akron bar
association®

NEW LAWYER TRAINING

Avoiding The Top Ethical Mistakes Made By New Attorneys

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Akron Bar Association's
Certified Grievance Committee

BEST PRACTICES FOR AVOIDING GRIEVANCES

Review of Grievance Process

- We only investigate written grievances against attorneys with a Summit County address (either residence or business)
- Initial review: confirm attorney lives and/or maintains principal office in Summit County; check to see if attorney has been the subject of previous grievances and/or sanctioned or is being investigated by the Office of Disciplinary Counsel; review court dockets; contact grievant for additional information; contact attorney if matter can be resolved with a phone call, (i.e. turning over of files, transcripts, etc.)
- Dismissal on intake: no allegation of a violation of the Rules of Professional Conduct (not all behavior by an attorney which the public may view as "unethical" is covered by the Rules); pending litigation (we cannot interfere with ongoing court proceedings); malpractice (we will suggest that the grievant consult an attorney who can advise of his or her legal options); ineffective assistance of counsel (grievant must raise a claim of ineffective assistance of counsel on appeal or in post-conviction pleadings and then provide us with a certified copy of the judgment).
- Refer for investigation: letter to attorney (with copy of grievance) requesting a written response, evidence of malpractice insurance, information regarding attorney's IOLTA account, other pertinent documentation; investigator conducts telephone interviews with both grievant and attorney, reviews documentation (may request correspondence with client, IOLTA statements, etc.).
- Investigator makes recommendation to dismiss or refer to Grievance Committee for additional investigation. If referred to Grievance Committee, a three-member panel is appointed (two attorneys and one lay person) to interview both the grievant and attorney in person (with a court reporter present); request additional information, talk to other parties, etc. If necessary, the panel can request the Board of Professional Conduct to issue a subpoena to compel attendance at a hearing or produce documents.
- Panel makes a recommendation to full Grievance Committee to dismiss or file a complaint with the Board of Professional Conduct. Once the complaint is prepared, the attorney is given Notice of Intent to File and at least 14 days from receipt of the Notice to respond to the allegations in the complaint.
- After the complaint is filed, a three-member probable cause panel of the Board of Professional Conduct will review it for certification. If the complaint is certified, the matter is assigned to a different three-member hearing panel. At this point, the grievance becomes public. The second panel conducts a hearing with the relator (bar association filing the complaint) and the respondent present and then makes a recommendation to the Board of Professional Conduct regarding a possible sanction. The Board of Professional Conduct then reviews the proceedings of the hearing panel and issues a Finding of Fact, Conclusions of Law and Recommendation to the Supreme Court.
- The Supreme Court issues a Show Cause Order giving both parties the opportunity to object and respond to the objections filed by the other party. If either party objects, there is a hearing before the Supreme Court. The Supreme Court then issues its ruling confirming the recommendation of the Board of Professional Conduct, remanding the

matter to the Board of Professional Conduct for further proceedings or assessing its own sanction.

- Sanctions can range from a public reprimand, to a term suspension (with all or part of the suspension stayed, with or without conditions), indefinite suspension (attorney may apply for reinstatement after a certain period of time, generally two years) or permanent disbarment.
- If we dismiss a grievance at any stage, the grievant has the right to appeal our decision to the Office of Disciplinary Counsel. In such a case, we copy the entire file and send it to ODC. The standard of review is abuse of discretion or error of law.

Best Practices to Avoid the Grievance Process

1. Communicate with your client and manage client expectations

RULE 1.4: COMMUNICATION

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required by these rules;

(2) *reasonably* consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client *reasonably* informed about the status of the matter;

(4) comply as soon as practicable with *reasonable* requests for information from the client;

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer *knows* that the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent *reasonably* necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client to participate effectively in the representation.

Communicating with Client

[2] If these rules require that a particular decision about the representation be made by the client, division (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Division (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations, depending on both the

importance of the action under consideration and the feasibility of consulting with the client, this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, division (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation and the fees and costs incurred to date.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, division (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

- ***Grievance examples: The Akron Bar Association recently filed a complaint against an attorney, who in four separate cases, undertook to represent the clients in domestic relations matters. In all four cases, we are alleging that the attorney has violated Prof Cond. R. 1.4(a)(3) and (4) for failing to communicate with the clients on a regular basis and failing to respond to numerous attempts by the clients to contact her.***
- ***In a grievance that the Akron Bar Association currently is investigating, the clients all claim a lack of communication by the attorney and the failure of the attorney to respond to their requests for information.***
- ***In June, 2015, the Ohio Supreme Court accepted a Consent to Discipline whereby the attorney was given a public reprimand for violations of Prof. Cond. R. 1.3 (diligence) and Prof. Cond. R. 1.4 (communications) in two separate cases, one a custody matter and the other the filing of a dissolution, which evolved into a divorce action. In the first case, there was a delay in the filing of the complaint after the clients signed the custody papers. During the delay, the attorney's communication with the clients was inadequate and she did not otherwise keep her clients reasonably informed about the case. The clients eventually terminated the representation and hired other counsel, at additional expense. As part of the initial grievance, the clients stated that upon their termination of the representation, the attorney had sent them a statement indicating that their retainer had been exhausted and that they owed an additional $2,678. During the grievance process, the attorney agreed to forgive the balance owed. In the second matter, the attorney's responsibilities included representing her client's interest with the regard to the completion, filing and implementation of the Domestic Court Orders required to divide the marital portion of the parties' public retirement accounts. Over a period of 15 months, the client repeatedly and unsuccessfully attempted to contact the attorney to discuss the status of the Domestic Court Orders and what the effect would be if her husband retired without the Orders being filed. When the client finally connected with the attorney, the attorney said she would get the matter done quickly. Two months later she contacted the firm engaged to value the retirement accounts and prepare the Orders about the delay and was informed that the firm was waiting for information they had requested from the attorney months earlier, but had not been able to contact her. Again, the client found it necessary to retain new counsel at additional expense.***
- ***In March 2016, the Ohio Supreme Court suspended an attorney's license to practice for two years, with six months stayed upon conditions including full contractual cooperation with OLAP and full restitution for violations of Prof. Cond. R. 1.4(a)(3) [failing to keep a client reasonably informed] in two cases, in one of which, the attorney had been retained to file a divorce in Ohio, which he never did and the client was forced to litigate the case out of state when her husband filed for divorce in West Virginia. There also were violations of other sections of the Rules of Professional Conduct as well as Gov. Bar. R. V. In July 2016, a new complaint alleging similar violations of the Rules of Professional Conduct in five separate criminal matters by the same attorney was certified to the Board of Professional Conduct and in October, 2016, the Board certified that the attorney has failed to answer the new complaint. The Ohio Supreme Court has issued a Show Cause Order as to why an interim default***

suspension should not be imposed. According to the court docket, the attorney has not responded to the Show Cause Order.

- ***Also in March of this year, the Ohio Supreme Court suspended another attorney's license to practice for one year, stayed in its entirety upon conditions including monitored probation, at least six hours of continuing legal education on law office management and operations and a monitor acting as mentor and providing guidance in regard to the proper operation and management of the attorney's practice. The attorney stipulated to violating, among others, Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed] in one case where she had been retained to handle a custody hearing. The attorney failed to notify the court that she was unable to attend the hearing due to illness and did not seek a continuance or arrange for substitute counsel. As a result, the clients were forced to handle the hearing without the assistance of counsel. In September, the attorney resigned her license to practice law with disciplinary action pending. Disciplinary Counsel's report is filed under seal so the actual events leading to the resignation are unknown.***
- ***In April 2016, the Ohio Supreme Court accepted a Consent to Discipline whereby the attorney received a public reprimand for violation, among others, of Prof. Cond. Rule 1.4 [communication] in one case in which the attorney was retained to represent the husband in the divorce proceedings initiated by his wife The attorney failed to attend a hearing on a motion to compel her client's responses to discovery and did not contact the court in advance of the hearing regarding her inability to appear. The magistrate's bailiff performed a Google search and the attorney was working as a teacher. The magistrate then contacted the attorney by phone, but the attorney did not offer any explanation to the magistrate for her failure to attend the hearing other than she was no longer practicing law. The magistrate then issued an Order to Show Cause as to why the attorney should not be held in contempt of court for willfully failing to appear as counsel for her client, or to communicate with the court, opposing counsel and her client regarding her cessation from the practice of law. The attorney attended the contempt hearing where she was ordered to file a motion for leave to withdraw as counsel for her client, provide her client with a full accounting for all fees and expenses incurred in her representation and to refund the balance owed from any fee deposits by the client within 14 days. The attorney did not file the motion to withdraw for another month and did not attach to the motion copies of the accounting or the receipt reflecting transmittal of the accounting and file to her client. The magistrate then called the attorney's place of employment and left a message asking that the attorney file the accounting with the court as soon as possible. The attorney never returned the magistrate's call and did not file the accounting. Notwithstanding that, the court granted the motion to withdraw and dismissed the contempt.***

2. Proper handling of retainers and flat fees

RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a

reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

Comment

Reasonableness of Fee

[1] Division (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in divisions (a)(1) through (8) are not exclusive. Nor will each factor be relevant in each instance.

Nature and Scope of Representation; Basis or Rate of Fee and Expenses

[2] The detail and specificity of the communication required by division (b) will depend on the nature of the client-lawyer relationship, the work to be performed, and the basis of the rate or fee. A writing that confirms the nature and scope of the client-lawyer relationship and the fees to be charged is the preferred means of communicating this information to the client and can clarify the relationship and reduce the possibility of a misunderstanding. When the lawyer

has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be established promptly. Unless the situation involves a regularly represented client, the lawyer should furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. So long as the client agrees in advance, a lawyer may seek reimbursement for the reasonable cost of services performed in-house, such as copying.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(e) *(A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned ...)*

> *Advisory Opinion 2016-1* (issued by the Board of Professional Conduct on February 12, 2016)
>
> **CONCLUSION:**
>
> It is proper for a lawyer to enter a flat fee agreement requiring a client to pay a fixed amount in advance of representation. The flat fee agreement must comport with the Ohio Rules of Professional Conduct. Under Prof. Cond. R. 1.15(c), a lawyer is required to deposit flat fees and expenses paid in advance for representation into an IOLTA account, unless designated as "earned upon receipt" or similarly, and may withdraw the fee only as it is earned or the expense as it is incurred. If a lawyer designates a fee "earned upon receipt," "nonrefundable," or similarly, the client must be advised in writing that the client may be entitled to a refund under Prof. Cond. R. 1.16(e) for any part of an unearned flat fee paid in advance of representation. Under Prof. Cond. R. 1.5(a), the flat fee must not be excessive. Under Prof. Cond. R. 1.8(e), the lawyer shall not provide financial assistance to a client, aside from advances in court costs and litigation expenses. Under Prof. Cond. R. 1.1 and 1.3, the flat fee agreement must not interfere with an attorney's duties to provide competent and diligent representation to each client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Retainer

[6A] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance solely to ensure the lawyer's availability to represent the client and precludes the lawyer from taking adverse representation. What is often called a retainer is in fact an advance payment to ensure that fees are paid when they are subsequently earned, on either a flat fee or hourly fee basis. A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed. An earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. When a fee is earned affects whether it must be placed in the attorney's trust account, see Rule 1.15, and may have significance under other laws such as tax and bankruptcy. The reasonableness requirement and the application of the factors in division (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt," or in similar terms that imply the client would never receive a refund. So that a client is not misled by the use of such terms, division (d)(3) requires certain minimum disclosures that must be included in the written fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation [*e.g.*, factor (a)(2) might justify the entire fee], nor does it determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum meruit, percentage of the work completed, etc.), but merely requires that the client be advised of the possibility of a refund based upon application of the factors set forth in division (a). In order to be able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it is advisable that lawyers maintain contemporaneous time records for any representation undertaken on a flat fee basis.

- ***Grievance examples: Attorney was retained to obtain modification of child support and visitation. Attorney and client entered into a written fee agreement and client paid attorney a retainer of $1,000 against a $200/hour billing rate. Attorney did not send client any invoices. On several occasions, client inquired as to whether any additional amount was owed and was told that everything was fine. At the conclusion of the representation, approximately ten months later, attorney sent client a statement showing a balance due in excess of $1,000. After investigation, the matter was dismissed with a referral to the Fee Arbitration Committee.***
- ***In the complaint mentioned above, each of the clients paid the attorney a retainer against an hourly billing rate. There were no written fee agreements. In all four cases, the clients terminated the representation when the attorney failed to communicate with them and they became dissatisfied with the attorney's services or lack thereof. In addition to the communications violations, the Bar Association also is alleging that the attorney violated Prof. Cond. R. 1.5(d)(3) since the clients were not provided with a written statement regarding their right to a refund if all or part of the retainer was not fully earned and, in one case, Prof. Cond. R. 1.16(e) for failure to return the unearned portion of the retainer when the representation was terminated.***
- ***In a case decided earlier this year, the Ohio Supreme Court publicly reprimanded an attorney who had been retained by a client in a custody and child support matter. The representation ended after about fifteen months when the client reconciled with the child's father. At the conclusion of the representation, the client requested a refund of***

the unused portion of the retainer. While the attorney agreed to return the unused portion of his retainer, he failed to do so despite several requests from the client. After nine months, the client filed a grievance. A month later, the attorney provided the client with an itemized account of his billing and returned the unearned portion of the retainer from his trust account. Nevertheless, the Trumbull County Bar Association pursued investigation of the grievance and filed a complaint with the Board of Professional Conduct. The parties filed agreed stipulations as to the facts, rule violations, mitigating factors, aggravating factors, exhibits and sanction.

3. Proper handling of client funds

RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:

(1) maintain a copy of any fee agreement with each client;

(2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:

(i) the name of the client;

(ii) the date, amount, and source of all funds received on behalf of such client;

(iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;

(iv) the current balance for such client.

(3) maintain a record for each bank account that sets forth all of the following:

(i) the name of such account;

(ii) the date, amount, and client affected by each credit and debit;

(iii) the balance in the account.

(4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;

(5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (4) of this rule. (b) A lawyer may deposit the lawyer's own

funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

- ***Grievance example: In the complaint mentioned above, the Akron Bar Association also is alleging that the attorney violated Prof. Cond. Rule 1.15(c) as the attorney did not maintain an IOLTA account and, therefore, did not deposit the retainers into that account upon receipt.***
- ***The Akron Bar Association is currently investigating another attorney who was retained to handle domestic relations matters for the clients, collected retainers, but did not deposit the retainers into an IOLTA account and did not provide the clients with periodic invoices so that the clients would know when the retainer had been exhausted. When the attorney asked for additional funds, the clients balked.***

4. Maintain malpractice insurance coverage or provide clients with Rule 1.4 notice

RULE 1.4: COMMUNICATION

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

(1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

(2) A lawyer who is involved in the division of fees pursuant to Rule 1.5(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.

(3) The notice required by division (c) of this rule shall not apply to either of the following:

(i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;

(ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.

NOTICE TO CLIENT

Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least $100,000 per occurrence and $300,000 in the aggregate.

_____
Attorney's Signature

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.4 of the Ohio Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least $100,000 per occurrence and $300,000 in the aggregate.

_____
Client's Signature

_____
Date

Comment

Professional Liability Insurance

[8] Although it is in the best interest of the lawyer and the client that the lawyer maintain professional liability insurance or another form of adequate financial responsibility, it is not required in any circumstance other than when the lawyer practices as part of a legal professional association, corporation, legal clinic, limited liability company, or limited liability partnership.

[9] The client may not be aware that maintaining professional liability insurance is not mandatory and may well assume that the practice of law requires that some minimum financial responsibility be carried in the event of malpractice. Therefore, a lawyer who does not maintain certain minimum professional liability insurance shall promptly inform a prospective client or client.

- ***Grievance example: In the complaint mentioned above, the Akron Bar Association also is alleging that in three of the four cases the attorney violated Prof. Cond. Rule 1.4(c) as the attorney did not maintain malpractice coverage and failed to provide the clients with the required notice and have the clients sign the same.***
- ***In a case decided this past June, the Ohio Supreme Court sanctioned an attorney who had been in practice for not quite six years when the Office of Disciplinary Counsel filed a complaint charging him with professional misconduct for neglecting two client matters, misrepresenting the status of a case to a client, filing a frivolous lawsuit and failing to property inform clients that he lacked professional liability insurance (for a period of approximately 3.5 years). The attorney stipulated to all of the charges and the Court suspended his license for two years, with the entire term stayed on conditions including a two-year period of monitored probation, making restitution to one client, extending the term of his contract with the Ohio Lawyers Assistance Program (OLAP)***

to coincide with the term of his monitored probation and following all recommendations of his counselor and OLAP. Failure to comply with any condition will result in the stay being lifted and the attorney serving the entire two-year suspension.

- ***In October, 2015, the Ohio Supreme Court publicly reprimanded an attorney who had been in practice almost ten years when he was charged with neglecting a single client matter, failing to inform the client during the course of the representation that his malpractice insurance had lapsed and after the attorney-client relationship ended, failed to return the client's case file as she had requested.***

- ***In August 2012, the Akron Bar Association filed a complaint against an attorney who at the time had been in practice for a little more than ten years, alleging that he had engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that adversely reflected on his fitness to practice law by notarizing documents without having witnessed the signatures and failing to advise a client that he did not maintain professional liability insurance. The attorney admitted to both counts of misconduct. In his answer and testimony, the attorney admitted that he had not maintained professional liability insurance during his representation of the client involved in the other count of misconduct, did not notify the client of that fact or have the client acknowledge it in writing. The attorney did state, however, that he had placed a sign in his office stating that he was a "self-insured attorney." In its opinion sanctioning the attorney, issued in May, 2014, the Ohio Supreme Court had the following to say about the lack of malpractice insurance and the representation of self-insurance:***

> We also find that with respect to Count II, Respondent not only failed to notify his clients of the fact that he did not carry professional liability insurance, but he expressly represented to them that he was "self-insured." "Self-insurance" is "[a] plan under which a business maintains its own special fund to cover any loss." Black's Law Dictionary 875 (9th Ed.2009). Respondent testified that in stating that he was self-insured, he meant that he had no insurance, and if something were to happen, his clients could sue him personally. He was unaware of any pending claims against him.
>
> While Respondent stated that he was just following the example of another firm he had worked for, he also stated that it was his intention to make potential clients comfortable with the fact that he did not have professional liability insurance. On these facts, we find that Respondent not only failed to notify his clients of the fact that he did not carry insurance, but he also affirmatively represented to them that he was self-insured, with resources set aside to cover his professional liabilities, when that was not true.
>
> Respondent has also engaged in a pattern of misconduct in this regard, given his testimony that he (1) has filed over 1,000 cases in his career, (2) did not carry professional liability insurance from the time he commenced his solo practice in 2004 until he finally obtained coverage in June 2012, and (3) relied on a sign stating that he was self-insured to inform his clients of his uninsured status, discussing the issue with them only if they brought it up. See BCGD Proc.Reg.

10(B)(1)(c). Fortunately, it does not appear that any clients were harmed as a result of this misconduct.

The Court suspended the attorney from the practice of law for eighteen months, all stayed on the condition that he engage in no further misconduct.