

AGENDA ITEM

136 JULY

DATE: July 3, 2012

TO: Members, Member Oversight Committee
Members, Board of Trustees

FROM: Mary Lavery Flynn, Director, Office of Legal Services

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

EXECUTIVE SUMMARY

This agenda item brings back from public comment a proposal to amend Pro Bono Practice Program Rule 3.327 by reducing the number of years of Bar admission required for participation in the program.

The Board of Trustees established the Pro Bono Practice Program (formerly called the Emeritus Attorney Pro Bono Participation 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 public comment notice sought input on a proposal that would reduce the number of years of experience required, from 5 years to 3 years, in order to allow more young lawyers to participate in the program.

Six comments were received during the public comment period. Five comments were received in support of the proposal and one comment was received in opposition to the proposal. In light of the comments, it is recommended that the Member Oversight Committee recommend this proposal to the Board for adoption.

Questions may be directed to Mary Flynn at Mary.Flynn@calbar.ca.gov, (415) 538-2251, or Lauren Calton at Lauren.Calton@calbar.ca.gov, (415) 538-2534.

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 and practice law by only 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 total number of years from ten 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.

DISCUSSION

The proposed amendment, in the form of Attachment A, was published for a 30-day public comment period. As of the date of this item, five comments were received in support of the proposal and one comment was received in opposition to the proposal. The comments are included in Attachment B.

Five comments supported the proposal for several reasons. The comments stressed the great need for pro bono attorneys and how reducing the number of years required for participation in the Pro Bono Practice Program would increase the number of attorneys doing pro bono work. The economic recession has increased poverty while also decreasing funding for legal services programs aimed at helping low-income people. As a result, more and more low-income Americans are in need of free legal services. The revision would engage more attorneys to help provide more underserved Californians with the legal services they need. Reducing the years of experience required for participation would also benefit legal services organizations while allowing younger attorneys to gain more experience.

One comment in support of the proposal also noted how many attorneys already do pro bono work in areas outside of their regular practice area, suggesting that attorneys do not need many years of experience to do pro bono work. An attorney's willingness to do more pro bono work, combined with training and backup support, is more important than an attorney having more years of practice.

The Standing Committee on the Delivery of Legal Services (SCDLS) submitted the one comment in opposition to the proposal. SCDLS emphasized how the current five year requirement was intended to be the minimum and that reducing the number of years required to participate does not serve the program's purpose. The program was not conceived to help attorneys at the beginning of their careers but rather was designed 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 for the benefit of the public. SCDLS also asserted that the proposal is inconsistent with the current demographics of program participants, as the "youngest" participant was admitted in 2001 (11 years ago).

SCDLS suggested that instead of reducing the years of admission required, a young lawyer who does not meet the five year requirement or qualified legal services provider that is interested in utilizing the services of a young lawyer who does not meet the five year requirement could request a waiver of the requirement under Rule 3.328. This alternative would shift the burden to the applicant to show that the young lawyer with less than five years of admission has the skills and experience needed to participate in the program.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

Approval of this proposal at the July 2012 meeting would amend Title 3, Division 2, Chapter 6, Pro Bono Practice Program Rule 3.327.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the Member Oversight Committee recommend this proposal to the Board for adoption.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, following consideration of the public comments received, that the Member Oversight Committee recommends that the Board adopt the amendment to Pro Bono Practice Program Rule 3.327, in the form of Attachment A, to be effectively immediately.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Member Oversight Committee's recommendation, the following resolution would be in order:

RESOLVED, following consideration of public comments received and upon the recommendation of the Member Oversight Committee, the Board hereby adopts the amendment to Pro Bono Practice Program Rule 3.327, in the form of Attachment A, effective immediately.