

**Ethical and Professional Considerations in Landlord-Tenant Law**

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**I. Ethical and Professional Considerations in Landlord-Tenant Law**

A. Negotiating with a Pro-So Tenant at Court.

1. **Louisiana Rule of Professional Conduct 4.3.** Dealing with Unrepresented Persons.

- a. Make sure that pro-so tenant is aware that you represent the landlord who is an adverse party. Make clear that you do not represent the tenant. You cannot seem disinterested. La. R. Prof. Conduct. 4.3
- b. If lawyer knows or reasonably should know that tenant misunderstands your role as lawyer, you must make reasonable efforts to correct any misunderstanding. La. R. Prof. Cond. 4.3
- c. Lawyer must not give legal advice to any tenant who is unrepresented.
- d. **Practice Tip:** Always instruct unrepresented tenant that he or she should secure counsel. Such advice is not considered legal advice.
- e. You may ask the judge to intervene. While settlement communications are inadmissible, the judge may be better able to instruct the pro se tenant as to his or her prospective rights.

2. Unrepresented Tenant Which is a Juridical Person

- a. Technically, if unrepresented tenant is a corporation, partnership, limited liability company, or some other juridical entity, tenant should be represented by counsel.

- b. Louisiana Revised Statute § 37:212(C) provides:

Nothing in this Section shall prohibit any partnership, corporation, or other legal entity from asserting any claim, not exceeding five thousand dollars, or defense pertaining to an open account or promissory note, or suit for eviction of tenants on its own behalf

in the courts of limited jurisdiction on its own behalf through a duly authorized partner, shareholder, officer, employee, or duly authorized agent or representative. No partnership, corporation, or other entity may assert any claim on behalf of another entity or any claims assigned to it.

- c. While Louisiana Revised Statute § 37:212(C) allows unrepresented landlord, which may be a juridical entity to file eviction suit, the plain reading of statute does not carve out same exception for unrepresented tenant.
  - d. **Practice Tip:** If tenant, which is a juridical person, is unrepresented, you may have the court explain to tenant its rights in court.
3. **La. R. Prof. Conduct 3.4.** Fairness to Opposing Party and Counsel.
- a. Lawyer cannot obstruct another party's access to evidence
  - b. Lawyer cannot knowingly disobey an obligation under the rules.
  - c. In any pre-trial procedure, lawyer cannot make a frivolous discovery request or fail to make reasonably diligent effort to comply with legally proper discovery request by opposing party.
  - d. In trial, lawyer cannot: (a) allude to any matter that lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence; (b) assert personal knowledge of facts at issue, except when testifying as a witness; (c) state personal opinion as to justness of a cause, credibility of witness, culpability of civil litigant or guilt or innocence of accused.
  - e. Lawyer cannot request a person other than client to refrain from voluntarily giving relevant information to another party, unless person is relative or employee or other agent of client

and lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information

4. **La. Rule Prof. Cond. 3.5.** Impartiality and Decorum of the Tribunal.

- a. When dealing with pro se tenant, lawyer cannot seek to influence a judge, juror, prospective juror, or other official by means prohibited by law.
- b. Lawyer cannot communicate ex parte with such persons (judge, juror, prospective juror, etc.) during proceedings unless authorized to do so by law.
- c. Lawyer cannot engage in conduct intended to disrupt a tribunal.
- d. La. R. Prof. Cond. 3.5 contains other restrictions as to contact with jurors that is not generally applicable in the eviction context.

B. Conflicts of Interest, un-represented, dual representation, and competency.

1. When dealing with un-represented persons, *see* La. R. Prof. Cond. 4.3.
  - a. Lawyer shall not seem disinterested.
  - b. If lawyer knows or reasonably should know that unrepresented person misunderstands lawyer's role, lawyer must make reasonable efforts to correct any misunderstanding. La. R. Prof. Cond. 4.3
  - c. Lawyer must not give legal advice.
  - d. Lawyer should advise unrepresented person to secure counsel. Such advice does not constitute impermissible legal advice.
  
2. Dual representation.

- a. La. Rule Prof. Conduct 1.7.  
A concurrent conflict of interest exists if:
  - i. Representation of one client will be directly adverse to another client.
  - ii. There is a significant risk that such representation will materially limit by lawyer's responsibilities to another client.

Except, lawyer may represent client notwithstanding existence of conflict if:

- i. Lawyer reasonably believes that he may provide competent and diligent representation to both.
  - ii. Representation not prohibited by law.
  - iii. Representation does not involve the assertion of a claim by one client against another client represented by lawyer in same litigation or other proceeding before a tribunal
  - iv. Each effected client gives informed consent.
- b. While representing both lessor and lessee is not advisable, make sure you obtain detailed informed consent. Should contain "out clause."

3. Competency

- a. **La. Rule Prof. Cond. 1.1.** Competence  
A lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, skill thoroughness and preparation reasonably necessary for the representation.
- b. **La. Rule Prof. Cond. 1.3.** Diligence  
A lawyer shall act with reasonable diligence and promptness in representing a client.

C. Professional and Ethical/Legal Situations

1. Service of Process in Eviction Context. While rules may be vague and confusing, effect service on tenant through sheriff. While citation is not necessary per La. C.C.P. art. 2594, service of the rule to show cause is necessary. Such service should be made by sheriff. *See* La. C.C.P. art. 2596, 1314, 4732.
2. Penalty for late payment of rent. Must be in writing and/or orally agreed upon between tenant and landlord. Penalty should be reasonable and should not be applied arbitrarily. Also, to the extent interest is charged as late penalty, interest will be subject to usury laws. *See* La. R.S. § 3500.
3. Some states prohibit recovery of attorneys' fees by landlord or tenant in residential lease agreements. Attorneys who violate such statutes can be penalized.
4. Non-sufficient fund checks. La. R.S. § 9:2782
5. Self-help not allowed.
6. Violation of lease may be subject to Louisiana Unfair Trade Practices Act.
7. Automatic renewal clauses
8. Security deposit and commingling of funds

D. *Fee Arrangements, Getting Paid.*

1. In context of both litigation and in connection with preparation of leases, hourly fee arrangement is more widely used.
  - a. In rent collection matters, blended rate is also common. Blended rates generally involve a flat hourly rate for all attorneys involved, regardless of level of expertise. Hourly rate is generally lower than normal hourly rates. In addition to hourly rate, lawyer may also receive a portion of any money actually collected as a contingent-fee.
  - b. When using blended rates, make sure that hourly fee plus any contingent fee is reasonable per Rule 1.5 of the Louisiana Rules of Professional Conduct.

- c. If using blended rate, must be in writing due to contingent aspect of rate per La. Rule Prof. Conduct 1.5.
2. Due to a sluggish economy, some lawyers have used a flat-rate or fixed-fee to attract clients. For example, lawyer may charge \$5,000 for preparation of commercial lease, or modification of commercial lease, regardless of the amount of time expended on the project.
  - a. **Practice Tip.** Flat-rates are generally more advisable for lawyers who are familiar with preparation of such documents.
  - b. Even though the amount of time that you spend on preparing the document is immaterial as to the actual amount of the bill, you should record your time so that you can adjust your flat rates accordingly in the future. Also, such recordation of time may be helpful if there is a fee dispute between lawyer and client.
  - c. **Caution:** Be sure that flat rate is reasonable for the amount of time that you may spend on the preparation of the document. Per La. Rule Prof. Cond. 1.5(a)(1), the amount of time and labor involved, plus novelty of issue, are material factors.
  - d. While flat-rates may not be generally advisable in normal breach of contract disputes between landlord and tenant, such rates can be useful in eviction proceedings involving non-payment of rent. Be cautious if using flat rates involving non-monetary evictions as such evictions may be costly.
  - e. La. Rule Prod. Conduct 1.5(e)(5) governs disputes between lawyers and clients involves flat or fixed-fee. If dispute arises, lawyer must immediately return unearned portion of fee, if any. Lawyer must deposit disputed amount of fee in trust until dispute resolved. If lawyer and client cannot

resolve dispute, lawyer should suggest mediation or arbitration involving the Louisiana State Bar Association Fee Dispute Program.

3. **La. Rule Prof. Conduct 1.5.** Fees

Factors to be considering when determining reasonableness of fee:

- i. Time, labor, and degree of difficulty
- ii. Likelihood that acceptance of employment may preclude other employment
- iii. Fee customarily charged in same locality for similar services.
- iv. Amount involved and results obtained.
- v. Time limitations imposed by either client or circumstances involved
- vi. Nature and length of professional relationship with client.
- vii. Experience, reputation, and ability of lawyer performing services.
- viii. Whether fee is fixed or contingent

4. To secure payment of fees, or at least a portion of the total amount of any fee, many attorneys use a retainer. Retainers are governed by La. Rule Prof. Conduct 1.5(f) as to payment of fees in advance of services.

- a. Money must be placed in trust account and remains property of client until earned.
- b. As such funds are earned, lawyer may transfer money from trust account to operating account, without further authorization from client for each transaction.
- c. **Practice Tip:** Make sure your retainer agreement includes use of such funds for not only hourly fees, but also costs and expenses. *See La. Rule Prof. Conduct 1.8(e)(3)* as to recoverable costs.

- d. Lawyer must render a periodic accounting as reasonable under the circumstances. **Practice Tip:** Reasonableness may depend on how frequently such funds are transferred between accounts.