



Major Changes to Emeritus Membership Rule Should Encourage More Members to Do Pro Bono

EFFECTIVE MARCH 1, 2018, the Supreme Court of Virginia has approved changes to the emeritus membership rule that will make it easier for active, associate, and retired members to provide legal services pro bono, if they are ready to restrict their practice to just pro bono. In addition to the rewards of helping the most vulnerable of Virginia's population who need legal assistance, emeritus members do not have to pay dues or the clients' protection fund fee under Paragraph 3(e).

Specifically, the changes to the emeritus rule will enable members who have practiced law for 20 years or more and who are an active, associate, or retired member in good standing of the Virginia State Bar to become emeritus members (Paragraph 3(e)(1)(B)(ii) of Part 6, Section IV of the Rules of the Supreme Court of Virginia). The member must not have been the subject of discipline by any bar or court within the past 15 years (Paragraph 3(e)(1)(B)(iii)). The member must have been engaged in the active practice of law for a minimum of five out of the seven years immediately preceding the application to become an emeritus member (Paragraph 3(e)(1)(B)(iv)).

The changes allow those who qualify as emeritus members under the new rule to provide pro bono services without being under the direct supervision of a supervising attorney after certifying annually his or her affiliation with a qualified legal services provider (Paragraph 3(e)(4)(B)). The

previous emeritus rule, first effective in 2004, required experienced lawyers to practice under the direct supervision of legal aid attorneys. For most of 2017, only two VSB members had emeritus status.

There is also a requirement that the emeritus member certify in the affidavit required by Paragraph 3(e)(4)(B) that they are currently covered by professional liability insurance. Legal aid societies are required to have malpractice insurance that provide at least \$250,000 per claim for lawyers who provide client legal services under the auspices of the program (Virginia Licensed Legal Aid Society Regulations, 15 VAC5-10-10(3)(g), <http://www.vsb.org/pro-guidelines/index.php/vllas-regs/>). Lawyers with an extended reporting endorsement interested in emeritus status should contact their professional liability carrier before providing pro bono service under the rule.

Paragraph 3(e)(5) requires that a retired member has to comply with the petition and approval requirements for reinstatement as an active member under Paragraph 3(d) and satisfy outstanding MCLE deficiencies before assuming emeritus status. Because the new rule requires that emeritus members must comply with all rules and requirements set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, except for dues and the clients' protection fund fee, emeritus members are required to comply with the MCLE rules set forth in Paragraph 17 (Paragraph 3(e)(5)). As provided in

the existing rule and unchanged in the new rule, emeritus members cannot practice law except in the limited manner specified in the emeritus rule, nor can they vote or hold office in the Virginia State Bar (Paragraph 3(e)).

The full text of the new rule is as follows:

SECTION IV. ORGANIZATION AND GOVERNMENT.

3. Classes of Membership.

(e) *Emeritus Members.* – Those attorneys 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, corporate practice as authorized by Part 1 A, Rule 1A:5, public employment as a lawyer, or full-time teaching at an American Bar Association approved law school.

(B) Emeritus member is any

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

(ii) Is, at the time of requesting emeritus member status, an active, associate, or retired member in good standing of the Virginia State Bar who has practiced law for 20 years or more; and

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

(iv) Has been engaged in the active practice of law for a minimum of five out of the seven years immediately preceding the application to become an emeritus member; and

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

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

(2) Activities.

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

(i) The emeritus member may appear in any court or before an admin-

istrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of a qualified legal services provider.

(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 member may render legal advice and perform other appropriate legal services.

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

(3) Limitations

(A) The prohibition against compensation for the emeritus member contained in Section (1)(B)(v) of this subparagraph shall not prevent the qualified legal services provider from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor shall it prevent the qualified legal services provider from charging for its services as it may otherwise properly charge. The qualified legal services provider 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:

(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; and

(B) The filing with the Virginia State Bar each year of an affidavit of affiliation with a qualified legal services provider by the emeritus member. The emeritus member shall also certify in this affidavit whether they are currently

covered by professional liability insurance.

(5) Membership Requirements. In order to practice law under this rule, a retired member must comply with the petition and approval requirements for reinstatement as an active member prescribed in Paragraph 3(d) of Part 6, Section IV of the Rules of the Supreme Court of Virginia. Also, associate members must satisfy any outstanding MCLE deficiencies before assuming emeritus status. Additionally, emeritus members must comply with all rules and requirements set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia with the exception that they are not required to pay dues and the client protection fund fee as set forth in Paragraphs 11 and 16, nor comply with the professional liability certification requirements in Paragraph 18.

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

Questions?

Should you have any questions regarding the new rule or how to become an emeritus member, please contact Crista Gantz, the VSB's new director of Access to Legal Services. She replaced Karl Doss, who has become the Deputy Director of Legal Services Corporation of Virginia. Crista can be reached at cgantz@vsb.org.