

## RESOLUTION ELF-01-2007

### DIGEST

Provision of Legal Services Following Determination of Major Disaster

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that the Legislature add Section 6064.2 to the Business and Professions Code to read as follows:

1     §6064.2

2             (a) Determination of existence of major disaster. Solely for purposes of this Section,  
3 upon application by the Board of Governors of the State Bar of California, the Supreme  
4 Court shall determine when an emergency affecting the justice system, as a result of a  
5 natural or other major disaster, has occurred in:

6             (1) California and whether the emergency caused by the major disaster affects the  
7 entirety or only a part of California, or

8             (2) another jurisdiction but only after such a determination and its geographical  
9 scope have been made by the highest court of that jurisdiction. The authority to engage in  
10 the temporary practice of law in California pursuant to subdivision (c) shall extend only to  
11 lawyers who principally practice in the area of such other jurisdiction determined to have  
12 suffered a major disaster causing an emergency affecting the justice system and the  
13 provision of legal services.

14             (b) Temporary practice in California following major disaster. Following the  
15 determination of an emergency affecting the justice system in California pursuant to  
16 subdivision (a), or a determination that persons displaced by a major disaster in another  
17 jurisdiction and residing in this jurisdiction are in need of pro bono services and the  
18 assistance of lawyers from outside of California is required to help provide such assistance,  
19 a lawyer authorized to practice law in another United States jurisdiction, and not disbarred,  
20 suspended from practice or otherwise restricted from practice in any jurisdiction, may  
21 provide legal services in California on a temporary basis. Such legal services must be  
22 provided on a pro bono basis without compensation, expectation of compensation or other  
23 direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and  
24 supervised through an established not-for-profit bar association, pro bono program or legal  
25 services program or through such organization(s) specifically designated by the Supreme  
26 Court.

27             (c) Temporary practice in California following major disaster in another jurisdiction.  
28 Following the determination of a major disaster in another United States jurisdiction, a  
29 lawyer who is authorized to practice law and who principally practices in that affected  
30 jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from  
31 practice in any jurisdiction, may provide legal services in California on a temporary basis.  
32 Those legal services must arise out of and be reasonably related to that lawyer's practice of  
33 law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

34             (d) Duration of authority for temporary practice. The authority to practice law in  
35 California granted by subdivision (b) shall end when the Supreme Court determines that the  
36 conditions caused by the major disaster in California have ended except that a lawyer then

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

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

45 (1) pursuant to the court's pro hac vice admission rule and, if such authority is  
46 granted, any fees for such admission shall be waived; or

47 (2) if the Supreme Court, in any determination made under paragraph (a), grants blanket  
48 permission to appear in all or designated California courts to lawyers providing legal  
49 services pursuant to paragraph (b). If such an authorization is included, any pro hac vice  
50 admission fees shall be waived.

51 (f) Disciplinary authority and registration requirement. Lawyers providing legal services  
52 in California pursuant to subdivisions (b) or (c) are subject to the disciplinary authority of  
53 the Board of Governors of the State Bar and the Supreme Court and the Rules of  
54 Professional Conduct adopted pursuant to Division 3, Chapter 4 of the California Business  
55 and Professions Code. Lawyers providing legal services in California under subdivision (b)  
56 or (c) shall, within 30 days from the commencement of the provision of legal services, file a  
57 registration statement with the State Bar. The registration statement shall be in a form  
58 prescribed by the State Bar. Any lawyer who provides legal services pursuant to this Section  
59 shall not be considered to be engaged in the unlawful practice of law in California.

60 (g) Notification to clients. Lawyers authorized to practice law in another United States  
61 jurisdiction who provide legal services pursuant to this Section shall inform clients in this  
62 California of the jurisdiction in which they are authorized to practice law, any limits of that  
63 authorization, and that they are not authorized to practice law in California except as  
64 permitted by this Section. They shall not state or imply to any person that they are otherwise  
65 authorized to practice law in California.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: There is no rule governing the practice of law by out of state lawyers after an emergency has affected the justice system either in California or in the lawyer's home state.

This Resolution: This resolution is based on American Bar Association Model Rule 104, which was approved by the ABA on February 12, 2007. It provides a structure for and limits on the ability of an out of state attorney to practice in California after an emergency affecting the justice system has occurred either in California or in another jurisdiction.

The Problem: 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. All of the California disciplinary rules would apply to lawyers from other jurisdictions practicing temporarily in California after an emergency.

Further information and commentary can be found at:  
[www.abanet.org/leadership/2007/midyear/docs/journal/hundredfour.doc](http://www.abanet.org/leadership/2007/midyear/docs/journal/hundredfour.doc)

#### IMPACT STATEMENT

This resolution would not affect any other statute, regulation, or law.

AUTHOR AND/OR PERMANENT CONTACT: Patrick H. Fabian, Law Office of Patrick H. Fabian, 101 Howard Street, Suite 310, San Francisco, CA 94105, 415.543.5443,  
[phf@phfabian.com](mailto:phf@phfabian.com)

RESPONSIBLE FLOOR DELEGATE: Patrick H. Fabian