

AGENDA ITEM

54-114 MAY 10 13

DATE: May 6, 2013

TO: Members, Board Committee on Operations
Members, Board of Trustees

FROM: Joseph Dunn, Executive Director/CEO

SUBJECT: AB 296 (Wagner): Military Spouse Admission Rules

EXECUTIVE SUMMARY

Assembly Bill 296 (Wagner) would authorize an individual who has been an active member in good standing of the bar of a sister state or United States jurisdiction who is married to, or in a domestic partnership or other legal union with, a U.S. active duty member who is assigned to a duty station in California, to apply to receive a provisional license to practice law in California without first taking and passing the California Bar exam. Amendments by the author and/or Assembly policy committee are anticipated. These amendments attempt to strike a balance between the State Bar's separation of powers and public protection concerns and the author's objective of helping military families avoid financial strain that might impact a military member's ability to stay enlisted.

BACKGROUND/DISCUSSION

AB 296, as amended May 2, 2013, provides that a person who has been an active member in good standing of the bar of an admitting sister state or United States jurisdiction, possession, or territory may apply to receive a provisional license to practice law in California, and that a provisional license to practice law shall be granted to an applicant who meets the following requirements: (1) Is at least 18 years of age; (2) Is of good moral character; (3) Has passed an examination in professional responsibility or legal ethics as the examining committee may prescribe; (4) Supplies evidence satisfactory to the State Bar that he or she is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders; (5) Holds a current license to practice law in another state, district, or territory of the United States; (6) Establishes that he or she is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; (7) Pays annual bar membership dues; and (8) Complies with all ethical, legal, and continuing legal education obligations.

As stated in the Assembly Veterans Affairs committee analysis of AB 296, California has approximately 72,000 military spouses residing in any given year (California Research Bureau, Professional Licensing and Military Spouses (2013). S-13-001). 95% of military spouses are women. Over a third of military spouses are employed in professions that require some sort of license or certificate. Additionally, a recent survey showed that more than two-thirds of all service member state their decision to reenlist was largely or moderately affected by their spouses' career prospects. (U.S. Department of the Treasury and U.S. Department of Defense. (2012). Supporting Our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines).

While the State Bar understands the objective of AB 296, issues have been raised with some of the provisions of the bill. Representatives of the State Bar have therefore worked closely with the author and the Assembly Judiciary Committee to try to strike the right balance of beginning to allow such provisional licenses while ensuring adequate consumer protections are in place. Amendments to the bill are anticipated, including:

- 1) The current version of the bill says that a provisional license to practice law “shall be granted” if certain requirements are met. The amendments state that a person “shall be eligible” to be certified to the Supreme Court for provisional admission and a provisional license if certain requirements are met.
- 2) The current version of the bill applies to any person who “has been” an active member in good standing of the bar of an admitting sister state. The amendments apply only to a person who “is” an active member.
- 3) The current version of the bill applies to a person with a “current license to practice law.” The amendments apply to an “active member in good standing entitled to practice law.”
- 4) The current version of the bill requires the applicant to establish that he or she “is not currently” subject to lawyer discipline or the subject of a pending disciplinary matter. The amendments require that the applicant “has never been” subject to lawyer discipline, and is not the subject of a pending disciplinary matter.
- 5) The current version of the bill says the State Bar “shall expedite all moral character investigations or proceedings for provisional license applicants.” The amendments have no provision expediting moral character review, investigation or proceedings.
- 6) The current version of the bill says the applicant must take the first bar examination administered at least 90 days after his or her moral character determination application is submitted to the State Bar. The amendments provide that this requirement is triggered by the date the active duty member of the Armed Forces of the United States must report to a duty station in California under official active duty military orders.

- 7) The current version of the bill does not say when the applicant must take and pass the professional responsibility or legal ethics exam required in California. The amendments tie the requirement to take the professional responsibility or legal ethics exam to the same timing that applies to the bar examination.
- 8) The current version of the bill says the provisional license holder must “associate with” an active member of the State Bar. The amendments provide that the provisional license holder may practice law in California only “under the supervision of” an active member of the State Bar.
- 9) The amendments include a separate provision, not in the current version of the bill, providing that a provisional license holder may not advertise, hold out to the public, or otherwise represent that he or she is admitted or licensed to practice law in California, unless the provisional license holder concurrently states that he or she is admitted to practice in California under a provisional license only.

CONCLUSION

The State Bar will continue to monitor this measure and work with the Supreme Court and the Legislature to ensure AB 296, and any amendments thereto, do not negatively impact the State Bar’s public protection mission.