

JIM GINZKEY

Tireless and Zealous Med-mal Advocate, Appellate Lawyer

by Josh Weinhold

BLOOMINGTON—When James P. Ginzkey takes a case, three things are certain. He's going to be prepared. He's going to be organized. And he's going to know his client well.

"In our firm, you're going to get pretty much the same person dealing with your case from start to finish," the owner of Ginzkey Law Office in Bloomington says.

"There are firms where people feel like they never talk to the same person twice. We're going to know the client very well by the time we get to trial, and they're going to know us."

That level of personal contact is impressive for a successful medical-malpractice attorney who over a more than 35-year career has won major verdicts—including a \$23 million judgment in LaSalle County for a man who sustained brain damage while under anesthesia—and argued a case before the U.S. Supreme Court.

When Ginzkey handles litigation, the client can rest assured their claim will get vigorous, tireless advocacy.

"Jim refuses to accept something that he does not believe is fair," says Gregory A. Cerulo, a partner at Quinn, Johnston, Henderson, Pretorius & Cerulo in Peoria who has faced Ginzkey in cases for the past 30 years.

"It's not just zeal, which Jim has through and through. If he gets something that's unfair, he keeps plugging and plugging and plugging until he gets his way. He's a tenacious advocate."

DEVELOPING A ROADMAP

Ginzkey grew up in Bloomington, one of six children born to a father who worked in advertising and a stay-at-home mother. While growing up, he at one point considered being a lawyer. Instead, he earned a degree in finance at the University of Illinois, thinking he would end up with a career in banking.

He started working for a financial company in Decatur for a couple of years, but when his office was closed, he figured it was time to enhance his education. So, he enrolled at St. Mary's University School of Law in San Antonio, Texas.

While he envisioned practicing in trust,



wills and probate matters once he graduated, his first employers thought otherwise. After landing a job at Costigan & Wollrab P.C. in Bloomington, which needed a litigator, he soon was spending the bulk of his time on insurance defense matters—and handling trials immediately.

William F. Costigan proved to be a key mentor for Ginzkey, demonstrating both the determination and the strength it takes to be a quality advocate.

On one occasion, Ginzkey was assisting Costigan on a loan case where they were representing a wealthy, powerful local family. The client wanted to move the fight to the court of public opinion and conduct several media interviews to encumber sympathy or pressure the other side to back down. But Costigan insisted that no such thing would happen, and there was only one place for the dispute—the courtroom.

"I was so impressed that he stood up to the client," Ginzkey says. "I immediately thought, 'I hope I have the guts to do that in my practice.'"

Another key lesson that served Ginzkey well throughout his career was imparted by another defense attorney. Cases are best worked backwards, he learned—begin by studying the pattern jury instructions for the matter at hand, then develop evidence based on what the key determining factors for the jury will be.

"That basically is your roadmap in the development of evidence," he says.

His success in defending those smaller

motor vehicle cases caught the attention of his frequent opponents, Jerome Mirza & Associates. The plaintiff firm was transitioning into larger product liability and medical malpractice cases, and they saw value in adding someone who had been on the other side of the aisle.

In his three years there, Mirza proved to be another invaluable mentor, Ginzkey says, as he learned more about trial work from him than anywhere else. In particular, Mirza stressed the importance of the opening statement—and the need to not wait to develop the theme of a case until later in the trial.

"He would say, 'Go for the win right in your opening statement, so work very hard on that,'" Ginzkey says. "I learned to not make the mistake of thinking I would mention three things later and it would all come together. As the plaintiff's attorney, you have the first statement, so convince the jury right at the outset. I still think that's great advice."

ALWAYS PREPARED

Ginzkey later moved to another firm handling plaintiff-side litigation and then set off on his own in 2005. Now, he handles personal injury litigation nearly exclusively, with 60 to 70 percent being medical-malpractice cases on behalf of patients.

With med-mal cases being decidedly difficult to win, Ginzkey's secret to success is simple—diligence and preparation.

Before even accepting a case, he investigates the claim thoroughly, spending significant time combing through medical records,

determining what's available and what's missing, and researching medical journals and other scholarly sources to evaluate the likelihood of determining fault.

In his preparation, Ginzkey is largely looking for two things: causation and treatment that was below the traditional standard of care. Digging through Google Scholar citations and medical libraries is always an effort to draw a line between the actions of a doctor and the resulting harm to the patient.

With the defense likely to "try the empty chair"—in other words, claim someone else not involved in the litigation is at fault—and with the standard of care doctors owe patients in certain cases never in writing, Ginzkey relies on his tireless research methods to help establish when a patient has been harmed and what they are owed.

That research is of little value unless Ginzkey can call upon it at the precise moment he needs it. That's why organization is essential.

When he's about to depose a defendant doctor, for instance, he will spend hours upon hours preparing, marking up every exhibit—perhaps 20 or 30—so they're ready to go whenever he needs them.

"I've run into really brilliant courtroom attorneys who just didn't make it because they're flying by the seat of their pants," he says.

"They're very creative and think well on their feet. But if you're not organized, it's all for naught. I've seen great performances that just didn't have the right medical article or quick access to documents when cross-examining a witness, and it cost them."

Ginzkey's preparation serves him well in the courtroom, Cerulo says, but his understanding of human emotion pays great dividends, too. The only loss Cerulo ever sustained in a medical malpractice case was to Ginzkey, and Cerulo is convinced it was because of one specific moment in the trial.

When Ginzkey stood up to give his rebuttal, the first thing he said was that, after a week of trial, not once had the defendant doctor said he was sorry for what happened to the patient.

"I never made that mistake again—never again," Cerulo says. "Jim tipped the weight with that."

Albert E. Durkin, a partner at MDR Law LLC in Chicago who, like Ginzkey, has chaired the Illinois State Bar Association's Tort Law Section Council, says Ginzkey is extremely generous in sharing his litigation expertise and experience with his peers.

While some attorneys fear revealing tips and tricks will steer business elsewhere, Ginzkey is more than willing to help a colleague.

"If he's had a similar case or done a

deposition of a doctor before, he'll send me the transcript right away," Durkin says.

"It's a collegial situation, where people have confidence in their own abilities and aren't worried that sharing information will adversely affect them. He's not that kind of person—because he has confidence in himself and in his ability."

Ginzkey's team is small by choice. Limiting his volume of cases allows him to be more selective, taking only the ones he sees true potential in. With one associate attorney and two full-time and one part-time staff members, his clients are sure to get the personal touch from start to finish.

"That personal contact is absolutely essential," he says. "You're going to get personal attention from the same people throughout your case, so you develop a rapport with everyone."

“**What clearly sets him apart is his ability to use the trial testimony and instructions to create an appealable issue.**”

ZEALOUS ADVOCACY

Ginzkey's commitment to research, Cerulo says, makes him the consummate lawyer—and one able to match wits with any medical experts brought in to testify.

And he's incredibly personable and able to connect with clients, so much so that once he bonds with them, he's determined to see their case to the very end.

"What clearly sets him apart is his ability to use the trial testimony and instructions to create an appealable issue in case he has a negative outcome," Cerulo says. "Most attorneys think this will take care of itself, but Jim is well aware of the appropriate way to preserve a potential error on a judge's ruling during a case and give himself a second chance with a valid appeal."

And when the time comes to challenge a trial action in a court of review, Ginzkey will be handling the matter himself. He's taken dozens of cases to the Illinois appellate courts, argued in the Illinois Supreme Court four times, and in the 7th U.S. Circuit Court of Appeals three times.

"When you're there, you're much more aware of what is or is not reversible error at the trial level," he says. "I enjoy the argument—how well you can craft a legal argument that is cogent and makes sense in terms of delineating an area of law that will stand to benefit lots of people."

One recent appeal Ginzkey led did just that. In *Turner v. Orthopedic and Shoulder Center*, Ginzkey's client was injured in an auto accident that wasn't her fault. An orthopedic surgeon who performed a procedure on her refused to bill her at the agreed, discounted rate—\$6,800—dictated by her insurance company's contract with the doctor. Instead, the doctor filed a lien for the full price of his services—\$37,000.

It's the type of thing that happens more frequently than people realize, Ginzkey says, and he was determined to fight it. He argued the doctor was in breach of contract, but the trial court ruled against him, citing a 4th District Appellate Court ruling that said doctors were allowed to take such action.

Ginzkey appealed and successfully persuaded a three-judge 4th District panel—including the original ruling's author—to reverse that decision. The state high court denied the defense's appeal, cementing new precedent.

"I'm extremely proud of that decision," he says. "We now have a case where patients can say, 'I paid for my insurance, that entitled me to a discount'—as opposed to what they were allowing doctors to do. It's amazing."

It's a more storybook ending than Ginzkey's most notable case, one that began in the early 1990s with a patient's misdiagnosed appendicitis. Despite the patient's insistence, the doctor refused to order a particular scan.

During a break in a deposition with an expert witness, Ginzkey asked why there would have been such stubbornness on the part of the doctor. The deponent explained that HMOs, in an effort to minimize costs, offer an annual bonus to doctors if they keep testing services below a certain threshold.

Ginzkey alleged such a policy amounted to fraud. The case was removed to federal court, where the claim was thrown out. He won his appeal before the 7th Circuit, but in 2000, a unanimous U.S. Supreme Court ruled against Ginzkey—a decision that still irritates him.

"It was the best of times and the worst of times," he says. "I was grateful for the opportunity, and it was thrilling to be out there, but it was so disappointing."

While ultimately not a success, the case is one of the countless career examples of Ginzkey's ability to be persistent and relentless in his quest to help his clients.

"Jim becomes the champion of his client that has been put up to battle the champion on the other side—like in the Middle Ages," Cerulo says. "Jim is willing to put on that armor and grab that lance and kick that horse as frequently as he can. If he wins, he wins. If he doesn't win, he sets a great record for himself on appeal." ■