

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.



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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



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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.



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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?

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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.