



WSSFC 2022

**Practice Management Track –
Session 1**

**Staying Safe: De-Escalating
Difficult People and Securing
Your Office**

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About the Presenters...

Jessica M. Kramer is the managing partner of Kramer, Elkins & Watt, LLC in Madison. Jessica focuses her practice on commercial real estate with an emphasis on representing landlords, including manufactured home communities, throughout Wisconsin. She provides landlords with comprehensive representation, including drafting customized lease packages, prosecuting evictions, defending administrative actions such as fair housing complaints, and providing day to day advice. Jessica regularly litigates landlord-tenant matters, employment matters, and business disputes and has a growing appellate practice. Jessica prides herself on being well prepared and organized while providing clients with the balance of appropriately aggressive advocacy they desire and the practical advice they need. When not at the office, Jessica enjoys cooking and attending live sporting events, especially football and basketball cheering on her beloved Wisconsin teams.

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Staying Safe: De-Escalating Difficult People and Protecting Yourself

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- I. **Difficult People.** As lawyers, we inevitably deal with a number of difficult people at one time or another. We'll touch on interactions with the following, and discuss how to keep yourself safe in these various interactions.
 - a. Clients
 - b. Potential Clients
 - c. Opposing Parties
 - d. Opposing Counsel
 - e. Client's Family and Significant Others

- II. **Safety Concerns.** When and where might safety be a concern? Be mindful of when and where you might interact with a client or another individual, in the course of your work, that might give rise to an unsafe or uncomfortable situation.
 - a. In the Office
 - b. At/Near Court
 - c. Other Locations (e.g., out in public, outside the context of work, which is more likely in smaller communities)

- III. **Horror Stories.** No CLE program is complete without "war" or "horror" stories. We'll share some situations in which we have found ourselves and ways those experiences have shaped our approaches to being on alert and keeping ourselves and our staff safe.

- IV. **Practical Tips & Considerations.** There are a number of factors and practical considerations that come into play when prioritizing safety and, if necessary, deescalating a situation.
- a. Geographic Location & Size of Community
 - b. Office Setup (in person meetings, walk-ins)
 - c. Gender
 - d. Practice Area
 - e. Traits of the Person(s) Giving Cause For Concern
 - f. Telephone Communications
 - g. Declining Representation
- V. **Physical Safety.** Though it may be rare, it is important to be prepared to protect yourself, physically, if needed. Mr. Mbow will provide tips on maintaining physical safety, generally and in a typical meeting, and we will perform a brief self-defense demonstration.
- a. Tips on maintaining physical safety
 - b. Demonstrations
 - i. Meeting set-up
 - ii. Self-defense demonstration
- VI. Ethical Considerations
- a. Declining Or Terminating Representation
 - i. **SCR 20:1:16**
 - 1. Lawyer *must* not represent if:
 - a. Representation will result in violation of rules of professional conduct or other law
 - b. Lawyer's physical/mental condition materially impairs ability to represent
 - c. If discharged
 - 2. Lawyer *may* withdraw if:
 - a. Withdrawal won't have materially adverse effect on clients
 - b. Client persists in a course of action involving lawyer's services that lawyer reasonably believes is criminal/fraudulent
 - c. Client uses lawyer's services to perpetrate a crime/fraud
 - d. Client insists upon action lawyer considers repugnant/fundamental disagreement
 - e. Client fails substantially to fulfill obligations to lawyer after reasonable warning that lawyer will withdraw if not fulfilled
 - f. Representation will result in unreasonable financial burden on lawyer or has been rendered unreasonably difficult by the client

- g. Other good cause
- 3. Lawyer must comply with rules/law re: giving notice to/getting permission for withdrawal from the court. Lawyer must continue representation if ordered by court. Lawyer must take reasonably practicable steps to protect client's interest after termination of representation
- ii. **SCR 20:1.18**
 - 1. Anyone who consults regarding representation is a prospective client.
 - 2. Even when no client-lawyer relationship ensues, cannot use or reveal information learned in the consultation, except as SCR 20:1.9 would permit
 - 3. Cannot subsequently represent someone adverse to potential client if information obtained in consultation is adverse to potential client's interests.
- iii. **Accepting Appointments (SCR 20:6.2)**
 - 1. Lawyers shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as
 - a. Representation will like result in a violation of law or Rules of Professional Conduct
 - b. Representation will likely result in unreasonably financial burden
 - c. The client or cause is so repugnant as to likely impair the attorney client relationship/lawyer's ability to represent.
- b. Terminating representation based on assault or other crime against lawyer
 - i. **Duties to former client (SCR 20:1.9)**
 - 1. Can't represent another person in the same/substantially related matter if adverse interests unless former client waives conflict
 - 2. Can't use information relating to the representation to the disadvantage of the former client except as rules permit or when information is generally known
 - 3. Can't reveal information relating to the representation except as rules permit or require with respect to a client.
 - ii. **Confidentiality (SCR 20:1.6)**
 - 1. Lawyer shall not reveal information relating to the representation of a client unless client gives informed consent
 - 2. Lawyer may reveal information relating to representation if lawyer reasonably believes its necessary to
 - a. Prevent reasonably likely death/substantial bodily harm
 - b. Prevent/mitigate/rectify substantial injury to financial interest or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.

- c. To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client.
 - d. To comply with a law or court order
 - iii. Can an attorney whose client/former client physically assaulted them report it to the police?
 - iv. Office and file security: Lawyer must act competently to safeguard information relating to the representation of a client. (**SCR 20:1.6, ABA Comment 18**)
- c. Communications with unrepresented parties
 - i. **SCR 20:4.3**
 - 1. “In dealing on behalf of a client”, lawyer must inform the person of the lawyer’s role in the matter. If lawyer knows/reasonably should know that unrepresented person misunderstands the lawyer’s role in the matter, lawyer must reasonably try to correct misunderstanding.
 - 2. Can’t give legal advice other than to secure counsel if lawyers knows/reasonably should know that unrepresented party’s interests conflict with client.
- d. Reporting professional misconduct of other lawyers (**SCR 20:8.3**)
 - i. A lawyer who knows another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty/trustworthiness/fitness shall inform the appropriate professional authority.
 - ii. If the information is confidential under **SCR 20:1.6**, lawyer shall consult with client and abide by client’s wishes re disclosure.