

Virginia Supreme Court to Review Proposed Rule Authorizing the Admission of Military Lawyers

RICHMOND, VA—The Virginia Supreme Court is expected to consider for approval, disapproval or modification, a proposed rule permitting lawyers to represent members of the armed forces in courts in Virginia. The Military Law Section worked with the Executive Committee and the Standing Committee on Unauthorized Practice of Law to develop a rule of court authorizing military lawyers stationed in Virginia, but licensed in other jurisdictions, to be admitted on a limited basis in Virginia, solely for the purpose of representing low income military clients and their dependents. The authority for a limited practice rule for military lawyers is Section 54.1-3900 of the Code of Virginia.

At its meeting on June 13, 2002, the Virginia State Bar Council approved the following proposed rule. The proposed rule will subject military lawyers to Virginia's Rules of Professional conduct and to the same membership requirements as other active members of the Virginia State Bar, including completion of the required Professionalism Course and annual mandatory Continuing Legal Education requirements. The proposal also

includes a provision for payment of dues to the Virginia State Bar but, under federal regulations, this requirement would be waived for a lawyer for the first two years following the initial issuance of a Military Legal Assistance Certificate to that lawyer. As proposed, this exemption for non-Virginia licensed military attorneys to practice before Virginia courts would be added to Rule 1A:1 of the Rules of the Virginia Supreme Court.

Inspection and Comment

The proposed Rule may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed rule by filing nine copies with the Clerk of the Virginia Supreme Court and three copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than December 20, 2002.

PROPOSED RULE

- (a) A lawyer admitted to the practice of law in a state or territory of the United States, other than Virginia, who is serving in or employed by the armed services and is authorized to provide legal assistance pursuant to 10 U.S. Code §1044, may apply to the Board of Bar Examiners for a certificate as a Registered Military Legal Assistance Attorney in Virginia ("Military Legal Assistance Attorney Certificate") to represent clients eligible for legal assistance in the courts and tribunals of this Commonwealth while the lawyer is employed or stationed, or assigned within Virginia.
- (b) Each applicant for a Military Legal Assistance Attorney Certificate shall:
 - (1) File with the secretary of the Virginia Board of Bar Examiners an application, under oath, upon a form furnished by the Board.
 - (2) Furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.
 - (3) File an affidavit, upon a form furnished by the Board, from commanding officer, staff judge advocate or chief legal officer of the military base in Virginia where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the Virginia State Bar immediately upon the termination of the applicant's employment or service at the military base.
- (c) Upon a finding by the Board of Bar Examiners that the applicant has produced evidence sufficient to satisfy the Board that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the Board shall notify the applicant that he or she is eligible to be issued a Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the Board shall issue to the applicant a Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this Commonwealth solely as provided in this rule.
- (d) Each lawyer issued a Military Legal Assistance Attorney Certificate shall immediately register as an active member of the Virginia State Bar, with his or her practice limited as provided in this rule, and pay to the Virginia State Bar the same dues required of regularly admitted active members. (The requirement to pay dues shall be waived for a lawyer during the first two years immediately following the initial issue of a Military Legal Assistance Attorney Certificate to that lawyer.)
- (e) The practice of a lawyer registered under this rule shall be limited within this Commonwealth to practice exclusively pursuant to the laws, rules, and regulations governing the military services, and may include appearing before a court or tribunal of this Commonwealth as counsel for a client eligible for legal assistance on:
 - (1) Adoptions,
 - (2) Guardianships,
 - (3) Name changes,
 - (4) Divorces,
 - (5) Paternity,

- (6) Child custody and visitation, and child and spousal support,
 - (7) Landlord-tenant disputes on behalf of tenants,
 - (8) Consumer advocacy cases involving alleged breaches of contracts or warranties, repossession, or fraud,
 - (9) Garnishment defense,
 - (10) Probate,
 - (11) Enforcement of rights under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. §§ 501-548, 560-593),
 - (12) Enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S. Code §§ 4301-4333), and
 - (13) Such other cases within the discretion of the court or tribunal before which the matter is pending.
- (f) Representation in proceedings before courts or tribunals of this Commonwealth shall be limited to low-income legal assistance clients for whom hiring a lawyer in private practice would entail a substantial financial hardship to themselves or their families. All pleadings filed by a legal assistance attorney will cite this rule, include the name, complete address, and telephone number of the military legal office representing the client and the name, rank or grade, and armed service of the lawyer registered under this rule providing representation.
- (g) No lawyer registered under this rule shall (i) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this Commonwealth, (ii) offer to provide legal services in this Commonwealth to any person other than as authorized by his or her military service, (iii) undertake to provide legal services in this Commonwealth to any person other than as authorized by his or her military service, or (iv) hold himself or herself out in this Commonwealth to be authorized to provide legal services to any person other than as authorized by his or her military service.
- (h) Representing clients eligible for legal assistance in the courts or tribunals of this Commonwealth under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and the Rules of Procedure for Disciplining Lawyers (Rules of Court, Pt. 6, Section IV, Paragraph 13). Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Virginia.
- (i) Each person registered with the Virginia State Bar as an active member on the basis of a Military Legal Assistance

Attorney Certificate shall be subject to the same membership obligations as other active members, including completion of the required Professionalism Course and annual Mandatory Continuing Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Virginia State Bar the military address in Virginia of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

- (j) Each person issued a Military Legal Assistance Attorney Certificate shall promptly report to the Virginia State Bar any change in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.
- (k) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (i) the lawyer is no longer employed, stationed, or assigned at the military base in Virginia from which affidavit required by this rule was filed, (ii) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of part 1A of these Rules, (iii) the lawyer fails to comply with any provision of this rule, (iv) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States, other than Virginia, or the District of Columbia, or (v) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law. If a lawyer is no longer employed, stationed, or assigned at the military base in Virginia from which affidavit required by this rule was filed, but the lawyer, within six months after the last day of employment or service, is re-employed by, or militarily reassigned to, the same military base or by another military base in Virginia filing the affidavit required by this rule, the Military Legal Assistance Attorney Certificate shall be reinstated upon evidence satisfactory to the Board that the lawyer remains in full compliance with all requirements of this rule.
- (l) The period of time a lawyer practices law full time on the basis of a Military Legal Assistance Attorney Certificate issued pursuant to this rule shall be considered in determining whether such lawyer has fulfilled the requirements for admission to practice law in this Commonwealth without examination under Rule 1A: 1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination. 