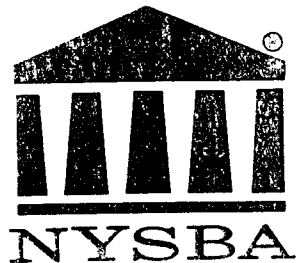


The New York State Bar Association Mass Disaster Response Plan



**Developed by the New York State Bar Association
Special Committee on the Mass Disaster Response**

Revised: June, 1998

THE NEW YORK STATE BAR ASSOCIATION MASS DISASTER RESPONSE PLAN

REVISED 1998

I. STATEMENT OF PURPOSE

The New York State Bar Association's ("NYSBA") mass disaster response plan ("Response Plan") sets forth guidelines for the volunteer members of the Disaster Response Team to follow in responding to the needs of victims and their families, as well as to the needs of the public and the media, immediately after a disaster. The plan outlines the procedures to be followed in determining whether the Response Plan should be implemented, taking into account the nature of the particular disaster and the types of legal questions that victims and their families may have in its immediate aftermath.

The Response Plan is not intended to provide victims, or families of victims, with long-term pro bono legal representation.

The principal goals of the Response Plan are:

1. To make victims of a disaster, their families, and the public aware that personal solicitation of clients by attorneys at the site of a disaster is unethical;
2. To monitor conduct of attorneys at a disaster site, receive reports of illegal or unethical conduct by attorneys, and to report attorney misconduct to appropriate prosecutors or attorney grievance committees;
3. To inform victims of a disaster and their families how the legal system functions to resolve disputes that arise out of mass disaster;
4. To advise those who require legal assistance how to make an informed selection of an attorney; and
5. When requested by responsible governmental authorities, to conduct a legal clinic and respond to specific legal questions posed by disaster victims and their families, subject to the understanding that no attorney-client relationship is being created thereby.

II. WHAT IS A MASS DISASTER?

A mass disaster is an unanticipated and unexpected event that causes injury, death, or property damage on a scale that may give rise to complex legal issues and/or massive compensation for the victims and/or their families. Examples of such events are aircraft and train crashes, hurricanes/tornadoes/floods, hotel fires, explosions, chemical spills/environmental damages, civil disturbances, and blackouts/brownouts. Not every event that meets the definition of a mass disaster will warrant the invocation of the Response Plan and its delivery of immediate,

short-term pro bono legal services. Certain catastrophes may occur that will not give rise to immediate legal needs and likewise do not create a risk of improper solicitation. For such disasters, traditional pro bono legal services provided through local bar associations may be the appropriate response.

III. THE RESPONSE TEAM

The Response Team shall consist of:

1. The President of the NYSBA ("President"), or the President-Elect in the absence of the President, who shall be the head of the team;
2. The Chair of the Mass Disaster Response Committee ("Chair");
3. The Executive Director ("Executive Director") of the NYSBA;
4. The Director of Media Services and Public Affairs ("Media Director") of the NYSBA;
5. The Director of the Department of Pro Bono Affairs ("Pro Bono Director") of the NYSBA; and
6. Those persons listed on Attachment 1.

IV. STEPS TO IMPLEMENT PROCEDURES

A. Notification And Preparation

The NYSBA may receive notification of a mass disaster from any one of a number of sources including bar members; media; federal; local or state officials; or other bar associations. Upon notification, the staff of the NYSBA carries primary responsibility to perform three important tasks:

- (I) gather details concerning the precise location of the disaster and determine the extent of personal injury, death, and/or property damage resulting from it as well as information as to any agencies that have already responded to the disaster;
- (II) take steps immediately to obtain a leadership decision whether the bar will initiate its Response Plan by notifying the highest available authority (*i.e.*, the President, the President-Elect or his or her designee); and,
- (III) take steps to aid the NYSBA President in initiating the Response Plan.

B. Decision To Implement Response Plan

After notification, the President or the President-Elect, if the President is not available, will consult with the Executive Director. The decision as to whether or not to execute the Response Plan should be made by the highest available authority. The President, or the President-Elect if the President is unavailable, after obtaining sufficient data and consultation to allow an informed decision, should determine whether the incident reported is a mass disaster for which the Response Plan should be implemented or whether another type of response would be appropriate. In making that decision, the President should consider the stated goals of the plan and the definition of a mass disaster. He or she should also consider the type of disaster, the number of victims or potential victims and their families, the size of the Response Team, and the time in which a response is needed.

The President shall implement the Response Plan whenever requested to do so by the Federal Emergency Management Agency, the National Transportation Safety Board, the Federal Bureau of Investigation, or the New York State Emergency Management Office.

C. Initiation of the Response

If the decision is made to implement the Response Plan, the NYSBA President, or President-Elect, with assistance from the Chair and appropriate NYSBA staff, shall notify:

- (I) **Local Response Team Members-** members of the Response Team who are located at or near the disaster site should be asked to provide suggestions as to: the most appropriate site location for the Response Team (at a minimum, the site should provide minimal furnishings, a telephone, a computer and access to photocopying and facsimile machines, if possible); the most effective means of transportation to the vicinity of the disaster site; and appropriate overnight accommodations for members of the Response Team.
- (II) **Response Team-** each member of the Response Team should be provided with information regarding the type of disaster and the extent of damage or injury, location of the disaster, precise directions to the site where members of the Response Team will initially meet, potential problems in traveling to the site, the estimated time of arrival of the President, and the estimated length of time that the members of the Response Team should be prepared to stay.
- (III) **Local Associations-** local bar associations and other similar organizations should be contacted and advised of the NYSBA Response Plan in order to coordinate efforts and obtain additional assistance if necessary.

Depending upon the nature of the disaster, a determination will be made as to whether a response will be made from the NYSBA Bar Center, on-site at the disaster, coordinated from both locations, or from any other appropriate location.

V. THE RESPONSE STAGE

A. Response by NYSBA Staff

Immediately upon notice of a decision that a response will be made to the mass disaster, NYSBA staff members shall:

1. Make final preparation and production of an appropriate number of copies of the Notice To Disaster Victims And Their Families (Media Director). (See Attachment 3).
2. Complete News Releases and make initial dissemination directly from NYSBA headquarters (Media Director). (See Attachment 2).
3. Make contact with federal, state or local law enforcement or relief agencies such as FEMA and SEMO and any other persons or entities involved in the event to obtain information about known location of any Disaster Field Office and the location of any press center designated by emergency management authorities (Pro Bono Director).
4. Transport supplies to the site, including copies of the Mass Disaster Response Plan, an appropriate media list, completed copies of the Notice To Disaster Victims And Their Families, copies of the Legal Guide for Victims of Mass Disasters (See Attachment 4), extra news releases, fact sheets on the NYSBA and on the Mass Disaster Response Plan, phone numbers for NYSBA officials, name badges for members of the Response Team, appropriate personal credentials and business cards, on-site signs, and appropriate NYSBA stationery (Media Director).
5. Establish responsibilities of persons remaining at the headquarters of the NYSBA concerning ongoing support of the effort of the Response Team, including maintenance of a communications "presence" while members of the Response Team are in transit to and from the disaster site and while they may otherwise be out of communication (Media Director).

B. On-Site Response by Response Team and Responsibilities

Immediately after the decision to implement the Response Plan, members of the Response Team should be dispatched to the scene, as selected by the President (or President-Elect) or his or her designee. At a minimum, the Chair, Media Director and Pro Bono Director should be among the members of the Response Team who are selected for dispatch to the disaster scene. All Response Team members are expected to abide by the requirements set forth in Attachment 5. After the team arrives it shall confer regarding information gathering, media contacts, and response to victim requests.

1. President/President-Elect (or his or her designee)
 - establish policy
 - conduct media interviews
 - make official statements

2. Chair
 - consult with President, as necessary
 - contact Response Team Members at the direction of the President
 - coordinate Response Team efforts
 - responsible for follow-up report

3. Media Director
 - prepare, make copies, and disseminate appropriate news releases by both print and electronic means (Home Page)
 - compile list of media contacts
 - arrange individual media interviews for President
 - compile list of all media contacts and work with outside public relations firm to ensure NYSBA messages are being communicated to appropriate audiences
 - provide copies of victims assistance handbook to media
 - gather background information for response team, as well as monitor TV/radio reports
 - serve as conduit for release of follow-up information to media
 - distribute appropriate public service announcements

4. Pro Bono Director
 - select site for command center
 - establish liaison with involved parties such as the Red Cross, Salvation Army, FEMA, SEMO and victims' organizations to provide assistance to victims and furnish written materials to these organizations
 - maintain communication with Executive Director

- contact and coordinate with local bar associations and other similar organizations
- coordinate lodging and transportation to and from site
- arrange for reimbursement expenses for Response Team Members

5. Other Response Team Members

- do not approach or seek out victims or victims' family—serve only as respondents to contacts generated by media publicity
- distribute written materials to disaster victims and their families
- respond to general questions by victims or their families about how the legal system functions to resolve disputes that arise as a result of mass disaster
- when requested by responsible government authorities, the Response Team shall conduct a legal clinic and respond to individual legal questions posed by disaster victims and their families, each of whom shall be given a copy of the “Notice to Persons Served by the Disaster Response Team Legal Clinic” (See Attachment 7)
- monitor lawyer solicitation and report instances of illegal or unethical conduct by lawyers to appropriate government authorities, including local district attorneys or attorney grievance or disciplinary committees
- provide information to disaster victims and their families in response to complaints of alleged violations of the Code of Professional Responsibility

C. Important Points for Response Team Members

- (I) It is crucial that the Response Team not become identified with any faction of a potential controversy, that it abstain from making statements on the merits of claims that might arise from the disaster, and that it not make, even if repeating comments made by other persons or organizations, any statements implying responsibility for the disaster.
- (II) The President of the NYSBA, or his/her designee, is the sole spokesperson for the Response Team. No other person shall make statements of any kind to members of the press.
- (III) While all Response Team members should participate in the distribution of written materials to the disaster victims and their families, all should also be careful not to provide specific legal advice or referrals while acting as a member of the Response Team other than as part of a legal clinic established under Part V.B.5 above.
- (IV) In responding to disaster victims or their families or others, members of the Response Team should emphasize that their major concern is for the persons affected by the disaster and the public interest. Further, they should emphasize that the team is there chiefly to provide information to the victims and their families and to

monitor compliance with the Code of Professional Responsibility and to receive reports of any possible violations of those rules.

- (V) To the extent that time and circumstances permit, the Response Team shall confer before any response to a press inquiry is made.
- (VI) Members of the Response Team should also maintain notes of any problems that make performance of their duties more difficult and any ideas for avoiding or diminishing such problems in the event of a future response to a mass disaster.

D. Key Bar Leader Notification

The Executive Director will be responsible for notification of Executive Committee members of the NYSBA and others, as deemed appropriate. The notification should include information regarding action taken, reasons for such action, and contact person for updates or additional background.

E. Report on Results

The Chair will convene a meeting as soon as possible to be attended by as many Response Team members as may be available to obtain input regarding the effectiveness of the plan in that particular situation. The Chair shall prepare a written report of all that occurred at the site or in response to the crisis. The report shall be submitted to the President.

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as of June 1, 1999

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ATTACHMENT 2

Sample News Release

FOR IMMEDIATE RELEASE
[Date]
CONTACT:
TELEPHONE:

NEW YORK STATE BAR ASSOCIATION RESPONDS TO DISASTER

[Location] — The New York State Bar Association (NYSBA) has dispatched a Disaster Response Team to the site of the [disaster] to offer information and advice on a pro bono basis to victims of this tragedy and their families. The Disaster Response Team will also monitor the conduct of lawyers in an effort to prevent solicitation or other improper behavior.

[Insert], chair of the Disaster Response Team, said, “The Team members are volunteer lawyers and will not accept any cases that might arise from this matter in the future. They are providing assistance without charge.”

New York's Code of Professional Responsibility, which guides the daily ethical and business behavior of lawyers, prohibits a lawyer, or any person acting on behalf of a lawyer, from soliciting employment or initiating uninvited contact with any individual. Those same rules prohibit lawyers from taking advantage of a disaster victim by pressuring relatives into signing documents releasing their clients from further liability.

“After an event of this nature, the victims and their families are emotionally devastated, making it difficult to make informed decisions about numerous matters of great importance — including their legal rights,” [insert] said. “They are vulnerable and we are attempting to make sure no one takes advantage of their distress.”

As part of the disaster response, the NYSBA is offering a “Legal Guide for Victims of Mass Disasters,” which provides general advice to persons faced with a tragic occurrence. “Each victim’s legal rights are particularly important and the decision to speak with an attorney about these legal rights should be handled cautiously and carefully,” according to [insert].

For additional information, or to report an instance of attorney solicitation, call the NYSBA at 518-463-3200. While the NYSBA cannot provide legal representation to individuals, members of the Disaster Response Team or the NYSBA staff may be able to answer questions or provide other assistance. The Appellate Divisions of the New York Supreme Court have the power to impose discipline on attorneys found to have violated the Code of Professional Responsibility. If there is a complaint about the conduct of an individual other than an attorney, the NYSBA will refer complaints to the appropriate authority.

The __,000-member NYSBA is the largest voluntary statewide organization of lawyers in the nation.

**STATE BAR PRESIDENT WARNS LAWYERS
CONCERNING [INSERT] DISASTER**

ALBANY - [Insert], President of the __,000-member New York State Bar Association (NYSBA), has issued the following statement in the wake of yesterday's disaster at [insert].

"The events of [insert] have shocked and saddened not only New Yorkers but the entire country. I would like to assure family members of disaster victims that New York lawyers are legally and ethically prohibited from accepting employment in situations in which they have given unsolicited advice to obtain counsel or take legal action. Further, lawyers in this state are prohibited from asking another lawyer or an employee to take this action on their behalf."

[For air crashes: "Federal law prohibits any persons, including lawyers, from having any unwanted communications relating to possible lawsuits or claims with air crash victims or their families within 30 days of the crash."]

"The state bar has proposed amendments to the Code of Professional Responsibility, which governs the daily ethical and business conduct of lawyers practicing in the state, that would expressly prohibit lawyers from soliciting business when they have reason to believe that the mental or emotional state of a potential client is compromised, and out of respect for the family members of [insert] at a time of unimaginable shock and horror, all lawyers should, at this time, avoid even the appearance of soliciting victims of this catastrophe as clients."

ATTACHMENT 3

Notice to Disaster Victims and Their Families

Lawyers can provide meaningful assistance to you for problems arising out of mass disasters. However, the choice of a lawyer and decision whether or not to use a lawyer is yours and yours alone. The New York State Bar Association (NYSBA) offers the following general information to you in this time of grief and emotional distress.

- ◆ **You are not required to speak with anyone.** Police, fire and other emergency personnel are there to help. You should feel free to speak with them. Other people may *not* be there to help you. They may be trying to help insurance companies or the people who may be responsible for the disaster. If you don't know *who* someone is and *why* they want to speak with you don't say anything. Get help from someone you know and trust, or from emergency personnel.
- ◆ **Volunteer lawyers are available to help you.** These volunteer lawyers, members of the NYSBA Disaster Response Team, can answer legal questions and help you find a lawyer, if you decide to hire one. Each of them carries an official identification card.
- ◆ **Lawyers are not supposed to contact you unless you want them to.** In other words, you call them, they don't call you. Unless you call or write to them first, lawyers — and their helpers, sometimes also called “runners” — are not supposed to approach you in person or by telephone. They are permitted to write to you. If you think that a lawyer or runner has approached you improperly, report that to members of the NYSBA Disaster Response Team.
- ◆ **You do not need to make any decisions now.** If you know you want to make a legal claim based on what has occurred, you may want to hire a lawyer soon. But that is an important decision, and as with any other important decision, you should make it when your mind is clear and you have the information you need to make a sound decision. We recommend you see a lawyer within 60 days of the disaster if you wish to explore making a legal claim. This is because some deadlines for filing can come up in 90 days.
- ◆ **Do not sign anything that affects your legal rights without consulting a lawyer first.** You may be offered certain money settlements and asked to sign certain forms that give up your right to make a legal claim. You should not sign anything like this without consulting a lawyer.

**THIS MESSAGE IS BROUGHT TO YOU BY THE NEW YORK STATE BAR
ASSOCIATION COMMITTEE ON MASS DISASTER RESPONSE, A GROUP OF
VOLUNTEER LAWYERS PREPARED TO HELP YOU AT NO COST TO YOU.**



ATTACHMENT 4

NEW YORK STATE BAR ASSOCIATION
LÉGAL GUIDE FOR VICTIMS OF
MASS DISASTERS

If you are reading this guide because you or a loved one has just been the victim of a catastrophic event, please accept our deepest sympathies. We understand that this is a time filled with grief and emotional distress. Our only motive in providing this information is to assist in protecting your legal rights and in avoiding unnecessary anguish.

Despite the deep sadness that you are now feeling, this is also a time in which you may have to make some informed decisions having serious implications for the future. One of those decisions is whether to hire a lawyer to pursue a lawsuit against those who may be responsible for the disaster. If you do decide to hire a lawyer, then you should select a qualified lawyer who will best suit your needs before taking any actions that might jeopardize your rights. This brochure is offered to assist in the decision-making process.

It is impossible to provide comprehensive advice that will apply to all situations. This guide is intended to assist in preserving your legal rights until you decide how you will pursue them in this situation. It is provided by the New York State Bar Association Disaster Response Team, a committee of lawyers who have volunteered to provide guidance and assistance to victims of mass disasters and their families without charge.

YOU WILL PROBABLY NEED THE SERVICES OF A LAWYER. IT IS YOUR DECISION WHEN TO SELECT AN ATTORNEY TO REPRESENT YOU AND TO PROTECT YOUR LEGAL RIGHTS. SINCE YOU MAY BE ENTRUSTING YOUR LAWYER WITH THE FINAL RESOLUTION OF YOUR OR YOUR LOVED ONE'S LEGAL RIGHTS, THIS DECISION SHOULD BE TAKEN VERY SERIOUSLY.

WHAT IS A MASS DISASTER?

A mass disaster is an unanticipated and unexpected event that causes injury, death, or property damage on a large scale. Examples of such events are air crashes and other mass transportation accidents, weather related catastrophes (such as hurricanes, tornadoes and floods), office building or hotel fires, explosions, chemical spills or other environmental hazards, terrorist attacks, riots and other civil disturbances, and power blackouts.

While no catastrophic event can be called a "typical" or an "expected" occurrence, various organizations and groups usually react to mass disasters. These include:

- Federal, state and local agencies, including the Federal Emergency Management Agency, the New York State Emergency Management Office, local emergency managers and, in aviation and other transportation disasters, the National Transportation Safety Board.
- Where criminal conduct is suspected, law enforcement agencies including the Federal Bureau of Investigation and the New York State Police.
- Fire, rescue, medical and other local emergency personnel.
- Victim assistance organizations, such as the American Red Cross and local emergency service organizations.
- Representatives of various individuals or companies that may be responsible for the occurrence.
- Lawyers who routinely represent victims of accidents and lawyers who represent and defend the interests of parties who may be responsible or are otherwise involved in the catastrophe.
- Members of the news media.

WHAT TO DO WHEN DISASTER STRIKES

If you or a family member have been involved in a mass disaster, representatives of any or all of the above groups may try to contact you. Preserving your legal rights may hinge on your ability to identify these representatives and to decide how best to deal with each of them.

Emotional distress and grief are inevitable after a catastrophic tragedy, and this condition may initially impair your ability to make sound decisions or to preserve your legal rights. In contrast, the individuals contacting you are usually specialists who possess extensive training or are otherwise experienced in dealing with disaster victims. *Do not assume that any of these*

individuals is necessarily looking out for your best interests. You should try to make an independent judgment as to each person.

It is important for you to determine who has a financial interest in contacting you about this tragic event. You should retain a healthy skepticism of anyone who stands to gain financially from your misfortune. For example, a policeman or a federal aviation inspector is charged by law to deal with the tragic event; you will probably want to speak freely with them. On the other hand, lawyers may try to solicit you as a client. A lawyer may already be representing an insurance carrier providing coverage for one of the parties involved in the disaster. While you may wish to speak openly with law enforcement or investigatory personnel, it may not be wise to be so open with a lawyer you have never met and whose advice, counsel, or representation you have not sought.

SHOULD YOU HIRE A LAWYER?

The purpose of a civil lawsuit is to determine the cause of the accident and to identify those individuals or entities, if any, whom the law holds responsible for the accident. A civil lawsuit seeks money for people who are injured (to pay for medical expenses, make up lost wages and compensate for pain and suffering) and to help provide for survivors of the victims who are killed. A civil lawsuit does not determine whether or not a crime has been committed. That determination is made in criminal proceedings brought by public officials, such as the District Attorney. Whether someone is entitled to money for injuries or the death of a loved one is usually determined through a trial. At the end of the trial, the court may assess monetary damages against those parties responsible for the accident and may award monetary compensation to the parties who have brought the lawsuit. However, if the parties agree that compensation to the victim is appropriate, and they agree on the amount that should be paid, they can settle the case without going to trial.

Because of the notoriety and magnitude of a disaster, you may be subjected to many pressures and distractions from outside sources, such as the media, as well as those who have an interest in limiting the amount of compensation paid to the victims, including representatives of insurance companies and potential defendants.

You may also be contacted by lawyers seeking to represent you or your family. A lawyer can help you decide whether to accept or reject any settlement offers that are made to you. You should view settlement offers with caution. Accepting a settlement offer could potentially foreclose you from bringing a lawsuit later. A lawyer can also help you decide what is in your best interest and evaluate the different legal possibilities open to you. Selection of a lawyer you trust and in whom you have confidence is important and you should not make your decision to hire a lawyer based solely upon that lawyer's solicitation of you.

You may be asked to sign documents, complete forms or questionnaires concerning the victim or your family, or provide information concerning the victim. You may wish to consult a

lawyer before signing any documents, filling out forms or giving statements, for your responses might be used against you and your family in a future lawsuit. A qualified lawyer can protect you from jeopardizing your right or ability to recover money by advising you how to respond to any inquiries and by acting as an intermediary between you and anyone who tries to contact you.

One of the first steps a lawyer takes in preparing for a lawsuit is to investigate the circumstances surrounding an accident by retrieving and preserving evidence and by locating witnesses. While in some circumstances, such as commercial air crashes, government agencies conduct such an investigation, it is often important for your lawyer to begin the process as soon as possible before evidence can disappear and before witnesses can forget important information or change their stories.

WHEN TO HIRE A LAWYER

If you believe that you may wish to seek compensation for your loss, you should probably hire a lawyer early enough to assist you and your family in a meaningful way because of the important, complex, and frequently technical issues involved in litigation. Not only will you want to protect yourself from individuals or entities seeking to undermine your legal rights, it may be in your interests to initiate the investigative process as soon as possible. You should know that the law imposes certain time limits for commencing lawsuits or filing certain required notices (sometimes as short as 90 days). You do not want to forfeit your right to bring suit as a result of unnecessary delay.

Selecting an attorney may prove to be a crucial step towards the ultimate goal of resolving the troubling questions you may have concerning the disaster and ensuring that those who are responsible are held accountable to you and your family.

CHOOSING THE RIGHT LAWYER

You will want to hire an attorney who is qualified to handle a complex case like a mass disaster and with whom you feel comfortable. A lawsuit may last a long time and, over the course of the suit, you will need to work very closely with your lawyer. In addition, you will likely need to share personal and, perhaps, painful information with your attorney. Therefore, it is important that you have the utmost confidence in your lawyer, both personally and professionally. We recommend that you interview several attorneys before hiring one. Many attorneys will consult with you about your case without charge.

We recommend that you try to hire a lawyer with extensive experience in complex lawsuits. To find the right attorney, you may wish to speak with your family lawyer, if you have one. You could seek a recommendation from friends, relatives or members of the clergy, who might be able to suggest a general practice lawyer in your community, or from a bar association legal referral service. The New York State Bar Association Legal Referral Service, which without charge will provide you the names of attorneys you may wish to consider hiring, can be

reached at 1-800-342-3661. If you reside outside of New York State, you should have a personal lawyer in your home community to advise you on issues of local law (such as estate or real property law), in addition to a lawyer with expertise in complex lawsuits.

Remember, if you are not satisfied with your lawyer, you are free to hire a new lawyer and your legal fees should not be increased if you do.

UNSOLICITED COMMUNICATIONS FROM ATTORNEYS

If you contact a lawyer to ask about that lawyer's services, that lawyer may respond by writing to you, telephoning you, or meeting with you in person. If you have *not* first contacted a particular lawyer, that lawyer is restricted as to how and when he or she may communicate with you. In most circumstances, if you have not contacted a lawyer first, that lawyer (or someone acting on his or her behalf) may not solicit your business by approaching you directly, in person or by telephone. You should feel free to tell any lawyer or non-lawyer who approaches you personally that you do not want to be contacted. Your request should be honored.

In most cases, it is proper for lawyers to mail you letters or brochures about their experience and abilities, as long as the mailings are truthful. In the case of an air disaster, however, federal law prohibits a lawyer from contacting you in any way, including by mail, until 30 days after the crash, unless you have contacted the lawyer first. You are under no obligation to read any unsolicited mailings or to respond to them in any way.

If you are being harassed by a lawyer or someone acting for a lawyer, or if you believe that a lawyer has contacted you improperly, you may file a complaint with the appropriate District Attorney's Office or attorney disciplinary or grievance committee. You may obtain information on how to do so from the New York State Bar Association by calling 518-463-3200. (If you have a complaint about the conduct of individuals other than lawyers, the New York State Bar Association can assist you in making a report to the appropriate authority.)

LEGAL FEES

Most lawyers in cases involving personal injury or death will charge you a "contingent fee" based on a percentage of any settlement or recovery you receive. In many states, the percentage a lawyer may charge is limited by law. In New York, for example, the limit is 33-1/3%. You may negotiate with a prospective lawyer and request that he or she accept a lower percentage of the recovery. The lawyer may agree to do so; if not, you are under no obligation to hire the lawyer. If you have more than one lawyer working on your case on a contingent fee basis (such as a personal lawyer in your home community as well as a lawyer experienced in disaster cases), you should still pay no more than the *maximum* percentage, which will be shared among the lawyers.



Once you hire a lawyer, you should remember that you are free to change lawyers at any time if you are dissatisfied with the lawyer's services (although the lawyer you hire may be entitled to some compensation or share of the recovery and to reimbursement for expenses in connection with your case). In many states, including New York, a lawyers' fees in a wrongful death case must be approved by a court.

FINAL THOUGHTS

Your decision to hire a lawyer should be made calmly and intelligently, with no less care than any other important decision you make in your life. We urge you not to let pressure and confusion from outside sources force you into making hasty choices at this most difficult time.

**PREPARED BY THE NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON MASS DISASTER RESPONSE**

NEW YORK STATE BAR ASSOCIATION

LEGAL GUIDE FOR VICTIMS OF MASS DISASTERS

SUPPLEMENT FOR VICTIMS OF AIR DISASTERS

This Guide will provide some basic information about your legal rights and protections following an air disaster. It is meant to be an overview of what you may expect in the immediate aftermath of the air disaster and what eventual litigation may entail.

Why are Air Crashes Different from Other Mass Disasters?

Air crashes are usually the focus of intense attention. They often involve large numbers of victims and invoke public anxieties concerning air travel safety. As a result, Congress has taken steps to provide special protection air crash victims and their families. The Aviation Disaster Family Assistance Act of 1996 requires:

- the National Transportation Safety Board ("NTSB") to establish a Director of Family of Support Services to aid families of air crashes in the immediate aftermath of the accident;
- the NTSB to designate an organization to provide such assistance as the families need, including mental health and counseling services, assistance to families to travel to the location of the crash and to communicate with the families of other resources available to provide immediate assistance;
- all air carriers to implement internal plans to address the needs of families of passengers involved in air crashes.

The Act also prohibits lawyers and potential parties to lawsuits from communicating with any victim or family member for 30 days after the crash unless requested to do so. In other words, if you are a victim of an air crash or a member of a victim's family, no private attorney or attorney representing the airline or any other potential defendant may contact you to discuss possible claims arising out of the crash. (Other matters, such as logistics for memorial services, may be discussed.)

You should be aware that some attorneys hire non-lawyer "runners," who may pretend to be members of the clergy or family members of a victim of an earlier air crash. Accordingly, if *anyone* contacts you about possible legal representation, ask for their name and that of the lawyer they are touting.

New York State Bar Association, One Elk Street, Albany, New York 12207, 518/463-3200



What Will Air Crash Litigation Entail?

The purpose of a lawsuit is to determine who is at fault for the crash and how much should be paid as compensation to the surviving passengers or the families of victims as a result of their loss. In air crash cases there are frequently several defendants because air crashes are often caused by a combination of factors. The court will decide which defendants are legally responsible for the accident. Blame may be apportioned among the defendants if more than one is held responsible. Air crash litigation often involves complex legal and technical issues. Typically the cases take three to five years, although there are instances of cases taking much longer to resolve.

You may wish to consider whether to hire a lawyer experienced in aviation mass disaster lawsuits. No matter who you choose, your lawyer should be someone in whom you have absolute confidence, both personally and professionally. You and your lawyer will likely have a relationship that lasts a long time. The lawyer will need to inquire about details of your family life and ask you about very private and personal feelings. Therefore, you should feel comfortable talking with your lawyer about intimate matters.

Some lawyers are experienced in air crash litigation, and you may decide that it is to your advantage to hire one of them. There are a number of laws and legal doctrines applicable specifically to aviation. Depending upon the circumstances of the crash, a technical understanding of piloting procedures, manufacturing technologies, and federal regulations may be needed. Most plaintiffs' lawyers will consult with you about your case without any charge or obligation on your part. You should interview several lawyers before choosing one and investigate (or ask a lawyer friend or family member to investigate) the qualifications of anyone you are considering to insure that they have actual and proper experience. You may also wish to have your family lawyer involved. Among other things, you may feel more comfortable discussing intimate family matters with your family lawyer. Your family lawyer can also help you locate an experienced aviation attorney, if you wish to hire one.

Should I Talk to Representatives of the Airline or of Other Potentially Liable Parties?

You have the absolute right to refuse to talk to lawyers or other representatives of the airline or of any other potentially liable party on issues relating to potential claims or lawsuits. There may be other issues that you will need to discuss with representatives of the airlines relating to logistics, personal possessions, and other similar matters. However, once you have retained a lawyer, it is wisest to have your lawyer conduct all communications with airline personnel or representatives of any other potential defendants.

At present, statements you make to representatives of the airline or of any other potential defendant may be used against your interests in the course of litigation. These representatives

may be completely well-meaning and genuinely interested in helping you and your family. However, if they have heard potentially damaging information, even though revealed in the immediate emotional aftermath and grief, they may be required to reveal that information to their employers. It is wisest not to reveal any information about your family life or the personal habits of the decedent to airline personnel except for the names and telephone numbers of other family members.

What About the Possibility of Settlement?

Most civil lawsuits are settled before trial (sometimes called an "out-of-court" settlement). The possibilities of your case being settled before actually going to trial are, therefore, quite good. It often takes a significant amount of time however, to develop the information about your claim with sufficient detail and in a proper format so that the parties can agree upon an amount of compensation.

One of the most difficult decisions that family members have to make is what is a proper amount to compensate them for their loss. Of course, there is no amount of money that can truly compensate for the loss of a beloved family member. If you ultimately have to agree to an amount, that is not what your loved one was "worth," but monetary compensation is the only medium that our legal system has to try to acknowledge the loss in your life. As with all things, you will have to balance the amount that is ultimately offered with ending the litigation and with any emotional turmoil associated with the process, the possibility of the financial security that the amount will represent, and the need to devote yourself to other family issues.

Many people believe that it is inequitable that two people sitting side by side on an airplane, both morally good and loving family members, can result in vastly different amounts of compensation to their families as a result of their deaths. However, the laws in the United States generally assess compensation based upon the age of the decedent, his or her earnings or job prospects, the composition of his or her family, and the closeness of the relationships between the decedent and his or her family members. It is, therefore, unwise to compare any recovery that you might obtain with that of anyone else.

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ATTACHMENT 5

Response Team Responsibilities:

- a. Team members and lawyers associated with them in their law firms shall not accept representation of a party in a matter arising from participation on the Disaster Response Team. (If a particular member of the Response Team reasonably believes that his or her law firm may be called upon to represent a party in a matter arising out of a particular mass disaster, he or she shall be excused from participation in that particular response effort.)
2. Team members shall not make referrals or, unless participating in a legal clinic at the request of responsible government authorities, shall not provide specific legal advice to anyone while acting as a team member.
3. Response team member are "on call," and when activated by the President or Chair are to be prepared to travel immediately to the designated rendezvous site. The assembly point will be a place the team can meet, not necessarily the site of the disaster.

ATTACHMENT 6

Mass Disaster Plan Checklist

President Checklist

1. Receive call and get briefing from Executive Director
2. Consult mass disaster plan resource guide booklet for the NYSBA's definition of a mass disaster
3. Confer with NYSBA staff, Chair and other Response Team members, as necessary
4. Make decision whether or not to respond to disaster

Once a decision is made to respond on-site

5. Decide best possible way to travel to the site, using the input and assistance of the Media Director, Pro Bono Director and local members of the Response Team
6. Arrange meeting place/time with NYSBA staff
7. Get credentials, clothing, etc. for the trip
8. Travel to site
9. Meet NYSBA staff and Response Team members at site
10. Once at site, perform duties as official spokesperson for the NYSBA
 - Give media interviews
 - Establish relationship with local officials

Chair Checklist

1. consult with President, as necessary
2. contact Response Team Member at the direction of the President
3. coordinate Response Team efforts
4. prepare follow-up report

Media Director Checklist

1. Call the Disaster Field Office or similar operation to obtain the following information:
 - Number of dead/injured
 - Location of Disaster
 - Nature of Disaster Field Office response
 - Name of on-site contact, i.e., local FEMA representative

2. Assist Executive Director in briefing the NYSBA President on disaster
 - Remind president of mass disaster definition
 - Ask the president if he or she wishes to check with the local Response Team Representative before making a decision whether to travel to the site
 - Remind president to bring credentials, clothes, etc., should the decision be made to travel to the site
 - Arrange a time and place for the Response Team to meet the President

3. Write initial news release
 - Distribute via Empire Information Service
 - Make Additional copies to take on-site

4. Bring resource bag which includes the following:
 - a. copies of mass disaster plan
 - b. appropriate media list
 - c. completed notices to disaster victims and their families
 - d. extra news releases
 - e. fact sheets on the NYSBA and on the Disaster Response Plan
 - f. phone numbers for NYSBA officials
 - g. name badges for members of the response team
 - h. appropriate personal credentials and business cards
 - i. signs for the on-site station and appropriate NYSBA stationery
 - j. cellular telephone
 - k. news media directories
 - l. Lawyers Diary and Manual ("Red Book")
 - m. copies of the Mass Disaster Response Committee roster

5. While at site, arrange media interviews for President and help provide information to victims/family members

Pro Bono Director Checklist

1. Contact chief agencies and local and state officials to let them know that the Response Plan is in operation -
2. Secure on-site headquarters
3. Gather any additional information about mass disaster that may be helpful for the rest of the Response Team
4. Maintain communication with Executive Director
5. Make travel and lodging arrangements for Response Team

ATTACHMENT 7

NOTICE TO PERSONS SERVED BY THE DISASTER RESPONSE TEAM LEGAL CLINIC

The members of the New York State Bar Association Disaster Response Team who are assisting you will not represent you as your lawyer, and no attorney-client relationship exists between you and them. They are not here to provide legal representation, but simply to answer your questions, to refer you to appropriate sources of information, and to provide guidance to you in seeking legal representation.

We will not keep any of your papers and will not maintain a file relating to your situation. We will hold everything you tell us or show us in confidence to the extent we are permitted to do so by law.

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