

REPORT TO CONFERENCE OF CHIEF JUSTICES

Summary

The proposed Resolution demonstrates the Conference of Chief Justices' support for military families. The proposed Resolution urges bar admission authorities to participate in the development and implementation of rules permitting admission without examination for qualified attorneys who are dependents of servicemembers of the United States Uniformed Services. Recognizing that frequent transfers are required of military families, admission without examination permits military spouses to continue to contribute to our profession and to support their families. Reducing licensing barriers will improve the well-being of military families, upon whose service our country's defenses depend.

In February 2012, the American Bar Association ("ABA") passed a resolution urging states 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.¹ The First Lady encouraged more states and professional associations to follow the ABA's lead.² At the same time, the Department of Defense ("DoD") issued a report highlighting the impact of state licensing requirements on the careers of military spouses and on military readiness.³ The Idaho Supreme Court recently approved Bar Commission Rule 229, the first rule providing for admission of military spouse attorneys in the state due to military orders.⁴ Other states are considering similar rules.

Adopting the proposed Resolution demonstrates the legal profession's support of military families while maintaining the high professional standards expected of the legal profession. Military spouse attorneys admitted without examination will be subject to the same rules and regulations, including the rules of professional conduct, applicable to all other attorneys to ensure client protection. Accommodating the unique needs of military spouse attorneys comes at little cost to states but makes a meaningful difference in the financial and personal well-being of military families. While the number of military

¹ AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, *Resolution 108* (Feb. 2012).

² *Michelle Obama Praises ABA on Professional Licensing for Military Spouses*, www.abanow.org/2012/02/michelle-obama-praises-aba-on-professional-licensing-for-military-spouses/ (last visited Jun. 26, 2012); First Lady Michelle Obama and Dr. Jill Biden, Remarks on Military Spouse Licensing (Feb. 15, 2012), *available at* www.whitehouse.gov/the-press-office/2012/02/15/remarks-first-lady-and-dr-biden-military-spouse-licensing; *see also* First Lady Michelle Obama and Dr. Jill Biden, Remarks Discussing Military Spouse Employment at National Governors Association Annual Meeting (Feb. 27, 2012), *available at* www.whitehouse.gov/photos-and-video/video/2012/02/27/first-lady-michelle-obama-and-dr-jill-biden-speak-military-spouse-#transcript.

³ U.S. DEP'T OF DEF. AND U.S. DEP'T OF THE TREASURY, SUPPORTING OUR MILITARY FAMILIES: BEST PRACTICES FOR STREAMLINING OCCUPATIONAL LICENSING ACROSS STATE LINES (2012) [hereinafter SUPPORTING OUR MILITARY FAMILIES], *available at* www.defense.gov/home/pdf/Occupational_Licensing_and_Military_Spouses_Report_vFINAL.PDF.

⁴ Press Release, Military Spouse JD Network, First State Approves Military Spouse Attorney Admission, *available at* www.militaryspousejdnetwork.org/#!news (last visited Jun. 26, 2012).

spouse attorneys may not be large,⁵ approval of the proposed Resolution would send a message of support to the entire military community.⁶

The legal profession has a long history of ensuring that legal procedures do not unduly prejudice servicemembers and their families.⁷ The Soldiers' and Sailors' Civil Relief Act of 1940⁸ was amended in 1942 to add a section specifically extending certain protections to military dependents, including spouses, "to avoid situations in which dependents suffered as a result of the servicemember's period of service."⁹ A number of amendments have increased the protections available to both servicemembers and their families.

The proposed Resolution recognizes military spouses as peers, rather than as clients. The ideals underlying the Servicemembers Civil Relief Act, and of other legislation supportive of servicemembers, are the same ideals compelling support for the proposed Resolution. After nearly a decade of armed conflict that has strained military families, the legal community can recognize the sacrifices of military families within its own ranks by eliminating the licensing restrictions burdening military spouses.

Unique Challenges Faced by Military Spouse Attorneys

The unemployment rate for military spouses is three times as high as their civilian counterparts.¹⁰ Military wives who are employed earn less, on average, than do civilian wives.¹¹ When controlled for differences, "the disparity between military and civilian wife unemployment becomes even clearer and the impact of the husband's military service is revealed as the major explanatory factor."¹² High rates of unemployment and

⁵ There is no database available to identify the exact number of military spouse attorneys.

⁶ Military spouse attorney licensing rules, which serve as role models for other professions, are important to the military community and are supported by the Military Officer Association of America (MOAA), the National Military Family Association, Blue Star Families, and the US Chamber of Commerce.

⁷ "During the Civil War, Congress enacted legislation suspending any statute of limitations where the war worked to thwart the administration of justice. In World War I, the Soldiers' and Sailors' Civil Relief Act of 1918 directed trial courts to take whatever action equity required when servicemembers' rights were involved in a controversy." ADMIN. & CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE 1-1 (2006) (citations omitted) [hereinafter JAG SSCRA Report], available at www.americanbar.org/content/dam/aba/migrated/legalservices/lamp/downloads/SCRAguide.authcheckdam.pdf.

⁸ 54 Stat. 1178 (1940).

⁹ JAG SSCRA Report, *supra* note 7, at 4-1.

¹⁰ U.S. DEP'T OF DEF., REPORT ON MILITARY SPOUSE EDUCATION AND EMPLOYMENT 2 (2008) [hereinafter MILITARY SPOUSE EDUCATION & EMPLOYMENT], available at images.military.com/spouse/Report_to_Congress_on_Military_Spouse_Education_and_Employment_Jan_2008.pdf.

¹¹ MARGARET HARRELL ET AL., RAND CORPORATION, WORKING AROUND THE MILITARY: CHALLENGES TO MILITARY SPOUSE EMPLOYMENT AND EDUCATION 48 (2004), available at www.rand.org/pubs/monographs/2004/RAND_MG196.pdf; NELSON LIM ET AL., RAND CORPORATION, "WORKING AROUND THE MILITARY" REVISITED: SPOUSE EMPLOYMENT IN THE 2000 CENSUS DATA, at xiii, xiv, available at www.rand.org/pubs/monographs/2007/RAND_MG566.pdf.

¹² HARRELL ET AL., *supra* note 11, at 40; see also HARRELL ET AL., *supra* note 11, at 61 ("[R]esidential mobility negatively affects the labor market conditions of military wives.").

underemployment of military spouses impact the entire family and are primarily the result of frequent transfers of military families.¹³

According to the DoD, “[m]ilitary spouses are ten times more likely to have moved across state lines in the last year compared to their civilian counterparts.”¹⁴ A typical military family moves every two to three years.¹⁵ Only 1 in 10 military wives remains in the same location for at least five years.¹⁶ Research indicates that “the feature of military life that most negatively affects military wives’ careers is being asked to move often and far.”¹⁷ For service members, failure to comply with transfer orders may be chargeable as a federal offense.¹⁸ Although families may decide not to move with the servicemember, the resulting separations only compound the hardship on families already subject to lengthy separations due to training and overseas deployments. According to a 2007 report by the RAND Corporation, “unlike civilian couples, who can make relocation decisions considering advantages and disadvantages for all family members, military couples must move according to the timing and placement of the service members’ new assignment.”¹⁹

Frequent geographic dislocations have a particularly negative effect on military spouse attorneys, for whom state licensing requirements create enormous barriers to the maintenance of a continuous professional career.²⁰ Bar exams are offered only twice per year and applications must be submitted months in advance. Military spouse attorneys may 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 may 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, receipt of a license, and the swearing-in process. The periods of unemployment required to take multiple bar exams cascade into difficulties meeting the practice requirements imposed by most states as a condition of admission on motion.

Anecdotal evidence of these difficulties abound. One example is Hon. Erin Masson Wirth, co-founder of the Military Spouse JD Network²¹ and a Coast Guard

¹³ HARRELL ET AL., *supra* note 11, at 40 (explaining that a husband’s military service is “the major explanatory factor” for the disparity between military and civilian wife unemployment).

¹⁴ SUPPORTING OUR MILITARY FAMILIES, *supra* note 3, at 3.

¹⁵ 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, 2010 Military Family Life Project (May, 2011), *available at* <http://conferences.cna.org/pdfs/longitudinalstudy.pdf>.

¹⁶ MILITARY SPOUSE EDUCATION & EMPLOYMENT, *supra* note 10, at 2.

¹⁷ HARRELL ET AL., *supra* note 11, at 18.

¹⁸ Uniform Code of Military Justice (UCMJ) art. 85, 10 U.S.C. § 885.

¹⁹ LIM ET AL., *supra* note 11, at 4.

²⁰ The White House 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 OUR MILITARY FAMILIES: MEETING AMERICA’S COMMITMENT 16 (2011), *available at* www.defense.gov/home/features/2011/0111_initiative/strengthening_our_military_january_2011.pdf.

²¹ See Military Spouse JD Network, <http://www.militaryspousejdnetwork.org> (last visited June 26, 2012).

spouse, who explained to the ABA that since she graduated from William and Mary Law School in 1995, 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 other jurisdictions.²² To the extent that her experience is atypical, it is because her husband has not been stationed in a war zone, overseas, or in any jurisdiction for less than a year.²³

Given the frequency of relocations, a military spouse attorney may spend thousands of dollars on the bar exam process and receive a license to practice and only have a year or two left in the state with which to use that license. Bar admission rules currently do not address the unique challenges facing military spouse attorneys.

Because of geographic insecurity and licensing restrictions, many military spouses do not pursue the legal profession. Attorney military spouses who are currently practicing law forego traditional careers in order to support the servicemember, or, alternatively, the servicemember leaves the military, causing the military to lose smart, extensively trained, highly skilled, and talented servicemembers.

Recently, Congress specifically recognized and ameliorated some of the hardships endured by military spouses based solely on their marital status and their spouses' profession through the Military Spouses Residency Relief Act.²⁴ The Military Spouses Residency Relief Act amends the Servicemembers Civil Relief Act to provide that a spouse shall neither lose nor acquire domicile or residence in a state when the spouse is present in the state solely to be with the servicemember in compliance with the servicemember's military orders. This change is part of the national initiative to reduce the burden on military families as they move from state to state.

The White House, through its Joining Forces initiative, is leading a coordinated and comprehensive federal approach to supporting military families outlined in the 2011 White House initiative, "Strengthening Our Military Families: Meeting America's Commitment," which states in relevant part:

The lack of broad-based reciprocity among the states to recognize professional licenses or certificates held by military spouses creates a significant barrier to employment. Additionally, frequent moves result in military spouses incurring high costs for recertification and increased delays before they are able to work due to state licensing requirements in

²² Hon. Erin Wirth, Address to American Bar Association House of Delegates (February 6, 2012), *available at* <http://www.abanow.org/2012/02/aba-passes-policy-supporting-military-spouses-in-legal-profession/>.

²³ See Laura Dempsey, *The Military vs. Marriages*, WASH. POST, Feb 19, 2008, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/18/AR2008021801538.html> ("I've been a lawyer and an Army wife for 10 years. In that period, I've moved seven times. I've taken four different bar exams and held five different jobs. My income has been taxed in at least five states. My children have had five different nannies. I think it's safe to say that military wives like me face career obstacles that few civilian wives could appreciate.").

²⁴ Pub. L. No. 111-97, 123 Stat. 3007.

fields such as teaching and medical services.²⁵

The White House recently highlighted the efforts of the Military Spouse JD Network to address licensing issues in the legal profession.²⁶

The ability to maintain or transfer a professional license when moving from state to state has a direct impact on the ability of the spouse to find employment. The DoD Military Community and Family Policy office has addressed the licensing issue through state legislation for those career fields that are governed by state regulatory agencies.²⁷ This includes nearly all medical professionals, real estate brokers, social workers, and other professions. However, the practice of law is not governed by a state regulatory agency, therefore the legislation that the DoD has advocated for does not include the practice of law. The proposed Resolution identifies specific ways the legal profession, itself, can eliminate professional licensing barriers for military spouse attorneys.

Conclusion

Through the adoption of this Resolution, the Conference of Chief Justices articulates its support of military families within the profession by welcoming those attorneys relocating as a result of military orders, while at the same time maintaining a high standard of professionalism and proficiency. Both the legal community and our Uniformed Services will benefit from allowing military spouses to practice in their chosen profession while supporting their servicemember's commitment to our country.

Respectfully submitted,

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²⁵ WHITE HOUSE, *supra* note 20, at (2011), available at www.defense.gov/home/features/2011/0111_initiative/strengthening_our_military_january_2011.pdf.

²⁶ Posting of Brad Cooper to White House Blog, Military Spouse Attorneys Answer the Joining Forces Challenge, <http://www.whitehouse.gov/blog/2012/06/14/military-spouse-attorneys-answer-joining-forces-challenge> (Jun. 14, 2012, 16:55 EDT).

²⁷ Lisa Daniel, *Military Spouses Get Help with Professional Licenses*, American Forces Press Service, June 13, 2011, available at www.defense.gov/news/newsarticle.aspx?id=64285.