

# News

## Admissions

### State Courts Relax UPL Restrictions To Help Attorneys Displaced by Katrina

**N**ow, crying won't help you, praying won't do you no good

*When the levee breaks, mama, you got to move.*

—"Memphis" Minnie McCoy, *When the Levee Breaks* (1929)

It wasn't long after Hurricane Katrina ripped through the Gulf Coast that the online message board at the Louisiana State Bar Association began lighting up with pleas from clients trying to reach lawyers, along with messages from attorneys notifying clients and each other that they were safe and had fled to areas that were spared the worst of the storm's wrath.

Although many refugee lawyers found temporary housing and offices in their home state, thousands more were forced to flee the affected states and now face the arduous task of putting their lives and practices back together while living in a jurisdiction where they are not licensed to practice law.

The lack of a local license will not be an insuperable problem for many of these lawyers, however, because more than a dozen states have issued or are contemplating emergency orders waiving their unauthorized practice rules and allowing lawyers displaced by Hurricane Katrina to carry on their law practice in those states without being licensed there.

**Heart of Texas.** Texas was the first state to respond to the legal diaspora. In an order approved Sept. 2—just five days after Katrina made landfall on the Gulf Coast—the Texas Supreme Court issued an order allowing Louisiana, Mississippi, and Alabama lawyers displaced by the hurricane to practice law in Texas for 30 days from the date of the order without having to worry they might be practicing law in Texas illegally. The only condition is that the lawyers must be in good standing in their home state.

The court also directed the Texas State Bar to withhold suspension notices for members in the affected regions who missed dues payments and to waive late fees for lawyers from those same areas who were planning to take the Texas bar examination but had not met the Aug. 30 deadline for paying registration fees.

"We're acting to honor the immediate needs of clients whose lawyers have been forced from their offices by the vast destruction Katrina inflicted," Chief Justice Wallace B. Jefferson said in an accompanying press release. The court indicated that it plans to consider additional measures to help Katrina-displaced attorneys.

Although some have estimated the number of lawyers who have relocated to Texas to be 1,000, the chair of the Texas State Bar's Katrina Relief Task Force,

Kelly Frels, told BNA he has received estimates "from those out in the field" that the figure is closer to 2,500. Frels, a former Texas State Bar president who is with Bracewell Giuliani LLP in Houston, said that his office alone has taken in eight displaced lawyers.

The state bar is also reviewing possible long-term solutions, Frels said, such as registration procedures to keep track of displaced out-of-state lawyers who have come to Texas.

**'Magnificent Gesture.'** Texas's open-door policy is a "magnificent gesture," said displaced lawyer Bob E. Kerrigan Jr., who heads the civil litigation department of Deutsch Kerrigan & Stiles, New Orleans. Kerrigan told BNA that he and 14 other DK&S lawyers currently are working out of a temporary office in Houston that was secured for them by the Houston law firm Beirne, Maynard & Parsons. "The extension of good will has been great," he remarked.

Kerrigan said that although the firm was forced to shut down offices in New Orleans and Gulfport, Miss., it was able to relocate many of its lawyers and staff to satellite offices in Baton Rouge, Lafayette, and Monroe, La., and in Hattiesburg, Miss. Nonetheless, Kerrigan said, DK&S lawyers are scattered across the country, including Tennessee, Maryland, Florida, and Arkansas.

**"We run a paperless, laptop-driven office so we were able to continue without missing a beat."**

HOWARD SHAPIRO  
PROSKAUER & ROSE

"Our New Orleans office is high, dry, and not damaged," Kerrigan said, "and we were able to park our [computer] servers in Lafayette." This means that DK&S lawyers can continue to work off-site, he said.

**High Watermark.** For some lawyers and law firms, the issue is not so much when they will be able to move back into their offices as where they will live for the foreseeable future.

Although electricity is being restored to the central business district in New Orleans and officials are starting to open up the downtown area, there remain "formidable personal obstacles" to moving back, according to Howard Shapiro of Proskauer Rose LLP's New Orleans office.

In an interview with BNA from the firm's offices in Boca Raton, Fla., Shapiro said that many lawyers and staff from his office lost their homes to flooding. "It's been estimated that at least two-thirds of our group have had water up to their ceilings," Shapiro said, noting that his own house was under six feet of water for days.

Whether these homes are renovated or must be razed and rebuilt, Shapiro said, it will be quite some time before his staff has a place to return to.

**'Laptop' Practice.** The first two days after the storm hit were terrifying, Shapiro recounted, as his office scrambled to account for its lawyers and employees. "Cell and land phones were obliterated," Shapiro said, so the firm turned to instant messaging and BlackBerry to track everyone down.

The resumption of business from the Boca Raton office was less difficult. "We transferred our servers to the New York main office right away, so e-mail was not impacted," Shapiro said. Moreover, he added, "we run a paperless, laptop-driven office so we were able to continue without missing a beat."

The multijurisdictional practice issues are less critical for his group, Shapiro continued, because their practice is concentrated in federal labor law and their clientele is usually from out of state anyway. Shapiro is a former chair of the ABA's Labor and Employment Law Section.

**Matter of Life and Death.** For certain lawyers forced to leave New Orleans, the need for swift resumption of their law practice from an out-of-state location was literally a matter of life and death for clients.

"We couldn't get to our files," said Richard Bourke of the Louisiana Capital Assistance Center (LCAC), a nonprofit law office that represents indigent criminal defendants facing a possible death penalty in Louisiana. Many of the center's clients had looming trial dates, post-conviction filing deadlines, or even dates for execution, Bourke told BNA. The LCAC ultimately set up shop in Houston, he said, using office space and equipment donated by the Gulf Region Advocacy Center, a Texas-based nonprofit group.

Bourke noted that the Texas emergency order did not benefit him personally because he is licensed in Texas. As an Australian foreign national, Bourke cannot obtain Louisiana bar membership due to that state's rules that do not permit nonimmigrant aliens to take the Louisiana bar examination. See *LeClerc v. Webb*, 419 F.3d 405, 21 Law. Man. Prof. Conduct 401 (5th Cir. 2005).

However, Bourke said, other lawyers in the LCAC are not licensed in Texas and will be working under the safe harbor carved out by the Texas Supreme Court. Bourke said that although he hoped this is a temporary solution and that the 30-day period may be enough, events make anyone's timetable uncertain. "Even President Bush is advising people against returning," Bourke noted. Indeed, as yet another tropical storm was approaching the Gulf of Mexico, New Orleans Mayor C. Ray Nagin Sept. 19 called for a mandatory evacuation of the people who had already returned to that city.

**Other States Follow Suit.** After Texas rolled out the welcome mat for displaced lawyers, ABA President Michael S. Greco urged the Conference of Chief Justices to push for similar action in other states. The ABA also set up a clearinghouse on its Web site dedicated to Katrina news, resources, and information.

Other states have in fact followed Texas's lead with a variety of relief efforts to ease Katrina's impact on lawyers and other victims of the storm. Some, like Arkansas and Alabama, adopted similar unauthorized practice exemptions for lawyers fleeing the three affected states; the main difference is that these two states extended the time frame to 60 days.

The Tennessee Bar Association Sept. 14 petitioned its state supreme court to grant a comparable 60-day waiver to lawyers in good standing from Louisiana, Mississippi, and Alabama who were displaced by Hurricane Katrina.

Several state supreme courts enacting special emergency rules have tacked on additional qualifications not included in the Texas order. For example, Indiana and Ohio welcome displaced lawyers to set up shop provided they do so "in association" with a local licensed attorney who is in good standing. The Ohio exception is set to expire on March 15, 2006; Indiana's exemption lasts until June 30, 2006.

### Texas Rule on Displaced Lawyers

*The Texas Supreme Court Sept. 2 announced that Louisiana, Mississippi, or Alabama lawyers displaced by Hurricane Katrina may continue to represent their clients from temporary offices in Texas for 30 days:*

"Until further order of this Court, and notwithstanding Texas Government Code chapter 81, subchapter G, an attorney holding a valid law license issued by Louisiana, Mississippi, or Alabama, who is in good standing with the attorney's respective state bar, and who is displaced from the attorney's home jurisdiction due to Hurricane Katrina, is permitted to practice law for 30 days from the date of this order from a location in Texas as if the attorney were located in the state in which the attorney is licensed."

At least three states have made clear that displaced lawyers must not use emergency relief effort as an opportunity to drum up local business in the host state. For example, lawyers entering Arizona have a green light so long as they limit their activities to existing clients or clients who have also fled the three affected states. South Carolina likewise assures displaced lawyers that they will not run afoul of unauthorized practice restrictions if they handle "their client base" from the Palmetto State. And Pennsylvania's order explains that displaced lawyers who come to that state must limit their practice "to furnishing legal services to their clients with respect to actions or matters arising out of the jurisdictions where they are licensed."

**Reciprocity and Rule 5.5.** Some states are looking at reciprocity as a possible solution. Chief Justice Leah Ward Sears of the Georgia Supreme Court Sept. 13 sent letters to the supreme courts of Alabama, Louisiana, and Mississippi asking them to consider adopting a reciprocal admission-on-motion rule similar to the one in effect in Georgia. Sears pointed out that a reciprocity concord would allow lawyers in these states to be admitted to the Georgia bar immediately once they receive a certification of fitness to practice.

Sears also advised that Georgia Rule of Professional Conduct 5.5 on multijurisdictional practice, which was adopted last year, permits out-of-state lawyers to practice in Georgia on a temporary basis without contraven-

ing the state's unauthorized practice rules. According to Sears, this rule can be used to accommodate lawyers

from Alabama, Louisiana, or Mississippi "who need a

## States Take Steps to Accommodate Practice by Out-of-State Lawyers After Hurricane Katrina

*The following states have made special accommodation for lawyers who in Katrina's wake have been forced to relocate in a different jurisdiction:*

**Alabama:** The supreme court Sept. 12 released a directive stating that for the next 60 days Louisiana and Mississippi lawyers uprooted by Katrina may practice in Alabama as if they were licensed there. See <http://www.alabar.org/katrina/sco.cfm>.

**Arizona:** On Sept. 12, Arizona issued a directive granting displaced lawyers from Mississippi, Louisiana, and Alabama a six-month pass to practice in Arizona provided that the lawyers limit their representation to clients who were also displaced by the storm and those with whom the lawyer had an existing attorney-client relationship. See <http://supreme.state.az.us/orders/admorder/orders05/2005-63corr.pdf>.

**Arkansas:** The supreme court Sept. 9 issued an emergency order allowing lawyers from the affected three states to practice law in Arkansas for 60 days "as if the attorney were located in the state in which the attorney is licensed." See <http://courts.state.ar.us/opinions/2005b/20050909/05-973.html>.

**Florida:** The supreme court reacted to the disaster by announcing Sept. 14 that its rule amendments relaxing the ban against multijurisdictional practice, which were scheduled to go into effect Jan. 1, 2006, will instead take effect immediately. See [http://www.floridasupremecourt.org/pub\\_info/summaries/briefs/04/04-135/Filed\\_09-14-2005\\_EmergencyOrder.pdf](http://www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-135/Filed_09-14-2005_EmergencyOrder.pdf).

The state bar has posted information on its Web site for lawyers who have temporarily moved to Florida, explaining what they may and may not do under the Florida rules. See <http://www.floridabar.org/tfb/TFBLawReg.nsf/9dad7bbda218afe885257002004833c5/be2feb5cefe943a38525707c004ef122?OpenDocument>.

**Indiana:** The supreme court Sept. 9 declared that lawyers in good standing from the affected areas are eligible to receive a "temporary provisional license" allowing them to practice in Indiana until June 30, 2006. Lawyers seeking the license need not jump through the normal procedural hoops or pay the standard \$800 fee, but are required to associate with local counsel. See <http://www.in.gov/judiciary/orders/other/2005/katrina.pdf>.

**Mississippi:** On Sept. 9, the supreme court granted the state bar's petition to allow lawyers from other jurisdictions to enter the state to provide pro bono legal assistance to Katrina's victims. There is no time limit on the order, but the legal assistance must be limited to "rights, remedies, claims, defenses, injuries or damages resulting from Hurricane Katrina or its aftermath or evacuation." See <http://www.mssc.state.ms.us/news/126579.pdf>.

**Missouri:** On Sept. 20 the supreme court granted lawyers from Alabama, Louisiana, and Mississippi a temporary waiver from the rules governing admission to the state bar, and put into effect its Rule of Professional Conduct 5.5 on multijurisdictional practice, which had been scheduled to take effect Jan. 1, 2006. See <http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/5f345dd58bbfa8a68625708200540ec1?OpenDocument>.

**Ohio:** The supreme court Sept. 15 announced that lawyers in good standing from the three affected states who flee to Ohio may practice law there until March 15, 2006, provided that they do so "in association with an Ohio lawyer who is in good standing." See [http://www.sconet.state.oh.us/Atty\\_Reg/katrinaOrder\\_091505.pdf](http://www.sconet.state.oh.us/Atty_Reg/katrinaOrder_091505.pdf).

**Pennsylvania:** In an order dated Sept. 19, the supreme court created a nine-month period during which lawyers displaced by Katrina may relocate in Pennsylvania, so long as they limit their services to matters arising out of their home-state practice. Affected lawyers must also submit an affidavit to the board of law examiners stating where they are licensed and affirming that they are in good standing there. See <http://www.aopc.org/OpPosting/Supreme/out/377spct.1.pdf>.

**South Carolina:** The supreme court issued a directive Sept. 13 notifying its lawyers that they may offer office space to lawyers from the three affected states without thereby facilitating unauthorized practice. The court also stated that it is not unauthorized practice for the displaced lawyers to handle their "client base" from a South Carolina location. Furthermore, out-of-state lawyers may gain pro hac vice admission in specific matters without paying a fee and need apply for such admission only once, rather than having to submit an application for each appearance as is the usual standard. See <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=286>.

**Texas:** The supreme court Sept. 2 entered an emergency order granting an unauthorized practice exemption for lawyers in good standing who were displaced from their home jurisdiction by Hurricane Katrina. A qualifying displaced lawyer may practice law in Texas for 30 days, the order says, "as if the attorney were located in the state in which the attorney is licensed." See [http://www.texasbar.com/Template.cfm?Section=Press\\_Releases&Template=/ContentManagement/ContentDisplay.cfm&ContentID=12646](http://www.texasbar.com/Template.cfm?Section=Press_Releases&Template=/ContentManagement/ContentDisplay.cfm&ContentID=12646).

temporary professional home in order to regroup and keep their practices alive.”

The rule allows out-of-state lawyers to provide legal services in Georgia on a temporary basis if they act in association with a Georgia lawyer who actively participates in the matter, if they expect to be admitted pro hac vice, or if the legal services arise out of or are reasonably related to their home state practice.

**Accelerated MJP Reform.** In Florida, lawyers seeking temporary sanctuary to keep their practices afloat must likewise look to that state’s rule governing multijurisdictional practice.

In May 2005, the Florida Supreme Court amended its rules governing unauthorized practice to allow lawyers licensed elsewhere to enter the state and perform limited legal services without joining the state bar. See 21 Law. Man. Prof. Conduct 262. Florida Rule of Professional Conduct 4-5.5, patterned in part on ABA Model Rule 5.5, was not scheduled to go into effect until Jan. 1, 2006; however, after Katrina, the court moved up the effective date to Sept. 14.

Under Florida’s rule, lawyers admitted elsewhere may enter the Sunshine State and practice there on a temporary basis if they:

- associate with a Florida lawyer who actively participates in the matter;
- engage in pre-litigation activity, so long as authorization to appear before a Florida tribunal is reasonably expected;
- render legal services in a pending or potential arbitration, mediation, or other alternative dispute resolution context;
- provide services that “arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice”; or
- provide services “that are governed primarily by international law or the law of a non-U.S. jurisdiction in which the lawyer is a member.”

As was the case in Florida, the Missouri Supreme Court moved up the effective date of its Rule 5.5 on MJP so that it became operative immediately rather than on Jan. 1, 2006. Missouri went further, however, in granting lawyers from the affected states “a temporary waiver” of its rules governing admission to the state bar; the court’s order did not specify precisely what exemptions the waiver will provide.

Mississippi has opened its doors too, but for a different purpose: to encourage lawyers from other states to visit and work free of charge to help hurricane victims. The Mississippi Supreme Court Sept. 9 announced that it will allow lawyers from outside the state to come to Mississippi to provide emergency pro bono services to victims of Hurricane Katrina.

**Federal Practice.** On the federal level, the U.S. Patent and Trademark Office has made clear in a notice posted on its Web site that the PTO allows intellectual property practitioners to practice in any state regardless of their bar status in that jurisdiction. Federal statutes and PTO regulations preempt state licensing requirements so that the standing of a registered practitioner to practice in patent matters before the PTO is not affected by state bar rules, the PTO said. The supremacy of federal law in this area of practice was recognized by the U.S. Supreme Court more than 40 years ago in *Sperry v. Florida*, 373 U.S. 379 (1963).

The PTO’s interpretation is consistent with ABA Model Rule 5.5(d)(2), which contains a specific safe harbor from state unauthorized practice restrictions for lawyers in federal practice. More than 20 states have adopted a version of this rule which recognizes an “authorized by federal law” exception to state licensing requirements.

BY LANCE J. ROGERS

*The PTO’s “Ethics FAQs for Practitioners in Response to Hurricane Katrina” is posted at <http://www.uspto.gov/emergencyalerts/hurricane-katrinafaq.html>.*

*The ABA’s “Materials on Licensing Issues Affecting Lawyers Displaced by Hurricane Katrina and Those Offering Pro Bono Legal Services” is available at <http://www.abanet.org/cpr/KatrinaServices.html>.*

*The ABA’s “Katrina Disaster Resources” page, containing legal information for victims of Hurricane Katrina, is <http://www.abanet.org/katrina/>.*

*The Georgia Supreme Court’s letter to the Louisiana, Mississippi, and Alabama supreme courts urging them to adopt a reciprocity rule is posted at <http://www.gasupreme.us/pdf/Louisiana.pdf>.*

*The Georgia State Bar’s FAQ on Hurricane Katrina issues is available at [http://www.gabar.org/news/ethics\\_faqs\\_for\\_lawyers\\_in\\_response\\_to\\_hurricane\\_katrina/](http://www.gabar.org/news/ethics_faqs_for_lawyers_in_response_to_hurricane_katrina/).*

*The Tennessee Bar Association’s petition to the state supreme court for a 60-day waiver to displaced lawyers from Louisiana, Mississippi, and Alabama may be viewed at <http://www.tba.org/Katrina/scpetition.html>.*