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Barred from Service: Support Our Troops by Supporting their Attorney Spouses with Uniform License Portability

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Barred from Service: Support Our Troops by Supporting their Attorney Spouses with Uniform License Portability

Jacquelyn Loyd*

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* J.D. Candidate, University of the Pacific, McGeorge School of Law, 2015; B.A. English, University of California, Davis, 2011. I would like to extend my profound thanks to Distinguished Professor Michael Vitiello for his extensive and timely feedback on this Comment over the last year. I also want to thank Professor Brian Slocum for his suggestions about the model rule proposed here and the Editors of the *McGeorge Law Review* for their assistance getting this article into print. But most of all, I want to thank my husband, Ensign Targe Loyd, USN, for his patience and enduring love as I pursue my dreams. I could not have done this without you. Hoo-yah!

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I. INTRODUCTION

In December of 2013, the United States Senate confirmed Patricia Millet’s nomination to the U.S. Court of Appeals, D.C. Circuit.¹ Before her nomination, Millet led the Supreme Court appellate practice at Akin Gump Strauss Hauer & Feld’s.² During this time, she “argued thirty-two times before the United States Supreme Court, the second-most for [any] woman advocate” in history.³ Unquestionably, Millet displayed all the necessary qualifications for an appointment to what is widely regarded as the nation’s most important circuit.⁴ Although her distinguished career and judicial appointment set her a cut above most practicing attorneys, what makes her truly remarkable is that she accomplished these goals while dealing with the added complications of a military lifestyle.⁵ Twenty years ago, Millet and her active duty Navy husband

1. See Ed O’Keefe & Paul Kane, *Senate Confirms Patricia Millet, Mel Watt Using New Majority Rules*, WASH. POST (Dec. 10, 2013, 5:57 PM), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/12/10/senate-proceeding-as-scheduled-tuesday/> (on file with the *McGeorge Law Review*) (noting that the Senate confirmed Millet by a 56–38 margin).

2. See Todd Ruger, *Senate Confirms Patricia Millet to D.C. Circuit*, THE BLOG OF LEGAL TIMES (Dec. 10, 2013), <http://legaltimes.typepad.com/blt/2013/12/senate-confirms-patricia-millett-to-dc-circuit.html> (on file with the *McGeorge Law Review*) (listing Millet’s prior practice).

3. *Id.*

4. See *id.* (pointing out that “both parties said she had the credentials and experience to serve”). An appointment to the D.C. Circuit is often a precursor to consideration for appointment to the Supreme Court of the United States. If Patricia Millet is ever appointed the nation’s highest court, she will be the second military spouse to ever hold that position; the first being Sandra Day O’Connor. Brad Plumer, *The D.C. Circuit is the Court at the Center of the Filibuster Fight. Here’s Why it Matters*, WASH. POST (Nov. 21, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/11/21/the-d-c-circuit-court-was-at-the-center-of-the-filibuster-fight-heres-why-it-matters/> (on file with the *McGeorge Law Review*); Elizabeth Jamison, *MSJDN Visits the Supreme Court of the United States*, MILITARY SPOUSE JD NETWORK (June 6, 2014), <http://www.msjdn.org/2014/06/msjdn-visits-scotus/> (on file with the *McGeorge Law Review*).

5. See Reda Hicks, *Faith & Family: The Center of a Military Spouse DC Circuit Nominee*, BARS AND STRIPES (Oct. 21, 2013), available at <http://www.msjdn.org/wp-content/uploads/2013/10/MilSpouseJD-Network-Faith-and-Family-Patricia-Millett-Profile-OCT-2013.pdf> (on file with the *McGeorge Law Review*) (outlining Millet’s family life).

faced a difficult choice, the same choice all military families must make when one spouse is an attorney: whose career will take priority?⁶

For attorneys, marriage to an active duty service member often means moving frequently and taking multiple bar exams.⁷ In order to continue practicing, some military spouse attorneys have been forced to gain admission in multiple jurisdictions.⁸ This frequently leads to a disruption in the military spouse's employment.⁹ Often, it frustrates these spouses' ability to have a career at all.¹⁰ In Millet's case, her husband transitioned from active duty to the reserves to avoid disrupting his wife's high-powered career.¹¹ The Navy lost a valuable sailor.¹²

But it did not have to. If attorney licenses were more portable, service members could stay in the military without jeopardizing their spouses' careers.¹³ By helping military spouses, military families are strengthened, and soldiers and sailors can better focus on their jobs: protecting the United States and her citizens.¹⁴

According to Military One Source, eighty-five percent of military spouses, mostly women,¹⁵ are unemployed or underemployed.¹⁶ There are over 900 military spouse attorneys¹⁷ that suffer the same employment problems as military

6. See ABA Resolution 108 at 4 (Feb. 6, 2012) [hereinafter ABA Resolution] (stating the dilemma that military attorney spouses are often forced to make career sacrifices, otherwise the service member must leave the military).

7. See *id.* at 3 (explaining that military spouse attorneys take a new bar exam every two to three years when moving across state lines).

8. See *id.* at 4 (using the Honorable Erin Wirth as an example, acknowledging that she moved seven times in sixteen years and took and passed bar exams in three different jurisdictions).

9. See *id.* (indicating that Erin Wirth held eleven different jobs that did not constitute full time legal work).

10. See *id.* (stating that military spouse attorneys frequently forgo legal careers in order to support their service members).

11. See Hicks, *supra* note 5 (describing Millet's husband's military career, which began as active duty, but later transitioned to military reserve service).

12. See *id.* (indicating that Bob King, Millet's husband, chose to transition to the reserves when it looked like remaining active duty would result in his career taking him away from his wife).

13. See ABA Resolution, *supra* note 6, at 4 (explaining that service members frequently separate from the military to avoid frequent moves that hurt their spouses careers).

14. See Elaine Sanchez, *First Lady, Panetta Unveil Effort to Aid Spouse Employment*, U.S. DEP'T OF DEF. (Feb. 15, 2012), <http://www.defense.gov/News/NewsArticle.aspx?ID=67211> (on file with the *McGeorge Law Review*) (quoting Defense Secretary Leon E. Panetta, "In helping our families, you are not only protecting them, you are in a very real way, helping to protect America.").

15. See *Employment Resources for Our Military Community*, OUR MILITARY, <http://www.ourmilitary.mil/hot-topic/employment-resources-for-our-military-community> (last visited Dec. 27, 2013) [hereinafter *Employment Resources*] (on file with the *McGeorge Law Review*) (stating that 95% of military spouses are women). Because of this statistic, this Comment uses the feminine pronoun when referring to military spouses.

16. Natalie Wilson, *MSJDN Inducted into Military Spouse Employment Partnership*, MILITARY SPOUSE JD NETWORK (Nov. 8, 2013), <http://www.msjudn.org/2013/11/msjudn-inducted-into-military-spouse-employment-partnership/> (on file with the *McGeorge Law Review*) (quoting Military One Source).

17. *Id.*

spouses in other professions.¹⁸ Nine hundred¹⁹ does not seem like many when compared to the total number of military spouses,²⁰ but the problems attorney spouses face are severe.²¹ The frequent moves that military spouses undertake as a result of Permanent Change of Station (PCS) orders²² make having any career difficult.²³ But attorneys face a unique challenge because they must gain admission to a new bar every time they move across state lines.²⁴ This process is expensive,²⁵ time-consuming,²⁶ and sometimes an exercise in futility due to the difficulty many military spouses face when finding a job.²⁷

This situation yields several different outcomes. Some military spouse attorneys choose to live apart from their active duty spouses,²⁸ often separating children from their other parent for long periods of time.²⁹ Those that choose to move with their spouse often give up good jobs for part-time work, or cannot find work at all.³⁰ And finally, those that do manage to find a job must first spend

18. See ABA Resolution, *supra* note 6, at 5 (discussing military spouse employment disparity as compared to civilian employment, but not distinguishing attorney employment).

19. See Wilson, *supra* note 16 (giving a current estimate of military spouse attorneys, but not counting the many whose spouses served and then separated that may nevertheless be affected by all the same problems as current military spouse attorneys).

20. See *U.S. Military Demographics*, AMERICA'S PROMISE ALLIANCE, <http://www.americaspromise.org/Our-Work/Military-Families/Military-Families-by-the-Numbers.aspx> (last visited Dec. 27, 2013) [hereinafter *Demographics*] (on file with the *McGeorge Law Review*) (relaying the statistics that there are 1.4 million active duty service members of which about 56% are married, meaning there are around 784,000 military spouses).

21. See MILITARY SPOUSE J.D. NETWORK, <http://www.msjdn.org/> (last visited April 1, 2015) [hereinafter MSJDN] (on file with the *McGeorge Law Review*) (discussing the employment challenges specific to military spouse attorneys).

22. See *Employment Resources*, *supra* note 15 (reporting that military families are 14% more likely to move than civilian families); ABA RESOLUTION, *supra* note 6, at 5 (stating that military families often move every two to three years); see also Rod Powers, *Military Travel (PCS) Move Entitlements*, ABOUT.COM, <http://usmilitary.about.com/od/travelpay/a/pcsentitlement.htm> (last visited June 24, 2014) (on file with the *McGeorge Law Review*).

23. See *Employment Resources*, *supra* note 15 ("Eighty-five percent of military spouses either want or need employment currently").

24. See MSJDN, *supra* note 21 (explaining that attorneys must be licensed in every state they practice in).

25. See *id.* (stating that licensing fees and preparation can cost \$4,000–\$5,000).

26. See *id.* (emphasizing that the process of getting bar certified can take a year).

27. See *id.* (describing the difficulty of finding employment and that half of military spouse attorneys are unemployed and looking for work).

28. See, e.g. Thea Pitzen, *One Tough No-Brainer*, MILITARY SPOUSE JD NETWORK (Dec. 19, 2013), <http://www.msjdn.org/blog/> (on file with the *McGeorge Law Review*) (describing how she chose to live apart from her husband so that she could complete a clerkship); ABA Resolution, *supra* note 6, at 3 (stating that many attorney spouses are placed in the unfortunate position of having to choose to live separate from their spouses due to financial need and student loans).

29. See ABA Resolution, *supra* note 6, at 3 (describing the choice to live apart from a military spouse).

30. See, e.g. Pitzen, *supra* note 28 (lamenting the fact that she had to give up a good job to move with her husband when he received PCS orders); ABA Resolution, *supra* note 6, at 4 (detailing the career of the Honorable Erin Wirth, who held eleven different full or part time jobs during her husband's military career).

large amounts of money paying for bar-prep courses, bar exams, and multiple state bar member fees.³¹

Many military families decide that the service member should separate from the military and allow the spouse to pursue her career.³² The Department of Defense (DOD) has recognized this as a significant problem not just with attorneys, but also with spouses in other professional careers and has taken steps to encourage states to ease certification requirements so that military spouses can keep their careers even when moving on PCS orders.³³ To date, over half the states have enacted or have laws pending that ease certification requirements for military spouses in professions like medicine and architecture.³⁴ However, only twelve states have changed their rules for the admission of military spouse attorneys,³⁵ and just four of those states, Texas, North Carolina, Virginia, and Colorado, are in the top-ten active duty military states.³⁶ Several more states have pending rule changes that ease state bar admission requirements for military spouse attorneys.³⁷ But despite this progress, a more consistent rule is needed to best help military families and maximize employment for military spouse attorneys.

This Comment begins by describing the current enacted and pending rule revisions in the states that have attempted to accommodate military spouse attorneys. These states fall into three general categories: (1) those that modify

31. See MSJDN, *supra* note 21 (stating that licensing fees and preparation can cost \$4,000-\$5,000).

32. See ABA Resolution, *supra* note 6, at 4 (noting that many couples must choose between the service member separating from the military or the spouse's career).

33. See Amaani Lyle, *Dr. Biden Urges Governors to Help Military Spouses*, U.S. DEP'T OF DEF. (Feb. 25, 2013), <http://www.defense.gov/News/NewsArticle.aspx?ID=119371> (on file with the *McGeorge Law Review*) (detailing Dr. Jill Biden's statement about military spouse career portability); DR. JANICE EBERLY & JO ANN ROONEY, DEP'T OF DEF., SUPPORTING OUR MILITARY FAMILIES: BEST PRACTICES FOR STREAMLINING OCCUPATIONAL LICENSING ACROSS STATE LINES 22 (Feb. 2012), available at http://www.defense.gov/home/pdf/Occupational_Licensing_and_Military_Spouses_Report_vFINAL.PDF (on file with the *McGeorge Law Review*).

34. See Lyle, *supra* note 33 (stating that twenty-eight states have made laws or amendments facilitating license portability); see also Marcus Beauregard, *States Step Up to Remove Barriers for Military Spouses Employment!*, DODLIVE.MIL (June 1, 2012), <http://www.dodlive.mil/index.php/2012/06/states-step-up-to-remove-barriers-for-military-spouse-employment-2/> (on file with the *McGeorge Law Review*).

35. See *State Rule Change Efforts*, MILITARY SPOUSE JD NETWORK, <http://www.msjdn.org/rule-change/> (last visited April 18, 2015) (on file with the *McGeorge Law Review*) [hereinafter *State Rule Change Efforts*] (listing the twelve states that have passed laws or regulations that increase military spouse attorney license portability as: Oklahoma, New York, New Jersey, Colorado, Massachusetts, Virginia, South Dakota, Illinois, North Carolina, Texas, Arizona, and Idaho).

36. See *Demographics*, *supra* note 20 (listing the top ten states based on number of active duty military personnel stationed there, from most to least: California, Virginia, Texas, North Carolina, Georgia, Washington, Florida, Hawaii, Kentucky, and Colorado).

37. See *State Rule Change Efforts*, *supra* note 35 (identifying those states as Oregon, California, Alaska, Utah, Indiana, Ohio, Pennsylvania, Maryland, Delaware, Tennessee, Alabama, Georgia, South Carolina, and Florida); see also *Official Opposition to AB 296*, MILITARY SPOUSE JD NETWORK 3 (June 26, 2013) [hereinafter *Opposition to AB 296*] (on file with the *McGeorge Law Review*) (counting those states, as of 2013, as Delaware, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, and Maryland).

reciprocity and minimum practice requirements;³⁸ (2) those that require supervision by a local attorney;³⁹ and (3) those requiring that the attorney be admitted to a bar in another state.⁴⁰ The following sections explore licensing portability for military spouses in other professions, the states' concerns about attorney competence, and the valuable resource that is the military spouse attorney. Finally, this Comment explores the weaknesses in the current law and offers solutions. By adopting the model rule in Part VII of this Comment, states can ensure maximum protection for their citizens while still fully utilizing the valuable resource of military spouse attorneys.

II. CURRENT STATE MILITARY SPOUSE EXCEPTIONS

In February 2012, the American Bar Association (ABA) issued a resolution urging states to adopt rules allowing the admission without examination of attorneys married to active duty service members moving to the state on PCS orders.⁴¹ Since that time, twelve states have adopted such rules and many states are considering them.⁴² However, state regulations show little consistency, and many fall short of the ultimate goal: making bar certification, and thus employment, more attainable for the attorneys who move frequently with their military spouses.⁴³

Most jurisdictions offering special admission rules to military spouse attorneys share the same basic requirements.⁴⁴ Generally, spouses must prove

38. See N.C. BD. OF LAW EXAM'RS, Rule .0503(1)(a) (2013) (listing North Carolina's requirements for admission of military spouse attorneys); *License Portability for Military Spouses*, TEX. BD. OF LAW EXAM'RS, available at http://www.ble.state.tx.us/applications/pdfs/Applications/Military_Spouse_info.pdf [hereinafter *Texas License Portability*] (on file with the *McGeorge Law Review*) (describing Texas's change in policy granting waivers to military spouse attorneys); *Message to Military Spouses Seeking Admission to the Massachusetts Bar*, MASS. COURT SYSTEM, <http://www.mass.gov/courts/court-info/sjc/attorneys-bar-applicants/bbel/> (last visited March 31, 2014) (on file with the *McGeorge Law Review*) [hereinafter *Massachusetts Message to Military Spouses*]; *Notice to Military Spouses Seeking Admission to the New York Bar*, THE N.Y. STATE BD. OF LAW EXAM'RS, <http://www.nybarexam.org/AOM/AdmissiononMotion.htm> (last visited March 31, 2014) (on file with the *McGeorge Law Review*) [hereinafter *New York Notice to Military Spouses*].

39. See IDAHO BAR COMM'N RULES (2012), Rule 229 (stating that military spouse attorneys need supervision by a local attorney); NEW JERSEY SUPREME COURT RULE 1:27-4 (2014).

40. See RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 38(i) (2013) (outlining the requirements for military spouse attorneys in Arizona); ILL. SUPREME COURT RULES, ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS, PART A. ADMISSION TO THE BAR, Rule 719 (2013) (listing the requirements for military spouse attorney admission without examination in Illinois); S.D. SUPREME COURT RULES, Rule 13-10 (2013) (stating the very lenient requirements for admission of military spouse attorneys in South Dakota); C.R.C.P. Rule 204.4 (2014); RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF OKLAHOMA, RULE 2 § 7 (2014).

41. ABA Resolution *supra* note 6, at 1.

42. *State Rule Change Efforts*, *supra* note 35.

43. *Infra* Part VI.

44. See *e.g.*, N.C. BD. OF LAW EXAM'RS, Rule .0502 (2013); IDAHO BAR COMM'N RULES, Rule 229 (2012); AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as amended on May 15, 2013, but not enacted); RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 38(i) (2013); ILL. SUPREME

they are legally married to an active duty service member relocating to the state on official orders.⁴⁵ This requires a marriage certificate, a DOD dependent ID, and the service member's official orders.⁴⁶ Additionally, most jurisdictions either require that the attorney spouse passed a moral character examination in her last jurisdiction, such as the MPRE, or that her character and fitness to be re-evaluated upon entering the state.⁴⁷ Further, once admitted, all jurisdictions require the attorney comply with the same rules of conduct and disciplinary measures as other members of its bar.⁴⁸

Nevertheless, the rules for admission differ from state to state.⁴⁹ This Comment divides these adopted statutes, regulations, and resolutions into three categories: (A) states that only modify their reciprocity and prior practice requirements; (B) states that require supervision by a state-bar-certified attorney; and (C) states that require the attorney be admitted to the bar in any other jurisdiction.

A. *Reciprocity and Previous Practice Requirements*

Attorney spouses struggle to meet the minimum yearly practice requirement for reciprocity in many jurisdictions.⁵⁰ Their active duty spouses are rarely stationed anywhere for longer than two years,⁵¹ so a continuous practice requirement of four or five years is unattainable. Some states have recognized this difficulty and modified their laws to ease the burden on these attorneys.⁵²

1. *North Carolina*

North Carolina's reciprocity statute requires that an attorney seeking admission without examination come from a state sharing reciprocity with North

COURT RULES, ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS, PART A. ADMISSION TO THE BAR, Rule 719 (2013); S.D. SUPREME COURT RULES, Rule 13-10 (2013) (listing the common requirements for military spouse attorney without examination).

45. *See e.g.* S.D. SUPREME COURT RULES, Rule 13-10 § 1 (2013) (requiring the attorney to prove that her spouse is a military service member travelling on active duty orders and that she left employment to accompany her spouse).

46. *See e.g.* IDAHO BAR COMM'N RULES, Rule 229(a)(7), (8) (2013) (stating that the attorney must prove she is identified as a dependent by the DOD and that she is residing in Idaho due to her spouse's military orders).

47. *See e.g. id.* at Rule 229(a)(3) (requiring that the attorney meet the same moral character requirements as all other attorneys admitted in the state).

48. *See e.g.* ILL. SUPREME COURT RULES, ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS, PART A. ADMISSION TO THE BAR, Rule 719(h) (2013).

49. *Infra* Parts II.A.–C.

50. *See e.g.* N.C. BD. OF LAW EXAM'RS, Rule .0502(3) (2013) (requiring that the attorney have practiced for at least four out of the last six years in the previous jurisdiction).

51. MSJDN, *supra* note 21 (stating that military families often move every two to three years).

52. *See State Rule Change Efforts, supra* note 35 (listing the twelve states that have modified their rules and twelve more with rules pending).

Carolina and that the attorney worked in that jurisdiction for at least four out of the last six years.⁵³ A military spouse could be moving from a state that does not share comity with North Carolina,⁵⁴ and even if she were coming from a qualifying state, she likely would not have practiced there for four years.⁵⁵

In order to rectify this situation, North Carolina Rule .0503 allows the military spouse to come from any jurisdiction in the United States, even one not normally in comity with North Carolina.⁵⁶ Additionally, the attorney need only have practiced law in her previous jurisdiction for four out of the previous eight years.⁵⁷ While widening the window makes the four-year practice requirement easier to satisfy, it still bars many attorney spouses who did not live in their previous jurisdictions for at least four years due to their spouse's military orders.⁵⁸

2. Texas

Texas Rule XIII(a)(1)(A) allows any attorney admission to the Texas bar without examination if the attorney has practiced in her previous jurisdiction for five out of the last seven years.⁵⁹ Unlike North Carolina, Texas does not restrict its reciprocity requirement to states offering reciprocity to Texas attorneys and the rule does not require the five years of practice to be continuous.⁶⁰ But, for a military spouse, living in a jurisdiction for at least five years is next to impossible.⁶¹ An attorney can apply for a waiver of this requirement, however, that fate of the attorney spouse remains uncertain because the Texas Board of Law Examiners (Board) retains absolute discretion over these waivers.⁶²

To rectify this problem, the Board adopted new policy guidelines that apply to military spouses.⁶³ The Board did not deem it necessary to amend the rule, but instead issued advisory parameters for the Board to use when considering

53. N.C. BD. OF LAW EXAM'RS, Rule .0502(3) (2013).

54. *Id.* California, for example, does not admit attorneys from other jurisdictions and so attorneys admitted to the bar in California would not be able to gain admission to North Carolina without taking the bar exam. *See* COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2013, NAT'L CONFERENCE OF BAR EXAM'RS 25 (2013) [hereinafter BAR ADMISSION REQUIREMENTS 2013] (listing California as a state that does not accept bar applicants based on scores from other states)

55. *See* ABA Resolution, *supra* note 6, at 4 n.9 (describing one typical military spouse's life. In her ten years as an attorney she has taken four different state bar exams, moved seven times, and held five jobs).

56. N.C. BD. OF LAW EXAM'RS, Rule .0503(1)(a) (2013).

57. *Id.*

58. *See* ABA Resolution, *supra* note 6, at 5 (stating that military spouses move every two to three on average).

59. *Rules Governing Admission to the Bar of Texas*, Rule XIII(a)(1)(A).

60. *Id.*; *Texas License Portability*, *supra* note 38.

61. *See* ABA Resolution, *supra* note 6, at 4 (explaining that one typical military spouse attorney "has not held the same job for more than three years," due to frequent military ordered moves).

62. *Texas License Portability*, *supra* note 38.

63. *Id.*

waivers from military spouses.⁶⁴ A spouse can apply to expand the seven-year window, reduce the five-year practice requirement, or both.⁶⁵ When assessing the waiver, the Board should consider: a history of short-term moves due to military orders, unique problems faced by military spouses, documentation of the military service member's orders, and any letters of recommendation from other attorneys.⁶⁶

While the ability to waive the prior practice requirement does help military spouses gain access to the Texas bar without examination, the absence of a rule means that attorney spouses lack security when moving to the state, and some might be excluded from the bar even when other less qualified attorneys gain admission.⁶⁷

3. Massachusetts

Like Texas, Massachusetts chose not to amend its admission rules for military spouse attorneys.⁶⁸ Instead, it simply published a notice online "welcome[ing] inquiries and applications for Admission on Motion from attorney spouses of service members in the United States Uniformed Services."⁶⁹ The current Supreme Judicial Court Rules require that an attorney seeking admission on motion be actively engaged in the practice of law for five out of the last seven years in the attorney's previous jurisdiction.⁷⁰ As explained above, it is all but impossible for military spouse attorneys to meet this prior practice requirement.⁷¹

Unlike Texas, the Massachusetts Board of Bar Examiners did not outline any parameters for use in deciding a military spouse's application for admission on motion.⁷² Current admission on motion requirements mandate that an attorney provide, in addition to proof of five years of practice,⁷³ letters of recommendation from Massachusetts attorneys,⁷⁴ a passing MPRE score,⁷⁵ and a current certificate of admission in good standing from each jurisdiction in which the attorney is currently admitted.⁷⁶ Massachusetts' two-paragraph notice online leaves many

64. *Id.*

65. *Id.*

66. *Id.*

67. *See id.* (stating that the Board has discretion within the stated requirements to grant or deny a waiver).

68. *Compare id.*, with *Massachusetts Message to Military Spouses*, *supra* note 38 (both allowing military spouse attorneys to apply for admission under existing exceptions rather than enacting or amending a court rule).

69. *Massachusetts Message to Military Spouses*, *supra* note 38.

70. MASS. SUPREME COURT JUDICIAL RULE 3:01 § 1.2.9 (2010).

71. ABA Resolution, *supra* note 6, at 4.

72. *Compare Texas License Portability*, *supra* note 38, with *Massachusetts Message to Military Spouses*, *supra* note 38.

73. MASS. SUPREME COURT JUDICIAL RULE 3:01 § 1.2.9.

74. *Id.* § 1.2.5.

75. *Id.* § 1.2.3.

76. *Id.* § 1.2.7.

questions unanswered, including which, if any, of these requirements military spouse attorneys must satisfy.⁷⁷

4. New York

In 2014, New York followed Texas and Massachusetts and adopted a policy for admitting military spouse attorneys rather than amending its rules.⁷⁸ Like Massachusetts, its policy consists of a short online notice informing military spouse attorneys that they might qualify for a “waiver of strict compliance with the prior practice requirements.”⁷⁹ Typically, New York requires that an attorney seeking admission without examination prove that she practiced continuously for five of the preceding seven years in a reciprocal jurisdiction.⁸⁰ Any attorney may apply for a waiver of this requirement if she can show that compliance with the rules will cause “undue hardship.”⁸¹ Like the policies in Massachusetts and Texas, New York’s invitation for military attorney spouses to apply for admission under this existing exception offers little guidance.⁸² Without a more definite rule, military spouse attorneys cannot know with any certainty whether New York will admit them without an additional examination.

B. Provisional Licensing

States understandably do not want to make it too easy for attorneys to gain admission to their bars; they have an interest in protecting their citizens from unscrupulous or unqualified attorneys.⁸³ Some states overcome these reservations about admitting attorneys without examination by requiring that the military spouse attorney work under the supervision of a state-bar-certified attorney.⁸⁴ These provisional licenses give citizens peace of mind, but are burdensome to military spouses who want to go into solo practice or who are unable to find work with a larger employer, such as a large firm, the state, or a federal agency.⁸⁵

77. See *Massachusetts Message to Military Spouses*, *supra* note 38 (encouraging military spouse attorneys to contact the Board, but not explaining what the modified requirements for admission might entail).

78. See *New York Notice to Military Spouses*, *supra* note 38 (inviting military spouse attorneys to apply for a waiver of standard requirements for admission without examination).

79. *Id.*

80. N.Y. STATE BD. OF LAW EXAM’RS, RULES OF THE COURT 520.10 (2012).

81. *Id.* § 520.14.

82. See *New York Notice to Military Spouses*, *supra* note 38 (providing contact information for attorneys seeking admission without examination, but not stating any specific exemptions or policies).

83. See BAR ADMISSION REQUIREMENTS 2013, *supra* note 54 (explaining that the purpose of moral character requirements is the protection of state citizens).

84. See *e.g.* IDAHO BAR COMM’N RULES, Rule 229(f) (2013) (requiring that military spouse attorneys who do not take the state bar exam be supervised by local counsel).

85. *Infra* Part VI.B.

1. Idaho

Attorneys wishing to gain admission to the Idaho bar without examination must meet the requirements for reciprocity under Rule 206.⁸⁶ These include a minimum of three years of practice in a state that has comity with Idaho.⁸⁷ As explained briefly above, and in detail below, this requirement is nearly impossible for most military spouses to meet.⁸⁸

But rather than relaxing its reciprocity requirements like North Carolina or Texas, Idaho added Rule 229 to the Idaho Bar Commission Rules.⁸⁹ This rule eliminates the previous practice requirements, but provides only a provisional license.⁹⁰ That license expires after one year,⁹¹ but is renewable,⁹² and requires that the admitted attorney practice under the supervision of a “local attorney.”⁹³ The provisional attorney must submit the name and contact information of the local counsel as well as their signed consent.⁹⁴ If the military spouse attorney wants to renew the provisional license at the end of the year, she must submit a fee of \$300 and the local counsel’s continuing consent to supervise.⁹⁵ Further, the admitted attorney must complete a minimum of fifteen hours of Idaho Continuing Legal Education (CLE) no later than six months after admission.⁹⁶

This rule is advantageous to military spouses because it does not require that the attorney practiced in her previous jurisdiction for any length of time, but is still restrictive to those spouses who want to be solo practitioners because they would have to seek out attorneys willing to sign on as their local counsel and take on extra responsibilities.⁹⁷

2. Virginia

A Virginia Supreme Court rule also requires supervision by a local attorney as a means of increasing attorney spouse license portability.⁹⁸ This rule goes a

86. IDAHO BAR COMM’N RULES, Rule 206(a) (2013).

87. *Id.* at Rule 206(a)(3).

88. *See* ABA Resolution, *supra* note 6, at 5 (describing the frequency with which military families move).

89. IDAHO BAR COMM’N RULES, Rule 229 (2013).

90. *Id.* at Rule 229(a).

91. *Id.* at Rule 229(c).

92. *Id.* at Rule 229(c)(1).

93. *Id.* at Rule 229(f).

94. *Id.* at Rule 229(b)(4)(A)–(B).

95. *Id.* at Rule 229(c)(1)(C).

96. *Id.* at Rule 229(d).

97. *See e.g.* Stephen L. Miles, *Duties of Local Counsel: More Expansive Than You Think?*, AMERICAN BAR ASSOCIATION (July 18, 2012), <http://apps.americanbar.org/litigation/committees/ethics/email/summer2012/summer2012-0712-duties-local-counsel-more-expansive-than-you-think.html> (on file with the *McGeorge Law Review*) (describing the responsibilities of local counsel acting for corporations with representation not licensed in the state; many of the obligations are applicable to military spouse attorneys as well).

98. VIRGINIA SUPREME COURT RULES, Rule 1A:8(4)(b)–(c) (2014).

step further than Idaho's and requires not only that the military spouse get supervising counsel's signed consent, but also mandates that the "local counsel" must accompany the military spouse attorney to all court proceedings unless the judge specifically excuses the supervising counsel.⁹⁹ This essentially reduces the military spouse attorney, who has already graduated from law school and passed a bar exam, to a certified law student or a summer associate.¹⁰⁰ A military spouse attorney gaining admission to the Virginia bar under this rule gives up all the autonomy she earned in another state when she successfully passed a bar examination.¹⁰¹

3. New Jersey

The military spouse admission rule in New Jersey had a rough road to enactment.¹⁰² The Civil Practice Committee, originally tasked with approving the proposed rule, formed a sub-committee that failed to recommend the amendment.¹⁰³ The two military spouse attorneys responsible for submitting the rule then presented their case to the full New Jersey Supreme Court and persuaded it to adopt a rule for admitting military spouse attorneys without examination.¹⁰⁴ The rule the court ultimately adopted contains a quasi-supervision requirement.¹⁰⁵ A military spouse attorney admitted under Rule 1:27-4 must either show proof that she practiced for five out of the last eight years in her previous jurisdiction *or* that she will be employed in New Jersey by a New Jersey licensed attorney or by a state or federal agency.¹⁰⁶ This rule is more flexible than the other rules requiring supervision by local counsel because it does not require the local counsel to sign any forms or accompany the military spouse attorney to court and it offers another option to military spouse attorneys who might not find work in the permitted categories—prove five years of prior practice.¹⁰⁷ However, because most military spouses move every two to three years, most military spouse

99. *Id.* at 1A:8(4)(c).

100. *See e.g.* CALIFORNIA RULES OF COURT, Rule 9.42 (2014) (outlining the requirements for a law student to represent clients in court proceedings and requiring that a supervising attorney accompany the law student to court).

101. *See* VIRGINIA SUPREME COURT RULES, Rule 1A:8(4)(c) (2014) (requiring that local counsel accompany the military spouse attorney to court proceedings unless specifically excused by the judge).

102. *See* Josie Beets, *New Military Spouse Rule Adopted in New Jersey*, MSJDN (July 25, 2014), <http://www.msjdn.org/2014/07/military-spouse-rule-adopted-in-new-jersey/> (on file with the *McGeorge Law Review*) [hereinafter *New Rule Adopted in New Jersey*] (describing the efforts of military spouse attorneys to get the rule passed).

103. *See* Jennifer D. Talley, *Military Spouse Attorneys Deserve Temporary Licenses to Practice*, N.J. L. J., Mar. 17, 2014, at 746 (explaining the various committees that reviewed the proposed rule and their decisions).

104. *New Rule Adopted in New Jersey*, *supra* note 102.

105. *See* NEW JERSEY SUPREME COURT RULE 1:27-4 (requiring that an attorney admitted under that rule practice under a licensed New Jersey attorney or have five years of previous practice).

106. *Id.* at 1:27-4(d).

107. *Compare id.*, with VIRGINIA SUPREME COURT RULES, Rule 1A:8(4)(b)–(c).

attorneys will be unable to take advantage of this alternate provision and instead will have to find work in New Jersey law firms or for the government if they want to be admitted to the New Jersey Bar without examination.¹⁰⁸

4. California

California has not yet changed the law to ease the burden on military spouses. A bill dealing with the issue died in the legislature's 2013–2014 term.¹⁰⁹ The original language of the bill was broad, allowing any attorney certified in another state admission without examination.¹¹⁰ The legislature then amended the bill and restricted admission considerably.¹¹¹ The amendments required a military spouse attorney actually take the California bar exam within a few months of moving to the state and granted a provisional license to practice under another attorney until she passed the exam.¹¹² This language defeated the purpose of a military spouse exception, since taking the bar is expensive and time-consuming, and the military spouse attorney will probably move within a year of receiving the exam results anyway.¹¹³

The Military Spouse JD Network (MSJDN) played an instrumental role in the death of this bill.¹¹⁴ While the group typically lobbies for passage of this type of legislation, the bill was much too restrictive and did not benefit military spouses.¹¹⁵ The group is now working with the California Bar Association to get its approval on a new bill that can be introduced in a future term.¹¹⁶ This bill will supposedly track one of California's other exceptions, for corporate in-house attorneys, and allow military spouse attorneys to practice in the state without a bar examination as long as they practice under the supervision of a local attorney.¹¹⁷

108. See ABA Resolution, *supra* note 6, at 4 (explaining how frequently military spouses move).

109. AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as introduced on Feb. 11, 2013, but not enacted).

110. *Id.*

111. AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as amended on May 2, 2013, but not enacted).

112. *Id.*

113. See ABA Resolution, *supra* note 6, at 5 (noting that military spouses move as often as every two years).

114. See *Opposition to AB 296*, *supra* note 37, at 2.

115. *Id.* at 4

116. Interview with Mary Reding Smith, President Military Spouse JD Network (July 2, 2013) (notes on file with the *McGeorge Law Review*).

117. *Id.*

C. Admitted in Another Jurisdiction

The broadest category of regulations admits a military spouse attorney as long as she is admitted to the bar in another state.¹¹⁸ Three states so far have adopted this type of broad rule.¹¹⁹

1. Arizona

Arizona requires an attorney seeking admission without examination to have practiced for five out of the previous seven years.¹²⁰ However, this requirement is eliminated for attorneys coming into the state with a spouse traveling on military orders.¹²¹ The rule requires that the attorney be admitted by examination in any other state,¹²² have graduated from an ABA accredited law school,¹²³ and complete fifteen hours of CLE within the first six months of residing in the state.¹²⁴ The license is renewable every year the attorney's spouse remains in the state on military orders,¹²⁵ and the attorney must complete fifteen hours of CLE for each license renewal.¹²⁶

2. Colorado

Colorado's military spouse certification rule is similar to Arizona's in many respects.¹²⁷ It admits a military spouse attorney who holds a J.D. or an LL.B. from an ABA accredited law school so long as that attorney can show she is an active member of the bar in any United States jurisdiction in good standing and has met all requirements for character and fitness in Colorado.¹²⁸ In addition, the attorney must prove that she is married to, or in a civil union with, a service member stationed in Colorado on official orders and she must complete a professionalism course within six months of certification.¹²⁹ Colorado does not require any supervision of the military spouse attorney.¹³⁰

118. See e.g., RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 34(f)(1)(C); ILL. SUPREME COURT RULES, ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS. PART A. ADMISSION TO THE BAR. Rule 719(a); S.D. SUPREME COURT RULES, Rule 13-10 § 1 (adopting rules in this category).

119. *Infra* Part II.C.1-3.

120. RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 34(f)(1)(C) (2013).

121. *Id.* at Rule 38(i).

122. *Id.* at Rule 38(i)(1)(A).

123. *Id.* at Rule 38(i)(1)(B).

124. *Id.* at Rule 38(i)(3).

125. *Id.* at Rule 38(i)(2).

126. *Id.* at Rule 38(i)(3).

127. Compare RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 38(i), with C.R.C.P. Rule 204.4.

128. C.R.C.P. Rule 204.4(1).

129. *Id.* at Rule 204.4(2).

130. *Id.* at Rule 204.4.

3. Oklahoma

The most recent state to adopt a licensing provision for military spouse attorneys amended its current court rules in December 2014.¹³¹ Section 7 admits military spouse attorneys who hold J.D.s from ABA accredited law schools, have passed the MPRE, pay for moral character determinations in the state, and prove that they are in Oklahoma due to a spouse's military orders.¹³² It is somewhat less detailed than the rules adopted by Colorado and Arizona and does not require that the military spouse attorney complete any CLE.¹³³ The military spouse attorney's license has no expiration date, but terminates when the service member leaves the military or is transferred outside the state.¹³⁴

4. Illinois

Illinois has one of the broadest rules for admitting military spouses to the bar without examination. The rule requires that the attorney graduated from an ABA accredited law school¹³⁵ and that she is admitted to a bar in another state.¹³⁶ Further, the license need not be renewed each year, and terminates only if the attorney's spouse separates from the military,¹³⁷ she divorces her spouse,¹³⁸ the service member's orders transfer him to another state,¹³⁹ or the attorney is admitted to the bar by one of the other rules.¹⁴⁰

5. South Dakota

South Dakota's military spouse exception is the broadest of any rule currently adopted in the United States. It requires only that the military spouse attorney be admitted to practice law in another jurisdiction.¹⁴¹ The attorney need not prove that she graduated from an ABA accredited law school.¹⁴² For the

131. See *In re Rule Granting Special Temporary Permit to Current Military Spouse*, 2014 OK 114, __ P.3d __ (2014), available at <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=474901> (ordering the amendment of Rule Two and Rule Seven of the Rules Governing Admission to the Practice of Law in the State of Oklahoma).

132. RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF OKLAHOMA, RULE 2 § 7.

133. Compare *id.*, with C.R.C.P. Rule 204.4(2), and RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 38(i)(3).

134. *Id.*

135. ILL. SUPREME COURT RULES, ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS, PART A. ADMISSION TO THE BAR, Rule 703(b) (1992).

136. *Id.* at Rule 719(a).

137. *Id.* at Rule 719(f)(1).

138. *Id.* at Rule 719(f)(2).

139. *Id.* at Rule 719(f)(3).

140. *Id.* at Rule 719(f)(4).

141. S.D. SUPREME COURT RULES, Rule 13-10 § 1 (2013).

142. See *id.* Rule 13-10 (not including a requirement that the attorney graduated from an ABA law school).

reasons explored below, this definition is too broad for many states' comfort¹⁴³. The model rule this Comment proposes lays out a compromise that offers flexibility to military spouse attorneys, but still includes provisions to protect state citizens.¹⁴⁴

III. OTHER LICENSING: WHAT IS THE DIFFERENCE BETWEEN LAW AND MEDICINE?

Over half the states have laws increasing portability of military spouse licensing in professions other than law¹⁴⁵ and even more have similar legislation pending.¹⁴⁶ But these laws do not help military spouse attorneys because the courts, which are not affected by these laws, govern admission to the bar.¹⁴⁷ In order to implement a change for bar admission, the court rules must be amended directly, or the legislature must pass a law specific to military spouse attorneys.¹⁴⁸

In 2012, the DOD called for states to amend their laws and make it easier for military spouses to get licensed when moving frequently from state to state.¹⁴⁹ Many states responded,¹⁵⁰ and as a result, nurses, doctors, architects, and many other professional military spouses can now move to new states and immediately begin practicing.¹⁵¹ It seems odd that over half the states have passed laws recognizing these licenses while only twelve have passed laws increasing license portability for attorneys.

One explanation might be found in the universality of other types of licensing, like medicine. An appendectomy is performed the same way in one state as it is in another.¹⁵² A nurse starts an IV the same way whether she is in California or Virginia.¹⁵³ But an attorney doing citations for a motion in

143. *Infra* Part VI.

144. *Infra* Part VII.

145. *See* Lyle, *supra* note 33 (reporting that twenty-eight states have passed laws increasing license portability for military spouses).

146. *See id.* (stating that thirteen states have pending legislation to increase license portability).

147. *See State Rule Change Efforts, supra* note 35 (pointing out that rules for attorney admissions are governed by the court rules in each state).

148. *See* MARY REDING & HON. ERIN MASSON WIRTH, MILITARY SPOUSE JD NETWORK, REPORT TO CONFERENCE OF CHIEF JUSTICES 5 (2012) (stating that state regulatory agencies do not govern the practice of law); AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as introduced on Feb. 11, 2013, but not enacted) (representing legislation that can impact state admission rules).

149. Eberly, *supra* note 33.

150. *See* Lyle, *supra* note 33 (stating that twenty-eight states have passed laws and thirteen states have pending legislation to increase license portability).

151. *See* Sanchez, *supra* note 14 (explaining that laws in Tennessee grant provisional licenses to military spouses so that they can begin work immediately, that laws in Colorado allow waivers for clearly competent spouses, and that Arizona grants licenses to most military spouses with at least a year of experience); *see also* Beauregard, *supra* note 34.

152. *See Appendectomy*, JOHN HOPKINS MEDICINE, http://www.hopkinsmedicine.org/healthlibrary/test_procedures/gastroenterology/appendectomy_92,P07686/ (last visited Jan. 1, 2014) (on file with the *McGeorge Law Review*) (explaining the only two types of appendectomies possible).

153. *See* S.L. Page, *How to Start an IV*, REGISTERED NURSE RN (Jan. 15, 2013), <http://www>.

California must use the California Style Manual¹⁵⁴ while an attorney in Virginia must cite according to their own state specific variant.¹⁵⁵ The forms needed to file a case in Texas and those needed in Washington vary greatly.¹⁵⁶ It is clear that attorneys need more state-specific knowledge in order to practice than nurses and doctors. However, citation preferences and court forms are not among the subjects tested on most bar exams.¹⁵⁷

Both the California and Virginia bar exams test many of the same subjects, including Civil Procedure, Evidence, Criminal Law, Business Associations/Organizations, Contracts, and Real Property.¹⁵⁸ In California, the Bar Examiners test subjects like Criminal Law not on state-specific law, but on the common law principles all first-year law students learn.¹⁵⁹ Criminal Law on the Virginia bar is likewise based on common law principles.¹⁶⁰ Therefore, the bar exams do not actually test whether an attorney who passes knows any of the actual criminal statutes in the state. A district attorney or a public defender will likely need to look up these laws even in the state where she took the bar exam.

Even in subjects that do test state-specific knowledge, such as Civil Procedure, there are few substantive differences between the laws of Virginia and California.¹⁶¹ For example, the rule for entering a default judgment in California¹⁶² contains the same requirements as that in Virginia.¹⁶³ In both states, if a defendant

registerednurses.com/how-to-start-an-iv-starting-an-iv-clinical-nursing-skills/ (on file with the *McGeorge Law Review*) (laying out the steps for starting an IV in an article targeting RNs in all states).

154. See *Table of State-Specific Citation Norms and Practices*, BASIC LEGAL CITATIONS § 7-500, <http://www.law.cornell.edu/citation/7-500.htm> (follow "California" hyperlink; then follow "Cases" hyperlink) (last visited Jan. 1, 2014) (on file with the *McGeorge Law Review*) (showing the California specific case citations in compliance with the California Style Manual).

155. See *id.* (explaining that in Virginia, parallel citations to Virginia Reports should be included with the regional reports when available).

156. *Compare Publications, Forms and Online Information*, TEXAS COURTS ONLINE, <http://www.courts.state.tx.us/pubs/pubs-home.asp> (last visited Jan. 1, 2014) (on file with the *McGeorge Law Review*) (providing the common form needed to file all civil cases), with *Washington State Court Forms*, WASHINGTON COURTS, <http://www.courts.wa.gov/forms/> (on file with the *McGeorge Law Review*) (linking to around fifty separate forms, each specific to the type of case being filed).

157. See BAR ADMISSION REQUIREMENTS 2013, *supra* note 54, at ix (outlining suggested elements states should include on the bar exam, not including court rules or citations).

158. *Compare* THE STATE BAR OF CAL. COMM. OF BAR EXAM'RS, SCOPE OF THE CALIFORNIA BAR EXAMINATION, available at <http://admissions.calbar.ca.gov/LinkClick.aspx?fileticket=VQF73Jr-8iE%3D&tabid=250> (last visited Mar. 15, 2014) [hereinafter CAL. BAR EXAM REQUIREMENTS], with VA BD. OF BAR EXAM'RS, Rule (I)(2).

159. CAL. BAR EXAM REQUIREMENTS, *supra* note 158; see also *The California Bar Exam*, THOMAS JEFFERSON SCHOOL OF LAW, <http://www.tjssl.edu/academics/bar-prep/california-bar-exam> (last visited March 15, 2014) (listing the subjects requiring California specific knowledge).

160. See VA BD. OF BAR EXAM'RS, RULE (I)(2) (indicating that the only Virginia-specific law tested on the exam is Civil and Criminal Procedure).

161. See generally CAL. CODE CIV. PROC. (West 2006); VA. SUP. CT. R. 3 (identifying similarities between California and Virginia civil procedure).

162. CAL. CODE CIV. PROC. § 1169 (West 2007).

163. VA. SUP. CT. R. 3:19(C)(1).

fails to appear, the court may enter a judgment for the plaintiff.¹⁶⁴ While some of the rules may differ,¹⁶⁵ it is naïve to think that an attorney admitted in California would rely solely on knowledge gained from studying for the bar while in practice. To the contrary, she would frequently refer to the state rules when preparing court filings and would be just as capable of doing so if she were practicing in Virginia. A state has nothing more to lose by admitting an attorney who passed the bar in another state than it has by admitting an attorney who recently passed its own bar exam.¹⁶⁶

The strongest argument for limiting license portability for attorneys comes from the narrow areas of practice that do differ substantially between states.¹⁶⁷ While criminal laws against murder are extremely similar between states,¹⁶⁸ property laws, especially those for marital property, can be vastly different. California and Virginia once again illustrate the point well;¹⁶⁹ California is a community property state, whereas Virginia is a separate property state.¹⁷⁰ However, property laws in separate property states are becoming more similar to those in community property states.¹⁷¹ For example, all separate property states now use an equitable division system to divide marital property on divorce.¹⁷² Rather than divide property acquired during marriage equally like a community property state,¹⁷³ courts in equitable division states will divide the property of divorcing couples however is fair.¹⁷⁴ This division is more comparable to a community property system than a traditional separate property system where the property acquired by one spouse (e.g., that spouse's earnings) remained the separate property of that spouse on divorce.¹⁷⁵

164. Compare CAL. CODE CIV. PROC. § 1169, with VA. SUP. CT. R. 3:19(a).

165. Compare CAL. CODE CIV. PROC. § 1021.7 (West 2007), with VA. SUP. CT. R. 3:25. In California, a court may only grant attorney's fees to a party in several specific circumstances, such as for civil rights claims against police officers. But in Virginia, a party may submit an application to the court requesting attorney's fees for any reason so long as it "identif[ies] the basis upon which the party relies in requesting attorney's fees."

166. See BAR ADMISSION REQUIREMENTS 2013, *supra* note 54, at ix (noting that court rules or citations are not recommended subjects for state bar exams).

167. See e.g., JESSE DUKEMINIER & ROBERT H. SITKOFF, WILLS, TRUSTS, AND ESTATES 513 (9th ed. 2013) (highlighting different state laws for marital property upon dissolution).

168. Compare CAL. PENAL CODE § 187 (West 2008) (defining murder in terms of malice aforethought), with VA. CODE ANN. § 18.2-32 (2009) (defining murder as "any willful, deliberate, and premeditated killing").

169. This Comment continues to use California and Virginia as examples due to their high military populations and the fact that both recently had military spouse exceptions pending in their legislatures.

170. See DUKEMINIER, *supra* note 167 (showing a map of the United States and indicating which states used Community Property versus Separate Property systems as of 2012).

171. See Lawrence W. Waggoner, *Marital Property Rights in Transition*, 59 MO. L. REV. 21, 46 (1994) (pointing out that the equitable division system now adopted in all separate property states approximates the division of assets in community property states).

172. *Id.* at 44–45.

173. *Id.* at 44.

174. *Id.* at 45.

175. *Id.* at 23–24.

Obviously, a property attorney moving from one state to the other would have many new substantive laws to familiarize herself with. But, this reasoning ignores some of the realities of actual practice. In California, family law and estate planning attorneys most frequently deal with community property laws, while corporate and criminal attorneys rarely rely on such principles.¹⁷⁶ A Virginia attorney might not even need to know community property law in her particular practice area in California.¹⁷⁷ Furthermore, an attorney admitted in California might practice as a criminal or personal injury lawyer for twenty years and then decide to change careers and practice family law. That attorney would not need to take the California bar exam again, even though she likely forgot all the community property law she originally learned for the exam. While an attorney coming from a separate property state into a community property state, and vice versa, might not have the same depth of knowledge as one admitted to the bar by examination there, the problem is not as extreme or as common as it seems.

Despite some substantive differences in the law between different states,¹⁷⁸ most state laws are quite similar.¹⁷⁹ In addition, there is little difference between admitting a new attorney pursuant to the bar exam and admitting one from another state. The argument that the law varies more from state to state than a field like medicine differs simply flat lines.¹⁸⁰

IV. THE STATE'S CONCERNS

State bar exams ensure that attorneys practicing in that state meet minimum requirements of competence and ethics.¹⁸¹ Historically, lawyers in the United States received their education through apprenticeships and clerkships, and a judge granted admission to the local bar, perhaps after a brief oral examination.¹⁸² With the rise of law schools in the late 1800s and early 1900s, states began using written bar exams in order to standardize admissions and combat the less than adequate teachings at inferior law schools.¹⁸³

176. John Meyers, Professor, University of the Pacific, Pacific McGeorge School of Law, Community Property class lecture at the University of the Pacific, McGeorge School of Law, (Jan. 16, 2014) (notes on file with the *McGeorge Law Review*).

177. *See id.* (inferring that an assistant district attorney from Virginia working for a district attorney in California would not need to use community property law).

178. DUKEMINIER, *supra* note 167 and accompanying text.

179. Waggoner, *supra* note 171 and accompanying text.

180. *See id.* (noting the similarities between various states' criminal and property laws).

181. *See About NCBE Exams*, THE NAT'L CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/> (last visited Dec. 17, 2013) (on file with the *McGeorge Law Review*) ("Developing, maintaining, and applying reasonable and uniform standards of education and character for eligibility for the admission to the practice of law.").

182. Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1198–1200 (1994–95).

183. *Id.* at 1200.

A. State Concerns with Competence and Exams

Today, state bar exams are largely similar to one another.¹⁸⁴ In fact, the National Conference of Bar Examiners (NCBE) recommends that state bar exams focus on fundamental questions taught in all law schools, and only include state law specific questions of substantial importance.¹⁸⁵ Nearly every state uses the Multistate Bar Examination's (MBE) set of 200 multiple-choice questions as part of its exam,¹⁸⁶ and most also require all applicants to pass the Multistate Professional Responsibility Exam (MPRE).¹⁸⁷ In the last few years, some states have utilized the Uniform Bar Examination (UBE), an exam drafted with national standards in mind.¹⁸⁸ However, even states utilizing the UBE do not allow automatic admission of attorneys who passed the same exam in another state.¹⁸⁹

Such similarities between even non-UBE examinations beg the question of why states have such strict requirements for attorneys wanting to practice in their jurisdictions without examination. Perhaps it is because of the minority of states that do not conform to standard bar admission procedures. Wisconsin still offers a diploma privilege to graduates of the University of Wisconsin Law School and Marquette University Law School, so these graduates do not need to take any bar exam.¹⁹⁰ While other states might be justified in their reluctance to admit attorneys who have not passed a standard exam ensuring their competence, this problem can be solved by requiring that the attorney seeking admission has passed a bar exam.

In addition to being admitted to the bar in another jurisdiction,¹⁹¹ New York requires not only that the attorney have practiced in her previous jurisdiction for

184. *Id.* at 1202.

185. BAR ADMISSION REQUIREMENTS 2013, *supra* note 54, at ix.

186. *The Multistate Bar Examination (MBE)*, THE NAT'L CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/mbe/> (last visited Dec. 17, 2013) (on file with the *McGeorge Law Review*) (stating that only Louisiana and Puerto Rico do not require applicants to take the MBE).

187. *The Multistate Professional Responsibility Examination (MPRE)*, THE NAT'L CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/mpre/> (last visited Dec. 17, 2013) (on file with the *McGeorge Law Review*) (listing Maryland, Wisconsin, and Puerto Rico as the only jurisdictions that do not require applicants to pass the MPRE before admission to the state bar).

188. *The Uniform Bar Examination*, THE NAT'L CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/ube/> (last visited Dec. 17, 2013) (on file with the *McGeorge Law Review*) (listing the fourteen jurisdictions that have begun using the exam: Alabama, Alaska, Arizona, Colorado, Idaho, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, Washington, and Wyoming.).

189. *See UBE Score Transcript Services*, THE NAT'L CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/ube/ube-transcript-services/> (last visited Dec. 17, 2013) (on file with the *McGeorge Law Review*) (conveying to transfer applicants the importance of checking with the jurisdiction they want to transfer scores to, because each jurisdiction is allowed to determine what constitutes a passing score and whether or not to admit the applicant).

190. *Admission to the Practice of Law in Wisconsin: Diploma Privilege 2013*, WISCONSIN COURT SYSTEM, <http://www.wicourts.gov/services/attorney/bardiploma2.htm> (last visited Oct. 3, 2013) (on file with the *McGeorge Law Review*).

191. THE N.Y. STATE BD. OF LAW EXAM'RS, RULES OF THE COURT 520.10(a)(1)(i) (2012).

five out of the last seven years,¹⁹² but also that she be at least twenty-six years old,¹⁹³ and have a degree from an ABA accredited law school.¹⁹⁴ The requirements of age and prior practice make sense as extra safeguards of competence for attorneys who have never passed a bar exam. But New York has no qualms about admitting new lawyers who received an education from an ABA accredited law school anywhere in the United States, as long as those attorneys pass the New York bar exam, which is similar to the exam used in many other states, and includes both the MBE and the MPRE.¹⁹⁵ If New York law required the attorney seeking admission be admitted by examination to the bar in another jurisdiction, then the requirements of age and prior practice would be redundant. The model rule proposed by this Comment makes precisely this change.¹⁹⁶

B. State Concerns With Same-Sex Marriage

In June of 2013, the Supreme Court struck down the section of the Defense of Marriage Act (DOMA) that recognized only heterosexual marriages for the purposes of federal benefits.¹⁹⁷ As a result, same-sex spouses can now receive military benefits like healthcare and death allowances.¹⁹⁸ However, while states increasingly legalize same-sex marriage,¹⁹⁹ the section of DOMA that permits states to refuse to recognize same-sex marriages legally performed in other states remains in effect.²⁰⁰

192. *Id.* at 520.10(a)(2)(i).

193. *Id.* at 520.10(a)(2)(iv)(4).

194. *Id.* at 520.10(a)(2)(iv)(3).

195. See *The Multistate Bar Examination (MBE)*, *supra* note 186 (listing the two jurisdictions that do not use the MBE); *The Multistate Professional Responsibility Examination (MPRE)*, *supra* note 187 (noting the three jurisdictions that do not require applicants to pass the MPRE).

196. *Infra* Part VII.

197. See *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (holding that DOMA violates both the due process and equal protection clauses of the Constitution).

198. See Memorandum from the Under Secretary of Defense on Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members to Secretaries of the Military Departments, Chiefs of the Military Services 1 (Aug. 13, 2013) available at <http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf> (on file with the *McGeorge Law Review*) (stating that all efforts would be taken to implement the changes needed to provide same-sex military spouses access to benefits, like issuing ID cards, by September 3, 2013).

199. See *Gay Marriage*, PROCON, <http://gaymarriage.procon.org/view.resource.php?resourceID=004857> (last updated on March 4, 2015) (on file with the *McGeorge Law Review*) (showing a list of the thirty-seven states that have currently legalized same-sex marriage, over half of which legalized it since the beginning of 2013).

200. See Gabriel Grand, *DOMA Section 2: States Still Don't Have to Recognize Gay Marriages*, POLICYMIC (June 26, 2013), <http://www.policymic.com/articles/51323/doma-section-2-states-still-don-t-have-to-recognize-gay-marriages> (on file with the *McGeorge Law Review*) (pointing out that the decision in *Windsor* only struck down Section 3 of DOMA). However, the Supreme Court will answer the question once and for all in the summer of 2015. See Richard Wolf, *Supreme Court Agrees to Rule on Same Sex Marriage*, USA TODAY (Jan. 16, 2015), <http://www.usatoday.com/story/news/nation/2015/01/16/supreme-court-gay-marriage/21867355/> (on file with the *McGeorge Law Review*) (explaining that the Court will rule on whether denying marriage licenses to same sex couples violates the Fourteenth Amendment and whether states are required

This presents a difficulty for same-sex military spouse attorneys like Jessica Huskey.²⁰¹ Should the Marine Corps station her wife in a state that refused to recognize their marriage, Jessica would not be considered a spouse under state law and thus could not be admitted to the bar under a military spouse exception.²⁰² In order to circumvent this problem, and in light of the trend towards legalizing same-sex marriage, the model rule proposed by this Comment defines “spouse” as an individual recognized by the Department of Defense (DOD) as a military dependent, and specifically states that the state recognizes same-sex marriages for the purpose of the military spouse admission rule only.²⁰³

V. MILITARY SPOUSES: AN UNDERUTILIZED RESOURCE

Military spouses, like any other group, vary in abilities and education levels. Attorneys come from top law schools and non-accredited schools alike and in practice they might be federal judges or first-year associates.²⁰⁴ But military spouses have a few qualities in common: flexibility, a talent for multitasking, and a deep understanding of military life.²⁰⁵ Employers as well as clients benefit from these skills.²⁰⁶ Sadly, military spouses are underemployed due to frequent moves, gaps in previous employment, and employers’ hesitancy to hire someone who could leave any day.²⁰⁷

Military spouse attorneys face unique difficulties getting a job.²⁰⁸ States ought to assist military spouse attorneys by admitting them without the extra burden of an examination. Although these attorneys may be present in the state for only a few years, they will draw upon their organizational and time management skills as well as their proven abilities to handle stress while helping state citizens.²⁰⁹

under the full faith and credit clause to recognize the validity of same sex marriages that occurred in other states).

201. See Jessica Huskey, *The Professional Path: Becoming a Lawyer*, MILITARY SPOUSE, <http://www.militaryspouse.com/articles/the-professional-path-becoming-a-lawyer/> (last visited Jan. 3, 2014) (on file with the *McGeorge Law Review*) (describing her struggles as a military spouse attorney).

202. See *Legal Definitions of Marriage in the United States*, THE CENTER FOR LESBIAN AND GAY STUDIES IN RELIGION AND MINISTRY, <http://www.clgs.org/marriage/state-definitions> (last visited Jan. 3, 2014) (on file with the *McGeorge Law Review*) (listing the myriad of different definitions of marriage in different states, many of which exclude same-sex couples from the definition).

203. See *infra* Part VII. (MODEL RULE § (a)(6)).

204. See REDING & WIRTH, *supra* note 148, at 5 (indicating that one of the founders of the Military JD Network and co-author of the Report is a judge); Pitzen, *supra* note 28 (relating the story of one military spouse attorney as she makes the decision to leave her job as an associate at a law firm in Florida).

205. ABA Resolution, *supra* note 6, at 9.

206. See *id.* (describing the many qualities military spouse attorneys possess that will benefit their clients and the legal community as a whole).

207. See *id.* at 5 (explaining that military spouses are much more likely than civilian spouses to be unemployed or underemployed and that military service and its consequences is the controlling factor).

208. See Pitzen, *supra* note 28 (relating how lucky she felt that her firm took a chance on her right out of law school because she had no ties to the community and was married to a service member).

209. See ABA Resolution, *supra* note 6, at 9 (describing the many qualities military spouse attorneys possess that will benefit their clients and the legal community as a whole).

While her service member is deployed, the military spouse often becomes a single parent, and can rarely afford to give up her job. She is used to multitasking and juggling many obligations. Handling several motions at once or filing a court brief on a tight deadline is standard operating procedure.

Due to their familiarity with the military lifestyle, military spouse attorneys are uniquely suited to assisting veterans.²¹⁰ The Veterans' Court is backlogged, with insufficient attorneys to help petitioners with their cases.²¹¹ While this Comment does not impose a requirement of pro-bono work on military spouse attorneys,²¹² it recognizes that many of them, like their service members, feel a desire to give back. Allowing these attorneys admission without examination permits them to use the time they might otherwise have spent studying for the bar exam to represent some of these veterans who need their help.

As a whole, the group of military spouse attorneys is just as talented as any other subset. They bring many different abilities to the table as judges,²¹³ partners in law firms,²¹⁴ and civil servants.²¹⁵ Changing the rules to benefit these attorneys does not only help them, their families, or the military; it helps the state granting them admission and its citizens.²¹⁶

VI. THE SHORTCOMINGS OF THE EXISTING RULES AND LAWS AND THE SOLUTIONS

Twelve states have taken steps in the direction of aiding military spouse attorneys by granting them admission without examination,²¹⁷ but each of those rules excludes a substantial number of the military spouses they are designed to assist. The lack of uniformity between these rules leaves military spouse attorneys in a continued state of confusion. This section explores the deficiency

210. Lori Volkman, *Big Win for Military Spouse Attorneys*, BLUE STAR FAMILIES (Feb. 19, 2012), <http://bluestarfam.org/blog/view/big-win-milspouse-lawyers> (on file with the *McGeorge Law Review*) (quoting Mary Reding).

211. See Steve Vogel, *Veterans Face Another Backlog as a Quarter-Million Appeal Disability Claims*, WASH. POST (Sept. 8, 2013), http://www.washingtonpost.com/politics/veterans-face-another-backlog-as-a-quarter-million-appeal-disability-claims/2013/09/10/0078154a-15ba-11e3-804b-d3a1a3a18f2c_story.html (indicating that the wait times veterans experience in the system are often as long as 1,500 days, and that that time can be reduced by employing more attorneys to help get through the backlog).

212. See *infra* Part VII (lacking a pro-bono requirement in the model rule); but see *Opposition to AB 296*, *supra* note 34 (stating that the MSJDN supports a pro-bono requirement for military spouse attorneys admitted in California without examination).

213. See *e.g.* ABA Resolution, *supra* note 6, at 4 (describing co-founder of MSJDN, the Honorable Erin Wirth).

214. See *Opposition to AB 296*, *supra* note 37 (including a statement from Reda Hicks, an Army wife and "a partner at a Houston-based law firm.").

215. See *id.* (relating Marine wife Andrea Avery's story; she practiced law in Georgia as a criminal attorney before giving up her job to move with her husband).

216. See ABA Resolution, *supra* note 6, at 9 (exploring all the valuable qualities that military spouses bring to the state where they are working).

217. See *supra* Part II.

of each of the rules described in Part II and posits ways in which each could be improved.

A. *Minimum Practice Requirements*

North Carolina, Texas, Massachusetts, and New York keep minimum practice requirements for military spouse attorneys.²¹⁸ But military spouses move, on average, every two or three years.²¹⁹ Additionally, many service members are stationed overseas, during which time many of their attorney spouses cannot work in the legal field because their degrees from the United States are not recognized by foreign jurisdictions.²²⁰ Lastly, these requirements prohibit young attorneys who have recently graduated from gaining admission.²²¹ A law student married to an active duty service member could end up needing to move to a new jurisdiction within a year of passing her first bar²²² and would have no hope of meeting such requirements.

North Carolina requires a minimum of four years of practice in a single previous jurisdiction for the military spouse wanting to gain admission without examination.²²³ Even though that practice does not have to be continuous, and can take place within an expanded eight-year window,²²⁴ many attorney spouses will never be able to meet this requirement. Take, for example, Erin Wirth, the co-founder of the Military Spouse JD Network.²²⁵ The spouse of an active duty member of the Coast Guard, she has moved seven times in the last sixteen years and held eleven different jobs, the longest lasting not even three years.²²⁶ Many spouses who have had to move overseas or whose service member has been stationed in a jurisdiction for less than a year have even less stable careers.²²⁷ Those attorneys have unavoidable gaps on their resumes that can make getting a job difficult even without the added burden of gaining admission to the bar.

218. N.C. BD. OF LAW EXAM'RS, Rule .0503(1)(a) (2013); *Rules Governing Admission to the Bar of Texas*, Rule XIII(a)(1); MASS. SUPREME COURT JUDICIAL RULE 3:01 § 1.2.9 (2010); THE N.Y. STATE BD. OF LAW EXAM'RS, RULES OF THE COURT 520.10.

219. ABA Resolution, *supra* note 6, at 5.

220. *See id.* at 8 (acknowledging that military spouses who have moved overseas with their service members have trouble meeting minimum practice requirements).

221. *See id.* (describing the difficulty recently admitted attorneys have meeting the previous practice requirement).

222. *See e.g. Opposition to AB 296*, *supra* note 37 (including a statement from Christine Ellis, who completed her JD in San Diego, CA, but is licensed only in New Jersey since that is where her husband was stationed when she graduated).

223. N.C. BD. OF LAW EXAM'RS, Rule .0503(1)(a) (2013).

224. *Id.*

225. The Honorable Erin Wirth co-founded MSJDN along with Mary Reding, Esquire in the summer of 2011. *See MSJDN*, *supra* note 21.

226. ABA Resolution, *supra* note 6, at 4.

227. *Id.*

Texas, Massachusetts, and New York provide slightly more assistance to military spouse attorneys by offering waivers of their five-year minimum practice requirements.²²⁸ The Texas Bar could admit a military spouse with as little as a year or two of practice, but the waivers are extremely subjective.²²⁹ The recent policy changes simply provide guidelines for the Board in considering military spouse waivers.²³⁰ The military spouse must still file an application for the Board's consideration.²³¹ The spouse may not be granted a waiver because Texas has not codified a rule. Further, while attorneys falling just outside the normal practice requirement and demonstrating good cause are often granted waivers,²³² most military spouses will have half, or even less than half, the required practice in a previous jurisdiction.²³³ New York and Massachusetts provide even less guidance to military spouse attorneys by only publishing short, online notices absent any parameters or policy guidelines.²³⁴ Uncertainty creates tension and stress when a family is planning a PCS move. Military spouse attorneys frequently must live away from their service members in order to keep a steady job and avoid defaulting on their student loans.²³⁵ An attorney moving to any of these states would need to delay moving until she could be certain that the state would grant her waiver, which could mean moving separately from her spouse, or else risk unemployment if she moved and the state subsequently denied her application for admission. Additionally, while the military would pay to move the service member,²³⁶ the spouse's delayed move would have to come out of the couple's pocket, and the family might not be able to afford to live on the service member's income alone.²³⁷ These expenses and inconveniences add up, seriously impeding the attorney's ability to pursue her career and support her family.

228. *Texas License Portability*, *supra* note 38; *Massachusetts Message to Military Spouses*, *supra* note 38; *New York Notice to Military Spouses*, *supra* note 38.

229. *See Rules Governing Admission to the Bar of Texas*, Rule XX(e) (granting discretion to the Board to admit an attorney who does not meet a requirement).

230. *See Texas License Portability*, *supra* note 38, at 2 (“[T]he Board of Law Examiners, in consultation with the Supreme Court, has adopted policy guidelines appropriate for the Board of Law Examiners’ . . . consideration of their . . . waiver requests . . .”).

231. *See id.* (indicating all the information that the military spouse should include on the application along with any additional information she deems relevant).

232. *Id.*

233. *See ABA Resolution*, *supra* note 6, at 5 (noting that many military spouses move every two to three years).

234. *See Massachusetts Message to Military Spouses*, *supra* note 38; *New York Notice to Military Spouses*, *supra* note 38 (simply inviting military spouse attorneys to contact the state bar for more information).

235. *See e.g. Opposition to AB 296*, *supra* note 37 (indicating that an enlisted Marine's salary is prohibitively low when it comes to supporting the fees for multiple bar exams).

236. *See Movement and Storage of Household Goods*, DEFENSE FINANCE AND ACCOUNTING SERVICES, <http://www.dfas.mil/pcstravel/civentitlements/movementofgoods.html> (last visited Jan. 2, 2014) (on file with the *McGeorge Law Review*) (outlining the parameters for a paid military move).

237. *See Miranda Leitsinger, Hungry Heroes: 25 Percent of Military Families Seek Food Aid*, NBC NEWS (Aug. 17, 2014), <http://www.nbcnews.com/feature/in-plain-sight/hungry-heroes-25-percent-military-families-seek-food-aid-n180236> (on file with the *McGeorge Law Review*) (reporting that “620,000 households that include at least one [service member] – or 25 percent of the nation’s total active duty and reserve personnel

B. Local Supervision Requirements

Several states, including Idaho, eliminate the previous practice requirement completely, but require that the military spouse attorney practice under the supervision of local counsel.²³⁸ While these rules allow access for the military spouse attorneys who have moved too frequently to gain admission in states with minimum practice requirements, they also make it difficult for attorneys wishing to go into solo practice.²³⁹ An attorney working as an associate at a law firm or as an assistant district attorney should have little trouble getting her boss to sign as her supervisor.²⁴⁰ However, an attorney wishing to practice on her own would have to seek out other attorneys, in a place where she does not know anyone and has no connections, and persuade another attorney to take on the responsibility of signing her paperwork and supervising her each year.²⁴¹ Even New Jersey's rule, which offers military spouses a little more freedom, is too restrictive.²⁴² A military spouse attorney who cannot find work in a firm or for the government must satisfy the five-year practice requirement—an impossible burden for many.²⁴³ While it is an improvement over many current rules, this onerous burden may keep military spouse attorneys from practicing on their own, and in a location where jobs at firms or state agencies are scarce, it could keep them from working at all.²⁴⁴

This is especially true in Virginia, where the military spouse attorney rule requires that the supervising attorney accompany the military spouse attorney to all court proceedings.²⁴⁵ A military spouse attorney in this situation is of limited use to a law practice. Firms hire summer associates with the expectation that most of them will soon be admitted to the bar and able to practice on their own, so the period where other attorneys must supervise them is short-lived. In a

– [] are seeking aid from food pantries and other charitable programs across the country.”).

238. IDAHO BAR COMM'N RULES, Rule 229(b)(4) (2012).

239. *See id.* (requiring a military spouse attorney to obtain local counsel, making it impossible for an attorney to practice in the state without first shopping around for a supervisor).

240. *See id.* (describing the requirements for local counsel, and other than submitting a signed paper to the court, those requirements are no more than a partner would normally shoulder for an associate).

241. *See Local Counsel Representation*, HULL EVANS & KOB LLP, <http://www.heklaw.com/localcounsel.html> (last visited Jan. 2, 2014) (on file with the *McGeorge Law Review*) (offering to provide local counsel for out-of-state attorneys needing California representation). This form of local counsel is different from the local counsel required in the statute. Firms offering this service are few and far between.

242. *See* NEW JERSEY SUPREME COURT RULE 1:27-4(d) (requiring supervision or five years of prior practice).

243. *Id.*

244. *See* Edmundo O. Ramirez & Minerva I. Zamora, *Reinventing the Role of Local Counsel*, TEX. BAR J. (May 2005), available at <http://www.ekrattorneys.com/graphics/articles/reinventing.pdf> (on file with the *McGeorge Law Review*) (describing the many considerations an attorney must make when selecting local counsel, and even though local counsel has different requirements under the military spouse exceptions, many of the same principles apply).

245. VIRGINIA SUPREME COURT RULES, Rule 1A:8(4)(c) (2014).

military spouse's case, she could practice for several years in the jurisdiction.²⁴⁶ It might not be worth the hassle for many firms to hire her, since they would have to send another attorney to all court proceedings with her anyway. This sort of strict requirement imposes unnecessary limitations on military spouse attorneys.

C. Broader Admission Policies

States granting admission to military spouse attorneys based solely on their admission in another jurisdiction benefit all military spouse attorneys. Even those states also requiring that the attorney have a degree from an ABA accredited school benefit a great number of military spouses.²⁴⁷ The Military Spouse JD Network,²⁴⁸ founded to advocate for the adoption of such rules, drafted a model rule that also follows this broad format.²⁴⁹ But despite the advantages these broad rules give to military spouses, including the author,²⁵⁰ this Comment acknowledges that some of these rules are *too* broad for most states to consider adopting them.

Take, for example, California. The California bar exam is considered the most difficult in the nation²⁵¹—only 48.6% of test takers passed the July 2014 exam.²⁵² When Assembly Member Donald Wagner introduced AB 296 during the California Legislature's 2013 term,²⁵³ the Assembly met the proposal with some trepidation.²⁵⁴ The initial bill used the same language as the MSJDN's model rule,²⁵⁵ which is broad, requiring only that the California Bar admit an attorney in good standing in another state who graduated from an ABA accredited law school.²⁵⁶ A suggestion by the Committee on Veterans Affairs modified the bill,

246. See ABA Resolution, *supra* note 6, at 3 (explaining that military spouses might live in a single location for two to three years, much longer than the ten weeks most summer associates work, or even the three or four months many attorneys spend working post-bar).

247. See *Draft Model Rule for Admission of Military Spouse Attorneys*, MILITARY SPOUSE JD NETWORK (Dec. 10, 2012), <http://www.msjdn.org/rule-change/> (click hyperlink: Model Rule) [hereinafter MSJDN MODEL RULE] (on file with the *McGeorge Law Review*) (outlining the suggested requirements for admission of military spouse attorneys, including that the attorney have graduated from an ABA accredited school). The Military Spouse JD Network is committed to helping as many military spouse attorneys gain admission without examination as possible.

248. MSJDN, *supra* note 21.

249. MSJDN MODEL RULE, *supra* note 247.

250. Jacquelyn Loyd is married to an active duty Naval officer. He is currently stationed in San Diego, CA while she finishes her law degree at Pacific McGeorge in Sacramento, CA.

251. See Robert Anderson, *The Most Difficult Bar Exams*, WITNESSETH: LAWS, DEALS, & DATA (Apr. 3, 2013), <http://witnesseth.typepad.com/blog/2013/04/the-most-difficult-bar-exams.html> (on file with the *McGeorge Law Review*) (indicating that the California Bar Exam has the lowest pass rate in the country).

252. GENERAL STATISTICS REPORT JULY 2014 CALIFORNIA BAR EXAMINATION I (Dec. 18, 2014), available at http://admissions.calbar.ca.gov/Portals/4/documents/gbx/JULY2014STATS121814_R.pdf.

253. AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as introduced, but not enacted).

254. See ASSEMBLY COMMITTEE ON VETERANS AFFAIRS ANALYSIS OF AB 296, at 4 (Apr. 20, 2013) (showing some of the changes the author made to the bill since its introduction).

255. Compare *id.*, with MSJDN MODEL RULE, *supra* note 247.

256. MSJDN MODEL RULE, *supra* note 247.

requiring that the military spouse attorney pass the California bar exam after moving to the state.²⁵⁷ This left military spouses no better off than if the law was never amended.²⁵⁸ As a result, the organization responsible for the bill's original language successfully sought to kill the bill.²⁵⁹

Arizona, Colorado, and Oklahoma come the closest to achieving the proper balance between accessibility for military spouse attorneys and states' concerns with protecting their citizens because they contain additional requirements that ensure attorney competence, but they still might be too broad for some states.²⁶⁰ Many states, like California, are protective of their citizens and proud of the quality of attorneys licensed there.²⁶¹ These states may be reluctant to adopt a rule that admits attorneys to the bar simply because they are married to a service member and are admitted to another bar when those attorneys might not possess the skills to pass the admitting state's bar exam.²⁶²

D. The Solutions

Striking a balance between the needs of military spouses and the states' concerns for competent and ethical attorneys is difficult, but it can be done. This Comment presents a model rule that best addresses state concerns while still allowing many military spouses to gain admission without the burden of examination.²⁶³

First, the model rule dispenses with the prior practice requirement altogether.²⁶⁴ Military spouse attorneys can almost never satisfy these requirements,²⁶⁵ and case-by-case waivers do not provide the same efficiency as

257. Assembly Committee on Veterans Affairs Analysis of AB 296, at 4 (Apr. 20, 2013) (showing the Author's commitment to amend the bill to include bar examination for military spouses).

258. See *Opposition to AB 296*, *supra* note 37 ("AB 296 claims to help military spouse attorneys but actually creates a harmful precedent for the largest military-populated state in the country.").

259. See *id.* (showing MSJDN's opposition to the bill); Natalie Wilson, *Busting Archetypes for Effective Advocacy*, MILITARY SPOUSE JD NETWORK (Sept. 3, 2013), <http://www.msjdn.org/2013/09/busting-archetypes-for-effective-advocacy/> (on file with the *McGeorge Law Review*) (praising the group's efforts in defeating AB 296).

260. See RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZ., Rule 38(i); C.R.C.P. Rule 204.4; RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF OKLAHOMA, RULE 2 § 7 (requiring that attorneys admitted under these rules show proof of graduation from an ABA accredited law school, a passing score on the MPRE, and, in Arizona and Colorado, completion of some CLE).

261. See *e.g.* *The State Bar of California Overview*, THE ST. BAR OF CAL., <http://www.calbar.ca.gov/AboutUs/StateBarOverview.aspx> (last visited Feb. 8, 2014) (on file with the *McGeorge Law Review*) ("Protection of the public is the highest priority of The State Bar of California.").

262. See AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as amended on May 15, 2013, but not enacted) (implying legislators were concerned about admitting attorneys without examination because they amended the bill to include that requirement).

263. *Infra* Part VII.

264. See *Infra* Part VII (showing the Model Rule: Military Spouse Admission Without Examination, which does not include a requirement for prior practice).

265. See ABA Resolution, *supra* note 6, at 8 (outlining the difficulties military spouses have in meeting previous practice requirements).

rules.²⁶⁶ Under the model rule, young military spouse attorneys could gain admission without an additional bar exam, as could spouses suffering from a gap in their resumes caused by several years serving overseas.

On the other hand, a rule that is too broad will tempt states to modify the rule to such an extent that it is no longer effective.²⁶⁷ To assuage the concerns of these states, the model rule keeps a supervision requirement.²⁶⁸ However, because the supervision requirement inhibits attorneys who wish to go into solo practice, the model rule contains an alternative to supervised practice.²⁶⁹ An attorney practicing without supervision must inform her clients that she is admitted to that State's bar only under the military spouse exception and must have those clients give informed consent to representation.²⁷⁰ The existence of this requirement ensures that clients have the chance to find a different attorney if they are concerned that the military spouse has not taken the admitting state's bar examination. Spouses who do not wish to inform their clients of their method of admission must work under a supervisor or take the state's bar exam.²⁷¹

Other sections of the model rule prevent abuse of the military spouse attorney exception. In addition to proving her qualifications upon admission,²⁷² the military spouse attorney must submit an affidavit each year saying that she still qualifies.²⁷³ Should her marital status change or should her service member separate or retire from the military,²⁷⁴ she has the option of utilizing a grace period so that she may study for and pass the state's bar exam.²⁷⁵ Additionally, all military spouses must hold a degree from an ABA accredited law school, as is required in order to take most bar exams if the attorney went to school outside of the state.²⁷⁶ The military spouse attorney must have passed a bar exam,²⁷⁷ eliminating those attorneys admitted by diploma privilege from gaining admission under the exception, and the attorney must have passed the MPRE,²⁷⁸ ensuring the military spouse meets minimal ethical standards. Further, an

266. See *Texas License Portability*, *supra* note 38 (indicating that the waiver process, while guided by official policy, is still subjective); *Massachusetts Message to Military Spouses*, *supra* note 38; *New York Notice to Military Spouses*, *supra* note 38.

267. See AB 296, 2013 Leg., 2013–2014 Sess. (Cal. 2013) (as amended on May 15, 2013, but not enacted) (implying legislators were concerned about admitting attorneys without examination because they amended the bill to include that requirement).

268. See MODEL RULE § (c)(1) (including a supervision requirement).

269. *Id.* at § (c)(2).

270. *Id.*

271. See *id.* at § (d)(iv) (terminating the attorney spouse's license if she fails to meet the requirements of the rule and leaving the traditional route of admission by examination as the only possible option of admission).

272. *Id.* at § (a).

273. *Id.* at § (b)(2)(A).

274. See *id.* at § (d)(1)(i) (listing reasons the attorney spouse's license will be terminated).

275. *Id.* at § (d)(2).

276. *Id.* at § (a)(1).

277. *Id.* at § (a)(2).

278. *Id.* at § (a)(3).

attorney seeking admission under this provision cannot have previously failed the admitting State's bar examination.²⁷⁹ This will prevent unqualified attorneys from circumventing the exam through marriage. Lastly, the military spouse attorney must have completed, or have proof of enrollment in, the minimum amount of state-required CLE, or in fifteen hours' worth of CLE in the absence of any existing state requirement.²⁸⁰

These requirements might still exclude some military spouse attorneys, like those graduating from non-accredited schools or those admitted to their previous jurisdiction through a diploma privilege. It could delay admittance for those attorneys who recently took a bar exam and have not yet received results. But the model rule achieves a better balance than any of the existing laws by providing quality control and protection to state citizens while still remaining flexible and admitting most military spouse attorneys. Above all, military spouse attorneys will benefit from a rule that provides certainty in the otherwise volatile life of a military family.

VII. PROPOSED MODEL RULE

Military Spouse Admission Without Examination

(a) **Qualifications.** In order to be admitted to the practice of law without passing the State bar examination, an applicant must prove to the State Board of Bar Examiners that he or she:

- (1) has graduated from an ABA accredited law school;
- (2) has passed a written bar examination in any state or territory of the United States or the District of Columbia;
- (3) possesses the moral character and fitness required of all other applicants for admission as demonstrated by:
 - (A) Attaining a passing score on the Multistate Professional Responsibility Exam, and;
 - (B) Passing a state character and fitness investigation;
- (4) has paid the required application fees;
- (5) has not failed the State bar examination;
- (6) is identified by the Department of Defense or the Department of Homeland Security as a dependent spouse of the United States Uniformed Services, including same-sex spouses. If State does not recognize same-sex marriage, they do for the purposes of this section only;

279. *Id.* at § (a)(5).

280. *Id.* at § (a)(8).

(7) is residing in State or moving to State in the next six months due to the active duty service member's military orders, and;

(8) has taken or is enrolled in the minimum amount of continuing legal education required in State. If State has no minimum requirement for continuing legal education, then the attorney must have taken or be currently enrolled in 15 hours of continuing legal education at the time of admission.

(b) Duration and Renewal.

(1) The attorney's license expires one year from the date of issuance.

(2) The license is renewable every year provided that:

(A) the attorney signs an affidavit stating:

(i) that his or her spouse is still a member of the United States Uniformed Services; and

(ii) that his or her spouse's orders still require them to reside in State; and

(B) the attorney has taken or is enrolled in the yearly required amount of continuing legal education, as defined in subsection (a)(8), in State at the time of renewal.

(3) The license is renewable for five consecutive years. But, if the attorney moves out of State due to the spouse's military orders, the five year count will begin again if the attorney later moves back to State on a spouse's military orders.

(c) Supervision and Disclosure. Once admitted, the attorney must satisfy one of the following requirements:

(1) Work under Local Counsel. "Local Counsel" is an attorney admitted to the Bar in State by examination or by a comity provision other than this section. It is not necessary that the Local Counsel appear with the attorney at trial or any other court proceedings. The attorney seeking admission must provide the court with a signed statement that Local Counsel agrees to supervise the attorney; or

(2) Inform clients that attorney was admitted to the State bar without examination as a military spouse and keep signed consent to representation from each client on file.

(d) Termination.

(1) The State Board of Bar Examiners has the right to terminate the attorney's license upon any of the following:

(i) the attorney's spouse separates or retires from the United States Uniformed Services;

(ii) the attorney's spouse receives orders for a permanent change of station outside of State, unless the attorney is not

- authorized to travel as a dependent on those orders;
- (iii) the attorney divorces the service member; or
- (iv) the attorney fails to renew his or her license or fails to meet any other requirement under this section.

(2) If the Board terminates an attorney's license under subsection (d)(1)(i), (ii), or (iii), the attorney may request a one year renewal of his or her license from the Board if he or she submits proof that he or she will take the State bar exam during that year and gain admission that way.

(e) All rules regarding attorney discipline and misconduct will apply to an attorney admitted to the Bar under this section.

VIII. CONCLUSION

Military spouses, along with their service members, make sacrifices for the safety of our country. Many of these men and women²⁸¹ have extensive educations and must give up rewarding careers to move with their active duty spouses.²⁸² Attorneys have a particularly difficult time due to many states' restrictive rules regarding admission without a bar examination.²⁸³ While twelve states have made various allowances for military spouse attorneys,²⁸⁴ none achieve the right balance between protecting the states and helping the spouses,²⁸⁵ although some come close.²⁸⁶ By adopting the model rule presented here, states can grant admission to almost every military spouse attorney while assuring that those attorneys meet the minimum standards for competency and ethics.²⁸⁷

281. See *Employment Resources*, *supra* note 15 (indicating that 95% of military spouses are women).

282. See *e.g.*, *Opposition to AB 296*, *supra* note 37 (including a statement from Navy spouse Alicia Bond that she is currently underemployed and has frequently been without a job at all despite her potential to make a good living).

283. See ABA Resolution, *supra* note 6, at 3 (highlighting the difficult choice attorney spouses must make between taking multiple bar exams or living apart from their service members).

284. See *supra* Part II (identifying those states as Texas, North Carolina, Idaho, Virginia, Illinois, South Dakota, Oklahoma, New York, New Jersey, Colorado, Massachusetts, and Arizona).

285. *Supra* Part VI.

286. *Supra* Part VI(C).

287. *Supra* Part VII.