

Louisiana State Board of Private Investigator Examiners



Ethics & Private Investigator Laws

*Approved by Board
On January 25, 2011.*

Introduction

The Ethics and Private Investigator Laws Course is designed to incorporate professional responsibility principles into the 40 Hour Basic Private Investigator Training Course and continuing education programs approved by the Louisiana State Board of Private Investigator Examiners. Ethics and P.I. Laws course will focus on legal and ethical considerations of Louisiana private investigators as well as complaints against private investigators made by citizens to the Board. One of the most important goals of the LSBPIE Ethics & P.I. Laws is to facilitate greater standardization of ethics courses for Louisiana private investigators. The overall purpose of this model course is to encourage and guide private investigators to develop a better understanding and management of ethical issues facing the investigative industry. The course contributes to the main purpose of the “Private Investigators Law” which sets up the licensure of private investigators and contributes to the safety, health, and welfare of the people of Louisiana.

Each approved Louisiana University/College authorized to teach the 40 Hour Basic Private Investigator Training Course and approved continuing education programs will utilize this Ethics and P.I. Laws Course as the official teaching material and curriculum for the one (1) hour of Ethics & P.I. Laws required in Training and Continuing Education.

An optional Microsoft Power Point Presentation has been developed to coincide with the Ethics and P.I. Laws materials.

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Table of Contents (Course Outline)

Introduction	2
I. Ethics	5
a. What is ethics?	6
b. Ethics and Private Investigators	6
II. Sources of Louisiana Private Investigator Ethics.....	6
a. “Private Investigator Law”	6
b. Private Investigator Rules & Regulations	7
III. Private Investigator Profession	7
a. Licensing.....	8
b. Who needs a license?	8
c. Types of licenses	10
d. License renewal.....	12
IV. Complaints Against Private Investigators	12
a. Pay disputes between client and private investigator.....	13
b. Communication with client.....	14
c. Failure to send final report	14
d. Dissatisfied Client.....	15
e. Suspicious person.....	16
f. Truth in advertising.....	17
V. Confidentiality of Information	18
a. General rule	18
b. Exceptions	19
VI. Conflicts of Interest.....	19
a. General rule:	19
b. Prohibited transactions.....	20
c. Former client.....	20
VII. Professional Misconduct and Transactions with Persons Other than Clients	20
VIII. Recent Louisiana legislation related to the P.I. industry	21

a. Private investigators 21

b. Tracking devices 22

c. Process Service..... 23

d. Telecommunications..... 23

I. Ethics

got ethics?

Before you answer, consider the following hypothetical:

HP#1: Bubba Gump, the client, hires you as a licensed private investigator to locate his long lost high school sweetheart, Clementine Boudreaux. Bubba gave you the following information to handle his case: Bubba and Clementine attended South Bayou High School in Bourg, Louisiana. They dated from 1985 to 1989. In 1989, Clementine graduated and moved away to attend college in New York City. Bubba graduated in 1990 and went to work on his father's shrimp boat on the bayou. Bubba attended church every Sunday to pray for the return of his sweetheart, Clementine. Bubba wants to reach to Clementine and renew his love for her. Bubba knows that Clementine moved from New York but he has no idea where she's moved to. Bubba wants you to locate Clementine, take pictures of her and her new residence and document any important information about her daily activities for about a week so that Bubba can plan when to "pop" in and surprise Clementine. Is it ethical to help him?



Second part of HP #1: Bubba, like most clients, left out parts of the story. A few months before hiring you, Bubba traveled to New York and found Clementine in the midst of a homosexual relationship with Lisa. Bubba's southern Baptist Christian roots were shook to the core. Bubba and Clementine argued over her "sins." Bubba threatened Clementine by saying that he'll punish her sins by making sure that she will never do it again. Bubba left the apartment to get his guns from his pickup truck which he drove to New York city which gave Clementine and Lisa enough time to escape. Bubba has not been able to find Clementine since that day. You found out this information from Clementine's relatives who begged you not to find her because Bubba will kill her just like he killed his momma when he caught her cheating on his daddy. Bubba escaped jail because of his tender years. The local justice of the peace confirms Bubba's violate temper. You know that Bubba owns guns. You pay Bubba a visit to discuss this new information and his house is filled with photos of Clementine with her face cut out of the picture. Now, will you still help him? What should you do?

still got ethics?

Hollywood loves to portray private investigators as gritty, glamorous and riddled with danger and intrigue at every turn with the typical damsels in distress. Television compounds the stereotypical "gumshoe" as using any tactic, even wiretapping or trespassing to get the job done and the save the day.

The Hollywood version of P.I.s may increase ratings, but modern day private investigators prefer a more professional image. In modern day reality, "gumshoes" follow the

law. Today, the implementation of licensing by the majority of states integrated with modern business practices ensure a professional outlook for investigators.

a. What is ethics?

Ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

b. Ethics and Private Investigators

“Professional” ethics for private investigators means that state licensed professional individuals are entrusted to pursue investigations in service to their clients while maintaining the essential statutory goals of upholding the safety, health and welfare of citizens. Ethical standards of licensed private investigators guide them in balancing his duties to the community, to the client, to his colleagues and to the discipline itself.

II. Sources of Louisiana Private Investigator Ethics

The Louisiana State Board of Private Investigator Examiners set forth ethical standards for licensed private investigators in two main sources: Louisiana “Private Investigator Law” and Private Investigator Rules and Regulations.



Both sources mentioned are available online in pdf format at the LSBPIE website (www.LSBPIE.com).

a. “Private Investigator Law”

In June of 1992, Governor Edwin W. Edwards signed into law Title 37 of the Louisiana Revised Statutes sections 3500 – 3525 known as the “Private Investigator Law.” This law was enacted to regulate private investigators, establish the Louisiana State Board of Private Investigator Examiners (LSBPIE), and to provide a statutory means for licensure of private investigators.

Over the years, the “Private Investigator Law” has been amended. The current version of this law is available online at the Board website.

b. Private Investigator Rules & Regulations

The Rules and Regulations were adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and under the authority of R.S. 37:3505.B.(1).

The Rule and Regulations are divided into five (5) chapters, specifically, chapters 1, 3, 5, 7, and 9, which encompasses the following: duties of chairman, vice chairman, and executive director; meetings of the Board; committees; complaints; public comments at Board meetings; additional definitions; application, licensing, training, registration and fees; client-investigator relationship; and rules for adjudication for the Board. The current version of the Rules & Regulations is available online at the Board website.

what about the LSBPIE Board members, do they have ethical requirements?

Yes, the Board members must also adhere to the same P.I. Laws and Rules & Regulations governing private investigators in Louisiana. The LSBPIE is governed by the standards set forth in the Louisiana Revised Statutes under Title 42. Public Officers and Employees, Chapter 15. Code of Governmental Ethics which is regulated by the Louisiana Board of Ethics.



The Louisiana Board of Ethics website is located at: www.ethics.state.la.us.

III. Private Investigator Profession

Private Investigators have a role in history dating back before the civil war. In 1850, Allan Pinkerton founded his detective agency, the Pinkerton Detective Agency, based on his own incorruptible principles. His values became the corner stone of a respected agency which still exists today. Pinkerton's logo was an eye embellished with the words "we never sleep" which inspired the term "private eye."

The modern private investigative industry has grown with the changing needs of the public. Social issues such as adultery, insurance fraud and criminal investigations guide the services offered by private investigators. Today, the majority of the states provide for licensing of private investigators which promotes high ethical standards within the P.I. industry.

HP#2: You were issued a private investigator license by the LSBPIE. Your license renews on December 1, 2010 but you failed to take your continuing education course. You plan to take the CE course after the 1st of the year. On January 10, 2011, you are offered an assignment by a law firm to process serve a witness for court. Can you legally handle the assignment?

HP#3: Same licensing facts as HP#2. Instead of a process service assignment, the law firm needs you to conduct surveillance of a workers' compensation claimant. Can you legally handle the assignment?



a. Licensing

In passing the “Private Investigator Law”, the Louisiana Legislature declared that it is in the best interest of the citizens of Louisiana to require the licensure of private investigators and their businesses. (R.S. 37:3501)

What if private investigators operate without a license?

Under R.S. 37:3520, the statute states that it is unlawful for any person knowingly to commit any of the following acts:

- (1) Provide contract or private investigator service without possessing a valid license.
- (2) Employ an individual to perform the duties of a private investigator who is not the holder of a valid registration card.
- (3) Designate an individual as other than a private investigator to circumvent the requirements of this Chapter.
- (4) Knowingly make any false statement or material omission in any application file with the board.
- (5) Falsely represent that a person is the holder of a valid license or registration.
- (6) Violate any provision of this Chapter or any rule or regulation of the board.

The 2010 Louisiana Regular Legislative Session increased the penalties and fines for individuals who operate as unlicensed private investigators which are set forth under R. S. 37:3521. Today, this statute provides for \$5,000 - \$10,000 in fines or not more than one year in prison, or both.

b. Who needs a license?

HP#4: I am a courthouse abstractor in St. Mary parish. I only work for oil companies and conduct title examinations. Do I need a P.I. license?

HP#5: I am conduct background checks at the local courthouse. The background check includes civil and criminal information about applicants for my company only. I conduct these background checks prior to face to face interviews with candidates. Do I need a P.I. license?

HP#6: I conduct surveillance for insurance companies of claimants allegedly injured in accidents. I obtain video of the claimant. I provide a report to the company. I often testify in court as a rebuttable witness. Do I need a P.I. license?

According to R.S. 37:3503(8)(a)(i.-v.), “private investigator” or “private detective” means any person who holds out to the general public and engages in the business of furnishing or who accepts employment to furnish information or who agrees to make or makes an investigation for the purpose of obtaining information with reference to the following:

- Crimes or wrongs committed.
- Identity, habits, conduct, business, occupations, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.
- The location, disposition or recovery of stolen property.
- The cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to properties. However, scientific research laboratories, technical experts, and licensed engineers shall not be included in this definition.
- Securing evidence to be used before any court, board, officer or investigative committee.

who doesn't need a license?

Accordingly to R.S. 37:3503(8)(b)(i.-x.), the definition of a private investigator *shall not* include:

- **Insurer: employees, agents, insurance adjustors, claims agents** – who make appraisals for the monetary value or settlement of damages or monetary value or settlement of personal injuries.
- **Officer or employee of United States, this State or any political subdivision** – of either while such officer or employee is engaged in the performance of his official duties within the course and scope of his employment with the U.S., this State or any political subdivision.
- **Person engaged exclusively in the business of obtaining & furnishing information** as to financial rating or credit worthiness of persons.
- **Attorney at law**, licensed to practice in this State and **his employees**
- **Undercover agents working with United States, this State or any political subdivision** while engaged in the performance of their official duties
- Person primarily engaged in business of furnishing confidential information for **purpose of a consumer reporting agency**, as defined by the Federal Fair Credit Reporting Act., 15 U.S.C. 1681 et seq.
- **Licensed Private Security officer** only when investigating at his place of employment during performance of his duties pursuant to R.S. 37:3272(18).
- **Employer-Employee relationship**, person or corporation which employs persons to do private investigative work in connection with the affairs of such employer exclusively and who have an employer-employee relationship.
- **Professional employment screening consultant** conducting face to face interview with an applicant or candidate for employment.
- **C.P.A.'s**, licensed to practice in this State, and **their employees**

In determining who does or does not need a private investigator's license, some types of work may fall into a "gray" area which the Board members need to clarify. If you are unsure about licensing, please contact the Board office.

c. Types of licenses

HP#7: I was issued an individual private investigator licensed under XYZ Agency. I was also issued an individual licensed under RST Agency. I work for both agencies as a private investigator. I conduct insurance surveillance of claimants. To earn extra money, I conduct domestic investigations for cash for the general public. I conduct the investigations and provide my clients with a report and video. I am diligent in my investigations. Are all of these activities allowed under the law?

HP# 8: I have an individual license issued by the LSBPIE under the agency of RST Agency. My sponsor agency only conduct workers' compensation investigations but I need more experience in domestic investigations. Therefore, I worked a domestic investigation for Charlie's Angles Detective Agency. I provided Charlie with my tax payer identification number and Charlie promptly issued my check for the investigation directly to me. Did I violate the law?



The LSBPIE is authorized to issue four types of private investigators licenses: (R.S. 37:3507.2)

- **Agency**
- **Individual**
- **Apprentice**
- **Journeyman**

General Rule: Private Investigator licensing qualifications set forth under R.S. 37:3507 and they are:

- Of legal age
- A citizen of the U.S. or a resident alien holding proper work documentation in U.S.
- Has not been convicted in any jurisdiction of any felony or of any crime involving moral turpitude
- Has not been declared by any court of competent jurisdiction to be incompetent by reason of mental defect or disease which has not been restored
- Is not a practicing alcoholic or drug addict
- If corporation, incorporated under Louisiana laws or authorized to do business in this State

In addition to the general licensing qualifications set forth above, specific requirements, standards and regulations govern each particular license type. In conducting investigations, a licensed private investigator must be aware of the particular standards or limitations of his license type. Individual, apprentice and journeyman licensures must be managed by a licensed

private investigative agency in some form and cannot conduct business directly with the general public.

	Requirements	Solicit and conduct work for General Public	P.I. work	Who manages P.I. work?	Responsibilities under law or rules & regulations
Agency	<ul style="list-style-type: none"> • 3 yrs. of experience within the last 10 years either as a private investigator or in an investigative capacity • Satisfies all other licensing requirements¹ • Take 40 hour course and pass state exam 	Yes	<ul style="list-style-type: none"> • May operate as private investigator • May work for another agency • May hire other licensed private investigators – if individual or apprentice is hired, agency must obtain a P.I. license for that person under the agency • Agencies cannot directly hire and pay an individual or apprentice license holder if they are licensed under another agency. The work must go through the other agency. 	Self-management	<p><u>Apprentice licenses:</u></p> <ul style="list-style-type: none"> • Directly responsible for supervision and training • Educating Apprentice in P.I. industry, laws, rules & regulations, federal & state constitutional principles, surveillance techniques, and courthouse research. <p><u>Journeyman licenses:</u></p> <ul style="list-style-type: none"> • Maintain total number of hours worked each year – provide to Board or journeyman upon request
Individual	<ul style="list-style-type: none"> • As defined in R.S. 37:3503(8) • Satisfies all requirements for licensing • Employed by a licensed private investigative agency • Take 40 hour course and pass state exam 	No	<ul style="list-style-type: none"> • Only operate as private investigator for each agency he is licensed under • Must be employed by P.I. agency • Cannot hire other private investigators 	Agency licensed under	
Apprentice	<ul style="list-style-type: none"> • Satisfies licensing requirements • Sponsorship by a licensed agency • Take 40 hour training course within one year from issuance of apprentice license and pass exam 	No	<ul style="list-style-type: none"> • Only work assigned by its sponsoring agency 	Agency licensed under	

¹ R.S. 37:3507.2 Types of licenses.

Journeyman	<ul style="list-style-type: none"> • Same licensing requirements as individual license holder except does not need to be employed by a licensed agency • Take 40 hour training course and pass state exam • Affidavit acknowledging and accepting license limitations² 	No	<ul style="list-style-type: none"> • Only provide investigative services to agencies licensed under the Board of Private Investigator Examiners • Shall not provide direct investigative services to the general public, private businesses or governmental agencies 	Each agency employing journeyman shall supervise the activities of journeyman in same manner as apprentice or individual.	<u>Journeyman license:</u> <ul style="list-style-type: none"> • Maintain a job log concerning investigations they performed • Include in log: name of managing agency; reference; dates investigations were performed; and total number of hours worked during the investigation.
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d. License renewal³

All private investigator licensed shall expire annually on the date of issuance unless renewed by payment of the required renewal fee at least thirty days prior to its expiration. If not renewed within thirty (30) days after expiration, it shall be deemed to have lapsed and invalid. The delinquent private investigator business or individual shall apply again for initial licensure. If the renewal is made prior to the thirty day grace period but after the expiration date, the private business shall pay a fine of \$35.00 and an additional \$20.00 per investigator.

Renewal licensures shall submit certification to the Board that the applicant for license renewal has not been convicted of a felony charge during the past year. The fee notice sent out for licensing renewal shall contain this certification.⁴

What needs to be submitted for license renewal?

- Fee notice which contains the require certification
- If agency, sole proprietor or required by law, a copy of current occupational license
- Copy of continuing education certificate
- CE compliance form
- CE Program Evaluation form
- Renewal fee

IV. Complaints Against Private Investigators

Complaints against private investigators are primarily pertaining to agency relationships with their clients or investigators while engaged in their work. The complaint procedure is set forth in the P.I. Rules and Regulations under Chapter 7 § 721 and Chapter 9 § 903. The rules of adjudication of complaints are set forth in Chapter 9.

² P.I. Rules & Regulations Chapter 5. § 510. Licensing of Journeyman.

³³ R.S. 37:3517. License Renewal; certificate; penalty

⁴ P. I. Rules & Regulations Chapter 5. § 503. License Renewal.

Chapter 7 of the P.I. Rules and Regulations set forth the standards for client-investigator relationships.

a. Pay disputes between client and private investigator



In pay disputes between client and investigator, there is usually confusion over exactly what work was being conducted for the payment made by client. Generally, the dispute revolves around verbal representations of “client said” and “investigator said.” Basically, the client feels “ripped off” by the private investigator. Then the angry client may choose to file a complaint against the agency.

While the Scope of Representation under § 703, the rules provide guidelines for setting the objectives of the investigations by both the client and investigator, there is no requirement for confirmation of scope of representation in writing and signed by both parties. An investigator should follow the guidelines under this section in establishing the investigative objectives.

The P.I. Rules and Regulations or state law does not require a contract between a client and investigator. However, if the private investigator elects to offer a contract, the P.I. Rules and Regulations Chapter 7 § 717 sets forth requirements for contracts if they are offered in any matter. A contract shall contain the following but may not be limited to the following information:

- Name, address and phone number of investigative agency;
- Name, address and phone number of private investigator responsible for case work;
- Schedule of fees charged;
- Purpose and scope of investigation;
- Limitations of responsibility to investigative agency;
- Limitations of responsibility to client;
- Signature of client;
- Signature of two witnesses;

- Date agreement was signed; and
- Contracts shall be made in duplicate: one copy for client, one copy shall be retained in the investigative case file for a period of three years.

While a contract is not required between client and investigator, a prudent private investigator may elect to use a contract to prevent problems or confusion that may arise in understanding of the scope of investigation and fees charged.

b. Communication with client

A major complaint made to Board against private investigators is a failure to communication with the client. The client pays the investigator in advance for services and weeks or months may pass without any update from the investigator. Lack of communication may lead to an unsatisfied client and complaint against the investigator. Communication standards are set forth in the P.I. Rules & Regulations under Chapter 7 § 707. This section requires that an investigator:

- Keep the client reasonably informed about the status of a matter
- Promptly comply with reasonable request for information
- Provide client with sufficient information to participate intelligently in decisions concerning the objectives or the representation and the means by which they are to be pursued, to the extent the client is willing and able to do

Communication is an integral part of just about any occupation. Effective communication is key to avoiding misunderstandings and disappointment. In communicating with the client, the investigator should consider the following recommendations for effective communications with clients:

- Be upfront and direct
- Clearly communicate what you can and cannot do
- Set out terms of your arrangement clearly
- Explain how you work and what can be expected of you
- Replace jargon or terms of art with common phrases
- Use analogies to explain technical concepts
- Confirmation in writing by letter or email

Investigators should also consider the method of communication that would be most effective with the client. Communication options generally include: phone, email, texting, writing (mail), fax, or face to face. In determining the appropriate form of communication with the client, the investigator should comply with other ethical consideration related to confidentiality.

c. Failure to send final report

A final report documents the work conducted by the private investigator during the investigation. The report conveys to the client the evidence obtained that may affect the case. The report of investigation is a form of communication with the client which clearly sets forth the investigative results. The 40 Hour Basic Private Course Training Course and other

continuing education programs provide guidance to the novel investigator in the preparation of a report.

An investigator should advise the client of the time frame in which the report will be generated and provided to them upon completion of the investigation. By reasonably informing the client of when the report will be provided may avoid misunderstandings with the client. If the client does not want a report related to the investigation, it is recommended that you document that fact in your investigative file including the date of that communication, means of communication and what was or was not requested by client from investigator.

d. Dissatisfied Client

In some cases, what the private investigator considers a good job may not be good enough for the client. The client's perception of the investigative goals may differ from the private investigator. When a client is not satisfied with the job performed by the private investigator, the investigator should not argue with the client over the issue. Generally, an argument will not be able to resolve the problem, may lead to a lost client or a complaint against the private investigator with the LSBPIE.

Hear the client out and try to meet with about the problem. The private investigator should give the client the opportunity to explain the particular dissatisfaction with the investigation. After understanding the exact issue, the private investigator may be able to resolve the problem by adding clarification to certain parts of the investigation or reaching a compromise between the parties to end the matter which benefits both parties.



When private investigators fail to handle client relationships and resolve problems, the client may file a complaint with the LSBPIE against the private investigator. Under the laws and rules, the LSBPIE has established a complaint and hearing procedure to address complaints against private investigators.

Example: McDonald v. LSBPIE, 873 So.2d 674, La. App. 1st Cir. (2004)

Investigator McDonald was hired by client for an investigation and had an agreement with client to perform certain work. Investigator McDonald became ill and referred work to Investigator Bearden for completion. The client was not satisfied with the services provided by Investigators and filed a complaint with the Board. A formal administrative hearing was held and the Board rendered a decision revoking the private investigator licenses of McDonald and Bearden and ordered them to pay fines, costs and fees incurred by the Board.

The administrative decision of the Board was appealed to the 1st Circuit Court of Appeals for judicial review. Court of Appeals held that the period to bring a proceeding for judicial review of administrative adjudication follows request for rehearing and commences with rendition of decision for rehearing.

In conclusion, private investigator should operate ethically and maintain a good relationship with their client. If complaints are filed with the Board, the private investigator faces fines and loss, suspension or revocation of his license.

e. Suspicious person

In private investigations, especially surveillance cases, investigators may be reported by the noisy neighbor as a “suspicious” person. Even when the investigator is sitting in his vehicle in a public parking, people may feel spooked by his presence. Then the spooked individual may feel it’s their duty to protect society from the mysterious person sitting in the vehicle by calling the police. This is where the fun begins, what do you do? Don’t panic. The investigator should handle the matter professionally while abiding by the P.I. laws and ethics.

Particular laws and surveillance techniques are addressed in the forty (40) Hour Basic Private Investigator Training Course.



Example: *Trahan v. City of Scott*, 802 So.2d 24, La. App. 3rd Circuit (2001)

Investigator Trahan is a licensed private investigator. Investigator was working a surveillance case and sitting a public parking lot in his truck. An employee approached the investigator and asked if she could help him. Investigator replied that he was working in the area. The employee called the police. The police arrived at the public parking lot and requested that Investigator exit his vehicle. Investigator refused to exit vehicle and he refused to produce identification requested by the police. The police officers handcuffed Investigator, patted him down, and read him his Miranda rights. Investigator’s wallet was removing from his back pocket and searched. Officers found his private investigators licensed and released the investigator. The police officers advised Investigator that next time he is working in the area, Investigator was to check in with the city police.

The Lafayette Parish District Court (14th JDC) dismissed the lawsuit filed by investigator. The 4th Circuit of Court of Appeals held that:

- Officers had no reasonable justification for stopping investigator and searching him
- Officers unlawfully detained investigator resulting in false imprisonment
- Investigator was entitled to \$1,000 in damages for the loss of half day of work lost as well as emotional distress and embarrassment.

In its reasoning, the 4th Circuit Court of Appeals notes that law enforcement officials are not authorized to stop an individual in a public place unless the official “reasonably suspects is committing, has committed, or is about to commit an offense” (*Louisiana Code of Criminal Procedure art. 215.1*) and only then may the official demand his name, address, and an explanation of his actions.

Example: *Lenward Hebert v. Sheriff Randy Maxwell*, United States District Court, Western District of Louisiana, Civil Action No. CV-03-1739-A

Lenward Hebert, a licensed private investigator, sued the Sheriff of Concorda Parish on several grounds including: false imprisonment, conditions of the jail, violation of 8th amendment rights and punitive damages. Mr. Tiffie completed a statement saying that Hebert trespassed on his property. Then Hebert was arrested for criminal trespass. Hebert was taken to Concorda parish jail. Hebert produced numerous forms of identification including his private investigator's license. Hebert was denied bail in accordance with the bond schedule.

Sheriff Maxwell testified that most private investigator's stop by his office, as a courtesy, to notify the sheriff's office that they are working in the area, what type of vehicle they are driving and what the look like in case someone calls with a complaint.

Imprisonment of Hebert for over 48 hours – Court was unable to locate any Louisiana statute or cases giving Sheriff the authority to detain an arrestee nearly 48 hours in order to determine exactly who he was. The court denied defendant's motion for summary judgment requesting qualified immunity on this issue.

Bail denied – Court found that the Sheriff violated Hebert's right to post bond in accordance with the court ordered misdemeanor bond schedule. His 8th amendments rights were violated. Hebert's motion for summary judgment on this issue was granted by the Court.

Past Louisiana legislative action on this issue

In 2005, Rep. Ernest Wooten introduced House Bill No. 45 which required private investigators to notify police or sheriff prior to conducting an investigation. The bill was sent to the House Commerce Committee and no further action was taken on the legislation after the committee hearing on May 18, 2005. In due diligence, private investigators should monitor the legislation introduced each year because it only takes one bill to pass to change the general operations of the investigative industry.



The Louisiana legislative website is located at: <http://www.legis.state.la.us/>.

f. Truth in advertising

Whether your private investigative agency is well established or just starting up, effective advertising and marketing can be key to its success. However, in advertising, private investigators must be cognizant of federal & state laws as well as professional LSBPIE rules and regulations regarding truth in advertising.



The Federal Trade Commission (FTC) is the main federal agency that enforces advertising laws and regulations. Basically, the FTC requires the following of advertisements:

- Advertisements must be truthful and non-deceptive.
- Advertisements must have evidence to back up their claims.
- Advertisements cannot be unfair.

There are additional laws that govern particular types of advertisements and products. The same truth in advertising standards apply to all mediums: Internet, radio, television, newspaper, magazine, mail, billboards, or buses. The Internet connects private investigators with a nationwide or global market.

The LSBPIE Rules & Regulations regarding truth in advertising are aimed at protecting clients by requiring, as part of ethical responsibility, private investigators must be truthful about their years of experience and certifications.⁵ Specifically, the *truth in advertising requirements* are:

- Clearly state the actual years of experience within the private investigative industry.
- Ad must indicate if it is a total number of years for one certain investigator or a combined total of all investigators.

When the private investigator advertisement includes a *certification designation*, the following standards apply:

- Prior to advertising, a copy of the certificate and certificate number must be furnished to LSBPIE.
- The certified investigator's name must accompany the designation.

The truth in advertising standards set forth in federal law, state law and LSBPIE rules are designed to protect clients; however, these guidelines also help to maintain the creditability and integrity of the private investigative industry.

V. Confidentiality of Information

The client entrusts the investigator with conducting their investigation. The client also expects that the private investigator will maintain their privacy by being discreet with the information revealed in the investigation. Therefore, confidentiality is as important in an investigation as the success of the investigation itself. The P.I. Rules & Regulations under Chapter 7. § 709 set forth the confidentiality rules.



a. General rule

Investigator shall not reveal information relating to the representation of the client.

⁵ P.I. Rules & Regulations Chapter 7. § 731. Truth in Advertising

b. Exceptions

- Client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation
- Investigator may reveal information to the extent the investigator reasonably feels is necessary:
 - To prevent client from committing a criminal act that investigator believed is likely to result in imminent death or substantial bodily harm
 - To establish a claim or defense on behalf of the investigator in a controversy between client and investigator
 - To establish a defense to a criminal charge or civil action against the investigator based upon conduct in which the client was involved
 - To respond to allegation in any proceeding concerning the investigator's representation of the client.

VI. Conflicts of Interest

The ethical standards for conflicts of interest are set forth in the P.I. Rules & Regulations under Chapter 7 § 711 through § 715. Loyalty is an essential element in the private investigator's relationship to a client.

a. General rule:

Investigator shall not represent a client if the representation of that client will be *directly adverse* to the representations of another client.

Exception:

- Investigator reasonable believes the representation will not adversely affect the relationship with the client, AND
- Each client consents after consultation.

General rule:

Investigator shall not represent a client if the representation of that client may be *materially limited* by investigator's responsibilities to another client or to a third person or by investigator's own interest.

Exception:

- Investigator reasonably believes the representation will not be adversely affected; AND
- The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the disadvantages and risks involved.

b. Prohibited transactions

General rule: All transactions between client and investigators should be fair and reasonable to the client. Investigator may not exploit the representation of a client or information relating to the representation to the client's disadvantage.

Examples:

- **GR:** Investigator shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client.

Exception:

- Transaction and terms on which investigator acquires the interest are fair and reasonable to the client and are fully disclosed and *transmitted in writing to client* in a manner which can be reasonably understood by the client;
 - the client is given a reasonable opportunity to seek advice of independent counsel in the transactions; AND
 - the client *consents in writing* thereto.
- **GR:** Investigator shall not use information relating to representation of a client to the disadvantage of the client.

Exception:

- The client consents consultation.

c. Former client

Investigator who has formerly represented a client in a matter shall not thereafter:

- **GR:** Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client
- **GR:** use information relating to the representation to the disadvantage of the former client

Exception: the former client consents after consultation; or
Exception: except when the information derived from independent sources has become generally know.

VII. Professional Misconduct and Transactions with Persons Other than Clients

Professional misconduct and transactions with persons other than clients are ethical standards that are core to the private investigator's integrity, trustworthiness and professionalism. These standards are in Chapter 7 of the Rules & Regulations. Many "old school" tactics used by private investigators are a direct violation of one or both of these standards.

Professional misconduct of a private investigator who:

- Violates or attempts to violate the Rules of Professional Conduct or knowingly assist or induce another to do so, or do so through the acts of another;
- Commit a criminal act or any other act that reflects adversely on the investigator’s honesty, trustworthiness, or fitness as a investigator in other respects;
- Engage in conduct involving dishonestly, fraud, deceit or misrepresentation;
- Except upon the expressed assertion of a constitutional privilege, to fail to cooperate with the Ethic Committee in its investigation of alleged misconduct; or
- Threaten to file criminal charges solely to obtain an advantage in a civil matter.

Truthfulness in statements to others. In the course of representing a client, an investigator shall not knowingly:

- Make a false statement of material fact or law to a third person; or
- Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is otherwise prohibited by this Chapter.

VIII. Recent Louisiana legislation related to the P.I. industry

The Louisiana Legislature convenes each year in Baton Rouge and may pass legislation which directly affects the private investigator or activities used by private investigator in their trade. The legislature’s regular session is generally from March to June; however, please visit the legislative website for exact dates. Throughout the legislative session, private investigators should monitor the proposed bills.



Proposed legislations can be tracked online at the Louisiana legislative website is located at: <http://www.legis.state.la.us/> .

a. Private investigators

The 2010 Regular Legislative Session increased the fines and penalties for offenders operating as an unlicensed private investigator. The current fine is not less than \$2,000 and not more than \$10,000 or imprisoned for not less than three months and not more than one year, or both.

HB 57	Danahay	Act 909	Private Investigator: Increases penalty for violations of private investigator law.
Link to bill:	http://www.legis.state.la.us/billdata/streamdocument.asp?did=722928		

The 2008 Regular Legislative Session authorized the LSBPIE to issue a private investigator journeyman license. Subsequently in 2009, the new LSBPIE Board passed rules and regulations setting forth the standards, limitations and rules for the new journeyman license.

SB 519	Amedee	Act 862	Fees/Licenses/Permits: Authorizes the board of private investigators to issue a private investigator journeyman license to qualified applicants.
Link to bill:	http://www.legis.state.la.us/billdata/streamdocument.asp?did=504658		

b. Tracking devices

The 2010 Regular Legislative Session enacted Act 807 which prohibits the use of tracking device to track the location or movement of a person without the person’s consent. Under this new law, “tracking device” is defined as any device that reveals its location or movement by the transmission of electronic signals.

General Rule: No person shall use a tracking device to determine the location or movement of another person without the consent of that person.

Exception(s): *(Section shall not apply to the following.)*

- ***Owner of a motor vehicle***, including the owner of a vehicle available for rent, who has consented to the use of the tracking device with that vehicle.
- ***Lessor or lessee of a motor vehicle and the person operating the motor vehicle*** who have consented to the use of tracking device with that vehicle.
- ***Any law enforcement agency***, including state, federal, and military law enforcement agencies
 - acting pursuant to a *court order or lawfully using* tracking device in an ongoing criminal investigation,
 - provided that law enforcement officer employing the tracking device creates a *contemporaneous record* describing in detail the circumstances under which the tracking device is being used.
- ***Parent or legal guardian of a minor child*** whose location or movements are being tracked by parent or legal guardian.
- ***Department of Public Safety and Corrections*** tracking an offender who is under its custody or supervision.
- Any provider of ***commercial mobile radio service (CMRS)***, such as a mobile telephone service or vehicle safety or security service, which allows the provider of CMRS to determine the location or movement of a device provided to a customer of such service.
- Any ***commercial motor carrier operation***.

SB 801	Riser	Act 807	Geographic info system: Prohibits the use of tracking device to track the location or movement of a person without the person’s consent.
Link to bill:	http://www.legis.state.la.us/billdata/streamdocument.asp?did=722912		

c. **Process Service**

The 2010 Regular Legislative Session amended Louisiana Civil Code Article 1293, Service by private person in Act 466. The amendment changed as follows:

- The sheriff’s office now has ten (10) days, instead of five (5) days, after receipt of process or when a return has been made certifying that the sheriff was unable to make service, whichever is earlier.
- On the motion of a party, the court shall appoint a person:
 - Over the age of majority
 - Not a party
 - Residing within the state
 - Qualified to perform the duties required
- Addition: Any person who is a Louisiana licensed private investigator shall be presumed qualified to perform the duties to make service.

HB 327	Greene	Act 466	Civil Process: provides with respect to service of process by private persons.
Link to bill:	http://www.legis.state.la.us/billdata/streamdocument.asp?did=721952		

d. **Telecommunications**

The 2009 Regular Legislative Session passed Act 105 enacts under Chapter 19-C of Title 51 of the Louisiana Revised Statutes of 1950, the statutes comprised of: 51:1741.1 through 51:1741.5. The act is known as the “Anti-Caller ID Spoofing Act.” Caller ID spoofing allows a caller to hide his or her true identity by modifying caller ID information with the intent to mislead, defraud, or deceive the recipient of the telephone call.

General Rule: Unlawful for a caller to knowingly insert false information into a caller identification system with the intent to mislead, defraud, or deceive the recipient of a telephone call.

Exceptions:

- Any blocking of caller identification information.
- Any municipal, parish, state or federal law enforcement agency pursuant to an active criminal investigation.
- Any federal intelligence or security agency.
- Any private investigator licensed by the state of Louisiana or any duly authorized process server that is used in connection with a civil, criminal, administration, or arbitral proceeding, including the service of process, investigation in anticipation of litigation, the execution or enforcement of judgments or compliance with orders of any court.

SB 29	Riser	Act 105	Telecommunications: Enacts the Anti-Caller ID Spoofing Act.
Link to bill:	http://www.legis.state.la.us/billdata/streamdocument.asp?did=664972		

In addition to state laws and LSBPIE rules & regulations, investigator should be cognizant of national legislation pertaining to the private investigative industry.



The website for tracking Congress is: www.govtracks.us

This completes the one (1) hour of ethics required by the LSBPIE each year. If you have any questions regarding the course, please contact the Board office.

Louisiana State Board of Private Investigator Examiners

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