

***Ethics in Uncertain Times: Ethics Advisory Service – We’re Available to Help When You Need Us...***

**Ethics Counsel/Ethics Advisory Service: The Facts...Just the Facts**

Every day, lawyers from around the state call, write, or email questions to the LSBA’s Ethics Advisory Service looking for answers to a variety of questions. The Ethics Advisory Service is designed to provide non-binding advice regarding prospective ethical behavior of the lawyer requesting the opinion under the Louisiana Rules of Professional Conduct. Some members do not realize that it is a free, confidential service. Depending on the issue, and how many of the LSBA’s members are currently using the service the response time may be affected. In many instances, advice can be provided with a phone call and discussion. Other times, a written response is requested or needed. LSBA Ethics Counsel stand ready to provide members with non-binding conservative advice about the Louisiana Rules of Professional Conduct and the lawyer’s prospective conduct to lessen the chance of a disciplinary complaint.

If needed contact Ethics Counsel Eric Barefield at 504-619-0122 or [ebarefield@lsba.org](mailto:ebarefield@lsba.org) or Ethics Counsel Richard Lemmler at 504-619-0144 or [rlemmler@lsba.org](mailto:rlemmler@lsba.org).

**Visit the Ethics Advisory Service webpage**

<https://www.lsba.org/Members/EthicsAdvisary.aspx>

**Policies of the Ethics Advisory Service:**

Policies: Any member of the Louisiana State Bar Association who avails himself/herself of the Ethics Advisory Service should understand that the individual members of the Committee and the LSBA staff provide this service without any assumption of any liability for the correctness of the opinion rendered or for any liability for any damages or other consequences resulting from the rendition of this advice;

(1) Requests shall be limited to the prospective conduct of the requesting lawyer.

(2) The Committee/Ethics Counsel will not comment on the conduct of other lawyers not a party to the request.

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(3) The Committee/Ethics Counsel will not comment on past conduct or on conduct in progress.

(4) The Committee/Ethics Counsel will not comment on matters which are the subject of litigation (i.e., no second-guessing, meddling or encroachment on the jurisdiction of the courts) or on matters which are already involved in the disciplinary system (i.e., no second-guessing, meddling or encroachment on the jurisdiction of the Office of Disciplinary Counsel or the Louisiana Attorney Disciplinary Board).

(5) Ethics Advisory Opinions are not binding on any court or on the Office of Disciplinary Counsel or on the Louisiana Attorney Disciplinary Board or on the Supreme Court of Louisiana.

(6) Ethics Advisory Opinions are not admissible into evidence.

(7) Requests, the fact of the Request, the facts of the Request, Opinions and the fact of the rendition of an Opinion rendered as a result of a Request are deemed confidential and not discoverable in any civil or criminal matter in this state for any reason.

## **Selected Louisiana Rules of Professional Conduct**

Rule 1.1(a) of the Louisiana Rules of Professional Conduct, in pertinent part, provides:

*... A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

Rule 1.16 of the Louisiana Rules of Professional Conduct provides:

*(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged. (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer's*

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*services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer's services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists. (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.*

Rule 1.2(c) and (d) provides, in pertinent part, that:

*...(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.*

Rule 1.3 of the Louisiana Rules of Professional Conduct, provides:

*A lawyer shall act with reasonable diligence and promptness in representing a client.*

Rule 1.4(a) provides, in pertinent part, that:

*...A lawyer shall: ... (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; ... and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client*

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*expects assistance not permitted by the Rules of Professional Conduct or other law...*

Rule 1.6 of the Louisiana Rules of Professional Conduct provides:

*...(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services; (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; (4) to secure legal advice about the lawyer's compliance with these Rules; (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or (6) to comply with other law or court order. (7) to detect and resolve conflicts of interest between lawyers in different firms, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized access to, information relating to the representation of a client.*

Rule 1.7 of the Louisiana Rules of Professional Conduct provides:

*...(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation*

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*does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.*

Rule 4.4(b) of the Louisiana Rules of Professional Conduct provides:

*(b) A lawyer who receives a writing or electronically stored information that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing or electronically stored information was not intended for the receiving lawyer, shall refrain from examining the writing or electronically stored information, promptly notify the sending lawyer, and return the writing or delete the electronically stored information.*

Rule 5.3(b) of the Louisiana Rules of Professional Conduct provides:

*With respect to a non-lawyer employed or retained or associated with a lawyer: ...*

*(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.*

Rule 8.4(a), (b), and (d) of the Louisiana Rules of Professional Conduct provides:

*It is professional misconduct for a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do, or do so through the acts of another; (b) Commit a criminal act... (d) Engage in conduct prejudicial to the administration of justice; ...*

Additional Resource Materials:

The Louisiana Rules of Professional Conduct

<https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf>

Practice Transition Handbook

<https://www.lsba.org/PracticeManagement/ClosingPractice.aspx>

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LSBA Ethics Opinion 19-LSBA-RPCC-021 “Lawyers Use of Technology”

<https://www.lsba.org/documents/Ethics/EthicsOpinionLawyersUseTech02062019.pdf>

## **MORE RESOURCES**

### **Court-Specific Resources**

- Information on Louisiana Courts: <http://www.lasc.org/COVID19/>
- 24th Judicial District Court: <http://www.courtonline.us>
- U.S. District Court, Eastern District of Louisiana: <http://www.laed.uscourts.gov/>
- U.S. Court of Appeals, Fifth Circuit: <http://www.ca5.uscourts.gov/>
- Orleans Civil District Court - Free Subscriptions to Remote Access System: <https://bit.ly/2ykQT82>

### **Louisiana-Specific Resources**

- Louisiana Department of Health: <http://ldh.la.gov/Coronavirus/>
- Louisiana LawHelp: <https://bit.ly/2TWykiC>
- Governor’s Information Page: <https://gov.louisiana.gov/index.cfm/page/89>
- Governor’s Expanded Emergency Proclamation: <https://bit.ly/2U4Y9Ny>
- Governor’s Proclamation Regarding Remote Notarization: <https://bit.ly/2WZNBBn>

### **Coronavirus Control & Prevention**

- Centers for Disease Control and Prevention: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- World Health Organization: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

### **Member Resources**

- ABA Resources: <https://www.americanbar.org/>
- Wellness in the time of COVID-19: <https://bit.ly/2U13wHB>
- JLAP COVID-19 Support Guide: <https://louisianajlap.com/covid-19/>
- LawSites Free Product List: <https://www.lawsitesblog.com/coronavirus-resources>
- Home Fitness in Small Spaces: <https://bit.ly/2JnmjwI>

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