

Minnesota's legal system updates its disaster preparedness

In light of recent disasters such as 9/11 and Hurricane Katrina, institutions across the nation have adjusted their operating procedures to better prepare for emergency circumstances. Minnesota's legal system is no exception to this trend, and it is taking a variety of steps to deal with disaster scenarios.

One such disaster-mitigation proposal is now up for review by the Minnesota Supreme Court. On Oct. 22, the court opened a public comment period on a model rule proposed by the Minnesota State Bar Association (MSBA) that deals how legal services would be provided in the aftermath of a major catastrophe. If adopted, the rule would alter regulations governing the practice of law in Minnesota during a declared emergency.

This MSBA initiative was undertaken in recognition of the legal disarray that occurred after major disasters elsewhere in the country. According to MSBA executive director Tim Groshens, the proposed rule is part of "prudent planning" for scenarios that could place great strains upon Minnesota's legal system.

Attorney Jenneane Jansen, who co-authored the MSBA petition to the court, noted that recent disasters caused large-scale disruptions to the legal communities in the affected areas.

"During Hurricane Katrina, whole law offices were destroyed," she said. "Entire collections of files were lost." She noted that similar problems occurred in New York City after 9/11, due to the physical damage sustained by legal offices in and around the World Trade Center. In many instances, Jansen said, destroyed case files had to be reconstructed from court records.

In reviewing the impact of disasters on legal communities, Jansen noted that such disruptions had two principal effects. "Disasters generate new legal disputes," she remarked, "such as those arising from insurance claims." At the same time, she noted that catastrophic events often hampered the processing of existing caseloads, due to the displacement of facilities and personnel.

Rule had roots in the Katrina experience

The model rule proposed by the MSBA was initially drafted by the American Bar Association (ABA) in 2007. Since then, it has been adopted by several states, including Iowa and Arizona. The ABA undertook this disaster-planning initiative in large part because of problems encountered after Hurricane Katrina. New York University law professor Steven Gillers helped to draft the ABA's model rule. He noted that the Katrina event raised many issues — among them, concerns related to the unauthorized practice of law.

According to Gillers, after Hurricane Katrina, "many lawyers from Louisiana and Mississippi were displaced, and some needed temporarily to relocate their practice in other states." However, he noted, laws and professional practice rules in neighboring states raised uncertainties about whether this would be permissible. In most jurisdictions, practicing law without being admitted to the state bar can result in a variety of penalties. In Minnesota, for instance, the unauthorized practice of law is a misdemeanor criminal offense.

Concerns about unauthorized practice also hampered the provision of volunteer legal services after Katrina. Said Gillers, "Lawyers from outside the affected area wanted to offer pro bono help, but were concerned that they would be violating unauthorized practice rules if they went in."

Modifications made by the rule

According to Gillers, the ABA's model rule was designed to accomplish two primary objectives. First, it was designed to speed the provision of volunteer legal aid by reducing procedural barriers.

Under the model rule, a state's Supreme Court would first have to determine that a disaster had occurred within its jurisdiction. Then, volunteer attorneys would contact designated legal aid associations, and file necessary paperwork with the clerk of court.

According to Jenneane Jansen, adopting the ABA rule in Minnesota would expedite the provision of pro bono services, and would allow outside attorneys to serve during a Minnesota-based disaster, free from concerns arising from unlicensed practice. She noted that adopting the rule would send the message that "it's OK to volunteer in Minnesota."

The ABA model rule also provides a streamlined method for allowing displaced attorneys to work from a state in which they are not licensed to practice law. According to Steven Gillers, the rule "enables lawyers from the affected states to continue to safely serve their clients."

Additionally, the ABA rule provides a mechanism for capping the length of time that outside attorneys could practice in the affected area. Jansen stated that such limits were included because the ABA did not want to create a "free for all. They did not want attorneys from other jurisdictions setting up practices indefinitely."

Adoption tied to experience, vulnerability

Seven states have adopted the ABA model rule, and more than 20 have taken it under consideration. In addition, four other states reviewed the rule, but subsequently declined to adopt it. Among these states was North Dakota, which declined the rule in mid-2007. Minutes from North Dakota's Joint Committee on Attorney Standards indicate that members believed the state's experience with the 1997 Grand Forks flood did not demonstrate that changes to state laws, or professional practice rules, were required.

Jansen noted that while the North Dakota legal system may have fared well in the face of its own flood-related disaster, Minnesota has not had a similar "dry run" to assess its capabilities. Jansen also noted that the tight physical distribution of Minnesota's lawyers entailed risks that differed significantly from North Dakota's situation. According to data cited in the MSBA petition, 82 percent of Minnesota's licensed attorneys work in the seven-county metro area. Jansen noted that this centralization makes the area's legal community particularly vulnerable to a concentrated event, such as a terrorist attack or flu pandemic.

The Minnesota Supreme Court plans to consider the MSBA's petition without a public hearing, but it is accepting written comments. All such comments must be submitted to the Court by Nov. 23. MSBA executive director Tim Groshens said that submitted comments are considered during the court's deliberations, and that in some cases they may cause the court to hold public hearings at a later time.

Court system addresses concerns over flu pandemic

While planning related to future disasters continues, the Minnesota judicial system has now found itself also deeply involved in managing an ongoing public-health challenge — the outbreak of the H1N1 flu virus. Concerns about a potential H1N1 pandemic arose several months ago, and since then the judicial system has taken steps to deal with its effects.

According to Fred Grittner, clerk of the Appellate Courts, the Minnesota Judicial Council recently issued recommendations to judges, urging them to "err on the side of caution in court appearances" by recommending that cases be continued if parties were ill.

At the same time, many Minnesota district courts have made adjustments related to their juries and jury pools. According to Grittner, many counties have rearranged chairs in the holding rooms where potential jurors wait to be called for service. Such efforts are intended to minimize potential flu transmission by providing more space between the individuals reporting for jury duty.

Some district courts have also made modifications to their jury selection process, to ensure that trials continue without interruption. "In Hennepin county," said Grittner, "they have been adding more alternates to jury panels" as a hedge against jurors becoming ill, and jeopardizing trial proceedings.

According to Grittner, disaster-related contingency planning had been occurring even before the outbreak of H1N1. He noted that the judicial system had been working on plans related to the continuity of operations at courthouse facilities, but then expanded its planning to deal with human resource issues that might stem from a flu pandemic. Grittner said that planners had to consider a variety of personnel matters, such as "What kind of issues would arise if court employees were asked to stay home, but didn't have any sick leave left?"

Quarantine law benchbook created

In recent years, the Minnesota judicial system has also undertaken other forms of planning related to pandemic management. One year ago, the Minnesota Judicial Branch prepared and distributed a benchbook on

isolation and quarantine (I/Q) law. The book compiled information and statutes related to quarantine and isolation procedures, which had been substantially modified when the Legislature passed the Minnesota Emergency Health Powers Act in 2002.

According to Fred Grittner, the I/Q benchbook and related training materials have been disseminated statewide, but the Ramsey County district courts have been the most heavily involved in ongoing training. Grittner noted that this is because Ramsey County would be the initial venue for many I/Q hearings.

In addition to acting as a statutory resource, the I/Q benchbook sets out hearing procedures designed to protect attorneys, court personnel, and others from exposure to communicable diseases. For instance, the benchbook states that in order to reduce transmission risks, courts may hold I/Q hearings via telephone or interactive video. The chosen technology "must be interactive," according to the benchbook, in order "to provide the person(s) subject to I/Q with a meaningful opportunity to appear and be heard."

Plans for judicial succession

In the event that Supreme Court justices were to become ill from a flu virus or other communicable illnesses, court communications director John Kostouros said that the court would follow longstanding traditions governing judicial succession. "For example," Kostouros noted, "in the event that the chief justice became incapacitated, the most senior justice would then assume his duties."

Kostouros said that such succession procedures were regularly used when justices recused themselves from court cases. He noted that these protocols were followed during the Franken/Coleman recount trial, after Chief Justice Eric Magnuson recused himself from selecting members of the three judge trial panel. That job then passed to Justice Alan Page.

Kostouros also noted that in the event of a pandemic event or similar disaster, related procedures would be followed at the appellate and district court levels as well.

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