



The wisdom of finding a local attorney

Question: I've heard that you are retiring. What risk management services will the American Counseling Association make available to members in the future? Also, can you give me suggestions on finding a local attorney I can turn to for help with practice-related issues?

Answer: Yes, after 30 delightful years of working with ACA members, I am retiring at the end of 2017 from the risk management consultation service. However, for the near future, I will continue to write this column. Additionally, ACA has some exciting new products to help members manage their practices. These products are explained below, along with suggestions on finding a local attorney.

Under the direction of John Duggan, manager of professional development, ACA has an exciting new professionally filmed webinar that will deal with ethics, risk management and professional practice issues. Also, you may wish to consider two ACA publications designed specifically to help counselors with ethical, legal and risk management issues:

- ❖ *Ethics Desk Reference for Counselors*, second edition (2014), by Jeffrey E. Barnett and W. Brad Johnson
- ❖ *The Counselor and the Law: A Guide to Legal and Ethical Practice*, seventh edition (2015), by Anne Marie “Nancy” Wheeler and Burt Bertram

Both titles are available through ACA's online bookstore at counseling.org/publications/bookstore.

You are wise to look for a local attorney now, *before* you have an urgent situation. If you are in private practice, your personal attorney in your own state can

provide opinions on various state laws. For example, if you wish to find out whether your state's child abuse law has been interpreted to include mandatory reporting of past abuse when the victim is now an adult, you may need to consult a local health care attorney. If you are being threatened with a lawsuit from a prior employer and want advice on whether the restrictive covenant (noncompete clause) in your contract is enforceable, you may need to obtain advice from a local employment attorney. If you are employed by a school or agency and a legal issue arises, you may wish to ask your supervisor whether legal counsel may be available to you through the school system or agency. If not, or if it is a situation in which a conflict exists between you and the institution for which you work, you should consider consulting a local attorney for specific legal advice. Cultivating *existing* relationships with qualified professionals (and not just attorneys but also accountants and perhaps even information technology/computer specialists) will help in the event that you run into a serious problem.

In trying to find an attorney, I would suggest that you speak with trusted colleagues who are mental health professionals because they may have past experiences with local attorneys. If you personally know attorneys in your town or city, ask whether they might be able to provide you with referrals to health care attorneys or lawyers with other specialized areas of experience, depending on the matter.

In addition, online resources and directories such as martindale.com and findlaw.com may be useful in locating

attorneys by geographic location and type of law practice (e.g., health care law or medical malpractice defense). It can also help to use these websites to cross-reference personal referrals and suggestions from colleagues. Generally, it is not a good idea to use a relative who practices law in a nonrelated field such as real estate law, just as you would not go to an orthopedic surgeon after experiencing an episode of cardiac arrest.

If you have been served with an actual summons and complaint, notice of intent to sue, licensure board complaint, subpoena or other legal document, you should promptly call your professional liability insurance company and inquire whether it will assign a local attorney to you. This would be considered a claim, but some or all of the attorney's fees might be borne by the insurance company. Furthermore, if you are on notice of an incident that is likely to lead to a lawsuit or complaint, you are likely obligated by your policy to call your insurance company immediately. Keep your insurance policy in an accessible location and become familiar with the policy language that covers what incidents you must report and what time frames may apply. ❖

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Upcoming ACA webinar, Jan. 17, with Anne Marie “Nancy” Wheeler: “Counselor Risk Management: What You Didn’t Learn in Grad School That Could Lead to a Lawsuit or Licensure Board Complaint”