

RESOLUTION 01-02-2015

DIGEST

Attorneys: Temporary License for Attorney Spouses of Active Duty Military Personnel

Adds California Rules of Court, rule 9.49 to create a program for temporary admission to practice law for attorney spouses of active duty military service members stationed in California.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This Resolution adds California Rules of Court (“CRC”), rule 9.49 to create a program for temporary admission to practice law for attorney spouses of active duty military service members stationed in California. This Resolution should be approved in principle because it supports military personnel by helping them keep their families together during their active duty postings in California, and is similar to the program which grants a temporary license to legal service attorneys. However, the Resolution should be amended to add restrictions to this new temporary license before it is entered into the legislative program.

California does not have licensing reciprocity with any other state; therefore, to practice law in California, one must hold a California license. The few circumstances under which an attorney who is not licensed by California can practice law do not include a temporary license for attorney spouses of active duty military personnel posted to California. The current exceptions include admission *pro hac vice* (restricted to a specific action, governed by CRC, rule 9.40); registered in-house counsel (restricted to a specific employer, no California license / admission required, registration with the California Bar Association required per State Bar Rules 3.370 – 3.377, and governed by CRC, rule 9.46); and registered legal service counsel (no California license / admission required, limited to three years, required registration with the California Bar Association per State Bar Rules 3.360 – 3.367, and governed by CRC, rule 9.45).

It is important to support military personnel by helping them keep their families together during their active duty postings in California. To further this goal, military spouse attorneys should be granted a temporary license to practice in California while his/her spouse is posted to California on active duty. This Resolution is based on the above-described programs which allow temporary licensing of legal service attorneys and in-house counsel in California, and those adopted by other states for attorney spouses of active duty military service members.

This Resolution also contains suitable restrictions and safeguards. For example, the attorney spouse with the temporary license would have to (a) be supervised by a licensed California attorney who has at least four years active practice experience during the first year of registration under the program; (b) complete 25 hours of California MCLE within the first year of registration and the same MCLE required of California attorneys thereafter; (c) be subject to discipline by way of suspension of privileges upon suspension or disbarment by another jurisdiction.

However, Resolution Committee’s recommendation is premised on its suggestion that this Resolution be amended before it enters the legislative program to include some additional restrictions; e.g., (a) the temporary license would be limited to two years, which gives the attorney spouse time to take and pass the California bar exam; (b) the supervision by a licensed California attorney who has at least four years active practice experience would continue for the entire duration of the temporary license; and (c) the attorney spouse would be subject to California’s disciplinary authority under California law.

This Resolution is similar to Assembly Bill No. 296 (2014-2015 Reg. Sess.) (“AB 296”), which proposed to address the same issues through amendment of Business and Professions Code section 6062. Among other things, AB 296 required attorney spouses to take and pass the first available California bar exam. AB 296 passed the Assembly in this form, but was gutted and amended in the Senate Judiciary Committee into a bill related to trusts (not attorney licensing), which was then enacted in its amended form. There appears to have been some tension between the Military Spouse JD Network (which opposed the requirement that the attorney spouse would have to take and pass the first available California Bar Exam), and the California State Bar (which would not agree to a temporary license without bar passage). A compromise would be a short temporary license with a bar passage requirement.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that the Judicial Council add California Rules of Court, Rule 9.49, to read as follows:

Rule 9.49.

Registered Military Spouse Attorneys.

(a) Purpose. Due to the unique mobility requirements of military families who support the defense of our nation, an attorney who is a spouse or a registered domestic partner of an active duty member of the United States Uniformed Services (“service member”) may be required to relocate to this jurisdiction when the service member spouse is stationed within this jurisdiction. This rule is intended to provide attorney spouses of service members an option to obtain a temporary license to practice law within the State of California under this rule for the period in which the service member is stationed in California.

(b) Definitions. The following definitions apply in this rule:

(1) “Military Spouse Attorney” is an active member in good standing of the bar of the bar of a United States state, jurisdiction, possession, territory, or dependency and who is a spouse or registered domestic partner of a Service Member.

(2) “Service Member” means an active duty member of the United States Uniformed Services who has been ordered stationed within California.

(3) “Spouse” shall have the ordinary meaning accorded by California law, and includes Civil Union.

(4) “Active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency” means an attorney who:

(A) Is a member in good standing of the entity governing the practice of law in each jurisdiction in which the member is licensed to practice law;

21 (B) Remains an active member in good standing of the entity governing the practice of
22 law in at least one United States state, jurisdiction, possession, territory, or dependency other
23 than California while practicing law as a registered Military Spouse Attorney in California; and

24 (C) Has not been disbarred, has not resigned with charges pending, or is not suspended
25 from practicing law in any other jurisdiction.

26 (c) Scope of practice. Subject to all applicable rules, regulations, and statutes, and as
27 specifically required under this rule, an attorney practicing law under this rule may practice law
28 in California in all forms of legal practice that are permissible for a member of the State Bar of
29 California.

30 (d) Requirements. For an attorney to practice law under this rule, the attorney must:

31 (1) Be an active member in good standing of the bar of a United States state, jurisdiction,
32 possession, territory, or dependency, and be a spouse or registered domestic partner of a Service
33 Member;

34 (2) Register with the State Bar of California and file an Application for Determination of
35 Moral Character;

36 (3) Meet all of the requirements for admission to the State Bar of California, except that
37 the attorney:

38 (A) Need not take the California bar examination or the Multistate Professional
39 Responsibility Examination; and

40 (B) May practice law while awaiting the result of his or her Application for
41 Determination of Moral Character;

42 (4) Comply with the rules adopted by the Board of Governors relating to the State Bar
43 Registered Military Spouse Attorney Program;

44 (5) Practice law under the supervision of an attorney who is a member in good standing
45 of the State Bar of California for the first year of practice under this rule;

46 (6) Abide by all of the laws and rules that govern members of the State Bar of California,
47 including the Minimum Continuing Legal Education (MCLE) requirements;

48 (7) Satisfy in his or her first year of practice under this rule all of the MCLE
49 requirements, including ethics education, that members of the State Bar of California must
50 complete every three years; and

51 (8) Not have taken and failed the California bar examination within five years
52 immediately preceding application to register under this rule.

53 (e) Application. To qualify to practice law as a registered Military Spouse Attorney, the
54 attorney must:

55 (1) Register as an attorney applicant and file an Application for Determination of Moral
56 Character with the Committee of Bar Examiners;

57 (2) Submit to the State Bar of California a declaration signed by the attorney agreeing
58 that he or she will be subject to the disciplinary authority of the Supreme Court of California and
59 the State Bar of California and attesting that he or she will not practice law in California other
60 than as provided under this rule, except that, if so qualified, the attorney may, while practicing
61 under this rule, simultaneously practice law as registered in-house counsel; and

62 (3) Submit to the State Bar of California a declaration signed by a qualifying supervising
63 attorney attesting that the applicant will be supervised as specified in this rule and the
64 supervising attorney assumes professional responsibility for any work performed by the
65 applicant under this rule. The applicant need not be directly employed by the qualifying
66 supervising attorney.

67 (f) Duration of practice

68 (1) An attorney may practice for no more than a total of nine years under this rule. This
69 period shall be extended where the attorney has, prior to the expiration of nine years, applied to
70 take the California Bar Examination and the extension shall expire upon either the failure to
71 receive a passing score on the bar examination or upon admission to the California Bar as a
72 member in good standing.

73 (2) The license to practice law under this rule shall terminate sixty (60) days after any
74 one of the following events or such other period as specified in the enumerated events:

75 (A) The Service Member is no longer a member of the United States Uniformed
76 Services;

77 (B) The Military Spouse Attorney's marriage, civil union, or registered domestic
78 partnership is dissolved;

79 (C) The service member receives a permanent transfer outside the jurisdiction, except
80 that if the service member has been assigned to an unaccompanied or remote assignment with no
81 dependents authorized, the Military Spouse Attorney may continue to practice pursuant to the
82 provisions of this rule until the service member is assigned to a location with dependents
83 authorized; or

84 (D) One year after the death, permanent disability, or disability resulting in discharge of
85 the service member.

86 (3) In the event that any of the events listed in paragraph (f)(2)(A)-(D) occur, the
87 attorney licensed under this rule shall notify the State Bar of California of the event in writing
88 within thirty (30) days of the date upon which the event occurs. If the event occurs because the
89 service member is deceased or disabled, the attorney shall notify the State Bar of California
90 within one hundred eight (180) days of the date upon which the event occurs.

91 (4) Each attorney admitted to practice under this rule shall report to the State Bar of
92 California, within thirty (30) days, or such other time as provided:

93 (A) Any change in bar membership status in any jurisdiction of the United States or in
94 any foreign jurisdiction where the attorney has been admitted to the practice of law;

95 (B) The initiation of any disciplinary proceedings by any federal or state court or agency;
96 or

97 (C) Immediately upon the imposition of any permanent or temporary professional
98 disciplinary sanction by any federal or state court or agency

99 (5) An attorney's authority to practice under this rule shall be suspended when the
100 attorney is suspended and revoked when the attorney is disbarred in any jurisdiction of the
101 United States, or by any federal court or agency, or by any foreign nation before which the
102 attorney has been admitted to practice.

103 (g) Application and registration fees. The State Bar of California may set appropriate
104 application fees and initial and annual registration fees to be paid by registered Military Spouse
105 Attorneys.

106 (h) State Bar Registered Military Spouse Attorney Program. The State Bar may
107 establish and administer a program for registering California Military Spouse Attorneys under
108 rules adopted by the Board of Governors of the State Bar.

109 (i) Supervision. To meet the requirements of this rule, an attorney supervising a Military
110 Spouse Attorney:

111 (1) Must be an active member in good standing of the State Bar of California;

- 112 (2) Must have actively practiced law in California and been a member in good standing
113 of the State Bar of California for at least the two years immediately preceding the time of
114 supervision;
115 (3) Must have practiced law as a full-time occupation for at least four years;
116 (4) Must not supervise more than two registered Military Spouse Attorneys concurrently;
117 (5) Must assume professional responsibility for any work that the registered Military
118 Spouse Attorney performs under the supervising attorney's supervision;
119 (6) Must assist, counsel, and provide direct supervision of the registered Military Spouse
120 Attorney in the activities authorized by this rule and review such activities with the supervised
121 attorney, to the extent required for the protection of the client;
122 (7) Must read, approve, and personally sign any pleadings, briefs, or other similar
123 documents prepared by the registered Military Spouse Attorney before their filing, and must read
124 and approve any documents prepared by the registered Military Spouse Attorney for execution
125 by any person who is not a member of the State Bar of California before their submission for
126 execution; and
127 (8) May, in his or her absence, designate another attorney meeting the requirements of
128 (1) through (7) to provide the supervision required under this rule.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Active duty members of the United States Armed Forces are often required to relocate to California as part of their military service and this imposes burdens on the member's spouse and family, inclusive of the spouse's need to find new employment in California. Where the spouse of the service member is an attorney licensed to practice law in another state or U.S. territory, this presents the added problem of seeking admission to practice law in California. Currently, the attorney spouse would need to take and pass the attorney bar examination, if admitted to the other jurisdiction and actively engaged in the practice of law for at least four years, or take the general bar examination, and must pass the moral character background. This process takes a minimum of eight months from the deadline for submission of the application to take the bar examination until results are posted, and often takes upwards of one year, or nearly one quarter of a service member's normal 4-year deployment order.

This Solution: This Resolution adds rule 9.49 to the California Rules of Court to create a program for temporary licensing of Military Spouse Attorneys while their spouse or registered domestic partner is stationed in California. It is based on similar programs in California allowing for the temporary licensing of legal service attorneys and in-house counsel, and similar programs adopted by other states for attorney spouses of active duty military service members. It provides a maximum period of nine years which would accommodate two 4-year active duty assignments of the spouse in California and allows for a short transition period after the spouse leave the military, is deceased or disabled, or there is a dissolution. It requires supervision by a licensed California attorney, with at least four years active practice experience, during the first year of registration under the program. It requires completion of 25 hours of California MCLE within

the first year of registration and the same MCLE required of California attorneys thereafter. It provides for reciprocal discipline by way of suspension of privileges under the rule upon suspension or disbarment by another jurisdiction.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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