

mutuallyspeaking



WILMIC'S Fall Seminar to Focus on Technology National Speaker, Wisconsin Attorneys To Participate in Panel Discussions



Jim Calloway



Jon Groth



Tim Pierce



Bill Mulligan



Katja Kunzke

Jim Calloway, the Director of the Management Assistance Program for the Oklahoma Bar Association, and a frequent speaker on technology at ABA conferences and other national seminars, will be one of the participants at this year's WILMIC Fall Seminar.

The panel will also include Milwaukee attorney Bill Mulligan of Davis & Kuelthau, Brookfield solo attorney Jon Groth and State Bar of Wisconsin Ethics Counsel Tim Pierce.

The half-day, live program, entitled "Lawyering in an Electronic Age—How Technology Can Make You a Better Lawyer," will be held at the Sheraton Hotel on John Nolen Drive in Madison on Friday morning, October 8 from 8:30 am—11:30 am.

Video replays of the program will be held on Friday, November 12 in Milwaukee, La Crosse, Appleton and Wausau.

Three Continuing Legal Education credits, including three ethics credits will be applied for with the Board of Bar Examiners for approval. The cost is \$40 for WILMIC policyholders, \$75 for lawyers not insured by WILMIC and \$10 for office staff and other non-lawyers. Law students are admitted free of charge.

The program will include three one-hour panel discussions moderated by Katja Kunzke, President & CEO of WILMIC. Topics include:

- Technology programs best suited for your office, including costs and ease of use
- Billing, calendaring and case management software
- Electronic communication with clients, including security and confidentiality
- Social media—should Twitter, Facebook and LinkedIn be part of your law practice?
- E-filing
- File storage
- Law office networks
- Firewalls
- Legal research on the internet
- Technology-related malpractice claims and ethics considerations

For registration information, check the WILMIC website at www.wilmic.com, or contact Tom Watson or Stephanie Williams at 608-824-1700.



Richard J. Byron— A Man Who Made a Difference

Richard J. Byron, who served with great distinction on the Wisconsin Lawyers Mutual Insurance Company (WILMIC) Board of Directors since 1988, died this past May 24 at the age of 71.

During the malpractice insurance crisis in the mid-1980's, when lawyers couldn't find affordable insurance coverage, a group of State Bar leaders, including Madison attorney Don Heaney and Milwaukee attorney Bill Mulligan, agreed to start their own malpractice insurance company.

It was a daunting task, but one they pulled off. WILMIC was born in 1986, and by 1988, Don Heaney knew they needed some expertise. "We didn't have anybody who knew anything about insurance. We were just a bunch of lawyers. We knew how to form a company, we just didn't know what we were going to do with it."

Along came Richard Byron, who had worked in private practice, then at

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Claims Digest

Brian Anderson – Claims Counsel



Brian Anderson
Claims Counsel

Practicing law can be fulfilling and satisfying as lawyers help people in need. However, for a variety of reasons, things can sometimes go wrong.

To give policyholders an idea of the potential risks, we provide the following as examples of lawyers who, even with the best of intentions, found themselves to be the target of a claim.

Notice of claim—service upon the Attorney General

Recently, WILMIC has received reports on several new matters that highlight the unforgiving nature of the statutory notice provision for claims against the State of Wisconsin.

Under Wisconsin Statute §893.82(3), notice must be served upon the Attorney General by certified mail within 120 days of the event giving rise to the claim for such injury, damage, or death. In medical malpractice cases, the notice time period has recently been extended to three years, pursuant to 2009 Wisconsin Act 278. Act 278 eliminates the need to notify the State within 180 days of a malpractice suit and went into effect May 26, 2010.

If a claim cannot be concluded and a formal written notice of a claim is required, it must be filed with the office of the Attorney General, specifying the date, location, name of the negligent party and the circumstances of that claim.

The following mistakes highlight how notice defects can be raised by the State to reject claims:

- A notice *personally served* on the

Attorney General's office fails to meet the statutory notice requirements;

- A notice mailed by certified mail to the Attorney General's address at the Department of Justice address, rather than its State Capitol address, fails to comply with the notice requirement of Wis. Stat. §893.82(5);
- A notice sent by certified mail to the Attorney General's State Capitol office, 122 days after the event, fails to provide the State with timely notice; and
- A notice sent with the attorney's signature, not the claimant's was ineffective. Same result if the claimant's signature is not notarized.

The first two bullet points listed above concern Wis. Stat. §893.82(5) which provides that the notice of claim "shall be served upon the Attorney General at his or her office in the capitol, by *certified mail*." The Attorney General's capitol address is 114 East, State Capitol in Madison. The Attorney General's capitol address is different than the address for the Department of Justice. Service of a notice of claim at the Attorney General's State Capitol office, by certified mail is required to assure the further pursuit of your client's claim against the State.

The Notice of Injury and Claim form is available at: www.doj.state.wi.us/docs/injury_and_claim_form.pdf

Caution required when making a referral

It is common practice for attorneys to refer clients to other attorneys who may be better suited to handle the case geographically or based upon the practice area. An insured learned the hard way that the act of merely "referring" an underlying case and agreeing to accept a fee for doing so can be enough for the referring attorney to be held responsible for the mishandling of the underlying case. Recently, this happened

in a matter for which the lawyer actually handling the case on referral missed a time deadline causing the dismissal of the case. It turned out that the lawyer did not have insurance and a WILMIC insured lawyer was suddenly faced with a claim demand, seeking to hold him responsible for the other lawyer's error.

Wisconsin SCR Rule 20:1.5(e) allows for a division of fee between lawyers who are not in the same firm. However, this section provides that each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm. The decision to maintain a fee interest in a case that you are referring may make good business sense and may be profitable to your practice. As a cautionary reminder, referring attorneys who accept referral fees maintain continuing responsibility and liability if that case is not adequately handled.

If a referral fee is expected, the attorney should do the following to reduce any unexpected exposure:

- Maintain contact with the referring firm;
- Assure that deadlines are being met in the underlying case;
- Maintain contact with the client;
- Verify that the firm upon which a matter has been referred to has professional liability insurance coverage with adequate limits; and
- Communicate in writing to both the client and the referring firm identifying your role, the referral fee agreement and the role and responsibility being taken by the firm that the matter has been referred to.

Therefore, caution is required when seeking a referral fee, because by accepting a fee for the referral, you have accepted joint responsibility for the outcome of the case. ■

Lawyering in an Electronic Age— How Technology Can Make You a Better Lawyer

Seminar Schedule

8:30 am – 11:30 am at all locations

Live Program: Madison

Friday, October 8

Sheraton Hotel

706 John Nolen Drive

Madison, Wisconsin 53713

Video Replays:

Friday, November 12

• Milwaukee area

Midway Hotel Brookfield

1005 S. Moorland Road

Brookfield

• La Crosse

Midway Hotel Riverfront

1835 Rose Street

La Crosse

• Appleton

Radisson Paper Valley Hotel

333 W. College Avenue

Appleton

• Wausau

Howard Johnson Inn and

Conference Center

2101 North Mountain Road

Wausau

RICHARD BYRON continued from page 1

Northwestern Mutual Life Insurance Company and Wausau Insurance Companies. “When Dick came with John Bubolz and Anne Ross, we finally had some expertise for the first time,” Heaney recalls. “Dick was helpful because he talked to us in a way we could understand. We desperately needed expertise, and with them, we got it.”

During WILMIC’s 20-year anniversary celebration in 2006, Mr. Byron was asked why he had stayed on the board for so long. “I really enjoy the good personal relationships among the board and staff. And I’m proud of the success we have collectively achieved over the course of these two decades.”

WILMIC President & CEO Katja Kunzke remembers Richard Byron with great fondness. “He was unfailingly supportive and kind to me. His deep commitment to WILMIC, his passion for knowledge, his quick wit, his ease with laughter and friendship while still getting the business at hand done—all of these qualities in

Dick are ones I deeply admire and hope to emulate. Dick was my cheerleader, my mentor and my friend. I will miss him.”

Don Heaney also remembers Mr. Byron with affection. “Everyone warmed to him, even if you didn’t know him well, you got to love him—he was fun to be around. My wife, Barbara, knew him longer than I did. He got to know Barbara when he served on a committee charged with redrafting the state’s insurance code. When he met me, he went out of his way to tell me how good the work was that Barbara did for that committee. That was how he was. He made you feel good being around him.”

Mr. Byron met his wife Carol in 1957 and they were married in 1961. Richard began practicing law in 1964 after graduating from U.W. Law School.

He is survived by three sons, two grandchildren, a brother and sister, three sisters-in-law and a brother-in-law. He was preceded in death by his wife Carol in 2004. ■

WILMIC Programs Highlighted at State Bar Convention

WILMIC speakers presented a number of topics to lawyers at this year’s annual State Bar of Wisconsin convention in Madison, including: 1) dealing with pro se parties, 2) generational differences in the legal profession, and 3) professional responsibility when things go wrong in your practice.

Tom Watson, Senior Vice President, and Brian Anderson, Claims Counsel, served on a panel for the General Practice Section and Solo & Small Firm Practice Committee. The program covered the increasing trend in pro se parties and how the court system is handling it, self-help websites available to consumers and potential ethical and malpractice issues that can arise when lawyers deal with pro se parties.

Anderson also participated in a panel for the Young Lawyers Division on generational issues. He spoke to the audience about risk management techniques lawyers can employ when dealing with clients from different generations, from methods of communication to how they view their legal problem.

Vice President – Claims Sally Anderson participated in the Bar’s Professional Ethics Committee program on Friday afternoon of the convention. The program covered topics such as fee collection, dealing with an irrational client, and conflicts of interest, among others. Anderson addressed the legal malpractice issues.

Finally, WILMIC once again sponsored the Law Practice Symposium put on by the Law Practice Management Section. For the first time, this was held as a lunch program and a full room of attendees heard about technology needs, staffing, client communication and more. ■

CONTACT US

608-824-1700

608-824-1701 FAX

800-373-3839

wilmic.com

Office hours at Wisconsin Lawyers Mutual Insurance Company are 8 am until 4:30 pm Monday - Friday. Hours and other information also found at wilmic.com.

725 Heartland Trail, Suite 300
Madison, WI 53717

Four Directors Re-elected to Board; One New Director Appointed



John E. Danner



John P. Miller



Kevin J. Palmersheim



Thomas R. Schumacher



Noreen J. Parrett

Four attorneys were re-elected to three-year terms on the WILMIC Board of Directors. The election was held at the company's Annual Meeting of Policyholders in June. They are:

- John E. Danner, Harrold, Scrobell & Danner, SC, Minocqua
- John P. Miller, Miller, McGinn & Clark SC, Milwaukee
- Kevin J. Palmersheim, Haley Palmersheim, SC, Madison
- Thomas R. Schumacher, Bakke Norman SC, Baldwin

Meanwhile, at the Annual Meeting of the Board of Directors, Bill Mulligan, an attorney at Davis & Kuelthau in Milwaukee, was re-elected Chairman. In addition, three officers of the company were elected

for another term by the board. They include Katja Kunzke as President & CEO, Patricia A. Lehner as Secretary/Treasurer, and Thomas J. Watson as Senior Vice President and Corporate Secretary. Kunzke, a 1982 graduate of U.W. Law School, has been with WILMIC since 1989, serving previously as Vice President-Claims and Chief Operating Officer. Lehner, a Certified Public Accountant, joined the company in 1995. She has a bachelor's degree in business administration from U.W. - Whitewater. Watson is a 2002 Marquette University Law School graduate and has been with WILMIC since 2005. He was in private practice prior to joining WILMIC.

In addition, attorney Noreen J. Parrett was appointed by directors to serve out the term of the board seat vacated by

Richard J. Byron. The term expires in June, 2011. Parrett will be up for re-election to the board next June.

Parrett is a partner with the Madison law firm of Parrett & O'Connell, LLP and brings a wealth of insurance law experience to the board. She concentrates her practice in corporate and regulatory insurance law and guaranty fund law and has assisted Wisconsin's domestic insurance industry in corporate transactions such as mergers, acquisitions, demutualizations, recapitalizations and formations. Parrett's practice also includes representing domestic and foreign insurers before the Wisconsin Office of the Commissioner of Insurance on the holding company act and other corporate issues, on policy forms and rates issues, compliance issues and in enforcement actions. ■