



Wisconsin Defense Counsel
*Defending Individuals and
Businesses in Civil Litigation*

#WDCWinter2025



2025 Winter Conference

December 12, 2025

Milwaukee Marriott West
W231N1600 Corporate Ct.
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Program Chair:
Nicole Radler,
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*Program Agenda &
More Information
inside!*

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*Defending Individuals and
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Schedule of Events

Friday, December 12, 2025

8:15AM

Registration and Continental Breakfast

COYNE, SCHULTZ, BECKER & BAUER, S.C.
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8:55 AM

Opening Remarks

9:00 - 9:50 AM

Medical Record Discovery

Patrick Brennan, Crivello Nichols & Hall, S.C.

9:50 - 10:00 AM

Break

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Richter, S.C. and
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10:00 - 10:50 AM

The Communication Compact: Client Counsel and Courtroom Candor

Caleb Gerbitz, Meissner, Tierney, Fisher & Nichols, S.C.

10:50 - 11:40 AM

From Dispute to Resolution: The Impact of Statutory Referees in Insurance Coverage Litigation

Monte Weiss, Weiss Law Office, S.C.

11:40 AM - 1:00 PM

Lunch

Sponsored by Don Engels, Ringler Associates in WI



1:00 - 1:25 PM

Materials Failure Analysis – What Can We Learn

Craig Schroeder, EFI Global

1:25 - 1:50 PM

Cost Containment in E-Discovery: A Practical Playbook for Defense Counsel

Claudia Beyer & Spencer Orin, Digital Intelligence

1:50 - 2:00 PM

Break

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2:00 - 3:25 PM

Graduated with Honors, Cited the Wrong Holding: AI and the Perils of Unverified Research

*Matt Beier, Wisconsin Lawyers Mutual Insurance
Company & Ariella Schreiber, Rural Mutual Insurance Co.*

3:25 - 3:50 PM

Standing Firm and Addressing Unethical Requests

*Ryan Johnson, Everson, Whitney, Everson &
Brehm, S.C.*

3:50 PM

Adjourn

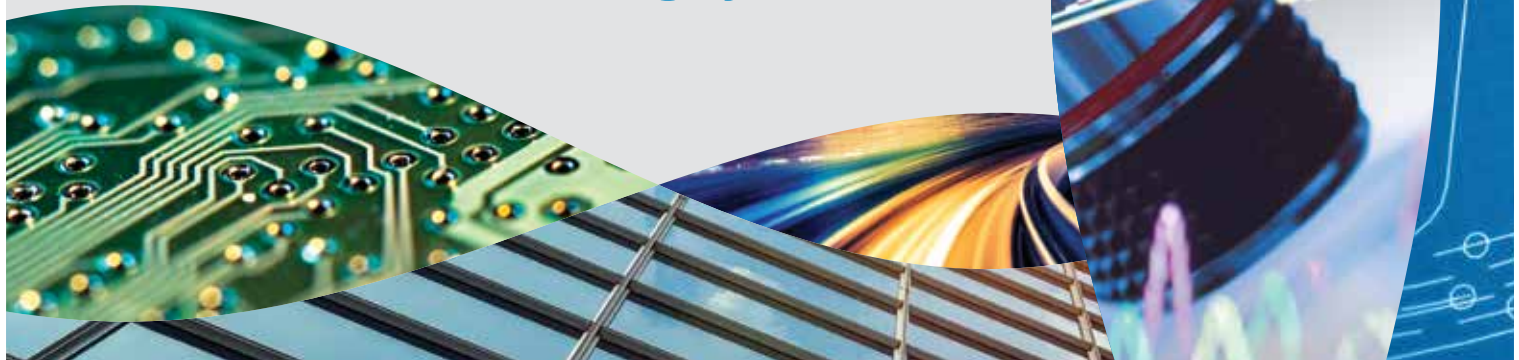


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Speaker Biographies

Matt Beier is the Senior Vice President and Director of Business Development Wisconsin Lawyers Mutual Insurance Company (WILMIC).

Prior to joining WILMIC in November 2016, Matt was a civil litigation attorney in Madison with experience before state and federal courts as well as Wisconsin administrative agencies. He has broad experience in diverse areas of the law, including personal injury, employment law, contract law, business law, commercial law, and debtor/creditor law.

Matt is a 1996 graduate of South Dakota State University, with a degree in Political Science, and graduated from the University of Wisconsin Law School in 2000. He is a member of the State Bar of Wisconsin, Wisconsin Defense Counsel, Milwaukee County Bar Association and the Dane County Bar Association. He also serves as a board member on the State Bar of Wisconsin's Solo/Small Firm and General Practice Section.

As Director of Professional Services, **Claudia C. Beyer** manages the daily operations of the professional services team, guiding the team through the life cycles of cases; monitoring the progress and quality of internal operations; effectively and efficiently delegating the team's resources; and serving as a liaison between clients and the technical team. Leading our team of client-facing administrators, Claudia plays an integral role in developing and maintaining positive client relationships that are paramount to the success of Digital Intelligence. Prior to joining Digital Intelligence, Claudia earned her bachelor's degree in Religion & Art History at Ripon College. She is also a graduate of the Wisconsin School of Business at the University of Wisconsin-Madison, with a Master of Business Administration. She maintains an eDiscovery Advanced Certification (eADv).



Pat Brennan is a shareholder and Chairman of the board of Crivello, Nichols & Hall. With state and federal practice throughout Wisconsin, he has demonstrated expertise in professional liability, commercial litigation, construction disputes, insurance coverage issues and personal injury litigation.

Maintaining the highest possible rating in both legal ability and ethical standards, he has achieved the AV Preeminent Martindale Hubbel Award, was invited into the Federation of Defense and Corporate Counsel organization, and elected to the American Board of Trial Advocates (ABOTA).

Having tried to verdict over 100 cases, Pat's experience in the courts has been recognized by his peers with election to the Chair position of the State Bar of Wisconsin Litigation Section and past President of the Civil Trial Counsel of Wisconsin, now the Wisconsin Defense Counsel, and a Super Lawyers designation since 2010.

Pat has been selected as a Fellow of both the State Bar of Wisconsin and the American Bar Foundation and has received the singular honors of Lawyer of the Year/Legal Scholar by the Milwaukee Bar Association, Best's Lawyer of the Year for personal injury in 2022, and Lawyer of the Year for personal injury litigation – defendants in Milwaukee 2023.

An award-winning author, Pat has published widely in the legal, insurance and corporate press, and has spoken on topics of interest to litigators, to professional and industry groups including RIMS, CPCU, the State Bar of Wisconsin, Wisconsin Defense Counsel and numerous other organizations. He co-authors a chapter of the Wisconsin Trial Practice manual.

Caleb R. Gerbitz is an appellate and litigation attorney at Meissner Tierney Fisher & Nichols S.C. Caleb serves as the Wisconsin State Chair of the American Bar Association's Council of Appellate



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Speaker Biographies *continued*

Lawyers, co-chairs the Milwaukee Bar Association's Civil Litigation Section, and is a board member of the Wisconsin Defense Counsel. Caleb graduated *summa cum laude* from Mitchell Hamline School of Law, after which he clerked for Justice Brian Hagedorn of the Wisconsin Supreme Court. In addition to his legal practice, Caleb authors a Substack column, Appellate Approach, which features regular updates on cases from Wisconsin's appellate courts.

Ryan Johnson is a litigator who defends insurance companies and their insureds. In addition to his defense work, Ryan is active in the legal community. He is the chair and helped establish WDC's Wellness committee and is the chair for the Young Lawyer's Program as well as the Vice President of the Honorable Robert J. Parins Legal Society of Northeast Wisconsin.



Ryan graduated Magna Cum Laude from Ohio Northern University Pettit College of Law. He was born and raised in Wisconsin and is proud to be back home with The Everson Law Firm after completing law school and beginning his insurance defense career in Ohio. He was an active participant in Moot Court, led award-winning teams, and was individually recognized for his trial advocacy skills. Ryan has been a board member for several organizations, including Law Review. He had two case notes and a legal article published, was a teaching and research assistant, and was an ambassador for the Pettit College of Law. Ryan gained experience in environmental law after interning with the USDA and Fair Shake Environmental Legal Services. He also interned with Legal Aid of Western Ohio where he primarily provided advocacy for survivors of domestic violence.

Prior to his legal career, Ryan earned a Master of Fine Arts degree in creative writing and advocated for at-risk youth as the high school program director for a paramilitary school in Milwaukee, Wisconsin.

He was a self-defense instructor and is hoping to continue developing those skills and providing classes in the Green Bay area in the near future. He is an avid reader and writes fiction. Ryan loves to cook and enjoys the outdoors and spending time with his dogs, family, and friends.

As Director of eDiscovery Services, **Spencer K. Orin** provides guidance to clients in all phases of the electronic discovery reference model (EDRM), project planning, budgeting, and eDiscovery technology. Spencer is a certified expert on software platforms such as Relativity and Nuix. He is often engaged to consult on the employment of early case assessment strategies, analytics, and predictive coding technology to create more efficient, streamlined document reviews. He has conducted dozens of data collections in large, highly sensitive matters, and frequently assists clients with data mapping and preservation strategies.



Spencer manages DI's largest, most complicated cases, often involving terabytes of data. Spencer is responsible for the oversight of eDiscovery operations, including the implementation and utilization of efficient and innovative solutions throughout preservation, collection, processing, hosted review, and production of electronically stored information (ESI). Spencer is a graduate of the University of Wisconsin-Madison, with a B.S. in Legal Studies, is a Certified eDiscovery Specialist (CEDS), and is a Relativity Certified Administrator (RCA).

Ariella Schreiber is the Vice President of Claims and General Counsel at Rural Mutual Insurance Company. She therefore spends a lot of time spending money and herding cats. In her spare time, she fosters cats. Her life is mostly cats.



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Speaker Biographies *continued*

Mr. **Craig Schroeder, P.E.** is a Senior Principal Materials Scientist and Manager of the Materials Laboratory at EFI Global in Cedarburg, WI. Mr. Schroeder has nearly 30 years of experience in the field of Materials Science and Engineering as a process engineer, forging engineer and failure analyst. He has worked in a foundry at Amcast Automotive in Cedarburg, WI, a forge shop at Ladish Co. Inc. in Cudahy, WI, a power transmission company at Rexnord Technical Services in West Milwaukee, WI, a commercial laboratory at Element in New Berlin, WI, an engine manufacturing company at Briggs & Stratton in Wauwatosa, WI and an engineering consulting company at EFI Global in Cedarburg, WI. He has performed over a thousand failure investigations for a variety of organizations in the automotive, aerospace, medical and numerous other industries. Mr. Schroeder served as a volume editor for the latest revisions of the ASM Handbook: Volume 12: Fractography and Volume 12A Fractography Atlas. In addition he contributed as an editor to Volume 11: Failure Analysis. He is currently a member of ASM's Handbook and Technical Books Committees



and served as the vice chairman and chairman for each committee. Previously, he served on the Board of Directors for the Failure Analysis Society and as an associate editor for the Journal of Failure Analysis and Prevention. Also, Mr. Schroeder has presented numerous talks at MS&T and IMAT conferences. Mr. Schroeder has published numerous articles through the Journal of Failure Analysis and Prevention, Advanced Materials and Processes and numerous other media outlets. He is a licensed professional engineer in Wisconsin. Craig earned his Master's, and Bachelor's Degrees from the University of Wisconsin-Milwaukee. In graduate school, his research focused on failure analysis and heat treatment of steel.

Monte Weiss is the founder of Weiss Law Office, S.C. His practice is devoted almost entirely to the defense of bodily injury, property damage, and products liability cases on behalf of insurance companies and self-insured entities. His courtroom experience includes numerous jury and court trials around the State of Wisconsin as well as arguing cases before the Wisconsin Court of Appeals and the Wisconsin Supreme Court.





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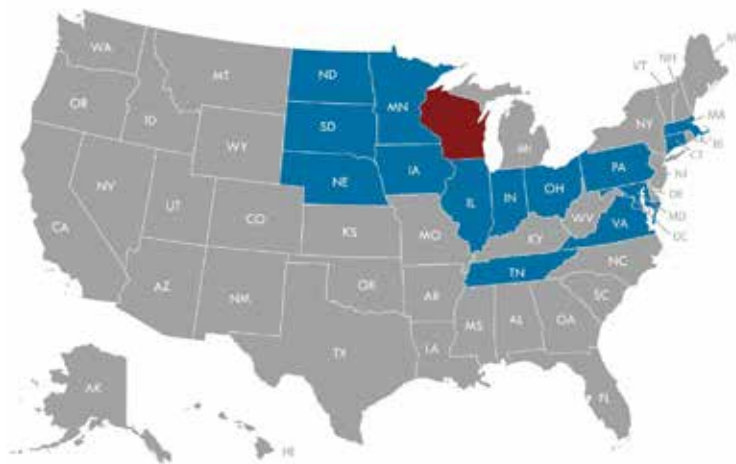
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Speaker Bio

Caleb R. Gerbitz is an appellate and litigation attorney at Meissner Tierney Fisher & Nichols S.C. Caleb serves as the Wisconsin State Chair of the American Bar Association's Council of Appellate Lawyers, co-chairs the Milwaukee Bar Association's Civil Litigation Section, and is a board member of the Wisconsin Defense Counsel. Caleb graduated *summa cum laude* from Mitchell Hamline School of Law, after which he clerked for Justice Brian Hagedorn of the Wisconsin Supreme Court. In addition to his legal practice, Caleb authors a Substack column, [Appellate Approach](#), which features regular updates on Wisconsin's appellate courts.

I. Duty to Communicate

Preamble to the Wisconsin Rules of Professional Conduct for Attorneys

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

SCR 20:1.4 Communication

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests by the client for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Questions

1. What must you say to your client?
2. What can you say to your client?
3. What happens when client communication produces disagreement?
4. What can you say to third parties about your client communications?

A. What must you say to your client?

SCR 20.1.4 ABA Comment [2]

. . . For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer.

A Reel Problem: In *The Verdict*, Paul Neuman’s character represents a woman in a coma, having been retained by the woman’s sister and brother-in-law to bring a medical malpractice case against the hospital. The hospital (via the archdiocese that operates the hospital) offers Neuman’s character \$210,000 to settle the matter. Neuman observes that the preferred number is conveniently divisible by three and slowly begins the following monologue:

That that poor girl put her trust in the hands of two men who took her life, she's in a coma, her life is gone. She has no family, she has no home, she's tied to a machine, she has no friends -- and the people who should care for her: her Doctors, and you, and me, have been bought off to look the other way. We have been paid to look the other way. I came in here to take your money. — I brought snapshots to show you. So I could get your money. I can’t take it. If I take it. If I take that money I’m lost. I’m just going to be a rich ambulance chaser. — I can’t do it. I can’t take it.

The next day, the brother-in-law learns that Neuman’s character rejected a \$210,000 settlement offer and threatens to have him disbarred for rejecting the offer. Is the brother-in-law correct that Neuman’s character could be disbarred?

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- Offer Rejection: <https://www.youtube.com/watch?v=Asm-9UXAOog>
- Client Reaction: <https://www.youtube.com/watch?v=ME2S71b553U>

Notes About Hypothetical

- Would the analysis change if the clients said at the very outset of the matter several months earlier that they won't accept anything less than \$500,000?
- Would the analysis change if, on the morning that the \$210,000 was offered, the clients said that they *might* take \$225,000?

SCR 20:1.4 ABA Comment [5]

...The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

A Real Problem: In a lawsuit against Alex Jones brought by the parents of a child killed in the Sandy Hook school shooting, Jones's lawyers inadvertently produced an entire digital copy of Jones's phone to plaintiffs' counsel, including privileged content. Plaintiffs' counsel informed Jones's lawyers of the disclosure, but Jones's lawyers took no steps to identify any of the content as privileged. When confronted about text messages on the phone, Jones said this was the attorney's "Perry Mason moment" and said, "No, I didn't know this happened." Plaintiffs' counsel then used the text messages in a devastating cross examination to show that Jones had lied about his prior production of text messages.

At a minimum, what two things should Jones's lawyers have done after the inadvertent production of the digital copy of the phone?

- Courtroom Testimony:
<https://www.youtube.com/watch?v=pgxZSBfGXUM>

SCR 20:1.4 ABA Comment [3]

Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior



consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

Hypothetical: A litigation attorney represented a certain defendant in a lawsuit. The client was absent during the final pre-trial hearing about which experts the court would permit to testify at trial for each side. As the hearing was wrapping up, plaintiff's counsel asked the court to have the record sealed in the upcoming trial, and to have reporters banned from the courtroom. The trial involved sensitive information about the mental health of some of the children involved as parties and witnesses in the case. The court agreed but asked if the defendant had any objections. The defendant's attorney tried to reach his client by phone, but he could not get through. There was no obvious reason to oppose the motion, so the attorney agreed on his client's behalf. The judge ordered the record sealed for the upcoming trial.

The client never returned the attorney's phone call, and the attorney forgot to mention what had transpired until they were sitting in court on the first day of trial, two weeks later. The client was upset, having planned to use media publicity about the case to draw attention to the other side's exploitation of children as witnesses in litigation. The attorney told the client that the judge would not reverse the decision now that the trial was underway. Were the attorney's actions permissible?

- A. Yes, it was proper for the lawyer to defer to the judge on this question, lest he risk angering the judge or unnecessarily inconveniencing the opposing party.
- B. Yes, the opposing party's request was reasonable, and even if Attorney had asked Client and Client disapproved, Attorney could not have ethically objected to the request.
- C. No, because the importance of the action under consideration and the feasibility of consulting with the client meant the lawyer's duty required consultation prior to acting.
- D. No, because even when an immediate decision is necessary during trial, and the exigency of the situation may require the lawyer to act without prior consultation, the lawyer must tell the client about it as soon as possible.

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SCR 20:1.2 Wisconsin Committee Comment (e)

When a lawyer has been retained by an insurer to represent an insured pursuant to the terms of an agreement or policy requiring the insurer to retain counsel on the client's behalf, the representation may be limited to matters related to the defense of claims made against the insured. In such cases, the lawyer shall, within a reasonable time after being retained, inform the client in writing of the terms and scope of the representation the lawyer has been retained by the insurer to provide.

Practice Pointer for Defense Counsel: Attorneys appointed by insurers to represent a client with respect to a particular incident should promptly inform the client *in writing* of the limited scope of their representation.

B. What can you say to your client?

SCR 20:2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

SCR 20:1.2 Wisconsin Committee Comment (d)

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

A Reel Problem: In *Anatomy of a Murder*, lawyer Paul Biegler, played by Jimmy Stewart, represented Lt. Manny Manion on the charge of murder. Lt. Manion did not deny that he had killed the victim but claims that the victim had raped his wife. During the early states of Biegler's representation, Biegler advised Lt. Manion in the dialogue below.

Was Biegler's advice consistent with his ethical obligations?

Biegler Fine. Now, Lieutenant...there are four ways I can defend murder. Number 1: It wasn't murder. It was suicide or



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accidental. Number 2: You didn't do it. Number 3: You were legally justified. Like protecting your home or self-defense. Number 4: The killing was excusable.

Lt. Manion Where do I fit into this rosy picture?

Biegler I'll tell you where you don't fit. You don't fit in any of the first three.

Lt. Manion Why wouldn't I be legally justified in killing the man who raped my wife?

Biegler The time element. If you'd caught him in the act, the shooting might be justified. But you didn't. You had time to get the police. You didn't do that, either. You're guilty of murder, premeditated and with vengeance. That's first-degree murder in any court of law.

Lt. Manion So I should plead guilty?

Biegler When I advise you to cop out, you'll know.

Lt. Manion Cop out?

Biegler That's plead guilty and ask for mercy.

Lt. Manion If you're not telling me to cop out, what are you telling me?

Biegler I'm not telling you to do anything. I just want you to understand the letter of the law.

Lt. Manion Go on.

Biegler Go on with what?

Lt. Manion Whatever it is you're getting at.

Biegler You're very bright. Let's see how really bright you can be.

Lt. Manion Well, I'm working at it.

Biegler Because your wife was raped, you'll have a favorable atmosphere in the courtroom. The sympathy will be with you if all the facts are true. What you need is a legal peg...so the jury can hang up their sympathy in your behalf.

 You follow me?

Lt. Manion Yes.

Biegler What's your legal excuse, Lieutenant? What's your legal excuse for killing Barney Quill?

Lt. Manion Not justification, huh?

Biegler Not justification.



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Lt. Manion Excuse.

Biegler Just excuse, huh?

Lt. Manion What excuses are there?

Biegler How should I know? You're the one that plugged Quill.

Lt. Manion I must've been mad.

Biegler How's that?

Lt. Manion I said I must've been mad.

Biegler A bad temper's no excuse.

Lt. Manion I mean, I must've been crazy.

 Am I getting warmer?

Biegler Okay, Sulo. I'm going...

Lt. Manion Am I getting warmer?

Biegler I'll tell you that after I've talked to your wife. In the meantime, see if you can remember just how crazy you were.

Video: https://www.youtube.com/watch?v=JTnF14D8_-I

SCR 20:1.2 ABA Comment [9]

Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

C. What happens when client communication produces disagreement?

SCR 20:1.2 ABA Comment [2]

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. . . . Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not proscribe

A photograph of two scientists, a woman and a man, wearing lab coats and safety glasses, working in a laboratory. The woman is in the foreground, wearing a blue lab coat, and the man is behind her, wearing a white lab coat. They are both looking down at a piece of equipment. The background is slightly blurred, showing other lab equipment.

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how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation.

Hypothetical: Attorney Morgan represents Acme Retail in a personal-injury lawsuit. The plaintiff has offered to settle for \$150,000, which Morgan believes is a fair number given the risk of trial. Acme’s in-house counsel, however, insists on a “zero-pay” strategy: “This plaintiff staged the fall — we are not giving them a dime.” They demand Morgan file multiple aggressive motions, including a motion for sanctions accusing plaintiff’s counsel of fraud. Morgan has no evidence to support such allegations and believes the motions could damage Acme’s position and credibility with the court.

What should Attorney Morgan do?

- A. File all motions requested — the client gets to decide litigation strategy and Morgan must follow instructions.
- B. Explain to the client that filing baseless motions would violate ethical rules, consult thoroughly about risks and alternatives, and work to reach a mutually acceptable path forward.
- C. Withdraw immediately because Morgan fundamentally disagrees with the client’s approach.
- D. File the motions but water them down to reduce risk while still showing the client Morgan is “fighting hard.”

D. What can you say to third parties about your client communications?

SCR 20:1.6 Confidentiality

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).
- (b) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is



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likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

Hypothetical: You are representing a convenience store in a slip-and-fall case. The plaintiff slipped and fell on an icy walkway while the owner of the store was working. The plaintiff now argues that the owner failed to properly clear the walkway, in part because he was intoxicated on the job and was not adequately clearing the walkway as a result. The morning of trial, you receive a call from the owner's girlfriend (who is not an employee of the store), explaining that the owner will not be able to appear in court because he is drunk and incoherent. As trial is supposed to begin, the judge asks, "Do you have any information about why your client is absent from court?"

How should you respond?

- A. You should describe the girlfriend's phone call.
- B. You should ask the judge to excuse you from answering in light of the attorney-client privilege.
- C. You should ask the judge to excuse you from answering in light of your confidentiality obligation.
- D. You should say, "I have no idea where my client is."

Notes About Hypothetical

- Is this an instance where attorney-client privilege applies, confidentiality applies, neither, or both?
- Would the analysis be different if the judge said, "Counsel, I am ordering you to tell me whether you know about your client's whereabouts."
- How does this interact with Rule 3.3, requiring candor toward the tribunal?

Hypothetical: A man came to see a lawyer after being fired from his job as the superintendent of an apartment building. After reviewing the man's employment contract, the lawyer concluded, "It looks like they can terminate your employment for pretty much any reason, so I don't think you have a cause of action." The man responded, "Yeah, well it will be a real shame when their building 'accidently' burns down." When the lawyer looked shocked, the man said, "Oh, come on—I was only joking."

May/must the lawyer inform law enforcement about the man's threat?



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Notes About Hypothetical

- Does this fit Rule 1.6(b)?
- How should the lawyer handle the man's disclaimer that he was "only joking"?

SCR 20:1.6 ABA Comment [4]

Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Hypothetical: In the course of working on a client's case, the lawyer runs across an issue that may be governed by federal maritime law. A law school classmate at another firm is a maritime lawyer. The lawyer wants to call up his friend and ask a quick question about the application of maritime law to the case, to see whether additional research or association of specialist co-counsel is required.

Is the lawyer permitted to disclose the information in question?

Notes About Hypothetical

- The ABA Committee on Professional Responsibility has interpreted the "implied authorization" exception to include lawyer-to-lawyer consultations where the consultation will further the client's interests by obtaining the benefits of the other lawyer's expertise.
- Even so, the lawyer doing the consulting should take care to keep disclosures of confidential information to a minimum. The comments to the confidentiality rule permit some disclosure as long as the question is couched in hypothetical terms and do not reveal the identity of the client.
- Don't forget that the safest course of action here may simply be to obtain the client's informed consent to the consultation.

Hypothetical: A lawyer in a small state is struggling to find a valuation expert for a hotly contested corporate dispute. This is a significant matter for the lawyer, and she has relatively few other cases. She decides to post a message



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to bar association message board/listserv, asking if anyone has recommendations for a valuation expert. Her message explains that she plans to have the expert testify that the plaintiff has been cooking the books for years to inflate the value of the company.

Is the lawyer's message appropriate? Why or why not?

Notes About Hypothetical

- How far does the lawyer's impliedly authorized right to make disclosures to further the client's interests run?
- How far can the lawyer go in describing the type of testimony she anticipates asking for from the expert?
- Does it matter that the lawyer is in a small state and that she has relatively few other cases?

II. Courtroom Candor

SCR 20:3.3 Candor toward the tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in pars. (a) and (b) apply even if compliance requires disclosure of information otherwise protected by SCR 20:1.6.

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(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Hypothetical: Plaintiff was injured while bird watching on privately owned land. She sued the landowner for negligence for failing to remove a hidden stump. Plaintiff's lawyer did some legal research and found a statute conferring immunity on landowners where the injured party had been engaging in "hunting, fishing, swimming, other than in a swimming pool, boating canoeing, kayaking, hiking, biking, skateboarding, in-line skating, sledding, horseback riding, off-road driving, waterskiing, team sports, snowmobiling, skiing, or climbing."

Plaintiff's lawyer figured the statute was distinguishable because all of the listed activities involved vigorous exercise, unlike bird watching. Thus, she went ahead and filed the lawsuit. Defendant filed an answer, and discovery is ongoing.

Defendant has filed a motion for summary judgment but did not mention the statute. Must the plaintiff's lawyer disclose the statute in her response brief?

- A. No, because the statute is not a new judicial decision.
- B. No, because the statute is distinguishable, so it is not directly adverse to the plaintiff's position.
- C. Yes, because the lawyer must inform the tribunal of all information that will enable it to make an informed decision.
- D. Yes, because the statute is directly adverse to the plaintiff's position and not disclosed by the defendant.

III. Communication with Opposing Counsel

SCR 20:4.1 Truthfulness in statements to others

(a) In the course of representing a client a lawyer shall not knowingly:

- (1) make a false statement of a material fact or law to a 3rd person; or
- (2) fail to disclose a material fact to a 3rd person when disclosure is necessary to avoid assisting in criminal or fraudulent act by a client, unless disclosure is prohibited by SCR 20:1.6.

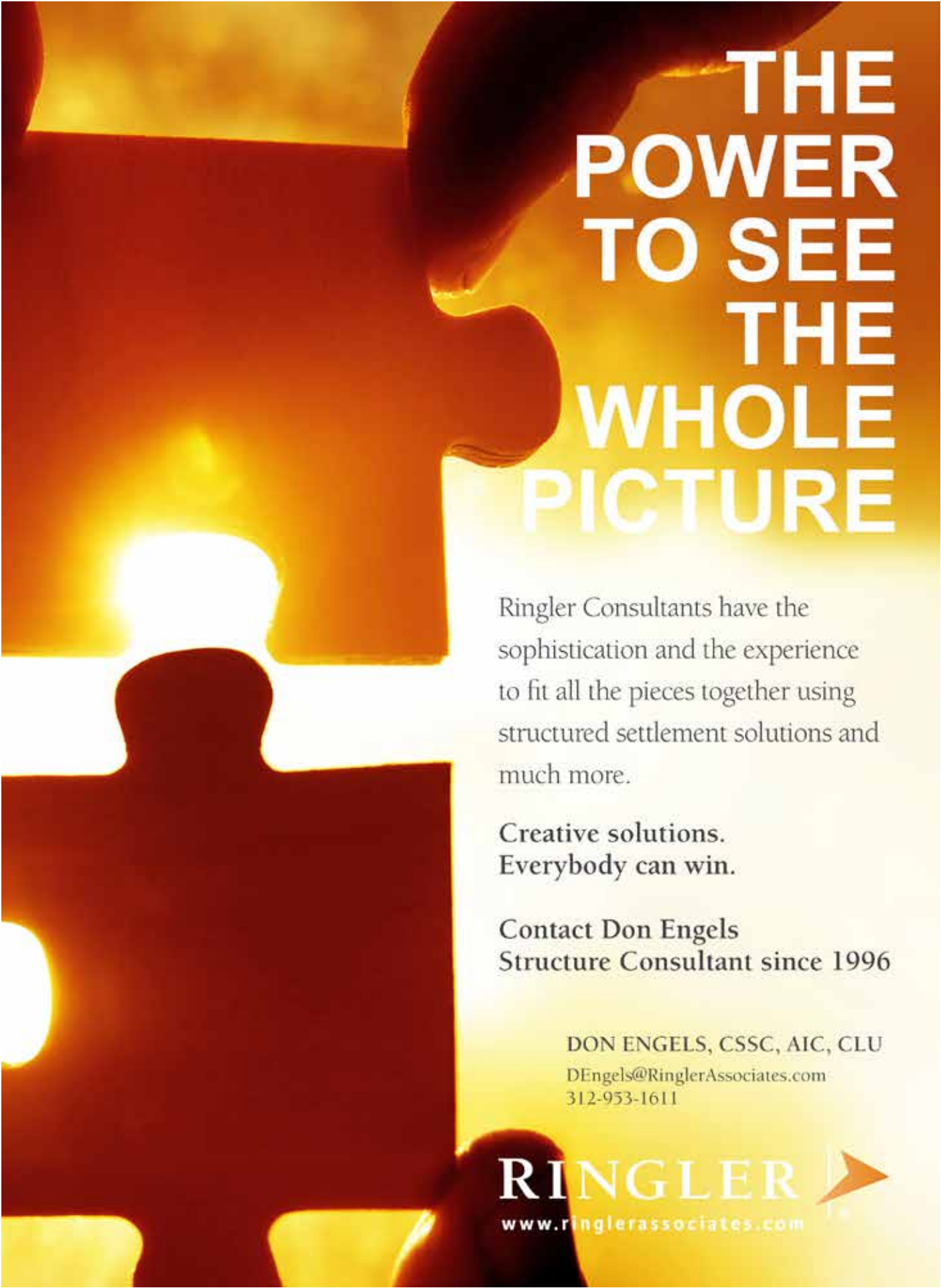
Hypothetical: Attorney Riley represents an equipment manufacturer in a product-liability case. Plaintiff's counsel emails asking whether Riley's expert has "fully ruled out" a defect in the product design. The truth: the expert's draft report says the product likely isn't defective, but it also identifies one alternative design issue still under investigation. The report isn't due for another month, and the client has directed Riley to "buy time" and keep strategy close to the vest.

Riley is considering responding: "Our expert's analysis shows there is no design defect." Riley reasons that this is technically headed in the right direction — the report will probably conclude "no defect" in the end — and that the plaintiff will get the final report soon enough.

What should Attorney Riley do?

- A. Send the statement as drafted — the final conclusion is expected to show no defect, so this isn't materially false.
- B. Decline to answer the question entirely and respond that expert work is ongoing and will be disclosed pursuant to the case schedule.
- C. Answer as drafted but add: "We reserve the right to supplement our response."
- D. Give a partial answer acknowledging that there are "some issues under review," but avoid details unless specifically asked.

Several of the hypotheticals in this program have been derived from *Examples & Explanations: Professional Responsibility* by W. Bradley Wendel (7th edition), sample MPRE questions, and from a compendium of MPRE practice questions compiled by Professor Drury Stevenson.



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From Dispute to Resolution: The Impact of Statutory Referees on Insurance Coverage Litigation

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Page | 1

What is a Referee?

- Akin to a special master in federal courts.
- An individual who has “such qualifications as the court deems appropriate” for the task at hand.¹

What is the Purpose of A Referee?

- “Used properly, a circuit court's power to appoint and assign functions to a referee is not unconstitutional and allows circuit courts to provide more efficient dispute resolution to litigants.”²
- Referees can be used only if the issues are *complicated* for actions to be tried before a jury.³
- Referees can be used only if there is some *exceptional condition* for actions to be tried without a jury.⁴
- Use of the referee is to be “the exception and not the rule.”⁵
- A busy court calendar is not a basis to refer the matter to a referee.⁶

¹ Wis. Stat. § 805.06(1).

² *State ex rel. Universal Processing Servs. of Wisconsin, LLC v. Cir. Ct. of Milwaukee Cnty.*, 2017 WI 26, ¶ 59, 374 Wis. 2d 26, 55, 892 N.W.2d 267, 281.

³ Wis. Stat. § 805.06(2); see also, *Horst Distrib. v. Timm*, 91 Wis. 2d 849, 284 N.W.2d 120 (Ct. App. 1979) (unpublished) (determination of complexity and need for a referee subject to circuit court's discretion).

⁴ Wis. Stat. § 805.06(2).

⁵ Wis. Stat. § 805.06(2).

⁶ *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259 (1957) (“congestion in itself is not such an exceptional circumstance as to warrant a reference to a master. If such were the test, present congestion would make references the rule rather than the exception.”).

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How Have Referees Been Used?

Attorney disciplinary process.

- “A court-appointed attorney or reserve judge hears the discipline cases and makes disciplinary recommendations to the Supreme Court, approves the issuance of certain private and public reprimands, and conducts hearings on petitions for reinstatement of a license to practice law.”⁷
- In a disciplinary proceeding “the function of the referee is that of a special master appointed to conduct a hearing under the jurisdiction of this court.”⁸

General Litigation

- To address discovery disputes.⁹
- To address valuation issues.¹⁰
- To address property division in divorce matters.¹¹
- To address placement issues in divorce matters.¹²

The Process.

- Court issues an Order of Reference.
- Parties file a motion for an Order of Reference.
- Decision to grant or refuse to grant an Order of Reference is subject to the court’s discretion.
- Any party opposed to a referee can file a motion to revoke the reference.

⁷ [Wisconsin Court System - Court services - For the public - Lawyer regulation system](#) (site last accessed on November 6, 2025).

⁸ *In re Sedor*, 73 Wis. 2d 629, 637, 245 N.W.2d 895, 899 (1976); see also, SCR 22.09(2), SCR 22.12(3), SCR 22.15, SCR 22.16.

⁹ *State ex rel. Universal Processing Servs. of Wisconsin, LLC v. Cir. Ct. of Milwaukee Cnty.*, 2017 WI 26, ¶ 59, 374 Wis. 2d 26, 55, 892 N.W.2d 267, 281.

¹⁰ *Tillman v. Tillman*, 175 Wis. 2d 624, 502 N.W.2d 283 (Ct. App. 1993); *Hannan v. Godfrey*, 2000 WI App 186, 238 Wis. 2d 446, 617 N.W.2d 906 (unpublished).

¹¹ *Krueger v. Krueger*, 105 Wis. 2d 756, 315 N.W.2d 728 (Ct. App. 1981) (unpublished); see also, *Feinauer v. Feinauer*, 2013 WI App 128, 351 Wis. 2d 223, 838 N.W.2d 865 (unpublished) (*per curiam*).

¹² *Rose v. Rose*, 2017 WI App 7, 373 Wis. 2d 310, 895 N.W.2d 104 (unpublished).

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- If no objection or motion to revoke is denied, then referee is to meet with the parties (or counsel) within 20 days or as per the Order of Reference.

What Is an Order of Reference?

Page | 3

- It is THE DOCUMENT.
- Sets for the scope of the tasks / issues that the referee is to address.
- The order can be narrow or broad, can be a single task or involve multiple tasks.
- The referee may not exceed the scope of the Order of Reference.
- If the referee does so, that portion that exceeds the scope of the reference is to be ignored.
- However, the parties can stipulate to have the referee address tasks.

Power of The Referee.

- The Order of Reference sets the scope of the duties and the powers of the referee.
- Wisconsin Statute § 805.06 also delineates the powers of the referee.
- While the powers provided by statute are broad, it can be narrowed by the Order of Reference.

Referees can:

- Require the production of witnesses, parties, documents;
- Compel attendance of witnesses;
- Place individuals under oath;
- Have experts (in certain matter) provide information/documents/analysis.
- Hold hearings; and
- Receive and refuse to receive evidence.

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Referee's Report.¹³

- Referee must generate a report and submit same to the court.
- Content of report is determined by Order of Reference.
- Parties have opportunity to object to report's content and recommendation(s). Page | 4
- Parties must file objections within 10 days of notice of the filing of the report.
- Court must compare the evidence to the factual findings.¹⁴
- If parties stipulate to factual findings, then only questions of law will be addressed by the court.
- If the parties do not stipulate to the factual findings, then the factual findings will be reviewed under a "clearly erroneous" standard.
- "Winning" Party must move the court to adopt the referee's report.
- The court will review any objections to content of report.
- A hearing must be held on motion to adopt report.
- Once report filed, it is not expected that further evidence will be accepted.
- Court can accept report in total, in part, or reject it entirely.
- If court determines that referee failed to complete the tasks assigned in the Order of Reference, court can recommit the issue or issue to referee.

Issues With The Use of a Referee.

- Referee cannot replace the role of the court.¹⁵
- Referee cannot decide dispositive motions.
- Referee cannot conduct trials.
- Cost associated with use of referee.

Opposing the Order of Reference.

- Motion to revoke reference must be filed with court – promptly.
- Determine the basis for the order of reference:
 - If matter is to be tried before a jury, is the issue for the referee complicated?
 - If matter to be tried is **not** before a jury, is there an exceptional condition?

¹³ Wisconsin Statute § 805.05(a).

¹⁴ *Associated Bank, N.A. v. Brogli*, 2018 WI App 47, ¶38, 383 Wis. 2d 756, 917 N.W.2d 37.

¹⁵ *State ex rel. Universal Processing Servs. of Wisconsin, LLC v. Cir. Ct. of Milwaukee Cnty.*, 2017 WI 26.

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- Does the Order of Reference substitute the referee for the circuit court?
- The cost of the referee can be an issue.

Benefits Of a Referee on Coverage Litigation.

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- Parties can select referee (subject to court approval).
- Complex / complicated coverage issue will be addressed by experience coverage counsel.
- Factual record in complicated coverage litigation can be created.
- Parties can object to referee's report and recommendation(s) on facts and law.
- Court reviews report, underlying materials and objections of parties.
- Referee's report and recommendations can become an order of the court.
- Court can accept report in full, in part, or reject it entirely.
- Court can recommit the matter to referee with more detailed instructions, or additional tasks.
- Right to appeal circuit court's decision remains intact.

Downsides of a Referee on Coverage Litigation.

- Cost as circuit court is "free" whereas a referee is an added expense.
- Court can issue Order of Reference without consent of the parties.
- Court can select referee unilaterally.
- If a party objects to Order of Reference, there is additional litigation expense.
- If a party objects to referee, there is additional litigation expense.

Recommendations When Using a Referee on Coverage Litigation.

- Seek agreement on the use of a referee.
- Seek agreement on appropriate individual to serve as referee.
- Prepare a joint motion for an Order of Reference.
- Agree as to content of Order of Reference and submit proposed order.
- Make timely objections to referee and/or Order of Reference if appropriate.

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Outline

- What is Materials Science?
- What are the steps in a materials failure analysis?
- What do we hope to learn and how can that benefit a defense attorney?
- Case studies
- Questions and discussion

12/8/25



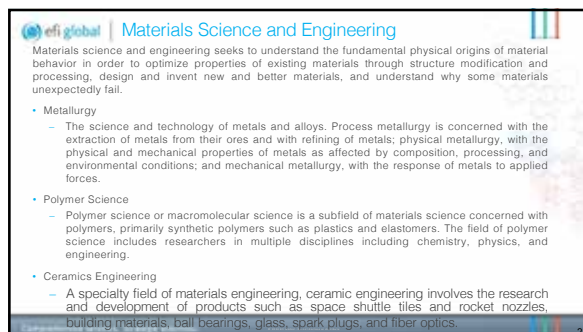
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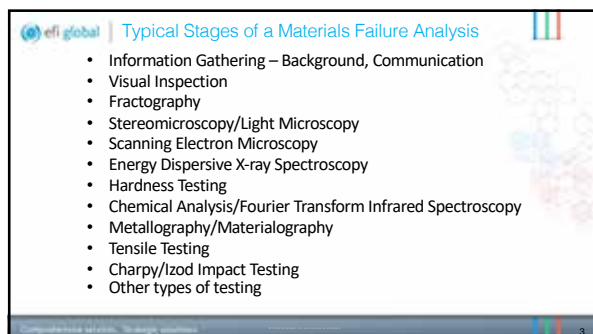
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Materials Science and Engineering

Materials science and engineering seeks to understand the fundamental physical origins of material behavior in order to optimize properties of existing materials through structure modification and processing, design and invent new and better materials, and understand why some materials unexpectedly fail.

- Metallurgy
 - The science and technology of metals and alloys. Process metallurgy is concerned with the extraction of metals from their ores and with refining of metals; physical metallurgy, with the physical and mechanical properties of metals as affected by composition, processing, and environmental conditions; and mechanical metallurgy, with the response of metals to applied forces.
- Polymer Science
 - Polymer science or macromolecular science is a subfield of materials science concerned with polymers, primarily synthetic polymers such as plastics and elastomers. The field of polymer science includes researchers in multiple disciplines including chemistry, physics, and engineering.
- Ceramics Engineering
 - A specialty field of materials engineering, ceramic engineering involves the research and development of products such as space shuttle tiles and rocket nozzles, building materials, ball bearings, glass, spark plugs, and fiber optics.

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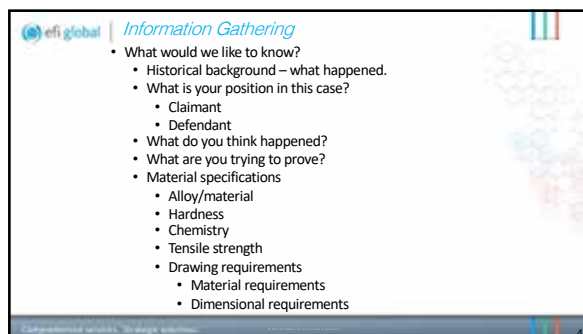


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Typical Stages of a Materials Failure Analysis

- Information Gathering – Background, Communication
- Visual Inspection
- Fractography
- Stereomicroscopy/Light Microscopy
- Scanning Electron Microscopy
- Energy Dispersive X-ray Spectroscopy
- Hardness Testing
- Chemical Analysis/Fourier Transform Infrared Spectroscopy
- Metallography/Materialography
- Tensile Testing
- Charpy/Izod Impact Testing
- Other types of testing

3

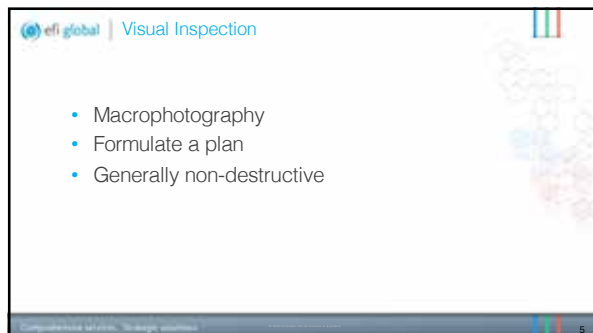


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Information Gathering

- What would we like to know?
 - Historical background – what happened.
 - What is your position in this case?
 - Claimant
 - Defendant
 - What do you think happened?
 - What are you trying to prove?
- Material specifications
 - Alloy/material
 - Hardness
 - Chemistry
 - Tensile strength
 - Drawing requirements
 - Material requirements
 - Dimensional requirements

4

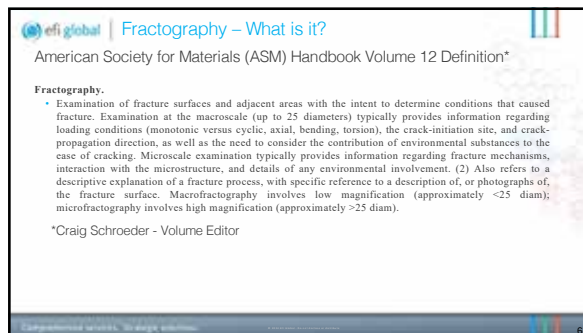


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Visual Inspection

- Macrophotography
- Formulate a plan
- Generally non-destructive

5



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Fractography – What is it?

American Society for Materials (ASM) Handbook Volume 12 Definition*

Fractography.

- Examination of fracture surfaces and adjacent areas with the intent to determine conditions that caused fracture. Examination at the macroscale (up to 25 diameters) typically provides information regarding loading conditions (monotonic versus cyclic, axial, bending, torsion), the crack-initiation site, and crack-propagation direction, as well as the need to consider the contribution of environmental substances to the ease of cracking. Microscale examination typically provides information regarding fracture mechanisms, interaction with the microstructure, and details of any environmental involvement. (2) Also refers to a descriptive explanation of a fracture process, with specific reference to a description of, or photographs of, the fracture surface. Macrofractography involves low magnification (approximately <25 diam); microfractography involves high magnification (approximately >25 diam).

*Craig Schroeder - Volume Editor

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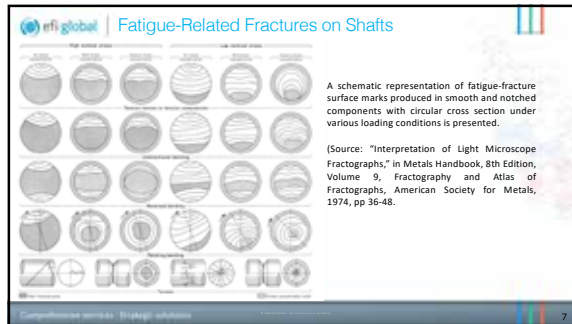


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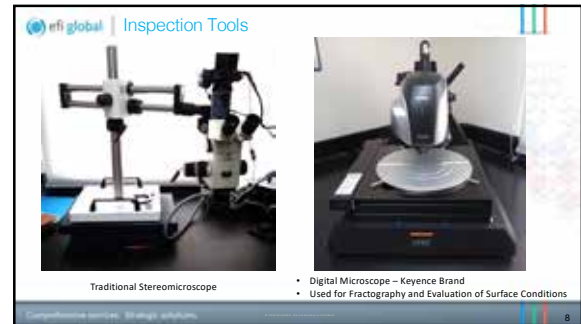


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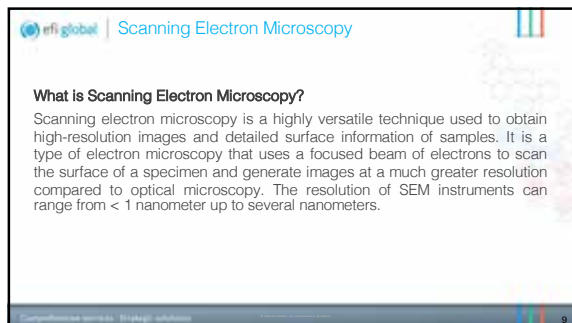
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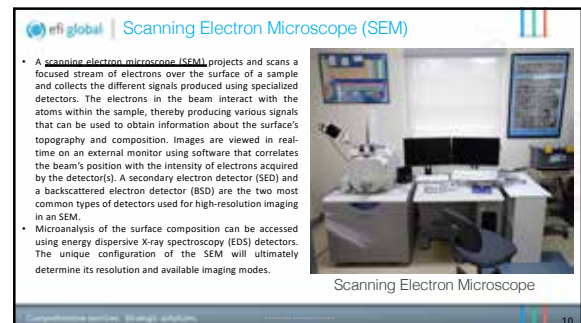
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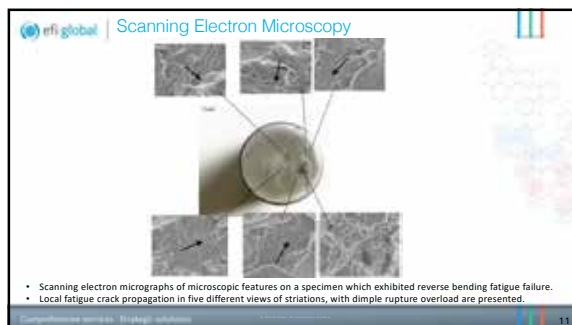
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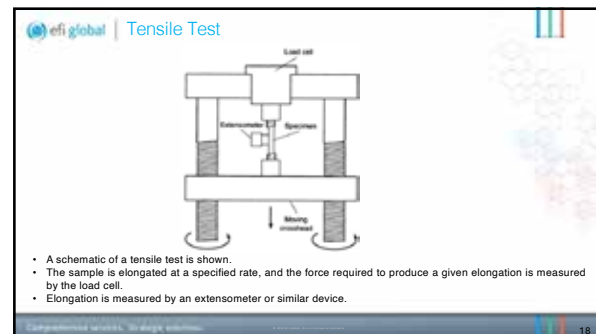
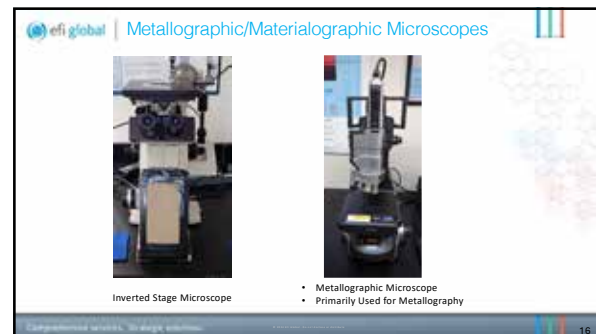
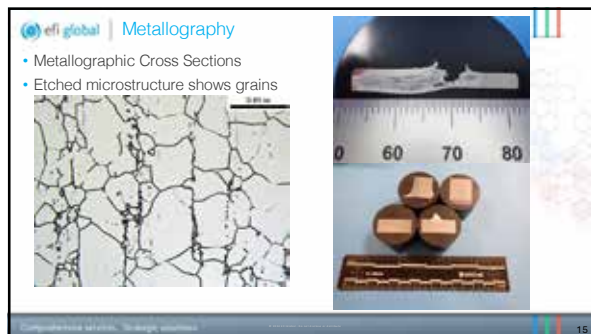
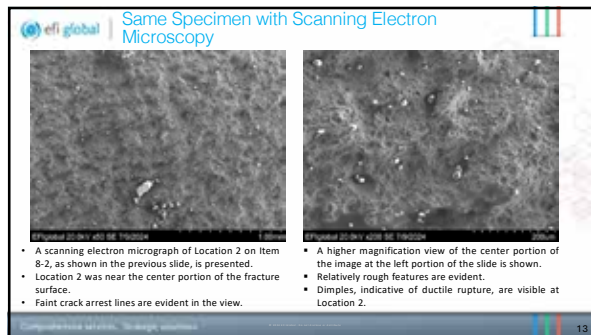


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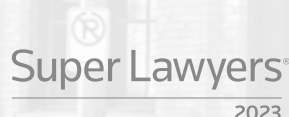
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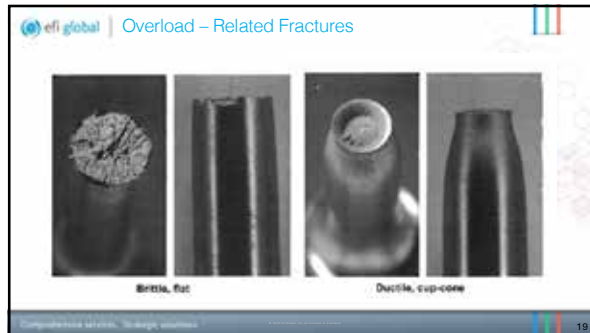
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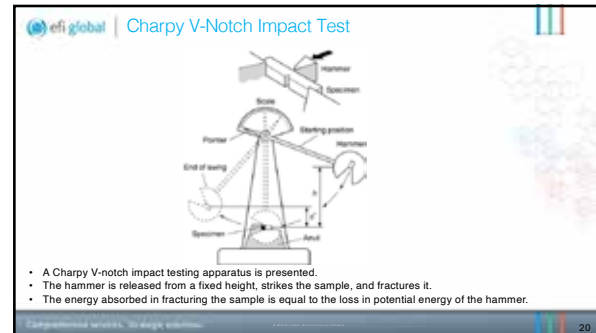
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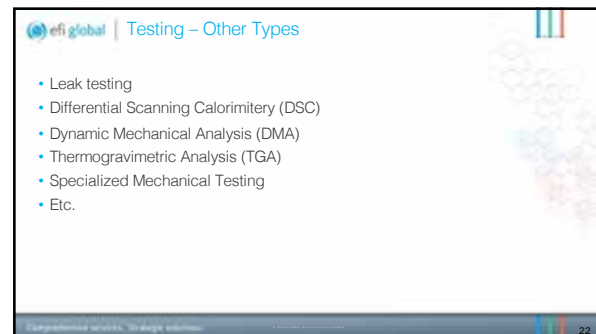
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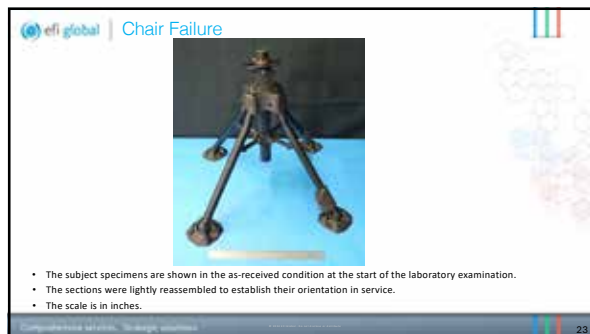
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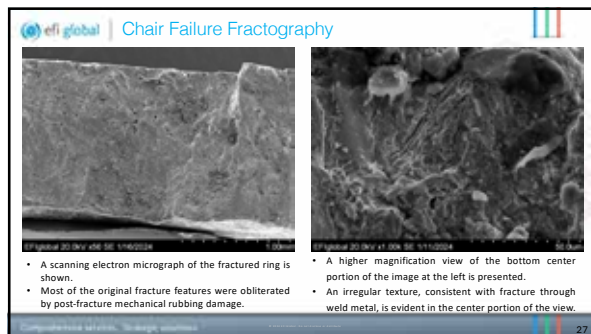
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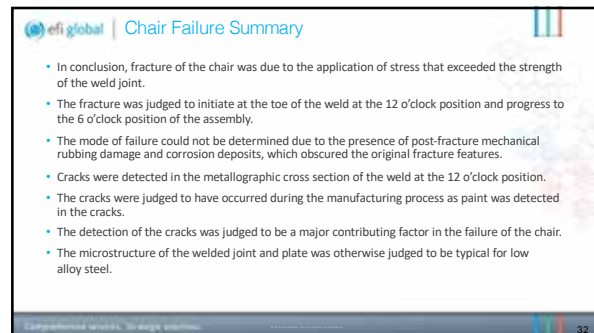
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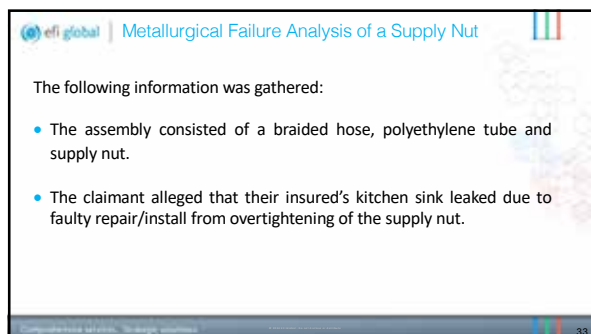
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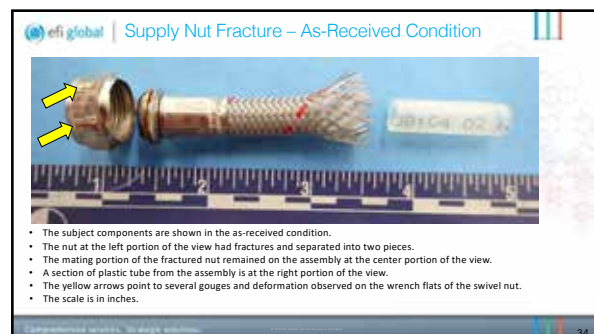
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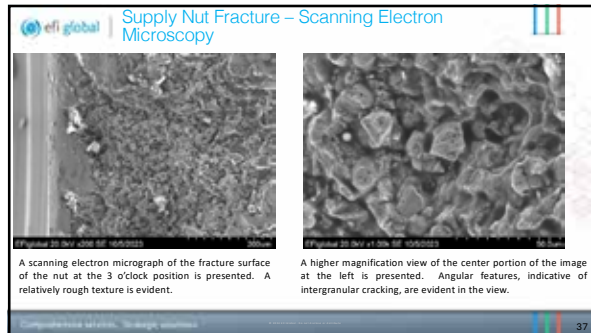
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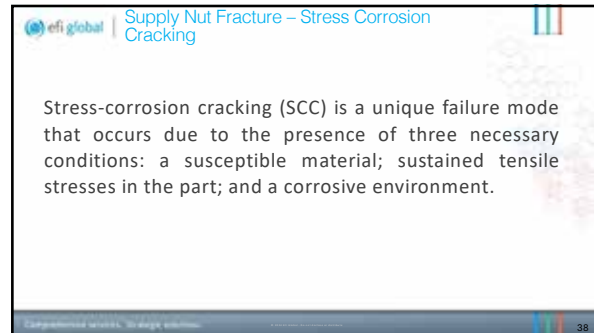
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efi global | Supply Nut Fracture – Energy Dispersive X-Ray Spectroscopy (EDS)

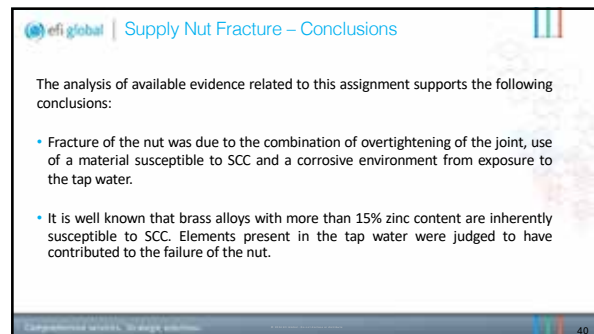
Table 1
EDS Results*
(Weight Percent)

Element	Base Metal	Nut Location 8, 9 (7 o'clock Position)
Figure No.	None	14.9
Carbon	88.9	18.9
Zinc	10.9	10.9
Lead	0.0	0.0
Iron	0.0	0.0
Chromium	26.9	26.9
Chlorine	36.9	12.9
Sulfur	0.0	0.0
Magnesium	0.0	0.0
Aluminum	0.0	0.0
Silicon	0.0	0.0
Phosphorus	0.0	0.0
Nickel	0.0	0.0
Cadmium	0.0	0.0
Titanium	0.0	0.0

*EDS can detect elements of atomic number 11 (boron) and greater at concentrations greater than 0.1 weight percent. The results are normalized to 100% and provide an approximate relative composition of the material analyzed. The results do not constitute absolute values.
N/A = not detected
N/D = detected from analysis

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Presentation Title: Cost Containment in E-Discovery: A Practical Playbook for Defense Counsel

Presented by:

Spencer Orin, Digital Intelligence, Director of eDiscovery Services

Claudia Beyer, Digital Intelligence, Director of Professional Services

Session Description: This session will highlight practical approaches to controlling discovery spend, showing how early and strategic collection efforts, proportionality arguments, thoughtful negotiations, and early strategy can align legal obligations with client business realities.

OUTLINE

- I. Early Strategy – Aligning Legal Obligations with Business Realities**
 - a. Cost-Benefit analysis.
 - b. Tiered approach for collection and review.
 - c. End goal can dictate initial scope.
- II. Early and Strategic Collection Efforts**
 - a. Identifying relevance before collection.
 - i. Key custodians.
 - ii. Custodian interviews.
 - iii. Relevant date range.
 - iv. Document your process.
- III. Thoughtful Negotiations**
 - a. ESI Protocol.
 - i. Data sources not reasonably accessible or likely to contain additional relevant information.
 - ii. Production format.
 - iii. Keyword searching.
 - iv. Privilege logs.
 - v. Clawback agreement.
- IV. Proportionality**
 - a. Federal Rules of Civil Procedure 26(b)(1)
 - i. Quantify the burden.
 - ii. Could the same information be more easily obtained from a different source?

- **SCR 20:1.3** mandates diligence and promptness.
- Procrastination leads to errors, especially in the digital age of mandatory e-filing (as of July 1, 2023).

E. Using Technology Effectively

- Centralized vs. decentralized calendaring systems.
- Importance of synchronization across devices and integration with firm workflows.
- Legal-specific software tools (e.g., Clio, MyCase) enhance reliability and user access.
- Tickler systems with escalating reminders help develop work-ahead habits.

F. Training and Accuracy

- Comprehensive and ongoing training for all users is critical.
- Accurate deadline calculation is essential—errors of even an hour can be fatal to a case.

G. Avoid Malpractice

- Missed deadlines are a preventable and common cause of legal malpractice.
- Competent use of calendaring technology and firm-wide adherence to best practices are essential to effective, ethical lawyering.

II. Ethical Requirement #2 – Supervision (1 of several)

An inflection point arose when the managing partners assigned the case to a second-year associate without ensuring appropriate supervision or implementing redundant calendaring safeguards. Under SCR 20:5.1(a), partners and lawyers with managerial authority are obligated to establish systems that ensure all attorneys—especially less experienced ones—comply with the Rules of Professional Conduct. Had the firm instituted adequate oversight and reliable calendaring protocols, the missed expert disclosure deadline and ensuing malpractice exposure could likely have been avoided.

A. “Ethics: Supervising Lawyers: Accountability for Others' Work,” Dietrich, D. 85 *Wis. Law.* (March 2012)

B. **Wisconsin SCR 20:5.1** identifies the responsibilities of partners, managers, and supervisory lawyers.

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Graduated with Honors, Cited the Wrong Holding: AI and the Perils of Unverified Research

Associate Quote: “I received the top grade in my legal research class...” – Famous last words before the bench lecture.



Atty. Matthew M. Beier
WILMIC, Senior Vice President



Atty. Ariella Schreiber
Vice President & General Counsel

Introduction

In spring 2025, a routine personal injury auto accident case in California went off the rails—quickly. The defendant’s insurance carrier hired a small firm to defend the lawsuit and the matter was assigned to an associate who had only been practicing for two years (Associate #1).

Associate #1 missed the critical deadline to name expert witnesses and then left the firm. The defense firm did not inform the insurance carrier responsible for the defense until months later and just a few weeks out from trial. The firm also chose not to immediately report the matter to its legal malpractice carrier.

Instead, the small firm partners scrambled and hired a new associate (Associate #2)—freshly minted, having passed the bar exam just a few months earlier in January—and handed her a daunting task: file a motion seeking relief from the expert disclosure deadline (in Wisconsin, a motion for enlargement of time under § 801.15). What followed could generously be described as a cautionary tale.

Associate #2 filed the motion, but in doing so violated multiple procedural court rules. Worse, she cited several cases in her brief in support of her position—cases which, unfortunately, stood for the *exact opposite* of the propositions she asserted. The judge indicated he suspected she used artificial intelligence without verifying her writings. He then humiliated her, asking her to clarify the holdings and explain her legal reasoning, an impossibility. She famously responded:

“I received the top grade in my legal research class. I know how to do research. I know how embarrassing this looks right now.”

Rather than admitting she had relied on artificial intelligence to prepare the brief or do her research—likely the true culprit—she stated plainly that she had simply been “incompetent.” The judge went on a rampage and spun the associate in circles and toyed with her like a cat with its prey before denying the motion and leaving the defendant sans experts. The transcript, now legendary in certain circles, reads like a warning label for unchecked reliance on AI tools in the practice of law.

In this CLE program, we will walk through this real-world scenario (with names changed to protect the mortified), identifying the inflection points at which things could have—and should have—gone differently. We will also examine relevant **Wisconsin Supreme Court Rules of Professional Conduct**, particularly those relating to **supervision (SCR 20:5.3)**, **competence (SCR 20:1.1)**, **diligence (SCR 20:1.3)**, **candor toward the tribunal (SCR 20:3.3)**, and the evolving standards of **technological competence**.

Whether you’re managing a firm, mentoring young lawyers, or experimenting with AI tools yourself, this session will help you avoid turning a simple procedural motion into a CLE-worthy case study.

I. Ethical Requirement #1 – Calendaring

The insurance carrier learned that the only employee who had the expert deadline on any calendar was Associate #1. Had the firm implemented adequate calendaring, this train wreck may never have happened.

A. “Whoosh! There Goes Another Deadline,” Beier, M. **96 Wis. Law. 43-45 (October 2023).**

- Douglas Adams quote sets the tone: “I love deadlines. I love the whooshing noise they make as they go by.”
- Missed deadlines cause not only stress and embarrassment but also potential malpractice claims.
- Reliable calendaring systems are essential to competent legal practice.

B. Competence and Technology

- **Wisconsin SCR 20:1.1** requires competence, including the use of relevant technology.
 - “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
 - “Comment [8] - [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”
- Calendaring is a technological function that lawyers must understand and integrate into their practice.

C. The Scope of the Problem

- ABA: 19% of malpractice claims (2016–2019) stemmed from administrative errors like calendaring.
- WILMIC: Missed or ignored calendar events comprise 20% of claims (2010–2020).
- Lateral hires and firm transitions increase risk due to unfamiliar procedures.

D. Diligence and Procrastination

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We erase the speculation.

We investigate the maybes.

We explain away the what-ifs.

To take note of the facts.



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- “(a) A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”
- ABA Comment [2] - [2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. **Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.**

III. Ethical Requirement #3 – Communication

Upon discovering the missed expert disclosure deadline, the firm had a critical duty under SCR 20:1.4 to promptly inform both the client and the insurer of the error. Timely communication is essential not only to preserve trust, but also to allow clients to make informed decisions about their representation and potential case strategy. Equally important, the failure to notify the firm's malpractice carrier deprived the firm of potential repair assistance—intervention that might have preserved the opportunity to name an expert or mitigate the consequences of the oversight. Delayed or withheld disclosure in such situations compounds harm and exposes the firm to further ethical and liability risks.

A. What does a lawyer have to do when a claim is made or learns of a potential claim?

1. Ethically:

- a. Lawyers are required to tell their clients if a serious mistake was made – risk of not doing so is a risk to the lawyer's license to practice law. SCR 20:1.4 (Duty to inform clients).

SCR 20:1.4 Communication

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests by the client for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

b. Clients should be advised to obtain separate legal advice on whether they have a claim arising out of the mistake. **SCR 20:1.7** (Conflict of interest). See also **SCR 20:4.3** (Dealing with an unrepresented person – basically what a client becomes when they have a potential legal malpractice claim against their lawyer).

c. ABA Comment to **SCR 20:1.7** Conflicts of interest current clients: “[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For definitions of “informed consent” and “confirmed in writing,” see Rule 1.0 (f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under paragraph (a) and obtain their



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informed consent, confirmed in writing.”

- d. See also, “Conflict Waivers and the Informed Consent Standard.” Pierce & Anderson. *Wis. Law*. July 2009.

2. Practically:

- a. A claims-made-and-reported policy will only provide coverage if a claim or potential claim is reported during the applicable policy period
- b. Review the policy language for specific reporting requirements and duties, but generally:
 - reports must be in writing; and
 - reports should include a chronological narrative of the representation; a description of the error or alleged error; the date the lawyer first became aware of the error; and a description of the potential damages.

3. If the lawyer’s interest in getting past the mistake or minimizing any conflicts with the client’s interest in getting a full and fair resolution of their matter, a conflict exists and the lawyer cannot continue the representation. The client should be told to obtain legal advice on how to proceed and existence of professional liability insurance should be disclosed.

4. The client is entitled to complete copy of their file and the lawyer should keep a complete copy as well. The insurer will ask for a copy of the file and likely defense counsel will want one also.

B. Insured’s reporting obligation to insurer:

1. The reporting obligation is contractual, so each policy needs to be read for specific obligation.
2. The obligation to report includes mistakes out of which no claim is expected, or allegation of mistake that the insured believes are frivolous or unfounded.

- The existence of a claim (allegation of a mistake and a demand for payment) is usually obvious. For example, when a client alleges that you made a mistake and demands restitution, a claim exists. The recompense sought by a client could range from a return of your fees to a demand for outright payment of financial loss allegedly suffered.
- Other matters may be subtler and you may be either reluctant or unsure to report it. For example, in reviewing a file, you may discover a problem of which no one else is aware. Although you may want to look the other way, you have a duty under the terms of your policy to inform your insurance carrier immediately. Plus, your ethical duty is another matter.

3. What if I believe that the allegation is frivolous?

As a condition of coverage, you have the duty to report any circumstance which could give rise to a claim, regardless of whether or not you believe the matter is defensible. If the matter is without merit, by reporting it to your insurance carrier you have done your duty and have triggered protection just in case the matter would mushroom into a problem.

4. What is the importance of timely reporting?

Prompt reporting has a number of benefits to both you and your insurance carrier:

- Mitigation and repair.
- Defense.
- Accurate accounting to the applicable fiscal year, affecting financial statements and rate making.
- Timely reporting to reinsurance carriers (participation by reinsurance carriers varies from one treaty year to another; only those carriers receiving premium will tolerate paying a claim).
- Thorough, complete disclosure builds trust (lawyer & underwriter; underwriter & reinsurance carrier).
- Benefit other policyholders/owners of a mutual insurance company.



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5. What happens if a known matter is reported after my policy expires?

Coverage is only provided if a known matter is reported, in writing, to the insurance carrier before the policy expiration date. Once your policy expires, coverage terminates, regardless of when you performed the professional services.

In this example, will my next policy provide coverage?

If, after a matter is reported to an insurance carrier, it is determined that you knew or should have known of a matter that could potentially become a claim – based on the reasonably prudent lawyer standard – then coverage could be contested.

IV. Inflection Point #4 – Supervision (2 of several)

When the firm assigned Associate #2 to the unenviable task of to salvage the ability to name experts, it failed to meet its responsibilities under SCR 20:5.1(c). Entrusting such a high-stakes motion to an associate with only months of practice—without close mentoring, guidance, or review—was both unfair to the attorney and dangerous to the client. Law firms have an ethical obligation to provide meaningful training and support to junior lawyers, especially when the matter involves correcting prior missteps with significant malpractice exposure. This was not simply poor judgment; it was a failure of professional responsibility at the management level.

A. “Partners can also be disciplined under 5.1(c) for the actions of others if they ordered, ratified, or failed to take reasonable remedial action regarding misconduct. Here the partner’s responsibility is not strictly vicarious; it requires active participation or knowledge of misconduct without appropriate preventive or corrective measures.” Lundberg. “Professional Quandaries and Quagmires,” *Minn. Lawyer* (April 22, 2024).

- In this matter, the supervising partner was certainly aware of the error.
- The supervising partner’s response was to hire an even less experienced associate and assign her the task of fixing the error. That is not an “appropriate corrective measure.”

B. “Disciplinary issues often arise from inadequate training and policies for supervising nonlawyers or junior associates, leading to problems like mishandling trust accounts, missed deadlines, unreturned client communications, and improper investigatory communications by nonlawyers.” *Id.*

- This requirement applies to the managing attorney both as to Associate #1, as previously discussed, and Associate #2.
- With respect to Associate #2, the supervisory attorney’s explanation to the judge that “[she] represented to me that she fully understood her obligations and confirmed that she was capable of handling all aspects of the motion and hearing,” flies in face of common sense and, more importantly, falls short of his obligations under this Rule.

V. Ethical Requirement #5 – Competence

Before assigning a critical motion to newly licensed Attorney #2, both the associate and the managing partner had a duty to handle the task competently. Competence is not presumed by licensure alone—particularly when the assignment involves correcting a significant procedural misstep with potentially case-dispositive consequences. The managing partner should have evaluated the complexity of the matter and ensured that adequate support and supervision were in place, while Associate #2 had a parallel obligation to recognize the limits of her experience and seek guidance. Proceeding without that mutual awareness and caution compromised the client’s representation and triggered avoidable ethical and professional risks.

A. SCR 20:1.1 Competence – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

- Comment 2: [2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar ... Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

B. Dabbling – Extremely Risky

- Approximately 40% of all claims involve areas of practice in which lawyers practice LESS than 10% of the time.
- Less than 1% of all claims involve areas of practice in which lawyers practice 90 – 100% of the time.

VI. Ethical Requirement #6 – Supervision (3 of several – use of AI)

When Associate #2 appeared before the court with a brief citing cases that contradicted her arguments, the judge strongly suspected—and the facts suggest—that she relied on generative AI to draft her submission. Though she denied using

such tools and instead claimed incompetence, the scenario underscores a failure by the firm to establish policies governing AI use. Under SCR 20:5.1 and SCR 20:5.3, the managing partner had an ethical duty to supervise both the associate and any nonlawyer assistance, including technological tools that function in lieu of human support. A lack of clear guidance, oversight, and training on the permissible and ethical use of AI left the associate—and the client—vulnerable to grave consequences, making this an avoidable inflection point with serious implications.

A. Rules 5.1 and 5.3 – Supervisory Responsibilities: “Managerial lawyers must establish clear policies regarding the law firm’s permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm’s lawyers and nonlawyers comply with their professional obligations when using GAI tools. Supervisory obligations also include ensuring that subordinate lawyers and nonlawyers are trained, including in the ethical and practical use of the GAI tools relevant to their work as well as on risks associated with relevant GAI use.” ABA Standing Comm. on Ethics & Pro. Resp., Formal Op. 512 (July 29, 2024); see also Kaiser, “Ethical Obligations When Using ChatGPT,” 96 Wis. Law. 41 (Feb. 2023)

B. ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 512 also considers lawyers obligations to vet third-party providers. When outsourcing legal or nonlegal services to third-party vendors—including generative AI providers—lawyers must take reasonable steps to ensure competent performance and the protection of client confidentiality.

Key Considerations:

- ensure that the [GAI tool] is configured to preserve the confidentiality and security of information, that the obligation is enforceable, and that the lawyer will be notified in the event of a breach or service of process regarding production of client information;
- investigate the [GAI tool’s] reliability, security measures, and policies, including limitations on the [the tool’s] liability;
- determine whether the [GAI tool] retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information;

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- and •understand the risk that [GAI tool servers] are subject to their own failures and may be an attractive target of cyber-attacks.

VII. Ethical Requirement #7 – Candor Toward the Tribunal

By submitting a brief that misrepresented case law, the associate breached multiple ethical obligations under SCR 20:3.1 (meritorious claims), SCR 20:3.3 (candor toward the tribunal), and SCR 20:8.4 (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation). Even if the errors stemmed from generative AI, the associate had a nondelegable duty to verify the accuracy and legal soundness of the content she submitted to the court under her signature. Lawyers may not blame technology or others for misstatements of law; they are ethically responsible for reviewing and affirming the integrity of all work—especially when it originates from AI tools that are known to hallucinate or fabricate authority. Had she verified the statements in her brief prior to submitting same, she could have avoided damage to her reputation and to her client.

A. Lawyers have ethical responsibilities to the courts.

- **SCR 20:3.1 Meritorious claims and contentions** (a) In representing a client, a lawyer shall not: (1) knowingly advance a claim or defense that is unwarranted under existing law...
- **SCR 20:3.3 Candor toward the tribunal** (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- **SCR 20:8.4 Misconduct** It is professional misconduct for a lawyer to: ...(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

B. “Therefore, output from a GAI tool must be carefully reviewed to ensure that the assertions made to the court are not false.

Issues that have arisen to date with lawyers’ use of GAI outputs include citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments.

Some courts have responded by requiring lawyers to disclose their use of GAI. As a matter of competence, as previously discussed, lawyers should review for accuracy all GAI outputs. **In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review**

these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments.” ABA Formal Op. 512.

Conclusion

This cautionary tale serves as a stark reminder that in the age of artificial intelligence, the foundational duties of competence, diligence, communication, supervision, and candor remain firmly rooted in the Rules of Professional Conduct. The ethical failures in this scenario—ranging from inadequate calendaring and poor supervision to unverified use of AI and misstatements of law—were not the result of a single error, but rather a cascade of missed inflection points where responsible action could have prevented harm. As legal technology evolves, lawyers must adapt thoughtfully and proactively, ensuring that emerging tools enhance, rather than erode, the quality and integrity of their practice. When those obligations are overlooked—no matter how promising the software or how bright the associate—the consequences can be swift, public, and professionally devastating.



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - NORTH COUNTY

[REDACTED] an) [REDACTED]
[REDACTED])
Plaintiff,) **CERTIFIED TRANSCRIPT**
)
vs.)
)
[REDACTED] an)
individual, and DOES 1 through)
50, inclusive.)
)
Defendants.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

April 17, 2025

APPEARANCES OF COUNSEL:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

REPORTED BY: [REDACTED], CSR NO. 5096, RPR

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1 VISTA, CALIFORNIA; THURSDAY, APRIL 17, 2025
2 BEFORE THE HONORABLE [REDACTED]
3 ---oOo---
4 THE COURT: [REDACTED]
5 MR. [REDACTED] Good morning.
6 [REDACTED] on behalf of
7 the plaintiff.
8 THE COURT: Good morning to both of you.
9 MR. [REDACTED] [REDACTED] on behalf of
10 defendant, [REDACTED]
11 THE COURT: Good morning to you, Mr. [REDACTED]
12 MR. [REDACTED] Thank you.
13 THE COURT: This is defense's motion that was
14 filed by Ms. [REDACTED] and she --
15 Is she not joining us this morning, Mr. [REDACTED]
16 MR. [REDACTED] She is en route. She will be here
17 any second.
18 THE COURT: We will wait for her arrival then.
19 Let's go off the record until she gets here.
20 MR. [REDACTED] Thank you, your Honor.
21 THE COURT: Thank you.
22 (Recess.)
23 THE COURT: Let's go back on the record.
24 Item number 2, [REDACTED] versus [REDACTED]
25 The record will reflect that all previous

1 counsel that made their appearance are with us. Ms.

2 [REDACTED] is now with us.

3 Good morning to you, ma'am. You could have a
4 seat.

5 This an ex parte request filed on behalf of the
6 defense by Ms. [REDACTED]

7 Good morning to you, ma'am. Let me ask you
8 first, this matter was calendared for this morning at
9 8:30. All the rest of the counsel were here at 8:30.
10 Tell me why you were not here.

11 MS. [REDACTED] Sorry. There were multiple car
12 accidents, and I was coming from Escondido. I have two
13 small children who are home for spring break, and as
14 hard as I tried, I was up at 6:00 a.m. My children are
15 two and three years old, so it was very difficult to
16 come out of the house, to get to the car, and to get
17 here.

18 THE COURT: I understand. I appreciate that,
19 and the Court is sympathetic with having child issues.
20 And having traveled through north county, I understand
21 how the roads could be if there are accidents along the
22 way.

23 I wanted to talk about the defense motion, and I
24 am not sure how else to say it, Mr. [REDACTED] and I
25 appreciate the fact that you are here today.

1 As you are probably aware, because there is a
2 declaration that was presented to the Court as part of
3 this request that is signed by you, this case has
4 presented some issues for the Court that Ms. [REDACTED] has
5 tried to address since she was hired in your firm in
6 February.

7 She has been in front of me a number of times,
8 and she has presented the document that is currently
9 before the Court. That document bears both your name
10 and her name on the caption page, but the document is
11 signed by Ms. [REDACTED] so I am going to presume that
12 she's the one that prepared the document, at least
13 that's my presumption. But I will ask now that she is
14 here.

15 Ms. [REDACTED] did you prepare this document?

16 MS. [REDACTED] The application, your Honor?

17 THE COURT: Yes.

18 MS. [REDACTED] Yes, your Honor.

19 THE COURT: After preparing it and before filing
20 it with the Court, did you have anybody from your law
21 firm review this document?

22 MS. [REDACTED] I submitted it to Mr. [REDACTED] and
23 he provided his feedback; however, as I mentioned, it's
24 difficult for me to try to incorporate all the nuances
25 that go on in law and procedure and try to fulfill --

1 absorb everything that is being relayed to me and ensure
2 that not only do I properly record it, but I also
3 properly understand it to ensure that what has been told
4 to me by my supervisor is correctly reflected into the
5 necessary changes that need to be made.

6 So although Mr. [REDACTED] did provide a very
7 detailed line by line review of how I was supposed to
8 make changes, including the way I referenced the
9 exhibits --

10 THE COURT: Okay. So let me talk to you first,
11 Mr. [REDACTED] if you don't mind.

12 MS. [REDACTED] Thank you, your Honor. Absolutely.

13 THE COURT: You submitted a declaration as part
14 of Ms. [REDACTED] application.

15 So looking at page 2 of your declaration, I
16 don't know if you have a copy of it with you.

17 MS. [REDACTED] I do, your Honor. Thank you.

18 THE COURT: In paragraph 11 on page 32 of the
19 application, line 12 it says:

20 "Ms. [REDACTED] represented to me that she fully
21 understood her obligations and confirmed that she was
22 capable of handling all aspects of the motion and
23 hearing."

24 Why did you write that to me? What is it that
25 you wanted me to know?

1 MR. [REDACTED] To be thorough. To indicate that
2 hopefully the prior problems with [REDACTED] were not
3 carried over, so there was a level of further diligence
4 following Mr. [REDACTED] leave introspectively.

5 THE COURT: I appreciate that.

6 In the following paragraph, paragraph 12, you
7 write in the second sentence:

8 "However, this matter has been complicated by
9 her initial misunderstanding of the legal and procedural
10 nuances involved."

11 What is it that you wanted me to understand
12 about that sentence?

13 MR. [REDACTED] Well, I think the Court has been
14 very patient with us. We have been here several times.
15 You listened to Ms. [REDACTED] for 45 minutes, and I hate
16 to take up more of the Court's time than is necessary,
17 and the same extends for counsel.

18 So it was kind of an olive branch of we are
19 sorry for taking so much of the Court's time in these
20 matters before the Court.

21 THE COURT: Okay.

22 MR. [REDACTED] I will say that the declarations
23 are in support of the second basis for which we are here
24 today on the ex parte.

25 The first basis, this is a separate and

1 independent request based on new information received.

2 THE COURT: Understood.

3 MR. [REDACTED] Thank you, your Honor.

4 THE COURT: Ms. [REDACTED] mentioned in her
5 application that there are declarations from her,
6 declarations from you, and declarations from Mr. [REDACTED]

7 In your copy of the application, do you see a
8 declaration from Mr. [REDACTED]

9 MR. [REDACTED] I do, yes.

10 THE COURT: On what page?

11 MR. [REDACTED] It is --

12 I just see it as a separate declaration. I
13 don't see a base number attached to it. It is three
14 pages.

15 THE COURT: And it's an exhibit to the
16 application?

17 MR. [REDACTED] It is.

18 THE COURT: Okay.

19 MR. [REDACTED] Yes.

20 THE COURT: That's not in the file copy that the
21 Court received.

22 Mr. [REDACTED] did you get a copy that had Mr.
23 [REDACTED] declaration?

24 MR. [REDACTED] I was never served with any
25 papers. The papers I pulled from the registrar did not

1 have a declaration of Mr. [REDACTED] nor did they have any
2 exhibits.

3 THE COURT: Well, that's the next part I was
4 going to get to.

5 Mr. [REDACTED] the reason why -- one of the reasons
6 I wanted to make sure Ms. [REDACTED] was here is because
7 the Court has grave concerns about the document that was
8 filed with the Court.

9 I don't know what is in your possession.
10 Certainly what is in your possession is not what is
11 filed with the Court.

12 If you have a declaration of Mr. [REDACTED] if you
13 got exhibits, both Mr. [REDACTED] and I will say on the
14 record no exhibits were attached to any moving papers.
15 And that's only part of the concern.

16 So what I intend to do with our time, and I
17 appreciate your comments, Mr. [REDACTED] this morning about
18 using the Court's time, and I want to use the Court's
19 time wisely today, because I want to express my concerns
20 with the document that the Court has in front of it.
21 And I am going to take some time to walk us through that
22 document.

23 MR. [REDACTED] If I may, your Honor?

24 THE COURT: Yes, Mr. [REDACTED]

25 MR. [REDACTED] My instructions obviously were not



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1 to not serve counsel with ex parte papers. My intention
2 was that my ex parte papers were filed with the Court.
3 I was told it was heard. My understanding was that
4 counsel would get forwarded this information as well. I
5 trust him, what he said.

6 THE COURT: I appreciate that.

7 MR. [REDACTED] I don't know if it was a size issue
8 or what, but I was there, and I was being assured that
9 everything was being filed. And we used Nationwide as
10 an additional procedure to ensure that it would get to
11 the Court. Had I known, I would have had everything
12 personally delivered to the Court, courtesy copy
13 delivered to the Court. I am happy to do that.

14 We could push this over to Tuesday. If it's an
15 issue with paperwork, I will be happy to do that. I
16 apologize that the Court does not have the full file in
17 front of it.

18 MS. [REDACTED] Your Honor, we had some issues
19 because of the size of the exhibits, and the Court
20 contacted me, as they have in the past, multiple ex
21 parte hearings. They notified us there was some issue
22 with the exhibits, and that we could re-submit it by
23 reducing the size of the exhibits; that we should send
24 it into multiple different parts, and that the e-mail
25 filing would figure it out. And we did that by 2

1 o'clock.

2 They confirmed to us that it is all being done
3 and compressed.

4 THE COURT: By 2 o'clock what date, Ms. [REDACTED]

5 MS. [REDACTED] Yesterday. It was --

6 Well, they told us at the obligation time that
7 they had received everything, but they are making their
8 effort on their end to try to condense it so that it
9 would be easier for the Court to open, and that for us
10 to also notify our e-filing, the company that we use, to
11 see if they could help in condensing the size. And
12 that's why it took us longer, because we were trying to
13 condense it.

14 And when my paralegal asked me to confirm
15 whether or not opposing counsel was receiving it, I
16 personally got three e-mails back to back sent by Polly
17 Adams, the paralegal, to opposing counsel showing it was
18 sent to Ms. -- I think [REDACTED] Mr. [REDACTED]

19 [REDACTED] I think their legal secretary, [REDACTED] not
20 sure of her last name as well as Mr. [REDACTED] [REDACTED]

21 I got three e-mail confirmations. They were
22 sent to them, and I assured our paralegal, because we
23 were having problems due to the size of the file all
24 morning that on my end it is showing that I got the
25 e-mail from her where she was serving the documents to



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1 the opposing counsel.

2 THE COURT: I want to make sure I am
3 understanding correctly.

4 It is your understanding that as of 2:00 p.m.
5 yesterday, April 16th, that the documents that you
6 intended to file with the court that were originally
7 rejected by the court because of the size had been
8 received and processed by the court; is that your
9 statement?

10 MS. [REDACTED] Not that it was rejected by the
11 court, but they had received a very large sized
12 document, and they were having a difficult time --

13 I am not sure how the process works, what they
14 do once they -- when they get it, but they let us know
15 that they had it, but whether or not we could try to get
16 that file condensed.

17 And I relayed that I personally don't know how
18 to condense a pdf file, but I would contact somebody at
19 the firm to see if they could help figure out how to
20 condense it.

21 They then gave us a suggestion to contact
22 National, the e-filing service, and see if they could
23 assist us, and that way when we resubmit the file that
24 they did get timely, it would be easier for them to -- I
25 am not sure if they upload it or what they do due to the

1 size.

2 THE COURT: When you use pronouns like "they"
3 who are you referring to? Are you referring to
4 National, the court, or some other entity?

5 MS. [REDACTED] Someone in the court that I
6 contacted. I used the ex parte hearing calendar and
7 phone number.

8 THE COURT: Okay. And that person had told you
9 that the documents had been received and processed by
10 the court?

11 MS. [REDACTED] They told us the lodgements had
12 been received, but it looked like there was some kind of
13 error with the exhibit because of the size.

14 I asked them then what do we do in a situation
15 like this? Does that mean it is going to get rejected?
16 Does that mean I should bring copies to the judge and
17 opposing counsel tomorrow? And they said I should
18 condense it.

19 And personally, I don't know how to condense a
20 pdf file, and I am worried because of the timeliness
21 what solutions they had. They said contact e-filing
22 again and divide the exhibits into how many parts you
23 need to. They know how to condense it and re-submit
24 that to us.

25 So the way it was relayed to me was "you did

1 your part" as in me, "by having it submitted on time."

2 Now let's figure out how to better, I guess,
3 manage the documents so that it would be --

4 Again, I am not sure how the process worked
5 related -- uploaded to the ROA or whatever the process.
6 And two suggestions, condense it or resubmit it to
7 e-filing so they could condense it on their end.

8 We were also under a lot of pressure and stress,
9 your Honor, because on Tuesday when we tried to do this
10 the earthquake -- the e-filing service company had to
11 have a mandatory evacuation, and we had no idea where it
12 was, because we had submitted it on time.

13 The court contacted me asking where our
14 documents were since we had a hearing the next day, and
15 I was very confused and let her know that we had filed
16 it before 11 o'clock. And she asked me to contact the
17 e-filing company, and, of course, they were not
18 answering. And by the time they did contact us, they
19 said they had to evacuate, and they were unable to file
20 it.

21 So we were under tremendous stress yesterday
22 knowing we had a hiccup on Tuesday, and there was an
23 issue with the size. So I was personally on the phone
24 all morning from 8:00, 9:00 a.m. contacting everyone I
25 could to make sure this was then properly and timely, to

1 the best of my knowledge and ability of what was
2 required from us.

3 THE COURT: The document that you are trying to
4 file with the court, it appears the Court now has that.

5 I want to make sure that we are looking at the
6 same document, Ms. [REDACTED] It is a document that is
7 454 pages long; is that correct?

8 MS. [REDACTED] The exhibit, your Honor --

9 THE COURT: It is not just exhibits, so I am
10 trying to make sure. We have it as a single document
11 that is part of your ex parte application for a
12 continuance. That total pdf document is 454 pages; is
13 that correct?

14 MS. [REDACTED] Your Honor, what I gave the
15 paralegal to file, and the instructions I gave were for
16 the application to be submitted alongside the
17 declaration of myself, Mr. [REDACTED] [REDACTED] and Mr.
18 [REDACTED] [REDACTED] and that in a separate -- as an
19 attachment the exhibits, I believe they are A to N,
20 should be also filed separately.

21 And to my understanding, that's what she did.
22 And when she contacted us -- when I told her what the
23 instructions were, to resubmit the exhibit to e-filing,
24 I told her to try to split up the exhibits as much -- as
25 small as she can and put in the subject line part 1 of

1 4, 2 of 4, 3 of 4, to contact e-filing and let them know
2 why we are resubmitting it, what our intentions were.
3 And ultimately she sent nine e-mails for the exhibit,
4 because no matter how few pages we attached, it kept
5 giving the error that the file was too large.

6 So she did end up sending it in nine parts, and
7 e-filing let us know that they did get it, and they
8 condensed it.

9 THE COURT: Okay. I appreciate that.

10 MS. [REDACTED] Thank you, your Honor.

11 THE COURT: The additional document that you
12 filed with the Court, though, there was not a problem
13 receiving the one that the plaintiff got from the ROA.

14 Do you have a copy of that document in front of
15 you?

16 MS. [REDACTED] The copy of the application and
17 declaration?

18 THE COURT: Yes, ma'am.

19 MS. [REDACTED] Yes, your Honor.

20 THE COURT: I will turn you to page 3 of that
21 document.

22 Do you have that in front of you?

23 MR. [REDACTED] Yes.

24 THE COURT: Ms. [REDACTED] do you see paragraph 12
25 on page 3 of defendant's ex parte application?

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1 MS. [REDACTED] Yes, sir. Yes, your Honor.

2 THE COURT: My copy shows dashes where I think
3 dates should be. Is that what your copy shows?

4 MS. [REDACTED] No, your Honor.

5 THE COURT: We are going to go off the record
6 for a bit.

7 (Pause in proceedings.)

8 THE COURT: Let's go back on the record.

9 The record shall reflect that all counsel are
10 still present.

11 I am looking for the record ROA 33. These are
12 documents that were filed by the defense on April 14th
13 at 2:16 p.m.

14 Ms. [REDACTED] do you have a copy of that document
15 in front of you?

16 MS. [REDACTED] Yes, your Honor.

17 THE COURT: Is that the document that you
18 prepared as part of your application on this case?

19 MS. [REDACTED] Your Honor, this is one version.

20 In our firm's procedure, when we produce any
21 kind of work, we use the -- a program called Net Docs.
22 And I have been instructed that by no means am I allowed
23 to produce any kind of work that is saved on to my
24 desktop or not saved directly into the file in order for
25 the partners to always be aware of what my work product

1 is, and what the -- where I am at with an assignment.

2 This is one version that I had produced that I
3 believe my paralegal inadvertently uploaded, which is
4 clearly the wrong version as there are fill in the
5 blanks that were not completed, and as you could see
6 multiple other areas that clearly show that I have not
7 gone back to make the necessary edits.

8 So this is one version, a drafted version that
9 has for some reason been uploaded. And what is more
10 alarming to me is that we were informed by the court on
11 Monday morning that they did not receive our documents,
12 and we were also informed by e-filing that they did not
13 serve it since they evacuated.

14 So an issue that we had yesterday when we were
15 looking at the ROA was that the plaintiff's counsel,
16 their opposition was uploaded on to the ROA; however,
17 ours was not.

18 So that was another added layer of stress that's
19 where is ours? If theirs is uploaded, where is ours?

20 When I saw on the ROA the canceled hearing on
21 4/15, and there was no other dates on it, like they did
22 not show the 4/17 dates, I thought that perhaps there
23 was another internal error, or we made an error.
24 However, upon a second and third read I noticed that
25 although it said at 4/15 canceled, there was a 4/16 file

1 date.

2 So I have no idea who filed this, or how it was
3 filed since the Court relayed to me that they did not
4 receive it, and e-filing told me that they did not file
5 it. So I don't know how they got -- how this version is
6 uploaded, and why our correct version is not uploaded.

7 However, I want to confirm that I just checked
8 in my e-mail the version that was sent that shows to me
9 that it was e-mailed to me where Mr. [REDACTED] is also
10 included in that e-mail is the correct version which is
11 the version that Mr. [REDACTED] had in front of him.

12 THE COURT: That's a lot to unpack there, so let
13 me try to take my time with some of it.

14 If I understand you correctly, the document that
15 is filed with the Court had nothing to do with you
16 wanting to file this document.

17 According to you, someone without your
18 authorization or consent filed this document that I just
19 printed for you, and plaintiff's counsel, that wasn't
20 you, despite the fact that page 24 of the application
21 has a signature on it, you are saying this is somehow
22 just a draft document that got inadvertently sent from
23 your law firm to the Court without your knowledge or
24 consent.

25 MR. [REDACTED] That was something that --

1 THE COURT: Mr. [REDACTED] my question was not for
2 you. My question was for your associate.

3 MR. [REDACTED] This has nothing to do with today's
4 hearing.

5 MS. [REDACTED] Yes, your Honor.

6 THE COURT: Just a second.

7 Mr. [REDACTED] I appreciate what you just said at
8 the end. You are saying this document that I just
9 provided to you and plaintiff's counsel has nothing to
10 do with today's hearing.

11 MR. [REDACTED] This is the one that was rejected,
12 correct. And the hearing was taken off calendar because
13 of the earthquake. The original hearing was Tuesday of
14 this week.

15 THE COURT: Let me correct a couple things,
16 because we have a court reporter here.

17 There was an earthquake earlier this week that
18 lasted less than 10 seconds. The Court was never
19 closed. Parties were never evacuated. The business
20 office was never closed. The public was never excluded.
21 The business never stopped at the courthouse.

22 So to represent that because of an earthquake
23 that did not impact the operations of the court that
24 somehow hearings were continued, documents weren't
25 accepted is a misrepresentation about what happened at

1 the court.

2 And I could say that, because I was in session.
3 And the earthquake wasn't on Tuesday, it was on Monday.

4 Why? Because we were trying to get ready to
5 pick a jury on a case, and I had attorneys sitting at
6 the seats where you are.

7 So the earthquake on Monday had nothing to do
8 with the ex parte on Tuesday. The document that was
9 filed Tuesday afternoon at 2:16, and that's what the
10 stamp on the electronic filing is, was hours after the
11 earthquake.

12 So clearly our court was still accepting
13 documents, because we accepted this one. In fact, in
14 our register of actions, our official record for this
15 case, this is the only document that we have from the
16 defense, and now I am hearing for the first time because
17 that's the one that Mr. [REDACTED] objected to, because
18 that's the only one he could see in the register of
19 actions, that the defense's position is judge, I don't
20 know how you even got that document. We never meant to
21 submit that to anybody despite the fact that it has the
22 named partner's declaration attached to it and signed
23 and dated. It has the appearing attorney's declarations
24 attached to it, signed and dated, and the application
25 itself is signed and dated.

1 What the defense wants me to believe now is
2 well, judge, we just have some screwy people in our
3 office that take drafts of our motions and without even
4 consulting our lawyer, they send it to the court, and
5 the court did not even tell us that they had received
6 our document even though it shows it is electronically
7 filed with the file stamp.

8 I find that hard to believe.

9 MS. [REDACTED] May I clarify, your Honor?

10 THE COURT: I didn't ask the question yet.

11 MS. [REDACTED] Right.

12 THE COURT: So I have got more questions.

13 MS. [REDACTED] Okay.

14 THE COURT: So in this document, Ms. [REDACTED]
15 you are saying that I should not rely on anything in
16 this document?

17 MS. [REDACTED] Yes, your Honor. And please --
18 If you could please turn to page 24 of that
19 document so I could better clarify what I meant.

20 THE COURT: Well, let's start first with --

21 MS. [REDACTED] Yeah.

22 THE COURT: Ms. [REDACTED] do you have an
23 understanding on whether there are any rules, Rules of
24 Court that limit page numbers on memorandums and motions
25 filed with the court?

1 MS. [REDACTED] Yes, your Honor.

2 THE COURT: What is your understanding of the
3 page limit?

4 MS. [REDACTED] There is a 10-page page limit as
5 to ex parte hearings, and if we were to have pages
6 beyond 10 pages, we are to write a declaration
7 explaining the circumstances as to why we have over 10
8 pages. And it is my understanding that if it is over a
9 certain number of pages, between a certain number of
10 pages, we also need to include a table of contents and I
11 believe Points and Authorities as to, I guess, more
12 easily defer to what we are trying to address.

13 THE COURT: Okay. And I say that because you
14 were starting to direct me to page 24 on a document by
15 your own statement that should not be 24 pages long.

16 MS. [REDACTED] Yes, your Honor.

17 THE COURT: And there is no declaration in
18 support of why you need more than 10 pages. There is no
19 information to the Court that you are requesting the
20 Court for anything including leave to extend the pages
21 beyond the page limit.

22 But I am at page 24 now. What did you want me
23 to know about that page?

24 MS. [REDACTED] So in reference to the first
25 comment that I made, not that somebody submitted this

1 without my permission --

2 THE COURT: Well, that's what you said. You
3 said the paralegal submitted that, and it was only a
4 draft.

5 MS. [REDACTED] She submitted the draft version,
6 not the final version, because as you could see, first
7 of all, this is the signature of Marvin [REDACTED] at the
8 bottom of page 24.

9 THE COURT: I can't see. I see some lines. I
10 cannot tell whose signature that is.

11 MS. [REDACTED] If you were to compare that
12 signature in comparison to Mr. [REDACTED] signature in his
13 declaration in comparison to my signature in my
14 declaration, that is not my signature, that is Mr.
15 [REDACTED] signature.

16 What I was saying, this was a draft copy. When
17 I produce a copy, in my habit of how I do things, I take
18 a sample of a previously saved document with pleading
19 papers so I don't have to go back and forth and redo it.
20 And I start making my drafts within that document.

21 And once it is done, then I go back, and I
22 correct the declaration; I correct the page number; I
23 correct the signatures, and I make it so it reflects
24 that it is my production.

25 This is not a reflection of my work. I would

1 never submit an application with Mr. [REDACTED] signature.
2 As you could see in the past three that I have
3 submitted, it is always my signature.

4 What I mean is my paralegal, Ms. [REDACTED],
5 when I told her that the copy was completed, and that
6 she may file it on Monday when the earthquake occurred,
7 she mistakenly uploaded the draft copy, not the final
8 copy.

9 This is a draft copy that I had prepared which
10 clearly exceeds the 10-page limit which in his initial
11 review Mr. [REDACTED] told me you cannot have more than 10
12 pages. We need to reduce it, and if you cannot reduce
13 it to have 10 pages, go look at the court rule as to
14 what you need to do and make sure that you comply with
15 the rules as to what you need to do in that situation
16 which is, first of all, try to reduce it to 10 pages,
17 and if you cannot, make sure you follow all the
18 requirements of the declaration that needs to be
19 submitted with your application. And that is what I
20 did.

21 And I would like to clarify one more thing.

22 On Monday, when the earthquake occurred after 11
23 o'clock, it was 1:40 p.m. that the clerk from this court
24 called me, and they said you have a hearing for Tuesday
25 yet we do not have your documents. Is there an issue,

1 or do you want me to -- if there is an issue, I have to
2 take you off calendar for tomorrow.

3 I said I am surprised that I am hearing this,
4 because we submit to e-filing. She said contact your
5 e-filing and see what happened, and give me a call back.

6 When I called e-filing, they were not answering.
7 I called her back, and I said I don't want to waste your
8 time. I don't know if you are waiting for me or on the
9 wait list for other people. I want you to know that
10 e-filing is not answering. I don't want to waste the
11 Court's time. Take us off the schedule for tomorrow.

12 She said would you like me to change it to the
13 Thursday date? I said yes.

14 And what happened is instead of cancelling it, I
15 believe, it is my impression, that rather than
16 cancelling it and getting it off the ROA other than
17 completely cancelling it and getting a new date,
18 apparently it seems like it was an extension.

19 Once National did come back to their office and
20 filed it by 2 o'clock, by the time they returned on
21 Monday, this file was inadvertently determined by the
22 court the version that we were going to be using in
23 today's hearing where clearly not only is this the draft
24 version, but this wasn't -- I had more time from Monday
25 when we found out to make the corrections, including the

1 declaration, figure out what I had to do and basically
2 try again to have a better version for Thursday.

3 Now we are back to square one where because of
4 bad luck, procedural error, an earthquake of all things,
5 mistake by the paralegal, a lot of stress as to what is
6 going on, why didn't they get it, stress from everyone.

7 We know how important this is. Everyone at our
8 firm I could tell you knows about this ex parte. My
9 family knows about this ex parte. Everyone was
10 extremely heightened and diligent as to ensuring we
11 don't let Mr. [REDACTED] down, because Mr. [REDACTED] has been
12 nothing but diligent. He has been nothing but a great
13 supervisor to me, and I feel very disappointed that I
14 have let him down, because I have could have followed up
15 better with the paralegal.

16 And I did contact Mr. [REDACTED] last night to let
17 him know that I think there is an issue with what the
18 ROA is showing, because it is showing canceled yet it
19 shows it was filed with a 4/16 date. And I wanted to
20 let him know that before he comes into the hearing
21 tomorrow I suspect there may be some kind of errors with
22 what was filed and what was not filed, so for him to
23 assure before he starts, because I did not know if he --
24 to make sure that your Honor and opposing counsel has
25 everything that they need especially given the fact the

1 exhibit was so large.

2 I was extremely aware of this. Everyone is
3 aware how important this is, how important court rules
4 are, and how significant it is to ensure that we are
5 complying with the rules.

6 That has been my honest efforts. I have gone
7 personally and contacted e-filing. I have contacted Ms.
8 Ashley Carini in the past two applications. I did
9 everything within my power to make sure that this was
10 correct, and I am very upset we are back in square one.

11 THE COURT: Oh, we are not in square one.

12 Let me ask a couple questions. And I know that
13 plaintiff does not have the 454-page document, but I
14 believe you do, correct, Ms. [REDACTED] I do believe you
15 have that in front of you.

16 MS. [REDACTED] Yes.

17 THE COURT: I will direct your attention to page
18 16 of that application.

19 Starts with, "Additionally under section."

20 You see that language?

21 MS. [REDACTED] Yes.

22 THE COURT: That's the end of the application,
23 correct? The actual next page is the declaration of Mr.

24 [REDACTED]

25 MS. [REDACTED] Yes, your Honor.

1 THE COURT: Typically at the end of the
2 application there is a signature and date block of the
3 person who is filing the application.

4 This document that -- The one that you say is
5 the correct one, the one you say that you want me to
6 consider, the one that you say is the one that you have
7 been trying to file all week does not have a signature
8 block saying who the attorney is that prepared that
9 document; is that correct?

10 MS. [REDACTED] You are correct, your Honor. In
11 that version that I am also looking at which was filed
12 by the paralegal does not have a signature line;
13 however, I could show you with proof that I told the
14 paralegal that the version I e-mailed her does not have
15 a signature line and to make sure that the date and my
16 signature is included, because that's her job within our
17 firm, the way our firm works for her to make the final
18 edits, because she is the one that knows how to add the
19 signature line, and it is her job.

20 I confirmed with her three times on a text
21 message and over TEAMS. She told me she will do it, and
22 clearly she did not.

23 THE COURT: And I appreciate that. I have
24 heard, and you made the record, that I understand from
25 the defense's position there are at least eight people

1 that are responsible including San Diego Superior Court
2 and your paralegal.

3 Let me ask, because there is now signatures on
4 this document, the 454-page document. Did you prepare
5 that document, or did someone else prepare that
6 document?

7 MS. [REDACTED] Yes. The exhibits --

8 MR. [REDACTED] Did you prepare the ex parte?

9 MS. [REDACTED] Yes. I prepared the ex parte.

10 THE COURT: Pages 1 through 16 of that document,
11 that was prepared by you?

12 MS. [REDACTED] Yes, your Honor.

13 THE COURT: The legal research that was done in
14 support of that application, was that also done by you?

15 MS. [REDACTED] Yes, your Honor.

16 THE COURT: Do you stand by that legal research?

17 MS. [REDACTED] As to the rules, or the law?

18 THE COURT: As to the legal research. That
19 would be the cases that you cited and the statutes that
20 you cited. Do you sand by that?

21 MS. [REDACTED] Yes, your Honor.

22 THE COURT: Do you understand what California
23 Bar Rule 3.3 means?

24 MS. [REDACTED] If you could refresh the title,
25 your Honor?

1 THE COURT: That's duty of candor to the
2 tribunal.

3 That means an attorney has an obligation to not
4 make misrepresentations about facts or the law to the
5 Court. Are you familiar with that rule?

6 MS. [REDACTED] Yes, your Honor.

7 THE COURT: Did you have that in mind as you
8 prepared this application?

9 MS. [REDACTED] Yes, your Honor.

10 THE COURT: On your page of the corrected
11 application, I believe it is your page 9, you reference
12 a case, *Stanchfield vs. Hammer Toyota*.

13 Mr. [REDACTED] on your copy it is going to be page
14 17, but it is the same case. It is cited in both
15 places.

16 MS. [REDACTED] Yes, your Honor.

17 THE COURT: You cited that case in support of
18 the position that the Court can look at expert
19 disclosure deadlines and take action regarding those,
20 correct?

21 MS. [REDACTED] Correct, your Honor.

22 THE COURT: Are you familiar with this
23 *Stanchfield vs. Hammer Toyota* case?

24 MS. [REDACTED] Yes, your Honor.

25 THE COURT: Tell me your knowledge of that case.

1 MS. [REDACTED] There was a car, and there was a
2 lawsuit as to product defect with the car, and at the
3 time that the attorneys were to designate their experts
4 -- sorry, one second -- they did not timely designate
5 their experts because of their understanding of the need
6 for that specific expert was determined after the expert
7 cut-off date. Similar to our case.

8 And in assessing the facts, the take-away of
9 that case was since the Court believed based on the
10 parties declaration that their error was due to the
11 attorney's mistaken understanding of when things would
12 be determined, and when law -- when the need for that
13 expert would -- came to light, similar to Mr. [REDACTED] he
14 did not designate it, and he wrote that in his
15 declaration. And the --

16 THE COURT: I am not asking about Mr. [REDACTED] I
17 am asking about *Stanchfield vs. Hammer Toyota*.

18 For the record, that is 37 Cal.App.4th at 1695.

19 So I am not asking about Mr. [REDACTED] When you
20 talk about Mr. [REDACTED] I hope you appreciate that I am
21 suggesting that you are not talking about the case I am
22 asking about.

23 MS. [REDACTED] Yes, your Honor.

24 So the appellate court --

25 So the trial court denied the designation, and

1 the trial court stated that although it was mistaken,
2 because as you know the standard of excusable neglect is
3 whether a reasonable person would have made that
4 mistake, perhaps a reasonable attorney would not have
5 made the mistake not understanding the need for late
6 expert designation.

7 THE COURT: Let me stop you.

8 MS. [REDACTED] Sorry.

9 THE COURT: Let me try one more time.

10 MS. [REDACTED] Yes.

11 THE COURT: Have you read the *Stanchfield vs.*
12 *Hammer Toyota* case?

13 MS. [REDACTED] I read the case briefly, your
14 Honor, yes.

15 THE COURT: Do you want to amend your answer?

16 MS. [REDACTED] Based on your line of questioning
17 I believe I should since I was under the impression that
18 I have made a mistake at some point as to what was
19 stated.

20 THE COURT: No.

21 Let me make sure that I am as clear as possible.

22 One of the things that people often don't
23 understand about me, one of the things I try to make
24 clear to all the attorneys and all the pro se litigants
25 that appear in front of me in court is file what you

1 want to file, and I am going to read everything that
2 gets filed.

3 So if you cite statutes, I am going to look at
4 the statutes. If you cite cases, I am going to read the
5 cases.

6 So as I am reading through what you now call the
7 draft copy, but now is included in the one that you say
8 this is the real one, that should have been both of
9 those reference this case.

10 So one of the things that is nice about the
11 Court is they provide bench officers with Westlaw at our
12 disposal. So I type the case in Westlaw, and I read the
13 case, and it does not seem consistent with the facts
14 that you list in your application.

15 But I am old school enough to know, yeah, maybe
16 don't go by the digital version. So I actually go pull
17 books off our library shelf.

18 So what I originally thought I might need to do
19 is to say, well, I have got the case here, Ms. [REDACTED]
20 like we do with impeachment for omission. Look at this
21 case, and it is not a very long case, and find the part
22 in the case where they mention a biomechanical expert.
23 But I already know the answer, because I have read the
24 entire case.

25 The case isn't about late disclosure of experts.

1 The case isn't about biomechanical experts. The case
2 isn't about defects with automobiles. The case is about
3 a salesperson that wanted to buy his dealership and
4 reached an agreement with the dealership to buy the
5 dealership and then didn't work very hard as the
6 salesperson, and they fired him. And so he sued them
7 for breach of contract; they sued him back saying you
8 were a horrible employee.

9 And on the *Stanchfield vs. Hammer Toyota* case,
10 the issue was plaintiff's expert was going to be deposed
11 in the morning, and defense's expert was going to be
12 deposed in the afternoon.

13 Defense expert sat through plaintiff expert
14 deposition, and then when it came time for his
15 deposition he said I am not ready with my opinions yet,
16 having just sat through the deposition of plaintiff's
17 expert, I need more time.

18 Plaintiff decided not to depose him, and they
19 came to trial and said we object to him testifying at
20 trial.

21 That's what the case is about. The trial court
22 said I am going to let him testify, because the trial
23 court learned that when the expert said he needed more
24 time, he only needed 16 hours. He would have been ready
25 the next day.

1 And the trial court and the Court of Appeal said
2 hey, plaintiff, if you wanted to exclude him, you needed
3 to do something more than just cancel the deposition.
4 You needed to do some formal objection. You needed to
5 bring that to the Court. You couldn't just wait to the
6 day of trial to raise your objection.

7 So the Court overruled plaintiff's objection.
8 They appealed, and despite what you write in your motion
9 which is the Court of Appeal reversed the trial court's
10 denial, that's not what happened.

11 The Court of Appeal affirmed the trial court's
12 decision to allow the expert to testify. Why? Because
13 the case was never about late disclosure of experts.
14 That was never the issue.

15 And I say that because the case from front to
16 back goes from page 1495 to 1507. It is a 12-page
17 opinion. It does not take hours to go through.

18 So when I read from an attorney who has filed a
19 document that recites a case to me that is so incorrect
20 on the law and the facts, I get concerned. Because I
21 don't understand how somebody could be that wrong.

22 And here's what is true. I did not expect that
23 we were going to spend part of our morning talking about
24 documents that could not get filed, didn't get filed. I
25 thought we would just be talking about these cases that

1 were cited. But I appreciate what I have learned about
2 our filing system, and I will be making some contacts to
3 some people on the court side to see that we could
4 correct whatever role we might have played in that.

5 But it still doesn't answer why you would
6 represent to the Court that *Stanchfield vs. Hammer*
7 *Toyota* involved a Court of Appeal reversal of a trial
8 court's denial of motion to permit late expert
9 designation if that's not what the actual case is about.
10 Why would you write that?

11 MS. [REDACTED] Your Honor, I want to express my
12 sincere apologies for doing this.

13 THE COURT: I don't want your apologies, I want
14 your explanation.

15 MS. [REDACTED] My explanation is that as of
16 February 19th when this case was assigned to me, I have
17 read through LexisNexis over I would say 100 cases as to
18 anything that will help me into getting experts at this
19 stage, whether it has to do with discovery, whether it
20 has to do with continuances, anything under the sun I
21 have read.

22 I received the top grade in my legal research
23 class. I know how to do research. I know how
24 embarrassing this looks right now.

25 THE COURT: I don't know that you are

1 embarrassed at all.

2 MS. [REDACTED] Oh, I am very embarrassed, your
3 Honor.

4 THE COURT: Explain to me why you should be
5 embarrassed.

6 MS. [REDACTED] I am embarrassed, because I know
7 how horrible this looks.

8 THE COURT: You are concerned about how it
9 looks?

10 MS. [REDACTED] How it looks in --

11 THE COURT: You think this makes you look bad?

12 MS. [REDACTED] No, not that it makes me look bad;
13 it makes me look incompetent.

14 THE COURT: No. No. Just so we are clear, I
15 don't think you are incompetent. My concern, since we
16 are making a record, is that you're unethical. That's
17 my concern.

18 MS. [REDACTED] That, your Honor, I am not.

19 I have read -- I have cite --

20 I have perhaps not mastered how to use my time
21 to the best of my ability.

22 In doing my research, I have read probably 50
23 cases just for the issue of excusable neglect, just for
24 the issue of mistake, and there was tremendous amounts
25 of pressure on me to make sure that what I produced is

1 not only compelling but accurately and procedurally
2 correct and timely.

3 THE COURT: So do we agree that if my recitation
4 of the facts of *Stanchfield vs. Hammer Toyota* is
5 accurate, that what you submitted to the Court is not
6 accurate? Do we agree on that?

7 MS. [REDACTED] Based on what you said right now,
8 your Honor, yes, I agree.

9 THE COURT: So I am trying to understand if your
10 zeal is to be accurate, why you would submit documents
11 that the Court can so easily find --

12 This is not a hide and seek thing. You cited a
13 case. I go find the case. I read the case, and I
14 compare it to what you write and go they don't match up.
15 That's not accurate.

16 So if you tell me that you are accurate, then I
17 point to a single case where you are not accurate. So
18 what you expect, based on what you have told me so far
19 this morning, is that I might be able to find other
20 cases where you were likewise inaccurate about what you
21 cited to the Court.

22 MS. [REDACTED] Yes, your Honor.

23 THE COURT: You think I would be able to?

24 MS. [REDACTED] Yes, your Honor.

25 THE COURT: Why would I be able to if you are so

1 attuned to being accurate?

2 Because if I was telling somebody that I was
3 really accurate, and they find one mistake, I would say
4 I stand on all tens then that that's the only mistake
5 that you are going to find, because I know the rest are
6 right; I must have missed that one.

7 I would not tell the judge, no, you are probably
8 going to find more mistakes. So I could not be both
9 accurate and submit work that is full of mistakes.

10 I am trying to understand. Are you
11 acknowledging, judge, I was really under so much
12 pressure; I have so much going on in my life; this is
13 such an important case that I submitted documents that I
14 know are rife with mistakes, and I just hope that the
15 Court would overlook them so we could get to the merits
16 of what my argument is?

17 MS. [REDACTED] Your Honor, I would like to
18 clarify that specifically for this -- just this
19 application that is before you in the --

20 THE COURT: That's the only one that I am
21 worried about, the one that is in front of me today.

22 MS. [REDACTED] And I have to date spent over 50
23 hours --

24 THE COURT: I am not concerned about the number
25 of hours, I am concerned about your accuracy claim.

1 So you told me, judge, I focus on accuracy, and
2 I pointed out a case that you are not accurate. I asked
3 you could I find more cases, and you told me yes.

4 And so those two things are now in conflict. In
5 my mind either she is not telling me the truth when she
6 says she is accurate, or she is telling me the truth,
7 and her statements that I will find more cases seems to
8 contradict that.

9 So what do you want me to believe, that there
10 are more cases that are accurate, or you are not
11 concerned about inaccuracy?

12 MS. [REDACTED] Neither. When you ask me whether
13 or not there is a possibility, if there are more cases,
14 it was my position at the time when I submitted this
15 that I am not an unethical person. I have no intention
16 of tricking the Court or opposing counsel of any law or
17 precedent. If I have made one mistake, I could not
18 firmly confirm if there were other mistakes, because I
19 am now confused why this mistake was made.

20 However, I would like to offer a possible
21 explanation which is not an explanation in that I had a
22 document that was over 100 pages of cases that I
23 reviewed on Lexis withholding facts, and whether or not,
24 whether or not there was some kind of mistake, because
25 in my admission I spent more time on the research than

1 putting this together to make sure it was right, because
2 I believed, after that, the writing part comes easy for
3 me.

4 So honestly at this moment in answer to your
5 questions, I could not actually confirm that the cases
6 that were cited are 100 percent to my knowledge without
7 any mistake, because that was my position before you
8 brought this up.

9 So if I have made one mistake, then the
10 potential is that there might be additional mistakes.

11 THE COURT: Let's go to the next page that you
12 cite as part of your motion.

13 For the plaintiff, that will be on page 18.
14 Excuse me, the bottom of page --

15 It is going to be page 18 of the defense, it is
16 going to be on the top of page 10, *Zellerino vs. Brown*
17 at 235 Cal.App.3d. 1097.

18 Did you read that case?

19 MS. [REDACTED] Of course I read the case, your
20 Honor.

21 THE COURT: Well, you say "of course."

22 So the first clause of the sentence after the
23 citation is the Appellate Court reversed a trial court's
24 decision.

25 Do you see that?

1 MS. [REDACTED] Yes, your Honor.

2 THE COURT: I will wait until you pull up the
3 case.

4 Do you have the case in front of you?

5 MS. [REDACTED] Yes.

6 THE COURT: As to *Zellerino vs. Brown*, is it
7 your statement that the disposition of the case is that
8 the trial court was reversed?

9 I will direct you to page 1118 of the opinion if
10 you have the opinion up.

11 MS. [REDACTED] Yes. I have it.

12 THE COURT: I think the Court said do you know
13 what it means when a trial court reverses their opinion?

14 Do you have the disposition of that case in
15 front of you now? Again, it is 20 pages long. Do you
16 have that?

17 MS. [REDACTED] Yes. It says the judgment is
18 affirmed.

19 THE COURT: What does "judgment affirmed" mean?

20 MS. [REDACTED] Not reversing.

21 THE COURT: So do you agree your statement as to
22 *Zellerino vs. Brown* is a misstatement of law?

23 MS. [REDACTED] Yes, your Honor.

24 THE COURT: So I am trying to understand when
25 you cite cases that you want the Court to be persuaded

1 by what you misrepresent to the Court what they stand
2 for?

3 MS. [REDACTED] Sorry. Please repeat the
4 question.

5 THE COURT: I am trying to understand when you
6 cite cases to the Court to try to persuade the Court to
7 take action, why do you misrepresent to the Court what
8 the cases stand for?

9 Let me tell you what I think, Ms. [REDACTED] I
10 think that no one could be that incompetent as to read
11 those two cases and include the facts that you included
12 in your application, because they misread the case.

13 And so I am concerned that what you might have
14 done is you decided to rely on some software technology
15 to assist you with your legal research; that you plugged
16 certain parameters into that software, and they gave you
17 answers you did not vet.

18 I am going to ask you directly if that's what
19 you did, or is that not what you did, and you want me to
20 believe you are just as incompetent as these two cases
21 seem to suggest you are.

22 MS. [REDACTED] That's not what I think, your
23 Honor.

24 THE COURT: If I stop at two cases, do you think
25 I could find more than two cases that you misrepresented

1 to the Court what the facts or the holding of the cases
2 are? I hope you do think I could find more cases when
3 you misrepresent what the case disposition was or what
4 the holding was.

5 MS. [REDACTED] Yes, your Honor. When you asked
6 me a few minutes ago, I believe that you may find more
7 errors.

8 THE COURT: So what do you think I should do
9 about an attorney who is either so unethical that they
10 misrepresent cases in your holding, or so incompetent
11 that they don't take the time or have the diligence to
12 find those mistakes before they submit documents to the
13 Court? What do you think the Court's role should be?

14 MS. [REDACTED] I think the Court should take into
15 consideration the circumstances of the initial reason
16 that this ex parte was brought in that I admitted in
17 open court, on paper in my declaration to opposing
18 counsel, to the partners, and to the Court that I do not
19 have the necessary competence that is required to go
20 ahead with this trial as to date that it is written.

21 THE COURT: We are not even talking about the
22 trial, Ms. [REDACTED] I am talking about your
23 application.

24 You are suggesting to me now that what you meant
25 to admit is, judge, I don't even have the competence to

1 properly file an application for ex parte relief.

2 MS. [REDACTED] That's not what I am saying, your
3 Honor.

4 THE COURT: So assuming that you are saying to
5 the Court then that you do have the competence to file
6 an appropriate ex parte relief, action for ex parte
7 relief, help me understand what I should do with an
8 attorney who indicates to the Court that she is
9 competent to do the work, and she produces to the Court
10 work product that belays that competence?

11 What actions do you think the Court needs to
12 take in response to that, if any, or do you think I
13 should overlook all of that and pretend as if I did not
14 read the cases myself; I should pretend that I did not
15 find all the many places where you misstate the law to
16 the Court; that I should act as if you had never done
17 that and just get to the merits of your request? Is
18 that what you want me to do?

19 MS. [REDACTED] Your Honor, I would like you to
20 look at me as someone who made a diligent effort to find
21 cases that are talking about the issue of expert
22 designation. And perhaps right now I am too nervous to
23 read the case, but perhaps I made a mistake in writing
24 "reversal of the trial court's decision," rather the
25 hold, the reversal of the holding rather than the

1 misinterpretation or the different interpretation, and
2 perhaps I could be wrong.

3 But as the case progresses, and as my time as
4 [REDACTED] goes on, I have repeatedly become aware
5 there is a disconnect in certain terms because of my
6 lack of experience which I have expressed to the
7 experienced attorneys at our firm, as well as the two
8 partners, that when you tell me, for example, complete a
9 meet and confer, or complete research, or find whether
10 or not a court reversed something, there is some
11 misunderstanding by me due to the lack of experience in
12 really being able to have that information sink in as to
13 what these terms mean legally.

14 There are different ways and different --
15 basically there is -- when interpreting rules, and
16 procedures, there are numerous factors that need to be
17 taken into consideration, and I have had a difficult
18 time trying to not only completely understand what the
19 path is, completely understand what the rules and the
20 holdings mean, and to articulate what that is.

21 However, it is my position that if the Court may
22 set aside any case that I have cited to here, my
23 position is based on the law and the facts --

24 THE COURT: Ms. [REDACTED] let me stop you for
25 just a second, because I am not sure you are hearing

1 yourself.

2 What you just said, and I appreciate so much
3 that a court reporter is here, because what I will
4 encourage you to do is get a copy of the transcript and
5 re-read your words to the Court throughout this hearing.

6 Because what you just said was I want the Court
7 to set aside the law that I included in the motion, and
8 follow the law in granting the relief.

9 Well, I am following the law as you cite it, but
10 you don't cite it accurately. It is absolutely not I
11 did not go further in talking about *Zellerino vs. Brown*,
12 the case we discussed where you cite to a quotation that
13 supposedly takes place on page 1108.

14 I don't know. I have got the entire case in
15 front of me. There is no such quote on that page.

16 So to suggest that I looked at so many cases,
17 and they all are either blurred in my mind, or I was
18 trying to keep them in memory, or I took notes and cut
19 and paste my notes and lost track of which notes went
20 with what case, displays a level of unprofessionalism
21 that shocks the conscious of the Court.

22 One of the things that is true is that you have
23 expressed to the Court that you were recently given a
24 job at [REDACTED] [REDACTED] but prior to that you were
25 accepted into a profession, a profession that has

1 licensing requirements, that presents obligations for
2 those that would choose to engage in that profession.

3 I say that because when the state bar says we
4 have some separate rules, separate from the California
5 Rules of Court, separate from the Code of Civil
6 Procedure that says attorneys have the duty to do these
7 things, and your attitude towards the Court is, I don't
8 care if I get it right; I looked at a lot of cases. I
9 might have just mixed them all up, judge. You figure it
10 out for me. You sort it out.

11 *Zellerino vs. Brown* is not the right case. I am
12 sure there is a right case out there somewhere that says
13 what I said. I don't work with you, and I don't work
14 for you. You are not my associate, so I am pleased that
15 Mr. [REDACTED] is here, because you are his associate, and I
16 don't know what he wants to do, if anything, about what
17 I have shared.

18 But what I wanted to know is, Mr. [REDACTED] the
19 two cases that I mentioned are not the only two cases
20 that your associate cited for the Court that she either
21 was so incompetent that she could not keep the facts and
22 holdings straight, or she was deliberately unethical and
23 attempted to mislead the Court as to what the law was.

24 The Code of Judicial Ethics requires me to take
25 corrective actions when attorneys are not being candid

1 to the Court. One of the steps that the Court can take
2 is to report the offending attorney to the California
3 bar.

4 And so what I contemplated for the last two days
5 since I first got the moving papers, what I
6 re-contemplated once I got a copy of the 454 page
7 document, because I wanted to make sure those same cases
8 were cited in the version that you acknowledged you
9 wanted the Court to know with the same language in
10 support of those cases, so it was not like the copy that
11 I got originally was a draft, and you later corrected
12 the facts or the law, you merely repeated those sections
13 over, is whether I need to report you to the bar;
14 because your blatant, flagrant, disregard for accuracy
15 is troubling to the Court.

16 But I recognize a couple things. You are a new
17 attorney recently licensed.

18 You are in a new position at a new firm, and you
19 were given the unenviable position of arguing to correct
20 a mistake that was made by somebody other than you.

21 I told you that when I first met you on the case
22 when you asked for the continuance in March, and we
23 continued the trial to May, I get it; it is not your
24 fault, but I did not hire you. I did not put you in
25 that position, but I extended some grace and continued

1 the trial 60 days until May.

2 Your declaration in support of your application
3 says you relied on a minute order that was prepared by
4 the Court despite the fact that you were in court in
5 person when you made the request as part of your motion
6 to continue; that I was making it clear I was not
7 continuing any other dates other than the trial
8 readiness and the trial, not the expert designations,
9 and not discovery.

10 I am not sure why you would write in your
11 declaration, you would rely on a document that you knew
12 flew in the face of what I had said to you orally from
13 the bench.

14 But we corrected that a couple weeks later when
15 plaintiff brought his ex parte request to correct the
16 minutes. And I made it clear at that time
17 notwithstanding your efforts to try to correct Mr.
18 [REDACTED] potential error, and I still don't know that it
19 is an error, I just know he did not designate the
20 experts in January as he was ordered to do by the Court.

21 So I told you at that point when you filed your
22 subsequent request, that your declaration alone wasn't
23 enough.

24 Wasn't surprised to see your ex parte
25 application this week. I was not surprised to see that

1 there was a declaration from Mr. [REDACTED] I am not going
2 to spend anymore time about what is in his declaration
3 other than to say that there is nothing in his
4 declaration that amounts to excusable neglect on behalf
5 of Mr. [REDACTED] and his failure to designate experts.

6 So here's what I want you to know, Ms. [REDACTED]
7 You are establishing a reputation with this Court that
8 is as unfavorable as any attorney that has ever been in
9 front of me. You are as close as I hope I ever need to
10 get to reporting someone to the bar.

11 But the law allows me to have other remedies as
12 corrective action. So one of the things I recognize I
13 could do is ask you to rewrite it, give me the correct
14 cites that you meant to give me. I am not going to do
15 that.

16 I am going to strike your ex parte pleadings in
17 their entirety. I am going to deny your request for
18 late designations with experts with prejudice, giving me
19 inaccurate information that was provided to the Court in
20 support of this application. So the defense's motion
21 for late designation of experts is denied.

22 The motion that is currently calendared --

23 Let me just say this aside. I am a stickler to
24 details, so when you write in your moving papers that
25 you have got a motion set for June 16th, there is no

1 such date. Your motion is June 13th. That motion will
2 go off calendar as part of the sanction in this case.

3 Plaintiff also has a request for sanctions
4 because he believes that this motion wasn't properly
5 captioned, served, or presented to the Court. I agree.

6 So I am going to award the sanctions in the
7 amount that he has requested in his opposition in the
8 amount of \$2,250. That is going to be paid by the firm
9 of [REDACTED] and [REDACTED] not their client. Payment to be
10 made to Mr. [REDACTED] firm within 14 days.

11 What I hope, Ms. [REDACTED] is whatever happened
12 that lead you to present the two sets of documents that
13 you presented to this Court in support of your ex parte
14 application doesn't ever happen again. If that means
15 that you have to tell people in your firm I can't do
16 that work, because I don't know how to do it right, then
17 tell them you can't do the work.

18 Because if you do this work again, and
19 especially if you do it in front of this Court, you are
20 guaranteed to receive a notice from the California state
21 bar, and you will know, even those notices come out
22 anonymously, they came from Judge Washington, because I
23 can't make it any clearer to you than I have tried to in
24 the hour plus that we spent on this case this morning
25 that what you did in this case was unacceptable.

1 So I don't have the time or the inclination to
2 go through all the other cases that I found where you
3 misstate the law, you misstate the holdings, misstate
4 the facts, but it is not two, it is at least four times
5 that many, because I stopped at eight. I could not
6 stomach looking for more examples of inaccurate
7 information. It was much more likely that what I would
8 find from you would be inaccurate than it was that it
9 would be accurate. And that's why I was concerned that
10 you had used some technology to assist you, because at
11 least that would be an explanation.

12 Judge, it is not me. It is that darn Artificial
13 Intelligence. They told me these were good cases and
14 good sites, and they are actual cases; I could actually
15 find them in the books.

16 But the sentences that follow the cites are
17 inaccurate. And those were either put there by you
18 typing them yourself, or put there by somebody else, and
19 you affirming them by your signature, or put there by
20 technology.

21 I will accept your representation that that's
22 all you. I will accept your position that that's an
23 example of your work product. Accept my presentation
24 that you don't ever want to do that in front of me
25 again.

1 I don't have the ability to suspend your
2 license, but the state bar does. And trust and believe,
3 my letter to them will be in full support of that if you
4 do that after today.

5 So with that, we are going to confirm our
6 further court dates on this case.

7 MR. [REDACTED] Your Honor?

8 THE COURT: Mr. [REDACTED]

9 MR. [REDACTED] May I be heard very briefly, your
10 Honor?

11 THE COURT: Do you want to?

12 MR. [REDACTED] I am nervous but yes, your Honor.
13 Please.

14 THE COURT: If I were sitting where you were
15 sitting, I would be nervous, too. I have been clear
16 about my position. I am not sure what you hope to say
17 that is going to make me change my feelings about how
18 your associate has handled her work thus far.

19 Go ahead.

20 MR. [REDACTED] Yes. The ex parte requested three
21 forms of relief. I understand the second request is
22 absolutely denied. I am accepting that.

23 The first request was for ex parte relief under
24 California Rules of Court 3.133(c)(6) and (c)(7), and
25 then the last form of relief that is requested is at

1 California Code of Civil Procedure 2024.050.

2 THE COURT: Correct.

3 MR. [REDACTED] I heard the Court, and I listened
4 very carefully, and I understand that the request for
5 late designation is denied.

6 I think that's all the case law cites that were
7 included; however, there is still the matter of the
8 request for relief under CCP 3.1332(c)(6) and (7) as
9 well as again CCP 202.050 as there is independent
10 information that supports relief under those sections.

11 THE COURT: Right.

12 So what I was trying to make clear is I was
13 striking the pleadings as the corrective act.

14 If you want me to go through and say as to each
15 of the separate requests I am denying each request, I
16 will do that.

17 And I am doing that because what I said was it
18 wasn't just those two cases.

19 What I said was I don't have the time or the
20 inclination to list on the record all the cases that I
21 found that your associate misrepresented to the Court
22 the facts are the holding.

23 But if you are requesting that what I do instead
24 is, judge, if you are going to deny all three requests,
25 and we are making a record, I want you to go through

1 each of the requests and tell me which cases you are
2 relying on that you are allowing me to strike the entire
3 application, because my associate was either incompetent
4 or unethical, I am happy to make that record for you.

5 I was trying not to make a more detailed record
6 in support of your associate's poor pleading, but if you
7 want me to make a more detailed record, I am happy to do
8 that.

9 Is that what you are asking me to do?

10 MR. [REDACTED] No, I am not.

11 THE COURT: Thank you.

12 Anything else, Mr. [REDACTED]

13 MR. [REDACTED] No.

14 THE COURT: We will confirm the future dates.
15 We have trial readiness April 25th, 10:15 back in this
16 department, jury trial May 16th at 8:30 back in this
17 department.

18 Mr. [REDACTED] anything else on behalf of the
19 defense?

20 MR. [REDACTED] No, your Honor.

21 THE COURT: Notice waived?

22 MR. [REDACTED] Notice waived.

23 THE COURT: Mr. [REDACTED] anything else on behalf
24 of plaintiff?

25 MR. [REDACTED] Because we are making a record

1 here, your Honor, I would just like -- and in light of
2 Mr. [REDACTED] last comment about the new matter, and
3 because the materials cited in the brief that you and I
4 saw on the ROA did not include exhibits, it is my
5 understanding that the exhibits are not a part of the
6 record, and I just want to be on the record saying the
7 contention that we withheld critical medical history, or
8 that my client did, is completely unsupported by the
9 deposition testimony and the discovery responses we
10 served are as inaccurate as everything else as the Court
11 has described here today.

12 So I just want that on the record, because I
13 know those exhibits are not part of the registrar of
14 actions that we dispute, the contention with force that
15 we have concealed anything that our client has.

16 With that, I would rest, and notice is waived.

17 THE COURT: Thank you all.

18 With that, we will be in recess.

19 Thank you. We are off the record.

20 (Proceedings concluded.)
21
22
23
24
25

REPORTER'S CERTIFICATE

--o0o--

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, [REDACTED], a Certified Shorthand Reporter
and Official Court Reporter Pro Tempore do hereby
certify:

On April 17, 2025, I took in Stenotype a true and
accurate record of the proceedings had.

I further certify that the foregoing transcript,
pages 1 through 57 is a true and accurate record of my
Stenotype notes thereof, as taken by me.

DATED: [REDACTED], CALIFORNIA, MAY 8, 2025

[REDACTED] [REDACTED] CSR NO. 5096

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Outline:

Standing Firm and Addressing Unethical Requests

Ryan Johnson, *Everson, Whitney, Everson, and Brehm, S.C.*

- Scenario One:

- Chicken or the egg – A senior partner requests that an associate do research on a trivial matter that has been bugging the partner personally: the origin of the phrase, which came first, the chicken or the egg? The partner then instructs the associate to fold this time into another research task and charge a client for the time spent researching.

- Scenario One:

- What are the ethical concerns the associate faces?

- How should the associate respond and/or what next steps should be taken?

- Scenario One:

- 20:1.2 Scope of Representation

- 20:1.5 Fees

- Scenario Two:

- An associate switches firms. At the subsequent firm, the associate is assigned to a case by a partner. The associate is familiar with the case as the associate's former firm represents another party in the matter. Prior to moving to the new firm, the associate drafted pleadings and motions, which totaled approximately 25 billable hours.

- Scenario Two:

- What are the ethical concerns the associate faces?

- How should the associate respond and/or what next steps should be taken?

- Scenario Two:

- 20:1.9 Duties to Former Clients

- Scenario Three:

- An associate is asked to cover a matter for a senior attorney at the firm. Given that the associate is covering the matter, another senior attorney requests that the associate cover on behalf of that partner's client as well. Both senior attorneys tell the associate to bill on

the matter. Note – any conflict with partners representing litigants in this case have been waived.

- Scenario Three:

- What are the ethical concerns the associate faces?

- How should the associate respond and/or what next steps should be taken?

- Scenario Three:

- 20:1.5 Fees

- Scenario Four:

- A client wasn't getting signed discovery back despite repeated letters. A partner recommends the associate send a letter telling them if they didn't cooperate, the insurance company may deny them coverage.

- Scenario Four:

- What are the ethical concerns the associate faces?

- How should the associate respond and/or what next steps should be taken?

- Scenario Four:

- 20:1.7 Conflicts of interest current clients

- Recall the "tripartite" relationship and creating a conflict of interest and advising the insurance company of the issues

-

- Scenario Five:

- A client insists that a case not get settled because they believe they were not at fault, the plaintiff is lying, etc. A partner recommends ignoring it and doing whatever the associate thinks is best.

- Scenario Five:

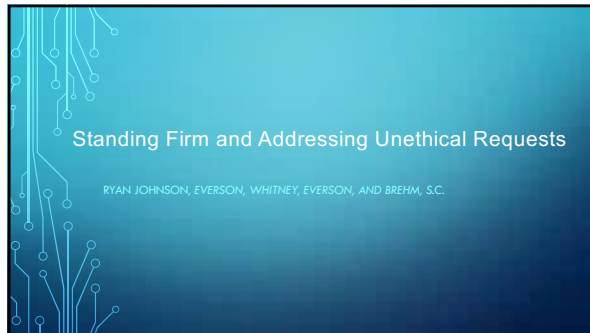
- What are the ethical concerns the associate faces?

- How should the associate respond and/or what next steps should be taken?

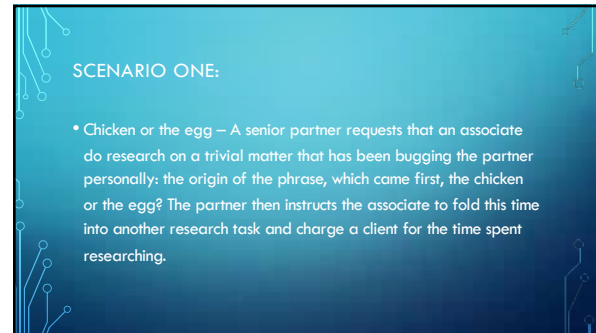
- Scenario Five:

- 20:1.7 Conflicts of interest current clients

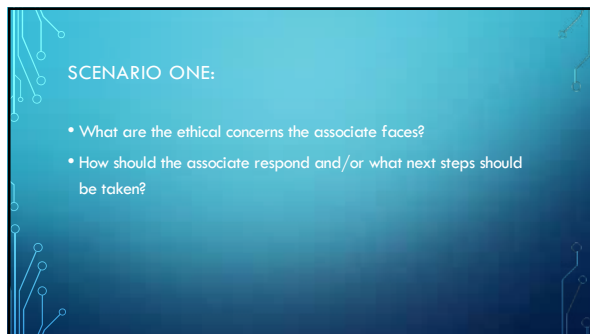
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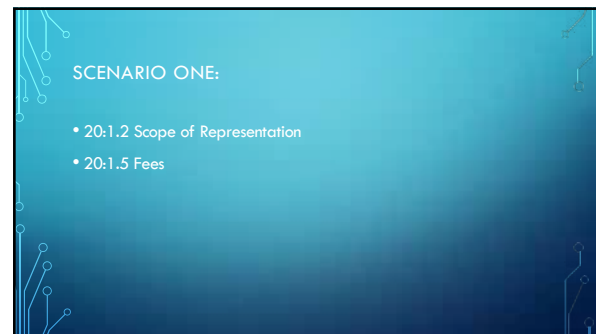
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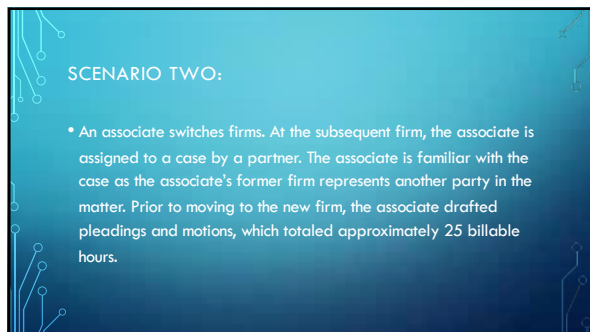
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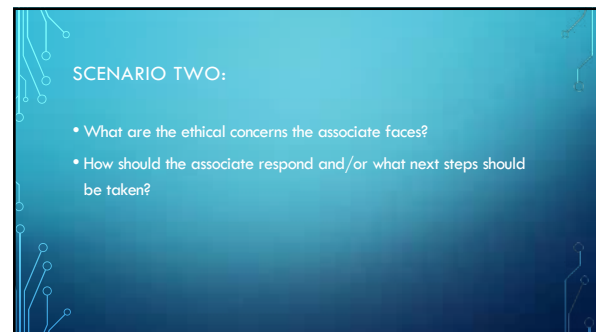
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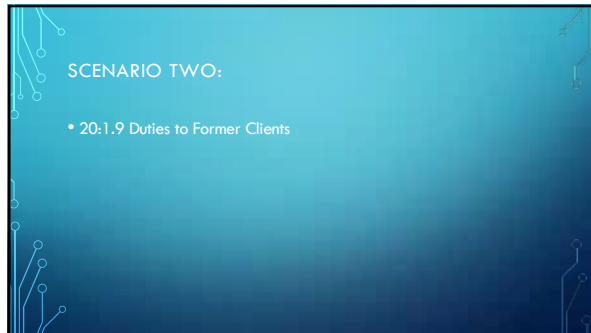


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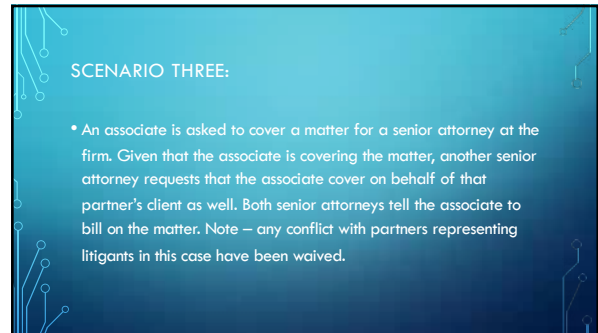
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SCENARIO TWO:

- 20:1.9 Duties to Former Clients

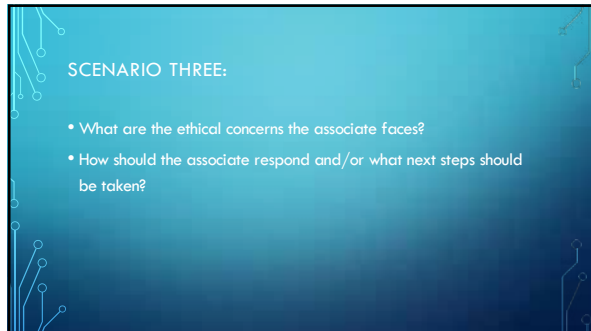
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SCENARIO THREE:

- An associate is asked to cover a matter for a senior attorney at the firm. Given that the associate is covering the matter, another senior attorney requests that the associate cover on behalf of that partner's client as well. Both senior attorneys tell the associate to bill on the matter. Note – any conflict with partners representing litigants in this case have been waived.

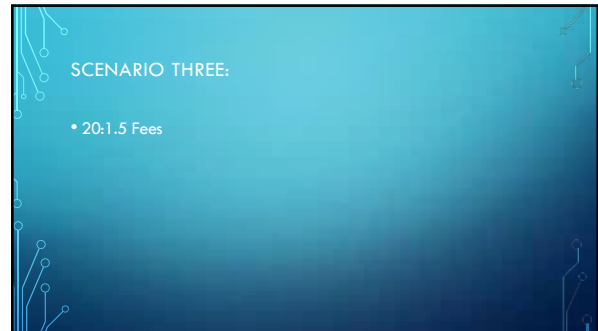
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SCENARIO THREE:

- What are the ethical concerns the associate faces?
- How should the associate respond and/or what next steps should be taken?

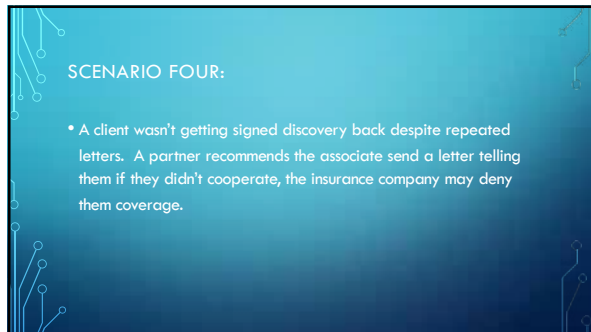
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SCENARIO THREE:

- 20:1.5 Fees

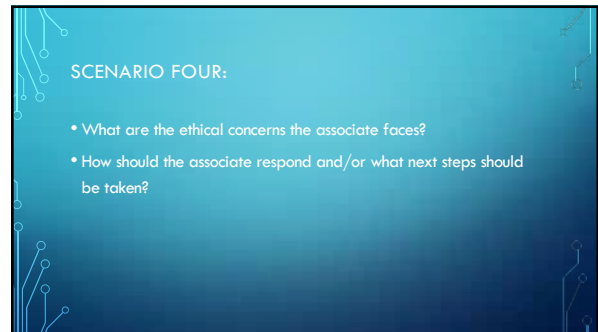
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SCENARIO FOUR:

- A client wasn't getting signed discovery back despite repeated letters. A partner recommends the associate send a letter telling them if they didn't cooperate, the insurance company may deny them coverage.

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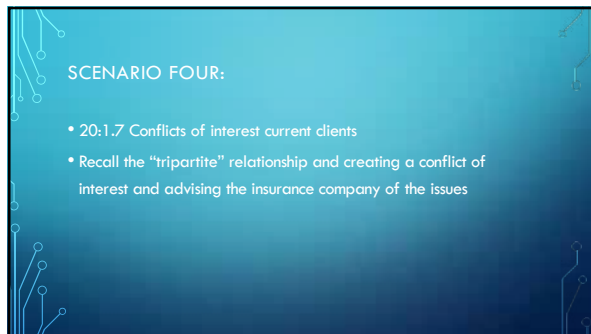


SCENARIO FOUR:

- What are the ethical concerns the associate faces?
- How should the associate respond and/or what next steps should be taken?

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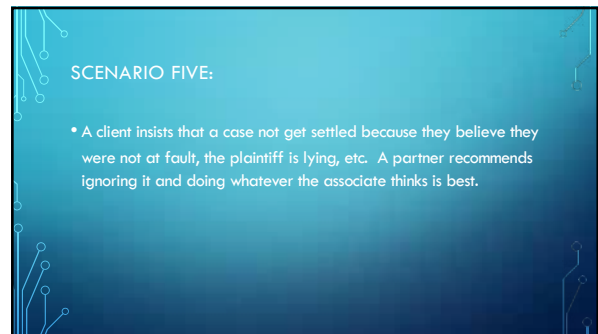
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SCENARIO FOUR:

- 20:1.7 Conflicts of interest current clients
- Recall the "tripartite" relationship and creating a conflict of interest and advising the insurance company of the issues

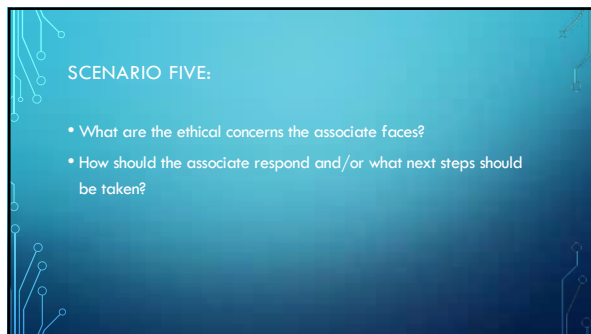
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SCENARIO FIVE:

- A client insists that a case not get settled because they believe they were not at fault, the plaintiff is lying, etc. A partner recommends ignoring it and doing whatever the associate thinks is best.

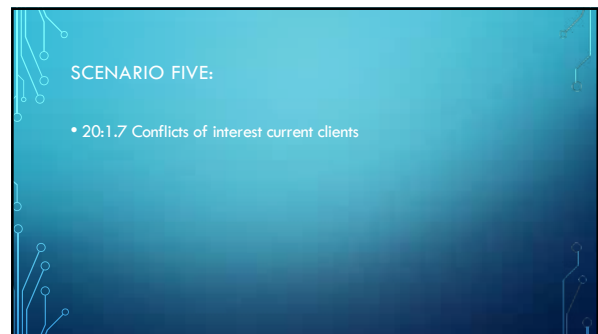
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SCENARIO FIVE:

- What are the ethical concerns the associate faces?
- How should the associate respond and/or what next steps should be taken?

15



SCENARIO FIVE:

- 20:1.7 Conflicts of interest current clients

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