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## REPORT AND RECOMMENDATION

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**TO:** OHIO SUPREME COURT  
**FROM:** OHIO WOMEN'S BAR ASSOCIATION  
**SUBJECT:** REPORT & RECOMMENDATION:  
PROVISIONAL BAR MEMBERSHIP FOR QUALIFIED MILITARY SPOUSES  
**DATE:** MAY 6, 2009

### I. ACKNOWLEDGEMENTS

Members of the Ohio Women's Bar Association (the "OWBA") would like to thank the Officers and Trustees for their support throughout this process. A special thank you is extended to Mary Reding, military spouse and member of the California State Bar, and Denise Platfoot Lacey, OWBA Trustee, for their initiative, research, and work on this recommendation.

### II. INTRODUCTION

The backbone of the United States military is the family that supports them while they are at home and away. The military spouse is highly motivated and educated with 97% possessing a high school diploma<sup>1</sup> and 87% interested in pursuing a higher degree.<sup>2</sup> Most military spouses are in the labor market, either employed or looking for employment.<sup>3</sup> However, the unemployment rate for military spouses is three times as high as their civilian counterparts.<sup>4</sup> There have been many studies on why this is the case, but one of the most evident causes is the fact that military families move on average every two to three years.<sup>5</sup> Only 10% stay on the same base for longer than five years.<sup>6</sup> This has a direct impact on military spouses obtaining and maintaining a career, specifically in the legal profession as a practicing attorney.

In order to practice law in the State of Ohio, one must meet the requirements of general admission, including a written bar exam. There are provisions of the code that allow for admission without examination.<sup>7</sup> Such admission requires, among other things, that the applicant must have practiced in another jurisdiction 5 of the last 10 years. The lifestyle of the military spouse and the fact that the military family moves every 2-3 years, does not allow for one to be in one state long enough to satisfy this requirement.

To support the military families, the OWBA is suggesting a provisional bar membership to those military spouses who are in the State of Ohio due to military orders, are members in good standing in another jurisdiction, attended an ABA accredited law school, have an Ohio Bar Member as a supervising attorney, agree that provisional bar membership expires when the military orders in the

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<sup>1</sup> [http://www.rand.org/pubs/monographs/2004/RAND\\_MG196.pdf](http://www.rand.org/pubs/monographs/2004/RAND_MG196.pdf)

<sup>2</sup> <http://www.defenselink.mil/news/newsarticle.aspx?id=49883>

<sup>3</sup> <http://images.military.com/spouse/Report to Congress on Military Spouse Education and Employment Jan 2008.pdf>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. And quoting move every 2 years <http://www.gao.gov/new.items/d02935.pdf>

<sup>6</sup> Ibid.

<sup>7</sup> Gov Bar R. I, Section 9

State of Ohio are completed, and comply with all CLE and New Lawyers Training in accordance with Gov. Bar R. X Section 3(H).

Ohio currently allows other exceptions to the previous practice requirement for the admission without examination rule. Currently there are four exceptions that have reduced or no previous practice requirements: Temporary Certification for Practice in Legal Services, Public Defender, and Law School Programs<sup>8</sup>; Attorneys not Admitted in Ohio and who are employed by a nongovernmental Ohio employer<sup>9</sup>; and the limited practice of law by Interns<sup>10</sup> and Foreign Legal Consultants<sup>11</sup>.

### **III. RECOMMENDATION TO PROVIDE PROVISIONAL MEMBERSHIP TO MILITARY SPOUSE**

The OWBA recommends that the Rules governing the practice of law in the State of Ohio should include a provision providing provisional membership to qualified military spouses. Attached in Exhibit A, please find sample language for the provisional bar membership for military spouses. The sample language seeks to:

- Establish basic criteria for admission including a statement of good standing in all jurisdictions in which the military spouse is admitted, copy of Military Orders, and acknowledgement of Ohio's attorney disciplinary rules.
- Permit the administrative revocation of privileges to practice in Ohio if the attorney does not comply with certain provisions of the rule.
- Require the military spouse to be supervised by an attorney in good standing in the state of Ohio.
- Require the military spouse to comply with all New Lawyer Training requirements and CLE requirements.

### **IV. CONCLUSION: SUPPORTING THE MILITARY FAMILY**

Unlike the civilian world, the United States Military is not an optional assignment based system. You must move when and where you are told. Due to the fact that the military family moves frequently, the only way that a military spouse can maintain a legal career is by either remaining behind and living separate from the family or taking the bar exam every 2-3 years in a new state and then maintaining the registration requirements for each state in which they are qualified. Neither option is appealing and the later is nearly impossible. Because of this, hundreds of thousands of military dependents are not encouraged to pursue the legal profession due to lack of financial incentives, educational opportunities, and role models. Further, thousands of attorneys who are currently practicing must give up a traditional career in the legal profession in order to support their military spouse.

The State of Ohio could be the first to support the military family in a way that no other state has done: by welcoming those attorneys who are married to the military and dedicated to supporting our freedom while maintaining a high level of professionalism, standards, and proficiency. By providing a provisional bar membership for military spouses, the legal profession in Ohio will be encouraging a

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<sup>8</sup> Gov Bar R. IX

<sup>9</sup> Gov Bar R. VI, Section 3

<sup>10</sup> Gov Bar R. II

<sup>11</sup> Gov Bar R. XI

talented pool of independent, intelligent, and resourceful women and men to begin or continue their legal career.

EXHIBIT A

SUGGESTED LANGUAGE FOR PROVISIONAL MEMBERSHIP

**Section 1. Eligibility.**

A person not admitted to the practice of law in Ohio may become certified to practice law and provide legal services if that person satisfies all of the following:

- (A) The person is residing in the state of Ohio due to a spouse's United States Military Orders;
- (B) The person has earned a degree from a law school that is accredited by the American Bar Association;
- (C) The person has taken and passed a bar examination, and has been admitted and is in good standing as an attorney at law in the highest court of another state, the District of Columbia, or a territory of the United States;
- (D) The person has not taken and failed the Ohio bar examination;
- (E) The person has not had an application for admission in Ohio denied on character and fitness grounds pursuant to Gov. Bar R. I; and
- (F) The person is employed by a supervising attorney that is a member in good standing with the Ohio Bar Association.

**Section 2. Application.**

An applicant for certification under this rule shall file with the Office of Bar Admissions of the Supreme Court an Application for Temporary Certification. The application shall be on forms furnished by the Office of Bar Admissions and shall include all of the following:

- (A) A copy of the United States Military Orders of the spouse of the applicant, establishing that they are in the State of Ohio due to military orders;
- (B) A certificate from the applicant's law school certifying that the applicant has received a law degree;
- (C) A certificate of admission as an attorney at law from another state, the District of Columbia, or a territory of the United States;
- (D) A certificate of good standing from each jurisdiction in which the applicant is admitted to practice law;
- (E) An affidavit that the applicant has read, is familiar with, and agrees to be bound by the Ohio Rules of Professional Conduct and to submit to the jurisdiction of the Supreme Court for disciplinary purposes pursuant to Gov. Bar R. V;
- (F) An affidavit from the supervising attorney certifying all of the following:

- (1) That the applicant is employed by the supervising attorney;
  - (2) That the supervising attorney has no knowledge of information that would cause him or her to doubt the applicant's character, fitness, or moral qualifications to practice law or the applicant's ability to discharge the duties of an attorney at law;
  - (3) That the supervising attorney will notify the Office of Bar Admissions in writing immediately upon termination of the applicant's employment or association with the supervising attorney;
- (G) A questionnaire, in duplicate, for use by the National Conference of Bar Examiners and the Board of Commissioners on Character and Fitness in conducting a character investigation of the applicant;
- (H) A fee in the amount charged by the National Conference of Bar Examiners for its report;
- (I) A fee of three hundred dollars. Fees paid under this rule may be applied toward the fees for admission under Gov. Bar R. I.

**Section 3. Certification.**

Upon filing of a completed application that demonstrates the applicant's eligibility under this rule, the Office of Bar Admissions shall issue a temporary certificate to the applicant. The certificate shall be subject to the limitations imposed by Sections 4 and 5 of this rule and shall authorize the practice of law in Ohio only to the extent that practice is engaged in by the applicant as an employee or associate of the supervising attorney.

**Section 4. Review by the Board of Commissioners on Character and Fitness.**

The Office of Bar Admissions shall forward the applicant's questionnaire to the National Conference of Bar Examiners. Upon receipt of a report from the National Conference of Bar Examiners, the Office of Bar Admissions shall submit the report and the application to the Board of Commissioners on Character and Fitness, which shall review the report and the application. The Board may request additional information or materials from the applicant and may conduct a personal interview to determine the applicant's character, fitness, and moral qualifications to practice law. The Board shall recommend that the applicant's temporary certificate either be approved or revoked. If the Board recommends revocation of the certificate, it shall file a report of its recommendation and the basis for its recommendation with the Office of Bar Admissions, who immediately shall revoke the certificate and send a copy of the report and recommendation to the applicant. An applicant whose certificate is revoked shall be entitled to review by the Supreme Court pursuant to Gov. Bar R. I, Section 11(F).

**Section 5. Duration and Renewal of the Certificate.**

(A) A certificate issued pursuant to this rule shall expire when the United States Military Orders are terminated unless, prior to the date of termination, one of the following events occurs, in which case the certificate shall expire on the date the event occurs:

- (1) The applicant is admitted to the bar of Ohio;
- (2) The applicant is denied admission to the practice of law under Gov. Bar R. I;
- (3) The applicant receives a failing score on the Ohio bar examination;

(4) The applicant's employment or association with the supervising attorney is terminated and, within thirty days of the date of the notice provided for in Section 2(E)(3) of this rule, the supervising attorney fails to notify the Office of Bar Admissions that the applicant has become employed by or associated with another law firm or attorney in this state;

(5) If the applicant has completed five (5) calendar years of practice with a supervising attorney in accordance with this rule, they must apply for admission without examination under Gov.Bar R. I, Section (9).

(B) A certificate issued pursuant to this rule may be renewed once for a period of one year from the date on which the certificate would have expired. An applicant may obtain renewal by filing an application for renewal and both of the following with the Office of Bar Admissions:

(1) An affidavit from supervising attorney where the applicant is employed or associated certifying the applicant's continued employment or association;

(2) An affidavit from the applicant stating that the applicant has not engaged in the practice of law in Ohio outside the scope of employment or association with the supervising attorney.

(C) An applicant who is granted temporary certification under this rule is subject to all provisions of the Ohio Rules of Professional Conduct, the requirements of the New Lawyer Training under Gov.Bar R. X and CLE, and submits to the jurisdiction of the Supreme Court for disciplinary purposes under Gov. Bar R. V. The Supreme Court, on its own initiative and at any time, may revoke a temporary certificate for disciplinary or other reasons.

(D) Role of Supervising Attorney:

(1) "Supervising attorney" means an attorney who satisfies all of the following:

(a) Has been admitted to practice law in Ohio pursuant to Gov. Bar R. I or has been temporarily certified to practice law in Ohio pursuant to Gov. Bar R. IX;

(b) Is in good standing with the Supreme Court.

(2) A supervising attorney shall assume professional responsibility for each case, client, or matter assigned to the applicant. The supervising attorney shall read and cosign all correspondence, legal documents, pleadings, and other papers prepared, in whole or in part, by the applicant. In any matter before a court or administrative board or agency in which an applicant participates, the supervising attorney shall ensure that the judge, referee, magistrate, or hearing officer is informed of the applicant's status as a provisional bar member and shall be present with the applicant in court or before the administrative board or agency.

(3) The supervising attorney shall provide the applicant with the opportunity to engage in and observe the practice of law, shall discuss and counsel the applicant regarding matters of professional responsibility that arise, and shall train and supervise the applicant on matters assigned to the applicant to the extent necessary to properly protect the interests of the client and to properly advance and promote the applicant's training.

(4) The supervising attorney shall cooperate with the Supreme Court of Ohio on any reporting or evaluation requirements.