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Bernard H. Ehrlich: Let retired attorneys help low-income Floridians

By BERNARD H. EHRLICH, Guest Columnist

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The Association of Retired Attorneys of Sarasota strongly supports reforms that could encourage more emeritus lawyers to volunteer their services to Floridians who need, but cannot afford, legal aid.

Specifically, we favor the revision of Chapter 12 of the Florida Bar Rules governing emeritus attorneys in the Pro Bono Participation Program -- including changes proposed by one of our members, David E. Morrill, in a guest column published in your paper Dec. 14.

What's more, we applaud the Herald-Tribune's support of the commission appointed by the Florida Supreme Court to change the way we provide civil legal assistance to disadvantaged, low-income and moderate-income Floridians.

Our association is composed of more than 80 members, most of whom are retired attorneys and judges who practiced law and served in states other than Florida and have retired to the Sarasota area. One of the association's first community outreach programs, in the late 1990s, was to encourage its members to become emeritus attorneys to provide civil legal services to the poor.

Many of our members volunteered through Legal Aid of Manasota, starting in the 1990s. Today we have four of our members volunteering as emeritus attorneys at both Legal Aid of Manasota and Gulf Coast Legal Services. Further applications of our members are pending with Legal Aid of Manasota.

Notwithstanding our promotion of the emeritus attorney program in the Sarasota area, we believe that the Florida Bar Rules can be improved to attract more participation throughout the state.

For example, in 2012 -- at the request of the chief judge of the 12th Judicial Circuit and with the support of both the Sarasota and Manatee County bar associations -- our association created a Pro Se Clinic providing assistance primarily to indigent individuals in completing forms, approved by the Florida Supreme Court, for do-it-yourself divorces.

After conducting the clinics for a year in Sarasota and Manatee county courthouses and helping more than 50 people, we closed down the program because of a letter from the Florida Bar Association. That letter informed us of the Bar's concern that we were representing ourselves as attorney volunteers, which the Bar claimed was misleading and amounted to the unlicensed practice of law.

The letter reminded us that, since we are not members of the Florida Bar, we are considered "non-lawyers in Florida."

We discussed continuing the divorce clinic as emeritus attorneys. But the current rule does not make it clear that emeritus attorneys can give legal advice unless the advice is given in connection with a court case in which the emeritus attorney appears.

Another significant problem with the current rule is that an emeritus attorney can appear in court only under the bar number of a Florida attorney. This raises potential liability for a Florida lawyer lending a bar number to a "non-lawyer."

This problem may account for the reluctance of staff attorneys of legal aid entities to promote the use of emeritus attorneys. The Florida Supreme Court currently reports only 14 registered emeritus attorneys in the entire state of Florida -- seven of which are in Sarasota County.

As Mr. Morrill suggested, we support the modification of the emeritus attorney rule to provide that emeritus attorneys are authorized (a) to become special members of the Florida Bar and be issued a bar number which can contain the letter "E" to indicate the emeritus status; (b) to practice law, but only under the auspices of a licensed legal aid entity; (c) to advise and represent only eligible clients who have been screened by the legal aid entity at a low-income level for legal aid; and (d) to practice only pro bono without receiving any fees. Emeritus attorneys should continue to expect professional liability coverage.

We believe that, with these modifications, Florida can tap a large legal service resource from experienced out-of-state attorneys and judges at no cost, to help provide the unmet civil legal needs of disadvantaged, low-income Floridians. We know that the total solution requires many more new ideas and resources; but emeritus attorneys can make a significant contribution.

In spite of our disappointment with the divorce clinic, we have provided volunteers as teachers at the law program at Booker High School and advisers at Teen Court. We are constantly exploring other areas where we can help the cause of justice.

Bernard H. Ehrlich is president of the Association of Retired Attorneys of Sarasota Inc.

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