

A photograph of a destroyed neighborhood with a rainbow in the sky. The scene shows several houses that have been severely damaged or destroyed, with debris scattered everywhere. A large rainbow is visible in the sky, arching over the scene. The overall mood is one of devastation and hope.

# After the Storm: Legal Issue Spotting in Disaster Relief

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# Agenda

A top-down view of a person's hands writing in a notebook on a wooden desk. Several other papers and notebooks are scattered around the main notebook. The person is wearing a brown sweater and a blue denim shirt. The lighting is warm and focused on the desk.

- 01 **Legal Issue Spotting**
    - Short-Term Legal Needs
    - Mid-Term Legal Needs
    - Long-Term Legal Needs
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- 02 **Suits on the Ground:  
Navigating Legal Ethics in Action**
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- 03 **Become a Volunteer**



# Part I

Legal Issue Spotting



## Immediate Priorities After a Disaster

- Access to food and water
- Securing emergency shelter

These needs take precedence over legal concerns

# How Attorneys Assist After a Disaster

## Response: Damage Assessment, Stabilize, & Provide

- First responders and other officials will provide information and coordinate life and property saving efforts.
- Attorneys may volunteer at distribution centers and temporary emergency shelters.

## Recovery: Short-Term, Mid-Term, & Long-Term

- Assist survivors with their immediate disaster legal needs as well as the disaster legal needs that arise in the future.

# Timeline of Disaster Legal Issues

- Short-Term – 2 to 6 weeks from disaster
- Mid-Term – within 1 to 6 months of disaster
- Long-Term – 1 year up to several years



**FEMA**

# Short-Term Legal Issues

- Housing – Renters
- Housing – Owners
- Replacing Important Documents
- Financial Assistance Information
- Employment Issues



# Immediate Landlord-Tenant Issues

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- Right to terminate lease
- Obligations when unit unsafe to occupy
- Requirements for notice to vacate
- Repair requests
- Return of security deposit
- Requirements when federally subsidized housing





# Immediate Homeowner Issues

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- Title Issues – Unable to access recovery resources for needed repairs to disaster damage
- Real estate contracts: Contract for Deed/Rent to Own
- Mortgage issues



# Replacing Important Documents

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- ID Card
  - Social Security Card
  - Birth Certificate
  - Deed
  - Financial Records
  - Court Documents
  - EBT Cards



# Financial Assistance Information

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- Insurance
- Unemployment
- FEMA
- SBA Disaster Loans
- Personal and Business
- KEMA
- Red Cross
- Other Voluntary Relief Efforts
- Public Benefits
- Grants





# Mid-Term Legal Needs

- Housing
- Consumer
- Other



# Housing

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- Clearing Titles
- Heirships Will/Probate
- Mortgage Relief
- FEMA



# Consumer

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- Insurance
- Identity Theft
- Contractor Fraud

# Insurance Issues

(Car, Flood, Homeowners', Renters')

Understanding Insurance coverage

Disputing Settlement

Denial of Claim

Appealing Insurance Decision



# Identity Theft

- Lost documents
- Sharing Identity Info
  - Credit Freeze



# Contractor Fraud

- Scammers come into town quickly
- Up front payment of services
- Incomplete work
- Substandard repairs





# Other Legal Issues

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- Immigration
  - Family Law

# Immigration

- Replacing documents
- Illegal Status



# Family Law

- Domestic Violence
- Custody action
- Child Support Modification
- Obtaining guardianship over a child or adult because guardian or parent lost their life in disaster



# Long-Term Legal Needs

- FEMA Recoupment
- Foreclosures
- Bankruptcies



# FEMA RECOUPMENT

DOCUMENT!  
DOCUMENT!  
DOCUMENT!



# Foreclosures

- Communicate with mortgage company
- Look for government assistance
- Agree to foreclosure in exchange for debt being deemed satisfied



# Bankruptcy

- Chapter 7
- Chapter 13





## Part II

Suits on the Ground:  
Navigating Legal Ethics in Action

# Take Care of You Too

Disaster response attorneys have often been impacted by the disaster as well.

Prioritizing disaster client care means providing professional legal services in a way that is trauma informed while also being mindful of the fact that we do this best when we engage in self care and we work in collaboration with our colleagues and community partners in a way that promotes care for each other.



# KENTUCKY RULES OF PROFESSIONAL CONDUCT

As a representative of clients, a lawyer performs various functions.

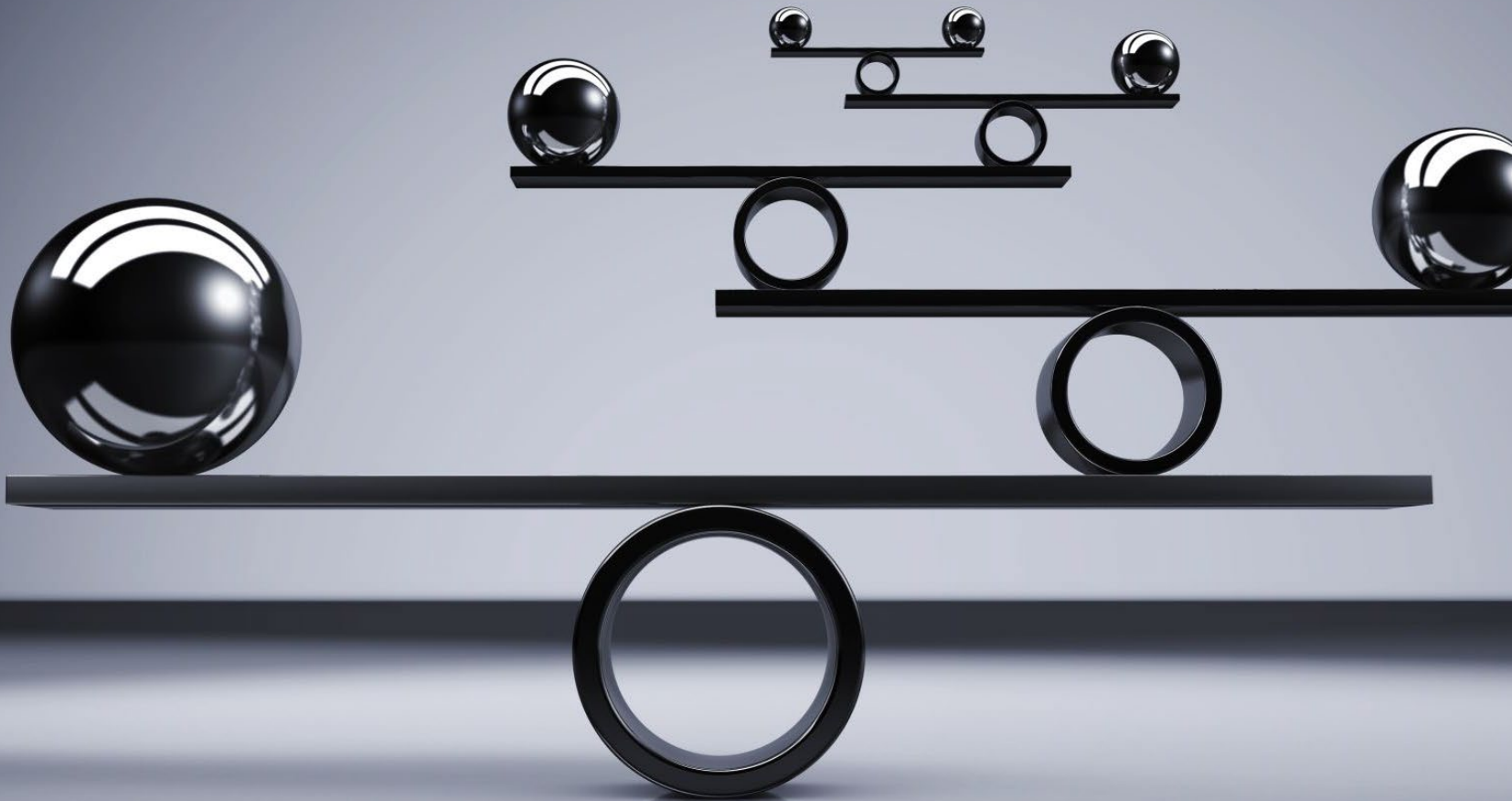
As *advisor*, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.

As *advocate*, a lawyer zealously asserts the client's position under the rules of the adversary system.

As *negotiator*, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others.

As an *evaluator*, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

SCR 3.130 Preamble III:  
A Lawyer's Responsibilities



# Legal Ethics & FEMA Appeals

- Competence
- Scope of Representation
- Communication
- Declining or Terminating Representation
- Diminished Capacity
- Confidentiality of information and Privacy Act of 1974

SCR 3.130(1.1).  
Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Disaster 101 training and other resources available through [LADRC.org](http://LADRC.org)

# SCR 3.130(1.2) Scope of representation and allocation of authority between client and lawyer



(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter...

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

**(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.**

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

# SCR 3.130(1.4) Communication

Rule SCR 3.130(1.4)(a) A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(1.4)(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



# FEMA Appeals

## Scope of Representation and Communication



Sign retainer and manage client expectations: keep case or submit appeal and close?



[Closing] letter with anticipated FEMA response date of 90 days.



Client will receive contact from FEMA, not attorney.



Schedule FEMA response deadline to anticipate client return contact.

Signature \_\_\_\_\_

Date \_\_\_\_\_

# SCR 3.130(1.16)

## Declining or terminating representation



(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law; or (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client; or (2) **the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or (3) the client has used the lawyer's services to perpetrate a crime or fraud;** or (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; or (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; or (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

# Declining or Terminating Representation: FEMA Fraud

- SCR 3.130(1.16)(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- ... (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or (3) the client has used the lawyer's services to perpetrate a crime or fraud...
- If you find a client has attempted to or did defraud FEMA, may withdraw from representation.
- SCR 3.130(1.16)(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.
- Inform client of withdrawal and potentially implications of the fraud like FEMA recoupment.



# Examples of FEMA Fraud

Stop payment check:

- Dig deeper!

Ownership letter signed by deceased person

Spending FEMA assistance

Submitted application for non-primary residence



## SCR 3.130(1.14) Diminished Capacity Client

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, age, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

- In FEMA appeal matter, the Applicant or Co-Applicant is your client.
- If reasonable belief of diminished capacity, seek information about power of attorney or guardianship/conservatorship appointment.

CONFIDENTIALITY

## SCR 3.130 (1.6)

### Confidentiality of Information

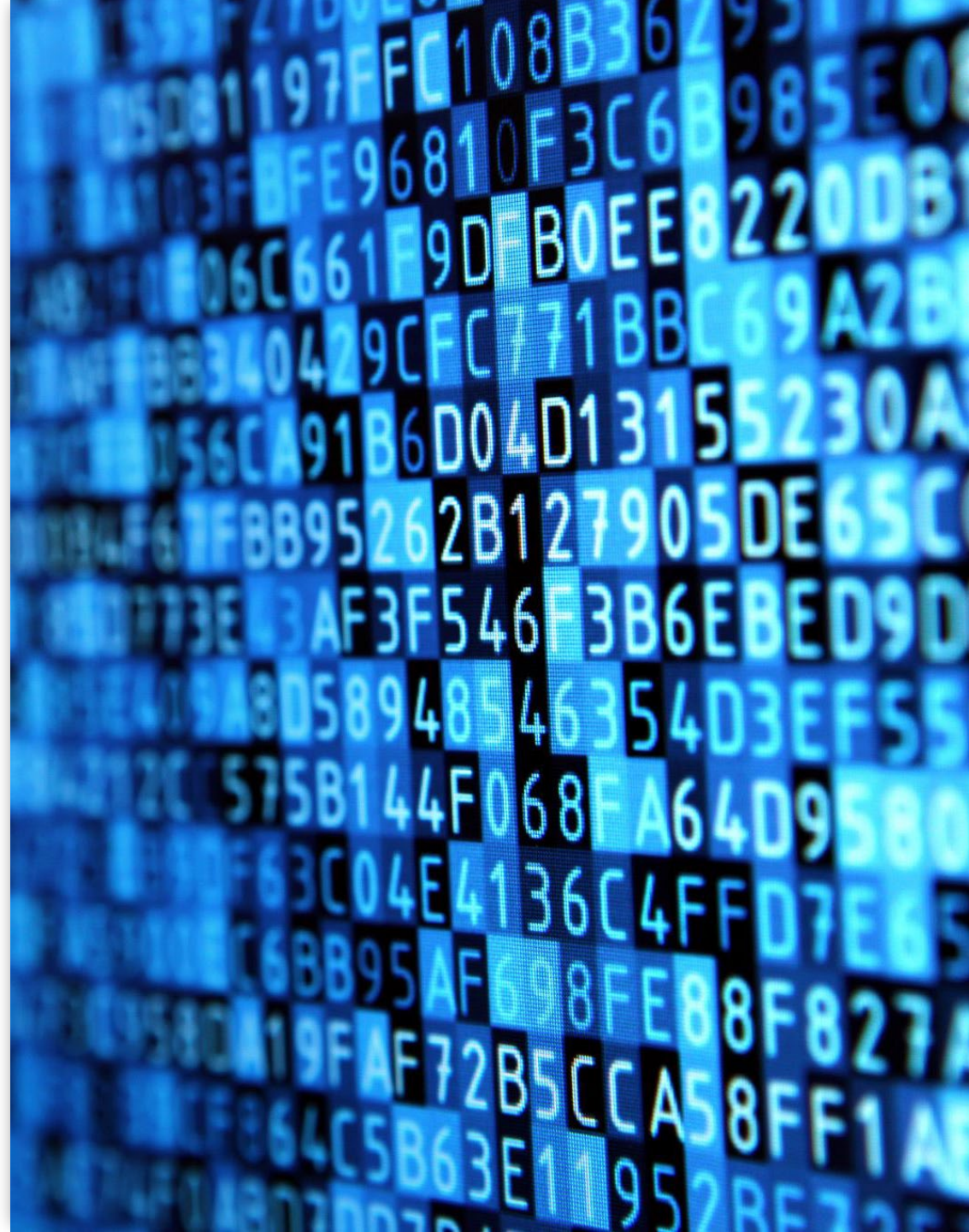
A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted:

- Permitted when:
  - Informed consent of client.
  - Disclosure impliedly authorized.
  - Necessary to prevent certain death or substantial bodily harm.
  - To secure ethics advice.
  - To establish a defense against a claim by the client or respond in a disciplinary proceeding.
  - To comply with a court order.

# Privacy Act of 1974: 5 U.S.C. 552 and 44 CFR Part 6

- Records maintained by FEMA are subject to the Privacy Act of 1974 (44 CFR § 6.1)
- 44 CFR § 6.3: Collection and use of information (Privacy Act statements).
  - (a) **General.** Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under FEMA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

<https://www.ecfr.gov/current/title-44/chapter-I/subchapter-A/part-6>





# 44 CFR § 6.20: Conditions of Disclosure

No employee of FEMA shall disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(e) To a recipient who has provided FEMA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record subject to the following: The record shall be transferred in a form that is not individually identifiable. The written statement should include as a minimum

(1) a statement of the purpose for requesting the records; and

(2) certification that the records will be used only for statistical purposes. These written statements should be maintained as accounting records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records;



# Confidentiality of Information

- Personal Identifying Information
  - E.g. Name, address,
- Privacy Data Cover Sheet
  - Appeals and physical folders
- Authorization for the Release of Information Under the Privacy Act form
- Additional Release of Information form, if applicable



# Part III

## Become a Volunteer



WHY VOLUNTEER?

# SCR 3.130 Preamble: A Lawyer's Responsibilities

- [II] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice, i.e. representing disaster survivors.
- [VII] ...[A] lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.
- [VII] ...A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor... cannot afford legal assistance.
- [VII] ...Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. – SCR 3.130



## SCR 3.130 (6.1) Donated Legal Services

- A lawyer is encouraged to voluntarily render public interest legal service.
- A lawyer is encouraged to accept and fulfill this responsibility by:
  - rendering a minimum of 50 hours of service per calendar year by:
    - providing professional services at no fee or a reduced fee to persons of limited means,
    - and/or by financial support for organizations that provide legal services to persons of limited means.

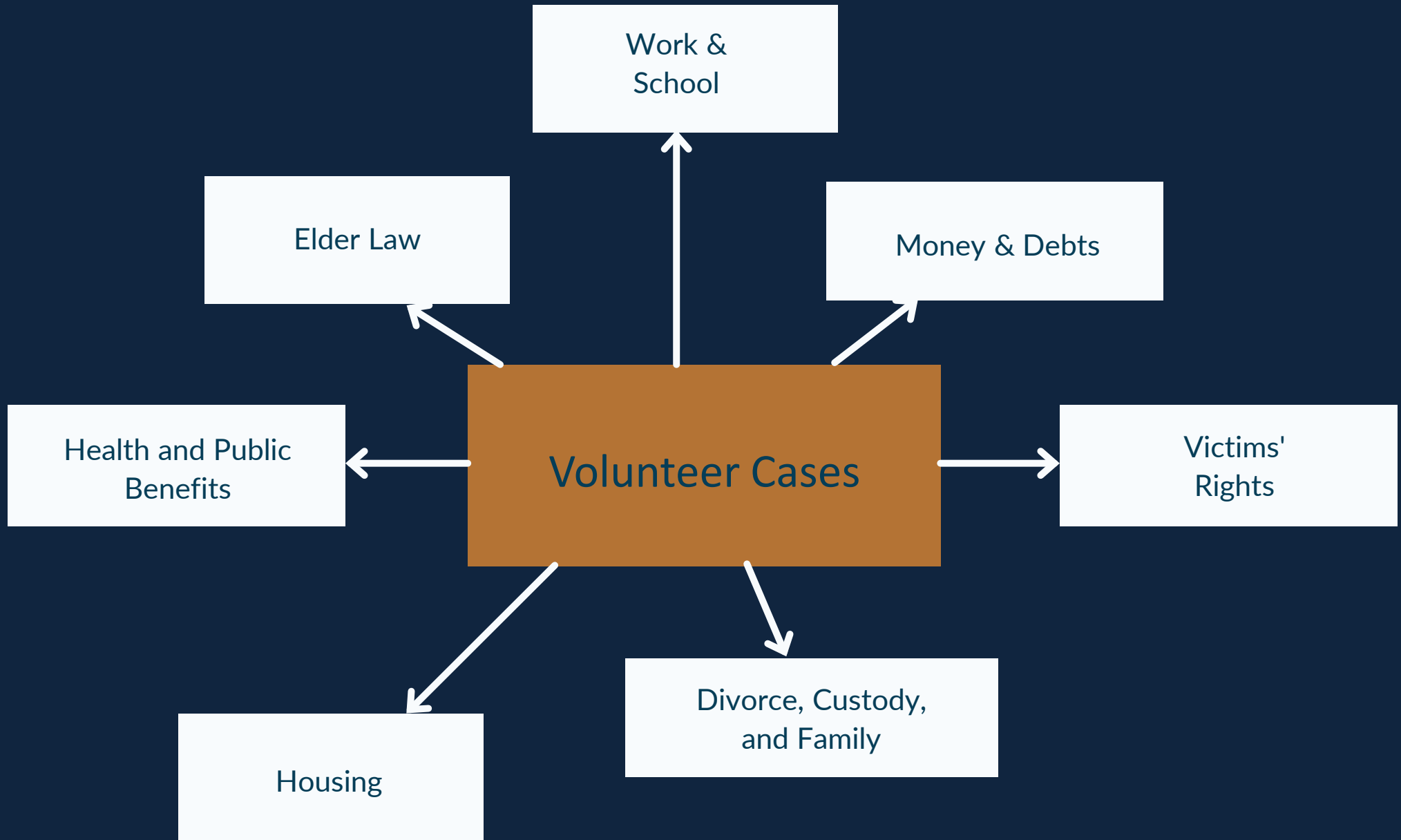


# QUALIFICATIONS

All attorneys participating in Lawyers Care must be members in good standing of the Kentucky Bar Association (KBA).

All volunteers are required to provide their KBA identification number and the date they became licensed.

Active status with the KBA is a prerequisite to serving as a volunteer attorney.





# VOLUNTEER IMPACT



Decrease child poverty by increasing self-sufficiency of low-income families



Reduce domestic violence



Improve health care of impoverished children and other individuals



Protect low-income families and elderly individuals who have been victimized by fraud, financial abuse, or economic factors

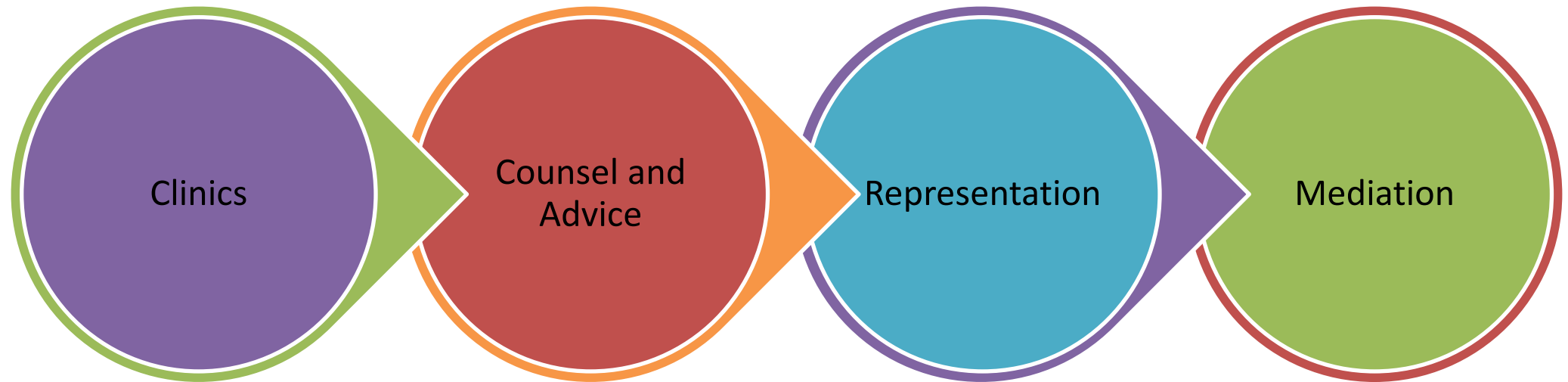


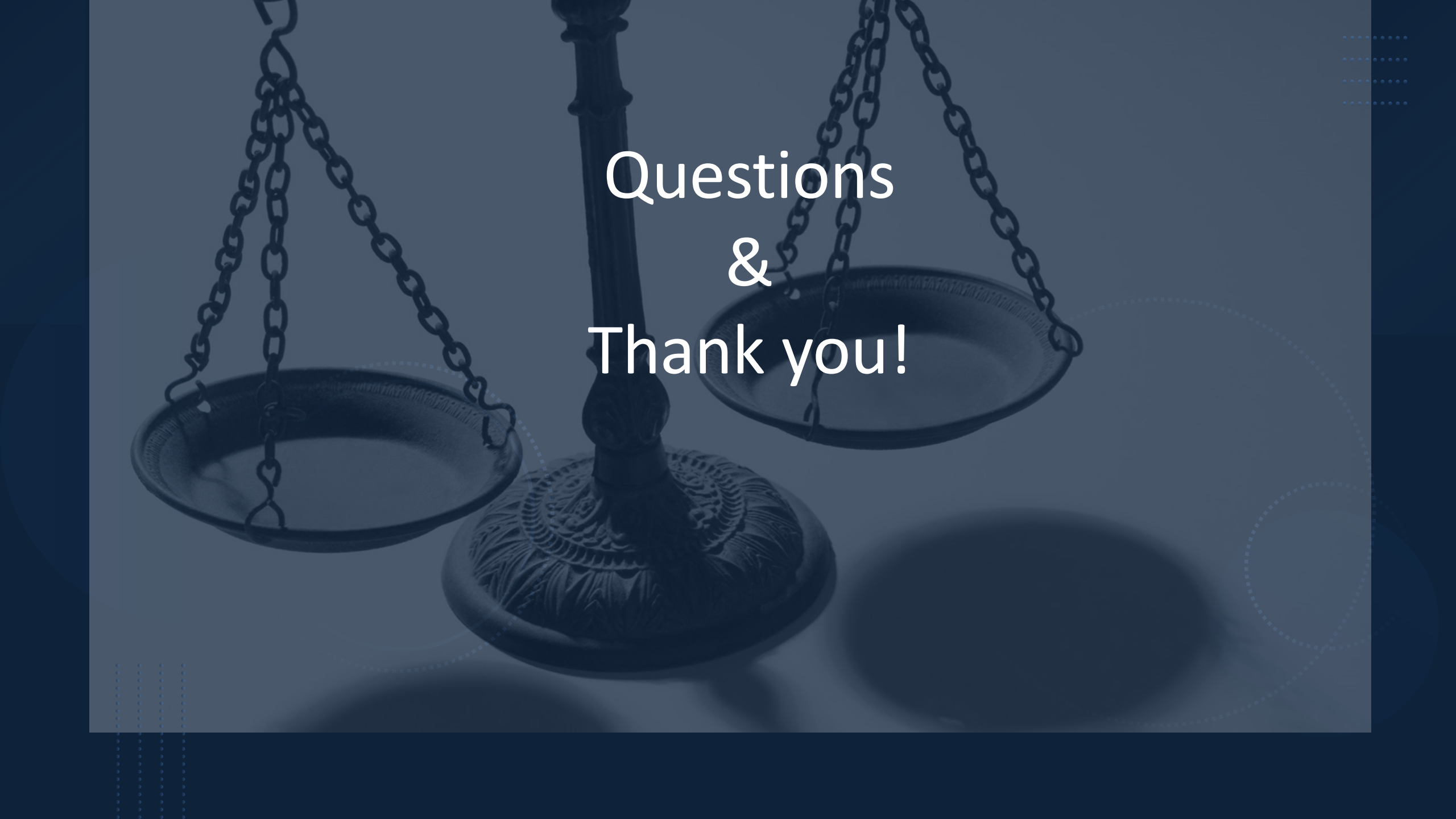
Improve the quality of life of impoverished elderly and disabled individuals



Improve the quality and stability of housing for low-income families

# VOLUNTEER OPPORTUNITIES





Questions  
&  
Thank you!