

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON CLIENT PROTECTION
SANTA CLARA COUNTY BAR ASSOCIATION
SECTION OF DISPUTE RESOLUTION
COMMISSION ON LAW AND AGING
COUNCIL ON RACIAL AND ETHNIC JUSTICE
SENIOR LAWYERS DIVISION
STANDING COMMITTEE ON LAW AND NATIONAL SECURITY
CENTER FOR RACIAL AND ETHNIC DIVERSITY
WASHINGTON STATE BAR ASSOCIATION
NATIONAL ORGANIZATION OF BAR COUNSEL
SECTION OF SCIENCE AND TECHNOLOGY LAW
STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
NEW JERSEY STATE BAR ASSOCIATION
OHIO STATE BAR ASSOCIATION
SECTION OF INTELLECTUAL PROPERTY LAW
BAR ASSOCIATION OF SAN FRANCISCO
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

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

3
4 FURTHER RESOLVED, That the American Bar Association amends Comment [14] to Rule 5.5
5 of the *Model Rules of Professional Conduct*.

6
7 *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*
8 (February 2007)

9
10 **RULE ____.** PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR
11 DISASTER

12
13 (a) *Determination of existence of major disaster.* Solely for purposes of this Rule, this
14 Court shall determine when an emergency affecting the justice system, as a result of
15 a natural or other major disaster, a ~~major disaster~~ has occurred in:

- 16 (1) this jurisdiction and whether the emergency conditions caused by the
17 major disaster affects the entirety or only a part of this jurisdiction, or
18 (2) another jurisdiction but only after such a determination and its
19 geographical scope have been made by the highest court of that
20 jurisdiction. The authority to engage in the temporary practice of law in
21 this jurisdiction pursuant to paragraph (c) shall extend only to lawyers
22 who principally practice in the area of such other jurisdiction
23 determined to have suffered a major disaster causing an emergency
24 affecting the justice system and the provision of legal services.

25 (b) *Temporary practice in this jurisdiction following major disaster.* Following the
26 determination of an emergency affecting the justice system ~~major disaster~~ in this
27 jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons
28 displaced by a major disaster in another jurisdiction and residing in this
29 jurisdiction are in need of pro bono services and the assistance of lawyers from
30 outside of this jurisdiction is required to help provide such assistance, a lawyer
31 authorized to practice law in another United States jurisdiction, and not disbarred,
32 suspended from practice or otherwise restricted from practice in any jurisdiction,
33 may provide legal services in this jurisdiction on a temporary basis. Such legal
34 services must be provided on a *pro bono* basis without compensation, expectation
35 of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal
36 services shall be ~~supervised by a lawyer authorized to practice law in this~~
37 ~~jurisdiction and~~ supervised through an established not-for-profit bar
38 association, *pro bono* program or legal services program or through such
39 organization(s) specifically designated by this Court.

40 (c) *Temporary practice in this jurisdiction following major disaster in another*
41 *jurisdiction.* Following the determination of a major disaster in another United
42 States jurisdiction, a lawyer who is authorized to practice law and who principally
43 practices in that affected jurisdiction, and who is not disbarred, suspended from
44 practice or otherwise restricted from practice in any jurisdiction, may provide legal
45 services in this jurisdiction on a temporary basis. Those legal services must arise out
46 of and be reasonably related to that lawyer's practice of law in the jurisdiction, or
47 area of such other jurisdiction, where the major disaster occurred.

48 (d) *Duration of authority for temporary practice.* The authority to practice law in
49 this jurisdiction granted by paragraph (b) of this Rule shall end when this Court
50 determines that the conditions caused by the major disaster in this jurisdiction have
51 ended except that a lawyer then representing clients in this jurisdiction pursuant to
52 paragraph (b) is authorized to continue the provision of legal services for such time
53 as is reasonably necessary to complete the representation, but the lawyer shall not
54 thereafter accept new clients. The authority to practice law in this jurisdiction
55 granted by paragraph (c) of this Rule shall end [60] days after this Court declares
56 that the conditions caused by the major disaster in the affected jurisdiction have
57 ended.

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

- 60 (1) pursuant to that court's *pro hac vice* admission rule and, if such authority
61 is granted, any fees for such admission shall be waived; or

62 (2) if this Court, in any determination made under paragraph (a), grants
63 blanket permission to appear in all or designated courts of this
64 jurisdiction to lawyers providing legal services pursuant to paragraph
65 (b). If such an authorization is included, any *pro hac vice* admission fees
66 shall be waived.

67 (f) *Disciplinary authority and registration requirement.* Lawyers providing legal
68 services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this
69 Court's disciplinary authority and the *Rules of Professional Conduct* of this
70 jurisdiction as provided in Rule 8.5 of the *Rules of Professional Conduct*. Lawyers
71 providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within
72 30 days from the commencement of the provision of legal services, file a registration
73 statement with the Clerk of this Court. The registration statement shall be in a form
74 prescribed by this Court. Any lawyer who provides legal services pursuant to this
75 Rule shall not be considered to be engaged in the unlawful practice of law in this
76 jurisdiction.

77 (g) *Notification to clients.* Lawyers authorized to practice law in another United
78 States jurisdiction who provide legal services pursuant to this Rule shall inform
79 clients in this jurisdiction of the jurisdiction in which they are authorized to
80 practice law, any limits of that authorization, and that they are not authorized to
81 practice law in this jurisdiction except as permitted by this Rule. They shall not
82 state or imply to any person that they are otherwise authorized to practice law in
83 this jurisdiction.

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85 **Comment**

86 [1] A major disaster in this or another jurisdiction may **cause an emergency affecting**
87 **the justice system with respect to the provision of legal services** for a sustained period of time
88 **interfering** with the ability of lawyers admitted and practicing in the affected jurisdiction to
89 continue to represent clients until the disaster has ended. When this happens, lawyers from the
90 affected jurisdiction may need to provide legal services to their clients, on a temporary basis,
91 from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction
92 may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a
93 result of the disaster or, though independent of the disaster, whose legal needs temporarily are
94 unmet because of disruption to the practices of local lawyers. Lawyers from unaffected
95 jurisdictions may offer to provide these legal services either by traveling to the affected
96 jurisdiction or from their own offices or both, provided the legal services are provided on a *pro*
97 *bono* basis through an authorized not-for-profit entity or such other organization(s) specifically
98 designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood,
99 wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

100 [2] Under paragraph (a)(1), this Court shall determine whether a major disaster **causing**
101 **an emergency affecting the justice system** has occurred in this jurisdiction, or in a part of this
102 jurisdiction, for purposes of triggering paragraph (b) of this Rule. This Court may, for example,
103 determine that the entirety of this jurisdiction has suffered a ~~major disaster~~ **disruption in the**
104 **provision of legal services** or that only certain areas have suffered such an event. The authority
105 granted by paragraph (b) shall extend only to lawyers authorized to practice law and not
106 disbarred, suspended from practice or otherwise restricted from practice in any other manner in
107 any other jurisdiction.

108 [3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction,
109 and not disbarred, suspended from practice or otherwise restricted from practicing law in any
110 other manner in any other jurisdiction, to provide pro bono legal services to residents of the
111 affected jurisdiction following determination of **an emergency caused by** a major disaster;
112 notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction.
113 Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from
114 providing legal services pursuant to this Rule include, but are not limited to, probation, inactive
115 status, disability inactive status or a non-disciplinary administrative suspension for failure to
116 complete continuing legal education or other requirements. Lawyers on probation may be subject
117 to monitoring and specific limitations on their practices. Lawyers on inactive status, despite
118 being characterized in many jurisdictions as being "in good standing," and lawyers on disability
119 inactive status are not permitted to practice law. Public protection warrants exclusion of these
120 lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to
121 provide legal services pursuant to this Rule must do so without fee or other compensation, or
122 expectation thereof. Their service must be provided through an established not-for-profit
123 organization that is authorized to provide legal services either in its own name or that provides
124 representation of clients through employed or cooperating lawyers. Alternatively, this court may
125 instead designate other specific organization(s) through which these legal services may be
126 rendered. Under paragraph (b), an *emeritus* lawyer from another United State jurisdiction may
127 provide *pro bono* legal services on a temporary basis in this jurisdiction provided that the
128 *emeritus* lawyer is authorized to provide *pro bono* legal services in that jurisdiction pursuant to
129 that jurisdiction's *emeritus* or *pro bono* practice rule. Lawyers may also be authorized to provide
130 legal services in this jurisdiction on a temporary basis under Rule 5.5(c) of the *Rules of*
131 *Professional Conduct*.

132 [4] Lawyers authorized to practice law in another jurisdiction, who principally practice in
133 the area of such other jurisdiction determined by this Court to have suffered a major disaster, and
134 whose practices are disrupted by a major disaster there, and who are not disbarred, suspended
135 from practice or otherwise restricted from practicing law in any other manner in any other
136 jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in
137 this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's
138 practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a
139 major disaster in another jurisdiction should first be made by the highest court of appellate
140 jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see
141 Rule 5.5 Comment [14], *Rules of Professional Conduct*.

142 [5] **Emergency** Conditions created by major disasters end, and when they do, the
143 authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to
144 plan and to complete pending legal matters. Under paragraph (d), this Court determines when
145 those conditions end only for purposes of this Rule. The authority granted under paragraph (b)
146 shall end upon such determination except that lawyers assisting residents of this jurisdiction
147 under paragraph (b) may continue to do so for such longer period as is reasonably necessary to
148 complete the representation. The authority created by paragraph (c) will end [60] days after this
149 Court makes such a determination with regard to an affected jurisdiction.

150 [6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this
151 jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular
152 court. This Court may, in a determination made under paragraph (e)(2), include authorization for
153 lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or

154 designated courts of this jurisdiction without need for such *pro hac vice* admission. If such an
155 authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has
156 appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in
157 any such matter notwithstanding a declaration under paragraph (d) that the conditions created by
158 major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule
159 1.16 of the *Rules of Professional Conduct*.

160 [7] Authorization to practice law as a foreign legal consultant or in-house counsel in a
161 United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore
162 restrict that person's ability to provide legal services under this Rule.

163 [8] The ABA National Lawyer Regulatory Data Bank is available to help determine
164 whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of
165 this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary
166 sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

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ABA RULES OF PROFESSIONAL CONDUCT

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

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

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(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.

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

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(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

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

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(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 that:

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

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(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 such proceeding or reasonably expects to be so authorized;

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(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

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

202 **(d) A lawyer admitted in another United States jurisdiction, and not**
203 **disbarred or suspended from practice in any jurisdiction, may provide legal**
204 **services in this jurisdiction that:**

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

208 **(2) are services that the lawyer is authorized to provide by federal law**
209 **or other law of this jurisdiction.**
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211 **Comment**

212 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is
213 authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a
214 regular basis or may be authorized by court rule or order or by law to practice for a
215 limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of
216 law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting
217 another person.

218 [2] The definition of the practice of law is established by law and varies from one
219 jurisdiction to another. Whatever the definition, limiting the practice of law to members
220 of the bar protects the public against rendition of legal services by unqualified persons.
221 This Rule does not prohibit a lawyer from employing the services of paraprofessionals
222 and delegating functions to them, so long as the lawyer supervises the delegated work
223 and retains responsibility for their work. See Rule 5.3.

224 [3] A lawyer may provide professional advice and instruction to nonlawyers
225 whose employment requires knowledge of the law; for example, claims adjusters,
226 employees of financial or commercial institutions, social workers, accountants and
227 persons employed in government agencies. Lawyers also may assist independent
228 nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to
229 provide particular law-related services. In addition, a lawyer may counsel nonlawyers
230 who wish to proceed *pro se*.

231 [4] Other than as authorized by law or this Rule, a lawyer who is not admitted to
232 practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an
233 office or other systematic and continuous presence in this jurisdiction for the practice of
234 law. Presence may be systematic and continuous even if the lawyer is not physically
235 present here. Such a lawyer must not hold out to the public or otherwise represent that the
236 lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5 (b).

237 [5] There are occasions in which a lawyer admitted to practice in another United
238 States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may
239 provide legal services on a temporary basis in this jurisdiction under circumstances that
240 do not create an unreasonable risk to the interests of their clients, the public or the courts.
241 Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified
242 does not imply that the conduct is or is not authorized. With the exception of paragraphs
243 (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other
244 systematic and continuous presence in this jurisdiction without being admitted to practice
245 generally here.

246 [6] There is no single test to determine whether a lawyer's services are provided
247 on a "temporary basis" in this jurisdiction, and may therefore be permissible under
248 paragraph (c). Services may be "temporary" even though the lawyer provides services in
249 this jurisdiction on a recurring basis, or for an extended period of time, as when the
250 lawyer is representing a client in a single lengthy negotiation or litigation.

251 [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in
252 any United States jurisdiction, which includes the District of Columbia and any state,
253 territory or commonwealth of the United States. The word "admitted" in paragraph (c)
254 contemplates that the lawyer is authorized to practice in the jurisdiction in which the
255 lawyer is admitted and excludes a lawyer who while technically admitted is not
256 authorized to practice, because, for example, the lawyer is on inactive status.

257 [8] Paragraph (c)(1) recognizes that the interests of clients and the public are
258 protected if a lawyer admitted only in another jurisdiction associates with a lawyer
259 licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer
260 admitted to practice in this jurisdiction must actively participate in and share
261 responsibility for the representation of the client.

262 [9] Lawyers not admitted to practice generally in a jurisdiction may be authorized
263 by law or order of a tribunal or an administrative agency to appear before the tribunal or
264 agency. This authority may be granted pursuant to formal rules governing admission *pro*
265 *hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph
266 (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or
267 agency pursuant to such authority. To the extent that a court rule or other law of this
268 jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain
269 admission *pro hac vice* before appearing before a tribunal or administrative agency, this
270 Rule requires the lawyer to obtain that authority.

271 [10] Paragraph (c)(2) also provides that a lawyer rendering services in this
272 jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in
273 conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is
274 authorized to practice law or in which the lawyer reasonably expects to be admitted *pro*
275 *hac vice*. Examples of such conduct include meetings with the client, interviews of
276 potential witnesses, and the review of documents. Similarly, a lawyer admitted only in
277 another jurisdiction may engage in conduct temporarily in this jurisdiction in connection
278 with pending litigation in another jurisdiction in which the lawyer is or reasonably
279 expects to be authorized to appear, including taking depositions in this jurisdiction.

280 [11] When a lawyer has been or reasonably expects to be admitted to appear
281 before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers
282 who are associated with that lawyer in the matter, but who do not expect to appear before
283 the court or administrative agency. For example, subordinate lawyers may conduct
284 research, review documents, and attend meetings with witnesses in support of the lawyer
285 responsible for the litigation.

286 [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another
287 jurisdiction to perform services on a temporary basis in this jurisdiction if those services
288 are in or reasonably related to a pending or potential arbitration, mediation, or other
289 alternative dispute resolution proceeding in this or another jurisdiction, if the services
290 arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the
291 lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice*

292 in the case of a court-annexed arbitration or mediation or otherwise if court rules or law
293 so require.

294 [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide
295 certain legal services on a temporary basis in this jurisdiction that arise out of or are
296 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
297 admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal
298 services and services that nonlawyers may perform but that are considered the practice of
299 law when performed by lawyers.

300 [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be
301 reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
302 admitted. A variety of factors evidence such a relationship. The lawyer's client may have
303 been previously represented by the lawyer, or may be resident in or have substantial
304 contacts with the jurisdiction in which the lawyer is admitted. The matter, although
305 involving other jurisdictions, may have a significant connection with that jurisdiction. In
306 other cases, significant aspects of the lawyer's work might be conducted in that
307 jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction.
308 The necessary relationship might arise when the client's activities or the legal issues
309 involve multiple jurisdictions, such as when the officers of a multinational corporation
310 survey potential business sites and seek the services of their lawyer in assessing the
311 relative merits of each. In addition, the services may draw on the lawyer's recognized
312 expertise developed through the regular practice of law on behalf of clients in matters
313 involving a particular body of federal, nationally-uniform, foreign, or international law.
314 **Lawyers desiring to provide *pro bono* legal services on a temporary basis in a**
315 **jurisdiction that has been affected by a major disaster, but in which they are not**
316 **otherwise authorized to practice law, as well as lawyers from the affected**
317 **jurisdiction who seek to practice law temporarily in another jurisdiction, but in**
318 **which they are not otherwise authorized to practice law, should consult the *Model***
319 ***Court Rule on Provision of Legal Services Following Determination of Major Disaster.***

320 [15] Paragraph (d) identifies two circumstances in which a lawyer who is
321 admitted to practice in another United States jurisdiction, and is not disbarred or
322 suspended from practice in any jurisdiction, may establish an office or other systematic
323 and continuous presence in this jurisdiction for the practice of law as well as provide
324 legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a
325 lawyer who is admitted to practice law in another jurisdiction and who establishes an
326 office or other systematic or continuous presence in this jurisdiction must become
327 admitted to practice law generally in this jurisdiction.

328 [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide
329 legal services to the client or its organizational affiliates, i.e., entities that control, are
330 controlled by, or are under common control with the employer. This paragraph does not
331 authorize the provision of personal legal services to the employer's officers or
332 employees. The paragraph applies to in-house corporate lawyers, government lawyers
333 and others who are employed to render legal services to the employer. The lawyer's
334 ability to represent the employer outside the jurisdiction in which the lawyer is licensed
335 generally serves the interests of the employer and does not create an unreasonable risk to
336 the client and others because the employer is well situated to assess the lawyer's
337 qualifications and the quality of the lawyer's work.

338 [17] If an employed lawyer establishes an office or other systematic presence in
339 this jurisdiction for the purpose of rendering legal services to the employer, the lawyer
340 may be subject to registration or other requirements, including assessments for client
341 protection funds and mandatory continuing legal education.

342 [18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a
343 jurisdiction in which the lawyer is not licensed when authorized to do so by federal or
344 other law, which includes statute, court rule, executive regulation or judicial precedent.

345 [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or
346 (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule
347 8.5(a).

348 [20] In some circumstances, a lawyer who practices law in this jurisdiction
349 pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not
350 licensed to practice law in this jurisdiction. For example, that may be required when the
351 representation occurs primarily in this jurisdiction and requires knowledge of the law of
352 this jurisdiction. See Rule 1.4(b).

353 [21] Paragraphs (c) and (d) do not authorize communications advertising legal
354 services to prospective clients in this jurisdiction by lawyers who are admitted to practice
355 in other jurisdictions. Whether and how lawyers may communicate the availability of
356 their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

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REPORT

BACKGROUND

360

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

369

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

380

381

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

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

391
392 It was the consensus of the responding entities, including the Standing Committee on Ethics and
393 Professional Responsibility, that the issues to be addressed were administrative matters involving
394 the temporary practice of law and that they should be addressed in a Model Court Rule. The
395 Standing Committee on Ethics and Professional Responsibility believes that the proposed Model
396 Court Rule, if adopted, would effectively facilitate the provision of legal services in urgent
397 situations, such as the occurrence of natural disasters. The Ethics Committee also believes that
398 because the creation of a mechanism for making legal services available is not an ethical, but
399 essentially an administrative and operational concern of each state's highest court, it is
400 appropriate that the subject be addressed by a Model Court Rule, rather than a Rule of
401 Professional Conduct, and supports its adoption by the House of Delegates. The Ethics
402 Committee agrees that proposed amended Comment [14] to Model Rule of Professional
403 Conduct 5.5, which serves as an important cross-reference to any such rule of court, is a
404 necessary and helpful addition to the Model Rules, and supports its adoption by the House of
405 Delegates as well.

406
407 ***MODEL COURT RULE ON PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF***
408 ***MAJOR DISASTER***

409
410 An emergency affecting the justice system, as a result of a natural or other major disaster, may
411 for a sustained period of time interfere with the ability of lawyers admitted and practicing in the
412 affected jurisdiction to continue to represent clients until the disaster has ended. A natural or
413 other major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado,
414 public health emergency or an event caused by terrorists or acts of war. When this happens,
415 lawyers from the affected jurisdiction may need to provide legal services to their clients, on a
416 temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an
417 unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have
418 unmet legal needs as a result of the disaster or whose legal needs temporarily are unmet because
419 of disruption to the practices of local lawyers.

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421 Lawyers from unaffected jurisdictions may offer to provide these legal services either by
422 traveling to the affected jurisdiction or from their own offices or both, provided the legal services

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.

423 are provided on a pro bono basis through an authorized not-for-profit legal services organization
424 or such other organizations specifically designated by the highest court of the affected
425 jurisdiction.

426
427 Under the Model Court Rule, the highest court in the affected jurisdiction shall determine
428 whether an emergency affecting the justice system as a result of a natural or other major disaster
429 has occurred in the jurisdiction, or in a part of the jurisdiction, for purposes of triggering
430 paragraph (b) of the Model Court Rule. The regulation of the practice of law by the judicial
431 branch of government, which includes jurisdictional limits on legal practice, is a fundamental
432 principle recently re-affirmed as policy by the American Bar Association.³ The court in making a
433 determination whether an emergency affecting the justice system has occurred can take judicial
434 notice of any Presidential proclamations or declarations by the governor or executive officer of
435 an affected jurisdiction.

436
437 Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not
438 disbarred, suspended from practice or otherwise restricted from practicing law in any other
439 manner in any other jurisdiction, to provide pro bono legal services to residents of the affected
440 jurisdiction following determination of an emergency affecting the justice system and the
441 provision of legal services. Lawyers permitted to provide legal services pursuant to this Model
442 Court Rule must do so without fee or other compensation, or expectation thereof. Their service
443 must be provided through an established not-for-profit organization that is authorized to provide
444 legal services either in its own name or that provides representation of clients through employed
445 or cooperating lawyers. The rules governing the not-for-profit organization will determine who
446 should be considered an eligible client in light of the circumstances caused by the disaster.

447
448 Alternatively, the Court may instead designate other specific organizations through which these
449 legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United
450 State jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction
451 provided that the emeritus lawyer is authorized to provide pro bono legal services in that
452 jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also
453 be authorized under paragraph (b) of this Rule to provide legal services on a temporary basis in
454 an affected jurisdiction, or to provide legal services on a pro bono basis to the citizens of an
455 affected jurisdiction who have been displaced to and are temporarily residing in an unaffected
456 jurisdiction, ~~under Rule 5.5(c) of the Rules of Professional Conduct.~~

457
458 Lawyers authorized to practice law in an affected jurisdiction, as determined by the highest court
459 of the affected jurisdiction, and whose practices are disrupted by a major disaster there, are
460 authorized under paragraph (c) to provide legal services on a temporary basis in the jurisdiction
461 adopting the Model Court Rule. Those legal services must arise out of and be reasonably related
462 to the lawyer's practice of law in the affected jurisdiction. The Court in the affected jurisdiction
463 shall determine when a major disaster has occurred in another jurisdiction but only after such a
464 determination and the geographical scope of the disaster have been made by the highest court of
465 that other jurisdiction. The authority to engage in the temporary practice of law in an unaffected
466 jurisdiction pursuant to paragraph (c) shall extend only to those lawyers who principally practice

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

467 in the area of a jurisdiction determined to have suffered an emergency affecting the justice
468 system and the provision of legal services.

469
470 Emergency conditions created by major disasters end, and when they do, the authority created by
471 the Model Court Rule also ends with appropriate notice to enable lawyers to plan and to
472 complete pending legal matters. Under paragraph (d), the highest court in the affected
473 jurisdiction determines when those conditions end only for purposes of the Model Court Rule.
474 The authority granted under paragraph (b) shall end upon such determination except that lawyers
475 assisting residents of the affected jurisdiction under paragraph (b) may continue to do so for such
476 longer period as is reasonably necessary to complete the representation. The authority created by
477 paragraph (c) will end 60 days, or as otherwise enacted in the Rule, after the highest court in an
478 unaffected jurisdiction makes such a determination with regard to an affected jurisdiction. The
479 parameters created by the Model Court Rule are intended to be flexible and the highest court in a
480 jurisdiction has the discretion to extend the time period during which out-of-state lawyers may
481 provide pro bono legal services in an affected jurisdiction or during which lawyers displaced by
482 a disaster may practice law on a temporary basis in an unaffected jurisdiction.

483
484 Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of the affected
485 jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular
486 court. The highest court may, in a determination made under paragraph (e)(2), include
487 authorization for lawyers who provide legal services in the jurisdiction under paragraph (b) to
488 appear in all or designated courts of the jurisdiction without need for such *pro hac vice*
489 admission. If such an authorization is included, any *pro hac vice* admission fees shall be waived.
490 A lawyer who has appeared in the courts of an affected jurisdiction pursuant to paragraph (e)
491 may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that
492 the conditions created by the major disaster have ended. Furthermore, withdrawal from a court
493 appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

494
495 **AMENDMENT TO COMMENTARY OF RULE 5.5 OF THE RULES OF PROFESSIONAL CONDUCT**

496
497 Following the occurrence of a major disaster, lawyers practicing law outside the affected
498 jurisdiction will begin to research what legal services they may provide on a temporary basis to
499 the citizens of the affected jurisdiction. In addition, not-for-profit legal organizations within the
500 affected jurisdiction will begin to research what legal services out-of-state lawyers may provide
501 in their jurisdiction on a temporary basis. At some point, the lawyers and not-for-profit
502 organizations will consult the *Rules of Professional Conduct*. While Rule 5.5 of the *Rules of*
503 *Professional Conduct* is titled “Unauthorized Practice of Law: Multijurisdictional Practice of
504 Law,” Rule 5.5 does not directly address the provision of pro bono legal services by out-of-state
505 lawyers in a jurisdiction affected by a major disaster nor does it address the temporary practice of
506 law in an unaffected jurisdiction by displaced lawyers principally practicing in the affected
507 jurisdiction. The *Model Court Rule on Provision of Legal Services Following Determination of*
508 *Major Disaster* does address these issues. Upon the suggestion of the Standing Committee on
509 Ethics and Professional Responsibility, whose jurisdictional statement includes recommending to
510 the ABA House of Delegates amendments to the *Rules of Professional Conduct*, the Committee
511 recommends that Comment [14] to Rule 5.5 of the *Rules of Professional Conduct* be amended to

512 include a cross-references to the *Model Court Rule on Provision of Legal Services Following*
513 *Determination of Major Disaster*.

514

515 **CONCLUSION**

516

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

529

530

531

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

535