



MALPRACTICE ALERT!

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There's a crispness in the air that lets us know the seasons are changing. It's been a busy fall here at OBLIC. We moved our office within the 1650 Lake Shore building to new quarters in Suite 285. Our new space allows us to better serve OBLIC policyholders now and in the future.

This issue of **MALPRACTICE ALERT!** will inform you about:

- Professional Conduct CLE presentations
- Update on Closed Files
- Opinion 2015-2
- Loss Prevention Hotline
- 2016 All-Ohio Legal Forum preview
- Hot practice areas for claims
- Internet Scams

As always, we welcome your comments! Please let us know if you have any questions or ideas for topics you would like to see in future issues of **MALPRACTICE ALERT!**

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PROFESSIONAL CONDUCT CLE PRESENTATIONS

OBLIC and the OSBA recently partnered during the OSBA Fall District Meetings to present a 2.5 hour professional conduct CLE, *Using "Best Practices" to Enhance Your Law Practice*, featuring OBLIC Director of Loss Prevention Gretchen Mote.

This presentation examined how lawyers attract and retain clients, and provided helpful hints to improve the attorney/client relationship from start to finish. Applicable Rules of Professional Conduct were discussed in the context of "real life" examples. This presentation will also be presented at the OSBA Spring District Meetings.

➤ **Reminder:**

OBLIC policyholders may apply for an additional OBLIC premium discount if they obtain 5 hours of professional conduct credit within the 24 months immediately preceding their policy effective date. These District Meeting CLE's are great opportunities to enhance your practice AND earn an additional premium discount.

UPDATE ON CLOSED FILES

The OBLIC Loss Prevention Hotline continues to receive numerous questions regarding closed files. You can access a helpful article addressing closed files in this previous issue of the **MALPRACTICE ALERT!** found on the OBLIC website.

<https://www.oblic.com/resource-articles/malpractice-alerts/2013/06/01/what-do-i-do-with-closed-client-files/>





Remember, it's a good idea to address in the fee agreement at the outset of representation how the client's file will be handled at the conclusion of the representation. If it is specified in the fee agreement that the file will be returned at the conclusion of the representation, the file can be reviewed at that time to determine what the attorney may want to retain for their records.

The file can then be scanned or copied (without charge to the client) for the attorney's records and the original returned to the client with a file closing letter and client survey. (See Supreme Court Board of Professional Conduct Opinion 2010-2 and ABA Formal Opinion 471, July 1, 2015 for what to return to the client.) It's a good idea to get a receipt signed by the client confirming that he/she received the file.

If an attorney is facing a backlog of closed files, it is important to remember that the file belongs to the client. Each client should be notified that the attorney has the file and that he/she may contact the sender of the letter to make arrangements to obtain the file or give permission to destroy the file. (See Pages 91-93 of *Succession Planning for Ohio Attorneys* for additional information

<https://www.ohiobar.org/ForLawyers/Documents/Succession-Planning-for-Ohio-Attorneys.pdf>)

OBLIC is monitoring a proposed *Ohio Ethics Guide to Client Files* being drafted by the Staff of the Ohio Supreme Court Board of Professional Conduct. We'll provide this information to our policyholders when it becomes available.

OPINION 2015-2 ON LEGAL SEMINAR

The Ohio Supreme Court Board of Professional Conduct issued Opinion 2015-2 to address the ethical issues that arise when a lawyer presents a seminar to prospective clients regarding legal issues. The Board opined that a lawyer may present a legal seminar to prospective clients and may provide brochures and law firm information near the exit of the seminar, but a lawyer may not meet with attendees following the seminar to answer legal questions, even if attendees sign up in advance.

The opinion suggested that attendees should be advised to contact the lawyer's office to schedule an appointment. It also noted an exception exists for lawyers providing pro bono services who may meet with attendees contemporaneously to presenting an informal legal seminar.

Lastly, it opined that the "prior professional relationship" exception under Professional Conduct Rule 7.3 does not apply to seminar attendees who are employees of an organizational client of the presenting lawyer. You may read the full opinion at www.sconet.state.oh.us under Board of Professional Conduct, Opinions.



LOSS PREVENTION HOTLINE

OBLIC provides information and resources to assist our policyholders in preventing claims. If policyholders have any questions about issues that arise in their practice, OBLIC encourages you to call Director of Loss Prevention Gretchen Mote at 614-572-0620.

Frequently asked questions involve:

- possible internet scams
- firm names and letterhead
- conflicts of interest
- withdrawal from representation
- terminating the attorney/client relationship
- closed files
- closing a law practice and tail coverage

While the Director of Loss Prevention cannot provide legal or ethics advice, information and resources are discussed with policyholders. The Director of Loss Prevention can also set up an Ethics Consult with independent ethics counsel if it is determined such is needed.

OBLIC provides policyholders with up to one hour of complimentary ethics consultation with independent legal counsel, if requested, per policy period. The Hotline and Ethics Consults are benefits provided without additional cost to OBLIC policyholders.

ALL-OHIO LEGAL FORUM PREVIEW

The All-Ohio Legal Forum, formerly known as the OSBA Annual Convention, will be held April 27-29, 2016 in the Duke Energy Center in Cincinnati, Ohio. OBLIC is again partnering with the OSBA Solo, Small Firm and General Practice Section and the OSBA Senior Lawyers Section to sponsor CLE sessions at the Forum. The OSBA Young Lawyers Section will also sponsor the “Connect” Networking Event.



CONNECT



Look for these seminars titled **FuturePlan**. Mark your calendar now and plan to attend.

You *won't* want to miss the networking event on Thursday, April 28, 2016!

HOT PRACTICE AREAS FOR CLAIMS

OBLIC tracks practice areas with the highest number of claims. For 2015, the Probate and Estate area of practice leads the “hit parade” with the highest number of claims. This area of practice is followed closely by Plaintiff Personal Injury, Domestic Relations and General Litigation practice. Real Estate and Collections round out the areas of practice with the highest frequency of claims.



Although the area of practice with the greatest frequency of claims may change slightly from year to year, these practice areas historically rank highest for claims. It is notable that many claims arise from:

- missed deadlines
- lack of client communication
- settlement/negotiation
- inadequate investigation

OBLIC provided “Best Practices” seminars in these practice areas at the 2015 Ohio State Bar Association Convention. Checklists can be helpful tools to assist lawyers in avoiding claims. The seminar materials included checklists and

other useful information. You may access these materials on the OBLIC website www.oblic.com.

INTERNET SCAMS...



Lest we sound like a broken record, we'll beg your attention once more! Internet scams are still out there! Hardly a day goes by without Ohio attorneys receiving an email from at least one purported client requesting assistance collecting a debt.

The typical scam involves a purported client asking an attorney to try to collect a significant debt and usually requests an attorney to deposit a large check in the attorney's trust account, deduct the attorney's fees and send a check from the attorney's trust account for the balance to a third party. This process uses your legitimate trust account (and any monies therein) as a clearing-house for a typically fraudulent check.

If you have **ANY** questions at all whether something is a scam, please do not hesitate to call the OBLIC Hotline.

Recently, these scams have "gone local." Visit the OBLIC website to learn more.

<https://www.oblic.com/resource-articles/oblic-alerts/2015/08/19/scams-have-gone-local/>

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