

DATE: April 25, 2012

TO: Members of the Board Committee on Member Oversight

FROM: Cathy Bennett, Chair, Standing Committee on the Delivery of Legal Services (SCDLS)

SUBJECT: Pro Bono Practice Program Rules 3.325 - 3.330-- Request to Release Proposed Revision for Public Comment to Expand Eligibility to Court-Based Self-Help Centers

### **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. [now in Title 3, Division 2, Chapter 6 of the State Bar Rules.] The latest amendments to the Program were made in 2008 when the Board approved reducing the number of years required for participation from 10 to 5 years, and changed the name to the Pro Bono Practice Program to encourage mid-career attorneys to join. This agenda item proposes that participating attorneys be allowed to volunteer with a court-based self-help center as well as with a legal services program or a State Bar certified Lawyer Referral Service. The Standing Committee on the Delivery of Legal Services and the staff of the Office of Legal Services recommend the proposal and request that the Member Oversight Committee grant permission to release the proposal for a 30-day 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 to the “Pro Bono Practice Program, thereby dropping the term “emeritus” (July 2008).

Expanding the Pro Bono Practice Program to include court-based self-help centers as eligible programs for participants to volunteer with would reflect the emerging status of such centers as an important component of the continuum of service for low and moderate income Californians. These centers exist in every county in the state and include Family Law

Facilitators as well as more broad-based Self-Help Centers that offer services beyond family law issues, and some Small Claims Court Advisor programs. This proposal envisions allowing these self-help centers to use Pro Bono Practice Program participants.

The full list of self-help centers is available at: <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>. They provide an invaluable service to litigants who are mostly unrepresented and have nowhere else to turn, and are particularly valuable resources in rural areas that often lack a legal aid office. The Centers are also extremely valuable for the courts, since hearings can be held more efficiently and judges can be more assured that justice is being served if litigants have access to information about the law and judicial procedures. Most studies have shown that 80% to 90% of individuals assisted at court-based programs meet income eligibility requirements for services from IOLTA programs but cannot otherwise access those services because the legal services programs have inadequate resources and have very focused priorities that may not include the subject matter in question. These court-based centers often use the services of volunteer attorneys in a workshop or a one-on-one clinic setting. Because court self-help centers provide legal information rather than legal advice or representation, the range of services provided by attorney participants in the Pro Bono Practice Program would be more appropriately described as “legal assistance” rather than “legal services.”

The Judicial Council’s Task Force on Self-Represented Litigants developed a statewide Action Plan that was approved by the Judicial Council in 2007, available at: <http://www.courts.ca.gov/documents/selfreplitsrept.pdf>. In 2007, the Judicial Council also adopted rule 10.960 of the California Rules of Court, effective January 1, 2008, in order to establish the foundation for the administration of California court self-help centers. The Task Force also developed guidelines for the operation of these centers, calling for them to be staffed by attorneys and to ensure that supervision of staff is available through attorneys or judicial officers. These guidelines can be found at: [http://www.courts.ca.gov/documents/self\\_help\\_center\\_guidelines.pdf](http://www.courts.ca.gov/documents/self_help_center_guidelines.pdf)

Because of the key role that court self-help centers now play as a resource for unrepresented litigants, and because of the strict oversight that is available to ensure quality services are provided, this agenda item recommends that those Centers also be able to use the volunteer services of Pro Bono Practice Program attorneys.

#### **SUMMARY OF KEY PROPOSED CHANGES:**

1. Rule 3.325 (A): Add reference to court-based self-help center.
2. Rule 3.325 (E): The following definition should be added: a “court-based self-help center” is, for the purposes of the Pro Bono Practice Program, a self-help program that is in compliance with California Rules of Court 10.960.
3. Rule 3.329 (B): Add reference to court-based self-help center.
4. Rule 3.329 (F): Add reference to court-based self-help center.
5. Rule 3.329 (H): Add reference to court-based self-help center.
6. Rule 3.330: Add references to court-based self-help center.
7. Rules 3.325 - 3.330: Change “legal services” to “legal assistance” throughout the rules.

#### **LENGTH OF PUBLIC COMMENT PERIOD & REASON:**

The proposed 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

one-hundred Self-Help Centers that will be impacted by the proposed rule change, as well as from other interested stakeholders. No opposition to the rule change is anticipated at this time. The final public comment report and recommendations will be submitted for review and approval by the Board Committee on Member Oversight 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 AND 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.

**BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:**

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

**RULE AMENDMENTS:**

The proposed changes to the Pro Bono Practice Program Rules 3.325 - 3.330 as shown on Attachment A would be in Title 3, Division 2, Chapter 6 of the Rules of the State Bar.

**RECOMMENDATIONS:**

The Chair of the Standing Committee on Delivery of Legal Services, on behalf of the Committee, recommends that the Rules of the Pro Bono Practice Program be revised to allow participants to volunteer with court-based self-help centers. See Attachment A for the proposed revised rules of the Pro Bono Practice Program.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

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

**RESOLVED** that the Board Committee on Member Oversight approves the request to release the proposed revisions to the Pro Bono Practice Program Rules 3.325 - 3.330 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.