

SUPPORTING MEMORANDUM In the
Matter of the Petition For
Providing Legal Services
Following a Determination of
Major Disaster

TO: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Filed with the Clerk of Court A. John Voelker
Clerk of Supreme Court
110 E. Main Street
Suite 215
Madison, WI 53703

The Board of Administrative Oversight (BAO), State Bar of Wisconsin, and Office of Lawyer Regulation (OLR) provide the following memorandum in support of the petition to provide for legal services after determination of a major disaster.

Petitioners seek to create Supreme Court Rule (SCR) 23.03, providing for legal services following the determination of a major disaster, and a Wisconsin Comment to SCR 20:5.5, referencing proposed SCR 23.03 (Appendix A). Proposed SCR 23.03 would allow out of state lawyers to

practice pro bono temporarily in Wisconsin after a major disaster in Wisconsin, and to provide legal services in Wisconsin related to the lawyer's practice in a jurisdiction affected by a major disaster.

After Hurricanes Katrina and Rita in 2005, the American Bar Association developed and adopted a model rule on legal services following a major disaster. Petitioners recommend adoption of this rule in the form provided in Appendix A.

In recommending adoption of the ABA Model Rule, ABA President Stephen N. Zack noted an August 2007 resolution of the Conferences of Chief Justices that urged each state to consider adopting "a rule setting forth an orderly manner for the provision of legal services following determination of major disaster." Furthermore, President Zack stated:

While the Major Disaster Rule was adopted in the wake of a disaster created by hurricanes, it is important to remember there are many other types of natural and catastrophic disasters that can occur and for which there is a desperate need for preparedness. The Major Disaster Rule is intended to address both natural and catastrophic disaster (e.g. earthquakes, floods, tornadoes, kidnappings, shootings and the detonation of "dirty bombs").

The proposed rule vests authority in the Supreme Court to determine when an emergency due to a major disaster

exists. When the Court determines an emergency exists in Wisconsin, out of state lawyers may provide pro bono services under supervision of a court-approved program.

When the highest court in another jurisdiction determines that an emergency exists there, the Supreme Court of Wisconsin may also make that determination. Then, lawyers from that jurisdiction may provide legal services in Wisconsin arising out of and reasonably relating to the lawyer's practice in that jurisdiction.

Out of state lawyers practicing in Wisconsin under the proposed rule would be required to register with the Clerk of the Supreme Court and Court of Appeals within 30 days of beginning to provide services and to notify clients of the authority and limitations on the authority to practice in Wisconsin. These lawyers would be subject to the disciplinary authority of the Supreme Court of Wisconsin.

The proposed Wisconsin Comment to SCR 20:5.5 would reference proposed SCR 23.03.

Petitioners believe the proposed rule would assist persons in need of legal assistance during a major disaster, and would not adversely affect any person's procedural or substantive rights. The proposed rule requires supervision of out of state lawyers providing pro bono services when the major disaster occurs in Wisconsin;

and when the disaster occurs in another jurisdiction, the proposed rule limits services to those arising out of and relating to representation in the other jurisdiction. These requirements adequately protect the public.

The ABA Standing Committee on Client Protection reported as of November 17, 2010, that 9 jurisdictions have adopted a rule, 20 jurisdictions are considering adoption, and 5 jurisdictions decided not to adopt the rule.

The proposed rule would require out of state lawyers to register with the Clerk of the Supreme Court and Court of Appeals. The Clerk would be required to keep records of registrations.

The proposed rule should not have any significant fiscal impact. While the rule provides that pro hac vice fees would be waived, fees for pro hac vice applications would not otherwise be affected.

Petitioners do not believe there are any related petitions pending before the Court.

Petitioners have consulted the Director of State Courts, the Clerk of Supreme Court and Court of Appeals and the State Bar of Wisconsin prior to submitting the petition.

Respectfully submitted this ___ day of _____, 2011.

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