TEXAS SUPREME COURT ADVISORY

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Thursday, October 14, 2010

COURT GRANTS LIMITED PRACTICE PRIVILEGE
TO MILITARY LAWYERS NOT LICENSED IN TEXAS

Practice-rules amendment focuses on assisting lower-rank service members, dependents who need legal assistance for certain civil matters

In an order posted Thursday the Supreme Court of Texas has amended law-practice rules to allow military attorneys stationed in Texas but licensed elsewhere to represent military service members or their dependents in limited matters in state courts or tribunals.

The rule, limited to enlisted military personnel in grade E-4 and below or their immediate family members, takes effect Friday. It allows military attorneys licensed and in good standing in other states, the District of Columbia or U.S. territories to register with the Texas Board of Legal Examiners.

Under the program, military attorneys would be limited to representing clients in select civil proceedings, but not criminal matters.

Military attorneys cannot be paid in these cases and, before undertaking a legal representation under the rule, must obtain approval from a supervising military attorney. In some instances, approval must come from the Judge Advocate General of the Army, Navy, Coast Guard or Air Force or the Staff Judge Advocate to the Marine Corps Commandant. Representation of military personnel's family members will be approved only upon a determination that the family members would face a substantial financial hardship without the military attorney's representation.

"This effort is another step by the Court to help people without financial resources find legal help when they might otherwise go without," Chief Justice Wallace B. Jefferson said. "The common legal problems these military personnel and their families face are beyond the reach of legal-aid organizations, which are facing their own financial struggles."

The registration rule – Rule XXII of the Rules Governing Admission to the Bar of Texas – follows a proposal in the 2009 legislative session by state Sen. Judith Zaffarini of Laredo and a model rule by the American Bar Association.

"The Supreme Court's military limited-practice rule will complement the State Bar's initiative, Texas Lawyers for Texas Veterans," said Terry Tottenham of Austin, State Bar president, "and better enable our service members to receive the necessary legal assistance they deserve, and have earned, through their sacrifices in defense of our country."

Don Guter, president and dean of South Texas College of Law and chair of the ABA's Standing

Committee on Legal Assistance for Military Personnel, said Texas was a priority for his committee's efforts to find ways to help lower-grade military personnel.

"They really don't have that much access to legal help," Guter said. "This I going to be a tremendous help to military servicemen and women in Texas."

Military attorneys registered under the rule would pay a $25 annual application fee and be required to complete 15 hours of continuing-legal education course work within the first year, three hours of which must be ethics credit. In each subsequent year registered military attorneys would have to complete three hours' ethics credit.

They will be subject to Texas disciplinary rules and laws. The limited-practice privilege would end when the military attorney leaves the service or is transferred out of Texas.

Order

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 10-9171

ADOPTION OF RULE XXII AND AMENDMENTS TO RULE XVIII OF THE RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

ORDERED that:

Pursuant to Sections 81.102 and 82.022 of the Government Code, the Supreme Court of Texas promulgates Rule XXII of the Rules Governing Admission to the Bar of Texas and amends Rule XVIII of the Rules Governing Admission to the Bar of Texas. New Rule XXII and amended Rule XVIII take effect October 15, 2010.

In Chambers, this 13th day of October, 2010.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Rule XVIII. Fees

(a) The following provisions shall govern the fees charged by the Board:

FEES RELATING TO DECLARATIONS

Declaration Investigation Fee	$150
Fingerprint Card Processing Fee	40
	$190
Late Filing Fee	$150
Fee for Check Returned for Insufficient Funds	$ 25

FEES RELATING TO ELIGIBILITY & EXAMINATIONS

Texas Law Student:

$ 150	Application Fee
75	Examination Fee
75	Investigation Fee
$ 300	

Out-of-State Law Student:

$ 150	Application Fee
40	Fingerprint Card Processing Fee
75	Examination Fee
150	Investigation Fee
$ 415	

Attorneys Licensed in Another State:

$ 700	Application Fee
40	Fingerprint Card Processing Fee
150	Examination Fee
150	Investigation Fee
$ 1,040	

Attorneys Qualified for Admission Without Examination Under Rule XIII:

$ 700	Application Fee
40	Fingerprint Card Processing Fee
150	Investigation Fee
$ 890	

Foreign Nation Attorney - Texas Bar Exam Application Only:

$ 700	Application Fee
40	Fingerprint Card Processing Fee
150	Examination Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$1,140	

Foreign Nation Attorney - Concurrent Texas Bar Exam and Foreign Legal Consultant Applications:

$ 700	Application Fee
150	Foreign Legal Consultant Supplemental Investigation Fee
40	Fingerprint Card Processing Fee
150	Examination Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$ 1,290	

Foreign Legal Consultant Application Only:

$ 700	Application Fee
40	Fingerprint Card Processing Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$ 990	

Foreign Legal Consultant Re-Application Fee:

$ 150	Re-Application Fee
150	Supplemental Investigation Fee (every second renewal year only)
$ 300	($150 in alternate years)

Supplemental Investigation (S.I.) Fee (as required under Rule IX)	$ 150
Fingerprint Card Processing Fee	$ 40
	$ 190
Military Attorney Application Fee (as required under Rule XXII)	$ 25
Military Attorney Renewal Application Fee (as required under Rule XXII)	$ 25

MISCELLANEOUS FEES

Late Filing Fee	$150
Re-Application Fee	$150
Investigation on Re-Application	$150
Fee for Check Returned for Insufficient Funds	$ 25
MBE Transfer Fee	$ 25
Application Deposit Fee[1]	$ 30
Incompleteness Fee[2]	$ 75
Laptop Examination Fee	$ 50

(b) No refund or transfer of fees will be made in the event of the withdrawal of any Declaration or Application, nor in the event a determination is made by the Board that the Applicant or Declarant does not meet the requirements imposed under these Rules.

(c) Any fee required under these Rules may be waived or lowered by the Board upon written request and proof of indigence.

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[1] One deposit fee shall be credited toward the filing fee if the application is filed within 1 year of date the deposit is received.

[2] This fee shall be imposed when a document (declaration, application, S.I., etc.) is received, for the second and subsequent times, which is determined to be incomplete (e.g., unanswered questions, not signed, not notarized, incorrect fees, etc.).

Rule XXII. Registration Program for Military Attorneys on Military Assignment in Texas but not Licensed in Texas

§ 1 General Requirements for Registration and Limited Permission to Practice Law

Upon the Board's approval, a military attorney who is admitted to practice law in a state other than Texas or in a territory of the United States or the District of Columbia, and who is a full-time, active-duty military officer serving in the office of a Staff Judge Advocate of the United States Air Force, Army, Navy, Marines, or Coast Guard, a Naval Legal Service Office, or a Trial Service Office, located in Texas, may appear as an attorney and practice law before the courts and other tribunals of Texas in any civil proceeding, subject to the conditions and limitations in this rule and applicable law. This rule does not preclude a non-resident military attorney's request under Rule XIX to participate in the proceedings of a particular cause in a Texas court.

§ 2 Specific Requirements

The military attorney must be of good moral character and apply for registration annually by:

(a) filing an application and paying fees in the form and manner that the Board prescribes;

(b) presenting satisfactory proof of admission to practice law and current good standing as a member of the bar in any state or territory of the United States or the District of Columbia;

(c) complying with the training requirements in this rule; and

(d) furnishing any additional information or proof that the Board requires in the course of processing the application.

§ 3 Training

Permission to practice law under this rule requires that the military attorney complete at least 15 credit hours of Accredited Continuing Legal Education (CLE) Activity, including a minimum of three hours of legal ethics or professional responsibility, within the first year of registration. The minimum of three hours of legal ethics or professional responsibility must also be completed within each subsequent year of registration. As used in this rule, the term Accredited CLE Activity has the meaning ascribed to it in Article XII of the State Bar Rules.

§ 4 No State Bar of Texas Membership or Texas Law License Granted

Military attorneys permitted to practice law under this rule are not, and shall not represent themselves to be, members of the State Bar of Texas or licensed to practice law in the State of Texas.

§ 5 Termination

The military attorney's privilege to practice law under this rule may be terminated by the Board at any time, with or without cause. In addition, the military attorney's privileges under this rule shall be terminated when the military attorney ends full-time, active-duty military service as described in section 1 of this rule. The military attorney registered under this rule or the military attorney's supervisory Staff Judge Advocate or other supervisory military attorney shall:

(a) advise the Board as soon as practicable of any change in the military attorney's status that may affect the military attorney's right to practice law under this rule;

(b) immediately notify each court or tribunal in which the military attorney is involved in a pending civil proceeding when the military attorney is unable to continue to serve as counsel under this rule; and

(c) immediately obtain substitution of counsel when the military attorney involved in any pending civil proceeding is unable to continue to serve as counsel under this rule.

§ 6 Subject Matter Jurisdiction, Authorized Clients, and Pleading Requirements

A military attorney granted limited permission to practice law under this rule may, with approval of the military attorney's supervisory Staff Judge Advocate or other supervisory military attorney, represent:

(a) enlisted military personnel in grades E-1 through E-4; and

(b) immediate family members who qualify under armed services regulations as dependents of enlisted military personnel in grades E-1 through E-4 if the military attorney's supervisory Staff Judge Advocate or other supervisory military attorney determines that retaining civilian legal counsel for the matter in controversy would present a substantial financial hardship for the family member involved.

A military attorney granted limited permission to practice law under this rule may represent other military personnel, as well as their immediate family members who qualify under armed services regulations as their dependents, only if the military attorney receives written approval from the Judge Advocate General of the Army, Navy, Coast Guard, or Air Force, or the Staff Judge Advocate to the Commandant of the Marine Corps, as appropriate. The written authorization must include a determination that retaining civilian legal counsel for the matter in controversy would present a substantial financial hardship for the service member or family member involved.

A military attorney granted limited permission to practice law under this rule may not demand or receive any compensation, beyond the military attorney's regular pay and allowances, for the legal services provided under this rule.

The practice of a military attorney under this rule shall be subject to the limitations and restrictions of 10 U.S.C. § 1044 and the regulations of that attorney's military service and shall be further limited to:

(a) cases arising under all Titles, except Title 3, of the Family Code;
(b) guardianships;
(c) landlord-tenant disputes on behalf of tenants;
(d) consumer-law cases on behalf of consumers;
(e) garnishment defenses;
(f) estate planning and probate matters;
(g) enforcement of rights under the Servicemembers Civil Relief Act;
(h) enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act; and
(i) other cases within the discretion of the court or tribunal before which the civil proceeding is pending, provided that written permission of the court or tribunal is obtained in advance of the appearance.

All pleadings filed in a civil proceeding by a military attorney under this rule shall state that limited permission to practice in Texas has been obtained under this rule; include the name, complete address, and telephone number of the military legal office of the military attorney representing the client and of the military attorney's supervisory Staff Judge Advocate or other supervisory military attorney; and include the name, grade, and armed service of the military attorney who is registered under this rule and providing representation. Upon making an appearance in a civil proceeding, the military attorney shall file a document with the court or other tribunal in which the civil proceeding is pending, designating each individual authorized to accept service of process on the military attorney's behalf and providing the name and complete address of each authorized individual. If the military attorney does not file this document, the military attorney's agent for service of process shall be the supervisory Staff Judge Advocate or supervisory military attorney whose name appears on the military attorney's most recent application filed pursuant to this rule, or the successor to that office.

§ 7 Discipline

A military attorney granted limited permission to practice law in Texas under this rule is subject to the Rules Governing Admission to the Bar of Texas, the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure, and any other rules and laws governing the discipline of attorneys admitted to the State Bar of Texas. The State Bar of Texas, Supreme Court of Texas, and other Texas courts have jurisdiction over the discipline of the military attorney, regardless of whether the military attorney retains the right to practice in the state, for the military attorney's professional conduct while practicing in this state. This jurisdiction includes, but is not

limited to, the authority — concurrent with the Board's authority under section 5 of this rule — to terminate the military attorney's privilege to practice law in Texas under this rule.