



mutuallyspeaking

WILMIC Celebrates 35 Years in Business

There has been plenty of change, upheaval and progress since the formation of WILMIC in 1986 when Wisconsin lawyers were being priced out of obtaining malpractice insurance. In the 1990's, technology innovations were starting to change the legal profession and WILMIC began paying back its bonds to policyholders. In the 2000's, an explosion in access to information had a profound effect on client expectations and WILMIC saw tremendous growth. In the last ten years, we have seen incredible technological change, online business and finally, the coronavirus pandemic.

Through all of that upheaval, WILMIC continues to show the stability and dependability policyholders have come to expect.

The mid-1990s brought the beginning of innovation. The internet exploded onto the scene. WILMIC developed and launched its first website in 1996. It would be upgraded many times in the years since, but like most other businesses, WILMIC had entered the technology age.

It was also a time when WILMIC was paying back all the bonds that were sold to raise the money needed to start the company in 1986. For many, paying back the bonds was the turning point for the company. "A lot of people thought they would end up simply giving us this money. They didn't expect to get it back," says Katja Kunzke, then Vice President of Claims, now President and CEO.

"It took perseverance and steadiness, and a commitment to what we were doing for lawyers. And those tenets are still at the heart of what we do today," Kunzke says. "Those were exciting days and we knew we were doing something really good and important for Wisconsin lawyers."



After the economic downturn in 2008, WILMIC continued its commitment to solo practitioners and small firm lawyers. "Many of those firms were hit hard by that recession. We had to be there when they needed us most."

And now, in the past year, with the pandemic still going, WILMIC has committed to offering CLE programs online, being as accessible as ever, and working with the State Bar, local bars and others to help direct lawyers to the resources they need, whether it's cybersecurity, remote "work-from-home" information, or resources on client communication and services during the pandemic.

WILMIC is still moving forward. After 35 years, the company is poised to take on new challenges as the practice of law continues to evolve and the world emerges from the pandemic and the changing needs of clients.

Now in her seventeenth year at the helm, Kunzke sees a steady, stable and evolving company equipped to respond to the new challenges facing its policyholders. "Our intent is still the same – to protect the professional liability of the lawyers we insure. The tools we use to further that intent change all the time." Consequently, Kunzke says, WILMIC will continue to explore ways to serve its policyholders in 2021 and beyond. "One of the strongest assets we have is trust. Lawyers trust us because they know us, and they know we work hard to understand the challenges of practicing law. We were formed to help Wisconsin lawyers better serve their clients, a mission we continue today."

Law Students Would Get Earlier Court Experience Under Proposed Rule Change

Under a petition filed with the Wisconsin Supreme Court by the Wisconsin Access to Justice Commission, law students would be allowed to get practical, hands-on experience under supervision earlier than they do now.

The Commission has proposed Petition 20-04, <https://www.wicourts.gov/supreme/docs/2004petition.pdf>, to amend Supreme Court Rule (SCR) Chapter 50, which governs the practical training of law students. The rule change would allow law students to practice under the supervision of a licensed attorney after completing one year of law school. The current rule requires one-and-a-half years of school before practicing.

Several law school professors testified recently at a Wisconsin Supreme Court hearing on the proposed rule change. They said the rule change would give law students more practical training while also increasing access to justice. Wisconsin Supreme Court Rule Chapter 50 was originally adopted in 1975.

The State Bar of Wisconsin, the State Public Defender, Legal Action of Wisconsin, the Legal Aid Society of Milwaukee all support the rule change. It would be the first change to the rule in more than 40 years.

Been Targeted With a Negative Online Review? Use Caution If You Plan On Responding

In this day and age, voicing an opinion is as easy as opening a social media site or an internet platform and typing away. Lawyers can be frequent targets of criticism. You have a target on your back if a case goes sideways. An unhappy former client may want to vent a little bit and you may be the target.

This kind of criticism sometimes comes in the form of a negative online review, with on Facebook, Twitter, Avvo or any number of other sites. But lawyers have to be cautious not to violate the duty of confidentiality when responding to negative online reviews. The ABA's Standing Committee on Ethics and Professional Responsibility advises that the best response is often no response at all.

ABA Formal Opinion 496 was released just a couple weeks ago. It identifies "the main ethical concern" of any response a lawyer makes to a negative online review as ensuring the "confidentiality of client information."

SCR 20:1.6, the duty of confidentiality, protects all information relating to the representation of a client, including client identity, as well as information that could reasonably lead to the discovery of that information. **Wisconsin Formal Ethics Opinion EF-17-02.**

Aviva Kaiser, Ethics Counsel at the State Bar of Wisconsin, says in determining whether to respond to a negative review online, you have to start with the duty of confidentiality. "The protection afforded by the duty of confidentiality," she says, "is not forfeited even when the information is available from other sources or is publicly filed."

Kaiser goes on to say, "A lawyer is prohibited from disclosing information relating to the representation of the client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or the disclosure falls within one of the exceptions. Among these exceptions is the self-defense exception, **SCR 20:1.6(c)(4)**. That exception permits, but does not require, a lawyer to reveal information to the extent reasonably necessary in the following circumstances:

1. To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client;

2. To establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or
3. To respond to allegations in any proceeding concerning the lawyer's representation of the client."

"Defending one's professional reputation is not among the permitted exceptions to the confidentiality rule." In the Matter of Disciplinary Proceedings Against Peter J. Thompson, 2014 WI 25 at ¶ 44.

Kaiser cites ABA Comment 10: "Although a lawyer may genuinely disagree with statements that a client has made online about the lawyer's conduct or representation of the client, that disagreement does not constitute a controversy within the meaning of SCR 20:1.6(c)(4) and does not authorize the lawyer to disclose information relating to the representation of the client in response to the negative online review."



Kaiser adds, "The same conclusion was reached by several ethics opinions, including a Pennsylvania opinion that recognizes the increasing importance of online rating services. But it concludes that a lawyer cannot disclose information relating to the representation of the client in response to a negative online review without the client's consent.

What does all of this mean?

A Los Angeles County Bar Association ethics opinion concluded, however, that "a lawyer may respond online to the negative review as long as the response does not disclose any information relating to the representation of the client, does not injure the client in any matter involving the prior representation, and is proportionate and restrained."

ABA Formal Opinion 496 identifies what it calls "best practices" for lawyers when confronted with negative online reviews. A lawyer can ask the website host or search engine to remove the post. The lawyer cannot relay confidential client information but can tell the website host that post is not accurate.

The opinion says, "Lawyers should give serious consideration to not responding to negative online reviews in all situations." Such a response, of course, may lead to a flurry of further posts by the original poster.

But Kaiser says there are a couple other options. "Lawyers may post an invitation to contact the lawyer privately to resolve the matter. Another permissible online response would be to indicate that professional considerations preclude a response. If you want to invite a private conversation with the poster, I would do so cautiously. If the lawyer has been unsuccessful in attempts to resolve the client's concerns before the negative review was posted, then inviting further attempts could result in additional negative comments. If the lawyer has not attempted to resolve the client's concerns before the negative review was posted, the lawyer should evaluate whether any such attempt would be helpful before inviting the client to do so. For example, it may be that the particular client was not willing to discuss the concerns or was dissatisfied even though the lawyer was helpful and competent. Inviting such a client to discuss the matter privately would not be helpful and could result in additional negative comments."

Kaiser says a Pennsylvania ethics opinion offered the following sample language if a lawyer feels compelled to write some kind of response online: "A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution, I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events."

CLAIMS DIGEST



By Senior Claims Attorney, Brian Anderson

The on-going coronavirus pandemic has created many different challenges for lawyers during the past nine months. From client communication to court proceedings to economic pressures on clients, there are no shortages of challenging issues for lawyers. WILMIC Senior Claims Attorney Brian Anderson describes some of the risks that lawyers face and how to deal with them.

Failed Business Transactions Place Lawyers at Risk of Legal Malpractice Claims

In 2020, lawyers practicing in the area of business transactions and commercial law entered the top five areas of law receiving claims. Of greater concern is the fact that this area of practice represented over 17 percent of the indemnity dollars WILMIC paid to resolve these types of claims last year. We believe this increased severity trend will continue in 2021.

Business and commercial law includes the drafting and reviewing of contracts, agreements and commercial transactions. Although the lawyer's client may represent a small business entity, this type of legal work often involves a complex transaction involving multiple parties. Because there are often extensive documents to analyze that could be subject to various interpretations, the lawyer can easily be second guessed after things go wrong.

Small businesses remain under great stress as we are now entering into the second year of this global pandemic. A difficult environment for small business is likely in 2021, based upon the strong headwinds they are facing. According to a year-end survey conducted by SCORE, a national association dedicated to helping small business owners, only 34% of small businesses reported that they were able to turn a profit in 2020. Businesses related to travel, arts and culture experienced the biggest losses last year. Struggles were also noted by construction firms, restaurants, professional services, health services and retail. We are anticipating that lawyers practicing in the areas of business transactions and commercial law could increasingly become the target of legal malpractice claims as their clients may be forced to enter into a risky transaction, in haste, to generate short-term cash flow opportunities to maintain their business operations. If your client's business ultimately fails or the transaction you handled proves to be less profitable than anticipated, the lawyer may be the most solvent party left against whom a claim can be made. It is all too easy to blame the lawyer after their client's business failed, when the underlying transaction is scrutinized by legal malpractice counsel, with the full benefit of hindsight.

Last year, we saw claims where the attorney was dragged into claims involving the parties to a failed business dispute, after the litigation was already pending for a period of time. A common theme in these types of claims, from the "aggrieved client's perspective," is that the attorney was the only lawyer involved in the underlying business transaction and represented "both sides." This type of arrangement helped set up a "conflict of interest" legal malpractice claim, wherein the plaintiff, (client or not), blamed the lawyer for not better protecting their interest or more clearly defining whom they represented at, before and after the closing.

Another risk to guard against is handling a business sale or commercial purchase agreement at the last minute, that your client had already put together with the other party. If you are asked to simply "review" a transaction agreement that your client already agreed to, this can be problematic if the deal does not end up going as planned. Your review of the transaction materials may include the work of another attorney or expert advisor, such as an accountant, that your client actually relied upon when deciding whether or not to move forward with the underlying deal. Clear communication with your client advising of the pros and cons of the

transactions and any limitations that impacted your ability to completely analyze the matter, must be communicated in writing. Although your involvement may truly be limited in scope, if your client communications do not reflect this you could inadvertently become the scapegoat after things go wrong.

A carefully drafted scope of retention, with a follow-up “as I advised you” letter, can protect an attorney practicing in this environment from becoming the guarantor of their client’s faulty business judgment. Providing legal guidance to a stressed business owner is important. With this risk management guidance to consider at the outset of the representation, we are hopeful that your business transaction legal work can be completed without you later becoming the target of a legal malpractice claim.

WILMIC’s 2020 Claims Statistics

In analyzing the most common types of claims reported to WILMIC in 2020, the top five areas of practice, sorted by frequency and severity, reveals the following:

Frequency

Estate/Probate/Trust	19%
Bankruptcy/Collections	16%
BI/PI Plaintiff	12%
Family Law	11%
Business Transactions/Commercial Law	8%

Severity

BI/PI Plaintiff	33%
Estate/Probate/Trust	21%
Business Transaction/Commercial Law	17%
Bankruptcy/Collections	10%
Family Law	8%

Careful, frequent and detailed communications with your clients remain paramount, as economic pressures are likely to impact your clients this year. Addressing conflict concerns, before an issue presents, remains the best way for a lawyer to avoid a claim or grievance down the road. Finally, developing a clear scope of retainer that is understood by your client and that is documented, in writing, will go a long way toward helping you avoid a claim or grievance.

Wellness Corner

It’s Okay To Feel Stress and Anxiety, But Don’t Ignore It and Hope It Goes Away

The past year has been a time of disruption and maybe even a little bit of chaos. Practicing law can bring stress and anxiety in “normal” times, but during the pandemic, even more so. Challenges brought by the needs and demands of clients, changing rules for court proceedings, and personal pressures have all combined to keep us constantly working on ways to stay balanced in a topsy-turvy world.

Mary Spranger, Manager of the State Bar of Wisconsin’s Lawyers Assistance Program, says her office has had recent conversations with attorneys who essentially worked themselves into having panic attacks because they made a mistake on a case. “We feel like the normal amount of support they received from co-workers would have sufficed pre-COVID-19.

We would say a common and scary trend we're seeing amongst lawyers during the pandemic is not reaching out for support. Pre-pandemic, colleagues and friends helped provide support and keep things in perspective and we are missing that now."

Working remotely from home and the closure of courthouses to in-person proceedings has contributed to a significant rise in stress and depression among lawyers. Spranger says isolation and loneliness have been among the most common issues she has helped lawyers with during the past year. "This is personal as well as professional. Lawyers who are used to going to court and being part of that community are now unable to access their informational and peer support sources. One lawyer commented to me, 'I've been practicing 30 years but I feel like a newbie because everything is different now.' That stress can be unsettling and make people anxious for a return to normal."

What You Can Do

Spranger says continue to nurture your important relationships in whatever way you can. "Schedule time with friends, colleagues and mentors by phone or Zoom to maintain your critical supports. Physical health needs are important. At least, focus on the basics of enough exercise, sleep, and eat as healthy as you can. Don't put off needed medical care. Refill your prescriptions. Seek out extra support."

She also says those who have well-controlled mental health diagnoses and regularly take medicine or are engaged in treatment are having their stability challenged. "It is not unexpected that this should be the case. If you find you are struggling, it is not a personal failure, it is a predictable response to stress that none of us has ever faced before. There's no reason not to ask for help."

Spranger also suggests lawyers seek out CLE or self-study on self-care and lawyer well-being. The Bar's WisLAP program can help provide you with material – it is available in abundance. And, she adds that lawyers should "practice creative activities and hobbies when possible. This is a form of self-care that can be restorative and mindful, as well as redirecting your thoughts away from work. Don't view this as a waste of time. Self-care helps with productivity in the long run."

In future editions of Mutually Speaking, we will continue with the Wellness Corner, and the importance of connections, and the importance for all of us to recognize that we need to be well to be competent lawyers.

Wisconsin Lawyers Assistance Program - WisLAP is a member service of the State Bar of Wisconsin which provides free confidential assistance to lawyers, judges, law students, and their families in coping with any substance misuse, mental health challenges, or other stressors which negatively impact the quality of life and the practice of law. The program is designed to help members and their families build on their strengths and to provide support through offering services that promote physical, mental, and emotional health.

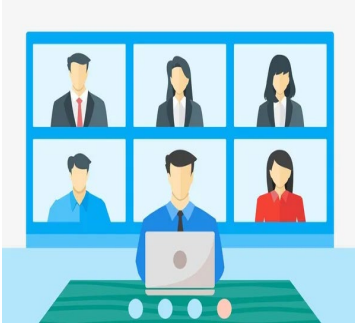
Contact Information for the WisLap program:

24 hour helpline: (800) 543-2625

WisLAP Manager Mary Spranger (800) 444-9404 ext. 6159

WisLAP Coordinator Jason Magill (800) 444-9404 ext. 6151

WILMIC Still Providing Free CLE Risk Management Programs In 2021 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.

Do You Trust Your Computer System, Especially During a Pandemic? Is Your Network Secure? WILMIC Can Direct You To Cybersecurity Protection

The same cybersecurity risks that are threats at the office exist when working from home. During the coronavirus pandemic, the threats have jumped in frequency. Experts say phishing scams have increased over the past nine months.

Your law firm handles a significant amount of client data, which you have a legal duty to protect. Law firms have proven to be highly attractive to cyber criminals. The most significant exposure is the theft or loss of personal or corporate information in the firm's care, custody or control, which includes:

- Confidential client information
- Documents regarding corporate transactions
- Personal information such as financial records, health records, Social Security numbers, intellectual property, depositions, and criminal records

Many law firms work with real estate clients and arrange for the transfer of funds as part of their business practice. In recent years, an increasing percentage of these firms have become victims of eCrime, in particular, wire transfer schemes based on business email compromise or social engineering.

Other exposures for law firms include:

- Ransomware
- System outage

Stay on top of phishing and ransomware – make sure your staff is educated and trained on cybersecurity awareness, so they have the tools to spot these threats. It's also a time to consider cybersecurity insurance.

If you are interested in getting more information about cyber risk coverage, call WILMIC at 800-373-3839, or go to www.wilmic.com. You will find more information about cyber coverage at <https://wilmic.com/insurance-services/cyber-liability-coverage/>. You can apply online or get more information at 1-877-256-6296 or 1-844-432-5625.

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. ■