

Marquette Volunteer Legal Clinics'

Model of Service Delivery & Professional Responsibility Considerations When Providing Brief Legal Advice

January 10, 2024

12:00-1:15PM

THE SESSION WILL BEGIN
PROMPTLY AT NOON



Marquette Volunteer Legal Clinics

Post Training To-Dos



Complete the attendance form for today's session within 30-minutes of its conclusion:
<https://mulaw.wufoo.com/forms/ms1zzl61hwu1fs/>



Complete our scheduling survey:
https://docs.google.com/forms/d/e/1FAIpQLSeA9usYETvQqlifDgsAvsl8K540xQ1gUbsVihPQg011EF2J_g/viewform



Experienced volunteers, sign up for open shifts here:
https://docs.google.com/spreadsheets/d/1LmdrNNmzFZy_rJ7n3wEgK1aRBe4qI2T6TExVkQ5Ejdyc/edit#gid=0



Zoom Meeting



Winter/Spring 2024



Clinics running both in-person
and online



~100 clients served each
week



~ 150 volunteer lawyers and
~130 law students are
involved

Topical Clinics

General Civil

Family Law

Expungement/Pardons

Immigration Law

Advice for Small Businesses &
Nonprofits - (FULL)

Estate Planning Clinics

Three main topics in today's training



Why we (you) offer these
services



How we (you) provide the
services



What ethical rules apply in
brief legal advice settings

*IF YOU CANNOT
AFFORD AN
ATTORNEY...*

One will NOT be provided
for you in civil matters.

The cost of accessing justice



Filing fees:

\$98 for small claims actions
\$198 for divorce with children
\$188 for divorce without children



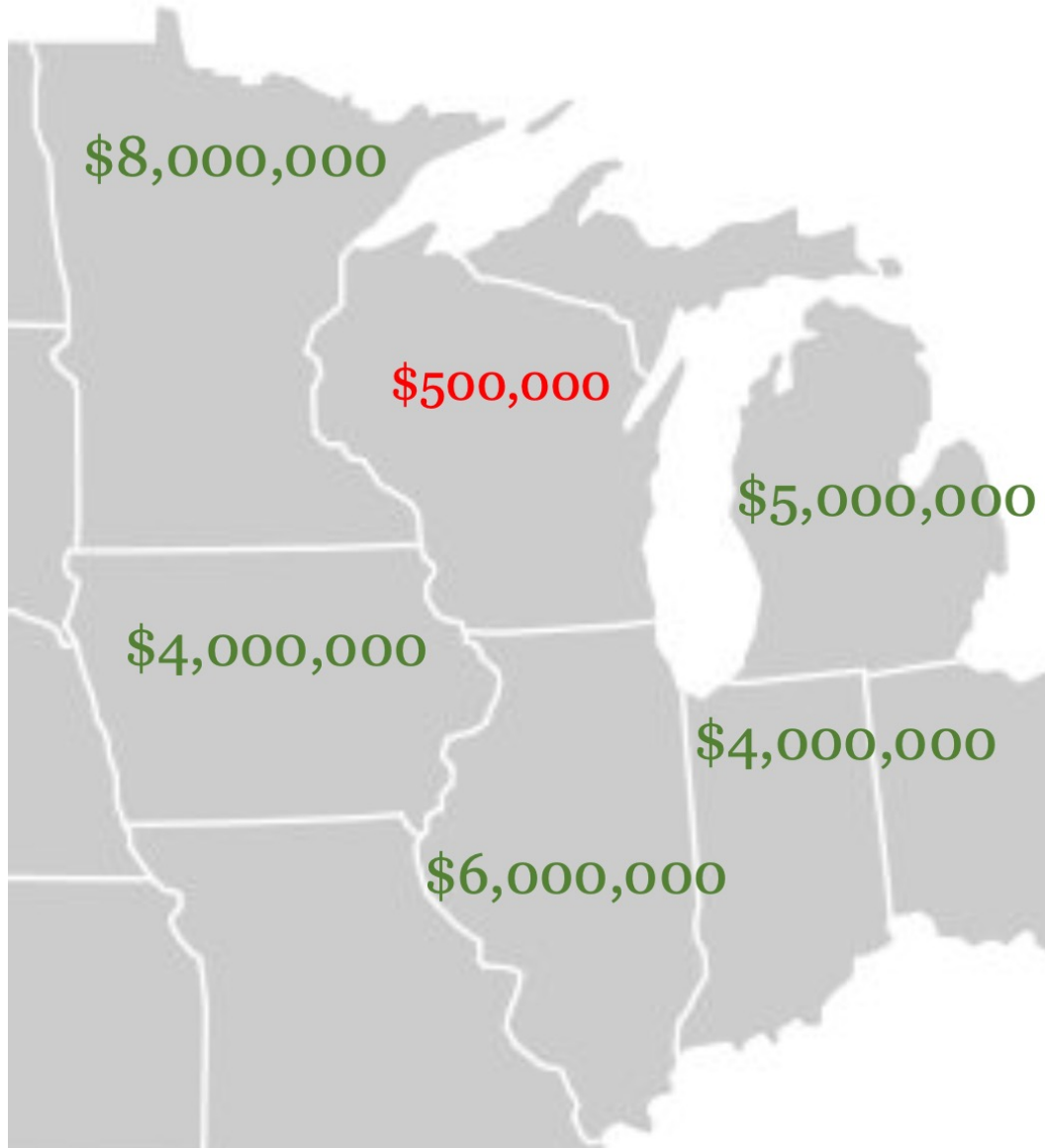
Service fees:

\$90 for three attempts by
Milwaukee Co. Sheriff's Office



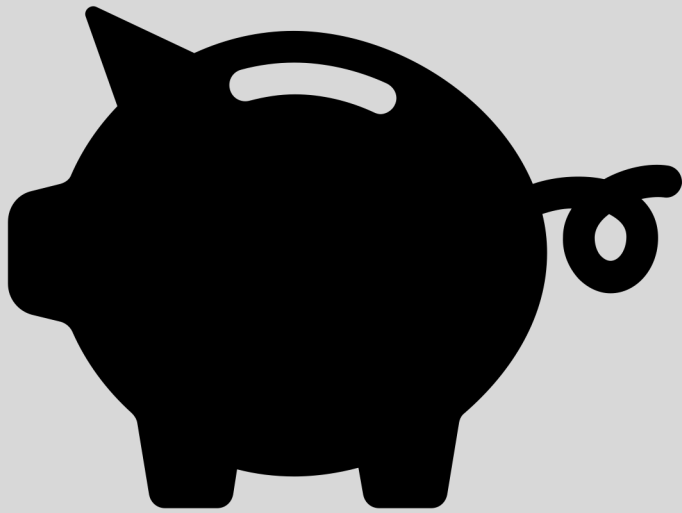
Attorney's fees:

Often hourly
Sometimes with a retainer



**WISCONSIN HAS
THE LOWEST LEVEL
OF STATE
FUNDING FOR
CIVIL LEGAL AID IN
THE NATION**

Legal Aid Can Save Costs



Housing:

Prevent evictions and foreclosures

Health:

Promote health & prevent illness by helping with benefits or remedying conditions that caused the problems

Domestic Violence:

Prevent recurrence resulting in fewer hospital visits

Seniors:

Prevents guardianships, financial abuse, and consume fraud

Veterans and Military Families:

Assists with benefits claims

Wisconsin's Economic Impact Study Released in June 2023

Every \$1 invested in civil legal aid in Wisconsin returns \$8.40 to the economy, according to a study commissioned by the Wisconsin Trust Account Foundation, Inc. (WisTAF).



Read the full study at https://www.wistaf.org/wisconsin/Study-The-Economic-Impact-of-Civil-Legal-Aid-in-Wisconsin_90386

We, as lawyers, have a special responsibility.

From (6) of the preamble to the rules of professional responsibility:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

Rule 6.1 Voluntary Pro Bono Service

SCR 20:6.1 Voluntary pro bono publico service

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.



MVLC Mission

To serve the Milwaukee community (and beyond!) in Marquette's tradition of service by increasing access to justice while providing learning and mentoring opportunities for law students.

How the clinics operate

- Law student, lawyers, and supervisors gather 5/10-minutes before start time for updates and announcements.
- Supervisors place student/lawyer teams into meeting rooms (Zoom “breakout rooms” and in-person conference rooms). Clients are assigned to those meeting places as they arrive.
- The students and attorneys may return to the main office (in Zoom, it is a virtual main office) at any time to consult with supervisors and facilitators.



Host and Client Intake

Greet the client
Make introductions
Explain the limits of the
clinic
Gather intake info



Researcher

Have “Gold Guides”
and other clinic
materials at your
fingertips

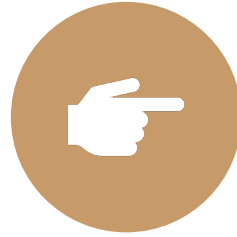


Listener and Client File Manager

Listen to the client and
attorney and ask
clarifying questions
Take client-friendly
notes during the
meeting

The Law Student Role

The Lawyer Role



READ MVLC
UPDATES ON
GOLD LINK
BEFORE EACH
CLINIC



CONSULT WITH
SUPERVISORS &
COLLEAGUES AS
OFTEN AS
YOU'D LIKE



PROVIDE THE
BRIEF LEGAL
ADVICE TO THE
CLIENT



ENSURE THE
NOTES ARE
WELL DONE
BEFORE THEY
ARE SUBMITTED



TAKE CARE
WHEN
PROVIDING
CLIENT
REFERRALS

*The power of
listening*

*The value of
giving time*

You know a client doesn't have a case after hearing the first 3-minutes of their story. We ask you to continue listening, asking questions, and validating feelings.

- **We listen to show we care**
- **We listen & ask questions for the benefit of the students**
- **You may be one of the client's only sources of support**



Gold Link

Volunteer SharePoint Page

*What ethical rules
apply to brief
legal advice?*

All of them!

- Confidentiality, SCR 20:1.6
- Competence, SCR 20:1.1
- Limited Scope Representation, SCR 20:1.2
- Conflicts of Interest, SCR 20:6.5
- Ghostwriting, SCR 20:1.2(cm)
- Communicating with Person Represented by Counsel, SCR 20:4.2

Lawyer as Advisor

SCR 20:2.1

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, **a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.**

ABA Comment [1] states: “. . . **Purely technical legal advice, therefore, can sometimes be inadequate.** It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, **moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.**”

Confidentiality

SCR 20:1.6

- A lawyer shall not reveal information relating to the representation of a client
- Information contained in the public record does not deprive it of its confidential nature
- When using Zoom, work in a private setting; roommates and others should be insulated from hearing the client
- The set-up at in-person clinics can allow for easy eavesdropping. Take note.
- Destroy any notes you jot down during the meeting
- Students: Use only your Marquette.edu email address for correspondence about clients
- Ensure your computer is password protected

*Limited Scope
Representation
SCR 20:1.2*

A lawyer may limit the scope of the representation if the limitation is:

- Reasonable under the circumstances and
- The client gives informed consent.

*“Reasonable under
the circumstances”*

Our malpractice insurance indicates four
area ill-suited for brief legal advice:

- Commercial real estate transactions
- Public school law
- Employment discrimination
- Complex litigation

Also, anything you decide is ill-suited for
brief legal advice

Part of what is “reasonable under the circumstances”
is whether you can provide competent advice

Competence
SCR 20:1.1

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

Competence ***SCR 20:1.1***

Limited scope representation does not exempt a lawyer from the duty to provide competent representation, but the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Rule Comment 7 to SCR 20:1.2

Competence SCR 20:1.1

Other relevant factors in determining whether a lawyer employs the requisite knowledge and skill in a particular matter are listed in ABA Comment [1]:

- The relative complexity and specialized nature of the matter,
- The lawyer's general experience,
- The lawyer's training and experience in the field in question,
- The preparation and study the lawyer is able to give the matter, and
- Whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

Comment [5]:

- The required attention and preparation are determined in part by what is at stake.

Competence ***SCR 20:1.1***

A newly admitted lawyer can be as competent as a practitioner with long experience...

Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. Rule Comment to SCR 20:1.1

*Limited Scope
Representation
SCR 20:1.2*

A lawyer may limit the scope of the representation if the limitation is:

- Reasonable under the circumstances and
- The client gives informed consent.

Informed Consent SCR 20:1.0(f)

***(the second prong
of limited scope
representation)***

Three elements of informed consent. Each is included in our written explanation of clinic services provided to clients by email.

1. Explanation of facts and circumstances
2. Explanation of the material advantages and disadvantages of a proposed course of conduct
3. An explanation of available options and alternatives

Explanation of Clinic Services

The Marquette Volunteer Legal Clinics ("MVLC") are a brief legal advice and referral service staffed by volunteer Marquette University law students working with and supervised by volunteer attorneys. Our purpose is to provide you with brief legal advice and appropriate referrals if more extensive services are needed. The MVLC cannot accept your case or represent you in any legal action in which you may be involved. Our assistance is limited and does not create an ongoing attorney-client relationship.

It is usually a good idea to have an attorney represent you, and it may be difficult to proceed without one. We will provide as much assistance as we can today, but you may be more successful if you have an attorney. If we are aware of any reasonable available alternatives to our service, we will refer you to them. We recommend that you contact any legal resources to which we refer you.

Please note that the limited scope of our services does not permit us to advise you on complicated matters, including but not limited to commercial real estate transactions, complex litigation, or certain other specialized areas of the law.

Information that you share with us will be treated as confidential by the MVLC and will not be disclosed without your consent or unless the MVLC is required to do so under applicable state law. The MVLC respects your privacy and maintains safeguards to protect personal information from unauthorized access. The personal information you share with us will be maintained by the MVLC and the Milwaukee Justice Center solely for the purposes of providing you with services and to collect statistical data. We do not sell or lease private information about you to any third parties for marketing purposes.

While some persons may visit the MVLC on more than one occasion, each visit must stand on its own and does not establish an ongoing attorney-client relationship. In addition, we reserve the right to refuse to see returning individuals if it appears that their expectation for services is beyond the scope of our services—brief legal advice and referrals.

***Informed Consent
Not Required in
Writing
SCR 20:1.2(c)(1)***

Informed consent need not be given in writing if the representation is provided by a lawyer ... participating in a program sponsored by ... an accredited law school, or a court and lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms.

Conflicts of Interest

SCR 20:6.5

A special rule for lawyers participating in advice-only clinics. No need to check for conflicts. You only have a conflict if you know it.

A lawyer who, under the auspices of a program sponsored by ... an accredited law school ... provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is subject to Rules 1.7 (conflict with current clients) and 1.9(a) (duties to former clients) **only if the lawyer knows that the representation of the client involves a conflict of interest**; and (2) is subject to Rule 1.10 (imputed disqualifications) only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

But what if I see a client in the clinic and at some later time an adverse party hires me for representation?

No! There is still no conflict.

Comment 4 to SCR 20:6.5 states in relevant part (emphasis added):

...a lawyer's participation in a short-term limited legal services program **will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices.** Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

Ghostwriting *SCR 20:1.2(cm)*

A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that “This document was prepared with the assistance of a lawyer.”

We draft everything as the client. Assume they are proceeding pro se.

Every clinic equipped with a stamp with the words: “Prepared with assistance of a lawyer.” Or type those words on the document you prepare.

***Communication
with Person
Represented by
Counsel SCR
20:4.2***

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule comment:

This rule does not preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter.

Personal Pro Bono Accounts



Your pro bono hours are recorded for you



Your CLE attendance with any MVLC-sponsored CLE is recorded in your pro bono account



Wisconsin lawyers who have performed at least 50 hours of pro bono legal services with the MVLC in a calendar year are reported to the Wisconsin Pro Bono Honor Society



Wisconsin lawyers can claim one hour of CLE credit for every five hours of pro bono work in qualified pro bono programs, up to a maximum of six credits per reporting period.



2023-24 Free CLE Series for volunteers:

<https://law.marquette.edu/mvlc/volunteer-cle/>

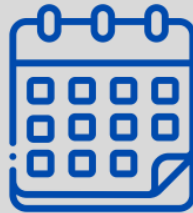
CLE credits & substantive training

Marquette Volunteer Legal Clinics

Post Training To-Dos



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Experienced volunteers, sign up for open shifts here:
https://docs.google.com/spreadsheets/d/1LmdrNNmzFZy_rJ7n3wEgK1aRBe4ql2T6TEhVvkQ5Ejdyc/edit#gid=0



Comments? Questions?

Thank You for Joining the Marquette Volunteer Legal Clinics!