

### **Thoughts on the Affidavit of Merit in the legal-malpractice context**

- Not like the medical-malpractice context
- Defense attorneys will try to challenge the sufficiency and argue your expert does not have the right qualifications or background, which is irrelevant to the question of the sufficiency of an AOM in the legal-mal context-as long as you push back judges will go with you.

### **The RPC's and Case Law are your Rules of the Road**

- In supporting breach, expert should always tie in the conduct to an applicable RPC, standard set forth in caselaw, or treatise if applicable. The expert's own experience can be a fallback, but this should be last resort, and only if strongly qualified
- Use Baxt v. Lilioa in your jury charges - RPC's can be used as evidence of the applicable standard of care
- Show the jury the rulebook - lawyers have rules they need to follow too, and should be held responsible when they fail to abide by them.

### **Surviving the Summary Judgment Motion**

- Expert's qualifications as to the specific practice area are vital to surviving the Defendant's summary judgment motion.
- Judges use the net opinion issue regarding expert's qualifications as a back door to granting summary judgment
- Case within a case or expert testimony - unless the Defendant makes a motion, the manner in which you establish causation is always the plaintiff's decision - but you do so at your own risk when relying on expert testimony - but it can be done.

### **Working with your expert and the fight over causation**

- Need to determine early how you are going to establish causation, and your damages. You will generally need an expert as to the malpractice and an expert as to the damages.
- You don't always need to retry the underlying case
- But make sure your expert has the right experience and is not simply second-guessing the conduct of the attorney - tie into hard and fast standards of conduct - rules - that the defendant violated and substantially contributed to the client's bad result,