

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of October, 2015.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective January 1, 2016.

Add Part Ten to read as follows:

### **PART TEN PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER**

#### **Rule 10. Provision of Legal Services Following Determination of Major Disaster**

(a) *Determination of existence of major disaster.* -- Solely for purposes of this Rule, the Chief Justice of this Court shall determine when, as a result of a major disaster, an emergency affecting the justice system has occurred in:

(1) this jurisdiction and, if so, whether that emergency affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction, but only if such a determination and its geographical scope have previously been made by the highest court of that jurisdiction.

(b) *Temporary practice in this jurisdiction following major disaster.* -- Following a determination, pursuant to paragraph (a) of this Rule, of an emergency affecting the justice system in this jurisdiction that warrants the assistance of lawyers from outside this jurisdiction, or a determination by the Chief Justice 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 warranted to help provide such assistance, a Foreign Lawyer may provide *pro bono* legal services in this jurisdiction on a temporary basis. Those legal services shall be assigned and supervised through an established bar association *pro bono* program, not-for-profit bar association, an

approved legal assistance organization, a public defender's office, or through any organization(s) specifically designated by the Chief Justice.

(c) *Temporary practice in this jurisdiction following major disaster in another jurisdiction.* -- Following the determination of a major disaster pursuant to (a)(2), a Foreign Lawyer who is authorized to practice law and who principally practices in the geographic area of the other jurisdiction determined to be affected 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 geographic area of that jurisdiction, where the major disaster occurred.

(d) *Duration of authority for temporary practice.* -- The authority to practice law in this jurisdiction granted by paragraphs (b) and (c) of this Rule shall end when the Chief Justice determines that the conditions caused by the major disaster in this or another affected jurisdiction have ended, except that a lawyer then representing clients in this jurisdiction pursuant to paragraphs (b) or (c) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. However, the lawyer shall not accept new clients or new unrelated matters for an existing client after the Chief Justice has determined that the conditions caused by the major disaster have ended.

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

- (1) pursuant to a court's *pro hac vice* admission rule; or
- (2) if the Chief Justice, 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).

When authority to appear in any court is granted under either paragraph (e)(1) or (e)(2), 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 this 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 this Court. The registration statement shall be in a form prescribed by this 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.* -- Foreign Lawyers 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, any limitations 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.

(h) *Definitions.* -- For purposes of this rule:

(1) “Foreign Lawyer” is a person with an active and unrestricted license to practice law issued by the bar or highest court of any State or Territory of the United States or the District of Columbia, but neither licensed by the Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice.

(2) “*Pro bono*” means that legal services are provided without compensation, expectation of compensation, or other direct or indirect pecuniary gain to the lawyer.

## **Comment**

[1] A major disaster, including, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency, or an event caused by terrorists or acts of war, in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services. This emergency may continue 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 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 entities authorized by this Rule.

[2] Under paragraph (a)(1), the Chief Justice shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. The Chief Justice may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event.

[3] Restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability status, or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Foreign Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis pursuant to Part 6 § I (C) of the Rules of the Supreme Court of Virginia and Rule 5.5(d)(4) of the Rules of Professional Conduct.

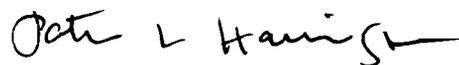
[4] Under paragraph (c), the phrase "arise out of and reasonably related to" requires that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors evidence such a relationship. The Foreign Lawyer's client may have been previously represented by the Foreign Lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the Foreign Lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the Foreign Lawyer's work 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 issues involve multiple

jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Foreign Lawyer in assessing the relative merits of each. In addition, the services may draw on the Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[5-7] *ABA Model Rule* comments not adopted.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Peter L. Hanig". The signature is written in a cursive style with a long horizontal stroke at the end.

Clerk