

TO: Chairs of ABA Entities and Other Interested Parties

FROM: Janet Green Marbley, Chair
Standing Committee on Client Protection

DATE: September 6, 2006

RE: **Proposed new Model Rule 5.8/Model Court Rule: Provision of Legal Services Following Determination of Catastrophic Event**

The Standing Committee on Client Protection is circulating for comment a proposed new Model Rule that addresses the provision of *pro bono* legal services by out-of state lawyers in a jurisdiction that has been devastated by a catastrophic event. The proposed Model Rule also addresses the issue of lawyers whose practices have been disrupted by a catastrophic event continuing their law practices on a temporary basis in a jurisdiction in which they are not admitted to practice law.

The Committee is circulating two versions of the proposed Model Rule. The proposed Model Rule 5.8 would be incorporated in the ABA *Model Rules of Professional Conduct*. The Committee has received comment that a Model RPC is the better course of action in that lawyers could readily find direction on providing *pro bono* legal services, or on temporarily providing legal services for existing clients in a jurisdiction where they are not currently licensed, by consulting the Rules of Professional Conduct. (e.g. Rule 5.5 already addresses multijurisdictional practice of law).

The Committee is also circulating a proposed Model Court Rule that parallels proposed Model Rule 5.8. The Committee has received comment that the substance of proposed Rule 5.8 addresses an “admission” matter, not a matter of ethics, and the proposed rule should therefore take the form of a Court rule.

We are asking that your entity provide comments on the substance of the proposed Model Rule 5.8/Model Court Rule and that your entity comment on whether you believe this topic should be addressed in a Model Rule of Professional Conduct or in a Model Court Rule.

The Committee plans to submit the proposed Model Rule to the ABA House of Delegates at the 2007 Midyear Meeting in Miami. The filing deadline for Reports and Recommendations is Wednesday, November 15, 2006. We request that your entity submit any comments to John Holtaway, Client Protection Counsel, jholtaway@staff.abanet.org, no later than **Friday, November 3, 2006**.

Thank you very much.

**RULE 5.8: PROVISION OF LEGAL SERVICES FOLLOWING
DETERMINATION OF CATASTROPHIC EVENT**

(a) Following the determination of a catastrophic event in this jurisdiction pursuant to paragraph (c) of this Rule, a lawyer admitted in another United States jurisdiction, and not disbarred, suspended from practice or on probation in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a *pro bono* basis through a not-for-profit organization that is authorized to provide legal services either in its own name or through employed or cooperating lawyers. Legal services supplied pursuant to this Rule may also be provided through such other organization(s) specifically designated by this court.

(b) Following the determination by the appropriate authority of a catastrophic event in another United States jurisdiction, a lawyer who is admitted and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or on probation in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction where the catastrophic event occurred.

(c) Solely for purpose of this Rule, this court shall determine when a catastrophic event occurs in this jurisdiction and whether the conditions caused by the catastrophic event affect the entirety or only a part of this jurisdiction. If this court determines that there has been a catastrophic event in only a part of this jurisdiction, the authority granted by paragraph (a) shall extend only to allow lawyers to provide legal services in that designated area. The authority to engage in temporary practice in this jurisdiction pursuant to paragraph (b) shall extend only to lawyers who principally practice in the area of another jurisdiction determined to have suffered a catastrophic event.

(d) The authority granted by this Rule shall end [60] days after this court declares that the conditions caused by the catastrophic event have ended except that, a lawyer representing clients in this jurisdiction pursuant to paragraph (a) is authorized to continue the representation for such longer period as is reasonably necessary to complete the work.

(e) The authority granted by this Rule does not include appearances in court except:

- (1) pursuant to that court's *pro hac vice* admission rule; or
- (2) if this court, in any determination made under paragraph (c), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (a).

Comment

[1] A catastrophic event in this or another jurisdiction may for a sustained period of time interfere with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the catastrophe has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have legal needs as a result of the catastrophe or though independent of the catastrophe, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these services either by traveling to the affected jurisdiction or

from their own offices or both. A catastrophic event includes, for example, a hurricane, earthquake, flood, or tornado.

[2] Paragraph (a) permits lawyers admitted in an unaffected jurisdiction, and not disbarred, suspended from practice or on probation in any jurisdiction, to provide legal services to residents of the affected jurisdictions following determination of a catastrophic event and notwithstanding that they are not admitted to practice in the affected jurisdiction. Since lawyers on probation may be subject to monitoring and specific limitations on their practices, public protection warrants their exclusion from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation. Their service must be provided through a not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these services may be rendered.

[3] Lawyers admitted to practice in another jurisdiction, whose practices are disrupted by a catastrophic event there, and who are not disbarred, suspended from practice or on probation in any jurisdiction, are authorized under paragraph (b) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a catastrophic event in another jurisdiction should be made by the appropriate authority in that jurisdiction. For the meaning of "arise out of and reasonably related to," See Rule 5.5 Comment [14].

[4] For the meaning of "admitted to practice" as used in this Rule, See Rule 5.5 Comment [17]. Admission as a foreign legal consultant in a jurisdiction does not constitute being admitted to practice within the meaning of this rule.

[5] Under paragraph (c), this court shall determine whether a catastrophic event has occurred in this jurisdiction, or in part thereof, for purposes of triggering paragraph (a) of this Rule. This court may, for example, determine that the entirety this jurisdiction has suffered a catastrophic event or that only certain areas have suffered such an event. In the latter instance, the authority granted by paragraph (a) permits lawyers to offer legal services only in those areas. The authority granted by paragraph (b) shall extend only to lawyers licensed and not disbarred, suspended from practice or on probation, who principally practice in the affected areas of another jurisdiction. Such determination shall have no effect or impact on any declaration of disaster that may be made pursuant to any other federal or state law.

[6] Conditions created by catastrophic events end and when they do, the authority created by paragraphs (a) and (b) also ends with appropriate notice to enable lawyers to plan and to complete current work. This court determines when those conditions end only for purposes of this Rule. The authority created by paragraph (a) and (b) will then end [60] days after such a determination except that lawyers assisting residents of this jurisdiction under paragraph (a) may continue to do so for such longer period as is reasonably necessary to complete the work. However, those lawyers may not accept new clients or matters following such a determination by this court.

[7] Paragraphs (a) and (b) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular court. This court may, in a determination made under paragraph (c), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (a) to appear in all or designated courts

of this jurisdiction without need for such *pro hac vice* admission. If such an authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by catastrophic event have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16.

[8] Lawyers providing legal services in this jurisdiction under paragraphs (a) or (b) are subject to the disciplinary authority and the rules of professional conduct of this jurisdiction as provided in Rule 8.5. [Lawyers providing legal services in this jurisdiction under paragraphs (a) or (b) shall, within 30 days of the beginning of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court].

Model Court Rule on Provision of Legal Services Following Determination of Catastrophic Event

Rule _____. Provision of Legal Services Following Determination of Catastrophic Event

(a) Following the determination of a catastrophic event in this jurisdiction pursuant to paragraph (c) of this Rule, a lawyer admitted in another United States jurisdiction, and not disbarred, suspended from practice or on probation in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a *pro bono* basis through a not-for-profit organization that is authorized to provide legal services either in its own name or through employed or cooperating lawyers. Legal services supplied pursuant to this Rule may also be provided through such other organization(s) specifically designated by this court.

(b) Following the determination by the appropriate authority of a catastrophic event in another United States jurisdiction, a lawyer who is admitted and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or on probation in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction where the catastrophic event occurred.

(c) Solely for purpose of this Rule, this court shall determine when a catastrophic event occurs in this jurisdiction and whether the conditions caused by the catastrophic event affect the entirety or only a part of this jurisdiction. If this court determines that there has been a catastrophic event in only a part of this jurisdiction, the authority granted by paragraph (a) shall extend only to allow lawyers to provide legal services in that designated area. The authority to engage in temporary practice in this jurisdiction pursuant to paragraph (b) shall extend only to lawyers who principally practice in the area of another jurisdiction determined to have suffered a catastrophic event. [Lawyers providing legal services in this jurisdiction under paragraphs (a) or (b) shall, within 30 days of the beginning of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court].

(d) The authority granted by this Rule shall end [60] days after this court declares that the conditions caused by the catastrophic event have ended except that, a lawyer representing clients in this jurisdiction pursuant to paragraph (a) is authorized to continue the representation for such longer period as is reasonably necessary to complete the work.

(e) The authority granted by this Rule does not include appearances in court except:

- (1) pursuant to that court's *pro hac vice* admission rule; or
- (2) if this court, in any determination made under paragraph (c), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (a). If such an authorization is included, any *pro hac vice* admission fees shall be waived.