



OBLIC

Ohio Bar Liability
Insurance Company

MALPRACTICE ALERT!

July 2000 • 1650 Lake Shore Drive • Columbus, OH 43216-2708 • 614/488-7924 • Ohio Wats 1-800-227-4111

BEFORE YOU FILE SUIT FOR FEES...

OBLIC suggests that you carefully consider several issues before suing a client for a fee. In many such instances, a lawsuit for a fee will draw a counterclaim for malpractice. In fact, question 31 on OBLIC's application for insurance asks how many suits for fees have been filed by the applicant in the past two years because of the malpractice exposure such conduct can create.

Have you exhausted all other remedies to collect the fee? Some local bar associations offer fee mediation or arbitration, where both parties can explain their respective positions. A determination is then reached, which may be binding, depending upon the program. Another related option is to advise the client that an explanation for their delay in payment would be appreciated. If the client believes that the fee is too high, perhaps some accommodation can be made to resolve the issue.

If no reasonable resolution is possible, the last resort is the suit for fees. However, it is may be worth waiting at least one year from termination of the representation before filing suit. If suit is filed within one year of the termination of representation, then there is no potential statute of limitations defense to a legal malpractice counterclaim.

The OBLIC policy requires that "If Claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons or other process received," "Notice of Claim or Suit," page 8 of the policy. If a defense to the counterclaim is necessary, the policy deductible (usually \$1,000, \$2,500 or \$5,000) applies to legal fees and expenses incurred in

defending the counterclaim. Thus, any recovery in a suit for a fee may be reduced by payment of the relevant policy deductible in defense of the malpractice counterclaim. It might make little sense to sue a client for a \$2,000 fee, if your OBLIC policy contains a \$2,500 or \$5,000 deductible, for example. This may be particularly true when you know the client was dissatisfied with the handling or outcome of his or her legal matter.

Even if an attorney waits more than one year from termination of representation to bring a suit for a fee, there are other issues to consider as well. You might wish to contact an OBLIC staff attorney to discuss fee claim matters prior to commencement of a suit for a fee. Please refer to the address or telephone numbers on this "Alert!" to contact OBLIC.

STABILITY—PROFESSIONAL LIABILITY INSURANCE

We recently noted an advertisement for professional liability insurance from a large metro bar association. The correspondence from that bar association noted "Over the past year, several companies have ceased to write professional liability coverage for lawyers in Ohio," and that the bar association had "confidence in (insurer's) commitment to the legal profession." The company referred to in the ad has written such coverage in Ohio for Ohio lawyers for around three years or less.

We would like to remind our policyholders that OBLIC has stabilized the professional liability market in Ohio for Ohio lawyers for OVER 20

YEARS. The OBLIC policy provides the following features:

- You have the right to consent or refuse to consent to any settlement of a claim.
- “Tail” or an extended reporting endorsement can be purchased for an unlimited time period.
- Bar College discounts per lawyer of 15%, and Claim-free discounts of up to 30% (combined Bar College and maximum Claim-free discounts total about 40% off standard price)

- AM Best rating of “A”
- Founded and owned by the Ohio State Bar Association, 16 of 18 members of the Board of Directors are Ohio lawyers.

In our 20+ years of experience, most commercial insurers’ “commitment” to the legal profession in Ohio has not withstood the test of time. Lawyers receiving solicitations from other companies or enterprises might do well to keep that fact in mind.

The contents of this newsletter are provided for informational purposes only, and should not be construed as providing legal advice.

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