

**Louisiana State Bar Association  
Rules of Professional Conduct Committee**

**PUBLIC Opinion 05-RPCC-005<sup>1</sup>**

September 27, 2005

**Lawyer Providing “Hotline” Advice in the Wake of a Natural Disaster**

*A lawyer, under the auspices of a program sponsored by a nonprofit organization or court, may provide short-term limited legal services to clients—such as over a “hotline” or at a booth established to help victims of a natural disaster—as long as the lawyer is competent to provide the necessary services. Additionally, the lawyer may properly provide a “second opinion” to persons who may already be represented by counsel but who, for instance, are unable to locate or communicate with their original lawyer. However, profit-based solicitation of disaster victims, especially under the deceptive guise of providing help and/or free disaster assistance, is strictly prohibited.*

The Committee considers the ethical implications of a lawyer who wishes to volunteer to provide assistance to victims of a natural disaster by means of a “victims’ hotline” or at a booth sponsored by a nonprofit organization or court. It should be clearly noted that this opinion is specifically limited to Louisiana-licensed lawyers who would provide such advice to Louisiana-

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<sup>1</sup> The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

based disaster victims with respect to matters of Louisiana law<sup>2</sup>—the conduct of lawyers who are licensed elsewhere is not the subject or focus of this opinion.<sup>3</sup>

### **Competence**

Rule 1.1 of the Louisiana Rules of Professional Conduct (2004) requires that “...*A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation...*”

Foremost, a lawyer who wishes to provide assistance to persons over a “victims’ hotline” or at a booth should possess the knowledge, skill, thoroughness and preparation reasonably necessary to provide competent advice and/or services to those seeking such assistance. As callers to such a “hotline” and visitors to such a booth will likely be desperate for help, eager for assistance and, therefore, most vulnerable, a lawyer who is not competent in the areas of law at issue (and unwilling/unable to attain competence through seminars, training and other learning aids) should refrain from volunteering to provide this type of assistance as that lawyer’s participation would have a high potential for causing more harm than good.

Similarly, even if the lawyer has some degree of competence as generally needed for the “hotline” or booth, the lawyer should be careful to limit the scope of the advice given, advising

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<sup>2</sup> Additionally, following the disaster, Louisiana lawyers who have been displaced outside of Louisiana’s borders and who would provide legal services to Louisiana-based clients (and perhaps some of them now as displaced Louisiana residents) with respect to Louisiana-based matters should also check with the bar licensing authority in that foreign state regarding that state’s position on the Louisiana lawyer’s temporary “multi-jurisdictional practice” there and/or whether that state’s highest court may have issued a special order permitting other forms of practice there by displaced Louisiana lawyers.

<sup>3</sup> Lawyers not licensed in Louisiana should consider potential unauthorized practice of law issues with respect to providing legal services to displaced Louisiana residents regarding matters of Louisiana law, absent some special emergency exception which might be ordered by the Supreme Court of Louisiana. Exploration of that issue is beyond the scope of this informal advisory opinion.

the client of any relevant limitations on the lawyer's competence<sup>4</sup> as well as any relevant limitations on the lawyer's conduct<sup>5</sup>—while there will be a tendency to want to try and provide as much help as possible, the lawyer should be extremely cautious about advising disaster victims on matters or areas of law with which the lawyer has little or no familiarity. As in normal situations, the lawyer confronted with a disaster victim who is seeking advice on matters beyond the lawyer's competence should refer that person to another lawyer who would be capable of providing competent advice or—despite the overwhelming desire to help—compassionately but firmly remind the disaster victim of the limitations of the service and decline to offer advice on those matters which exceed the lawyer's competence.

### **Provision of Short-Term Limited Legal Services**

Rule 6.5 of the Louisiana Rules of Professional Conduct (2004) provides:

*...(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:...(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and...(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or*

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<sup>4</sup> Rule 1.2(c) of the Louisiana Rules of Professional Conduct (2004) states: “...A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent...” It is presumed that the nonprofit organization or court sponsoring the “hotline” or booth will have appropriate safeguards, disclaimers and advance notices in place to advise disaster victims that the advice and services to be provided over the telephone or at the booth will be fairly limited in scope and should not necessarily substitute for a full-fledged, in-depth consultation with a lawyer. See also Comment [2] to Rule 6.5 of the ABA Model Rules of Professional Conduct.

<sup>5</sup> Rule 1.4(a) of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part: “...(a) A lawyer shall:...(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;...and...(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 Rules of Professional Conduct or other law...”

*1.9(a) with respect to the matter...(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule...*

Provision of legal advice to callers over a “victims’ hotline” or at a booth sponsored by a nonprofit organization—such as a state or local bar association—or a court would qualify under Rule 6.5.<sup>6</sup> Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.<sup>7</sup> However, a lawyer participating as a volunteer in such a program should still remain reasonably vigilant regarding the potential for conflicts of interest with current clients<sup>8</sup>, former clients<sup>9</sup> or such conflicts pertaining to another lawyer who is associated in a firm with the volunteering lawyer.<sup>10</sup> If the lawyer recognizes such a conflict, the lawyer should refrain from further consultation with the client with respect to the matter and simply refer that client to another, hopefully conflict-free volunteer lawyer at the “hotline” or booth.<sup>11</sup>

### **Persons Already Represented by Counsel**

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<sup>6</sup> See Comment [1] to Rule 6.5 of the ABA Model Rules of Professional Conduct: “...*Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation...*”

<sup>7</sup> *Id.*, Comment [1].

<sup>8</sup> See Rule 1.7 of the Louisiana Rules of Professional Conduct (2004).

<sup>9</sup> See Rule 1.9 of the Louisiana Rules of Professional Conduct (2004).

<sup>10</sup> See Rule 1.10 of the Louisiana Rules of Professional Conduct (2004).

<sup>11</sup> See Rule 1.16 of the Louisiana Rules of Professional Conduct (2004).

Rule 4.2 of the Louisiana Rules of Professional Conduct (2004) prohibits a lawyer, “...*in representing a client...*”, from communicating about the subject of a representation with a person that lawyer knows to be represented by another lawyer in the matter—unless the “new” lawyer has the consent of that other lawyer or the authority of law or a court order. In the days, weeks and months following a natural disaster, clients and their lawyers are quite likely to be scattered all over the country. Communications will be sketchy at best but client matters will, in some instances, not be able to wait.<sup>12</sup> These clients—some of them now suffering as victims of the disaster—will be in dire need of immediate legal assistance but unable to contact their “regular” lawyers. The lawyer who would volunteer to provide advice and other short-term limited legal services by way of a “victims’ hotline” or booth for disaster relief may be confronted with two similar but distinct situations involving disaster victims who are already represented by counsel.

First, volunteering lawyers will likely encounter persons who indicate that they already have “a lawyer” but, in fact, it will be discovered that the original lawyer has not and does not represent this person with respect to what is actually a brand-new, different legal matter than what was being handled by the original lawyer: for example, post-disaster issues related to FEMA<sup>13</sup> benefits, insurance coverage, food stamps, etc. Under this scenario, Rule 4.2 would not be triggered at all and the volunteer lawyer would not be prohibited from communicating with this disaster victim concerning these new matters since the disaster victim is not yet represented by ANY lawyer with regard to these brand-new matters.<sup>14</sup>

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<sup>12</sup> For example, family law issues such as child custody, child support, etc., will not reasonably be able to just sit and wait for disposition after some return to relative normalcy.

<sup>13</sup> “Federal Emergency Management Agency”.

<sup>14</sup> See Comment [4] to Rule 4.2 of the ABA Model Rules of Professional Conduct: “...*This Rule does not prohibit communication with a represented person, or an employee or agent of such person, **concerning matters outside the representation**...*” [emphasis added].

Second, volunteering lawyers may encounter disaster victims who are and have been represented by a lawyer with respect to the same matter now being presented to the volunteer but the original lawyer, for example, is now missing or outside the reach of current communications. Rule 4.2 would not prohibit the volunteer lawyer from also communicating with the disaster victim regarding this matter, as long as the volunteer has no known prior or reasonably anticipated client connection with the same matter or one substantially related to it. The most obvious and common example of this would be a person who seeks a “second opinion” from a lawyer, although that person is already represented by a different lawyer with respect to the matter in question. There is no reason why a client cannot seek and obtain a “second opinion” (or “third opinion”, etc.) in order to satisfy the client’s need for legal advice, information and services—what one lawyer does not offer or provide may perhaps be made available to the client by a second (or third or ...) lawyer.<sup>15</sup> As such, Rule 4.2 does not automatically prohibit a lawyer from speaking with a person about a matter even though that person may already be represented by counsel—as long as the “new” lawyer has no known prior or reasonably anticipated representational connection to that matter or one substantially related to it.

Under the circumstances involving a “victims’ hotline” or disaster relief booth, Rule 4.2 would not prohibit a lawyer who volunteers to provide advice and assistance over the “hotline” or at the booth from helping even clients who may already have a lawyer representing them with a matter, as long as the volunteer lawyer has not, is not currently and does not reasonably expect to be representing another person in connection with that same

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<sup>15</sup> While lawyers are held to a standard of professional competence and diligence, they are still human, packaged in all different sizes, shapes and varieties and are by no means perfect or all-knowing. Putting the egos of the lawyers aside, clients are always entitled to seek the best legal advice and services that they might be able to find—even if it happens to be assembled from bits and pieces gathered from several different lawyers along the way.

matter or one substantially related to it.<sup>16</sup> The clients will certainly need legal advice and should not be “shunned” by lawyers (whether manning “hotlines”, booths or consulted in a normal practice setting) merely because the clients might already be represented by another lawyer in that matter but with whom they cannot currently communicate and/or locate.<sup>17</sup>

### **No Room for Profit-Motivated Solicitation of Victims**

Profit-motivated solicitation by volunteer lawyers will not be tolerated, either directly or for the benefit of others through systematic referrals. Rule 7.1 of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part, that “...*(a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer’s services or the services of the lawyer’s firm...*” Rule 7.3 of the Louisiana Rules of Professional Conduct (2004) states, in pertinent part, that “...*(a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain...*” A lawyer who would volunteer to provide legal advice over a “hotline” or at a booth for disaster victims has no business deceptively preying upon those persons with solicitations for other, paying legal business or pretending to be there only to help others while really trolling for good, paying cases. On the other hand, Rule 7.3 prohibits in-person and person-to-person telephonic solicitation of clients when a significant motive for the lawyer’s doing so is the lawyer’s own pecuniary gain—if the lawyer is genuinely interested in helping as many disaster victims as possible without regard

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<sup>16</sup> If there is such a conflict, Rule 1.7 and/or Rule 1.9 would generally prevent the volunteer lawyer from advising/assisting that person with respect to the matter in question.

<sup>17</sup> The “new” lawyer should also consider, if possible, trying to help the client locate and communicate with the disaster victim’s now-missing original lawyer.

to monetary gain or profit, Rule 7.3 would not prohibit non-coercive “solicitation” of these persons as *pro bono* clients who may be in need of such free advice and assistance.<sup>18</sup>

Moreover, lawyers should also remember that Rule 7.3(b)(iii)(C) prohibits even otherwise acceptable forms of “targeted solicitation”<sup>19</sup> for personal injury or wrongful death claims during a period of thirty days following an accident or disaster involving the person to whom the communication would be sent or a relative of that person.<sup>20</sup> In short, lawyers genuinely wishing to do *pro bono* work under the circumstances in question should be clearly focused on helping others in that manner rather than prospecting for their own personal gain and profit.<sup>21</sup>

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<sup>18</sup> See also *In Re: Primus*, 436 U.S. 412 (1978): “...Solicitation of prospective litigants by nonprofit organizations that engage in litigation as ‘a form of political expression’ and ‘political association’ constitutes expressive and associational conduct entitled to First Amendment protection, as to which government may regulate only ‘with narrow specificity’...”

<sup>19</sup> See Rule 7.3(b)(iii)(A) & (B) of the Louisiana Rules of Professional Conduct.

<sup>20</sup> Rule 7.3(b)(iii)(C) of the Louisiana Rules of Professional Conduct: “... (iii) *In the case of a written communication: ... (C) if the communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, such communication shall not be initiated by the lawyer unless the accident or disaster occurred more than 30 days prior to the mailing of the communication...*”

<sup>21</sup> There is little doubt that the Supreme Court of Louisiana takes a very stern, harsh view of lawyers who would seek simply to take advantage of the misery and misfortune of others by preying upon disaster victims at their lowest and most vulnerable times.