I. Professional Obligation

20:6.1 Voluntary pro bono publico service.

A. *Every lawyer has a professional responsibility to provide legal services to those unable to pay.* A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year.

B. In order to fulfill this responsibility, *a lawyer should*

1. *Provide a substantial majority of the 50 hours of legal services without fee or expectation of a fee to:
   a. *persons of limited means OR*
   b. *charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; AND*

2. *Provide any additional services through:
   a. *delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where*
the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;

b. delivery of legal services at a substantially reduced fee to persons of limited means; OR

c. participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

C. Comments

1. The rule is aspirational; it does not require any pro bono at all. The rule cannot be the basis for any disciplinary action.

2. ABA recommended 50 hours.

3. Version adopted by Wisconsin Supreme Court does not include the reporting requirement recommended by the Ethics 2000 Committee.

4. The rule offers a better definition of what constitutes pro bono service with more emphasis on serving persons of limited means.
   a. Priority to providing services without charge to persons of limited means or organizations in matters intended to address the needs of persons of limited means.
   b. “Persons of limited means” includes persons who qualify for LSC programs and those with incomes slightly above who cannot afford counsel.
   c. Intent of the lawyer to provide free legal services is essential. Cases where anticipated fees are uncollected is not truly pro bono. However, award of statutory attorney fees would not disqualify from this definition.
   d. Second category—individuals, groups or organizations of more than limited means. Also allows for lawyers to receive modest fees, including judicare and court appointments where the fee is substantially below a lawyer’s usual rate and still consider it pro bono.
   e. Third category—activities that improve the law, the legal system or legal profession.
   f. Comments 9 and 10 stress that efforts of individual lawyers are not enough to meet the need for free legal services. Every lawyer should financially support such programs.
II. The Legal Clinic Rule  
**SCR 20:6.5 Nonprofit and court-annexed limited legal services programs.**

A. A lawyer who provides short-term limited legal services under the auspices of a program sponsored by a nonprofit organization, a bar association, an accredited law school or a court to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

1. Is not subject to the conflict of interest rules SCR 20:1.7 and 1.9(a), unless the lawyer knows that the representation of the client involves a conflict of interest
2. Is not subject to 20:1.10 unless the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by the rules above. Otherwise 20:1.10 does not apply to representation governed by this rule.

B. Comments

1. Completely new rule designed to allow lawyers to participate more freely in clinical type programs which offer limited legal services by limiting conflicts and imputation of conflicts to matters in which the lawyer has knowledge of the conflict. This enables lawyers to avoid extensive conflict checking before participating in a short-term relationship with a client.
2. The lawyer is exempted from the requirements of SCR 20:1.7, SCR 20:1.9(a) and SCR 20:1.10, except when s/he has actual knowledge that this representation constitutes a conflict of interest.
3. Lawyers can participate in limited legal services programs under the following circumstances
   a. lawyer providing limited scope representation must obtain client’s informed consent. SCR 20:1.2(c), SCR 20:6.5, Comment 2.
   b. lawyer is not required to screen for conflicts, because conflict rules apply only if lawyer is actually aware of the conflict
   c. lawyer is not required to record the names of clinic clients to enter into his/her firm’s conflicts database, because conflicts arising under this rule are not imputed to the firm. SCR 20:6.5, Comment 4
   d. if lawyer providing services is actually aware of a conflict, s/he may not provide services.
   e. if a lawyer subsequently becomes aware of a conflict arising from the lawyer’s provision of limited scope legal services under this rule, s/he is personally disqualified but such disqualification is not imputed to other members of the lawyer’s firm. SCR 20:6.5, Comment 4
4. Wisconsin added bar associations and law schools to the list of programs.

5. This rule is intended to apply to programs that help with forms and those that provide advice, programs designed to help people address their legal problems without further representation. The rule does not apply to more involved, longer term representation.

6. Even though a lawyer-client relationship is established, there is no expectation that the representation will continue.


8. If short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client that s/he needs further assistance from a lawyer. All other rules of professional conduct apply.

III. Limited Scope Representation

A. Limited scope representation, sometimes called unbundled legal services, describes a situation in which a lawyer agrees with a client to provide some, but not all, of the legal work involved in a matter, with the understanding that the client will be responsible for the services the lawyer does not agree to provide.

B. Limited scope representation is permitted by SCR 20:1.2(c) Scope of representation and allocation of authority between lawyer and client.

1. In general, a lawyer must abide by a client’s decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued.

2. However, a lawyer may limit the scope of the representation, if the limitation is reasonable under the circumstances and the client gives informed consent. SCR 20:1.2(c)

C. Comment 6 explains that limited representation may be appropriate because the client has limited objectives for the representation. The terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client’s objectives. Such limitation may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.
D. The limitations of the representation must be reasonable under the circumstances. Lawyer has responsibility to determine whether the limitation is reasonable. Assisting with forms or providing brief advice may suffice for a simple uncontested matter but be unreasonable for a complicated custody dispute.

E. Limiting scope does not limit ethical responsibility for lawyers.
   1. Lawyer must provide competent, even if limited, representation, (although limitations on the representation are a factor in determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation). Comment 7
   2. A lawyer undertaking limited scope representation should be experienced in the type of matter in which the lawyer seeks to provide limited services in order to be certain that the discrete tasks are performed competently and do not negatively affect other aspects of the matter.
   3. Lawyer must provide conflict free representation, communicate adequately with the client, maintain confidentiality and protect the client’s interests upon termination of the representation.

F. Lawyer must conduct sufficient inquiry into the matter before undertaking a limited scope representation to determine that the limited representation is reasonable.

G. A lawyer may have a duty to advise a client of readily apparent and relevant information, even if it falls outside the scope of a limited representation and to advise the client to seek independent advice as appropriate.

H. The scope of limited representation should be defined carefully in writing, and the client’s informed consent should be confirmed in writing. See IV. Informed Consent, below.
   1. Explain the facts and circumstances. When a lawyer is proposing limited representation, the lawyer must explain the specific services the lawyer agrees to provide and, perhaps the services the lawyer will not provide. Example: Lawyer will appear at Temporary Order hearing but will not negotiate divorce settlement.
   2. Explain the material advantages and disadvantages of the limited scope representation. Most importantly, the lawyer must explain the risks of limited scope representation, specifically the probable affect of limited representation. If is foreseeable that more
extensive services will be required, the lawyer must explain that client may be confronted with issues s/he can’t understand or handle.

I. The scope of representation rule emphasizes the importance of having a legal services agreement to avoid confusion. The agreement should specifically state what each party to the agreement will do and the level of service to be provided by attorney (i.e., how the representation will end—through administrative agency determination, appeals court, etc.).

J. Because it is unclear how the rule concerning lawyer communications with a represented opposing party applies, a lawyer should discuss with the client at the beginning whether communication with opposing counsel should go through client or lawyer.

K. Ghostwriting. Formal Ethics Opinion 07-446, ABA took the position that the rules of professional conduct do not require lawyers to reveal assistance provided to pro se litigants. However, some courts have indicated that they want to know when it’s been done. Good practice to state that the document was “drafted with assistance of counsel.” (Also note the distinction between form completion and advice about wording.)

IV. Informed Consent

SCR 20:1.0(f) Agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

A. Lawyers must now obtain “informed consent” in situations where lawyer previously needed “consent after consultation” from the client. This is a higher standard for consent.

B. Explain relevant facts and circumstances, material advantages and disadvantages of a proposed course of action and reasonably available alternatives to the proposed course of action.

C. Informed consent issues showing up in disqualification motions, not yet in disciplinary matters.

D. A lawyer must explain risks before obtaining consent. If a lawyer fails to discuss risks of particular type of conduct or reasonably available alternatives, then consent is not informed.
V. **SCR 20:1.1 Competence**

*A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

A. This applies to any legal service, starting with advice; it is not limited to extended representation. A lawyer who undertakes to provide legal advice must be competent to do that when the advice is sought. The most fundamental legal skill is determining what kind of legal problems a situation may involve.

B. Distinction between legal information and legal advice.

C. A lawyer is not required to have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A lawyer may take on new types of cases so long as s/he’s committed to do adequate preparation and study.

D. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners, including adequate preparation. The attention and preparation required are determined in part by what is at stake, major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.

E. Competent representation can be achieved through study or association with a lawyer of established competence.

F. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements.

VI. **SCR 20:1.6 Confidentiality**

A. Wisconsin prohibits revealing information relating to representation without client’s consent, but it also mandates disclosure under certain specific circumstances.

B. Lawyer is required to keep all information, whatever its source, relating to the representation of a client confidential, unless the client gives informed consent.
C. Wisconsin rule requires disclosure of information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in inflicting death or in substantial bodily harm or substantial injury to the financial interest or property of another. SCR 20:1.6(b)

D. A lawyer may disclose information under the following circumstances:
   1. to prevent reasonably likely death or substantial bodily harm, regardless of whether the client is involved in the conduct likely to cause such harm.
   2. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result, or has resulted, from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services.
   3. to seek advice about compliance with the Rules of Professional conduct, e.g. calling the State Bar’s Ethics Hotline.
   4. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client.
   5. To comply with other law or court order. Lawyer must raise all non-frivolous objections to court-ordered disclosure of information protected by SCR 20:1.6.

E. A lawyer is impliedly authorized to make disclosures about a client when appropriate in the representation and also to discuss case with co-workers in law firm. Comment 5.

F. Issues
   1. Distinguish from the attorney-client privilege which is a narrow evidentiary rule, and does not subject lawyer to discipline.
   2. Lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure.
   3. Sharing information in clinic setting is not addressed, but clinics are not considered law firms. Important to have rules and procedures to protect information.
   2. Rule applies to all information related to representation obtained from any source.
   3. Rule applies to agents of the attorney, including interpreters.
   4. Obligation continues after the client-lawyer relationship has terminated. SCR 20:1.9(c)
   5. Disclosure for one purpose doesn’t constitute a waiver. Client dictates disclosure even if information is a public record.
6. Health care records pose important issues. Always keep in mind the purpose of this rule and other protections for client information.

VII. Conflicts of Interest

A. SCR 20:1.7 Conflicts of interest current clients

*Generally, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.* Concurrent conflicts of interest arise where the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by personal interest of the lawyer.

1. The principles in the new rule are the same as the previous rule. The revisions are intended to make it easier to understand and process.

2. Direct adversity
   a. Representing opposing parties in a litigated matter.
   b. Advocacy in any proceeding against a person the lawyer represents in another matter. (Matters need not be related.)
   c. Negotiating on behalf of a client a contract or settlement agreement adversely to a person the lawyer is representing in another matter.
   d. Giving advice to a client that is adverse to the interests of a person the lawyer is representing in another matter.
   e. Representing co-parties in litigation.
   f. If lawyer discovers that s/he has been representing clients with adverse interests or current clients’ interests have become adverse, lawyer must determine whether s/he must withdraw and whether s/he may continue to represent either party.

3 A lawyer cannot represent a client or clients when there is a significant risk that the representation will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
   a. The new rule uses “significant risk that representation may be substantially limited,” in place of “materially limited.”
   b. four types of competing interests: lawyer’s responsibility or loyalty to another current client, a former client a third person or a lawyer’s personal interests.
4. A conflict arises when there is a significant risk that the lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited because of the lawyer's other responsibilities or interests.

5. This rule expands the definition of unwaivable conflicts
   a. When lawyer does not reasonably believe that the lawyer will be able to provide competent and diligent representation to each affected client.
   b. Representation is prohibited by law.
   c. Representation involves the assertion of a claim by one client against another in the same litigation or proceeding before a tribunal.

6. The second part of the rule allows a lawyer to represent a client, even if there is a concurrent conflict of interest, under the following circumstances:
   a. A lawyer is able to reasonably conclude that the lawyer will be able to provide competent and diligent representation to each affected client (after considering the facts and circumstances of each matter to determine whether the interests of each affected client will be adequately protected if the client is permitted to waive the conflict);
   b. The representation is not prohibited by law;
   c. The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
   d. Each affected client gives informed consent, confirmed in writing signed by the client.

7. After determining that the conflict is waivable, obtain the client’s informed consent including the facts and circumstances giving rise to the conflict, the material and foreseeable ways the conflict could adversely affect the client’s interests, and, in cases of multiple representation, of the possible adverse effects on loyalty, confidentiality and the attorney-client privilege. Consent should be confirmed in writing, signed by the client.

8. In some instances, seeking an informed waiver of a conflict from a client would require divulging confidential information of another client. In such circumstances, the lawyer may not seek the waiver without the consent of the client who “owns” the confidence.
9. Comments to the rule suggest that an attorney may procure an effective prospective waiver of a possible future conflict.

10. SCR 20:1.8 describes a variety of prohibited transactions.

B. **SCR 20:1.9 Duties to former clients.**
   1. A lawyer cannot undertake a representation materially adverse to a former client in the same or a substantially related matter in which the lawyer represented the former client, unless the former client gives informed consent. SCR 1.9(a)
      a. Was there ever an attorney-client relationship between the lawyer and purported former client?
      b. Is the client truly a “former” client? (If actually a current client, the more stringent rules of 1.7 apply)
      c. Are the interests of the current and former client adverse?
      d. Is there a substantial relationship between the two representations?
         i. Do the client matters involve the same transaction or legal dispute or is there otherwise a substantial risk that confidential factual information would materially advance the current client’s position in the subsequent matter?
         ii. Are the factual contexts of the two representations similar or related?
         iii. Is it reasonable to assume that the lawyer had access to confidential information in the first representation that would be relevant in the second.
      e. Has the former client given informed consent or waived objection to the representation of the current client.
   2. Unless a client gives informed consent, a lawyer cannot undertake a representation materially adverse to a former client of the lawyer’s former firm when the representations are substantially related and the lawyer has acquired material confidential information. SCR 20:1.9(b).
   3. A lawyer who formerly represented a client in a matter or whose present or former firm has formerly represented a client shall not
      a. use information relating to the representation to the disadvantage of the former client, except as the rules otherwise provide or when the information has otherwise become generally known; or
      b. reveal information relating to the representation except as the rules permit or require. SCR 20:1.9(c).
4. All former client conflicts are waivable.

C. **SCR 20:1.10 Imputed disqualification.**

A. An individual lawyer’s conflicts are imputed to other members of the lawyer’s firm.

B. New rule poses fewer restrictions on firms’ ability to accept cases despite of the conflict of one of its members.
   1. Conflicts arising from personal interests of a lawyer that do not pose a significant risk of materially limiting the representation of the client will not be imputed to other members of the firm.
   2. When a lawyer has a conflict arising from the providing minor and isolated services to a former client, that conflicted lawyer may be timely screened to avoid imputation of the conflict to other lawyers in the firm. Affected client must receive

VIII. **SCR 20:1.14 Client with diminished capacity.**

A. The new rule replaces “client under a disability” with “client with diminished capacity.”

B. **When a client’s capacity to make adequately considered decisions in connection with a representation is diminished** (because of minority, mental impairment or other reason), the lawyer shall, as far as reasonably possible, maintain a normal client/lawyer relationship with the client. SCR 20:1.14(a)

C. **When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.** SCR 20:1.14(b)
   1. This rule encourages an attorney to consult with others that can take action of behalf of client.
   2. This permits an attorney to seek GAL appointment or take other protective action only when the lawyer reasonably believes the client cannot act on his or her own.
D. The rule makes it clear that information relating to the representation of a client with diminished capacity is protected by SCR 20:1.6. When taking protective action pursuant to above, the lawyer is impliedly authorized under 1.6 to reveal information about the client but only to the extend reasonably necessary to protect the client’s interests.

E. According to Comment 9, under emergency circumstances, where imminent and irreparable harm is threatened, a lawyer can act on behalf of a person with seriously diminished capacity even though the person is unable to establish a lawyer-client relationship or make other judgments.

IX. Dealing With Persons Other Than Clients

A. **SCR 20.1.18 Duties to prospective clients.**
   1. New rule imposes a duty to keep information of prospective clients confidential, even if the attorney-client relationship is never formalized.
   2. A prospective client is one who discusses with a lawyer the possibility of an attorney-client relationship.
   3. Comment 4 cautions lawyers to avoid possible disqualification by limiting the initial information to the extent necessary to determine whether to represent the client.
   4. Must treat prospective clients as former clients for conflicts analysis if lawyer has gained “significantly harmful” information. To avoid significantly harmful information, limit discussion with prospective clients to that necessary to determine whether or not to take the case, type of matter, names of parties, names of witnesses, etc.
   5. The internet has opened up new possibilities to trigger this rule. Websites may appear to be an invitation to prospective clients to provide information about their circumstances with an expectation of privacy. An unsolicited e-mail may not present the same expectation.

B. **SCR 20:4.2 Communication with person represented by counsel.**
   1. Violation only if lawyer knows that party is represented.
   2. Doesn’t apply when client is seeking second opinion, when the lawyer is not adverse to the client’s interests.
   3. Issues arise in limited scope representation—attorney has limited role which may not include negotiating with other side.
   4. Lawyer may be authorized to communicate with a represented person by a court order.
C. **SCR 20:4.1 Truthfulness in statements to others.**
   1. A lawyer shall not knowingly make a false statement of material fact or law to a third person or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by SCR 20:1.6.
   2. New rule adds a provision allowing lawyers to supervise or advise others with respect to lawful investigatory activities.