RESOLVED, That the American Bar Association urges bar admission authorities in the several states and territories to revise, where necessary, existing rules regarding admissions on motion to provide that military lawyers associated with organized legal service programs be specially admitted for the purpose of providing pro bono publico legal services.
While off duty, military lawyers in the nation's armed forces may, under certain circumstances, engage in the private practice of law, including practice involving the delivery of pro bono publico legal services. As a prerequisite, however, military lawyers must comply with applicable service directives and policies regarding off-duty employment. Generally, these directives and policies require lawyers in the armed forces to: (1) be licensed to practice in the state where stationed or employed; (2) obtain the written approval of their superiors; (3) be sanctioned in their pro bono publico service by the local or state bar association; (4) adhere to the ethical standards of conduct set forth in the Joint Ethics Regulation, Department of Defense Directive 5500.7-R or, as applicable, state law; and, (5) avoid potential and actual conflicts of interest by not representing any person in an action in which the United States is a party or has an interest. It should also be pointed out that federal laws that may protect military lawyers from pecuniary liability for malpractice claims arising from legal services provided in the course of their official duties have no application to off-duty practice - including pro bono publico legal work - even when all the above conditions are met.

Virtually all military personnel are subject to worldwide assignment and most military personnel relocate many times over the course of a military career. As a natural consequence of this exigency of the service, military lawyers - who must be admitted and licensed to practice law in at least one state or territory of the United States or the District of Columbia - often are assigned to and reside in states in which they are not admitted to practice.

State bar admission requirements mandating licensure to practice law in the jurisdiction in which legal services are performed is a significant impediment to military attorneys who wish to provide pro bono publico legal services in their off-duty time.

To determine the national scope of this impediment, we surveyed the admission rules in the several states to find out which states, if any, made special provisions authorizing out-of-state attorneys to provide pro bono publico legal services. Here is what we found:

Ten states have admission rules providing authorization for admission of out-of-state attorneys to practice before state courts and administrative tribunals in causes associated with an organized legal services program providing legal assistance to indigent persons. These rules usually impose a temporal limit (e.g., one to two years) and prohibit such attorneys from performing legal services for clients other than those being served by the organized legal services program. States which have such rules include: Arizona (S. Ct. Rule 40); Delaware (Bar Rule 55.1); Florida (Bar Rule 13-1.2); Kentucky (S. Ct. Rule 2.112); Maryland (Ct. Rule 15); Nevada (Ct. Rule 49.3); New Jersey (Ct. Rule 1:21-3); New York (Ct. Rules, §602.2); Ohio (Ct. Rule 9); and, Rhode Island (Ct. Rule 2).

Three other states have special admission rules designed to permit out-of-state lawyers to
engage in pro bono publico practice but under more limited circumstances. South Carolina (Ct. Rule 415) issues a limited certificate to practice law to retired lawyers associated with an approved legal services organization. Washington (Ct. Rule 8) permits members in good standing in other bars to provide indigent representation in a legal services organization on the condition that they must apply for and take the Washington State Bar Examination within a specified period of time after being specially admitted to provide pro bono publico services. West Virginia (Ct. Rule 10.0) has an even more limited provision that authorizes special admission for pro bono publico purposes only for law students whose work must be supervised by a licensed attorney.

There are about 4,300 uniformed lawyers serving in the armed forces. There is little question that some of these lawyers - and hopefully many of them - would engage willingly in off-duty pro bono publico legal work if the impediment imposed by state admission rules were to be lifted. Indeed, this matter was brought to the attention of the Government and Public Sector Lawyers Division by military lawyers attending a Division-sponsored program on pro bono opportunities for public lawyers. We agreed to look into the matter and we have concluded that the military lawyers who raised the issue were correct: admissions rules which do not provide for special admission for military lawyers significantly deplete the potential pool of competent counsel willing to provide legal aid to indigents. Can there be any doubt that more, rather than less, lawyers are needed to provide legal services to the poor? Our association is currently working to preserve the Legal Services Corporation because under that organization's auspices needy persons have been able to secure competent legal advice and assistance. Recognizing the need for competence and for accountability, we have added language to our Recommendation to make it clear that the kind of special admission we favor would be limited to those lawyers associated with organized legal service programs.

With a proper respect for the several states' need to regulate carefully admission practices, we hope the House of Delegates will adopt this Recommendation. We believe that if implemented by admissions authorities it will increase the pool of competent lawyers willing to provide pro bono publico services and we also believe that its passage by the House of Delegates will demonstrate to our military law colleagues that they enjoy the respect of the American Bar Association as able lawyers capable of sharing in the profession's responsibility to provide pro bono publico services. We urge its adoption.

Respectfully submitted,

E.E. Anderson, Chair

Government and Public Sector Lawyers Division
GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Government and Public Sector Lawyers Division
Submitted By: E.E. Anderson, Chair

1. Summary of Recommendation(s). The recommendation asks the House of Delegates to urge state admissions authorities to revise, where necessary, admissions rules to enable active duty military lawyers to be admitted on motion to provide pro bono publico legal services.

2. Approval by Submitting Entity. This Report with Recommendation has been approved by the submitting entity's governing Council at its Spring, 1995 Meeting.

3. Has this or a similar recommendation been submitted to the House or Board previously?

The association has established policy recommending that impediments preventing government lawyers from engaging in pro bono work be removed. This specific recommendation, however, has not been previously submitted to the best of our knowledge.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Adoption of this recommendation would buttress existing association policies regarding removal of impediments to enable government lawyers to perform pro bono work.

5. What urgency exists which requires action at this meeting of the House?

In an era where the need for legal services is expanding, efforts to increase the pool of potential providers should be pursued.

6. Status of Legislation. (If applicable.)

Proposals are under consideration in the Congress to appreciably reduce the federal funding share for the Legal Services Corporation. Should those efforts succeed, other means for providing legal services will need to be found.

7. Cost to the Association. (Both direct and indirect costs.)

Adoption of this recommendation would not result in direct or, as far as the submitters can determine, indirect costs to the association.

8. Disclosure of Interest. (If applicable.) (conflict of interest question)

There is no conflict of interest known to exist.

Concurrent with submitting this Report with Recommendation to the ABA Policy Administration Office for calendaring on the House of Delegates agenda, it is being concurrently circulated to the following:

**Standing Committees:** Armed Forces Law; Bar Activities and Services; Continuing Education of the Bar; Delivery of Legal Services; Ethics and Professional Responsibility; Lawyers Public Service Responsibility; Legal Aid and Indigent Defendants; Legal Assistance for Military Personnel

**Special Committees and Commissions:** Consortium on Legal Services and the Public

**Sections/Divisions:** General Practice; Individual Rights and Responsibilities; Judicial Administration Division; Legal Education and Admissions to the Bar; Litigation; Senior Lawyers Division; State and Local Government Law; Taxation; Young Lawyers Division

10. **Contact Person.** (Prior to the meeting.)

    John Jay Douglass
    2111 Dunstan
    Houston, TX 77005
    713-529-1344 (FAX number the same)

11. **Contact Person.** (Who will present the report to the House.)

    John Jay Douglass
    2111 Dunstan
    Houston, TX 77005
    713-529-1344 (FAX number the same)

12. **Contact Person Regarding Amendments to This Recommendation.**

    No proposed amendments are known to exist.