



**WSSFC 2022**

**Quality of Life/Ethics Track –  
Session 5**

# **Ethics Jeopardy**

*Christopher C. Shattuck*

## About the Presenter...

**Christopher C. Shattuck** has been the Law Practice Assistance Manager for the State Bar of Wisconsin since 2017. Mr. Shattuck previously managed a department and litigated cases at a creditors' rights firm in Milwaukee. In addition to providing confidential law practice consultations, he frequently writes and speaks on law practice management topics. He received his undergraduate and master of business administration degrees from the University of Wisconsin — Oshkosh and his law degree from the University of La Verne College of Law in southern California.

# **Ethics Jeopardy**

*Wisconsin Solo and Small Firm  
Conference 2022*

By: Christopher C. Shattuck, State Bar of Wisconsin

I. Category 1: Trust Accounts

- A. Lawyers are permitted to place advanced fees into their business account when using this provision of the rule.
  - 1. Alternative Protection for Advanced Fees.
  - 2. **SCR 20:1.5(g)** – “A lawyer who accepts advanced payments of fees may deposit the funds in the **lawyer's business account**, provided that review of the lawyer's fee by a court of competent jurisdiction is available in the proceeding to which the fee relates, or provided that the lawyer complies **with each of the following requirements:**” (**Emphasis Added**).
- B. Before a lawyer may close out a trust account, they must withdraw any of the funds they deposited into the trust account for maintenance purposes, and any unclaimed funds should be returned to this entity.
  - 1. The State of Wisconsin.
  - 2. In order to avoid holding funds indefinitely and losing contact with the owner(s), a lawyer should promptly follow up on any trust account check that has not cleared within two to three months of disbursement.
  - 3. Monthly reconciliations allow the lawyer to keep track of any such uncashed checks.
  - 4. If the owner of funds held in trust cannot be located, the funds may have to escheat to the State of Wisconsin, pursuant to [Wis. Stat. Chapter 177](#).
  - 5. For additional guidance, review the following: [Inside Track: Dilemma: What to Do with Unclaimed Money in a Trust Account: \(wisbar.org\)](#), [Inside Track: New Law Creates Unclaimed Property, Voluntary Disclosure Program: \(wisbar.org\)](#), & [Trust accounts - unclaimed funds \(wicourts.gov\)](#).
- C. Advanced costs, even if accepted in conjunction with the Alternative Protection for Advanced Fee provision, must always be placed into this account.
  - 1. A trust account.
  - 2. **SCR 20:1.15(b)(1)** provides that all funds or property belonging to a client or 3rd party that are entrusted to a lawyer in connection with a representation must be held in trust.
  - 3. Such funds include: filing fees and other advanced costs relating to a representation.
  - 4. Source: [OLR Trust Account Manual](#)
- D. A lawyer is permitted to maintain this amount of their own funds in their trust account to cover monthly account service charges.
  - 1. **\$100.00.**
  - 2. Pursuant to **20:1.15(b)(3)**, the OLR Considers:

3. A balance of \$100 to be “reasonably sufficient” to cover monthly account service charges. Such funds should be identified as a “Maintenance Account” in the trust account subsidiary ledgers and other records. If a firm’s monthly service charges or its check printing charges typically exceed \$100, a somewhat larger Maintenance Account balance may be appropriate.
4. **Source:** [OLR Trust Account Manual](#)
- E. Lawyers have a duty to keep, maintain, and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least this number of years.
  1. At least six years after the date of termination of the representation.
  2. [SCR 20:1.15\(g\)\(1\)](#) states: A lawyer shall maintain and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for trust account recordkeeping.
  3. Source: [OLR Guidelines for Trust Account Records](#)
- II. Category 2: Trust Accounts
  - A. A law firm that is organized solely to render professional legal services under the laws of this state [Wisconsin], including chs. 178 and 183 and subch. XIX of ch. 180, in addition to applicable registration requirements with the Wisconsin Department of Financial Institutions, must also register with this entity.
    1. The State Bar of Wisconsin.
    2. [SCR 20:5.7\(b\)](#) states, “A lawyer or law firm that is organized as a limited liability organization shall file an annual registration with the state bar of Wisconsin in a form and with a filing fee that shall be determined by the state bar.”
    3. For more information, visit [Law Firm Registration](#)
  - B. A law firm that is organized solely to render professional legal services under the laws of this state [Wisconsin], including chs. 178 and 183 and subch. XIX of ch. 180, is required to have professional liability insurance in this amount.
    1. It depends on the number of lawyers in the firm.
    2. [SCR 20:5.7\(bm\)](#)

Number of Lawyers in Firm	<u>Combined</u> Indemnity & Defense cost Coverage per claim	<u>Aggregate</u> combined Indemnity and Defense cost Coverage per policy period
1 to 3	\$ 100,000	\$300,000
4 to 6	\$250,000	\$750,000
7 to 14	\$500,000	\$1,000,000
15 to 30	\$1,000,000	\$2,000,000
31 to 50	\$4,000,000	\$4,000,000
51 or more	\$10,000,000	\$10,000,000

- C. Law firms organized as limited liability entities must provide this type of notice to their clients.
1. A plain-English summary.
  2. If the firm is organized as a limited liability entity, [SCR 20:5.7\(e\)\(2\)](#) requires that clients and potential clients be provided a “plain-English summary of the features of the limited liability law under which it is organized and of the applicable provisions of this chapter.”
- D. A lawyer looking to use a name for their law firm other than their own should look to this type of name.
1. A trade name.
  2. [SCR 20:7.5\(a\)](#) states, “A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of SCR 20:7.1.”
- E. In order to register as a limited liability entity in Wisconsin to provide legal services, the law firm must have a lawyer with an ownership interest that is licensed to practice in this state.
1. Wisconsin.
  2. [SCR 20:5.7\(b\)](#) states, “The annual registration shall be signed by a lawyer who is licensed to practice law in this state and who holds an ownership interest in the organization seeking to register under this rule.”
  3. SCR 20:5.7(d) states, “A law firm that is organized as a limited liability organization under the laws of any other state or jurisdiction or of the United States solely for the purpose of rendering professional legal services that is authorized to do business in Wisconsin and that has at least one lawyer licensed to practice law in Wisconsin and who also has an ownership interest in the firm may register under this rule by complying with the provisions of sub. (b).”

III. Category 3: Fee Agreements

- A. A client that wishes to pay lawyer a fee to ensure the lawyer will be able to provide legal services in the future, should the client need representation, may request a lawyer accept this type of engagement.
1. Retainer.
  2. [SCR 20:1.0\(mm\)](#) – "Retainer" denotes an amount paid specifically and solely to secure the availability of a lawyer to perform services on behalf of a client, whether designated a "retainer," "general retainer," "engagement retainer," "reservation fee," "availability fee," or any other characterization. This amount does not constitute payment for any specific legal services, whether past, present, or future and may not be billed against for fees or costs at any point. A retainer becomes the property of the lawyer upon receipt, but is subject to the requirements of [SCR 20:1.5](#) and [SCR 20:1.16\(d\)](#).
- B. Lawyers have a duty to refund unearned portions of their advanced fees and retainers, pursuant to this rule.
1. [SCR 20:1.16\(d\)](#).
  2. "Lawyers may charge clients advanced fees, which [SCR 20:1.0\(ag\)](#) defines as an amount paid to a lawyer in contemplation of future services. [SCR 20:1.0\(ag\)](#) subjects advanced fees to the requirements of [SCR 20:1.5](#) and [SCR 20:1.16\(d\)](#).
  3. Lawyers may also charge availability retainers to clients. [SCR 20:1.5\(b\)\(2\)](#) requires that the purpose and effect of any retainer be communicated to the client in writing when the total cost to the client of the representation is more than \$1000. [SCR 20:1.0\(mm\)](#) prohibits lawyers from billing against retainers for fees or costs at any time, and subjects retainers to the requirements of [SCR 20:1.5](#) and [SCR 20:1.16\(d\)](#).
  4. Because both advanced fees and retainers must be earned as required by [SCR 20:1.16\(d\)](#), and unforeseen circumstances may prevent such fees from being earned, a lawyer may not describe such fees as 'nonrefundable' in communications with clients, including fee agreements."
  5. Source: [Revised Wisconsin Ethics Opinion E-93-4: Nonrefundable Retainers and Advanced Fees](#)
- C. A lawyer seeking to prospectively limit their malpractice liability with their client must ensure their client agrees and has this type of representation.
1. Independent legal representation.

2. [SCR 20:1.8\(h\)\(1\)](#) - A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement.
- D. A lawyer may not enter into an agreement with a client that prohibits the client from reporting a complaint to this authority.
  1. Disciplinary authorities.
  2. [SCR 20:1.8\(h\)\(3\)](#) - A lawyer shall not make an agreement limiting a person's right to report the lawyer's conduct to disciplinary authorities.
- E. When a client pays their attorney an advanced flat fee at the initial meeting and consultation, the money belongs to this person.
  1. The client.
  2. [SCR 20:1.0\(dm\)](#) – **"Flat fee" denotes a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed,** agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the representation. A flat fee, sometimes referred to as "unit billing," is not an advance against the lawyer's hourly rate and may not be billed against at an hourly rate. Flat fees become the property of the lawyer upon receipt and are subject to the requirements of [SCR 20:1.5](#), including [SCR 20:1.5\(f\)](#) or [\(g\)](#) and [SCR 20:1.5\(h\)](#), [SCR 20:1.15\(f\)\(3\) b.4](#), and [SCR 20:1.16\(d\)](#). (**Emphasis added**).

IV. Category 4: Breach of Security

- A. A lawyer has an ethical obligation under this supreme court rule to inform their client when there has been a breach of the provider's security that affects the confidentiality or security of the client's information.
  1. [SCR 20:1.4](#).
  2. [Wisconsin Ethics Opinion EF-15-01](#): "If there has been a breach of the provider's security that affects the confidentiality or security of the client's information, SCR 20:1.4(a)(3) and SCR 20:1.4(b) require the lawyer to inform the client of the breach."
- B. A lawyer has an obligation under this statute to inform their client when there has been a data breach.
  1. [Wisconsin Statute § 134.98\(1\)](#).
    - (a)1. Entity means a person, other than an individual, that does any of the following:
      - a. Conducts business in this state and maintains personal information in the ordinary course of business.
    - (b) "Personal information" means an individual's last name and the individual's first name or first initial, in combination with and linked to



any of the following elements, *if the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable....*

- C. Under Wisconsin Supreme Court Rules, lawyers have this amount of time to report the occurrence of a data breach to their clients.
  - 1. A reasonable period of time. Take note that the Wisconsin Statute for breach notification has a different, specified time period.
  - 2. **SCR 20:1.4 Communication**
    - a) A lawyer shall:  
**(3) keep the client reasonably informed about the status of the matter;**
    - b) **A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.** (Emphasis Added).
- D. Having this type of plan in place can help law firms quickly respond to data breaches.
  - 1. Incident Response Plan.
  - 2. **Data Breach Incident Response Plan Toolkit**: Provides an overview of responding to an incident, including incident response team, suspecting or detecting an incident, discovery form, assessment and analysis, flow chart, notification letters, and documentation for insurance purposes.
  - 3. **Once Upon a Cybercrime: Are You Covered?**: Provides a hypothetical situation where an attorney faces a data breach incident involving the attorney's trust account. Illustrates the need for various coverages.
  - 4. **Do Not Let Ransomware Win: Back Up Your Data**: Step-by-step guide for making sure your law firm can survive a ransomware attack.
- E. Lawyers in Wisconsin can contact these two Ethics Counsel at the State Bar of Wisconsin to receive confidential guidance of the supreme court rules, as they relate to ethical responsibilities for data breaches.
  - 1. Tim Pierce and Aviva Kaiser.
  - 2. **Ethics Counsel:** **Tim Pierce**
  - 3. **Ethics Counsel:** **Aviva Kaiser**
  - 4. **Ethics Hotline:** (608) 229-2017 or (800) 254-9154
  - 5. **Ethics FAQs:** Find answers to the most commonly asked ethics questions here! **Ethics FAQs**
- V. Category 5: Succession Planning
  - A. A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including this, if the conditions in the rule are satisfied.
    - 1. Goodwill.

2. **SCR 20:1.17 Sale of Law Practice**
3. A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied....
- B. A lawyer that sells their law practice must cease engaging in this behavior after the practice has been sold.
  1. Seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area or in the jurisdiction in which the practice has been conducted.
  2. **SCR 20:1.17(a)**.
- C. Clients have rights when the law practice has been sold to retain other counsel and to take possession of these items.
  1. Their client files.
  2. **SCR 20:1.17 Sale of Law Practice**
    - (c) The seller gives written notice to each of the seller's affected clients regarding:
      - (1) the proposed sale;
      - (2) the client's right to retain other counsel or to take possession of the file;
- D. A lawyer seeking to avoid the cessation of practice rule should consider pursuing this type of arrangement instead of the sale of a law practice.
  1. A law firm merger.
  2. Mergers of law firms are not subject to the sale of a law practice rule, unless the requirements of the sale of a law practice rule are being satisfied. Therefore, it would be unwise to frame a sale as a merger in attempt to evade the rules. Further, the merging law firm is not the only person that could complain to the OLR, should a dispute arise, as clients, judges and members of the public may also file a grievance.
- E. A client's consent to their new counsel as the result of the sale of a law practice may be presumed after this period of time has elapsed.
  1. 90 days.
  2. **SCR 20:1.17 Sale of Law Practice Contd.**
  3. (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

## Ethics Jeopardy

Presenter: Christopher C. Shattuck  
Phone: (800) 957-4670

Trust Accounts	Law Firm Registration	Fee Agreements	Breach of Security	Succession Planning
<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>
<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>50</u>	<u>50</u>	<u>50</u>	<u>50</u>	<u>50</u>

Category 1 questions follow

# Question

Lawyers are permitted to place advanced fees into their business account when using this provision of the rule.

Category 1

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# Answer

## **Alternative Protection for Advanced Fees.**

**SCR 20:1.5(g)** – “A lawyer who accepts advanced payments of fees may deposit the funds in the **lawyer's business account**, provided that review of the lawyer's fee by a court of competent jurisdiction is available in the proceeding to which the fee relates, or provided that the lawyer complies **with each of the following requirements:**” (**Emphasis Added**).

Category 1

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# Question

Before a lawyer may close out a trust account, they must withdraw any of the funds they deposited into the trust account for maintenance purposes, and any unclaimed funds should be returned to this entity.

Category 1

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# Answer

The State of Wisconsin.

- In order to avoid holding funds indefinitely and losing contact with the owner(s), a lawyer should promptly follow up on any trust account check that has not cleared within two to three months of disbursement.
- Monthly reconciliations allow the lawyer to keep track of any such uncashed checks.
- If the owner of funds held in trust cannot be located, the funds may have to escheat to the State of Wisconsin, pursuant to Wis. Stat. Chapter 177.
- For additional guidance, review the following: Inside Track: Dilemma: What to Do with Unclaimed Money in a Trust Account: (wisbar.org), Inside Track: New Law Creates Unclaimed Property, Voluntary Disclosure Program: (wisbar.org), & Trust accounts - unclaimed funds (wicourts.gov).

Category 1

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# Question

Advanced costs, even if accepted in conjunction with the Alternative Protection for Advanced Fee provision, must always be placed into this account.

Category 1

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# Answer

A trust account.

- SCR 20:1.15(b)(1) provides that all funds or property belonging to a client or 3rd party that are entrusted to a lawyer in connection with a representation must be held in trust.
- Such funds include: filing fees and other advanced costs relating to a representation.
- Source: OLR Trust Account Manual

Category 1

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# Question

A lawyer is permitted to maintain this amount of their own funds in their trust account to cover monthly account service charges.

Category 1

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# Answer

**\$100.00.**

**Pursuant to 20:1.15(b)(3), the OLR Considers:**

A balance of \$100 to be “reasonably sufficient” to cover monthly account service charges. Such funds should be identified as a “Maintenance Account” in the trust account subsidiary ledgers and other records. If a firm’s monthly service charges or its check printing charges typically exceed \$100, a somewhat larger Maintenance Account balance may be appropriate.

**Source:** OLR Trust Account Manual

Category 1

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# Question

Lawyers have a duty to keep, maintain, and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least this number of years.

Category 1

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# Answer

At least six years after the date of termination of the representation.

SCR 20:1.15(g)(1) states: A lawyer shall maintain and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for trust account recordkeeping.

Source: OLR Guidelines for Trust Account Records

Category 1

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Category 2 questions follow

# Question

A law firm that is organized solely to render professional legal services under the laws of this state [Wisconsin], including chs. 178 and 183 and subch. XIX of ch. 180, in addition to applicable registration requirements with the Wisconsin Department of Financial Institutions, must also register with this entity.

Category 2

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# Answer

The State Bar of Wisconsin.

SCR 20:5.7(b) states, “A lawyer or law firm that is organized as a limited liability organization shall file an annual registration with the state bar of Wisconsin in a form and with a filing fee that shall be determined by the state bar.”

For more information, visit [Law Firm Registration](#).



Category 2

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# Question

A law firm that is organized solely to render professional legal services under the laws of this state [Wisconsin], including chs. 178 and 183 and subch. XIX of ch. 180, is required to have professional liability insurance in this amount.



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# Answer

It depends on the number of lawyers in the firm.

SCR 20:5.7(bm)

Number of Lawyers in Firm	<u>Combined</u> Indemnity & Defense cost Coverage per claim	<u>Aggregate</u> combined Indemnity and Defense cost Coverage per policy period
1 to 3	\$ 100,000	\$300,000
4 to 6	\$250,000	\$750,000
7 to 14	\$500,000	\$1,000,000
15 to 30	\$1,000,000	\$2,000,000
31 to 50	\$4,000,000	\$4,000,000
51 or more	\$10,000,000	\$10,000,000



Category 2

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# Question

Law firms organized as limited liability entities must provide this type of notice to their clients.



Category 2

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# Answer

A plain-English summary.

If the firm is organized as a limited liability entity, SCR 20:5.7(e)(2) requires that clients and potential clients be provided a “plain-English summary of the features of the limited liability law under which it is organized and of the applicable provisions of this chapter.”



Category 2

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# Question

A lawyer looking to use a name for their law firm other than their own should look to this type of name.



Category 2

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# Answer

A trade name.

SCR 20:7.5(a) states, "A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of SCR 20:7.1."



Category 2

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# Question

In order to register as a limited liability entity in Wisconsin to provide legal services, the law firm must have a lawyer with an ownership interest that is licensed to practice in this state.



Category 2

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# Answer

Wisconsin.

SCR 20:5.7(b) states, “The annual registration shall be signed by a lawyer who is licensed to practice law in this state and who holds an ownership interest in the organization seeking to register under this rule.”

SCR 20:5.7(d) states, “A law firm that is organized as a limited liability organization under the laws of any other state or jurisdiction or of the United States solely for the purpose of rendering professional legal services that is authorized to do business in Wisconsin and that has at least one lawyer licensed to practice law in Wisconsin and who also has an ownership interest in the firm may register under this rule by complying with the provisions of sub. (b).”



Category 2

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Category 3 questions follow

# Question

A client that wishes to pay lawyer a fee to ensure the lawyer will be able to provide legal services in the future, should the client need representation, may request a lawyer accept this type of engagement.

Category 3

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# Answer

Retainer.

**SCR 20:1.0(mm)** – "Retainer" denotes an amount paid specifically and solely to secure the availability of a lawyer to perform services on behalf of a client, whether designated a "retainer," "general retainer," "engagement retainer," "reservation fee," "availability fee," or any other characterization. This amount does not constitute payment for any specific legal services, whether past, present, or future and may not be billed against for fees or costs at any point. A retainer becomes the property of the lawyer upon receipt, but is subject to the requirements of SCR 20:1.5 and SCR 20:1.16(d).

Category 3

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# Question

Lawyers have a duty to refund unearned portions of their advanced fees and retainers, pursuant to this rule.

Category 3

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# Answer

SCR 20:1.16(d).

- “Lawyers may charge clients advanced fees, which SCR 20:1.0(ag) defines as an amount paid to a lawyer in contemplation of future services. SCR 20:1.0(ag) subjects advanced fees to the requirements of SCR 20:1.5 and SCR 20:1.16(d).
- Lawyers may also charge availability retainers to clients. SCR 20:1.5(b)(2) requires that the purpose and effect of any retainer be communicated to the client in writing when the total cost to the client of the representation is more than \$1000. SCR 20:1.0(mm) prohibits lawyers from billing against retainers for fees or costs at any time, and subjects retainers to the requirements of SCR 20:1.5 and SCR 20:1.16(d).
- Because both advanced fees and retainers must be earned as required by SCR 20:1.16(d), and unforeseen circumstances may prevent such fees from being earned, a lawyer may not describe such fees as ‘nonrefundable’ in communications with clients, including fee agreements.”

Source: **Revised Wisconsin Ethics Opinion E-93-4: Nonrefundable Retainers and Advanced Fees**

Category 3

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# Question

A lawyer seeking to prospectively limit their malpractice liability with their client must ensure their client agrees and has this type of representation.



Category 3

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# Answer

Independent legal representation.

SCR 20:1.8(h)(1) - A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement.



Category 3

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# Question

A lawyer may not enter into an agreement with a client that prohibits the client from reporting a complaint to this authority.



Category 3

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# Answer

Disciplinary authorities.

SCR 20:1.8(h)(3) - A lawyer shall not make an agreement limiting a person's right to report the lawyer's conduct to disciplinary authorities.



Category 3

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# Question

When a client pays their attorney an advanced flat fee at the initial meeting and consultation, the money belongs to this person.

Category 3

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# Answer

The client.

**SCR 20:1.0(dm) – "Flat fee" denotes a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed, agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the representation. A flat fee, sometimes referred to as "unit billing," is not an advance against the lawyer's hourly rate and may not be billed against at an hourly rate. Flat fees become the property of the lawyer upon receipt and are subject to the requirements of SCR 20:1.5, including SCR 20:1.5(f) or (g) and SCR 20:1.5(h), SCR 20:1.15(f)(3) b.4, and SCR 20:1.16(d). (Emphasis added).**

Category 3

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Category 4 questions follow

# Question

A lawyer has an ethical obligation under this supreme court rule to inform their client when there has been a breach of the provider's security that affects the confidentiality or security of the client's information.

Category 4

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# Answer

SCR 20:1.4.

Wisconsin Ethics Opinion EF-15-01: “If there has been a breach of the provider’s security that affects the confidentiality or security of the client’s information, SCR 20:1.4(a)(3) and SCR 20:1.4(b) require the lawyer to inform the client of the breach.”



Category 4

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# Question

A lawyer has an obligation under this statute to inform their client when there has been a data breach.



Category 4

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# Answer

## Wisconsin Statute § 134.98(1).

(a)1. Entity means a person, other than an individual, that does any of the following:

- a. Conducts business in this state and maintains personal information in the ordinary course of business.

(b) "Personal information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, ***if the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable....***



Category 4

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# Question

Under Wisconsin Supreme Court Rules, lawyers have this amount of time to report the occurrence of a data breach to their clients.



Category 4

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# Answer

A reasonable period of time. Take note that the Wisconsin Statute for breach notification has a different, specified time period.

## SCR 20:1.4 Communication

- a. A lawyer shall:  
**(3) keep the client reasonably informed about the status of the matter;**
- b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (Emphasis Added).



Category 4

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# Answer

Having this type of plan in place can help law firms quickly respond to data breaches.



Category 4

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# Question

## Incident Response Plan.

- Data Breach Incident Response Plan Toolkit: Provides an overview of responding to an incident, including incident response team, suspecting or detecting an incident, discovery form, assessment and analysis, flow chart, notification letters, and documentation for insurance purposes.
- Once Upon a Cybercrime: Are You Covered?: Provides a hypothetical situation where an attorney faces a data breach incident involving the attorney's trust account. Illustrates the need for various coverages.
- Do Not Let Ransomware Win: Back Up Your Data: Step-by-step guide for making sure your law firm can survive a ransomware attack.

Category 4

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# Answer

Lawyers in Wisconsin can contact these two Ethics Counsel at the State Bar of Wisconsin to receive confidential guidance of the supreme court rules, as they relate to ethical responsibilities for data breaches.

Category 4

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# Question

Tim Pierce and Aviva Kaiser.

- **Ethics Counsel:** [Tim Pierce](#)
- **Ethics Counsel:** [Aviva Kaiser](#)
- **Ethics Hotline:** (608) 229-2017 or (800) 254-9154
- **Ethics FAQs:** Find answers to the most commonly asked ethics questions here! [Ethics FAQs](#)

Category 4

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Category 5 questions follow

# Question

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including this, if the conditions in the rule are satisfied.

Category 5

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# Answer

Goodwill.

**SCR 20:1.17 Sale of Law Practice**

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied....

Category 5

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# Question

A lawyer that sells their law practice must cease engaging in this behavior after the practice has been sold.

Category 5

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# Answer

Seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area or in the jurisdiction in which the practice has been conducted.

SCR 20:1.17(a).

Category 5

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# Question

Clients have rights when the law practice has been sold to retain other counsel and to take possession of these items.

Category 5

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# Answer

Their client files.

**SCR 20:1.17 Sale of Law Practice**

(c) The seller gives written notice to each of the seller's affected clients regarding:

- (1) the proposed sale;
- (2) the client's right to retain other counsel or to take possession of the file;

Category 5

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# Question

A lawyer seeking to avoid the cessation of practice rule should consider pursuing this type of arrangement instead of the sale of a law practice.

Category 5

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# Answer

A law firm merger.

Mergers of law firms are not subject to the sale of a law practice rule, unless the requirements of the sale of a law practice rule are being satisfied. Therefore, it would be unwise to frame a sale as a merger in attempt to evade the rules. Further, the merging law firm is not the only person that could complain to the OLR, should a dispute arise, as clients, judges and members of the public may also file a grievance.

Category 5

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# Question

A client's consent to their new counsel as the result of the sale of a law practice may be presumed after this period of time has elapsed.

Category 5

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# Answer

90 days.

**SCR 20:1.17 Sale of Law Practice Contd.**

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

Category 5

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