



MALPRACTICE ALERT!

OBLIC

Ohio Bar Liability Insurance Company

April 2007 • 1650 Lake Shore Drive • Columbus, OH 43216-2708 • 614/488-7924 • 800/227-4111

PROGRAM SET FOR 2007 OSBA CONVENTION: PROFESSIONAL RULES OF CONDUCT

The Professional Rules of Conduct are the focus of an all-day program on Thursday, May 17, 2007 co-sponsored by the Council of Governors of the OSBA Solo, Small Firm & General Practice Section, Ohio Bar Liability Insurance Company and OSBA Lawyers' Assistance Committee at the Ohio State Bar Association Convention in Cincinnati, Ohio.

The morning segment will begin with **LAWYER/CLIENT RELATIONSHIPS UNDER THE NEW RULES: CONFLICTS, ADVOCACY & FEES (Rules 1.0 – 4.4)** presented with a power point panel discussion led by Ohio Disciplinary Counsel **Jonathan E. Coughlan**. Other panel members include: **Richard A. Dove, J.D.**, Director of Attorney Services, Supreme Court of Ohio, **Jonathan W. Marshall, J.D.**, Secretary, Board of Commissioners on Grievances & Discipline, and **Bernard K. Bauer, J.D.**, Member, Supreme Court Task Force on Rules of Professional Conduct.

IMPACT OF THE NEW RULES ON SOLO/SMALL FIRMS will conclude the morning session with a panel discussion by **Charles J. Kettlewell, J.D.**, Kettlewell & Kettlewell LLC, **Alvin E. Mathews, J.D.**, Bricker & Eckler, and **Gretchen Koehler Mote, J.D.**, Ohio Bar Liability Insurance Company.

The afternoon session will convene at 2:00 PM with the power point panel discussion of **LAWYERS' RESPONSIBILITIES UNDER THE NEW RULES: SUPERVISING, ADVERTISING AND SPECIALIZATION (Rules 5.1 – 8.5)**.

The afternoon session will also include **MAINTAINING THE INTEGRITY OF THE PROFESSION: PROFESSIONALISM UNDER THE NEW RULES** presented by Denise Platfoot Lacey, Secretary, Commission on Professionalism, Supreme

Court of Ohio. The seminar will conclude with **SUBSTANCE ABUSE** by Scott R. Mote, J.D., Executive Director, Ohio Lawyers' Assistance Program

Even if you've attended a previous rules seminar, this will give you an update on the new rules from their effective date on February 1, 2007.

Ohio Bar Liability Insurance Company (OBLIC) and the Council of Governors of the Solo, Small Firm & General Practice Section have co-sponsored a program at the OSBA Annual Convention since 1990. We're looking forward to another dynamic program this year!

Full-time OBLIC policyholders who are OSBA members can use their \$250.00 OBLIC Coupon to register for the full Convention by April 13th Early Bird rate of \$250.00 and have the whole cost of the Convention covered! The full-time \$250.00 coupon can also be used for Single Day and Half Day registration. Part-time coupons can also be used for Convention.

Mark your calendar now for Thursday, May 17, 2007 and plan to attend! We'll see you there!

UPDATE: ATTORNEY TITLE AGENTS-BOND REQUIREMENTS – IMPORTANT!

In a recent FAQ notice from the Ohio Department of Insurance, a question was posed: "Is there an exception to the surety bond requirement for a title agent who is also an attorney if he or she handles escrows for real property transactions not involving the issuance of any title insurance through his or her law practice? Answer: "No. The statute and rule regulate all title agent licensees. There is no statutory exemption for title agents who are also attorneys."

OBLIC would like to thank Attorney Tom Lammers for providing notice of the Department's position on this issue to us.

FEE AGREEMENTS: TERMS TO AVOID

OBLIC reviews fee agreements of applicants for insurance. From time to time, such agreements contain provisions that are questionable, if not outright violations of the Rules of Professional Conduct. This brief note is intended to provide guidance on the provisions that are of concern.

Co-Counsel: a fee agreement can contain a provision regarding assistance of co-counsel, provided that the client first consents to retention of such counsel, and the identity of such counsel. Failure to provide the client with notice and consent for retention of co-counsel would be subject to question under Rule 1.6, Confidentiality, and Rule 1.5 (e)(2), Fees and Expenses, under which any division of fees with another lawyer not in the firm has to have written consent of the client.

Advisory Opinions from the Board of Governors on Grievances and Discipline have found **provisions requiring clients to arbitrate any fee dispute** with the lawyer to be unethical, as the client is agreeing to give up legal rights regarding such disputes without advice of counsel. Rule 1.8 (h)(1), Conflicts of Interest: Current Clients: Specific Rules, is possibly applicable to such an agreement. If a client had independent legal counsel review such an agreement before entering into it with a lawyer, then perhaps such an agreement would be acceptable. However, the likelihood of this occurring in most instances is remote.

An attorney cannot choose an **alternate fee** where the lawyer can charge the greater of either an hourly rate, or a contingent fee, Advisory Opinion 95-7.

Powers of attorney to sign checks for clients. We've seen some fee agreements that give the lawyer a POA to sign checks for a client. This is a questionable practice.

Generally, Ohio law prohibits self-dealing when one is acting as a fiduciary for another. Since client funds received often will involve some share of attorney fees, acting under a POA to cash a clients' check without the client's signature could violate Ohio common law. O.R.C. Section 1337.18, Form creating power of attorney, does allow an agent to engage in self-dealing transactions if the principal so indicates specifically on the form, 1337.18 (A)(12). We have not seen any fee agreements with POA language that use the language found in 1337.18.

Rule 1.15: Safekeeping Funds and Property, part (d) states that "upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person." A POA in a fee agreement could be construed as allowing a lawyer to handle client funds without promptly notifying the client of receipt of those funds. There may be other Rules of Professional Conduct applicable to this issue as well. In any event, OBLIC recommends against using fee agreements containing POA's that allow cashing of client checks without the client's actual signature endorsing the check.

* * * * *

The contents of this newsletter are provided for informational purposes only, and should not be construed as providing legal advice.
Copyright 2007 Ohio Bar Liability Insurance Company