

Request for Written Comments on Proposed Amendment to the South Carolina Appellate Court Rules

The Commission on Lawyer Conduct requests that this Court consider adopting the American Bar Association's Model Court Rule on the Provision of Legal Services Following Determination of a Major Disaster with minor changes. The language the Commission proposes for adoption as **Rule 426** of the South Carolina Appellate Court Rules, along with a recommended amendment to the comments to Rule 5.5 of the Rules of Professional Conduct contained in Rule 407, SCACR, is attached.

Persons or entities desiring to submit written comments regarding the Commission's proposal may do so by filing an original and seven (7) copies of their written comments with the Supreme Court. The written comments must be sent to the following address:

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

The Supreme Court must receive any written comments by May 16, 2014. Additionally, the Court requests that an electronic version of the comments in Microsoft Word or WordPerfect be e-mailed to **rule426@sccourts.org** by that same date.

Columbia, South Carolina
April 16, 2014

RULE 426 **PROVISION OF LEGAL SERVICES FOLLOWING** **DETERMINATION OF MAJOR DISASTER**

(a) Determination of Existence of Major Disaster. Solely for purposes of this Rule, the Supreme 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, 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

designated by the Supreme 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, 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 the Supreme 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. 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 the Supreme 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 Rule 404 and, if such authority is granted, any fees for such admission shall be waived; or
- (2)** if the Supreme 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 the Supreme 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 the Supreme Court. The registration statement shall be in a form prescribed by the Supreme 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, of 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 14 to Rule 5.5, RPC, Rule 407, SCACR, would be amended as follows:¹

[14] Paragraph (c)(3) requires that the services arise out of or be reasonably related to the lawyer's pre-existing representation of a client in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work for the client might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issue 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. Lawyers not otherwise authorized to practice law in this jurisdiction desiring to

¹ Additions to the comment are underlined.