




ETHICS ROUND ROBIN

FCP LAW DAY
May 1, 2018




Materials available
electronically at

www.paulstenzel.com

- Audience participation:
- Text paulstenzel975 to 22333
- Go to:
www.polleverywhere.com/PaulStenzel975

Have you participated in audience polling before?

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 Answers to this poll are anonymous

Yes

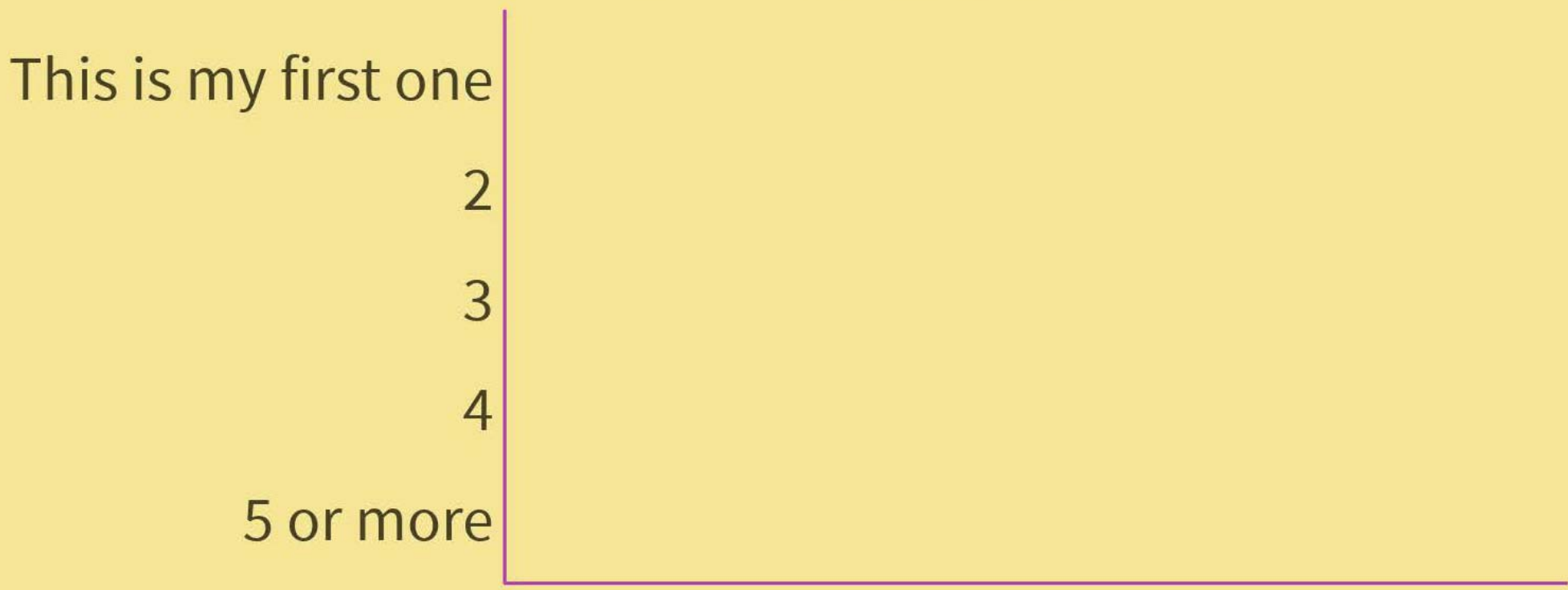
No

Total Results: 0

Including today, how many FCP Law Days have you been to?

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Answers to this poll are anonymous



Total Results: 0

- Client has been sued in small claims court and provides lawyer with all relevant information
- Lawyer never files an answer; default judgment entered against client; lawyer learns of this but decides to ignore it and never calls the client.

Which of these rules did the lawyer violate?

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🔒 Answers to this poll are anonymous

SCR 20:1.3 - Diligence

SCR 20:1.4 - Communication

Both


Neither

Total Results: 0

- A client who hires you for a divorce says at the beginning of the representation that she has thought about killing herself.
- Three months in to the case, she is very upset to find out her husband is seeing another woman. In a weepy voice she leaves a vm saying, "I can't take it anymore. I'm finishing all of it, including me and him."
- You call her cell phone but she doesn't answer or respond for three hours.

Do you:

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Keep calling

Call the police

Do nothing

Call a family member
of the client

It depends


Total Results: 0

- Applicable rule is SCR 20:1.6(b) and (c);
- (b) = mandatory; to prevent a criminal act that is likely to result in death or substantial bodily harm
- (c) = permissive; “may” reveal to the extent the client reasonably believes necessary:
 - *To prevent reasonably likely death or bodily harm*

- Attorney Smith has a client, JB, with diminished capacity who is the subject of a guardianship action by JB's parents. JB is 33 years old and does not wish his parents to be his guardians.
- JB states that to spite his parents he is going on gambling spree with the intention of having a good time until his money runs out. Attorney Smith knows that JB has several hundred thousand dollars in a savings account.

What do the rules require / permit?

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Contact JB's parents

Do nothing

Talk JB out of it

Alert the casino

Alert JB's psychiatrist

Need more info

Total Results: 0

- Applicable rules are SCR 20:1.6 (Confidentiality) and 1.14 Client with diminished capacity
- 1.6 (b) and (c) as previously discussed
- 1.14 permits reasonably necessary “protective action” in the face of substantial physical, financial or other harm, including talking to other individuals. (Again, like 1.6(c), permissive not mandatory.)

- At a hearing on a motion to modify child support, lawyer's client, payor, testifies under oath that his income is \$15/hr @ 20 hours per week. The court uses this testimony to determine child support.
- After the hearing, the client says to the lawyer, "That *was* my income; I got a big raise and now am full time."
- What are the lawyer's obligations?

What should the lawyer do?

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Nothing

Call the opposing lawyer
and explain what happened

Write a letter to the court
disclosing

Depends - on what?


Total Results: 0

- Applicable rule is SCR 20:3.3, Candor toward the Tribunal.
- A lawyer shall not knowingly (3) offer evidence that the lawyer knows to be false. **If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.**

- In the same matter, the payee, who is unrepresented, approaches you after the hearing (after your client has left) and says, she wants to talk to you and before you can speak says, "Just between you and me, I know my ex makes more but I don't care; I'm moving away soon and the Court can't stop me because I have primary placement."

The lawyer should respond by saying:

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I can't talk to you about this

You should talk to a lawyer

[Say nothing and walk
away.]

Explain to the ex how the
law actually works


Other


Total Results: 0

- SCR 20:4.3, Dealing with unrepresented person.

- Attorney A represents a parent in a pending CHIPS action. Attorney A is copied on an email from the ICW worker which contains an attachment of a letter from Attorney B, who is the ICW attorney, to the GAL. It is clear to Attorney A that the email and letter were not intended to be shared with Attorney A.
- What should the attorney do?

The lawyer should:

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Review the letter to
determine what to do

Treat it as an inadvertent
disclosure under SCR 20:4.4

Call the sender of the email

Call the GAL and ICW
attorney

Other


Total Results: 0

- SCR 20:4.4 deals with inadvertently sent documents or electronically stored information.

- Attorney Jones regularly represents a contractor and he recently asked Jones to give a presentation at a seminar on the construction business.
- The client introduced Attorney Jones at the seminar as an excellent attorney who he “highly recommends.” Several of the people at the seminar became new clients, and out of gratitude, Jones gave the client a substantial discount on his next bill.
- What do the rules require / permit?

What do the rules require / permit?

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Discount is allowed

Discount not allowed

Give the discount because
no one would ever find out

Total Results: 0

- Rule 7.2 and 7.3; and State Bar of Wisconsin Formal Ethics Opinion E-94-4: lawyer may not give a thing of value, other than money paid for ads, to someone recommending the lawyer's services.

- I represent a client on a personal injury matter. I've represented this client on several matters over the years and consider her a friend as well. The accident has resulted in hard times for her because she hasn't been able to work and is danger of being evicted. I'd like to give the client a loan/gift so she can stay afloat until the case is settled or tried. Can I do this?

Can I do this?

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Yes

No

Maybe - it depends.

Need more facts


Total Results: 0

- No. SCR 1.8(e) prohibits giving financial assistance to clients.

- I've been in solo practice for a long time and I'm starting to run out of space for old files. How long do I have to hold on to the old files?

How long hold on to old files?

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6 years
10 years
20 years
Other
Forever!


Total Results: 0

- No firm amount of time; 6 years is SOL for some malpractice claims and lawyers are required to keep trust account records for 6 years.
- 10 years is suggested as it is the SOL for filing grievances.
- Clients should be informed of firm's file retention policy.
- SCR 20:1.16(d); Wisconsin Ethics Opinion EF-17-01.

Several years after the representation ended, Client contacts Attorney out of the blue and asks for a copy of the file. File must be retrieved from off-site storage. Can Attorney charge Client for time spent obtaining the file?

Charge for retrieving file

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Total Results: 0

- No. The file is the property of the client and the lawyer must provide the file upon request. In the Kitchen case, the Wisconsin Supreme Court held that it is a violation of SCR 20:1.5(a) when a lawyer charged for the time spent in retrieving a file.
- References: SCR 20:1.16, SCR 20:1.5; Disciplinary Proceedings Against Kitchen, 273 Wis.2d 279, 682 N.W.2d 780. Wisconsin Ethics Opinion EF-16-03.

- Law firm has three lawyers each with about 10 years experience. Firm runs an ad that states, "Put our 30 years of experience to work for you!"
- Is this ad permitted under the rules?

Is ad permitted?

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Total Results: 0

- The advertisement is misleading and should state, "Put Our Combined 30 Years Experience to Work for You."
- SCR 7.1: Advertisement cannot be misleading. Even statements that are entirely true may be misleading.

- Attorney A represents Client A. Attorney B represents Client B.
- In the course of negotiating settlement of a civil matter, Attorney A realizes that Attorney B contacted Client A directly and discussed substantive matters related to the case (while Attorney A represented Client A).
- At the final negotiations, Attorney B seeks assurances from Attorney A that Attorney will not report Attorney B's misconduct to OLR.
- Can Attorney A use Attorney B's misconduct as leverage in negotiation?

Use opposing counsel's misconduct as leverage?

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Yes

No

It
depends


- It is misconduct for a lawyer to seek an advantage in negotiations by threatening to report the other lawyer for misconduct and/or make an agreement not to report such misconduct.

- Wisconsin Formal Ethics Opinion E-01-01

- Is it permissible for a paralegal employed by a law firm to attend a real estate closing on behalf of a client if:
 - 1) a lawyer with the firm previously has reviewed the closing documents;
 - 2) the paralegal will not provide any legal advice or legal opinion at the closing;
 - 3) the client will not otherwise be represented at the closing; and
 - 4) the client consents to the arrangement?

Paralegal attend real estate closing?

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Total Results: 0

- Unauthorized practice issues arise when a nonlawyer provides legal advice or legal opinions during a closing, and these activities should be scrupulously avoided by nonlawyer representatives. With this important caution in mind, it is permissible under the circumstances posed in the question for a properly trained paralegal employed by a law firm to attend a real estate closing on behalf of a client.

- Source: State Bar Ethics Opinion E-95-3

- A lawyer puts the following statement on her letterhead:
- “Specializing in Federal Indian Law.”
- Is this permitted under the rules?

Allowed to claim "specialize" in Indian law?

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Total Results: 0

- Ok to claim specialization but not ok to state or imply that lawyer is formally recognized as a specialist unless it is from appropriate authority.
- Still need to be careful of complying with SCR 20:7.1.
- SCR 20:7.4 & Comments