

WASHINGTON STATE
BAR ASSOCIATION
Regulatory Services Department

March 14, 2019

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
Via email to: supreme@courts.wa.gov

Re: Comment Regarding Proposed Amendment to APR 3

Dear Clerk of the Supreme Court:

I am submitting this comment for consideration by the Court in connection with the Court's Proposed Amendments to Admission and Practice Rule 3, which have been published for comment. I submit this comment with the approval of the Washington State Bar Association (WSBA) Board of Governors. Please provide this comment to the appropriate Justices for their review.

For the reasons stated below, I am requesting that the Court not adopt the published proposed amendments, and instead consider adopting a different set of amendments to accomplish the same basic results. The amendments that I am requesting the Court to consider adopting would add a new section to Admission and Practice Rule (APR) 3(c), as shown in the attached blackline and clean versions.

Background: The Military Spouse J.D. Network (the Network) has been attempting to achieve changes in state lawyer admission rules and policies across the country. They are seeking to ease the admission requirements for people with J.D.s who are married to active duty military personnel and are seeking admission to practice law in a state when their military spouses are transferred to that state. This effort resulted in their submission of a suggested rule amendment to the Washington Supreme Court.

I and others at the WSBA had been in contact with representatives from the Network previously regarding their interest and drafts of rules that they had prepared. In addition, I and WSBA admissions staff had been reviewing other states' military spouse admission rules, and drafting possible amendments to Washington's Admission and Practice Rules (APR) to try to arrive at a suitable rule that fits within WSBA's regulatory system and still achieves the Network's stated goals.

The rule amendments the Network is seeking would apply only to a small number of applicants in Washington per year – probably fewer than 10 per year. This small number is because Washington's APR are broad enough that they cover most applicants who currently have a J.D. and are seeking licensing in Washington based on a bar exam or on their licensing in another state. Washington currently offers the Uniform Bar Exam (UBE) and accepts transfers of passing UBE scores attained in other states in the previous three years, and Washington permits admission by motion for applicants licensed in another state and engaged in the active practice of law for three out of the previous five years. Washington also has rules that provide a pathway for admission of applicants who obtained a J.D. from a non-ABA accredited law school or who obtained their legal education and license in a non-U.S. jurisdiction.

The proposed amendments published for comment are very lengthy, and create administrative issues for WSBA because they do not fit easily into our existing regulatory setup. They also would create an entirely new applicant type, complicating our online application processing, and a new license type. In



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addition, several of the provisions in the proposed amendments address matters covered in Washington's admission applications and the character and fitness rules (APR 20-24) that apply to all applicants, and so do not need to be separately called out in this rule.

For these reasons, I have been authorized to submit this comment containing different suggested rule amendments, for consideration by the Court. These suggested amendments would meet the Network's stated purposes, yet are shorter, more easily administered by WSBA, more readily understandable by applicants, and do not recite or repeat character and fitness related considerations that apply to all applicants. The approach set forth in the attachments would amend the admission by motion rule (APR 3(c)) to cover military spouses and admit them as members of the Washington Bar, rather than add to APR 3 an entirely new section (j), new method of seeking admission, and a new type of temporary license. Please see the attachments for the suggested amendments to APR 3(c).

I informed the Network's spokesperson that I would be seeking authorization from the BOG to submit this comment to the Court and provided a copy of the new suggested amendments and the background memo explaining the reasoning. After some initial communication to explain why a standard license is preferable to a temporary license from an administrative standpoint (WSBA experienced administrative difficulties in tracking whether service members with temporary "Military" licenses had completed requirements or been transferred out of state, and this led to the recent elimination of the "Military" license type in favor of new *pro hac vice* admission requirements for active duty lawyers stationed in Washington), and about the ease of voluntary resignation in Washington with no stigma attached, I was told there was no objection to this approach. The Network sent a representative to the Board of Governors meeting where the presentation was made and did not make any comments. It is my understanding that the Network finds this proposal acceptable.

Suggested Amendments: As stated, our suggested amendments are shown on the attachment. If the Court believes it necessary to publish these suggested amendments for comment, we would have no objection to that. We would appreciate some lead time for implementation of adopted amendments, to ensure we have the appropriate processes in place to handle applications under the revised rule. For this reason, we ask that any amendments be adopted on the Court's usual timeline, not on an expedited or emergency basis.

Please feel free to contact me if you have any questions about this comment or this proposal.

Respectfully,

Jean K. McElroy
WSBA Chief Regulatory Counsel
(206) 727-8277/jeanm@wsba.org

Attachment: Blackline and Clean Versions of WSBA Suggested Amendment to APR 3(c)

Cc: Paula C. Littlewood, WSBA Executive Director, by email
William Pickett, WSBA President, by email
Chief Justice Mary Fairhurst, by email
Justice Charles Johnson, by email
Elizabeth Jamison, Esq., by email



SUGGESTED AMENDMENTS TO APR 3 (Blackline)

1 TITLE

2 ADMISSION AND PRACTICE RULES (APR)

3 RULE 3. APPLICANTS FOR ADMISSION TO PRACTICE LAW

4 (a) (No change.)

5 (b) (No change.)

6 (c) **Lawyer Admission by Motion.**

7 (1) Lawyers admitted to practice law in other states or territories of the United States or the
8 District of Columbia are not required to sit for the lawyer bar examination if they:

9 ~~(1)~~(A) file a certificate from that jurisdiction certifying the lawyer's admission to
10 practice, and the date thereof, and current good standing or the equivalent; and

11 ~~(2)~~(B) present satisfactory proof of active legal experience for at least three of the five
12 years immediately preceding the filing of the application.

13 (2) *Military Spouse Admission by Motion.* A lawyer admitted to practice law in another state or
14 territory of the United States or the District of Columbia who is the spouse of an active duty
15 service member of the United States Uniformed Services, as defined by the United States
16 Department of Defense, is not required to sit for the lawyer bar examination if the applicant
17 meets the following requirements:

18 (A) the applicant's spouse is stationed in Washington or will be stationed in Washington
19 within six months of filing the application, and the applicant resides or will reside in
20 Washington as the spouse of that member of the United States Uniformed Services
21 within six months of filing the application;

22 (B) the applicant does not qualify for admission by motion under APR 3(c)(1);

23 (C) the applicant does not qualify for admission by UBE score transfer under APR 3(d);

24 (D) the applicant files a certificate from each jurisdiction in which the applicant is
25 admitted certifying the applicant's admission to practice and the date thereof, and
26 current good standing or the equivalent; and

SUGGESTED AMENDMENTS TO APR 3 (Blackline)

1 (E) the applicant has no lawyer disciplinary sanctions or pending lawyer disciplinary or
2 incapacity matters in any jurisdiction in which the applicant has been admitted.

3 (d) (No change.)

4 (e) (No change.)

5 (f) (No change.)

6 (g) (No change.)

7 (h) (No change.)

8 (i) (No change.)

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SUGGESTED AMENDMENTS TO APR 3 (Clean)

1 TITLE

2 ADMISSION AND PRACTICE RULES (APR)

3 RULE 3. APPLICANTS FOR ADMISSION TO PRACTICE LAW

4 (a) (No change.)

5 (b) (No change.)

6 (c) Lawyer Admission by Motion.

7 (1) Lawyers admitted to practice law in other states or territories of the United States or the
8 District of Columbia are not required to sit for the lawyer bar examination if they:

9 (A) file a certificate from that jurisdiction certifying the lawyer's admission to practice, and
10 the date thereof, and current good standing or the equivalent; and

11 (B) present satisfactory proof of active legal experience for at least three of the five years
12 immediately preceding the filing of the application.

13 (2) *Military Spouse Admission by Motion.* A lawyer admitted to practice law in another state or
14 territory of the United States or the District of Columbia who is the spouse of an active duty
15 service member of the United States Uniformed Services, as defined by the United States
16 Department of Defense, is not required to sit for the lawyer bar examination if the applicant
17 meets the following requirements:

18 (A) the applicant's spouse is stationed in Washington or will be stationed in Washington
19 within six months of filing the application, and the applicant resides or will reside in
20 Washington as the spouse of that member of the United States Uniformed Services
21 within six months of filing the application;

22 (B) the applicant does not qualify for admission by motion under APR 3(c)(1);

23 (C) the applicant does not qualify for admission by UBE score transfer under APR 3(d);

24 (D) the applicant files a certificate from each jurisdiction in which the applicant is
25 admitted certifying the applicant's admission to practice and the date thereof, and
26 current good standing or the equivalent; and

SUGGESTED AMENDMENTS TO APR 3 (Clean)

(E) the applicant has no lawyer disciplinary sanctions or pending lawyer disciplinary or incapacity matters in any jurisdiction in which the applicant has been admitted.

(d) (No change.)

(e) (No change.)

(f) (No change.)

(g) (No change.)

(h) (No change.)

(i) (No change.)

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, March 14, 2019 4:35 PM
To: Tracy, Mary
Subject: FW: Comment regarding proposed amendment to APR 3 for military spouses
Attachments: APR 3 Military Spouse comment letter 3-14-19.pdf; APR 3(c) Sugg Amendment for Military Spouse Blackline.pdf; APR 3(c) Sugg Amendment for Military Spouse Clean.pdf

From: Jean McElroy [mailto:jeanm@wsba.org]
Sent: Thursday, March 14, 2019 4:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'M.Fairhurst@courts.wa.gov' <M.Fairhurst@courts.wa.gov>; Phillips, Cindy <Cindy.Phillips@courts.wa.gov>; 'c.johnson@courts.wa.gov' <c.johnson@courts.wa.gov>; Jennings, Cindy <Cindy.Jennings@courts.wa.gov>; Paula Littlewood <PaulaL@wsba.org>; 'bill@wdpickett-law.com' <bill@wdpickett-law.com>; 'Elizabeth Jamison' <ejamisonesq@gmail.com>
Subject: Comment regarding proposed amendment to APR 3 for military spouses

Attached to this email are a letter comment regarding the published proposed amendment to APR 3 (which would add a new section APR 3(j) to provide a separate type of admission and license for spouses of active duty military personnel), and both a blackline and a clean version of an alternative approach to accomplish this goal through suggested amendments to existing rule APR 3(c) (the Admission by Motion).

Please feel free to contact me if you have any questions or need any further information.



Jean K. McElroy | Chief Regulatory Counsel

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