

Article II. Members

§ 1. Classes of Membership. The membership of the state bar shall be divided into three classes: (a) Active members; (b) active but not practicing members; and (c) inactive members.

In addition, the board may from time to time establish, alter and terminate such classes of contributing and sustaining members, composed of active and/or inactive members, as it may deem advisable, but no member of any such class shall by reason of such membership acquire or have any rights or privileges other than those of a member in good standing, active or inactive, whichever he may be.

§ 2. Register and Enrollment of Members. The secretary shall keep a register for the enrollment of members of the state bar. Each member shall enroll by signing and filing with the secretary a registration form containing such information as may be prescribed by the board.

§ 3. Active Membership. An active member in good standing shall be a person lawfully admitted to the practice of the law in the State of West Virginia, who is lawfully engaged in the practice of the law in this State, who is enrolled as an active member, who is not under suspension, and who shall each year duly pay the annual active membership fee to the state bar.

§ 4. Enrollment as an Inactive Member. Any member of the state bar not under suspension, who does not desire to engage in the practice of law in this State, may, upon written request to the secretary, be enrolled as an inactive member, so long as such member shall each year duly pay the annual inactive membership fee to the state bar. Every judge of a court of record of this State shall be enrolled as an inactive member during his continuance in such office, but shall not be required to pay the annual inactive membership fee to the state bar. A member of the faculty of the College of Law, West Virginia University who has not engaged in the practice of law in this State may be enrolled as an inactive member. No member of the state bar practicing law in this State, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he is called upon to or does give legal advice or counsel or examine the law or pass upon the legal effect of any, law, transaction, instrument (whether or not of record), or state of facts, except judges of courts of record, shall be enrolled as an inactive member.

§ 5. Transfer From Inactive to Active Membership. Any inactive member not under suspension may be enrolled as an active member upon written request to the secretary. Upon the filing of such request, and the payment of any unpaid fees and penalties for prior years and the full annual active membership fee for the current fiscal year, less any membership fee paid by him as an inactive member for the current fiscal year, and upon a showing that the member is in compliance with the pertinent mandatory CLE rules and regulations, the member shall be immediately transferred from the inactive roll to the active.

§ 6. Privileges of Inactive Members. An inactive member shall not practice law, vote in any meeting, election or referendum of the state bar, or hold office in the state bar. He may attend meetings of the state bar, participate in the debates of such meetings, and be appointed upon a special committee but not upon a standing or administrative committee. He shall be entitled to receive the official publication of the state bar and such notices and publications as are mailed to

the active members upon the payment of an annual fee fixed by the board, not in excess of the active membership fee.

§ 7. Enrollment as an Active but Not Practicing Member. Any member of the state bar not under suspension, who does not desire to engage in the practice of law in this State, may, upon written request to the secretary, be enrolled as an active but not practicing member. No member of the state bar practicing law in this State, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he is called upon to or does give legal advice or counsel or examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, except judges of courts of record, shall be enrolled as an active but not practicing member.

§ 8. Transfer From Active but Not Practicing to Active Memberships. Any active but not practicing member not under suspension may be enrolled as an active member upon written request to the secretary, and upon a showing that the member has complied with pertinent mandatory CLE rules and regulations. Upon such request and showing, the member shall be immediately transferred to the active roll.

§ 9. Privileges of Active but Not Practicing Members. Any active but not practicing member shall not practice law, but may vote in any meeting, election or referendum of the state bar and hold office in the state bar. With the exception of the right to practice, an active but not practicing member shall enjoy the same rights and responsibilities as an active member. An active but not practicing member shall not be required to comply with mandatory continuing legal education rules and regulations.

§ 10. Attorneys Licensed in Other Jurisdictions; Right to Appear [Abrogated].

§ 11. Emeritus Attorneys' Pro Bono Participation Program

(a) Purpose. Individuals admitted to the practice of law in West Virginia 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 rule establishing the Emeritus Attorneys Pro Bono Participation Program is adopted.

(b) Definitions.

(1) "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.

(2) An "emeritus attorney" is any active but not practicing member of the West Virginia state bar, any inactive member of the West Virginia state bar, or any person, retired from the active practice of law, who has been admitted to practice before the highest court of any other state or territory of the United States of America or the District of Columbia, and

A. Has engaged in the active practice of law for a minimum of ten years at any time prior to applying to participate in the emeritus program; and

B. Has been a member in good standing of the State Bar of West Virginia 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 fifteen years; and

C. Agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of West Virginia for disciplinary purposes; and

D. Neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and

E. Is certified under paragraph (e) hereof.

(3) An "approved legal assistance organization" for the purposes of this article is a not-for-profit organization offering legal services to lower income individuals in West Virginia.

(4) A "supervising attorney" as used herein is an active member of the State Bar of West Virginia who directs and supervises an emeritus attorney engaged in activities permitted by this article. The supervising attorney must:

A. Be employed by or be a participating volunteer for an approved legal assistance organization; and

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

C. Assist the emeritus attorney in his preparation to the extent that the supervisory attorney considers it necessary.

(c) Activities.

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

A. 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 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 or the presiding officer of the administrative tribunal.

B. 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.

C. The emeritus attorney may render legal advice and perform other appropriate legal services unless the supervising lawyer directs otherwise, either generally or on an ad hoc basis.

D. The emeritus attorney may engage in such other preparatory activities as are necessary for any

matter in which he or she is involved.

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

(d) Supervision and Limitations.

(1) An emeritus attorney must perform all activities authorized by this article under the supervision of a supervising attorney.

(2) 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 West Virginia licensed to practice law in this state.

(3) The prohibition against compensation for the emeritus attorney contained in paragraph (b)(2)D 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.

(e) 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 Appeals of West Virginia and the State Bar of West Virginia of:

(1) A certificate 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;

(2) A certification 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 paragraph (b)(2)B hereof; and

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

A. Has read and is familiar with the Rules of Professional Conduct and the Rules of the Supreme Court of West Virginia and statutes of the State of West Virginia relating to the conduct of lawyers, and will abide by the provisions thereof; and

B. Submits to the jurisdiction of the Supreme Court of West Virginia for disciplinary purposes, as defined by the Rules of Professional Conduct.

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

(f) Withdrawal of Certification.

(1) Permission to perform services under this article shall cease immediately upon the filing with the Clerk of the Supreme Court of West Virginia and the State Bar of West Virginia of a notice either:

A. By the approved legal assistance organization stating that:

i. 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

ii. 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 West Virginia and with the State Bar of West Virginia and shall be mailed by the organization to the emeritus attorney concerned.

B. By the Supreme Court of West Virginia, in its discretion, at any time, stating that permission to perform services under this article has been revoked. A copy of such notice shall be delivered by the Clerk of the Supreme Court of West Virginia to the emeritus attorney involved and to the approved legal assistance organization to which he or she had been certified and to the State Bar of West Virginia.

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

(g) Discipline. The emeritus attorney shall be bound by the West Virginia Rules of Professional Conduct and subject to discipline under the West Virginia Rules of Lawyer Disciplinary Procedure.

(h) Mandatory Continuing Legal Education. Emeritus attorneys certified under paragraph (e) hereof shall be exempt from the requirements of Mandatory Continuing Legal Education and from the payment of any bar membership dues or fees.