

Wisconsin Town Attorneys
2021 Town Law Conference
October 1, 2021

Ethics for Town Lawyers

What's New in the World of Professional Responsibility?



**DIETRICH
VANDERWAAL**
LAW GROUP

Dean R. Dietrich
Dietrich@dvlawgroup.com

Municipal attorneys are covered by the same Supreme Court Rules that apply to all other attorneys but often are faced with different issues because of the representation of a governmental body and sometimes, the public.



**Preamble:
A Lawyer's Responsibilities**

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct.

[18] Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the 'public interest' in circumstances where a private lawyer would not be authorized to do so. These rules do not abrogate any such authority.

Who is the Client?

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the frame, creating a modern, layered effect. The rest of the background is plain white.



State Statute 905.03
Lawyer-client privilege

(1) DEFINITIONS. As used in this section:

(a) A “client” is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) A “lawyer” is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(c) A “representative of the lawyer” is one employed to assist the lawyer in the rendition of professional legal services.

(d) A communication is “confidential” if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

SCR 20:1.13

Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Except as provided in par. (d), if,

(1) despite the lawyer's efforts in accordance with par. (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not SCR 20:1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of SCR 20:1.7. If the organization's consent to the dual representation is required by SCR 20:1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) Notwithstanding other provisions of this rule, a lawyer shall comply with the disclosure requirements of SCR 20:1.6(b).

COMMENT

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employee and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. “Other constituents” as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

Decision-making in the Local Government Setting

SCR 20:1.0(f)

**Defines informed consent client
as:**

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

SCR 20:1.4

Communication

(a) A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;


(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests by the client for information; and

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Confidentiality in the Local Government Setting



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).

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably likely death or substantial bodily harm;

(2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(3) to secure legal advice about the lawyer's conduct under these rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with other law or a court order.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

SCR 20:1.7

Conflict of Interest: General Rule


(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:


(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

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- (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in a writing signed by the client.

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- A. Clients are entitled to receive unimpaired loyalty from their lawyers:
1. During the course of a legal representation; and
 2. To some extent after a representation is concluded.
 3. The two key elements of unimpaired loyalty are:
 - a. Zealous representation of the client's interests; and
 - b. Protection of the client's confidences

SCR 20:1.10

Imputed Disqualification:

General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by SCR 20:1.7 or SCR 20:1.9 unless:

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition arises under SCR 20:1.9, and

(i) the personally disqualified lawyer performed no more than minor and isolated services in the disqualifying representation and did so only at a firm with which the lawyer is no longer associated;

(ii) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written notice is promptly given to any affected former client to enable the affected client to ascertain compliance with the provisions of this rule.

SCR 20:1.11

**Special Conflicts of Interest for
Former and Current Government
Employees**

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to SCR 20:1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under par. (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to SCR 20:1.7 and SCR 20:1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by SCR 20:1.12(b) and subject to the conditions stated in SCR 20:1.12(b).

(e) As used in this rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(f) The conflicts of a lawyer currently serving as an officer or employee of the government are not imputed to the other lawyers in the agency. However, where such a lawyer has a conflict that would lead to imputation in a nongovernment setting, the lawyer shall be timely screened from any participation in the matter to which the conflict applies.

SCR 20:4.2

**Communication with Person
Represented by Counsel**

Hypothetical

- Lawyer just graduated from law school. Prior to attending law school, Lawyer had a twenty-year career in wealth management, providing fee-based planning, life insurance sales, and asset management.
- Lawyer would like to provide investment advisory services and/or design and broker financial products for a commission. The wealth management services would be provided through an entirely separate entity from the legal services entity.
- May a lawyer simultaneously provide wealth management services to law clients for separate fees?

- A. Yes, SCR 20:5.8 permits a lawyer to offer law related services.
- B. Yes, if the lawyer complies with the requirements of SCR 20:1.8(a).
- C. No, it is a personal conflict, and the risk of material limitation is so great that the conflict is not amenable to informed consent.
- D. No, doing so would constitute solicitation in violation of SCR 20:7.3.

Hypothetical

- Associate has been with current law firm for almost three years and has decided to look for other opportunities.
- Associate sent blanket form letters and resumes to multiple law firms.
- One law firm sent a response to Associate expressing an interest and requesting an appointment for a telephone conference.
- That law firm represents the opposing party in an important commercial case in which a litigation partner in Associate's firm is counsel of record.
- In that case, Associate researched and wrote a draft of the brief in opposition to a motion for summary judgment. Associate's name does not appear on the brief.
- Associate often receives assignments from the litigation partner.
- Does Associate have a conflict of interest?

- A. No, Associate does not have primary responsibility for the case.
- B. No, Associate is not currently working on the matter.
- C. Yes, the partner's conflict would be imputed to Associate.
- D. Yes, if Associate agrees to the interview.

Hypothetical

- Lawyer A represents Employee 1 in an employment matter.
- At the same time, Lawyer B, a lawyer in the same law firm, represents Employee 2 in an unrelated lawsuit arising out of a construction defect in Employee 2's new home.
- It is likely that Employee 2 will be a witness in the employment matter as to the behavior of Employee 1.
- When Lawyer A contacted Employee 2, Employee 2 told Lawyer A that Employer's Attorney told her not to talk to anyone about the case.
- May Lawyer A depose Employee 2?

- A. Yes, the matters are not the same or substantially related.
- B. No, the matters are directly adverse.
- C. Yes, because Lawyer A will not be cross-examining Employee 2.
- D. No, there is a significant risk that Lawyer A will be materially limited in the representation of both clients would be materially limited by the attorneys' responsibilities to each client.

Hypothetical

- Employee was discharged for using the company credit card for personal purchases.
- Employee retained an attorney to represent her, claiming that she was wrongfully discharged and that Employer sexually harassed her.
- Employer claims that the relationship was consensual and was initiated by Employee.
- Employer's Lawyer threatens to report the theft to the police for criminal prosecution if Employee pursues a sexual harassment claim.
- Did Employer's Lawyer violate the Rules of Professional Conduct?

- A. Yes, Wisconsin Rules of Professional Conduct expressly prohibit threatening to present criminal charges solely to obtain an advantage in a civil matter.
- B. No, the Rules do not prohibit a lawyer's ability to use the threat of criminal prosecution to the advantage of the client in a civil matter.
- C. Yes, under SCR 20:28.4(b), it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- D. No, as long as the criminal conduct is related to the client's civil claim and the threat of reporting is legitimately related to the client's lawful objectives in the civil matter.

Hypothetical

- Lawyer represents a criminal defendant charged with two misdemeanors.
- At a court appearance, the prosecutor advises the court that the state will dismiss one of the charges but wishes to proceed on the other.
- The matter is set for a jury trial.
- A week before trial, Lawyer noticed on CCAP that both cases were dismissed. Lawyer has the clerk check with clerk of court. The court file indicated both cases against the defendant were dismissed, suggesting a clerical error by court personnel.
- Does the lawyer have an obligation to inform the court of this error?

- A. Yes, Lawyer, as an officer of the court, has a duty to inform the court of the error.
- B. No, Lawyer's duty of confidentiality to the client prohibits Lawyer from informing the court.
- C. Yes, Lawyer's failure to inform the court is the equivalent of an affirmative misrepresentation.
- D. No, although there is no ethical duty to notify others of an error, nonetheless, Lawyer should consult with the client about the consequences of not correcting the mistake.

Hypothetical

- Lawyer was the target of an online negative review. Not only was the opinion of Lawyer especially unflattering, but the facts presented were untrue.
- The review was not posted by the former client, but by the former opposing party.
- Lawyer responded by stating that the person posting was not a client and that the facts were not accurately stated.
- Did Lawyer violate the Rules with this response?

- A. Yes, even a general disclaimer that the events are not accurately portrayed may reveal that the lawyer was involved in the events mentioned, which could disclose protected client information.
- B. Yes, SCR 20:1.(c)(4), which permits a lawyer to reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, does not apply because the poster was not the client.
- C. No, Lawyer did not disclose any confidential information.
- D. No, Lawyer's response was impliedly authorized to protect the client's interests.

Hypothetical

- Attorneys are opposing counsel in an employment dispute involving a teacher. One attorney represents the school district and is the subordinate counsel, and the other attorney represents the teacher.
- Attorneys attended law school together and share a number of friends.
- They see each other frequently at social gatherings and occasionally go to the opera together.
- Do Attorneys have a conflict of interest?

- A. No, because you have to have friends.
- B. No, Attorneys do not have an intimate relationship that would require disclosure and informed consent.
- C. Yes, Attorneys have a close personal relationship because they regularly socialize.
- D. Yes, Attorneys have a conflict based on their close personal relationship unless one attorney has little or no direct decision-making authority in the matter and minimal contact with the opposing attorney.

Hypothetical

- A lawyer is a member of a religious legal organization. Among other activities, the organization advocates, on religious grounds, for the ability of private employers to terminate or refuse to employ individuals based on their sexual orientation.
- Will the lawyer's membership in this legal organization constitute a violation of Rule 8.4(i)?

- A. Yes, the U.S. Supreme Court has recognized that discrimination based on sexual orientation violates Title VII.
- B. No, to the extent that such conduct takes the form of pure advocacy, it would not qualify as sufficiently “harmful” or targeted.
- C. Yes, membership in a religious legal organization is “in connection with the lawyer’s professional activities.”
- D. No, Rule 8.4(i) governs only harassment, not discrimination.

Hypothetical

- Lawyer was engaged by Client to negotiate and draft a simple contract.
- Based on the nature of the transaction, Lawyer believed that the total cost of the representation would be less than \$1,000.
- Although there was no written engagement agreement or written communication, Lawyer told Client that the negotiation should take no more than two hours, and the drafting of the contract only about an hour. Lawyer also told Client that Client would be charged \$250 per hour.
- Unfortunately, the negotiation did not go as anticipated by Lawyer and took over four hours.

- As a result, the contract was more complex than expected and took almost two hours to draft.
- Lawyer sent Client a bill for \$1,400.
- Client believed the bill would be \$750 and threatened to report Lawyer. Lawyer agreed to reduce the bill to \$750.
- Did Lawyer violate SCR 20:1.5(b)?

- A. Yes, under SCR 20:1.5(b), communication of the basis or rate of the fee may be oral or in writing if the total cost of representation to the client, including attorney's fees, will be \$1000 or less.
- B. No, if it was reasonably foreseeable that the total cost of the representation would be \$1000 or less.
- C. Yes, the Rule requires a written communication concerning fees and expenses when the lawyer anticipates the total cost to exceed \$1,000, regardless of whether this occurs at the commencement of the representation or while the representation is in progress.
- D. No, because Lawyer agreed to reduce the bill to \$750.

Hypothetical

- Lawyer agreed to reduce Client's bill after Client threatened to report Lawyer.
- Lawyer immediately sent a revised invoice along with a letter stating: "I understand why you are upset with my fee. Neither of us anticipated the difficulties we encountered during the negotiation, which resulted in much more time than I had estimated. Based on your understanding that you would only be billed for the three hours, I have enclosed a revised invoice."
- Did Lawyer violate the Rules of Professional Conduct?

- A. Yes, SCR 20:1.8(h)(3) prohibits a lawyer from making “an agreement limiting a person’s right to report the lawyer’s conduct to disciplinary authorities.”
- B. No, Lawyer did not specifically condition the reduction of the bill on Client’s agreement not to report Lawyer.
- C. No, Lawyer did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of SCR 20:8.4(c).
- D. Yes, Lawyer failed to tell Client that even though Lawyer is reducing Client’s bill, Lawyer is not making an agreement limiting Client’s right to report Lawyer.

Hypothetical

- Defense Counsel represents codefendants, Boyfriend and Girlfriend, in a drug case involving the possession of and the intent to distribute or deliver amphetamine (Class C Felony) in which they are each charged as parties to the crime.
- Boyfriend, 28, is also charged with multiple counts of bail jumping as a result of other pending drug cases, which also include a count of felon in possession of a firearm.
- Girlfriend, 23, has no prior criminal history.
- As a condition of bond for both, they are not to have contact with each other.

- Upon learning of the joint representation, Prosecutor raised the conflict of interest concerns with Defense Counsel.
- Defense Counsel called the Ethics Hotline and then told Prosecutor there is no conflict of interest because the codefendant's positions are aligned.
- Defense Counsel also told Prosecutor that Boyfriend and Girlfriend were not interested in any plea offers at that time because they believed that the evidence would be suppressed.
- Prosecutor raised the conflict of interest concern with the court at a status conference.

- Defense Counsel filed a motion to dismiss the codefendant's cases on the grounds that the only evidence against each of them is the evidence seized in the execution of the search warrant, and that all of the evidence must be suppressed because of an alleged *Franks-Mann* violation by the officer who swore to the affidavit supporting the search warrant.
- Defense Counsel informed the court that she had called the Ethics Hotline and was told that there is no conflict because the codefendants' positions are aligned.

- Prosecutor asserted that the joint representation constitutes a conflict of interest because there is a significant risk that Defense Counsel would be materially limited in the representation of Girlfriend by the defense of Boyfriend. Prosecutor asserted that because of the joint representation, he cannot make a plea offer to Girlfriend in exchange for her testimony against Boyfriend, especially since Defense Counsel had informed him that neither codefendant was interested in a plea offer at that time.

- The court cautioned Defense Counsel to carefully consider the information raised by Prosecutor and ordered Defense Counsel to obtain informed consent to the conflict from both Boyfriend and Girlfriend if joint representation is continued.

A. Based on the facts, does the joint representation of the codefendants present a conflict of interest?

B. How does the conflict of interest analysis for a disciplinary action differ from the conflict of interest analysis for a disqualification motion of defense counsel or a claim of effective assistance of counsel?

C. If there is a conflict of interest, is that conflict consentable?

Hypothetical

- City prosecuted and settled a nuisance claim against Truck Co. involving truck traffic to a local quarry. Law Firm represented City in this litigation.
- As part of the settlement, City could designate the specific route that the trucks took to the quarry.
- Thereafter, individual with property interests along the route designated by City for traffic to the quarry brought a private nuisance action against Truck Co. Law Firm represented individuals in this action.

- City was not part of the private nuisance action, but brought a motion seeking to disqualify Law Firm from representing various individuals based on a conflict of interests.
- Individuals oppose the motion to disqualify claiming that there is no conflict of interest.
- Individuals also oppose the motion based on the doctrine of laches and waiver of the disqualification claim because the City waited five months before moving to disqualify Law Firm.

- A. Does Law Firm have a conflict of interest?

- B. How does the doctrine of laches and waiver of disqualification claim affects the conflicts analysis?

Hypothetical

- Three years ago, Lawyer completed representation of Wife in a highly contentious divorce. Lawyer is still listed as counsel of record on CCAP.
- Wife has now asked Lawyer to represent her in a post-judgment action for contempt because she has failed to make maintenance payments. She is also asking for a reduction in the amount of child support and maintenance.
- During call with Lawyer, Wife explains that she is behind paying maintenance as a result of her failing business. She started business after divorce, and it thrived until Pandemic. She is hopeful it will bounce back but has depleted her savings and having difficulty making ends meet.


- Lawyer expressed surprise that Wife had quit her well-paying job and had started a business shortly after the divorce.
- Wife responded that after divorce she was told her company was considering moving her position to the headquarters in Connecticut. She began looking for new job since she could not leave Wisconsin. She started her own business when she failed to find a new job. Her brother loaned her money and she got a bank loan.
- Lawyer agreed to represent Wife.
- After filing a response to the motion to show cause, lawyer asked Wife for documentation from the bank and her brother for the loans. She sheepishly stated that the money from her brother was “not really a loan.”

- When asked to explain, Wife told Lawyer that money had been held for her by her brother since beginning of marriage. Her brother encouraged her to consider starting a “rainy day fund,” which he held and managed for her. The “fund” consisted of some of her savings prior to marriage, contributions during the marriage, and a \$20,000 lottery prize, which her brother claimed on her behalf.
- Lawyer expressed concern that he had not been told about the “rainy day fund” and consequently, he had not included it in the required financial disclosures during the divorce.
- Wife stated the fund was held in her brother’s name and technically did not belong to her. Lawyer told Wife that he needed a few days to think about his ethical obligations.

- Lawyer talked to a friend who also is a lawyer. The friend advised Lawyer to “just withdraw.”
- The next day, Lawyer told Wife that he could not continue to represent her. Lawyer explained his duty of candor to the court. Wife stated that she could truthfully complete the Financial Disclosure Statement; that there was no need to mention the “rainy day fund” on the Financial Disclosure Statement because the fund was depleted; and she would not include any payment to her brother as an expense because she was not making any payments to him. Wife told Lawyer that with the hearing coming up, she could not find another lawyer to represent her.

- Although Wife refused to stipulate to lawyer's withdrawal, Lawyer filed a motion to withdraw stating that ethical considerations required him to withdraw. Wife sent a letter to the court objecting to lawyer's motion to withdraw. In the letter, she stated that the lawyer had more than competently represented her in the divorce action and that she had paid the lawyer an advanced fee to represent her on the motion to show cause.
- The court scheduled the hearing on Lawyer's motion to withdraw at the same time as the hearing on the motion to show cause.

- At the hearing, the court asked Lawyer to explain the reason for his motion to withdraw, especially because he had been paid and because Wife was satisfied with his prior representation.
- The court denied Lawyer's motion to withdraw and ordered Lawyer to proceed with the hearing on the motion to show cause.

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- A. Is Lawyer required to disclose to the court the omission of the “rainy day fund” on the Financial Disclosure Statement as well as during a deposition during the divorce proceeding?

 - B. Is Lawyer required to provide further explanation of his reasons for moving to withdraw?

Hypothetical

- A lawyer represents a criminal defendant charged with two misdemeanors.
- The defendant has agreed to enter a plea of no contest to both charges, after which the state will recommend two consecutive terms of six months, for a total of twelve months in jail.
- Although the court indicated acceptance of the agreement, it imposed two concurrent sentences, for a total of six months.
- The prosecutor, who was reviewing their file, does not appear to notice the court's error.
- Does the lawyer have an obligation to inform the court of this error?

Hypothetical - Alternative Facts (1)

- However, at the subsequent sentencing hearing, a different prosecutor appears and recommends concurrent sentences, which the court imposes. The lawyer knows that the actual terms of the plea agreement, as agreed to by the defendant, called for two consecutive six month terms, for a total of twelve months in jail.
- Does the lawyer have an obligation to inform the prosecutor and the court of this error?

Hypothetical - Alternative Facts (2)

- A lawyer represents a criminal defendant charged with two misdemeanors. As a court appearance, the prosecutor advises the court that the state will dismiss one of the charges but wishes to proceed on the other.
- The matter is set for a jury trial. A week before trial, the lawyer checked with the clerk of court and was informed the court file indicated both cases against the defendant were dismissed, suggesting a clerical error by court personnel.
- Does the lawyer have an obligation to inform the court of this error?

A. In each of these fact scenarios, does the lawyer have an obligation to inform the court of the error?

Hypothetical

- In a dissolution of marriage case, the custody of a minor child is in dispute.
- Husband's mother, Grandmother, moved to intervene in the case for purpose of seeking custody of the minor child.
- During the hearing on the motion to intervene, both Husband and Grandmother moved to disqualify Lawyer for Wife on the grounds that Lawyer is a necessary witness in the matter. In support of the motion to disqualify Lawyer, Husband and Grandmother made four claims.

- First, they claim that Lawyer is the neighbor of Wife and that Lawyer's wife is a close personal friend of Wife.
- Second, they claim that Lawyer made statements to opposing counsel, the guardian ad litem and the court in chambers about his conversations with the minor child's therapist.

- Third, they claim that Lawyer was present on certain occasions during which Lawyer overheard the minor child's conversations and observed conduct and demeanor of Wife and the minor child.

- Fourth, they claim that the location of Lawyer's home was the situs for several telephone conversations between Wife and the minor child about which evidence would be introduced at trial.
- Based on these claims, they argue that Lawyer had attempted to use his own personal knowledge and observations to discredit the testimony of Grandmother, the intervenor, and to influence the proceedings, and that Lawyer's testimony would be needed at trial.
- Lawyer stated to court: "I am not a witness in this case. I'm assuming their motion is directed at the fact that two phone calls were made from parties at my house that I didn't witness, but I knew were being made and that somewhat makes me a witness in this case."

A. What standard governs disqualification of a lawyer under SCR 20:3.7?

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