

**CRIMINAL LAW WORKSHOP FOR  
CIVIL LAW PRACTITIONERS**

**NEW ORLEANS BAR ASSOCIATION**

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**JONES WALKER at NEW ORLEANS, LA**

**Criminal Defense Ethics: The Basics**

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## CRIMINAL DEFENSE ETHICS: THE BASICS

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- I. Introduction. We will discuss the most common professional-responsibility issues that arise criminal defense work. We will consider these issues chronologically, from commencement of representation through termination of a lawyer-client relationship in an appointed criminal case. An outline of the presentation follows.
  
- II. Appointment
  - A. "Duty" to perform voluntary pro bono service. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 6.1.
  - B. Obligation to accept appointment. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 6.2.
  
- III. Initial Client Meeting
  - A. Communicating with the client. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 4.1; *id.* 1.4.
  - B. Assessing the client's capacity to understand the nature of the proceedings and to assist with the defense. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 1.14.
  - C. Preserving defense options and future candor to the tribunal: resolving the lawyer's trilemma.
    1. The duty of competence. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 1.1.
    2. The duty of confidentiality. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 1.6.
    3. The duty of candor. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.3(a).

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IV. Pretrial Discovery and Investigation

A. Dealing with Witnesses

1. Getting witnesses to talk. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 4.1; *id.* Rule 4.3; *id.* Rule 4.4.
2. Encouraging witnesses not to cooperate with the state. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.4(f); *id.* Rule 4.3.
3. Interviewing witnesses and avoiding the lawyer-witness problem. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.7.
4. Taping witness interviews. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 4.1.

B. Reporting case progress and prognosis to friends and family of the defendant. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 1.6; *id.* Rule 1.8(f).

C. Assuring prosecutor's compliance with *Brady* obligation. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.8; *id.* Rule 8.3.

V. Plea Negotiations

A. Giving competent advice regarding sentencing and corrections issues. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 1.1.

B. Being a candid advisor. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 2.1; *id.* Rule 1.2.

VI. Trial

A. Race and jury selection. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 8.4; *id.* Rule 3.4(c); *id.* Rule 3.3(a)(1).

B. Promising the undeliverable in opening statement. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.4(e).

C. Cross-examining the truthful state witness. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.1; *id.* Rule 3.3; *id.* Rule 4.4.

- D. Defendant and defense witness perjury. *See* LOUISIANA RULES OF PROFESSIONAL CONDUCT Rule 3.3(a).

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