

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 96- 9012

ORDER OF THE COURT APPROVING AN AMENDMENT TO THE EMERITUS
ATTORNEY PRO BONO PROGRAM RULE

WHEREAS, the State Bar of Texas has, by petition filed with the clerk of this Court on January __, 1996, petitioned the Supreme Court of Texas to approve an amendment to the Emeritus Attorney Pro Bono Participation Program rule, Article XIII of the State Bar Rules and to approve the action of the State Bar Board of Directors in adopting the amendment to the rule at its meeting on April 7, 1995 in Austin, Texas.

WHEREAS, the petition has been presented to and considered by the Supreme Court of Texas, and the Court being of the opinion that such amendment to the Emeritus Attorney Pro Bono Participation Program rule should be approved as set forth therein. It is, therefore, ORDERED that the proposed rule amendment to the Emeritus Attorney Pro Bono Participation Program rule as set forth in the petition of the State Bar of Texas and submitted to this Court is hereby, APPROVED, and that Article XIII of the State Bar Rules be amended effective this date.

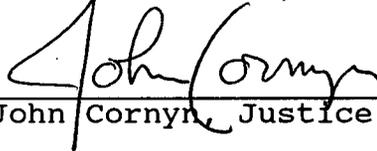
Signed and entered this 3rd day of January, 1996.

Thomas R. Phillips
Thomas R. Phillips, Chief Justice

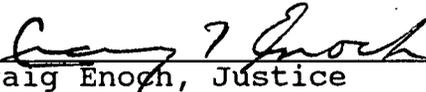
Raul A. Gonzalez
Raul A. Gonzalez, Justice



Nathan L. Hecht, Justice



John Cornyn, Justice



Craig Enoch, Justice



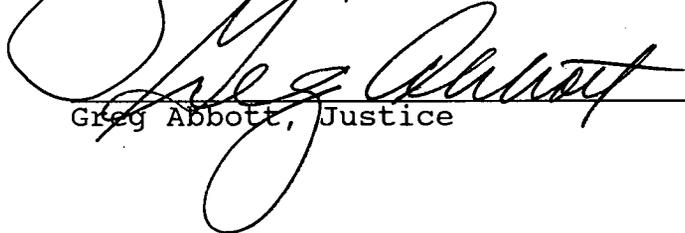
Rose Spector, Justice



Priscilla Owen, Justice



James A. Baker, Justice



Greg Abbott, Justice

Order Amending Emeritus Attorney
Pro Bono Participation Program Rule
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STATE BAR OF TEXAS



Antonio Alvarado
Executive Director

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January 2, 1996

Justice Raul A. Gonzalez
Supreme Court of Texas
Supreme Court Building
P. O. Box 12248
Austin, Texas 78711

Re: Order Amending the Emeritus Attorney Rule, ARTICLE XIII.

Dear Justice Gonzalez:

As I have previously written to you, the Legal Services to the Poor in Civil Matters Committee has compiled data regarding the Emeritus Attorney Program which suggests that a change in the required years of practice should be made, from 10 of the last 15 years to 5 of the last 10. Over a period of 5 months, Texas Lawyers Care compiled data from responses to a recruitment drive initiated in August, 1994. This data shows that 49.6% of the attorneys responding positively to the recruitment letter had 5 years of practice or more, while only one of them had 10 years.

The Board of Directors of the State Bar of Texas has approved the amendment to the rule. Therefore, the State Bar requests that the Justices of the Texas Supreme Court sign the attached Order amending the rule.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Antonio Alvarado".

Antonio Alvarado

IN THE SUPREME COURT OF TEXAS

PETITION TO APPROVE AMENDMENT OF THE EMERITUS ATTORNEY
PRO BONO PARTICIPATION PROGRAM RULE OF THE
STATE BAR OF TEXAS

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF SAID COURT:

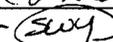
The State Bar of Texas hereby respectfully petitions the Court to amend the Emeritus Attorney Pro Bono Participation Program Rule, Article XIII of the State Bar Rules. In support hereof, the petitioner states as follows:

The Board of Directors of the State Bar of Texas, after receiving a recommendation from its Legal Services to the Poor in Civil Matters Committee, approved an amendment at its board meeting on April 7, 1995, at which meeting a quorum was present.

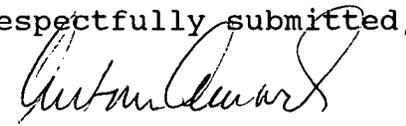
The amendment of the rule would change the required years of practice in the rule from 10 of the last 15 years to 5 of the last 10 years, as shown in Exhibit A to this petition.

WHEREFORE, the State Bar of Texas respectfully requests the Supreme Court of Texas approve this amendment to the Emeritus Attorney Pro Bono Participation Program Rule, Article XIII of the State Bar Rules.

Attest:


with permission 
James M. McCormack
General Counsel

Respectfully submitted,


Antonio Alvarado
Executive Director

Petition for Amending Emeritus
Attorney Pro Bono Participation
Program Rule
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EXHIBIT "A"

ARTICLE XIII - EMERITUS ATTORNEYS PRO BONO PARTICIPATION PROGRAM

Section 1. Purpose.

Individuals admitted to the practice of law in Texas 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 Article establishing the emeritus Attorneys Pro Bono Participation Program is adopted.

Section 2. Definitions.

(A) "The active practice of law" means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment or academic employment.

(B) An "emeritus attorney" is any person, retired from the active practice of law, who is or was admitted to practice law before the highest court of Texas or any other state or territory of the United States of America or the District of Columbia, and

(1) Has been engaged in the active practice of law for a minimum of five ~~ten~~ out of the ten ~~fifteen~~ years immediately preceding the application to participate in the emeritus program; and

(2) Has been a member in good standing of the State Bar of Texas or the entity governing the practice of law of any

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

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

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

(6) The existence and extent of malpractice insurance which will cover the emeritus attorney.

(D) A "supervising attorney" as used herein as an active member of the State Bar of Texas who directs and supervises an emeritus attorney engaged in activities permitted by this Article. The supervising attorney must:

(1) Be employed or be a participating volunteer for an approved legal assistance organization, and

(2) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding or other legal services in which the emeritus attorney participates.

(3) Assist the emeritus attorney in his preparation to the extent that the supervisory attorney considers it necessary.

Section 3. Activities.

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

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 fifteen years; and

(3) If not a retired member of the State Bar of Texas has graduated from a law school accredited by the American Bar Association and has not failed the Texas bar examination three or more times; and

(4) Agrees to abide by the Texas Code of Professional Responsibility and submit to the jurisdiction of the Supreme Court of Texas and State Bar of Texas for disciplinary purposes; and

(5) Neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and

(6) Is certified under Section 5 hereof.

(C) An "approved legal assistance organization" for the purposes of this article is a not-for-profit legal assistance organization which is approved by the Supreme Court of Texas as set forth herein. A legal assistance organization seeking approval from the Supreme Court of Texas for the purposes of this article shall file a petition with the clerk of the Supreme Court of Texas 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;

(1) The emeritus attorney may appear in any court of before any administrative tribunal or arbitrator in this state on behalf of a client of an approved legal assistance 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 shall be filed in the record of each case and shall be brought to the attention of a judge of the court, the presiding officer of the administrative tribunal or the arbitrator.

(2) The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal or arbitrator in this state in any matter in which the emeritus attorney is involved. Such pleadings also shall be signed by the supervising attorney.

(3) The emeritus attorney may render legal advice and perform other appropriate legal services but only after prior consultation with, and upon the express consent of, the supervising lawyer.

(4) The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.

(B) The presiding judge, hearing officer or arbitrator may, in her or his discretion, determine the extent of the emeritus attorney's participation in any proceeding.

Section 4. Supervision and limitations.

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

(B) Emeritus attorneys permitted to perform services under this Article are not, and shall not represent themselves to be, active members of the State Bar of Texas licensed to practice law in this state.

(C) The prohibition against compensation for the emeritus attorney contained in Section 2(A)(5) shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services hereunder nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by the emeritus attorney.

Section 5. Certification.

Permission for an emeritus attorney to perform services under this Article shall become effective upon filing with and approval by the clerk of the Supreme Court of Texas of:

(A) A certification by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney

required hereunder;

(B) A certificate from the highest court or agency in the state, territory, or district in which the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by Section 2(B) hereof; and

(C) A sworn statement by the emeritus attorney that he or she:

(1) Has read and is familiar with the Texas Code of Professional Responsibility as adopted by the Supreme Court of Texas and will abide by the provisions thereof; and

(2) Submits to the jurisdiction of the Supreme Court of Texas and State Bar of Texas for disciplinary purposes, as defined by Article 10 of the Rules; and

(3) Will neither ask for nor receive compensation of any kind for the legal services authorized hereunder.

Section 6. Withdrawal of Certification.

(A) Permission to perform services under this article shall cease immediately upon the filing with the clerk of the Supreme Court of Texas of a notice either:

(1) By the approved legal assistance organization stating that:

(a) The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or

(b) That certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the clerk of the Supreme Court of Texas shall be mailed by the organization to the emeritus attorney concerned.

(2) By the Supreme Court of Texas, in its discretion, at any time, stating that permission to perform services under this article may be revoked. A copy of such notice shall be mailed by the clerk of the Supreme Court of Texas to the emeritus attorney involved and to the approved legal assistance organization to which he or she had been certified.

(B) If an emeritus attorneys' certification is withdrawn, for any reason, the supervising attorney shall immediately file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus attorney was involved.

Section 7. Discipline.

In additon to any appropriate proceedings and discipline which may be imposed by the Supreme Court of Texas or State Bar of Texas, the emeritus attorney shall be subject to the following disciplinary measures:

(A) 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

such tribunal's orders; and

(B) The Supreme Court of Texas or the approved legal assistance organization may, at any time, with or without cause, withdraw certification hereunder.