

## **SCR CHAPTER 23**

# **REGULATION OF UNAUTHORIZED PRACTICE OF LAW**

### **PREAMBLE**

Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices.

The following rules are promulgated by the Wisconsin Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rules is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

#### **SCR 23.01 Definition of practice of law.**

The practice of law in Wisconsin is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) where there is a client relationship of trust or reliance and which require the knowledge, judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion for another entity or person of legal documents or agreements which affect the legal rights of the other entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative

proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(5) Any other activity determined to be the practice of law by the Wisconsin Supreme Court.

**SCR 23.02 License required to practice law; use of titles.**

(1) **RIGHT OF A PERSON TO PRACTICE LAW IN WISCONSIN.** A person who is duly licensed to practice law in this state by the Wisconsin Supreme Court and who is an active member of the State Bar of Wisconsin may practice law in Wisconsin. No person may engage in the practice of law in Wisconsin, or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar of Wisconsin.

(2) **EXCEPTIONS AND EXCLUSIONS.** A license to practice law and active membership in the State Bar of Wisconsin are not required for a person engaged in any of the following activities in Wisconsin, regardless of whether these activities constitute the practice of law:

(a) Practicing law pursuant to SCR 10.03(4) by a non-resident counsel or registered in-house counsel.

(b) Serving as a courthouse facilitator pursuant to court rule.

(c) Appearing in a representative capacity before an administrative tribunal or agency to the extent permitted by such tribunal or agency.

**COMMENT**

A nonlawyer who is an employee, member, or officer of an entity or organization may represent such entity, organization or any corporate affiliate before an administrative tribunal or agency of the State of Wisconsin.

(d) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(e) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

- (f) Acting as a lobbyist.
- (g) Sale of legal forms in any format.
- (h) Activities which are preempted by federal law.
- (i) Selection or completion of a legal document, including a legal document created pursuant to statute, administrative rule, or Supreme Court Order, where the document may contain various blanks and provisions to be filled in or completed and selection or completion of the legal document requires only common or transaction-specific knowledge regarding the required information and general knowledge of the legal consequences.
- (j) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.
- (k) Any other activities that the Supreme Court has determined by rule or by published opinion do not constitute the unlicensed or unauthorized practice of law or which are permitted under a regulatory system established by the Supreme Court, Wisconsin Statutes, Administrative Code or common law.
- (l) Acting as a nonlawyer advocate under the direction or supervision of a lawyer.
- (m) Acting as a nonlawyer assistant under the supervision of a lawyer in compliance with SCR 20:5.3 of the Wisconsin Rules of Professional Conduct for Attorneys.

## COMMENT

This provision encompasses practical training of law students authorized by SCR Ch. 50.

- (n) Governmental agencies, Indian tribes and their employees carrying out responsibilities provided by law.
- (o) Practicing within the scope of practice allowed by a current credential issued or authorized under chs. 440 to 480, stats., or performing services under the supervision of a professional holding a current credential issued under chs. 440 to 480, stats., provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(p) A victim service representative acting within the scope of s. 895.45, stats., or a Court Appointed Special Advocate (CASA) volunteer or staff member acting within the scope of s. 48.236, stats.

(q) A nonlawyer entity or organization acting through lawyer employees to the extent such lawyers perform pro bono legal services for nonprofit organizations, low-income clients, or otherwise in the public interest.

(r) An entity or organization in the business of insurance guarantee or indemnity, or the provision, sale or marketing of insurance or financial products or services permitted to be offered by insurance companies under s. Ins 6.75, Wis. Admin. Code, or a self-insured entity or organization, or any employee licensed under ch. 628, stats., or contractor of any of the foregoing entities or organizations when conducting their insurance business, which includes but is not limited to: (1) investigating or adjusting claims against it or its insured; (2) negotiating with other persons or entities; (3) conducting loss control functions; (4) underwriting business; (5) selling insurance or financial products or services permitted to be offered by insurance companies under s. Ins 6.75, Wis. Admin. Code, or providing advice and counsel with respect to such insurance or financial products or services; (6) the preparation of releases or settlement agreements; (7) using a lawyer employee or captive lawyer admitted to the bar in Wisconsin or otherwise permitted to practice law in Wisconsin to represent its principal or corporate affiliate, or an insured or noninsured for whom a defense is provided; and (8) any act required of an insurer by law, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(s) Professional activities performed by a certified public accountant or by a person working under the direction of a certified public accountant.

(t) Any state or federally chartered financial institution or affiliate of such an institution when engaging in an activity that is within its authority under applicable state or federal law, including any person providing services for it in connection with that activity; provided that the Supreme Court has not determined by rule or by

published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(u) A benefits specialist acting in the scope of s. 46.81(4), stats., or in the scope of s. 46.283, stats., and s. DHS 10.23 (2) (d), Wis. Adm. Code.

(v) Nonlawyers making any disclosure or advisement which is required by state or federal law.

(w) Teaching about the law or providing information about the law including the legal rights or responsibilities of persons under the law, in a manner that is not directed at providing specific legal advice to a specific individual in the context of a specific matter.

## COMMENT

The exceptions may also encompass:

Nonlawyer employees of an entity or organization that engage in giving advice or counsel to another entity or person as to the legal rights of that entity or person; selection, drafting, or completion, for another entity or person, of legal documents; or negotiation of legal rights or responsibilities on behalf of another entity or person, where the activities are undertaken for the sole benefit of the entity or organization or any corporate affiliate;

Nonlawyer employees of an entity or organization preparing legal documents that are incidental to the entity's or organization's business and connected with any transaction in which the entity has a direct, primary, and nonfiduciary interest, or a fiduciary interest required by federal law;

Nonlawyer entities or organizations which employ lawyer employees to perform the activities described in 23.01(1) for such entity, other entities within the organization, or in the case of privately held entities or organizations, for owners and their families, officers, directors, or employees of the entity or organization;

A nonlawyer entity or organization acting through lawyer employees providing legal services, without direct payment therefor, to a party other than a party described in (j), in a manner consistent with the Wisconsin Rules of Professional Conduct for Attorneys (including, without limitation, the rules relating to conflicts of interest and fee sharing), so long as the entity or organization has a financial interest in the outcome of the legal services, there is a commonality of purpose between the entity or organization and the third party, and the entity or organization is not otherwise in the business of providing legal services except as provided in these rules.

(3) USE OF TITLES. Except as permitted by SCR 10.03(4), only a person who is currently licensed to practice law in Wisconsin and who is an active member of the State Bar of Wisconsin may represent himself or herself to the public using the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his or her name or any sign, advertisement, business card, letterhead,

circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand the person to be authorized to practice law in this state or otherwise qualified to provide professional legal services or advice.

## COMMENT

The practice of law requires a skillful practitioner with training in how to find, interpret and apply the law in various circumstances which involve the legal rights and interests of the person(s) being served. Licensure and regulation of the practice of law are necessary to protect the public interest from harm which can result from incompetency, dishonesty, and unethical behavior. The regulation of the practice of law in Wisconsin is a judicial power vested in the Wisconsin Supreme Court. Seitzinger v. Community Health Network, 2004 WI 28, ¶31, 270 Wis. 2d 1, 19.

A license to practice law in Wisconsin is a privilege bestowed upon someone who has completed legal training through an accredited law school and who has met the standards prescribed by the Wisconsin Board of Bar Examiners. Once admitted to practice law in Wisconsin, a lawyer must comply with requirements designed to reduce the likelihood of harm to the public. For example, a lawyer must complete a minimum number of hours of continuing legal education every two years and is required to follow a code of professional and ethical conduct. The failure of a lawyer to abide by the required standards may result in discipline, including but not limited to suspension and/or revocation of a lawyer's license to practice law as well as other remedies.

### **SCR 23.03 Provision of legal services following determination of major disaster.**

(1) DETERMINATION OF EXISTENCE OF MAJOR DISASTER. Solely for purposes of this rule, the Wisconsin Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(a) the State of Wisconsin and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(b) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in the State of Wisconsin pursuant to sub. (3) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(2) TEMPORARY PRACTICE IN THE STATE OF WISCONSIN FOLLOWING MAJOR DISASTER. Following the determination of an

emergency affecting the justice system in Wisconsin pursuant to sub. (1) of this rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in Wisconsin are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in the State of Wisconsin on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.

**(3) TEMPORARY PRACTICE IN THE STATE OF WISCONSIN FOLLOWING MAJOR DISASTER IN ANOTHER JURISDICTION.** Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in the State of Wisconsin on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

**(4) DURATION OF AUTHORITY FOR TEMPORARY PRACTICE.** The authority to practice law in the State of Wisconsin granted by sub. (2) of this rule shall end when this Court determines that the conditions caused by the major disaster in the State of Wisconsin have ended except that a lawyer then representing clients in the State of Wisconsin pursuant to sub. (2) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in the State of Wisconsin granted by sub. (3) of this rule shall end 60 days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

**(5) COURT APPEARANCES.** The authority granted by this rule does not include appearances in court except:

(a) pursuant to that court's pro hac vice admission rule (SCR 10.03(4)) and, if such authority is granted, any fees for such admission shall be waived; or

(b) if this Court, in any determination made under sub. (1), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to sub. (2).

If such an authorization is included, any pro hac vice admission fees shall be waived.

**(6) DISCIPLINARY AUTHORITY AND REGISTRATION REQUIREMENT.** Lawyers providing legal services in the State of Wisconsin pursuant to sub. (2) or (3) are subject to the Wisconsin Supreme Court's disciplinary authority and the Rules of Professional Conduct for Attorneys of this jurisdiction as provided in SCR 20:8.5 of the Rules of Professional Conduct. Lawyers providing legal services in the State of Wisconsin under sub. (2) or (3) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of Supreme Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in the State of Wisconsin.

**(7) NOTIFICATION TO CLIENTS.** Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Wisconsin of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in the State of Wisconsin except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in the State of Wisconsin.

## ABA COMMENT

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a

result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph [(1)(a),] this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph [(2)] of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph [(2)] shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph [(2)] permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction.

Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph [(2),] an emeritus lawyer from another United States jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under Rule 5.5(c) of the Rules of Professional Conduct.

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph [(3)] to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14], Rules of Professional Conduct.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs [(2)] and [(3)] also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph [(4),] this Court

determines when those conditions end only for purposes of this Rule. The authority granted under paragraph [(2)] shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph [(2)] may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph [(3)] will end [60] days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs [(2)] and [(3)] do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the pro hac vice admission rules of the particular court. This Court may, in a determination made under paragraph [(5)(b),] include authorization for lawyers who provide legal services in this jurisdiction under paragraph [(2)] to appear in all or designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph [(5)] may continue to appear in any such matter notwithstanding a declaration under paragraph [(4)] that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs [(2)] or [(3)] of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

Adopted July 27, 2010. Amended July 5, 2012.