

CASE NO. S18Z0774
IN THE SUPREME COURT
OF THE STATE OF GEORGIA

IN THE MATTER
OF HARRIET O'NEAL

BRIEF OF AMICUS CURIAE CERTAIN MEMBERS OF THE
STATE BAR OF GEORGIA

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Pursuant to Georgia Supreme Court Rule 23, Linda A. Klein, Sloane S. Perras, Oscar N. Persons, and Joe D. Whitley respectfully submit this Amici Curiae brief to address the issues attendant to waivers into the practice of law in Georgia by the lawyer spouses of active duty members of the United States military. Amici Curiae take no position on whether Appellant should be admitted to practice law in Georgia.

I. Statement of Identity and Interest

Amicus Curiae Linda Klein, a member of the State Bar of Georgia for 35 years, is the Immediate Past President of the American Bar Association and a Past President of the State Bar of Georgia. In State Bar leadership, Amicus Curiae served on the State Disciplinary Board Investigative Panel and the State Disciplinary Board Review Panel, was a principal author of the State Bar's position on disciplinary reform, worked with the Governor's Executive Counsel on professional licensing sanctions for those who were delinquent in child support payments, and appointed the committee that modernized the Georgia Rules of Professional Conduct. As American Bar Association President, Amicus Curiae created a program to provide veterans access to legal assistance. This experience informed Amicus Curiae about issues unique to military families.

Amicus Curiae Sloane Perras has been a member of the State Bar of Georgia for 18 years. Amicus Curiae was the spouse of an active duty Air Force pilot. As a

military spouse seeking a legal career, Amicus Curiae worked six jobs between 2003 and 2006, a total of eight jobs between 2003 and 2009, and passed five U.S. bar examinations all within three years of graduating law school due to military relocations. Unable to take a traditional career path, Amicus Curiae has a legal career today because she undertook several risky opportunities to maintain her licensure to practice law while she moved to different states with her husband as he pursued his military career. As an example of how strenuous pursuing a career as an attorney and military spouse can be, on one occasion, Amicus Curiae received notice of her then husband's move from McGuire Air Force Base in New Jersey to McCord Air Force Base in the State of Washington, only *2 weeks after* receiving notice she passed the Pennsylvania and New Jersey bar exams. This untimely reassignment happened within *1 year* of her moving from Florida to New Jersey to join her then husband and required her to sit for yet another bar exam in Washington state. Amicus Curiae could never predict where she would be within a year. Amicus Curiae therefore understands the hardships military spouses face when seeking a legal career, including the immense strain on couples.

Amicus Curiae Oscar Persons has been a member of the State Bar of Georgia for 51 years. Amicus Curiae served as an officer in the United States Navy and is familiar with the responsibilities of the federal government mandated by the U.S. Constitution to provide for a strong national defense.

Amicus Curiae Joe Whitley has been a member of the State Bar of Georgia for 43 years. He was appointed by President George W. Bush as the first General Counsel of the U.S. Department of Homeland Security. During the Ronald Reagan and George H. W. Bush administrations, Amicus Curiae served as Acting United States Associate Attorney General, the third-ranking position in the United States Department of Justice. Presidents Reagan and George H.W. Bush, respectively, appointed him to serve as the U.S. Attorney for the Middle and Northern Districts of Georgia. Amicus Curiae understands the necessity of a strong military for our nation.

II. Summary of Argument

With an all-volunteer military, it is indisputable that our nation's precious resources are best conserved by encouraging military members trained and experienced at taxpayer expense to make the military their career. This is especially important in Georgia, which has the 6th highest number of active duty military personnel in the US.¹

Georgia public policy encourages support for military families. The Military Spouse JD Waiver program is intended to accomplish that for military families who have a lawyer spouse. Nonetheless, the Board's application of the Waiver

¹D.O.D Defense Manpower Data Center, Military Active-Duty Personnel, Civilians by State, (Sept. 30, 2017) <http://www.governing.com/gov-data/military-civilian-active-dutyemployee-workforce-numbers-by-state.html>.

program here was unfair and inconsistent with its purpose. Specifically, the Court should not consider the Board's ex post facto justifications for denying Mrs. O'Neal's waiver. The justifications are not part of the evaluation criteria stated in the Board's policy. Considering any ex-post facto "rational justification" is inherently unfair. The Court should require the Board to apply the policy in effect when Appellant applied for the waiver. If the Board wishes to change its policy there is a proper mechanism to do that.

Amici have reviewed and acknowledge the arguments in the American Bar Association (ABA) and Military Spouse JD Network's (MSJDN) Amicus Curiae briefs. Amici agree and adopt the arguments in both organizations' briefs and will endeavor not to repeat their arguments herein.

III. Argument

(a) This Court Should Uphold its Precedents of Treating Attorneys the Same as Other Professional License Holders.

In 1996, the Georgia General Assembly recognized that some licensed professionals were harming children and Georgia taxpayers by not paying child support. In response the General Assembly enacted O.C.G.A. § 19-6-28.1, suspending the license or registration of persons in child support arrears.² To ensure that the same standards applied to lawyers, that same year, this Court

²O.C.G.A. § 19-6-28.1 Suspension of License or Registration of Persons in Child Support Arrears.

approved a rule suspending the licenses of attorneys in child support arrears.³ Indeed, in *Matter of Carlson*, 268 Ga. 335, 335 (1997) this Court held that a State of Kentucky delinquent child support conviction constituted a violation of the Georgia rule warranting a twelve month law license suspension. The Court explained that it is in accord with our state's public policy to recognize defendant's conviction for failure to pay child support for purposes of the Georgia disciplinary proceeding.

In 2016, the General Assembly enacted O.C.G.A. § 43-1-34, the Military Spouses and Veterans Licensure Act (MSVLA), as a matter of public policy to help ensure that our nation's military remains strong by providing portable career opportunities for military spouses. Georgia recognized military spouses had difficulties with state licensing procedures because of their frequent changes of residence.⁴ The remedy compelled sweeping changes across all state licensure boards, consistent with the approach to enforcing child support regulations.

The Board of Bar Examiners enacted a waiver program for military spouses. Unfortunately, the waiver program for lawyers does not accomplish what is necessary, at least in the application in the case at bar. Of course, separation of

³State Bar Ga. Part 1 Chap. 2 Rule, 1-209 Failure to Pay Child Support Obligations.

⁴Governor Nathan Deal, Georgia is Committed to Honoring Our Armed Forces Community, (May 27, 2016 at 6:00 am) <http://workforce.georgia.org/2016/06/01/georgia-committed-honoring-armed-forces-community/>.

powers mandates that this Court control admission to the practice of law.⁵ However, the legislature's public policy declarations and judgment for what is in the best interests of our state is entitled to some deference from this Court. As will be shown below, besides our legislature, numerous studies and Georgia's Congressional delegation agree that license portability is critical to supporting our U.S. military families.

(b) Georgia's Law to Improve Interstate License Portability for Military Spouses Supports Military Retention and a Strong National Defense.

Spouse underemployment impacts military retention, which impacts the ability to sustain a strong national defense.⁶ With an all-volunteer military, the Department of Defense must do all it can to retain well-trained professionals in its workforce.⁷ "For most service members, joining the military is an individual decision, but the decision to remain in the military is made as a member of a family."⁸

⁵ O.C.G.A. § 15-19-2(a) Rules Governing Board of Examiners; Expenses of Board; Amount and Disposition of Examination Fees.

⁶ Lepper, Steven J. Aff., March 30, 2018 ¶ 5(b) and Nelson Lim & David Schulker, *Measuring Underemployment Among Military Spouses* 28 (Rand Corporation 2010).

⁷ Nelson Lim & David Schulker, *Measuring Underemployment Among Military Spouses* 28 (Rand Corporation 2010).

⁸ *Id.*

One disadvantage military families frequently cite, as a drawback to military retention, is inadequate interstate license portability for licensed military spouses.⁹ Too often military families are separated because the non-member spouse is unable to work outside the state in which she - most non-member spouses are women - is licensed.¹⁰ To avoid this unfavorable outcome Georgia and many other states have enacted laws providing an expedited process to acquire a state's professional license so military spouses can enter the workforce there.¹¹ Eliminating or mitigating barriers to interstate license portability will improve economic security for our state,¹² improve the quality of life for our military families¹³, and ease the stress of transferring duty stations with consideration for long-term implications.¹⁴

⁹Memorandum from Richard V. Spencer, Secretary of the Navy; Heather Wilson, Secretary of the Air Force, and Mark T. Esper, Secretary of the Army for the National Governors Association, *Consideration of Schools and Reciprocity of Professional Licensure for Military Families in Future Basing or Mission Alternatives*, (Feb. 23, 2018) <https://media.defense.gov/2018/Feb/23/2001881660/-1/-1/1/Military-Family-School-Consideration-and-Professional-Licensure-Reciprocity.PDF>

¹⁰Lepper Aff. ¶ 5(b).

¹¹Dan Cohen, Georgia Lawmakers Advance Legislation to Ease Plight of Transitioning Personnel, Spouses, (March 29, 2016) <https://www.defensecommunities.org/blog/military-families/georgia-lawmakers-advance-legislation-to-easeplight-of-transitioning-personnel-spouses/>.

¹²*Id.*

¹³See n.9.

¹⁴*Id.*

(c) Georgia Should Continue its Commitment to Welcome and Support U.S. Military Families.

In February 2018, Secretaries of the United States Navy, Air Force, and Army released a memo to the National Governors Association asserting "whether or not state professional licensing requirements are friendly to military spouses will help officials determine where to station future troops or mission alternatives."¹⁵

Georgia is home to nine major defense installations and has a population of soldiers, sailors, airmen, Marines, and defense civilian employees of more than 100,000.¹⁶ As our Governor proclaims, Georgia wants to make it clear that it means what it says when it comes to unsurpassed support for our service personnel and their families.¹⁷

In March 2018, the entire Georgia congressional delegation unanimously highlighted its dedicated support to our service men and women and urged the Pentagon to consider Georgia as home to the new Futures Command of the U.S. Army.¹⁸

¹⁵*Id.*

¹⁶See n.4.

¹⁷*Id.*

¹⁸See Press Release, Congressman Drew Ferguson, Congressional Delegation Pushes Georgia as Home to U.S. Army Futures Command, (Mar. 15, 2018) <http://ferguson.house.gov/media/press-releases/georgia-congressional-delegation-pushes-georgia-home-us-army-futures-command>.

(d) The Board's Waiver Process and Policy Has Not Been Fairly Applied.

The Waiver Process and Policy (Policy)¹⁹ was established to alleviate the hardships faced by military spouses seeking admission into the State Bar of Georgia. However, the Board established a Policy it *does not* itself adhere to in evaluating petitioners seeking the waiver. Thus, on paper it appears as if the Board created a policy to accommodate military spouses, but in *application* the Board's Policy has not been fairly applied.

According to the Policy, the Board evaluates a petition for waiver of the requirements of Part C of the Rules *considering the following criteria*:

- (1) The duration of the military spouse petitioner's engagement in the active practice of law, as defined in Part C, Section 3 of the Rules;
- (2) The military spouse petitioner's employment history in the legal profession; and
- (3) The career goals of the military spouse petitioner.²⁰

Absent from the stated criteria are law school grades, class rank, and whether the applicant sat for the Multistate Bar Examination in another state bar

¹⁹Sup. Ct. of Georgia Office of Bar Admissions, Military Spouse JD Waiver Process and Policy: Waiver Process and Policy Available for Military Spouse JDs Seeking Admission in Georgia (2017) <https://www.gabaradmissions.org/news.action?id=740>.

²⁰*Id.*

examination.²¹ The Board's use here of criteria different from the published criteria is unfair and inconsistent with the purpose of the Waiver. This only increases the barriers military attorney spouses face when seeking employment. The purpose of the Waiver is to minimize barriers to employment by accommodating the bar admission needs of those seeking to continue their legal career while residing in Georgia. If the Board is going to deviate from its published criteria it has a duty to communicate that to petitioners so they can provide appropriate information to address those additional considerations during the initial application phase.

The Board's actions during the appellate process must be fair. For example, the Board should not:

- supplement the record through briefs;
- make the record public in violation of the Supreme Court of Georgia Rule which states, "the Office of Bar Admissions shall then prepare the complete file, which shall be confidential, for delivery to the Clerk"; or
- use the appellate process to explain its reasoning on appeal, for the first time, rather than its denial letter.²² The Board's actions deprived

²¹Br. on Behalf of the Board of Bar Examiners ¶5

²²Letter from Board of Bar Examiners, to Harriet Blackburn O'Neal (Jan. 22, 2018).

Mrs. O'Neal of an opportunity to address the Board's concerns during the initial review of her application when she could have provided supplemental responses.

Rules should reflect the traditions of our honorable profession. Rules should be fair in letter and application. The Board's decision and actions are unfair and can be far reaching if military leaders begin to pull resources and personnel from our state or bypass Georgia for future military mission alternatives.

(e) Appellant Apparently Presented Evidence Establishing her Fitness to Practice Law in Georgia.

Mrs. O'Neal, an attorney in good standing in the State of Louisiana, apparently presented evidence showing she is eligible and entitled to practice law under the Policy. Section (d) of this brief lists the *criteria* the Board said it considers in evaluating a petition for waiver of the requirements of Part C of the Rules for Admission to the State Bar of Georgia.

Mrs. O'Neal satisfied the published application requirements under the Policy available for military spouse JDs seeking admission in Georgia. The Board nonetheless denied her application. The Board cited no public policy concerns and provided no basis or compelling reasons to deny Mrs. O'Neal's petition other than a general failure to show good cause for admission under the Policy, which raises a

due process concern.²³ If there was something else she needed to prepare or provide, the Board had a duty to communicate that to Mrs. O'Neal.

On appeal the Board, for the first time, cited Mrs. O'Neal's state of licensure and that she did not sit for the Multistate Bar Examination. Undoubtedly, it is not the experience or immersion into a specific state's law that attorneys know when taking the bar exam, it is the skills to analyze and comprehend the law that makes attorneys capable of practicing law. Mrs. O'Neal's three years of legal experience and law school training²⁴ presumably make her more experienced and skilled in analyzing the law than a typical first year attorney who just recently passed the bar exam.

Furthermore, Gene Hughes a member of the State Bar of Georgia for 31 years and current Chief of the Legal Assistance Division at Fort Benning, who is responsible for supervising 20 attorneys, indicates that in her experience in training and observing Mrs. O'Neal she has no trouble understanding Georgia law and her work product is well-reasoned, concise, and legally on point.²⁵ Ms. Hughes does not see a significant difference between attorneys at Fort Benning

²³Br. of Amicus Curiae Amer. Bar Assoc. Part II.(B)(4)

²⁴See Br. of the Appellant at 10-11.

²⁵Hughes, Gene Aff., May 16, 2018 ¶¶ 3-5.

who were members of the bars of other states and the work product and research skills provided by Mrs. O'Neal.²⁶

If the Court condones the Board's actions, Mrs. O'Neal will be the *first* military spouse disenfranchised in spite of the waiver policy, but arguably not the last. Amici strongly believe that Georgia understands the importance of being the *first* to support our service men, women, and their families. Georgia was the nation's *first* state to open a support center for military families,²⁷ home of the Army's *first* permanent southeastern installation and primary camp for officers, and potential home of the Army's *first* Futures Command.²⁸

Amici urge this Court to simply do what is right and fair. The Board's renegeing on its commitment to our military personnel leaves this Court little choice but to also be the *first: first* to ensure that its Board gives effect to the real legislative intent and meaning of the MSVLA and MSJDW, rather than defeating its purpose. To carry out the purpose of the MSVLA and MSJDW, this Court should liberally construe the policy in favor of military spouse attorneys.

²⁶ *Id.*

²⁷ Kimber, Green First of Its Kind Military Support Center Opens In Georgia, (June 6, 2016) <http://militaryshoppers.com/first-kind-military-family-support-center-opens-georgia/>.

²⁸ See n.18.

(f) The Court Should Adopt a Comprehensive Rule that Provides Applicants A Clear Understanding of the Waiver Requirements.

The Court should adopt a more comprehensive rule that provides applicants and the public a clear understanding of what will be required for military spouses to waive into the bar in Georgia. The rule should be mindful of the purpose of the military spouse waiver and not merely a duplicate of the waiver rule that applies to experienced attorneys who move to Georgia by choice. The military spouse should be a graduate of an accredited law school, and a member in good standing of another state bar, without a disciplinary history. Although not in the current rule, amici curiae suggest that the applicant certify that she has read the Georgia Rules of Professional Conduct and agrees to abide by them, and provide such other affidavits, proofs, and documentation as may be reasonably prescribed by the Board.²⁹

Amici suggest the following elements should be considered:

Less experienced lawyers typically have high student loan debt. They need to work as lawyers. They are also the lawyers least likely to spend an entire career in Georgia. Perhaps they should be granted a limited waiver that ends when their spouse's assignment in Georgia ends or be considered for a full waiver after successfully practicing law in Georgia for a reasonable number of years.

²⁹Sup. Ct. of Illinois State Bar, *Military Spouse Waiver*, Rule-719.

More experienced lawyers should be granted a permanent Georgia law license. However, they should have the benefit of the special military spouse waiver because they have likely moved frequently in support of their spouse and cannot meet the other Georgia waiver requirements.

The waiver rule allows a bar member in good standing from any state to apply. Louisiana is a state, but if members of its bar will need to meet a greater standard, and amici strongly suggest that they should not, the standard should be plainly noted. If lawyers who did not take the Multistate Bar Examination will receive different scrutiny, that should be made clear.³⁰ Again, amici strongly suggest the standard should be the same regardless of which state's bar exam the applicant passed.

Amici suggest that any decision to deny a waiver by the Board of Bar Examiners be explained to the applicant in writing in detail and the applicant be allowed an opportunity to submit more evidence. This is consistent with the purposes of a military spouse waiver and a welcoming bar. Mrs. O'Neal believed she did what was required, and it appears that even the Board concedes so.³¹

³⁰We can easily conclude that Mrs. O'Neal successfully took the Multistate Professional Responsibility Examination (MPRE) and received a score higher than 80, which is more stringent than Georgia's requirement.

³¹Br. on Behalf of the Board of Bar Examiners' ¶¶1-3 and Board of Bar Examiners' Resp. to Reply of Harriet O'Neal and Amici Curiae ¶4.

However, the Board claims on appeal to have considered factors that Mrs. O'Neal only learned of by reading the Board's reply briefs.

Without conceding any argument made by the Board of Bar Examiners in its briefs, a best practice is undoubtedly to have a transparent process that is clear. Procedural due process, even if not required, enhances the credibility of any process and should be especially important to the legal profession. Here, Mrs. O'Neal received a brief letter devoid of explanation, denying her application. Following her appeal, new "evidence" was offered by the Board, some of it from the confidential record, into the public forum of this Court.

In its second reply brief, the Board mentions the Extended Public Service Program (EPSP).³² That is not a practical option for a young lawyer with substantial student loans. The EPSP mostly anticipates volunteer service. Mrs. O'Neal is already volunteering at the Legal Assistance Division at Fort Benning in Columbus, Georgia. Mrs. O'Neal should be able to apply for paid employment. The options for paid employment in EPSP are very limited, with non-profit organizations that are financially stressed. Even if a paying job is found, the EPSP limits the applicant to a maximum practice of 18 months, which may not be enough time for a military spouse. If the Board intends to offer this option to

³²See Georgia Sup. Ct. Rules 114- 120.

applicants, it should do so in writing, in the rule, and before denying an application for waiver. Amici strongly suggest that the EPSP is not consistent with a fair and proper military spouse waiver program.

IV. Conclusion

Throughout the year we honor service men and women who die to keep us safe and secure. Let us also remember our duty to our living service members and their families when we have an opportunity to act.³³ Portable licensing accommodations are warranted for military spouse attorneys relocating upon change-of-station orders. The State of Georgia should make it clear that we mean what we say when it comes to unsurpassed support for our service personnel and their families.³⁴ We respectfully submit that the Court should uphold its commitment to military spouse lawyers and reverse the Board's decision.

[Signatures are on the following page]

³³See n.4.

³⁴*Id.*

This 4th day of June, 2018

/s/Linda A. Klein

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