

**PROPOSED RULE:
REVISIONS TO CALIFORNIA'S LICENSE REQUIREMENTS
IN SUPPORT OF MILITARY SPOUSE ATTORNEYS**

REPORT TO THE STATE BAR OF CALIFORNIA BOARD OF GOVERNORS

JANUARY 27, 2012

MILITARY SPOUSE JD NETWORK

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Summary

This Report encourages the State Bar of California to adopt a rule reducing licensing barriers for military spouses who are active attorneys in good standing in other U.S. jurisdictions, and who are residing in California due to military orders (“Proposed Rule”).

Adopting the Proposed Rule provides an opportunity for the State Bar of California to demonstrate its support of military families. The Proposed Rule attempts to mitigate the challenges faced by military spouse attorneys, who are subject to frequent interstate (and international) transfers, and who struggle to maintain career continuity in the face of the geographical insecurity created by their spouses’ military service.

Recognizing the importance of continued protection for the public, the Proposed Rule explicitly provides that military spouse attorneys will be subject to the same rules and regulations generally applicable to all other California attorneys—including the rules of professional conduct—and will be required to comply with all standard annual licensing requirements for active members of the California Bar. In addition, to ensure that military spouse attorneys licensed under the Proposed Rule are prepared for practice in this state, the Proposed Rule also requires that, within the first six months of becoming licensed in California, military spouse attorneys licensed under the Proposed Rule complete an additional twenty hours of continuing legal education focused specifically on California state law.

California and the Military Community

According to the Department of Defense, 159,380 active-duty military servicemembers reside in California—the largest active duty population of any U.S. state.¹ The legal community in California has worked hard to demonstrate its deep support for military servicemembers and their families. The State Bar of California President Jon Streeter and board members Karen Goodman and Wells Lyman have worked hard to provide training and resources so our legal community are able to assist Veterans, organizing events such as the CLE course “Advocating for Veterans – the Basics on Benefits, Discharge Upgrades and Combat to Community” hosted in partnership with the Practicing Law Institute.² In addition, California has established three Veteran’s courts to create an “interagency, collaborative, nonadversarial treatment strategy for combat veterans in the criminal justice system.”³

¹ DEPT. OF DEFENSE, *Demographics 2010: Profile of the Military Community*, 27, available at http://www.militaryhomefront.dod.mil/12038/Project%20Documents/MilitaryHOMEFRONT/Reports/2010_Demographics_Report.pdf (last visited Jan. 26, 2012).

² Diane Curtis, “*Wanted: Lawyers to offer Veterans a helping hand*”, California Bar Journal, April 2011, available at <http://www.calbarjournal.com/April2011/TopHeadlines/TH1.aspx> (last visited Jan. 26, 2012).

³ Diane Curtis, “*Orange County veterans court dispenses a different kind of justice*”, California Bar Journal, April 2010, available at <http://www.calbarjournal.com/April2010/TopHeadlines/TH1.aspx> (last visited Jan. 26, 2012).

This Report and the accompanying Proposed Rule call on California's legal community to continue this tradition of supporting the military community by supporting military spouses not only as clients, but as professional peers and colleagues.

Background on the Unique Challenges Faced by Military Spouse Attorneys

Of the 1.4 million active duty U.S. military servicemembers, just over half (56.4%) are married.⁴ Most military spouses participate in the labor market, whether employed or looking for work,⁵ but despite their desire for employment, military spouses are three times as likely as their civilian counterparts to be unemployed, as well as significantly more likely to be underemployed.⁶

The unfortunate statistics result in large part directly from the requirements of military service and the impact of those requirements on the ability of military spouses to maintain stable careers.⁷ A typical military family moves every two to three years,⁸ and only ten percent of military wives stay in the same location for longer than five years, compared with half of their civilian counterparts.⁹ For servicemembers, reassignments are generally unavoidable and mandatory.¹⁰ For military spouses, transfer orders are "voluntary" only in the most technical sense, since refusing to accompany a servicemember to a new duty station only compounds the hardship on families already subject to lengthy separations due to training and overseas deployments. Thus, according to a 2007 report by the RAND Corporation, "unlike civilian couples, who can make relocation decisions considering advantages and

⁴ DEPT. OF DEFENSE, *supra* note 1, at 34.

⁵ DEPT. OF DEFENSE, *Report on Military Spouse Education and Employment*, 2, available at http://images.military.com/spouse/Report_to_Congress_on_Military_Spouse_Education_and_Employment_Jan_2008.pdf (last visited Jan. 26, 2012).

⁶ *Id.* at 2 ("87% of [military] spouses would like to further their education and develop a portable career," and yet their "unemployment rate is three times as high as civilian spouses"); Nelson Lim & David Schulker, RAND CORPORATION, *Measuring Underemployment Among Military Spouses* (2010), available at http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG918.sum.pdf (military wives "have a much greater tendency to be underemployed" than civilian wives with similar backgrounds). Note that studies on military spouses often focus on "wives," since as of 2010, 93.1 percent of military spouses were female. DEPT. OF DEFENSE, *supra* note 1, at 56.

⁷ Margaret Harrell *et al.*, RAND CORPORATION, *Working Around the Military: Challenges to Military Spouse Employment and Education* (2004), 40, available at http://www.rand.org/pubs/monographs/2004/RAND_MG196.pdf (last visited Jan. 26, 2012) (a husband's military service is "the major explanatory factor" for the disparity between military and civilian wife unemployment).

⁸ Active duty spouses thirty years old or younger move on average every thirty-three months due to the servicemember's change of duty station. DEFENSE MANPOWER DATA CENTER, *Military Family Life Project* (2010), available at <http://conferences.cna.org/pdfs/longitudinalstudy.pdf> (last visited Jan. 26, 2012).

⁹ DEPT. OF DEFENSE, *supra* note 6, at 2.

¹⁰ Indeed, failure to comply with transfer orders may be chargeable as a federal offense.

disadvantages for all family members, military couples must move according to the timing and placement of the servicemembers' new assignment.”¹¹

Frequent geographic dislocations have a particularly negative effect on military spouse attorneys, for whom state-by-state licensing requirements create enormous barriers to the maintenance of a continuous professional career.¹² Bar exams are generally offered only twice per year and applications must be submitted months (up to six months) in advance.¹³ Military spouse attorneys often do not know where they will be stationed more than a few months in advance, so that by the time the attorney learns of an impending move, the application deadline for the next exam will very likely have passed. Even under ideal circumstances, the process is time consuming, as the attorney must acquire preparation materials; study and sit for a bar exam; and then wait months for the results, the receipt of an actual license, and the swearing-in process. Thus, even assuming substantial notice of military reassignments, each relocation that requires a bar exam will result in *a minimum of four to seven months of unemployment* for a military spouse attorney.¹⁴ The periods of unemployment required for taking multiple bar exams then often cascade into difficulties meeting the practice requirements imposed by most states as a condition of admission on motion.

And difficulties with licensure requirements are hardly the only troubles that military spouse attorneys face in their attempts to maintain career continuity. Finding professional employment can be extremely difficult given the uncertainty surrounding the length of time the servicemember spouse will be stationed in a given state—an uncertainty many employers are unwilling to accept.

Anecdotal evidence of these difficulties abound. As just one example, Hon. Erin Wirth, co-founder of the Military Spouse JD Network¹⁵ and a Coast Guard spouse, graduated from law school sixteen years ago. Since then, she has moved seven times; taken and passed the full bar exam in three different jurisdictions; been admitted on motion to work for legal aid after being unable to meet the practice requirement for admission on motion in a fourth jurisdiction; and practiced for the federal government in two other jurisdictions.

¹¹ Nelson Lim *et al.*, RAND CORPORATION, “Working Around the Military” Revisited: Spouse Employment in the 2000 Census Data, 4, available at http://www.rand.org/pubs/monographs/2007/RAND_MG566.pdf (last visited Jan. 26, 2012).

¹² The White House recently acknowledged the effects of these barriers in a wide variety of professions, noting that “[t]he lack of broad-based reciprocity among the states to recognize professional licenses or certificates held by military spouses creates a significant barrier to employment.” WHITE HOUSE, *Strengthening America’s Military Families: Meeting America’s Commitment* (Jan. 2011), 16, available at http://www.defense.gov/home/features/2011/0111_initiative/strengthening_our_military_january_2011.pdf (last visited Jan. 26, 2012).

¹³ See, e.g., THE STATE BAR OF CALIFORNIA, http://www.calbarxap.com/applications/calbar/California_Bar_Exam/ (last visited Jan. 26, 2011).

¹⁴ Assuming two to three months to study for the exam, then two to four months to receive results and get sworn in.

¹⁵ See MILITARY SPOUSE JD NETWORK, <http://www.militaryspousejdnetwork.org> (last visited Jan. 26, 2011). More information in attached Addendum 6.

The Current California Rules

Currently, an attorney who moves to California due to a servicemember spouse's military orders, and who wishes to continue practicing law, faces a difficult situation. Although the rules governing attorney licensure in the state do provide options for continuing a multi-jurisdictional practice, none of these options address the challenging realities faced by military spouse attorneys.

Bar Exam

One option for an incoming military spouse attorney is to take the California Bar Exam. As described previously, however, the timing of the Exam and the timing of military orders often result in a delay of many months—sometimes over a year—before the military spouse attorney can be licensed by this method.¹⁶ Thus, given the frequency of relocations, an attorney might spend thousands of dollars on the bar exam process¹⁷ and receive a license to practice and only have a year or two left in the state with which to use that license.

Multi-Jurisdictional Practice

An incoming military spouse attorney may apply as a Registered In-House Counsel, an Out-of-State Attorney Arbitration Counsel, or a Registered Legal Services Attorney.¹⁸ Unfortunately, once again, the geographic insecurity, geographic location of military installations, and employment barriers created by military life make it difficult for military spouse attorneys to obtain employment in these roles or significantly limit the job search.

Thus, the California rules currently offer no option that addresses the challenges unique to military spouse attorneys. Instead, a military spouse must choose among four alternatives: (1) delay employment for many months by sitting for another bar examination; (2) severely limit his or her job search to positions that don't require a California license; (3) abandon his or her legal career altogether (either temporarily or permanently); or (4) increase the already lengthy family separations by staying behind in a state where the attorney is licensed to practice.

¹⁶ Again, the math: taking the Bar Exam means a *minimum* of approximately six months of unemployment (two months to study for and take the exam, and another four months to receive the results and get sworn in). But that minimum is only achievable under the most ideal circumstances, where (1) the military has given the servicemember more sufficient notice so that the attorney can make the application deadline for the first exam after s/he arrives in California, *and* (2) the relocation happens to coincide roughly with the date of the Exam (so that there's no "wait time" in between arriving in the state and taking the exam). If, however, the family receives short notice, the attorney must wait an *additional* six months to take the subsequent exam.

¹⁷ The exam itself costs \$892 for a licensed attorney (not including the various fees required to gather the documentation necessary for the application, laptop fee, late fees if military orders are received past the deadline, etc.), *see* THE STATE BAR OF CALIFORNIA WEBSITE, <http://rules.calbar.ca.gov/LinkClick.aspx?fileticket=3ySPhIP9Zhs%3d&tabid=1227> (Last Visited Jan. 26, 2012), and exam preparation classes through BarBri cost an additional \$3,975, *see* BARBRI WEBSITE, *at* <http://www.barbri.com> (last visited Jan. 26, 2012).

¹⁸ Cal R. of Ct. 3.370, 3.380, and 3.360.

The Proposed Rule: Mechanics

The Proposed Rule¹⁹ seeks to accommodate military spouse attorneys and assist them in the pursuit of legal careers while supporting their spouses' military service. It achieves this purpose by modifying the requirements of licensure for military spouse attorneys who can prove that they are residing (or anticipate residing) in the state due to their spouse's military orders to the State of California. The Proposed Rule

1. Provides a **non-member, multi-jurisdiction practice alternative** for military spouse attorneys;
2. Provides for **association with a member** in good standing of the California Bar;
3. Provides that applicants under this rule will be considered "non-member applicants," in order to reduce the administrative burden of creating a completely new applicant category.

In order to ensure the professional competence and moral character of military spouse attorneys admitted under the rule, and to protect the public, the following are suggestions to be added to the Proposed Rule

1. Require that a military spouse applicant conform to all other requirements of the State Bar attorney application process, including any necessary **background checks and moral character requirements**;
2. Require a military spouse attorney, within six months of admission to practice, to complete **twenty hours of continuing legal education coursework** relating to substantive areas of California law; and
3. Explicitly provide that military spouse attorneys admitted under this rule are **subject to all rules and regulations governing attorneys in California**, including the rules of professional conduct, annual CLE requirements, and annual dues requirements.

The Proposed Rule: Benefits

In addition to its obvious benefits for military families, the Proposed Rule allows the California legal community to benefit from the diversity of experience and skills offered by military spouse attorneys. These attorneys have a wide variety of legal backgrounds, but their experience as military spouses means that they almost inevitably possess a strong ability to adapt to rapidly changing circumstances; experience learning new things in new environments; and an eagerness to apply their talents and skills toward meaningful work—all qualities that California should embrace in its attorneys. In addition, military spouse attorneys are in an ideal position to act as ambassadors from California's legal community to its

¹⁹ Although the Military Spouse JD Network believes that the Proposed Rule is the best possible solution, we recognize that opinions may vary on the necessity for certain provisions in the new rule language.

military community, as they are generally enthusiastic about using their skills to help other military families.

The Proposed Rule allows the State Bar of California to continue leading the nation in support for military families by becoming one of the first states to show its strong support for military spouses not only as clients, but as peers. Other states—including Ohio and Arizona—are currently considering similar proposals,²⁰ and the Idaho State Bar Board of Commissioners recently adopted a resolution certifying a rule to its supreme court that would allow for licensing of military spouse attorneys in that state.²¹ In addition, the American Bar Association’s Commission on Women in the Profession has submitted a resolution to the ABA House of Delegates encouraging states to ease licensing requirements for military spouse attorneys, which will be considered at the ABA’s Midyear Meeting in February 2012.²² By adopting the Proposed Rule, California will be among the national leaders on this important issue.

The Proposed Rule, moreover, is consistent with existing California provisions in which the State Bar has allowed for exceptions to the normal licensure requirements in order to achieve an important public purpose.

Finally, the Proposed Rule supports the essential national goal of military readiness, since spouse employment opportunities have a significant impact on the ability of the U.S. military to recruit and retain qualified servicemembers.²³ This impact has particular salience in the context of military spouse attorneys, whose relatively high earning potential creates an even higher incentive for servicemembers to leave the military in favor of their spouses’ careers.

Conclusion

With the Proposed Rule, The State Bar of California can show the legal profession’s support by welcoming those attorneys relocating to the state due to their servicemember spouse’s military orders, while still maintaining a high standard of professionalism and competence. Although the number of military spouse attorneys is relatively small,²⁴ the

²⁰ OHIO WOMEN’S BAR ASSOCIATION, *Report and Recommendation to the Ohio Supreme Court re: Provisional Bar Membership for Qualified Military Spouse Attorneys*, available at http://owba.org/Resources/Documents/Military_Spouses_Report_and_Recommendation.pdf (last visited Jan. 26, 2012), and attached as Addendum 3 to this Report; Mary K. Reding, *Petition to Add Rule 38(j), Regarding Admission to the State Bar of Arizona* (filed Jan. 10, 2012), on file with the Military Spouse JD Network and attached as Addendum 4 to this Report.

²¹ IDAHO STATE BAR BOARD OF COMMISSIONERS, *General Session Minutes* (October 14, 2011), 1–2 (adopting *Resolution 11-3, Reciprocal Admission for Spouses of military stationed in Idaho*).

²² AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, *Report to the House of Delegates*, 1, (Nov. 2011), attached as Addendum 5 to this Report (urging “courts and state and territorial bar admission authorities to adopt rules, regulations, and procedures that accommodate the unique needs of military spouse attorneys, who move frequently in support of the nation’s defense . . .”).

²³ See Harrell, *supra* note 8, at xvii.

²⁴ It is estimated that approximately ten percent of civilian military spouses have advanced degrees, but unknown how many of those are law degrees. ABA COMMISSION ON WOMEN IN THE PROFESSION, *supra* note 21, at 11 n.34 (citing DEFENSE MANPOWER DATA CENTER, *Survey of Active Duty Spouses* (2008), available

impact of this Proposed Rule on their families will be enormous. Moreover, passage of the rule will send a clear message that the State Bar of California encourages the participation of this talented, diverse group of military spouse attorneys in the professional community.

at www.dmdc.osd.mil/appj/dwp/index.jsp). The Military Spouse JD Network, which was founded in the summer of 2011, has identified over 200 military spouse attorneys.

**ADDENDUM 1:
PROPOSED RULE
REQUIREMENTS FOR MILITARY SPOUSE APPLICANTS**

DIVISION 3. NON-MEMBER ATTORNEYS

Chapter _____. Out-of-State Military Spouse Attorneys

Rule _____ Compliance procedure

To register as an Out-of-State Military Spouse Attorney, the applicant must:

- (A) have been admitted by bar examination to practice law in another jurisdiction in the United States or territory;
- (B) hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;
- (C) establish that the applicant is currently an active member in good standing in at least one jurisdiction where admitted, and establish that the applicant is a member in good standing in all jurisdictions where admitted;
- (D) certify that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction; and
- (E) establish that the applicant possesses the character and fitness to practice law in this jurisdiction.
- (F) submit evidence that they are a dependent of a servicemember in the United States Uniformed Services as defined by the Department of Defense.
- (G) submit evidence that the servicemember is on military orders in the State of California.
- (H) submit evidence that once admitted, the applicant will be associated with an active member of the State Bar of California;
- (I) complete the Certificate of Out-of-State Attorney, which includes an agreement to comply with the standards of professional conduct required of members of the State Bar of California;
- (J) serve a copy of the completed certificate with an original signature and provide proof of service in accordance with California law on the State Bar with the nonrefundable fee prescribed in the Schedule of Charges and Deadlines.

Rule 3. _____ Duration of certificate

An Out-of-State-Attorney Certificate remains in effect

- (A) until the termination of spouses military orders in the State of California, unless the follow on assignment is remote or unaccompanied;
- (B) until the attorney is no longer defined as a dependent by the Department of Defense;
- (C) as long as an active member of the State Bar of California is associated with the Out-of-State Military Spouse Attorney;
- (D) as long as the attorney complies with these rules;
- (E) unless the attorney is subject to disciplinary action by the California Supreme Court or the State Bar Court for failure to comply with the standards of professional conduct required of members

of the State Bar of California;

- (F) unless discipline is imposed by a professional or occupational licensing authority;
- (G) unless the State Bar determines that the attorney has filed a certificate containing false information;
- (H) unless the attorney requests termination.

Rule 3. _____ Public information

State Bar records for attorneys permitted to practice law as Out-of-State Attorney are public to the same extent as member records.

ADDENDUM 2:
IDAHO STATE BAR RESOLUTION
(Adopted by the Idaho State Bar October 14, 2011)

**ADDENDUM 3:
OHIO WOMEN'S BAR ASSOCIATION REPORT AND
RECOMMENDATION**

ADDENDUM 4:
ARIZONA PETITION TO ADD RULE 38(J)
REGARDING ADMISSION TO THE STATE BAR

ADDENDUM 5:
ABA COMMISSION ON WOMEN IN THE PROFESSION
RESOLUTION 108

(Submitted to ABA House of Delegates for vote on February 6, 2012)

**ADDENDUM 6:
MILITARY SPOUSE JD NETWORK INFORMATION**