

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON CLIENT PROTECTION
NATIONAL ORGANIZATION OF BAR COUNSEL
SENIOR LAWYERS DIVISION
SECTION OF ENVIRONMENT, ENERGY AND RESOURCES
SECTION OF STATE AND LOCAL GOVERNMENT LAW
COMMISSION ON YOUTH AT RISK
STANDING COMMITTEE ON PROFESSIONALISM
COMMISSION ON HOMELESSNESS AND POVERTY
STANDING COMMITTEE ON ETHICS & PROFESSIONAL RESPONSIBILITY
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
NEW JERSEY STATE BAR ASSOCIATION
SANTA CLARA COUNTY BAR ASSOCIATION
CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association adopts the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*, dated February 2007.

FURTHER RESOLVED, That the American Bar Association amends Comment [14] to Rule 5.5 of the *Model Rules of Professional Conduct*.

Model Court Rule on Provision of Legal Services Following Determination of Major Disaster
(February 2007)

1 **RULE ____.** **PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR**
2 **DISASTER**
3

4 **(a) *Determination of existence of major disaster.* Solely for purposes of this Rule, this**
5 **Court shall determine when a major disaster has occurred in:**

6 **(1) this jurisdiction and whether the conditions caused by the major disaster**
7 **affect the entirety or only a part of this jurisdiction, or**

8 **(2) another jurisdiction but only after such a determination and its**
9 **geographical scope have been made by the highest court of that jurisdiction.**

10 **The authority to engage in the temporary practice of law in this jurisdiction**
11 **pursuant to paragraph (c) shall extend only to lawyers who principally**
12 **practice in the area of such other jurisdiction determined to have suffered a**
13 **major disaster.**

14 **(b) *Temporary practice in this jurisdiction following major disaster.* Following the**
15 **determination of a major disaster in this jurisdiction pursuant to paragraph (a) of**
16 **this Rule, a lawyer authorized to practice law in another United States jurisdiction,**
17 **and not disbarred, suspended from practice or otherwise restricted from practice in**
18 **any jurisdiction, may provide legal services in this jurisdiction on a temporary basis.**
19 **Such legal services must be provided on a *pro bono* basis without compensation,**

20 expectation of compensation or other direct or indirect pecuniary gain to the
21 lawyer. Such legal services shall be supervised by a lawyer authorized to practice
22 law in this jurisdiction and assigned through an established not-for-profit
23 bar association, *pro bono* program or legal services program or through such
24 organization(s) specifically designated by this Court.

25 (c) *Temporary practice in this jurisdiction following major disaster in another*
26 *jurisdiction.* Following the determination of a major disaster in another United
27 States jurisdiction, a lawyer who is authorized to practice law and who principally
28 practices in that affected jurisdiction, and who is not disbarred, suspended from
29 practice or otherwise restricted from practice in any jurisdiction, may provide legal
30 services in this jurisdiction on a temporary basis. Those legal services must arise out
31 of and be reasonably related to that lawyer's practice of law in the jurisdiction, or
32 area of such other jurisdiction, where the major disaster occurred.

33 (d) *Duration of authority for temporary practice.* The authority to practice law in
34 this jurisdiction granted by paragraph (b) of this Rule shall end when this Court
35 determines that the conditions caused by the major disaster in this jurisdiction have
36 ended except that a lawyer then representing clients in this jurisdiction pursuant to
37 paragraph (b) is authorized to continue the provision of legal services for such time
38 as is reasonably necessary to complete the representation, but the lawyer shall not
39 thereafter accept new clients. The authority to practice law in this jurisdiction
40 granted by paragraph (c) of this Rule shall end [60] days after this Court declares
41 that the conditions caused by the major disaster in the affected jurisdiction have
42 ended.

43 (e) *Court appearances.* The authority granted by this Rule does not include
44 appearances in court except:

- 45 (1) pursuant to that court's *pro hac vice* admission rule and, if such
46 authority is granted, any fees for such admission shall be waived; or
47 (2) if this Court, in any determination made under paragraph (a),
48 grants blanket permission to appear in all or designated courts of this
49 jurisdiction to lawyers providing legal services pursuant to paragraph
50 (b). If such an authorization is included, any *pro hac vice* admission
51 fees shall be waived.

52 (f) *Disciplinary authority and registration requirement.* Lawyers providing legal
53 services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this
54 Court's disciplinary authority and the *Rules of Professional Conduct* of this
55 jurisdiction as provided in Rule 8.5 of the *Rules of Professional Conduct*. Lawyers
56 providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within
57 30 days from the commencement of the provision of legal services, file a registration
58 statement with the Clerk of this Court. The registration statement shall be in a form
59 prescribed by this Court. Any lawyer who provides legal services pursuant to this
60 Rule shall not be considered to be engaged in the unlawful practice of law in this
61 jurisdiction.

62 (g) *Notification to clients.* Lawyers authorized to practice law in another United
63 States jurisdiction who provide legal services pursuant to this Rule shall inform
64 clients in this jurisdiction of the jurisdiction in which they are authorized to
65 practice law, any limits of that authorization, and that they are not authorized to

66 **practice law in this jurisdiction except as permitted by this Rule. They shall not**
67 **state or imply to any person that they are otherwise authorized to practice law in**
68 **this jurisdiction.**

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70 **Comment**

71 [1] A major disaster in this or another jurisdiction may for a sustained period of time
72 interfere with the ability of lawyers admitted and practicing in the affected jurisdiction to
73 continue to represent clients until the disaster has ended. When this happens, lawyers from the
74 affected jurisdiction may need to provide legal services to their clients, on a temporary basis,
75 from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction
76 may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a
77 result of the disaster or, though independent of the disaster, whose legal needs temporarily are
78 unmet because of disruption to the practices of local lawyers. Lawyers from unaffected
79 jurisdictions may offer to provide these legal services either by traveling to the affected
80 jurisdiction or from their own offices or both, provided the legal services are provided on a *pro*
81 *bono* basis through an authorized not-for-profit entity or such other organization(s) specifically
82 designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood,
83 wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

84 [2] Under paragraph (a)(1), this Court shall determine whether a major disaster has
85 occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph
86 (b) of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has
87 suffered a major disaster or that only certain areas have suffered such an event. The authority
88 granted by paragraph (b) shall extend only to lawyers authorized to practice law and not
89 disbarred, suspended from practice or otherwise restricted from practice in any other manner in
90 any other jurisdiction.

91 [3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction,
92 and not disbarred, suspended from practice or otherwise restricted from practicing law in any
93 other manner in any other jurisdiction, to provide *pro bono* legal services to residents of the
94 affected jurisdiction following determination of a major disaster; notwithstanding that they are
95 not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a
96 lawyer's license to practice law that would prohibit that lawyer from providing legal services
97 pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive
98 status or a non-disciplinary administrative suspension for failure to complete continuing legal
99 education or other requirements. Lawyers on probation may be subject to monitoring and
100 specific limitations on their practices. Lawyers on inactive status, despite being characterized in
101 many jurisdictions as being "in good standing," and lawyers on disability inactive status are not
102 permitted to practice law. Public protection warrants exclusion of these lawyers from the
103 authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal
104 services pursuant to this Rule must do so without fee or other compensation, or expectation
105 thereof. Their service must be provided through an established not-for-profit organization that is
106 authorized to provide legal services either in its own name or that provides representation of
107 clients through employed or cooperating lawyers. Alternatively, this court may instead designate
108 other specific organization(s) through which these legal services may be rendered. Under
109 paragraph (b), an *emeritus* lawyer from another United State jurisdiction may provide *pro bono*
110 legal services on a temporary basis in this jurisdiction provided that the *emeritus* lawyer is
111 authorized to provide *pro bono* legal services in that jurisdiction pursuant to that jurisdiction's

112 *emeritus* or *pro bono* practice rule. Lawyers may also be authorized to provide legal services in
 113 this jurisdiction on a temporary basis under Rule 5.5(c) of the *Rules of Professional Conduct*.

114 [4] Lawyers authorized to practice law in another jurisdiction, who principally practice in
 115 the area of such other jurisdiction determined by this Court to have suffered a major disaster, and
 116 whose practices are disrupted by a major disaster there, and who are not disbarred, suspended
 117 from practice or otherwise restricted from practicing law in any other manner in any other
 118 jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in
 119 this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's
 120 practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a
 121 major disaster in another jurisdiction should first be made by the highest court of appellate
 122 jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see
 123 Rule 5.5 Comment [14], *Rules of Professional Conduct*.

124 [5] Conditions created by major disasters end, and when they do, the authority created by
 125 paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to
 126 complete pending legal matters. Under paragraph (d), this Court determines when those
 127 conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall
 128 end upon such determination except that lawyers assisting residents of this jurisdiction under
 129 paragraph (b) may continue to do so for such longer period as is reasonably necessary to
 130 complete the representation. The authority created by paragraph (c) will end [60] days after this
 131 Court makes such a determination with regard to an affected jurisdiction.

132 [6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this
 133 jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular
 134 court. This Court may, in a determination made under paragraph (e)(2), include authorization for
 135 lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or
 136 designated courts of this jurisdiction without need for such *pro hac vice* admission. If such an
 137 authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has
 138 appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in
 139 any such matter notwithstanding a declaration under paragraph (d) that the conditions created by
 140 major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule
 141 1.16 of the *Rules of Professional Conduct*.

142 [7] Authorization to practice law as a foreign legal consultant or in-house counsel in a
 143 United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore
 144 restrict that person's ability to provide legal services under this Rule.

145 [8] The ABA National Lawyer Regulatory Data Bank is available to help determine
 146 whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of
 147 this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary
 148 sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

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ABA RULES OF PROFESSIONAL CONDUCT

(Deletions are ~~stricken through~~; additions are in **bold** and underlined.)

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

156 (a) A lawyer shall not practice law in a jurisdiction in violation of the
157 regulation of the legal profession in that jurisdiction, or assist another in
158 doing so.

159 (b) A lawyer who is not admitted to practice in this jurisdiction shall not:

160 (1) except as authorized by these Rules or other law, establish an
161 office or other systematic and continuous presence in this jurisdiction for the
162 practice of law; or

163 (2) hold out to the public or otherwise represent that the lawyer is
164 admitted to practice law in this jurisdiction.

165 (c) A lawyer admitted in another United States jurisdiction, and not
166 disbarred or suspended from practice in any jurisdiction, may provide legal
167 services on a temporary basis in this jurisdiction that:

168 (1) are undertaken in association with a lawyer who is admitted to
169 practice in this jurisdiction and who actively participates in the
170 matter;

171 (2) are in or reasonably related to a pending or potential proceeding
172 before a tribunal in this or another jurisdiction, if the lawyer, or a
173 person the lawyer is assisting, is authorized by law or order to appear
174 in such proceeding or reasonably expects to be so authorized;

175 (3) are in or reasonably related to a pending or potential arbitration,
176 mediation, or other alternative dispute resolution proceeding in this
177 or another jurisdiction, if the services arise out of or are reasonably
178 related to the lawyer's practice in a jurisdiction in which the lawyer is
179 admitted to practice and are not services for which the forum requires
180 *pro hac vice* admission; or

181 (4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are
182 reasonably related to the lawyer's practice in a jurisdiction in which
183 the lawyer is admitted to practice.

184 (d) A lawyer admitted in another United States jurisdiction, and not
185 disbarred or suspended from practice in any jurisdiction, may provide legal
186 services in this jurisdiction that:

187 (1) are provided to the lawyer's employer or its organizational
188 affiliates and are not services for which the forum requires *pro hac*
189 *vice* admission; or

190 (2) are services that the lawyer is authorized to provide by federal law
191 or other law of this jurisdiction.

193 **Comment**

194 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is
195 authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a
196 regular basis or may be authorized by court rule or order or by law to practice for a
197 limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of
198 law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting
199 another person.

200 [2] The definition of the practice of law is established by law and varies from one
201 jurisdiction to another. Whatever the definition, limiting the practice of law to members

202 of the bar protects the public against rendition of legal services by unqualified persons.
203 This Rule does not prohibit a lawyer from employing the services of paraprofessionals
204 and delegating functions to them, so long as the lawyer supervises the delegated work
205 and retains responsibility for their work. See Rule 5.3.

206 [3] A lawyer may provide professional advice and instruction to nonlawyers
207 whose employment requires knowledge of the law; for example, claims adjusters,
208 employees of financial or commercial institutions, social workers, accountants and
209 persons employed in government agencies. Lawyers also may assist independent
210 nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to
211 provide particular law-related services. In addition, a lawyer may counsel nonlawyers
212 who wish to proceed *pro se*.

213 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
214 practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an
215 office or other systematic and continuous presence in this jurisdiction for the practice of
216 law. Presence may be systematic and continuous even if the lawyer is not physically
217 present here. Such a lawyer must not hold out to the public or otherwise represent that the
218 lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5 (b).

219 [5] There are occasions in which a lawyer admitted to practice in another United
220 States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may
221 provide legal services on a temporary basis in this jurisdiction under circumstances that
222 do not create an unreasonable risk to the interests of their clients, the public or the courts.
223 Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified
224 does not imply that the conduct is or is not authorized. With the exception of paragraphs
225 (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other
226 systematic and continuous presence in this jurisdiction without being admitted to practice
227 generally here.

228 [6] There is no single test to determine whether a lawyer's services are provided
229 on a "temporary basis" in this jurisdiction, and may therefore be permissible under
230 paragraph (c). Services may be "temporary" even though the lawyer provides services in
231 this jurisdiction on a recurring basis, or for an extended period of time, as when the
232 lawyer is representing a client in a single lengthy negotiation or litigation.

233 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in
234 any United States jurisdiction, which includes the District of Columbia and any state,
235 territory or commonwealth of the United States. The word "admitted" in paragraph (c)
236 contemplates that the lawyer is authorized to practice in the jurisdiction in which the
237 lawyer is admitted and excludes a lawyer who while technically admitted is not
238 authorized to practice, because, for example, the lawyer is on inactive status.

239 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are
240 protected if a lawyer admitted only in another jurisdiction associates with a lawyer
241 licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer
242 admitted to practice in this jurisdiction must actively participate in and share
243 responsibility for the representation of the client.

244 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized
245 by law or order of a tribunal or an administrative agency to appear before the tribunal or
246 agency. This authority may be granted pursuant to formal rules governing admission *pro*
247 *hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph

248 (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or
249 agency pursuant to such authority. To the extent that a court rule or other law of this
250 jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain
251 admission *pro hac vice* before appearing before a tribunal or administrative agency, this
252 Rule requires the lawyer to obtain that authority.

253 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this
254 jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in
255 conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
256 authorized to practice law or in which the lawyer reasonably expects to be admitted *pro*
257 *hac vice*. Examples of such conduct include meetings with the client, interviews of
258 potential witnesses, and the review of documents. Similarly, a lawyer admitted only in
259 another jurisdiction may engage in conduct temporarily in this jurisdiction in connection
260 with pending litigation in another jurisdiction in which the lawyer is or reasonably
261 expects to be authorized to appear, including taking depositions in this jurisdiction.

262 [11] When a lawyer has been or reasonably expects to be admitted to appear
263 before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers
264 who are associated with that lawyer in the matter, but who do not expect to appear before
265 the court or administrative agency. For example, subordinate lawyers may conduct
266 research, review documents, and attend meetings with witnesses in support of the lawyer
267 responsible for the litigation.

268 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another
269 jurisdiction to perform services on a temporary basis in this jurisdiction if those services
270 are in or reasonably related to a pending or potential arbitration, mediation, or other
271 alternative dispute resolution proceeding in this or another jurisdiction, if the services
272 arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the
273 lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice*
274 in the case of a court-annexed arbitration or mediation or otherwise if court rules or law
275 so require.

276 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
277 certain legal services on a temporary basis in this jurisdiction that arise out of or are
278 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
279 admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal
280 services and services that nonlawyers may perform but that are considered the practice of
281 law when performed by lawyers.

282 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be
283 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
284 admitted. A variety of factors evidence such a relationship. The lawyer's client may have
285 been previously represented by the lawyer, or may be resident in or have substantial
286 contacts with the jurisdiction in which the lawyer is admitted. The matter, although
287 involving other jurisdictions, may have a significant connection with that jurisdiction. In
288 other cases, significant aspects of the lawyer's work might be conducted in that
289 jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction.
290 The necessary relationship might arise when the client's activities or the legal issues
291 involve multiple jurisdictions, such as when the officers of a multinational corporation
292 survey potential business sites and seek the services of their lawyer in assessing the
293 relative merits of each. In addition, the services may draw on the lawyer's recognized

294 expertise developed through the regular practice of law on behalf of clients in matters
295 involving a particular body of federal, nationally-uniform, foreign, or international law.
296 **Lawyers desiring to provide *pro bono* legal services on a temporary basis in a**
297 **jurisdiction that has been affected by a major disaster, but in which they are not**
298 **otherwise authorized to practice law, as well as lawyers from the affected**
299 **jurisdiction who seek to practice law temporarily in another jurisdiction, but in**
300 **which they are not otherwise authorized to practice law, should consult the *Model***
301 ***Court Rule on Provision of Legal Services Following Determination of Major Disaster.***

302 [15] Paragraph (d) identifies two circumstances in which a lawyer who is
303 admitted to practice in another United States jurisdiction, and is not disbarred or
304 suspended from practice in any jurisdiction, may establish an office or other systematic
305 and continuous presence in this jurisdiction for the practice of law as well as provide
306 legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a
307 lawyer who is admitted to practice law in another jurisdiction and who establishes an
308 office or other systematic or continuous presence in this jurisdiction must become
309 admitted to practice law generally in this jurisdiction.

310 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide
311 legal services to the client or its organizational affiliates, i.e., entities that control, are
312 controlled by, or are under common control with the employer. This paragraph does not
313 authorize the provision of personal legal services to the employer's officers or
314 employees. The paragraph applies to in-house corporate lawyers, government lawyers
315 and others who are employed to render legal services to the employer. The lawyer's
316 ability to represent the employer outside the jurisdiction in which the lawyer is licensed
317 generally serves the interests of the employer and does not create an unreasonable risk to
318 the client and others because the employer is well situated to assess the lawyer's
319 qualifications and the quality of the lawyer's work.

320 [17] If an employed lawyer establishes an office or other systematic presence in
321 this jurisdiction for the purpose of rendering legal services to the employer, the lawyer
322 may be subject to registration or other requirements, including assessments for client
323 protection funds and mandatory continuing legal education.

324 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a
325 jurisdiction in which the lawyer is not licensed when authorized to do so by federal or
326 other law, which includes statute, court rule, executive regulation or judicial precedent.

327 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or
328 (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule
329 8.5(a).

330 [20] In some circumstances, a lawyer who practices law in this jurisdiction
331 pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not
332 licensed to practice law in this jurisdiction. For example, that may be required when the
333 representation occurs primarily in this jurisdiction and requires knowledge of the law of
334 this jurisdiction. See Rule 1.4(b).

335 [21] Paragraphs (c) and (d) do not authorize communications advertising legal
336 services to prospective clients in this jurisdiction by lawyers who are admitted to practice
337 in other jurisdictions. Whether and how lawyers may communicate the availability of
338 their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

REPORT

BACKGROUND

In the summer of 2005, Alabama, Louisiana and Mississippi were devastated by Hurricanes Katrina and Rita. The physical damage done in those jurisdictions was catastrophic but the storms also damaged and crippled their legal systems. In response, then American Bar Association President Michael S. Greco formed the ABA Task Force on Hurricane Katrina (the “Task Force”). One of the most significant early efforts of the Task Force was advocating the suspension of unlicensed practice of law rules by various states impacted by the hurricane so that lawyers from other jurisdictions could volunteer to provide pro bono legal services in the affected jurisdictions.¹

The Task Force soon recognized the need for a model rule that would allow out-of-state lawyers to provide pro bono legal services in an affected jurisdiction and lawyers in the affected jurisdiction whose legal practices had been disrupted by a major disaster to practice law on a temporary basis in an unaffected jurisdiction. Both the highest court of a jurisdiction affected by the major disaster and the highest courts of jurisdictions not affected by the disaster could implement the Rule on an emergency basis. In February 2006, the Task Force approached the ABA Coordinating Council for the Center for Professional Responsibility and requested assistance in drafting such a model rule. In light of its jurisdictional statement that includes the multijurisdictional practice of law and the unlicensed practice of law, the Standing Committee on Client Protection (the “Committee”) agreed to undertake the project.

With the assistance of Professor Stephen Gillers, Chair of the ABA Joint Committee on Lawyer Regulation and former member of the Commission on Multijurisdictional Practice, the Committee spent the next several months researching the issues and the law and preparing drafts of model rules. On September 6, 2006, the Committee circulated for comment to all ABA entities and other interested parties a proposed new Model Rule of Professional Conduct 5.8 (Provision of Legal Services Following Determination of Catastrophic Event) and a Model Court Rule with the same title. The ABA entities and other interested parties were requested to comment on the substance of the Model Rule/Model Court Rule and whether the topic should be addressed in a Model Rule of Professional Conduct or in a Model Court Rule.²

It was the consensus of the responding entities, including the Standing Committee on Ethics and Professional Responsibility, that the issues to be addressed were administrative matters involving the temporary practice of law and that they should be addressed in a Model Court Rule. The Standing Committee on Ethics and Professional Responsibility believes that the proposed Model Court Rule, if adopted, would effectively facilitate the provision of legal services in urgent

¹ *In the Wake of the Storm: The ABA Responds to Hurricane Katrina*. Report of the ABA Task Force on Hurricane Katrina. www.abanet.org/katrina

² The Committee received comments from numerous ABA entities including: the Standing Committees on Ethics and Professional Responsibility, Professional Discipline, Professionalism, Pro Bono and Public Service, Legal Aid and Indigent Defendants, Delivery of Legal Services, the Commissions on Interest on Lawyers’ Trust Accounts and Law and Aging, the Task Force on GATS Legal Services Negotiations, the National Organization of Bar Counsel and the Association of Corporate Counsel.

situations, such as the occurrence of natural disasters. The Ethics Committee also believes that because the creation of a mechanism for making legal services available is not an ethical, but essentially an administrative and operational concern of each state's highest court, it is appropriate that the subject be addressed by a Model Court Rule, rather than a Rule of Professional Conduct, and supports its adoption by the House of Delegates. The Ethics Committee agrees that proposed amended Comment [14] to Model Rule of Professional Conduct 5.5, which serves as an important cross-reference to any such rule of court, is a necessary and helpful addition to the Model Rules, and supports its adoption by the House of Delegates as well.

MODEL COURT RULE ON PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

A major disaster 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 disaster has ended. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war. 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 unmet legal needs as a result of the disaster or whose legal needs temporarily are unmet because of disruption to the practices of local lawyers.

Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit legal services organization or such other organizations specifically designated by the highest court of the affected jurisdiction.

Under the Model Court Rule, the highest court in the affected jurisdiction shall determine whether a major disaster has occurred in the jurisdiction, or in a part of the jurisdiction, for purposes of triggering paragraph (b) of the Model Court Rule. The regulation of the practice of law by the judicial branch of government, which includes jurisdictional limits on legal practice, is a fundamental principle recently re-affirmed as policy by the American Bar Association.³ The court in making a determination whether a major disaster has occurred can take judicial notice of any Presidential proclamations or declarations by the governor or executive officer of an affected jurisdiction.

Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of a major disaster. Lawyers permitted to provide legal services pursuant to this Model Court Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides

³ Report 201A, *Regulation of the Practice of Law by the Judiciary*, adopted August 12, 2002.

representation of clients through employed or cooperating lawyers. The rules governing the not-for-profit organization will determine who should be considered an eligible client.

Alternatively, the Court may instead designate other specific organizations through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United State jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services on a temporary basis in an affected jurisdiction, or to the citizens of an affected jurisdiction who are temporarily residing in an unaffected jurisdiction, under Rule 5.5(c) of the Rules of Professional Conduct.

Lawyers authorized to practice law in an affected jurisdiction, as determined by the highest court of the affected jurisdiction, and whose practices are disrupted by a major disaster there, are authorized under paragraph (c) to provide legal services on a temporary basis in the jurisdiction adopting the Model Court Rule. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. The Court in the affected jurisdiction shall determine when a major disaster has occurred in another jurisdiction but only after such a determination and the geographical scope of the disaster have been made by the highest court of that other jurisdiction. The authority to engage in the temporary practice of law in an unaffected jurisdiction pursuant to paragraph (c) shall extend only to those lawyers who principally practice in the area of a jurisdiction determined to have suffered a major disaster.

Conditions created by major disasters end, and when they do, the authority created by the Model Court Rule also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), the highest court in the affected jurisdiction determines when those conditions end only for purposes of the Model Court Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of the affected jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days, or as otherwise enacted in the Rule, after the highest court in an unaffected jurisdiction makes such a determination with regard to an affected jurisdiction. The parameters created by the Model Court Rule are intended to be flexible and the highest court in a jurisdiction has the discretion to extend the time period during which out-of-state lawyers may provide pro bono legal services in an affected jurisdiction or during which lawyers displaced by a disaster may practice law on a temporary basis in an unaffected jurisdiction.

Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of the affected jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular court. The highest court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in the jurisdiction under paragraph (b) to appear in all or designated courts of the 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 an affected jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that

the conditions created by the major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

AMENDMENT TO COMMENTARY OF RULE 5.5 OF THE *RULES OF PROFESSIONAL CONDUCT*

Following the occurrence of a major disaster, lawyers practicing law outside the affected jurisdiction will begin to research what legal services they may provide on a temporary basis to the citizens of the affected jurisdiction. In addition, not-for-profit legal organizations within the affected jurisdiction will begin to research what legal services out-of-state lawyers may provide in their jurisdiction on a temporary basis. At some point, the lawyers and not-for-profit organizations will consult the *Rules of Professional Conduct*. While Rule 5.5 of the *Rules of Professional Conduct* is titled “Unauthorized Practice of Law: Multijurisdictional Practice of Law,” Rule 5.5 does not directly address the provision of pro bono legal services by out-of-state lawyers in a jurisdiction affected by a major disaster nor does it address the temporary practice of law in an unaffected jurisdiction by displaced lawyers principally practicing in the affected jurisdiction. The *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* does address these issues. Upon the suggestion of the Standing Committee on Ethics and Professional Responsibility, whose jurisdictional statement includes recommending to the ABA House of Delegates amendments to the *Rules of Professional Conduct*, the Committee recommends that Comment [14] to Rule 5.5 of the *Rules of Professional Conduct* be amended to include a cross-references to the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*.

CONCLUSION

Following Hurricanes Katrina and Rita, thousands of lawyers from across the United States were inspired to offer their legal expertise on a pro bono basis to the citizens of the affected jurisdictions. Unfortunately, in some instances, the delivery of those pro bono legal services was hampered by the existence of unlicensed practice of law statutes and rules. The Committee believes that the adoption of the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* will allow lawyers to provide temporary pro bono legal services and that it will allow lawyers whose legal practices have been disrupted by major disasters to continue to practice law on a temporary basis in an unaffected jurisdiction. The Model Court Rule will facilitate the delivery of pro bono legal services while at the same time insuring the proper regulation of the lawyers providing those legal services in an affected jurisdiction and those displaced lawyers practicing law on a temporary basis in an unaffected jurisdiction

Janet Green Marbley, Chair
Standing Committee on Client Protection
February 2007

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Client Protection

Submitted By: Janet Green Marbley, Chair

1. Summary of Recommendation:

The ABA *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* allows lawyers to provide pro bono legal services on a temporary basis in a jurisdiction in which they are not otherwise authorized to practice law and which has been affected by a major disaster. It also allows those lawyers who principally practice in an area of a jurisdiction devastated by a major disaster to temporarily practice law in an unaffected jurisdiction in which they are not otherwise authorized to practice law.

The Commentary to Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the *Rules of Professional Conduct* would be amended to cross-reference the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*.

2. Approval by Submitting Entity:

The Recommendation was approved by the Committee at its meeting on November 8, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?
No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

In August 2002, the American Bar Association House of Delegates amended Rule 5.5 of the *Rules of Professional Conduct* to allow lawyers to practice law on a temporary basis in a jurisdiction in which they are not licensed to practice law under certain circumstances. Amended Rule 5.5 did not address the provision of pro bono legal services following a catastrophic event. The Model Court Rule will complement Rule 5.5 of the *Rules of Professional Conduct*.

5. What urgency exists which requires action at this meeting of the House?

The devastation caused by Hurricanes Katrina and Rita in summer 2005 in Alabama, Mississippi and Louisiana, and the ensuing breakdown of the provision of legal services in those jurisdictions, demonstrates the immediate need for a Model Court Rule that will allow out-of-state lawyers to provide pro bono legal services on a temporary basis in an affected jurisdiction and for lawyers practicing in the affected jurisdiction to continue their law practices in an unaffected jurisdiction.

6. Status of Legislation.

Not applicable.

7. Cost to the Association.

None.

8. Disclosure of Interest.

None.

9. Referrals.

On September 6, 2006, the proposed *ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* was referred to members of the judiciary, the presidents of state and local bar associations, Chairs and Directors of ABA entities, Chief Disciplinary Counsel, members of the legal academy and other interested parties and individuals.

To date, the following entities have agreed to co-sponsor the Report and Recommendation: National Organization of Bar Counsel, Standing Committee on Professionalism, Commission on Homelessness and Poverty, Senior Lawyers Division, Section of Environment, Energy, and Resources, Section of State and Local Government Law, Commission on Youth at Risk and the Standing Committee on Ethics and Professional Responsibility. There is no known opposition at this time.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

Janet Green Marbley, Chair

EXECUTIVE SUMMARY

A. Summary of Recommendation

The ABA Standing Committee on Client Protection (“the Committee”) recommends that the American Bar Association adopt the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* (“the Model Court Rule”). The Model Court Rule allows out-of-state lawyers to provide pro bono legal services in a jurisdiction that has been devastated by a major disaster and in which they are not otherwise authorized to practice law. It also allows lawyers who principally practice in an area of a jurisdiction that has been devastated by a major disaster, and whose practices have been disrupted, to continue their law practices on a temporary basis in a jurisdiction in which they are not otherwise authorized to practice law.

B. Summary of Issue Addressed

The Model Court Rule addresses the provision of pro bono legal services by out-of state lawyers in a jurisdiction that has been devastated by a major disaster. It also addresses the issue of whether lawyers whose practices have been disrupted by a major disaster can continue their law practices on a temporary basis in a jurisdiction in which they are not otherwise authorized to practice law.

C. Explanation of How the Proposed Rule Addresses the Issue

The Model Court Rule permits lawyers authorized to practice law in an unaffected jurisdiction to provide pro bono legal services in the affected jurisdiction following the determination of a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be supervised by a lawyer authorized to practice law in the affected jurisdiction and assigned through an established not-for-profit bar association, pro bono program or legal services program or through such organizations specifically designated by the highest court in the affected jurisdiction. Lawyers authorized to practice law in an area of an affected jurisdiction, whose practices are disrupted by a major disaster, are authorized under the Model Court Rule to provide legal services on a temporary basis in an unaffected jurisdiction in which they are not otherwise authorized to practice law. Those legal services must arise out of and be reasonably related to the lawyer’s practice of law in the affected jurisdiction.

D. Summary of Minority Views

The Committee is not aware of any opposition at this time.