

## LICENSE PORTABILITY FOR MILITARY SPOUSES

In 2011, the 82<sup>nd</sup> Legislature enacted TEXAS OCCUPATIONS CODE § 55.004 entitled Alternative License Procedure for Military Spouse, which provides:

- A state agency that issues a license<sup>1</sup> shall adopt rules “for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the U.S. armed forces,” and
- Such rules “must include provisions to allow alternative demonstrations of competency” to meet licensing requirements.

As of June 2012, approximately 23 states had passed military spouse license portability measures.

A registration program for military attorneys on military assignment in Texas was recently added in Rule XXII of the Rules Governing Admission to the Bar of Texas. It permits limited practice in Texas matters by military attorneys representing members of the armed forces in certain Texas matters specified in the rule.

In July 2012 the Conference of Chief Justices adopted Resolution XV urging:

“the bar admission authorities in each state and territory to consider the development and implementation of rules permitting admission without examination for attorneys who are dependents of service members of the United States Uniformed Services and who have graduated from ABA accredited law schools and who are already admitted to practice in another state or territory.”

There is already long-standing provision in Rule XIII(a)(1) of the *Rules Governing Admission to the Bar of Texas* providing for admission without examination. Each year the Texas Board of Law Examiners certifies hundreds of qualified attorney applicants to the Supreme Court as eligible for admission without examination. The essential qualifications under XIII(a)(1) are as follow:

- (1) An attorney holding a valid, active law license issued by another state is eligible for exemption from the requirement of successfully completing the Texas Bar Examination, if the attorney:
  - (A) has been actively and substantially engaged in the lawful practice of law in any state or elsewhere as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the application;
  - (B) has a J.D. degree from an approved law school; and
  - (C) has not failed the Texas Bar Examination.

The rule does not require consecutive years of law practice. It requires a minimum of five years within the seven years preceding the application. This allows for up to two years of gaps in the practice time. Moreover, Rule XX(e) of the *Rules Governing Admission to the Bar of Texas* delegates to the Board, on an applicant’s showing of good cause, some discretion to consider requests for waiver of the strict application of the five-years-out-of-seven standard.

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<sup>1</sup> TEXAS GOVERNMENT CODE § 82.021 states that only the Supreme Court of Texas may issue licenses to practice law and that the power may not be delegated. The Texas Board of Law Examiners examines applicants, applies and interprets the *Rules Governing Admission to the Bar of Texas*, and reports to the Supreme Court on the eligibility for licensure.

The Board receives several such waiver requests each year. They are decided by the same panels of Board members that are tasked with presiding over Character and Fitness hearings. Attorney applicants whose otherwise qualifying experience may be a little outside the XIII(a)(1)(A) seven year window, or a little short of the five year minimum, often receive favorable consideration when they demonstrate extenuating circumstances or other good cause.

As a rule change is not mandated by TEXAS OCCUPATIONS CODE § 55.004, the Board of Law Examiners, in consultation with the Supreme Court, has adopted policy guidelines appropriate for the Board of Law Examiners' (a) consideration of problems faced by military spouse applicants and (b) consideration of their XIII(a)(1)(A) waiver requests, as follow:

- As used in these guidelines, a military spouse applicant means an attorney holding a current active law license in another state who demonstrates that his or her spouse is a person on active duty as a member of the armed forces of the United States, whose duty station is in Texas.
- The military spouse applicant may file an application for admission in Texas at a reduced fee (the fee applicable to an out-of-state law student<sup>2</sup>) without having to demonstrate the indigence required under Rule XVIII(b) for fee waivers.
- If applying to take the Texas Bar Examination, no late fee will be incurred for filing within the times provided in Rule IX(a)(3).<sup>3</sup>
- The military spouse applying for admission without examination (“AWOX”) should meet all other eligibility criteria for admission, but if lacking only Rule XIII(a)(1)(A), then the military spouse may submit a written request for waiver of XIII(a)(1)(A) demonstrating good cause for (a) enlarging the seven-year window to encompass law practice beyond seven years, (b) accepting fewer than the minimum five years time in practice, or both.
- The military spouse’s waiver request shall be submitted on forms designated by the Board at the time of filing the application for admission, or thereafter. In addition to any other factors the military spouse applicant may consider appropriate for the Board to consider, the applicant’s written waiver request shall include:
  - A verifiable history of short-term moves that were compulsory for the applicant as an attorney married to an active duty military service member;
  - A detailed description of the unique problems, if any, the applicant faced as a military spouse in undertaking to engage actively and substantially in the lawful practice of law during the relevant time period(s) for which waiver is sought;
  - Documentation demonstrating to the Board’s satisfaction that the applicant is currently the legal spouse of an active duty member of the armed forces whose duty station is in Texas; maintains a current active license to practice law in another state or territory of the United States; is in good standing and has no current or pending discipline in any jurisdiction currently licensed (active or inactive status); is in compliance with Continuing Legal Education, fees and other requirements of licensure in all jurisdictions of active licensure; and has no issues that could result in the Board’s character and fitness director determining that the applicant lacks present good moral character and fitness; and
  - Any letters of support from attorneys with whom applicant has practiced law that the applicant considers appropriate for the Board to consider with respect to the waiver request.

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<sup>2</sup> This is less than half the fee an attorney applicant would usually be required to pay under the fee schedules in Rule XVIII(a).

<sup>3</sup> Rule IX(a)(3) requires a \$150 late fee for applications filed after the timely due dates in IX(a)(1) and (2).