

REVISED DRAFT

Prepared for discussion at 4/24/08 open conference

REVISED DRAFT BY STATE BAR OF WISCONSIN¹

SCR CHAPTER 23 REGULATION OF UNAUTHORIZED PRACTICE OF LAW

SCR 23 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. Nothing in these rules shall be taken to define or affect standards for civil liability.

SCR 23.01 Definition of practice of law.

(1) 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:

- (a) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
- (b) 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).
- (c) 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.
- (d) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

¹ This draft is based on the draft the Supreme Court prepared for the Court's April 24, 2008 administrative hearing. (At the State Bar's request, the Court did not consider the proposed UPL rule at the April 24 hearing.) This draft reflects how the State Bar wants the Court's draft of the proposed rule to be modified and edited. No footnotes from the April 24, 2008 draft are included in this draft, although two "comments" are included. THIS DRAFT IS MARKED TO SHOW ADDITIONS AND DELETIONS TO THE COURT'S DRAFT DATED APRIL 24, 2008.

42 (e) Any other activity determined to be the practice of law by the Wisconsin Supreme Court.
43

44 **SCR 23.02 License required to practice law; use of titles.**
45

46 (1) **Right of a person to practice law in Wisconsin.** A person who is duly licensed by the
47 Wisconsin Supreme Court and who is an active member of the State Bar of Wisconsin may practice
48 law in Wisconsin. No person may engage in the practice of law in Wisconsin, or attempt to do so, or
49 make a representation that he or she is authorized to do so, unless the person is currently licensed to
50 practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar
51 of Wisconsin.

52
53 (2) **Exceptions and exclusions.** ~~Regardless whether they constitute the practice of law, a~~
54 ~~license to practice law and active membership in the State Bar of Wisconsin are not required for a~~
55 ~~person engaged in any of the following activities in Wisconsin:~~
56

57 (a) Practicing law by a non-resident counsel pursuant to SCR 10.03(4).
58

59 (b) Serving as a courthouse facilitator pursuant to court rule.
60

61 (c) Appearing in a representative capacity before an administrative tribunal or agency to the extent
62 permitted by such tribunal or agency.²
63

64 (d) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.
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66 (e) Participation in labor negotiations, arbitrations or conciliations arising under collective
67 bargaining rights or agreements.
68

69 (f) Acting as a lobbyist.
70

71 (g) Sale of legal forms in any format.
72

73 (h) Activities which are preempted by federal law.
74

75 (i) Selection or completion of a legal document, including a legal document created pursuant to
76 statute, administrative rule, or Supreme Court Order, where the document may contain various blanks
77 and provisions to be filled in or completed and selection or completion of the legal document requires
78 only common or transaction-specific knowledge regarding the required information and general
79 knowledge of the legal consequences.
80

81 (j) Serving in a neutral capacity as a clerk or court employee providing information to the public
82 pursuant to Supreme Court Order.
83

84 (k) Such other activities that the Supreme Court has determined by rule or by published opinion
85 do not constitute the unlicensed or unauthorized practice of law or which are permitted under a

² COMMENT: Note that 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.

86 regulatory system established by the Supreme Court, ~~Wisconsin Statutes, Administrative Code or~~
87 ~~common law.~~

88

89 (l) Acting as a non-lawyer advocate under the direction or supervision of a lawyer.

90

91 (m) Acting as a non-lawyer assistant under the supervision of a lawyer in compliance with SCR
92 20:5.3 of the Wisconsin Rules of Professional Conduct.

93

94 (n) Governmental agencies and their employees carrying out responsibilities provided by law.

95

96 (o) Practicing within the scope of practice allowed by a current credential issued under Wis.
97 Stats. chs. 440 to 480 provided that the Supreme Court has not determined by rule or by published
98 opinion that the activity constitutes the unlicensed or unauthorized practice of law.

99

100 (p) A victim service representative acting in the scope of sec. 895.45, Stats., is not engaged in the
101 practice of law; nor is a Court Appointed Special Advocate (CASA) volunteer or staff member acting
102 within the scope of sec. 48.236, Stats.

103

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

107

108 (r) An entity or organization in the business of insurance guarantee or indemnity, or the sale of
109 insurance ~~or financial products~~ permitted to be offered by insurance companies, ~~or a self-insured~~
110 ~~entity or organization~~, or any employee or contractor of any of the foregoing entities or organizations
111 when conducting their customary insurance business, which includes ~~but is not limited to~~: (1)
112 investigating or adjusting claims against it or its insured; (2) negotiating with other persons or
113 entities; (3) conducting loss control functions; (4) underwriting business; (5) selling insurance ~~or~~
114 ~~financial products~~ permitted to be offered by insurance companies or providing advice and counsel
115 with respect to such insurance ~~or products~~; and (6) the preparation of releases or settlement
116 agreements; ~~(7) using a lawyer employee or captive lawyer admitted to the bar in Wisconsin or~~
117 ~~otherwise permitted to practice law in Wisconsin to represent its principal or corporate affiliate, or an~~
118 ~~insured or noninsured for whom a defense is provided; and (8) any act required of an insurer by law;~~
119 provided that the Supreme Court has not determined by rule or by published opinion that the activity
120 constitutes the unlicensed or unauthorized practice of law.

121 ~~(s) — Notwithstanding par. (o), the Director of the Office of Lawyer Regulation shall [may] forward~~
122 ~~any complaint received against a certified public accountant to the Accounting Examining Board for~~
123 ~~its review and action under Wis. Stats. Ch. 442.~~

124 ~~(t)(s)~~ Any state ~~of or~~ federally chartered financial institution ~~or affiliate of such an institution~~, when
125 engaging in an activity that is within its authority under applicable state or federal law, including any
126 person employee providing services for it in connection with that activity; provided that the Supreme
127 Court has not determined by rule or by published opinion that the activity constitutes the unlicensed
128 or unauthorized practice of law.

129 ~~(w)~~ (u) Nonlawyers making any disclosure or advisement which is required by state or federal law.
130 ~~(x)~~ (v) Teaching about the law or providing information about the law including the legal rights or
131 responsibilities of persons under the law, in a manner that is not directed at providing specific legal
132 advice to a specific individual in the context of a specific matter.

133 ~~(y)~~—Nonlawyer or lawyer employees or members of an entity or organization providing
134 information or education about law, regulations, legal procedures, and compliance issues for the
135 purpose of training other employees or members of the entity or organization.

136 ~~(z)~~—General Information. Nothing in these rules shall affect the ability of a person or entity to
137 provide information of a general nature about the law and legal procedures to members of the public.

138
139 (3) **Use of titles.** Only a person who is currently licensed to practice law by the Wisconsin
140 Supreme Court and who is an active member of the State Bar of Wisconsin may use the title
141 "attorney", "lawyer" or any similar title, or may state or imply that he or she is licensed to practice
142 law in Wisconsin. Only a person who is currently licensed to practice law in Wisconsin and who is an
143 active member of the State Bar of Wisconsin may represent himself or herself to the public by any
144 description of services incorporating the words "law" or "legal".³

145
146 **SCR 23.03 Duties and powers of the Office of Lawyer Regulation.**
147 The Office of Lawyer Regulation, as described in SCR 21.02 through SCR 21.05, shall:
148 (1) Receive and respond to information, inquiries and complaints relating to persons and entities
149 alleged to have engaged in the unauthorized practice of law in Wisconsin.
150 (2) Investigate allegations of unauthorized practice of law.
151 (3) Enter into consent and desist agreements with those who have engaged in the unlicensed practice
152 of law.
153 (4) Seek civil action for violations of consent agreements.
154 (5) Seek injunctive relief against those who have engaged in the unlicensed practice of law.
155 (6) Monitor that individuals comply with terms of cease and desist agreements and with orders of
156 injunction.
157

³ 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, par. 31, 270 Wis. 2d 1, 19. [Use different citation]

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.

158 **SCR 23.04 Office of Lawyer Regulation - director.**

159 The director of the Office of Lawyer Regulation is authorized to:

160 (1) Receive, review and direct the investigation of allegations of unauthorized practice of law. (2)
161 Close an inquiry or complaint following preliminary evaluation and to dismiss an inquiry or
162 complaint following investigation when there is insufficient evidence of cause to proceed.

163 (3) Enter into and monitor compliance with consent agreements, as set out in SCR 23.05.

164 (4) File and pursue civil actions for violations of consent agreements.

165 (5) File and pursue injunctive actions against individuals or entities engaging in the unauthorized
166 practice of law.

167 (6) Monitor the compliance of individuals and entities that have been enjoined from engaging in the
168 unauthorized practice of law.

169 (7) Delegate the duties specified in this rule to staff and counsel as the director may consider
170 advisable.

171

172 **SCR 23.05 Consent agreements.**

173 Following investigation, if the director concludes a person or entity has engaged in the unauthorized
174 practice of law, the director may enter into a consent agreement with the person or entity. The
175 agreement:

176 (1) May include admissions that the person or entity engaged in the unauthorized practice of law.

177 (2) Shall include an agreement by the person or entity to refrain from engaging in the conduct in the
178 future.

179 (3) Shall be a contract enforceable in the name of the Office of Lawyer Regulation by civil action.

180 (4) May include specific penalties for violation of the agreement.

181

182 **SCR 23.06 Injunctive actions.**

183 Following investigation, if the director concludes a person or entity has engaged in the unauthorized
184 practice of law, the director may commence a civil action in the name of the Office of Lawyer
185 Regulation seeking to have the person or entity enjoined from engaging in the unauthorized practice
186 of law.

187

188 **SCR 23.07 Role of Office of Lawyer Regulation and complainant.**

189 In the process of regulating the unauthorized practice of law, the director and staff of the Office of
190 Lawyer Regulation do not represent the complaining person, the person against whom a complaint
191 has been made, the bar generally, or any other person or group. The director and staff of the Office of
192 Lawyer Regulation represent the interests of the Wisconsin Supreme Court and the public in the
193 integrity of the unauthorized practice of law regulation system in its search for the truth. A
194 complainant is not a party to an action nor proceeding brought by the Office of Lawyer Regulation.

195

196 **SCR 23.08 Cooperation with other agencies.**

197 (1) The Office of Lawyer Regulation shall cooperate with unauthorized practice of law regulatory
198 bodies from other jurisdictions and may share confidential information with them.

199 (2) The Office of Lawyer Regulation shall cooperate with district attorneys in the state of Wisconsin
200 and may share confidential information with them.

201 (3) The office of lawyer regulation shall cooperate with agencies which provide credentials under
202 Wis. Stats. chs. 440 to 480 [and which regulate and examine state and federal financial institutions, as
203 applicable] and may share confidential information with an agency regarding a credential holder [, a
204 regulated entity or non-lawyer employee of a regulated entity] of that agency. The office of lawyer
205 regulation, in addition to or in lieu of investigating an allegation of unauthorized practice of law

206 against a credential holder [a regulated entity or non-lawyer employee of a regulated entity], may:
207 {shall?}

208 (a) Refer an allegation of unauthorized practice of law to the agency for possible
209 action against the credential [the regulated entity or the non-lawyer employee of a regulated
210 entity].

211 (b) Ask the agency's position [or authority] on whether the activity is within the scope
212 of practice allowed by the agency.

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216 Draft SCR 23 (09-12-06), as revised, 11-27-07, as revised 03-03-08, 03-18-08 , 4/22/08, 6/6/08.