

AGENDA ITEM

JUL 135

DATE: July 3, 2012

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

FROM: Mary Lavery Flynn, Director, Office of Legal Services
Lauren Calton, Program Coordinator, Office of Legal Services

SUBJECT: Pro Bono Practice Program Rules 3.325 - 3.330—Proposed
Revision to Expand Eligibility to Court-Based Self-Help
Centers

EXECUTIVE SUMMARY

This agenda item brings back from public comment a proposal to amend Pro Bono Practice Program Rules 3.325 - 3.330 to expand eligibility to court-based self-help centers.

The Board of Trustees established the Pro Bono Practice Program (formerly 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. This public comment notice sought input on a proposal that would allow participating attorneys 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.

Seven comments were received during the public comment period. All seven comments supported the proposal. The Standing Committee on the Delivery of Legal Services and the staff of the Office of Legal Services recommend 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.

Expanding the Pro Bono Practice Program to include court-based self-help centers, as defined by [rule 10.960 of the California Rules of Court](#), as eligible programs for participants to volunteer with would reflect the 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.

Self-help centers 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.”

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, seven comments were received in support of the proposal. The comments are included in Attachment B.

The seven comments supported the proposal for several reasons. The comments stressed the great need for pro bono attorneys and how expanding eligibility to court-based self-help centers would increase the number of opportunities for lawyers to participate in the Pro Bono Practice Program. 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 unable to obtain free legal services and must proceed unrepresented. The revision would engage more attorneys to help provide more underserved Californians with the legal assistance they

need to represent themselves. These pro bono attorneys would be of great assistance to the courts as they continue their efforts to serve self-represented litigants.

While supporting the proposal, two of the comments noted how the assistance provided by court-based self-help centers differs from services provided by qualified legal services or lawyer referral services. Any volunteer serving in a court-based self-help center must comply with the ethical rules set out in the [Guidelines for the Operation of Self-Help Centers in California Trial Courts](#). Under these rules, attorneys serving in a court setting must provide neutral services to all parties, avoiding the establishment of an attorney-client relationship.

One comment also expressed a concern about professional liability insurance coverage for work done at the self-help centers. However, attorneys who volunteer at a self-help center that is sponsored in whole or in part by an IOLTA funded program are covered by the IOLTA funded program's insurance coverage. The AOC would generally provide representation for volunteers supervised by the court rather than a legal services agency if a lawsuit is filed against them based on conduct within the course and scope of their volunteer duties.

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

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 Rules 3.325 - 3.330.

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 Rules 3.325 - 3.330, 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 Rules 3.325 - 3.330, in the form of Attachment A, effective immediately.