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Working Remotely During the Pandemic – How’s It Going So Far?

The COVID-19 pandemic has certainly upended the legal profession. Prior to this life-altering health crisis, law firms maintained a largely face-to-face business model. Courts generally required in-person preliminary conferences and compliance conferences, despite their relative inefficiency in comparison to telephone or video conferences. When important documents were signed and notarized, everyone traditionally gathered in the same location, even though it would be more convenient and cost-effective to notarize documents remotely.

In the last several months, this has all changed, of course. Many law firms have been forced to adapt to a remote-work environment. This can place an unprecedented burden on law firms’ technological capabilities.



These stressors can build up over time, creating unfortunate opportunities for lawyers to make mistakes – which can lead to negative outcomes, such as unhappy clients, loss of business, malpractice liability, and even disciplinary proceedings.

There is some good news. As lawyers, you are all trained to handle new problems and help others do the same. You have figured out ways during the pandemic to effectively implement a continuity of operations; better understand the technology tools at your disposal and how to use them; and how best to navigate changing court rules and changing client expectations.

Maintaining continuity may have been the biggest challenge for many lawyers the past several months. The pandemic forced us to do this suddenly rather than gradually. Brent Hoefft, of Hoefft Law LLC in Madison, has operated a web-based law practice for many years and also specializes in the usage, security and ethics of technology in law firms. He says continuity in your law practice is not only necessary, but achievable. “So much is about maintaining routine and finding ways to do that from home. Some things are as simple as getting up at the same time as if you were going to work, getting dressed in clothes you might normally wear to the office, and setting up a designated spot in your home where only work happens.”

Technology can also help to keep continuity when shifting to working from home. To keep in touch with firm members, video conferencing and team messaging apps can help.

• **Video Conferencing:** Hoefft suggests having a morning check-in with firm members. This allows everyone to brainstorm over client matters as well as talk about what worked the day before and what didn’t and how it can be improved upon. He says, “The ‘face-to-face’ of video conferencing helps to maintain the team atmosphere for a firm. It helps all members to be able to see and interact with each other and prevents anyone from feeling like they are out on an island during any of this.”

- **Team Messaging Apps:** Messaging apps are a great way to quickly communicate either on-to-one or more broadly with firm members to keep all necessary people in the loop on matters throughout the day. “When smaller issues arise that don’t necessitate making a phone call or video conference, sending a message via messaging apps like Slack, Microsoft Teams, Yammer, Chat in GSuite are great,” Hoeft says.

- If your firm is set up on Office365 Business Premium edition, you can use the Teams software to do both messaging, video conferencing, and more with your firm members.

In addition, having a way for all firm members to get to client files is very important.

Hoeft says, “The two common ways to do this is through remote access programs like SplashTop, LogMeIn, GoToMyPC, TeamViewer, to name a few. This way is popular because it can be easily set up to allow remote access to law office servers or personal workstations.”

Virtual Offices

It’s been several months since the pandemic hit, of course, but some lawyers are still considering ways to set up a virtual law office, if they need it. Hoeft says a quick way to set-up a virtual law office is by using one of the web-based practice management software offerings out there. “There are a lot of options to choose from but some of the biggest and most established players in the market are Clio and MyCase. These practice management systems provide so many tools to keep members of your firm on the same page but also allow clients to stay up on their case and feel connected through the use of client portals these systems offer. You can do client scheduling, intake, e-signatures, secure document sharing, secure messaging, online billing and payments, all from within the practice management system.”

Client Confidentiality

Obviously, the livelihood of attorneys depends on the ability to preserve confidentiality and protect client information from unauthorized disclosure to 3rd parties. SCR 20:1.1, Comment 8 expressly applies the competency requirement applicable to the use of technology in your law practice and states “to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, to maintain the requisite knowledge and skill the benefits and risks associated with relevant technology...”

Hoeft says some things to consider in taking all reasonable efforts to protect against disclosure would be:

- Always do due diligence about any software or service that you are thinking of using as a tool for working from home. There are a lot of options out there and the levels of security steps taken by these providers can vary greatly. If possible, try to stick to services that are geared towards business rather than personal use and, if you can, find some that are designed for use by lawyers and the legal industry.

- Always use a virtual private network (VPN) when connecting to the internet even while on your home network and doing business online. There are a lot of options out there. There are also a lot of review sites that are quite helpful in making your decision. The main thing is to choose a commonly used VPN and always choose the paid version. The free accounts of even good VPNs are not reliable and can be very slow.

- Because lawyers have a duty to take reasonable efforts to become competent in the technology tools that we are using in our practice, we can’t just jump right in and start using the tools without understanding the tool and its default settings, how to change these settings to become more secure, and what setting options are available to make the use of the tool is as secure as possible to use in a law firm setting.

Cloud Computing

Wisconsin Ethics Opinion EF-15-01: Ethical obligations of Attorneys Using Cloud Computing concludes that ‘cloud computing is permissible as long as the lawyer makes reasonable efforts to adequately address the potential risks associated with it.’

Hoeft says there really are only two ways to go if you have a firm consisting of more than one person and you would like to work remotely. “There is the remote access software that allow for you to remote into the computer or server in your physical law office to access files and business critical items. Or, you can use a web-based practice management system. This is, in my opinion, the way to go. However, many firms cannot easily switch to that option in the short-term.

As for using a separate computer at home for work, Hoeft says, “I would absolutely recommend using a separate computer for work and personal use, if possible. The more personal things you do on the computer like email and social media the greater the risk of things like phishing, ransomware, viruses, and malware to get onto the system.”

Cyber Security Considerations

The same cybersecurity risks that are threats at the office exist when working from home. Hoeft says during the pandemic, the threats have jumped in frequency. “The focus of hackers has been the people in the organization, or in the case of lawyers, the firm. People are looked at as the weakest link in the security chain. Humans can be tricked, manipulated, and distracted. With the coronavirus pandemic we are seeing a lot of phishing scams focusing on people’s desire for information about what is going on with the virus, as well as people seeking recommendations on what to do and how to protect themselves and their loved ones.

Additionally, the huge increase in the use of Zoom for video conferencing has not gone unnoticed by hackers. They are targeting businesses through fraudulent video conference invites that will either take you to fake landing pages meant to steal your login credentials or launch ransomware attacks.”

Hoeft says the best way to stay on top of phishing and ransomware is to make sure your staff is educated and trained on cybersecurity awareness, so they have the tools to spot these threats.

He also says using a VPN is always recommended. “Both while you are trying to access your law firm server via remote access software but also when you are doing anything else online. For privacy and security reasons you should be connected to a VPN while you are on the internet,” says Hoeft.

He also encourages lawyers to make sure they have antivirus software installed and updated. In addition, he says, “Make sure you update the operating system as soon as security updates come out as well as updates to other programs on the system. With the increase in the use of remote working tools there has been an increase in the number of updates to software as well. Stay on top of these as many of the updates may be patching security holes in software.”

Conclusion

There are many considerations during this pandemic when trying to maintain good client communication, maintain continuity in your office and from home, and making sure your staff is up to speed on all the changes that are occurring.

Hoeft reminds lawyers to keep track of what works and what doesn’t. Discuss it at your video conference meetings with your staff and other attorneys in your firm. “Some things may not be able to be implemented for the short-term but still make notes of these so you can change the way you do things in the future to make things more manageable in the future. Much of what we’re doing now will become and has become permanent. So look to the future when determining how best to maintain your law firm operations.”

Finally, if you do not have written policies on how your firm should operate on a daily basis, as well in times of crisis and emergency, now is the time to do it. Hoeft says, “These include work from home policies, information security policies, business disaster policy, and security awareness and training policies. They are all good to have so everyone in your firm knows where to turn to in a crisis rather than everything being done in a reactionary way.”

Unfortunately, we all had to react quickly in March when the pandemic hit. Hopefully, we all have had time to find the best ways to continue working, and for lawyers, that means maintaining great client service, having sound technology security, and being as efficient as possible, even during these highly unusual times.



Claims Digest

Matt Beier, Claims Attorney

As society continues to grapple with the impact of the COVID-19 pandemic, in-person communications and transactions have proven to be quite challenging. For example, several of WILMIC's insured attorneys and others have questioned how to formally execute documents without being in the physical presence of the signatory. Some guidance has begun to take shape, and remote execution is now occurring.

Notarization Basics

Back in pre-pandemic 2015, Tom Watson wrote an article, "[Test your Notary Public IQ](#)," for Wisconsin Lawyer covering the basics of being a Notary Public. At that time, remote notarization was not allowed, and a brief quiz tested one's knowledge of common requirements, such as:

- A lawyer must submit an application to the Wisconsin Department of Financial Institutions (more information can be found at the [WDFI's](#) website) before becoming a Notary Public.
- As a Wisconsin notary public, you can perform notarial acts only in the state of Wisconsin.
- Authentication – as opposed to notarization or acknowledgment – applies only to documents relating to lands in Wisconsin. (See [Wis. Stat. § 706.06](#).)
- Every official act of a notary should be attested by handwritten signature, and must include the notary's seal or stamp.

Not everything is covered in the quiz, and, as discussed below, some of the law has now changed, including the authorization of Remote Online Notarization (RON).

Remote Execution of Documents

Prior to the COVID-19 pandemic, remote online notarization was not allowed. Since the implementation of state "lock downs" and social distancing, confusion and hesitancy have ensued when it comes to the formal execution of documents. WDFI issued emergency orders to allow for remote notarization, and on May 1, 2020, a new law, [2019 Wisconsin Act 125](#), went into effect to allow electronic Remote Online Notarization (RON) of documents.

Ok, so what is a "Remote Online Notarization (RON)," what training does a notary need to do prior to be able to accomplish a RON, and finally, what are RON limits?

Remote Online Notarization

Under Act 125, "...a remotely located individual may comply with s. 140.06 by using communication technology to appear before a notary public." Wis. Stat. Sec. 140.145(2). "'Remotely located individual' means an individual who is not in the physical presence of the notary public who performs a notarial act." Wis. Stat. Sec. 140.145(1)(e). "'Communication technology' means an electronic device or process that satisfies all of the following: 1. The device or process allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound. 2. When necessary..., the device or process facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment." Wis. Stat. Sec. 140.145(a)

In other words, a signatory and the notary do not need to be in the physical presence of each other when the document is executed. The notary may use WDFI-approved online tools to notarize a document executed by the signatory at another location. Currently, there are 5 known providers of "communication technology" approved by the WDFI: [notarize.com](#), [NotaryCam](#), [Pavaso](#), [DocVerify](#) and [Nexsys](#).

Training

The WDFI requires any notary wishing to perform RON to undergo training with the particular software platform they wish to use. The WDFI states, "That's important, because [the providers'] platforms are capable of identity-proofing, credential verification, recording and retention, and other safeguards to ensure the integrity of the notarial process."

Presently, Notarize.com and DocVerify (for notarizations of any type of document) and Pavaso (for real-estate transactions) are each offering online training opportunities for Wisconsin notaries. Once training is completed, these providers notify the WDFI that a notary is authorized to perform RON, and WDFI will maintain a database of notaries so authorized. WDFI also indicates that other providers may also be approved in the future.

Limits

RON is not without limits, and a notary is not able to accomplish any and all notary acts remotely. Specifically, Act 125 does not apply to:

- (a) Any law governing the creation and execution of wills, codicils, or testamentary trusts.
- (b) Any law governing the creation and execution of living trusts or trust amendments for personal use, not including a transaction, as defined in s. 137.11 (15).
- (c) Any law governing the creation and execution of powers of attorney, not including a transaction, as defined in s. 137.11 (15).
- (d) Any law governing the creation and execution of marital property agreements.
- (e) Any law governing the creation and execution of powers of attorney for health care, declarations to physicians (living wills), and authorizations for use and disclosure of protected health care information.

Even with these limits, Act 125 provides for the efficient and effective execution of real estate documents and will help streamline transactions for businesses and individuals.

As we continue to encounter the challenges of a global pandemic, our reliance on technology will only increase. It is likely that "Zoom," "Microsoft Teams," "DocVerify" and others will become a regular part of the practice of law. Many of these practices were inevitable, and the pandemic has accelerated their usage. WILMIC will continue to monitor the issues, listen to insureds and provide guidance regarding these rapidly changing topics.

Four WILMIC Directors Elected To Three-Year Terms on WILMIC Board



Linda de la Mora



Marna Tess-Mattner



Richard Orton



Kristine Burck

Three longtime WILMIC board members were recently elected to new three-year terms on the WILMIC board, while another was elected for the first time.

Linda de la Mora, Marna Tess-Mattner and Richard Orton were all elected to serve new terms, while Kristine Burck was elected for the first time.

de la Mora has been on the board since 1999. She currently serves on WILMIC's Executive and Investment Committees. de la Mora practices at the von Briesen law firm in its Waukesha office, focusing on estate planning, trusts and estates, trust administration, probate, marital property law and residential and commercial real estate transactions.

Tess-Mattner has been on the WILMIC board since 2013. She is a member of the board's Audit, Governance and Long Range Planning committees. Tess-Mattner is a shareholder at Schmidt, Rupke, Tess-Mattner & Fox in Brookfield. She represents employers in employment and labor matters.

Orton has been on the WILMIC board since 2017 and is currently the board vice-chair. He also serves on the Executive, Governance, and Long Range Planning committees. Orton is a trial attorney at the Milwaukee firm of Gass, Weber Mullins focusing on products liability, general liability, professional liability, and commercial, construction and insurance litigation and appeals.

Kristine Burck joins the WILMIC board this year, and will also be serving on the board's Audit and Governance committees. She is General Counsel for Wisconsin Mutual Insurance Company. In addition to working as in-house counsel for two property and casualty insurance companies, Kristine has practiced as a solo practitioner, associate in small to medium size firms, and as a government lawyer of the Wisconsin Office of the Insurance Commissioner.

Kristine has also served on the Board of Directors of the Wisconsin Defense Counsel organization and as the Vice Chair for the Wisconsin Insurance Alliance.

Reminder – You ARE Getting a Dividend Check This Year!

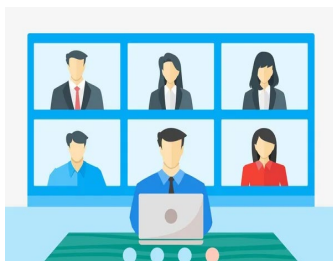
In case you missed our earlier notice this summer about our dividends in 2020, the WILMIC board did declare a dividend in 2020. If you have been insured with WILMIC for a while, you may have been used to receiving your dividend check in April.

However, this year, there is a change in the timing of the checks. Because of new administrative procedures, dividend payments are going 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.

So if you have not received your dividend check yet, it's still on the way. It's just coming a little bit later than in past years.

WILMIC has paid out almost \$10 million in dividend payments to policyholders since 1999, including approximately \$357,000 this year.

WILMIC Still Providing Free CLE Risk Management Programs In 2020 Zoom Video Programs Are Being Presented During the Pandemic



Looking for speakers who can deliver real-life examples of practical, use-it-now information? Wisconsin Lawyers Mutual is presenting the same one-hour CLE programs to local bar associations and others during the COVID-19 pandemic, we're just coming to you through Zoom videos, rather than in-person.

With gatherings limited or halted altogether, WILMIC is still providing CLE programming to local bar associations. Thanks to Zoom video technology, risk management programs are available free from WILMIC.

Whether your local bar would like information on a specific topic, or just a general overview in all practice areas, our speakers will cover it for you.

Continuing legal education and ethics and professional responsibility credits are subject to approval of the Board of Bar Examiners. If you would like to schedule a speaker, please contact Tom Watson at tom.watson@wilmic.com.

Need a Bond? WILMIC Can Help

WILMIC's insurance agency, Wisconsin Lawyers Insurance Agency LLC continues to offer good, competitively-priced court bonds. The probate and court bonds are available from The Bar Plan of Missouri.

During the past five years of operation, most of the bonds sold to Wisconsin lawyers were for estate planning cases.

Any Wisconsin lawyer who needs a bond can turn to the agency for help. The Bar Plan offers 24-hour turnaround, very competitive rates, and easily accessible representatives to handle the application and underwriting process.

Bonds available to Wisconsin lawyers include:

- Fiduciary Bonds (Administrator, Executor, Conservator, Estate)
- Court Bonds (Appeal, Replevin, Injunction, etc.)
- Notary Bonds
- License and Permit Bonds
- Lost Instrument Bonds
- Public Official Bonds
- ERISA Bonds

For access to the online application process, go to WILMIC's website, www.wilmic.com and click on "Court Bonds." To apply by telephone, call 1-877-553-6376. ■