



DuPage County Bar Association

Professional Responsibility Section
PRMCLE Meeting

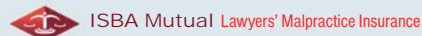
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Today's Claim Story

"But He Did Everything Right"

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Underlying Case: Divorce

- ▶ Insured represented husband in divorce
 - ▶ Married 25 years
 - ▶ Multi-million dollar estate
 - ▶ Wife claimed dissipation of marital assets
 - ▶ Both petitioned for fees



ISBA Mutual Lawyers' Malpractice Insurance

Underlying Case: Divorce

- ▶ Discovery
 - ▶ Husband's Comprehensive Financial Declaration did not include overseas funds
 - ▶ Husband's financial records subpoenaed and money was sent overseas
- ▶ Result
 - ▶ Wife awarded 50% of estate
 - ▶ Assets sent overseas included in value of estate
 - ▶ Wife won on fee petition – husband had to pay fees



ISBA Mutual Lawyers' Malpractice Insurance

Malpractice Suit and Amendments

Allegation	Court Decision
Original suit: Legal Malpractice & Psychological Injury	Dismissed
Three amended complaints	Dismissed
Insured failed to follow plaintiff request to pay fees from escrow account	Insured acted properly in refusing
Insured failed to assert that funds sent overseas were not marital property	Both marital and nonmarital property must be declared; court determined that funds sent overseas were marital property
Excessive fees	Already resolved otherwise in underlying case
Fraud	No fraud committed

**Malpractice Suit and Appeal
Dismissed with Prejudice**



ISBA Mutual Lawyers' Malpractice Insurance

End Result

Insured won!!!!!!!!!!!!*

* Cost to defend \$46,000



ISBA Mutual Lawyers' Malpractice Insurance

BUT HE DID EVERYTHING RIGHT



ISBA Mutual Lawyers' Malpractice Insurance

Client Screening

- ▶ Insured had the expertise: family law & large estates
- ▶ Insured had the time: first lawyer on case
- ▶ Evaluated client
 - ▶ Had client complete Comprehensive Financial Declaration
 - ▶ Could not have known that client was withholding information until subpoena by wife's attorney



ISBA Mutual Lawyers' Malpractice Insurance

Setting Expectations

- ▶ Fee Agreement / Engagement Letter
 - ▶ Detailed description of work to be performed
 - ▶ Advised client of his rights and responsibilities (Rule 508)
 - ▶ Advised client of the law as relates to his case
 - ▶ Detailed description of fee arrangement



ISBA Mutual Lawyers' Malpractice Insurance

Client Relations

- ▶ Kept client informed
- ▶ Advised client of weakness in case
- ▶ Remained honest and ethical even when client requested otherwise
- ▶ Timely, detailed billing – Paragraph Billing
- ▶ Document, Document, Document



ISBA Mutual Lawyers' Malpractice Insurance

The Takeaway

- ▶ You can do everything right
 - ▶ Client screening
 - ▶ Setting expectations
 - ▶ Client relations
- ▶ But you still need insurance
 - ▶ Nuisance suits exist
 - ▶ Cost of defense in time and money



ISBA Mutual Lawyers' Malpractice Insurance

What Does ISBA Mutual Do?

- ▶ Indemnify against judgement/settlement
- ▶ Defend against suits
- ▶ Educate and support lawyers to elevate the practice of law
- ▶ Provide support and education through bar association sponsorships, ISBA Mutual free Lunch and Learn CLEs and much more



ISBA Mutual Lawyers' Malpractice Insurance

Visit www.isbamutual.com/dcbaguide to download *Fundamentals of Loss Prevention for Lawyers*

THANK YOU!

