State Emeritus Pro Bono Rules (as of 10/31/07)
Holly Robinson, Associate Staff Director
ABA Commission on Law and Aging

Alaska (effective October 15, 2007)
http://www.state.ak.us/courts/sco/sco1641leg.pdf

Arizona
Supreme Court Rule 38 (e). Special Exceptions to Standard Examination and Admission Process
http://azrules.westgroup.com/Find/Default.wl?DocName=AZSCTR38&FindType=W&DB=AZ-TOC-WEB%3BSTAAZTOC&RS=WLW2%2E07&VR=2%2E0

California
Title 3, Division 2, Chapter 8

Colorado (Effective July 1, 2007)

Delaware
Supreme Court Rule 69

District of Columbia
Court of Appeals Rule 49 (c)(9) & (10)

Florida
Bar Rule 12
http://www.floridabar.org/divexe/rrtfb.nsf/FV?Openview&Start=1&Expand=12.1#12.1

Georgia
Bar Rule 1-202 (d)
http://www.gabar.org/handbook/part_i_-_creation_organization/rule_1-202_classes_of_members/

Hawaii
Supreme Court Rule 20
http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

Idaho
Bar Rule 223
http://www2.state.id.us/lsb/PDF/IBCR.pdf
Maine
Bar Rule 6 (d)
http://www.courts.state.me.us/rules_forms_fees/rules/MBarRules3-07.pdf

Maryland
Court of Appeals Rules 16-811 (e)(2); 1-312
http://www.courts.state.md.us/cpf/pdfs/inactive07.pdf

Massachusetts
Supreme Judicial Court Rule 4:02 (8)
http://www.massreports.com/courtrules/sjcrules.htm#4:02

Mississippi (Effective October 18, 2007)
Mississippi Rules of Appellate Procedure 46 (f)
http://www.mssc.state.ms.us/Images/Opinions/143112.pdf

Montana
Bar Rule Art. 1, §3

New Hampshire (Public Hearing on December 12, 2007)
Rule 42-D.

By-Laws of the New Hampshire Bar Association, Article II, Section 8
http://www.nhbar.org/about-the-bar/bylaws.asp

New York
22 NYCRR § 118.1(g)
http://www.courts.state.ny.us/attorneys/registration/part118.pdf

North Carolina (Effective July 8, 2007)

Oregon
Oregon State Bar By-Laws 6.1
http://search.osbar.org/showHTMLhits.asp?cmd=getdoc&maxSize=200000&DocId=2107&Index=C%3a%5cProgram%20Files%5cOsbar%5cOSB%2dFullSite%2dHTML&HitCount=11&hits=1e82+1ed4+1ee1+1f84+1f88+2007+2031+204e+20f9+2100+21
21+&hc=209&req=emeritus#6.1

South Carolina
Supreme Court Rule 415
http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=415.0&subRuleID=&ruleType
=APP

South Dakota (Effective January 1, 2008)
Texas
Bar Rule Article XIII
HTTP://WWW.TEXASBAR.COM/TEMPLATE.CFM?SECTION=HOME&CONTENTID=12973&TEMPLATE=/CONTENTMANAGEMENT/CONTENTDISPLAY.CFM

Utah
Rule 14-101 et seq. (RIM); Rule 14-203 (Bylaws); Rule 14-401 et seq. (MCLE)
http://www.utahtbar.org/rules_ops_pols/policies/licensing_policy.html

Virginia
Supreme Court Rule 6:4-3
http://leg1.state.va.us/cgi-bin/legp504.exe?000+scr+vscr-6Z4-3

Washington
Court Rule 8 (e)
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaa pr08

West Virginia
Bar Rule Article II, § 11
http://www.state.wv.us/wvsca/rules/emeritus.htm

Total Number of States: 26
Summary of Newly Enacted Emeritus Rules
Holly Robinson, Associate Staff Director
ABA Commission on Law and Aging
(202) 662-8694
robinsoh@staff.abanet.org

Alaska (Mandatory Bar) – Effective Date: October 15, 2007

• **Purpose.** Encourage attorneys who do not otherwise engage in active practice of law to provide pro bono legal representation to person who cannot afford private legal services.
• **Bar Dues.** Bar Dues waived the year following year attorney serves as emeritus attorney.
• **Definitions.**
  o “Emeritus Attorney” means an inactive or retired attorney of the Alaska Bar Association not otherwise engaged in practice of law who provides free civil legal services under supervision of qualified legal services provider as defined in rule; member in good standing; no record of public discipline with past 15 years; neither asks for or receives personal compensation for legal services provided under the rule.
  o “Qualified Legal Services Provider” means a not-for-profit legal assistance organization approved by the Board of Governors.
• **Requirements for Legal Services Provider to obtain approval.** File a petition with BOG certifying that it is a not-for-profit and explaining structure of organization, major sources of funding, criteria used to determine eligibility for legal services, types of legal and non-legal services provider, names of all members of the Alaska Bar Association who are employed by organization and regularly perform legal work and extent of malpractice insurance that will cover emeritus attorney.
• **Authority.** Authorized to practice law to extent permitted active member but only for services performed in association with qualified legal services provider.
• **Payment.** Emeritus attorney may not be paid by qualified legal services provider but may receive reimbursement for actual expenses incurred. If attorney’s fees obtained, emeritus attorney may not retain them.
• **Duties.** Retired or inactive attorney wishing to perform pro bono work as emeritus attorney on behalf of qualified legal services provider shall file a sworn statement with Alaska Bar Association stating the name of emeritus attorney and name of qualified legal services provider, that the emeritus attorney may not be paid compensation, and will be covered by legal services provider’s malpractice insurance, has read the Alaska Rules of Professional Conduct and has not been publicly disciplined within last 15 years in any jurisdiction.

Colorado (Voluntary Bar) – Effective Date: July 1, 2007

• **Purpose.** To act as legal counsel on behalf of a person seeking representation through a Colorado nonprofit entity whose purpose is or includes provision of pro bono legal services.
• Authority.
  o Admitted to practice in Colorado and now on inactive status, in good standing, no pending disciplinary proceedings, and will not receive or expect compensation or other direct or indirect pecuniary gain for legal services provided; or
  o Admitted to practice in state other than Colorado, is licensed to practice law and is on active, inactive or equivalent status in another jurisdiction, in good standing, no pending disciplinary proceedings, agrees to be subject to Colorado Rules of Professional Conduct, limits practice to acting as pro bono counsel, and will not receive or expect compensation or other direct or indirect pecuniary gain, and complete application and pays one-time administrative fee of $50.00, payable to the Clerk of the Colorado Supreme Court and collected by the Attorney Registration Office.

• Applications for Out-of-State Attorneys/ Certification Numbers.
  o Will contain certificate that attorney agrees to requirements.
  o Attorney will be assigned a certification number that will be used to identify the attorney's status as a pro bono/emeritus attorney.

• Annual Registration Fees. Pro Bono/emeritus attorneys are exempt from payment of annual registration fees.

• Annual Registration Statement Requirement.
  o Filed by all pro bono/emeritus attorneys on or before February 28 of each year identifying organized nonprofit entity for which attorney is currently volunteering at time of timing the registration statement or volunteered in the prior calendar year, or
  o Paying the registration fee that was applicable in the prior calendar year for registered inactive attorneys.
  o Failure to file registration statement shall result in automatic termination of pro bon/emeritus status.

Mississippi (Mandatory Bar) – Effective Date: October 18, 2007

• Purpose. Permit and encourage attorneys who do not engage in the active practice of law to provide legal representation to persons who cannot afford private legal services.

• Authority. To provide free legal services under the supervision of a qualified legal services provider.

• Definitions.
  o “Pro bono publicus attorney” means an inactive member of the Mississippi Bar who is not otherwise engaged in the practice of law, or an attorney licensed in another state.
  o “Qualified legal services provider” means a non-for-profit legal aid organization approved by the Mississippi Bar.

• Requirements for Legal Services Provider to obtain approval. File a petition with the Office of General Counsel certifying that it is a non-for-profit organization and specifically stating the structure of the organization and whether it accepts funds from its clients; the major source of funds used by the organization; the criteria used to determine potential clients’ eligibility for legal services; the types of legal and non-legal services performed; the names of all members of the Mississippi Bar who are employed by the
organization or who regularly perform work for the organization; and the existence of professional liability insurance that will cover the pro bono publicus attorney.

- **Duties.** Attorney must file an affidavit with the Office of General Counsel containing the following information:
  
  - Attorney’s full name, firm name, residence address, principal business address, telephone numbers, jurisdiction or jurisdictions in which attorney is admitted, and bar identification numbers;
  
  - Affirmation that attorney is an inactive member of the Mississippi Bar or is duly licensed and authorized to practice in at least one state and has no record of public discipline for professional misconduct within the past 15 years and did not resign or retire with disciplinary charges pending or in lieu of discipline;
  
  - Affirmation that in performing all services under the authorization of this rule, the attorney is acting as a volunteer for a qualified legal services provider;
  
  - Affirmation that the attorney will abide by the Mississippi Rules of Professional Conduct and consents to the jurisdiction of the State of Mississippi for disciplinary action; and
  
  - Affirmation that the attorney will not undertake to represent any person other than an eligible legal assistance client for a qualified legal services provider, shall not offer to provide legal assistance to any person or for any matter other than through a qualified legal services provider, and may not hold themselves out to be authorized to provide legal services to any person or for any matter other than through a qualified legal services provider.

- **Limitations.** Except for acts and services provided in association with qualified legal services provider, a pro bono publicus attorney may not otherwise engage in the active practice of law; the attorney may not be paid by the qualified legal services provider but may receive reimbursement for actual expenses incurred while rendering services. Qualified legal services provider is entitled to receive any court-awarded attorneys fees for representation provided by the pro bono attorney.

- **Exception Created from Unauthorized Practice of Law as Defined by State Law.** Attorneys who comply with the rule permitting practice as a pro bono publicus attorney may not be deemed to be engaged in the unauthorized practice of law as defined by Miss. Code Ann. § 73-3-55, the Mississippi Rules of Professional Conduct and pertinent case law.

- **Comments.**
  
  - Includes purpose statement. Under certain circumstances, inactive members of Mississippi Bar and members of bars in other states may provide pro bono legal services. Attorneys over the age of 75 who qualify as active members of the bar even if not engaged in the active practice of law are also qualified to provide pro bono legal representation.
  
  - The rule provides that pro bono publicus attorneys provide free legal services under the supervision of a qualified legal services provider, meaning that the legal services provider bears ultimate responsibility for the services provided under the rule.
North Carolina (Mandatory Bar) – Effective Date: July 8, 2007

- **Class of Membership.**
  - “Inactive member” means “persons allowed by the Council solely to represent indigent clients on a pro bono basis under the supervision of an active member employed by a nonprofit corporation qualified to render legal services.”
  - G.S. § 84-16 (2)

- **Exception Created from Unauthorized Practice Statutes for Out-of-State Pro Bono Attorneys.**
  - “Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. § 84-5.1.”
  - G.S. § 84-8 (3).

South Dakota (Mandatory Bar) – Effective Date: January 1, 2008

- **Purpose.** Emeritus status is intended to allow a retired judge or lawyer to contribute to society and the profession by taking pro bono referrals from an approved Legal Services program. Representation of friends, neighbors, and relatives, even if no fee is charged, is not permitted.
- **Class of Membership.** “Emeritus status” created for members of the State Bar.
- **Eligibility.** Member of the State Bar who is or has maintained active status and is retired or is retiring from active practice or the Judiciary.
- **Privileges.** Represent clients referred by pro bono programs such as Legal Services or Access to Justice recognized and approved by the State Bar on a pro bono basis.
- **Dues.** Annual dues same as for inactive status.
- **Registration.** File form prepared by Secretary-Treasurer of the State Bar, who is responsible for advising approved programs of the availability of an emeritus attorney.

West Virginia (Mandatory Bar) – Effective Date: January 1, 2006

- **Purpose.** Individuals admitted to the practice of law have responsibility to provide competent legal services for all persons, including those unable to pay for those services. As one means of meeting these legal needs, the following rule establishing the Emeritus Attorneys Pro Bono Participation Program is adopted.
- **Definitions.**
  - “Emeritus Attorney” means an active but not practicing member of the West Virginia state bar, any inactive member of the West Virginia state bar, or any person, retired from the active practice of law, who has been admitted to practice before the highest court of any other state or territory of the United States of America who has been engaged in active practice for minimum of ten years at any
time prior to applying to participate in emeritus program and is a member in good standing, with no disciplinary actions within 15 years.

- **Authority.**
  - Emeritus attorney, in association with approved legal services organization and under supervision of supervising attorney may appear on behalf of client if client has consented in writing to that appearance and supervising attorney has given written approval for appearance.
  - Written consent and approval must be filed in record of each case brought to attention of judge of court or presiding officer of administrative tribunal.
  - May prepare pleadings or other documents, which must be signed by supervising attorney.
  - May render legal advice and other legal services.
  - The presiding judge or hearing officer may determine the extent of emeritus attorney participation in any proceedings.

- **Supervision and Limitation**
  - Emeritus attorney must perform all activities under the supervision of supervising attorney.
  - May not represent themselves to be active members of the bar.

- **Certification**
  - Approval upon filing with clerk of Supreme Court and State Bar of West Virginia of certificate by approved legal assistance organization that emeritus attorney is associated with and that emeritus attorney is volunteering, certificate of good standing and sworn statement by emeritus attorney.

- **Exemptions**
  - Exempt from requirements of mandatory continuing legal education
  - Exempt from payment of any bar membership dues or fees
A Checklist for Creating an Emeritus Attorney
Pro Bono Participation Program

Holly Robinson
Associate Staff Director
ABA Commission on Law and Aging
robinsoh@staff.abanet.org
(202) 662-8694

The purpose of enacting Emeritus Attorney Pro Bono practice rules and establishing an Emeritus Attorney Pro Bono Participation Program is to encourage and provide retiring attorneys, or non-practicing attorneys who have chosen other career paths, who otherwise may choose inactive status or resign from membership in the bar, the opportunity to provide pro bono legal services to low- and moderate-income individuals and vulnerable seniors.

To encourage participation and utilize the legal skills, training and experience of retiring and non-practicing attorneys in providing pro bono services, the results of a survey conducted in 2006 by the ABA Commission on Law and Aging suggest that a state or territorial bar:

- Adopt practice rules that permit and encourage retiring or otherwise non-practicing attorneys to choose this type of bar membership or status; and
- Establish a statewide emeritus attorney pro bono participation program that offers attorneys a meaningful opportunity to volunteer their valuable skills to legal services providers, thereby increasing the availability of legal assistance to low- and moderate-income individuals and vulnerable seniors.

Enacting an emeritus attorney pro bono rule is a necessary first step. But equally important is establishing a program to implement the rule, educate retiring and non-practicing attorneys about the option, and encourage attorneys to volunteer, and to provide support to legal services providers in recruiting and maintaining volunteers.

The establishment of an Emeritus Attorney Pro Bono Participation Program requires consideration of a number of elements and variables. The following list of factors and questions may be helpful in the formulation process:
_program Administration

- Who will administer the program? Pro bono or program development staff, access to justice staff, or committees of a state bar or bar association may be well-suited to this task.

_rule Administration

- Who will receive applications for emeritus pro bono status? Does that entity have the capacity to create and maintain a data base of emeritus pro bono attorneys, either as part of the bar membership data base or a separate data base?
- Who will verify elements of a rule that may require verification; i.e. a length of practice requirement, or will an attorney’s filing of an affidavit be sufficient?
- If out of state attorneys are permitted to provide pro bono services, will there be a different process for their registration?

_attorney Registration Requirements

- How often will attorneys be required to register for emeritus attorney pro bono status - once, annually, bi-annually? Will registration be a part of or separate from bar registration requirements?

_legal Services Provider Registration Requirements

- How will legal services provider registration be handled?
- Will providers be required to register once, annually, or bi-annually?
- Does the entity receiving applications from providers have the capacity to create and maintain a data base of providers?
- What happens after a provider files an application with the named entity?
- Is the process administratively onerous and discourage providers from participating?

_outreach and Recruitment of Attorneys
• Who will be responsible for informing retiring and non-practicing attorneys about the rule and recruiting attorneys to volunteer? What mechanisms are available to do this, such as dues statements and other mailing of the bar or association?

☑ Outreach and Recruitment of Legal Services Providers

• Who will be responsible for informing legal services providers about the rule and advising them about the availability of volunteers?

☑ Attorney Orientation and Training

• What type of orientation and training will be provided to new volunteers? The Washington State Bar Association requires all attorneys interested in changing their status to Emeritus to participate in a one-time orientation training sponsored by the Washington State Bar Association. The potential new volunteers are welcomed by the President of the Washington State Bar and have an opportunity to meet legal services providers. Attendees at this training receive information about volunteer opportunities available at the various legal services providers, as well as logistical information about changing their WSBA membership status to Emeritus. Attendees are reimbursed for their travel expenses to attend the orientation training. Many organizations that sponsor CLE seminars offer low-cost or free admittance to Emeritus attorneys.

☑ Volunteer Recognition

• How will the efforts of the emeritus pro bono attorneys, who are participating in the state’s access to justice efforts, be recognized for their contributions?

☑ Program Evaluation and Outcomes

• Will the entity responsible for overseeing the implementation of the rule be able to report, on a regular and on-going basis, the number of attorneys providing pro bono services under the rule, the number of legal services providers for whom emeritus pro bono attorneys are volunteering, and the overall impact of the rule in needing unmet legal need?
• Will the entity responsible for overseeing the implementation of the rule be able to identify aspects of the rule that may be barriers to volunteering and recommend changes to the rule?

It is important to remain mindful that the goal of emeritus attorney pro bono participation rules and programs is to encourage retiring and non-practicing attorneys to volunteer to provide pro bono services and to expand access to justice for low- and moderate income persons and vulnerable seniors. But, 20 years of experience with emeritus attorney pro bono rules has demonstrated that adopting emeritus attorney pro bono rules without establishing an emeritus attorney pro bono participation program to implement the rules is ineffective in meeting the stated goals of the rules; namely, using emeritus attorneys to increase access to civil legal services for low- and moderate-income individuals and vulnerable seniors.

Emeritus attorney pro bono rules are a wonderful way to tap into the invaluable experience and time that retiring and no-practicing attorneys have to offer and can provide a significant avenue to engage attorneys in new or additional pro bono opportunities. And emeritus attorney pro bono participation programs can show them the way.

“\textit{It’s a pleasure to have the support of the State Bar in making this meaningful contribution}”

“I find participation in the program very satisfying.”

\textit{2006 California Emeritus Attorney Survey}