

Proposed Amendments to Virginia Supreme Court Rules Part 6, § IV, Paragraph 3 (Classes of Membership)

The following proposed amendments to Virginia Supreme Court Rules, Part 6, Section IV, Paragraph 3 (Classes of Membership) have been suggested and endorsed by the Senior Lawyers Conference and the Young Lawyers Conference. The purpose of these amendments is to provide increased participation by experienced attorneys in pro bono efforts benefiting persons of limited economic means.

These rule changes create an “emeritus” class of membership by allowing retired attorneys to work under the supervision of a legal aid office, or other licensed agency, without paying bar dues, in recognition of the services they would be providing. They would be covered by the legal malpractice insurance of the agency for which they would be working, would be providing only pro bono services, and could appear in court with the permission of the judge or hearing officer. They would be expected to fulfill their yearly MCLE requirements. Retired attorneys are especially well qualified to provide pro bono services, considering the extensive legal experience gained in their many years of practice.

Any comments on the proposed amendments may be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219, by **February 18, 2004**.

PROPOSED AMENDMENTS TO VIRGINIA SUPREME COURT RULES PART 6, § IV, PARAGRAPH 3 (CLASSES OF MEMBERSHIP)

(e) *Emeritus Members.*—Those persons who are admitted to practice law in the Commonwealth of Virginia may, upon request to the Virginia State Bar with the supporting materials specified in this subparagraph, become emeritus members and provide pro bono legal services to the poor and working poor as emeritus members subject to the terms and conditions stated in this subparagraph. They shall pay no dues, may not practice law except in the limited manner specified in this subparagraph, and may not vote or hold office in the Virginia State Bar.

(1) Definitions.

- (A) Active practice of law, for the purposes of this subparagraph, means that an attorney has been engaged in the practice of law, which includes private practice, house counsel, public employment as a lawyer, or full-time teaching at an American Bar Association approved law school.
- (B) Emeritus member is any person who is admitted to practice law in the Commonwealth of Virginia, who is retiring or has retired from the active practice of law, and who intends to provide *pro bono* services under this subparagraph; and
 - (i) Has been engaged in the active practice of law for a minimum of ten out of the fifteen years immediately preceding the application to become an emeritus member; and
 - (ii) Is, at the time of requesting emeritus member status, an active member in good standing of the Virginia State Bar and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and
 - (iii) Signs a statement that he or she has read and will comply with the Virginia Rules of Professional Conduct and as an emeritus member submits to the continuing jurisdiction of the Virginia Supreme Court and the Virginia State Bar for disciplinary purposes; and
 - (iv) Agrees to neither ask for nor receive any compensation of any kind, except for out-of-pocket expenses, for the legal service to be rendered under this subparagraph.

(C) Approved legal assistance organization, for the purposes of this subparagraph, is a Virginia licensed legal aid society or other not for profit entity organized in whole or in part, to provide legal services to the poor and/or working poor in Virginia and receiving funds for that purpose from an agency or entity of the federal government or the Commonwealth of Virginia, or from the Virginia Law Foundation.

(D) Supervising attorney, for purposes of this subparagraph, is an attorney who directs and supervises an emeritus member engaged in activities permitted by this subparagraph. The supervising attorney must:

- (i) Be an active member of the Virginia State Bar in good standing employed by or participating as a volunteer for an approved legal assistance organization; and
- (ii) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding, or other legal service in which the emeritus member engages; and
- (iii) Direct and assist the emeritus member in his or her preparation to the extent the supervising attorney considers it necessary.

(2) Activities.

- (A) An emeritus member, in association with an approved legal assistance organization and only under the supervision of a supervising attorney, may perform only the following activities:
 - (i) The emeritus member may appear in any court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of an approved legal assistance organization if the person on whose behalf the emeritus member is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of the presiding judge or presiding officer in any administrative or arbitration proceeding.
 - (ii) The emeritus member may prepare and sign pleadings and other documents to be filed in

any court or with any administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved.

- (iii) The emeritus attorney may render legal advice and perform other appropriate legal services, but only with the express approval of the supervising attorney.
- (iv) The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.

(B) The presiding judge, hearing officer, or arbitrator may, in his or her discretion, determine the extent of the emeritus member's participation in any proceeding.

(3) Supervision and Limitations

- (A) An emeritus member must perform all activities authorized by this subparagraph under the direct supervision of a supervising attorney.
- (B) Emeritus members permitted to perform services under this subparagraph are not, and shall not represent themselves to be, active members of the Virginia State Bar licensed to practice law generally in the Commonwealth of Virginia.
- (C) The prohibition against compensation for the emeritus member contained in Section (1)(B)(iv) of this subparagraph shall not prevent the approved legal assistance organization from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor shall it prevent the approved legal assistance organization from charging for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court awarded attorney's fees for any representation rendered by an emeritus member.

(4) Certification. Permission for an emeritus member to perform services under this subparagraph shall become effective upon filing with and approval by the Virginia State Bar of:

- (A) A determination by the Virginia State Bar that the emeritus member has fulfilled the requirements of such membership and has a clear disciplinary record as required by Section (1)(B) of this subparagraph;
- (B) A certification by an approved legal assistance organization stating that the emeritus member is currently associated with that approved legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required under this subparagraph; and

(5) Withdrawal of Certification.

- (A) Permission to perform services under this subparagraph shall cease immediately upon the filing with the Virginia State Bar of a notice either:

(i) By the approved legal assistance organization stating that:

- (a) The emeritus member has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased, or
- (b) That the certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the Virginia State Bar shall be mailed by the organization to the emeritus member concerned.

(ii) By the Virginia State Bar, or the Virginia Supreme Court, at any time, stating that permission to perform service under this subparagraph is revoked. A copy of such notice shall be mailed to the emeritus member involved and to the approved legal assistance organization by which he or she has been certified. The emeritus member may apply to the Virginia State Bar or the Virginia Supreme Court for review of such revocation.

(B) If an emeritus member's certification is withdrawn, for any reason, the supervising attorney shall promptly file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus member was involved.

(6) Discipline. In addition to any appropriate investigation or proceeding instituted, or any discipline that may be imposed by the Virginia Supreme Court or the Virginia State Bar, the emeritus member shall be subject to the following disciplinary measures:

- (A) The presiding judge or hearing officer for any matter in which the emeritus member has participated may hold the emeritus member in civil contempt for any failure to abide by such tribunal's orders; and
- (B) The Virginia Supreme Court, the Virginia State Bar, or the approved legal assistance organization may, at any time, with or without cause, withdraw certification under this subparagraph.

(7) Mandatory Continuing Legal Education. Emeritus members must satisfy the Mandatory Continuing Legal Education (MCLE) obligations required of active members under Part 6, § IV, Paragraph 17 of the Rules of the Supreme Court of Virginia. Failure to satisfy the MCLE requirements shall subject the emeritus members to the fees and sanctions specified in Part 6, Section IV, Paragraph 19 of the Rules the Virginia Supreme Court.

(8) Change of Membership Status. An emeritus member may petition for reinstatement to active membership under the procedure prescribed in subparagraph (d) of this rule for disabled and retired members. 