RESOLVED, That the American Bar Association adopts the black letter "Model Expanded Legal Assistance Program Rule for Military Personnel," dated February 2003; and

FURTHER RESOLVED, That the American Bar Association recommends the adoption by each state and territory of this model rule for the purpose of providing low-income military service members and their dependents free civil legal assistance and in-court representation by military attorneys.
BLACK LETTER
MODEL EXPANDED LEGAL ASSISTANCE PROGRAM RULE
FOR MILITARY PERSONNEL

(Febuary 2003)

(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.
REPORT
MODEL EXPANDED LEGAL ASSISTANCE PROGRAM RULE

Introduction
Since the beginning of World War II, the military services, through their legal assistance programs, have provided free legal help to military members and their dependents on their personal civil legal problems and needs in order to enhance military readiness, morale, discipline, and quality of life. The scope of the legal assistance programs vary from one military service to another, but none of them includes helping clients pursue tort and other claims commonly handled on a contingent fee basis by lawyers in private practice, nor assisting clients charged with criminal offenses in state, Federal, or foreign courts. Also, the military legal assistance programs do not include the free legal counsel provided by statute to military members in court-martial proceedings.

Discussion
Throughout the United States, and around the world wherever U.S. military forces are deployed, military lawyers assist eligible legal assistance clients in drafting and executing wills, powers of attorney, health care directives, and, in marital situations often involving distribution of military pensions. They also assist clients in divorce, adoption, and name change proceedings, child support and paternity claims, landlord-tenant disputes, consumer protection issues, and garnishment and other debt-related problems. The legal assistance programs are authorized by Title 10, United States Code, Section 1044 (10 USC 1044).

Most legal assistance is provided to clients within the confines of military bases and encampments or on board ships. In many instances, military lawyers may also negotiate settlements with lawyers representing opposing parties, or refer clients to lawyers in private practice who can assist them in court. Unfortunately, many military members and their dependents often do not have the funds to hire lawyers, and many are further disadvantaged by being stationed at a site far removed from the states in which their legal problems need to be resolved.

The legal assistance program at many bases involves assisting clients who cannot afford to hire lawyers with drafting pleadings in actions being brought against them in state courts. Assisting clients who are representing themselves in court, particularly in defense of actions being brought against them, may occur at great distance from the court in which the legal action is pending. Without any assistance, military members would frequently suffer default judgments, even despite the availability of the Soldiers' and Sailors' Civil Relief Act (SSCRA) to protect their rights in these proceedings.

Each of the military services, to varying degrees, and depending on staffing and applicable state laws, has authorized expanded legal assistance programs (ELAP) for military members and their dependents. This type of ELAP service, and the one
primarily addressed by the accompanying rule, involves in-court representation. Depending on staffing and applicable state laws, military lawyers sometimes enter appearances on behalf of military members and their dependents in state court proceedings. Where the military lawyer is a member of the state bar in question, there is no problem. Military lawyers, like other service members, are frequently reassigned from one military base to another during their careers, and, most often, they are not members of the bar in the state where they are providing legal assistance. Several states, under varying conditions, including California, Florida, Hawaii, Illinois, Massachusetts, Rhode Island, Tennessee, and Washington, authorize military lawyers who are not admitted to practice in their states, to represent clients in their courts through an ELAP rule.

The proposed rule would subject military lawyers to the CLE requirements prescribed by the state lawyer regulatory authority. These requirements would be in addition to the existing CLE provided by the military. Lawyers commissioned in the military regularly receive extensive CLE instruction, including courses offered at the ABA-approved Army Judge Advocate General's School in Charlottesville, VA; the Naval Justice School, in Newport, RI; and the Air Force Judge Advocate General's School, in Montgomery, AL. CLE offered at these schools covers all major substantive areas with primary concentrations in family law, estate planning, and statutes that protect the rights of reservists during and after mobilizations, such as the SSCRA and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Lawyers selected to provide ELAP service to a military client are handpicked for their exemplary legal acumen. Individuals represented through ELAP provisions are also selected either because of the representative nature of the case, e.g. a consumer fraud situation specifically targeting the military, or enforcement of a statute protecting the rights of military members, including mobilized reservists and/or because of the economic necessity represented by the case, e.g., door-to-door solicitation, termination of leases and "self help" evictions and proceedings to vacate default judgments pursuant to the SSCRA. It also should be noted that ELAP is not authorized under 10 USC 1044 if the member can afford legal fees for such representation without undue hardship. Because of the limited number of military attorneys and the large military clientele, generally only a few situations are selected for ELAP service. For example, Florida, which has had an ELAP rule for eight years, handled only nine cases in 2001 under the ELAP provision.

The following rule would provide a uniform approach to those states seeking to allow military attorneys to represent military clients and their dependents in limited situations in state courts.

**Action Requested**

Allowing military attorneys to represent military members and their dependents in limited situations in state courts would provide necessary services to a population that would not otherwise be able financially to retain a private attorney to address these issues.
Additionally, many of the issues confronted by the military member involve facets of laws that are unique to the military member, such as division of a military pension in a divorce, or protection of consumer rights under the Soldiers' and Sailors' Civil Relief Act, areas of law often unfamiliar to private practitioners.

The Standing Committee on Legal Assistance for Military Personnel asks the House of Delegates to support the adoption of the Model Expanded Legal Assistance Program Rule for the purpose of providing low-income military service members and their dependents free civil legal assistance and in-court representation by military lawyers.

Respectfully submitted,

David C. Hague
Brigadier General, U.S. Marine Corps, (Retired)
Chair, Standing Committee on Legal Assistance for Military Personnel

February 2003
1. Summary of Recommendation(s).

The proposed rule would allow military attorneys stationed in one state, but licensed in another jurisdiction, to be admitted under limited circumstances and under requirements prescribed by the state lawyer regulatory authority in order to represent low-income military members and their families. This rule provides a limited privilege to practice in selected situations and subjects military lawyers to the requirements prescribed by the state regulatory authority for CLE instruction and for disciplinary action in matters undertaken under this limited practice rule.

2. Approval by Submitting Entity.

The Standing Committee on Legal Assistance for Military Personnel approved this resolution at its August, 2002 business meeting.

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

No

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

This recommendation is consistent with previous Association policy supporting protections for military personnel and support for the preservation of resources for military legal assistance.

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

The current climate is one in which such proposals that provide services to low-income military members and their families are most likely to receive a favorable reception by the state jurisdictions which would adopt the limited admission arrangements.
6. **Status of Legislation.** (If applicable.)

No legislation is currently pending before Congress.

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

There is no cost to the Association, except for minor lobbying or letter writing by existing staff and committee members.

8. **Disclosure of Interest.** (If applicable.)

n/a

9. **Referrals.**

Copies of this report were sent to the following Sections and Committees on September 17, 2002:

- StC on Armed Forces Law
- StC on Delivery of Legal Services
- StC on Ethics and Professional Responsibility
- StC on Pro Bono and Public Service
- StC on Professional Discipline
- StC on Solo and Small Firm Practitioners
- Consortium on Legal Services and the Public
- Military Law Committee – GP, Solo and Small Firm Section
- Family Law Section
- General Practice Section
- Government and Public Sector Lawyers Division
- Young Lawyers Division
- Judge Advocates Association
10. **Contact Person.** (Prior to the meeting.)

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

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