

WASHINGTON STATE BAR ASSOCIATION

MEMO

To: Rajeev Majumdar
CC: Terra Nevitt, Kevin Plachy, Diana Singleton
From: Paige Hardy
Date: December 13, 2019
Re: History of the Emeritus Pro Bono Status at WSBA

Dear Rajeev,

I am writing in response to your request for a brief history of the Emeritus Pro Bono license at the Washington State Bar Association.

Background/History

The Supreme Court of Washington approved the Emeritus status in 1998. Washington was the seventh state to implement a rule of this nature. Presently there are 44 jurisdictions in the United States with similar Emeritus Pro Bono rules.

The creation of this license type allowed for the limited practice of law to attorneys providing unpaid legal services to low-income clients through a qualified legal services organization. This rule has gone through several variations, but is currently set forth in [APR 3\(g\)](#) (originally APR 8(e)). For example, prior versions of the Emeritus status required complete MCLE compliance, which is no longer mandated.

In 2008, the Board of Governors (BOG) Bylaw Review Committee approved a name change from the Emeritus status to Emeritus *Pro Bono*. Please see attached memorandum dated October 14, 2009, for many of the changes.

The Pro Bono and Public Services Committee has advocated on behalf of WSBA members for many of the improvements to the Emeritus Pro Bono requirements that the BOG and the Supreme Court have considered and implemented.

License Fees

The cost for the Emeritus Pro Bono license type is on the same fee schedule as the Inactive license. Currently the fee is set at \$200. The Emeritus Pro Bono license fee was first set at \$48 in 1998 and has generally trended upwards. In 2001, the license fee dropped from \$51 to \$10—the only noted fee decrease. However, in the following year, the license fee jumped up to \$108. The second largest increase took place in 2010 when the fee went from \$120 to \$200. The fee has steadily remained at \$200 for a decade. Please see table below.

Year	Emeritus License Fee
1998	\$48
1999	\$50
2000	\$51
2001	\$10
2002	\$108
2003	\$117
2004	\$117
2005	\$117
2006	\$117
2007	\$120
2008	\$120
2009	\$120
2010	\$200
2011	\$200
2012	\$200
2013	\$200
2014	\$200
2015	\$200
2016	\$200
2017	\$200
2018	\$200
2019	\$200

Recognizing that the fee was barrier for many attorneys, the Pro Bono and Public Service Committee has spent several years advocating for the reduction or elimination of the fee. In 2015, the Committee moved to pass a resolution in support of the elimination of the Emeritus Pro Bono license fee. In 2016, the Committee submitted their recommendation to the Board of Governors Budget and Audit Committee. Please see attached memorandum dated April 25, 2016. The BOG declined to take action on the proposal at the time.

Present

Currently, attorneys that want to transfer to Emeritus Pro Bono must meet the following licensing requirements and submit an application.

- Admitted to the practice of law in Washington and have current good standing.
- Active legal experience for at least five of the last ten years immediately proceed the application filing.
- \$200 license fee, equivalent to the Inactive license fee.
- Practice of law is limited to pro bono work through a Qualified Legal Services Provider. Attorney must arrange their volunteer service with the Qualified Legal Services Provider.
- Complete 6 hours of training or orientation with the Qualified Legal Services Provider.
 - Although many of these trainings are MCLE-accredited, this is not a requirement. It is also important to note that attorneys with this license type are not required to meet MCLE credit requirements with the exception of attorneys seeking to change back to active status.

- There are currently 110 attorneys with this license type of 40,866 total members.

Other Jurisdictions

In May 2019, the American Bar Association published a comparative chart of the 44 jurisdictions with Emeritus-type rules. The chart compared data points such as years of practice requirements, fee waivers and reductions, MCLE requirements, and requirements for working with a certified legal services program. The chart is accessible [here](#).

The information below specifically identifies how the neighboring jurisdictions (Oregon, Alaska, and Idaho) are currently handling similar license types.

Oregon: The Oregon State Bar sets forth the rules for its Active Pro Bono Membership Status under Oregon State Bar Bylaws, Subsection 6.101.

- Attorneys with active membership and in good standing are eligible to apply.
- Malpractice coverage is required through the pro bono program or the Oregon State Bar's Professional Liability Fund.
- The annual fee is set at \$125, equivalent to the inactive license fee.
- Attorneys are restricted from practicing law except with a certified pro bono program. See Section 13.2 of the Oregon State Bar Bylaws for certification requirements.
- There are no MCLE or IOLTA requirements for attorneys under this status.
- Attorneys must annually report the total number of pro bono hours completed the preceding year. The attorney or the certified program can report these hours.

Idaho: The Idaho State Bar sets forth the Emeritus Attorney Limited License under Idaho Bar Commission Rules, Section II, Rule 228.

- Attorneys with an active license to practice law in Idaho or another state within the preceding five years of their application are eligible to apply.
- The annual fee is set at \$150, equivalent to the inactive license fee.
- Practice of law is limited to pro bono legal services through an organization approved by the Idaho State Bar.
- Idaho does impose a MCLE requirement. Each year that an attorney renews their Emeritus Attorney license, they must verify that they have completed three CLE credit hours with an Approved Legal Assistance Organization.
- There are currently only 7 attorneys with this license type of 6,485 total members.

Alaska: In 2007, the Alaska Bar Association added Bar Rule 43.2, outlining their Emeritus Attorney license.

- Attorneys with good standing and licensed to practice law.
- Practice of law is limited to pro bono legal services through a qualified legal services provider.
- Applicants must verify malpractice insurance coverage through the qualified legal services provider.
- Attorneys must have no instances of public discipline within the past 15 years in any jurisdiction.

- License fees are eligible for waiver. The Alaska Bar Association contacts the qualified legal services provider to verify that the work has been performed the preceding year to determine whether dues are eligible for waiver. \$215 is the cost for the inactive license.

Next Steps

In furtherance of the Committee's mission to enhance a culture of legal service and encourage WSBA members to engage in pro bono, the Rules Workgroup has continued to research this topic to identify potential changes that will both substantively reduce barriers and clarify portions of the existing rule that are most commonly misunderstood by WSBA members. For example, the name of the license, *Emeritus Pro Bono*, gives the impression that the license is limited to older attorneys closer to retirement. If the intended goal is to make this license more inclusive of attorneys at varying stages of their legal careers, it might be more prudent to rename the license to help clarify that narrative.

The most recent version of their proposal is in the process for finalization. The BOG can expect this proposal in 2020, before the end of the fiscal year. The Rules Workgroup intends to reach out to their BOG Liaison, Kim Hunter, as well as additional stakeholders.

The Rules Workgroup looks forward to any opportunity to continue this conversation with the governors and officers of the Board of Governors.



WSBA

Pro Bono and Public Service Committee

TO: WSBA Board of Governors

FROM: Pro Bono and Public Service Committee

DATE: May 5, 2020

RE: Proposal to Reduce Barriers to Access for Emeritus Pro Bono License Status

The Board of Governors created the Pro Bono and Public Service Committee to enhance a culture of legal service by promoting opportunities and best practices that encourage WSBA members to engage in pro bono and public service with a particular focus on services to people with low or moderate income.

In October of 2019, the Pro Bono and Public Service Committee (PBPSC) passed a resolution supporting the elimination of various structural barriers facing members of the bar seeking Emeritus Pro Bono status (recommendations 1, 3-5). The PBPSC intends to discuss and vote on the final recommendation (2) at the May 2020 meeting. The PBPSC recommends:

1. Removing the years of practice requirement for eligibility
2. Providing the option for a waiver of annual dues for Emeritus Pro Bono members who provided 30 hours of pro bono service in the previous calendar year
3. Clarifying the rules regarding Emeritus Pro Bono members seeking to move back to active membership
4. Clarifying that the rules to permit Emeritus Pro Bono members to volunteer for multiple Qualified Legal Service Providers (QLSPs)
5. Simplifying the name of the program to “Pro Bono Status” and clarifying that members do not need to be “otherwise retired” and that inactive members are eligible to apply for Emeritus Pro Bono status

The PBPSC sees these unclear and/or unnecessary rules and restrictions as barriers to engaging members to volunteer; barriers which could be removed at negligible cost to the WSBA, while furthering the organization’s mission to serve the public and members of the Bar.

Emeritus Pro Bono Membership Status

Emeritus Pro Bono members have a limited license to practice law. They may only practice through a QLSP without compensation. Currently, Emeritus Pro Bono members pay annual dues equal to

those of inactive members (currently \$200 for attorneys). The average pro bono hour contribution of Emeritus Pro Bono members consistently exceeds the aspirational 30 hours set by RPC 6.1.

Since 2014, 5,131 members have switched from active to inactive or voluntarily resigned and only 67 have opted for Emeritus Pro Bono. There are currently 114 Emeritus Pro Bono members. Although Emeritus Pro Bono status is not age restricted, the majority of Emeritus Pro Bono members are over the age of 60 and 90% of Emeritus Pro Bono members are over the age of 50.

This effort to eliminate barriers and retain legal knowledge in the profession works to accomplish one of the strategic goals set out by the Bar; to support member transitions across the life of their practice. We also know that Emeritus Pro Bono attorneys are drawn back into active status because they have continued to be involved in the practice of law, without the pressure of making a living from law. Several of these members are parents who are taking time to raise their family but do not want to completely leave the legal profession. A flexible Emeritus Pro Bono rule would encourage WSBA members to stay involved, retain their skills, and provides a viable path to return to active membership, while providing much needed legal services to low- and moderate-income Washingtonians.

Recent History of PBPSC and BOG actions

In 2008, the BOG Bylaw Review Committee recommended changing the name of Emeritus membership status to Emeritus Pro Bono and waiving the license fee while requiring 80 hours of pro bono work per year. At that time there were 124 emeritus members. The Pro Bono and Legal Aid Committee (now the Pro Bono and Public Service Committee) supported eliminating the fee but not requiring a set number of volunteer hours. Committee members at the time feared that requiring a certain number of hours might actually decrease participation. The Board of Governors came to a consensus that the fee amounts should not be set out in the bylaws but did rename the status.

In 2016 the PBPSC approved a recommendation to eliminate the license fee for Emeritus Pro Bono members.¹ The BOG declined to take action due to the potential fiscal impacts. As a result, the PBPSC refocused to look at other barriers to participation.

This proposal is targeted to correct significant barriers that stand between qualified WSBA members who are deciding between resignation, inactive status, or providing pro bono services, including the current licensing fee.

Similar Programs in Other States

While Washington was a relatively early adopter of the Emeritus Pro Bono status in 1998 its membership remains less than 0.3% (109/40360) of the bar and in that intervening 20 years many States have made significant changes to their rules.² There are 44 jurisdictions that have adopted some form of

¹ See 2017 Brendan Vandro memo Re: Emeritus Research, attached

² In May 2019, the American Bar Association published a comparative chart of the 44 jurisdictions with Emeritus-type rules. The chart compared data points such as years of practice requirements, fee waivers and reductions, MCLE requirements, and requirements for working with a certified legal services program. The chart is accessible [here](#).

Emeritus Pro Bono rules. The majority³ of these states do not place any restrictions on the years of practice for eligibility. The vast majority⁴ of states place no restriction on age.

Our southern neighbor, Oregon, places no age restriction on eligibility and places no restriction on years of practice for Oregon attorneys. Oregon allows out of state attorneys to become Active Pro Bono members of the Oregon bar, but does place a years of practice restriction on out of state attorneys.

Our northern neighbor, Alaska, like Oregon, places no restriction on age nor does it have a years of practice requirement. Additionally, Alaska waives bar dues for Emeritus attorneys.

The modest rule changes recommended by the PBPSC would place the WSBA marginally closer to a State like Texas, which has significantly more liberal requirements. For example, the NOVA program (Texas' version of Emeritus Pro Bono) does not place any restrictions on age/years of practice or current status, allows out of state attorneys to participate, and waives bar dues.

Recommendations of the Pro Bono Public Service Committee

1. *The rules should be amended to eliminate the requirement of active practice for five of the last ten years (the 5/10 rule)*

Qualification for Emeritus Pro Bono Status requires that an attorney must have actively practiced in Washington for five of the previous ten years. This requirement is an unnecessary barrier to the provision of pro bono services in Washington. Although the rule may have been initially intended as a way to ensure that Emeritus Pro Bono attorneys provide competent legal services, there are adequate safeguards already in place. In order to provide pro bono services under an Emeritus Pro Bono status a QLSP must screen and accept the volunteer and the WSBA requires that an Emeritus Pro Bono member receive training before certifying the status. Notably, the WSBA has the flexibility to prescribe training for those on Emeritus Pro Bono status, pursuant to APR 3(g)(1)(D). This training is in addition to any training required by the QLSP.

The experience of other states is illustrative. For example, as the ABA reports, the Texas Lawyers Care project (TLC), which contributed to substantial revisions to the Texas emeritus rules, effective as of 2018, came to the following conclusions, "The Texas Lawyers Care project shows an instance in which a restrictive rule served as an impediment in recruiting interested emeritus attorneys. The Texas rule required that an attorney have been active for five of the past ten years. Of the attorneys who responded to the TLC recruitment, five were ineligible even though they were accomplished lawyers. For instance, one practiced law and then turned to legal teaching for seven years before seeking to volunteer; while another left her practice at childbirth and would have liked to contribute her legal expertise. TLC found that the "five of ten" rule "is a poor proxy for competent representation," and that active supervision and tracking is a better approach."⁵ Additionally, the ABA report contains a

³ 29/44 (66%)

⁴ 39/44 (89%)

⁵ See David Godfrey & Erica Wood, *Emeritus Attorney Programs: Best Practices and Lessons Learned*, American Bar Association Commission on Law and Aging (Sept. 2010). Available [here](#).

survey of states that allow for an Emeritus Pro Bono status. That survey found that of the 44 states that have an Emeritus Pro Bono status, two-thirds of them have no “years of practice” rule at all.

Furthermore, active members are presumptively qualified to practice law in a pro-bono or for-profit environment. If an active member wishes to change status, requiring five years of recent experience to provide pro bono service is unnecessarily punitive. Additionally, attorneys with active status are not required by current rules to actually engage in the practice of law. For example, a newly licensed attorney straight out of law school, who may or may not have any active practice experience, or someone who has remained on active status despite not actively practicing for many years, may freely volunteer with a QLSP without facing a similar barrier. The rules merely require that such attorneys pay their active status dues and satisfy the MCLE requirements. This creates two different sets of standards for those who wish to volunteer through a QLSP and unnecessarily burdens those who wish to do so through the Emeritus Pro Bono Status.

Further, there are no requirements that lawyers complete MCLE credits in specified practice areas. Thus, an attorney on active status could take a pro bono case outside of his or her area of specialty and, in fact, without any current or previous experience whatsoever. The WSBA rules regarding active status assume lawyer competence but do not ensure it by requiring that a lawyer be engaged in the active practice of law or requiring MCLE’s in the practice area of the intended pro bono service. The PBPSC believes this creates an unnecessarily punitive discrepancy among active and inactive lawyers who wish to provide pro bono service.

WSBA requires that lawyers with Emeritus Pro Bono status may practice only through a QLSP. In order to become a QLSP, a legal service provider must either “provide malpractice insurance for volunteers or have a policy in place to require that all volunteers carry their own malpractice insurance.”⁶ This requirement provides an additional safeguard to assure lawyer competence when engaging in pro bono service. Both the QLSP and the lawyer must be mindful of insurance reporting and procedure requirements.

The 5/10 rule unnecessarily restricts new members from service. For example, the 5/10 rule can be especially burdensome for parents who opt out of the practice of law to raise a family. If a newly licensed attorney, after only practicing law for three years before going inactive to focus on personal or family obligations, attempts to return to the practice when their children are older (even if limited to pro bono practice) they may find they are prohibited from doing so unless they re-take the bar exam, an onerous and impractical requirement for those who wish to limit practice to unpaid work. Reducing barriers to allow members to provide pro bono services not only helps the community but it helps the bar. Members in active practice, through for-profit activities or community enhancing pro bono services, maintains a skilled bar and any restriction on practice leads to atrophy of skill. The best alternative to active practice is Emeritus Pro Bono. It is the recommendation of the PBPSC that the eligibility requirement for Emeritus Pro Bono status of active practice within five of the previous ten years be eliminated.

⁶ <https://www.wsba.org/connect-serve/volunteer-opportunities/psp/qlsp>

2. *The rules should be amended to allow for a fee waiver if 30 hours of pro bono service were provided through a QLSP in the previous calendar year*

It is the view of the PBPSC that the requirement that Emeritus Pro Bono Status members pay dues equal to inactive members constitutes a significant barrier to participation.⁷ Emeritus Pro Bono attorneys pay dues of \$200/year for the privilege of providing free legal services to Washington's low-income residents. Members whose practice is limited to only pro bono service through a QLSP should not be required to pay for opportunity to provide their services for free.

The 2015 Civil Legal Needs Study showed that only 24% of Washington's low-income residents who faced a civil legal issue were able to obtain assistance from an attorney.⁸ With such great need, the WSBA should do everything it can to encourage members to provide pro bono services yet charging substantial dues to those who's practice is limited to only pro bono service does the opposite.

While in the past, the view of this committee was that a specific number of hours of pro bono service should not be required, the PBPSC acknowledges that in the absence of some type of accountability measure, inactive members may be incentivized to switch to Emeritus Pro Bono status to avoid the expense of dues, but without actually providing any pro bono service. Since the goal is to actually increase the hours of pro bono service provided, the PBPSC recommends the dues waiver be available to Emeritus Pro Bono status members who provided at least 30 hours of pro bono service within the previous calendar year, which is consistent with the number of hours of pro bono service recommended for all attorneys in RPC 6.1. The PBPSC believes 30 hours of pro bono service in a given year is a reasonable expectation and could be achievable for a volunteer no matter what other responsibilities they may have, for example, working full-time or being a primary caregiver to children or other family members. However, the PBPSC recognizes that in more rural areas of the state there may not be opportunities to provide 30 hours of service through a QLSP in one year. For example, if a QLSP offers a monthly legal clinic, but only 2 hours of service are available at each clinic, someone who volunteers at every opportunity would only obtain 24 hours of service per year. The PBPBC looks forward to receiving input from stakeholders including QLSPs and volunteer attorneys regarding the appropriate number of hours of service that should be required for fee waiver eligibility.

3. *The rules should be amended to clarify that Emeritus/Pro Bono members are eligible to return to active status*

Section III. D. 1. c. of the WSBA bylaws provide that "An Emeritus Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is no limit on how long a member may be Emeritus Pro Bono before returning to Active status." In contrast, Section III. D. 1. a 3) of the bylaws states that "Any member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and *does not have active legal experience as defined in APR 1(e) in any jurisdiction for more than ten consecutive years* is required to complete the requirements in Art. III. Sec.D.1. a. 1)(a), (c) and (d), above, and is also required to take and pass the examinations required for admission to the Bar for the member's license type." (emphasis added).

⁸ https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

The definition of “Active legal experience” found in APR 1(e) currently does not explicitly include practice under the Emeritus Pro Bono status, though our understanding is that internal WSBA policy allows for consideration of experience under Emeritus Pro Bono status. It is easy to imagine a scenario where an attorney decided to take advantage of the Emeritus Pro Bono status for a period of time but wanted to return to active status at some point down the road. The rule should be amended to make clear to members that their time practicing under the Emeritus Pro Bono program could count as “active practice.” The PBPSC recommends that practice under Emeritus Pro Bono status should be included in the definition of “active legal experience” under APR 1(e).

4. Clarify that an Emeritus Pro Bono volunteer may volunteer with multiple QLSPs

Similarly, the rules are not clear regarding whether an Emeritus Pro Bono member may volunteer with more than one QLSP. Many areas of Washington have multiple QLSPs. Given the significant need for pro bono legal assistance, as reported in the 2015 Civil Legal Needs Study, Emeritus Pro Bono members should be encouraged to volunteer with multiple QLSPs if they have the time and desire to do so. It seems that internal WSBA policy does allow for registration with more than one QLSP concurrently, however, WSBA Emeritus FAQ sheet indicates otherwise.⁹ A minor change to APR 3(g) would help to clarify that this would be permitted and would be consistent with current WSBA internal policy. Additionally, the WSBA Emeritus FAQ sheet should be updated to accurately reflect this policy.

5. The rules should be amended to clarify that members currently on ‘inactive’ status are eligible to apply and remove “Emeritus” from the name

The PBPSC recommends that the requirement that a WSBA member be “otherwise retired from the practice of law” should be removed and that the name of the Emeritus Pro Bono status be changed to simply “Pro Bono Status”. While the PBPSC is unaware of any instances where the WSBA has barred someone from practicing for violation of the “otherwise retired” requirement it is also unaware of any standards in place to determine what level of activity qualifies as “otherwise retired from the practice of law” and this language in the rule unnecessarily causes confusion about who is eligible. Similar to the 5/10 requirement, the language of the rule serves to exclude a large pool of potential volunteers, who may be “inactive” rather than “retired.” Additionally, this language might imply that return to active status is unavailable, which is not true.

The PBPSC recommends changing the name of the status from “Emeritus Pro Bono status” to “Pro Bono Status”, which would be the most inclusive approach to clarifying the qualifications for this status. The current name “Emeritus” implies that an attorney is contemplating between this status or retirement, or that the service will be limited or advisory in nature. However, this is a narrow view of the Emeritus Pro Bono status. Other individuals that could qualify for this status might have just joined the bar and taken a job where being an active member is no longer necessary (for example the thousands of

⁹ Emeritus FAQ Sheet (available [here](#)):

“Q: What happens if I want to switch QLSPs?

A: You must notify the WSBA and coordinate the change to a new QLSP with our office.

Do not engage in the practice of law until you receive approval and a new ID card for your new QLSP. Contact WSBA via statuschanges@wsba.org.

in-house members), or they might have started a family and found the demands of active membership limiting, or they might have changed careers but still want to give back to the public. The Bar has an interest in all of these trained lawyers. Emeritus Pro Bono status is a fantastic opportunity to keep members engaged with the bar and provide an opening for them to return to active status. When someone faces the choice between going inactive, resigning, or Emeritus Pro Bono it is in the best interest of the WSBA, the community, and the attorney to choose Emeritus Pro Bono status. Changing the name of the status to simply, "Pro Bono Status" would more accurately reflect the nature of the status and eliminate inaccurate connotations associated with the term "Emeritus."

Outstanding issues/questions

The following questions still need to be addressed, but the PBPSC believes that WSBA staff and/or the Board of Governors are best positioned to provide the research and information necessary to adequately address these questions.

- Would Active members seeking to change to Pro Bono Status be eligible for a fee waiver if they provided at least 30 hours of pro bono service during the previous year while they were still in active status?
- Could an inactive attorney who changes to Pro Bono Status receive a refund of their membership dues for their first year of practice under Pro Bono Status if they provide at least 60 hours of service in that year?
- Would someone who provides at least 30 hours of service in their last year of practice under Pro Bono Status be eligible for a reduced fee for their first year after switching back to active or inactive status, or a refund after choosing to retire?

Conclusion

The PBPSC views the current Emeritus Pro Bono status rules as unclear and/or unnecessarily restrictive in ways that cause significant barriers to access for WSBA members considering leaving the active practice of law or seeking to provide necessary pro bono service to the public. The recommendations described above would provide additional clarity and reduce barriers to access in ways that will hopefully lead to increased participation in the program and a subsequent increase in the provision of pro bono legal services.

The Emeritus Pro Bono 5/10 eligibility rule is restrictive for the wrong reasons. The practical alternatives to Emeritus Pro Bono are inactive status or retirement. Neither of these latter statuses allows for the practice of law. Neither of these statuses increases the skillset of the bar. Neither of these statuses provides much needed legal services to the community. Emeritus Pro Bono status increases the skillset of the bar and benefits the community. Hundreds of people retire each year. Hundreds of people go inactive each year. Tens of people elect for Emeritus Pro Bono status. Additionally, providing an option to waive annual dues for Emeritus Pro Bono status members who provide pro bono services would create a greater incentive for members to participate and to put their skills to good use serving the community. Finally, the name "Emeritus Pro Bono" implies retirement and leaving the active practice of law for good. Changing the name would reduce a barrier in language faced by those hoping

to encourage people who have otherwise left the practice of law to contribute their legal knowledge back to the community.

The WSBA is in a unique position to champion justice in a time where we know the civil legal needs of low and moderate-income clients are not being met. Based on the 2015 Civil Legal Needs Study Update, we know there is a large gap of legal aid attorneys needed and thus we must turn to the larger WSBA membership to help meet the legal needs of the public. Making these changes to the Emeritus Pro Bono status is one simple way to address this very real and harsh reality many members of the public struggle with.



WSBA

Pro Bono and Public Service Committee

TO: WSBA Board of Governors

FROM: Pro Bono and Public Service Committee

DATE: June 10, 2020

RE: Proposal to Reduce Barriers to Access for Emeritus Pro Bono License Status

ACTION/DISCUSSION: Adopt the recommendations of the Pro Bono and Public Service Committee; direct WSBA to take all required or appropriate action to change APR 1(e), APR 3(g), GR 24(b)(1); and amend Section III B (4) of the WSBA Bylaws consistent with the recommendations; and submit these proposed changes and amendment to the Washington Supreme Court in accordance with GR 9.

The Board of Governors created the Pro Bono and Public Service Committee to enhance a culture of legal service by promoting opportunities and best practices that encourage WSBA members to engage in pro bono and public service with a particular focus on services to people with low or moderate income.

In October of 2019, the Pro Bono and Public Service Committee (PBPSC) passed a resolution supporting the elimination of various structural barriers facing members of the bar seeking Emeritus Pro Bono status (recommendations 1, 3-5). The PBPSC intends to discuss and vote on the final recommendation (2) at the May 2020 meeting. The PBPSC recommends:

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Recommendations of the Pro Bono Public Service Committee

1. *The rules should be amended to eliminate the requirement of active practice for five of the last ten years (the 5/10 rule)*

Qualification for Emeritus Pro Bono Status requires that an attorney must have actively practiced in Washington for five of the previous ten years. This requirement is an unnecessary barrier to the provision of pro bono services in Washington. Although the rule may have been initially intended as a way to ensure that Emeritus Pro Bono attorneys provide competent legal services, there are adequate safeguards already in place. In order to provide pro bono services under an Emeritus Pro Bono status a QLSP must screen and accept the volunteer and the WSBA requires that an Emeritus Pro Bono member receive training before certifying the status. Notably, the WSBA has the flexibility to prescribe training for those on Emeritus Pro Bono status, pursuant to APR 3(g)(1)(D). This training is in addition to any training required by the QLSP.

The experience of other states is illustrative. For example, as the ABA reports, the Texas Lawyers Care project (TLC), which contributed to substantial revisions to the Texas emeritus rules, effective as of 2018, came to the following conclusions, "The Texas Lawyers Care project shows an

² In May 2019, the American Bar Association published a comparative chart of the 44 jurisdictions with Emeritus-type rules. The chart compared data points such as years of practice requirements, fee waivers and reductions, MCLE requirements, and requirements for working with a certified legal services program. The chart is accessible [here](#).

³ 29/44 (66%)

⁴ 39/44 (89%)

instance in which a restrictive rule served as an impediment in recruiting interested emeritus attorneys. The Texas rule required that an attorney have been active for five of the past ten years. Of the attorneys who responded to the TLC recruitment, five were ineligible even though they were accomplished lawyers. For instance, one practiced law and then turned to legal teaching for seven years before seeking to volunteer; while another left her practice at childbirth and would have liked to contribute her legal expertise. TLC found that the ‘five of ten’ rule ‘is a poor proxy for competent representation,’ and that active supervision and tracking is a better approach.”⁵ Additionally, the ABA report contains a survey of states that allow for an Emeritus Pro Bono status. That survey found that of the 44 states that have an Emeritus Pro Bono status, two-thirds of them have no “years of practice” rule at all.

Furthermore, active members are presumptively qualified to practice law in a pro-bono or for-profit environment. If an active member wishes to change status, requiring five years of recent experience to provide pro bono service is unnecessarily punitive. Additionally, attorneys with active status are not required by current rules to actually engage in the practice of law. For example, a newly licensed attorney straight out of law school, who may or may not have any active practice experience, or someone who has remained on active status despite not actively practicing for many years, may freely volunteer with a QLSP without facing a similar barrier. The rules merely require that such attorneys pay their active status license fees and satisfy the MCLE requirements. This creates two different sets of standards for those who wish to volunteer through a QLSP and unnecessarily burdens those who wish to do so through the Emeritus Pro Bono Status.

Further, there are no requirements that lawyers complete MCLE credits in specified practice areas. Thus, an attorney on active status could take a pro bono case outside of his or her area of specialty and, in fact, without any current or previous experience whatsoever. The WSBA rules regarding active status assume lawyer competence but do not ensure it by requiring that a lawyer be engaged in the active practice of law or requiring MCLE’s in the practice area of the intended pro bono service. The PBPSA believes this creates an unnecessarily punitive discrepancy among active and inactive lawyers who wish to provide pro bono service.

WSBA requires that lawyers with Emeritus Pro Bono status may practice only through a QLSP. In order to become a QLSP, a legal service provider must either “provide malpractice insurance for volunteers or have a policy in place to require that all volunteers carry their own malpractice insurance.”⁶ This requirement provides an additional safeguard to assure lawyer competence when engaging in pro bono service. Both the QLSP and the lawyer must be mindful of insurance reporting and procedure requirements.

The 5/10 rule unnecessarily restricts new members from service. For example, the 5/10 rule can be especially burdensome for parents who opt out of the practice of law to raise a family. If a newly licensed attorney, after only practicing law for three years before going inactive to focus on personal or family obligations, attempts to return to the practice when their children are older (even if limited to pro bono practice) they may find they are prohibited from doing so unless they re-take the bar exam, an onerous and impractical requirement for those who wish to limit practice to unpaid work. Reducing

⁵ See David Godfrey & Erica Wood, *Emeritus Attorney Programs: Best Practices and Lessons Learned*, American Bar Association Commission on Law and Aging (Sept. 2010). Available [here](#).

⁶ <https://www.wsba.org/connect-serve/volunteer-opportunities/psp/qlsp>

barriers to allow members to provide pro bono services not only helps the community but it helps the bar. Members in active practice, through for-profit activities or community enhancing pro bono services, maintains a skilled bar and any restriction on practice leads to atrophy of skill. The best alternative to active practice is Emeritus Pro Bono. It is the recommendation of the PBPSC that the eligibility requirement for Emeritus Pro Bono status of active practice within five of the previous ten years be eliminated.

2. *The rules should be amended to allow for a fee waiver if 30 hours of pro bono service were provided through a QLSP in the previous calendar year*

It is the view of the PBPSC that the requirement that Emeritus Pro Bono Status members pay license fees equal to inactive members constitutes a significant barrier to participation.⁷ Emeritus Pro Bono attorneys pay license fees of \$200/year for the privilege of providing free legal services to Washington's low-income residents. Members whose practice is limited to only pro bono service through a QLSP should not be required to pay for opportunity to provide their services for free.

The 2015 Civil Legal Needs Study showed that only 24% of Washington's low-income residents who faced a civil legal issue were able to obtain assistance from an attorney.⁸ With such great need, the WSBA should do everything it can to encourage members to provide pro bono services yet charging substantial license fees to those who's practice is limited to only pro bono service does the opposite.

While in the past, the view of this committee was that a specific number of hours of pro bono service should not be required, the PBPSC acknowledges that in the absence of some type of accountability measure, inactive members may be incentivized to switch to Emeritus Pro Bono status to avoid the expense of license fees, but without actually providing any pro bono service. Since the goal is to actually increase the hours of pro bono service provided, the PBPSC recommends the license fee waiver be available to Emeritus Pro Bono status members who provided at least 30 hours of pro bono service within the previous calendar year, which is consistent with the number of hours of pro bono service recommended for all attorneys in RPC 6.1. The PBPSC believes 30 hours of pro bono service in a given year is a reasonable expectation and could be achievable for a volunteer no matter what other responsibilities they may have, for example, working full-time or being a primary caregiver to children or other family members. However, the PBPSC recognizes that in more rural areas of the state there may not be opportunities to provide 30 hours of service through a QLSP in one year. For example, if a QLSP offers a monthly legal clinic, but only 2 hours of service are available at each clinic, someone who volunteers at every opportunity would only obtain 24 hours of service per year. The PBPBC looks forward to receiving input from stakeholders including QLSPs and volunteer attorneys regarding the appropriate number of hours of service that should be required for fee waiver eligibility.

3. *The rules should be amended to clarify that Emeritus/Pro Bono members are eligible to return to active status*

⁸ https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

Section III. D. 1. c. of the WSBA bylaws provide that “An Emeritus Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is no limit on how long a member may be Emeritus Pro Bono before returning to Active status.” In contrast, Section III. D. 1. a 3) of the bylaws states that “Any member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and *does not have active legal experience as defined in APR 1(e) in any jurisdiction for more than ten consecutive years* is required to complete the requirements in Art. III. Sec.D.1. a. 1)(a), (c) and (d), above, and is also required to take and pass the examinations required for admission to the Bar for the member’s license type.” (emphasis added).

The definition of “Active legal experience” found in APR 1(e) currently does not explicitly include practice under the Emeritus Pro Bono status, though our understanding is that internal WSBA policy allows for consideration of experience under Emeritus Pro Bono status. It is easy to imagine a scenario where an attorney decided to take advantage of the Emeritus Pro Bono status for a period of time but wanted to return to active status at some point down the road. The rule should be amended to make clear to members that their time practicing under the Emeritus Pro Bono program could count as “active practice.” The PBPSC recommends that practice under Emeritus Pro Bono status should be included in the definition of “active legal experience” under APR 1(e).

4. Clarify that an Emeritus Pro Bono volunteer may volunteer with multiple QLSPs

Similarly, the rules are not clear regarding whether an Emeritus Pro Bono member may volunteer with more than one QLSP. Many areas of Washington have multiple QLSPs. Given the significant need for pro bono legal assistance, as reported in the 2015 Civil Legal Needs Study, Emeritus Pro Bono members should be encouraged to volunteer with multiple QLSPs if they have the time and desire to do so. It seems that internal WSBA policy does allow for registration with more than one QLSP concurrently, however, WSBA Emeritus FAQ sheet indicates otherwise.⁹ A minor change to APR 3(g) would help to clarify that this would be permitted and would be consistent with current WSBA internal policy. Additionally, the WSBA Emeritus FAQ sheet should be updated to accurately reflect this policy.

5. The rules should be amended to clarify that members currently on ‘inactive’ status are eligible to apply and remove “Emeritus” from the name

The PBPSC recommends that the requirement that a WSBA member be “otherwise retired from the practice of law” should be removed and that the name of the Emeritus Pro Bono status be changed to simply “Pro Bono Status”. While the PBPSC is unaware of any instances where the WSBA has barred someone from practicing for violation of the “otherwise retired” requirement it is also unaware of any standards in place to determine what level of activity qualifies as “otherwise retired from the practice of law” and this language in the rule unnecessarily causes confusion about who is eligible. Similar to the 5/10 requirement, the language of the rule serves to exclude a large pool of potential volunteers, who

⁹ Emeritus FAQ Sheet (available [here](#)):

“Q: What happens if I want to switch QLSPs?

A: You must notify the WSBA and coordinate the change to a new QLSP with our office.

Do not engage in the practice of law until you receive approval and a new ID card for your new QLSP. Contact WSBA via statuschanges@wsba.org.

may be “inactive” rather than “retired.” Additionally, this language might imply that return to active status is unavailable, which is not true.

The PBPSC recommends changing the name of the status from “Emeritus Pro Bono status” to “Pro Bono Status”, which would be the most inclusive approach to clarifying the qualifications for this status. The current name “Emeritus” implies that an attorney is contemplating between this status or retirement, or that the service will be limited or advisory in nature. However, this is a narrow view of the Emeritus Pro Bono status. Other individuals that could qualify for this status might have just joined the bar and taken a job where being an active member is no longer necessary (for example the thousands of in-house members), or they might have started a family and found the demands of active membership limiting, or they might have changed careers but still want to give back to the public. The Bar has an interest in all of these trained lawyers. Emeritus Pro Bono status is a fantastic opportunity to keep members engaged with the bar and provide an opening for them to return to active status. When someone faces the choice between going inactive, resigning, or Emeritus Pro Bono it is in the best interest of the WSBA, the community, and the attorney to choose Emeritus Pro Bono status. Changing the name of the status to simply, “Pro Bono Status” would more accurately reflect the nature of the status and eliminate inaccurate connotations associated with the term “Emeritus.”

Outstanding issues/questions

The following questions still need to be addressed, but the PBPSC believes that WSBA staff and/or the Board of Governors are best positioned to provide the research and information necessary to adequately address these questions.

- Would Active members seeking to change to Pro Bono Status be eligible for a fee waiver if they provided at least 30 hours of pro bono service during the previous year while they were still in active status?
- Could an inactive attorney who changes to Pro Bono Status receive a refund of their license fees for their first year of practice under Pro Bono Status if they provide at least 60 hours of service in that year?
- Would someone who provides at least 30 hours of service in their last year of practice under Pro Bono Status be eligible for a reduced fee for their first year after switching back to active or inactive status, or a refund after choosing to retire?

Conclusion

The PBPSC views the current Emeritus Pro Bono status rules as unclear and/or unnecessarily restrictive in ways that cause significant barriers to access for WSBA members considering leaving the active practice of law or seeking to provide necessary pro bono service to the public. The recommendations described above would provide additional clarity and reduce barriers to access in ways that will hopefully lead to increased participation in the program and a subsequent increase in the provision of pro bono legal services.

The Emeritus Pro Bono 5/10 eligibility rule is restrictive for the wrong reasons. The practical alternatives to Emeritus Pro Bono are inactive status or retirement. Neither of these latter statuses allows for the practice of law. Neither of these statuses increases the skillset of the bar. Neither of these statuses provides much needed legal services to the community. Emeritus Pro Bono status increases the skillset of the bar and benefits the community. Hundreds of people retire each year. Hundreds of people go inactive each year. Tens of people elect for Emeritus Pro Bono status. Additionally, providing an option to waive annual license fees for Emeritus Pro Bono status members who provide pro bono services would create a greater incentive for members to participate and to put their skills to good use serving the community. Finally, the name “Emeritus Pro Bono” implies retirement and leaving the active practice of law for good. Changing the name would reduce a barrier in language faced by those hoping to encourage people who have otherwise left the practice of law to contribute their legal knowledge back to the community.

The WSBA is in a unique position to champion justice in a time where we know the civil legal needs of low and moderate-income clients are not being met. Based on the 2015 Civil Legal Needs Study Update, we know there is a large gap of legal aid attorneys needed and thus we must turn to the larger WSBA membership to help meet the legal needs of the public. Making these changes to the Emeritus Pro Bono status is one simple way to address this very real and harsh reality many members of the public struggle with.

MEMORANDUM

TO: WSBA Pro Bono & Public Service Committee; Barriers Subcommittee
FROM: Brendan Vandor
DATE: September 8, 2017
RE: Emeritus Research

A. Introduction

In only the last five to ten years, dozens of states have enacted new rules permitting retired or elderly attorneys (the so-called “emeritus” class) to provide pro bono legal services. The purpose of such programs is to facilitate pro bono representation by retired/retiring lawyers (or those who are simply taking a break from the practice of law) who otherwise may choose inactive status or even to resign from membership in the state bar. To encourage emeritus participation, many states waive or reduce the annual registration fee necessary for an active license to practice law for these emeritus attorneys.

This memorandum will provide a brief overview of emeritus programs nationwide, detail Washington’s emeritus pro bono policy, analyze several interesting nationwide trends and features of emeritus programs, and provide recommendations for how this committee can succeed with a proposal to the WSBA Board of Governors to expand emeritus participation in Washington.

B. Emeritus Programs in Washington and Other States

As of 2016, 38 states had emeritus programs, including every state in the Ninth Circuit. The following twelve states still lack emeritus programs: Arkansas, Indiana, Kentucky, Louisiana, Missouri, Nebraska, Ohio,¹ Oklahoma, Pennsylvania, Rhode Island, Vermont, and Wisconsin (see map below).²

¹ Ohio recently enacted an emeritus program that began in 2017.

² David Godfrey & April Faith-Slaker, “Emeritus Attorney: Pro Bono Practice Rules: Participation, Recruitment and Case Placement.” American Bar Association, 2016.

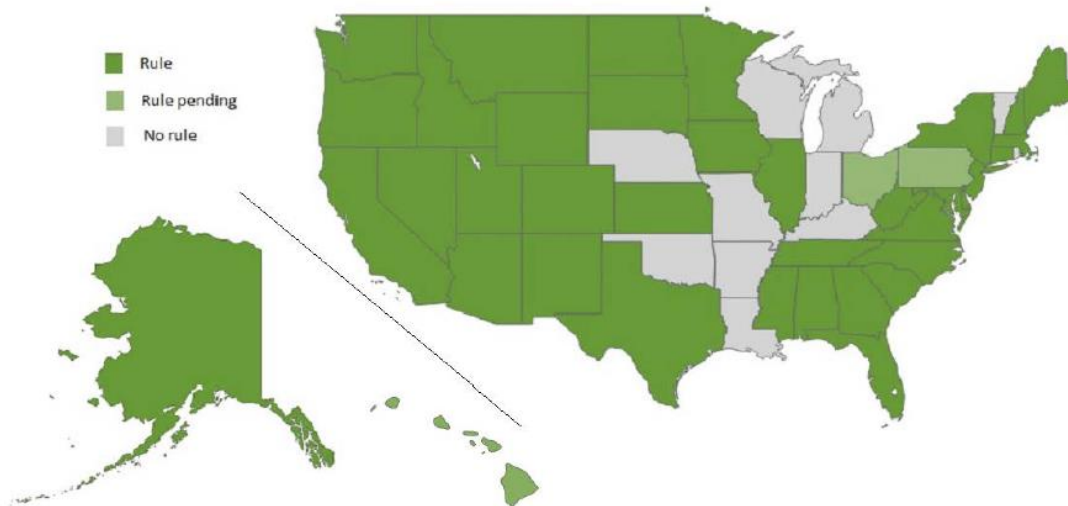


Figure 3. Graphic Distribution of States With and Without Emeritus Pro Bono Rules. Dark green represents states that have a rule, light green represents states with pending rules, and grey represents states that do not have a rule.

Three categories of attorneys are generally considered by emeritus programs: retired, inactive, and out-of-state. Of the 38 states with emeritus programs, 25 allow participation of retired attorneys. “Inactive” attorneys are permitted to practice in 27 of the 38 emeritus programs. Confusingly, some states allow only retired attorneys to participate, while others allow only inactive attorneys to participate. However, there is some confusion as to whether retired attorneys might actually be included in the “inactive” classification for certain states, and vice versa.

Out-of-state attorneys are the least included class, permitted to join emeritus programs in just 18 of the 38 states (though most out-of-state attorneys also face several additional requirements in order to participate in emeritus programs, which will be discussed later). Interestingly, New Jersey allows *only* out-of-state attorneys to participate in its emeritus program, demonstrating the wide variety in emeritus rules and requirements around the country.

Four states have age requirements and restrictions as well. For example, Utah permits retired attorneys to join its emeritus program only if they are 75 years or older (or have 50 years of more of practice). Georgia’s requirement is 70 years. In New York, emeritus participants must be at least 55 years of age. In Delaware, attorneys must be 65 years of age (though the rule allows the Delaware Supreme Court to waive the age requirement on a case-to-case basis).

Below is specific information concerning the emeritus programs in Washington, as well as three states of note: Oregon, California and New York:

1. Washington

Washington places no age restriction on attorneys wishing to take part in its emeritus program. The program is open to retired attorneys (note: not inactive) and to out-of-state attorneys who have practiced for 10 of the past 15 years. New in-state applicants must have practiced for five

of the last 10 years (this would seemingly prevent retired attorneys who have been out of practice for more than five years from participating in the program, an obvious barrier). Dues are reduced and CLE requirements are waived, save for a one-time orientation training. Finally, no direct supervision of the emeritus attorneys is required, and malpractice insurance is not mentioned in the court rule.

2. Oregon

The emeritus program in Oregon is remarkably wide open, permitting *any* attorney to join. Notably, this means that even lawyers with zero years of practice can join. However, participation comes with one large caveat: the attorney must *only* do pro bono work and must cease active lawyering altogether. Additionally, out-of-state attorneys must have at least 15 years of experience and must be admitted to the emeritus program upon motion. Annual bar membership dues are reduced: the fee is equivalent to the inactive membership fee plus an assessment for a “Client Security Fund.” Emeritus attorneys in Oregon are also exempt from compliance with MCLE requirements. Oregon emeritus attorneys must obtain malpractice insurance through Oregon’s Professional Liability Fund or the program referring the pro bono cases. Finally, there is no requirement that Oregon’s emeritus attorneys are supervised when offering pro bono services.

3. California

Similar to Oregon, California requires that its emeritus attorneys (including out-of-state attorneys) practice law on a pro bono basis only. It also requires the emeritus participants to submit an application annually, an odd and seemingly cumbersome requirement. Unlike Oregon, California has a “years of practice” requirement that emeritus attorneys must have practiced law for at least three years, and with three of five of those years coming in-state. It also requires that the applying attorney have no record of public discipline during the three years preceding his/her application. Significantly, California waives the annual state bar membership fee for its members, but still requires that they meet MCLE requirements, which may or may not represent a barrier. California also requires emeritus attorneys to have malpractice insurance, but notes that such insurance is “generally available” from the qualified legal service provider that organizes the pro bono opportunity. Finally, California’s rule states that “adequate supervision” of its emeritus attorneys is required, but does not define “adequate.”

4. New York

New York’s emeritus rules are the most inflexible of the three sampled in this memorandum. As stated above, it restricts its program to attorneys 55 or older and requires at least 10 years of practice. Additionally, all attorneys must commit to providing at least 30 hours of pro bono service annually. Out-of-state participation is not permitted and malpractice insurance and “direct supervision” of the emeritus attorneys are required. However, dues and CLE requirements are waived (though the legal services host organization must arrange free training appropriate for the pro bono assignment).

C. Analysis of Emeritus Program Features in Other States

1. Variation Among States

Of the 38 states that have adopted emeritus rules, there is quite a bit of variation. In a recent publication, the ABA cleverly captured this wide variation with a graphic of the fifty states, which is explained and shown below:

To capture an overall sense of the variation an index was created, consolidating all of these factors into a single composite number for each state. Here, a score of 0 indicates that the state does not have an emeritus rule and a score of 9 would indicate no restrictions along each of the factors considered. A state with a score of 9 would have no age restrictions, no practice year requirements, eligibility extending to all three of the above categories of attorneys, a full waiver of licensure fees for all categories, and no program or supervision requirements.

The average score for all of the states is 3.7, and the average score among only the states that have adopted an emeritus rule is 5.0. The states with the lowest scores, meaning they have adopted the most restrictive emeritus rules, include New York, Utah, Florida, New Jersey, and Virginia. The states with the highest scores, meaning they have adopted the least restrictive emeritus rules, include Illinois, North Carolina, Nevada, Kansas, and Iowa. No state at this time reaches a score of 9.³

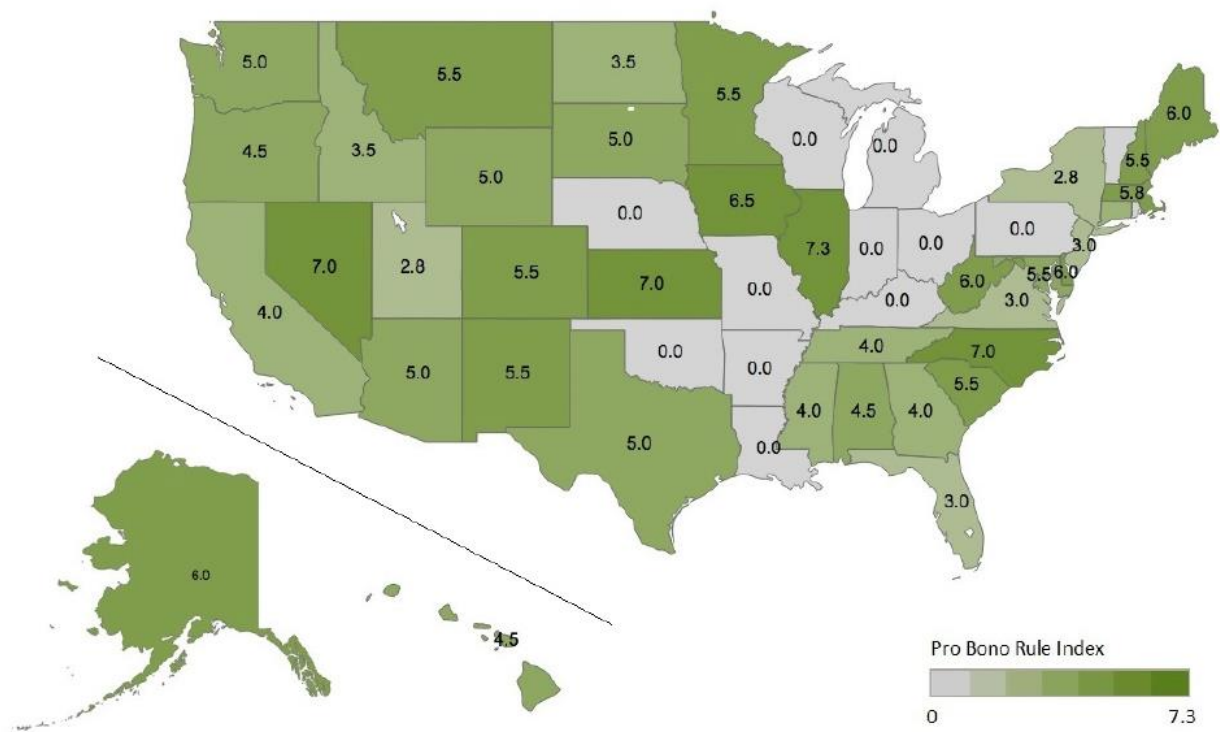


Figure 6. Index of Emeritus Pro Bono Rules, on a scale from 0-9. Zero indicates no rule in the state and a 9 indicates the least restrictive rule. The following factors were included in the index: age restriction, years of practice requirements, eligibility (retired, inactive, out of state), licensure cost, CLE requirements, and program and supervision requirements.

³ David Godfrey & April Faith-Slaker, “Emeritus Attorney: Pro Bono Practice Rules: Participation, Recruitment and Case Placement.” American Bar Association, 2016.

In the graphic above, Washington scored a 5.0, which was the average of states with emeritus programs. California scored a 4.0, Oregon a 4.5, and New York a 2.8. This chart may or may not be useful when presenting our proposal to the WSBA, considering that our main competition (Oregon and California) scored lower on this scale than Washington. Overall, however, it is probably useful for demonstrating that Washington is by no means the vanguard on the emeritus front and has several opportunities to broaden and expand its emeritus participation.

2. Data Analysis of Increase or Decrease in Emeritus Participation

Unfortunately, I was not able to track down any data online regarding whether other states have seen increases in emeritus participation after liberalizing its emeritus rules. Additionally, the ABA has compiled a database of emeritus contacts within each state's bar organization, and I have contacted several of these individuals, including representatives for Oregon, California and New York. No representative with whom I spoke could give me any information about how emeritus participation has changed in response to certain rule changes. Some do not even keep information from year-to-year on that state's total numbers of emeritus attorneys. More diligence on this front (i.e. contacting state bar representatives) is needed, as more data is probably out there.

3. Poll Results and Trends

Attorneys across the country hold several interesting beliefs about their state's emeritus programs. For example, in a poll conducted in 2015-2016, the American Bar Association found that only an insignificant percentage of attorneys believe that requiring pro bono cases to be placed within a specific approved legal services provider creates an impediment to success:⁴



This data suggests that a potential barrier on paper (requiring emeritus attorneys to volunteer with an approved legal services provider) is not really a barrier at all in the minds of most attorneys. Washington's current rule (requiring emeritus attorneys to work with a certified legal services program) should therefore not be seen as a barrier.

⁴ David Godfrey & April Faith-Slaker, "Emeritus Attorney: Pro Bono Practice Rules: Participation, Recruitment and Case Placement." American Bar Association, 2016.

The ABA poll also found that attorneys believe that allowing out-of-state participation in the emeritus program increases overall recruitment:



While out-of-state attorneys are permitted to practice law in Washington, we may want to use the data represented in the poll, above, to encourage the WSBA to liberalize its rules regarding its years of practice requirement for out-of-state attorneys (15 years).

The ABA poll also found that attorneys strongly believe that including inactive attorneys in the emeritus pool increases recruitment:

The respondents for the present study were asked questions about the perceived effectiveness of including inactive attorneys in these rules. Sixty percent²⁶ of those who responded indicated that their rule included inactive attorneys. Of these respondents, the vast majority (88%) believed that this inclusion increases participation. In states where inactive attorneys are not included in the pro bono practice rule, the majority (71%) believe that it would increase participation if it were allowed.



It is unclear just exactly what kind of participation inactive attorneys can have in Washington. Either way, we should use this data to encourage the WSBA to allow inactive attorneys to participate to a level commensurate with retired attorneys, and perhaps should consider waiving

or changing the years of practice requirement (5 of the last 10 years for in-state applicants to the emeritus program).

The graph below can also be used to show the WSBA that, while we are outpacing New York and Oregon with respect to self-reported emeritus hours (note: a *highly* volatile measurement device), we are at about the same level of hours as Iowa, a state with less than half of our population. Clearly, there is room for improvement:

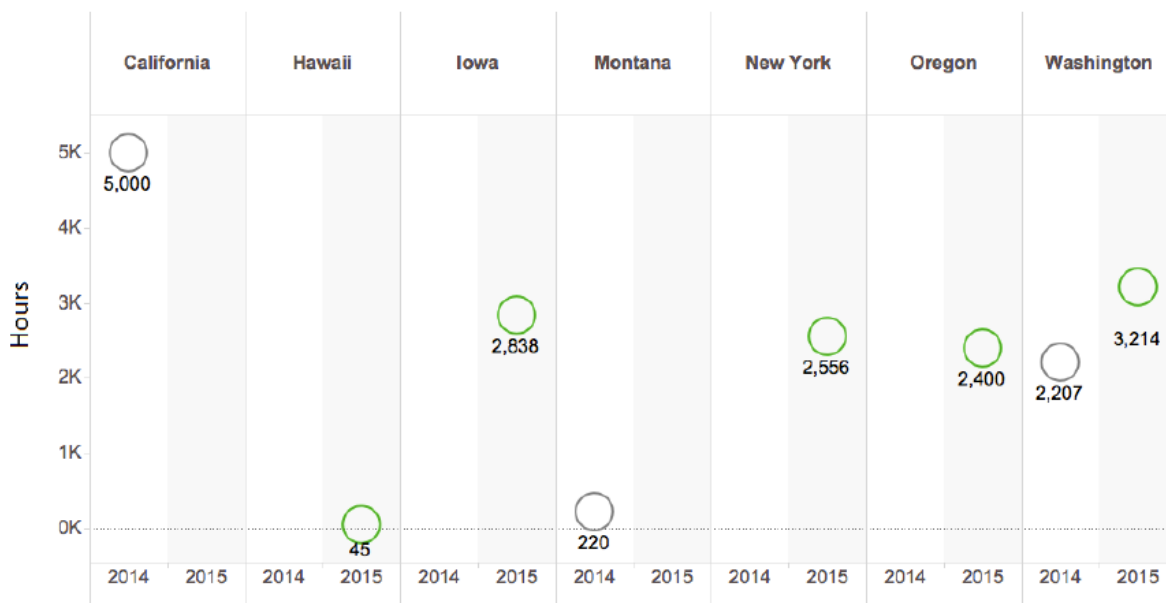
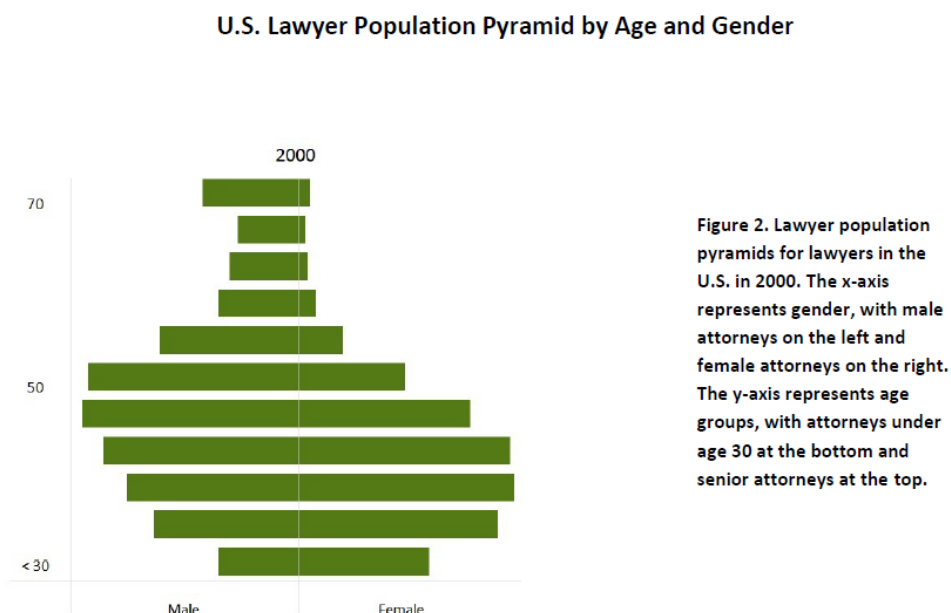


Figure 10. Hours reported under emeritus pro bono rules, 2014 and 2015, by state.

Finally, it is worth including in our presentation to the WSBA that the aging lawyer population (i.e. the incoming emeritus class) will look much different than it traditionally has. The reason? Women are composing a greater and greater portion of the attorney workforce, as seen in the graphic below:



This changing emeritus demographic may necessitate changes in the current emeritus program, such as offering inclusion to new parents who stepped away from the practice of law for more than 5 years to raise children.

4. Interesting Features

Several states have various features that could be useful for Washington to consider adding as a strategy to increase emeritus participation. Those features are as follows:

- Over half of emeritus programs allow inactive, in-state licensed attorneys;
- The duration of emeritus status varies from state-to-state: some states (California) require each participant to re-apply each year; in some states, emeritus status expires after a set amount of years (for example, two in New York and three in Minnesota); and in other states, there does not seem to be a set duration;
- In Minnesota, the names of attorneys granted emeritus status will be posted publically on the CLE Board's website;
- Requirements as to years of licensure range from 5-25 years;
- Maine reduces fees for all emeritus participants, but waives them completely for attorneys over 65 who have practiced for over 40 years;
- Texas waives fees for any emeritus participant over 70; and
- Some states have an hours requirement (New York); others recommend a number of hours (California recommends 100); and other states have no requirement whatsoever;

D. Recommendations

This committee recently brought an emeritus proposal before the WSBA Budget and Audit Committee that was turned down. There is reason to believe that this occurred because of a lack of statistical and/or empirical data backing up the proposal. Therefore, our proposal, which we should endeavor to bring to the Board of Governors in 2018, should focus more on persuasion of the statistical variety rather than the anecdotal variety. This memorandum includes some useful nuggets of data, but more research and empirical analysis is needed before a proposal can be developed.

Additionally, creativity should be encouraged. In the context of our proposal, creativity can and should mean “cherry-picking” the best and/or most interesting or eye-catching features of other state's emeritus programs. Below are my recommendations:

- Abolish the years of practice requirement in terms of requiring the attorney to have practiced for five of the past 10 years; this allows experienced, but currently inactive, attorneys who may have taken time off to raise a family, or to pursue a new career, to participate in the provision of pro bono legal services to individuals who could benefit from the experience of these attorneys;
- Abolish the out-of-state years of practice requirement;
- Waive bar membership fees for emeritus members (though we may need data showing that this rule change resulted in an increase in emeritus participation in other states);
- Advertise and celebrate the current members of the emeritus program (in a way equivalent or similar to what Minnesota does in terms of publically posting the names of the emeritus attorneys on its website);

- Allow lifetime emeritus membership, subject to a requirement that the attorney volunteers a certain number of hours per year; and
- If waiving fees for all participants is not feasible, waive them for all participants over 60, or with 35+ years of experience.

In the coming weeks and months, I will continue to attempt to gather any statistical data from other state bars regarding an increase (or decrease) in emeritus participation upon the enactment of new rules. As a subcommittee (and overall committee), we should begin discussing the most important elements we want to include in our 2018 proposal to the WSBA, and hopefully this memorandum can be used as a launching pad for such a discussion.

Proposed Changes to APR 1(e)

(e) Definitions. The following definitions apply throughout these Admission and Practice Rules except where otherwise stated:

(1) "Active legal experience."

(A) When used to describe a requirement for admission or licensure as, or otherwise regarding, a lawyer means experience in the active practice of law as a lawyer, or as a teacher at an approved law school, or as a judge of a court of general or appellate jurisdiction or any combination thereof, in a state or territory of the United States or in the District of Columbia or in any jurisdiction where the common law of England is the basis of its jurisprudence, or as a Pro Bono Status lawyer approved under APR3(g);

(B) when used to describe a requirement for licensing as, or otherwise regarding, an LLLT, means active experience practicing law as an LLLT;

(C) when used to describe a requirement for licensing as, or otherwise regarding, an LPO means active experience practicing law as an LPO.

(2) "Bar" means the Washington State Bar, including Bar staff.

(3) "Bar counsel" means a staff lawyer employed by the Bar.

(4) "Board of Governors" means the Board of Governors of the Washington State Bar.

(5) "LLLT" means limited license legal technician.

(6) "LPO" means limited practice officer.

(7) "Member" means a person who is identified as belonging to a group identified as members by the Bar's Bylaws.

(8) "Qualified legal services provider" means a not for profit legal services organization in Washington State whose primary purpose is to provide legal services to low income clients

(9) "Supreme Court" means the Supreme Court of Washington.

Proposed Changes to APR 3(g)

(g) ~~Emeritus~~ Pro Bono Admission. A lawyer, LLLT, or LPO admitted to practice law in Washington State may apply for ~~emeritus~~ pro bono status when the lawyer, LLLT, or LPO is inactive or otherwise fully retired from the practice of law. An ~~emeritus~~ pro bono status lawyer, LLLT, or LPO shall provide legal services in Washington State only for a qualified legal service provider as defined in these rules.

(1) To apply, the lawyer, LLLT, or LPO shall:

(A) file an application in such form and manner as prescribed by the Bar;

~~(B) present satisfactory proof of active legal experience as defined in APR 1 or at least 5 of the 10 years immediately preceding the filing of the application;~~

~~(C)~~ (B) file a certification from ~~a~~ one or more qualified legal services provider(s) that the applicant's practice of law will comply with the terms of this rule;

~~(D)~~ (C) comply with training requirements prescribed by the Bar; and

~~(E)~~ (D) furnish whatever additional information or proof that may be required in the course of investigating the applicant.

(2) Upon approval of the application by the Bar, the lawyer, LLLT, or LPO shall pay the current year's annual license fee in the amount required of inactive lawyers, LLLTs, or LPOs, whichever is the applicable license type. This fee shall be waived if the pro bono status lawyer, LLLT, or LPO provided at least 30 hours of pro bono service through a qualified legal service provider in the previous calendar year. ~~Emeritus p~~Pro bono status lawyers, LLLTs, or LPOs are subject to annual license renewal as provided by the Board of Governors.

(3) Upon admission under this section, the practice of law by a lawyer, LLLT, or LPO shall be limited to:

(A) providing legal service for no fee through a qualified legal services provider; or

(B) serving as an unpaid governing or advisory board member or trustee of or providing legal counsel or service for no fee to a qualified legal services provider.

The prohibition against compensation for ~~emeritus~~ pro bono status lawyers, LLLTs, or LPOs shall not prevent a qualified legal services provider from reimbursing ~~an emeritus~~ pro bono status lawyer, LLLT, or LPO for actual expenses incurred while rendering legal services under this rule. A qualified legal services provider shall be entitled to receive all court awarded attorney fees for any representation rendered by the ~~emeritus~~ pro bono status lawyer, LLLT, or LPO.

(1) ~~Emeritus p~~Pro bono status lawyers, LLLTs, or LPOs shall pay to the Bar an annual license fee in the amount required of inactive lawyers, LLLTs, or LPOs, whichever is the applicable license type, or provide at least 30 hours of pro bono service in the previous calendar year to obtain a fee waiver.

(2) The practice of a lawyer, LLLT, or LPO admitted under this section shall be subject to the applicable Rules of Professional Conduct, disciplinary rules, and to all other laws and rules governing lawyers, LLLTs, or LPOs admitted to the Bar.

(3) ~~Emeritus p~~Pro bono ~~status~~ lawyers, LLLTs, or LPOs shall be exempt from compliance with APR 11 concerning mandatory continuing legal education.

(4) ~~Emeritus p~~Pro bono admission shall be automatically terminated and converted to inactive status when the lawyer, LLLT, or LPO fails to comply with the terms of this rule.

Proposed Changes to GR24

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus pro bono status membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

Proposed Changes to WSBA Bylaw III(B)(4)

education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

9. Legal, legislative, and policy positions and resolutions taken by the BOG are not taken on behalf of Judicial members, are not considered to be those of Judicial members, and are not binding on Judicial members.
10. The Bar's disciplinary authority over Judicial members is governed exclusively by ELC 1.2 and RPC 8.5.

4. ~~Emeritus~~ Pro Bono

A member may become a ~~n-Emeritus~~ Pro Bono member by complying with the requirements of APR 3(g), including payment of any required license fee and passing a character and fitness review.

~~Emeritus~~ Pro Bono members must not engage in the practice of law except as permitted under APR 3(g), but may:

1. Be appointed to serve on any task force, council, or Institute of the Bar. In addition, up to two ~~Emeritus~~ Pro Bono members are permitted to serve on the Pro Bono and Public Service Committee~~Legal Aid Committee~~ (PBPSC~~LAC~~) and may be appointed to serve as Chair, Co-Chair, or Vice-Chair of that committee;
2. Join Bar sections;
3. Request a free subscription to the Bar's official publication; and
4. Receive member benefits available to ~~Emeritus~~ Pro Bono members.

5. Suspended

Members of any type and status can have their membership suspended by order of the Washington Supreme Court. Although suspended members remain members of the Bar, they lose all rights and privileges associated with that membership, including their authorization and license to practice law in Washington.

May 19, 2020, ed.

- C.
1.

REGISTER OF MEMBERS

All Bar members, including Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer, must furnish the information below to the Bar:

- a. physical residence address; 9

Feedback Received from Volunteer Lawyer Programs (VLPs)

Paige Hardy

From: Lori Bashor-Sarancik <cwlap@live.com>
Sent: Friday, May 29, 2020 11:55 PM
To: Paige Hardy
Subject: Fwd: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Follow Up Flag: Follow up
Flag Status: Completed

Hello Paige,

I hope you are doing well. I wanted to thank you for your work on this! I remember our initial conversations about the Emeritus status and the things we all found out about it that created some barriers for retired attorneys to fully embrace it. It seems like your work on this has made a difference and I hope it translates into more retired attorneys providing pro bono work for low income people across the State.

In our small community, the legal community has dwindled due to many retirements over the past 5 to 8 years, and the number of new attorneys practicing in our area has not offset this. Many of these retired attorneys still live in the community and may be a resource to volunteer if they have the interest.

A retired attorney may be operating on a limited income because they are no longer practicing. So, the waiver of fee to retain a license for the benefit of others just makes sense. I think this one change is significant and may, by itself, cause more retired attorneys to volunteer at QLSPs across the State. I don't think the 30 hours of pro bono service requirement is too burdensome, at least for ongoing Emeritus Pro Bono licensees who are renewing over and over.

The other situation we found is that there are many attorneys who have retired in the past 5 to 8 years, and they either did not know about the Emeritus status, or found the fee to be too much at \$200. So, they retired and/or went Inactive. If they find they later want to move back into Emeritus Pro Bono status and utilize their knowledge and skill to help low income people through a QLSP, they should be able to do that without overly burdensome fees and requirements. Assuming they could catch up on MCLE credits utilizing free training provided for volunteer attorneys, it makes sense they should be able to jump in and help if they so have the interest.

Let's not forget that the need to provide legal help to low income people who cannot afford an attorney is tremendous. In many rural areas of the state there simply are not enough practicing attorneys who can run their small offices with all of the associated expenses and effort, and still volunteer hours and hours of time for pro bono work. Retired attorneys in a community represent a possible group of volunteers who may now have some time and interest on their hands because they are no longer under the burden of running a law practice. If the Emeritus Pro Bono license is something we can suggest, and the requirements are not overly expensive or difficult, we may be able to grow our volunteer roster. Retired attorneys may want to reconnect at some level with the local legal community and with the local court. Many of them came to the practice because they like to help people and they still do. It is my hope that these suggested rule changes will facilitate those ideals.

I also like the change in the name of the license to include 'Pro Bono.' The change adds clarity and affiliates this special license with providing help to others through a local Legal Aid agency.

Again, thank you for your persistence and having a very good understanding on the challenges we face at a QLSP, especially in rural areas, trying to get more volunteer lawyers.

Very Best,

Lori Bashor-Sarancik
Cowlitz Wahkiakum Legal Aid

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From: Lori Bashor-Sarancik <cwlsp@live.com>
Sent: Wednesday, May 27, 2020 8:52:10 AM
To: 'Elizabeth Fitzgearld' <elizabethf@ccvlp.org>; Eloise Barshes - Chelan-Douglas County Volunteer Attorney Services (director@cdcvas.org) <director@cdcvas.org>; Michael Terasaki <michael@probonocouncil.org>
Subject: Fwd: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Could this be something the PBC supports as a group?

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From: Paige Hardy <paigeh@wsba.org>
Sent: Wednesday, May 27, 2020 8:43:56 AM
To: Qualified Legal Service Providers <qlsp@list.wsba.org>
Subject: RE:[qlsp] Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Dear QLSPs,

Good morning! I am emailing to request any feedback for the WSBA's Pro Bono and Public Service Committee's proposed changes to the Emeritus Pro Bono status. Please see my original email below.

We have only received one comment to date and would greatly appreciate any additional feedback that we can share with the Board of Governors.

Please let me know if you have any questions or concerns. Email is best at this time!

Best Regards,



Paige Hardy | Equity and Justice Lead – DEI & Public Service

Pronouns: She/Her

Washington State Bar Association | paigeh@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact paigeh@wsba.org.

Paige Hardy

From: Quinn Dalan <yakimavas@yakimavas.org>
Sent: Thursday, May 28, 2020 11:06 AM
To: Paige Hardy
Subject: RE: [qlsp] Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

No feedback. It all sounded good. Thank you!

From: Paige Hardy <paigeh@wsba.orgqlsp@list.wsba.org>
Sent: Wednesday, May 27, 2020 8:44 AM
To: Qualified Legal Service Providers <qlsp@list.wsba.org>
Subject: RE:[qlsp] Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Dear QLSPs,

Good morning! I am emailing to request any feedback for the WSBA's Pro Bono and Public Service Committee's proposed changes to the Emeritus Pro Bono status. Please see my original email below.

We have only received one comment to date and would greatly appreciate any additional feedback that we can share with the Board of Governors.

Please let me know if you have any questions or concerns. Email is best at this time!

Best Regards,



Paige Hardy | Equity and Justice Lead – DEI & Public Service

Pronouns: She/Her

Washington State Bar Association | paigeh@wsba.org

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The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact paigeh@wsba.org.



*Most WSBA employees are working remotely.
Thank you for your patience and understanding.*

From: Paige Hardy
Sent: Wednesday, May 6, 2020 1:56 PM
To: 'qlsp@list.wsba.org' <qlsp@list.wsba.org>
Subject: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Thurston County Volunteer Legal Services
PO Box 405 Olympia, WA 98507 • 360-515-5381
www.tcvls.org



May 28, 2020

Paige Hardy
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Proposed Changes to Emeritus Pro Bono Status Rules

Hello Ms. Hardy, *Paige*

Thank you for the opportunity to provide feedback on this proposal to amend the Emeritus Pro Bono Status rules. On behalf of Thurston County Volunteer Legal Services (TCVLS) I wish to express our support for this proposal. As a Qualified Legal Service Provider (QLSP), TCVLS has had the privilege of supporting the pro bono work of many Emeritus Status volunteers over the years. We could not serve our clients without our dedicated volunteers, and we appreciate the work and thoughtfulness that the WSBA Pro Bono Public Service Committee put into developing these proposals to reduce barriers to access to the Emeritus licensing status.

TCLVS supports this proposal overall, and the option for obtaining a waiver of the licensing fee is especially great to see. We are in support of Emeritus Status volunteers not being required to pay for the privilege of donating their time to those in need of legal services. Further, we are hopeful that this option, combined with the other proposals intended to reduce barriers to access, may provide incentive for more otherwise inactive attorneys to opt for Emeritus Status and subsequently volunteer their time with a QLSP. We would note, however, that for some QLSPs, the minimum number of hours proposed to obtain the fee waiver, may be difficult to achieve.

Our program, for example, serves clients in Thurston, Mason, Grays Harbor, Pacific, and Lewis Counties. In the four counties besides Thurston, we only offer one legal advice clinic per month (at the most). An Emeritus volunteer in one of those counties who volunteered at every clinic we offered, for two hours per clinic, would only be able to obtain 24 hours of volunteer service per year and would be ineligible for the fee waiver, as proposed. While there may be additional opportunities for pro bono service available at our Thurston County clinics, or by providing direct representation, we believe that a requirement of 20 hours of pro bono service per year would be an appropriate level. This would allow those volunteers with fewer pro bono opportunities available to them, to still be eligible for this benefit, without requiring that they travel or provide a level of service greater than what they may have capacity for.

Sincerely,

Rachael Langen Lundmark
Executive Director

Paige Hardy

From: Michael Terasaki <michael@probonocouncil.org>
Sent: Friday, May 29, 2020 3:48 PM
To: Paige Hardy
Subject: Input from some PBC members on proposed Emeritus Pro Bono changes

Hi Paige,

I had a call and discussion with some Pro Bono Council members and have some feedback and comments on the proposed changes to the Emeritus Pro Bono designation to share with you.

Please also note that several programs submitted their comments independently, so what I have here to show you are some general comments and then some specific things VLPs expressed opinions on.

Simplifying the Process

VLPs are generally in favor of simplifying and streamlining the process of becoming Pro Bono licensed.

Tacoma Pro Bono finds the current system unnecessarily burdensome -- enough so that good people that would otherwise volunteer did not do so because of the administrative hurdles.

No VLPs expressed concern to me about removing the recent active legal experience requirement and they do not foresee unqualified or incapable people attempting to volunteer under Pro Bono status.

Fee Waivers

Generally, programs are very supportive of the fee waiver for Pro Bono attorneys. Many VLPs would prefer the volunteer hours be more like 15 or 20 instead of 30. Other than the obvious reason that less hours may encourage more people to volunteer, many retired attorneys are "snow birds" who spend any months out of Washington State. Particularly at smaller programs outside of the Seattle or Tacoma areas, where there simply aren't proportionally very many attorneys, even one or two attorneys who are willing to volunteer only 15 hours would make a huge difference.

Additionally, instead of basing a fee waiver on the prior year's volunteer hours, the first year could be based on a promise to volunteer during that first year. Once common situations VLPs have identified is a solo or small firm attorney who regularly volunteers a large number of hours for most of their career, but then is unable to volunteer in the final year of practice due to the large amount of time involved in wrapping up and closing their practice. These attorneys certainly deserve a fee waiver, but would be excluded under the proposed change. Even something like a way to apply for an alternative waiver the first year would be an improvement.

One comment several VLPs made was that Pro Bono status should not require any fee at all. Pro Bono service furthers the public good and professional goals of WSBA and attorneys should not be charged to volunteer. At a minimum, APR3 should be clarified so that license fees for volunteers is a cost/expense that is properly paid for by QLSPs.

Removal of the "Emeritus" Language

Clark County VLP in particular has expressed a concern that while many of the changes appear to be things that would make pro bono status logistically easier to obtain, the loss of the word "Emeritus" is something their older attorneys will dislike. Being able to offer an attorney a special new title that ensures the work they do going forward is pro bono work is important. When trying to convince some older, well established attorneys to make the move to "retire", they will be less inclined to take the title of pro bono attorney when that does not speak to their life's work. The title of Emeritus has much more meaning to offer than just "Pro Bono".

Other Issues VLPs would like to mention

While this is likely beyond the scope of the proposed revisions, one large barrier for many attorneys is that switching their license from active to Emeritus/Pro Bono status causes problems with their tail insurance coverage. Attorneys have had to either prepay fully or simply keep active status when they are already effectively retired and volunteering at QLSPs. VLPs and attorneys often have to fight with insurance companies over this. WSBA should take some formal position on this or make some substantive changes to rules so this is no longer an issue.

Thanks,
Michael

Michael Terasaki, Attorney

Washington Pro Bono Council Manager

michael@probonocouncil.org [PLEASE NOTE NEW EMAIL ADDRESS](#)

(425) 495-0132

[Pro Bono Council Doc Hub](#)

Paige Hardy

From: Joanne Sprague <executivedirector@kitsaplegalservices.org>
Sent: Friday, May 29, 2020 4:36 PM
To: Paige Hardy
Subject: RE: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Follow Up Flag: Follow up
Flag Status: Completed

Hi Paige:

I hope I am not too late to provide feedback on these rule changes.

Overall, I am in favor of the changes. Even for myself, currently with an inactive license, I can foresee in the future when I am no longer employed at Kitsap Legal Services, may want to convert to Pro Bono Status and volunteer.

The only change I would make to the current recommendations, is to lower the number of annual volunteer hours needed for a WSBA fee waiver to 20 hours. In my limited time at KLS, I have noticed that our two Emeritus Pro Bono attorneys spend a lot of time travelling and being involved with other activities.

I shared the proposed rule changes with our Emeritus Pro Bono attorneys. They liked the changes, but one of the attorneys thought the process of changing to Emeritus Pro Bono was particularly onerous. I believe he was changing from Voluntarily Resigned (Retired) to Emeritus Pro Bono, and he may not have practiced 5 of the last 10 years. The proposed changes seem to take care of this problem.

Enjoy your weekend!
Be Well!

Joanne Sprague

Executive Director
Kitsap Legal Services-A Volunteer Lawyer Program
PO Box 1446/920 Park Ave.
Bremerton, WA 98337
360-479-6125

From: Paige Hardy [mailto:paigeh@wsba.org]
Sent: Wednesday, May 27, 2020 8:44 AM
To: Qualified Legal Service Providers <qlsp@list.wsba.org>
Subject: RE:[qlsp] Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Dear QLSPs,

Good morning! I am emailing to request any feedback for the WSBA's Pro Bono and Public Service Committee's proposed changes to the Emeritus Pro Bono status. Please see my original email below.

Paige Hardy

From: Eloise Barshes <director@cdcvas.org>
Sent: Thursday, May 7, 2020 5:43 PM
To: Paige Hardy
Subject: Re: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

I think this is great! The changes are really progressive!

Eloise

From: Paige Hardy <paigeh@wsba.org>
Sent: Wednesday, May 6, 2020 1:56 PM
To: Qualified Legal Service Providers <qlsp@list.wsba.org>
Subject: [qlsp] Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Dear QLSPs,

I hope you are all well.

I am reaching out as the staff liaison to the WSBA Pro Bono and Public Service Committee. The Committee's Policy and Rules Workgroup is proposing rule changes to the Emeritus Pro Bono status. The goal for these proposed changes is to reduce many of the barriers for attorneys to switch to this status. This issue will go before the WSBA Board of Governors (BOG) for first reading at their June meeting.

Attached to this email is a draft memo from the Committee along with proposed rule changes.

The WSBA President, Rajeev Mujumdar, and the Committee are requesting feedback to these proposed changes from QLSPs as they are most impacted by these proposed changes. Any feedback provided to me will be shared with President Majumdar and the BOG. If possible, please submit any feedback by **Friday, May 29**.

If you have any questions or concerns, please do not hesitate to reach out to me. Email is the best way to get in contact with me at this time.

Best Regards,



Paige Hardy | Equity and Justice Lead – DEI & Public Service

Pronouns: She/Her

Washington State Bar Association | 206-239-2109 | paigeh@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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Paige Hardy

From: Cynthia Klein <cynthia@elap.org>
Sent: Friday, May 29, 2020 3:53 PM
To: Paige Hardy
Cc: Jerry Kroon; Esperanza Borboa
Subject: RE: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Follow Up Flag: Follow up
Flag Status: Completed

Eastside Legal Assistance Program (ELAP) supports the Proposal to Reduce Barrier to Access for Emeritus Pro Bono License Status of the Pro Bono and Public Service Committee (PBPS) dated May 5, 2020, with only one exception. We believe that the dues requirement for pro bono status members should be waived for those who have provided 10 hours of pro bono service in the prior year.

One of the primary ways in which attorneys provide services to our clients is in our two-hour legal clinics. Attorneys volunteering in those clinics typically serve once every 30-60 days. If the attorney served in a clinic with a 60 day rotation, (s)he would have served 12 hours in a year. Assuming the attorney were not available for one of those clinics because of vacation or illness or some other reason, (s)he would have served for 10 hours in a year. We do not feel that the attorneys who provide this invaluable service should be required to pay in order to do so, and in fact, ELAP has lost volunteers who did not want to pay the \$200 licensing fee in order to be able to continue to volunteer in our clinics. We have other volunteers who pay the fee, but find it burdensome.

We believe the availability of a fee waiver would remove a significant barrier to continuing to provide pro bono services, and we believe that a 10 hour eligibility threshold is reasonable.

Cynthia Klein

Eastside Legal Assistance Program
Legal Clinics Manager
She/Her

(425) 620-2787—Direct
cynthia@elap.org
www.elap.org



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Paige Hardy

From: Cynthia Klein <cynthia@elap.org>
Sent: Monday, June 1, 2020 9:07 AM
To: Paige Hardy
Cc: Jerry Kroon; Esperanza Borboa
Subject: RE: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

You are welcome.

I might add that for volunteers who serve 10 hours a year in our pro bono clinics, the current \$200 licensing fee amounts to a \$20 an hour tax on volunteering.

Cynthia Klein

Eastside Legal Assistance Program
Legal Clinics Manager
She/Her

(425) 620-2787—Direct
cynthia@elap.org
www.elap.org



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From: Paige Hardy <Paigeh@wsba.org>
Sent: Sunday, May 31, 2020 12:24 PM
To: Cynthia Klein <cynthia@elap.org>
Cc: Jerry Kroon <jerry@elap.org>; Esperanza Borboa <Esperanza@elap.org>
Subject: RE: Feedback Requested - Proposed Changes to Emeritus Pro Bono Status

Thank you, Cynthia. We will share your comments to the Board of Governors. This is incredibly helpful!

Best Regards,
Paige