

Attachment A

Recommendations and Comments Title 3, Division 2, Chapter 8 of the State Bar Rules

Recommendation 1

Change title of Chapter 8 from Emeritus Attorneys to “Pro Bono Practice Attorneys”; globally replace “Emeritus Attorney” or “emeritus” with “Pro Bono Practice” and delete “retired” and “retirement”.

Comment: Renaming the program is necessary to adequately reflect the rule changes. The words “emeritus” and “retired” are associated with age and/or retirement status due to age. Removing them will help broaden the pool of applicants to include younger attorneys taking an early or mid-career break from the active practice of law and attorneys transitioning to alternative careers.

Recommendation 2

Rule 3.325, Definitions (C): delete “certified by the State Bar as meeting the statutory criteria for” and replace with “receives or is eligible to receive funds from the Legal Services Trust Fund Program as . . .”

Comment: The proposed replacement language appeared in the original version of the Emeritus Attorney Program Rules and should be retained as the language is the most recognized definition of “qualified legal services providers” both within and outside the State Bar.

Recommendation 3

Rule 3.325, Definitions (D): add “panel or” between “pro bono” and “clinic.”

The word “panel” is the correct terminology when referencing lawyer referral services.

Recommendation 4

Rule 3.327, Eligibility requirements (A): delete “retirement” and replace with “application to the Pro Bono Practice Program.”

Comment: All of the eligibility requirements would be effective from the time the attorney files an application to enroll in the program.

Recommendation 5

Rule 3.327, Eligibility requirements (B) and (D): Reduce the number of years admitted to the practice of law in a United States jurisdiction and no record of public discipline from ten to five.

Comment: On the basis of their experience with the Emeritus Program, the Standing Committee on the Delivery of Legal Services and the Program Development staff of the Office of Legal Services, Access & Fairness Programs believe that being admitted to the practice of law for five years in any jurisdiction (with three of those years as a judge or practicing attorney in California) plus no record of public discipline during the five years are sufficient requirements for an attorney to provide valuable pro bono contributions and to overcome any concerns about protecting the public and the profession.

Recommendation 6

Rule 3.327, Eligibility requirements (E): add “annually” after “application.”

Comment: Adding the word “annually” clarifies that enrollment in the program is not renewed automatically.

Recommendation 7

Rule 3.328, Waiver of an eligibility requirement: delete “for any reason” and add “or for other good cause” at the end of the rule.

Comment: Waiving an eligibility requirement for good cause is consistent with State Bar policy.

Recommendation 8

Rule 3.329, Responsibilities of a pro bono practice attorney (B): delete “project, qualified legal support center, or the no-fee panel or pro bono clinic of a . . .” and replace with “provider or a . . .”

Comment: This change is consistent with the definition of “qualified legal services provider” at Rule 3.325 Definitions (C).

Recommendation 9

Rule 3.329, Responsibilities of a pro bono practice attorney (D): delete “these rules and relevant law” and replace with “State Bar Rules on Minimum Continuing Legal Education and all other rules and laws applicable to active State Bar members.”

Comment: It is important to state in the rules that program participants must comply with MCLE requirements as many assume they are exempt from MCLE

Recommendation 10

Rule 3.329, Responsibilities of a pro bono practice attorney : add “(F) agree with the qualified legal services provider or certified lawyer referral service to provide a minimum number of hours of pro bono legal services annually, 100 hours being the recommended minimum; and.”

Comment: The current Emeritus Attorney Program Rules are silent regarding a recommended minimum number of pro bono hours to contribute per year. As pro bono resolutions adopted by the Board of Governors in December 1989 and revised in June 2002 urge all attorneys to provide at least 50 hours of pro bono legal services each year, it would be consistent to recommend a minimum number of pro bono hours. 100 hours represents a little less than two hours of pro bono service per week per year, and the committee believes this number is reasonable and attainable. Please note that the recommended number of 100 hours is voluntary and not mandatory, and that the qualified legal services provider or certified lawyer referral services and the pro bono practice attorney can agree on a different number of hours.

Recommendation 11

Rule 3.329, Responsibilities of a pro bono practice attorney: add “(G) submit application annually; and.”

Comment: This language is consistent with Rule 3.327 Eligibility requirements (E).

Recommendation 12

Rule 3.329, Responsibilities of a pro bono practice attorney : add “(H) disclose any disciplinary charges to the qualified legal services provider or certified lawyer referral service as part of the attorney’s continuing duty.”

Comment: This language is consistent with State Bar policy.

Recommendation 13

Rule 3.330, Responsibilities of a qualified legal services provider or certified lawyer referral service: Replace “qualified” with “certified” in the rule title and first sentence.

Comment: “Certified” is the correct terminology when referencing lawyer referral services.

Recommendation 14

Rule 3.330, Responsibilities of a qualified legal services provider or certified lawyer referral service : add “(E) provide adequate support and supervision to each pro bono practice attorney . . .”

Comment: Adding this responsibility for support and supervision helps ensure quality assurance and is not unduly burdensome.

Recommendation 15

Rule 3.330, Responsibilities of a qualified legal services provider or certified lawyer referral service : add “(F) agree with the pro bono practice attorney to provide a minimum number of hours of pro bono legal services annually, 100 hours being the recommended minimum; and.”

Comment: This change is consistent with text proposed above for Rule 3.329 Responsibilities of a pro bono practice attorney (F).

Recommendation 16

Rule 3.330, Responsibilities of a qualified legal services provider or certified lawyer referral service : add “(G) submit application annually for each pro bono practice attorney.”

Comments: This change is consistent with text proposed above for Rule 3.327 Eligibility requirements (E).