



Legal Ethics in Serving Victims of Crime

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Crime Victim Services Division

▶ **Mission Statement:**

- To assist in the compassionate and effective delivery of crime victim services by offering information, resources, and financial assistance to crime victims and the organizations assisting them.

▶ **CVSD Programs:**

- Crime Victims' Compensation Program (CVC)
- Sexual Assault Prevention and Crisis Services (SAPCS)
- Victim Information and Notification Everyday (VINE)
- Address Confidentiality Program (ACP)



What Lawyers Need to Know about Victims

- ▶ Lawyers are often considered leaders in the community.
- ▶ Many victims reach out to lawyers for information and advice.
- ▶ How a lawyer reacts to a victim and their story matters.
- ▶ Learning victim service basics will improve representation.
- ▶ Helping victims isn't as hard as it may seem.
- ▶ Representing victims is rewarding and important work.



The Holistic Approach to Legal Services for Victims of Violent Crime

- ▶ Crisis response
- ▶ Safety planning
- ▶ Understanding crime victims' rights
- ▶ Identify common legal contexts
- ▶ Advising and choosing legal options
- ▶ Following through
- ▶ Following up
- ▶ Relevant rules of professional conduct
- ▶ Communication skills
- ▶ Resources



Lawyer's Guide to Crisis Response

- ▶ The first 24 hours after victimization
- ▶ Hospital and bedside manners for lawyers
- ▶ Tapping into resources and referrals
- ▶ Prioritize legal vs. non-legal problems
- ▶ Know what you need to report and how to do it



Safety Planning for Lawyers

- ▶ **If the suspect is unknown or not in custody:**
 - Safety basics – <http://safeplace.org/help/safetyplanning/>
 - Lethality risk assessment
 - Relocation options, including local shelter services
 - Identity protection and privacy protection
- ▶ **If the suspect is in custody, but victim is still vulnerable:**
 - Identify and reduce risks for possible re-victimization
 - Encourage medical evaluation (PTSD, depression, etc.)
 - VINE (Victim Information and Notification Everyday) automated system providing crime victims with 24 hours/day toll free: (877) TX4-VINE; (877) 894-8463



Crime Victim Rights

- ▶ **Texas Constitution, Art. 1, § 30 & 31 and Texas Code of Criminal Procedure, Chapters 56 and 57**
 - To be protected – from harm or threats (MOEPs, bail, POs)
 - To have privacy protected – address and phone, CVC claim
 - To be informed – proceedings, incarceration status, referrals
 - To be heard – victim impact statement, parole, probation
 - To be compensated – CVC and restitution
 - Special rights – forensic medical exams, continuances, the rule, restorative justice
 - Enforcement and immunity issues – victim (guardian or close relative of deceased victim) has no standing to participate as a party in a criminal proceeding or to contest disposition



Legal Contexts

- ▶ **Lawyers work with crime victims in many contexts:**
 - Criminal justice (prosecutors, defenders)
 - Family law (divorce, custody, juvenile justice)
 - Protective orders (county, private)
 - Probate/estate planning (homicide, family violence)
 - Property (relocation, family violence, landlord-tenant)
 - Personal injury (insurance liability, auto, torts)
 - Government benefits (SSA, Medicaid, TDI-Worker's Comp)
 - Immigration (visas, residency, asylum)
 - Employment (FMLA, terminations, violence in the workplace)



Choosing Legal Options

- ▶ **When a lawyer is ready to advise/represent a crime victim:**
 - Not every victim/survivor wants the most aggressive approach. Offer a range of strategies.
 - Stay within the scope of expertise. Avoid giving advice without confidence, especially to a vulnerable client.
 - When considering mutually agreed orders and settlements, value the victim/survivor's wishes.
 - Take on representation for as many aspects of their case as possible.
 - Explore non-legal options:
 - Safety planning is essential for self-help options.
 - Social services referrals and interventions



Following Through

- ▶ Accept victims/survivors as clients whenever possible.
- ▶ Help prioritize the issues – not everything is a crisis.
- ▶ Register with VINE, apply for CVC, draft letters.
- ▶ Make referrals and get case updates from the referral.
- ▶ File things on time – don't miss a statute of limitations.
- ▶ Return calls – top complaint about lawyers is communication.
- ▶ Keep track of work, even if pro bono – report those hours.
- ▶ Say "no" when necessary.
- ▶ Don't try to be a hero or a martyr.
- ▶ Stay professional and victim-centered.



Following Up with Victims

- ▶ Victims may suffer repercussions from victimization well after the representation is concluded.
- ▶ Most important in these contexts:
 - Homicide
 - Family violence
 - Unsolved or unpunished cases
 - Preventing re-victimization
 - Repeat victimization



Legal Ethics Lawyers and Counselors at Law

- ▶ **Texas Disciplinary Rules of Professional Conduct**
 - 1.01 Competent and Diligent Representation
 - 1.02 Scope and Objectives of Representation
 - 1.03 Communication
 - 1.05 Confidentiality of Information
 - 1.15 Declining or Terminating Representation
 - 2.01 Advisor
 - 3.09 Special Responsibilities of a Prosecutor
 - 4.02 Communications with One Represented by Counsel
 - 4.03 Dealing with Unrepresented Persons
 - 5.05 Unauthorized Practice of Law
 - 8.03 Reporting Professional Misconduct
 - 8.04 Misconduct



Attorney Client Communications – Privileges TDRPC – Rules 1.03 and 1.05

- ▶ Confidentiality may be more important when representing victims than in any other case you have.
- ▶ Public Information Requests – know what’s protected
- ▶ Pseudonyms – when available
- ▶ Sealing Records – discovery protective orders
- ▶ **Subpoenas**– criminal and civil
 - Mental health records
 - Medical records
 - Correspondence
 - Much, much more...



Client-Lawyer Relationship TDRCP Rules 1.01, 1.02, 1.03, 1.04

- ▶ Explain processes and the anticipated difficulties.
- ▶ Learn what CVC or other programs can and cannot do.
- ▶ Never promise a specific outcome.
- ▶ Put the representation in writing. **Always.**
- ▶ Billing should be clearly understood by the client.
- ▶ Scope of representation should be clearly established.
- ▶ Avoid conflicts of interest.



Maximize Recovery

- ▶ Assess economic and non-economic losses in the long term.
- ▶ Consider all potential collateral sources.
- ▶ Seek restitution through prosecutor’s office.
- ▶ CVC and subrogation issues:
 - Non-economic losses
 - Made-whole doctrine
 - *TASB v. Ward*, 18 SW3d 256 at 111.
 - “Under general equitable principles, [the] right to reimbursement is subject to the [insured’s] right to first be made whole.”



Communicating with Victims

▶ **Communication skills require training and regular practice!**

- Closed vs. open-ended questions
- Silence is golden
- Paraphrasing effectively
- Perception checking to reduce confusion
- Reflection of appropriate emotion
- Summarizing the message or status
- The Art of the Apology



Best Practices – Do’s and Don’ts

- ▶ **Do:**
- Victims/claimants often feel a strong need to be heard and acknowledged.
 - Communicate trust, support, confidence and non-judgment.
 - Reassure, calm and comfort distressed callers.
 - Remember – your tone, pitch, speed and vocabulary affect the listener.
 - Remain calm, professional and empathetic.
 - Try to use “I” statements instead of “you” statements.
 - Ask for help with difficult callers or cases.
- ▶ **Don’t:**
- Judge, blame or second-guess the victim about the crime.
 - Internalize or take personally a caller’s emotions, anger or complaints.
 - Argue with or promise a specific outcome to a caller.



Resources

- ▶ Office of Victims of Crime Training and Technical Assistance Center (database of federal, state and tribal laws)
<https://www.victimlaw.org/>
- ▶ Texas Legislature Online (constitution, statutes, rules)
<http://www.capitol.state.tx.us/>
- ▶ National Center for Victims of Crime (national resources)
<http://www.victimsofcrime.org/home>
- ▶ State Bar of Texas (disciplinary rules, grievances)
<http://www.texasbar.com/>
- ▶ Texas Ethics Reporter (ethics opinions)
<http://www.law.uh.edu/libraries/ethics/Opinions/ethicssubjectindex.html>



Legal Ethics Serving Victims

- ▶ Provide your best representation to victims/survivors by educating yourself, finding state and local resources, reaching out for help, and communicating openly and honestly.
- ▶ Questions?



Contact Information

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