

Military Spouses Need Careers Too

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

5.5—Other Military Service and Family Obligations

6.0—Military Service and Tax Laws

Rachel Smith³ moved to Virginia in 2009, accompanying her husband Joe, who is a junior officer on active duty in the Navy. She attended law school in Virginia from September 2009 to May 2012. She graduated and passed the Virginia bar exam. For the past few months, she has been practicing law with a small Norfolk law firm. She has an enormous student loan debt, relating to her undergraduate degree as well as her law degree.

Husband Joe came to Virginia and served on a ship that is home-ported in Norfolk, from 2009 to 2011, followed by a shore assignment in Norfolk that is ending this summer. Joe has just learned that his next Navy assignment is in Hawaii, and he will be reporting there in September. Of course, Rachel will go too.

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

³The names in this article are fictitious. The facts are an amalgamation of several people I know, plus some poetic license.

Hawaii does not accept bar admission on motion—Rachel will need to take the Hawaii bar exam. The Hawaii bar exam is two days. The first day is the Multi-State Bar Exam (MBE), which Rachel already passed in Virginia, but Hawaii will make her pass it again. Much more difficult for Rachel will be the second day, which is an essay exam based on Hawaii law, with which Rachel is not yet familiar. Hawaii offers the bar exam only twice per year. Rachel will not be in Hawaii in time for the July 2013 exam, so she will have to wait until February 2014. Results from that exam are expected by May of next year.⁴

Because Rachel has not previously studied Hawaii law, she will need to take a bar exam preparation course in that state. One such course costs \$1295.⁵

Because Rachel is accompanying her husband to his new duty station, she will be unable to practice her chosen profession for at least eight months after arriving in Hawaii. To make matters worse, she cannot deduct the costs of preparing for and taking the Hawaii bar exam from her federal income tax, under the Internal Revenue Code as currently written.

On April 18, 2013, Representative Matt Cartwright of Pennsylvania introduced H.R. 1620, the proposed “Military Spouse Job Continuity Act of 2013.” The bill was referred to the House Ways and Means Committee. So far, the bill has 65 co-sponsors. On the same day, Senator Robert P. Casey, Jr. of Pennsylvania introduced an identical bill (S. 759) in the Senate, and that bill was referred to the Senate Finance Committee. So far, there are 15 Senate co-sponsors. If enacted, the Cartwright-Casey bill would give a military spouse like Rachel a federal tax credit of up to \$500 for relicensing expenses incurred as a result of moving to a new state to accompany a spouse who is on active duty in the armed forces and who has been transferred by his or her armed force.

The Cartwright-Casey approach would be marginally useful to someone like Rachel, but what she really needs is a state or federal law that permits her to practice her chosen profession in the new state without the delay, trouble, and expense of relicensing. There has been some progress on that front at the state level. Georgia recently enacted a new law to that effect, for military spouses who move into Georgia to accompany spouses who are on active duty. Please see Law Review 13051 (April 2013).³

Divorce is a huge problem in the military, and it contributes greatly to depression, suicide, and other major problems. We need public policies that will preserve rather than break up military families. The military spouse should not have to choose between practicing her chosen profession (for which she has often invested tens of thousands of dollars and years of her life in education) and remaining married to her chosen spouse. The military marriage likely will not long endure if the wife or husband not on active duty does not accompany the active duty

⁴See *Hawaii bar exam information*, QUIMBEE, https://www.quimbee.com/bar-review/states/hawaii?utm_source=adwords&utm_medium=cpc&utm_term=hawaii%20bar%20review&utm_campaign=16589467124&gclid=EA1aIQobChMlhOHO9qTu9gIVEnxvBB0IMAQ1EAAYASAAEgJazfD_BwE (last visited Mar. 30, 2022).

⁵When I passed the Texas bar exam in July 1976, the prep course cost \$200, as I recall.

spouse to his or her new duty station. State licensing rules have been a major problem for military spouses ever since they first started working outside the home in large numbers, in the 1960s. A recent Department of Defense report shows that 85% of military spouses want to work outside the home, but there is a 26% unemployment rate among military spouses who have or seek jobs.

This problem is not limited to military spouses who are attorneys. There are scores if not hundreds of professions that require state-issued licenses.

It has now been 40 years since Congress abolished the draft in 1973. With each passing year, a greater and greater percentage of state legislators (as well as members of the United States Senate and House of Representatives) have never served in the uniformed services. We need to educate these folks about the issues that affect those who serve in uniform and their families.

State professional licensing authorities justify their existence by repeating the “consumer protection” mantra, but more often than not those authorities have been captured by professional associations representing members of the regulated profession. Those who are already licensed use the licensing process to raise their own incomes by restricting access to the profession. See www.ij.org/louisiana-caskets-release-7-21-11-2 and <http://blogs.wsj.com/law/2012/10/24/fifth-circuit-louisiana-rule-on-casket-sales-must-not-be-irrational>.

Don’t let these state licensing authorities use their entry-limiting powers to add to the stresses on the military family.

Update – April 2022⁶

As of April 2022, neither the House nor the Senate have moved their bills forward. Therefore, there is still no federal tax credit of up to \$500 for relicensing expenses incurred as a result of moving to a new state to accompany a spouse who is on active duty in the armed forces and who has been transferred by his or her armed forces.

Additionally, the NCBE created Uniformed Bar Examination (UBE) in 2011. The UBE offers portability of scores across states lines, allowing an attorney who passes the UBE can transfer his or her scores to another jurisdiction within a certain number of months of passing the exam. As of now, 41 jurisdictions have adopted the UBE.⁷ Unfortunately for Rachel Smith, Hawaii is one of the few jurisdictions that has not adopted the UBE. So, she will need to take the Hawaii bar exam.

⁶Update by Second Lieutenant Lauren Walker, USMC.

⁷*List of UBE Jurisdictions*, NCBE <https://www.ncbex.org/exams/ube/list-ube-jurisdictions> (last visited Mar. 30, 2022).