

ETHICS UPDATE
Ohio Association of Civil Trial Attorneys
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Technology, client files, succession planning, advertising and the virtual law office are among trending ethics issues impacting the practice of law today. Knowing the application of the Rules of Professional Conduct in dealing with current legal situations can help lawyers practice efficiently and ethically.

I. CYBERSECURITY

[ABA Formal Opinion 477R](#)

Issued May 11, 2017, Revised May 22, 2017

This Opinion addresses *Securing Communication of Protected Client Information*. The Opinion states:

A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security.

The ABA Standing Committee on Ethics and Professional Responsibility recommended seven steps lawyers should take to prevent disclosures:

- 1. Understand the nature of the threat.** Consider the sensitivity of the client's information and whether it poses a greater risk of cyber theft. If there is a higher risk, greater protections may be warranted.
- 2. Understand how client confidential information is transmitted and where it is stored.** Have a basic understanding of how your firm manages and accesses client data. Be aware of the multiple devices such as smartphones, laptops and tablets that are used to access client data, as each device is an access point and should be evaluated for security compliance.

3. **Understand and use reasonable electronic security measures.** Have an understanding of the security measures that are available to provide reasonable protections for client data. What is reasonable may depend on the facts of each case, and may include security procedures such as using secure Wi-Fi, firewalls and anti-spyware/anti-virus software and encryption.
4. **Determine how electronic communications about clients' matters should be protected.** Discuss with the client the level of security that is appropriate when communicating electronically. If the information is sensitive or warrants extra security, consider safeguards such as encryption or password protection for attachments. Take into account the client's level of sophistication with electronic communications. If the client is unsophisticated or has limited access to appropriate technology protections, alternative nonelectronic communication may be warranted.
5. **Label client confidential information.** Mark communications as privileged and confidential to put any unintended lawyer recipient on notice that the information is privileged and confidential. Once on notice, under Model Rule [4.4\(b\)](#) ***Respect for Rights of Third Persons***, the inadvertent recipient would be on notice to promptly notify the sender.
6. **Train lawyers and nonlawyer assistants in technology and information security.** Under Model Rules 5.1 and 5.3, take steps to ensure that lawyers and support personnel in the firm understand how to use reasonably secure methods of communication with clients. Also, follow up with law firm personnel to ensure that security procedures are adhered to, and periodically reassess and update security procedures.
7. **Conduct due diligence on vendors providing communication technology.** Take steps to ensure that any outside vendor's conduct comports with the professional obligations of the lawyer.

Amendments to [Ohio Rules of Professional Conduct](#)

Effective April 1, 2015 These amendments are based largely on amendments made by the ABA to the Model Rules of Professional Conduct in 2012 and 2013, with a few changes as the result of comments from the bar in Ohio. These amendments address significant issues for the legal profession in technology, confidentiality, client development and client solicitation.

RULE 1.1: COMPETENCE requiring a lawyer to maintain competency including the benefits and risks associated with relevant technology.

RULE 1.6: CONFIDENTIALITY OF INFORMATION requiring a lawyer to make *reasonable* efforts to prevent inadvertent or unauthorized disclosure of or access to confidential client information, and amending the Rule to allow a limited disclosure of confidential information to detect and resolve conflict involved with a change in employment or in the ownership or composition of a law firm.

[ABA Formal Opinion 483](#)

Issued October 17, 2018

This opinion discusses *Lawyers' Obligations After an Electronic Data Breach or Cyberattack*. The opinion informs that:

Model Rule 1.4 requires lawyers to keep clients “reasonably informed” about the status of a matter and to explain matters “to the extent reasonably necessary to permit a client to make an informed decision regarding the representation.” Model Rules 1.1, 1.6, 5.1 and 5.3, as amended in 2012, address the risks that accompany the benefits of the use of technology by lawyers. When a data breach occurs involving, or having a substantial likelihood of involving, material client information, lawyers have a duty to notify clients of the breach and to take other reasonable steps consistent with their obligations under these Model Rules.

[Ohio Data Protection Act](#) **Cyber Safe Harbor**

This legislation became effective November 2, 2018. It provides legal safe harbor for businesses that have been proactive instituting defenses to guard against data breaches.

II. CLIENT FILES

[OHIO ETHICS GUIDE: CLIENT FILE RETENTION](#)

Issued 2016 Ohio Board of Professional Conduct

The Ethics Guides address subjects about which the staff of the Board of Professional Conduct receives frequent inquiries from judges and attorneys. The Ethics Guides provide nonbinding advice from the staff of the Board of Professional Conduct.

The information in this Ethics Guide is helpful for all practicing attorneys. It discusses the relevant Ohio Rules of Professional Conduct pertaining to

attorneys' responsibilities regarding client files and property and provides sample language for letters to clients that deal with file disposition and destruction.

III. SUCCESSION PLANNING

[OHIO ETHICS GUIDE: SUCCESSION PLANNING](#)

Issued 2017 Ohio Board of Professional Conduct

The Board issued this Ethics Guide as a prevention tool to assist Ohio attorneys in developing a succession plan for their practices. The ethics guide does not address issues related to the sale of a law practice. For information on that topic see [Succession Planning for Ohio Attorneys](#).

IV. FIRM CHANGES

[OHIO ETHICS GUIDE: SWITCHING FIRMS](#)

Issued 2017 Ohio Board of Professional Conduct

The Board published this Ethics Guide to provide guidance to lawyers and law firms addressing the ethical implications when a lawyer changes firms. It does not analyze the legal implications of changing law firms.

[OHIO ETHICS GUIDE: TRANSITION FROM THE PRACTICE OF LAW TO THE BENCH](#)

Issued 2017 Ohio Board of Professional Conduct

The Board issued the Ethics Guide to provide a general overview of the ethical obligations of a newly elected or appointed judge regarding the judge's transition to the bench.

V. ADVERTISING

[Ohio Board of Professional Conduct Opinion 2016-3](#) *Lawyer Participation in Referral Services*.

This Opinion examined whether an online lawyer referral service that matches

prospective client with a lawyer for a particular legal service and requires the lawyer to pay a “marketing fee” for each completed client matter is permissible. The Opinion acknowledged that this presented multiple, potential ethical issues involving fee-splitting with non-lawyers, advertising and marketing, lawyer’s responsibility for nonlawyer assistants, interference with lawyer’s professional judgment, and facilitating unauthorized practice of law.

The Opinion concluded that a lawyer should carefully evaluate a lawyer referral service to ensure the lawyer’s participation is consistent with the ethical requirements. Further, the Opinion said that a fee structure that is tied specifically to individual client representations that a lawyer completes or to the percentage of a fee is not permissible, unless the lawyer referral service is registered with the Supreme Court of Ohio, pursuant to Gov Bar Rule XVI.

[Ohio Board of Professional Conduct Opinion 2016-8](#) *Client Testimonials in Lawyer Advertising and Online Services*

This Opinion withdraws Opinions 89-24 and 2000-6 and gives guidance on *Client Testimonials in Lawyer Advertising and Online Services*. The opinion addressed truthfulness in advertising and communication of a lawyer’s services in Rules 7.1 and 7.2 and the restrictions on revealing information relating to representation in Rules 1.6 and 1.9 when evaluating a client testimonial. If a lawyer has or is considering ads that include testimonials, this opinion should be reviewed.

[Ohio Board of Professional Conduct Opinion 2017-1](#) *Advertisement of Contingent Fee Arrangements*

This Opinion discusses lawyer advertisements for contingent fee arrangements. It 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,” or “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 states 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.”

[Ohio Board of Professional Conduct Opinion 2017-3](#) *Solicitation of Professional Employment Via Email*

This Opinion updates and withdraws former Opinion 2004-1. Opinion 2017-3 notes that because email solicitation is treated similarly to other forms of written communication permitted by Rules 7.1-7.3 of the Ohio Rules of Professional Conduct, the content of the email soliciting professional employment must not be false, misleading, or nonverifiable.

Further, the Opinion notes Rule 7.3 requires that every written, recorded or electronic communication from a lawyer soliciting professional employment comply with three conditions, including that it conspicuously include the recital “ADVERTISING MATERIAL” or “ADVERTISEMENT ONLY” at the beginning and ending of any electronic communication. The opinion notes that including “ADVERTISING MATERIAL” or “ADVERTISEMENT ONLY” in the subject line of the email satisfies the requirement to include that recital at the beginning of the communication.

[Ohio Board of Professional Conduct Opinion 2018-5](#) *Lawyer and Firm Website Domain Names*

This Opinion discusses that the registration and publication of a domain name is a form of advertising and a professional designation subject to the Ohio Rules of Professional Conduct. A lawyer or firm is encouraged, but not required, to include in a domain name the name of the lawyer or firm, its partners, initials, or some other specific identifying criteria. A lawyer may not include a specific field of practice in a domain name if it conveys or implies a specialty when the lawyer is not in fact certified in that specific field of practice. A lawyer’s use of domain name that references a specific city or municipality, when the lawyer or firm does not have a physical and active office in that city or municipality, is a false or misleading communication.

[Ohio Board of Professional Conduct Opinion 2018-6](#) *Lawyer Communication of Juris Doctor Degree, Other Academic Degrees, and Professional Licenses*

This Opinion withdraws Opinion 1994-3. It indicates that a lawyer may advertise the holding of a juris doctor degree while engaged in another business or profession. It further finds that a lawyer engaged in the practice of law may communicate other earned academic degrees or professional licenses in the advertisement of the law practice as long as the communication is not false, misleading, or unverifiable.

A lawyer may communicate other earned academic degrees or professional licenses on law practice letterhead, office signage, or professional cards. A lawyer may not use other earned academic degrees or professional licenses to state or imply that the lawyer is a specialist in a particular field of law.

VI. VIRTUAL OFFICE

[Ohio Board of Professional Conduct Opinion 2017-5](#) *Virtual Law Office*

This opinion states that an Ohio lawyer may provide legal services via a virtual law office (VLO) through the use of available technology, noting that a VLO permits lawyers to work remotely, offers clients and lawyers the ability to discuss matters electronically without meeting in person, affords clients the opportunity to review their client file online, and reduces or eliminates the overhead typically associated with traditional offices.

The opinion cites Rule 1.1 of the Ohio Rules of Professional Conduct, noting that because of the nature of a VLO, the lawyer needs to keep abreast of the benefits and risks associated with relevant technology and possess a general knowledge of the security safeguards for the technology used in the lawyer's practice.

It also states that the lawyer must take steps to ensure that all electronic communications are adequately understood by the client so the client is able to make informed decisions regarding the representation, per Rule 1.4. When using cloud computing, email, or other technology that relies on third-party storage or transmission of data, the lawyer must take "reasonable efforts" to prevent inadvertent or unauthorized disclosure of unauthorized access to information related to the representation of the client, as required by Rule 1.6. The opinion also discussed Rule 5.3 duties related to third-party technology vendors.

The opinion indicated that a lawyer may use a shared office arrangement as part of a VLO if the lawyer meets the "Office address" requirement of Rule 7.2(c) by providing an office address in all communications that corresponds to the lawyer's home or physical office, the address of the shared office space, or a registered post office box and avoids making a false, misleading, or nonverifiable communication under Rule 7.1.

VII. CLIENT FUNDS

[Ohio Board of Professional Conduct Opinion 2016-7](#) *Lawyer's Duty to Promptly Deliver Funds to a Client or Third Party*

This Opinion addresses how long the lawyer may hold client funds in the trust account to ensure the check clears before distributing funds to the client, in light of the duty in Rule 1.15 to “promptly” deliver funds to a client of third party.

The opinion found that a lawyer may hold a client’s funds in trust for a reasonable period of time to ensure that the check has cleared and the funds are available to distribute to the client or third party. Further, subject to the exceptions in the opinion, the opinion stated that a reasonable period of time consists of one week to ten days, given federal banking regulations and modern banking practices.

[Ohio Board of Professional Conduct Opinion 2016-11](#) *Division of Fees by Lawyers Not in the Same Firm*

This Opinion withdraws Opinions 91-05 and 2003-3. It provides that Lawyers who practice in association with each other, but not in a partnership, of counsel, or other permissible legal arrangement are not considered lawyers in the "same firm" for purposes of the division of fees under Prof.Cond.R. 1.5(e). Lawyers who informally practice in association with each other must comply with the restrictions contained in Prof.Cond.R. 1.5(e) when dividing fees.

VIII. CLIENT CONFIDENTIALITY

[ABA FORMAL OPINION 480](#)

Issued March 6, 2018

This Opinion addresses *Confidentiality Obligations for Lawyer Blogging and Other Public Commentary*. The Opinion states:

Lawyers who blog or engage in other public commentary may not reveal information relating to a representation, including information contained in a public record, unless authorized by a provision of the Model Rules.

Lawyers who communicate about legal topics in public commentary must comply with the Model Rules of Professional Conduct, including the Rules regarding confidentiality of information relating to the representation of a client. A lawyer must maintain the confidentiality of information relating to the representation of a client, unless that client has given informed consent to the disclosure, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by Rule 1.6(b). A lawyer’s public commentary may also implicate the lawyer’s duties under other Rules,

including Model Rules 3.5 (Impartiality and Decorum of the Tribunal) and 3.6 (Trial Publicity).

[Ohio Board of Professional Conduct Opinion 2016-10](#) *Duty to Preserve Confidential Information of a Prospective Client*

This Opinion discusses that a lawyer owes a duty of confidentiality under Rule 1.18, to a prospective client regarding information learned in a preliminary conference between the prospective client and the lawyer. Rule 1.18 extends the protections of confidentiality and attorney-client privilege to a person who consults with a lawyer for legal representation, even if the lawyer is not retained to represent the prospective client. The Opinion finds that thus, a lawyer may not reveal information learned in a consultation unless the prospective client gives informed consent.

[Ohio Board of Professional Conduct Opinion 2018-3](#) *Settlement Agreement Prohibiting a Lawyer's Disclosure of Information Contained in a Court Record*

This Opinion finds that a settlement agreement that prohibits a lawyer's disclosure of information contained in a court record is an impermissible restriction on the lawyer's right to practice. A lawyer may not participate in either the offer or acceptance of a settlement agreement that includes a prohibition on a lawyer's disclosure of information contained in a court record. A lawyer is not required to abide by a client's decision to settle a matter if the settlement is conditioned on a restriction to practice and must withdraw from the representation.

The Board recommends that the holding in this opinion be applied prospectively.

IX. CONFLICTS OF INTEREST

[Ohio Board of Professional Conduct Opinion 2016-4](#) *Imputation of Conflict Involving Current and Former Legal Interns*

The Opinion discusses potential conflicts of interest that can arise with a law student holding a legal intern certificate.

The opinion stated that conflicts of interest arising out of a legal intern's current or former representation of clients are imputed to all lawyers in a private law firm when the intern is employed simultaneously as a law firm clerk. However, the conflicts of a former legal intern newly employed as a lawyer are not imputed to the lawyers in a law firm, but may necessitate the

screening of the lawyer from any matter in which he or she had substantial responsibility.

[Ohio Board of Professional Conduct Opinion 2016-12](#) *Conflict of Interest when Spouse of Criminal Defendant's Lawyer is an Officer Employed by Arresting or Investigating Agency*

This Opinion addresses the potential conflicts of interest situation that may arise when a lawyer's spouse is employed by a law enforcement or investigating agency. The Opinion says that a lawyer is not prohibited from accepting representation of a defendant in a criminal matter where the lawyer's spouse is an officer or detective employed with the arresting or investigating agency and is not involved in the case.

If a lawyer determines that a material limitation conflict exists and the lawyer seeks to accept or continue the representation, then the lawyer must ensure that (1) he or she is able to provide competent and diligent representation to the client; (2) the client gives informed consent, confirmed in writing; and 3) the representation is not precluded by law. Prof.Cond.R. 1.7(a)(2), (b), (c).

[Ohio Board of Professional Conduct Opinion 2017-4](#) *Legal Representation of a Client by Former Magistrate*

This Opinion discusses the potential conflict of interest that arises when a former magistrate is now in private practice. The Opinion states that under the Ohio Ethics Law, Ohio Revised Code 102.03(A)(1), a former magistrate is prohibited for 12 months after leaving the bench from representing a client in a matter in which he or she personally participated in as a government employee.

The Opinion then discusses Rule 1.12: Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral, of the Ohio Rules of Professional Conduct, which provides: (a) Except as stated in division (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

X. DUTY TO REPORT

[Ohio Board of Professional Conduct Opinion 2016-2](#) *Duty to Report Unprivileged Knowledge of Misconduct*

The opinion concluded that a lawyer has a duty to report unprivileged knowledge of another lawyer's misconduct under Rule 8.3 of the Ohio Rules of Professional Conduct. A lawyer is not required to report privileged information of another lawyer's misconduct. A lawyer may, however, reveal information related to the misconduct of a lawyer if the client gives his or her informed consent to the disclosure under Rule 1.6 of the Rules of Professional Conduct.

[Ohio Board of Professional Conduct Opinion 2017-2](#) *Duty of Judge to Report Misconduct*

This Opinion withdraws Opinion 89-32. It 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.

XI. CORPORATE EMPLOYEES AND OUT-OF-STATE ATTORNEYS

[Ohio Board of Professional Conduct Opinion 2016-5](#) *Communication With Current and Former Corporate Employees*

This Opinion withdraws Opinion 2005-3. It says that when a corporation is known to be represented with respect to a particular matter, Rule 4.2 prohibits communication without the consent of the corporate lawyer with a current employee of the corporation who supervises, directs, or regularly consults with the corporation's lawyer concerning the matter, who has authority to obligate the corporation with respect to the matter, or whose act or omission in connection with the matter may be imputed to the corporation for purposes of civil or criminal liability.

[Ohio Board of Professional Conduct Opinion 2016-9](#) *Out-of-State Lawyer Practicing Exclusively Before Federal Courts or Agencies*

This Opinion states that an out-of-state lawyer who is admitted and in good standing in another United States jurisdiction, and also is admitted or authorized by law to appear before a federal court or agency in Ohio, may maintain an office or other systematic and continuous presence in Ohio. An out-of-state lawyer who is engaged in a federal practice and maintains a physical office in Ohio, may not provide legal services based on Ohio law to clients.

The letterhead of a lawyer not licensed to practice law in Ohio, engaged in a federal practice, and who maintains an office or other systematic and continuous presence, may include the designation “Attorney at Law,” but must identify the federal courts or agencies to which the lawyer is admitted or permitted to appear and include an appropriate disclaimer regarding his or her jurisdictional limitations.

[Ohio Board of Professional Conduct Opinion 2018-2](#) *Out-of-State Lawyer Representing Lending Institution*

This Opinion provides that an out-of-state lawyer who is admitted and in good standing in another United States jurisdiction may represent, on a temporary basis, an out-of-state lending institution concerning loans made to persons and entities in Ohio secured by real property located in Ohio. The out-of-state lawyer may prepare loan documents, negotiate the terms of the agreement with the borrower or counsel, and attend the loan closing in Ohio without engaging in the unauthorized practice of law.

XII. NONPROFIT ORGANIZATIONS

[Ohio Board of Professional Conduct Opinion 2017-6](#) *Specialized Docket Courts and Nonprofit Organizations*

This Opinion finds that under Ohio Ethics Law, a court may not employ a person who is simultaneously employed by a nonprofit drug treatment center that has contracted with the court to provide services for its specialized drug court docket. Further, the Opinion states that under the Code of Judicial Conduct, the dual employment of a court employee with the treatment center may impact the independence, integrity and impartiality of the judge and create an appearance of impropriety that necessitates the disqualification of the judge.

XIII. REPRESENTATION OF ORGANIZATIONAL CLIENT

[Ohio Board of Professional Conduct Opinion 2018-1](#) *Representation of Organizational Client*

This Opinion holds that A lawyer for an organization has an ethical obligation to carry out the legal representation in furtherance of the best interests of the organization, but not the independent interests of organization’s constituents. A lawyer facing conflicting directions from constituents about the objectives of the representation should act in accordance with the direction of constituents

with higher authority in the organization. An organization's constituents include only its owners, officers, directors, employees, and shareholders or persons in equivalent positions in the organization.

XIV. SELF-HELP CLINICS

[Ohio Board of Professional Conduct Opinion 2017-7](#) *Court Established Self-Help Clinics for Self-Represented Litigants*

The Opinion addresses a court established self-help clinic. The Opinion states that to ensure the right of self-represented litigants to be heard, a court may establish and fund a self-help center to assist self-represented litigants as long as the independence, integrity, and impartiality of its judges is maintained.

Further the opinion states that a court may appoint and compensate lawyers to provide limited scope representation to litigants in a self-help clinic. A lawyer who provides legal assistance through a self-help clinic creates a client-lawyer relationship, although the relationship may be limited in scope. A written agreement that obtains the client's acknowledgement to the limited scope representation is recommended.

XV. MEDICAL MARIJUANA

[Ohio Medical Marijuana Control Program](#) is the State of Ohio's official resource for this program which will allow people with certain medical conditions, upon the recommendation of an Ohio-licensed physician certified by the State Medical Board, to purchase and use medical marijuana.

House Bill 523, effective September 8, 2016, set a basic framework for the Ohio Medical Marijuana Control Program. However, the legislation left the work of establishing specific rules and guidelines for the cultivation, processing, testing, dispensing and medical use to different state agencies. The website for the Ohio Medical Marijuana Control Program is designed to keep Ohioans informed about the program and provide information on the rules, program resources and updates.

XVI. AMENDMENTS TO OHIO RULES OF PRACTICE AND PROCEDURE

July 1, 2018 amendments took effect to Ohio Rules of Civil Procedure, Ohio Rules of Criminal Procedure, Ohio Rules of Evidence and Ohio Rules of Juvenile Procedure. [Click here](#) to read all the amendments.

Several amendments to the Ohio Rules of Civil Procedure impact the unbundling of legal services. The amendments to Civil Rule 3 (B) and Civil Rule 5 are meant to encourage attorneys to assist pro se parties on a limited basis without undertaking full representation of the client on all issues in the legal matter. New division (B) permits attorneys to enter a limited appearance on behalf of an otherwise unrepresented litigant, as authorized by Professional Conduct Rule 1.2(c), if that scope is specifically described in a "Notice of Limited Appearance."

This provision also provides that leave of court normally required if an attorney seeks to withdraw from representation, is not required for withdraw from the case at the conclusion of a properly noticed limited appearance, provided the attorney files and serves the proper Notice of Completion of Limited Appearance in accordance with Civil Rule 5.

Other amendments to Civil Rule 4.4 allow any petitioner in a civil protection order, regardless of indigency, to use publication by "posting and mail" when defendant's residence is unknown.

Further, Civil Rules 50 and 59 were amended to clarify that the 28-day timeframe to file a motion pursuant to those rules begins to run when the clerk actually completes service, so the time to file a motion cannot expire if a party is never actually served with notice of the judgment.

XVII. DEVELOPMENTS IN ELDERCARE AND REPORTING ABUSE

In February 2018, judges at a Probate Judges Association Conference received training on the Eldercare Coordination program to help resolve family disputes in taking care of elderly loved ones. The purpose of the program is to help avoid guardianships for elderly individuals.

The Ohio Supreme Court has materials available for training of attorneys as mandatory reporters of elder abuse. See [Understanding Elder Abuse: A Guide for Legal and Law Enforcement Professionals](#).

XVIII. [ABA AMENDMENTS TO MODEL RULES OF PROFESSIONAL CONDUCT](#)

At the ABA Meeting in Chicago on August 6-7, 2018, the House of Delegates [amended Model Rules 7.1 – 7.5](#) and related comments on lawyer advertising.

The principal amendments:

- Combine provisions on false and misleading communications into Rule 7.1 and its Comments.

- Consolidate specific provisions on advertising into Rule 7.2, including requirements for use of the term “certified specialist”.
- Permit nominal “thank you” gifts under certain conditions as an exception to the general prohibition against paying for recommendations.
- Define solicitation as “a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.”
- Prohibit live, person-to-person solicitation for pecuniary gain with certain exceptions.
- Eliminate the labeling requirement for targeted mailings but continue to prohibit targeted mailings that are misleading, involve coercion, duress or harassment, or that involve a target of the solicitation who has made known to the lawyer a desire not to be solicited.

XIX. [ABA FORMAL OPINION 481 A LAWYERS’ DUTY TO INFORM A CURRENT OR FORMER CLIENT OF THE LAWYER’S MATERIAL ERROR](#)

Model Rule of Professional Conduct 1.4 requires a lawyer to inform a current client if the lawyer believes that he or she may have materially erred in the client’s representation. Recognizing that errors occur along a continuum, an error is material if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice.

XX. [NEW GRAND JURY VIDEO AND PAMPHLET](#)

On May 16, 2018, the Ohio Supreme Court unveiled a new grand jury [video](#) and [pamphlet](#) for all Ohio judges, courts and schools to educate potential grand jury members and the public about grand juries. For more information, you can read the [Report of the Task Force to Examine Improvements to the Ohio Grand Jury System](#).

XXI. PROBATE BENCH CARDS

In July 2018, updated [Probate Bench Cards](#) became available. The bench cards are a quick legal reference for judge and magistrate reflecting changes in the law. The updated bench cards address Adult Protective Services, Concealment of Assets, Insolvent Estates and Voluntary Admission of Mentally Ill Persons.

XXII. [RULE ON ATTORNEY RESIGNATION, RETIREMENT MODIFIED](#)

Effective November 1, 2018, Gov. Bar Rule V, Section 15 and Gov Bar Rule VI, Sections 11 and 12, are amended to provide that whether an attorney permanently retires or resigns with disciplinary action pending, an appropriate order from the Court will be issued. Such order will reinforce the prohibition against the permanently retired or resigned attorney ever practicing in the future.

XXIII. ISSUES FOR WHICH PUBLIC COMMENT REQUESTED BY OHIO SUPREME COURT

Assignment of Appellate Court Cases

[See June 5, 2018 posting.](#)

The Ohio Supreme Court accepted accept public comment until July 5, 2018 on a proposed rule that would require appellate court cases to be randomly assigned to judges of that court.

The new rule resembles Sup. R. 36.011, which addresses trial courts only. Since that rule doesn't address how cases are assigned in appellate courts, the Advisory Committee on Case Management recommended a specific rule to address how those cases are assigned.

This proposed rule allows for the random assignment of cases through an objective and impartial system. Click to read the specific language of [proposed new Sup.R. 36.020.](#)

Update Mediator Qualifications

[See July 16, 2018 posting](#)

The Ohio Supreme Court asks for public comments until August 15, 2018 on proposed [amendments](#) that would broaden the mediator qualifications for courts across the state.

The request for public comment notes that currently, 77 percent of common pleas courts refer cases to mediation, and 63 percent of courts do so statewide. Of the courts that use mediation, 84 percent have a local rule regarding mediation. Right now, the current rule reads that a court "shall consider, and may adopt, a local rule providing for mediation." Under the proposed rules, courts would continue to have discretion in whether to refer cases to mediation, but those courts that elect to refer cases to mediation would be required to have a local rule.

Under proposed Rules 16-16.36 of the Rules of Superintendence for the Courts of Ohio, provisions will be updated or added to include:

- Responsibilities of mediators
- Responsibilities of courts
- Pre-referral education and training
- Complaint process
- Core values for mediation

The proposed rules will also add a requirement that local rules governing mediation must incorporate Ohio's Uniform Mediation Act, identify the cases eligible for mediation, and address confidentiality.

Creating Alternative Dispute Resolution in Probate Courts

[See July 16, 2016 posting.](#)

The Ohio Supreme Court asked for public comments by August 15, 2018 on a proposed [amendment](#) that would create alternative dispute resolution (ADR) as an option in settling family matters within the state's probate courts.

The request for public comment states that currently, there is no rule governing eldercaring coordination. As a result, adult siblings have problems making decisions on behalf of aging parents, which can result in heated legal battles.

The request further notes that under proposed Rule 79 of the Rules of Superintendence for the Courts of Ohio, courts would have discretion to use ADR in disputes in which high conflict family dynamics interfere with the well-being and safety of the elder, limit adherence to court orders, impede court processes, and detract from the efficacy of guardianship and other appointments by the court. Additionally, dispute resolution options in probate court are anticipated to become even more relevant since the number of baby boomers reaching 65 years of age will double from 2008 to 2030.

Proposed Amendment to Shorten Extensions of Time

[See October 9, 2018 posting](#)

The Supreme Court will accept public comment until November 7, 2018 on a [proposed amendment](#) to the Rules of Practice of the Supreme Court of Ohio to will shorten the amount of time by which parties may agree to extend the time for filing certain documents.

Currently, parties may file a stipulation for up to a 20-day extension to file certain documents in their case. The proposed amendment will shorten that timeframe and limit parties to stipulating to a maximum extension of 10 days.

Proposed Amendment on Rules Videotaping Jurors

[See October 22, 2018 posting](#)

The Ohio Supreme Court will accept public comment until November 21, 2018 on a proposed [amendment](#) to the Rules of Superintendence for the Courts of Ohio that would generally prohibit filming and videotaping jurors or prospective jurors.

Under the proposed amendment to the Rules of Superintendence, there would be no filming, videotaping, recording, or photographing of jurors or prospective jurors, unless permitted by the judge.

XXIV. SPEAKER CONTACT INFORMATION

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