

## CHAPTER 12. EMERITUS LAWYERS PRO BONO PARTICIPATION PROGRAM

### 12-1. GENERALLY RULE 12-1.1 PURPOSE

Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for these services. The emeritus lawyers pro bono participation program is one means of meeting these legal needs.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

### RULE 12-1.2 DEFINITIONS

**(a) Emeritus Lawyer.** An “emeritus lawyer” is any person who meets the following eligibility and requirements.

(1) *Eligibility.* An emeritus lawyer must be a person who:

(A) is a member of The Florida Bar who is inactive or retired from the active practice of law in Florida;

(B) is an inactive or retired member of the bar of any other state or territory of the United States or the District of Columbia;

(C) has served as a judge in Florida or any other state or territory of the United States or the District of Columbia;

(D) is or was a full-time law professor employed by a law school accredited by the American Bar Association; or

(E) is an authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules.

(2) *Requirements.* All emeritus lawyers must meet the following requirements:

(A) not be currently engaged in the practice of law in Florida or elsewhere except for authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules;

(B) have been engaged in the active practice of law for a minimum of 10 out of the 15 years immediately preceding the application to participate in the emeritus program, except for authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules;

(C) have been a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and have not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(D) have not failed the Florida bar examination 3 or more times except for an inactive or retired member of The Florida Bar;

(E) agree to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

(F) neither ask for nor receive compensation of any kind for the legal services to be rendered under this rule; and

(G) be certified under rule 12-1.5.

**(b) Approved Legal Aid Organization.** An “approved legal aid organization” for the purposes of this chapter is a not-for-profit legal aid organization that is approved by the Supreme Court of Florida. A legal aid organization seeking approval must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and reciting with specificity:

(1) the structure of the organization and whether it accepts funds from its clients;

(2) the major sources of funds used by the organization;

(3) the criteria used to determine potential clients’ eligibility for legal services performed by the organization;

(4) the types of legal and nonlegal services performed by the organization;

(5) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization; and

(6) the existence and extent of malpractice insurance that will cover the emeritus lawyer.

**(c) Supervising Lawyer.** A “supervising lawyer” as used in this chapter is a member in good standing of The Florida Bar who supervises an emeritus lawyer engaged in activities permitted by this chapter. The supervising lawyer must:

(1) be employed by or be a participating volunteer for an approved legal aid organization; and

(2) assume responsibility consistent with the requirements of rule 4-5.1 of the Rules Regulating The Florida Bar for supervising the conduct of the matter, litigation, or administrative proceeding in which the emeritus lawyer participates.

**(d) Inactive.** “Inactive” as used in this chapter refers to a lawyer who voluntarily elects to be placed on inactive status and was not placed on inactive status due to incapacity or discipline, or who is ineligible to practice law for failure to pay bar fees or complete continuing legal education requirements.

**(e) Active Practice of Law.** The “active practice of law” as used in this chapter includes, but is not limited to, private practice, working as an authorized house counsel, public employment including service as a judge, and full time employment as a law professor at or by an American Bar Association-accredited law school.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014; effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

### **RULE 12-1.3 ACTIVITIES**

**(a) Permissible Activities.** An emeritus lawyer, in association with an approved legal aid organization and under the supervision of a supervising lawyer, may perform the following activities:

(1) The emeritus lawyer may appear and proceed in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization if the person on whose behalf the emeritus lawyer is appearing has consented in writing to that appearance and representation and a supervising lawyer has given written approval for that appearance. The written consent and approval must be filed in the record of each case and brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

(2) The emeritus lawyer may prepare, sign, and file pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the emeritus lawyer is involved. The supervising lawyer's name and Florida Bar number must be included on each pleading or paper filed or served by an emeritus lawyer on each pleading or paper. The supervising lawyer is not required to sign each pleading or paper filed or served by an emeritus lawyer.

(3) The emeritus lawyer may engage in other activities as are necessary for any matter in which the emeritus lawyer is involved, including participating in legal clinics sponsored or provided by the emeritus lawyer's legal aid organization, and providing advice and assistance to, and drafting legal documents for, persons whose legal problems or issues are not in litigation.

**(b) Determination of Nature of Participation.** The presiding judge or hearing officer may, in the judge's or officer's discretion, determine the extent of the emeritus lawyer's participation in any proceedings before the court.

### **Comment**

This rule recognizes that an emeritus lawyer may accept an appointment or assignment from a state or federal judge seeking pro bono assistance for litigants or persons appearing before the judge through a supervising legal aid organization, including but not limited to: direct representation; limited representation; or service as either an attorney ad litem or guardian ad litem. However, this rule applies to civil legal assistance and recognizes that emeritus lawyers under this rule may not provide representation and/or legal services in criminal law matters.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

## **RULE 12-1.4 SUPERVISION AND LIMITATIONS**

**(a) Supervision by Lawyer.** An emeritus lawyer must perform all activities authorized by this chapter under the direct supervision of a supervising lawyer.

**(b) Representation of Bar Membership Status.** Emeritus lawyers permitted to perform services are not, and must not represent themselves to be, active members of The Florida Bar licensed to practice law in this state.

**(c) Payment of Expenses and Award of Fees.** No emeritus lawyer may receive compensation for legal services rendered under the authority of this rule from any source, including but not limited to the legal aid organization with which the lawyer is associated, the emeritus lawyer's client, or a contingent fee agreement. The prohibition against compensation for the emeritus lawyer contained in this chapter will not prevent the approved legal aid organization from reimbursing the emeritus lawyer for actual expenses incurred while rendering approved services. It also does not prevent the approved legal aid organization from charging for its services as it may properly charge. The approved legal aid organization will be entitled to receive all court-awarded attorneys' fees that may be awarded for any representation or services rendered by the emeritus lawyer.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

## **RULE 12-1.5 CERTIFICATION**

An emeritus lawyer seeking to provide pro bono legal services must obtain approval from the clerk of the Supreme Court of Florida by filing all of the following certificates:

**(a)** a certificate from an approved legal aid organization stating that the emeritus lawyer is currently associated with that legal aid organization and

that a Florida Bar member employed by or participating as a volunteer with that organization will assume the required duties of the supervising lawyer;

**(b)** a certificate from the highest court or agency in any state, territory, or district in which the emeritus lawyer has been licensed to practice law, certifying that the emeritus lawyer has not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years, except that an authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules need not provide this certificate; and

**(c)** a sworn statement by the emeritus lawyer that the emeritus lawyer:

(1) has read and will abide by the Rules of Professional Conduct as adopted by the Supreme Court of Florida;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as provided in chapter 3 of these rules and elsewhere in this chapter; and

(3) will neither ask for nor receive compensation of any kind for the legal services authorized by this rule.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

## **RULE 12-1.6 WITHDRAWAL OF CERTIFICATION**

### **(a) Withdrawal of Permission to Perform Services.**

(1) The emeritus lawyer must immediately cease performing legal services if the emeritus lawyer ceases to be associated with the approved legal aid organization. The approved legal aid organization must file a statement with the clerk of the Supreme Court of Florida within 5 days after the association has ceased. The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus lawyer.

(2) The emeritus lawyer must immediately cease performing legal services if the approved legal aid organization withdraws certification of the emeritus lawyer, which may be at any time and without stating the

cause for the withdrawal. The approved legal aid organization must file a statement with the clerk of the Supreme Court of Florida within 5 days after withdrawing the certification. The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus lawyer.

(3) The emeritus lawyer must immediately cease performing legal services if the Supreme Court of Florida revokes permission for the emeritus lawyer to provide pro bono services, which is at the court's discretion. The clerk of the Supreme Court of Florida must mail a copy of the statement to the emeritus lawyer and the approved legal aid organization.

(4) The emeritus lawyer must immediately cease performing legal services if the Supreme Court of Florida terminates the emeritus lawyer as an authorized house counsel. The Florida Bar must file a statement with the Supreme Court of Florida that the individual is no longer an authorized house counsel. The Florida Bar must mail a copy of the statement to the emeritus lawyer involved.

**(b) Notice of Withdrawal.** If an emeritus lawyer's certification is withdrawn for any reason, the supervising lawyer must immediately file a notice of the withdrawal in the official file of each matter pending before any court or tribunal in which the emeritus lawyer was involved.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

## **RULE 12-1.7 DISCIPLINE**

The Supreme Court of Florida may impose appropriate proceedings and discipline under the Rules of Discipline or the Rules of Professional Conduct. In addition, the Supreme Court of Florida or the approved legal aid organization may, with or without cause, withdraw certification. The presiding judge or hearing officer may hold the emeritus lawyer in civil contempt for any failure to abide by the tribunal's orders for any matter in which the emeritus lawyer has participated.

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