

AGENDA ITEM

DATE: April 25, 2012

TO: Members, Member Oversight Committee

FROM: Samson Elsbernd, Member of the Board of Trustees

SUBJECT: Pro Bono Practice Program Rule 3.327 -- Request to Release Proposed Revision for Public Comment to Reduce the Number of Years Required for Participation

EXECUTIVE SUMMARY

The Board of Trustees established the Emeritus Attorney Pro Bono Participation Program (now called the Pro Bono Practice Program) in June 1987 to encourage attorneys who otherwise would be retired from the active practice of law to do pro bono work. [Title 3, Division 2, Chapter 6 of the State Bar Rules.] In 2008, the Board approved reducing the number of years required for participation from 10 to 5 years, and to change the name to the Pro Bono Practice Program to reflect that more mid-career attorneys were participating in the program.

This agenda item proposes that the number of years be reduced further, to 3 years, in order to allow more young lawyers to participate in the program, and requests that the Member Oversight Committee grant permission to release the proposal for a 30-day public comment period, from May 14, 2012 through June 13, 2012.

BACKGROUND

The Board of Trustees adopted the Emeritus Attorney Pro Bono Participation Program (“EA Program”) Rules in June 1987. The rules originally were created to encourage retired attorneys who otherwise would become inactive to represent low-income individuals on a pro bono basis. The retired attorney would become active for the purpose of doing pro bono work with a qualified legal services provider or certified lawyer referral service and the State Bar would waive the active membership fee. In the nearly twenty-five years since the EA Program was established, there have been four amendments with respect to eligibility—adding judges (June 1991), reducing the number of years of active practice from five out of last ten years to three out of the last eight years (December 1992), reducing the total number of years admitted to practice law in a United States jurisdiction from fifteen to ten (September 1996), and reducing the number of years to five and changing the name by dropping the term “emeritus” (July 2008).

Under the existing Program Rules that require admission to the practice of law for five years and active practice for three out of the last five, attorneys who have been admitted less than five years are ineligible to participate in the program. The proposed reduction in years of admission required for participation in the program could potentially increase the number of pro bono participants by opening the pro bono program to younger attorneys.

SUMMARY OF PROPOSED CHANGE:

Rule 3.327: Retain 3 years of practice of law or service as a judge in California, but reduce from five to three the total number of years admitted to the practice of law in California and the number of years of no record of public discipline.

LENGTH OF PUBLIC COMMENT PERIOD & REASON:

The thirty-day comment period would run from May 14, 2012 through June 13, 2012. This period of time is adequate to collect comments and feedback from approximately 100 qualified legal services providers and 60 certified lawyer referral services that will be impacted by the proposed rule change, as well as from other interested stakeholders. The final public comment report and recommendations will be submitted for review and approval by the Board Committee on Stakeholder Relations and the full Board of Governors at the July 2012 Board Meeting. Implementation of the rule change will begin immediately to coincide with the 2013 billing cycle.

FISCAL / PERSONNEL IMPACT:

It is projected that enrollment in the expanded program could potentially increase the level of participation; that increase would result in additional State Bar Membership Fees waived for each additional participant by the full value of the membership fee. No additional staff resources are anticipated at this time.

RULE AMENDMENTS:

The proposed changes to the Pro Bono Practice Program Rule 3.327 shown on Attachment A would be incorporated into the existing Title 3, Division 2, Chapter 6 of the Rules of the State Bar.

BOARD BOOK IMPACT:

The Board Book will not be impacted. The Administrative Manual topics affected by the proposed rule changes will be updated accordingly.

RECOMMENDATION

Board Member Samson Elsbernd recommends that the Rules of the Pro Bono Practice Program be revised to reduce from five to three the required number of years admitted to the practice of law in a United States jurisdiction and the number of years of no record of public discipline. See Attachment A for the proposed revision to the Pro Bono Practice Program Rules.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Member Oversight agree to release for public comment the proposed revision to the Pro Bono Practice Program Rule 3.327, the following resolution would be in order:

RESOLVED, that the Member Oversight Committee; approves the request to release the proposed revision to the Pro Bono Practice Program Rule 3.327 in the form attached for a thirty-day public comment period from May 14, 2012 through June 13, 2012; and it is

FURTHER RESOLVED, that authorization for public comment is not, and shall not be construed as, a statement or recommendation of approval by the Board Committee.