



MALPRACTICE ALERT!

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January-March 2017

It looks like we'll ride the roller coaster of winter weather right on into spring! There have been lots of developments to share with you.



In this issue we'll look at:

- ✓ Ohio Digital Assets Act
- ✓ Recent Opinions from the Board of Professional Conduct
- ✓ Claims summary of hot AOP's
- ✓ IOLTA practice pointers
- ✓ Recent internet scams
- ✓ All Ohio Legal Forum

As always, your comments and suggestions are most welcome. I appreciate hearing from you! Please feel free to contact me with your questions. OBLIC is here for YOU!

Gretchen K. Mote, J.D., Editor
MALPRACTICE ALERT

OHIO DIGITAL ACCESS ACT

[Am. Sub. H.B. 432](#), as adopted by the 131st Ohio General Assembly, takes effect on April 6, 2017. This legislation enacts the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADA), [Ch 2137 Ohio Revised Code](#), to

provide for continued access or control over digital assets when the owner of those assets dies or becomes incapacitated. The legislation tracks the RUFADA model act adopted by the National Conference of Commissioners on Uniform State Laws.

The Act defines a "digital asset" as an electronic record in which an individual has a right or interest. "Digital assets" may include email accounts, websites or social media accounts such as Facebook, Snapchat or Instagram.



The act provides user direction for disclosure of digital assets, the framework for disclosure of digital assets and creates an order of priority if the owner of digital assets provided conflicting directions or no directions regarding the digital assets.

The legislation also enacts changes to the Uniform Power of Attorney Act regarding digital assets in [1337.571 of the Ohio Revised Code](#) and to the [Statutory Forms in 1337.60 ORC](#).

Adoption of the Ohio Access to Digital Assets Act is an important development for attorneys drafting estate planning documents. It is a good idea to review this with clients to assist them in

making appropriate plans or revisions to existing documents

This legislation also enacts several other important changes to the law governing decedents' estates Ohio:

- ✓ [Revises deposit of a will in probate court](#)
- ✓ [Revises apportionment of estate tax](#)
- ✓ [Removes cap on number of autos](#) that may be selected by surviving spouse on death of other spouse
- ✓ [Increases total maximum value of autos](#) selected by surviving spouse to \$65,000
- ✓ Revises [Uniform Simultaneous Death Act](#)
 - [Person deemed to have predeceased another person](#)
 - [Person deemed to have predeceased specified event](#)
 - [Co-owners with right of survivorship](#)
 - [Determination and evidence of death](#)
- ✓ [Revises intestate succession](#)
 - See also [2105.14 ORC](#) revised effective March 14, 2017
- ✓ Provides that [action brought under Ohio Trust Code](#) is civil action
- ✓ Revises [Uniform Principal and Income Act](#) on [deferred compensation, annuities](#)
- ✓ Revises provisions on [distribution of income of retirement account](#)
- ✓ Revises [Uniform Transfers to Minors Act](#)

- ✓ Click here to read the [Final Analysis](#) of the bill by the Ohio Legislative Service Commission.



BOARD OF PROFESSIONAL CONDUCT OPINIONS

On February 10, 2017, the Board of Professional Conduct issued two opinions: [Opinion 2017-1 Advertisement of Contingent Fee Arrangements](#) and [Opinion 2017-2 Duty of Judge to Report Misconduct](#).

Opinion 2017-1 advises that a lawyer who advertises litigation services on a contingent fee basis may not use statements such as:

- ✓ "There's no charge unless we win your case"
- ✓ "No fee without recovery"
- ✓ "You pay no fee unless you win"
- ✓ "You pay us only when we win"

if the lawyer intends to recover advanced litigation costs and expenses from the client, regardless of the outcome of the litigation.

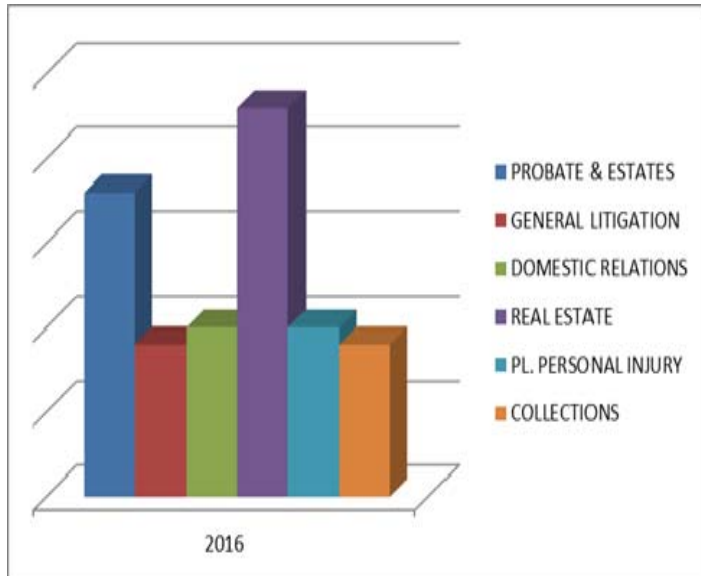


The Opinion says that because of the potential to mislead prospective clients, any obligation of a client to repay litigation costs and expenses must be revealed by the lawyer when advertising the services on a contingent fee basis. If a lawyer intends to recover advanced costs and expenses of litigation from the client, the advertising must include a statement such as "contingent fee clients are responsible for the costs and expenses of litigation."

Opinion 2017-2 withdraws Opinion 89-32 and provides that a judge who has knowledge that another judge has committed a violation of the Code of Judicial Conduct that raises a question about the judge's honesty, trustworthiness, or fitness as a judge is required to report it to the appropriate disciplinary authority. A judge who has knowledge of a lawyer's violation of the Rules of Professional Conduct has an ethical duty to report it to the disciplinary counsel or local grievance committee.

CLAIMS SUMMARY: HOT AOP'S

AOP refers to “areas of practice” that attorneys engage in. A summary of claims reported to OBLIC over the last year shows several practice areas in which claims commonly occur.



In 2016, OBLIC insureds reported more claims in the areas of real estate and probate, estate planning and trusts than any other area of practice.

Part of the reason for the number of claims in real estate and probate is the complexity of the cases in the practice areas. Another reason may be the larger amount of legal work in these practice areas due to population demographics, with baby boomers now transferring an unprecedented amount of assets.

To help prevent claims, follow these Loss Prevention Tips:

- ✓ Practice good client selection
- ✓ Effectively use engagement and disengagement letters
- ✓ Carefully define the scope of representation
- ✓ Use timely, effective client communication
- ✓ Always address conflicts of interest
- ✓ Keep up with practice developments

If you have additional questions, please feel free to contact Gretchen Mote, Director of Loss Prevention.

IOLTA PRACTICE POINTERS

Answering the OBLIC Hotline, there are frequent questions involving IOLTA ([Interest on Lawyer Trust Account](#)) accounts. Several practice pointers can help avoid problems with your IOLTA account:

- ✓ Follow the requirements of Rule 1.15 of the [Ohio Rules of Professional Conduct](#).
- ✓ Never let your balance go negative.
 - This may mean you will need to deposit funds sufficient to cover routine bank service fees to prevent a negative balance.
- ✓ Perform and maintain a monthly reconciliation, per Rule 1.15.
- ✓ Be aware when accepting credit card payments. See [Opinion 2007-3](#)
- ✓ Deposit flat fees appropriately. See [Opinion 2016-1](#)
- ✓ Be sure that funds are actually available for withdrawal after depositing a check from a third party before writing disbursement check from your IOLTA account. See [Opinion 2016-7](#)
- ✓ If you receive a Letter of Inquiry, contact OBLIC immediately!

A recent disciplinary decision highlighted the importance of following good trust account procedures. See [Disciplinary Counsel v. Barbera](#), Slip Opinion No. 2017-Ohio-882.

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The [Ohio Legal Assistance Foundation](#) provides information and resources on IOLTA & IOTA accounts. They are also happy to take your telephone inquiries at 614-715-8560. Your OBLIC Hotline is also always available to help!

INTERNET SCAMS CONTINUE



Internet scams continue to target Ohio attorneys. Recent scams involve the use of relatable data in phishing scams. This involves scammers obtaining information publicly available on the internet to include in emails so that you see something familiar in the email that will get you to click on the link in the email. When you click on it, the scammer can plant malware or a virus.

Another recent scam used an email account set up using [Office 365](#). The email address generated through Office 365 lent the appearance of legitimacy to the email of the scammer, who sought to snare an attorney into a check collection scheme.

Reports about an online scam or email hoax may be made by filing a complaint with the [FBI Internet Crime Complaint Center](#) or by using the FBI online [Tips and Public Leads form](#).

Here are practice tips to avoid scams:

- ✓ Use automatic updates to be sure anti-virus, firewalls, and known security issues are always up-to-date
- ✓ Get a VPN or use a personal hotspot rather than public WiFi
- ✓ Implement a policy for all electronic devices – and follow it!
- ✓ Use complex passwords for all devices, including your phone, laptop and tablet – and keep them refreshed
- ✓ Encrypt all electronic communications
- ✓ Train staff and attorneys to spot and avoid common pitfalls

If you have ANY questions about potential scams, please contact OBLIC immediately.

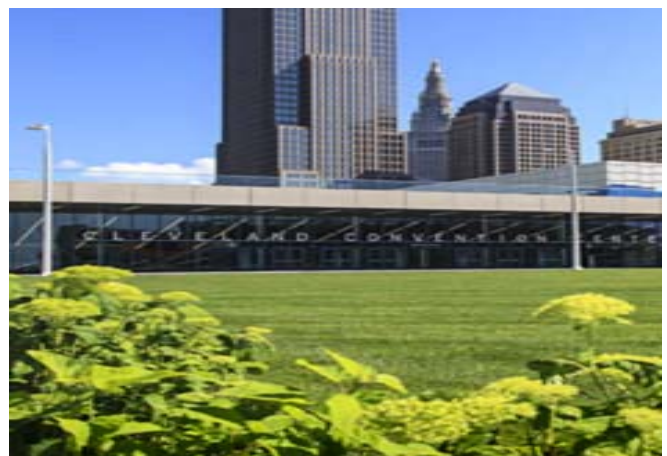
2017 ALL OHIO LEGAL FORUM

Save the date now and plan to attend the 2017 All Ohio Legal Forum. This annual meeting of the Ohio State Bar Association will feature top-notch CLE, exhibitors with law-related products and services and opportunities to renew contacts with lawyers you know and meet new lawyers at networking events.

The All Ohio Legal Forum will take place from August 23-25, 2017 at the Cleveland Convention Center in Cleveland, Ohio. The event, formerly the OSBA Convention, moved from spring to late summer this year. Remember that voting for the Ohio State Bar Association President-Elect will take place electronically the first week in May, rather than in-person at The Forum.



OBLIC will again partner with the OSBA Solo, Small Firm and General Practice Section to present CLE at the Forum. Watch for details on the “can’t miss” CLE that OBLIC will present! See you in Cleveland!



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