

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
SPECIAL COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS
COMMISSION ON LAWYER TRUST ACCOUNTS
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 **RESOLVED**, That the American Bar Association urges federal, state and local governments to
2 address the unmet legal needs of low-income residents of communities affected by major
3 disasters by action which includes providing additional emergency funding for not-for-profit
4 legal services providers, bar associations, and pro bono programs, to be used to ameliorate the
5 unique problems caused by a major disaster.

REPORT

I. Introduction and Background

Major disasters occur in the United States with alarming frequency. In the four year period 2005-2008, 178 major disasters were the subject of Presidential Disaster Declarations. In over 50 of these declared disasters in 34 states, the Federal Emergency Management Agency (FEMA) determined that the event required the implementation of the ABA/FEMA Disaster Legal Services Project (DLS Project), sponsored by the ABA Young Lawyers Division, to provide disaster legal services to low-income disaster victims in the aftermath of a major disaster.

FEMA is authorized to provide Disaster Legal Services (DLS) to disaster victims pursuant to 42 U.S.C. Section 5182 and 44 C.F.R. Section 206.164 when the President of the United States declares a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, Public Law 93-288, as amended (the Stafford Act), 42. U.S.C. 5121, et seq.

The DLS Project provides legal counseling and advice, referral to appropriate sources of legal services or disaster assistance and legal representation in non-fee-generating cases. Legal services are authorized only to assist low-income victims in securing benefits under the Stafford Act and in resolving matters arising out of the disaster. DLS are provided through a coordinated legal services delivery system to make available lawyers and legal support personnel from diverse practice settings with the expertise, skills and experience to meet the legal assistance needs of such low-income disaster victims. Participating attorneys who volunteer to provide DLS include individual attorneys, law firms, not-for-profit legal services providers, Legal Services Corporation grant recipients, state and local bar associations and pro bono organizations.

From time to time, depending upon the circumstances of the specific event, other federal, state and local agencies have provided modest supplemental funding to assist the legal services community's efforts to address the legal needs of disaster victims.

The ABA and other national organizations are not standing by idly in the absence of additional government funding for disaster legal assistance. For example, the ABA Center for Pro Bono, the Legal Services Corporation, the National Legal Aid and Defender Association and Pro Bono Net have partnered to develop www.disasterlegalaid.org, a website offering and linking to a wide array of content of value to lawyers, legal aid programs and the public. The ABA, FEMA and the American Red Cross have worked together to coordinate disaster preparation and response nationally, regionally and locally. Especially noteworthy is the DLS Project collaboration between the ABA Young Lawyers Division through which attorneys are activated to conduct legal triage in places where FEMA declares a disaster. The Legal Services Corporation hosts national conference calls convening lawyers and program managers to discuss issues and problems affecting the delivery of legal assistance to low-income persons affected by major disasters. These organizations are continually engaged in disaster legal assistance training for legal aid and pro bono lawyers.

But, despite the efforts of FEMA, the ABA and the Legal Services Corporation, legal assistance for residents of communities affected by disasters has been inadequate due in large measure to a lack of adequate resources to serve two distinct client populations:

- These residents who are directly affected by the event itself may lose their homes, suffer physical injuries or suffer other losses. They may become newly poor. The immediate legal needs of some of these residents will be met by the DLS Project, but the long-term legal needs will fall to legal aid providers and to private lawyers.
- Other residents will live outside of the immediate impact zone, but will nevertheless have their lives disrupted by the disaster. Their employer may be forced to cease operations, leading to unemployment. The housing market may suddenly tighten, making housing unaffordable. These residents often turn to legal aid providers or the private bar for assistance.

Unfortunately, the legal services programs, legal aid providers, pro bono programs and bar associations serving the affected communities are themselves typically significantly impacted by the disaster and need an infusion of aid in order to serve their low-income populations. Their staff is often displaced, their quarters destroyed, their infrastructure damaged, and their caseload increased by double, triple or more. This Recommendation recognizes the need these organizations have following disasters and calls for supplemental aid to those organizations that serve poor victims of major disasters, to ameliorate those adverse conditions and facilitate the performance of their job.

II. Legal Services Providers Have a Massive Job in the Wake of a Natural Disaster

A. Disasters Create Direct Victims Who Need Legal Assistance

It is well-documented that less than 20% of America's 50 million children, women and men who fall within 125% of the Federal poverty guidelines receive the civil legal services they need, and that less than 50% of the eligible clients who seek legal assistance from LSC grantee programs can be served – and those statistics reflect “ordinary” circumstances, not the post-disaster environment. Not only programs experience an explosion of caseloads in the aftermath of a major disaster, but they reported that the “daily bread and butter” cases are much more complicated, present multiple issues and take longer to resolve. Yet, their infrastructure is insufficient to handle the client needs, manage volunteers and tend to the needs of staff.

Low-income populations are disproportionately affected by major disasters. During February and March of 2009, the Legal Services Corporation and the ABA Center for Pro Bono surveyed a representative sampling of legal services programs and pro bono projects in a variety of states, including Florida, Alabama, Arkansas, Louisiana, Mississippi, Tennessee, Texas, Iowa and California. The organizations surveyed all had service areas ravaged by multiple major disasters since 2005. Respondents confirmed that legal services providers and pro bono programs serving low-income populations are systemically underfunded, that little or no additional funding was available to provide legal services to direct victims of major disasters, and that there are

significant non-financial barriers to the delivery of legal services to residents of communities affected by major disasters.

Thus, additional funding must be made available to staff local legal aid and pro bono programs through a variety of funding mechanisms, including directly from FEMA, through special appropriations to LSC, and through other federal, state and local governmental agencies focused on specific disaster response and recovery needs, issues and programs. This is necessary so that local legal communities can respond to the unmet legal needs both of low-income victims of the disaster and other low-income residents of communities affected by major disasters.

B. Disasters Create Ongoing Legal Problems in a Community Affected by a Disaster

Whenever a community is affected by a major disaster, the disaster assistance resources of the legal community flow toward the immediate and longer term needs of disaster victims. As the legal community itself recovers from the impact of the event, the civil legal needs of low-income residents of the affected community continue unabated and often increase by reason of reduced housing, employment and social services. This is true even for those who are not directly affected by the event.

Many low-income residents of communities affected by major disasters live or work within the service area for agencies that provide disaster legal assistance but for a variety of reasons may not be eligible for legal services as direct disaster victims. Nevertheless, they have significant legal needs that are exacerbated by the disaster. Emergency funding to address these needs has been ignored.

One program did a pre-Katrina and post-Katrina comparison of its new clients from flooded and dry ZIP codes and found that the per capita number of legal problems often were three to six times pre-Katrina utilization. Most importantly, they found that many of the dry ZIP codes experienced exponential increases in client utilization of their services. Moreover, the respondents concurred that legal services staff and pro bono lawyers were newly burdened with rapidly evolving disaster related legal issues, many of which require expertise beyond the scope of the day-to-day legal services practice, in addition to the usual and customary legal issues handled by these programs.

As one respondent who has experience with several declared major disasters wrote:

All hurricanes, but especially a major region-wide hurricane such as Hurricane Andrew, place a major stress on the legal services program, the immediate disaster victims, and the low income residents of the communities not directly affected by the disaster....Low income people not directly affected by a hurricane are seriously impacted by local conditions. Many people lose jobs or have their hours drastically cut. Schools close and students are denied access to special education services. Landlords no longer make repairs or maintain rental property as they are focused on repairing properties directly affected by the hurricane or supplies and contractors are in short supply. Clients are unable to pay their bills and mortgages due to a loss of income. Low income people experience many new additional costs that are difficult

to absorb. Many costs sky rocket. Public assistance offices, hospitals, and government agencies close or stop providing regular services. Public transportation is unreliable. Many people, but especially the elderly, disabled and mentally ill, even if not personally affected by the disaster, are severely stressed by the events surrounding them. These problems present serious new challenges and legal issues for low income people. They bring these new problems to our office. At the same time clients continue to present the typical problems presented prior to the disaster.

As the managing attorney of another program wrote:

Because of the emergency nature of the problems being experienced, we gave special attention to people who were either at risk of or had already lost their housing, needed benefits to support their families, etc. Cases of existing clients were processed more slowly and other new clients seeking services were turned away in order to meet the emergency needs of disaster victims.

Stress on the legal services delivery system is not limited to the region directly impacted by the disaster. Victims and their families evacuate and relocate, sometimes temporarily, but often permanently. They carry their legal problems to new communities, and bring their problems to legal services and pro bono programs in their new homes, multiplying the caseloads of these new host organizations and diverting resources away from the existing client base. They require a concomitant infusion of staff and money to cope with the deluge.

The Recommendation addresses and this Report underscores the need for more resources for legal aid and other providers so they can continue to serve (1) existing clients, (2) direct victims and (3) people who were not direct disaster victims but who have still suffered significant harm due to the disaster. It is vital that funding be distributed as quickly as possible to the field. This could be accomplished, for example, by having it flow through the currently available infrastructure, such as FEMA, LSC, and state IOLTA programs, or through other improved and enhanced funding infrastructures.

III. Aside from Creating Problems for Direct Victims and Their Communities, Major Disasters Adversely Impact Service-Providers Themselves

While legal services programs continue their daily work, as well as absorb new cases created by the disaster, the conditions under which lawyers who serve these clients practice become extremely difficult. Their offices, files and equipment are damaged or destroyed. Their homes may suffer damage or destruction, as well. Their children's schools cannot open. The courts and government offices that serve the community are disrupted. And often these conditions persist for months, and even years.

The Director of Program Services for one legal services program underscored the problem from the timing perspective, noting that:

Many of our legal aid program's grants are performance based and only paid after costs are actually incurred. Thus, Katrina disrupted much of our funding flow.

Also, it took a long time to receive insurance proceeds for our lost revenue and other disaster related losses due to the crushing demands placed on the insurance industry by Katrina. These funding uncertainties made it difficult or impossible for our program to hire new attorneys until February 2006, 5 full months after Katrina....Programs that are called on to respond to a major disaster need an immediate and major infusion of cash.

Funding needs are immediate in the aftermath of a major disaster to restore offices, equipment, communications and files, as well as to fund the additional lawyers and support staff necessary to serve both disaster victims and other low-income residents of the community who may not qualify for disaster legal assistance.

IV. Conclusion

Clearly, disasters widen the gap in an already challenged safety net. None of us can predict when or where the next major disaster will hit – but we know it will. And, we know that we must be prepared to deploy resources to address the unmet civil legal needs of low-income residents of communities affected by major disasters.

Dedicated staff and pro bono volunteers stand ready to meet the legal needs of disaster victims, if only they have the resources and infrastructure to do so. This Recommendation recognizes the need for emergency supplemental funding for the programs which supply that legal help, to make sure that in the wake of a major disaster lawyers are able to maintain their ongoing service, absorb the new caseload created by the disaster and facilitate their community's return to normalcy. It would be a resource very well spent.

Respectfully submitted,

Mark I. Schickman, Chair
Standing Committee on Pro Bono and Public Service
August 2009

**American Bar Association Policies Related to Damages Caused by Disasters,
Including Insurance Coverage and Financing**

Adopted by the ABA House of Delegates, February 2009

The following resolutions were developed by the Task Force on Disaster Insurance Coverage of the ABA Tort Trials & Insurance Practice Section. The actual resolutions follow the synopsis below.

107A

Recommends federal, state and territorial governments to enact legislation with appropriate funding that would eliminate any prohibitions or restrictions on participants in the private insurance and reinsurance markets from making available broadened insurance protection for properly damage arising from storms, including damage from wind, wind-driven rain and flood caused by storm surge, but excluding damage arising from other types of floods.

107B

Urges Congress to address the consequences of natural catastrophes by strengthening the financial infrastructure and developing programs that increase availability of affordable insurance in areas highly-exposed to catastrophes, while not competing with the private market.

107C

Urges the federal government to take steps to encourage capital markets to finance catastrophic risks by: a) undertaking a study through the U.S. Treasury Department to determine what changes in federal laws and regulations would reduce barriers to the issuance of catastrophe (CAT)-linked securities in the United States; and b) enacting legislation as needed to encourage the issuance of catastrophe (CAT)-linked securities.

107D

Urges the federal government to address the liquidity needs of individuals and business in the aftermath of future natural catastrophes to reduce some of the losses by residents affected by catastrophes.

107E

Urges state, territorial and local governments to use specific tools to mitigate losses from future mega-catastrophes to ensure the ongoing availability and affordability of insurance for natural disasters.

107F

Urges the federal government to use specific tools to mitigate losses from future mega-catastrophes by influencing building codes and land-use in certain situations.

107G

Recommends national, state and territorial governments to adopt standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms