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3 **REVISED DRAFT BY STATE BAR OF WISCONSIN¹**
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7 **SCR CHAPTER 23 REGULATION OF UNAUTHORIZED PRACTICE OF LAW**
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9 **SCR 23 Preamble.**
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11 Every jurisdiction in the United States recognizes the inherent right of individuals to represent
12 themselves in legal matters. In contrast, the privilege of representing others in our system is regulated
13 by law for the protection of the public, to ensure that those who provide legal services to others are
14 qualified to do so by education, training, and experience and that they are held accountable for errors,
15 misrepresentations, and unethical practices.
16

17 The following rules are promulgated by the Wisconsin Supreme Court pursuant to its inherent
18 authority to define and regulate the practice of law in this state. The purpose of the rules is to protect
19 the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized
20 practice of law. Nothing in these rules shall be taken to define or affect standards for civil liability.
21

22 **SCR 23.01 Definition of practice of law.**
23

24 (1) The practice of law in Wisconsin is the application of legal principles and judgment with regard to
25 the circumstances or objectives of another entity or person(s) and which require the knowledge,
26 judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:
27

- 28 (a) Giving advice or counsel to others as to their legal rights or the legal rights or
29 responsibilities of others for fees or other consideration.
30
- 31 (b) Selection, drafting, or completion for another entity or person of legal documents or
32 agreements which affect the legal rights of the other entity or person(s).
33
- 34 (c) Representation of another entity or person(s) in a court, or in a formal administrative
35 adjudicative proceeding or other formal dispute resolution process or in an administrative
36 adjudicative proceeding in which legal pleadings are filed or a record is established as the
37 basis for judicial review.
38

¹ This draft #4 is a revision of draft #3 which was dated August 4, 2008, which was submitted to the Court on or about August 6, 2008. Draft #4 is marked to show the changes from Draft #3. The changes were made to accommodate the concerns of the Indian Law Section of the State Bar of Wisconsin and the Coalition of Wisconsin Ageing Groups. This draft represents what is acceptable to the State Bar of Wisconsin with respect to creating a useful and effective rule defining the practice of law. Other changes to the rule proposed by other interested parties which are not incorporated into draft #4 are unacceptable to the State Bar of Wisconsin. 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.

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

40
41 (e) Any other activity determined to be the practice of law by the Wisconsin Supreme Court.

42
43 **SCR 23.02 License required to practice law; use of titles.**

44
45 (1) **Right of a person to practice law in Wisconsin.** A person who is duly licensed by the
46 Wisconsin Supreme Court and who is an active member of the State Bar of Wisconsin may practice
47 law in Wisconsin. No person may engage in the practice of law in Wisconsin, or attempt to do so, or
48 make a representation that he or she is authorized to do so, unless the person is currently licensed to
49 practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar
50 of Wisconsin.

51
52 (2) **Exceptions and exclusions.** A license to practice law and active membership in the State Bar
53 of Wisconsin are not required for a person engaged in any of the following activities in Wisconsin:

54
55 (a) Practicing law by a non-resident counsel pursuant to SCR 10.03(4).

56
57 (b) Serving as a courthouse facilitator pursuant to court rule.

58
59 (c) Appearing in a representative capacity before an administrative tribunal or agency to the extent
60 permitted by such tribunal or agency.²

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

62
63 (e) Participation in labor negotiations, arbitrations or conciliations arising under collective
64 bargaining rights or agreements.

65
66 (f) Acting as a lobbyist.

67
68 (g) Sale of legal forms in any format.

69
70 (h) Activities which are preempted by federal law.³

71
72 (i) Selection or completion of a legal document, including a legal document created pursuant to
73 statute, administrative rule, or Supreme Court Order, where the document may contain various blanks
74 and provisions to be filled in or completed and selection or completion of the legal document requires
75 only common or transaction-specific knowledge regarding the required information and general
76 knowledge of the legal consequences.

77
78 (j) Serving in a neutral capacity as a clerk or court employee providing information to the public
79 pursuant to Supreme Court Order.

80
81 (k) Such other activities that the Supreme Court has determined by rule or by published opinion

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.

³ COMMENT: **This rule does not apply to tribal courts operated under the jurisdiction of federally recognized Indian tribes.**

- 82 do not constitute the unlicensed or unauthorized practice of law or which are permitted under a
83 regulatory system established by the Supreme Court
84
- 85 (l) Acting as a non-lawyer advocate under the direction or supervision of a lawyer.⁴
86
- 87 (m) Acting as a non-lawyer assistant under the supervision of a lawyer in compliance with SCR
88 20:5.3 of the Wisconsin Rules of Professional Conduct.
89
- 90 (n) Governmental agencies, Indian tribes and their employees carrying out responsibilities
91 provided by law.
92
- 93 (o) Practicing within the scope of practice allowed by a current credential issued under Wis.
94 Stats. chs. 440 to 480 provided that the Supreme Court has not determined by rule or by published
95 opinion that the activity constitutes the unlicensed or unauthorized practice of law.
96
- 97 (p) A victim service representative acting in the scope of sec. 895.45, Stats., ~~is not engaged in the~~
98 ~~practice of law; nor is~~ or a Court Appointed Special Advocate (CASA) volunteer or staff member
99 acting within the scope of sec. 48.236, Stats.
100
- 101 (q) A nonlawyer entity or organization acting through lawyer employees to the extent such
102 lawyers perform pro bono legal services for nonprofit organizations, low-income clients, or otherwise
103 in the public interest.
104
- 105 (r) An entity or organization in the business of insurance guarantee or indemnity, or the sale of
106 insurance permitted to be offered by insurance companies, or any employee or contractor of any of
107 the foregoing entities or organizations when conducting their insurance business, which includes :
108 (1) investigating or adjusting claims against it or its insured; (2) negotiating with other persons or
109 entities; (3) conducting loss control functions; (4) underwriting business; (5) selling insurance
110 permitted to be offered by insurance companies or providing advice and counsel with respect to such
111 insurance; and (6) the preparation of releases or settlement agreements; provided that the Supreme
112 Court has not determined by rule or by published opinion that the activity constitutes the unlicensed
113 or unauthorized practice of law.
- 114 (s) Any state or federally chartered financial institution, when engaging in an activity that is
115 within its authority under applicable state or federal law, including any employee providing services
116 for it in connection with that activity; provided that the Supreme Court has not determined by rule or
117 by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.
- 118 (u) Nonlawyers making any disclosure or advisement which is required by state or federal law.
- 119 (v) Teaching about the law or providing information about the law including the legal rights or
120 responsibilities of persons under the law, in a manner that is not directed at providing specific legal
121 advice to a specific individual in the context of a specific matter.

⁴ **COMMENT:** The phrase “under the direction or supervision of a lawyer” does not contemplate that the non-lawyer advocate would have to be an employee of the lawyer-supervisor. It does contemplate that the non-lawyer advocate would be subject to general supervision by a lawyer so that the client of the non-lawyer advocate received competent direction and advice.

122 (w) A benefits specialist acting within the scope of Wis. Stats. §46.81(4) or in the scope of
123 §46.283 and Wis. Admin. Code HFS 10.23(2)(a).

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126

127 (3) **Use of titles.** Only a person who is currently licensed to practice law by the Wisconsin
128 Supreme Court and who is an active member of the State Bar of Wisconsin may use the title
129 "attorney", "lawyer" or any similar title, or may state or imply that he or she is licensed to practice
130 law in Wisconsin. Only a person who is currently licensed to practice law in Wisconsin and who is an
131 active member of the State Bar of Wisconsin may represent himself or herself to the public by any
132 description of services incorporating the words "law" or "legal".⁵

133

134 **SCR 23.03 Duties and powers of the Office of Lawyer Regulation.**

135 The Office of Lawyer Regulation, as described in SCR 21.02 through SCR 21.05, shall:

136 (1) Receive and respond to information, inquiries and complaints relating to persons and entities
137 alleged to have engaged in the unauthorized practice of law in Wisconsin.

138 (2) Investigate allegations of unauthorized practice of law.

139 (3) Enter into consent and desist agreements with those who have engaged in the unlicensed practice
140 of law.

141 (4) Seek civil action for violations of consent agreements.

142 (5) Seek injunctive relief against those who have engaged in the unlicensed practice of law.

143 (6) Monitor that individuals comply with terms of cease and desist agreements and with orders of
144 injunction.

145

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

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

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

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

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

153 (5) File and pursue injunctive actions against individuals or entities engaging in the unauthorized

⁵ 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.

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.

154 practice of law.

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

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

159

160 **SCR 23.05 Consent agreements.**

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

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

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

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

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

169

170 **SCR 23.06 Injunctive actions.**

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

175

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

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

183

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

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

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

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

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

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

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203 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 and 2-10-10.