

**LEGAL SERVICES CORPORATION
KATRINA CONFERENCE CALL NOTES
October 31, 2006**

Model Rule 5.8

Tony Barash - ABA

- The ABA standing committee on client protection has prepared a proposed rule in 2 different forms: 1) ethics 2) a model court rule
- It looks like, as of now, the court rule is the preferred vehicle.
- The purpose is to have a model rule that would enable out of state pro bono lawyers to do pro bono work in a state that is affected by a large scale disaster.
- The second part of the rule will allow lawyers who have been displaced to temporarily practice in another state.
- First Part: they used a model that was more or less similar to the Mississippi model. The Standing Committee on Pro Bono and Public Service has prepared a comment memo that addresses some of the identified issues based on the experiences of those in the field. It is being circulated among some ABA entities and they hope to have the memo submitted by November 7th to the Committee.
- They hope to have a proposal for this rule in front of the ABA House of Delegates at the February meeting, so it needs to be filed by November 15th, 2006.
- The salient points of the proposed rule with comments are:
 - o Pro bono does not expect compensation so the lawyer who is coming from out of state would be insulated under this rule from unauthorized practice.
 - o Should apply to the delivery of legal services and that program's limitations.
 - o The lawyer should be in good standing in their admitted jurisdictions and that the services be provided in a recognized program and under the supervision of a lawyer admitted to practice in the jurisdiction and that they are governed by the disciplinary rules of the host jurisdiction.
- People can send their comments in up until November 7th
- The email announcing this call, lists the website where the proposed rule is posted. People are welcome to make comments there.
- If it goes before the House of Delegates in February there will be ample time for people to make comments.

Linda Warren Seely – Memphis Area Legal Services, Inc.

- Are these attorneys covered by the rules of the NLADA?

Tony Barash

- It was concluded that it was the responsibility of the program to determine whether their insurance covered the volunteer.
- It has been Tony's experience that the available insurance covers the volunteer under the attorney in the program, but since these are case specific they decided not to cover this in the rule.
- You can send comments on the rule to Tony at barasha@staff.abanet.org

LSC - June 1 Disaster Conversation and Meeting with the American Red Cross

John Idleman – LSC

- Helaine Barnett recently circulated the notes from the LSC June 1 Disaster Conversation that took place in New Orleans, LA.
- We will circulate them before the next call. **(Please see attached)**
- The notes mention the suggestions made by participants, as well as what LSC is planning on doing in the future.
- Last week Taylor and John met with Juliet Choi, formerly of the Asian American Justice Center, and her co-workers at the American Red Cross National Headquarters.
- Under the national response plan, the Red Cross serves as a primary agency and only non-governmental agency with this designation.
- The Red Cross responds to all types and sizes of disasters.
- There are around 800 chapters nationwide.
- 98% of the organization is volunteer based.
- There is tremendous potential for legal services providers and the Red Cross to work together.
- One of our first objectives will be to link to our respective web pages and help programs become more aware of what the other agencies are doing and the services they provide.
- We are considering sending out a joint letter from LSC and the Red Cross to programs from both sides in order to encourage these programs to work closely together before and after a disaster.
- There is also potential for legal services programs to get lots of materials for their offices about the different services provided by the Red Cross.
- The Red Cross does a lot of community disaster programs.
- It may be possible for trainers to disseminate information and increase awareness about legal services in these trainings for the public.

Juliet Choi – American Red Cross

- There was a feeling from the meeting that immediate collaboration could definitely happen.
- It would be really easy to try and get the existing Red Cross preparedness materials out to the legal aid community.
- Working on knowledge sharing between the two groups is also a priority.
- One small example: the Red Cross has a corporation initiative that allows people to train to be volunteers. Legal aid attorneys could complete this training and it would allow for them to go out and work as a group with Red Cross volunteers after a disaster, which could help all of our communities.
- One of the major takeaways from this meeting was that our client populations (legal services and Red Cross) have many similarities because the disaster and low-income community tend to overlap in many ways.

John Idleman

- Pro bono programs and the ABA should be brought into this process as well.

- Here at LSC we want to seek input from our programs about what they suggest we do to solidify this Red Cross relationship at the local and national levels.

Juliet Choi

- The Red Cross, for example, had a 3 hour meeting with FEMA on Friday. Because they have this access, the Red Cross may be able to build bridges to LSC, the ABA and other legal services groups when it comes to FEMA.
- Working on getting a meeting for John Eidleman with the Office of General Counsel at the Red Cross.
- Juliet is willing to help Helaine Barnett to get a meeting with David Paulison, FEMA Director.
- The Red Cross has come out with new preparedness materials and brochures that are available in Spanish and Vietnamese, and will be coming out in Chinese and Japanese in the next few months. You can order them through your local Red Cross chapter.
- Trying to put together a fact sheet about the LEP community's access to services post-disaster. Trying to get this out early next year. This may be another way the Red Cross can partner with legal services.
- Generally the Red Cross does not do press releases to announce materials that are being disseminated, but there may be a way to address this.

FEMA Recoupment

Heather Godwin – Texas Rio Grande Legal Aid

- The FEMA Answers website (www.femaanswers.org) contains most of this information and the corresponding forms.
- NOLAC has been posting a lot of information about recoupment issues, for example.
- Terry Coble's memo on recoupment has also been helpful.
- Have been able to get together a recoupment page for the FEMA answers web site, which will hopefully be helpful for people filing pro se.
- When you have a client that has already overcome a barrier and established their eligibility, FEMA can come back again and declare them ineligible. If they do not get to an attorney or a case manager, they are going to have major issues.

Ranie Thompson – Southeast Louisiana Legal Services – NOLAC

- Getting the word out to people facing the claims is important.
- Many clients have been sitting on these letters and have not adhered to the timeline about paying or setting up a repayment plan with FEMA, or have failed to notice the reports sent to the credit bureau, etc.
- The FEMA recoupment notices are not providing enough information for people to submit appeals.
- Pro se clients thus far are not getting good results pertaining to their appeals because FEMA is saying they are standing by their initial ruling.

Tracy Figueroa – Texas Rio Grande Legal Aid

- Heard from a TRLA advocate in San Antonio today that FEMA says they will not look at the appeal unless you send in a payment plan or the hardship waiver with the appeal.

Ranie Thompson

- When the notices go out there is no mention of the hardship waiver.
- People who are not in contact with a legal services office or someone with this information are just submitting appeals and running into a wall.
- These will probably be the people who set up the payment plan and do not appeal.
- It is a way for FEMA to pressure people to enter into a repayment agreement.

Terry Coble – Florida Bar Foundation

- FEMA can use administrative offset to recoup. They can also collect Social Security benefits.
- There is an exemption on the first \$9,000.
- As a general rule it is probably a good idea to have clients complain to their federal legislators.

Ranie Thompson

- There have not been enough applicants in their office to determine if this is a pattern yet
- Can say that her impression is that individuals who were in shared household situations are more likely to face a recoupment claim than others.
- Those individuals who were roommates or families are facing the majority of the claims that they have seen.

Tracy Figueroa

- There was a Medicare case filed last month concerning the failure to notify the recipient of their right to a hardship waiver. (**Please see attached**)
- This may be helpful to us in the future concerning the limited information in FEMA notices.

Tom Stubbs – Private Attorney, Personal Injury Focus, Decatur, GA

- A lot of the political motivation surrounding Katrina has passed.
- Has heard from members of Congress that they feel they are not going to be able to convince people to spend money this far after the disaster since victims are receiving insurance benefits at this point.

Terry Coble

- The shared household issue is so important to this because once people are scattered after a disaster one person is suddenly not entitled to FEMA assistance.
- The does not really have anything to do with insurance.
- FEMA decides arbitrarily who in the shared household gets the funding and who does not.

Heather Godwin

- FEMA travel benefits would be very helpful because it would allow people to be reunited after a storm and then FEMA would not have to pay for two households in two different cities.
- The other thing is that we are not talking about people with insurance benefits.
- This is a population that does not have the educational level to find a job where they live now or to pay the rent because there is no city (other than maybe Houston) that is comparable to where they lived in New Orleans prior to the storm (renting an apartment for \$150 a month, for example)

Ranie Thompson

- If things are changed in the FEMA rules post-Katrina then they can be applied to future disasters.

Linda Warren Seely

- This is the opportunity to make things better for a population that cannot speak for themselves.
- The fact that that the members of Congress that Tom mentioned thought that these people receiving FEMA benefits were also receiving insurance benefits is telling of the general misunderstanding that many people have.

Tom Stubbs

- FEMA accepts price premiums, which count in their budget.
- Every agency has required revenue in their budget and FEMA assumes this is what will come in through recoupment.
- Not knowing what that recoupment dollar amount is makes it hard to convince FEMA to change.

Terry Coble

- No one really knows the dollar amount, but it is usually not more than 2-3% of what FEMA distributed.

Heather Godwin

- The lowest amount recouped is \$2,000 and the highest is \$22,200 so one could figure it out that way.

John Idleman

- People could look at past disasters and figure out an average of what was recouped based on what was distributed.

Heather Godwin

- Even if your client is in the recoupment process, they can still get FEMA rental assistance.
- You do have to pursue rental assistance through the direct assistance where it goes to a 3rd party and then to the landlord.

FEMA Recertification

Tracy Figueroa

- The simplified recertification form is available to anyone getting 408 assistance even though it says it is for the 403 to 408 transition.
- Their office has been having all people fill out the simplified form.
- The former 403 people who are now 408 are covered but it is unclear whether the straight to 408 group is covered, therefore, TRLA has been having those clients fill out the more complicated form.
- There has been some confusion about whether it had to be submitted by October 31.
- The FEMA fact sheet says that it applies nationwide to about 30,000 households nationwide, but there is also contradictory information.
- Have heard in Austin, TX that the form is necessary and to be used by people who are going to be considered even beyond February, 2007.
- You can get these forms on the FEMA answers website (www.femaanswers.org)
- Today a paralegal in the TRLA office applied over the phone for rental assistance with FEMA on behalf of a client and FEMA was able to take care of it over the phone with no forms and the client did not have to do anything.
- She stumbled onto this possibility by going through the FEMA helpline.
- They were told by one FEMA employee that the simplified form was only Houston, but the fact sheet says nationwide.

Maria Luisa Mercado – Lone Star Legal Aid

- Has heard that clients do not have to fill out any forms.
- Was at a recertification clinic in Houston with FEMA representatives and they just recertified people right there.

Announcements and Updates

John Eidleman

- AARP is giving out grants to help elder hurricane victims
- Catholic Charities is also doing this.

Linda Warren Seely

- Are people using the Katrina Aid Today case managers?
- For some reason, the United Way has a different case management program and if their clients agree to accept these services then they cannot also work with the Katrina Aid Today case manager.

Heather Godwin

- The money goes from UMCOR through the VOAD and then to the organizations within that, but their contracts are supposed to end in December.
- The United Way is a more client centered funding stream and is a more liberal organization. They may have apprehension that the UMCOR funded Katrina Aid Today agencies will share their information more broadly since they are funded by FEMA.

Mark Moreau – Southeast Louisiana Legal Services – NOLAC

- They won the flood insurance suit (Morris v. FEMA)
- NOLAC is not sure if/when they will pursue their fair and impartial appeals suit now that the client has received a large sum of money.
- The judge has given them more time to figure out their next move in this case.
- The justice department lawyers for FEMA were the ones who figured out that the home in question had never even experienced any flood damage before. The original case was regarding whether the client was eligible for FEMA benefits because the previous homeowner had received benefits in a prior disaster, but when the justice department attorneys searched for records of the past damage they found the mistake.
- FEMA wants them to dismiss the fair and impartial appeals claim.

Next Call November 14th at 5pm EST