



Virginia State Bar Public Comment Request

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The Virginia State Bar Rules-Emeritus Class of Membership

RICHMOND - Pursuant to Part 6, § IV, ¶ 3(f) of the Rules of the Supreme Court of Virginia, the Virginia State Bar is seeking public comment on the emeritus class of membership.

Proposed by the Access to Legal Services Committee, the following amendments to Paragraph 3(f) broaden the eligibility criteria for emeritus membership with the goal of allowing additional experienced Virginia attorneys to exclusively provide pro bono legal services to the poor and working poor in affiliation with a Qualified Legal Services Provider. Most significantly, the proposed amendments eliminate the recent active practice requirement and reduce the active practice duration from twenty (20) years to ten (10). The amendments also streamline the language and make it consistent with other membership class requirements.

(f) Emeritus Members — A member of the Virginia State Bar ~~Those lawyers who are admitted to practice law in the Commonwealth of Virginia may,~~ upon request to the Virginia State Bar with the supporting materials specified in this subparagraph, become an emeritus members and provide exclusively pro bono legal services, as defined by Rule 6.1 of the Rules of

Professional Conduct and its comments, to the poor and working poor, as ~~emeritus members~~ subject to the terms and conditions stated in this subparagraph. Emeritus members are not required to pay dues, cannot practice law except in the limited manner specified in this subparagraph, and except as members of committees and sections, cannot vote or hold office in the Virginia State Bar.

At the time of requesting emeritus member status, an emeritus member a lawyer must be an active, associate, judicial, disabled, or retired member in good standing of the Virginia State Bar who (a) for a total of 10 years or more, either has been an active member of the Virginia State Bar or has practiced law for 10 years or more in any U.S. jurisdiction; (b) has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and (c) intends to provide exclusively pro bono services in association with one or more a qualified legal services providers. A qualified legal services provider, for the purposes of this subparagraph, is a Virginia licensed legal aid society or other not-for-profit entity, organized in whole or in part, to provide legal services to the poor and/or working poor in Virginia.

An emeritus member agrees to neither ask for nor receive any compensation of any kind from the client, except for out-of-pocket expenses, for the legal services to be rendered under this subparagraph. The prohibition against compensation of an emeritus member will not prevent the qualified legal services provider from reimbursing the emeritus member for actual expenses incurred while rendering services under this subparagraph nor will it prevent the qualified legal services provider from charging for its services as it may otherwise properly charge. The qualified

legal services provider is authorized to receive all court awarded attorney's fees for any representation rendered by an emeritus member.

An emeritus member, in association with a qualified legal services provider with which the member is affiliated, may perform only the following activities on behalf of a current client of a qualified legal services provider:

(i) appear in court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia;

(ii) prepare and sign pleadings and other documents to be filed in court or with an administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved;

(iii) render legal advice and perform other appropriate legal services; and

(iv) engage in such other preparatory activities as are necessary for any matter in which the emeritus member is properly involved.

~~(1) Definitions.~~

~~(A) Active practice of law, for the purposes of this subparagraph, means that a lawyer has been engaged in the practice of law, which includes private practice, corporate practice as authorized by Part One A, Rule 1A:5, public employment as a lawyer, or full-time teaching at an American Bar Association approved law school.~~

~~(B) Emeritus member is any person who is admitted to practice law in the Commonwealth of Virginia, who is retiring or has retired from the bench or the active practice of law, and who intends to provide exclusively pro bono services under this subparagraph; and~~

~~(i) intends to provide pro bono legal services as defined by Rule 6.1(a) of the Virginia Rules of Professional Conduct and its comments, subject to the terms and conditions of this subparagraph; and~~

~~(ii) is, at the time of requesting emeritus member status, an active, associate, judicial, or retired member in good standing of the Virginia State Bar who has practiced law for 120 years or more in any U.S. jurisdiction; and~~

~~(iii) is, at the time of requesting emeritus status, an active, associate, judicial, or retired member who has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and~~

~~(iv) has been engaged in the active practice of law in any U.S. jurisdiction for a minimum of five out of the seven years immediately preceding the application to become an emeritus member; and~~

~~(v) agrees to neither ask for nor receive any compensation of any kind from the client, except for out-of-pocket expenses, for the legal service to be rendered under this subparagraph.~~

~~(C) Qualified legal services provider, for the purposes of this subparagraph, is a Virginia licensed legal aid society or other not-for-profit entity organized in whole or in part, to provide legal services to the poor and/or working poor in Virginia.~~

~~(2) Activities.~~

~~(A) An emeritus member, in association with a qualified legal services provider, may perform only the following activities:~~

~~(i) appear in court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of a qualified legal services provider.~~

~~(ii) prepare and sign pleadings and other documents to be filed in court or with an administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved.~~

~~(iii) render legal advice and perform other appropriate legal services.~~

~~(iv) engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.~~

~~(3) Limitations.~~

~~(A) The prohibition against compensation for the emeritus member contained in section (1)(B)(v) of this subparagraph will not prevent the qualified legal services provider from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor will it prevent the qualified legal services provider from charging for its services as it may otherwise properly charge. The qualified legal services provider is authorized to receive all court awarded attorney's fees for any representation rendered by an emeritus member.~~

(41) Certification. ~~Permission for an emeritus member to perform services under this subparagraph becomes effective upon:~~ Each year, an emeritus member must file with the Virginia State Bar a certification of affiliation for with each a qualified legal services provider with which the member will be affiliated. The certification must include whether the emeritus member is

covered by the qualified legal service provider's professional liability insurance.

~~(A) a determination by the Virginia State Bar that the emeritus member has fulfilled the requirements of such membership and has no disciplinary record as required by section (1)(B) of this subparagraph; and~~

~~(B) the filing with the Virginia State Bar each year of an affidavit of affiliation with a qualified legal services provider by the emeritus member. The emeritus member must also certify in this affidavit whether such member is currently covered by professional liability insurance.~~

(52) Membership Requirements. In order to practice law under this rule, a retired member must comply with the ~~the~~ petition and approval membership requirements for reinstatement as an active member prescribed in Paragraph 3(d) of Part 6, Section IV of the Rules of the Supreme Court of Virginia. Also, ~~associate members must satisfy any outstanding MCLE deficiencies before assuming emeritus status.~~ Additionally, emeritus members must comply with all rules and requirements set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia with the exception that they are not required to pay dues and other fees, nor comply with the ~~professional liability certification~~ requirements in Paragraph 18.

(63) Change of Membership ~~Status~~Class. An emeritus member may ~~petition for reinstatement~~ change to any membership class upon meeting the requirements of that class as prescribed in this Rule, including changing to active or associate membership without petitioning for

reinstatement to active or associate membership under the procedure prescribed in subparagraph (e) of this rule for retired members.

In addition to the amendments proposed by the Access to Legal Services Committee, the Regulatory Compliance department proposes adding the following language to the “Certification” provision – Paragraph 3(f)(1) under the Access Committee proposal – to provide a mechanism for enforcement of the annual emeritus certification requirement.

(41) Certification.

Emeritus members must provide the annual certification to the Virginia State Bar within 60 days of receiving the renewal request from the Virginia State Bar. Failure to timely certify will result in the emeritus member’s status being changed to “Not In Good Standing” and the emeritus member’s authorization to practice law under this Rule will be administratively suspended.

Inspection and Comment

The proposed Rule is above and may be inspected at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 am and 4:30 pm, Monday through Friday.

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Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron M. Rountree, executive director of the Virginia State Bar, not later than **July 26, 2024**. Comments may be submitted via email to publiccomment@vsb.org.