

CHAPTER 12. EMERITUS ATTORNEYS 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 such services. As one means of meeting these legal needs, the following rules establishing the emeritus attorneys pro bono participation program are adopted.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 12-1.2 DEFINITIONS

(a) Emeritus Attorney. An "emeritus attorney" is any person, who is retired from the practice of law in Florida or any other state or territory of the United States or the District of Columbia, or is an authorized house counsel certified by the Supreme Court of Florida and who;

(1) was 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 that this requirement does not apply to authorized house counsel certified under chapter 17 of these rules;

(2) was 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 has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(3) if not a retired member of The Florida Bar, has not failed the Florida bar examination 3 or more times;

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

(5) neither asks for nor receives compensation of any kind for the legal services to be rendered under this rule; and

(6) is 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 attorney.

(c) Supervising Attorney. A "supervising attorney" as used in this chapter is a member in good standing of The Florida Bar who directs and supervises an emeritus attorney engaged in activities permitted by this chapter. The supervising attorney must:

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

(2) assume personal professional responsibility for supervising the conduct of the matter, litigation, or administrative proceeding in which the emeritus attorney participates.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014; effective June 1, 2014 (SC12-2234).

RULE 12-1.3 ACTIVITIES

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

(1) The emeritus attorney may appear 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 attorney is appearing has consented in writing to that appearance and a supervising attorney 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 attorney may prepare 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 attorney is involved. The supervising lawyer must sign all documents filed with the court.

(3) The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which the emeritus attorney is involved.

(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 attorney's participation in any proceedings before the court.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.4 SUPERVISION AND LIMITATIONS

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

(b) Representation of Bar Membership Status. Emeritus attorneys 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. The prohibition against compensation for the emeritus attorney contained in rule 12-1.2(a)(5) will not prevent the approved legal aid organization from reimbursing the emeritus attorney for actual expenses incurred while rendering approved services. It 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 for any representation rendered by the emeritus attorney.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.5 CERTIFICATION

An emeritus attorney 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 attorney 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 attorney has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years. 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 attorney that the emeritus attorney:

(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 defined by chapter 3, Rules of Discipline, and by rules 12-1.2(a)(4) and 12-1.7, R. Regulating Fla. Bar; 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).

RULE 12-1.6 WITHDRAWAL OF CERTIFICATION

(a) Withdrawal of Permission to Perform Services. The emeritus attorney must immediately cease performing legal services if:

(1) the approved legal aid organization files a statement with the Clerk of the Supreme Court of Florida that:

(A) the emeritus attorney has ceased to be associated with the organization. This notice must be filed within 5 days after such association has ceased; or

(B) certification of such attorney is withdrawn. An approved legal aid organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal.

The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus attorney concerned; or

(2) the Supreme Court of Florida, in its discretion, at any time, revokes permission for the emeritus attorney to perform pro bono services. The Clerk of the Supreme Court of Florida must mail a copy of the statement to the emeritus attorney and the approved legal aid organization.

(3) The Florida Bar files 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 attorney involved.

(b) Notice of Withdrawal. If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney 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 attorney was involved.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

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 and the presiding judge or hearing officer for any matter in which the emeritus attorney has participated may hold the emeritus attorney in civil contempt for any failure to abide by the tribunal's orders.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).