

*Counselor Tara,*

*I've been watching the news coverage on the flooding in the southern Plains states and I want to offer my civil engineering expertise. Does ASCE have a policy on volunteering?*

When floods and other disasters strike, leaving victims without basic necessities such as food, medicine, and shelter, a community's recovery often depends on the willingness of volunteers to aid in disaster relief. Unfortunately, this same willingness to help can also expose volunteers to legal liability for actions taken in an emergency situation. The threat of liability is of particular concern to skilled professionals in fields such as medicine or engineering, because the critical nature of the services they provide presents a greater risk for mistakes which could result in serious injury, death or property damage.

Understanding that the threat of personal liability may deter volunteers from offering their professional expertise in an emergency, a number of laws have been enacted at the state and federal level to protect volunteers from liability for actions taken in rendering emergency services.

At the federal level, the 1997 Volunteer Protection Act (VPA) offers immunity from civil liability for volunteers serving nonprofit organizations or government entities, provided that: 1) the volunteer was acting within the scope of his/her responsibilities at the time of the incident; 2) the volunteer was appropriately licensed or certified to perform the type of service involved; and 3) the harm was not caused by an act of willful misconduct or conscious indifference to the safety of the persons involved. The Act also excludes harms caused by negligent operating of a motor vehicle.

Unfortunately, several gaps in the VPA make this federal protection a less-than-perfect solution to the threat of legal liability. First, the VPA gives states broad authority to opt out of the Act, or to place additional constraints on eligibility within the state. For example, states may permit suits against a volunteer by an officer of the government, or may require the sponsoring entity to provide mandatory training before its volunteers can receive civil immunity.

Second, the VPA provides protection only to the individual volunteers themselves, meaning that nonprofit organizations or entities which sponsor volunteer work may be held liable for the volunteer's negligent acts. Finally, the VPA applies only to third-party suits against negligent volunteers and expressly permits suits by government or nonprofit sponsors against the individual volunteers. This raises the possibility that, even if the VPA bars direct litigation by an injured party, a volunteer may be held indirectly accountable if his/her sponsor is forced to pay the injured party and then sues the volunteer for compensation.

The Volunteer Protection Act is intended to serve only where state law does not provide greater protection to volunteers, and many states offer civil litigation protections that expand on the protections of the VPA. A handful of states, including Alabama, Virginia and New Jersey, provide charitable immunity protections that bar or limit damages for suits brought against a charity by its beneficiaries. Many states have enacted "Good Samaritan" legislation to protect licensed health professionals who stop to render aid in an emergency. In addition, a growing number of states have begun to extend this "Good Samaritan" protection to design professionals such as architects and engineers who volunteer services in a disaster recovery effort.

For example, in Louisiana, Revised Statute 37 §1736B provides that any architect, professional engineer or professional land surveyor who provides voluntary services during a declared disaster, either at the request or with the approval of a federal, state or local official, will not be liable for loss or injury relating to those services, except in the event of gross negligence or willful misconduct.

Section 44.023 of the Missouri Revised Statutes bars liability for "professional engineers, construction contractors, equipment dealers and other owners and operators of construction

equipment and the companies with which they are employed” for actions taken as an emergency volunteer, in the absence of willful misconduct or gross negligence.

And in Georgia, §51-1-29.2 of the Official Code says that no “natural person who voluntarily and without the expectation or receipt of compensation provides services during a time of emergency... to prevent, minimize, and repair injury and damage to property resulting from catastrophic acts of nature” will be liable for services rendered in good faith and without “willful or wanton negligence or misconduct.”

As with many other areas of state regulation, the presence and extent of "Good Samaritan" laws vary widely from state to state, and many leave open questions such as whether coverage restricted to “licensed professionals” will provide protection for out-of-state engineers rendering volunteer services. As such, many professional associations have joined ASCE in advocating a uniform federal statute that provides civil immunity for design professionals rendering volunteer services.

In the past decade, several attempts have been made to pass federal "Good Samaritan" legislation. Most recently, H.R. 2067, the “Good Samaritan Protection for Construction, Architectural and Engineering Volunteers Act,” was introduced in the House of Representatives in April 2007. If passed, this bill would provide civil immunity for any engineering entity (including persons, sole proprietorships, partnerships, LLCs or corporations) that provides professional services, on a good-faith volunteer basis, in a declared emergency or disaster. For information on this bill and its status, visit: <http://www.thomas.gov>.

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