

LSA-R.S. 37:221

§ 221. Bar Committee on Alcohol and Drug Abuse; Judges and Lawyers Assistance Program; privilege, confidentiality, and immunity

**A. Statement of public policy.**

(1) Judges and lawyers are no less susceptible than any other citizen of Louisiana to mental health issues, including but not limited to alcoholism, drug addiction, depression, burnout, and dementia. These impairments pose serious health and ethical issues for members of the Louisiana State Bar Association.

(2) Successful treatment for mental health issues can be initiated years earlier than might otherwise be possible, by the use of counseling by peers or an intervention process. Intervention in cases of alcoholism and drug addiction involves peer counseling and confronting the person with specific instances of misconduct or abnormal behavior caused by alcohol or drug use, as recited to the subject of the intervention by fact reporters such as: family members, peers, friends, coworkers, employers, or other concerned individuals who have first-hand knowledge of such incidents and who are acting under the guidance of a trained intervenor.

(3) Recognizing that members of the judiciary and Louisiana State Bar Association have a strong interest in securing the competent administration of justice for citizens of Louisiana, and in upholding the dignity and respect of the judicial branch of government and legal profession, the Louisiana State Bar Association has created the Judges and Lawyers Assistance Program, Inc., and the Committee on Alcohol and Drug Abuse for the purpose of providing counseling and intervention services for judges, lawyers, law students, and other members of the legal profession who may suffer from mental health issues. Members of the legal profession and the judiciary are encouraged to seek out the counseling and intervention services of the Judges and Lawyers Assistance Program, Inc., and shall feel confident that their participation in the Judges and Lawyers Assistance Program, Inc., will be confidential and privileged in all respects and shall not be divulged to the public in any way.

(4) It is hereby declared to be the public policy of the state of Louisiana to promote and encourage the use of counseling by peers and the intervention process in order to initiate successful treatment of mental health issues among members of the legal profession. The intent of this Section is to further this goal by providing for a privilege, confidentiality of information, and tort immunity for the Louisiana State Bar Association, the Louisiana State Bar Association's

Committee on Alcohol and Drug Abuse, the Judges and Lawyers Assistance Program, Inc., the Louisiana Bar Foundation, their officers, directors, agents and employees, and persons who furnish information and who participate as volunteers in the programming offered by the Judges and Lawyers Assistance Program, Inc.

## **B. Privilege and confidentiality.**

(1) Any information, report, or record, whether written or oral, that the Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association, the Judges and Lawyers Assistance Program, Inc., or any member, or employee, or agent of either generates, receives, gathers, or maintains is confidential and privileged. No member of the Committee on Alcohol and Drug Abuse, or agent, or employee of the Judges and Lawyers Assistance Program, Inc., may disclose that information, report or record without written approval of the subject judge, lawyer, law student, or other member of the legal profession. No person shall be required to disclose, by way of testimony or otherwise, privileged information or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged information:

(a) In connection with any civil or criminal case or proceeding.

(b) By way of any discovery procedure.

(2) Nothing herein shall prohibit members of the Committee on Alcohol and Drug Abuse or any employee or agent of the Judges and Lawyers Assistance Program, Inc., from sharing among themselves information, reports, or records about a judge, lawyer, law student, or other member of the legal profession for the purpose of helping the judge, lawyer, law student, or other member of the legal profession recover from problems with alcohol, drug abuse, or any other mental health issue.

(3) This law is supplementary to any other law or statute or rule of the Supreme Court of Louisiana relative to a privilege and confidentiality for such information.

## **C. Civil immunity.**

(1) Any licensed lawyer, and his supporting staff, shall be immune from civil liability for, or resulting from, any act, decision, omission, communication, writing, report, finding, opinion, or conclusion, done by or made in good faith while engaged in efforts to assist judges, lawyers, law students, or other members of

the legal profession in connection with substance abuse or mental health counseling or intervention pursuant to the programs of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse or the Judges and Lawyers Assistance Program, Inc., or in the performance of his or her duties as a member or agent of the Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association or agent or as an agent, employee, or officer or director of the Judges and Lawyers Assistance Program, Inc., which function primarily to provide assistance in the form of counseling and intervention for any judge, lawyer, law student, or other member of the legal profession suspected of having an impaired ability to function professionally because of his or her abuse of the use of alcohol or other drug, or due to any other mental health issue. The Louisiana State Bar Association, its Committee on Alcohol and Drug Abuse, the Louisiana Bar Foundation, and the Judges and Lawyers Assistance Program, Inc., and their officers, directors, committees, employees, servants, and agents shall

also be immune from civil liability for any acts or omissions made or done or resulting from any of the following:

(a) The program of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse or the Judges and Lawyers Assistance Program, Inc.

(b) Any act, decision, omission, communication, writing, report, finding, opinion, or conclusion of the Committee on Alcohol and Drug Abuse, or the Judges and Lawyers Assistance Program, Inc., or any of their members, agents, or employees.

(c) The establishment of programs or activities of such committee or corporation or the Louisiana Bar Foundation.

(2) A person who in good faith reports information or takes action in connection with any program of the Committee on Alcohol and Drug Abuse or the Judges and Lawyers Assistance Program, Inc., is immune from civil liability for reporting information or taking any action set forth in Paragraph (C)(1) of this Section or participating therein and in particular any counseling or intervention effort under the auspices of the Committee on Alcohol and Drug Abuse or the Judges and Lawyers Assistance Program, Inc. This immunity shall not protect a person who makes a report known to be false, or with reckless disregard for the truth.

(3) The civil immunity provided by this Section shall be liberally construed to accomplish the purposes of this Chapter.

(4) Any persons or organization claiming immunity under this Section is presumed to have acted in good faith in the performance of legitimate duties. A

person alleging a lack of good faith or its opposite, bad faith, has the burden of proof on that issue beyond a reasonable doubt. Bad faith, or lack of good faith, shall mean conduct which is capricious, arbitrary, or the result of prejudice, and which is without any rational basis.

(5) In any civil action against any party claiming immunity hereunder, the complaining party shall proceed in accordance with the following:

(a) By verified petition.

(b) By clear and fact-specific allegations, in the absence of which, an action shall be dismissed.

(c) Issues of immunity are issues of law and must be disposed of preliminarily as a matter of law.

(d) The plaintiff shall have the burden of establishing the defendant's lack of good faith, or bad faith, and lack of good faith, or bad faith, must be proven beyond a reasonable doubt. Lack of good faith, or bad faith, shall mean conduct which is capricious, arbitrary, or the result of prejudice and which is without any rational basis.

(e) In the event a claimant shall be unsuccessful, said claimant must pay any successful defendant's reasonable attorney fees.

(f) By discovery, no claimant may compel any defendant to disclose information or the sources of that information which are privileged or confidential.

(6) The immunity provided by this Section is in addition to any other immunity provided by law.

(7) Any liability insurer of any party entitled to civil immunity hereunder shall be entitled to the same immunity as that to which its insured shall be entitled.

(8) The immunity granted under this Section shall be retroactive.

### **Credits**

Added by [Acts 1992, No. 652, § 1](#). Amended by [Acts 2015, No. 59, § 1](#).