

ATTACHMENT B

PROPOSED AMENDMENT TO PRO BONO PRACTICE PROGRAM RULE 3.327 TO REDUCE THE NUMBER OF YEARS REQUIRED FOR PARTICIPATION

PUBLIC COMMENTS RECEIVED

May 14, 2012

“As a former legal services attorney and program director many years ago, an attorney for 39 years, and a pro bono attorney for the last 5 years, I urge adoption of the proposed rule changes to allow attorneys with three years of practice to participate pro bono with a qualified legal services program and/or a self-help center. The need for pro bono attorneys is overwhelming and the key is to have attorneys who want to do pro bono work more than simply having attorneys with more years of law practice. It is their willingness to serve and the training and backup support that pro bono attorneys receive that is more important than their years as a member of the bar. I have found many pro bono attorneys do their pro bono work in areas outside of their regular practice area. This includes me.”

Howard K. Watkins
SB# 056204
1785 W. Dovewood Lane
Fresno, CA 93711
Res. 559-435-1992
Cell 559-355-7040

May 23, 2012

“I support this amendment, which would allow younger attorneys to obtain more experience while assisting underserved and very need populations”

Candace Goldman, Esq.
(information below for I.D. only):
Program Manager
Self-Help and Family Law Facilitator Services
Superior Court of California - Alameda County
1225 Fallon Street - Room 250
Oakland, Ca. 94612

June 13, 2012

“I’m the Pro Bono Coordinator for the San Diego Volunteer Lawyer Program, and we would like to provide feedback on the Pro Bono Practice Program Rules 3.327 - Proposed Revision to Reduce the Number of Years Required for Participation.

Reducing the number of years required for participation in the program would increase the number of attorneys doing pro bono work and this would benefit our organization. However, it needs to be more clear to attorneys who are considering this program that they cannot do any other legal work for that year, and they cannot volunteer to do legal work at any other organization. And if that attorney takes a paying legal job during the year, then he/she will be required to pay all bar dues. We have run into some confusion over this issue with a few volunteers.

Marisa Rastetter, Esq.

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June 13, 2012

“As an advisory body to the Board of Trustees on issues that relate directly to the delivery of legal services to low and moderate income Californians, the Standing Committee on the Delivery of Legal Services (“SCDLS”) submits the comments below in opposition to the proposed revision to Pro Bono Practice Program (“PBPP”) Rule 3.327. This proposal would reduce the number of years required for participation from five to three years in an effort that could potentially increase young lawyer participants.

Five Year Requirement is Minimum for Public Protection

While the PBPP rule changes in 2008 were made in large part to increase participation by more mid-career attorneys, it was recognized that some minimum level of experience should be required, to overcome any concerns about protecting the public and the profession. The required five years of admission (reduced from ten years) with at least three of those years having actively practiced law or served as a judge in California was intended to be the minimum number of years for an attorney or judge to provide valuable pro bono contributions and to overcome any such concerns. Five years is commensurate with the minimum experience level required for an attorney to serve as a Judge Pro Tem as permitted by a Presiding Judge in extraordinary circumstances (California Rule of Court 2.812), or for an attorney to be a sponsor under the State Bar’s Law Office Study Program (State Bar Rule 4.29). Lowering the years of admission below five years would be inconsistent with the standard set by the California Supreme Court and the State Bar of California.

Proposal Does Not Serve PBPP Purpose

Reducing the required number of years of admission to increase the number of lawyers eligible for a waiver of the State Bar active membership fee in the early stages of their career does not serve the purpose of the Pro Bono Practice Program. The purpose of the PBPP (formerly the Emeritus Attorney Pro Bono Participation Program) has remained the same since it began in June 1987, to reinvest the legal skills of experienced attorneys who have retired or are stepping away from the active practice of law on a temporary or permanent basis. Through the program, at-risk and needy low-income Californians receive legal assistance from experienced practitioners who can “hit the ground running.” Experienced attorneys are encouraged to continue using their well-developed legal skills which are transferable to other areas of the law. The program was not conceived to help attorneys at the beginning stage of their careers.

Proposal Inconsistent with Demographics of Program Participants

There are 78 attorneys currently participating in the PBPP. The “oldest” participant was admitted in 1953 (59 years ago) and the “youngest” participant was admitted in 2001 (11 years ago). The median admit date is 1975 (37 years ago). Despite the rule change in 2008 that reduced the years of admission from ten to five, there has been no increase in the number of younger lawyers. In fact, the PBPP continues to attract “older” and more experienced lawyers who likely have ended their legal careers, not “younger” less experienced lawyers who are starting their legal careers. The level of pro bono service provided by a PBPP attorney is typically much greater than a pro bono attorney at-large, and the average length of service with the same qualified legal services provider is more than five years. It is highly unlikely that more young lawyers will participate if the number of years admitted to practice is further reduced, and there is no information available to suggest otherwise.

Consider Alternative to Rule Change

Instead of reducing the years of admission with a rule revision, there is a viable alternative in the existing rules. A young lawyer who does not meet the five year requirement (or other eligibility requirement), or a qualified legal services provider that is interested in utilizing the services of a young lawyer who does not

meet the five year requirement (or other eligibility requirement) as part of the Pro Bono Practice Program, can request a waiver of the requirement:

Rule 3.328 Waiver of an eligibility requirement: The Secretary may waive a pro bono practice attorney requirement, such as the extent to which a member otherwise meets the requirements, the need for legal services in a particular place, or a member's experience in providing pro bono legal services or for other good cause.

This alternative is preferred to a rule change in that the burden of responsibility shifts to the applicant to show that the young lawyer with less than five years of admission has the skills and experience needed to provide pro bono legal services. SCDLS and State Bar staff would be happy to highlight Rule 3.328 and explain the process for requesting a waiver in outreach materials directed to State Bar members and qualified legal services providers, on the State Bar web pages dedicated to the Pro Bono Practice Program, and other avenues as appropriate.

In closing, SCDLS wants to make it abundantly clear that it supports younger lawyers being actively engaged in pro bono. It also recognizes the critical role that pro bono plays in training many young lawyers. SCDLS is supportive of any efforts the State Bar Board of Trustees might make toward practical training of law students—and we understand the Trustees recently finalized the appointments to the Admissions Reform Task Force that will investigate various aspects of such practical skills training as a pre-admission requirement. SCDLS is happy to consider any programs that arise out of the task force or to work with the task force as the Trustees may see fit. SCDLS is also committed to evaluating any other programs the State Bar staff or Board of Trustees might advance, which involve and encourage young lawyers in pro bono activities while maintaining the protection of the public.

For public protection and policy reasons, SCDLS respectfully opposes the proposed rule change to reduce the years of admission requirement for the Pro Bono Practice Program from five to three years, and instead strongly urges the Board of Trustees to direct SCDLS and staff to publicize the waiver provision set out in Rule 3.328. Thank you for the opportunity to provide comments. Please do not hesitate to contact me at cbennett@kleinlaw.com, or 661-395-1000.

Disclaimer

This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources."

Catherine Bennett, Chair
Standing Committee on the Delivery of Legal Services

June 13, 2012

This letter is in response to the notice of proposed revisions to Pro Bono Practice Program Rule 3.327 ("Proposed Revision to Reduce the Number of Years Required for Participation").

The Proposed Revision to Reduce the Number of Years Required for Participation would reduce the number of years of experience required to participate in the Pro Bono Practice Program from five years to three years in order to allow more young lawyers to participate in the Program.

The Southern California Pro Bono Managers—a group composed of pro bono coordinators at legal services organizations in Southern California—support the Proposed Revisions because, by allowing more lawyers to participate in the Pro Bono Practice Program and by expanding the number of

opportunities for lawyers to participate in the Program, the Proposed Revisions would help reduce the “Justice Gap” plaguing California’s most vulnerable individuals.

As Need Grows, Resources Dwindle, Resulting in the “Justice Gap”

More and more Americans are in need of free legal services. In 2010, the United States Census Bureau reported a fourth consecutive annual increase in the number of people living in poverty in the United States, bringing the total to 46.2 million.¹ As poverty rates increase, so too does the number of individuals in need of legal services to help them access basic life necessities like food, medical care, and shelter.

The economic recession, however, not only increases poverty, it decreases funding for the programs aimed at helping low-income people. In California, revenue from Interest on Lawyers Trust Accounts dropped from \$22 million in 2008 to less than \$8 million in subsequent years,² leaving legal services organizations thinly staffed and unable to serve the increasing amount of people in need. We refer to this widening chasm, between increased need and decreased capacity to meet this need, as the “Justice Gap.”

The Southern California Pro Bono Managers Believe that Pro Bono Lawyers Are Heroes

One effective way of relieving the effects of the Justice Gap is to encourage lawyers to provide pro bono support to organizations serving those in need. As pro bono coordinators at legal services organizations in Southern California, we know that pro bono attorneys can be heroes for our clients. That is why we work every day to draw pro bono support for our organizations, helping us to provide more underserved Californians with the legal services they need.

The Southern California Pro Bono Managers support measures, including the Proposed Revisions, which engage more pro bono attorneys in the effort to close the Justice Gap.

The Proposed Revisions Expand Pro Bono Service, Helping More People in Need

Under the current Rules, attorneys participating in the Pro Bono Practice Program must have been admitted to the bar for at least five years. The Proposed Revision to Reduce the Number of Years Required for Participation decreases the required years of admission to three years, thus increasing the pool of potential pro bono participants. This proposed revision would give more young, enthusiastic attorneys the opportunity to participate in the Pro Bono Practice Program, thereby increasing assistance to the legal services organizations, Legal Referral Services, and court-based self-help centers that make up an invaluable safety net for California’s low-income and otherwise underserved populations.

The Southern California Pro Bono Managers support the Proposed Revisions because they will allow more attorneys to be heroes in their communities. We appreciate the opportunity to comment on such an important topic in our legal community, and would happily provide further materials in support of the Proposed Revisions at your request.

Sincerely,

Ted Farley *Alliance for
Children’s Rights*

Anthony Roh *Asian Pacific
American Legal Center*

Diego Cartagena *Bet Tzedek*

Vicky Barker *California
Women’s Law Center*

Carmen Chavez *Casa
Cornelia Law Center*

Melinda Bird
Disability Rights California

Lani Woltmann *Disability
Rights Legal Center*

Nicola Kennedy *Harriett Buhai
Center for Family Law*

Lisa Mead
Inner City Law Center

Pamela Marx *Mental Health
Advocacy Services*

Jacqueline Hall
*Legal Aid Foundation of Santa
Barbara County*

Diamond Tran
Public Law Center

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The below-listed legal services organizations—each a member of the Bay Area Pro Bono Managers Group, which convenes Bay Area legal services nonprofits to coordinate and discuss pro bono programs—support the Proposed Revisions because, by allowing more lawyers to participate in the Pro Bono Practice Program and by expanding the number of opportunities for lawyers to participate in the Program, the Proposed Revisions would help reduce the “Justice Gap” plaguing California’s most vulnerable individuals.

As Need Grows, Resources Dwindle, Resulting in the “Justice Gap”

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The Bay Area Pro Bono Managers Group Believes that Pro Bono Lawyers Are Heroes

One effective way of relieving the effects of the Justice Gap is to encourage lawyers to provide pro bono support to organizations serving those in need. As Bay Area legal services organizations that rely heavily on the support of our pro bono volunteers, we know that pro bono attorneys can be heroes for our clients. That is why we work every day to draw pro bono support for our organizations, helping us to provide more underserved Californians with the legal services they need.

The below-listed Bay Area Pro Bono Managers Group members support measures, including the Proposed Revisions, which engage more pro bono attorneys in the effort to close the Justice Gap.

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Sincerely,

Bill Hirsh
AIDS Legal Referral Panel

Richard Konda
Asian Law Alliance

Layma Ahmadzai
Asian Law Caucus

Jose Padilla
*California Rural Legal
Assistance*

Allison Barnum
Law Foundation of Silicon Valley

Paul Chavez
Lawyers' Committee for Civil Rights

Nancy Murphy
Legal Aid of Marin

Stacey Hawver
*Legal Aid Society of San Mateo
County*

Catherine McKee
*Legal Services for Prisoners with
Children*

Sharon Bashan
Pro Bono Project Silicon Valley

Jamienne Studley
Public Advocates Inc.