

THE RISK MANAGER

Winter 2000



HOLIDAY MESSAGE

It goes without saying that year 2000 began with new challenges and multiple uncertainties to include Y2K. As with past years, Florida Lawyers Mutual Insurance Company addressed the issues and continued to provide a stable market for practicing lawyers to secure their professional liability protection.

As we reflect on the year 2000, Florida Lawyers Mutual Insurance Company takes great pride in its growth and achievements, which would not have been possible without your continued loyalty and support.

As the endorsed carrier of The Florida Bar, the staff, officers and directors of Florida Lawyers Mutual Insurance Company take this opportunity to say, "Thanks" and extend our best wishes to you and yours for a most joyous holiday season and prosperous new year.

Aubrey G. Smith
Executive Vice President



SMALL TOWN, SMALL PRACTICE, BIG PRICE



In most communities, individuals think that if you have a law degree, you know everything about every area of the law. If you grow up in a small community and return to practice law, the hometown folks are no exception. Their concerns range from families fighting over landlines to complicated probate matters. When they call, it is human nature to want to be of help to them. After all, it is either people who watched you grow up, or people with whom you attended school. They expect you to help them.

When a family friend's daughter showed up on my doorstep and told me she had been fired because she was pregnant, I immediately thought, "there may be a case here." The more she talked the better the case sounded. However, in the back of my mind, I could hear those words that so many seasoned lawyers caution with, "A case always looks best when you first

see it. It never gets better." Her case was no exception by the time a preliminary investigation had been completed.

Even though I had never taken a case like this before, I agreed to take this case on the basis of employment discrimination. From the beginning, I knew that I needed help. I wrote an attorney experienced in this area of law requesting his involvement. He was unable to get involved. After a few other dead ends, I called an attorney friend for some guidance. He agreed to review and help me along, but not become officially involved.

Early in the case we made an unannounced visit to the employer's office and asked to review my client's employee records. Of course, we were denied access. For a year, I talked to other employees, corresponded with the employer's corporate attorney, reviewed records, had countless meetings with the client, watched

the client's pregnancy come and go with complications, prepared the complaint, and so forth and so on. There was not a week that went by that some type of work was not done on the case.

Before the complaint was filed, I checked to determine what administrative hoops we had to go through before filing the complaint, if any. I talked with the Division of Human Rights in Tallahassee and they advised that a formal complaint had to be filed with their office so that they could conduct an investigation. The forms were sent over to our office. We completed and prepared them for the client's signature. Because my office had been informed on one occasion that the complaint had to be hand delivered to the Miami office, a call was placed to verify this. While on the phone, the date of the client's job termination was discussed. It was at that point that the Human Rights office advised that it was, in fact, too late to file a complaint with their office, and that we would have to go directly through the courts.

Panic set in. "If an administrative investigation is required, how can we directly file with the courts. However, with so many loop holes in the justice system, there must be another way to approach this." After several sleepless nights, horrors of disbarment, endless research and conversations with other attorneys and brief rays of hope, I determined that there was no solution. The time frame for filing with the Human Rights office had expired and therefore, filing a

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complaint in circuit court was barred. The feelings of sheer terror and anxiety cannot be put into words. It doesn't leave your mind for a moment for days. When you finally get to the point of not thinking about it every waking second, then you have to deal with the nauseating feeling when the thoughts return. And they return frequently. Somehow, I kept a poker face at the office and attempted to proceed with business as usual.

When I made the harsh and dreaded realization that there was no way to correct the problem, I called Florida Lawyers Mutual to report the potential claim. The anticipation of this call simply added to the awful situation. I had already gone through nearly a week of the self-humiliation and fear of what was to come. Now I had to call the insurance company and get raked over the coals for making such a ridiculous mistake, be informed that they were not going to cover the claim, and probably lose future coverage. When I finally dialed the number, my heart was in my throat once more. Upon answering, the receptionist indicated that I would need to speak with one of the claims specialists. She put me through to David Wilder. To my amazement, he was very calm and matter-of-fact about the entire situation. We went through the facts of the case, what my thoughts were on the case, and the likelihood that the client would file a claim.

After consulting with Mr. Wilder and inquiring as to what I should say or not say as a potential defendant in a case, the inevitable meeting with the client was scheduled. The “you may have a claim” letter was prepared with the assistance of Mr. Wilder. The client was then scheduled to come into the office. I approached the client in a very straightforward manner and explained the problem. The meeting lasted for about an hour and when the client left, I felt certain that she was going to file a claim. At the client's request, a meeting was scheduled with Mr. Wilder at her home.

Negotiations ensued and lasted for about one week. I anticipated threats from the client and her family to include reports to The Florida Bar, a lawsuit in a small town, shutting my doors, etc. Although this was difficult to go through, I never felt abandoned by Florida Lawyers Mutual. There was no question that they were on my side and went beyond the call of duty to protect me with the client and with the small community. I was in constant contact with Mr. Wilder, which helped my mental state tremendously while experiencing this ordeal.

From the beginning, Mr. Wilder emphasized that Florida Lawyers Mutual was not a cost of defense based company. Florida Lawyers Mutual realized the small town position I was in and went to great extremes to protect me with regard to the inevitable harm a public lawsuit would cause. After what seemed like months, a settlement

was finally reached, a confidentiality agreement signed and a check delivered.

I am sure that readers of this article think, “I would never let this happen.” How can someone make such an error. Just six months ago, I was one of those readers. My mistake was trying to help a family friend and taking a case that I should not have taken due to lack of experience in the area. Busy schedules, heavy caseloads and all the dilemmas that face today's lawyer help cause an error such as this. It is not always bad lawyering.

Due to my experience with Florida Lawyers Mutual Insurance Company, I would never consider changing my carrier. Both the company and Mr. Wilder helped make a horrible situation bearable. My reputation is in tact in my small community and that is worth everything, as all lawyers know. Although I do not recommend this type of legal education, the experience has made me a better attorney and somehow, I escaped with my dignity.

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