

Think Small!

The Official Newsletter of the Solo and Small Firm Practice Committee

Volume 1, Spring 2004

Committee concentrates on needs of solo, small firm attorneys

James E. Powers, Chair

First American Title Insurance Co.

It's a truism that within membership organizations, simple perseverance can yield rewards. Case in point: After serving on the Solo and Small Firm Practice Committee since my initial appointment in 1995, I was asked by State Bar President George Burnett to act as chair. My only possible qualification for the job (other than simply saying, "Yes") may be that I have some understanding of the committee's function within the bar. I'd like to bring you up to date on the activities of the committee, as well as how our State Bar is working to serve solo and small firm attorneys.



Think Small – The SSFPC Newsletter

This newsletter comes to you through the selfless efforts of attorney Nancy Trueblood, committee member, who has made a substantial investment of her time to edit this newsletter. For those of you unfamiliar with the process of producing newsletters, to "edit" is to supervise, negotiate, organize, prioritize, assuage, plead, cajole, cut, and paste. I am extremely impressed that anyone would volunteer for such a job, and I appreciate very much attorney Trueblood's selfless contribution.

Think Small represents a primary mission of the SSFPC: To serve solo and small firm attorneys by providing information they can use in their practice. Committee members Pharis Horton, Carl Edenhofer, and William Drengher have stepped up to provide articles in this or previous issues to make this publication relevant to Wisconsin lawyers, and their contributions are also appreciated.

SSFPC Email List

Participants in the SSFPC email list provide each other information on such diverse topics as lease forms, the ethics of legal notice, DSL v. dial-up, identifying process servers in another county, the use of credit cards to minimize accounts receivable, the mechanics of a construction escrow, LLC organization issues, and marketing a solo or small firm practice. The level of attention, personal generosity, courtesy, and

practical wisdom employed by the users of this email list is remarkable.

I believe that the email list not only enhances each lawyer's competence in the practice of law, it helps us all get along together better. The email list group is truly a community of lawyers who are willing to share their knowledge and insight with the simple expectation that other members will share in kind.

If you are new to the SSFPC email list, it's a good idea to just "listen in" for a while until you get a feel for the etiquette and response protocols used by experienced users. Spammers and flammers need not apply. If you are not already enrolled as an email list member, please join now. Pat Morgan at the State Bar can set you up; simply email her at pmorgan@wisbar.org and request enrollment in the Solo & Small Firm email list.

State Bar Annual Convention

The SSFP Committee has been a frequent contributor to the

continued on page 2

Inside this Issue

Bar to offer new deed, land contract and mortgage forms	2
The changing face of the legal profession: Using a client-centered approach to provision of legal services	3
Is offering unbundled legal services right for you?	4
Volunteers willing to help you by answering questions for free	5
How do your experiences, practices compare?	6
Log that call!	7
Who pays when an attorney prevails in disciplinary proceedings?	8
Comparing the rules	9
Speakers remind legal professionals of role of courtesy, decorum	10
Committee Roster	11
Convention team offers advice on marketing, money, avoiding malpractice	12

Committee concentrates on needs of solo, small firm attorneys

(continued from cover)

programs of the State Bar Annual Convention; we have Carl Edenhofer to thank for coordinating this year's program.

"Marketing, Money, and Ethics" will address topics such as referrals and referral fees, law firm marketing, and developing a network of medical experts for personal injury cases. Deborah L. Kilbury Tobin will provide a concurrent ethics commentary for each topic. Special thanks to Carl Edenhofer and Mark Loduha for acting as faculty for this program.

Solo and Small Firm Success Conference

While no longer sponsored by the State Bar, this annual conference is a useful resource for solo and small firm attorneys that you should know about. The 2004 conference will be held in La Crosse in October.

The conference is largely sponsored by the American Bar Association and provides seminars and workshops pertaining to marketing, technology, risk management, ethics, and various substantive practice issues. Attorney and past State Bar President Steven R. Sorenson has devoted a substantial amount of his time to make this event successful. More details on the event will be forthcoming.

Law Practice Management Assistance Program Study Committee

During the fall of 2003, a working group chaired by Wausau attorney William Hess met occasionally to consider whether the State Bar should create a Law Office Management Assistance Program (LOMAP). Operating under a mandate from State Bar President Burnett, the Study Committee was formed to determine the need among Wisconsin lawyers for access to information regarding practice management in order to better serve their clients.

The concept of the LOMAP is simple: Lawyers, particularly lawyers new to the practice, need practical information on issues such as financial management, technology, client relations, risk management, and office management. The idea is to help attorneys attract desirable clients, keep their trust accounts balanced, hire and retain efficient staff, purchase and maintain reliable computers and equipment, and keep from getting sued for malpractice.

The Study Committee's report was submitted to the Board of Governors in November 2003. Among the recommendations of the committee was the creation of a coordinator's position within the State Bar to assemble resources and coordinate continuing education programs consistent with the LOMAP mission. You will be hearing more about LOMAP in the coming months.

A final word

I take back what I said in the first sentence of this message. It isn't mere perseverance that brings rewards; it is participation.

All of the activities above have occurred because some very busy people made an additional investment of their time to serve their fellow bar members.

If you think you can make a difference – or perhaps think you'd like to chair a committee someday – the Solo and Small Firm Practice Committee would welcome your time, effort, and talent. Have a great year. ■

Bar to offer new deed, land contract, and mortgage forms

Pharis Horton

Horton Law Office

A committee of the Real Property, Probate & Trust Law Section chaired by Bob Leibsle of Elkhorn has completed the first comprehensive revision of the State Bar real estate forms since 1982.

These forms, which deal with the creation and transfer of legal interest in real estate, complement the contractual forms (listing contracts, offers, and related documents) issued by the State Department of Regulation and Licensing. Together they provide a comprehensive documentary package for the vast majority of transactions in the state.

The new forms incorporate the common provisions for these transactions, update the forms currently in use, provide alternative wording where appropriate, and offer a useful, flexible, and usable set of documents. Because of the general acceptance given to the bar-approved forms, it can be expected that they will become the standard paperwork attorneys will encounter in their real estate practice.

The advantage of the standardized forms is that they have been developed by a committee familiar with Wisconsin practice. Once you are familiar with their terms, drafting and review of transactional documents will be fairly routine. The forms do provide flexibility with alternative provisions, but these are in a format easy to follow and analyze.

The forms, by number, are: Warranty Deed (Forms 1 and 2), Quit Claim Deed (Form 3), Guardians Deed (Form 4), Personal Representatives Deed (Form 5), Special "Warranty" Deed (Form 6), Trustees Deed (Form 7) and Condominium Deed (Form 8).

Also: Land Contract (Form 11), Condominium Land Contract (Form 14) and Assignment of Land Contract (Form 15), Fixed Rate Note (Form 16), Indexed Variable Rate Note (Form 17), Mortgage (Form 21), Condominium Mortgage (Form 23), Partial Release of Mortgage (Form 28), Satisfaction of Mortgage (Form 29), Assignment of Mortgage (Form 30), Bill of Sale (Form 31), Guaranty (Form 32) and Marital Property Statement (Form 33).

The State Bar is developing the procedure to make the forms available. ■

The changing face of the legal profession: Using a client-centered approach to provision of legal services

Elizabeth Gamsky Rich

Pro Bono Coordinator, State Bar of Wisconsin

Times are changing for the legal profession. Gone are the days when lawyers would greet a new client, take over his or her case, handle it well, and submit a one-line bill “for professional services rendered.”

The new breed of clients is far more sophisticated, far more demanding, and thanks largely to the information explosion created by the Internet, far more informed. These clients want control over the costs, procedures, and choices involved in their legal representation.

One non-traditional way to serve today’s clients that is rapidly growing in popularity is known as “unbundling” of legal services. In a nutshell, unbundling is analogous to ordering from an à la carte, rather than a fixed-price, menu. The tasks involved in a particular client’s case are allocated between lawyer and client. The result is more control for the client, increased access to legal service for those who can’t afford traditional full-service representation, and – potentially – increased profitability and professional satisfaction for the attorney.

In many ways, unbundling is not new. Lawyers have been selling discrete legal services to clients for decades. For example, a family law attorney may charge a flat fee for an initial consultation, after which the client may or may not retain the attorney to proceed with filing a petition for divorce. A real estate attorney might provide a client who is considering purchasing property subject to an access easement with a second opinion regarding the validity of the easement for the client’s intended use. Or a lawyer might provide a single document for a client, such as a power of attorney or a quit-claim deed, without performing any additional services.

There is one area in particular that I believe warrants further attention by our membership: using unbundling to increase access to the legal system for low-income people by making it easier and less unprofitable to provide pro bono or “low bono” legal services. Taking a client-centered approach to provision of legal services that includes offering unbundled services has the potential to dramatically increase access to our legal system for low-income individuals. For low-income clients, unbundling:

- Directly increases access to both legal and non-legal information and services. At the outset, clients receive full disclosure of the options and potential outcomes available, and receive the information they need to manage their cases and develop their legal strategy for proceeding.
- Makes a full range of client-centered services accessible to low-income clients by offering an economically viable and personally empowering means of effectuating strategic decisions.
- Allows clients of limited means to minimize costs by

handling portions of their cases themselves, and heightens the probability of success for pro se litigants.

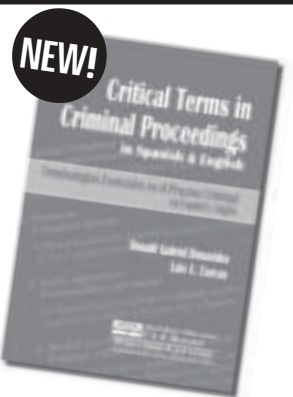
- Allows attorneys to provide pro bono or “low bono” legal services to clients of limited means while maintaining control over the commitment of time and money to the matter being handled.

The unbundling model does present several ethical issues. Although many ethical rules are potentially implicated by the concept, the primary governing rule in Wisconsin is SCR 20:1.2, Scope of Representation. The rule specifically authorizes limited scope representation; however, the rule in its current form contains many gray areas.

Unbundling may not be a panacea for all that ails the legal profession. It does, however, offer many potential benefits to lawyers. Unbundling can increase lawyers’ personal and professional satisfaction, both by helping them to provide economically viable and efficient pro bono service, and by allowing them to focus on the aspects of client representation they enjoy the most. ■

Serve your Spanish-speaking clients ... better!

Critical Terms in Criminal Proceedings in Spanish & English



New from the State Bar of Wisconsin, this pocket-sized book offers a fast, convenient means to locate the terms you need to represent your Spanish-speaking clients effectively and guide them through the often-confusing criminal justice system.

Perfect for attorneys, interpreters, or clients, this book addresses 70 terms commonly used in criminal and traffic proceedings, and provides clear, plain-language descriptions of the criminal process in both Spanish and English.

Designed for everyday use, *Critical Terms in Criminal Proceedings in Spanish & English* packs a wealth of useful information into one compact, paperback book, making it a quick, reliable, and convenient resource tool – ideal for easy transport wherever you need it.



AK0185; 132 pp.; 2004; \$10

Call (800) 728-7788 or visit www.wisbar.org/cle

Is offering unbundled legal services right for you?

Michelle B. Fitzgerald

Legal Horizons, LLC

Q: What are unbundled legal services?

A: Legal advice and counseling, with the client retaining primary control. Unbundled service (or limited legal assistance) allows you to handle a specific matter or to “coach” a client through a legal process. The attorney can also assist with such things as drafting documents, researching the law, negotiations, mediation, gathering facts, representation in court, explaining the court process, and explaining the client’s options. The client pays for services as they are needed.

Q: When are unbundled legal services appropriate?

A: In many instances! Unbundled services work well with family law issues where the client is able to speak for himself or herself while still having an attorney review/advise on the client’s legal rights. Unbundled services also work well for such issues as consumer law (such as creditor or contractor problems), and small claims issues where an attorney can briefly explain what the client’s legal rights are, whether the client has a counterclaim or what to expect in court.

Q: When would unbundled services not be appropriate?

A: In the following situations:

- The client does not have the time or interest to learn how to handle the matter.
- The client is not mentally or emotionally able to handle the matter.
- The client is in a situation of abuse or intimidation where full legal representation is needed.

Q: What about malpractice?

A: It is easier to avoid than you may think. Give every client a summary or intake sheet that describes the services performed, what was discussed, and the status of your work (for example, “Status: ‘Completed review of documents, client will proceed on own.’”) **GIVE THE CLIENT A COPY OF THAT BEFORE HE OR SHE LEAVES**, explaining briefly the “Status” section.

This serves the purpose of protecting yourself from clients alleging you did not advise them of “B,” when they never told you “A,” which would have led you to advise them of “B.” It also makes it clear whether your service for that client is complete or on-going, if appropriate. This avoids the trap of the client thinking that he or she is waiting for you to get back to him or her, or waiting for you to act on the client’s behalf.

If the client wants continued coaching or advice, ask for a retainer and have the client sign your regular retainer agreement for such coaching services.

Finally, you may want to meet with clients near a computer so that you can “take notes” on the computer for the summary sheet (or another form you devise for unbundled client contact) so that you can print a legible copy for the client. It also saves time for you, as that person is then in your system.

Q: Do I have to alert my malpractice carrier when I begin offering unbundled services?

A: No. If you think about it, you probably already offer some unbundled services. Your malpractice carrier would be concerned about any area of your practice if you were not adequately covering yourself with simple “CYA” memos, letters, etc. That is the dual purpose of the suggested summary sheet. Once you begin using this type of intake or summary sheet for unbundled clients, you will likely start using it for new clients or those prospective clients whom you may only meet one time. It is highly recommended for any clients who are turned away yet need to be told they have a deadline to meet. It saves time as well, as it is in lieu of having to draft a “CYA” letter after the potential client leaves.

Q: What are some benefits of performing unbundled services?

A: Lots! First, the client pays at the time of service. No exceptions. (You might want to invest in accepting credit card payments if you don’t already.) Second, many unbundled clients often find that their cases eventually become overwhelming and they will then want to hire you. This then leads to your regular retainer request and a new case. Third, you may experience a higher satisfaction with your profession as you will be helping more people who will be thrilled that you are offering the level of service they are seeking. ■

WisLAP is on call for you

Help is just a confidential call away.

Stress, depression, or professional crisis?

Call the WisLAP Stress Helpline

(800) 543-2625

Alcohol- or drug-related concerns?

Call the WisLAP Substance Abuse Helpline

(800) 254-9154

For more information, visit www.wisbar.org/bar/cm-lap.htm.

Volunteers willing to help you by answering questions for free

Nancy L. Trueblood

Law Offices of Darwish & Trueblood, LLP

A fellow small firm practitioner recently shared an experience that seemed akin to wading into what looked like a few inches of water only to find she might actually be in over her head.

This colleague was handling one of her first family law cases. Although the client initially seemed to merely need help seeking a revised child support order, my colleague soon learned the case was more complicated. The original order had been issued when the custodial client lived in another state, where the other parent remained. Although the non-custodial parent had approved the client's move to Wisconsin, the jurisdictional issue could best be described as murky.

Unable to seek help from anyone else in her firm, my colleague did the next best thing. She turned to her roster of about 700 attorneys who had all promised to be available whenever she needed guidance.

Actually, those 700 Wisconsin-licensed attorneys didn't just promise my colleague they would be available to help. They promised me, too. And they promised all of you. Actually, they promised every other lawyer in Wisconsin that they would be there when needed.

As volunteers listed in the State Bar's Lawyer-to-Lawyer Directory, these 700 attorneys agree to "share their knowledge in particular areas of law with other lawyers – not the public – through brief telephone consultations," according to the directory.

Revised every two years, the lawyer-to-lawyer listing is part of the annual *Wisconsin Lawyer Directory* published by the State Bar. By agreeing to be listed in this special section toward the back of the bar publication, each lawyer promises to share his or her expertise by offering brief phone consultations for free.

The Lawyer-to-Lawyer Directory offers both an alphabetical listing of volunteers and a listing

by topic. For example, the fifty topic areas range from administrative/government law and alternative dispute resolution to civil litigation, worker's compensation, and even career development. Many topic areas are broken down into sub-categories as well – for example, the "Tax" listing offers names under "Audits," "Collection Issues," "Criminal Defense," "Employee Benefit Plans," and more.

The lawyers must be seeking advice from a more experienced practitioner on behalf of a client, not the attorney. The consultations generally are expected to last about 10 minutes, and involve questions in the area for which the volunteer attorney is listed.

The current Lawyer-to-Lawyer Directory starts on Page 669 of the 2004 book with an overview of the program. It also offers directory etiquette from the volunteer lawyers, including:

- Identify yourself.
- Don't call collect, and if you leave a message for a volunteer out of your calling area, let the volunteer return your call collect.
- Be honest about the nature of the call and that you are calling from a directory listing.
- Respect the volunteer's time by keeping to the 10-minute call guideline. (A longer consultation may be arranged with the volunteer, at his or her discretion.)
- Ask questions of the volunteer such as: "Am I over my head? Is this issue more complex than my knowledge of the area indicates? Do I need to refer the client to someone experienced in this area?"

Attorney Gwendolyn G. Connolly, who spoke on how to manage a new law practice at the Milwaukee edition of the recent "Building for Success: The Ultimate 'How-to' Guide for New (and not so new) Lawyers" seminar, said attorneys who use the lawyer-to-lawyer service also should convey their thanks to the volunteers.

Connolly also stressed that it is important for solo and small firm practitioners to not be afraid to seek assistance. "Lawyers in Wisconsin are willing to help you," she told attendees.

In my own practice, I have used the Lawyer-to-Lawyer Directory several times. The attorneys I have spoken with have all been knowledgeable and understanding, and their assistance has been invaluable.

So the next time you suspect you may have stepped into too deep a pond, cast your eyes to the Lawyer-to-Lawyer Directory for help. The volunteer who answers your call may just be a lifesaver.

The State Bar does have a caveat about the lawyer-to-lawyer listings. It makes "no representation as to the knowledge or experience of any lawyer listed in this directory. The lawyers listed here have agreed to refrain from referring to the directory listing in advertising or other communications to the public because of the potential for misleading the public regarding the State Bar of Wisconsin's assessment of their level of competence." ■



How do your experiences, practices compare?

This newsletter aims to be another way for solo and small firm practitioners to share their ideas, opinions, and experiences. In that spirit of sharing, we asked a few committee members and other attorneys to respond to queries about the solo practice of law or practicing in a small firm.

The responses to our “conversation starters” were uniformly thoughtful and honest. Following is a sampling of what your fellow solo or small firm practitioners had to share:

Query 1: “One thing I wish I had known when I first became a solo or small-firm practitioner ... ”

- I wish that I had had a better appreciation for the need that a small firm practitioner has to do everything that goes with managing a business and practice law at the same time. From setting up workflow systems, to arranging for janitorial services, the small firm owner has to deal with all the issues. At the same time, he/she has to maintain a high level of practice to preserve or enhance the reputation of the firm. Ideally, the small firm manager has a non-lawyer office manager that he/she completely trusts who has decision-making authority on lots of matters. (Robert J. Kasieta, Madison)
- That the environment and market in which I would offer my professional services would change as rapidly as it does. (Michael A. Loduha, Manitowoc)
- Even kind, well-intentioned people can fail to pay your fees – protect yourself with written agreements and advances at the beginning of a case. (Pamela Pepper, Milwaukee)
- That everyone in the world of Lawyer Regulation and Ethics is gunning for you because they just do not understand the dynamics of solo or small firm practice. (Steven R. Sorenson, Ripon)

Query 2: “My top time-saving tip is ... ”

- Here’s an “inherited” tip from my brother. When I go through my stack of phone calls to return, I find the nastiest one and return it first. It often isn’t as bad as you think, and once it’s done, it’s smooth sailing. (Pharis Horton, Madison)
- Read your mail at your mailbox. Once it finds its way back to your office, mail burrows in among the other items of your desk and procrastination protects it from being touched again for too long. Bringing a dictation machine and notepad to your mailbox. Completing as much of it there as possible ensures that you only handle the mail once and that it is quickly addressed. Somehow this takes less time than dealing with it back in your office. (Kasieta)
- Faxing directly from my computer. (Loduha)
- Pay bills electronically. It saves at least two to four hours a month. (Frank Pasternak, Milwaukee)

- Use automated time and billing systems. I use Amicus Attorney and Quick Books . . . It takes me a half-hour or so to bill. (Pepper)
- Stay on top of filing every day. (Margaret M. Serrano, Milwaukee)
- Never waste a trip to Court or any travel time. Learn to make calls, dictate, listen to audio tapes, or otherwise put travel time to good use. (Sorenson)
- A telephone head set is a good tool for saving time and allowing the attorney to make necessary notes during a telephone conference. (Lowell E. Sweet, Elkhorn)

Query 3: “My top money-saving tip is ... ”

- Become a paperless office (or as close as you can get) as quickly as possible. The cost of good technology pales in comparison to the cost of duplicating, handling, and storing paper. In addition to saving money, digitized files help the small firm practitioner go toe-to-toe with larger firms that might not be as invested in technology. (Kasieta)
- Charging a set \$25 for a 45-minute initial consultation – where the prospective client signs an information sheet in advance of our accepting the \$25 and my talking to him or her to the effect that I am not obligated to provide any legal services beyond the 45-minute consultation. (Loduha)
- As long as you and any employees are healthy, change health insurance plans more frequently to keep premiums down. (Pasternak)
- Screen clients before accepting cases. Most attorneys looking back on that first meeting with a client who later failed to pay, realize that the signs were there in the beginning. (Pepper)
- Print research on the blank side of non-confidential scrap paper instead of new paper. (Serrano)
- Never do the work that a good assistant or legal secretary can do as well if not better. Proper delegation saves thousands and makes thousands more. (Sorenson)

Query 4: “My favorite part of being a solo or small-firm practitioner is ... ”

- The ability to control the culture of the workplace. Having managed a larger firm, I appreciate the fact that small firms are friendly, accommodating places where people pull together instead of splintering into factions. If cultural problems arise in small firms, they can be addressed promptly and effectively, in sharp contrast to larger firms, where culture change is like steering an aircraft carrier. (Kasieta)

- None – for every positive there is a negative and I’m not comfortable presenting solo practice in a small market and economically depressed community in a positive light without the balance of the sacrifices and negative aspects of such a career situation. It has given me the freedom to do other things – like inventing and promoting an Internet based tool for collaborative family law – but that is not an attribute of my practice but an escape from it. (Loduha)
- Feeling free and self-reliant. (Pasternak)
- The flexibility – I can come and go as I please, and the only people I have to account to are my clients and myself. (Pepper)

- I have control of my time and my priorities. (Serrano)
- Not having to “churn” a case, over bill a client, or turn down someone in need. (Sorenson)

We’re grateful to those who responded – but would like to hear from more of you next time. If you would like to be included in our next survey, or if you have an idea for a “top tip” question, please write newsletter editor Nancy L. Trueblood at the Law Offices of Darwish & Trueblood, LLP, 8500 W. North Ave., Wauwatosa, WI 53226 or email to trueblood@darwish-law.com.



Log that call!

Committee member Lowell E. Sweet of Sweet, Maier & Cox., S.C. in Elkhorn says he has suggested a number of time and money saving tips to groups and individual lawyers over the years.

One piece of advice he never fails to pass on is to keep a daily incoming call log, listing the caller’s name, who the caller wanted to speak with, the time of the call, the caller’s phone number, and what happened with the call. He notes that such logs help attorneys keep track of their time as well as locate a phone number when it is lost or numbers have been transposed.

“I recommend that they be saved for a considerable period of time,” he writes. “Unfortunately, individuals sometimes make allegations regarding what happened with the call. It is important to know if they even spoke with the attorney. We use our own form.”

Lowell supplied a copy of his firm’s form, which is excerpted below, and would welcome any suggestions to improve it. The “code” for the message is inserted before the “Message” blank. (Please note that the initials in the form “L K G” represent Lowell and the other attorneys in his firm, thereby indicating who the message was for.) ■

CB-Call Back – NM-No Message – SA-Set Appt. – PT-Put Through – CH-Call Home
TM-Took Message – CAN-Cancel Appt. – CA-Confirm Appt. – RC-Returned Call
NN-No Name – WN-Wrong Number

TELEPHONE MESSAGE LOG

<u>TIME</u>	<u>CALLER</u>	<u>DATE</u> _____	<u>MESSAGE</u>
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____
_____	_____	_____	L K G _____

Who pays when an attorney prevails in disciplinary proceedings?

Theodore D. Kafkas

Two instances exist when an attorney could have to pay the costs involving discipline.¹ First, an attorney could have to pay costs when the attorney consents to a reprimand and the director of the Office of Lawyer Regulation assesses costs.² Second, an attorney could have to pay costs when the state Supreme Court imposes discipline and also assesses costs.³

However, if an attorney does not consent to discipline and no discipline is imposed, the Supreme Court Rules do not have a provision for payment of the attorney's costs. (Some insurance policies might provide coverage for fees and expenses.)

In 2000, in *The Matter of Disciplinary Proceedings Against Steven M. Lucareli*⁴, the Supreme Court of Wisconsin provided guidance to attorneys when it ruled on former SCR 22.20. In *Lucareli*, the Supreme Court examined costs when it stated:

[W]e turn to the remaining issue raised in the cross-appeal: whether Attorney Lucareli is entitled to statutory costs. Attorney Lucareli argued that the rules of civil procedure, specifically, Wis. Stat. §814.03, provide that if a plaintiff in a proceeding is not entitled to costs, costs shall be allowed to the defendant. [Attorney Lucareli] noted that, pursuant to SCR 22.23(2), the rules of civil procedure apply in attorney disciplinary proceedings 'except as otherwise provided in the rules [governing disciplinary proceedings].'⁵

In *Lucareli*, the Supreme Court ruled that:

There is no merit to Attorney Lucareli's argument, as one of the rules of procedure governing attorney disciplinary proceedings, SCR 22.20, makes specific provision for the assessment of costs. It makes no provision, however, for an award of costs to the respondent attorney when the disciplinary proceeding is dismissed. Moreover, Attorney Lucareli presented no persuasive argument that he is entitled to statutory costs merely because the dismissal of this proceeding renders assessment of costs against him in favor of the Board unwarranted. The referee made specific findings that court decisions holding that Attorney Lucareli engaged in prosecutorial misconduct justified the Board's commencing this proceeding and that it was Attorney Lucareli's legal error in filing the criminal charge against defense counsel that necessitated full litigation of the issues.⁶

The Supreme Court made a better attorney regulation system, with more checks and balances, when it replaced the Board of Attorneys Professional Responsibility with the OLR.⁷ However, SCR 22.24 and former SCR 22.20 both deal with the assessment of costs and are extremely similar. Therefore, if an attorney is successful in persuading the OLR's director to dismiss a case or if the attorney receives an order for dismissal, the attorney is still

unlikely to receive an order for costs.

Many attorneys do not realize that some insurance policies have coverage for disciplinary proceedings. However, coverage language does exist in some insurance policies. For example, one policy states:

In the event the violation of disciplinary rules or other professional misconduct alleged in any disciplinary proceeding is not proven by a final and enforceable determination by a tribunal of competent jurisdiction adverse to the Insured and is not admitted by the Insured, then the Company shall reimburse the Insured for all reasonable fees, costs and expenses incurred by the Insured in connection with such disciplinary proceeding.⁸

Each policy could be different on whether coverage exists and, if coverage exists, on the type of coverage. Therefore, it is important for attorneys to promptly consult with a qualified attorney knowledgeable in insurance and disciplinary proceedings. In addition, attorneys could be proactive and ask their insurance company for coverage before they are involved in a disciplinary proceeding.

Even with the OLR's checks and balances, an innocent attorney could incur large costs from the disciplinary system before eventually winning. Although the Supreme Court is unlikely to provide costs to such an attorney, insurance could provide coverage for the costs. ■

(Endnotes)

¹ SCR 22.24 is entitled "Assessment of costs." SCR 22.24 (1) states:

The supreme court may assess against the respondent all or a portion of the costs of a proceeding in which it imposes discipline and enter a judgment for costs. The director may assess all or a portion of the costs of an investigation when discipline is imposed under SCR 22.09. Costs are payable to the office of lawyer regulation.

² SCR 22.24. Also see SCR 22.09 as it relates to consensual private and public reprimands.

³ SCR 22.24.

⁴ 2000 WI 55, 235 Wis. 2d 557, 611 N.W.2d 754.

⁵ 2000 WI 55, ¶34, Wis. 2d at 574, N.W.2d at 762-63. (Footnotes omitted.)

⁶ 2000 WI 55, ¶35, Wis. 2d at 574-75, N.W.2d at 763. (Footnotes omitted.)

⁷ Effective October 1, 2000, the Supreme Court of Wisconsin restructured the attorney discipline system.

⁸ Great American Insurance Company Policy TAU 8109 (Ed. 04/97) XS (Page 2 of 11).

Comparing the rules

Here's a comparison of current SCR 22.24 and former SCR 22.20 (2000):

SCR 22.24: Assessment of costs.

(1) The supreme court may assess against the respondent all or a portion of the costs of a proceeding in which it imposes discipline and enter a judgment for costs. The director may assess all or a portion of the costs of an investigation when discipline is imposed under SCR 22.09. Costs are payable to the office of lawyer regulation.

(2) In seeking the assessment of costs by the supreme court, the director shall file in the court a statement of costs within 20 days after the filing of the referee's report, provided that if an appeal of the referee's report is filed or the supreme court orders briefs to be filed in response to the referee's report, the statement of costs shall be filed within 14 days after the appeal is assigned for submission to the court or the briefs ordered by the court are filed. Objection to the statement of costs shall be filed by motion within 10 days after service of the statement of costs. The director has the burden of establishing costs to be assessed.

(3) Upon the assessment of costs by the supreme court, the clerk of the supreme court shall issue a judgment for costs and furnish a transcript of the judgment to the director. The transcript of the judgment may be filed and docketed in the office of the clerk of court in any county and shall have the same force and effect as judgments docketed pursuant to Wis. Stat. §§ 809.25 and 806.16 (1997-98).

SCR 22.20: Assessment of costs.

(1) The supreme court may assess all or part of costs of the proceeding against the respondent and enter a judgment for costs. The board may assess all or a portion of the costs of a proceeding in which the board imposes discipline pursuant to SCR 22.09(2). Costs are payable to board.

(2) In seeking the assessment of costs by the supreme court, the board shall file a statement of costs within 20 days of the filing of the referee's report with the court, provided that, in the event an appeal of the referee's report is filed or the supreme court orders briefs to be filed in response to the referee's report, the statement of costs shall be filed within 14 days of the date on which the appeal is assigned for submission to the court or the briefs ordered by the court are filed. Objection to the statement of costs shall be filed by motion within 10 days of service of the statement of costs.

(3) Upon the assessment of costs by the supreme court, the clerk shall issue a judgment for costs and furnish a transcript of the judgment to the board. The transcript may be filed and docketed in the office of the clerk of court in any county and shall have the same force and effect as judgments docketed pursuant to Wis. Stat. §§ 809.25 and 806.16 of the statutes. ■

Introducing State Bar CLE Books on the Internet.

Access to online research is included in the price of the book; one flat rate – no additional subscriptions necessary

Primary case law hyperlinked in the text of the book

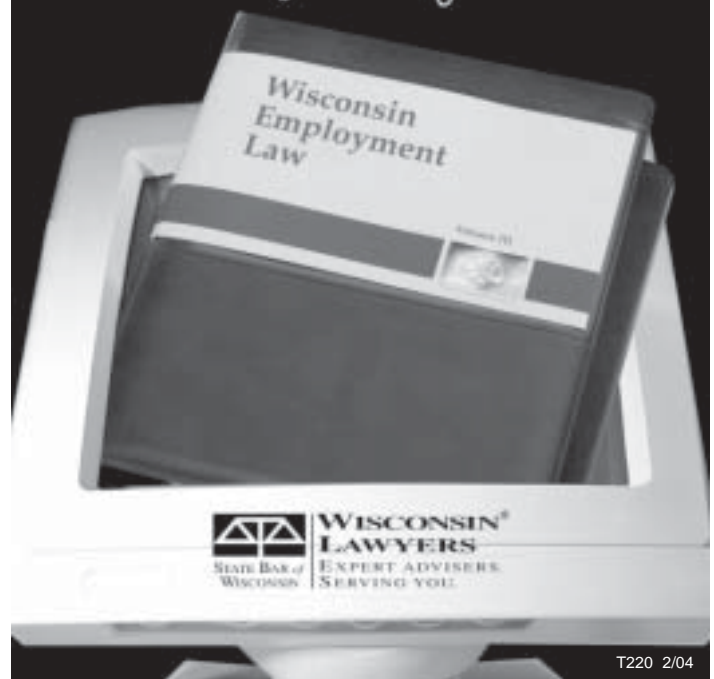
Unlimited access, linking, downloading, and printing of cases, statutes, and regulations

Fully searchable, updated case and supporting law links

GlobalCite allows you to scan **Loislaw** databases for cases, statutes, regulations, and other sources citing the document you're viewing-at **no additional cost**

Visit www.wisbar.org or
call the State Bar at (800) 728-7788.

Your State Bar Membership
Delivering what you value.



Speakers remind legal professionals of role of courtesy, decorum

Nancy L. Trueblood

Law Offices of Darwish & Trueblood, LLP

Attorneys should help block the rise of unethical, win-at-all-cost tactics by adhering to the standards set by the Wisconsin Supreme Court in its eight-year-old rule on “courtesy and decorum” for the state’s courts, urges Milwaukee County Circuit Court Judge John J. DiMotto.

DiMotto and Marquette University Law School professor Daniel D. Blinka reviewed Supreme Court Rule 62 – titled “Standards of Courtesy and Decorum for the Courts of Wisconsin” – as part of a presentation for Milwaukee attendees of the recent “Building for Success: The Ultimate ‘How-to’ Guide for New (and not so new) Lawyers” seminar at the University of Wisconsin-Milwaukee.

There is a difference between civility (“how we interact”) and decorum (“how we present ourselves”), DiMotto reminded attendees. He noted that SCR Chapter 62 applies to everyone involved in the legal process, and covers manners, demeanor, attire, scheduling, punctuality, and professionalism.

Courts have an obligation to enforce the rules, DiMotto’s presentation noted, and so a failure to comply should be brought to the court’s attention. Meanwhile, a judge’s failure to adhere to the rules should be brought to the attention of the chief judge (or to the judicial commission if “egregious enough.”)

Although rule violations may result in court-imposed sanctions, as shown in cases such as *Chevron Chemical Company v. Deloitte & Touche*, 176 Wis. 2d 935, 501 N.W.2d 15 (1993) and *Aspen Services, Inc. v. IT Corp.*, 220 Wis. 2d 491, 583 N.W.2d 849 (Ct. App. 1998), the SCR Chapter 62 guidelines are not enforceable by the Office of Lawyer Regulation, Blinka’s materials noted.

The standards set by SCR 62 are based on reasonableness, both speakers stressed.

“Civility is more than avoiding four-letter words or angry words,” added Blinka, who also serves as president of the Milwaukee Bar Association. He also reviewed various views on what it means for a lawyer to be a “professional,” and linked the concept of professionalism and civility.

“The practice of law is an art, and stems from the essence of the individual,” Blinka said.

Sponsored by the State Bar of Wisconsin’s Business Law Section and Young Lawyers Division, Lexis Nexis, Attorneys’ Title Guaranty Fund, Inc., Bultman Financial, Wisconsin Law Journal, Wisconsin Lawyers Mutual Insurance Co., and Attorney Daniel L. Shneidman, the seminar also was supported by various

bar associations and attorney’s groups statewide. (James Powers, who chairs the Bar’s Solo and Small Firm Practice Committee, served on the seminar’s planning committee, and the SSFPC offered its endorsement.)

The one-day seminar, presented on three January dates in Milwaukee, Madison, and Wausau, also offered sessions on managing a new law practice, networking, the art of negotiation, client-based counseling practices, technical solutions, representing small businesses, handling divorce cases, and more. A session on ethics wrapped up each day.

More than 100 people attended the Milwaukee session.

State Bar President George Burnett, the keynote speaker at each seminar site, sought to remind attendees to enjoy themselves in this “great and ancient profession,” because he believes the complexity of

problems faced by attorneys means they live life at an often fast pace.

Burnett also urged attendees to “remember the poor,” and that seeking help from an attorney is a once-in-a-lifetime experience for many people. Helping such “troubled and bewildered” clients is the duty of all lawyers, he said.

The seminar’s segment on lawyer civility was presented in Madison by Lester A. Pines of Cullen Weston Pines & Back LLP and in Wausau by George W. Curtis Jr. of Curtis Law Office. ■



Committee Roster

James E. Powers, Chairperson

First American Title Insurance Co, Madison
Phone: (608) 236-1300 x371
Email: jipowers@firstam.com

Alan J. Strohschein, Vice Chairperson

Stoltz, Strohschein & Green, Columbus
Phone: (920) 623-2710
Email: astro@internetwis.com

Anne Marie Blood

Attorneys Title Guaranty Fund Inc, Madison
Phone: (608) 827-5228
Email: atgwi@chorus.net

Cedric S. Cornwall

Law Office of Cedric S. Cornwall, Milwaukee
Phone: (414) 390-2989
Email: cornwall.law@corc.com

William Drengler

Drengler Law Firm, Wausau
Phone: (715) 849-9800
Email: drengler@dwave.net

Carl R. Edenhofer, Jr.

Edenhofer Law Offices SC, Salem
Phone: (262) 843-3355
Email: carl@edenhoferlaw.com

Vladimir M. Gorokhovskiy

Law Office of Vladimir M. Gorokhovskiy,
Milwaukee
Phone: (414) 218-1870
Email: gorlawoffice@yahoo.com

Wm Pharis Horton

Horton Law Office, Madison
Phone: (608) 231-3220

Robert J. Kasieta

Kasieta Legal Group LLC, Madison
Phone: (608) 298-2286
Email: rkasieta@kasieta.com

Deborah L. Kilbury

Wisconsin Lawyers Mutual Insurance Co,
Madison
Phone: (608) 288-1866
Email: deb.tobin@wilmic.com

Michael A. Loduha

Michael A. Loduha Law Office, Manitowoc
Phone: (920) 684-8485
Email: loduha@advocates.com

James W. Mohr, Jr.

Mohr & Anderson LLC, Hartford
Phone: (262) 673-6400
Email: jmohr@mohr-anderson.com

Lynn E. Morrissey

Morrissey Law Offices, Hartford
Phone: (262) 673-7900
Email: lmesq@execpc.com

Frank T. Pasternak

Frank Pasternak & Associates SC, Wauwatosa
Phone: (414) 257-4100
Email: frank@frankpasternak.com

Steven R. Sorenson

Sorenson Koenig Law Office, Ripon
Email: sorensn@powercom.net

Lowell E. Sweet

Sweet, Maier & Cox SC, Elkhorn
Phone: (262) 723-5480
Fax: (262) 723-2180
Email: lsweet@wisclaw.com

Daniel M. Tjornehoj

Law Office of Dan Tjornehoj, Hudson
Phone: (715) 381-3440
Email: dtjorneh@presenter.com

Nancy L. Trueblood

Law Offices of Darwish & Trueblood LLP,
Wauwatosa
Phone: (414) 258-8860
Email: trueblood@darwish-law.com

Atty. Deborah M. Smith, BOG Liaison

State Public Defenders Office Assigned Counsel
Division, Madison
Phone: (608) 266-0087
Email: smithd@mail.opd.state.wi.us

Ms. Patricia Morgan, Staff Liaison

State Bar of Wisconsin, Madison
Phone: (608) 250-6107
Email: pmorgan@wisbar.org

2004 Spring Seminar Calendar

Upcoming seminars from the CLE Division of the State Bar of Wisconsin



MARCH

Doing Right by Your Client Accused of Doing Wrong – A Criminal Defense Primer for the Non-Criminal Defense Practitioner

Webcast Seminar - Mar. 10

Live Seminar – Madison: Mar. 10

17th Annual Law and the Elderly

Live Seminar - Madison: Mar. 11

Live Seminar - Milwaukee: Mar. 12

2004 Traffic Law Update

Live Seminar - Madison: Mar. 17

9th Annual Advanced Worker's Compensation Symposium

Video Seminar - Select Locations: Mar. 23

Public Records and Open Meetings: Legal Rights and Limitations

Live Seminar - Milwaukee: Mar. 24

Live Seminar - Madison: Mar. 25

Build Your Practice: Handling a Basic Divorce

Video Seminar - Statewide Locations: Mar. 30

Build Your Practice: Choosing the Appropriate Business Entity

Live Seminar - Milwaukee: Mar. 31

APRIL

Advance Directives: More than End of Life Decision Making

Live Seminar - Milwaukee: Apr. 1

17th Annual Law and the Elderly

Video Seminar - Statewide Locations: Apr. 7

Build Your Practice: An Introduction to Worker's Compensation

Live Seminar - Milwaukee: Apr. 8

2004 Traffic Law Update

Video Seminar - Statewide Locations: Apr. 14

The Family Law Council of Community Property States 16th Annual National Symposium

Reception - Madison: Apr. 15

Live Seminar - Madison: Apr. 16

Beyond Legal Writing 101

Live Seminar - Milwaukee: Apr. 22

Intellectual Property

Live Seminar - Milwaukee: Apr. 23

More Than 300 Things You Can Do With a Law Degree

Live Seminar - Madison: Apr. 24

Public Records and Open Meetings: Legal Rights and Limitations

Video Seminar - Statewide Locations: Apr. 27

GAL Training 2004: Basic Program

Live Seminar - Madison: Apr. 28

GAL Training 2004: Advanced Program

Live Seminar - Madison: Apr. 29

MAY

Build Your Practice: Estate Planning Step I

Live Seminar - Milwaukee: May 14

Build Your Practice: Choosing the Appropriate Business Entity

Video Seminar - Statewide Locations: May 18

Building Blocks to a Successful Tax Practice

Live Seminar - Wausau: May 19

Live Seminar - Green Bay: May 20

Live Seminar - Waukesha: May 21

Seminar brochures are available 4-6 weeks prior to the first live program date. For more information and to register, call the State Bar at (800) 728-7788 or register online at: www.wisbar.org/cle/seminars



STATE BAR of WISCONSIN

P.O. Box 7158, Madison, WI 53707-7158

The Think Small! newsletter is published by the Solo & Small Firm Committee of the State Bar of Wisconsin. The committee welcomes your comments and suggestions and your volunteer efforts.

Contact committee liaison Patricia Morgan at (608) 250-6107 or pmorgan@wisbar.org for more information. © State Bar of Wisconsin

Non Profit
Organization
U.S. Postage
PAID
Madison, WI
Permit No. 515

Convention team offers advice on marketing, money, avoiding malpractice

Carl R. Edenhofer, Jr.

Edenhofer Law Offices, S.C.



At the upcoming State Bar Annual Convention, the Solo and Small Firm Practice Committee will be presenting a program that will provide helpful information for practice development, and invigorate your practice.

The program, entitled "Marketing, Money & Ethics," will be presented from 12:30 to 4:20 p.m. Wednesday, May 5, which is the first day of the convention.

The initial presentation by myself, the program chair, touches on referral fee development and promotion of a favorable image of the profession. Then attorney Michael A. Loduha of Manitowoc will bring a portion of his nationally marketed and promoted program of developing referrals

from healthcare providers. His portion of the program is entitled "A 'How To' Plan for Physician Referrals of Personal Injury Cases."

After these two practice development programs will be what is expected to be the highlight of the committee's program – "25 Free (or Almost Free) Methods to Market Your Firm," presented by myself and Mike.

Finally, attorney Deborah L. Kilbury Tobin of Wisconsin Lawyers Mutual Insurance Co. in Madison will follow with a companion presentation on "25 Free (or Almost Free) Methods to Market Your Firm: Avoiding Malpractice." Her presentation will provide attendees with one ethics credit.

Overall this program is designed to give you practical tools to further develop your practice. ■

To register call (800) 728-7788 or visit www.wisbar.org/convention