

TESTIMONY OF MAJ BRIAN C. SCHMITT, JUDGE ADVOCATE U.S. ARMY RESERVE  
SUPPORTING SENATE BILL 508  
FEBRUARY 17, 2022

Good afternoon, Chairman and Members of the Judicial Proceedings Committee:

I am here today to provide testimony in support of Senate Bill 508. I am a reserve soldier judge advocate in the U.S. Army Reserve. I hold the rank of Major. I commissioned into the Army on June 10, 2009 and have held diverse assignments in the Army. Assignments relevant to my testimony today are: Legal Assistance Attorney at Fort Meade, Maryland from June 2010 to June 2011 and Administrative and Civil Law Attorney at Aberdeen Proving Ground, Maryland from December 2014 through July 2018. In my military capacity, I am currently assigned to the 12<sup>th</sup> Legal Operations Detachment headquartered at Fort Jackson, South Carolina. My current assignment is that of Team Chief for a team of lawyers and paralegals serving at Fort Stewart, Georgia. These lawyers and paralegals provide legal assistance services to active and reserve component personnel, including Soldier Readiness Processing for units that are slated to mobilize or deploy. My testimony in my military capacity is based on my personal experience and I do not represent the Army or the Department of Defense, and I am not testifying as a subject matter expert for the Army on this particular subject. I have been granted permission to render this testimony in my personal capacity, in uniform, by my command and echelons above my command. I am licensed to practice law in Maryland, Michigan, and diverse federal courts, including the U.S. Supreme Court. I am a resident of Frederick County.

The Army provides legal assistance services to service members and their family members. In this context, some soldiers who have dependents and are either single or part of a dual-military couple must have a “Family Care Plan.” This applies to both active and reserve component soldiers. *See* AR 600-20, para. 5-5b., which identifies soldiers for whom a Family Care Plan is mandatory. This is an essential part of military readiness because soldiers must be available for duty when and where the needs of the Army dictate – without interference of family responsibilities. Deployments are frequently sudden, leaving a soldier little time to make on-the-spot arrangements for family member care.

The Family Care Plan must include the plan itself, DA Form 5305-R, where the soldier explains and documents specific measures taken to ensure their family is cared for in their absence. It also includes DA Form 5841-R, Power of Attorney, which is the legal means by which the soldier gives another person the legal authorization to make important decisions regarding children on behalf of the absent soldier-parent. Additionally, DA Form 5840-R is a Certificate of Acceptance as Guardian or Escort, which shows that the guardian has accepted the responsibility of caring for the family members of a soldier and has been provided all necessary legal authority and means to do so. Other forms are also prepared such as DD Form 1172, Application for Uniformed Services Identification Card DEERS Enrollment for each family member. This will provide uninterrupted access to military benefits and privileges while the soldier is absent. Letters of instruction are also frequently executed by soldiers, such as authorization for the guardian to obtain access to military installations and basic military services such as the Commissary and PX.

Applying this to installations in Maryland, such as Fort Meade, APG, and Fort Detrick, the standard legal assistance protocol is for guardianship Powers of Attorney to be executed. These are routinely drafted by legal assistance offices at these installations per the client's request. Legal assistance lawyers are under the impression that these POAs are legally recognized in nearly all jurisdictions.

In Maryland, there is no statutory basis for a guardianship POA as described above. Nonetheless, lawyers drafted these POAs and courts and organizations accepted these until 2014 in the Court of Special Appeals, *In re Guardianship of Zealand W.*, 220 Md. App. 66 (2014), where the court held a court is "not authorized, under Section 13-702 of the Estates and Trusts Article to appoint a third party as temporary or permanent guardian of the person of either Zealand or Sophia when (1) the children's mother is alive; (2) mother's parental rights have never been terminated; **and** (3) no testamentary appointment has been made." (emphasis added) In other words, one cannot file a Petition for Guardianship and appoint a guardian for their minor child while a parent is alive AND a parent's rights have not been terminated.

In Maryland, some jurisdictions strictly follow *Zealand*, where other jurisdictions have carved out exceptions such as having both parents' consent, and other courts have individual judicial variance where one judge may act and another may dismiss for lack of subject matter jurisdiction. I am aware of three anecdotes in Howard County schools where the military guardianship POA was not accepted, where the Fort Meade legal assistance office engaged local elected officials to pressure the administrators to honor the POA.

Passage of SB 508 would fully resolve the aforementioned issues. As such, I personally ask this Committee for a favorable report on the bill. The passage of this bill will further ensure military readiness is achieved in the State of Maryland. Soldiers need to be reassured that on deployment or mobilization everything is taken care of at home, which will minimize family-related stress, which, in turn will enable a soldier to concentrate more fully on his or her mission. A deployment or mobilization carries immense stress on the service member and family members. Ensuring the best readiness in the State of Maryland will allow our military services to decisively fight and win our nation's wars.