

**William H. Neukom**  
President

**AMERICAN BAR ASSOCIATION**

321 N. Clark Street  
Chicago, Illinois 60610  
(312) 988-5109  
FAX: (312) 988-5100

May 20, 2008

Dear Colleagues:

We are writing on an issue vital to assuring adequate legal representation of our American military members in the courts of your state. We request your support for an effective state Expanded Legal Assistance Program (ELAP) rule enabling military lawyers to appear in state courts to represent their servicemember clients in civil-law matters.

The availability of Judge Advocate representation in state courts is important because servicemembers too often cannot afford civilian lawyers, and the legal matters at issue are often too small to interest members of the civilian bar. For American servicemembers, even relatively small legal burdens can create enormous distractions when added to the special burdens faced by military families. That is particularly true in these times of international conflict and great servicemember sacrifice.

ELAP rules support military legal assistance in two ways: (i) by allowing Judge Advocates into state courts; and (ii) by enabling locally-based Judge Advocates to credibly inform businesses that engage in abusive practices targeting servicemembers that they will be taken to court if such practices persist. Military legal assistance offices report that when servicemembers are targets of unfair practices, the mere availability of in-court representation by military lawyers can lead to a negotiated resolution of controversies.

The ABA House of Delegates adopted the Black Letter Model Expanded Legal Assistance Program Rule for Military Personnel ("Model ELAP Rule") in February 2003, in recognition of a pressing need to allow JAG lawyers into state courts to protect their clients' legal interests. That need was reaffirmed the next year in the Report of the ABA Working Group on Protecting the Rights of Servicemembers, which identified adoption of ELAP by the states as a high priority.

Despite that need and ready tools to address it, too few states have stepped forward to adopt effective ELAP rules in the ensuing five years. Even some states with large military presences lack any rule that would open the doors of their state courts to military lawyers who are not licensed in the state. Others have adopted regulations that nominally admit JAG lawyers to state courts, but impose training and dues requirements that stand as practical barriers to admission to the courts. Military attorneys generally are not stationed in a state long enough to make satisfaction of such requirements practical or affordable.

May 16, 2008

Page Two

In the past, some jurisdictions expressed reluctance to adopt ELAP rules due to multi-jurisdictional practice concerns. That reservation was fully and finally resolved by the amendment of 10 USC §1044 adding a new subsection (d), which clarifies that a judge advocate or civilian attorney who is authorized to provide military legal assistance may provide that assistance in any state, provided that the attorney is admitted to the bar in any other state or to a federal bar, 10 U.S.C. §1044(d).

We would propose for your consideration not only the ABA Model ELAP rule, but a streamlined ELAP rule such as that adopted in Mississippi, which strikes a fair and practical balance between the state's interests and the interests of American military members who would, in a particular case, be best represented in court by a Judge Advocate. Copies of the ABA Model Rule and the Mississippi rule are attached.

We encourage you and your colleagues to examine carefully your state's rules and to adopt provisions that remove unnecessary barriers to court access for military attorneys representing servicemembers.

It is important to note that the legal leadership of all of the U.S. military services strongly supports the adoption of effective ELAP rules in the states. In that regard, I commend to your attention the attached joint letter from the Judge Advocates General of the Army, Air Force and Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, addressing the benefits of and need for ELAP.

If you have any questions or would like informational support on making the case for a new or enhanced ELAP rule in your state, please contact Paul Haskins, staff counsel of the Standing Committee on Legal Assistance for Military Personnel, at 312-988-5755.

Thank you for your support of the legal rights of our American servicemembers, who sacrifice so much for all of us.

Sincerely,



William H. Neukom, President  
American Bar Association



Earl E. Anderson, Chair  
Standing Committee on Legal Assistance for Military Personnel

**ABA BLACK LETTER  
MODEL EXPANDED LEGAL ASSISTANCE PROGRAM RULE  
FOR MILITARY PERSONNEL**

- (1) **Introduction:** A lawyer admitted to the practice of law in a state or territory of the United States or the District of Columbia, 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 Trial Service Office, located in [insert name of state], may, upon application and approval, appear as a lawyer and practice law before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations set forth in this rule.
- (2) **Requirements:** The applicant must be of good moral character and shall apply by: (i) filing an application in the form and manner that may be prescribed by the [insert here applicable entity for prescribing rules of practice]; (ii) presenting satisfactory proof of admission to the practice of 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; (iii) complying with the training requirements as set forth below; and (iv) furnishing whatever additional information or proof that may be required in the course of processing the application.
- (3) **Training:** To qualify for permission to practice pursuant to this rule, an applicant must, prior to approval, complete at least 15 credit hours of approved continuing legal education coursework, which shall include courses on the rules of practice and/or professional responsibility in [insert name of state].
- (4) **Miscellaneous:** Military lawyers permitted to practice pursuant to this rule are not, and shall not represent themselves to be members of the Bar of [insert name of state], nor that they are licensed to practice in [insert name of state].
- (5) **Termination:** The applicant's privilege to practice pursuant to this rule: (i) may be terminated by the [insert here applicable entity for prescribing rules of practice] at any time with or without cause. In addition, the applicant's privilege shall be terminated when the military lawyer ends active duty military service in this state. The lawyer admitted pursuant to this rule and his or her supervisory staff judge advocate or his or her commanding officer are responsible to advise the [insert here applicable entity for prescribing rules of practice] of any change in status of the lawyer that may affect his or her right to practice law under this rule.
- (6) **Subject Matter Jurisdiction and Authorized Clients:** Military lawyers admitted pursuant to this rule may represent military personnel in enlisted grades E-1 through E-4, and their dependents, who are under substantial financial hardship, in civil judicial and administrative proceedings to the extent such representation is permitted by the supervisory staff judge advocate or commanding officer. Other military personnel and their dependents may be represented if approved by the applicable

Judge Advocate General of the Army, Navy, or Air Force; or the Staff Judge Advocate to the Commandant of the Marine Corps, or the Chief Counsel of the Coast Guard, or his or her designee, respectively. Military lawyers permitted to practice pursuant to this section may not receive any compensation from clients.

- (7) **Discipline:** The practice of a lawyer admitted pursuant to this section shall be subject to the [insert applicable name for rules governing ethical conduct], and the applicable rules for lawyer discipline and to any other laws and rules governing the discipline of lawyers admitted to the bar of this state. The [insert here applicable entity for prescribing rules of practice] shall continue to have jurisdiction over the discipline of the lawyer regardless of whether the lawyer retains the right to practice in the state.

Adopted 2003, ABA House of Delegates

## MISSISSIPPI RULES OF APPELLATE PROCEDURE

. . .

### RULE 46. ADMISSION, WITHDRAWAL, AND DISCIPLINE OF ATTORNEYS

. . .

#### (e) Military Legal Assistance Program

(1) A lawyer admitted to the practice of law in a state or territory of the United States, other than Mississippi, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code §1044, may apply to the Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in Mississippi to represent clients eligible for legal assistance in the courts and tribunals of this state while the lawyer is employed, stationed, or assigned within Mississippi.

(2) Each applicant for a Registered Military Legal Assistance Attorney Certificate shall:

(i) file with the clerk of the Supreme Court an application, under oath, upon a form furnished by the clerk;

(ii) furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction;

(iii) file an affidavit, upon a form furnished by the clerk of the Supreme Court, from the commanding officer, staff judge advocate or chief legal officer of the military base in Mississippi where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this Page 46.9 - MRAP 46 rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the clerk of the Supreme Court immediately upon the termination of the applicant's employment or service at the military base.

(3) Upon a finding by the clerk of the Supreme Court that the applicant has produced evidence sufficient to satisfy the clerk that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the clerk shall notify the applicant that he or she is eligible to be issued a Registered Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the clerk shall issue to the applicant a Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this state solely as provided in this rule.

(4) The practice of a lawyer under this rule shall be subject to the limitations and restrictions of 10 U.S.C. §1044 and the regulations of that lawyer's military service and shall be further limited to: (i) adoptions, (ii) guardianships, (iii) name changes, (iv) divorces, (v) paternity matters, (vi) child custody, visitation, child and spousal support, (vii) landlord-tenant disputes on behalf of tenants, (viii) consumer advocacy cases involving alleged breaches of contract or warranties, repossession, or fraud, (ix) garnishment defenses, (x) probate, (xi) enforcement of rights under the Servicemembers Civil Relief Act (50 U.S.C. App. §501 et seq.), (xii) enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §4301 et seq., and (xiii) such other cases within the discretion of the court or tribunal before which the matter is pending.

(5) All pleadings filed by a legal assistance attorney shall cite this rule, and include the name, complete address and telephone number of the military legal office representing the client, and the name, grade and armed service of the lawyer registered under this rule providing representation.

(6) No lawyer registered under this rule shall (a) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this state, (b) offer to provide legal services in this state to any person other than as authorized by his or her military service, or (c) hold himself or herself out in this state to be authorized to provide legal services to any person other than as authorized by his Page 46.10 - MRAP 46 or her military service.

(7) Representing clients eligible for legal assistance in the courts or tribunals of this state under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Mississippi, including the Mississippi Rules of Professional Conduct and the Rules of Discipline. Jurisdiction of the Mississippi Bar shall continue whether or not the lawyer retains the Registered Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Mississippi.

(8) Each person receiving a Military Legal Assistance Attorney Certificate shall be registered with the Mississippi Bar as an active member on the basis of that certificate and shall be subject to the same membership obligations as other active members of the Mississippi Bar, other than the payment of dues and assessments and Continuing Legal Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Mississippi Bar, the military address in Mississippi of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(9) Each person issued a Military Legal Assistance Attorney Certificate shall promptly report to the Mississippi Bar any changes in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the

District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(10) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (a) the lawyer is no longer employed, stationed, or assigned at the military base in Mississippi from which the affidavit required by this rule was filed, (b) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of the Rules Governing Admission to the Mississippi Bar, (c) the lawyer fails to comply with any provision of this rule, (d) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States other than Mississippi, or (e) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law.

MRAP 46(e).