



MALPRACTICE ALERT!

OBLIC

Ohio Bar Liability
Insurance Company

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CLAIM AND INCIDENT REPORTS INCREASE IN 2002

Claims and incidents reported to OBLIC increased by over 30% in 2002 from each of the two prior years (2001 and 2000). 95 claims and incidents were reported in 2000, and 94 in 2001. 125 such files were reported in 2002, which may indicate some increasing frequency of claims, particularly since the results to date in 2003 are very similar to those experienced in 2002. It should also be noted that 125 reported matters in a calendar year is not an OBLIC record, in 1997, 137 claims and incident files were opened. The increase in 2002 reverses a five-year trend of decreasing reports from 1997 through 2001, however.

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SHARING FEES – LAWYERS TAKE NOTE!

Opinion 2003-3 of the Board of Commissioner on Grievances & Discipline was issued June 2003. This opinion clarifies DR 2-107(A), division of fees between lawyers not in the same firm. All lawyers who share fees with another lawyer not in the same firm should read this Opinion. Some key points to keep in mind are as follows:

1. When lawyers not in the same law firm agree to a division of legal fees under DR 2-107(A), based upon assuming responsibility for the representation rather than the proportion of services performed, each lawyer must assume responsibility for the representation through a written agreement signed by the client and each lawyer.

Regardless of whether the division of fees is in proportion to the services performed or based upon assuming responsibility, each lawyer and client must sign a written disclosure of the terms of the division and the identity of all lawyers sharing in the fee.

In addition, the total fee must be reasonable. Heretofore, Ohio lawyers have not had guidance on whether DR 2-107 (A) requires a *signed* written agreement, this advice applies prospectively to future division of fee agreements among lawyers not in the same firm.

2. When lawyers not in the same firm agree to a division of legal fees, each lawyer is responsible for providing the required written notice to a client under DR 1-104 regarding his or her own lack of professional liability insurance. Signatures of the lawyer and the client are required on the written notice.

This opinion does not address division of fees among lawyers not in the same firm in cases involving class actions and complex cases involving aggregation of multiple plaintiffs. It does not address legal issues regarding enforceability of fee agreements involving a division of fees by lawyers not in the same firm.

A complete copy of this Opinion can be found at:
www.sconet.state.oh.us/BOC/Advisory_Opinions/2003//op_03-003.doc.

**PRIVACY LAW ENFORCEMENT
RELAXED – FOR NOW**

Under the Gramm-Leach-Bliley Act (GLBA), lawyers with practices involving certain client information, primarily financial in nature, had until July 1, 2003 to send out their annual privacy notices under the GLBA. Two lawsuits brought by the New York State Bar and the ABA are pending against the FTC regarding the application of the GLBA to lawyers. On June 30, 2003 the FTC

advised lawyers for the plaintiffs in those cases that it did not intend to bring enforcement actions against lawyers for failure to comply, “prior to the Court’s rulings on the FTC’s motions to dismiss in the above-captioned cases.”

For additional information about the GLBA and its application to lawyers, please refer to OBLIC’s “Malpractice Alerts!” of August 2002 and July 2001, which can be found at our website, www.OBLIC.com.

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