



MARQUETTE
UNIVERSITY

LAW SCHOOL

To: Students Engaged in Pro Bono Service

From: Angela Schultz, Pro Bono Director

Re: Ethical Issues in Pro Bono Service

The Professional Responsibility of Law Students Engaged in Pro Bono Work

Legal education is generally a passageway to careers of service in the law. The standards of responsibility for that service are high. The responsibilities of law students are of course different from those of lawyers. Yet in a real sense professional responsibility begins upon entering law school. Before you graduate from law school, you will be required to complete a course in professional responsibility in which you will learn the professional and ethical obligations of an attorney. This memo will outline the issues of which you should be aware as you begin what we hope will be a lifelong practice of pro bono service.

Unauthorized Practice of Law

757.30 Penalty for practicing without license. 757.30(1)

(1) Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt. ...

As a law student, you will be viewed by non-lawyers as possessing legal knowledge and skills and are likely to receive requests for legal advice or assistance from family, friends, and even strangers. It is unethical, but more importantly illegal, to offer legal advice, assistance or representation, draft documents, or in any way appear to be giving a legal opinion to a person or entity unless you are licensed to practice in that jurisdiction. If someone were to rely on your advice, you could cause grievous harm. A disclaimer that you are “just a law student” is not sufficient. Not only could you be subject to civil or criminal penalties, you could jeopardize your admission to the Bar.

In the context of pro bono placements, it is essential that you do not give anything that could be construed as legal advice to a client or prospective client. That does not mean that you cannot convey legal information that an attorney supervisor tells you to give to a client. And you are able to provide information in a “know your rights” workshop at a community center or school. On the other hand, it does mean that if you are asked a question about a specific legal issue you should never try to apply the law to a particular set of facts. Under all of these scenarios, you should seek guidance from your attorney supervisor if you are at all unclear where the line should be drawn.

Confidentiality

Wisconsin Supreme Court Rule (SCR) 20:1.6

SCR 20:1.6 Confidentiality. (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c). ...

When volunteering or working in a legal clinic or office, you are likely to learn information about the clients and potential clients of the attorney, firm, or organization for which you are working. Almost without exception, this information is considered “confidential” which means it is protected by the ethical obligation of confidentiality regardless of the source of the information and should not be discussed with others outside the clinic, office, firm or organization.

Although you are not yet a lawyer, you have an obligation to the attorneys who are supervising you and to the organization’s clients to keep this information confidential. This is true even after you have left the firm or organization and regardless of whether the matter has been resolved.

On a related note, you may feel that something you have prepared during your pro bono placement would be a good writing sample for a future job search. Be aware that you must first get permission from your supervising attorney and then be sure to “redact” (black out) any confidential information that could identify the client(s).

Conflicts of Interest

SCR 20:1.7-1.10

SCR 20:1.7 Conflicts of interest current clients. (a)
Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. ...

Under the Wisconsin Supreme Court Rules of Professional Conduct, a lawyer cannot work for a client and the adverse party on the same matter. A lawyer is also prohibited from working for the adversary of a former client if the lawyer possesses confidential information about the former client that could adversely affect the client.

Although you are not yet a lawyer, the conflict of interest rules apply to you both as a future attorney and as a non-lawyer volunteer working with an attorney. The confidential knowledge gained from working in a legal clinic or office can place you in a situation that could potentially create a conflict of interest for you in subsequent volunteer positions or employment. For example, if at one point you worked for a firm that represented a landlord, then, while volunteering with a legal clinic, became involved in a landlord/tenant dispute against that same landlord, it would be a conflict of interest for you to work on the case against that landlord. You would have an obligation to inform the supervising attorney (but not the client because of confidentiality concerns) of your conflict.

While the process of determining whether there is an actual or a potential conflict of interest will be an essential part of your practice of law, there are special rules governing the type of clinics that we operate, including the Marquette Volunteer Legal Clinic (MVLCL), Legal and Medical Partnerships

(LAMP) and Marquette Legal Initiative for Nonprofit Corporations (M-LINC) clinics which allow us to proceed with giving advice to the client without going through the process of determining the existence of conflicts or creating future conflicts. This rule does not include actual conflicts of interest which the attorney or you may have based on actual knowledge of a conflict.

SCR 20:6.5 Nonprofit and court-annexed limited legal services programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court, 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 SCR 20:1.7 and SCR 20:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to SCR 20:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by SCR 20:1.7 or SCR 20:1.9(a) with respect to the matter.

(b) Except as provided in par. (a)(2), SCR 20:1.10 is inapplicable to a representation governed by this rule. ...

While the rule provides an exception to the requirement that conflicts be ruled out, there may, nevertheless, be certain actual conflicts that prevent us from providing our legal advice. For example, an attorney knows of a conflict because the firm represents the opposing party. Or, a student knows of a conflict through work for a company involved in the matter, or actually knows a party to the action.

If it occurs that there is an actual conflict that prevents the attorney or you from meeting with the client, there may be another attorney or student at the clinic that does not have a conflict of interest. If there is no one available and the client cannot be seen, this information should be conveyed to the client by the attorney or the clinic supervisor, not by the student. Also, the circumstances of the conflict or the fact that a conflict exists should not be shared with the client as this itself may constitute a breach of confidentiality.

Conclusion

It is important to remember that you should not try to determine for yourself how to handle one of these issues should it arise; you must inform your supervising attorney and let him or her make the determination of how to proceed. Under the rules of professional responsibility your supervising attorney is responsible for overseeing your work done to be sure you are complying with the rules. Your violation of these rules could subject the attorney to disciplinary actions and could cause the client harm. Furthermore, it could jeopardize your admission to the Bar.

Should anything arise during your pro bono placement that you have questions about, whether touching on the issues raised in this memo or anything of a professional or ethical nature, feel free to contact Angela Schultz, Pro Bono Director, Karin Werner, M-LINC Director, or Julie Darnieder, MVLC Director.