

mutuallyspeaking



Registration Open for WILMIC Summer Seminar

Managing Expectations—From Client Selection to Fee Disputes: Avoiding OLR Complaints and Learning From Mistakes

Featured speakers: Attys. Steve Hurley and Gregg Herman share their combined 77 years of practice experience

Registration is open at www.wilmic.com for WILMIC's Summer Seminar. This year's half-day, three-hour morning seminar is scheduled for Thursday, August 27 at the State Bar Center, 5302 Eastpark Blvd. in Madison. Three CLE credits, including ethics, have been applied for. The seminar is also being offered as a live, online webcast.

The program will include two keynote

presentations by Milwaukee attorney Gregg Herman and Madison attorney Steve Hurley, and a panel discussion including both speakers.

The program is titled, "Managing Expectations – From Client Selection to Fee Disputes: Avoiding OLR Complaints and Learning From Mistakes."

For more information, call Stephanie Williams or Tom Watson at 608-824-1700. They also can be reached by email at Stephanie.williams@wilmic.com and tom.watson@wilmic.com. ■



Gregg Herman



Steve Hurley



WILMIC Launches New Website

WILMIC has launched its new website. The new online home features easy-to-find links to services such as application forms, supplemental forms, reporting a claim, making payments, cyber liability coverage and more.

In addition, visitors to our home page will find all of our risk management and law practice management products and services as well as a Law Practice Library that includes links to other legal web resources such as federal and state government offices, state statutes and the administrative code, legal research sites, the state law schools, local court rules, State Bar of Wisconsin resources, State Supreme Court Rules, ethics opinions, and more.

The website also includes staff listings and contact information. You can check it out at www.wilmic.com. ■



Practicing law can be fulfilling and satisfying as lawyers help people in need. However, for a variety of reasons, things sometimes go wrong. In this edition of Mutually Speaking, we look at some of the issues that arise for even the best intentioned lawyers.

By Sally Anderson

How much is enough?

How far does a lawyer have to go to follow up with a client? Lawyers ask themselves that question frequently, especially when your stomach starts to feel a little queasy and you wake up in the middle of the night, wondering if you have done “enough.” For instance, you drafted the will and trust as requested, and sent it out for review. So it is your client’s “turn” to get back to you to let you know if the documents are okay and make arrangements to sign. Right? What if the client never calls to make the appointment to come in to sign the documents? Do you have any affirmative obligation to “chase” the client to do so? Lots of busy lawyers will do their part in a matter like this and then wait to hear from the client about the next steps. After all, this is the client’s business. But what if the client dies before the documents are signed?

Lawyers second guess their obligations in these situations frequently. And the truth is that there is no one-size-fits-all answer. Did the lawyer know the client was very ill, and time was of the essence? Is this a client who often waits until the matter “ages” a bit to think it through? Maybe a follow up letter asking for the client to make an appointment will spur the client into action, but what if it doesn’t? A phone call might do the trick, but if the lawyer

leaves a message that isn’t returned, then what? How many messages, e-mails or letters are “enough?”

Or, sticking with the estate planning example, does a lawyer have any continuing obligation to a client who has done his or her planning and signed documents to inform the client when there are changes in the law that will impact the client’s plan?

The answers to these questions may differ depending on the circumstances, but there are a few things the lawyer can do to avoid some of the sleepless nights. First, does your engagement letter make clear what the obligations of the client in the matter are? Those can include more than to pay you when you send an invoice and keep the client’s contact information up-to-date. They can also include the responsibility of the client to respond to your questions, calls and letters in a timely fashion. Your engagement letter can also state that the laws change frequently in this area, and that it makes sense for the client to check with you or another lawyer every couple of years, when there are changes in the family or to the beneficiaries, or if they hear that the law is changing. If the attorney wants to take on the risk of providing current, updated information, that can be included in the engagement letter with the terms under which the attorney is assuming the obligation. If you are not assuming the obligation, you can say that, too. A letter that says it has been a pleasure to work with the client and you hope she will call you for her future legal needs could be priceless under the right circumstances.

If a client decides to proceed contrary to your advice, for example, by loaning money to a spendthrift child, that should be confirmed in writing too. A recent matter involved a farmer who sold the family farm to a child under a land contract. The lawyer suggested they obtain at least a letter report, if not full title insurance, from the local title company, but the parties were comfortable proceeding without this unnecessary expense. After all, it was all in the family. Several years later, when the child wanted to finance a new building and pay

off the obligation to the father, they learned the father had a large judgment before the date of the land contract that had attached to the land. The judgment amount exceeded what was due on the contract. A letter at the beginning, clarifying what the lawyer advised and how the clients had directed they wanted to proceed would be invaluable at a time like this (not to mention that such a letter could also handle the conflict of interest the lawyer has in doing the documents for the buyer and seller, even when the parties are father and son).

In another instance, the lawyer thought he was clear that he represented the borrower in a loan from an individual to finance a business. The lawyer met with both parties and they discussed the terms of the loan and security. He sent the draft documents to the borrower, who called back promptly with changes he said he and the lender-friend wanted, and which the lawyer promptly provided and sent out to the client. The lawyer heard nothing more until several years later. The business had, by then, gone belly-up. The lender-now-former-friend called to find out why the security interest that was supposed to be protecting the loan was never recorded. The bank had taken the assets and the borrower was nowhere to be found. In fact, the lawyer had never heard from anyone that the documents were ever signed, let alone received the UCC financing statement signed by anyone, or any direction that he was responsible for filing. The lender tried to claim the lawyer had breached his duty to follow-up on the status of the transaction, and that some duty to the lender had been breached by this conduct.

What about follow-up to a direction received in a voicemail message or e-mail? The lawyer prepared a marital settlement agreement for the wife in a short term, low asset divorce. The direction from the client was that the husband was not retaining counsel. They hadn’t been married long and just wanted out. No big deal. Just prepare the agreement and help the wife to get the paperwork done. The list of property was, indeed, small. After the initial

contact, the lawyer prepared a simple MSA that allowed each party to keep what he or she had brought to the marriage, who was paying what bills and sent it out to the wife, who provided a copy to her spouse. The husband signed and returned the document with approval to file. Then the wife e-mailed the lawyer that the husband had a life insurance policy naming her as a beneficiary and she wanted to keep that in force. The lawyer made the change, and sent out a second MSA. A few days later, the wife left a voicemail that the husband didn't know if he could afford to keep paying for the policy and directed the lawyer to proceed under the first signed set of documents. The divorce was granted on those terms. A year later, the now ex-wife called again. She told the lawyer the husband had unexpectedly died. He had, in fact, kept the policy in force and she was the named beneficiary. But the insurance company refused to pay her. There was no document in which the ex-husband directed the insurance company that he still intended for her to be the beneficiary, even after the divorce. Without that, the company had no obligation to pay.

This last situation is complicated. Had the lawyer spoken with the client, they may have discussed what insurance companies do when a beneficiary designation goes to a divorced spouse. Instead, with the clear direction in the voicemail to go ahead without any reference to the policy, the opportunity was missed. E-mail and voicemail can be handy, but they do not always substitute for in person or "live" telephone situations. Just because there is a record doesn't always mean that the lawyer and client have communicated clearly and the various considerations have been understood by the client.

Communication can be complicated, and just because a lawyer sent an e-mail does not mean it has been accomplished. Just being aware of the possible pitfalls may help. The bottom line is that it may not be legal malpractice to follow a client's clear direction in an "indirect" communication, but may not be good client service. It may not be "enough." ■



Look for WILMIC at this Fall's Solo & Small Firm Conference

Wisconsin Lawyers Mutual Insurance Company continues to reach out to lawyers around the state. Staff members will be on hand to meet and talk with attorneys attending the State Bar of Wisconsin's Solo & Small Firm Conference at the Kalahari Resort in Wisconsin Dells on October 22 – 24. WILMIC will also be involved in three different CLE sessions during the three-day conference, covering advertising and social media malpractice risks, phasing out of law practice and the Saturday morning wrap-up session called the "Ethics Game Show."

Staff members will offer insurance information to convention attendees and catch up with policyholders who stop by the WILMIC booth. ■

WILMIC Board of Directors Elected to New Three-Year Terms

Four members of the WILMIC Board of Directors were elected to new three-year terms this summer. At the company's Annual Meeting of Policyholders, four directors were up for election to three-year terms. They are:

- John Bubolz
- William Mulligan
- Anne Ross
- Thomas Sleik

Atty. Bubolz has been a member of the WILMIC board since 1991 and is chair of the board's Investment Committee. Atty. Mulligan is one of WILMIC's original board members and helped create the company. He served as chair of the board from its inception in 1986 until 2014 and also serves on the board's Executive and Long Range Planning Committees. Atty. Ross joined the WILMIC board in 1987. She has served on the company's Audit and Executive Committees. Atty. Sleik has been on the WILMIC board since 1997 and also serves on the board's Audit Committee. ■



John Bubolz



William Mulligan



Anne Ross



Thomas Sleik

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SUMMER 2015

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Office hours at Wisconsin Lawyers Mutual Insurance Company are 8 am until 4:30 pm Monday– Friday.

Other information also found at wilmic.com.

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2015 Risk Management Programs Available for CLE Credit

Looking for speakers who can deliver real-life examples of practical, use-it-now information? The following risk management programs are available free from Wisconsin Lawyers Mutual Insurance Company to local bar associations and legal groups. CLE credit can be applied for with each program.

- Legal Malpractice – A Primer
- Common Pitfalls In Law Practice
- Help Yourself: What Malpractice Claims Teach Us
- Protecting Your Practice: Preparing a Disaster Recovery Plan
- Avoiding the “M” Word: Managing Malpractice Risks
- Starting a Law Practice
- Setting Up a Solo Practice
- Malpractice Considerations With Unbundled Legal Services
- What Keeps You Up At Night? Getting Peace of Mind In Your Law Practice
- Using Office Staff Effectively
- Dealing With Pro Se Litigants: More Art Than Science?
- Top Ten Ways to Avoid Spending Your Deductible
- Avoiding the Malpractice Minefield in Real Estate
- Litigation Risk Management: What Malpractice Claims Teach You
- Legal Malpractice Claims – The Wisconsin Experience
- Facing a New Day In Court: The Pros and Cons of Delivering Unbundled Legal Services and Practical Solutions for Dealing with Pro Se Litigant

Speakers:

Katja Kunzke, *President and Chief Executive Officer*

Sally E. Anderson, *Vice-President - Claims*

Brian C. Anderson, *Claims Counsel*

Joseph A. McCarthy, *Vice President - Underwriting*

Thomas J. Watson, *Senior Vice President*

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 Thomas Watson, by calling 800-373-3839 (if calling from the Madison area, please use our local number, 824-1700). ■