



# mutuallyspeaking

## **ANOTHER WILMIC CASH DIVIDEND COMING TO POLICYHOLDERS THIS YEAR Over \$10 Million in Dividends Has Been Paid Out Since 1999**

For the 23<sup>rd</sup> consecutive year, WILMIC will be sending out dividend checks to policyholders.

The Board of Directors declared the dividend at its recent spring meeting after reviewing the company's 2020 financial results. Cash dividends equal to five percent of annual premiums will be sent to law firms currently insured by Wisconsin Lawyers Mutual.

Katja Kunzke, WILMIC President and Chief Executive Officer, says, "Cash dividends are a mutual company's way of distributing earnings back to its owners."

"A dividend is what the mutual concept in insurance is all about," Kunzke said. "Our board firmly believes it is important to return money to the policyholders when we are in a position to do so. Policyholders deserve that."

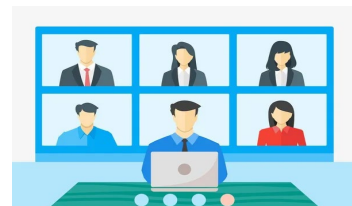
If you have been insured with WILMIC for a while, you may have been used to receiving your dividend check in April.

However, like last year, dividend payments this year will go out when your policy ends, as long as your policy was in effect on March 10 of this year. So, for example, if your policy expires in September, you would receive the dividend in early October.

WILMIC has paid out almost \$10 million in dividend payments to policyholders since 1999, including approximately \$218,000 this year.

---

## **If You Haven't Heard Yet – WILMIC Has Introduced "Free-CLE Fridays" One-Hour Virtual CLE Lunchtime Presentations**



WILMIC has introduced another service for policyholders this year. It's the one-hour, "Free-CLE Fridays With WILMIC" series that kicks off on April 16 at 12:00 Noon. Free to policyholders, you can get your credits without leaving your home or office! The programs are being offered virtually. Just look for the program emails – one click will take you to the registration page.

The first program on April 16 is titled, "The Technology Age - Cybersecurity Essentials for Law Firms." During the pandemic the past year, technology hackers have been more active than ever before, capitalizing on the pandemic chaos to ramp up their attacks. Is your firm's network vulnerable?

Hear how to spot weaknesses and fix the holes in your defenses and how cybersecurity issues can lead to potential malpractice claims. The program has been approved for one ethics credit.

Future lunchtime programs are scheduled for August 13 and November 12. Several summer programs are likely to be added to the series schedule. Stay tuned, watch your emails from WILMIC, and take advantage of this free opportunity – only for policyholders.

---

## SCAMS AND HACKERS: DURING THE PANDEMIC, THEY'RE MORE ACTIVE THAN EVER

Law firms have become targets within the hacker community. They contain all the desired information with less cybersecurity, on average. Your email system is the most common target. What can you do about it?



By Thomas J. Watson  
Senior Vice President

Full Story -

<https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=94&Issue=4&ArticleID=28339>



### Claims Digest by Matt Beier, Claims Attorney

#### Grievandemic

In WILMIC's last [Claims Digest](#), my colleague, Senior Claims Attorney Brian Anderson, explored the effects of the pandemic putting economic pressures on clients, and other challenging issues for lawyers. He included statistics on malpractice claims filed with WILMIC with a specific emphasis on the impact of the pandemic on lawyers representing business struggling to stay afloat. This Claims Digest focuses on grievances filed with the Office of Lawyer Regulation (OLR) against our policyholders during the pandemic.

Much of WILMIC's focus is certainly on legal professional liability *claims*. Our policyholders also rely on us for guidance and assistance when facing a *grievance* made against them under the Wisconsin Supreme Court Rules [Chapter 20](#), Rules of Professional Conduct for Attorneys. Although not formal malpractice claims, grievances could give rise to such claims in the future. WILMIC tracks both legal malpractice claims and OLR grievances involving policyholders.

## OLR by the Numbers

Each fiscal year, OLR publishes various statistics related to grievances filed against Wisconsin attorneys. OLR's 2019-2020 fiscal [report](#) tells us that a total of 1,518 new grievances were filed from July 1, 2019 to June 30, 2020. The top three practice areas are: Criminal Law (46.96%), Family Law (16.5%), Estate-Probate, Guardianship & Wills (5.5%). The allegations most commonly made in a grievance were lack of diligence by the lawyer entrusted with the legal matter (17.6%), lack of communication (15.6%), misrepresentation and dishonesty (9.3%) and improper advocacy (7.1%).

OLR also describes some changes in its internal operations to increase its efficiency in handling grievances. OLR reports that it has increased its efficiency in processing time with an average length of disposition of 118 days, and a 10-year high of 83% of matters closed within 90 days.

Disposition of matters in FY 2019-2020 breaks down as follows:

- 1070 matters did not warrant investigation
- 57 matters dismissed after investigation, finding insufficient evidence of a violation
- 30 lawyers received public discipline
- 18 attorneys received private reprimands
- 31 attorneys entered the alternatives to discipline program
- 10 matters were dismissed with an advisory letter
- 30 matters were closed pending petition for reinstatement

Finally, it should be noted that anyone can file a grievance against a Wisconsin lawyer. The majority of grievances OLR received in FY 2019-2020 were filed by clients (57.6%), followed by an adverse party (17.6%) and other party (14%).

## WILMIC's Statistics

Although overall numbers of grievances filed with OLR have declined in the last five to ten years, the same is not necessarily true for WILMIC policyholders. In 2010, WILMIC hired grievance defense counsel for a policyholder on only one occasion. However, that number has slowly crept up so that in the last five years, WILMIC has hired grievance defense counsel for our policyholders reporting grievances on average about 16 times per year. And, grievances currently make up about 20% of our current open claims. WILMIC's data as it relates to practice areas for its open grievances differ somewhat from OLR's, but identify the same top 3 riskiest areas: Criminal Law (27%), Family Law (23%), Estate-Probate, Guardianship & Wills (17%). Similarly, over 20% of grievances reported are a result of poor attorney-client communications.

## Malpractice Claims vs. Grievances

Knowing the areas of practice that generate the most grievances can help alert our policyholders to implement procedures to prevent mistakes. As WILMIC has often reported in years past, the practice areas that pose greater risk of malpractice *claims* over longer periods of time tend to be BI/PI Plaintiff, Estates/Probate/Trusts and Bankruptcy/Collections (Real Estate, also). However, both OLR and WILMIC consistently identify Criminal Law and Family Law as the practice areas which generate the most OLR *grievances*. This is perhaps best explained by the emotional investments of all parties involved in these types of matters. With nowhere else to turn at the conclusion of court proceedings in these areas, individuals who experience an unfavorable result or who had unrealistic expectations may pursue a grievance against one of the attorneys involved as a last resort.

## Not a Grievandemic...(Yet)

Over the course of the last year with so much change and volatility in the world and, specifically in the practice of law, WILMIC has often been asked what impact this will have on claim trends, including grievances. It is difficult to predict whether there will be a surge of grievances as clients experience the pressures from the pandemic. There simply hasn't been enough grievance activity to accurately determine whether there will be grievances specifically relating to how attorneys navigated their clients' responses to the pandemic.

That said, there are some anecdotes worth sharing as a cautionary note. For example, in 2020, one of our policyholders reported a matter that stemmed from a near scuffle over mask-wearing between our policyholder and a third party in a local supermarket. Without delving into the details of the argument, it was directly related to circumstances created by the pandemic. The other party knew our policyholder was an attorney and filed a complaint. Although this matter went nowhere, it is important to reiterate that *anyone* can file a grievance with OLR. During times like this, when arguments are many and patience is thin, a cautionary note to avoid such encounters is in order – especially when your status as a member of the bar is generally or well-known. The anxiety, time and expense associated with defending OLR grievances is just too great.

In another reported matter, a client's frustration with delays of his administrative hearing due to COVID concerns culminated in the termination of the lawyer-client relationship, a heated confrontation in the middle of a street, and ultimately a grievance. In that particular matter, there was nothing the lawyer could do to advance a hearing calendar that was postponed repeatedly due to circumstances out of everyone's control. As expected, OLR made quick work to dispose of the meritless grievance. However, our policyholder acknowledged that managing client expectations during a pandemic may involve more patience and explanation.

In a recent conversation with one of WILMIC's defense attorneys, we were discussing the increased activity on several open matters. The theory he offered was that society as a whole, as well as the legal world, has the end of the pandemic in sight, and consequently, we are experiencing "post-COVID confidence." That is, everyone is shifting focus back to those matters that were allowed to rest during restrictions that were necessary to curb the spread of the disease. In other words, without pressing the panic button on a "Grievandemic," it may be reasonable to anticipate increased grievance and claim activity now that we appear to have a handle on our most immediate health concerns.

### Time and Patience

Knowing the areas of practice and the types of errors most often complained about can help alert lawyers to the general likelihood of a grievance and allow you to implement procedures to prevent mistakes. While anecdotes about strange circumstances and outrageous conduct warn us of the more obvious situations to avoid, most of the difficulties that arise between lawyer and client are the result of poor communication or neglect. Perhaps what the statistics and anecdotes above tell us is that through time and patience during the pandemic, lawyers may be able to manage client expectations and avoid situations that could lead to the filing of an OLR grievance.

Lawyers have a duty to communicate with their clients under SCR 20:1.4. When asked, I often describe this duty as telling your client the "good, the bad and the ugly." One of the lawyer's first opportunities to communicate with the client is in the engagement letter, which is the best way to get the relationship off to a good start. In the past WILMIC has offered the "top ten" provisions that should appear in an engagement letter:

1. The identity of the client (and the identities of those not represented, when appropriate) and the nature of the lawyer-client relationship;
2. The scope of representation and the nature of the legal services, including a statement about when the representation ends with no continuing obligation (for example, only through trial and not appeal);
3. That there is no guarantee of outcome;
4. The identities of the people who might work on the matter – lawyers, paralegals, experts, consultants, and other personnel;
5. Type and amount of fee – hourly rate, flat fee, reduced fee, contingent fee, or incentive arrangements, and so on (SCR 20:1.5(a)) – and expenses;
6. Billing practices (frequency, interest (SCR 20:1.5(b)(1)), withdrawal for nonpayment (SCR 20:1.15(b)(5)));
7. Confidentiality and lawyer-client privilege, including electronic communication expectations and the potential impact of the use of social media (SCR 20:1.4);
8. Conflicts of interest, if any;
9. Client responsibilities and cooperation; and
10. Termination of services (SCR 20:1.16).

In addition to the fee agreement, here are some general tips to effectively communicate with a client:

- Communicate at the client's level of understanding;
- Determine the client's expectations and encourage realistic expectations.
- Show interest in the client as a person.
- Respect the importance of the matter to the client, including careful guarding of client confidences.
- Promptly convey all developments to the client, particularly adverse developments, preferably in writing.
- Return all phone calls promptly; be on time for appointments; and avoid taking telephone calls during office conferences.
- Provide the client with copies of finished work product.
- Share the decision-making process with the client.
- Reach Out to Clients Proactively - Don't leave clients guessing as to how you will be working and communicating with them during this stressful time. Clients are much happier when their lawyer takes out the guesswork and lets them know what's happening.
- Keep Up with Your Emails - Working at home, it's easy for small things to get lost. If you're now working at home, keep up with emails the way you would at your office.
- Stay Connected Working from Home - Again, if you're staying at home at not getting into the office because of the current public health crisis, be sure you can get client calls and voicemail messages at home. Nothing irritates clients more than unanswered calls.
- Tell Them Where You Are - Make sure your clients know what arrangements you have made during this pandemic. If you have changed your office status, put out an email to your clients, send a regular letter if you must, put it on your voicemail messages, your website and social media if you use that. They should know where you are and where they can find you.
- Anticipate Scheduling Changes
- If video conferencing or by speaker phone, make sure your client is the only one in the room. Confidentiality (SCR 20:1.3) still applies!

PUT IT IN WRITING!

As the COVID-19 pandemic now has an end in sight, lawyers and law firms are adjusting to changing circumstances and client expectations. It remains unknown how the pandemic will continue to impact claims and grievances against attorneys going forward. As one [article](#) recently pointed out, "If the past is any indicator of the future, the COVID-19 pandemic may result in an increased number of legal malpractice claims, like the aftermath of the 2008 Great Recession. Indeed, historically, economic pressures have led to a greater number of claims against lawyers as clients look to "point fingers" for commercial or other setbacks—whether warranted or not." Taking proactive steps to increase levels of communication and to manage client expectations can go a long way preventing grievances in the future.

---

## Wellness Corner

### **Dark and Stormy Nights, Silver Linings, and Attorney Well-Being** **By Erna Womble**

The COVID-19 pandemic this past year has caused plenty of stress and worry, and in many cases, hardship, for so many people. Lawyers are not immune to any of that, in their personal and professional lives. It's encouraging then, that a lawyer's training can help implement techniques to help manage themselves, control stress, and enhance a sense of confidence and well-being.

Read the Full Story -

<https://www.lawpracticetoday.org/article/dark-and-stormy-nights-silver-linings-and-attorney-well-being/>