

Note 1

§ 219. Unlawful payments by attorneys; penalty

Notes of Decisions

Contractual arrangements 1

exchange for percentage of fee, is unenforceable and cannot be used as setoff against legal obligation. Vidrine v. Abshire, App. 3 Cir.1990, 556 So.2d 288.

1. Contractual arrangements

"Running" contract, under which party recruits or searches out suits for law firm in

§ 220. Confidentiality, immunity; loss prevention programs

Any past or present loss prevention counsel functioning as such in the position approved by the Board of Governors of the Louisiana State Bar Association, Louisiana State Bar Association committee member, staff member, or person receiving information from such counsel, committee member, or staff member who has been involved in any loss prevention program, shall not be required to report any acts or disclose any information concerning the acts or omissions of a member of the Louisiana State Bar Association received during, or in connection with, loss prevention activities. Such counsel, committee member, and staff member shall be privileged and immune from any suit, claim, demand, court order, action, proceeding, or discovery request brought in connection with loss prevention duties or activities performed for any Louisiana State Bar Association member.

Added by Acts 1992, No. 627, § 1.

Retroactive Application

Acts 1992, No. 627 (§ 1 of which enacts this section) provides in § 2:

"The provisions of this Act are remedial and shall have retroactive effect."

Historical and Statutory Notes

Another R.S. 37:220, relating to privilege, confidentiality, and immunity of the Bar Committee on Alcohol and Drug Abuse, was enacted by

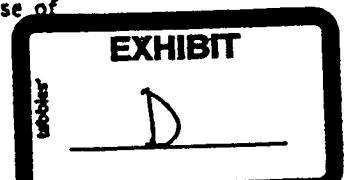
Acts 1992, No. 652, § 1, and was redesignated as R.S. 37:221 pursuant to the statutory revision authority of the Louisiana State Law Institute.

§ 221. Bar Committee on Alcohol and Drug Abuse; privilege, confidentiality, and immunity

A. Statement of public policy. (1) Alcoholism and drug addiction in the judiciary and among the members of the Louisiana State Bar Association poses serious health and ethical problems for the people of the state of Louisiana. One prominent characteristic of alcoholism and drug addiction is denial, which is the delusion of the alcoholic or drug addict that he or she will be able to control the use of alcohol or drugs. Successful treatment can be initiated only when the delusion of self-control is broken and the alcoholic or drug addict admits the hopelessness of his or her condition.

(2) The delusion of self-control can be broken, and successful treatment initiated years earlier than might otherwise be possible, by the use of counseling by peers and/or an intervention process. Successful treatment involves peer counseling and confronting the alcoholic or drug addict 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, co-workers, 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) The Louisiana State Bar Association has recognized the danger to the public of Louisiana arising through substance abuse by its members, the judiciary, prospective attorneys, and law students. In order to combat substance abuse among the judges, lawyers, prospective lawyers and law students of Louisiana, the Louisiana State Bar Association has created its Committee on Alcohol and Drug Abuse for the purpose of



counseling and intervening with respect to judges, lawyers, law students, and prospective lawyers who may have alcohol or drug abuse problems.

(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 alcoholism and drug addiction among the judiciary, members of the Louisiana State Bar Association, law students, and prospective lawyers. 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 Bar Association's Committee on Alcohol and Drug Abuse, Lawyer's Assistance Program, Inc., the Louisiana Bar Foundation, their officers, directors, agents and employees, and persons who furnish information and who participate in the counseling and intervention program of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse and Lawyer's Assistance Program, Inc., a non-profit corporation whose activities are determined by the Committee on Alcohol and Drug Abuse.

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, Lawyer's 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 Lawyer's Assistance Program, Inc., may disclose that information, report or record without written approval of the subject judge, lawyer, law student, or prospective lawyer. 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 Lawyer's Assistance Program, Inc., from sharing among themselves information, reports, or records about a judge, lawyer, law student, or prospective lawyer for the purpose of helping the judge, lawyer, law student, or prospective lawyer recover from problems of alcohol and/or drug abuse.

(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 prospective lawyers in connection with substance abuse counseling or intervention pursuant to the programs of the Louisiana State Bar Association's Committee on Alcohol and Drug Abuse or Lawyer's 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 Lawyer's Assistance Program, Inc., which function primarily to provide assistance in the form of counseling and intervention for any judge, lawyer, law student, or prospective lawyer suspected of having an impaired ability to function professionally because of his or her abuse of the use of alcohol or other drug. The Louisiana State Bar Association, its Committee on Alcohol and Drug Abuse, the Louisiana Bar Foundation and Lawyer's 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 Lawyer's Assistance Program, Inc.

(b) Any act, decision, omission, communication, writing, report, finding, opinion, or conclusion of the Committee on Alcohol and Drug Abuse, or Lawyer's 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 Lawyer's Assistance Program, Inc. is immune from civil liability for reporting information or taking any action set forth in Paragraph C(1) or participating therein and in particular any counseling or intervention effort under the auspices of the Committee on Alcohol and Drug Abuse or Lawyer's 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.

Added by Acts 1992, No. 652, § 1.

Historical and Statutory Notes

This section, originally enacted as R.S. 37:220 by Acts 1992, No. 652, § 1, was redesignated as R.S. 37:221 pursuant to the statutory revision authority of the Louisiana State Law Institute.

On the same authority, in this section as enacted in 1992, in par. A(4), second sentence, "this Act" was changed to "this Section"; in the same sentence, a comma was inserted following "agents and employees"; in par. B(2), "Lawyer's Assistance Programs, Inc." was changed to

"Lawyer's Assistance Program, Inc."; the subsection heading for subsec. C was changed from "Civil immunity when participating or assisting in certain bar and bar association activities relative to alcohol and drug abuse counseling and intervention" to "Civil immunity"; in par. C(2), first sentence, reference to "Paragraph (1) above" was changed to "Paragraph C(1)"; and periods were inserted following subsection headings throughout.

Cross References

Testimonial privileges, generally, see C.E. art. 501 et seq.