



Nancy Sylvester <nancyjs@utcourts.gov>

Military Lawyers & Military-Spouse Lawyers

Paul C. Burke <pburke@rqn.com>

Thu, Aug 24, 2017 at 5:45 PM

To: James Ishida <jamesi@utcourts.gov>, "Steven G. Johnson" <Stevejohnson5336@comcast.net>, Nancy Sylvester <nancyjs@utcourts.gov>, Elizabeth Wright <Elizabeth.Wright@utahbar.org>, Nicole Gray <nicoleg@utcourts.gov>

Thank you for the opportunity to contribute this process. I have continued to work with both the Judge Advocate General's Office (JAG) at Hill Air Force Base and [Deiss Law's Karl Gerner](#), who is the Utah State Director of the [Military Spouse J.D. Network](#), to further develop a Utah admissions rule for military-spouse lawyers. In addition, at the request of the military, we have also drafted an updated version of the existing rule for military lawyers.

Please find attached our most recent proposal for Rules 14-804 and 14-805. The updated version of Rule 14-804 for military lawyers is modeled on an analogous [Virginia rule](#), which is considered by the military as the new gold standard. Meanwhile, Rule 14-805 is currently reserved so we propose to assign it for a military-spouse admissions rule that has been designed to mirror the rule for military lawyers.

As you might expect, the military is supportive of these proposals as they will support both the military and military families. I have been authorized by the JAG Office at Hill Air Force Base to convey its endorsement of the attached proposal.

I am planning attend the Committee meeting this coming Monday, and I respectfully ask that the attached proposal be circulated in advance to the Committee. Thank you again for your consideration of these proposed rules. Please let me know if you have any questions, comments, or concerns about this proposal.

Paul C. Burke

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From: James Ishida [mailto:jamesi@utcourts.gov]
Sent: Wednesday, August 16, 2017 5:25 PM
To: Steven G. Johnson; Nancy Sylvester; Elizabeth Wright
Cc: Paul C. Burke; Nicole Gray; Docket
Subject: Proposal re Admission Rules for Military Spouse Lawyers

Dear Steve and Elizabeth,

This morning, during court conference, the Supreme Court considered the attached letter addressed to Justice Durham, supporting rule amendments that would permit military spouse attorneys to practice law in Utah under limited circumstances. The Court was favorably disposed, and asked that the proposal be referred to the Bar and its committee on professional responsibility for your consideration and recommendations.

The justices were also aware that Paul Burke has done a substantial amount of work in the area, and they hoped you would see Paul as a resource.

Pls let me know if you have any questions. I'll be on vacation from Aug 17-29, but I'll be monitoring email.

Many thanks,

James

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James N. Ishida

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Proposed Rule 14-804 & 14-805.pdf

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UTAH BAR ADMISSION RULES FOR MILITARY LAWYERS AND MILITARY-SPOUSE LAWYERS

Rule 14-804. Certification Rule for Military Lawyers.

(a) Eligibility. A lawyer admitted to the practice of law in a territory, district, or state of the United States other than Utah, who is serving in or employed by the armed services and is authorized to provide legal assistance by federal statute or military regulation, may obtain a certificate as a Registered Military Legal Assistance Attorney to represent authorized clients before courts and agencies in Utah.

(b) Application requirements. An applicant must be of good moral character and shall apply to the Bar by:

- (1) filing an application in the form and manner prescribed by the Board;
- (2) presenting proof the applicant holds a First Professional Degree in law from an Approved Law School;
- (3) presenting proof of admission to the practice of law and current good standing as a member of the licensing bar in any state, district, or territory of the United States, and certification that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (4) furnishing whatever additional information or proof is required in the course of processing the application;
- (5) certifying the applicant has not failed the Utah Bar Examination or been previously denied admission to the Bar;
- (6) submitting an affidavit from the applicant's commanding officer, staff judge advocate or chief legal officer of the military base in Utah attesting that the applicant will serve as a lawyer exclusively to provide legal services as authorized by the military, and that the applicant's commanding officer, staff judge advocate or chief legal officer will notify the Utah State Bar immediately upon the termination of the applicant's military employment or service in Utah; and
- (7) paying a \$10 processing fee.

(c) Processing of application. Upon receipt of a completed application, the Board must immediately process the application and may conduct investigations or hearings to ensure the applicant's compliance with the requirements of this rule. Upon a showing that strict compliance with any provision of this rule would cause the military or the applicant undue hardship, the Board may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof. The Board must promptly act upon any application filed under this rule.

(d) Certificate. Upon determination by the Board that an applicant has satisfied the requirements of this rule, the applicant will be immediately issued a Registered Military Legal Assistance Attorney Certificate.

(e) Requirements. A lawyer practicing under this rule must not hold out to the public or to any person that the lawyer is entitled to practice generally in Utah or to provide legal services except as authorized through military service. The address of record for a military legal assistance lawyer is the military address in Utah of the commanding officer, staff judge advocate or chief legal officer who filed the affidavit on the lawyer's behalf.

(f) Scope of authorized representation. A Registered Military Legal Assistance Attorney Certificate authorizes a lawyer to appear before a court or agency in Utah as counsel for authorized clients in matters involving the following subject matter:

- (1) Enforcement of rights under the Servicemembers Civil Relief Act, the Uniformed Services Employment and Reemployment Rights Act, or any other law respecting the military or military servicemembers or their dependents;
- (2) Probate and family law, including adoption, guardianship, name or gender changes, divorce, paternity, child custody and visitation, and child and spousal support;
- (3) Consumer advocacy, landlord-tenant disputes, and defense from garnishments; and
- (4) Any other matter upon the authorization of the military legal assistance lawyer's commanding officer, staff judge advocate or chief legal officer and upon the consent of the applicable court or agency.

(g) Jurisdiction and authority. The practice of a lawyer under this rule shall be subject to the Utah Rules of Professional Conduct and Article 5, Lawyer Discipline and Disability, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the lawyer retains the Military Legal Assistance Attorney Certificate and irrespective of the residence or domicile of the lawyer. A lawyer practicing under this rule will also be subject to the laws, rules, and regulations governing the military services.

(h) Mandatory disclosures. A lawyer practicing under this rule must report to the Bar within 90 days:

- (1) any change in bar membership status in any state, district, or territory where the attorney has been admitted to the practice of law;
- (2) the imposition of any permanent or temporary professional disciplinary sanction by any territory, district, state or by any territorial, district, state, or federal court or agency; or
- (3) the lawyer's commanding officer, staff judge advocate or chief legal officer of the military base in Utah must advise the Bar and the Supreme Court of any change in status of the lawyer that may affect the lawyer's privilege to practice under this rule.

(i) Termination of certification. A lawyer's certification under this rule may be terminated upon completion of a disciplinary proceeding in Utah; or shall terminate upon any of the following events:

- (1) the lawyer dies, separates, or retires from the United States Uniformed Services;
- (2) the lawyer is no longer employed, stationed, or assigned at the military base in Utah from which the affidavit required by this rule was filed,
- (3) the lawyer fails to remain in good standing as a member of a licensing bar of at least one other state, district, or territory of the United States;
- (4) the lawyer resigns, requests termination, or otherwise disclaims certification as a military legal assistance lawyer;
- (5) the lawyer is admitted to the Bar under any other rule.

(j) Reinstatement of Certificate. If a lawyer is re-employed or reassigned to the same military base or to another military base in Utah within six months after the termination of certification under this rule, the lawyer may submit an updated affidavit as required by this rule and the lawyer's Registered Military Legal Assistance Attorney Certificate will be reinstated upon evidence satisfactory to the Board that the lawyer remains in full compliance with all requirements of this rule.

(k) Service Time. The period of time a lawyer practices using a Registered Military Legal Assistance Attorney Certificate counts under all rules measuring a lawyer's time practicing law, including Rules 14-203 and 14-705.

Rule 14-806. Admission Rule for Military-Spouse Lawyers.

(a) Eligibility. A lawyer admitted to the practice of law in a territory, district, or state of the United States other than Utah, whose spouse is a servicemember of the United States Uniformed Services on active duty, as defined by the United States Department of Defense, may obtain a license to practice law under the terms of this rule, provided that the servicemember-spouse has received orders to serve in Utah or is domiciled or stationed in Utah.

(b) Application requirements. An applicant must be of good moral character and shall apply to the Bar by:

- (1) filing an application in the form and manner prescribed by the Board indicating whether the applicant seeks (A) admission to the Bar, or (B) admission to the Bar as House Counsel;
- (2) presenting proof the applicant holds a First Professional Degree in law from an Approved Law School;
- (3) presenting proof of admission to the practice of law and current good standing as a member of the licensing bar in any state, district, or territory of the United States, and certification that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (4) furnishing whatever additional information or proof required in the course of processing the application;
- (5) certifying the applicant has not failed the Utah Bar Examination or been previously denied admission to the Bar; and
- (6) paying a \$10 processing fee.

(c) Processing of application. Upon receipt of a completed application, the Board must immediately process the application and may conduct investigations or hearings to ensure the applicant's compliance with the requirements of this rule. Upon a showing that strict compliance with any provision of this rule would cause the military or the applicant undue hardship, the Board may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof. The Board must promptly act upon any application filed under this rule.

(d) License. Upon determination that an applicant has satisfied the requirements of this rule, the Board will immediately submit motions to the Supreme Court and the United States District Court of Utah for admission certifying that the applicant has satisfied all qualifications and requirements under this rule for admission to the Bar. After the motion is granted by the Supreme Court and the United States District Court for the District of Utah, the applicant will be eligible to take the required oath and thereafter be enrolled into the Bar and Utah's state and federal courts.

(e) Requirements and scope of authorized representation. A military-spouse lawyer licensed under this rule is entitled to all privileges, rights, and benefits and is subject to all duties, obligations, and responsibilities of active members of the Bar, including all ethical, legal, and continuing legal education obligations. A military-spouse lawyer admitted to the Bar other than as House Counsel must also enroll in the Bar's approved professional liability insurance program or obtain equivalent insurance coverage, and must not retain new clients or enter an appearance in any new matter after any of the events listed in subsection (h).

(f) Jurisdiction and authority. The practice of a lawyer under this rule shall be subject to the Utah Rules of Professional Conduct and Article 5, Lawyer Discipline and Disability, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the military-spouse lawyer retains the privilege to practice in Utah and irrespective of the residence or domicile of the military-spouse lawyer.

(g) Mandatory disclosures. A lawyer practicing under this rule must report to the Bar within 90 days:

- (1) any change in bar membership status in any state, district, or territory where the attorney has been admitted to the practice of law;
- (2) the imposition of any permanent or temporary professional disciplinary sanction by any territory, district, state or by any territorial, district, state, or federal court or agency; or
- (3) the occurrence of any event listed in subsection (h) of this rule.

(h) Termination of practice and licensure. A military-spouse lawyer's licensure under this rule may be terminated upon completion of a disciplinary proceeding in Utah; or shall terminate six months after any of the following events, unless the military-spouse lawyer has a pending application for admission to the Bar:

- (1) the servicemember-spouse dies, separates or retires from the United States Uniformed Services; or is permanently transferred outside the State of Utah on military orders with dependents authorized;
- (2) the military-spouse lawyer ceases to be a dependent as defined by the United States Department of Defense;
- (3) the military-spouse lawyer permanently relocates to another state, district, or territory of the United States for reason other than the servicemember-spouse's permanent change of station outside the State of Utah;
- (4) the military-spouse lawyer fails to remain in good standing as a member of a licensing bar of a state, district, or territory of the United States;
- (5) the military-spouse lawyer resigns, requests termination, or fails to meet annual licensing requirements of the Bar; or
- (6) the military-spouse lawyer is admitted to the Bar under any other rule.

(i) Reinstatement of License. If within six months after the termination of licensure under this rule, a military-spouse lawyer returns to Utah because the lawyer's servicemember-spouse is once again stationed in Utah, the military-spouse lawyer will be reinstated upon submission of evidence satisfactory to the Board that the lawyer remains in full compliance with all requirements of this rule.

(j) Service Time. The period of time a military-spouse lawyer practices under this rule counts under all rules measuring a lawyer's time practicing law or as a member of the Bar, including Rules 14-203 and 14-705.