

Deadman's Statute Repealed by the Wisconsin Supreme Court

Amundsen Davis Legal Update
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The Deadman's Statute in Wisconsin is now, well, dead. The confusing and sporadically enforced law was repealed by the Wisconsin Supreme Court earlier this month. The law formerly known as the Deadman's Statute basically prevented an interested person from testifying about conversations they had with a deceased person or incompetent person in any legal proceeding. This change comes at a particularly interesting time, as "Great Transfer" in wealth is commencing (and will continue for several decades), with baby boomers transferring roughly \$30 trillion in assets to their Gen X and millennial children.

The classic scenario where this arose was in will contests. Dad dies, his will gets probated, and the family finds out that everyone's least favorite son has been disinherited. Under the defunct Dead Man's Statute, the disenfranchised and disinherited family member would have been barred from testifying about conversations with the deceased father, if those conversations would help the disinherited son advance his position that the will was invalid. The longstanding principle behind this statute was that it prevented fraudulent claims about conversations with now-dead people, which of course could not be subjected to verification.

Starting July 1, 2017, this "witness competency" law is abolished, and practitioners will be unable to bar testimony interested persons had with the dead or incompetent person. Wisconsin joins the majority of jurisdictions in allowing this type of testimony on a go-forward basis. For currently pending cases, judges will have discretion whether to apply the Deadman's Statute.

The expected fallout of this change in the law is that it will lead to more probate and trust disputes. On the professional liability side, these probate and trust disputes may lead to more legal malpractice claims against estate planning lawyers drafting the instruments that are eventually challenged.

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