

New Rule Allows Retired and Inactive Lawyers to Provide Pro Bono Legal Services

by JoAnn Vogt

As part of the American Bar Association's "Second Season of Service" initiative,¹ the ABA House of Delegates passed a resolution in 2006 encouraging states to "adopt practice rules that establish guidelines to allow pro bono legal service by qualified, retired or otherwise inactive lawyers, under the auspices of qualified legal services or other non-profit programs."² With the adoption of C.R.C.P. 223 by the Colorado Supreme Court, Colorado has now joined some twenty states that have heeded the ABA's call and enacted pro bono practice rules.

Background

In launching its Second Season of Service initiative, the ABA recognized an ongoing problem and a potential way to help address it. The problem is that the civil legal needs of low-income Americans remain largely unmet. According to a recent Legal Services Corporation study, less than 20 percent of the legal problems faced by low-income people are addressed with the assistance of an attorney.³ In Colorado, at least half of the persons seeking assistance from Colorado Legal Services are turned away, primarily because of insufficient resources.⁴

At the same time, the number of lawyers about to retire is rapidly increasing, as the baby-boom (or, for some of us, pre-baby-boom) generation nears retirement age. The ABA estimates that, nationally, 40,000 lawyers will retire, consider retiring, or significantly alter their work environment each year over the next several years.⁵ As they transition from full-time practice to pursue other interests, these individuals are redefining retirement from a time of leisure to a time of renewed vigor and purpose.

Retiring lawyers thus represent a potential source of volunteers to help meet the unmet civil legal needs of low-income persons. However, such lawyers often face barriers to doing pro bono work. They may, for example, have taken inactive status to avoid the expense of annual registration fees, or they may have retired to states in which they are not licensed to practice law. For this reason, states are moving to adopt practice rules that remove some of the

barriers to volunteering, with the goal of expanding pro bono efforts on behalf of people who need civil legal assistance but cannot afford it.

The Rule

C.R.C.P. 223, captioned "Pro Bono/Emeritus Attorney," was adopted by the Colorado Supreme Court on June 28, 2007, and became effective July 1, 2007. The text of the rule appears on page 125 in the Court Business section of this issue. A draft rule was prepared by a committee of lawyers and judges, including members of the Colorado Access to Justice Commission and Attorney Regulation Counsel John Gleason. The rule subsequently was modified by the Colorado Supreme Court to reflect input from several other sources.

The stated purpose of Rule 223 is to "provide a licensing status to allow retired or inactive attorneys to provide pro bono legal services to the indigent" under the auspices of certain nonprofit entities. The entities through whom the pro bono/emergitus attorneys may provide services are those "whose purpose is or includes the provision of pro bono legal representation to indigent or near-indigent persons." Thus, the rule contemplates that pro bono/emergitus attorneys will focus on legal representation for the indigent, the area in which the existing but unmet needs are the greatest.

Rule 223 makes pro bono/emergitus status available not only to retired Colorado attorneys but also to inactive Colorado attorneys in good standing, and to attorneys not admitted in Colorado who meet certain specified criteria. Thus, although retiring lawyers were the impetus for the rule, the final rule recognizes that other lawyers who are willing to volunteer for pro bono work—for example, Colorado lawyers on inactive status and lawyers from other jurisdictions who have moved to Colorado—should similarly be afforded the opportunity to perform such work without facing unnecessary barriers.

All lawyers who seek certification under the rule must agree that they will not receive or expect compensation or other direct or in-

The Colorado Access to Justice Commission is an independent entity that was formed in 2003 with the support of the Colorado Supreme Court, the Colorado Bar Association, and the Statewide Legal Services Group. The Mission of the Access to Justice Commission is to develop, coordinate, and implement policy initiatives to expand access to and enhance the quality of justice in civil legal matters for persons who encounter barriers in gaining access to Colorado's civil justice system.

About the Author:

JoAnn Vogt, Denver, is a judge on the Colorado Court of Appeals. She was the 2006 chair of the Colorado Access to Justice Commission, and currently chairs the Commission's Second Season of Service Committee.

Access to Justice articles provide information about poverty law and other areas of the law as they relate to low-income clients; report on the Access to Justice Commission and local and national Access to Justice Committees; and may include testimonials from lawyers about their *pro bono* experience. Readers interested in contributing an article on legal services, *pro bono*, and Access to Justice topics should contact Kathleen Schoen at kschoen@cobar.org.

direct pecuniary gain for the legal services rendered. They are not precluded from receiving reimbursement for otherwise recoverable costs incurred in representing a pro bono client.

Pro bono/emeritus attorneys are not required to pay annual attorney registration fees. However, to maintain their pro bono/emeritus status, the attorneys either must file an annual registration statement identifying the entities for which they have volunteered or, alternatively, pay the registration fee applicable to registered inactive attorneys. The latter requirement necessarily will encompass only attorneys under age 65, as C.R.C.P. 227(A)(6)(c) exempts registered inactive attorneys over age 65 from payment of annual fees.

Conclusion

Rule 223 is an important first step toward the goal of enabling retired and inactive lawyers to use their skills and talents to provide pro bono legal services. The Colorado Access to Justice Commission will refocus its efforts on the next steps toward achieving that goal. These include publicizing the rule, putting lawyers admitted under the rule in contact with entities that can use their services,

and ensuring that training opportunities are available for those who would take advantage of them. By adopting and implementing Rule 223, and thereby reinvesting in our civil justice system the energy and experience of seasoned attorneys, Colorado will have taken a significant step toward ensuring equal access to justice for all its citizens.

Notes

1. For information about the American Bar Association's (ABA) "Second Season of Service" initiative, visit <http://www.abanet.org/dch/committee.cfm?com=BG110800>.

2. Visit the ABA Standing Committee on Pro Bono and Public Service website at <http://www.abanet.org/legalservices/probono>.

3. See "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans," Legal Services Corporation (Sept. 2005) at 4, available at http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf.

4. Taubman, "Expanding Colorado's Right to Counsel in Civil Cases—A Modest Proposal," 36 *The Colorado Lawyer* 95 (July 2007).

5. See <http://www.abanet.org/dch/comadd.cfm?com=BG110800&pg=2>. ■

Colorado Supreme Court Rules Committee

Rule Change 2007(08): Chapter 18, Colorado Court Rules Rules Governing Admission to the Bar (New) RULE 223. Pro Bono/Emeritus Attorney

Statement of Purpose. To provide a licensing status to allow retired or inactive attorneys to provide pro bono legal services to the indigent through nonprofit entities as defined in part 1, below.

(1) A pro bono/emeritus attorney may, under the auspices of a Colorado nonprofit entity whose purpose is or includes the provision of pro bono legal representation to indigent or near-indigent persons, act as legal counsel on behalf of a person seeking representation through such entity.

(2) To act in such a capacity the pro bono/emeritus attorney must be either:

- (a) An attorney admitted to practice law in Colorado who:
 - (i) is now on inactive status;
 - (ii) is in good standing;
 - (iii) has no pending disciplinary proceeding; and
 - (iv) will not receive or expect compensation or other direct or indirect pecuniary gain for the legal services rendered; or
- (b) An attorney not admitted to practice in Colorado who meets the following conditions:

- (i) is licensed to practice law and is on active, inactive, or equivalent status in another jurisdiction in the United States;
- (ii) is in good standing in all courts and jurisdictions in which he or she is admitted to practice;
- (iii) has no pending disciplinary proceeding;
- (iv) agrees to be subject to the Colorado Rules of Professional Conduct, the rules of procedure regarding attorney discipline and disability proceedings, and the remedies set forth in C.R.C.P. 234(a);
- (v) limits his or her practice to acting as pro bono counsel as set forth in this rule and will not receive or expect compensation or other direct or indirect pecuniary gain for the legal services rendered hereunder; and
- (vi) completes the application described herein and pays a one-time administrative fee of \$50.00, payable to The Clerk of the Colorado Supreme Court and collected by the Attorney Registration Office. The application shall contain:

- (A) A certification that the attorney agrees to the provisions of paragraphs (2)(b)(iv) & (v), above; and

(B) A certification that the attorney is in good standing in all courts and jurisdictions in which he or she is admitted to practice, and has no pending disciplinary proceeding in any jurisdiction.

(c) An attorney approved under this rule shall be assigned a certification number, which shall be used to identify the attorney's status as a pro bono/emeritus attorney.

(3) All fees collected by the Attorney Registration Office under this rule shall be used to fund the Attorney Regulation System.

(4) Pro bono/emeritus attorneys shall not be required to pay annual registration fees

(5) All pro bono/emeritus attorneys shall annually file a registration statement on or before February 28 of each year identifying the organized nonprofit entity or entities, as described in section (1) of this rule, for which the attorney is currently volunteering at the time of filing the registration statement or volunteered in the prior calendar year. In lieu of filing such a registration statement, the attorney may pay the registration fee that was applicable in the prior calendar year for registered inactive attorneys pursuant to C.R.C.P. 227(A) and, thereby, avoid termination of her or his pro/bono emeritus status. Failure of a pro bono/emeritus attorney to file a registration statement or pay the applicable prior year's inactive attorney registration fee by February 28 of each year shall result in automatic termination of pro bono/emeritus status.

(6) This Rule shall not preclude a nonprofit entity from receiving court-awarded attorney fees for representation provided by a pro bono/emeritus attorney and shall not preclude a pro bono/emeritus attorney from receiving reimbursement for otherwise recoverable costs incurred in representing a pro bono client.

Adopted by the Court, *En Banc*, June 28, 2007, effective July 1, 2007.

BY THE COURT:

Gregory J. Hobbs, Jr., Justice
Colorado Supreme Court