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# SUPREME COURT OF VIRGINIA



100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219-2334  
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April 3, 2020

Karen Gould  
Executive Director and Chief Operating Officer  
Virginia State Bar  
1111 East Main Street, Suite 700  
Richmond, VA 23219-3565

Dear Karen:

The Court received the attached petition to amend Rule 1A:8, Military Spouse Provisional Admission, filed by Military Spouse J.D. Network. The Court would like the Virginia State Bar to consider the petition and provide the Court with a recommendation. I look forward to hearing from you on this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Donald W. Lemons".

Donald W. Lemons

DWL:sa

Enclosure

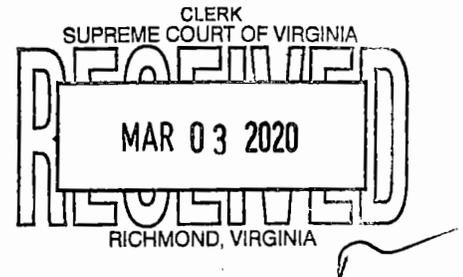
cc: Nicolle Vasquez  
Courtney M. Kelley



Military Spouse J.D. Network  
Military Spouse J.D. Network Foundation  
P.O. Box 1175  
Fort Myer, VA 22211  
www.msjdn.org

February 28, 2020

Supreme Court of Virginia  
Douglas B. Robelen, Clerk of Court  
100 North Ninth Street, 5<sup>th</sup> Floor  
Richmond, VA 23219



RE: Proposed Amendment to Rule 1A:8, Military Spouse Provisional Admission

Dear Mr. Robelen:

I write to you on behalf of the Military Spouse JD Network (MSJDN), a bar association for military spouses, requesting an amendment to Virginia Rule of the Supreme Court, Rule 1A:8, Military Spouse Provisional Admission. Specifically, MSJDN requests the removal of Section 4, requiring supervision and direction of local counsel for attorneys barred under this rule.

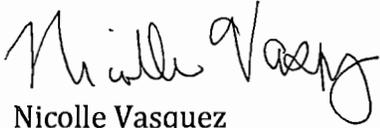
Since its founding in 2011, MSJDN attorneys have shared our challenges and stories with bar associations across the country. Telling our stories to educate our civilian legal colleagues about what it means to maintain our profession while serving our nation as military spouses has been very positive. We have seen great momentum across the country to support military spouse licensing, and now have licensing accommodations in 38 states and one U.S. territory, with the Commonwealth of Virginia being one of those states. However, while Virginia was innovative in 2014 as the seventh state to pass a military spouse admission exemption, over the five years of its implementation less than a dozen attorneys have used this rule due to the burdensome nature of the supervision requirement. As such, we submit our petition to amend Virginia Supreme Court Rule 1A:8 for your consideration.

Enclosed, please find the following: (1) a brief overview of our amendment request, (2) Petition for Amendment to Supreme Court Rule 1A:8 Military Spouse Provisional Admission, and (3) proposed Rule 1A:8 redline changes.

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

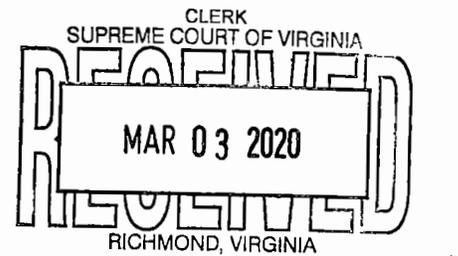
Please do not hesitate to contact me at (305) 308-0218 or at nicolleav@gmail.com should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Nicolle Vasquez". The signature is written in a cursive, flowing style.

Nicolle Vasquez  
Virginia Rule Change Co-Chair  
Military Spouse J.D. Network

Courtney M. Kelley  
Virginia Rule Change Co-Chair  
Military Spouse J.D. Network



## MILITARY SERVICE AND THE MILITARY SPOUSE ATTORNEY IN VIRGINIA AN OVERVIEW

Former President, John F. Kennedy once stated “I can imagine no more rewarding a career. And any man who may be asked in this century what he did to make his life worthwhile, I think can respond with a good deal of pride and satisfaction: 'I served in the United States Navy’”.<sup>1</sup>

While military service in any branch is commendable, the individual military member is not alone in service to their country. Most service members have spouses, children, or dependents, and every family member is directly impacted by the service member’s calling to serve. One of the greatest burdens on military families are the frequent mandatory moves based on the needs of the United States government.

### **Implications for Military Spouses with a Juris Doctorate**

While the military career requires geographic mobility, the ability to practice law in the United States is predominantly state specific. This is because attorneys are required to be licensed in each state where they practice law. On average, active duty military personnel move once every two to three years, 2.4 times as often as civilian families. Military spouses move across state lines 10 times more frequently than their civilian counterparts.<sup>2</sup> The careers of military spouse attorneys (attorney spouses) are negatively impacted by these frequent moves and jurisdictional changes. For example, while 85% of attorney spouses hold an active law license, only 37% have a job requiring a license to practice law.<sup>3</sup> Attorney spouses have a 27% unemployment rate,<sup>4</sup> and suffer from a \$33,000 wage gap compared to their civilian counterparts.<sup>5</sup> Military spouses are paid less, work fewer hours, and have a 90% underemployment rate (meaning they possess more formal education and experience than is needed at their position).<sup>6</sup> These staggering employment rates are directly related to the fact that military spouses serve in tandem with their servicemember who may be required to move repeatedly.

<sup>1</sup> If live presentation play clip at: <https://www.youtube.com/watch?v=8r8z6rFOJgA>

<sup>2</sup> Bradbard, D. Maury, R. & Armstrong, D. (2018). The Force Behind the Force: a Business Case for Leveraging Military Spouse Talent. Syracuse, NY: Institute for Veterans and Military Families, Syracuse University. Retrieved from: [https://ivmf.syracuse.edu/wp-content/uploads/2016/12/ForceBehindtheForce.BusinessCaseforLeveragingMilitarySpouseTalentACC\\_02.21.18.pdf](https://ivmf.syracuse.edu/wp-content/uploads/2016/12/ForceBehindtheForce.BusinessCaseforLeveragingMilitarySpouseTalentACC_02.21.18.pdf)

<sup>3</sup> Military Spouse JD Network, 2014 Member Survey Report of findings (May 2015), available at: <http://www.msjdn.org/wp-content/uploads/2012/12/2015-MSJDN-Survey-Report.pdf>.

<sup>4</sup> Military Spouse JD Network, 2014 Member Survey Report of findings (May 2015), available at: <http://www.msjdn.org/wp-content/uploads/2012/12/2015-MSJDN-Survey-Report.pdf>.

<sup>5</sup> Military Officers Association of America & Institute for Veterans and Military Families, Military Spouse Employment Report (February 2014) available at: <http://vets.syr.edu/research/research-highlights/milspouse-survey/>.

<sup>6</sup> Meadows, S.O., Griffin, B.A., Karney, B.R., & Pollak, J. (2016). Employment Gaps Between Military Spouses and Matched Civilians. *Armed Forces and Society*, 42(3). DOI: 10: 1177/0095327X156077810.



### **MSJDN**

As a result, the Military Spouse J.D. Network “MSJDN” was created in 2011 to support military spouses in the legal profession by advocating for licensing accommodations for attorney spouses; educating the public about the challenges faced by career-minded military spouses and their families; encouraging the hiring of military spouses; and providing a network connecting attorney spouses with each other and their supporters. MSJDN has successfully advocated for licensing accommodations, resulting in bar admission rule changes in 38 jurisdictions, including the U.S. Virgin Islands.

### **Virginia’s Military Spouse Provisional Admission Rule**

Rule 1A:8, the “Military Spouse Provisional Admission Rule,” was issued by the Supreme Court of Virginia on May 16, 2014. Section 4 of the rule, Supervision of Local Counsel, mandates that the attorney spouses may practice for the duration of their servicemember’s military assignment in Virginia or the National Capital Region, so long as he or she is “under the supervision and direction of Local Counsel.”<sup>7</sup> Additionally, Local Counsel is required to personally appear with the provisionally admitted attorney on all matters before the court unless specifically excused from attendance by the trial judge.

Section 4 of Rule 1A:8 is burdensome for a multitude of reasons. The lack of an established professional network in the local legal community due to frequent military moves means it is nearly impossible to find someone willing to take on the burden of supervision. The requirement for supervision may also create ambiguity as to which attorney is serving – the supervisor or the attorney spouse – and creates the potential for additional financial burdens on the attorney spouse regarding disputes over fee-sharing. A requirement for supervision also burdens members of the Virginia State Bar who, by acting as supervising attorneys, subject themselves to discipline on behalf of the supervised lawyer. To require supervision over an attorney spouse who is already licensed and in good standing in at least one other jurisdiction when supervision is not required for newly licensed Virginia attorneys who have never handled a case, in-house counsel who have voluntarily moved here, or for those seeking reciprocity to practice under Virginia law, seems unduly restrictive and burdensome.

### **Proposed Resolution**

We request the removal Section 4 from Rule 1A:8. Removing Section 4 from Rule 1A:8 would not lower the standard for character and fitness examination or set different requirements for adherence to the rules of professional conduct. Rather, this change reflects an appropriate balance of the need to maintain the highest professional standards for the bar and the important public policy interest in supporting Virginia’s large population of military families.

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<sup>7</sup> Rule 1A:8. Military Spouse Provision Admission. Va. Sup.Ct. (2014).



brought on by their servicemember's military duty assignments. The Military Spouse Provisional Admission Rule addresses these barriers and serves an important public policy interest in supporting military servicemembers through a commonsense licensing accommodation by providing a temporary license to practice law while in Virginia on their spouse's active duty military orders. However, in Virginia the requirement that attorney spouses be supervised by a local attorney renders this rule mostly moot. The supervision requirement in the Military Spouse Provisional Admission Rule should be removed or rewritten to be less burdensome so that employers are encouraged to, rather than deterred from, hiring military spouses.

Virginia was innovative in adopting the Military Spouse Provisional Admission Rule on May 16, 2014, making it only the seventh state to create an accommodation for admission to the bar for attorney spouses. While the creation of the rule was an excellent start in supporting attorney spouses, the reasons below articulate why it is essentially unusable as written and emphasizes the need for removal of the local counsel supervision requirement.

#### **A. Public Support and Policy**

To date, thirty-eight states and the U.S. Virgin Islands have enacted rules or policies aimed at enabling attorney spouses to continue their legal practice while their servicemember spouse is assigned for duty within said state without the need for bar examination, thus avoiding further separation and stress upon the military family. This Rule, as amended, has support from other accommodations provided in federal laws, highlighting the importance of reasonable accommodations for servicemembers, their families, and their service to our nation.<sup>1</sup>

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<sup>1</sup> See, e.g., Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, as amended by Section 565 of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84, to provide for exigency and military caregiver leave for employees of servicemembers; and the Uniformed

The American Bar Association, Conference of Chief Justices, the White House, U.S. Chamber of Commerce, Military Officers Association of America, and the National Military Family Association all support comparable rules and have encouraged state licensing authorities to implement rules allowing admission without examination for attorney spouses of servicemembers.

Since 2011, MSJDN, an all-volunteer network of attorney spouses, has taken up the mantle of lessening the licensing burden for attorney spouses. MSJDN works diligently with state bar licensing authorities to enact much-needed licensing accommodations, with the goal of easing the burdens attorney spouses face to both maintain their legal career and support their servicemember spouse. Many states already have a provision for admission without examination for in-house counsel or pro bono attorneys. These accommodations foster good public policy to provide an exception to the normal route to licensure when doing so benefits both the attorney and the state's legal community.

#### **B. Creating a Barrier for Women to Practice Law**

Certainly, there are male military spouse attorneys that would be able to potentially benefit from the Proposed Rule. However, military spouse law licensure is mostly a *women's issue*: The community of military spouse attorneys is predominately composed of women (93% women, 7% men, which is consistent with United States Department of Defense demographics reports on military spouses).<sup>2</sup> The American Bar Association's House of Delegates adopted a resolution on February 6, 2012 urging "state and territorial bar admission authorities to adopt rules, regulations and procedures that accommodate the unique needs of military spouse attorneys who move

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Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353, 228 U.S.C. §§ 4301-433

<sup>2</sup> Military Spouse JD Network (2018), *supra* note 7, at 3.

frequently in support of the nation's defense.”<sup>3</sup> This resolution was pushed forward by MSJDN and the American Bar Association's Commission on Women in the Profession.<sup>4</sup>

The supervision requirement imposed by the Military Spouse Provisional Admission Rule is thus a barrier impacting mostly women, and their ability to engage in the practice of law in Virginia. According to a report compiled by the American Bar Association's Commission on Women in the Profession in May 2016, female attorneys continue to struggle to reach the same leadership positions as their male counterparts. The Commission on Women in the Profession found that only 21.5% percent of women in private practice made partner, 18% percent of women in private practice made equity partner, 24% of women working for a Fortune 500 company were employed as general counsel, and 19% of women working for a Fortune 501-1000 company were employed as general counsel.<sup>5</sup>

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<sup>3</sup> American Bar Association, Resolution 108, adopted by the House of Delegates on February 6, 2012 at 1. *See, e.g.*, the story of Hon. Erin Wirth, co-founder of MSJDN, a U.S. Coast Guard Spouse, page 5: “[Since graduating] from law school sixteen years ago...she has moved seven times, taken and passed the full bar exam in three different jurisdictions, been admitted on motion to work for legal aid after being unable to qualify for admission on motion based on years of practice in a fourth jurisdiction, and practiced for the federal government in two other jurisdictions. She has held eleven full or part-time jobs, a number of which do not qualify as the full time practice of law frequently necessary to qualify for admission on motion. She has not held the same job for more than three years. To the extent that her experience is atypical, it is because her husband has not been stationed in a war zone, overseas, or in a jurisdiction for less than a year.”

<sup>4</sup> MSJDN was recently awarded the American Bar Association's 2016 Grassroots Advocacy Award. See comments by Mary Reding Smith, former President of MSJDN: “Our goal was very simple. We wanted to tell you each of you our story. At the time, after 10 years of war, and continuous deployments, we wanted to share the stories about service to this country. The multiple moves for our families, the new schools for our children, every 2-3 years; the tears when our spouses left on deployments and the joy when they returned. We wanted to share a story of the impact of a war fought by few. And every 2-3 years, we faced what many of our legal colleagues could not imagine ever facing again: The bar exam. The job search...” (emphasis added); *available at* <https://www.facebook.com/MilitarySpouseJDNetwork/videos/1071091992948970/> (last visited October 5, 2017).

<sup>5</sup> American Bar Association, Commission on Women in the Profession, A Current Glance at Women in the Law, May 2016, *available at* [http://www.americanbar.org/content/dam/aba/marketing/women/current\\_glance\\_statistics\\_may2016.authcheckdam](http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_may2016.authcheckdam).

As of 2014, women attorneys were only making 83% of the weekly salary of a male lawyer's salary.<sup>6</sup> Further, women make up only 27.1% of federal and state judgeships, and only 31.1% of the 18,006 available seats on the bench for all state court judges, including Virginia, are women.<sup>7</sup> Women on the Virginia Supreme Court are also outnumbered by their male justice colleagues.

The grim statistics on women lawyers in leadership positions is not reflected by under-enrollment of women in law schools nationwide. In fact, according to the American Bar Association Section of Legal Education and Admissions to the Bar, 1L enrollment (49.3% women, 50.7% men), total J.D. enrollment (48.7% women, 51.3% men) and J.D. awardee (47.3% women, 52.7% men) figures are rather comparable and almost equal in number.<sup>8</sup> It is unclear why women continue to struggle to obtain clerkships, judgeships, partnerships, and other leadership positions, other than acknowledging that the glass ceiling is still alive and well. Historically, the road to gender equality has been a rough ride, which is why the need for the Virginia, and even more so, the nationwide legal community to acknowledge the barriers faced by women attorneys, and to ensure access to the same networking and business opportunities as their male attorney counterparts is imperative. The only way to do this for attorney spouses in Virginia is to amend the Military Spouse Provisional Admission Rule, allowing these attorneys to successfully compete in the Virginia job market without burdensome restrictions.

### **C. Presence of Military in Virginia**

There are 27 military installations in Virginia, where U.S. Marines, Navy, Army, Air

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pdf at 2, 3.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 4.

Force, and Coast Guard are stationed. Virginia has the third largest military presence in the country, housing over 115,280 active duty and reserve members, and supporting 27 military installations as well as many others in the capital region.<sup>9</sup> The likelihood of having a servicemember with an attorney spouse stationed in Virginia is high. The Military Spouse Provisional Admission Rule, with the removal of section 4, eliminates the obstacle of choosing between career and family and provides a reasonable accommodation through a temporary law license.

#### **D. The Life of a Military Spouse Attorney**

A servicemember often considers their spouse's ability to maintain a career as a crucial factor in whether he/she continues service in the United States Armed Forces. Military spouses are ten times more likely to have moved across state lines in the last year compared to their civilian counterparts.<sup>10</sup> Over 79 percent of military spouses have moved across state lines or abroad within the last five years.<sup>11</sup> Moves are based on the needs of the military without regard for bar exam deadlines or licensing restrictions. Frequent moves make it nearly impossible for an attorney spouse to fulfill experience requirements for reciprocity or comity admission.

For attorney spouses, this means that while 97 percent maintain at least one active law license, only 76 percent work full time in a job requiring a law license.<sup>12</sup> Eighty-six percent of military spouse attorney spouses report that their servicemember spouse's military service has negatively impacted their legal career.<sup>13</sup> Military spouses have a higher unemployment rate which is

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<sup>9</sup> MILITARY ACTIVE-DUTY PERSONNEL, CIVILIANS BY STATE (2019), *Available at:* <https://www.governing.com/gov-data/public-workforce-salaries/military-civilian-active-duty-employee-workforce-numbers-by-state.html>

<sup>10</sup> *Id.*, at 92.

<sup>11</sup> *Id.* at 21.

<sup>12</sup> Military Spouse JD Network (2018), *supra* note 3, at 10.

<sup>13</sup> *Id.* at 9-10.

estimated to be as much as three times higher than their civilian peers.<sup>14</sup> Thirty-three percent of military spouses report that they are underemployed based on their educational background. Active duty spouses earn roughly 38 percent less than their civilian counterparts.<sup>15</sup> The higher the education level, the larger the income gap between active duty spouses and their civilian counterparts.<sup>16</sup>

A commonsense and reasonable provision for admission will support the military. For the current rule to be reasonable, the supervision requirement must be removed.

## **II. The Virginia Military Spouse Provisional Admission Supervision Requirement**

The licensing accommodations provided for attorney spouses in Virginia requires the following of applicants: hold a Juris Doctor degree from a law school accredited by the American Bar Association; be admitted by examination to the court of law before the court of last resort of any state or territory of the United States or of the District of Columbia; be in good standing with no disciplinary actions in all jurisdictions admitted; achieved a passing score on the Multistate Professional Responsibility Exam; not currently subject to lawyer discipline or subject to pending disciplinary matter; to possess the moral character and fitness required for admission in the admitting jurisdiction, have never failed the Virginia bar examination; have submitted all character investigation to the board; and to comply with continuing legal education and license maintenance requirements of the accommodating state. The ethical and character standards for admission under this rule are the same as for someone applying for

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<sup>14</sup> Syracuse University Institute for Veterans and Military Families, THE FORCE BEHIND THE FORCE: OVERVIEW AND GENERAL EMPLOYMENT SOLUTIONS FOR MILITARY SPOUSES (2016), available at: [https://ivmf.syracuse.edu/wp-content/uploads/2019/10/ForceBehindtheForce.BusinessCaseforLeveragingMilitarySpouseTalentACC\\_02.21.18.pdf](https://ivmf.syracuse.edu/wp-content/uploads/2019/10/ForceBehindtheForce.BusinessCaseforLeveragingMilitarySpouseTalentACC_02.21.18.pdf) at 4.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 4.

admission via reciprocity or by passage of the bar exam.

In addition to the requirements listed above, The Military Spouse Provisional Admission Rule states in pertinent part subsection (4):

**4. Supervision of Local Counsel.** A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local counsel. **a)** As used in this Rule, Local Counsel means an active member in good standing of the Virginia State Bar, whose office is in Virginia.**(b)** Local Counsel must provide to the Virginia State Bar his or her Virginia State Bar number, physical office address, mailing address, email address, telephone number, and written consent to serve as Local Counsel, on the form provided by the Board.**(c)** Unless specifically excused from attendance by the trial judge, Local Counsel shall personally appear with the provisionally admitted attorney on all matters before the court.**(d)** Local Counsel will be responsible to the courts, the Virginia State Bar, the Supreme Court of Virginia, and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.**(e)** Local Counsel is obligated to notify the Executive Director of the Virginia State Bar when the supervising relationship between the provisionally admitted attorney and Local Counsel is terminated.

The supervision requirement imposed by the Military Spouse Provisional Admission Rule is burdensome and fails to fully define the scope of the proposed supervision upon an attorney spouse. This requirement imposes both ethical and practical burdens on the attorney spouse and the supervising Virginia attorney.

Over the five years of its implementation less than a dozen attorneys have used this rule. Often attorney spouses cite section 4 as they reason they felt required to take the bar exam in Virginia. This requirement led to many attorney spouses accepting remote jobs out of state, not working, or spending the time and money to pass the bar exam only to move shortly after admission.

## **A. The Need for the Amendment Removing the Supervision Requirement**

### **1. The Supervision Requirement of the Rule is Unduly Burdensome**

In order for an attorney spouse to qualify for admission to the bar, they must meet the same character and fitness requirements of a new attorney and an attorney seeking reciprocity. However, they have the additional requirement of supervision even though they have graduated law school, passed a bar exam, been admitted to practice, and likely have practiced for a number of years. Within the Virginia State Bar, this supervision requirement is only mandated for third year law students and non-lawyer assistants, further highlighting the unreasonableness of this requirement for an attorney spouse with prior admission to a bar and experience.

In addition to the Military Spouse Provisional Admission Rule, supervision is also discussed in Supreme Court rule 5.3 and Supreme Court rule 15.

#### **Supreme Court Rule 5.3 Responsibilities regarding Nonlawyer Assistants:**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

• Comment [1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information

relating to representation of the client and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. At the same time, however, the Rule is not intended to preclude traditionally permissible activity such as misrepresentation by a nonlawyer of one's role in a law enforcement investigation or a housing discrimination "test".

**Supreme Court Rule 15. Third Year Student Rule:**

Activities.

- (i) An eligible law student may, in the presence of a supervising lawyer, appear in any court or before any administrative tribunal in this Commonwealth in any civil, criminal or administrative matter on behalf of any person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance. The eligible law student must obtain written approval from the court or administrative tribunal prior to any appearance before the court or administrative tribunal.
- (ii) An eligible law student may also, in the presence of a supervising lawyer, appear in any criminal matter on behalf of the Commonwealth with the written approval of the prosecuting attorney or his authorized representative, provided the student obtains the written authorization from the court or administrative tribunal prescribed in paragraph (a)(i) of this Rule.
- (iii) The written consent and approval of the person or entity on whose behalf the student appears shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

Supervision.

The supervising attorney under whose supervision an eligible law student performs any of the activities permitted by this Rule (Paragraph) 15 shall:

- (i) Be an active member of the Virginia State Bar who practices before, and whose service as a supervising lawyer for this program is approved by, each court or administrative body in which the eligible law student engages in limited practice.
- (ii) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
- (iii) Assist the student in his preparation to the extent the supervising lawyer considers it necessary.
- (iv) The approval of the court designated in (a)(i) or (d)(i) may be withdrawn at any time without stating the cause for withdrawal

The undersigned and MSJDN petition this Court to remove the unduly burdensome supervision requirement being applied to otherwise licensed attorneys. Military spouse attorneys are graduates of law schools accredited by the American Bar Association and often

have years of legal experience behind them. As mentioned above, many of the attorney spouse applicants under the Military Spouse Provisional Admission Rule possess more than one license to practice law and have vast experience in their area of law. They are not current third year law students seeking legal internships or non-lawyer assistants.

The levels of experience among attorney spouses are fairly evenly distributed with roughly twenty-two percent having between one and three years of practice, approximately twenty-two percent have seven to ten years of practice, and nearly forty percent have over ten years of practice.<sup>17</sup> In sum, treating the supervision requirement of the Military Spouse Provisional Admission Rule like that of the supervision imposed on third year law students or non-lawyer assistants pursuant to Supreme Court rule 5.3 or 15 is, in effect, wholly disregarding any previous law degrees, bar admissions, familiarity with various state ethical obligations, and fully-licensed legal work experience secured by spouse attorneys in other jurisdictions. It is clear that the rule as written is unduly restrictive and burdensome to spouse attorneys seeking licensure in the Commonwealth.

## **2. The Amendment Will Keep Families Together**

In addition to the inherent pressures of being a spouse to a servicemember, attorney spouses also bear a unique burden that limits their ability to practice their profession: the jurisdiction-specific licensing requirement. When servicemembers receive military orders for a change in duty assignment, attorney spouses are faced with the untenable choice of living separately from their spouse to maintain their practice or relocating with them to a jurisdiction where they are not authorized to practice law. Half of attorney spouses have lived apart from

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<sup>17</sup> Military Spouse JD Network (2019), *supra* note 3, at 3.

their servicemember spouse (excluding deployments) in order to maintain their legal career.<sup>18</sup> If the attorney spouse decides to relocate with their servicemember, taking the bar exam is often not an option. Typically, official orders do not arrive in time for the attorney spouse to apply to take the bar exam prior to the move. Further, the costs and time associated with sitting for another bar exam in light of an unknown duration of the relocation is prohibitive. On average, the bar exam costs from \$150 to \$1500 by the time one is sworn in. The cost of a reputable review course is anywhere from \$1,800 to \$4000, and the course lasts around 3 months. The bar exam is only offered twice a year with results typically taking between 8 and 12 weeks to be released. With the above constraints, the bar exam is often not an option for an attorney spouse who is not in control of short notice relocations for their military family, and who can expect to move every two to three years.<sup>19</sup>

Spouse attorneys are also often unable to waive in under traditional admission on motion rules due to work experience that is broken up over time, and not amounting to the five years of work experience required for reciprocity. As such, the ability to waive in under reciprocity is often limited to a small amount of spouse attorneys, and frequently comes with much higher bar fees than other waiver options. For example, the “Application for Admission Without Examination and your Character & Fitness Questionnaire” to qualify for reciprocity admission with the Virginia State Bar is \$2,500, whereas the filing fee to qualify for admission under the Military Spouse Provisional Admission Rule is \$400. It is clear that the Military Spouse Provisional Admission

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<sup>18</sup> MILITARY SPOUSE JD NETWORK, 2018 ANNUAL MILITARY SPOUSE ATTORNEY SURVEY REPORT OF FINDINGS (2019), *Available at*: <https://www.msjudn.org/wp-content/uploads/2019/07/2018-Annual-Military-Spouse-Attorney-Survey.pdf> at 9-10.

<sup>19</sup> <sup>19</sup> Military Officers Association of America & Institute for Veterans and Military Families at Syracuse University, MILITARY SPOUSE EMPLOYMENT REPORT (February 2014), *available at* [https://fortunedom.com.files.wordpress.com/2014/05/militaryspouseemploymentreport\\_2013.pdf](https://fortunedom.com.files.wordpress.com/2014/05/militaryspouseemploymentreport_2013.pdf) at 4, 92.

Rule in Virginia would be the more cost-effective option to waive in with, but with the supervision requirement in place, attorney spouses that qualify for reciprocity are forced to opt for the financially burdensome option.

### **3. The Amendment Will Remove Barriers to Career Growth**

Adoption of a military spouse admission accommodation with the Virginia State Bar has had an impact for some Virginia military families. However, the barrier added by the supervision requirement of section 4 is burdensome on attorney spouses for many reasons. The lack of an established professional network in the legal community due to frequent military moves means it is nearly impossible to find someone willing to take on the burden of supervision. The requirement for supervision also creates ambiguity as to which attorney is serving- the supervisor or the attorney spouse, and creates the potential for additional financial burdens on the attorney-spouse regarding disputes over fee-sharing. A requirement for supervision also burdens members of the Virginia State Bar who, by acting as supervising attorneys, subject themselves to discipline on behalf of the supervised lawyer. To require supervision over a military spouse attorney who is already licensed and in good standing in at least one other jurisdiction—when supervision is not required for newly licensed Virginia attorneys who have never handled a case, in-house counsel who have voluntarily moved here, or those seeking reciprocity to practice under Virginia law, seems unduly restrictive and burdensome.

Because of the supervision requirement of Section 4, the current Military Spouse Provisional Admission Rule effectively deters anyone from hiring an otherwise qualified attorney simply because the requirements of supervision would be too great. Below are the experiences of just a few military spouse attorneys stationed in Virginia.

## **B. Military Spouse Attorney Experiences in the Commonwealth of Virginia**

Jennifer M. Young has taken three bar exams in five years. Suffice to say, her career, like many other military spouses, has been impacted by her spouse's military career. Ms. Young currently serves as an Administrative Hearings Officer/Administrative Law Judge. The position requires her to conduct fair and impartial hearings, holding substantive prehearing conferences, conducting hearings on motions and/or status conferences, making findings of fact, conclusions of law and submitting final Order and Decisions within certain statutory timelines. She has performed these duties at both past duty stations in Hawaii and New York. As Ms. Young puts it, while she is an Administrative Hearings Officer, she is also a military spouse. Her husband's career demands that her family transfer to various states, jurisdictions, and/or countries every three to four years, forcing her family to face an array of unique hardships as a result. She is forced into gaps of unemployment when she moves to a new state, and after she receives her license to practice in a new jurisdiction through either motion or bar examination, she spends a considerable amount of time applying to positions and interviewing in a new area where no one is familiar with her high quality of work. This is one of the reasons Ms. Young asks her spouse to not preference any position in Virginia as she knows she will have to overcome the supervision requirement.

As a military spouse that has moved numerous times for her husband's career, Ms. Young finds the supervision requirement impractical and unnecessary, serving as yet another employment barrier for military spouse attorneys. Ms. Young adds that state rules of professional responsibility govern appropriate conduct for any attorney practicing in said state. Ms. Young urges the Supreme Court of Virginia to remove the supervision requirement from the Military Spouse Provisional Admission. This change would open up career opportunities for both her and

her spouse in the Commonwealth.

Katelyn P. Brady is a military spouse and member of the Maryland State bar and District of Columbia bar. Ms. Brady was eligible to waive into the Virginia State Bar through the Military Spouse Provisional Admission Rule, but ultimately decided not to based on her experience with the rule's supervision requirement. Upon arriving to Virginia with her active duty spouse, Ms. Brady began applying for jobs in an area she had prior experience in--litigation. Ms. Brady was denied several job opportunities at various firms, explaining that the firms cited the required supervision of an experienced litigator in court during each and every hearing as overly burdensome. As such, Ms. Brady had no other option but to end her employment search in Virginia and maintain employment with a firm in a different state. Ms. Brady now is required to commute nearly four hours (each way) several times a week to maintain employment at her firm in the District of Columbia, adding an additional financial burden and time constraint to an already frustrating situation. Ms. Brady is adamant that removing the supervision requirement from the Military Spouse Provisional Admission Rule will give other military spouse litigators an opportunity to thrive in Virginia, and litigate without being held back by overly restrictive requirements.

Lovely Thomas-McCracken has practiced law for over ten years. However, upon her arrival in Virginia she found it difficult to obtain a job due to the supervision requirement under the Military Spouse Provisional Admission Rule. Ms. Thomas-McCracken found that despite her varied attempts at securing employment, the majority of attorneys she met were immediately put off by the prospect of having to fully supervise an experienced attorney. Rather than sitting for another bar exam, Ms. Thomas- McCracken has selected to serve as a volunteer attorney at the nearby Army base's legal assistance office as she awaits news of her spouse's next duty station.

Ms. Thomas-McCracken believes that while her status as a military spouse in the legal field will always work against her, removing the supervision requirement would be one less impediment to seeking employment, and allow more military spouse attorneys the opportunity to be viewed as well-qualified and viable candidates for work.

A different perspective is provided by Phoenix Ayotte, a member of the Virginia State Bar, military spouse for over ten years, and owner of her own small legal practice. As a small business owner, Ms. Ayotte finds the supervision requirement of the Military Spouse Provisional Admission Rule to be onerous and impractical. Ms. Ayotte has attempted to hire military spouse attorneys for her firm multiple times; however, the need to supervise an attorney for the entirety of their time with her practice is both practically and financially unrealistic. Simply put, billing the time of two attorneys for one case would cause her practice to lose money. As an employer, Ms. Ayotte is frustrated at the limitations this rule presents, and emphasizes the need to remove the supervision requirement to make the Military Spouse Provisional Admission truly useful and meaningful to both military spouse attorneys and their potential employers.

Nicolle Vasquez has first-hand experience with the unduly burdensome effects of a supervision requirement in an accommodation rule. Licensed in Hawaii in 2014, she practiced family law in Honolulu for two years as part of the Skadden Fellowship program through Skadden, Arps, Slate, Meagher & Flom LLP. In Hawaii she represented domestic violence victims affiliated with the military in restraining orders, divorce, post-divorce, and paternity matters. With a caseload of 15-20 active divorce and paternity cases, in addition to 3-5 restraining order cases a month, she was in court at least twice a week, every week. By the end of her two year fellowship she had tried numerous restraining order show-cause hearings, first chaired a post-paternity relocation trial, and second-chaired two complex custody cases.

When her husband received orders with the U.S. Marine Corps, she relocated to Virginia. Upon reviewing the requirements of Virginia’s Military Spouse Provisional Admission Rule, she learned of the supervision of local counsel requirement.<sup>20</sup> This requirement severely harmed her in her job search as an attorney. Like many military spouses, she did not know any attorneys in Virginia and had no connections to the state aside from her husband’s job. The supervision requirement quickly turned into a “catch-22” for her. After submitting many applications, she found no one willing to sponsor and supervise an unfamiliar Hawaii attorney, and without a supervisor she could not become a member of the Bar. Without a Bar membership, she was unable to get hired. Many attorneys also did not want to appear in court with Ms. Vasquez as required by the Military Spouse Provisional Admission. As an attorney with two years of substantial family law and litigation experience, who previously required little to no supervision from other attorneys, she was seemingly reduced to the status of a law school intern needing court supervision to continue her practice of law.

As a result of these issues, Ms. Vasquez was underemployed as a paralegal to financially contribute to her household until she found a temporary job with a staffing agency on a bankruptcy team. Despite her prior legal experience, in both of these instances she settled for a

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<sup>20</sup> Virginia State Bar Rule 1A:8, Section 4(c), (d):

A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local Counsel.

...

(c) Unless specifically excused from attendance by the trial judge, Local Counsel shall personally appear with the provisionally admitted attorney on all matters before the court.

(d) Local Counsel will be responsible to the courts, the Virginia State Bar, the Supreme Court of Virginia, and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.

job in the legal field rather than a job that she was qualified for and prepared to do. After over year of odd legal jobs, Ms. Vasquez found employment with the Department of the Navy's Office of General Counsel. While a position with the federal government did not require a Virginia license, she remained active with the Virginia State Bar, serving as a co-chair of the Wills for Heroes program with the Young Lawyers Conference. Her dedication to the Virginia State Bar during this short time also led to her being named the recipient of R. Edwin Burnette Young Lawyer of the Year.

While Ms. Vasquez was fortunate to eventually land in a federal position that did not require a state license, her experiences with the Military Spouse Provisional Admission Rule demonstrate two things: (1) the employment hardship experienced by many military spouse attorneys brought on by the supervision requirement, and (2) despite the brevity of their time with the Virginia State Bar, military spouse attorneys are ready, willing, and able to successfully contribute valuable legal work to the practice of law in the Commonwealth of Virginia, whether through pro bono work or in private practice.

Despite the mobile nature of today's work force, where many employees change jobs frequently and the technological advances which allow greater flexibility in almost all professions, military spouses already face a stigma when applying and are often disregarded as viable candidates for a position due to their frequent moves. There is no need to further burden employers willing to hire military spouse attorneys with a requirement of supervision that will also burden them by making them appear with and be subject to discipline for the military spouse attorney.

Military spouses (of all professions) should not be discriminated against based on who their partners' chosen profession and their families' dedication to the nation. Attorney spouses

are a great asset to the Virginia legal community and would be required to uphold the same legal standards of any other Virginia licensed attorney, including continuing legal education requirements.

### **III. Conclusion**

Virginia led the way as one of the first states to adopt a Military Spouse Provisional Admission Rule, demonstrating its unwavering support for both the military members stationed here as well as their families. In seeing the effects of this rule, the Commonwealth now has the ability to correct its unintended consequences by removing the supervision requirement, allowing spouse attorneys to utilize the rule and make a meaningful contribution to the state they now call home.

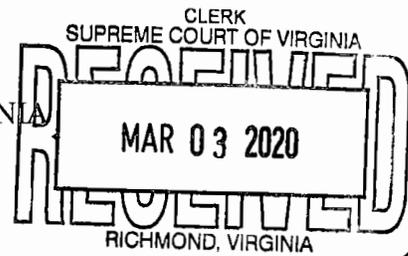
For the above reasons, the undersigned respectfully request that the Court amend Rule 1A:8, the Military Spouse Provisional Admission Rule, by removing section 4, otherwise known as the local counsel supervision requirement.

Respectfully submitted this 28<sup>th</sup> of February, 2020.

/s/ Nicolle Vasquez  
(Military Spouse)  
Bar No. 10181 (HI)  
Bar No. 91807 (VA)  
Norfolk, Virginia

/s/ Courtney M. Kelly  
Bar No. 035477 (TN)  
Bar No. 93598 (VA)  
Norfolk, Virginia

RULES OF SUPREME COURT OF VIRGINIA  
PART ONE A  
FOREIGN ATTORNEYS



**Rule 1A:8. Military Spouse Provisional Admission.**

1. **Requirements.** A person who meets all requirements of subparagraphs (a) through (m) of paragraph 2 of this Rule 1A:8 may, upon motion, be provisionally admitted to the practice of law in Virginia.

2. **Required Evidence.** The applicant for provisional admission shall submit evidence satisfactory to the Virginia Board of Bar Examiners (the "Board") that he or she:

(a) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;

(b) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of such applicant's graduation;

(c) has achieved a passing score on the Multistate Professional Responsibility Examination as it is established in Virginia at the time of application;

(d) is currently an active member in good standing in at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the unrestricted practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;

(e) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(f) possesses the good character and fitness to practice law in Virginia;

(g) is the dependent spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) and that the service member is on military

orders stationed in the Commonwealth of Virginia or the National Capitol region, as defined by the Department of Defense;

(h) is physically residing in Virginia;

(i) has submitted all requested character investigation information, in a manner and to the extent established by the Board, including all required supporting documents;

(j) has never failed the Virginia Bar Examination;

(k) has completed twelve (12) hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law, including four (4) hours of ethics, within the six-month period immediately preceding or following the filing of the applicant's application;

(l) certifies that he or she has read and is familiar with the Virginia Rules of Professional Conduct; and

(m) has paid such fees as may be set by the Board to cover the costs of the character and fitness investigation and the processing of the application.

### **3. Issuance, Admission, Duration and Renewal.**

(a) *Issuance.* - The Board having certified that all prerequisites have been complied with, the applicant for provisional admission shall, upon payment of applicable dues and completion of the other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, become an active member of the Virginia State Bar. An attorney provisionally admitted pursuant to this Rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by a lawyer admitted pursuant to this Rule shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct.

(b) *Admission.* - Upon notification by the Board that the applicant's application has been approved, the applicant shall take and subscribe to the oath required of attorneys at law. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an

appointed date and time or by appearing before a judge of a court of record in Virginia. Once the attorney has taken the oath, it shall remain effective until the attorney's provisional admission is terminated pursuant to paragraph 5 of this Rule.

(c) *Duration.* - A provisional admission may be renewed by July 31 of each year, upon filing with the Virginia State Bar (i) a written request for renewal, (ii) ~~an affidavit by supervising Local Counsel, who certifies to the provisionally admitted attorney's continuing employment by or association with Local Counsel and to Local Counsel's adherence to the supervision requirements as provided under this Rule,~~ and (iii) compliance with the membership obligations of Part 6, Section IV of the Rules of the Supreme Court of Virginia applicable to active members of the Virginia State Bar.

(d) *Renewal.* - When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Virginia, the provisional admission may be renewed until that unaccompanied or remote assignment ends, provided that the attorney complies with the other requirements for renewal.

~~4. **Supervision of Local Counsel.** A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local Counsel.~~

~~(a) As used in this Rule, Local Counsel means an active member in good standing of the Virginia State Bar, whose office is in Virginia.~~

~~(b) Local Counsel must provide to the Virginia State Bar his or her Virginia State Bar number, physical office address, mailing address, email address, telephone number, and written consent to serve as Local Counsel, on the form provided by the Board.~~

~~(c) Unless specifically excused from attendance by the trial judge, Local Counsel shall personally appear with the provisionally admitted attorney on all matters before the court.~~

~~(d) Local Counsel will be responsible to the courts, the Virginia State~~

~~Bar, the Supreme Court of Virginia, and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.~~

~~(e) Local Counsel is obligated to notify the Executive Director of the Virginia State Bar when the supervising relationship between the provisionally admitted attorney and Local Counsel is terminated.~~

**5. Events of Termination.** An attorney's provisional admission to practice law pursuant to this Rule shall immediately terminate and the attorney shall immediately cease all activities under this Rule upon the occurrence of any of the following:

(a) The spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in the Commonwealth of Virginia or the National Capitol region as defined by the Department of Defense, except as provided in section 3(c) of this Rule;

(b) Failure to meet the annual licensing requirements of an active member of the Virginia State Bar;

(c) The absence of supervision by Local Counsel;

(d) The attorney no longer physically residing within the Commonwealth of Virginia;

(e) The attorney ceasing to be a dependent as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) on the spouse's official military orders;

(f) The attorney being admitted to practice law in this Commonwealth under an admissions rule other than that of Provisional Admission;

(g) The attorney receiving a failing score on the Virginia Bar Examination;

(h) The attorney being suspended from the practice of law in Virginia;

or

(i) Request by the attorney.

**6. Notices Required.**

(a) An attorney provisionally admitted under this Rule shall provide written notice to the Virginia State Bar of any Event of Termination within thirty (30) days of the occurrence thereof.

(b) Within thirty (30) days of the occurrence of any Event of Termination, the attorney shall:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and furnish proof to the Executive Director of the Virginia State Bar within sixty (60) days of such notification; and

(ii) file in each matter pending before any court or tribunal in this Commonwealth a notice that the attorney will no longer be involved in the matter, which shall include the substitution of the Local Counsel, or such other attorney licensed to practice law in Virginia selected by the client, as counsel in the place of the provisionally admitted attorney.

**7. Benefits and Responsibilities.** An attorney provisionally admitted under this Rule shall be entitled to the benefits and be subject to all responsibilities and obligations of active members of the Virginia State Bar, and shall be subject to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and to the Virginia State Bar with respect to the laws and rules of this Commonwealth governing the conduct and discipline of attorneys to the same extent as an active member of the Virginia State Bar.

**Promulgated by Order dated May 16, 2014; last amended by Order dated February 27, 2015, effective immediately.**