

# PUBLICATION

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## For a Whistleblower, What is Good Faith?

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**Good faith. It is a term that is mercilessly bandied about in the law. And, its ambiguity can cause confusion . . . and a plea to the state's highest court for clarification.**

The Louisiana Environmental Whistleblower Act prohibits retaliation against an employee who threatens to disclose a violation of environmental law. One requirement for a cause of action under the law is that the employee act “in good faith.”

In a recent case in front of the federal Fifth Circuit Court of Appeals, the parties disagreed as to the act's meaning of “good faith” in the act. The trial court jury was instructed that the employee plaintiff did not act in good faith if he was trying to get an unfair advantage over his employer or to harm his employer. However, the plaintiff argued that “good faith” instead meant that he had an honest belief that an environmental violation had occurred.

The Fifth Circuit found that there was limited guidance from Louisiana courts as to the meaning of “good faith” in the act, and, therefore, certified the question to the Louisiana Supreme Court. Now, we must wait with bated breath to see if the high court takes up the question and, if so, what it decides.

Sometimes even judges are stumped by ambiguities in the law; tread lightly in any situation where an employee may qualify as a whistleblower.