

No. ADM 10 8002

**STATE OF MINNESOTA
IN SUPREME COURT**

OFFICE OF
APPELLATE COURTS

AUG 31 2010

FILED

In re:

Petition to Create an “Emeritus Attorney” Category
in the Supreme Court’s Rules on Lawyer Registration

PETITION OF MINNESOTA STATE BAR ASSOCIATION

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No. _____

**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

Proposed Amendment of the Rules of the Supreme Court
On Lawyer Registration

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association (“MSBA”) respectfully submits this petition asking this Honorable Court to join 33 other United States jurisdictions by creating a new category of attorney registration, “emeritus attorney,” for lawyers who practice law solely to provide pro bono services through certified legal services organizations. Such emeritus attorneys would be exempt from paying a fee to register as Minnesota lawyers, but would remain subject to all other Minnesota licensure requirements, including Continuing Legal Education requirements. This proposed change is intended to encourage inactive and retired attorneys to volunteer and to provide pro bono services to underserved communities in urgent need of such assistance.

In support of this petition, the MSBA would show the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.
2. This Honorable Court has and exercises the exclusive and inherent power to regulate the legal profession in the interest of the public good and the efficient

administration of justice. The Minnesota legislature has expressly recognized this power. See Minn. Stat. §§ 480.05, 481.01 (2006).

3. In the exercise of that power, this Court has the power to require and has required the annual payment of a Registration Fee by all licensed attorneys and judges in the State of Minnesota. See Rules of the Supreme Court on Lawyer Registration 2(A) (hereafter “Registration Rules”). The fee varies in amount from one attorney to another depending on, among other things, the duration of the attorney’s practice and the attorney’s military status, income, state of residence, disability, retirement, and active or inactive status. See id.

4. The State of Minnesota suffers a huge unmet need for legal services and representation for the disadvantaged and underserved communities in the State. For example, this Court’s Legal Services Planning Commission calculated in 2005 that over 80% of the legal needs of Minnesota’s poor go unmet. *Legal Services Planning Commission Final Report*, available at <http://www.mncourts.gov/?page=2166>. The current economic climate has only increased the demand for services, while funding cuts have decreased resources.¹

5. At the same time, the State of Minnesota has a substantial number of attorneys who have been admitted to practice law in the State but who either register annually in one of the “inactive” categories, see Registration Rule 2(C)(1-6), or do not

¹ For example, the annual state appropriation for civil legal services has decreased from \$13.1 million in the 2008-2009 biennium to \$11.8 million for fiscal year 2011.

register as attorneys at all.² In the near future, as attorneys of the baby-boom generation retire, the MSBA anticipates that this pool of retired and inactive attorneys will increase substantially. These attorneys no longer practice law as part of their professional lives, but they still have the knowledge of and experience in the law that result from years and even decades of legal practice. Moreover, the MSBA believes that many of these attorneys would (if encouraged) readily use this experience and knowledge to provide legal services to low-income clients.

6. In light of this continuing need for pro bono assistance in Minnesota, the MSBA's Legal Assistance to the Disadvantaged Committee has studied the issue of emeritus attorney status, including the use of such status in other jurisdictions. The Committee has prepared a report on its findings, a copy of which is attached to this Petition.

7. Based on the Committee's report, the MSBA passed a resolution that stated:

RESOLVED, that the Minnesota State Bar Association petition the Minnesota Supreme Court to amend the Rules on Lawyer Registration to provide that a lawyer who engages in the practice of law solely to provide pro bono legal services, as defined by Rule 6.1(a) of the Minnesota Rules of Professional Conduct, through a legal services organization, be exempt from paying a fee to register as a Minnesota lawyer.

² According to the Lawyers Professional Responsibility Board, there are currently over 2,000 retired, and resident, non-disabled lawyers registered as "inactive".

8. The majority of states and the District of Columbia have adopted some version of the emeritus attorney registration category. These provisions vary in their requirements concerning age, years of practice, prior in-state licensure, CLE requirements, waiver of dues, supervision, and whether the pro bono services must be provided through a certified pro bono or legal services program. The MSBA has considered all of these issues and makes the following recommendations concerning them.

9. The MSBA recommends that Minnesota join the majority of jurisdictions that have adopted emeritus attorney rules and permit attorneys of all ages to become emeritus attorneys.³ The MSBA recognizes that many of the emeritus attorneys are likely

³ See, e.g., Ala. Bar R. 6.6, http://www.alabar.org/ogc/PDF/03052009_6-5_6-6_rule.pdf; Alaska Bar R. 43.2; Ariz. S. Ct. R. 39 Emeritus Attorneys Pro Bono Participation Prog.; Cal. Pro Bono Prac. Prog. Title 3 Div. 2 Ch. 8; Colo. Ct. R. 223; Del. S. Ct. R. 69, www.delaware.gov/rules; D.C. Ct. App. R. 49(c)(9)(10), www.dcappeals.gov/dccourts; Fla. Bar R. 12, www.flabar.org; Haw. S. Ct. R. 20, www.courts.state.hi.us; Idaho Bar R. 223, www2.state.id.us/isb; Ill. S. Ct. R. 756, <https://www.iardc.org/rulesSCT.html#Rule%20756>; Me. Bar R. 6(d), www.courts.state.me.us/rules; Md. Ct. App. R. 16-811 (e)(2); 1-312, <http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=>; Mass. S. Jud. Ct. R. 4:02(8), www.mass.gov/courts; Miss. R. App. P. R. 46 (f), http://www.msra.org/rules_of_appellate_procedure.pdf; Mont. Bar R. Art. 1, §3, www.montanabar.org; Nev. S. Ct. R. 49.2; By-Laws of the N.H. Bar. Ass'n Art. II Section 8; N.M. R. 15-301.2; 22 NYCRR § 118.1(g); N.C. Session Law 2007-200 House Bill 1487; N.D. S. Ct. R. 3.10; Or. Bar R. 6.1, www.osbar.org; S.C. S. Ct. R. 415, www.judicial.state.sc.us; S.D. S. Ct. R. SDCL 16-17.4.1; Tex. Bar R. Art. XIII, www.texasbar.com; Va. S. Ct. R. 6:4-3, www.vsb.org; Wash. Ct. R. 8(e), www.wsba.org; W. Va. Bar R. Art. II §11, www.state.wv.us/wvsca. Only three states, Georgia, Utah, and Wisconsin, have age or age-related requirements for pro bono attorney status. Ga. Bar R. 1-202 (d) Applies to all Emeritus Attys: www.gabar.org; Utah Code Ch. 16 Bar R.: www.utcourts.gov/resources; R. 14-101 et seq. (RIM); R. 14-203 (Bylaws); R. 14-401 et seq. (MCLE); Wis. Bar R. Membership Status and Dues,

to be retirees, but sees no reason not to encourage as well those attorneys who have withdrawn from the active practice of law for other reasons.

10. The MSBA recommends that Minnesota join the majority of jurisdictions that have adopted emeritus attorney rules and permit attorneys to become emeritus attorneys regardless of the number of years they have practiced.⁴ Again, the MSBA recognizes that many of the anticipated emeritus attorneys are likely to have practiced for several decades, but believes that less-experienced attorneys who have withdrawn from active practice can and do provide substantial services to pro bono clients, and may in fact be better suited to provide certain kinds of services or to serve certain kinds of clients.

11. The MSBA recommends that Minnesota join the majority of jurisdictions that have adopted emeritus attorney rules and require that emeritus attorneys be

http://www.wisbar.org/AM/Template.cfm?Section=Membership_Status_Options&Template=/CM/ContentDisplay.cfm&Contentid=38207#memstatopt

⁴ See, e.g., Ala. Bar R. 6.6, http://www.alabar.org/ogc/PDF/03052009_6-5_6-6_rule.pdf; Alaska Bar R. 43.2; Colo. Ct. R. 223; Del. S. Ct. R. 69, www.delaware.gov/rules; D.C. Ct. App. R. 49(c)(9)(10), www.dccourts.gov/dccourts; Haw. S. Ct. R. 20, www.courts.state.hi.us; Ill. S. Ct. R. 756, <https://www.iardc.org/rulesSCT.html#Rule%20756>; Me. Bar R. 6(d), www.courts.state.me.us/rules; Md. Ct. App. R. 16-811 (e)(2); 1-312, <http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=>; Mass. S. Jud. Ct. R. 4:02(8), www.mass.gov/courts; Miss. R. App. P. R. 46 (f), http://www.mscoa.org/rules_of_appellate_procedure.pdf; Nev. S. Ct. R. 49.2; By-Laws of the N.H. Bar. Ass'n Art. II Section 8; 22 NYCRR § 118.1(g); N.C. Session Law 2007-200 House Bill 1487; Or. Bar R. 6.1, www.osbar.org; S.D. S. Ct. R. SDCL 16-17.4.1.

previously admitted to the Minnesota bar.⁵ The MSBA believes that such a requirement is consistent with the Court's demonstrated desire to oversee the qualifications of the attorneys that practice in Minnesota courts. The MSBA also believes that the vast majority of attorneys who would seek Minnesota emeritus attorney status would already be licensed in the state in any event, and that the requirement therefore would not substantially reduce the number of volunteers.

12. The MSBA recommends that Minnesota join the majority of jurisdictions that have adopted emeritus attorney rules and require that emeritus attorneys provide services only through approved legal services programs.⁶ The language of the MSBA's

⁵ See, e.g., Ala. Bar R. 6.6, http://www.alabar.org/ogc/PDF/03052009_6-5_6-6_rule.pdf; Alaska Bar R. 43.2; Cal. Pro Bono Prac. Prog. Title 3 Div. 2 Ch. 8; Del. S. Ct. R. 69, www.delaware.gov/rules; Ga. Bar R. 1-202 (d) Applies to all Emeritus Attys, www.gabar.org; Haw. S. Ct. R. 20, www.courts.state.hi.us; Ill. S. Ct. R. 756, <https://www.iardc.org/rulesSCT.html#Rule%20756>; Me. Bar R. 6(d), www.courts.state.me.us/rules; Md. Ct. App. R. 16-811 (e)(2); 1-312, <http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=>; Mont. Bar R. Art. 1, §3, www.montanabar.org; By-Laws of the N.H. Bar. Ass'n Art. II Section 8; 22 NYCRR § 118.1(g); Or. Bar R. 6.1, www.osbar.org; S.D. S. Ct. R. SDCL 16-17.4.1; Utah Code Ch. 16 Bar R., www.utcourts.gov/resources, R. 14-101 et seq. (RIM); R. 14-203 (Bylaws); R. 14-401 et seq. (MCLE); Va. S. Ct. R. 6:4-3, www.vsb.org; Wis. Bar R., http://www.wisbar.org/AM/Template.cfm?Section=Membership_Status_Options&Template=/CM/ContentDisplay.cfm&Contentid=38207#memstatopt.

⁶ See, e.g., Ala. Bar R. 6.6, http://www.alabar.org/ogc/PDF/03052009_6-5_6-6_rule.pdf; Alaska Bar R. 43.2; Colo. Ct. R. 223; Del. S. Ct. R. 69, www.delaware.gov/rules; D.C. Ct. App. R. 49(c)(9)(10), www.dcappeals.gov/dccourts; Ga. Bar R. 1-202 (d) Applies to all Emeritus Attys, www.gabar.org; Haw. S. Ct. R. 20, www.courts.state.hi.us; Idaho Bar R. 223, www2.state.id.us/isb; Ill. S. Ct. R. 756, <https://www.iardc.org/rulesSCT.html#Rule%20756>; Me. Bar R. 6(d), www.courts.state.me.us/rules; Md. Ct. App. R. 16-811 (e)(2); 1-312, <http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=>;

proposed amended rule would adopt the same definition for such programs as that used in Rule 2(B) of the Rules of the Minnesota State Board of Continuing Legal Education, which presently defines such programs as follows:

- B. “Approved legal services provider” means a legal services organization that meets at least one of the following criteria:
- (1) Funded by the Legal Services Corporation, the Minnesota Legal Services Advisory Committee, or the Minnesota Lawyer Trust Account Board; or
 - (2) Designated by the Minnesota Lawyer Trust Account Board as an approved legal service provider. Eligibility for designation is limited to:
 - (a) 501(c)(3) nonprofit organizations that have as their primary purpose the furnishing of legal services to persons with limited means.
 - (b) Law firms that conduct programs that have as their primary purpose the furnishing of legal services to persons with limited means and are under the supervision of a pro bono coordinator or designated lawyer.
 - (c) Law firms that provide pro bono legal services on behalf of a Minnesota Judicial Branch program, including but not limited to, the Guardian ad Litem Program.

13. The MSBA believes that such a requirement is well-advised for several reasons. First, the requirement would assure that emeritus attorneys actually do the type of work that the rule intends to encourage: the provision of needed legal services to low-

Mass. S. Jud. Ct. R. 4:02(8), www.mass.gov/courts; Miss. R. App. P. R. 46 (f), http://www.msca.org/rules_of_appellate_procedure.pdf; Mont. Bar R. Art. 1, §3, www.montanabar.org; Nev. S. Ct. R. 49.2; N.M. R. 15-301.2; N.C. Session Law 2007-200 House Bill 1487; N.D. S. Ct. R. 3.10; Or. Bar R. 6.1, www.osbar.org; S.C. S. Ct. R. 415, www.judicial.state.sc.us; S.D. S. Ct. R. SDCL 16-17.4.1; Tex. Bar R. Art. XIII, www.texasbar.com; Utah Code Ch. 16 Bar R., www.utcourts.gov/resources, R. 14-101 et seq. (RIM); R. 14-203 (Bylaws); R. 14-401 et seq. (MCLE); Va. S. Ct. R. 6:4-3, www.vsb.org; Wash. Ct. R. 8(e), www.wsba.org; W. Va. Bar R. Art. II §11, www.state.wv.us/wvsca.

income clients that cannot otherwise afford them. All of these approved programs have client eligibility requirements that ensure both that clients are truly low income and that they have high-priority legal needs. Second, as a corollary benefit, the rule would provide emeritus attorneys with a bright line concerning what services are and are not permitted under their emeritus attorney registration. Third, the requirement would provide the Court and the programs with both quantitative and qualitative means of evaluating the success of the incentives underlying the emeritus attorney rule. Finally, requiring emeritus attorneys to associate with approved legal services programs would assure that services provided by emeritus attorneys fall within the malpractice protection those programs typically provide, thus protecting clients while avoiding the imposition on emeritus attorneys of the cost of obtaining such insurance themselves.

14. The MSBA recommends that Minnesota join the majority of jurisdictions that have adopted emeritus attorney rules and permit emeritus attorneys to provide pro bono legal services without supervision by an attorney with a traditional state license.⁷

⁷ See, e.g., Ala. Bar R. 6.6, http://www.alabar.org/ogc/PDF/03052009_6-5_6-6_rule.pdf; Alaska Bar R. 43.2; Colo. Ct. R. 223; Del. S. Ct. R. 69, www.delaware.gov/rules; D.C. Ct. App. R. 49(c)(9)(10), www.dccourts.gov/dccourts; Ga. Bar R. 1-202 (d) Applies to all Emeritus Attys, www.gabar.org; Haw. S. Ct. R. 20, www.courts.state.hi.us; Ill. S. Ct. R. 756, <https://www.iardc.org/rulesSCT.html#Rule%20756>; Me. Bar R. 6(d), www.courts.state.me.us/rules; Md. Ct. App. R. 16-811 (e)(2); 1-312, <http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=>; Mass. S. Jud. Ct. R. 4:02(8), www.mass.gov/courts; Mont. Bar R. Art. 1, §3, www.montanabar.org; Nev. S. Ct. R. 49.2; By-Laws of the N.H. Bar. Ass'n Art. II Section 8; N.M. R. 15-301.2; 22 NYCRR § 118.1(g); Or. Bar R. 6.1, www.osbar.org; S.D. S. Ct. R. SDCL 16-17.4.1 Wash. Ct. R. 8(e), www.wsba.org; Wis. Bar R., http://www.wisbar.org/AM/Template.cfm?Section=Membership_Status_Options&Template=/CM/ContentDisplay.cfm&Contentid=38207#memstatopt.

The MSBA believes that the requirements of prior Minnesota licensure and of work through an approved legal services program adequately address the same issues of competence and diligence that supervision would address.

15. The MSBA recommends that Minnesota join the majority of jurisdictions that have adopted emeritus attorney rules and waive annual registration fees for emeritus attorneys.⁸ The MSBA believes that such waiver would provide a true incentive for otherwise inactive attorneys to register as emeritus attorneys and provide pro bono services, particularly given that attorneys who withdraw from their previous practices, by retirement or otherwise, often experience a decline in income and may be reluctant to continue to pay the full annual registration fee for active bar membership.

16. The MSBA recommends that Minnesota join the minority of jurisdictions that have adopted emeritus attorney rules and maintain Continuing Legal Education requirements for emeritus attorneys. The majority of states with emeritus rules have eliminated, reduced, or otherwise modified such CLE requirements for emeritus attorneys.⁹ Although the MSBA recognizes the possibility that the cost and

⁸ See, e.g., Alaska Bar R. 43.2; Ariz. S. Ct. R. 39 Emeritus Attorneys Pro Bono Participation Prog.; Cal. Pro Bono Prac. Prog. Title 3 Div. 2 Ch. 8; Colo. Ct. R. 223; Del. S. Ct. R. 69, www.delaware.gov/rules; Ga. Bar R. 1-202 (d) Applies to all Emeritus Attys, www.gabar.org; Mont. Bar R. Art. 1, §3, www.montanabar.org; 22 NYCRR § 118.1(g); N.C. Session Law 2007-200 House Bill 1487; N.D. S. Ct. R. 3.10; Va. S. Ct. R. 6:4-3, www.vsb.org; W. Va. Bar R. Art. II §11, www.state.wv.us/wvsca.

⁹ See, e.g., Ariz. S. Ct. R. 39 Emeritus Attorneys Pro Bono Participation Prog.; Del. S. Ct. R. 69, www.delaware.gov/rules; Ill. S. Ct. R. 756, <https://www.iardc.org/rulesSCT.html#Rule%20756>; Nev. S. Ct. R. 49.2; By-Laws of the N.H. Bar. Ass'n Art. II Section 8; N.C. Session Law 2007-200 House Bill 1487; Or. Bar

inconvenience of obtaining the required 45 CLE credits every three years may have some disincentive effect on pro bono participation, the MSBA believes that both the actual legal instruction and the contact with the legal community that CLE programs provide are of sufficient value to justify continuing the requirement. In addition, the MSBA notes that various Minnesota institutions regularly offer free CLE programs specifically directed to those providing pro bono legal services, which would somewhat reduce any monetary disincentive effect of maintaining CLE requirements for emeritus attorneys.

17. The MSBA believes that the adoption of the proposed emeritus attorney rule would have little or no adverse monetary effect on state court coffers. The MSBA anticipates that many of the attorneys who would register as emeritus attorneys are attorneys who otherwise would not register at all. To the extent that some attorneys currently paying annual Registration Fees in other categories (including inactive members) would elect to register instead as emeritus attorneys, the MSBA believes that any loss of revenue would be minimal and would be far outweighed by the benefits to the legal system of the services these volunteers would provide.

18. The proposed emeritus attorney category would assist the MSBA and other organizations in their programs to promote and encourage pro bono legal work by attorneys. For examples, the MSBA's current efforts to encourage pro bono service by attorneys include:

R. 6.1, www.osbar.org; S.C. S. Ct. R. 415, www.judicial.state.sc.us; Tex. Bar R. Art. XIII, www.texasbar.com; Wash. Ct. R. 8(e), www.wsba.org; W. Va. Bar R. Art. II §11, www.state.wv.us/wvsca.

- The Pro Bono Standard, a state version of the ABA law firm challenge. The MSBA recently decided to increase staffing levels to help implement this initiative.
- Judicial District Pro Bono Awards. The MSBA organizes and provides funding for each judicial district for an annual pro bono award.
- Pro Bono Celebration Week. This year will be the second year that Minnesota participates in this week-long promotion of pro bono, sponsored nationally by the American Bar Association.
- Projusticemn.org. The MSBA partners with the Minnesota Legal Services Coalition on this website, which serves as a portal for lawyers who volunteer. It links lawyers with volunteer opportunities, and provides substantive resources for a variety of legal areas.

19. The MSBA respectfully submits that the proposed “emeritus attorney” amendment would both benefit communities underserved by existing programs and aid the Minnesota bar in fulfilling its responsibility to serve such communities. The amendment would be particularly beneficial in these times of decreased public and private funding and substantially increased client need. Minnesota should follow the example of over 30 other states and act to remove a significant barrier to increased pro bono services. The MSBA believes that the amended rule as proposed would accomplish that end while insuring that the emeritus attorneys who practice under it are qualified and ethical.

20. To assist the Court in its consideration of this Petition, the MSBA submits with the Petition the following documents:
- a. The language the MSBA proposes be added to Registration Rules 1 and 2(B), showing the proposed added language (in Addendum);
 - b. Report and Recommendations to the MSBA Regarding Creation of an Emeritus Category in the Rules of the Supreme Court on Lawyer Registration, from the MSBA Legal Assistance to the Disadvantages Committee, dated January 5, 2010 (Attachment 1);
 - c. "State Emeritus Pro Bono Practice Rules," a report prepared by the American Bar Association's Commission on Law and Aging, updated August 20, 2009 (Attachment 2); and
 - d. "No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs," American Bar Association (Attachment 3).

For the reasons set forth above, Petitioner MSBA respectfully requests that this Honorable Court grant its petition, approve the "emeritus attorney" practice category described above, and adopt the amendments to the Rules of the Supreme Court on Lawyer Registration set out in the accompanying Addendum. The MSBA stands ready to address any comments or questions the Court may have concerning the proposal in whatever forum may be most convenient to the Court.

Dated: August 25, 2010

Respectfully submitted,
MINNESOTA STATE BAR
ASSOCIATION

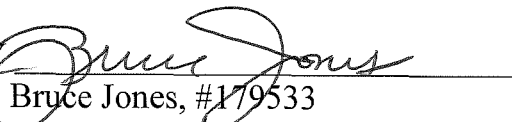
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ADDENDUM TO MSBA PETITION

**Proposed Additions to Rules 1 and 2(B) of
Rules of the Supreme Court on Lawyer Registration**

RULE 1. DEFINITIONS:

I. “Emeritus Attorney” means a lawyer who engages in the practice of law solely to provide pro bono services, as defined by Rule 6.1(a) of the Minnesota Rules of Professional Conduct, through a legal services organization, without expecting or receiving any compensation for the provision of legal services. The request for, or award of attorneys’ fees from opposing parties in a case originally accepted as pro bono does not disqualify such services from inclusion under this section.

J. “Legal Services Organization” has the same meaning as “Approved Legal Services Provider” under Rule 2.T. of the Rules of the Minnesota State Board of Continuing Legal Education.

RULE 2. REGISTRATION FEE

B. Active Statuses

6. Active Status – Pro Bono Practitioner

An Emeritus Attorney providing pro bono services through a legal services organization will pay no annual registration fee.

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No resolution presented herein reflects the policy of the Minnesota State Bar Association until approved by the Assembly. Informational reports, comments, and supporting data are not approved by their acceptance for filing and do not become part of the policy of the Minnesota State Bar Association unless specifically approved by the Assembly.

Report and Recommendation to the MSBA

Regarding Creation of an Emeritus Category in the Rules of the Supreme Court on Lawyer Registration

MSBA Legal Assistance to the Disadvantaged Committee

January 5, 2010

RECOMMENDATION

RESOLVED, that the MSBA petition the Minnesota Supreme Court to amend the Rules on Lawyer Registration to provide that a lawyer who engages in the practice of law solely to provide pro bono services, as defined by Rule 6.1(a) of the Minnesota Rules of Professional Conduct, through a legal services organization, be exempt from paying a fee to register as a Minnesota lawyer.

REPORT

The LAD committee proposes that Minnesota follow the example of thirty-two other jurisdictions¹ in the United States, and create an “emeritus” rule which would reduce barriers that prevent otherwise inactive lawyers from providing pro bono representation to the disadvantaged. The attached proposed amendment to the Rules of the Supreme Court on Lawyer Registration define an “Emeritus Attorney” as:

a lawyer who engages in the practice of law solely to provide pro bono services, as defined by Rule 6.1(a) of the Minnesota Rules of Professional Conduct, through a legal services organization, without expecting or receiving any compensation for the provision of legal services.²

Lawyers who meet this definition would pay no annual registration fee. Unlike a number of other states, this proposal does not seek to alter the continuing legal education requirement for Emeritus Attorneys. The proposed rule also requires that the Emeritus Attorney be licensed in Minnesota, and that the pro bono work be performed under the

¹ Thirty-one states and the District of Columbia have some type of emeritus rule.

² The proposed rule defines “legal services organization” to have the same meaning as “Approved Legal Services Provider” under Rule 2.T. of the Rules of the Minnesota State Board of Continuing Legal Education (the “CLE for Pro Bono” rule). It also provides that “The request for, or award of attorneys’ fees from opposing parties in a case originally accepted as pro bono does not disqualify such services from inclusion under this section.”

direction of an approved legal services provider. These provisions insure the protection of the public and the legal profession.

- **Background**

Over the next 10 to 15 years, approximately 400,000 of the nation's 900,000 practicing lawyers from the "baby boom" generation will leave full time legal practice. The proposed rule would reduce barriers to performing pro bono service for both these retiring lawyers and others who are younger but not actively practicing. This would increase the pool of lawyers available to help meet the huge unmet need of the disadvantaged for legal services.³

Recognizing the potential benefits of recruiting these lawyers to pro bono work, the American Bar Association actively encourages states to adopt an emeritus rule. As stated in an ABA publication on the issue:

The policy implications of emeritus attorney pro bono programs span local, state, and national levels. They offer the potential for expansion of legal services delivery and advocacy. In addition, emeritus attorney pro bono programs create a new focus for the effective use of volunteers, who may be unaware of the aging network or the legal services delivery system for low- and moderate-income individuals.

Emeritus attorney pro bono programs have at least three policy implications for delivery of direct services. The first impact is that the programs offer additional resources and are one method of supplementing existing legal services in light of growing need and finite resources. The second is that emeritus attorneys are well equipped to present community legal education programs, which have the potential to help seniors and low- and moderate-income individuals avoid legal crises. The third is that emeritus attorneys may be more readily used to reach out to provide legal services to homebound residents; residents of hospitals, long-term care facilities, and hospices; clients in rural and urban areas with limited transportation; and others who are unable to come to an office or clinic.⁴

By eliminating the registration fee for lawyers representing only pro bono clients, the proposed rule would make it easier for lawyers whose changing practice status may have reduced their income, to contribute their services to meeting the unmet needs of the disadvantaged. This is a non-controversial policy adopted by a majority of the states.

³ According to a recent study by the Legal Services Corporation, legal aid programs turn away one client for every client they accept, because of inadequate resources. *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low Income Americans*, http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf. In 2005, the Supreme Court's Legal Services Planning Commission calculated that over 80% of the legal needs of Minnesota's poor go unmet. *Legal Services Planning Commission Final report*, available at <http://www.mncourts.gov/?page=2166>.

⁴ *No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs*, http://www.abanet.org/aging/docs/V2_pro_bono_emeritus_brochure_3-5.pdf.

- **Comparison of the proposed Emeritus Rule to those in other jurisdictions**

There are certain common factors used by the jurisdictions with existing emeritus rules. Courts establish requirements variously for age, years of practice, in-state license, program certification, and required supervision to ensure that emeritus attorneys are competent and ethical. Some states waive dues, CLE requirements, or both to encourage retired or otherwise inactive lawyers to volunteer with legal services organizations.

The proposed rule contains no age, years of practice, or direct supervision requirements. It also maintains existing CLE requirements. It requires lawyers to take cases through a recognized legal services provider. These providers all have client eligibility requirements for service, insuring that clients are low income and have high priority legal needs. These programs also provide training, administrative and substantive support to their volunteers.

- **Overview of the Proposed Emeritus Rule for Minnesota**

Minnesota's proposed rule would place it with the majority of jurisdictions in the following factors: program certification requirement, no age requirement, waiving of bar dues, in-state license requirement, and not requiring supervision. Minnesota would join six other jurisdictions that do not require a minimum number of years of practice.

Age

By not using age as a requirement, Minnesota would join Alabama, Alaska, Arizona, California, Colorado, Delaware, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Texas, Virginia, Washington, and West Virginia. Georgia, Utah and Wisconsin are the only states to use age as a requirement.⁵

Years of Practice

Minnesota would join Alabama, Alaska, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New York, North Carolina, Oregon, and South Dakota by having no minimum years of practice requirement.

In-State License

By requiring the applicants to have an in-state license, Minnesota would join Alabama, Alaska, California, Delaware, Georgia, Hawaii, Illinois, Maine, Maryland, Montana, New Hampshire, New York, Oregon, South Dakota, Utah, Virginia, and Wisconsin.

Program Certification

Minnesota would join Alabama, Alaska, Arizona, California, Florida, Georgia, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Mississippi, Montana, Nevada, New

⁵ Utah requires emeritus lawyers to either be 70 years old or have been practicing for 50 years.

Mexico, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, and West Virginia in requiring the emeritus lawyer to provide services through a certified pro bono program.

Supervision

Minnesota would join Alabama, Alaska, Colorado, Delaware, the District of Columbia, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Mexico, New York, Oregon, South Dakota, Washington, and Wisconsin as states that do not require supervision. Generally, in the states with a supervision requirement, a lawyer with a traditional general state license is made responsible for the lawyer licensed under the emeritus rule.

Waiver of Dues

By waiving bar dues, Minnesota would join Alaska, Arizona, California, Colorado, Delaware, Georgia, Montana, New York, North Carolina, Virginia, and West Virginia. Illinois and Massachusetts waive bar dues for emeritus attorneys.

Modification, Reduction, or Elimination of Continuing Legal Education Requirements

By maintaining regular Continuing Legal Education (CLE) requirements, Minnesota would join Alabama, California, Idaho, Maine, Mississippi, New Mexico, North Dakota, South Dakota, and Virginia. A majority of states waive CLE requirements: Arizona, Delaware, Illinois, Nevada, New Hampshire, North Carolina, Oregon, South Carolina, Texas, Utah, Washington, Wisconsin, and West Virginia.

- **Conclusion**

The emeritus rule makes sense, particularly at a time of significantly decreased funding and substantially increased client need. Minnesota should follow the example of the majority of the states, and enact a rule that removes a significant barrier to increased pro bono services. The recommended rule is drafted in a manner designed to ensure that lawyers practicing pursuant to it are qualified and ethical.

Respectfully submitted:

Catherine Haukedahl, LAD Co-chair

Matthew Boos, LAD Co-chair

RULES OF THE SUPREME COURT ON LAWYER REGISTRATION

RULE 1. DEFINITIONS:

- H.** “**Emeritus Attorney**” means a lawyer who engages in the practice of law solely to provide pro bono services, as defined by Rule 6.1(a) of the Minnesota Rules of Professional Conduct, through a legal services organization, without expecting or receiving any compensation for the provision of legal services. The request for, or award of attorneys’ fees from opposing parties in a case originally accepted as pro bono does not disqualify such services from inclusion under this section.
- I.** “**Legal Services Organization**” has the same meaning as “Approved Legal Services Provider” under Rule 2.T. of the Rules of the Minnesota State Board of Continuing Legal Education.

RULE 2. REGISTRATION FEE

B. Active Statuses

6. Active Status – Pro Bono Practitioner

An Emeritus Attorney providing pro bono services through a legal services organization, will pay no annual registration fee.

State Emeritus Pro Bono Practice Rules

Updated August 20, 2009

American Bar Association
Commission on Law and Aging
David Godfrey
Senior Attorney
godfreyd@staff.abanet.org

Emeritus pro bono practice rules encourage retired and inactive attorneys to volunteer to provide pro bono assistance to clients unable to pay for essential legal representation. At last count 30 jurisdictions have adopted emeritus pro bono rules waiving some of the normal licensing requirement for attorneys agreeing to limit their practice to volunteer service. The following chart contains essential details of the current rules.

For More information see:

No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs

The ABA Commission on Law and Aging has published a brochure designed to help states successfully recruit emeritus pro bono attorneys to provide critically needed legal services to vulnerable seniors and low- and moderate-income individuals who are now facing their legal problems on their own. The brochure is titled "No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs. You can download the PDF as a pdf online at http://www.abanet.org/aging/docs/V2_pro_bono_emeritus_brochure_3-5.pdf

State (adopted/Amended)	1. Age	2. Years of practice	Retired Inactive other	3. Out of State License Allowed	6. Waive dues	7. MCLE Waived	4. Certified legal services program	5. Direct supervision required	Malpractice Insurance mentioned in the rule	Contact
Alabama (2008) Rule 6.6 http://www.alabar.org/ogc/PDF/03052009_6-5_6-6_rule.pdf Special Membership	No	No	Inactive	No	Reduced	No	Yes	No	Required	Linda L. Lund, Director Volunteer Lawyers Program Alabama State Bar P. O. Box 671 Montgomery, Alabama 36101 (334) 269-1515 linda.lund@alabar.org
Alaska (2007) <u>Alaska Bar Rule 43.2</u>	No	No	Retired or inactive	No	Yes	n/a	Yes	No	Disclosure of existence	Krista Scully Pro Bono Coordinator Alaska Bar Association 907-272-7469 scullyk@alaskabar.org
Arizona (1987) <u>Supreme Court Rule 39.</u> <u>Emeritus Attorneys Pro Bono Participation Program</u>	No	10 of last 15	Retired	Yes	Yes	Yes	Yes	Yes	Disclosure of existence	Lara Slifko Resource Development Director Arizona Foundation for Legal Services and Education 602-340-7235 Lara.Slifko@azflse.org
California (1987/2008) Pro Bono Practice Program <u>Title 3 Division 2 Chapter 8</u>	No	At least 5 and 3 of last 5 in Calif.	Inactive	No	Yes	No	Yes	Adequate supervision	No mention	Rodney Low Program Developer State Bar of California 415-538-2219 Rodney.Low@calbar.ca.gov
Colorado (2007) <u>Colorado Court Rules 223</u>	No	No	Inactive for in state license Active or inactive for out of state license	Yes	Yes	No mention	No Must work under the auspices of a non-profit legal aid or pro bono program. Does not require approval of program by Bar.	no	No mention	Kathleen M. Schoen Director Local Bar Relations & Access to Justice Colorado Bar Association 303-824-5305 kschoen@cobar.org
Delaware (1987/2003) Supreme Court Rule 69 www.delaware.gov/rules	No	No	Inactive	No	Waived	Yes	Non profit legal aid and other listed	No	No mention	Cathy Howard Clerk Delaware Supreme Court 302-739-4155

Supreme Court Rule 69							services			Cathy.Howard@state.de.us
District of Columbia (1982) Ct. App. Rules 49(c)(9)(10) www.dcappeals.gov/dccourts Court of Appeals Rule 49 (c)(9) & (10)	No	No	Inactive for DC license	Exception for the first 90 days if licensed in any jurisdiction, working for legal aid	No	N/A	No	No Out of state license must be supervise d	No mention	Maureen Syracuse Pro Bono Program Director The District of Columbia Bar 202-737-4700 ext. 290 msyracuse@dcbbar.org
Florida (1985/2006) Bar Rule 12 www.flabar.org Bar Rule 12	No	10 of last 15	Retired	Yes	No	No Limited exception for "certification reporting."	Yes	Yes	No mention	Tracy Brim Pro Bono Programs Florida State Bar 850-561-5622 tbrim@flabar.org
Georgia (1995) Bar Rule 1-202 (d) Applies to all Emeritus Attys www.gabar.org Bar Rule 1-202 (d)	70	25	Retired	No	Yes	Waived at age 70	Yes Pro Bono agency or Non-profit Legal Services	No	No mention	Michael Monahan Pro Bono Project State Bar of Georgia 404-527-8762 mike@gabar.org
Hawaii (2002/2007) Supreme Court Rule 20 www.courts.state.hi.us Supreme Court Rule 20. Pro Bono Publicus Attorney	No	No	Inactive	No	Yes, Reduced to inactiv e rate	N/A	Yes	No	Legal Service organizatio n must provide malpractice coverage	James Branham Staff Attorney Hawaii Supreme Court 808-539-4747 James.L.Branham@courts.state.hi.us Lyn Flanigan Esq. Executive Director Hawaii State Bar Association 808-537-1868 lflanigan@hsba.org
Idaho (1990) Bar Rule 223 www2.state.id.us/isb Bar Rule 223 http://isb.idaho.gov/general/rules/ibcr.html	No	10 of last 15	Retired or not engaged in the active practice of law	Yes	Reduced	No	Yes	Yes	LS must disclose existence and extent of coverage	Diane Minnich Executive Director Idaho State Bar 208-334-4500 dminnich@isb.idaho.gov
Illinois (2008) Supreme Court Rule 756 https://www.iardc.org/rulesSC756.html#Rule%20756	No	No,	Retired or Inactive	No	Waived for retired Reduced for inactiv e	yes Must agree to participate in training by sponsor	Yes	No	Must be provided by the LS agency	Dina Merrell Associate Director The Chicago Bar Foundation 312-554-1206 dmerrell@chicagobar.org

Maine (2/1/2005) Bar Rule 6(d) www.courts.state.me.us/rules/Bar Rule 6 (d)	No	No	Inactive (filed notice to disconti nue the practice of law)	No	Reduc ed	No	Yes	No	Not mentioned	Jackie Rogers Administrative Director Maine Board of Overseers of the Bar 207-623-1121 board@mebaroverseers.org
Maryland (1/1/97) Ct. App. Rules 16-811 (e)(2); 1-312 http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp= http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=	No	No	Retired Inactive	No	Waiver of client protect ion fund	N/A	Yes	No	Not mentioned	Sharon Goldsmith Executive Director Pro Bono Resource Center of Maryland 410-837-9379 sgoldsmith@probonomd.org
Massachusetts (1/1/05) Sup. Jud. Ct Rule 4:02(8) www.mass.gov/courts/Supreme Judicial Court Rule 4:02 (8)	No	No	Retired Inactive	Yes	Yes for retired Reduc ed for inactiv e	N/A	Yes	No	Not mentioned	Office of Bar Counsel Mass. Board of Bar Overseers 617-728-8749
Mississippi (2007) Mississippi Rules of Appellate Procedure Rule 46 (f) http://www.msra.org/rules_of_appellate_procedure.pdf	No	No	Inactive or License d in another state	Yes	No	No	Yes	Yes	Required	Adam Kilgore General Counsel Mississippi Bar Association 601-948-4471 ogc@msbar.org Shirley Williams Executive Director Miss. Volunteer Lawyers Project swilliams@msbar.org
Montana (2005/2006) Bar Rule Art. 1, §3 www.montanabar.org/Bar Rule 3 (g)	No	10 of last 15	Retired or inactive and must comple te 25 hours of pro bono per year	No	Yes	10 hours	Yes 25 hour minimum per year	No	Not mentioned	Janice Doggett Equal Justice Coordinator State Bar of Montana 406-442-7660 j.doggett@montanabar.org

Nevada (2008) <u>Supreme Court Rule 49.2.</u> <u>Limited practice for emeritus</u> <u>pro bono attorneys</u>	No	no	Inactive in state Active or inactive out of state Clinical Law Profess ors	Yes	Based on inactiv e status	Yes Waived for inactive and retired members (214)	Yes	No	Disclosure if they have coverage	Kristina Marzec Director State Bar of Nevada 702-317-1404 800-254-2797 Toll Free kristinam@nvbar.org
New Hampshire (2003) <u>By-Laws of the New</u> <u>Hampshire Bar Association</u> <u>Article II Section 8</u>	No	No	Not otherwis e engaged in the practice of law	No	Reduc ed at least 90%	Yes	No	No	Not mentioned	Ginny Martin Legal Services Director New Hampshire Bar Association 603-224-6942 gmartin@nhbar.org
New Mexico (2008) <u>Rule 15-301.2</u>	No	20 years in state license 3 years for out of state	Inactive in state Active or inactive if licensed in another state	Yes	Reduc ed	No	Yes	No	Not mentioned	Sarah Singleton Co-Chair, New Mexico Access to Justice Commission ssingleton@montand.com (505) 986-2648
New York (2003) <u>22 NYCRR § 118.1(g)</u>	No	No	Retired	No	Yes	n/a	No	No	No mention	Hon. Juanita Bing Newton Deputy Chief Administrative Judge for Justice Initiatives 646-386-4700
North Carolina (2007) <u>SESSION LAW 2007-200</u> <u>HOUSE BILL 1487</u>	No	No	Inactive	Yes	Yes	Yes	Yes	Yes	No Mention	Tom Lunsford Executive Director North Carolina State Bar 919-828-4620 tlunsford@ncbar.com
North Dakota (2009) <u>Supreme Court Rule 3.10</u>	No	Active 5 years out of past 10	Volunte er practice only	Yes	Yes	No	Yes	Yes	No Mention	Penny Miller Clerk North Dakota Supreme Court 701-328-2221
Oregon (1987/2001/2008) Bar Rule 6.1 www.osbar.org <u>Oregon State Bar By-Laws</u> <u>6.101 (bylaws)</u>	No	No	Volunte er practice only	No	Reduc ed	Yes	Yes	No	No Mention	Catherine Petrecca Pro Bono Program Developer Oregon State Bar 503-431-6355 cpetrecca@osbar.org

South Carolina (2008) Supreme Court Rule 415 www.judicial.state.sc.us <u>Supreme Court Rule 415</u>	No	Inactive or Retired for less than 7 years	Retired or inactive for not more than 7 years	Yes	Reduced/ Exempt	Yes	Yes	Yes	No Mention	Gayle Watts Deputy Clerk for Bar Admissions South Carolina Supreme Court 803-734-1080 Robin Wheeler, South Carolina Access to Justice Commission, (803) 576-3808, rwheeler@sctbar.org
South Dakota (2008) Supreme Court Rule SDCL 16-17.4.1.	No	No	Retired	No	Inactive	No	Yes	No	Not mentioned	Tom Barnett Executive Director State Bar of South Dakota 605-224-7554 Thomas.Barnett@sctbar.net
Texas (1988) Bar Rule Article XIII www.texasbar.com Bar Rule Article XIII	No	5 of last 10	Retired	Yes	If over the age of 70	Yes (XII 4-G)	Yes	Yes	Yes	Texas Lawyers Care 512-427-1859 800-204-2222, ext. 1855 tlcmail@texasbar.com
Utah (1996) Code Ch 16 Bar Rules www.utcourts.gov/resources <u>Rule 14-101 et seq. (RIM);</u> <u>Rule 14-203 (Bylaws); Rule</u> <u>14-401 et seq. (MCLE)</u>	If Retired 75 or 50 years of practice	If Retired 50 years of practice or age 75	Retired active 50 years or 75 years of age Or Inactive	No	Reduced for retired Not waived for inactive	Yes	Yes	Yes	Not mentioned	Utah State Bar Licensing department (801) 297-7020 licensing@utahbar.org
Virginia (2004) Supreme Court Rule 6:4-3 www.vsb.org Supreme Court Rule 6:4-3	No	10 of last 15	Retired	No	Yes	no	Yes	Yes	Not mentioned	Maureen Petrini Pro Bono Coordinator Virginia State Bar 804-775-0522 petrini@vsb.org
Washington (1998) Court Rule 8(e) www.wsba.org Court Rule 8 (e)	No	5 of last 10 is Lic in WA; 10 of 15 if out-of-state	Retired from the practice of law	Yes	Reduced	yes. One-time orientation training required	Yes	No	Not mentioned	Sharlene Steele Access to Justice Programs Liaison Washington State Bar Association sharlene@wsba.org 206-727-8282

Wisconsin (?) Membership status and dues http://www.wisbar.org/AM/Template.cfm?Section=Membership_Status_Options&Template=/CM/ContentDisplay.cfm&Contentid=38207#memstatopt	70	n/a	Age only	No	Reduced (\$16 in 2009)	Yes	No	No	Not mentioned	State Bar of Wisconsin, P.O. Box 7158, Madison WI 53707-7158. (800) 728-7788.
West Virginia (2006) Bar Rule Article II §11 www.state.wv.us/wvsca Bar Rule Article II §11	No	10	Retired Or Inactive	Yes	Yes	Yes	Yes	Yes	Not mentioned	Rory Perry Clerk West Virginia Court of Appeals 304-558-2601

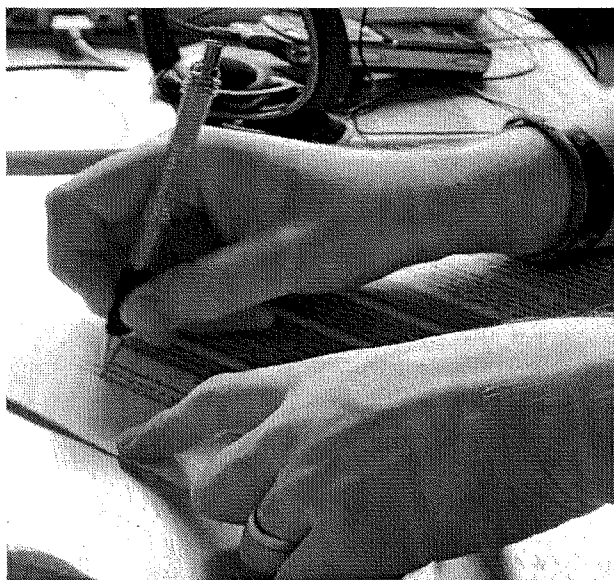
No Longer on Their Own

Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs

Why Emeritus Attorney Pro Bono Programs?

Emeritus attorney pro bono programs provide a limited license for retired and non-practicing lawyers who otherwise may retire from the active practice of law to practice on a volunteer basis for non-profit legal services providers serving vulnerable seniors and low- and moderate-income individuals.

The policy implications of emeritus attorney pro bono programs span local, state, and national levels. They offer the potential for expansion of legal services delivery and advocacy. In addition, emeritus attorney pro bono programs create a new focus for the effective use of volunteers, who may be unaware of the aging network or the legal services delivery system for low- and moderate-income individuals.



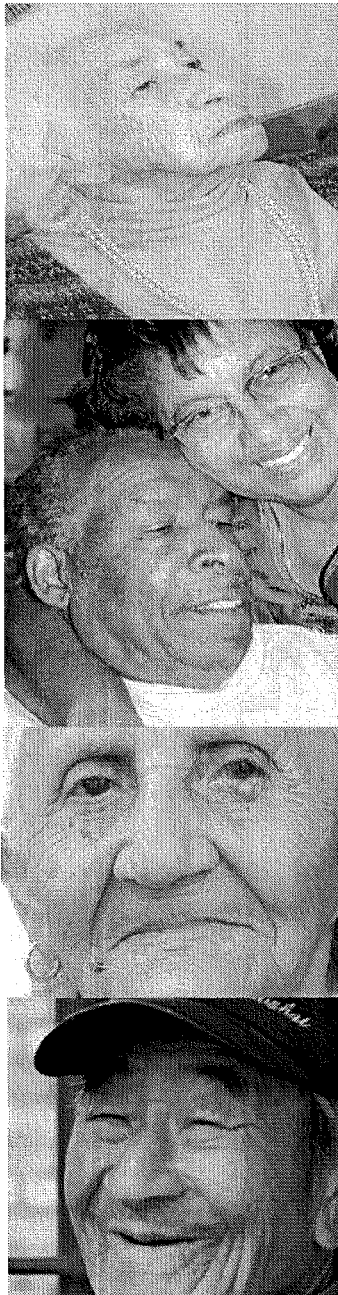
Emeritus attorney pro bono programs have at least three policy implications for direct services. The first impact is that the programs offer additional resources and are one method of supplementing existing legal services in light of growing need and decreasing resources. The second impact involves emeritus attorneys presenting community legal education programs, which have the potential to help seniors and low- and moderate-income individuals avoid legal crises. The third impact is the use of emeritus attorneys to provide legal services to homebound residents; residents of hospitals, long-term care facilities, and hospices; clients in rural and urban areas with limited transportation; and others who are unable to come to an office or clinic.

The volunteer attorney becomes a broker between a senior or a low- or moderate-income client and a complex social and legal system. At the same time, the volunteer attorney gains an awareness of the unique challenges facing their vulnerable clients. Emeritus attorneys become a critical component of efforts to address the unmet civil legal needs of individuals in the greatest social and economic need.



No Longer on Their Own

Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs



Significant numbers of attorneys are expected to retire or modify their practices in the coming years. They may think of changing their active membership status to accommodate their current career or lifestyle. Emeritus attorney pro bono programs offer these attorneys a limited license to practice pro bono legal services and are a great way to reinvest in our civil justice system the legal skills, training, and experience of retired and non-practicing attorneys.

Need for Pro Bono Legal Services

The gap between the legal needs of those who cannot afford legal services and the resources available to meet those needs continues to grow. Results from the 2007 Report on a Study of the Concerns of Older Kentuckians, the 2006 Legal Needs of Older Floridians Survey, and the 2003 Washington State Civil Legal Needs Study¹ are representative of the situation nationally.

According to the surveys, 42 percent of Kentuckian respondents² and 64 percent of Floridian respondents³ had not sought legal assistance because they felt they could not afford it, even though they expressed a need for help with legal issues, such as understanding government benefits, health insurance coverage issues, estate planning, and advance directives.

In addition, 60 percent of the legal services providers who participated in the Kentucky survey reported that demand for services already exceeds organizational capacity.⁴ More than 75 percent of all low-income households in Washington state experience at least one civil legal problem each year, yet face more than 85 percent of their legal problems without help from an attorney.⁵ Removing family-related matters, low-income Washingtonians receive help from an attorney in less than 10 percent of all civil legal matters.⁶ Low-income vulnerable seniors and domestic abuse survivors in Washington state get attorney assistance for legal problems most often, but still face more than 75 percent of their legal problems on their own.⁷

ABA Commission on Law and Aging
740 15th St., N.W., Washington, DC 20005
www.abanet.org/aging
Contact: Holly Robinson, associate staff director
robinsoh@staff.abanet.org ♦ (202) 662-8694

History of Emeritus Attorney Pro Bono Practice Rules

Florida was first. In 1981, the Florida Bar Board of Governors voted to support the concept of an emeritus attorney program on a one-year experimental basis. The Florida Bar Board of Governors authorized the creation of the Emeritus Attorney Pro Bono Participation Rule, which went into effect on October 24, 1985. The rule allows retired attorneys licensed in Florida or another state to be certified to practice with a qualified legal aid organization on a pro bono basis.

Rule 12-1.1 of the Rules Regulating the Florida Bar provides:

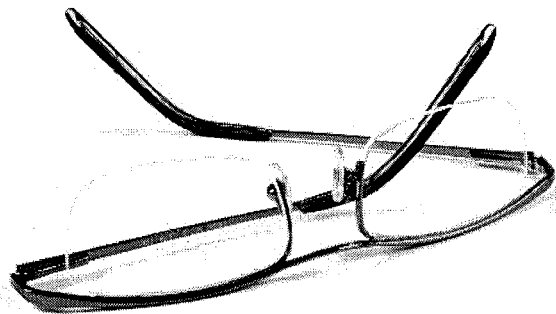
Purpose. Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rules establishing the emeritus attorneys pro bono participation program are adopted.

The Florida Bar Board of Governors was visionary in adopting practice rules that permit retired or non-practicing attorneys who are members of the Florida State Bar or another state bar to con-

tinue to practice in a limited capacity as a way of increasing access to legal services for those who are unable to afford it.

Arizona, California, and Oregon adopted similar rules in 1987. Arizona permitted attorneys licensed in any state to provide pro bono services under the supervision of a qualified legal aid organization, while California limited its rule to attorneys licensed to practice in California. Between 1985 and 1996, 12 states adopted emeritus attorney pro bono practice rules, and between 2001 and January 2008, 14 more states have followed.

In addition, as of January 2008, the state bars of California, Oregon, and Washington have staff responsible for implementing the rule by providing information to bar members about the limited license status, handling emeritus applications, assisting with recruitment of attorneys, or facilitating the placement of attorneys with legal services providers.



No Longer on Their Own

Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs

What Kind of Pro Bono Work Can Retired and Non-Practicing Volunteer Attorneys Do?

Few endeavors are better suited to the unique skills and experience of retired and non-practicing lawyers as pro bono legal work for vulnerable seniors, low- and moderate-income persons, and non-profit organizations.

It is not necessary to have a background in specific areas, such as government benefits, landlord/tenant law, estate planning, family law, or consumer law, to make a significant contribution as a volunteer. Emeritus attorneys can choose from a wide range of pro bono opportunities that complement their interests, skills, and schedules. They may choose to:

- ◆ Provide advice and brief services on a hotline or in person
- ◆ Develop and present community legal education programs
- ◆ Conduct client intake interviews and screenings
- ◆ Mentor less experienced attorneys
- ◆ Staff senior center clinics
- ◆ Draft advance directives, simple wills, and other basic estate planning documents
- ◆ Engage in public speaking and consumer education
- ◆ Provide transactional pro bono legal services to non-profit organizations, community development projects, and individuals
- ◆ Conduct outreach activities
- ◆ Conduct telephone hearings
- ◆ Serve on the board of directors of social service agencies and non-profit legal services providers
- ◆ Staff self-help or courthouse resource centers
- ◆ Provide mediation and dispute resolution services
- ◆ Work for long-term care ombudsman programs
- ◆ Assist with fundraising for legal services or social services programs
- ◆ Provide litigation support
- ◆ Assist with outreach and recruitment of volunteer attorneys
- ◆ Maintain a client caseload
- ◆ Assist with document analysis
- ◆ Conduct legislative research and bill analysis



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Benefits to Retired and Non-Practicing Volunteer Attorneys of Performing Pro Bono Work

In addition to providing much needed legal assistance to seniors and low- and moderate-income individuals, emeritus attorneys derive personal benefits from performing pro bono work. They enjoy giving something back to their community and putting their skills to good use; learning about elder law and issues they may be confronting in their own life; or discovering the challenges of living on a limited income or not being a native English speaker. They find personal satisfaction helping clients and maintaining social and professional interaction with professional colleagues.

Establishing an Emeritus Attorney Pro Bono Program

Enacting an emeritus attorney pro bono rule is a necessary first step. But **more important** is establishing an emeritus attorney pro bono program to implement the rule. The program can educate retiring and non-practicing attorneys about the option of changing one's bar status and the opportunities emeritus pro bono status provides, encourage attorneys to volunteer, provide support to legal services providers and other non-profit organizations in recruiting and maintaining volunteers, and participate in a state's access to justice efforts.

A 2006 survey conducted by the ABA Commission on Law and Aging found adopting emeritus attorney pro bono practice rules without establishing an emeritus attorney pro bono program is not effective in meeting the unmet civil legal needs of persons unable to pay for those services or providing a meaningful volunteer experience for emeritus attorneys. Without a program in place, very few attorneys take advantage of the limited practice rules and volunteer to provide pro bono legal services.

Emeritus attorneys serve as volunteers of the state's legal community. By recognizing this and treating the emeritus attorneys as the volunteers they are, emeritus attorney pro bono programs will be able to achieve their full potential.

"I definitely support the proposal—it's the perfect way for inactive members to give back to the community and stay involved. In fact, upon moving from active to inactive status, I asked whether such a rule existed and was surprised to learn that it didn't. I'm thrilled by the opportunity."

—Comment of inactive member interviewed about the Alaska State Bar's Pro Bono Services Committee Proposed Emeritus Attorney Rule

Checklist for Creating an Emeritus Attorney Pro Bono Program

The establishment of an emeritus attorney pro bono program requires consideration of a number of elements and variables. The following list of factors and questions may be helpful in the formulation process:

✓ Program Administration

Who will administer the program? Pro bono or program development staff, access to justice staff, or committees of a state bar or bar association may be well-suited to this task.

✓ Rule Administration

Who will receive applications for emeritus pro bono status? Does that entity have the capacity to create and maintain a data base of emeritus pro bono attorneys, either as part of the bar membership data base or a separate data base?

Who will verify elements of a rule that may require verification; *i.e.*, a length of practice requirement, or will an attorney's filing of an affidavit be sufficient?

If out-of-state attorneys are permitted to provide pro bono services, will there be a different process for their registration?

✓ Attorney Registration Requirements

How often will attorneys be required to register for emeritus attorney pro bono status—once, annually, bi-annually?

Will registration be a part of or separate from bar registration requirements?

✓ Legal Services Provider Registration Requirements

Will legal services providers be required to be registered or certified to participate?

If so, who will notify them of the requirements and how will provider registration be handled?

Will providers be required to register once, annually, or bi-annually?

Does the entity receiving registration applications from providers have the capacity to create and maintain a data base of providers?

What happens after a provider files an application with the named entity?

Is the process administratively onerous and discourage providers from participating?

✓ Outreach and Recruitment of Attorneys

Who will be responsible for informing retiring and non-practicing attorneys about the rule and recruiting attorneys to volunteer? Are there mechanisms available to do this, such as dues statements and other mailings of the state bar or bar association?

Is status-specific, subject-specific, or project-specific recruitment advantageous?

✓ Outreach and Recruitment of Legal Services Providers

Who will be responsible for informing legal services providers about the rule and advising them about the availability of volunteers?

✓ Showcasing Volunteer Opportunities

How will information be provided to emeritus attorneys about the variety of ways to provide pro bono legal services and the programs for which emeritus attorneys can vol-

Checklist for Creating an Emeritus Attorney Pro Bono Program

unteer? Who will be responsible for arranging for or providing an overview of volunteer opportunities available to emeritus attorneys?

As part of its mandatory orientation training for attorneys interested in changing their bar status to emeritus, the Washington State Bar Association hosts a pro bono fair where non-profit legal services organizations showcase their programs to attendees at the training and recruit new volunteers, and attendees are able to meet with representatives of the organizations.

✓ Attorney Orientation and Training

What type of orientation and training will be provided to new volunteers?

The Washington State Bar Association requires all attorneys interested in changing their status to emeritus to participate in a one-time orientation training. The potential new volunteers are welcomed by the president of the state bar and have an opportunity to meet legal services providers. Attendees receive information about volunteer opportunities available at the various legal services providers, as well as logistical information about changing their membership status to emeritus. Attendees are reimbursed for their travel expenses to attend the orientation training. Many organizations that sponsor CLE seminars offer low-cost or free admittance to emeritus attorneys.

✓ Malpractice Insurance

Are the non-profit legal services programs, bar association volunteer lawyers projects, and other programs for whom emeritus attorneys may volunteer able to provide malpractice insurance to their emeritus

attorneys for the pro bono legal services the attorney provides or the pro bono cases an emeritus attorney takes?

Generally, an attorney who does not have malpractice insurance is covered by the legal services office or program through which the attorney works or accepts a pro bono case. That endorsement covers any complaint that arises from an attorney's handling of the case within the statute of limitations. In order for an attorney to be covered by the malpractice insurance of a legal services office or volunteer lawyers program, the attorney must provide legal services directly to clients as part of the legal services office or accept the case through a pro bono referral program.

✓ Volunteer Recognition

How will emeritus attorneys, who are participating in the state's access to justice efforts, be recognized for their contributions?

✓ Program Evaluation and Outcomes

Will the entity responsible for overseeing the implementation of the rule be able to report, on a regular and on-going basis, the number of attorneys providing pro bono services under the rule, the number of legal services providers for whom emeritus pro bono attorneys are volunteering, and the overall impact of the rule in meeting unmet legal needs?

Will the entity responsible for overseeing the implementation of the rule be able to identify aspects of the rule that may be barriers to volunteering and recommend changes to the rule?

No Longer on Their Own

The State Bar of California, the Oregon State Bar, and the Washington State Bar Association have long operated emeritus attorney pro bono programs. These programs demonstrate that retired and non-practicing attorneys can be called upon to volunteer to provide critically-needed legal services to vulnerable seniors and low- and moderate-income individuals, and to help their clients meet basic human needs such as health care, financial security, housing, and personal safety.

Emeritus attorney pro bono programs can help ensure that vulnerable seniors and low- and moderate-income individuals no longer have to face their legal problems on their own.

Building Support for an Emeritus Attorney Pro Bono Program

An effort to enact an emeritus attorney pro bono rule or implement an emeritus attorney pro bono program requires support from a broad-based, non-partisan coalition of legal services organizations, the aging network, the judiciary, the private bar, bar foundations, state access to justice commissions, and state and local bar associations committed to expanding, coordinating, and promoting effective and economical civil legal services delivery for vulnerable seniors and low- and moderate-income individuals. These natural partnerships can form the foundation of an effort to draft and submit to the state supreme court a rule proposing an emeritus pro bono status or develop an emeritus attorney pro bono program. During 2007, for example, emeritus attorney pro bono rules were proposed by a state bar pro bono services committee, a state bar executive director, a state access to justice commission, and a coalition of groups representing these organizations and others in the access to justice community.

“It’s a pleasure to have the support of the state bar in making this meaningful contribution. I find participation in the program very satisfying.”

—2006 California Emeritus Attorney Survey

Emeritus attorney pro bono programs may also be a key element of statewide efforts to help those lawyers who wish to continue actively practicing law but who wish to transition to positions providing greater community service, or who wish to continue to practice in a limited capacity to provide pro bono legal services. An emeritus attorney pro bono program is a great tool to encourage and assist lawyers who are considering transitioning to a second career in pro bono service.

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Endnotes

1. David Godfrey & Cody Weber, *Report on a Study of the Concerns of Older Kentuckians* (Access to Justice Foundation, Lexington, Ky. 2007) (at http://www.legalhotlines.org/library/KY_Legal_Needs_Study_Nov2007.pdf); Erica L. Dinger, *Legal Needs of Older Floridians: A 2006 Survey* (AARP, Washington, D.C., 2007) (at http://assets.aarp.org/rgcenter/general/fl_legal_06.pdf); Task Force on Civil Equal Justice Funding, *The Washington State Civil Legal Needs Study* (Washington State Supreme Court, 2003) (at <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>).
2. Godfrey & Weber, *supra* n. 1, at 37.
3. Dinger, *supra* n. 1, at 20.
4. Godfrey & Weber, *supra* n. 1, at 48.
5. Task Force on Civil Equal Justice Funding, *supra* n. 1, at 24 & 26.
6. *Id.* at 26.
7. *Id.* at 28.