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Do Not Go Gentle: Using Emeritus Pro Bono Attorneys to Achieve the Promise of Justice

Kelly S. Terry*

I. INTRODUCTION

Most readers of American literature, especially those who are attorneys, know well the story of To Kill a Mockingbird and its heroic protagonist Atticus Finch.1 Finch is a small-town lawyer in 1930s Alabama who risks personal harm and professional ruin to defend Tom Robinson, an African-American man falsely accused of raping a white woman. With quiet dignity, Atticus confronts the racism and bigotry of his era, and against tremendous social pressure, defends Tom with skill and passion. Although an all-white jury ultimately convicts Tom of the spurious charges, the character of Atticus is widely admired for his integrity, courage, and compassion.2 Indeed, he has become a role model for lawyers and an embodiment of the professional values and ideals that they should strive to achieve.3

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2. E.g., Cynthia L. Fountaine, In the Shadow of Atticus Finch: Constructing a Heroic Lawyer, 13 Widener L.J. 123, 124 (2003) (asserting that Atticus Finch is a heroic role model for lawyers because he displayed the qualities of courage, honesty, and compassion in his professional life); Lance McMillian, Tortured Souls: Unhappy Lawyers Viewed Through the Medium of Film, 19 Seton Hall J. Sports & Ent. L. 31, 57 (2009) (asserting that Atticus Finch is a “cultural icon” and “is seen as boldly standing for truth, justice, and the American way.”).

3. E.g., Talmage Boston, Who Was Atticus Finch?, 73 Tex. B.J. 484, 484 (2010) (noting that the character of Atticus Finch “has pointed generations toward the goal of becoming lawyers—not just run-of-the-mill lawyers, but lawyers aspiring to serve the bar with Atticus-like integrity, professionalism, and courage”); Mary Ellen Maatman, Justice Formation From Generation to Generation: Atticus Finch and the Stories Lawyers Tell Their Children, 14 Legal Writing: J. Legal Writing Inst. 207, 208 (2008) (“Among lawyers, To Kill a Mockingbird has a special influence, and Atticus Finch is ‘arguably the most praised lawyer, real or fictional, in American legal lore.’ Lawyers see Atticus as a hero to be emulated; some even say the book or movie inspired them to become lawyers, or inspires their practice of law.”) (quoting Randy Lee, Lawyers and the Uncommon Good: Navigating and Transcending the Gray, 40 S.
Imagine now that many years have passed since the trial of Tom Robinson, and the fictional Atticus Finch has reached the age of sixty-five. He wants to retire from the active practice of law, but he also wants to remain engaged in the legal community and continue to use his skills to benefit others. His health is good, his mind is sharp, and he knows there are many other people like Tom Robinson who need his help—people in poverty with dire legal problems who cannot afford an attorney. These underserved clients need the retired Atticus Finches of the world and so too does the legal profession. It cannot afford to lose preeminent attorneys who possess such talent and wisdom and who have the capacity to represent those who otherwise would go without counsel.

Unfortunately, the organized bar does not always make it easy, or even possible, for such retiring lawyers to volunteer their time and talents to those in need. State practice regulations, such as licensing standards, unauthorized-practice-of-law prohibitions, and continuing legal education requirements, often create barriers and impose costs that prevent retired and inactive attorneys from providing volunteer legal services.4 Some states have overcome these obstacles by enacting “emeritus” pro bono practice rules. While these rules take different forms and have been accomplished through various changes in state regulatory schemes, their common purpose is to authorize retired and inactive lawyers to practice law for the limited purpose of representing low-income clients on a pro bono basis.

Not all states, however, have enacted such rules. Currently, only about thirty-one states and the District of Columbia have a practice rule that allows retired and/or inactive lawyers to provide pro bono services. Demographic data indicate that states lacking such rules are overlooking a vast pool of volunteers who might help to bridge the justice gap. According to the American Bar Association (ABA), “[o]ver the next 15 years, a massive movement of up to 400,000 lawyers will step away from full-time practice and enter ‘active retirement.’”5 Surveys also “estimate that by 2011, nearly one quarter of the

4. See JAN ALLEN MAY & STEPHANIE EDELSTEIN, LEGAL COUNSEL FOR THE ELDERLY, INC., SENIOR ATTORNEY VOLUNTEER PROJECTS: A RESOURCE MANUAL pt. 1, 1 (1994) (asserting that state licensing and practice requirements cause retired attorneys to be reluctant to undertake pro bono cases).

5. Karen J. Mathis, Service Opportunities for Tide of Retirees, 93 A.B.A. J. 4, 4 (2007), available at http://www.abajournal.com/magazine/article/service_opportunities_for_tide_of_retirees/; see also JoAnn Vogt, New Rule Allows Retired and Inactive Lawyers to Provide Pro Bono Legal Services, 36 Colo. Law. 75, 75 (2007) (“40,000 lawyers will retire, consider retiring, or significantly alter their work environment each year over the next several years.”); cf., e.g., Francesca Jarosz, Shining in the Golden Years, BUS. L. TODAY, May/June 2007, at 61 (citing a May 2004 study by the American Association for Retired Persons showing that “79 percent of boomers plan to work in retirement and 51 percent plan to do volunteer work.”).
nation's one million attorneys will be sixty-five or older."

In the struggle to provide equal access to justice, states must employ all of the resources at their disposal. Emeritus pro bono rules are one such tool. At very little cost (essentially, revisions to state bar regulations), such rules allow states to harness the knowledge and energy of retired attorneys for the benefit of underserved populations.7 This Article will encourage states to adopt such rules and create a guide for state policymakers and bar officials who wish to do so. Accordingly, the Article will demonstrate the need for and benefits of emeritus pro bono rules, identify and discuss the issues that states must consider in creating such rules, and set out recommended elements for such rules. Thus, the Article can serve as a guide for both states that lack emeritus pro bono rules and states that have such rules but wish to evaluate their effectiveness and improve them.

The Article proceeds in four parts. Following this Introduction, Part II explains the need for legal services and the failure of current efforts to meet the need. Part III discusses the existing types of emeritus pro bono practice rules, identifies issues that states should consider in adopting such rules, and recommends elements to include in such rules. Part IV of the Article discusses the benefits that both individual volunteer lawyers and the legal profession derive from emeritus pro bono rules. Part V concludes the Article.

II. THE NEED FOR LEGAL SERVICES AND THE FAILURE OF CURRENT EFFORTS TO MEET THE NEED

A. Unmet Legal Needs of the Poor

It is no secret that the legal needs of the poor in the United States are not being met. "Legal needs studies have consistently shown that anywhere from seventy to ninety percent of legal needs of the poor go unaddressed in America."8 In its 2009

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6. Kenneth G. Dau-Schmidt, Esther F. Lardent, Reena N. Glazer, & Kellen Ressmeyer, "Old and Making Hay": The Results of the Pro Bono Institute Firm Survey on the Viability of a "Second Acts" Program to Transition Attorneys to Retirement Through Pro Bono Work, 7 CARDOZO PUB. L. POL'y & ETHICS J. 321, 324 (2009). Survey data also indicate that these older attorneys are more inclined to engage in pro bono work than their younger counterparts. See 2009 ABA STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 3 (2009); cf., e.g., Anna P. Stern, Heeding the Call for the End of Mandatory Retirement, 21 GEO. J. LEGAL ETHICS 1095, 1097 (2008) ("[T]he number of Americans aged sixty-five and over is projected to grow from 12.4% of the total population in 2005 to 18.5% in 2025." (citing PATRICK PURCELL, CRS REPORT FOR CONGRESS, OLDER WORKERS: EMPLOYMENT AND RETIREMENT TRENDS 2 (2007)).

7. See, e.g., Marc Galanter, "Old and in the Way": The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services, 1999 Wis. L. Rev. 1081, 1105 (1999) (asserting that the legal profession needs to "institutionalize paths" for retiring lawyers to transition to volunteer public service work).

8. Russell Engler, From the Margins to the Core: Integrating Public Service Legal Work Into the Mainstream of Legal Education, 40 NEW ENG. L. REV. 479, 484 (2006) (citing LEGAL SERVS. CORP.,
The Georgetown Journal on Poverty Law & Policy

Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans, the Legal Services Corporation (LSC)\(^9\) found that "for every client served by an LSC-funded program, one person who seeks help is turned down because of insufficient resources."\(^10\) This lack of resources includes a shortage of attorneys: "nationally, on the average, only one legal aid attorney is available for every 6415 low-income people."\(^11\) These deficiencies result in the rejection of approximately 944,376 cases each year.\(^12\)

The nation’s ongoing recession has placed additional strain on an already overburdened legal services system. "The current economic crisis, with its attendant problems of high unemployment, home foreclosures and family stress, has resulted in legal problems relating to consumer credit, housing, employment, bankruptcies, domestic violence and child support, and has pushed many families into poverty for the first time."\(^13\) These problems "have all escalated at the same time that funding for legal aid has plummeted as a result of the reduced interest rate."\(^14\) Thus, those in poverty have an even greater need for attorneys who can provide pro bono representation.

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\(^9\) LSC is the nonprofit corporation that Congress established in 1974 "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C. § 2996b(a) (2011). It operates by awarding funds through a competitive grants process to 136 independent nonprofit legal aid programs across the country that provide legal assistance to low-income individuals. See LEGAL SERVS. CORP., http://www.lsc.gov/about/lsc.php (last visited Feb. 9, 2011).


\(^11\) Id. "By comparison, there is one private attorney providing personal legal services (those meeting the legal needs of private individuals and families) for every 429 people in the general population who are above the LSC poverty threshold." Id.

\(^12\) DOCUMENTING THE JUSTICE GAP IN AMERICA, supra note 10, at 9. "This figure does not include the many people who do not reach an LSC-funded program to ask for help, for whatever reason. Other studies indicate that those who seek help from legal aid programs represent only a fraction of the low-income people with legal needs." Id. The most pressing legal needs are in the areas of housing, consumer issues, family law, employment, health care, and government benefits. Id. at 15, n.18.

\(^13\) Id. at 5.

B. Why the Need is Not Being Met

1. Funding Cuts and Restrictions on the Legal Services Corporation

The legal needs of the poor are not being met for several reasons. Chief among them are funding cuts and restrictions placed on the LSC. Although LSC "is the single largest provider of civil legal aid for the poor in the nation," no other public interest organization "has been more vulnerable to funding restrictions." According to LSC, a doubling of both LSC funds and the funds that state, local, and private entities provide to LSC grantees is necessary merely to serve all of those currently seeking aid from LSC-funded programs. To meet the needs of all those eligible to seek aid from LSC-funded programs, LSC estimates that federal funding must increase fivefold to $1.6 billion.

However, instead of increasing funding for legal aid, Congress is currently seeking to dramatically decrease it. In July of 2011, "the House Appropriations Committee recommended a reduction of $104 million, or 26 percent, in LSC funding, to $300 million" for fiscal year 2012. LSC estimates that, if this cut is enacted, "about 235,000 low-income Americans eligible for civil legal assistance at LSC-funded programs would be turned away." According to the LSC, the impact of this funding cut would "prove to be especially damaging to low-income persons whose health and safety are at risk—the elderly, victims of domestic violence, the disabled, children, veterans and..."
others—by denying them access to justice.”

In addition to budget cuts, Congress passed legislation in 1996 imposing severe restrictions on the types of cases and activities that LSC-funded programs may undertake. Consequently, LSC-funded organizations may not use federal funds for a wide range of matters, including redistricting challenges, lobbying, class-action lawsuits, representing aliens, political advocacy, abortion litigation, representing incarcerated persons, challenges to certain public-housing evictions, and welfare reform activities. This legislation even prohibits “lawyers in LSC-funded organizations from using non-LSC funds to engage in any of the banned activities.”

2. The Institutionalization of Pro Bono

Partly as a result of these funding cuts and restrictions on LSC, the provision of pro bono services has shifted from government-funded programs to large law firms. Within the last 25 years, pro bono “has become centralized and streamlined, distributed through an elaborate institutional structure by private lawyers acting out of professional duty.” The pro bono work of private attorneys now constitutes one-quarter to one-third of full-time equivalent lawyer staff within the U.S. civil legal aid system. In 2005, large firms contributed over 3.5 million hours of pro bono service, which was an increase of nearly 80 percent from 1998. In 2009, 134 of the nation’s large law firms “performed a combined 4,867,820 total hours of pro bono work, as compared to 134 firms that performed

22. Id.
25. Cummings, supra note 23, at 22. According to a past LSC president, these legislative changes “were intended to ensure that the [LSC] programs worked exclusively on the representation of individual poor persons.” Helaine M. Barnett, Justice For All: Are We Fulfilling the Pledge?, 41 IDAHO L. REV. 403, 414 (2005).
26. This shift also results from the federal mandate that LSC-funded programs must “spend twelve percent of their grants to involve the private bar.” Rhode, supra note 8, at 394.
27. Cummings, supra note 23, at 1. According to Professor Cummings, private law firm pro bono has become “the dominant means of dispensing free representation to poor and underserved clients, eclipsing state-sponsored legal services and other nongovernmental mechanisms in importance.” Id.
29. Id. Since 2005, “total pro bono hours have increased nearly fifty percent and the average hours per attorney has grown by ten hours.” Scott L. Cummings & Deborah L. Rhode, Managing Pro Bono: Doing Well by Doing Better, 78 FORDHAM L. REV. 2357, 2376 (2010) [hereinafter Managing Pro Bono].
Many of the nation’s elite law firms now employ pro bono coordinators, who are responsible “for conducting the administrative, outreach, and policy work necessary to facilitate their firms’ pro bono activities.”

This delegation of pro bono to large law firms has several shortcomings, however. Law firms will not accept just any pro bono case, and the pro bono coordinators are constrained by the types of cases that are palatable to the firms’ attorneys. According to a partner at one major firm, “the ‘worst thing in the world is to give [the attorneys] a bad experience,’ which means no difficult clients and only cases that ‘are likely to be winnable or to achieve some sort of feel-good result.’” The attorneys want “a compelling story—a ‘worthwhile client or cause,’ or clear villain, such as ‘one of the city’s worst slumlords.’” Another pro bono coordinator noted that “[t]here are areas where I know that there is a huge legal need . . . but I can’t get lawyers to sign on. Homeless issues—it is difficult to sell those matters. . . . People are scared of working with homeless, mentally ill clients.”

Positional conflicts are another obstacle that prevents low-income clients from receiving pro bono services from private law firms. “Positional conflicts involve matters that do not require disqualification under ethical rules, but are likely to offend existing or potential clients or otherwise preempt business development.” Representing corporations and business interests is “the economic lifeblood of the big commercial firm.” Accordingly, firms often refuse to take pro bono cases that are contrary to corporate interests, “particularly employment, environmental, and consumer cases in which plaintiffs seek pro bono counsel to sue major companies.” Similarly, firms that represent financial institutions often have conflicts with pro bono cases involving consumer debt, mortgage, and bankruptcy issues.

Pro bono cases, however, often present claims against businesses and corporate interests. Thus, these positional conflicts prevent private attorneys from providing pro bono representation in a wide variety of cases.

Another shortcoming of this institutionalization of pro bono is the lack of

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33. *Id.*
35. *Id.* at 2392-93.
37. *Id.* at 118-19. Kilpatrick Stockton in Atlanta, for example, does not sue employers. *Id.* at 119.
quality control and assessment of client satisfaction. Law firms often assign pro bono cases to young associates for training purposes, so low-income clients are relegated to less-experienced attorneys. Indeed, pro bono coordinators often market pro bono cases as training opportunities to “sell” them to the attorneys in their firms. Data indicate, however, that there is little oversight and accountability for such work. In a recent survey of public interest legal organizations, “almost half reported extensive or moderate problems with quality in the pro bono work they obtained from outside firms.” Likewise, another survey found that less than half of the large firms employing pro bono counsel consider their attorneys’ pro bono performance when conducting individual performance evaluations. Large firms also seldom assess the satisfaction of their pro bono clients. Unlike paying clients, however, pro bono clients do not have the leverage to “vote with their feet” and find other counsel if they are dissatisfied with their attorney.

As the preceding discussion demonstrates, the current patchwork of government-funded legal services and private law firm pro bono is not adequate to meet the legal needs of the nation’s poor. More must be done to address the ever-growing justice gap. In a perfect world, increased government funding for legal services (and all other necessary public services) would be an ideal solution. We do not live in a perfect world, however, and increased funding is highly unlikely since the federal government and many states face serious budget shortfalls. States therefore must look for creative and cost-effective ways to meet the growing demand for legal services. As explained below, emeritus attorney pro bono rules that use the capacities of retired and inactive lawyers are one such way to meet the need.

39. “The D.C. Bar Pro Bono Program, for instance, reports that one of the main difficulties with pro bono placement is monitoring the quality of work by pro bono volunteers, many of whom are younger associates operating without a great deal of partner supervision.” Cummings, supra note 23, at 143. See also Managing Pro Bono, supra note 29, at 2421 (stating that “key considerations in selecting matters are whether a case is likely to appeal to firm associates and provide good training”).

40. According to one pro bono coordinator, to place cases with attorneys “it is critical to show how a case ‘will benefit the volunteer’ through opportunities for court appearances, development of negotiating skills, or collaboration with ‘an expert mentor.’” Rhode, supra note 32, at 1445.

41. Id. at 1442.

42. Managing Pro Bono, supra note 29, at 2394-95.

43. See id. at 2403. A recent survey of pro bono counsel found that “[a]lmost none of the survey respondents reported efforts to obtain feedback about client experiences beyond informal discussions with referring organizations, and only a fifth of respondents (n=12) made these efforts.” Id.


45. Retired and inactive attorneys should not be the sole resource that states employ to meet the demand for legal services. Other laudatory measures that states have undertaken include self-help legal clinics, simplified court forms and instructions, and increased efforts by judges and court staff to assist pro se litigants. See Steven K. Berenson, A Cloak for the Bare: In Support of Allowing Prospective Malpractice Liability Waivers in Certain Pro Bono Cases, 29 J. LEGAL PROF. 1, 15 (2005). These steps,
III. EMERITUS ATTORNEY PRO BONO RULES

A. The Various Types of Pro Bono Rules

As defined by the ABA, emeritus attorney pro bono rules waive some of the normal licensing requirements for retired and inactive attorneys who agree to limit their practice to uncompensated legal services in civil matters for clients unable to pay for representation. The purpose of enacting such rules, and creating pro bono projects to accompany them, "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."[47]

Emeritus pro bono rules tend to fall into one of three categories: rules creating formal emeritus attorney programs,[48] rules creating a special bar membership or licensing status for emeritus pro bono attorneys,[49] and miscellaneous licensing rules authorizing retired or inactive lawyers to provide pro bono representation.[50]

and other creative solutions, should be continued in addition to encouraging retired and inactive attorneys to provide pro bono services.


48. Thirteen states—Alaska, Arizona, California, Florida, Hawaii, Mississippi, Nevada, New Mexico, North Dakota, South Carolina, Tennessee, Texas, and West Virginia—have rules creating formal emeritus attorney pro bono participation programs. See ALASKA BAR ASS’N R. 43.2; ARIZ. SUP. CT. R. 38(e); CAL. STATE BAR R. 3.325-30; FLA. BAR R. 12-1; HAW. SUP. CT. R. 20; MISS. R. APP. P. 46(f); NEV. SUP. CT. R. 49.2; N.M. BAR ADMISSION R. 15-301.2; N.D. ADMISSION TO PRACTICE R. 3.1; S.C. APP. CT. R. 415; TENN. SUP. CT. R. 50A; TEX. STATE BAR R. art. XIII; W. VA. STATE BAR BY-LAWS art. III; see also DAVID GODFREY & ERICA WOOD, ABA COMM’N ON LAW & AGING, EMERITUS ATTORNEY PROGRAMS: BEST PRACTICES AND LESSONS LEARNED 3 (2010), available at http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/emeritus_best_practices_9_27.authcheckdam.pdf (stating that some states have formal emeritus attorney program rules).

49. Fourteen states—Alabama, Colorado, Georgia, Idaho, Maine, Massachusetts, Montana, New Hampshire, New York, North Carolina, Oregon, South Dakota, Virginia, and Washington—have rules creating a special bar membership or licensing status. See ALA. R. OF PROF’L CONDUCT 6.6; COLO. CIV. P. R. 223; GA. BAR R. 1-202; GA. SUP. CT. R. 114; IDAHO BAR COMM’N R. 223; ME. BAR R. 6(d); MASS. SUP. JUD. CT. R. 4:02(8); MONT. STATE BAR BY-LAWS art. I, § 3(g); N.H. BAR ASS’N BY-LAWS art. II, § 8; N.Y. R. OF THE CHIEF ADMIN. JUDGE pt. 118, § 118.1(g); N.C. BAR R. 0201(c)(2)(E); OR. STATE BAR BY-LAWS art. VI, § 6.101; S.D. CODED LAWS §§ 16-17-4.1; VA. SUP. CT. R. pt. 6, § iv, ¶ 3(e); WASH. ADMISSION TO PRACTICE R. 8(e).

50. Four states—Delaware, Illinois, Maryland, Utah—and the District of Columbia have miscellaneous provisions authorizing retired and inactive lawyers to provide pro bono representation. See Del.
The rules creating formal emeritus attorney pro bono programs generally are more detailed and set out more eligibility requirements for volunteer attorneys than the other types of emeritus rules. For example, the rules in Arizona, California, and Florida specify in great detail the circumstances under which a retired or inactive attorney may provide pro bono representation and address issues such as the attorney's past disciplinary record, years of practice experience, and association with a qualified legal services provider. On the other hand, rules that merely create a bar membership category for emeritus attorneys or authorize pro bono representation through miscellaneous licensing provisions generally are less detailed and impose fewer restrictions. New Hampshire attorneys, for example, are eligible for a “Limited Active Membership Status for Pro Bono Service” so long as they meet one of two criteria: (1) they “are otherwise not engaged in the practice of law in any jurisdiction”; or (2) they “occupy a position the duties of which do not require the giving of legal advice or services in New Hampshire or any other jurisdiction.” Similarly, Delaware’s rule governing retired bar members simply authorizes them to “engage in uncompensated services to clients of” one or more enumerated legal services organizations.

A state considering an emeritus pro bono rule must first decide which of these three types of rules best suits the goals it hopes to accomplish. The formal pro bono rules impose more eligibility criteria and administrative requirements, but they also anticipate more of the issues that can arise when volunteer attorneys provide pro bono representation. To ensure a positive experience for both the pro bono client and the volunteer attorney, it is preferable to address such issues in advance through the rule so that the qualifications, responsibilities, and authority of the volunteer attorney are clear. Accordingly, this Article identifies and discusses the elements that states should consider in enacting a more formal pro bono rule.

B. Eligibility Requirements: Retired, Inactive, Age, and Years of Practice

An initial question to decide is which attorneys will be eligible to practice under the emeritus pro bono rule. The word “emeritus” literally means “retired but retaining an honorary title corresponding to that held immediately before retirement.” So, should an “emeritus” rule limit participation to only retired attorneys, or should it also include attorneys who have temporarily taken inactive status? While some states restrict participation to attorneys who are retired or in

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51. ARIZ. SUP. CT. R. 38(e); CAL. STATE BAR R. 3.325; FLA. BAR R. 12-1.1.
52. N.H. BAR ASS'N BY-LAWS art. II, § 8.
53. DEL. SUP. CT. R. 69(f)(i).
the process of retiring, the prevailing trend is for states to make both retired and inactive attorneys eligible to practice under their emeritus pro bono rules. The purpose of an emeritus rule is to encourage volunteer attorneys to help meet the crushing demand for legal services. Therefore, states should do all they can to maximize the number of potential volunteers. Extending eligibility to inactive attorneys accomplishes that goal, since it expands the pool of potential volunteers to attorneys who have taken time off from the active practice of law to raise a child, care for an aging parent, or pursue an occupation outside of the legal profession. Accordingly, states should draft their emeritus pro bono rules to include both retired and inactive attorneys.

A corollary question is whether an attorney must be a minimum age or have a minimum amount of practice experience to qualify for the emeritus program. Two states—Georgia and New York—set a minimum age for practice as an emeritus pro bono attorney. Many states, however, require a minimum number of years of practice experience, which ranges from five years to twenty-five years. Since emeritus rules should encourage rather than inhibit volunteer participation, any age and experience requirements must strike a balance between client protection and maximizing the pool of potential volunteer attorneys. States generally do not set any minimum age or practice requirements for attorneys who represent paying clients; if an attorney is licensed in a state, he or she may accept cases and represent clients in that state regardless of his or her age and experience. While age and practice requirements for pro bono attorneys are undoubtedly well-intentioned, they are inconsistent with the general authorization to practice that a state’s law license confers. Thus, these requirements seem overly burdensome and unnecessary.

However, if states do wish to impose age and practice requirements for pro

55. E.g., FLA. BAR R. 12-1.2(a); GA. BAR R. 1-202(d); S.D. CODIFIED LAWS § 16-17-4.1; TEX. STATE BAR R. art. XIII, § 2(B); WASH. ADMISSION TO PRACTICE R. 8(e).

56. E.g., ALASKA BAR ASS’N R. 43.2(c)(1); CAL. STATE BAR R. 3.325(B); COLO. CIV. R. 223(2); DEL. SUP. CT. R. 69; HAW. SUP. CT. R. 20(c)(1); ILL. SUP. CT. R. 756(j); MASS. SUP. jud. CT. R. 4:02(8); N.H. BAR ASS’N BY-LAWS art. II, § 8; N.C. BAR R. 0201(c); OR. STATE BAR BY-LAWS art. VI, § 6.101; S.C. APP. CT. R. 415(a)(1); TENN. SUP. CT. R. 50A, § 1.02(b); UTAH SUP. CT. R. 14-110(a); W.Va. STATE BAR BY-LAWS art. II, § 11(b)(2).

57. Including both retired and inactive attorneys raises a question of terminology. Should the rule be called an “emeritus” pro bono rule if it authorizes participation by more than just retired attorneys? Hawaii, for example, includes both retired and inactive attorneys under its rule and designates them as “pro bono publicus” attorneys. See HAW. SUP. CT. R. 20.

58. GA. BAR R. 1-202(d) (setting seventy years of age as the minimum age for practice); N.Y. R. OF THE CHIEF ADMIN. JUDGE pt. 118, § 118.1(g) (setting fifty-five years of age as the minimum age for practice).

59. E.g., CAL. STATE BAR R. 3.327(B); N.D. ADMISSION TO PRACTICE R. 3.1(A); TEX. STATE BAR R. art. XIII, § 2(B)(1).

60. Georgia imposes a twenty-five year requirement. See GA. BAR R. 1-202(d). Other states impose a requirement of ten years. See, e.g., FLA. BAR R. 12-1.2(a)(1); IDAHO BAR COMM’N R. 223(b)(2)(A); MONT. STATE BAR BY-LAWS art. I, § 3(g)(i); W.Va. STATE BAR BY-LAWS art. II, §11(b)(2)A.

61. See GODFREY & WOOD, supra note 48, at 3 (stating that “reports from the field indicate that these rules [those requiring a minimum amount of practice experience] eliminate some willing volunteers.”).
pro bono attorneys, the requirements should be the least onerous possible so that they do not discourage volunteer participation. One alternative would be to require the same amount of practice experience necessary for admission to the state’s bar by reciprocity. Arkansas, for example, authorizes admission to the bar on motion if, in addition to satisfying other requirements, the applicant has been engaged in the active practice of law “in one or more states, territories or the District of Columbia for five of the seven years immediately preceding” the filing date of the application.62 If a state is willing to grant out-of-state attorneys full admission to its bar based on a specified amount of practice experience, then that same amount of experience should suffice to authorize attorneys to provide pro bono representation.

C. State Licensure Status

Another eligibility issue is whether an attorney must be licensed in a state to provide pro bono services there. While some states limit participation under their emeritus rules to those licensed in that state,63 the majority of states with emeritus rules extend eligibility to any attorney who is a member in good standing of a United States jurisdiction.64 Limiting participation to the members of the state’s bar excludes several categories of potential volunteers, such as attorneys who have relocated to another state to retire, government attorneys, and in-house counsel. Such limitations seem unduly restrictive, especially since law school curricula have become more consistent nationwide and there has been increasing standardization of the bar examination across jurisdictions.65 Authorizing participation by attorneys who are members in good standing of any state bar increases the number of attorneys who are available to provide pro bono services.

D. Professional Discipline Issues

Emeritus rules also raise the issue of professional discipline. The emeritus rules in several states include provisions stating that volunteer attorneys must not have been the subject of any professional discipline within a specified number of

64. See, e.g., Colo. Civ. P. 223(2); Fla. Bar R. 12-1.2; Idaho Bar Comm’n R. 223; Miss. R. App. P. 46(f); Nev. Sup. Ct. R. 49.2(3); N.M. Bar Admission R. 15-301.2(A); N.D. Admission to Practice R. 3.1; S.C. App. Ct. R. 415(g); Tenn. Sup. Ct. R. 50A, § 1.02(b); W.Va. State Bar By-Laws art. II, § 11(b).
years. While some state rules do not address this issue, other states require that a prospective pro bono attorney must not have been disciplined within the past five, ten, or fifteen years.

While these provisions are intended to protect pro bono clients from incompetent and unethical attorneys, this is another area in which the emeritus rule is inconsistent with the general authority that a state law license confers. In general, sanctioned attorneys are not prohibited from representing clients unless they have been suspended or disbarred from practice. The emeritus rules go further, however, and prohibit attorneys from representing pro bono clients if they have been the subject (within the specified time period) of any professional discipline, which would include less severe sanctions such as a reprimand or letter of caution. Some states have made their emeritus rule more consistent with their general regime for sanctioning misconduct. North Dakota's rule, for example, addresses this issue by requiring the disciplinary authority of the attorney's licensing state to certify that "the attorney is not disbarred or suspended or currently undergoing proceedings of disbarment or suspension." Similarly, Colorado's rule states that the prospective pro bono attorney must be licensed to practice law, be in good standing, and have "no pending disciplinary proceeding." Provisions such as these strike a good balance between protecting pro bono clients and not excluding able volunteers who have been subjected to only minor sanctions.

E. Association with a Qualified Legal Services Organization

Another question that states considering a pro bono practice rule must decide is whether to require the volunteer attorney to provide services under the auspices of a recognized legal services organization. The prevailing trend

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66. E.g., ALA. R. OF PROF'L CONDUCT 6.6; ME. BAR R. 6(d); N.H. BAR ASS'N BY-LAWS art. II, § 8; S.D. CODIFIED LAWS § 16-17-4.1.
67. E.g., CAL. STATE BAR R. 3.327(D); N.M. BAR ADMISSION R. 15-301.2.B(2).
68. E.g., NEV. SUP. CT. R. 49.2.3(a); TENN. SUP. CT. R. 50A § 1.02(b)(2).
69. E.g., ALASKA BAR ASS'N R. 43.2(e)(1)(B); ARIZ. SUP. CT. R. 38(e)(2)(B)(i); FLA. BAR R. 12-1.2(a)(2); HAW. SUP. CT. R. 20(c)(1)(ii); IDAHO BAR COMM'N R. 223(b)(2)(B); MISS. R. APP. P. 46(f)(1)(i); S.C. APP. CT. R. 415(a)(4); TEX. STATE BAR R. art. XIII, § 2(B)(2); W.VA. STATE BAR BY-LAWS art. II, § 11(b)(2)(B).
70. N.D. ADMISSION TO PRACTICE R. 3.1.C(2).
71. COLO. CIV. P. R. 223(2).
72. A related issue is whether emeritus pro bono attorneys must agree to be subject to the disciplinary rules of the states in which they are providing volunteer services. Several states have such a requirement. See, e.g., ARIZ. SUP. CT. R. 38(e)(2)(B)(iii); COLO. CIV. P. R. 223(2)(b)(iv); FLA. BAR R. 12-1.2(a)(4); IDAHO BAR COMM'N R. 223(b)(2)(B); MISS. R. APP. P. 46(f)(3)(v); MONT. STATE BAR BY-LAWS art. I, § 3(g)(iii); N.D. ADMISSION TO PRACTICE R. 3.1(C)(4); S.C. APP. CT. R. 415; TENN. SUP. CT. R. 50A § 1.02(b)(4); TEX. STATE BAR R. art. XIII, § 2(B)(4); W.VA. STATE BAR BY-LAWS art. II, § 11(b)(2)(C).
of states with pro bono practice rules is to require this type of association. Requiring such association raises several sub-issues, such as the type of legal services organization the volunteer attorney must associate with, the degree of supervision, if any, the legal services organization must provide to the volunteer, and whether the legal services organization must provide malpractice coverage to the volunteer.

If a state wishes to require a pro bono attorney to work under the auspices of a legal services organization, then the definition of the sponsoring legal services organization must be clear. Some states, for example, list by name the specific legal aid organizations with which the volunteer attorney may associate. Other states describe the type of organization, often defining it as a nonprofit legal assistance organization approved by the state's Supreme Court or other regulatory authority. In defining the qualifying legal aid organization, a state should take care to not be overly restrictive and inadvertently exclude providers of legal services, such as law school legal clinics. The legal clinic at the University of Arkansas at Little Rock, William H. Bowen School of Law, for example, is part of the state university system, which is not a nonprofit organization within the meaning of section 501(c)(3) of the Internal Revenue Code. Accordingly, this clinic would not meet the definition of a nonprofit legal services organization under several states' pro bono practice rules. Some states, such as Maine, Massachusetts, and Illinois, have addressed this issue by expressly stating in their pro bono practice rules that law school clinics are among the legal services organizations with which volunteer attorneys may associate. Thus, states should draft their rules to ensure that all legitimate legal services providers are included as qualifying legal services organizations.

If a state is going to require association with a legal services organization, then the next question is the level of supervision the organization must provide to the volunteer attorney. Some states impose stringent supervision standards, requiring the organization's supervising attorney to co-sign the

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73. See, e.g., ALA. R. OF PROF'L CONDUCT 6.6; ALASKA BAR ASS'N R. 43.2(c)(1)(A); ARIZ. SUP. CT. R. 38(e); CAL. STATE BAR R. 3.325(A); COLO. CIV. P. R. 223(1); FLA. BAR R. 12-1.3; HAW. SUP. CT. R. 20; IDAHO BAR COMM'N R. 223(a); ME. BAR R. 6(d); MASS. SUP. JUD. CT. R. 4:02(8); MISS. R. APP. P. 46(f); MONT. STATE BAR BY-LAWS ART. I, § 3(g); NEV. SUP. CT. R. 49.2; N.M. BAR ADMISSION R. 15-301.2; N.Y. CHIEF ADMIN. JUDGE R. pt. 118, § 118.1(g); N.D. ADMISSION TO PRACTICE R. 3.1; S.C. APP. CT. R. 415; TENN. SUP. CT. R. 50A; TEX. STATE BAR R. ART. XIII, § 3; WASH. ADMISSION TO PRACTICE R. 8(e); W.VA. STATE BAR BY-LAWS ART. II, § 11.

74. See, e.g., DEL. SUP. CT. R. 69; S.D. CODED LAWS § 16-17-4.1.

75. See, e.g., ALA. R. OF PROF'L CONDUCT 6.6; ALASKA BAR ASS'N R. 43.2(c)(2); ARIZ. SUP. CT. R. 38(e)(2)(C); FLA. BAR R. 12-1.2(b); IDAHO BAR COMM'N R. 223(b)(3); MISS. R. APP P. 46(f)(1)(i); MONT. STATE BAR BY-LAWS ART. I, § 3(g)(v); NEV. SUP. CT. R. 49.2(2); N.D. ADMISSION TO PRACTICE R. 3.1(B)(3); TENN. SUP. CT. R. 50A, § 1.02(c); TEX. STATE BAR R. ART. XIII, § 2(C).

76. Memorandum from the University of Arkansas General Counsel (March 2, 1989) (on file with author).

77. ILL. SUP. CT. R. 756(j)(1)(c); ME. BAR R. 6(d)(3); MASS. SUP. JUD. CT. R. 4:02(8)(c).
volunteer attorney’s pleadings and requiring the volunteer attorney to have written consent from the client and the supervising attorney to appear in court on the client’s behalf.\textsuperscript{78} Other states impose more general requirements, stating only that the organization must provide adequate supervision and support to the volunteer.\textsuperscript{79} In deciding this question, states must be careful not to impose burdensome requirements at which volunteer attorneys will chafe. For example, an assessment of one pro bono project involving retired attorneys found that “some volunteers resented being supervised by younger staff attorneys, particularly in cases that volunteers regarded as straightforward.”\textsuperscript{80} It seems that this issue could be better addressed by training than by submitting experienced attorneys to onerous requirements such as co-signed pleadings and written consent to appear in court. If volunteer attorneys, who are after all licensed members of the bar, are properly trained in the subject matter of the area in which they are providing pro bono services, then it should not be necessary to micromanage their work. Thus, states should consider requiring training and a general degree of supervision that permit the volunteer pro bono attorney to have more autonomy to interact with clients, sign pleadings, and appear in court.

Association with a legal services organization also raises the corollary issue of malpractice insurance. Several state pro bono rules mandate that the volunteer attorney receive malpractice coverage from the associating legal services organization\textsuperscript{81} or that the associating legal services organization must at least disclose the extent of malpractice insurance that will cover the volunteer.\textsuperscript{82} Receiving malpractice coverage through a legal services organization is a significant benefit for the pro bono attorney, since no prudent attorney wants to practice law without the protection of professional liability insurance\textsuperscript{83} Coverage through the legal services organization also will relieve the volunteer attorney from paying for an individual policy, which could be a significant

\textsuperscript{78} E.g., FLA. BAR R. 12-1.3; IDAHO BAR COMM’N R. 223(c)(1); S.C. APP. CT. R. 415(b); TEX. STATE BAR R. art. XIII, § 3; W.VA. STATE BAR BY-LAWS art. II, § 11(c).
\textsuperscript{79} E.g., CAL. STATE BAR R. 3.330(E); HAW. SUP. CT. R. 20(c)(1)(i). If further specificity is desired, such rules also could require the legal services organization to provide the degree of supervision necessary based on the volunteer’s level of practice experience.
\textsuperscript{80} MAY & EDELSTEIN, supra note 4, pt. I at 4.
\textsuperscript{81} E.g., ALA. R. OF PROF’L CONDUCT 6.6(f); ALASKA BAR ASS’N R. 43.2(e)(3); HAW. SUP. CT. R. 20(e)(2); MONT. STATE BAR BY-LAWS art. I, § 3(g)(v); OR. STATE BAR BY-LAWS art. VI, § 6.101(b).
\textsuperscript{82} E.g., ARIZ. BAR ASS’N R. 43.2(c)(2)(F); FLA. BAR R. 12-1.2(b)(6); IDAHO BAR COMM’N R. 223(b)(3)(F); MISS. R. APP. P. 46(f)(1)(ii)(f); N.D. ADMISSION TO PRACTICE R. 3.1(B)(3)(f); TENN. SUP. CT. R. 50A, § 1.02(c)(6); TEX. STATE BAR R. art. XIII, § 2(C)(6).
\textsuperscript{83} MAY & EDELSTEIN, supra note 4, pt. II at 10 (recommending that pro bono programs provide malpractice insurance coverage for volunteer attorneys); see also Berenson, supra note 45, at 4 (stating that “the possession of malpractice insurance by attorneys is now widely encouraged, though not required”).
While requiring volunteer attorneys to associate with an established legal services organization provides the benefits of training, supervision, and malpractice coverage, there is a significant drawback. Volunteer attorneys who provide pro bono services in conjunction with LSC-funded entities are subject to the same restrictions as the staff attorneys for the LSC-funded organizations. Thus, attorneys volunteering under the auspices of LSC-funded organizations cannot file class-action lawsuits, represent most aliens or incarcerated persons, or handle cases involving welfare reform, abortion, or redistricting. State policymakers should be aware of this trade-off in deciding whether their pro bono practice rules should require the volunteer attorney to associate with a legal services organization.

F. Fees and Costs

Another issue that state policymakers must consider in drafting a pro bono practice rule is whether the rule will waive licensing and registration fees to encourage volunteerism. Some states, like California and Georgia, waive annual licensing and registration fees for emeritus pro bono attorneys. Other states, like Hawaii and Washington, reduce the annual registration fee for pro bono attorneys to the amount paid by attorneys on inactive status. Understandably, retired and inactive lawyers who are not receiving income from their legal work do not want to continue to pay annual licensing fees just to serve as volunteers. Accordingly, states should consider waiving annual licensing and registration fees for volunteer attorneys who are willing to provide pro bono services. The loss of revenue from the licensing fee seems a small trade-off for the benefit of increasing pro bono services.

84. See Berenson, supra note 45, at 24 (asserting that “the prospect of an uncovered malpractice settlement or award is one of the most prominent reasons why more pro bono legal work is not performed on behalf of indigent persons”).

85. See, e.g., Linda F. Smith, The Potential of Pro Bono, 72 UMKC L. Rev. 447, 469 (2003) (“[F]ederal funds used to support private pro bono attorney involvement also carry the federal restrictions—thus preventing the pro bono lawyer so supported from filing class actions, pursuing legislative advocacy, and representing certain clients (most aliens, inmates in any litigation).”).

86. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-34, § 504, 110 Stat. 1321 (1996). The prohibition on cases involving abortion rights is particularly significant. In its most recent decision on abortion rights, the Supreme Court ruled that women seeking to challenge partial-birth abortion laws that lack an exception for the mother’s health must make “as applied” challenges rather than facial challenges to such laws. Gonzales v. Carhart, 550 U.S. 124, 167-68 (2007). This requirement imposes a significant added cost for abortion access for poor women.

87. Cal. State Bar R. 3.326; Colo. CIV. P. R. 223(4); Ga. Bar R. 1-202(d); Mont. State Bar By-Laws art. I, § 4(a). See also, e.g., Alaska Bar Ass’n R. 43.2(b) (“An attorney who serves as an emeritus attorney at any time during a year shall have bar dues for the following year waived.”).

88. Haw. Sup. Ct. R. 20(b); Wash. Admission to Practice R. 8(e)(3).

89. See, e.g., May & Edelstein, supra note 4, pt. I at 2 (noting that many attorneys take inactive bar status upon retirement to “avoid the expense of mandatory bar dues and continuing legal education programs”).
State requirements for continuing legal education (CLE) raise a similar question, as the cost of attending CLE seminars can be an impediment to maintaining one’s law license in order to provide volunteer services. States have taken opposite approaches on this issue, with some waiving CLE requirements for volunteer pro bono attorneys and others expressly mandating that volunteers must satisfy all CLE requirements. “[T]he purpose of continuing legal education is professional responsibility, which helps ensure that attorneys are able to discharge their duties to the public.”

In light of this laudatory purpose, allowing pro bono attorneys to dispense with CLE requirements does not seem appropriate. Pro bono clients are just as entitled as paying clients to representation by attorneys who maintain their knowledge of the law and meet the highest standards of professional responsibility. On the other hand, the cost of attending CLE seminars should not prohibit willing volunteer attorneys from maintaining their law licenses. One possible solution is for state bar associations and legal services organizations that sponsor CLE seminars to waive the registration fees for volunteer pro bono attorneys. Alternatively, as a condition of CLE accreditation, the regulatory authority that certifies CLE providers could require the providers to set aside a small number of free seats for pro bono attorneys at each seminar. As with licensing fees, this decrease in revenue seems a small price to pay for receiving additional pro bono services.

G. Filing and Certification Requirements; Termination of Emeritus Status

States implementing pro bono practice rules also must establish procedures for designating and terminating a volunteer’s status as a pro bono attorney. At a minimum, most states with a pro bono practice rule require the attorney to file an application to engage in pro bono practice. Other states go further and require the legal services organization that the attorney associates with to file an application or certification as well. The organization typically is required to

90. E.g., ARIZ. SUP. CT. R. 38(e)(4); ILL. SUP. CT. R. 756(j)(6).
91. E.g., CAL. STATE BAR R. 3.329(D); N.M. BAR ADMISSION R. 15-301.2(G)(3).
92. Am. Law Inst. v. Penn., 882 A.2d 1088, 1092 (Pa. Commw. Ct. 2005); cf., e.g., CAL. STATE BAR R. 2.50 (stating that the purpose of CLE rules is to require attorneys “to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices”).
93. In Arkansas, for example, free and discounted CLE courses are available to pro bono attorneys registered with the Arkansas Pro Bono Partnership. See ARK. LEGAL SERVICES’ P’SHP, http://www.arlegalservices.org/node/138 (last visited Mar. 1, 2011); cf., e.g., GODFREY & WOOD, supra note 48, at 12 (“Offering free CLE training as an incentive to volunteer in an emeritus pro bono program encourages attorneys to accept referrals from the program and stay involved.”).
94. E.g., COLO. CIV. P. R. 223(2)(vi); DEL. SUP. CT. R. 69; ME. BAR R. 6(d)(2); MASS. SUP. JUD. CT. R. 4:02(8); MONT. STATE BAR BY-LAWS art. I, § 3; N.M. BAR ADMISSION R. 15-301.2(D); S.C. APP. CT. R. 415(c).
95. E.g., ALASKA BAR ASS’N R. 43.2(c)(2); ARIZ. SUP. CT. R. 38(e)(2)(C); CAL. STATE BAR R. 3.330; FLA. BAR R. 12-1.2(b); IDAHO BAR COMM’N R. 223(b)(3); ILL. SUP. CT. R. 756(j)(2); MISS. R. APP. P.
certify its nonprofit status, its funding sources, the types of services it provides, and its ability to provide malpractice insurance for the volunteer attorney.96 While some registration process is advisable so states can monitor the identities and qualifications of those volunteering services, it should not be so onerous as to dissuade volunteers and legal aid organizations from participating in pro bono programs.97 A registration system can also provide the corollary benefit of allowing states to track the number of pro bono hours being contributed, so long as attorneys are required to report their pro bono hours as part of the registration process.98 Knowing the number of pro bono attorneys and the amount of time they contribute provides valuable data for evaluating the effectiveness of pro bono practice rules and programs.99

An issue related to the registration process is the procedure for terminating an attorney’s pro bono status once he or she stops providing services. Some state pro bono rules do not address the termination of an attorney’s pro bono status,100 while others expressly enumerate grounds on which the status may be terminated, such as the attorney’s failure to comply with the pro bono rule’s requirements or the attorney’s disassociation from the sponsoring legal services organization.101 In addition, some states provide that their supreme courts may revoke an attorney’s pro bono status.102 Including a termination procedure in the pro bono rule is advisable because it provides a clear mechanism to revoke the pro bono status should a pro bono attorney engage in misconduct, accept compensation for services, or fail to carry out his or her responsibilities.

In sum, states contemplating the adoption or revision of a pro bono practice rule should consider the following issues:

46(f)(1)(ii); NEV. SUP. CT. R. 49.2(2)(a)(3); N.D. ADMISSION TO PRACTICE R. 3.1(B)(3); TEX. STATE BAR R. art. XIII, § 2(C).
96. E.g., ALASKA BAR ASS’N R. 43.2(c)(2); ARIZ. SUP. CT. R. 38(e)(2)(C); FLA. BAR R. 12-1.2(b).
97. See, e.g., GODFREY & WOOD, supra note 48, at 14 (attorneys surveyed about their experiences with emeritus programs frequently commented “that the paperwork required under the rules was needlessly burdensome.”).
98. The pro bono practice rules in Montana and Oregon require volunteer attorneys to report the number of pro bono hours they provide. MONT. STATE BAR BY-LAWS art. I, § 3(g)(vi); OR. STATE BAR BY-LAWS art. VI, § 6.101(e).
99. According to the ABA’s Standing Committee on Pro Bono and Public Service, seven states currently have mandatory pro bono reporting, while eleven states have voluntary pro bono reporting. Overview of State Pro Bono Reporting Policies, AMER. BAR. ASS’N, http://apps.americanbar.org/legalservices/probono/reporting.html (last visited Oct. 18, 2011).
100. E.g., ALA. R. OF PROF’L CONDUCT 6.6; ALASKA BAR ASS’N R. 43.2; ME. BAR R. 6(e); MASS. SUP. JUD. CT. R. 4:02(8); MISS. R. APP. P. 46(f); N.H. BAR ASS’N BY-LAWS art. II, § 8; S.D. CODIFIED LAWS § 16-17-4.1.
101. E.g., ARIZ. SUP. CT. R. 38(e)(3); FLA. BAR R. 12-1.6; IDAHO BAR COMM’N R. 223(f); NEV. SUP. CT. R. 49.2(5); N.M. BAR ADMISSION R. 15-301.2(F); N.D. ADMISSION TO PRACTICE R. 3.1(F); S.C. APP. CT. R. 415(f); TEX. STATE BAR R. art. XIII, § 6; WASH. ADMISSION TO PRACTICE R. 8(e)(7); W.VA. STATE BAR BY-LAWS art. II, § 11(f).
102. E.g., FLA. BAR R. 12-1.6(a)(2); IDAHO BAR COMM’N R. 223(f)(1)(B); S.C. APP. CT. R. 415(f)(2); TEX. STATE BAR R. art. XIII, § 6(A)(2); W.VA. STATE BAR BY-LAWS art. II, § 11(f)(1)(B).
• Should a pro bono practice rule limit participation to only retired attorneys, or should it also include attorneys who have taken inactive status?

• Must an attorney be a minimum age to qualify to practice under a pro bono rule?

• Must an attorney have a minimum amount of practice experience to practice under a pro bono rule?

• Must an attorney be licensed in a state to provide pro bono services there, or are licensure and good standing in another state sufficient to allow practice under the pro bono rule?

• Must the attorney comply with CLE requirements?

• Must the attorney pay annual registration dues and licensing fees?

• Must the attorney carry malpractice insurance?

• Must the attorney associate with a legal services organization? If so, what types of entities qualify as eligible legal services organizations?

• If association with a legal services organization is required, what degree of support and supervision must that organization provide to the volunteer attorney?

• What application process must the volunteer attorney go through to practice under the pro bono rule?

• What procedures, if any, should be in place to terminate or revoke the attorney’s authorization to provide pro bono services?

• What sort of disciplinary record must the attorney have to qualify for practice under the pro bono rule?

• Must the attorney agree to abide by and be subject to the disciplinary rules of the state in which he or she wishes to provide pro bono services?

IV. EMERITUS PRO BONO RULES BENEFIT THE VOLUNTEER LAWYERS AND THE LEGAL PROFESSION

In addition to meeting the pressing demand for legal services, pro bono practice rules are advisable because they benefit the lawyers who volunteer through them. “As people age, they experience a deficit of meaning and purpose in their lives.”103 For American professionals in particular, “much of their sense of purpose and growth is connected with their work.”104 Pro bono work can restore that sense of meaning for retired and inactive lawyers because it allows them to continue to use their skills and talents for causes that are greater than themselves. “For many attorneys, public service offers their most rewarding

103. Galanter, supra note 7, at 1107.
104. Id. at 1108.
experiences; it is a way to feel that they are making a difference and to express the values that sent them to law school in the first instance.”

Testimonials from retired attorneys who have participated in pro bono programs bear out these assertions. One volunteer, for example, stated that his pro bono work on behalf of homeless women made him feel more “authentic” and “feel like a real lawyer for the first time in 40 years.” Other lawyers who have volunteered with legal services programs found that the work was mentally stimulating and furnished “lots of satisfaction by providing an opportunity to help people who really needed help.”

In addition to benefiting the individual volunteer attorney, pro bono practice rules also create opportunities to improve the legal profession by training the next generation of lawyers. At least one scholar has suggested that retired lawyers should provide pro bono services through law school clinics, which could significantly increase mentoring opportunities and staffing levels in clinical programs. Good mentors are crucial to law students because “[a] role model in a professional context sets an example of excellence by modeling the technical knowledge and relationship skills necessary for the professional role.” When law students “form relationships with professionals who inspire them, they can internalize new images of what they want to be like more deeply and vividly than

105. Rhode, supra note 32, at 1440; see also Cummings, supra note 23, at 113 (Pro bono can be “a way for attorneys to enact their ideals of lawyering as social justice, or at least experience the law as a mechanism for serving underrepresented interests. . . . In some cases, lawyers speak of pro bono as a personally transformative experience, one that connects them to issues of profound personal and social significance.”); Galanter, supra note 7, at 1108 (“Public interest work seems to promote the most intense feelings of satisfaction among its practitioners.”); cf Cummings & Rhode, supra note 16, at 640 (“Bar surveys find that lawyers' greatest source of dissatisfaction in practice is their lack of contribution to the social good.”).


107. John Lukens, On Being . . . An Older Lawyer, 2007 W. VA. LAW. 30 (stating that “certain brain cells that come into play for a large commercial loan also light up when other kinds of law are thrown into the mix.”); see also, e.g., Deborah Maranville, Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning, 51 J. LEGAL ED. 51, 55 (2001) (medical and other research suggests that “frequent volunteering has significant health benefits, ranging from decreasing depression to alleviating headaches and back pain to increasing longevity.”) (citing ALLAN LUKS & PEGGY PAYNE, THE HEALING POWER OF DOING GOOD: THE HEALTH AND SPIRITUAL BENEFITS OF HELPING OTHERS (1992)); Rhode, supra note 32, at 1437 (“A wide array of evidence suggests that selfless action is good for the self; it enhances satisfaction, health, and self-esteem.”).

108. W. Alfred Masters, Attorney for the Poor, 28 A.B.A. J. E-REPORT 5, 6 (2006); see also MAY & EDELSTEIN, supra note 4, pt. II at 1-2 (“[S]enior attorneys say that they volunteer to enhance their own sense of worth, through productive use of their skills and interaction with their peers and other colleagues.”).


110. Neil Hamilton & Lisa Montpetit Brabbit, Fostering Professionalism Through Mentoring, 57 J. LEGAL EDUC. 102, 109 (2007). Mentoring can assist new lawyers in learning to obtain and keep clients, understand and conduct litigation, counsel clients, negotiate, diagnose and plan solutions to legal problems, instill others' confidence in them, and manage their practices. Id.
they are likely to do through reading." Thus, retired and inactive lawyers who receive appropriate training in clinical pedagogy have the opportunity to mentor students and teach them the values of the legal profession by volunteering their pro bono services through law school clinics.

Using retired and inactive lawyers to raise the staffing levels of law school clinics also creates an opportunity to increase the number of future pro bono attorneys. “Surveys of students enrolled in clinical programs confirm the transformative and positive impact these programs have on a student’s future motivation to perform public service.” Increasing clinic staffing levels with retired and inactive attorneys will enable more law students to take clinical courses and experience firsthand the meaning that a lawyer can derive from providing representation to clients who cannot otherwise afford such services. Thus, expanding clinical programs with retired and inactive attorneys practicing under pro bono rules is a way to instill a commitment to pro bono work in a greater number of students.

111. WILLIAM SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 146 (2007). Research also indicates that, “for students to incorporate the profession’s ethical-social values into their own, they need to encounter appealing representations of professional ideals, connect in a powerful way with engaging models of ethical commitment within the profession, and reflect on their emerging professional identity in relation to those ideals and models.” Id. at 135.

112. The National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers recommend that bar associations and law schools “recruit senior lawyers and facilitate mentoring relationships between those newly admitted lawyers and law students who wish to take advantage of the invaluable opportunity to be mentored by an experienced, able senior lawyer.” NAT’L ORG. OF BAR COUNSEL & ASS’N OF PROF’L RESPONSIBILITY LAWYERS, FINAL REPORT 15 (2007), http://www.aprl.net/pdf/NOBC-APRL.pdf.

113. Larry R. Spain, THE UNFINISHED AGENDA FOR LAW SCHOOLS IN NURTURE A COMMITMENT TO PRO BONO LEGAL SERVICES BY LAW STUDENTS, 72 UMKC L. REV. 477, 487 (2003); see also Deborah L. Rhode, THE PRO BONO RESPONSIBILITIES OF LAWYERS AND LAW STUDENTS, 27 WM. MITCHELL L. REV. 1201, 1212 (2000) (“Like other forms of clinical and experiential learning, participation in public service helps bridge the gap between theory and practice, and enriches understanding of how law relates to life.”). But cf., e.g., Robert Granfield, THE MEANING OF PRO BONO: INSTITUTIONAL VARIATIONS IN PROFESSIONAL OBLIGATIONS AMONG LAWYERS, 41 LAW & SOC’Y REV. 113, 135 (2007) (concluding that, while law students’ “participation in mandatory pro bono does yield greater endorsement of the value of pro bono in practice compared to those who were not required to do pro bono in law school, participation in mandatory pro bono during law school has no significant effect on a lawyer’s support of mandatory pro bono, on the perceived benefits of doing pro bono, or on the associated motivations for engaging in pro bono work”).

114. I am not advocating that clinic staffing levels should be increased with retired and inactive lawyers in lieu of paid clinical faculty positions. I strongly support equal status for clinicians with full rights to participate in faculty governance and to receive tenure. Increasing the number of paid clinical faculty positions, however, depends on a law school’s funding levels. I am merely suggesting the option of using retired and inactive lawyers to increase clinic staffing levels if law schools do not have the funding to add paid clinical faculty positions.

115. See also Spain, supra note 113, at 487 (“Expanding clinical offerings for students can prove to be an effective strategy for instilling a professional commitment to pro bono work”).
V. CONCLUSION

In his famous poem, Dylan Thomas exhorts his aging and ailing father to “not go gentle into that good night” and to “rage, rage against the dying of the light.” Likewise, attorneys who are retiring or otherwise stepping away from the practice of law should “not go gentle” into retirement or alternative career paths. These lawyers have skills that can be used to bridge the ever-widening justice gap in this country, and bar licensing authorities should do everything in their power to tap into this pool of potential volunteers and encourage them to contribute their talents to those in need. Emeritus pro bono practice rules are one such means to harness this capacity. By authorizing retired and inactive lawyers to practice for the limited purpose of providing pro bono services, these rules benefit underserved populations that cannot otherwise afford legal representation, individual volunteer lawyers, and the legal profession as a whole. In creating such rules, state bar authorities must strike the appropriate balance between authorizing practice by volunteer lawyers and protecting vulnerable clients in need of representation. However, careful consideration of the issues outlined and discussed above should produce a thoughtful pro bono practice rule that accommodates all of the interests at stake. States that do not have a pro bono practice rule should undertake this deliberative process so that they can craft such a rule and take advantage of all available resources to achieve the promise of justice.