

STATE OF LOUISIANA
FOURTH CIRCUIT COURT OF APPEAL

Docket No. 2007-K-0319

***STATE OF LOUISIANA IN RE: STUART WEG,
ORLEANS PUBLIC DEFENDER vs. (CHARLES WESLEY)***

**On Application for Supervisory Writs
to the Orleans Parish Criminal District Court
Section I – Chief Judge Raymond C. Bigelow**

AMICUS CURIAE BRIEF
OF THE NEW ORLEANS BAR ASSOCIATION
IN SUPPORT OF THE ORLEANS PUBLIC DEFENDER'S
SUPERVISORY WRIT APPLICATION

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Hurricane Katrina's catastrophic arrival in August 2005 changed virtually every aspect of life in New Orleans. The storm caused a massive upheaval of the city's population, and this demographic shift has resulted in a dearth of lawyers able to handle the inexorable pace of criminal litigation. To address this problem, the Supreme Court of Louisiana, at the request of the Louisiana State Bar Association, promulgated a *Temporary Emergency Pro Bono Criminal Legal Assistance Rule for Orleans Parish* ("*Criminal Pro Bono Rule*"). The text of the *Rule* is neither confusing nor difficult to understand; it permits licensed out-of-state attorneys who are not admitted to practice in Louisiana to provide temporary *pro bono* criminal legal assistance in this state, under the "oversight and supervision" of a Louisiana licensed lawyer.

On March 8, 2007, the presiding judge in Section E, Criminal District Court for the Parish of Orleans, interpreted the *Rule* to mean exactly what it says, and after an evidentiary hearing, permitted an out-of-state attorney to represent

defendant Michael Lewis in a court proceeding, even though no supervising Louisiana attorney was physically present at that proceeding.¹

Nevertheless, on February 22, 2007, the presiding judge in Section I, Criminal District Court for the Parish of Orleans, ruled that Stuart M. Weg, Esq., an experienced criminal defense attorney licensed in several states (but not Louisiana), could not represent defendant Charles Wesley at a motion hearing in his court. The Court decided that even though Weg's representation of Wesley was being supervised by the Orleans Public Defender, the *Criminal Pro Bono Rule* did not authorize Weg to appear in court without the personal, physical presence of a supervising Louisiana lawyer.² Compounding this erroneous interpretation of the *Rule*, the Court below refused to permit an evidentiary hearing into the *Rule's* meaning and intent.

The transcripts of argument and testimony, the evidentiary offerings and the orders of the trial court have all been filed in conjunction with the original petition herein. The New Orleans Bar Association offers this *Amicus Curiae* brief in support of that petition because the ultimate resolution of this issue fundamentally impacts the pace of the recovery of the criminal justice system in the City of New Orleans, a matter of great import to the lawyers of the New Orleans Bar Association.³

1 *State v. Michael Lewis*, No. 432-104; the transcript of this hearing is appended to the Supplemental Brief filed on behalf of the Orleans Public Defender's Office as Exhibit C.

2 There is no question that Mr. Weg complied with all of the other procedural requirements of the Rule. Mr. Weg is admitted to practice law in New York, Minnesota, Illinois and Indiana, and received the appropriate certification from the Supreme Court of Louisiana allowing him to provide temporary *pro bono* criminal legal assistance.

3 The New Orleans Bar Association, in conjunction with other local bar associations, bears responsibility for nominations to the Public Defender Board for Orleans Parish by virtue of La. R.S. 15:144.

ARGUMENT

Of course, the meaning of the *Criminal Pro Bono Rule* “must first be sought in the language employed,” and if the language of the *Rule* is plain and unambiguous, it is this court’s duty to enforce it as written.⁴ Subsection (a) of the *Rule* states that a lawyer not admitted to practice in Louisiana “may provide temporary *pro bono* criminal legal assistance within Louisiana” once the lawyer is approved by the Supreme Court of Louisiana. Subsection (b) provides certain limitations on the ability of these lawyers to practice in this state, stating that the out-of-state lawyer’s actions:

May consist of representation within Louisiana courts and in administrative proceedings by enrolling as counsel of record on behalf of any person who is the subject of such an arrest or charge, but only if a Louisiana licensed supervising attorney cosigns the pleadings as counsel of record. Any Louisiana licensed lawyer who is of record in the proceeding shall provide oversight and supervision to the certified out-of-state *pro bono* practitioner, both of whom remain responsible to the client for the conduct of the proceedings before the court or agency.

This court need go no further: on its face, the *Rule* simply contains no requirement that the supervising Louisiana attorney be present at all court hearings when the out-of-state attorney appears *pro bono* on behalf of a criminally accused in Orleans Parish. The plain language of the *Criminal Pro Bono Rule* states that the temporary *pro bono* legal services provided by an out-of-state lawyer on behalf of an Orleans Parish indigent defendant “may consist of representation within Louisiana courts and in administrative proceedings,” as long as a Louisiana licensed lawyer co-signs pleadings and provides “oversight” and “supervision.” Nothing in the *Criminal Pro Bono Rule* suggests that the lawyer appearing *pro hac vice* must be accompanied by a Louisiana lawyer while in court, and such a

⁴ *Samuels v. Goodwin*, 05-213 (La. App. 1 Cir. 11/3/06); 2006 WL 3103475, at *5; see also *id.* (“The statutory and jurisprudential rules for statutory construction and interpretation apply equally well to ordinances, rules, and regulations.”).

requirement would seem patently contrary to the provision permitting “representation within Louisiana courts.” The decision below effectively rewrites the clear language of the *Rule* to add the modifier “with the physical presence of a Louisiana lawyer” to this permission.

Even if the Court had found the language of the *Rule* ambiguous, the appropriate course to take would have been to conduct a hearing into the meaning and intent behind the *Rule*. Fortunately, testimony adduced by the Orleans Public Defender Board in the *Lewis* case establishes the content of such an evidentiary presentation. The uniform testimony that would have been presented would have proven the *Rule*’s intent to reduce the workload of Louisiana criminal attorneys by relieving them of the need to be physically present in court so long as they supervised the attorney who was there.

Current LSBA President, Marta-Ann Schnabel, testified that she personally drafted the *Emergency Pro Bono Civil Legal Assistance Rule (Civil Pro Bono Rule)* which provided the drafting model for the *Criminal Pro Bono Rule*. She indicated that the *Civil Pro Bono Rule* had been crafted with an eye toward obtaining the courtroom assistance of out-of-state lawyers in domestic and landlord-tenant cases. The *Civil Pro Bono Rule* sought to address a severe shortage of Louisiana legal aid and civil pro *bono* lawyers by providing another source for lawyers who could appear in domestic court and landlord-tenant eviction proceedings.⁵

The drafters of the *Criminal Pro Bono Rule*, Louisiana State Bar Association then President Frank Neuner and Professors Dane Ciolino and Pamela Metzger, testified that the initial version of the *Rule* actually included a provision requiring

⁵ The New Orleans Bar Association itself sought to address the pressing need for forum space by permitting City Court to be conducted in its offices.

that lawyers licensed in Louisiana attend hearings with out-of-state lawyers.

However, the drafters deleted this provision because they believed that it defeated the very object of the *Rule* – if the supervising attorney had to be physically present during court appearances, no time or cost savings could be achieved by permitting the out-of-state counsel to appear. *See*, Transcript, appended as Exhibit C to the Orleans Public Defender Supplemental Brief.

This issue raised by this case is important. The court's decision will fundamentally impact the pace of the recovery of the criminal justice system in the City of New Orleans, a matter of great import to the Association's lawyers and the public at large. Indeed, the fact that it was the Louisiana State Bar Association which petitioned the Supreme Court to approve special *pro hac vice* rules for out-of-state lawyers volunteering to assist in New Orleans speaks volumes about the critical need to supplement the ranks of available Louisiana criminal defense attorneys with competent out-of-state counsel. As drafted, the *Rule* meets that critical need; as interpreted by the court below, it does not.

The New Orleans Bar Association is uniquely familiar with the daunting task of rebuilding the criminal justice system in New Orleans. No local organization is more familiar with the massive effort undertaken to assure that there be meaningful public access to both the civil and criminal courts, even while lawyers and judges struggle to rebuild their personal lives. No local organization more clearly recognizes the strain on volunteer resources that this undertaking represents and the significant relief that out-of-state lawyers can and do provide. And no local organization could have more reason to urge that out-of-state lawyers who meet the *Rule*'s requirements be permitted to appear in Criminal District Court for the Parish of Orleans without accompanying local counsel.

The New Orleans Bar Association joins the Orleans Public Defender in requesting that this Court reverse the ruling of the trial court and allow lawyers who qualify to practice in Louisiana pursuant to the *Criminal Pro Bono Rule* to appear in court without the presence of a supervising lawyer.

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Certificate of Service

I certify that on March 29, 2007, I mailed a copy of the foregoing brief to all counsel of record by the United States Mail, First Class Postage Prepaid, at the following addresses:

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