

Agenda

Supreme Court's Advisory Committee on the Rules of Professional Conduct

December 4, 2017
5:00 to 7:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City
Judicial Council Room, Suite N31

Welcome and approval of minutes	Tab 1	Steve Johnson, Chair
ADA lawsuits and abusive practices	Tab 2	Austin Riter (subcommittee chair), Judge James Gardner, Gary Sackett
Military attorney admissions Rules 14-804, 14-805, 14-806	Tab 3 and handout	Phil Lowry (subcommittee chair), Paul Burke, and Tim Conde Admissions: Joni Sekko, Steve Waterman, Dan Jensen
Rule 8.4(g) discussion	Tab 4 and Handout	Simón Cantarero (subcommittee chair), Billy Walker, Vanessa Ramos, Joni Jones, and Trent Nelson
Next meeting		Steve Johnson

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

Tab 1

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

October 30, 2017

DRAFT

The meeting commenced at 5:03 p.m.

Committee Members Attending:

Steven G. Johnson, Chair
Thomas B. Bruner
J. Simon Cantarero
Judge James Gardner
Joni Jones
Phillip E. Lowry
Judge Darold J. McDade - attending by phone
Judge Trent D. Nelson –attending by phone
Vanessa M. Ramos
Austin Riter
Cristie Roach – attending by phone
Gary G. Sackett- attending by phone
Billy Walker
Donald Winder
Katherine Venti (recording secretary)

Guests: Joni Sekko, Steve Waterman, Dan Jensen, Paul Burke

Members Excused:

Padma Veeru-Colling,
Tim Conde
Timothy Merrill

Staff:

Nancy Sylvester

Welcome, Introductions, and Approval of Minutes:

Chairman Johnson welcomed the committee to the meeting and asked that members introduce themselves to new committee member Judge James Gardner. He then recommended that the September 25, 2017 minutes be amended to reflect that John Bogart appeared as a guest rather than a member. Billy Walker moved to approve the minutes with that amendment and Tom Bruner seconded it. The motion carried.

Welcome to new Member Judge James Gardner and introduction to all Members.

Rule 14-804 Certification rule for military lawyers and Rule 14-806 Admission rule for military spouse lawyers:

Rule 14-804

Phil Lowry reported on meeting with members of the Admissions Committee and his subcommittee. With regard to Rule 14-804 Certification Rule for Military Lawyers, essentially this sub-committee and the Admissions Committee had very little disagreement over this rule.

Rule 14-806

Mr. Lowry reported that the subcommittee and the Admissions Committee failed to reach an agreement on Rule 14-806 for Military Spouses. The primary disagreements include the Admissions Committee's request to include minimum score on multistate bar exam and an oversight or supervisory relationship with another Utah barred lawyer in the rule. The Subcommittee disagreed with adding these provisions.

Paul Burke added that what the Subcommittee is recommending would be more protective to the public in that the State Bar has power to oversee military lawyers. With regard to military spouse lawyers, the public would be served in that military spouse lawyers could potentially take on cases for underserved constituencies. The military spouse rule would also require professional liability insurance.

The subcommittee said it presumes that all lawyers licensed in another state are competent. The number of military spouse lawyers affected by this rule would be around 1 to 2 per year.

Joni Sekko of the Admissions Committee reported that many states have more restrictive statutes for admission of spouses than the one proposed by the Subcommittee. The Admissions Committee also incorporated the Utah CLE requirements for lawyers admitted by waiver.

Mr. Burke reported that the subcommittee's rule has been adopted from the Model Rule, which is nationally endorsed. He said subsection (e) contains the CLE requirements that the Admissions Committee recommends. The subcommittee would not object to including the additional Utah CLE requirements for lawyers admitted by waiver. This is found in subsection (b) of the Admissions Committee's proposed Rule 14-806.

Ms. Sekko explained that the rationale of the Admissions Committee is that the military spouse lawyer's application will be quickly reviewed, but the Military Spouse Lawyer would need to associate with an attorney for quicker access to e-filing. And, on the other hand, if they have to depart early, an affiliation with a Utah attorney would ensure that the Utah public would continue to be served and protected. The Admissions Committee did not understand why a military spouse lawyer would not be held to the same standards as other out-of-state lawyers

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similarly situated. Although a number of states have adopted a military spouse rule, very few individuals have taken advantage of it, so data is not readily available.

Mr. Burke said that the national association's (Military Spouse J.D. Network) concern is that any additional impediment would be difficult for a military spouse attorney because of the nature of military orders. Mr. Burke explained that another important distinction is the subcommittee's rule requires a rolling admission requirement, rather than the temporary admission status pending "full" admission proposed by the Admissions Committee.

Mr. Lowry explained that usually there is notice of transfer orders in the military, typically 6 months.

Regarding the minimum score on the multistate bar exam, Dan Jensen explained that the Admissions Committee believes that because military spouse lawyers are working for a fee, they should be treated like other lawyers seeking admission. The Admissions Committee would prefer to seek competence up front like they expect of other lawyers coming here and apply the rules uniformly. The Admissions Committee is reluctant to change standards for one category of lawyers. Steve Waterman added to those comments.

Steve Johnson inquired as to whether the full committee had had enough time to review the subcommittee's proposal and the Admission Committee's proposal. The general response was that this Committee needs additional time to review both proposals. Mr. Jensen reported that the Admissions Committee has a memo regarding the differences in the proposals. Ms. Sekko will submit the memo to Ms. Sylvester for circulation.

Gary Sackett inquired regarding the cost of malpractice insurance and whether that will be a further impediment.

Mr. Johnson recommended that respective memoranda regarding both sets of proposed rules be circulated from both the Admissions Committee and the Subcommittee for discussion at the next committee meeting.

Mr. Burke, Ms. Sekko, Mr. Jensen, and Mr. Waterman were excused from the meeting at 6:00 p.m.

Rule 8.4(g):

The chair of the Rule 8.4(g) subcommittee, Simón Cantarero, explained to the new members the proposed rule's background, the submission of the Committee's recommendation for 8.4(g) to the Supreme Court, the Supreme Court's circulation of the ABA Model Rule, the public comments regarding 8.4(g), and the current status of the decision before this Committee.

Mr. Johnson reported on his September 6, 2017 meeting with the Supreme Court. The Supreme Court is seeking a recommendation from this Committee regarding action on the Rule. Options include: (1) do not amend and see how this rule plays out in other states; (2) use the ABA Model

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Rule; (3) resubmit what was previously submitted; and (4) submit another revised rule 8.4(g), which could include simply bringing comment 3 up into the rule.

Donald Winder submitted an ABA Journal article regarding the constitutional conflict on the rule. Mr. Winder recommended waiting.

Mr. Cantarero reported on other states' promulgation of similar rules and the reaction to the rule circulated for comment. Mr. Cantarero suggested that a rule change is still needed to address the harassment situations. He said nearly all of the subcommittee had personally dealt with it in some form or another and felt the need for a change.

Joni Jones highlighted the studies and data provided by the subcommittee in their January 2017 submission supporting the need for the rule. Mr. Walker explained the benefits of recommending the Model Rule again. Mr. Winder discussed a possible "aspirational" rule. Further discussion among the committee members ensued.

Chairman Johnson highlighted current Rule 8.4(g), Comment 2. Mr. Walker pointed out that Comment 2 is directed at 8.4(b), which says it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects..." Comment 2 states,

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

The committee discussed the interplay between the language of paragraph (b), Comment 2, and Model Rule 8.4(g).

Ultimately, Judge Trent Nelson suggested that given the Model Rule's broad reach over all aspects of practice, the committee should instead focus on a more limited area, such as the employment context. He said that may resolve some of the concerns many commenters have.

The subcommittee said it would explore amending its proposal to address only the employment context.

ADA Litigation Complaints:

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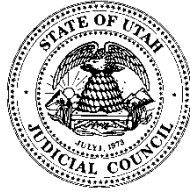
Nancy Sylvester and Chairman Johnson raised a new issue regarding numerous cases being filed against small businesses alleging ADA violations. The Legislature is apparently concerned about the cost of such litigation on small businesses and the alleged abusive practices by attorneys being reported. The Legislature requested that the Committee review the rules to see if there is a way to tie in sanctions against attorneys for abusive practices relating to ADA lawsuits. Ms. Jones offered materials regarding this issue and practice. Austin Riter, Mr. Sackett, and Judge Gardner volunteered to join the subcommittee. Chairman Johnson appointed Mr. Riter to the subcommittee chairmanship. The subcommittee will report back at next meeting.

Next Meeting:

The next meeting is scheduled for Monday, December 4, 2017 at 5:00.

Adjournment: 6:45 p.m.

Tab 2



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Advisory Committee on the Utah Rules of Professional Conduct
From: Nancy Sylvester *Nancy J. Sylvester*
Date: November 29, 2017
Re: ADA lawsuits and abusive practices

Austin Riter, on behalf of the ADA Subcommittee, provided the following response to the committee's charge of studying whether the Rules of Professional Conduct should be amended to address abusive practices by attorneys filing ADA lawsuits against businesses:

The ADA Subcommittee decided against proposing any specific language to address the ADA strike-suit issue for now. After discussing, our view is that Rule 11 of the Federal and Utah Rules of Civil Procedure and Rule 3.1 of the Utah Rules of Professional Conduct already cover the issue, and that any attempt to amend the text of the ethics rules to address the issue would raise federalism concerns and a host of practical problems regarding where to draw the line in defining abuse of legal procedure through a strike suit. If the Committee as a whole disagrees and thinks we should attempt to do something, at most we'd suggest considering amending the Comment to Rule 3.1. The Comment already states that an advocate has "a duty not to abuse legal procedure" and a duty to refrain from filing a "frivolous action," which together cover the issue. But we could consider amending the Comment to address the issue of strike suits in general (rather than in the ADA context alone) as an example of abusing legal procedure. If that is the Committee's inclination, we'll draft up a proposed amendment to the Comment for consideration at our next meeting. But I think the issue is not lack of an available remedy in the rules but lack of enforcement of that remedy. And I don't know that amending the Comment would do much to ameliorate that. It also would entail the risk of a more specific example of abuse of legal procedure potentially limiting interpretation of the scope of what other conduct constitutes such abuse.

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

Rule 3.1. Meritorious Claims and Contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Tab 3

Prepared by Admissions Committee

**DIFFERENCES BETWEEN ADMISSIONS COMMITTEE AND RPC
SUBCOMMITTEE VERSIONS OF PROPOSED MILITARY RULES**

This summary compares the proposed military rules drafted by the Subcommittee of the Utah Rules of Professional Conduct Committee (RPC) with the versions prepared by the Admissions Committee (AC).

Some of the formatting differences in the AC's version are made to simplify and clarify the provision or meant to ensure that the wording in the military lawyer rules is consistent with the language that has been adopted in other Bar rules. Using uniform, standardized phrasing for similar requirements eliminates interpretation disputes and makes administration of the rules more streamlined for Bar staff. It also ensures that all applicants are treated fairly. The substantive differences in the AC's version of the rules primarily relate to incorporating competency requirements for the protection of the public, but they also ensure that various categories of applicants receive equal treatment from the Bar and ease administration. While the AC favors adopting reasonable measures to expedite bar admission for attorneys associated with the military, it believes safeguards should also be included.

Rule 14-804 (Military Lawyer Rule)

A current, although dated, military lawyer rule exists as Rule 14-804, Special admission exception for military lawyers. The AC admits that the rule needs to be updated. There are few substantive differences between the AC and RPC versions of the proposed rule. The AC version closely mirrors the style of the current rule and incorporates the Supreme Court's formatting requirements. The rationale and primary differences between the AC and RPC versions are outlined below.

Purpose:

- Rule 14-804 allows full-time military lawyers to assist military service members and their dependents who may be unable to afford legal representation. This rule implements a federal statute: 10 U.S.C. § 1044.

Clarity:

- The type of legal work Military Lawyers are permitted to perform is not controlled by Utah law, but by federal statute and military regulation. The RPC version lists specific authorized legal services in subsection (f), but this provision could be interpreted to restrict the work that Military Lawyers can perform. Given that federal law is preeminent, the AC believes it is important that the scope of permissible legal representation be accurately described and does so using the more general wording found in subsection (e). Furthermore, the list of permitted legal services could change over time causing a need for further amendment of the rule.

- The AC version of the rule provides a title that makes the purpose and application of the rule clearer.
- The defined term “military lawyer” is adopted in the AC version for clarity whereas the RPC version uses the more general term “applicant”.
- In a minor difference: subsection (b)(6) in the AC version is found in subsection (b)(4) of the RPC version, a preference of the AC because it is a final ‘catchall’ provision that may or may not apply to an individual military lawyer, whereas each of the preceding subsections will apply to all military lawyer applicants.
- The language used in the AC version of subsections (g)(3) and (g)(4) is more concise and the wording in subsection (g)(4) is written in a format that is parallel with the other provisions under section (g).

Consistency:

- The wording used in subsection (b)(3) of the AC version is parallel with the language used in other Admission Rules. The RPC version of (b)(3) uses language inconsistent with other Admission Rules, which makes interpretation of the rule more difficult and administratively cumbersome.
- Subsection (d) in the AC version continues the provision from the current rule. There is no demonstrated need to change the language. The RPC version modifies and separates this language into (b)(3) &(e) without explanation.

Unnecessary Requirements:

- Several subsections in the RPC version contain requirements that are either unnecessary or inaccurately reflect administrative procedure. Military Lawyers will practice on a *pro bono* basis before Utah courts. Because the Military Lawyers act pursuant to federal law and are not members of the Bar, there is no need for a lengthy application or character and fitness approval. Like current *pro bono* or *pro hac vice* admission rules under Rule 14-803 or 14-806, the Military Lawyers will file a short application and certifications will be issued promptly by the Bar. Thus, subsection (c) of the RPC version is inapt and the reference in subsection (d) to immediate issuance is not included in the AC version. Use of the word “immediately” creates unrealistic expectations about the processing time that are administratively impractical. However, the Admissions Committee notes that like *pro hac vice* applications, it is anticipated that a Military Lawyer application will be processed in under 7 business days.
- Subsection (j) of the RPC version includes a provision on reinstatement. Because the process is quick, and it is easy to get certified as a military lawyer, there is no need for a provision that expedites reinstatement.
- The RPC version includes subsections (i)(4) and (i)(5) as termination events. These are not needed for the *pro hac vice* types of representation anticipated. If a

military lawyer resigns or disclaims certification, or if the lawyer is fully admitted to the Bar, as a matter of course, his or her certification would be terminated.

- The RPC version includes subsection (k) which is unnecessary. Time practicing in Utah (and everywhere else) as a Military Lawyer already counts toward reciprocal admission under the Rules Governing Admission.

Rule 14-805 (Military Spouse Rule)

The AC version of the Military Spouse Rule is substantively different from the version submitted by the RPC. The Utah Bar Commission has previously considered and rejected a military spouse rule over concerns as to competency, supervision, scope, applicability and protection of the public. Legal licensure is to assure a standard of ethics and competency, and to protect the public. While a rational explanation has been provided for why it may be appropriate to adjust administrative procedures where possible to accommodate military attorney spouses (due to their frequent relocation at the military's behest), there have been none that explain why these attorneys should not have to comply with the same competency requirements as other Bar members. Competency measurements are the way applicants show that they possess the minimum ability and skill necessary to represent clients. Removing requirements creates serious public protection and equal protection concerns that are not resolved by the fact that the attorney is married to a servicemember.

Providing preferential treatment to any group of attorneys undermines the system of rules and regulations upon which the Bar operates. Making exceptions for these attorneys will appear unfair and discriminatory to others who are unable to meet the same requirements but are told they must do so to gain admission, regardless of their personal circumstances. To effectively administer any rule-based licensing system, applicants and members must be treated in a fair and equitable manner, and any exceptions granted to a class of attorneys must be based on meaningful distinctions that do not pose a risk to the public and result in others demanding comparable treatment. The differences between these two proposed rules are again grouped into four categories: clarity and uniformity, ease of administration, competency, and additional requirements.

Purpose:

- These are not Military Lawyers; these attorneys are married to members of the military and will be temporarily licensed as full Bar members authorized to perform any legal service. The rationale for adopting a special admission rule for these attorneys is that they are frequently required to relocate to another jurisdiction when their spouses receive new military orders. To accommodate spouses of military members as a matter of policy, the proposed rule would allow military spouse attorneys to begin practicing soon after moving to Utah, an allowance that directly addresses this burden. However, gratitude for the service of military members does not take precedence over competency standards that protect the public.

Consistency, Clarity and Uniformity:

- The phrasing in section (a) of the AC rule uses the same language found in other Admission Rules, and specifically incorporates the defined terms used in the Rules Governing Admission. Subsections (a)(1) through (a)(3), (a)(6) through (a)(9), and (a)(14) parallel other rules and clarify that the military spouse applicant must satisfy the same licensing requirements as other applicants. Compare RPC version (a), (b) and(d).
- The provisions of Section (a) of the AC version of the rule list all requirements that Military Spouse Attorneys must satisfy to be admitted under this rule. Subsection (a)(10) clarifies that the applicant must establish standing as a military spouse, and subsection (a)(11) clarifies that this rule does not apply to an attorney who does not move to Utah with their military spouse. Of the 26 states that have adopted a rule to accommodate military spouses, 19 states specify that residence or presence in the state is required and all states require proof that the applicant is married to a servicemember.
- Subsection (i) and its subparts of the AC version are mostly the same as section (h) in the RPC version, although there are wording differences. The AC version is more consistent with other Admission Rules. Unnecessary provisions exist in the RPC version that are not in the AC version (e.g., if the lawyer resigns, of course the license terminates). On the other hand, the AC version includes some events that will terminate the license that are not in the RPC version (e.g. failing the Bar exam or Supreme Court notice).
- The rule number used in the RPC version, Rule 14-806, is already being used. It is the *Pro Hac Vice* rule. To permit the military rules to be listed together, the AC version numbers the Military Spouse Rule as Rule 14-805, and the title of the AC version of the rule makes the purpose and application of the rule clearer than the RPC version.

Competency:

- There is a major difference as to the competency requirement between the AC and RPC versions of the proposed rule. The AC version requires the same bar exam cut score that is required for all applicants, although a major accommodation is granted because military spouse applicants are not required to earn the score by taking the exam in Utah as are other applicants who do not qualify for admission by motion or UBE transfer. The RPC version permits an applicant licensed in any other jurisdiction to practice in Utah regardless of the cut score required by the other jurisdiction or even if they were admitted by diploma privilege and have never passed a bar exam. Being married to a person in the military is not a sufficient justification for lowering the competency standard for an applicant. It is fundamental for protection of the public to require that attorneys demonstrate minimum competency by providing an equivalent exam score as required in

subsection (a)(5). The cut score competency standard is established by the Supreme Court to safeguard the public and the Court has not granted any applicant a waiver of the cut score requirement. Although worded differently, at least five states have similar competency requirements, including Arizona and New York.

- To emphasize the importance of ethical practice, the Supreme Court requires the highest cut score in the United States on the Multistate Performance Responsibility Exam (MPRE). The MPRE tests a person's knowledge of the ethical rules and every applicant to the Bar must have a passing score. Subsection (a)(7) of the AC version requires the Military Spouse Attorney to provide a passing MPRE score and the RPC version does not. 14 states with a Military Spouse Rule require a passing MPRE score.
- Subsections (a)(12) and (a)(13) of the AC rule require that the Military Spouse Attorney affiliate with a Utah attorney and subsection (e) requires that clients be notified of this association. Supervision is necessary for practical reasons and to safeguard the public. First, the AC understands that those applying under this rule are generally going to be inexperienced attorneys (otherwise, they would apply for admission by Motion). Thus, it will be helpful to have an experienced Utah attorney oversee their work. Second, under the Court's e-filing system, the name and Bar number of a fully admitted Utah attorney must be on all documents. Practically speaking, the only way for a Military Spouse Attorney to file documents while waiting for admission is to affiliate with a Utah attorney whose name and Bar number may appear on the pleading. Third, knowing that the military spouse may be required to leave on short notice due to a change in the orders of the military member, it is in the best interest of clients and the Bar for there to be a fully-admitted Utah attorney who is already familiar with the case and can take it over without delay. Seven states require that the Military Spouse Attorney associate with local counsel.
- AC version subsection (d) on CLE requirements are identical to what is required of all attorneys admitted to practice in Utah whether by bar exam score, the transfer of a UBE score, or by motion admission. Military Spouse Attorneys will be required to comply with the same CLE requirements as other Utah attorneys and this provision makes those requirements clear. At least eight states incorporate specific state CLE requirements into their rules.
- Section (e) of the RPC version of the rule differs from the AC version and restates the "Jurisdiction and Authority" paragraph found elsewhere. The RPC version requires that Military Spouse Attorneys have malpractice insurance. No Utah licensed attorneys are required to maintain malpractice insurance. The RPC version uses malpractice insurance in lieu of competency requirements. This provision would be impractical to enforce and will yield insufficient results for the client. The AC believes that by requiring minimum competency upfront, misconduct is more likely to be avoided, which is a better outcome. In addition,

having a supervising attorney will minimize the chance of misconduct or malpractice. There is only one state that requires malpractice coverage (Oregon) and that state requires it of all attorneys.

Ease Administration:

- Because of changes in the Admission Rules, many applicants are no longer required to retake the bar exam to gain admission. Instead, they can transfer a Uniform Bar Exam (UBE) score or be admitted by motion (also known as reciprocal admission). Thirty jurisdictions administer the UBE and forty-two jurisdictions have reciprocity with Utah. Subsection (a)(4) of the AC version provides an alternative to retaking the bar exam for Military Spouse Attorneys who do not qualify for these other alternatives. Subsection (j) of the RPC version provides that time practicing in Utah counts toward motion admission. The Rules Governing Admission do not permit time practicing under a temporary or special counsel rule to apply towards years in practice and to maintain consistency and uniformity, that policy is carried forward in the AC rule.
- Section (b) of the AC rule (subsection (c) of RPC version) allows Military Spouse Attorneys to begin practicing as soon as they satisfy the requirements for admission under Rule 14-805. After a quick review of the application, these attorneys will receive a certificate that allows them to practice while their application is pending. The wording of this section is parallel to other Admission Rules to be administratively practical and consistent. Terms in the RPC rule including “immediately” and “promptly” are subject to varying interpretations and convey an unrealistically rapid certification process. Such terminology is not found in the rules of other states as only two states even refer to “expeditious” processing or the ability to practice while the application is pending. Furthermore, the RPC proposed rule that requirements which cause a hardship can be waived is contrary to Admission Rule 14-702(f) which reserves only to the Supreme Court the right to grant waivers. The AC could not find any other military spouse rule that allows a waiver of its rule requirements most likely because waivers, historically, have been disfavored as they undermine admission rules by inviting a parade of challenges to almost all requirements.
- Subsection (h) of the AC version is simpler than subsection (g) in the RPC version and only requires Military Spouse Attorneys to report items that affect their ability to practice under the rule. The time for the attorney to report a change in status is 30 days in the RPC version and 20 days in the AC version. There is a wide variety among other states as to the time specified for giving notice, but most of those with notice requirements are 30 days or less. Reporting these changes is not an onerous task and should not be delayed. Admissions has found that shortening the timeframe for applicants to report changes in their application (from 30 days to 10 days) has increased compliance, likely because it discourages procrastination and a tendency to forget.

Additional Requirements:

- The purpose of the rule is to allow a Military Spouse Attorney whose spouse is on military orders in Utah to temporarily be admitted to practice here. It is not intended to be an indefinite waiver for someone living in Utah long-term. Section (f) of the AC version limits licensure under this rule to 3 years. Admissions has been informed that this is generally the amount of time servicemembers are assigned to a location. If the attorney is going to be in the state for more than 3 years, then the attorney should seek full admission. At least 10 states place time limits on the duration of the license.
- Section (g) of the AC version does not have an RPC version counterpart and requires that the attorney annually demonstrate continuing compliance. This is necessary because once ineligible, the lawyer may fail to disclose a change in status to the Bar. Annual proof will ensure that those no longer eligible do not continue to practice. This is advisable based on Admissions' experience with House Counsel Applicants, some of whom have failed to notify the Bar of changes in their status.
- The AC version of section (j) does not have a counterpart in the RPC version, and specifies action the Military Spouse Attorney must take when the license terminates (in addition to notifying the Bar). This subsection protects the client, and 12 states have similar requirements.

Rule 14-804. Certification for military legal assistance lawyers.

(a) Certification for military lawyers to practice in Utah. A lawyer admitted to the practice of law in a state or territory of the United States or of the District of Columbia, who is serving in or employed by the United States Uniformed Services and authorized to provide legal assistance by federal statute or military regulation (“military lawyer”), may obtain a Registered Military Legal Assistance Certificate to represent clients before courts and agencies in Utah.

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

(b)(1) filing an application in the form and manner prescribed by the Bar;

(b)(2) presenting proof that the military lawyer is employed, stationed or assigned at a military installation in Utah;

(b)(3) presenting satisfactory proof of admission to the practice of law before the highest court of a state or territory of the United States or the District of Columbia and submitted certification that the military lawyer is in good standing in all jurisdictions where currently admitted and is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;

(b)(4) certifying the applicant has not been previously denied admission to the Bar;

(b)(5) submitting an affidavit from the military lawyer’s commanding officer, staff judge advocate or chief legal officer of the military installation in Utah attesting that the military lawyer will serve as a lawyer exclusively to provide legal services as authorized by federal statute or military regulation, and that the military lawyer’s commanding officer, staff judge advocate or chief legal officer will notify the Bar within ten days of the termination of the lawyer’s military employment or service in Utah; and

(b)(6) furnishing whatever additional information or proof that may be required in the course of processing the application.

(c) Certification. Upon determination by the Bar that a military lawyer has satisfied the requirements of this rule, the military lawyer will be issued a Registered Military Legal Assistance Certificate.

(d) Prohibition on holding forth. Military lawyers admitted to practice pursuant to this Rule are not, and shall not represent themselves to be, members of the Bar nor represent that they are licensed to generally practice law in Utah.

(e) Scope of authorized representation. Military lawyers certified pursuant to this rule are authorized to appear before a court or agency in Utah as counsel for clients eligible to receive military legal assistance by federal statute or military regulation in any matter

permitted by that federal statute or military regulation and authorized by the military lawyer's commanding officer, staff judge advocate or chief legal officer, or upon the consent of the applicable court or agency.

(f) Jurisdiction and authority. The practice of a lawyer admitted 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 lawyer retains the privilege to practice in Utah and irrespective of the residence or domicile of the military lawyer.

(g) Mandatory disclosures. A military lawyer certified under this rule must report to the Bar within 10 days;

(g)(1) any event listed in subsection (h) of this rule;

(g)(2) any change in bar membership status in any jurisdiction where the attorney has been admitted to the practice of law;

(g)(3) the imposition of any permanent or temporary professional disciplinary sanction by any jurisdiction;

(g)(4) any change in status that may affect the lawyer's privilege to practice under this rule.

(h) Termination of certification. The military lawyer's privilege to practice under this rule may be terminated upon completion of a disciplinary proceeding in Utah or shall terminate upon any of the following events:

(h)(1) the lawyer separates or retires from the United States Uniformed Services;

(h)(2) the lawyer is no longer employed, stationed, and assigned at a military installation in Utah;

(h)(3) the lawyer fails to remain in good standing in any jurisdiction where the lawyer has been admitted to practice law; or

(h)(4) the Supreme Court orders the termination of the certificate at any time, with or without cause.

Rule 14-805. Temporary admission for spouse of active military stationed in Utah.

(a) Requirements for provisional admission of spouses of active military with orders in Utah. Absent admission under Rules 14-701 et seq., the spouse of an active member of the military (“Military Spouse Attorney”) with orders to reside in Utah may be provisionally admitted to practice law without taking the Bar Examination. The defined terms set forth in Rule 14-701 are incorporated in this rule. The burden of proof is on the applicant for provisional military spouse admission to establish by clear and convincing evidence that she or he:

(a)(1) has paid the prescribed fee and filed the required Complete Military Spouse Application;

(a)(2) has graduated with a First Professional Degree in law from an Approved Law School;

(a)(3) has been admitted to the practice of law before the highest court of a U.S. state, territory, or the District of Columbia;

(a)(4) does not qualify for admission by motion under Rule 14-705 or admission by the transfer of a UBE score under Rule 14-712;

(a)(5) has achieved a score on a Bar examination in another U.S. state, territory, or the District of Columbia equivalent to Utah’s passing score as defined in Rule 14-711(d) and has not failed the Utah Bar Examination;

(a)(6) is of good moral character, satisfies the requirements of Rule 14-708, and has not previously been denied admission by the Utah State Bar;

(a)(7) has successfully passed the MPRE in accordance with Rule 14-713;

(a)(8) is an active member in good standing in at least one state or territory of the U.S. or the District of Columbia and is a member in good standing in all jurisdictions where she or he has been admitted;

(a)(9) has a proven record of ethical, civil and professional behavior and has never been disbarred or resigned with discipline pending, or their equivalent, in any jurisdiction and is not currently subject to lawyer discipline or the subject of a pending disciplinary matter;

(a)(10) is the spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense and the service member is on military orders stationed in Utah;

(a)(11) is physically residing in Utah;

(a)(12) has identified an active member of the Bar in good standing who has agreed to actively supervise the Military Spouse Attorney and assume full responsibility for all matters to be handled by the applicant as evidenced by a verification signed by both the Military Spouse Attorney and the supervising attorney;

(a)(13) agrees to file any pleadings or papers with Courts within Utah only with the active participation of the supervising attorney and to include the name of the supervising attorney on all pleadings and papers. Unless excused by the presiding judge, the attendance of the supervising attorney is required at all court appearances until the Supreme Court approves the Military Spouse Attorney's admission to the Bar; and

(a)(14) complies with the provisions of Rule 14-716 concerning licensing and enrollment fees.

(b) Timing and processing of application. An application under this rule may be filed at any time, but the applicant must be able to demonstrate that she or he satisfies the requirements of this rule as of the date the application is filed. Processing of the application typically takes a minimum of three months. However, the Bar will conduct a preliminary character and fitness review of the Military Spouse Application, upon satisfactory completion of which the Bar will issue a Practice Pending Admission Certificate to the applicant. The Practice Pending Admission Certificate authorizes the Military Spouse Attorney to begin practice in accordance with this rule while the application is pending.

(c) Jurisdiction and Authority. The practice of a lawyer admitted 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 Attorney retains the privilege to practice in Utah and irrespective of the residence or domicile of the Military Spouse Attorney.

(d) Continuing legal education. Applicants admitted under this rule that have two or more years of legal practice shall complete and certify no later than six months following admission that she or he has attended at least 15 hours of continuing legal education on Utah practice and procedure and ethics requirements.

(d)(1) The Bar may by regulation specify the number of the required 15 hours that must be in particular areas of practice, procedure, and ethics. Included in this mandatory 15 hours is attendance at the Bar's OPC ethics school.

(d)(2) Those with less than two years of practice when admitted must complete the New Lawyer Training Program (NLTP) as outlined in Rules 14-404 and 14-808.

(d)(3) On an ongoing basis, attorneys admitted pursuant to this rule must comply with the continuing legal education requirements imposed on active status lawyers under Rule 14-404.

(e) Mandatory disclosure of limited licensure. An attorney admitted pursuant to this rule must provide to every client, prior to the commencement of representation, a notice disclosing the Military Spouse Attorney's association with a supervising attorney.

(f) Term of temporary license to practice in Utah. An attorney admitted pursuant to this rule has a temporary license for a maximum of three years from the date of admission.

(g) Annual licensing. An attorney admitted pursuant to this rule is subject to annual licensing and enrollment fees, and during the annual licensing period must provide to the Bar proof of continuing compliance with (a)(8) through (a)(12).

(h) Mandatory status reporting. An attorney admitted pursuant to this rule and the supervising attorney are each responsible for notifying the Bar in writing within 20 days of any change that may affect the Military Spouse Attorney's privilege to practice law under this rule.

(i) Termination of temporary license to practice in Utah. The temporary license terminates and the attorney must cease all activities under this rule :

(i)(1) ninety days after the military service member receives orders to reside in a place other than Utah;

(i)(2) ninety days after the military service member leaves active duty in the military, including both voluntary and involuntary separation and retirement;

(i)(3) ninety days after the military service member and the Military Spouse Attorney legally separate or divorce;

(i)(4) thirty days after failure to satisfy the continuing legal education requirements listed in subsection (d);

(i)(5) thirty days after failure to pay annual licensing fees in accordance with Rule 14-107;

(i)(6) thirty days after failure to provide annual proof of continuing compliance as required by subsection (g);

(i)(7) immediately upon failure to maintain an active license in at least one U.S. state, territory, or the District of Columbia;

(i)(8) immediately upon any termination of sponsorship by the supervising attorney identified pursuant to (a)(12), or the failure of the supervising attorney to be an active member of the Bar in good standing, or the failure to satisfy the requirements of subsections (a)(12) and (a)(13);

(i)(9) immediately upon receiving a failing score on the Utah Bar Examination;

(i)(10) immediately upon receipt of notice by the Utah Supreme Court, with or without cause; or

(i)(11) as ordered by any disciplinary proceeding in Utah or upon disbarment or suspension of any other license of the Military Spouse Attorney from another jurisdiction.

(j) Required action after termination. Upon termination of authority to practice in Utah, the Military Spouse Attorney must:

(j)(1) transfer all pending matters to the supervising attorney;

(j)(2) provide written notice to all clients in pending matters;

(j)(3) notify any courts and opposing counsel in pending litigation; and

(j)(4) decline to represent any new client, begin work in any new matter, or enter an appearance on any new case.

(k) Failure to satisfy the notice and termination of practice requirements set forth in subsections (e), (h) and (i) may subject the Military Spouse Attorney to discipline, including the termination of the license granted under this rule.

(l) Reinstatement after temporary termination of license. A Military Spouse Attorney whose temporary license was terminated pursuant to subsection (i) may be entitled to have his or her license reinstated upon written request if within six months from the termination, the Military Spouse Attorney is able to demonstrate that he or she complied with all the requirements of this rule upon termination of the license and the terminating event has been cured.

(m) Full admission to the Utah State Bar. To become a permanent Active member of the Bar, a Military Spouse Attorney must comply with the provisions of Article 7.



Elizabeth Jamison
President
(206) 679-2170
president@msjdn.org

October 30, 2017

Steven G. Johnson, Esq.
Advisory Committee on the Rules of Professional Conduct
Supreme Court of Utah

RE: Rule 14-806, Admission Rule for Military Spouse Lawyers

Dear Chairman Johnson:

The Military Spouse JD Network (MSJDN), a bar association for military spouses writes you today to offer our support of Rule 14-806: Admission Rule for Military Spouse Lawyers to the Advisory Committee on the Rules of Professional Conduct of the Supreme Court of Utah.

Military spouse attorneys are faced with a difficult choice each time their servicemember receives orders to a new jurisdiction. Military families move, on average, every two to three years. As attorneys, we must obtain a new bar license with every move if we want to continue to practice law and maintain the profession we love. Military moves are based on the needs of the service, with no regard for licensing restrictions or bar exam deadlines. It is expensive, time consuming, and exhausting to continually apply for a new bar license, study for a new exam, and wait for the bar exam results in each new jurisdiction.

The only certainty of military life is uncertainty. Military spouses do not decide where we live, or how long we live there. Our service members cannot turn down a transfer, or quit their jobs because a reassignment and move might not be best for their family. As their spouses, we take great pride in their service, and in our role as a military family. What we ask from our communities is a modest accommodation to make this difficult life slightly less so.

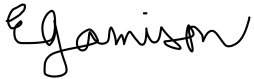
Since its founding in 2011, MSJDN attorneys have shared our challenges and stories with bar associations across the country. Telling our stories to educate our civilian legal colleagues about what it means to maintain our profession while serving our nation as military spouses has been very positive. We have seen great momentum across the country to support military spouse licensing, and now have licensing accommodations in 26 states and one U.S. territory, and at least 24 military spouse attorneys nationwide

admitted through these new rules. Although our numbers are small, progress in each state makes a tremendous positive difference for every military spouse who is able to continue to work with each new move.

With the adoption of Rule 14-806, Utah has an opportunity to demonstrate its strong support of our nation's military and their families. This rule represents a common sense accommodation; allowing temporary admission for military spouses without additional examination would recognize the tremendous sacrifices of our military families and would be an appropriate measure of appreciation considering their support for our nation.

MSJDN is truly grateful for your careful consideration of this issue. It is a testament to the great support our military families receive from this state.

Sincerely,

A handwritten signature in cursive script that reads "E. Jamison".

Elizabeth Jamison
President

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 may apply for to the Bar by:

- (1) filing an application in the form and manner prescribed by the Bar and by carrying the burden of proof to establish eligibility under this rule by clear and convincing evidence;
- (2) demonstrating that the applicant is of good moral character;
- (3) presenting proof that the applicant is employed, stationed, or assigned at the military installation in Utah;
- (4) 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;
- (5) furnishing whatever additional information or proof is required in the course of processing the application;
- (6) certifying the applicant has not been previously denied admission to the Bar;
- (7) submitting an affidavit from the applicant's commanding officer, staff judge advocate or chief legal officer of the military installation 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 Bar immediately upon the termination of the applicant's military employment or service in Utah.

(c) Processing of application. Upon receipt of a completed application, the Bar must expeditiously process the application and may conduct investigations or hearings to ensure the applicant's compliance with the requirements of this rule.

(d) Certificate. Upon determination by the Bar 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 clients eligible to receive military legal assistance authorized by applicable service regulations and federal law.

(g) Jurisdiction and authority. The practice of a lawyer under this rule shall be subject to the Utah Rules of Professional Conduct and Chapter 14, Article 5 (Lawyer Discipline and Disability) of the Rules Governing the Utah State Bar, 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 30 days:

- (1) any event listed in subsection (i) of this rule;
- (2) any change in bar membership status in any state, district, or territory where the attorney has been admitted to the practice of law;
- (3) 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
- (4) the lawyer's commanding officer, staff judge advocate or chief legal officer of the military installation in Utah must advise the Bar 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 installation 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 installation or to another military installation 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 Bar 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 14-801. Definitions.

(n) “Military Spouse” means a person admitted to the practice of law in a territory, district, or state of the United States other than Utah, whose spouse is a member of the United States Uniformed Services on active service, as defined by the United States Department of Defense, provided that the member-spouse has received orders to serve in Utah or is domiciled or stationed in Utah.

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

(a) Eligibility. A Military Spouse admitted to the practice of law in a territory, district, or state of the United States other than Utah, whose spouse is a member of the United States Uniformed Services on active service, 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 member-spouse has received orders to serve in Utah or is domiciled or stationed in Utah.

(b) Application requirements. A Military Spouse may apply to the Bar by:

- (1) filing an application in the form and manner prescribed by the Bar and by carrying the burden of proof to establish eligibility under this rule by clear and convincing evidence for admission either to the Bar or to the Bar as House Counsel under Rule 14-719;
- (2) demonstrating that the applicant is of good moral character;
- (3) presenting proof the applicant holds a First Professional Degree in law from an Approved Law School as defined by Rule 14-701;
- (4) 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 Military Spouse is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (5) furnishing whatever additional information or proof required in the course of processing the application;
- (6) certifying the Military Spouse has not failed the Utah Bar Examination or been previously denied admission to the Bar; and
- (7) paying a processing fee of \$250, which shall be credited towards Bar dues upon licensure.

(c) Processing of application. Upon receipt of a completed application, the Bar shall immediately conduct an initial review of the application and may issue a Temporary Practice Certificate to a Military Spouse. The Bar must expeditiously process the application and may conduct investigations or hearings to ensure the Military Spouse’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 Bar may in its discretion waive or

vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof. The Bar must promptly act upon any application filed under this rule.

(d) License. Upon determination that a Military Spouse has satisfied the requirements of this rule, the Bar will immediately submit motions to the Supreme Court and the United States District Court of Utah for admission certifying that the Military Spouse 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 Military Spouse 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 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 with less than two years of practice when admitted must complete the New Lawyer Training Program (NLTP) as outlined in Rules 14-404 and 14-808. Unless admitted as House Counsel or employed exclusively as corporate counsel, a Military Spouse must enroll in the Bar's approved professional liability insurance program or obtain equivalent insurance coverage. A Military Spouse must not retain any new client, begin work on any new matter, or enter an appearance on any new case 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 Chapter 14, Article 5 (Lawyer Discipline and Disability) of the Rules Governing the Utah State Bar, and to all other applicable laws and rules governing lawyers admitted to the Bar. Jurisdiction shall continue whether or not the Military Spouse retains the privilege to practice in Utah and irrespective of the residence or domicile of the Military Spouse.

(g) Mandatory disclosures. A Military Spouse practicing under this rule must report to the Bar within 30 days:

- (1) any event listed in subsection (h) of this rule;
- (2) any change in bar membership status in any state, district, or territory where the attorney has been admitted to the practice of law; or
- (3) 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.

(h) Termination of practice and licensure. A Military Spouse'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 has a pending application for admission to the Bar:

- (1) the member-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 ceases to be a dependent as defined by the United States Department of Defense;
- (3) the Military Spouse permanently relocates to another state, district, or territory of the United States for reason other than the member-spouse's permanent change of station outside the State of Utah;
- (4) the Military Spouse 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 resigns, requests termination, or fails to meet annual licensing requirements of the Bar; or
- (6) the Military Spouse 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 returns to Utah because the lawyer's member-spouse is again stationed in Utah, the Military Spouse will be reinstated upon submission of evidence satisfactory to the Bar that Military Spouse remains in full compliance with all requirements of this rule.

(j) Service Time. The period of time a Military Spouse 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.

Tab 4



Nancy Sylvester <nancyjs@utcourts.gov>

Military Admissions Rules and Rule 8.4

Simón Cantarero <cantarero.law@gmail.com>

Fri, Oct 27, 2017 at 4:19 PM

To: Nancy Sylvester <nancyjs@utcourts.gov>, "Steven G. Johnson" <stevejohnson5336@comcast.net>

Nancy and Steve,

Please see the email string below from subcommittee members. The issue of whether, or how, to amend Rule 8.4 is not resolved by the subcommittee and will warrant further discussions. I am drafting a memorandum summarizing and updating the recommendations of the subcommittee, and the subcommittee would benefit greatly from comments and discussion from Committee members this coming Monday.

I'm sorry we have not been able to deliver something more concrete on an issue that has been with this committee for over a year. The issue is important and sensitive, with significant consequences. As such, the subcommittee is duty-bound to be thorough, deliberate, honest, and frank in its discussions before recommending something for the Committee's or the Court's consideration.

Thank you,

J. Simón Cantarero

Cantarero Law Office, PLLC
13894 S. Bangerter Parkway, Ste. 200
Draper, UT 84020

Office: (801) 251-7707 | Mobile: (801) 244-8972
Email: CantareroLaw@gmail.com

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From: **Simón Cantarero** <cantarero.law@gmail.com>

Date: Fri, Oct 27, 2017 at 3:47 PM

Subject: Re: Military Admissions Rules and Rule 8.4

To: Trent Nelson <trentdnelson@hotmail.com>

Cc: Joni Jones <jonijones@agutah.gov>, Vanessa Ramos <Vanessa_Ramos@fd.org>, "Billy.Walker@utahbar.org" <Billy.Walker@utahbar.org>

Joni: Thank you for sharing those documents. The final versions are part of the public record.

All: I've compiled the materials in chronological order, including the discussions and approvals by the Committee as a whole. In particular, the subcommittee's rationale for proposing the language that was presented to the Committee can be found under #5, 7, and 8 below. They are all part of the public record.

1) October 3, 2016 - Agenda, Tab 2, pages 6-31.

Letter from ABA to C.J. Durrant, with supporting information about ABA Model Rule 8.4(g). Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2016/09/Revised-RPC-Agenda-2016-10-03.pdf>

2) October 3, 2016 - Minutes, starting at the bottom of page 1.

Presentation by Rob Rice and Margaret Plane. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2016/09/RPC-10032016-Minutes.pdf>

3) November 28, 2016 - Agenda, Tab 3, starting at page 13.

Introductory memo to the Committee with supporting information about ABA Model Rule 8.4(g). Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2016/11/Agenda-2016-11-28-1.pdf>

- 4) November 28, 2016 - Minutes, starting at bottom of page 1. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2016/11/11282016-Minutes.pdf>
- 5) January 23, 2017 - Agenda, pp. 14-32 - **First Memorandum from Subcommittee with version 1 of Proposed Utah Rule 8.4(g)**. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/01/Agenda-2017-1-23.pdf>
- 6) January 23, 2017 - Minutes, pp. 2-3. Notes of committee discussion. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/01/01232017-RPC-Minutes.pdf>
- 7) March 6, 2017 - Agenda, pp. 6-18. **Second Memorandum from Subcommittee, with alternative versions of Proposed Utah Rule 8.4(g)**. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/03/Agenda-2017-3-6.pdf>
- 8) March 6, 2017 - Minutes, pp. 2-3. Notes of Committee discussion, with **language approved by Committee of Proposed Rule and Comments to be presented to Utah Supreme Court**. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/03/Agenda-2017-3-6.pdf>
- 9) May 15, 2017 - Agenda, pp. 13-18. Memorandum to Committee with **suggestions and questions from the Utah Supreme Court, and revised Proposed Rule 8.4(g) incorporating the Court's recommendations**. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/05/Agenda-2017-5-15.pdf>
- 10) May 15, 2017 - Minutes, p. 2. Report of Committee discussion after meeting with Supreme Court. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/05/05152017.RPC-Minutes.pdf>. The memorandum of Pros and Cons referenced in the Minutes is attached to this email.
- 11) August 28, 2017 - Agenda, pp. 16-115. ABA Model Rule 8.4(g) as published for public comment, with comments and supporting documents received. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/08/Agenda-2017-8-28.pdf>.
- 12) August 28, 2017 - Minutes, p. 2. Committee discussion following public comments. Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/08/08282017.RPC-Minutes.pdf>.
- 13) September 25, 2017 - Agenda, pages 26-125 - Public comments to ABA Model Rule 8.4(g). Available at <http://www.utcourts.gov/utc/rulespc/wp-content/uploads/sites/27/2017/09/09252017.RPC-Agenda-2017-9-25.pdf>

J. Simón Cantarero

Cantarero Law Office, PLLC
13894 S. Bangerter Parkway, Ste. 200
Draper, UT 84020

Office: (801) 251-7707 | Mobile: (801) 244-8972
Email: CantareroLaw@gmail.com

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On Fri, Oct 27, 2017 at 10:57 AM, Trent Nelson <trentnelson@hotmail.com> wrote:

Thanks for the emails. I agree with Joni that we should get the explanation memos out, if possible today. This is a complicated issue, and many of the issues, that naturally arise, have already been fleshed out in the memos.

At the last meeting, I was a bit embarrassed that after all of this time, the issues and versions of the rule were not at the tip of my tongue, like they should have been. I think this may have been the same for many members. The memos may help with this.

I am available to talk Monday morning, but not after 12:30 p.m. Thanks, Trent

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify me by reply e-mail or by telephone at (801) 547-8985 and destroy the original transmission and its attachments without reading or saving in any manner. Thank you.

From: Joni Jones <jonijones@agutah.gov>

Sent: Friday, October 27, 2017 10:21 AM

To: Vanessa Ramos

Cc: Simón Cantarero; Billy.Walker@utahbar.org; Trent Nelson

Subject: Re: Military Admissions Rules and Rule 8.4

Hi everyone,

I found the memo I was thinking of, we submitted it to Steve in December. It explains everything we did in analyzing why we need an anti-discrimination rule and what we reviewed and considered in recommending our own version of 8(g). The only problem is I don't have the final version, and my copy is missing probably the most important section, the one on vagueness and First Amendment concerns.

Simone, do you have that?

I think we should submit the final version of this memo to the entire committee, sometime today so folks will have time to read it before Monday.

I also think it would be helpful to submit the memo that Vanessa and I prepared -- that also explains part of the process we went through.

And finally, I personally think we should consider going back to submitting the December proposed rule or a version of it. At a minimum, I think we should discuss it at the meeting Monday.

I feel like the committee and the Supreme Court, for that matter, really did not consider everything we went through and why we came up with what we did. I think folks were too busy to look at the background and explanation and went right to the rule and then thought, this looks different from our other rules. Well it does because there are a lot of considerations that go into adopting this rule, and there is a lot of anxiety out there in the Bar about what this rule might mean in terms of impinging a lawyer's rights. I feel like when we went in and suggested the first version of 8(g), we did so after very, very carefully considering all of the concerns. And then folks went too quickly at picking on the rule--because it was different (e.g., why is the standard for finding a violation stated in the rule? why is there a reference to statutes in the rule? answer #1 is the standard is there because there is anxiety in the bar that the rule could be applied unfairly; answer # 2 is, there is anxiety about the vagueness of saying it is misconduct to discriminate, and it's not so unusual to refer to other laws--Rule 8 also makes it misconduct for a lawyer to violate criminal or other laws that involve fraud or dishonesty).

I honestly feel like people weren't ready to listen and did not fairly evaluate the originally proposed rule. It was a lot of reaction based on "this is different." It was different because we were trying to address some very clear, specific, and genuine concern about the scope of the rule.

My hesitation about the May version of the rule we proposed is that it is almost identical to the actual model rule. I do not feel that it as carefully or thoroughly addressed the concerns raised originally by the committee and the Bar at large (as articulated in the materials we received from the ABA).

This was long-winded, but again, I think this is a hugely important issue. I am not sure when Utah has considered a more important and controversial addition to the rules of professional conduct. It is important to do this right. If we can't all agree (including the committee at large) then we should probably do nothing. But I think it is important to go back and try to explain carefully and clearly to the Committee, the Utah Supreme Court, and the Bar, what we did and why and why Utah needs and would benefit from a rule prohibiting discrimination.

Thanks, all. I hope we can talk Monday before the meeting. And I hope we can get the memos (including the complete December memo) to the entire committee.

-Joni

From: Vanessa Ramos <Vanessa_Ramos@fd.org>

Sent: Friday, October 27, 2017 7:30:45 AM

To: Joni Jones

Cc: Simón Cantarero; Billy.Walker@utahbar.org; Trent Nelson

Subject: Re: Military Admissions Rules and Rule 8.4

Sorry about that last email. Obviously May was after meeting with the court. Ignore my prior post.

I could talk on Monday after noon.

Sent from my iPhone

On Oct 26, 2017, at 11:42 AM, Joni Jones <jonijones@agutah.gov> wrote:

I am also inclined to resubmit the May 15, 2017 version.

I think we need to include a memo summarizing why we believe this version is appropriate. One piece we should be sure and include is the information in the memo that, I think Vanessa and I put together? That was included in a packet of materials sent to the Utah Supreme Court, that cited the Utah survey on discrimination and also cite a recent article on sexual harassment in the workplace and how it has not decreased despite more workplace training.

Do we need to have a phone call, perhaps Monday morning? I know everyone is busy, as am I. But this is a very important issue.

From: Simón Cantarero [<mailto:cantarero.law@gmail.com>]

Sent: Tuesday, October 24, 2017 2:14 PM

To: Billy.Walker@utahbar.org; Joni Jones <jonijones@agutah.gov>;
Vanessa_Ramos@fd.org; Trent Nelson <trentdnelson@hotmail.com>

Subject: Fwd: Military Admissions Rules and Rule 8.4

Hello Everyone,

Please see the email below and the attached draft of minutes from Nancy. I'm sorry I've neglected our assignment. But we have a few alternatives to present to the committee as a whole:

1) Recommend adopting the ABA Model Rule 8.4(g);

2) Recommend what has already been suggested and submitted to the Utah Supreme Court - the May 15, 2017 version;

3) Reconsider, revise, and submit a new version of 8.4(g); or

4) Table the adoption of Rule 8.4(g) until there is more history and adoptions by sister jurisdictions.

If you could let me know your preference. I am inclined to re-submit what was agreed by the entire committee last spring, based on the reasons and rationale already on the record.

Thank you.

Simón

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J. Simón Cantarero

Cantarero Law Office, PLLC

13894 S. Bangerter Parkway, Suite 200

Draper, UT 84020

(801) 244-8972 | CantareroLaw@gmail.com

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----- Forwarded message -----

From: **Nancy Sylvester** <nancyjs@utcourts.gov>

Date: Tue, Oct 24, 2017 at 11:42 AM

Subject: Military Admissions Rules and Rule 8.4

To: Simón Cantarero <cantarero.law@gmail.com>, Phillip Lowry <phillip.e.lowry@gmail.com>

Cc: "Steven G. Johnson" <stevejohnson5336@comcast.net>

Dear Simón and Phil,

I am writing to see if you both have updated rules and/or memos to submit to the committee for next Monday's meeting. Attached are the draft minutes from last meeting for your reference.

Thank you, both.

Sincerely,

Nancy

--

Nancy J. Sylvester

Associate General Counsel

Administrative Office of the Courts

[450 South State Street](#)

P.O. Box 140241

Salt Lake City, Utah

84114-0241

Phone: [\(801\) 578-3808](tel:(801)578-3808)

Fax: [\(801\) 578-3843](tel:(801)578-3843)

nancyjs@utcourts.gov



2017-05-17 Memo Comparing Proposed Rules 8.4(g).docx

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