

**Multijurisdictional Real Estate Practice
and Implementation of ABA Model Rules 5.5 and 8.5**

James Geoffrey Durham
University of Dayton School of Law
300 College Park
Dayton, OH 45469-2772

These materials are substantially drawn from materials prepared for a March 20, 2004, program of the American College of Real Estate Lawyers entitled "Crossing Borders: The Evolving Obstacles to Following Your Client Across State Lines" by: Kathleen M. Martin, Malkerson Gilliland Martin LLP, 220 South Sixth Street, Suite 1750, Minneapolis, MN 55402; and Mark F. Mehlman, Sonnenschein Nath & Rosenthal, 233 South Wacker Drive, Suite 8000, Chicago, IL 60606.

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A. BRIEF HISTORY OF THE MULTIJURISDICTIONAL DEBATE

1. In the early 1900s, states began enacting “unauthorized practice of law” (“UPL”) legislation that prohibited persons (lawyers and non-lawyers) not licensed in a state from practicing law within that state. The most widely stated purpose of the UPL laws was to ensure that a state’s citizens were represented by qualified legal practitioners. A state's UPL restrictions also operate to protect the livelihood of lawyers practicing within the state. Historically, the UPL laws had little impact on an attorney’s conduct; the lawyer typically represented only clients that lived or were organized in his or her state and the clients’ needs were limited to application of the laws of the lawyer’s home state.
2. As clients’ business needs expanded nationally and internationally during the twentieth century, however, clients increasingly sought advice from their attorneys in regard to transactions that crossed the borders of the lawyers’ home states. With technological advances, changes in our transportation systems and the expansion of our economy, this cross-border, or multijurisdictional, practice led lawyers to travel to other states to negotiate or close transactions, to negotiate documents governed by the laws of other states and to sometimes render advice with respect to the application of other states’ laws to the client’s business dealings.
3. As lawyers more frequently crossed state lines (literally and figuratively) in service to their clients, the UPL laws were invoked not only by the states to prohibit lawyers licensed in another jurisdiction (but not licensed in the host state) from practicing in the host state, but also by clients in fee disputes with their attorneys. A key question that arose from many of these UPL cases was: under what circumstances is a lawyer licensed in one state practicing “in” another state when the transaction involves parties, laws, contract rights or other property situated in or governed by the laws of more than one jurisdiction? (An excellent survey of UPL decisions appears in William T. Barker, *Extrajurisdictional Practice by Lawyers*, 56 BUS. LAW. 1501 (2001), which is available for review at <http://www.abanet.org/cpr/mjp/biblio.pdf>.)

4. Perhaps the most significant case giving rise to the recent study of the American Bar Association (“ABA”) *Model Rules of Professional Conduct* applicable to multijurisdictional practice was the California Supreme Court’s decision in *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1 (Cal. 1998). In *Birbrower*, New York licensed lawyers were sued by their client for legal malpractice and related claims; the New York firm counterclaimed for attorneys' fees for work it had performed in both California and New York. The *Birbrower* court found that the New York lawyers had practiced law (without a license) “in” California and were not permitted to collect fees for services constituting the practice of law in California, by virtue of the following facts: the New York law firm, which had represented the client on matters of New York law for a number of years, consulted with the client, in New York, in regard to a contract governed by the laws of California; the New York lawyers traveled to California (where the other party maintained its principal place of business) on more than one occasion to meet with the other party and to negotiate resolution of the dispute; and the New York attorneys commenced arbitration with a California office of the American Arbitration Association.
5. In response to the *Birbrower* decision and similar developments in other states, ABA President Martha Barnett appointed the Commission on Multijurisdictional Practice (the “Commission”) in July 2000 to, *inter alia*, “study and report on the application of current ethics and bar admission rules to the multijurisdictional practice of law” and to “make policy recommendations to govern the multijurisdictional practice of law that serve the public interest.” American Bar Association, *Report of the Commission on Multijurisdictional Practice* (Aug. 2002) (“*MJP Report*”), at 1, available at <http://www.abanet.org/cpr/mjp/home.html>.
6. After numerous hearings, much study and extended debate, the Commission issued its final recommendations in June 2002, which were adopted by the ABA House of Delegates on August 12, 2002. *See MJP Report, supra*.
7. Among the recommendations approved by the ABA House of Delegates were amendments to Model Rule 5.5 that relax previously existing constraints on cross-border practices (MR 5.5 is available at http://www.abanet.org/cpr/mrpc/rule_5_5.html, and the comments are available at http://www.abanet.org/cpr/mrpc/rule_5_5_comm.html), amendments to Model

Rule 8.5 that subject lawyers providing legal services in a state to the disciplinary authority of that state regardless of the attorney's state of licensure, and a Model Rule for Temporary Practice by Foreign Lawyers that allows foreign counsel to provide legal services on a temporary basis in the United States in certain circumstances that closely parallel the permitted cross-border practices authorized by Model Rule 5.5. Additionally, the ABA House of Delegates approved a number of other Model Rule revisions and new Model Rules intended to relax the UPL restrictions that exist in various jurisdictions, including amended Model Rule 6A and proposed Model Rule 22 (promoting reciprocal disciplinary enforcement by a state in which the attorney has practiced and the state in which the attorney is licensed), a Model Rule on "Pro Hac Vice Admission" with respect to practice before courts and tribunals of other states, a Model Rule on "Admission by Motion" under which an attorney can pursue permanent admission to another jurisdiction's bar without taking its bar examination, and promotion of the states' adoption of a Model Rule for the "Licensing of Legal Consultants" that permits a counselor outside the United States to advise American clients about the laws of the counselor's home nation. For a detailed description of the Commission's recommendations, *see MJP Report, supra*.

8. At the ABA Midyear Meeting, February 12, 2007, the House of Delegates responded to the calls to allow lawyers displaced by major disasters to temporarily move their practices to other jurisdictions and to allow lawyers from outside the major disaster area to provide *pro bono* legal services within the major disaster area. New language was added to Comment 14 of Model Rule 5.5 and the newly adopted rule was entitled "Model Court Rule on Provision of Legal Services Following Determination of Major Disaster," *see* pages 11-14, *infra*.

B. ABA MODEL RULE 5.5, AS AMENDED IN 2002, AFFIRMATIVELY PERMITS CERTAIN CROSS-BORDER PRACTICES PERFORMED ON A TEMPORARY BASIS

1. The focus of these materials is the effect of Amended Model Rule 5.5 (now titled "Unauthorized Practice of Law; Multijurisdictional Practice," available at http://www.abanet.org/cpr/mrpc/rule_5_5.html) on outside legal counsel providing legal services to clients engaged in cross-border business. The model rule is written from the perspective of the state in which the practitioner is not admitted to practice, and the model rule uniformly requires, as a condition to any

permitted multijurisdictional conduct, that the lawyer not be suspended from practice or disbarred in any other jurisdiction.

2. Amended Model Rule 5.5 clarifies that certain actions remain prohibited:
 - 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." *Model Rule 5.5(a)*.
 - b. "A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) . . . 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." *Model Rule 5.5(b)*.
3. Amended Model Rule 5.5(c) affirmatively authorizes certain multijurisdictional practices conducted on a temporary basis:

(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:

- (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 such 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. *Model Rule 5.5(c)*.

Comment 5 to Model Rule 5.5, however, states that these four areas of permitted, temporary practice are intended to be examples of authorized cross-border practice: "[t]he fact that conduct is not so identified does not imply that the conduct is or is not authorized."

4. Additionally, Model Rule 5.5(d)(2) permits in-house counsel, if licensed in one United States jurisdiction and not suspended or disbarred from practice in any jurisdiction, to perform legal services in the state to the "lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission."
5. Moreover, Model Rule 5.5(d)(2) states that an attorney licensed in another jurisdiction (and not disbarred or suspended from practice elsewhere) may provide services in the state that the lawyer is "authorized to provide by federal law or other law of this jurisdiction."

C. **WHAT CONSTITUTES RENDERING LEGAL SERVICES ON A TEMPORARY BASIS THAT REASONABLY RELATE TO THE LAWYER'S PRACTICE IN THE JURISDICTION IN WHICH THE LAWYER IS ADMITTED TO PRACTICE?**

1. The Commission's greatest departure from common law and existing UPL restrictions affecting transactional lawyers lies in Subsection (c)(4) of Model Rule 5.5, which permits a practitioner licensed in one state to provide legal services, on a temporary basis, in other states 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." An earlier version of subsection (c)(4) proposed by the Commission in its November 2001 interim report had limited cross-border transactional practice to non-litigation work ancillary to the lawyer's representation of a client in the jurisdiction in which the lawyer was licensed to practice law. After significant testimony by transactional lawyers (represented by ACREL, the ABA Business Law Section, the ABA Real Property, Probate and Trust Law Section, and other organizations), the Commission ultimately recognized that permitted cross-border

practices should not be dependent upon the lawyer's prior representation of the client in the lawyer's state of licensure.

2. In its report, the Commission did not state, explicitly, what constitutes a reasonable relationship to the lawyer's practice in his or her state of licensure. Rather, the Commission stated, in Comment 14 to Model Rule 5.5, that a "variety of factors evidence such a relationship," citing as examples that the client may have previously engaged the lawyer in question, the client may be a resident of or have substantial contacts in the lawyer's home state, the matter at issue may have "significant connection" with the lawyer's home state or "when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each."
3. Comment 5 to Model Rule 5.5 states that "continuous presence" in a jurisdiction "may be systematic and continuous even if the lawyer is not physically present" in the state, and a lawyer not licensed in the state "must not hold out to the public or otherwise represent that the lawyer is admitted to practice law" in the host jurisdiction.
4. Comment 6 further states that there "is no single test to determine whether a lawyer's services are provided on a 'temporary basis,'" given that professional advice may be temporary "even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation."

D. PRACTICE TIPS FOR THE REAL ESTATE ATTORNEY ENGAGED IN CROSS-BORDER PRACTICE

1. Practitioners must be mindful that Model Rule 5.5., as amended, only applies in those United States jurisdictions that have adopted the amended rule, although that is getting easier because the District of Columbia and most states have adopted some form of Model Rule 5.5 (*see* paragraph 2, *infra*). The Commission affirmed in its report its belief that "the principle of the regulation of the practice of law by the state judicial branch of government, which includes jurisdictional limits on the legal practice, should be preserved. . . ." *MJP Report*, at 13.

2. As of October, 2007, the ABA reported that that the revision of Model Rule 5.5 on multijurisdictional practice, and the related amendments to Model Rule 8.5 on disciplinary authority in cases involving cross-border practice, have been adopted and are effective in form identical to or substantially similar to the 2002 Model Rule Revisions in the highest courts of the District of Columbia and 34 states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Washington, and Wyoming. Three states have adopted one but not the other: Montana, and Wisconsin have adopted Model Rule 8.5 but the adoption Model Rule 5.5 is still pending in Montana, while in Wisconsin it has been recommended for adoption; and Alabama has adopted Model Rule 5.5 but is still studying Model Rule 8.5. Recommendations to adopt the model rule revisions in form identical or substantially similar to the 2002 Model Rule Revisions are pending in the highest courts of six states: Illinois, Kentucky, Maine, Michigan, New York, and Virginia. MJP Study Committees in two other states have recommended adoption of rules identical or similar to the 2002 Model Rules: Alaska and Vermont. Five other jurisdictions have created study committees to consider the 2002 Model Rules revisions: Hawaii, Mississippi, Tennessee, Texas, and West Virginia. For a summary of the status of implementation of revised Model Rule 5.5 in the various United States jurisdictions as of October 16, 2007, *see* the ABA table available at <http://www.abanet.org/cpr/mjp/quick-guide-5.5.pdf> (adoption of Model Rule 5.5 is still listed as pending in Connecticut). For a more detailed statement of the status of the various jurisdictions' implementation of Model Rule 5.5, Model Rule 8.5 and Model Rule for Temporary Practice by Foreign Lawyers, as of October 15, 2007, *see* the ABA table available at <http://www.abanet.org/cpr/mjp/impl-mjp-rules07.pdf> (which includes state specific websites). For a summary description of the implementation of Model Rule 8.5, *see* the ABA table available at http://www.abanet.org/cpr/mjp/8_5_quick_guide.pdf. Each of these summary tables is regularly updated and posted to the Commission's website, <http://www.abanet.org/cpr/mjp/home.html>.
3. Because the separate jurisdictions' review and implementation processes for revised Model Rule 5.5, and the corresponding revisions to Model Rule 8.5, are

ongoing, the real estate practitioner, before providing advice with respect to a transaction that involves the laws of, parties related to or property in another state, should consult the current status of such other state's implementation of the Model Rule revisions. The ABA tables included in these materials are an excellent source of information.

4. Furthermore, as noted by the Commission, "restrictions on unauthorized practice of law are also embodied in laws and rules that differ from state to state," such that care must be exercised by the practitioner venturing across state borders to ensure that appropriate legislative reform has been coupled with adoption of the Model Rules. *MJP Report*, at 23. The ABA maintains a summary chart that provides some guidance in this area: <http://www.abanet.org/cpr/mjp/impl-mjp-rules07.pdf>.
5. Commentators on the Commission's Model Rule revisions have noted that revisions to Model Rule 8.5 (which subjects the cross-border lawyer to the disciplinary authority of both the lawyer's home state and the state in which the lawyer provides legal advice and includes choice of law provisions governing the issue of which state's disciplinary rules apply) appear to be the "price that lawyers must pay for the opportunity for limited interstate practice." ABA/BNA Lawyers' Manual on Professional Conduct, *Conference Report*, August 14, 2002. (Note that, even in-house lawyers, under revised Model Rule 8.5, would be subject to the disciplinary authority of the host state, and in-house counsel must be mindful that they may still be subject to the host state's licensing and registration requirements. *Model Rule 5.5, comment 17*). A complete compilation of amended Model Rule 8.5, and the Comments thereto, are set forth in Appendix C to the *MJP Report*.
6. As the Commission cautions, "in the context of determining whether work performed outside the lawyer's home state is reasonably related to the lawyer's practice in the home state, as is true in the many other legal contexts in which a 'reasonableness' standard is employed, some judgment must be exercised." *MJP Report*, at 29.
7. Real estate lawyers must remain mindful of a separate ethical standard, set forth in Model Rule 1.1 (and adopted in most, if not all, states), which mandates that a "lawyer shall provide competent representation to a client. Competent

representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation." As noted in Raymond J. Werner, *Licensed in One State, But Practicing in Another: Multijurisdictional Practice*, PROBATE AND PROPERTY (March/April 2003) 6, at 9:

If the lawyer knows or is concerned that a certain legal issue may be treated differently under the law of a state that governs a transaction, the lawyer is duty bound to investigate that issue and react accordingly. Acquiring knowledge of relevant law and using it are merely aspects of the professionalism that sophisticated clients expect and to which all clients are entitled. Moreover, the lawyer has an obligation to explain matters to the client so as to enable the client to make an informed decision regarding matters that are the subject of the representation. *Model Rule 1.4(b)*. If the lawyer believes that there are limits on the lawyer's ability to represent the client, the lawyer must so inform the client so the client can decide how to proceed.

The prudence of informing the client that the lawyer is not licensed in a particular jurisdiction was reinforced by the Commission in Comment 20 to amended Model Rule 5.5: "In some circumstances, a lawyer who practices law in this jurisdiction . . . may have to inform the client that the lawyer is not licensed . . . in this jurisdiction. For example, that may be required when the representation occurs primarily in the jurisdiction and requires knowledge of the laws of this jurisdiction. See Rule 1.4(b)."

8. Engaging local counsel, while recognized in Model Rule 5.5.(c)(1) as a legitimate safe harbor, still requires that local counsel "actively participate in and share responsibility for the representation of the client." *Model Rule 5.5, Comment 8*.
9. An out-of-state lawyer engaging in a representation involving litigation or arbitration is, of course, treated differently by Model Rule 5.5. While it often is relatively easy for an out-of-state lawyer engaged to represent a client in a court proceeding to be admitted *pro hac vice*, the states have had a great deal of difficulty in determining how to handle out-of-state lawyers representing clients in arbitrations. For example, Rule 1-3.11 of the Rules Regulating The Florida Bar requires out-of-state lawyers to file a statement with The Florida Bar in all

domestic arbitration proceedings, pay a \$250 fee, and only engage in domestic arbitration proceedings in Florida no more than three times in a 365 day period.

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES
February 12, 2007

RECOMMENDATION

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

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

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

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 of 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 that 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.

Comment

[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), this 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 State jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the

emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services 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 under paragraph (b) to appear in all or designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by 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.