

STATE OF MINNESOTA

IN SUPREME COURT

ADM-09-8007

OFFICE OF
APPELLATE COURTS

OCT 22 2009

FILED

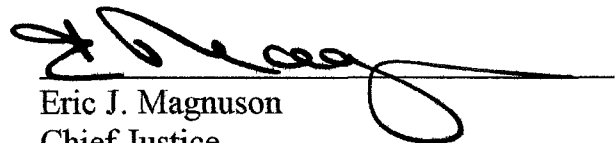
**ORDER ESTABLISHING DEADLINE FOR
SUBMITTING COMMENTS ON PROPOSED
ADOPTION OF ABA MODEL RULE ON
PROVISION OF LEGAL SERVICES
FOLLOWING DETERMINATION OF
MAJOR DISASTER**

The Minnesota State Bar Association filed a petition on July 13, 2009, recommending the adoption of the American Bar Association model rule on provision of legal services following the determination of a major disaster. This court will consider the proposed rule without a hearing after soliciting and reviewing comments on the petition. A copy of the petition is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide a written statement in support of or opposition to the proposed rules shall submit twelve copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before November 23, 2009.

DATED: October 22, 2009

BY THE COURT:


Eric J. Magnuson
Chief Justice

**STATE OF MINNESOTA
IN SUPREME COURT
ADM-09-8007**

In re: Proposed Adoption of ABA Model Rule on Provision of Legal Services Following
Determination of Major Disaster

PETITION OF THE MINNESOTA STATE BAR ASSOCIATION

<p>Minnesota State Bar Association Leo I. Brisbois, President 600 Nicollet Mall, Suite 380 Minneapolis, MN 55402 (612) 333-1183</p> <p><i>Petitioner</i></p>	<p>Jenneane Jansen (#236792) 4746 Elliot Avenue South Minneapolis, MN 55407 (612) 245-8245</p> <p>and</p> <p>Erica Gutmann Strohl (#279626) 2828 Dakota Avenue South St. Louis Park, MN 55416 (612) 716-1760</p> <p><i>Attorneys for Petitioner Minnesota State Bar Association</i></p>
---	---

To the Honorable Justices of the Minnesota Supreme Court:

Petitioner Minnesota State Bar Association respectfully requests that this court adopt the attached “Model Rule on the Provision of Legal Services Following Determination of Major Disaster.” The American Bar Association developed the model rule in 2007 in response to several states’ experiences with Hurricanes Katrina and Rita. To date, more than twenty states are considering — or have adopted — the model rule or a substantially similar rule.¹

The model rule has two primary effects. In the event of a Minnesota disaster, it facilitates provision of pro bono legal services by volunteer attorneys who are licensed outside the State of Minnesota, and it assists attorneys from disaster-affected areas in other jurisdictions by allowing them to temporarily relocate their practices in Minnesota. Under the rule, neither of these effects comes about unless this court first: a) determines that a major disaster has occurred in Minnesota; or b) adopts another state’s highest court’s determination that a major disaster has occurred in that court’s jurisdiction.

As the Hurricane Katrina experience demonstrated, major disasters can affect the delivery of legal-services needs in several ways. First, the disaster may generate new legal disputes. For example, Katrina-stricken areas saw an increase in insurance disputes. Second, attorneys whose offices or homes are affected by a disaster may be temporarily unable to meet the region’s preexisting legal needs in practice areas that consistently generate litigation, such as criminal and family law. Third, attorneys in neighboring jurisdictions suffering from a disaster may be displaced from their ordinary offices and need to temporarily relocate their practices in other jurisdictions until the effects of the disaster are ameliorated.

¹ See *infra* ¶¶ 23 through 28 for a breakdown of states’ positions as of the date of this petition.

Further, as many states discovered post-Katrina, current statutes and court rules may be inadequate to meet a community's legal-services needs after a major disaster. Many states' pro hac vice and Rules of Professional Conduct rules are like Minnesota's: they limit the ability of non-Minnesota attorneys to practice in Minnesota. The proposed rule provides a framework to guide Minnesota through potentially chaotic times and permits the rapid implementation of any needed changes in the unauthorized-practice-of-law rules. Having this rule in place in advance of a disaster will make it that much easier for the judiciary to react quickly and appropriately to a disaster in Minnesota or in a neighboring jurisdiction.

The MSBA is a not-for-profit corporation of attorneys admitted to practice law before this court and the lower courts of this state. In support of its petition, the MSBA states the following:

I. Katrina demonstrated that major disasters can cause exponential increases in states' unmet legal-services needs.

1. The American Bar Association estimates that over 5,000 of its members' practices were destroyed by Hurricane Katrina. Sheryl B. Shapiro, *American Bar Association's Response to Unauthorized Practice Problems Following Hurricane Katrina, Optimal or Merely Adequate?* 20 Geo. J. Legal Ethics 905, 917-18 (Summer 2007). Those losses included at least 75 percent of the 900 lawyers' offices in Mississippi's Gulf Coast counties. *Id.* An incredible 50 percent of Louisiana's practicing lawyers lost their homes, offices, or both. *Id.* And the disruption was not short-term: at least half of the New Orleans metropolitan area's 8,000 lawyers were still gone months after the storm. *Id.*

2. Meanwhile, Katrina-affected communities saw massive increases in legal-services needs. Hurricane victims needed assistance with insurance issues, emergency-assistance grant applications, environmental issues, landlord-tenant problems, bankruptcy, and family law. *Id.*

The Louisiana Disaster Legal Assistance Hotline assisted more than 13,000 callers between September 2005 and October 2006. *Id.* at 917, n. 86. In October 2006, the disaster hotline continued to field 200 to 300 calls per week, over 100 of which presented new cases. *Id.*

3. To place these numbers in perspective, Mid-Minnesota Legal Assistance reported that it closed 11,048 cases in 2007. (A. 2) (Excerpt of 2007 Legal Aid Annual Report).

4. The Twin Cities Metropolitan Area houses approximately half of Minnesota's total population, whereas the New Orleans Metropolitan Area made up only 25 percent of Louisiana's. (See A. 3-8) (U.S. Census Bureau Data).

5. Moreover, like Louisiana, Minnesota has a substantial percentage of its lawyers' practices concentrated in a single metropolitan area. In response to the MSBA's recent information request, Minnesota's Attorney Registration Office reported that 88 percent of Minnesota's 22,721 licensed attorneys have Minnesota addresses. And of those, 82 percent are in the seven-county metropolitan area. The Twin Cities also houses: the state's two largest judicial districts; the State Capitol complex, which includes both appellate courts; two of the state's federal courthouses; all four of the state's law schools; the state's Attorney General's Office; its Board of Public Defense; and several of the state's largest legal assistance organizations. (See generally, A. 9) (Civil Legal Services Directory (July 2008)). A major disaster affecting the Twin Cities could thus have a devastating effect on the entire state's legal community.

6. Similar scenarios could play out in population centers around the state such as Duluth, Rochester, St. Cloud, or Moorhead — areas where local attorneys serve geographically large but dispersed populations.

7. In the event of a major disaster such as a flood, major winter storm, extreme heat, wildfire, terrorism, or flu pandemic, Minnesota might see a similar increase in legal-services needs to what Katrina-affected jurisdictions experienced. Such disasters are not as unlikely as one might like to believe. The Minnesota Department of Health suggests that state residents prepare for such events. (A. 21) (Minnesota Department of Health, Individual/Family Preparedness). In fact, the Department warns that certain types of disasters are almost certain to occur; for example, it notes that, although it cannot predict the next pandemic flu's timing or severity, such an event "will happen." (A. 23) (March 2006 Minnesota Department of Health Fact Sheet, Pandemic Flu Facts).

II. Without the proposed rule or a substantially similar rule, existing Minnesota law could delay or impede efficient delivery of needed pro bono legal services by out-of-state attorneys.

8. While the ABA, state bars, and state courts responded admirably to Katrina victims' needs, the experience demonstrated that many states' existing statutes and rules create uncertainty about whether out-of-state attorneys may safely volunteer to meet another states' unmet legal needs. Like most states, Minnesota law contains provisions that impose criminal penalties, attorney discipline, or court sanctions for unauthorized practice, thereby potentially discouraging would-be volunteers.

9. For example, Minn. Stat. § 481.02, subd. 1 prohibits "any person" from providing legal services — including advising others, drafting legal documents, and "appear[ing] as attorney or counselor at law in any action or proceeding in any court in this state" — unless he or she is a "member[] of the bar of Minnesota admitted and licensed to practice as [an] attorney[] at law." Minn. Stat. § 481.02, subd. 1 (2007). The statute grants Minnesota courts discretion to

allow out-of-state attorneys to appear before them, but only if the attorneys' licensing states have reciprocal provisions. *Id.* at subd. 6. It is a crime to violate this statute. *Id.* at subd. 8(a).

10. Similarly, the Minnesota Rules of Professional Conduct (MRPC) do not provide for the provision of legal services such as that contemplated by the proposed rule:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so, except that a lawyer admitted to practice in Minnesota does not violate this rule by conduct in another jurisdiction that is permitted in Minnesota under Rule 5.5 (c) and (d) for lawyers not admitted to practice in Minnesota.
- (b) A lawyer who is not admitted to practice in this jurisdiction *shall not*:
 - (1) except as authorized by these rules or other law, *establish an office or other systematic and continuous presence in this jurisdiction for the practice of law*; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, *may provide legal services on a temporary basis in this jurisdiction* which:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in the proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

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

(d) A lawyer admitted to another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Minn. R. Prof. Conduct 5.5 (emphasis added).

11. Moreover the comments, to MPRC Rule 5.5 emphasize the uncertainty inherent in the rules themselves, stating that “[p]resence may be systemic and continuous even if the lawyer is not physically present here,” and “[t]here is no single test to determine whether a lawyer’s services are provided on a ‘temporary basis’ in this jurisdiction and may therefore be permissible * * *.” Minn. R. Prof. Conduct 5.5. at cmts. [4], [6]. Rather, the comments reiterate that any “systemic and continuous presence” may subject would-be volunteer attorneys to discipline in Minnesota or their home states. *See* Minn. R. Prof. Conduct 5.5 at cmt. ¶5. (“This rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.”); *see also id.* at cmt. ¶6 (“[A] lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.”); *id.* at cmt. ¶17 (“A lawyer who practices law in this jurisdiction [on a temporary basis] is subject to the disciplinary authority of this jurisdiction.”).

12. Minnesota’s Rules of General Practice similarly require that out-of-state attorneys associate with local counsel whenever they appear in Minnesota courts on a pro hac vice basis:

Lawyers duly admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone. In a subsequent

appearance in the same action the out-of-state lawyer may, in the discretion of the court, conduct the proceedings without the presence of Minnesota counsel.

Any lawyer appearing pursuant to this rule shall be subject to the disciplinary rules and regulations governing Minnesota lawyers and by applying to appear or appearing in any action shall be subject to the jurisdiction of the Minnesota courts.

Minn. R. Gen. Pract. 5.

13. Thus, in the event of a catastrophe, Minnesota law would provide clear direction to only a narrow subset of would-be volunteer lawyers, namely those who are: a) from states with reciprocal pro hac vice rules; b) associated with an actively participating Minnesota attorney; and c) performing legal services that are either authorized by federal law, or are reasonably related to a pending proceeding or the lawyer's practice in a jurisdiction in which he or she is licensed. *See* Minn. R. Prof. Conduct 5.5 (c), (d).

14. Current Minnesota law would also bar out-of-state attorneys from establishing a temporary legal practice in Minnesota, even if their own home-state offices have been damaged or destroyed by a court-recognized disaster. *See* Minn. R. Prof. Conduct 5.5 (b)(1).

III. The model rule provides a framework within which to quickly respond to a major disaster in Minnesota or another state.

15. The model rule alleviates the uncertainty that these existing provisions create in the event of a crisis, yet retains safeguards for Minnesota citizens.

16. The model rule includes careful limits to ensure that out-of-state attorneys' temporary pro bono legal services cannot "create an unreasonable risk to the interest of their clients, the public, or the courts." (*See infra*)(ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster, at cmt. ¶5).

17. Primary among these limits are that the rule would not be effective unless this court had either: a) determined that Minnesota had suffered a major disaster; or b) accepted a disaster declaration from the highest appellate court in an affected jurisdiction. (*Id.* at (a)).

18. Once such a declaration has been made, out-of-state attorneys would be authorized to advise Minnesota clients and prepare documents for them, but the model rule does not give blanket permission to appear in Minnesota courts. This court must first grant such permission, or the out-of-state attorneys must comply with Minn. R. Gen. Pract. 5. (*Id.* at (e)). Such compliance requirements include associating with Minnesota counsel. (*See id.*); Minn. R. Gen. Pract. 5.

19. Out-of-state attorneys may provide pro bono services from their home offices outside of Minnesota, or by traveling here. The services may be provided to Minnesotans, to those who have been temporarily displaced by disaster and are living in Minnesota, or to those who live in an affected jurisdiction. (Model Rule at (b), (c)). But the attorneys providing such services to Minnesotans must work with an authorized not-for-profit legal-services organization, or another organization that this court would designate. (*Id.* at (b)). Further, they may only work without a fee or compensation. (*Id.*) And finally, the emergency rule only authorizes attorneys to practice temporarily in Minnesota if they have not been disbarred, suspended, or are otherwise restricted in their home state. (*Id.*)

20. The model rule would also assist attorneys from other affected jurisdictions by allowing them to temporarily relocate their practices here. (*Id.* at (c)). The legal services provided in Minnesota on a temporary basis would have to arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction, and the attorney would have to be in good standing in her home jurisdiction. (*Id.*)

21. Finally, the model rule also protects Minnesotans by articulating the mechanism by which this court may determine when the triggering emergency conditions have ended. (*Id.* at (d)). It thus gives out-of-state attorneys fair notice of their obligations. (*See id.*) Attorneys who are assisting Minnesota residents would have as much time as is “reasonably necessary to complete the representation.” (*Id.*) Those who have temporarily relocated their practices to Minnesota would have 60 days within which to move their practices out of state. (*Id.*)

IV. Minnesota should join those states — Arizona, Delaware, Iowa, Missouri, New Jersey, Oregon, and Washington — that have adopted the model rule or a substantially similar rule.

22. Minnesota courts have the “power and responsibility” to determine the “proper role to be played by lawyers not admitted to practice in Minnesota.” *See* Minn. R. Gen. Pract. 5., at 1991 Task Force cmt.

23. To date, seven states — Arizona, Delaware, Iowa, Missouri, New Jersey, Oregon, and Washington — have adopted the model rule or a nearly identical rule. *See* Ariz. Sup. Ct. R. 39; Del. Sup. Ct. R. 58; Iowa Ct. R. 31.17, 31.25 & Iowa R. Prof. Cond. 32:5.5. cmt. 14a; Mo. Sup. Ct. R. 4-6.6; N.J. R. Prac. Law 1:21-10; and Wash. APR 27; (A. 26-32) (Oregon Supreme Court Order dated January 20, 2009); (*see also* A. 33) (ABA Standing Committee on Client Protection, State Implementation of ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster). Mississippi adopted a broader rule that allows out-of-state attorneys to provide pro bono assistance to Mississippi citizens under any circumstances. Miss. R. App. P. 46 (f).

24. Several other jurisdictions — Alabama, the District of Columbia, Florida, Georgia, Illinois, Louisiana, Maryland, Michigan, Nebraska, New Hampshire, New York, Tennessee, Texas, and Virginia — are considering adoption of the model rule or a substantially

similar rule. (See A. 26); (A. 35) (Michigan Bar Association Proposal to Adopt ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster); (A. 39) (Excerpt of N.H. Advisory Committee on Rules, March 12, 2008 Minutes); (A. 41) (Tennessee Supreme Court Order Dated December 10, 2008); (A. 42) (Petition of the Tennessee Bar Association for the Adoption of Rules Governing the Multijurisdictional Practice of Law); (A. 50) (Virginia State Bar Association Webpage).

25. Only four states' bar associations or standing rules committees have recommended against adopting the model rule. (See A. 52-59). They are California, Hawaii, North Carolina, and North Dakota. The criticisms that these bar associations and committees identified have less, if any, force in Minnesota. Moreover, to date, no state court has refused to adopt at least a substantially similar rule.

26. For example, the California State Bar Association recommended against adopting the model rule insofar as the rule departed from that state's supreme court's post-Katrina orders. (See A. 52) (Memorandum to the California State Bar Association Board of Governors and Board Committee on Operations Dated April 28, 2008). The association also noted that California's professional-responsibility rules differed from the ABA's model rules. (A. 56). And perhaps most importantly, the association concluded that California's geography and sizable attorney population made it unlikely that a major disaster would adversely affect access to in-state legal services. (*Id.*). The California association therefore recommended a case-by-case approach. (A. 57). As noted above, Minnesota's geography and population distribution could make it especially vulnerable to a major disaster in the Twin Cities metropolitan area.

27. The North Dakota Supreme Court Joint Committee on Attorney Standards also considered factors that do not apply to Minnesota. The committee voted to recommend against

the model rule because the state had prior experience with a major disaster. (*See* A. 61) (North Dakota Supreme Court Joint Committee on Attorney Standards, November 30, 2007 Minutes). The committee concluded that North Dakota's legal community's response to the 1997 Grand Forks floods showed that that state's current rules could adapt to meet its legal services needs. (*Id.*) Minnesota has never experienced a similar sort of "dry run" by which out-of-state attorneys may be guided.

28. Finally, the North Carolina State Bar Issues Steering Committee and the Hawaii Bar Association both concluded that their states' existing rules were sufficient to respond to major disasters on a case-by-case basis. With due respect to these associations, the MSBA respectfully disagrees with their analyses. The issue is not simply whether existing Minnesota law could be made to accommodate a major disaster; there is also the uncertainty problem. Adoption of the model rule alleviates uncertainty, thereby encouraging would-be volunteer attorneys, and reassuring out-of-state attorneys whose practices are disrupted by a major disaster.

CONCLUSION

In the event of a major disaster, existing Minnesota law could confuse and deter would-be volunteer attorneys. It may also discourage attorneys from temporarily relocating their practices to Minnesota. The ABA's Model Rule on Provision of Legal Services Following Determination of Major Disaster clarifies out-of-state attorneys' responsibilities while protecting Minnesota citizens. The MSBA respectfully requests that this court adopt the model rule.

Respectfully submitted,

Dated: _____

Jenneane Jansen (#236792)
4746 Elliot Avenue South
Minneapolis, MN 55407
(612) 245-8245

Dated: _____

Leo I. Brisbois, President
Minnesota State Bar Association
600 Nicollet Mall, Suite 380
Minneapolis, MN 55402
(612) 333-1183

Petitioner

**Model Court Rule on Provision of Legal Services
Following Determination of Major Disaster**

Rule ____ . Provision of Legal Services Following Determination of Major Disaster

- (a) Determination of existence of major disaster. Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster has occurred in:
- (1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or
 - (2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.
- (b) Temporary practice in this jurisdiction following major disaster. Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice 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 without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.
- (c) Temporary practice in this jurisdiction following major disaster in another jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice 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, or area of such other jurisdiction, where the major disaster occurred.
- (d) Duration of authority for temporary practice. The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that

a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end [60] days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

- (e) Court appearances. The authority granted by this Rule does not include appearances in court except:
 - (1) pursuant to the court's pro hac vice admission rule and, if such authority is granted, any fees for such admission shall be waived; or
 - (2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any pro hac vice admission fees shall be waived.
- (f) Disciplinary authority and registration requirement. Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement 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. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.
- (g) Notification to clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

Comments

- [1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster 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 unmet legal needs as a result of the disaster or, though independent of the disaster, 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 entity, or such other organization(s) specifically designated by this Court. 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.

- [2] Under paragraph (a)(1), the Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.
- [3] 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 an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers 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, 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 representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United States 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 in this jurisdiction on a temporary basis under Rule 5.5(c) of the Rules of Professional Conduct.
- [4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster,

and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) 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 major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14], Rules of Professional Conduct.

- [5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this 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 after this Court makes such a determination with regard to an affected jurisdiction.
- [6] Paragraphs (b) and (c) 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 (e)(2), include authorization for lawyers who provide legal services in 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 major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.
- [7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.
- [8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

EXHIBITS

Excerpt of 2007 Legal Aid Annual Report.....	A. 1
U.S. Census Bureau Data	A. 3
Civil Legal Services Directory	A. 9
Minnesota Department of Health, Individual/Family Preparedness.....	A. 21
March 2006 Minnesota Department of Health Fact Sheet, Pandemic Flu Facts.....	A. 23
ABA Standing Committee on Client Protection, State Implementation of ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster	A. 26
Oregon Supreme Court Order dated January 20, 2009	A. 33
Michigan Bar Association Proposal to Adopt ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster	A. 35
Excerpt of N.H. Advisory Committee on Rules, March 12, 2008 Minutes	A. 39
Tennessee Supreme Court Order Dated December 10, 2008.....	A. 41
Petition of the Tennessee Bar Association for the Adoption of Rules Governing the Multijurisdictional Practice of Law.....	A. 42
Virginia State Bar Association Webpage.....	A. 50
Memorandum to the California State Bar Association Board of Governors and Board Committee on Operations Dated April 28, 2008	A. 52
North Dakota Supreme Court Joint Committee on Attorney Standards, November 30, 2007 Minutes.....	A. 59

NOV 20 2009

FILED

Fredrikson
& BYRON, P.A.

November 18, 2009

Frederick K. Grittner
Clerk of Appellate Courts
Minnesota Court of Appeals
Minnesota Judicial Center, Suite 305
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul MN 55155

Re: *Proposed Model Rule on Provision of Legal Services Following the Determination of a Major Disaster*

Dear Mr. Grittner:

I submit this written statement in support of the proposed Model Rule on Provision of Legal Services Following the Determination of a Major Disaster ("Model Rule").

I am currently the chair of the American Bar Association Special Committee on Disaster Response and Preparedness ("Special Committee") which was one of the co-sponsors of the Model Rule when it was presented to the American Bar Associations House of Delegates. As a member of the Special Committee, I was involved in the discussions concerning the content of the Model Rule and comments. The Special Committee believes that the Model Rule is important to national preparedness for major disasters and has as one of its priorities to promote the adoption of the Model Rule by all states and territories.

The Model Rule arises from the experience of Hurricane Katrina. I was in Alabama, Mississippi and Louisiana on two occasions for a total of thirteen days after Katrina often meeting with local legal aid programs and pro bono programs to help them struggle with the overwhelming problems of coping with the damage to their own programs and with the dramatic increase in need for their help. These programs needed help and asked for help. In what I believe is a first, they did receive help from lawyers from all around the country.

But the methods to provide that help were being developed ad hoc and not quickly enough or well enough. There were lessons learned. Since then the American Bar Association, the Legal Services Corporation and others have been working to improve preparedness, including the ability to draw upon legal resources from around the country.

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

Frederick K. Grittner
November 18, 2009
Page 2


One significant barrier to providing legal services was the unauthorized practice of law statutes which, while appropriate during normal times, need to be modified in times of a major emergency. The Supreme Court of Mississippi and Louisiana eventually adopted special rules somewhat like the Model Rule to address the issues they faced, but, understandably with some difficulty and not as quickly as would be ideal. I say "understandably" because those courts had not faced these issues before. The policy issues are not insignificant. How can the necessary services be obtained while still maintaining the protection of the public and of local legal institutions which are part of those unauthorized practice of law rules? In addition, the Supreme Court of Louisiana itself had been displaced and was facing huge issues with the functioning of the court system itself.

Now that there is a little time between Katrina and the next major disaster, there is time to reflect and to prepare. The Model Rule is a considered recommendation by those with experience from Katrina. There is time to prepare by having a rule ready to use. The rule can always be tailored later if necessary to fit the circumstances that may be presented. But after the disaster is not the time to consider these issues for the first time or to begin to draft a rule. Having an adopted Model Rule ready to use is part of a plan.

(Another part of a plan might be to go beyond a COOP plan for each legal institution in Minnesota and for the courts and the bar to meet together to develop a coordinated plan to respond to a major disaster.)

In a meeting in New Orleans a few months after Katrina, the managing partner of one of the largest firms in New Orleans said: "Thank you for all of your help (referring to help from Minnesota), after all it is our problem." In this he was wrong. The times have changed so that we all need to think of disasters as national problems, even for the state based legal systems. We need to be able to help across state lines. We in Minnesota should be ready to give help and we should be ready to receive help. I urge you to adopt the Model Rule.

Respectfully submitted,


James L. Baillie
Attorney at Law

Direct Dial: 612.492.7013
Email: jbaillie@fredlaw.com

JLB:sc

4650450_1/031015.0008