SETTING STANDARDS

Group teams with bar in third push for paralegal certification program

By Erika Strebel

More than 20 years ago, the Paralegal Association of Wisconsin started looking into voluntary certification for paralegals.

Decades later, and following the rejection of two similar proposals, the association has yet to make good on its original intentions. But a third attempt, now underway, may be gaining ground.

"It's a matter that the paralegal association has never let die," said Kathryn Bulleson, chair of the State Bar's committee on continuing legal education. "They have continued to work on it through all of these years using different mechanisms."

In the latest attempt to get standards in place, the State Bar's Board of Governors plans to hear a detailed proposal in April concerning what bar-regulated voluntary certification for paralegals might eventually look like. Action could be taken in June at the earliest.

Setting the bar

John Goudre, professional responsibility and development committee coordinator for the Paralegal Association of Wisconsin and a paralegal at Gimbels Peltz Guern & Brown, has paid close attention to the discussion over the past few decades.

What association officials have wanted from the beginning, he said, has been a set of formal standards that a person must meet to carry the title of certified paralegal. The Paralegal Association of Wisconsin, a voluntary group, now has between 250 and 260 members, he said.

Even so, according to the state, there are 3,600 paralegals practicing in Wisconsin.

"You can hire anybody to be a paralegal," Goudre said. "You can call them a paralegal. You can pay them and put them to work as a paralegal. But there's no criteria as to who is qualified to be a paralegal."

Goudre acknowledged that despite those arguments, there are at least two hurdles that the proposal will have to overcome, Goudre acknowledged.

"There's still a certain degree of misperception on the part of attorneys that this is in some way authorizing paralegals to go out and practice law," he said. "It does not. It specifically requires that you work with the supervision of an attorney."

Then there is the notion that paralegals need not be regulated as long as lawyers are being held to the same standards.

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LESSONS LEARNED

LAWYERS OFFER THEIR BEST ADVICE FOR TRIALS

By Jessica Stephen
Special to the Wisconsin Law Journal

Don Mumm thought he had his first case in the bag.

"I had the unfortunate experience of getting a great grade in my trial practice class in law school," said Mumm, an attorney for 30 years and a former litigator who handled about 50 trials, including nine in his first year, before shifting to real estate and estate planning.

"I had a great opinion of myself. And, in my first trial, (opposing counsel) mopped the floor with me," said Mumm. "I thought I was better than this. And he said, 'You cannot be over prepared.'"

It was a lesson learned the hard way. But not all insights come from struggle.

Jason Abraham was lucky enough to turn what could have been a detriment into a source of strength at his first trial.

"As a young lawyer, the best piece of advice I had for my first trial was in jury selection to tell the jurors that it was in fact my first trial," said Abraham, a plaintiff's personal injury attorney, managing partner and vice president at Hupy and Abraham in Milwaukee.

Abraham said that admission bought him a little wiggle room.

"It allowed me, when I did make mistakes — and, inevitably, during your first trial you're going to make mistakes — for the jurors to chuckle and laugh," Abraham said.

There was, for instance, the time when he forgot to ask the judge for permission to present pictures to the jury.

"He chuckled and the jury all chuckled and, obviously, as a young lawyer you're terrified of making a mistake, but every-one knows what it's like to be at the beginning of their career, especially being a new lawyer with a trial a month out of law school," Mumm said.

So, 75 jury trials later, Abraham said he makes it a point to relay his experiences to new associates.

"You only have one chance to tell a jury it's your first trial, so take the opportunity."

The importance of seizing the opportunity is something that is definitely not lost on Kristen Scheuerman.

"I'm lucky enough to be at a firm with a lot of litigators," said Scheuerman, a partner at Hening Clark in Appleton, who has had nearly 10 cases in the last six years as an attorney. "As a young lawyer, if I didn't have my own files, I invited myself to second chair other cases. It's a good way to get in the courtroom."
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Once she got in front of a jury, Scheuerman said, she found that the best advice she had received was to be herself.

"You can do exactly what the best trial lawyer does, but it's not going to work if you're not true to yourself," she said. "You have to find a way to be authentic."

For Scheuerman, that's meant learning as much as she can about new technologies, which have generally proved an asset at trial.

"I wouldn't be comfortable in the courtroom without technology because it's wired into who I am," Scheuerman said.

One of her favorite devices is an iPad. She often uses one to scour depositions for contradictory testimony, which she can then present to the jury while also showing the initial statement at deposition.

"You put things right up in front of them, and the jury can see the lie," Scheuerman said. "They're not looking at you or the witness anymore. They're looking at the evidence."

Technology isn't without its pitfalls—a lesson, Scheuerman acknowledged, that she learned the hard way during a week-long case concerning premise liability.

The trial ended with a $1.8 million verdict. But things got a little shaky when a malfunctioning app left Scheuerman struggling to access exhibits.

"It was distracting," she admitted. "Fortunately, I was able to punt a little bit because I had some paper copies. I could quickly throw it up on a (projector) instead of the iPad. But the takeaway? I now go to court with two iPads."

And a portable Bluetooth printer. And extra hard drives. And paper copies.

She even goes to the courthouse the day before a trial to run through things with a paralegal.

"There is no such thing as over-prepared. You have to expect that, even if you are prepared, things will go wrong, because things will go wrong."

Kristen Scheuerman, Herrling Clark Law Firm partner

"There is no such thing as over-prepared. You have to expect that, even if you are prepared, things will go wrong, because things will go wrong."

One way to almost guarantee that things will go wrong is to underestimate a jury.

"You never know what those 12 people are thinking. And if you think you do, you're crazy," Abraham said.

It's a lesson he learned after polling jurors, who scolded him for rolling his eyes during a defense expert's testimony.

"Unbeknownst to me, the jurors were watching me," Abraham said.

In fact, they're watching everything—from what you wear to how you hold yourself at the table. But, Murn said, they're really paying attention to the details, especially the bad ones, which is why Murn doesn't even try to sugarcoat even the worst sets of facts.

"You never ever lie to a jury," said Murn, a partner at Axley Brynieson in Madison, who once admitted to a jury that a client who had sold a couple a house that leaked like a sieve was a liar.

"If you have bad facts, you let your jury know what your bad facts are," Murn said.

"I want to be the one telling the weaknesses in my case. I don't want them learning about them from the other side."

That isn't to say you have to tell them more than they need to know.

"Hit them hard, and be done," Abraham said. "There's a real tendency, sometimes, to say too much, ask too many questions, feel like you have to put on this big TV-style presentation. But when I see lawyers who do a really good job, they hit what they need to hit and they're done."

"It's a lesson that Abraham got to see the benefits of during a recent appearance before the Wisconsin Supreme Court — his first after nearly 25 years in practice — when he left unused a few of the five minutes he had for rebuttal.

"If you understand less is more, when you hit what you think is the best, that's what you want them to remember," Abraham said. "Why say something else that could make them forget?"

TAKE MY ADVICE

The best advice for preparing for trial?

Benjamin Wagner, a shareholder at Habush Habush & Rotter in Milwaukee and president-elect of the Wisconsin Association for Justice, shares his thoughts:

Be yourself, and be prepared.

"You need to know your case or know your case better than anyone," said Wagner, who has had at least 50 jury trials since 2003. "But the advice about being yourself is so important because to be persuasive you have to be believable; to be believable you have to be credible; and to be credible, believable and persuasive you have to be authentic, genuine and sincere. You can't be anyone but yourself."

Learn from your jury.

"I always make an attempt to talk to my jurors and see what was important in their decision-making process."

Work with your team.

"I've realized there's no downside to ever trying a case with a colleague, and I've started doing that consistently since 2010. You'd be ignoring valuable resources not to try a case with a talented partner."

Always ask.

"Never stop asking questions of your colleagues and people who have done it many times — and better than you. Hold onto your mentors and utilize the resources they provide. There's no better example."