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## Introduction

This publication is aimed at a very specific time period -- the deployment of forces overseas. Preparation for this time period, however, occurs constantly. This is true for combat, combat support, and combat service support organizations. The Legal Assistance Office must also prepare for this time. During deployment, issues that soldiers thought they could put off to another day will suddenly become top priority. The ability to handle the increased load and ensure that our soldiers heading into harm's way are legally prepared is the true reason legal assistance exists in the Army.

As with all things, prior planning prevents poor performance. This guide contains two parts. The base document is a narrative guide to issues that arise in the context of deploying a unit from the installation. While deploying the LAO itself is discussed, it is not the focus. The issues focus on supporting the move-out of others. The base document highlights issues to you. The appendices to this guide are resources for you to use in your planning. The hope is that they will assist you in developing your own planning documents. By thinking through the problems in advance, coordinating solutions, and documenting those solutions in writing, your soldiers will be better served and your office will be less strained when deployment comes

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## **Section I Legal Readiness**

This section of the guide discusses continuing legal issues experienced by soldiers. Readiness entails anticipating problems, not just reacting to them when they arise. Consequently, readiness in the legal assistance context requires proactive practice by legal assistance attorneys. This section deals with several areas where being proactive will pay dividends at deployment.

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### ***Chapter 1. Preventive Law***

#### **1. POLICY OF THE JUDGE ADVOCATE GENERAL (TJAG).**

Commanders are responsible for ensuring that preventive law services are provided within their commands (AR 27-3, para 3-3a). Supervising attorneys will ensure that attorneys performing legal assistance duties provide preventive law services. Attorneys should be aggressive and innovative in disseminating information to soldiers and their families that is responsive to potential legal problems and issues (AR 27-3, para 3-3b).

#### **2. EDUCATION**

Legal Assistance offices should be aggressive in sponsoring preventive law programs to educate soldiers and their families before deployment occurs. Numerous topics are suitable for this program. So are the opportunities for presenting the topics.

##### **a) Suggested Topics**

Appropriate topics are limited only by the ingenuity of the legal assistance professional and the needs of the audience being addressed. However, as a minimum, opportunities must be sought to present the following topics to soldiers and their dependents:

- (1) Who is eligible for legal assistance services and what services are available
- (2) SGLI designations and implications.
- (3) Wills for both spouses.
- (4) Powers of Attorney.
- (5) Consumer law issues.

(6) Allotments for child support, etc.

Formats and outlines for the conduct of these classes and/or briefings are included at **Appendix B** of this Guide. Additionally teaching outlines provided on the electronic data bases may be helpful in developing preventive law classes.

b) Suggested Forums For Preventive Law Briefings

(1) Family Support Group briefings. When a unit deploys, the commander normally holds a family support group meeting to inform the service member's spouses about the deployment and the support services available while the unit is away. A Legal Assistance Attorney should participate in these meetings. The LAO attorney briefs on LAO services and important legal issues to consider while the soldier is deployed. A script of a standard briefing LAO attorneys can use at FSG meetings is included at **Appendix B**.

(2) Newcomer's briefing. LAO should brief all newly arrived soldiers at the installation Replacement detachment. This is an excellent opportunity to warn new soldiers about the potential legal minefield they face with car dealerships, landlords, and door to door salesman, etc. An important part of the brief is to distribute and discuss a Legal Fitness Checklist. This checklist, and the script of the standard newcomers briefing are included in **Appendices B and G**.

(3) Other forums available for briefings include BOSS meetings, Pre-retirement briefings, and OPDs/NCOPDs

(c) Information to make available

At these briefings, preventive law material may be distributed.

These materials include:

- Fact sheets
- Newspaper articles
- Web site articles
- Command Information letters.

Additionally, the Soldier Readiness Program (SRP) is a Preventive Law program that allows LAO Attorneys and NCOs to distribute information about legal readiness, brief soldiers, prepare service members for deployments, and prepare

families for the separation. The SRP program should be given a high priority in the LA office. The Program will be discussed in depth in Chapter \_\_\_\_\_.

Information for this area not available.

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## **Chapter 3. Family Care Plans**

**1. REFERENCE** AR 600-20, INTERIM CH. 102 (1 APR 92) + INTERIM CH. 103(5 MAR 93), PARA 5-5. [NOTE THESE CHANGES HAVE EXPIRED]

### **2. POLICY**

An area of potential difficulty that one can easily anticipate is the extra burden deployments create for single parents and dual military couples with dependents. Mission, readiness, and deployment requirements dictate that these problems be considered and dealt with early in the planning process. The cited reference mandates this planning.

The purpose of the Family Care Plan is to provide for the care of their family members when military duties prevent the soldier from doing so. Plans must be made to ensure dependent family members are properly and adequately cared for when the soldier is deployed, on TDY, or otherwise not available due to military requirements. This policy applies to both active and reserve component soldiers. RC soldiers will implement plans during any periods of absence for Annual Training, regularly scheduled unit training assemblies, emergency mobilization and deployments, or other types of active duty

### **3. REQUIRED TO HAVE A FAMILY CARE PLAN**

AR 600-20, Interim Ch. 102 and Interim Ch. 103, requires the following service members to have a family care plan:

- A) single parents and dual military couples (AC and RC) with dependents under age 19,
- B) single parents and dual military couples (AC and RC) with an adult dependent that is incapable of self-care regardless of age,
- C) pregnant soldiers who are dual military (AC or RC) or who are separated, widowed or single (these members have 45 days after the birth of the child to complete the plan), and
- D) a soldier whose spouse is incapable of self-care or is otherwise physically, mentally, or emotionally disabled so as to require special care or assistance.

In addition, ALL married soldiers who have dependent family members are encouraged, even if not required by the regulation, to complete and maintain a Family Care Plan.

### **4. RESPONSIBILITIES AND THE ROLE OF THE LAO**

Commanders have responsibility for ensuring affected soldiers complete a Family Care Plan. The unit commander is the sole approving authority and this

responsibility will not be delegated. This issue is critical to commanders because affected soldiers are considered nondeployable until a Family Care Plan is validated and approved. If the unit commander disapproves a soldier's Family Care Plan, the soldier has thirty days to submit additional documentation or evidence to support the Family Care Plan. Soldiers who fail to provide and maintain adequate Family Care Plans may be barred from reenlistment or voluntarily or involuntarily separated. The commander must also perform periodic review of the Family Care Plan to ensure no changes have occurred that will affect the viability of the plan.

**Legal Assistance Role.** For both parties, the legal assistance attorney can play a critical preventive role.

- a) First, by working closely with the command, the attorney can ensure that the commander is aware of all requirements and can gain access to the unit for classes on what those requirements are.
- b) Second, the legal assistance office can provide valuable counsel to the individuals concerned who will be making critical decisions about the care of their loved ones. Soldiers should be aware that selecting a guardian is an important decision. The soldier will execute a Guardianship Power of Attorney to this person, granting substantial parental rights to the designated guardian.

Servicing both will prevent the loss of good soldiers through separation, ensure readiness should deployment be necessary, and maintain the quality of life and peace of mind for our soldiers. Being proactive in this area can greatly enhance the reputation of and reliance on the legal assistance office.

## **5. ESTABLISHING A FAMILY CARE PLAN**

The Army has established a standard form to ease the preparation of the Plan. DA Form 5305-R (Family Care Plan) is a reproducible form provided in the reference (AR 600--20). The form must include:

- a) Proof that guardians and escorts have been thoroughly informed of the responsibilities they will assume for the sponsor/soldier and on procedures for accessing military and civilian facilities and services on behalf of the dependent family members of the sponsor/soldier,
- b) Attestation that the guardian and escort agree to provide care and have been provided all necessary legal authority and means to do so. Proof of the foregoing will consist of (as a minimum) the following attachments to the DA Form 5305-R:
  - (1) DA Form 5841-R (Power of Attorney), or equivalent delegation of legal control, which the legal assistance office prepares, the soldier executes and has notarized, and the guardian/escort receives, (Original should be kept by the grantee)

(2) DA Form 5840-R (Certification of Acceptance as Guardian or Escort) which the guardian/escort completes, has notarized, and returns to the soldier, (original should be maintained in the file)

(3) DD Form 1172 (Application for Uniformed Service Identification Card DEERS enrollment) which the soldier executes for each dependent family member (AR 600-8-14 directs that ID cards will be issued for children under age 10 who reside with a single parent or dual military couple),

(4) DD Form 2558 (Authorization to start, stop, or change an allotment for Active Duty or Retired Personnel) which the soldier executes, or other proof of financial arrangements for the care of dependent family members, and

(5) Letters of Instruction executed by the soldier which contain additional pertinent information for escorts, temporary or long-term guardians.

In the event of a deployment, the Family Care Plan should remain with the rear detachment.

**Note:** Forms can be found in **Appendix G**.



Information for this area not available.

Information for this area not available.

Information for this area not available.

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## ***Chapter 7. Support to Dependents***

Times of deployment place extra burdens on family members. Soldiers separated from their families for major training exercises and real-world missions become less effective when they cannot attend to the legal affairs of their families. Quality legal assistance to dependents becomes a combat multiplier by putting the soldier's worries to rest.

During times of deployment, the home installation Legal Assistance section should:

- (1) Follow up on legal assistance cases referred by deployed LAOs.
- (2) Coordinate with communications, transportation, and aviation elements on the installation to ensure contact and courier service with deployed LAOs.
- (3) Extend legal assistance office hours, as necessary, to handle legal assistance problems of working dependents.
- (4) Continue legal assistance briefings for family members. Notice of these meetings should be mailed to the individual, using previously obtained mailing addresses and disseminated by post newspaper and local television and radio media. Coordination with the deployed unit Rear Detachment Commander may permit these briefings to be included in the unit's regularly scheduled family support briefings.
- (5) Coordinate with local banks and financial institutions to expect a higher usage of powers of attorney, and to explain 10 U.S.C. § 1044(b) and the legal effect of military notarizations.
- (6) Coordinate with local courts concerning the failure of deployed members to appear, and to explain soldiers' protections under the SSCRA.
- (7) Be prepared to brief and assist survivor assistance officers.
- (8) Be prepared to brief and assist family members with tax issues.



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## ***Chapter 8. Deployment of the Legal Assistance Office***

### **1. DEPLOYING THE LAO**

It will only be in the largest deployments, like the Gulf War, that an entire LAO will deploy. However, individuals from an office will often deploy on smaller contingencies. Additionally, it is impossible to predict when the next major contingency will occur. Readiness dictates that the leader of a LAO plan for the deployment of his office.

While the focus of this guide is support to the deployment of other units, it would be incomplete without at least some consideration of this topic. Toward this end, checklists and other planning information is located at **Appendix I**. These are provided for your use in planning and developing standard operating procedures. The Operational Law Handbook (JA 422) should also be consulted for its broader coverage of judge advocate deployment issues.

### **2. DEPLOYMENT CONSIDERATIONS**

Effective planning and preparation is essential to the success of any deployment, and quite often, much of this may be accomplished well in advance of the JCS Warning and Execute orders. This includes routine preparation unrelated to specific missions, as well as mission specific preparation and planning. The result is an efficient and speedy deployment when an Execution order is received. To that end there are some basic areas that must be addressed:

a) Training of the JA's to deploy. This includes keeping weapons qualifications current, conducting physical training, having medical and dental exams current, preparing field gear, and preparing their own families for deployment.

(1) Take advantage of all range opportunities. If a supported unit is on the range, you may be able to work in one or two people to fire as well if you provide the ammunition. This will allow you to fire your personnel without closing the customer service section of the office.

(2) Conduct a physical fitness program that includes PT at least three days a week.

(3) Obtain from the company First Sergeant information concerning dental and medical updates. If a soldier is a non-deployable because of either, action should be taken to either arrange dental or medical care as soon as possible.

(4) Deployed personnel should plan to live at least two weeks out of their A and B bags (generally rucksack and duffel bag). Personal items such as baby wipes, laundry soap and stamps should be included in these bags.

b) Identifying what and who is to be deployed. This includes determining what resources will be needed on deployments, which personnel (NCO's and attorneys) will deploy, what computer equipment and communication equipment is necessary, etc.

(1) Generally, the composition of the office will include an attorney and at least one legal NCO or specialist. For longer deployments, more personnel may be considered but space on transports and space at the deployed site will generally limit the number of personnel who may deploy.

(2) The office should have a deployment library ready. A list of recommended publications is provided in **Appendix I**. The hard copies of these pubs will generally be the main tool for research until communications can be established with home station and the Internet. The library may be deployed using two footlockers. The footlocker approach allows for a standard size item that can be easily packed, loaded and palletized. The footlocker can also be locked and can be used to sit on in theater (chairs may be a luxury). If the mission is a joint operation then basic handbooks for the Air Force and Navy may be helpful in providing services.

(3) If you are deploying as a follow-on unit, coordination should be conducted with the redeploying unit to determine what resources will be left on station. The current unit will also be able to provide you with an idea of what services are needed in the area. The more that is left behind, the easier the transition will be.

(4) What "heavy" equipment (or hardware) to bring is also a consideration. These items include tables, folding chairs, field desks, cots, and lighting systems. Although field desks are small, they are advantageous because they provide a place to sit down and a workstation for both the attorney and the NCO. Space may

be limited at the deployment site. If field desks are used, they should come by the most expeditious way possible, preferably palletized. Tables, chairs, and cots may have to wait for follow on transportation or obtained through supply channels in theater (this may be a long wait)

(5) Communication equipment is essential. Included in the packing list should be modems, telephones, and a STU-3 (secured phone). Phones may not be available, and if available there may not be a line dedicated solely to the Legal Assistance Office. If possible, talk with signal personnel on the ground to ensure phone lines are established as soon as possible. Since many legal assistance issues involve matters in the United States, LA should push for a dedicated phone line with world wide access. Additionally radios may be needed to communicate with other units in the area.

(6) Computer support must also be prepared prior to deployment. The rucksack deployable law office and library (RDL) includes a lap top computer, removable hard drives, a CD ROM, a printer, fax modem, scanner, hard shell case, and a full range of software. Ideally, the RDL also includes a satellite phone and battery. Additionally, care should be taken to ensure that the printer brought with the laptop is compatible with all the programs loaded, including LAAWS. All needed software should be loaded prior to deployment and back up material should be carried separately. See the Operational Law Handbook for guidance on how to pack the RDL.

(7) Photocopiers/ tactical faxes and printers should also be added to the deployment list. These resources may be available through the higher headquarters or in a centralized location in the theater, however, they may not be convenient to the Legal Assistance office or they are servicing too large a population.

(8) If possible, the LAO should deploy with a vehicle. A vehicle will give the office access to other areas of the theater and provide for better service to the soldier who cannot make it to the LAO. A vehicle also allows the LAO to pack using a load plan that allows for more equipment and better containment of the equipment. For example, if you bring cots, then they are loaded in your vehicle and not thrown on the general pallet. If a vehicle has not been assigned to the LAO, then at a minimum prior to deployment, the LAO and the NCO should have a military driver's license that allows them to

drive several types of vehicles such as the CUCV and the HMMWV.

c) What guidance should be given reserve augmentation at the Legal Assistance office (if augmentation is provided)?

(1) SOPs should be clearly established and updated so an IMA coming into the Legal Assistance office can operate effectively with little lead or train-up time.

(2) Close coordination should be established between the deployed LAO and the rear to assist in resolving legal assistance problems and provide additional research if necessary

d) Identify the LAO possible location in the area of operation such as Division Rear CP and support available at that location. Determine methods for communicating Legal Assistance problems with the rear and how a courier service can be established.

(1) In theater, it is likely that the legal assistance attorney will have to cover several units and locations when transportation to the LAO is not possible or feasible. In planning for this contingency, the attorney should look for ways to courier items between unit locations and places to conduct client interviews. Different ways to courier include having a dedicated vehicle, using existing supply routes or using radios and LAN lines if available. If the LAO does not have a dedicated work space, the attorney should look for other ways to ensure confidentiality, some suggestions include, using the inside of vehicles, mess tents when not in use, outside if conditions permit, and an unused VIP tent if available.

(2) Another consideration is whom the LAO office will report to while in theater. Generally, the SJA of the theater will technically supervise the LAO while the office may report to the local HHC, commander for accountability purposes.

(3) Courier service with the rear is also an issue. Bring enough envelopes that can be sent through the US mail system and identify, once on the ground, the nearest postal company to ensure rapid movement of documents that must be sent in the original. Faxes with the rear may also be established once sufficient phone lines are in place. E-mail may be the greatest tool to communicate general information and to receive assistance on issues from the

rear, however it cannot substitute for the actual delivery of documents. Shuttles (such as troop planes, supply planes, and transportation helicopters) between the theater and the rear may also be used to carry information.

## **Section IV: COMMON LEGAL ASSISTANCE ISSUES DURING DEPLOYMENT PROCESSING**

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### **Chapter 9. Combat Zone Tax Issues**

#### **1. EXTENSION OF DEADLINE**

Armed forces members who served in a combat zone are allowed additional time to take care of tax matters (called a "deadline extension," in this handout). The deadline for taking actions with the IRS is extended for at least 180 days after the later of:

- a) The last day the taxpayer is in a combat zone (or the last day the area qualifies as a combat zone), or
- b) The last day of any continuous qualified hospitalization for injury from service in the combat zone. (Qualified hospitalization is hospitalization which resulted from an injury received while serving in the combat zone. In the case of a Persian Gulf area injury, the injury must have occurred between 2 August 1990 and the date the President, by Executive Order, terminates the combat zone.)

Beyond the 180 days, the deadline is also extended by the number of days that were left for the member to take action with the IRS when (s)he entered the combat zone. If the member entered the combat zone before the time to take the action began, the deadline is extended by the entire time (s)he has to take the action.

#### **2. ACTIONS EXTENDED**

The deadline extension provision applies to these actions:

- a) Filing any return of income, estate, or gift tax (except employment and withholding taxes).
- b) Paying any income, estate, or gift tax (except employment and withholding taxes).
- c) Filing a petition with the Tax Court for re-determination of a deficiency, or for review of a Tax Court decision.
- d) Filing a claim for credit or refund of any tax.

- e) Bringing a suit for any claim for credit or refund.
- f) Purchasing a replacement residence to postpone paying tax on the gain on the sale of the old residence.
- g) Making a qualified IRA contribution.
- h) Allowing a credit or refund of any tax by IRS.
- i) Assessment of any tax by the IRS.
- j) Giving or making any notice or demand by the IRS for the payment of any tax, or for any liability for any tax.
- k) Collection by the IRS of any tax due.
- l) Bringing suit by the United States for any tax due.

### **3. SPOUSES**

Spouses of individuals who served in a combat zone are entitled to the same deadline extension with the following two exceptions:

- a) The extension does not apply to a spouse for any tax year beginning more than two years after the date that combat activities end.
- b) The extension does not apply to a spouse for any period the qualifying individual is hospitalized in the United States for injuries incurred in a combat zone.

### **4. NOT IN A COMBAT ZONE (DEFERMENT OF TAXES)**

Reservists called to active duty or regular military members who are not in a combat zone may still qualify to defer the payment of back taxes. To qualify, these individuals must be serving their initial period of service and they must show that their ability to pay back taxes has been materially impaired.

- A) **Initial Period of Service.** The initial period of service is defined as the period of active duty following a recall to active duty from an inactive reserve or National Guard unit. For regular military personnel, it is the period following induction or first enlistment in the Armed Forces or the first period of reenlistment for a person who has been out of service for a year or more. For an officer, the initial period of service is limited to two years of active service after one of the above occurrences.

- B) **Material Impairment.** To indicate material impairment, the taxpayer must show that his/her income dropped as a result of going into military service.

**Request for Deferment.** Military members who have a current pay agreement or who have received a notice requesting payment must make a written request for deferment to the IRS office where they have an agreement.

Information needed. The request for deferment must include the member's name, social security number, monthly income and source of income before military service, current monthly income, military rank, date of entry into the military service, and date the member is eligible for discharge. Enclosing a copy of the military order is helpful.

The IRS will review each request and advise the taxpayer in writing of its decision. If deferment is granted, the taxpayer will be able to defer payment of back taxes until 6 months after the end of his/her period of service.

## **5. COMBAT ZONE EXCLUSION**

Armed forces members who serve in a combat zone may exclude certain pay from their income. They do not have to receive the pay while in a combat zone, but it must be paid for service there, or for a period during which they were hospitalized as a result of their service there. The following military pay can be excluded from income:

- a) Active duty pay earned in any month they served in a combat zone. Military members (enlisted or commissioned warrant officers), who serve in a combat zone during any part of a month, can exclude all of their basic pay for that month from income. Commissioned officers may exclude up to the maximum enlisted pay plus the amount of imminent danger pay. For example for 1998 the maximum pay allowed to be excluded would be \$4,227.90 + \$150.
- b) A dislocation allowance if the move begins or ends in a month they served in a combat zone.
- c) A reenlistment bonus if the voluntary extension or reenlistment occurs in a month they served in a combat zone.
- d) Pay for accrued leave earned in any month they served in a combat zone.
- e) Pay received for duties as a member of the armed forces in clubs, messes, post and station theaters, and other nonappropriated fund

activities. The pay must be earned in a month the member served in a combat zone.

f) Awards for suggestions, inventions, or scientific achievements members are entitled to because of a submission they made in a month they served in a combat zone.

## **6. COMBAT ZONES**

The President, by Executive Order 12,744, designated the following locations (including airspace) as a combat zone beginning 17 January 1991:

- a) The Persian Gulf,
- b) The Red Sea,
- c) The Gulf of Oman,
- d) The part of the Arabian Sea that is north of 10 degrees north latitude and west of 68 degrees east longitude.
- e) The Gulf of Aden, and
- f) The total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

## **7. QUALIFIED HAZARDOUS DUTY AREA**

The President signed P.L. 105-117, which established a “qualified hazardous duty area” in the former Yugoslavia that is treated as if it were a combat zone. The law is effective retroactively to November 21, 1995. The qualified hazardous duty area includes:

- a) Bosnia and Herzegovina
- b) Croatia, and
- c) Macedonia

The law also provides that all members of the Armed Forces deployed overseas away from their permanent duty station in support of operation Joint Endeavor, but outside the former Yugoslavia, are treated as if they

are in a combat zone solely for the purposes of the extension of the filing deadline. These personnel are not entitled to other combat zone benefits.

**Note:** On 20 June 1998, Operation Joint Guard was terminated and Operation Joint Forge commenced. Operation Joint Forge is a follow-on operation to Operation Joint Guard, which was a follow-on operation to Operation Joint Endeavor.

a) On 17 July 1998, the IRS decided that Internal Revenue Code Section 7508 applies to individuals participating in Operation Joint Forge. This section extends the time period allowed for performing most acts required by the Internal Revenue Code.

b) Additional the benefits established in P.L. 104-117, which established the above areas, were not affected by the change in name of the operation.

c) P. L. 104-117 also extended the Internal Revenue Code section 7508, to "individual[s] who [are] performing services as part of Operation Joint Endeavor outside the United States while deployed from [their] permanent duty station" This was the only combat zone tax provision extended to these individuals. Since this provision of P.L. 104-117 was linked to Operation Joint Endeavor, it could be affected by a change to the name of the Operation. Nevertheless, the IRS previously determined that section 7508 applied to individuals serving outside the qualified hazardous duty area in support of Operation Joint Guard. As stated, it also determined that section 7508 applies to individuals serving outside the Qualified Hazardous Duty Area in support of Operation Joint Forge.

A Question and Answer sheet discussing tax relief for those affected by Operation Joint Guard is provided in a Appendix \_\_\_\_\_.

## **8. QUALIFYING SERVICE OUTSIDE COMBAT ZONE**

Military service outside of a combat zone is considered performed in a combat zone if:

a) The service is in direct support of military operations in the combat zone, **and**

b) The service qualifies the member for special military pay for duty subject to hostile fire or imminent danger. (Includes civilian personnel acting under the direction of the Armed Forces in support of these forces.)

Military pay for this service will qualify for the combat zone exclusion if the other requirements are met.

c) Nonqualifying service in a combat zone. The following military service does not qualify as service in a combat zone:

- (1) Presence in a combat zone while on leave from a duty station located outside the combat zone.
- (2) Passage over or through a combat zone during a trip between two points that are outside of a combat zone.
- (3) Presence in a combat zone solely for a member's personal convenience.

Consult IRS Publication 945, Tax Information for Those Affected by Operation Desert Storm, for more information. Also consult IRS Publication 678-M, Military Module Student Text.

## 9. DECEDENTS

(1) If a member of the U.S. Armed Forces dies while on active service in a combat zone from wounds, disease, or other injury received in a combat zone, the decedent's entire income tax liability is forgiven for the year the death occurred and for any earlier tax year beginning with the year before the year in which the wound, disease, or other injury occurred. Tax liability is also forgiven for any earlier tax year in which the member served at least one day in a combat zone. Any forgiven tax liability that has already been paid will be refunded, and any unpaid tax liability at the date of death will be forgiven.

In addition, any unpaid taxes for earlier years will be forgiven, and any earlier year taxes that were paid after the date of death will be refunded.

This forgiveness provision also applies to a member of the Armed Forces serving outside the combat zone if the service:

- a) was in direct support of military operations in the zone, and
- b) qualified the member for special military pay for duty subject to hostile fire or imminent danger.

(2) Missing status. The date of death for a member of the Armed Forces who was in a missing status (missing in action or prisoner of war) is the date his or her name is removed from missing status for military pay purposes. This is true even if death actually occurred earlier.

(3) Terroristic or Military Action Forgiveness.

Tax liability is forgiven for an individual who:

- a) Is a military or civilian U.S. employee at death, and
- b) Dies from wounds or injury incurred while a U.S. employee in a terroristic or military action outside the United States.

The forgiveness applies to the tax year the death occurred and for any earlier tax year beginning with the year before the year in which the wounds or injury occurred. A terroristic or military action is any terroristic activity primarily directed against the United States or its allies, and any military action involving the U.S. Armed Forces resulting from violence or aggression (or the threat of violence or aggression) against the United States or its allies.

Any multinational force in which the United States participates is considered an ally of the United States.

## 10. FORM W-2/ INCOME

(1) The wages shown on the Form W-2 should not include military pay excluded from an individual's income under the combat zone exclusion provisions. Contact your local finance office if you have questions about the exclusion.

(2) Pay that is normally included in gross income for tax purposes includes imminent danger pay and foreign duty pay.

(3) Family Separation allowance is an example of a payment not included in income.

**NOTE:** Taxpayers who serve in a combat zone should write “**COMBAT ZONE--(AREA)**” or “**QUALIFIED HAZARDOUS DUTY AREA**” on their tax return.

## **Tax Relief for Those Affected by Operation Joint Guard**

\*\* Note: These questions and answers may be found at  
<http://www.dfas.mil/money/milpay/not96-34.htm>

### **PART 1 - MILITARY PAY EXCLUSION**

**I am a member of the U.S. Armed Forces stationed in Italy. I fly patrols over Bosnia and Herzegovina, in direct support of the military operations there, for which I receive hostile fire/imminent danger pay. Is any part of my military pay excluded from gross income?**

Yes. Under the Act and regulations in effect prior to the Act, you are treated as serving in the qualified hazardous duty area because you are a member of the U.S. Armed Forces serving in direct support of military operations in the qualified hazardous duty area for which you receive hostile fire/imminent danger pay.

**If I am injured and hospitalized while serving in the U.S. Armed Forces in the qualified hazardous duty area, is any of my military pay excluded from gross income?**

Yes. Military pay received by enlisted personnel who are hospitalized as a result of injuries sustained while serving in the qualified hazardous duty area is excluded from gross income. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month. These exclusions from gross income for hospitalized enlisted personnel and commissioned officers end 2 years after the date of termination of the qualified hazardous duty area designation.





**My wife is currently serving in the U.S. Armed Forces in the qualified hazardous duty area and will be eligible for discharge when she returns home. If she is discharged upon her return, will the payment for the annual leave that she accrued during her service in the qualified hazardous duty area be excluded from gross income?**





Yes. Annual leave payments made to enlisted members of the U.S. Armed Forces at the time of their discharge from the service are excluded from gross income to the extent the leave was accrued during any month in any part of which the member served in the qualified hazardous duty area. If your wife is a commissioned officer, a portion of the annual leave payment she receives for leave accrued during any month in any part of which she served in the qualified hazardous duty area may be excluded. The leave payment cannot be excluded to the extent it exceeds the maximum enlisted amount for the month of service to which it relates less the amount of military pay already excluded for that month.





**My brother, who is a civilian in the merchant marine, is on a ship that transports military supplies between the United States and the qualified hazardous duty area. Is he entitled to the qualified hazardous duty area military pay exclusion?**





No. Those serving in the merchant marine are not members of the U.S. Armed Forces. The qualified hazardous duty area military pay exclusion applies only to members of the U.S. Armed Forces. The U.S. Armed Forces include all regular and reserve components of the uniformed services that are under the control of the Secretaries of Defense, Army, Navy, and Air Force, as well as the Coast Guard.





**My husband is a member of the U.S. Armed Forces performing services as part of Operation Joint Endeavor in Germany. He is not receiving hostile fire/imminent danger pay. Is he entitled to the military pay exclusion?**





No. U.S. Armed Forces personnel serving outside the qualified hazardous duty are not entitled to the military pay exclusion, unless they are serving in direct support of military operations in the qualified hazardous duty area for which they receive hostile fire/imminent danger pay.





## **PART 2 - EXTENSION OF DEADLINES**



**My son is a member of the U.S. Armed Forces who is now serving in the qualified hazardous duty area. Is he entitled to an extension of time for filing and paying his federal income taxes? Are any assessment or collection deadlines extended?**





For both questions, the answer is yes. In general, the deadlines for performing certain actions applicable to his federal taxes are extended for the period of his service in the qualified hazardous duty area on or after November 21, 1995, plus 180 days thereafter. During this extension period, assessment and collection deadlines will be extended, and interest and penalties attributable to the extension period will not be charged.





**Assuming the same facts as above, would my son still have an extension for filing and paying his federal individual income taxes if he has unearned income from investments?**

Yes. The extension applies without regard to the source of your son's income.

**Assuming the same facts as above, will the deadline extension provisions continue to apply if my son is hospitalized as a result of an injury sustained in the qualified hazardous duty area?**

Yes. The deadline extension provisions will apply for the period that your son is continuously hospitalized outside of the United States as a result of injuries sustained while serving in the qualified hazardous duty area. For hospitalization inside the United States, the extension period cannot be more than 5 years.

**Do the deadline extension provisions apply only to members of the U.S. Armed Forces serving in the qualified hazardous duty area?**

No. The deadline extension provisions also apply to individuals serving in a qualified hazardous duty area in support of the U.S. Armed Forces, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces.

**My son is a civilian explosive specialist who is in Macedonia training U.S. Armed Forces personnel serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my son?**

Yes. The deadline extension provisions apply to your son because he is serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

**My husband is a private businessman working in Bosnia and Herzegovina on nonmilitary projects. Do the deadline extension provisions apply to my husband?**

No. Other than military personnel, the only individuals working in the qualified hazardous duty area that are entitled to the deadline extension provisions are those serving in support of the U.S. Armed Forces.

**I am a member of the U.S. Armed Forces serving in the qualified**

**hazardous duty area. Do the deadline extension provisions apply to my husband who is in the United States?**

Yes. The deadline extension provisions apply not only to members serving in the U.S. Armed Forces (or individuals serving in support thereof) in the qualified hazardous duty area, but to their spouses as well, with two exceptions. First, if you are hospitalized in the United States as a result of injuries received while serving in the qualified hazardous duty area, the deadline extension provisions would not apply to your husband. Second, the deadline extension provisions for your husband do not apply for any tax year beginning more than 2 years after the date of the termination of the qualified hazardous duty area designation.

**Assuming the same facts as above, will my husband have to file a joint tax return in order to benefit from the deadline extension provisions?**

No. The deadline extension provisions apply to both spouses whether joint or separate returns are filed. If your husband chooses to file a separate return, he will have the same extension of time to file and pay his taxes that you have.

**My husband is serving in the U.S. Armed Forces in the qualified hazardous duty area. In 1998, our son, who is 12 years old, received \$700 of interest income. Our daughter, who is 17 years old, received \$2,000 of earned income from part-time work and \$900 of interest income. We claim both children as dependents on our federal individual income tax return. Are federal individual income tax returns required to be filed for our children while my husband is in the qualified hazardous duty area?**

No. Federal individual income tax returns for your dependent children are not required to be filed while your husband is in the qualified hazardous duty area. Instead, these returns will be considered timely if filed on or before the deadline for filing your federal individual income tax return under the deadline extension provisions. The U.S. Armed Forces will provide your husband with instructions on how to notify the IRS of your children's eligibility to receive this extension of time to file. Since your older child may be entitled to a refund of tax, she may want to file her federal individual income tax return and obtain her refund.

**I am a member of the U.S. Armed Forces serving in Croatia. My spouse and our three children live in our home in the United States. During**

**1998, a child care provider took care of our children in our home. We are required to file a Schedule H, Household Employment Taxes, as an attachment to our federal individual income tax return to report the federal employment taxes on wages we paid to our child care provider. Do the deadline extension provisions apply to the filing of Schedule H as an attachment to our federal individual income tax return?**

Yes. The deadline extension provisions apply to all schedules and forms that are filed as attachments to the federal individual income tax return.

**I am a member of the U.S. Armed Forces who served in the qualified hazardous duty area from December 10, 1997, through May 15, 1998. When will I be required to file my federal individual income tax return for 1997?**

You must file your 1997 federal individual income tax return on or before February 25, 1999, 286 days after you left the qualified hazardous duty area. The deadline extension period consists of the sum of the following:

(1) 180 days from the date you left the area	180
(2) The number of days remaining (as of the date you entered the area) to perform the required act (in your case, filing your 1997 federal individual income tax return, 1/1/98 to 4/15/98)	106
Total	286

**My wife is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Can she make a timely qualified retirement contribution for 1998 to her individual retirement account (IRA) after April 15, 1998, and on or before the due date of her 1998 federal individual income tax return after applying the extension of deadline provisions?**

Yes. Your wife can make a timely qualified retirement contribution for 1998 to her IRA on or before the extended deadline for filing her 1998 income tax return under the deadline extension provisions.

**My brother, who served in the U.S. Armed Forces in the qualified hazardous duty area from December 1997 through February 1998, did not make his fourth estimated tax payment for 1997. Will my brother**

**be liable for estimated tax penalties?**

No. Your brother is covered by the deadline extension provisions and will not be liable for any penalties if he files and pays any tax due by his extended filing due date. The U.S. Armed Forces will provide your brother with instructions on how to notify the IRS of his eligibility to receive tax relief.

**My son, who is a member of the U.S. Armed Forces, was on an installment payment plan with the IRS for back taxes before he was assigned to the qualified hazardous duty area. What should be done now that he is in the qualified hazardous duty area?**

The IRS office where your son was making payments should be contacted. Because your son is serving in the qualified hazardous duty area, he will not have to make payments on his past due taxes for his period of service in the qualified hazardous duty area plus 180 days. No penalties or interest will be charged during the deadline extension period.

**My son, who is a member of the U.S. Armed Forces serving in the qualified hazardous duty area, will file his federal individual income tax return for 1997 after April 15, 1998, but on or before the end of the deadline extension for filing that return. He expects to receive a refund. Will the IRS pay interest on the refund?**

Yes. The IRS will pay interest from April 15, 1998, on a refund issued to your son if he files his 1997 federal individual income tax return on or before the due date of that return after applying the deadline extension provisions. The U.S. Armed Forces will provide your son with instructions on how to notify the IRS of his eligibility to receive tax relief. If his 1997 return is not timely filed on or before the due date after applying the deadline extension provisions, no interest will be paid on the refund except as provided under the normal refund rules.

**Do the deadline extension provisions apply to federal tax returns other than the federal individual income tax return?**

Yes. The deadline extension provisions also apply to federal estate and gift tax returns. However, the deadline extension provisions do not apply to other federal tax and information returns, such as those for corporate income tax or employment taxes.

**I am a member of the U.S. Army that was deployed to Germany to perform services as part of Operation Joint Guard. My permanent duty**

**station is in the United States where my spouse resides. Do the deadline extension provisions for filing and paying our federal individual income taxes apply?**

Yes. Any member of the U.S. Armed Forces who is performing services as part of Operation Joint Endeavor outside of the United States while deployed away from that individual's permanent duty station qualifies for the deadline extension for filing and paying federal individual income taxes. The deadline extension provisions also apply to that member's spouse.

**My husband, who is a member of the U.S. Armed Forces, is at his permanent duty station in Germany performing services as part of Operation Joint Guard. Do the deadline extension provisions apply?**

No. U.S. Armed Forces personnel serving at their permanent duty station outside the qualified hazardous duty area are not entitled to the deadline extension provisions.

**I am a Department of Defense civilian employee stationed in Hungary away from my permanent duty station in the United States. I am performing services as part of Operation Joint Guard. Do the deadline extension provisions apply to me?**

Yes. The deadline extension provisions apply to you. Although you are not serving in the qualified hazardous duty area, you are a Department of Defense civilian employee performing services away from your permanent duty station as part of Operation Joint Guard.

**My husband and I are civilian employees of defense contractors. I work in the United States and my husband temporarily works in Germany. Our jobs involve the production of equipment used by the U.S. Armed Forces for Operation Joint Guard. Do the deadline extension provisions apply to either of us?**

No. The deadline extension provisions do not apply to civilian employees of defense contractors unless they are serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

### **PART 3 - MISCELLANEOUS PROVISIONS**

**My daughter is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. She makes calls to me here in the United States. Are these calls exempt from the federal excise tax on toll telephone service?**

Yes. Telephone calls that originate within the qualified hazardous duty area and that are made by members of the U.S. Armed Forces serving there are exempt from the federal excise tax on toll telephone service. If a calling card or collect call is made, a certificate of exemption must be furnished to the telephone service provider receiving payment for the call. The exemption certificate (which may be obtained from the telephone service provider) should be signed and dated by the telephone subscriber and contain the following information: the amount, time, and date of the call, the name of the person who called from the qualified hazardous duty area, a statement that the person who called was a member of the U.S. Armed Forces performing service in the qualified hazardous duty area, and the name and address of the telephone subscriber.

**If the federal excise tax has already been paid on the toll telephone service in question above can a refund be obtained?**

Yes. If the federal excise tax has already been paid on that toll telephone service, a refund may be obtained either from the telephone service provider that collected the tax, or from the IRS by filing Form 8849, Claim for Refund of Excise Taxes.

**How will my military pay for active service in the U.S. Armed Forces in the qualified hazardous duty area be reported on my 1998 Form W-2, Wage and Tax Statement?**

Military pay attributable to your active service in the qualified hazardous duty area that is excluded from gross income will not be reported on your 1998 Form W-2 in the box marked "Wages, tips, other compensation." However, military pay for such service is subject to social security and medicare taxes and will be reported on your 1996 Form W-2 in the boxes marked "Social security wages" and "Medicare wages and tips."

**I'm an officer serving in the qualified hazardous duty area. I have made monthly contributions to an individual retirement account (IRA) for 1998. In view of the military pay exclusion for my service in the qualified hazardous duty area, I may have little or no taxable compensation for 1998 and may not be eligible to make an IRA contribution for 1998. If my taxable compensation is less than \$2000, should I withdraw the portion of my contributions that exceeds my taxable compensation?**

Yes. In general, any amount contributed to your IRA that is more than the smaller of (1) your taxable compensation, or (2) \$2000, is

an excess contribution and must be withdrawn to avoid a 6 percent excise tax. Once you are sure that your taxable compensation will be less than \$2000, you should withdraw the portion of your contributions that exceeds your taxable compensation. You will not be taxed on the distributed amount if you receive the distribution on or before the deadline for filing your 1998 federal individual income tax return after applying the deadline extension provisions. You may not take a deduction with respect to these distributed contributions. You must also withdraw the amount of net income attributable to the distributed contributions while they were assets of the IRA. Any of that net income is includible in your gross income for 1996. For further information, see Publication 590, Individual Retirement Arrangements (IRA).

**Assuming the same facts as the question above how will the financial institution that distributes my 1998 IRA contributions to me report this distribution?**

The financial institution will report the entire amount of the distribution (1998 distributed contributions and attributable net income) on Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, it should report only the amount of any net income attributable to the distributed contributions as the "Taxable amount" on Form 1099-R.

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## **Chapter 10. Soldiers' & Sailors' Civil Relief Act Protections**

### **1. REFERENCES**

- a) 50 United States Code Appendix §§ 500-548, 560-593 (1990) (Supp. 1994).
- b) SSCRA Amendments of 1991, Pub. L. No. 102-12 (18 March 1991).
- c) The Judge Advocate General's School Publication JA 260, Soldiers' and Sailors' Civil Relief Act Guide (April 1998).
- d) Pottorff, "Contemporary Applications of the Soldiers' and Sailors' Civil Relief Act," 132 Mil. L. Rev. 115 (1991).
- e) Huckabee, "Operations Desert Shield and Desert Storm: Resurrection of the Soldiers' and Sailors' Civil Relief Act," 132 Mil.L.Rev. 141 (1991).
- f) Welfare Reform Act of 1996. Pub. L. No. 104-193, 110 Stat. 2105 (1996).
- g) Baron, "The Staying Power of the Soldiers' and Sailors' Civil Relief Act," 32 Santa Clara L.Rev. 137 (1992).
- h) Legal Assistance Note, "Using the Soldiers' and Sailors' Civil Relief Act to Your Clients' Advantage," The Army Lawyer, Dec. 1993 at 34.
- i) Hatch Act Reform Amendments, Pub. L. 103-94, 107 Stat. 1001 (Oct. 6, 1993) (Section 9: provisions to treat federal pay the same as non-federal pay for garnishment purposes).
- j) Note, "Child Support and Paternity Stay Actions Impacted by the Welfare Reform Act of 1996," The Army Lawyer, Jun 1998 at 13.

### **2. INTRODUCTION**

The following is a basic introduction to some of the protections provided by the SSCRA that you might encounter or use as you prepare a unit for deployment. The coverage is by no means comprehensive. The purpose here is to highlight the issues to you. More detailed guidance can be found in the references cited above.

The Act is divided into articles and includes, among other provisions, the following sections which are relevant to the purposes of this guide:

- a) Article I - who is protected and in what courts the Act applies; exercise of rights not to affect certain future financial transactions.
- b) Article II - limits on interest rates, stays of judicial proceedings; reopening default judgments; stays or vacation of execution of judgments, attachments; suspension of statutes of limitation.
- c) Article III - protection from evictions; terminating pre-service leases; protection from mortgage foreclosure; rescission of installment contracts.
- d) Article VII- stay of enforcement of obligations, liabilities and taxes; extension of powers of attorney; professional liability protection; health insurance reinstatement.

**NOTE:** Section numbers in the Act do not correspond to the 50 U.S.C. app. section numbers frequently cited.

### 3. GENERAL PROVISIONS

- a) Purpose. (50 U.S.C. app. § 510). To postpone/suspend certain civil obligations to permit service member to devote full attention to duty. The Act should be read "with an eye friendly to those who dropped their affairs to answer their country's call." Le Maistre v. Leffers, 333 U.S. 1,6 (1948).
- b) Protected People. "Persons in the military service," including members of the Army of the United States, the Air Force, the United States Navy, the Marine Corps, the Coast Guard, and Public Health Service detailed for duty with the Army or Navy. "Military service" means Federal service on active duty (50 U.S.C. app. § 511). This includes members of the Army Reserve, Air Force Reserve, Fleet Reserve, Naval Reserve, Marine Corps Reserve, the Coast Guard Reserve, and the National Guard **while in active federal service**.
- c) Period of protection. The period of protection varies by the status of the soldier.
  - (1) Active duty. Protection from date of entering active service to date of discharge (50 U.S.C. app. § 511). (Not the first day of civilian status)
  - (2) Inductees. From date of receipt of notice of induction (50 U.S.C. app. § 516).
  - (3) Reserve Components. From date of receipt of orders to active duty receive protections under Articles I through III; upon reporting for active duty receive all SSCRA protections. (50 U.S.C. app. § 516).

(4) Dependents (in their own right) have Article III benefits (§§ 530-536), including rent, installment contracts, mortgages, liens, assignments, and leases (50 U.S.C. app. § 536). Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under...[sections 530 to 536] [of the Act] ... unless [the court finds] the ability of the dependent to comply with terms of obligation, contract, lease, or bailment has not been materially effected by reason of the military service of the person upon whom the applicants are dependent.

(5) Derivative protection for those with joint liability with a service member applies to any provision that stays, suspends, or postpones an obligation for a service-member to the non-service-member who is jointly liable. (50 U.S.C. app. § 513).

d) Loss of Protection. It is possible to lose the SSCRA's protection. Some things that may do so are misconduct (desertion) and waiver (in writing). See The Soldier and Sailors' Civil Relief Act Guide, JA 260 Chapter 2 for more details if this is an issue.

e) Jurisdictional Application (50 U.S.C. app. § 512). The SSCRA applies in all federal, state, and territorial courts [generally interpreted to mean "civil" courts. See § 510: "...provision is made to suspend enforcement of civil liabilities...of persons in the military...in order to enable such persons to devote their entire energy to the defense needs of the Nation...."]. The SSCRA does NOT apply in foreign courts or in criminal courts.

#### **4. REDUCED INTEREST RATE (50 U.S.C. APP. § 526)**

a) General. This section of the SSCRA prohibits creditors from charging interest in excess of 6% annually on all indebtedness incurred prior to active duty. The creditor can avoid this result by showing that the service member's ability to pay is not "materially affected" by reason of military service. This cap is in effect for the period of military service. It makes no difference whether someone volunteers or is involuntarily called to active duty. The protection applies not only to civilians who entered financial agreements before entering active service, but also to those in Reserve Component status, as long as they were not on active duty when the obligation was entered.

b) Criteria for relief. Three conditions must exist for soldiers to get relief under this section:

(1) The obligation was entered into prior to entry into the active service. As a practical matter, this eliminates this benefit for most active duty soldiers.

(2) The soldier is now on active duty.

(3) The soldier's military service materially affects his/her ability to pay.

c) When is the interest rate effective? It is effective at the time the soldier enters active military service; not when the protection is invoked.

d) How is the protection invoked? Simply notify the lender in writing, provide copy of orders and evidence of the difference between civilian and military pay. A sample letter is contained in an appendix to JA 260.

e) The burden is ON THE LENDER to seek relief in court by proving that the military service does not materially effect the soldier's ability to pay.

f) Family members may also receive the 6% protection if they have joint contractual liability with service member.

g) What happens to the difference between the actual interest rate and six percent? The difference is to be forgiven, not accrued. Finance companies try all sorts of permutations to try to get additional money. Creditors cannot simply apply more of the payment toward principal, while keeping monthly payments the same. The object is to reduce the payment while the ability to pay is materially affected by the active service. Nor can they make a "balloon" payment to collect all of the difference once the soldier leaves active duty. Watch the companies closely to protect your client's interests. A recent decision may also allow service members a means to privately sue creditors and lenders that wrongfully refuse to lower the interest rate to 6%. *Moll v. Ford Consumer Finance Company, Inc.*, \_\_\_ F. Supp. \_\_\_, 1998 U.S. Dist. LEXIS 3638 (N.D. IL 1998)

h) Exception. The six- percent cap does not apply to Federally Guaranteed Student Loans. Title 20 U.S.C. § 1078(d) states that no provision of any law that limits the interest rate on a loan will apply to the Guaranteed Student Loan (GSL) program [now called FFELPs]. DOE's position is that this renders ineffective the § 526 interest rate cap if the loan in question is a FFLEP. Other SSCRA provisions, including stays of proceedings and reopening default judgments, remain available to GSL debtors. Additionally, you may be able to get a deferment. However, the Higher Education Amendments of 1992, Pub. L. 102-325, significantly changed deferments available to borrowers under FFELP. Under 20 U.S.C. § 1078(b)(1)(M), as revised, there is no longer an automatic deferment for military personnel. Borrowers receiving loans on or after 1 July 1993 are entitled only to deferments on limited grounds (military: most likely ground to use is economic hardship). DOE has developed regulations to implement this provision at 34 C.F.R. §§ 682.210 and 682.211 (1997). Reservists called to active duty for Operation Desert Storm/ Desert Shield received extended deferment payments. Look for specific conflict-based loan relief by congressional legislation.

i) Negotiation remains the key to helping financially burdened soldiers.

## 5. STAYS

a) Purpose. To permit the delay of civil court proceedings where military service prevents a plaintiff or defendant in military service from asserting or protecting a legal right. **Note that this provision does not protect civilian dependents.** The protection allows for a stay at any stage of any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant.

b) Whose service can trigger the protection? Both "plaintiffs and defendants" can request stays in civil proceedings "in any court" so long as they are military members. However, if the attorney or a witness for the party is called to active service, no stay is granted. The Act protects only the parties to the litigation.

c) Who is a "Defendant." This term has been viewed broadly by the courts. Thus a service member who was a debtor received a delay in a debtor/creditor meeting requiring his presence. Similarly, a debtor service member who was in bankruptcy proceedings was also granted a stay.

d) What types of proceedings are covered? The Act generally applies to civil court proceedings, NOT administrative proceedings (including administrative proceedings to expedite the handling of child support and paternity support claims.) The only section of the SSCRA that explicitly applies to administrative proceedings is § 525, which addresses the tolling of statutes of limitation.

(1) The Welfare Reform Act of 1996 directed the military services to promulgate regulations to facilitate the granting of leave for service members to appear in court paternity and child support hearings. The DOD, in response has directed that leave shall be granted to determine the paternity or child support arrangements unless:

(a) *member is serving in or with a unit deployed in a contingency operation or*

(b) *exigencies of military service require a denial of such request.*

DOD Directive 1327.5, Leave and Liberty (104, 10 Sep. 1997)

e) When must the request be made? A request for a stay may be made at any stage of the court action or proceeding as long as the **request is made during service or within 60 days thereafter.**

f) Length of Stay. Maximum duration of stay is the period of service plus 3 months after discharge. Following this period, defendant must appear in court (50 U.S.C. App. § 524).

g) Practical Matters in Requesting a Stay.

(1) It is important to be reasonable in requesting the stay. It is unreasonable to ask for the entire period of service unless it is actually impossible for the service member to attend. Ask for the minimum time possible and justify all of the time you ask for. It cannot be used to protect a service member from lack of diligence.

(2) The SOLDIER generally has the burden of showing “material effect.” Proving that the soldier's military duty materially affected the soldier's ability to be present in court can be the most difficult part of the proceeding.

(a) *The burden of proof.* The Supreme Court has indicated that the burden of proof in these cases may shift, depending on the facts. Boone v. Lightner, 319 U.S. 561, 571 (1943). As a practical matter, the service member should assume he or she has the burden of proving that military service has materially affected the ability to appear in court.

(b) *Possible factors impacting the finding of material effect.*

(i) UNAVAILABILITY. Is the soldier overseas? Can the soldier take leave to attend the proceedings? Support this with command affidavits.

(ii) DILIGENCE. Did the soldier request leave and it was denied? Has the soldier made good faith efforts to attend?

(iii) CAN THE CASE PROCEED IN THE SOLDIER'S ABSENCE? It may be possible for the soldier to protect his legal interests through a deposition. It may also be possible that his presence is not required at all. If the court believes the case can continue without the soldier, they will find no material effect.

(iv) PUBLIC POLICY. The court may find that public policy dictates that the case proceed without the soldier. For example, if the proceeding is about the abatement of a public nuisance, it may proceed in the soldier's absence.

(3) If the court finds that there has been material effect, the court **MUST** order a stay.

h) Approaching the problem of requesting a stay.

Stays must be requested very carefully. If the request is considered an “appearance” by the court, the client could lose other important protections of the SSCRA. Most significantly, they could lose their ability to reopen default judgments obtained against them during their service. Consequently, you should consider the following issues in advising the client.

- (1) Review the status of the client's civil action and identify the risks of doing nothing.
  - (a) *If you fail to enter an appearance now, will you be able to reopen the case later? Do you have both material effect and a meritorious/legal defense? See JA 260 regarding reopening default judgments.*
  - (b) *If you fail to appear now, will adverse action (**such as garnishment or involuntary allotment**) be taken anyway?*
- (2) If a stay of proceedings is most likely to afford relief, how should you seek one?
  - (a) *Request a stay of reasonable duration.*
  - (b) *Have someone other than the service member request the stay (i.e. commanding officer) or request the stay through the opposing counsel (who will then be obligated to inform the court of the service member's status). **IMPORTANT:** Letters directly from legal assistance attorneys to courts HAVE been considered to be appearances. The commander is the safest route. A sample letter from the commander is contained in an appendix \_\_\_\_\_. A sample letter to opposing counsel is also contained in the appendix. See also JA 260.*
  - (c) *Assume that the burden is on the service member to prove material effect, even though this is not clearly established by the law.*
  - (d) *Remember, in this case formal pleadings prepared by the legal assistance officer are NOT helpful.*

## 6. SUSPENSION OF STATUTES OF LIMITATION (50 U.S.C. APP. § 525)

*The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service...whether such cause of action...shall have accrued prior to or during the*

*period of such service..., nor shall any part of such period be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.*

a) **Applicability.** This provision tolls the running of statutes of limitation during the service member's period of military service with respect to any administrative or civil proceeding involving a service member as either plaintiff or defendant. Note that this includes his/her heirs, executors, administrators, or assigns. The only exception is that it DOES NOT toll time limits under internal revenue laws (§ 527). This section is self-executing.

b) **Length of Tolling.** The Supreme Court has settled the issue of whether a "career" soldier can toll the statute of limitations for his entire period of service. Some lower courts had interpreted this provision various ways with some requiring a showing of material effect for career personnel to invoke protection. The Supreme Court determined that there was no requirement to show material effect. Conroy v. Aniskoff, 113 S CT 1562, (S.Ct. 1993), reversing Conroy v. Danforth, 599 A.2d 426 (Me. 1992).

c) **Does the tolling apply to ALL actions?** Despite the literal language of the Act and even after the Conroy case, there appears to be a difference among jurisdictions whether § 525 tolls statutes of limitations for all or just some administrative and civil proceedings involving service members, particularly when another statute containing time limitations also applies in the case. For example, the tolling provisions of the Labor Management Relations Act, which required a showing of material effect, applied in a collective bargaining case, instead of the general tolling provision of the SSCRA. But, other courts have held the section does apply to actions such as Boards of Military Corrections actions. See JA 260 for additional details.

d) **Dangers to Anticipate.** In addition to statutes of limitation, the equitable principle of "**laches**" may bar suit after a significant period of time. "Laches" is the theory that if a party waits too long to bring an action, the party may be barred from bringing the action even though the statute of limitations has not yet run. Estoppel by laches requires proof of an inexcusable delay, combined with prejudice to the opposing party.

## 7. LEASES

a) **Protected People.** For purposes of Article III, protected people include not only those on active duty (50 U.S.C. app. § 511) but **also dependents, in their own right** (50 U.S.C. app. § 536).

- b) Protection from Eviction from Leased Housing. (50 U.S.C. app. § 530).
- (1) Purpose. To prevent eviction of a service member or dependents for nonpayment of rent without a court order.
  - (2) Criteria for relief.
    - (a) *The premises were occupied as a dwelling by the dependents of a service member.*
    - (b) *The rent does not exceed \$1200 per month.*
      - (i) \$1200 rent ceiling retroactive to evictions commenced after 31 July 1990 (SSCRA Amendments of 1991).
  - (3) Judicial relief available.
    - (a) *Court **shall (upon application of service member)** and may on its own motion, grant stay of eviction proceedings for up to 3 months, or "such other order as may be just" unless the court determines that the tenant's ability to pay the rent is not materially affected by such military service.*
    - (b) *Note: material effect is not a prerequisite for protection. The owner of the premises must go to court to initiate eviction; the court may allow eviction unless there is material effect shown.*
  - (4) Criminal sanctions including 1-year confinement and fine provided in title 18, U.S.C. for taking part in an eviction in violation of this section.
  - (5) Secretary of Defense empowered to order allotment of pay from service member in reasonable proportion to discharge rent of premises occupied by dependents.
- c) Termination of Pre-service Leases of Premises. (50 U.S.C. app. § 534).
- (1) Purpose. To permit lawful termination of a pre-service lease of premises by a service member entering active duty [or by his or her dependent in their own right (see § 536)].
  - (2) Criteria for relief. The service member **need NOT show material effect**. The service member need only show:
    - (a) *The lease was entered into prior to entry into military service,*

- (b) *The lease was executed **by or on behalf** of the service member,*
- (c) *The leased premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the service member or the service member and his or her dependents, and*
- (d) *The service member is currently in military service.*
- (3) Specific Issues.
  - (a) *Leases entered into AFTER entering active service may not be terminated unless there is a governing state statute containing a "military clause" (or negotiate with the landlord).*
  - (4) Procedure to terminate.
    - (a) *Provide to the landlord written notice.*
    - (b) *Delivered to the landlord after the service member's entry on active duty or receipt of induction orders.*
    - (c) *Requesting immediate termination of the lease.*
  - (5) Termination under the SSCRA.
    - (a) *Termination of lease with monthly rental payments effective 30 days after first date on which next rental payment due after date notice mailed or delivered.*
    - (b) *Other leases, termination effective last day of month following month notice mailed or delivered.*
- (6) Judicial Relief: Prior to termination period provided in this section, **lessor** may apply to court for equitable relief. In cases of commercial or professional space leases, be aware of "equitable offset" rules by landlords. Legal Assistance Note, "Pre-service Lease Terminations May Be Subject to landlord "Equitable Offsets," The Army Lawyer, April 1997 at 153.
- (7) Any person who seizes or attempts to seize the protected person's personal effects or property after lawful termination or interferes with its

removal for purposes of subjecting it to a claim for rent accruing after termination, shall be fined as provided under title 18, U.S.C., and/or imprisoned up to 1 year.

## 8. **INSTALLMENT CONTRACTS** (50 U.S.C. APP. § 531)

a) Purpose. Prohibits creditors, without "action in a court," from terminating certain installment contracts and repossessing the property for nonpayment or breach occurring prior to or during military service. Installment contracts include automobile lease contracts with an "option to purchase" clause.

b) Criteria for relief.

(1) Contract for purchase of real or personal property **or** lease or bailment "with a view to purchase" of real or personal property,

(2) Entered into **before** entry into military service, AND

(3) Deposit or installment payment paid before entry into military service.

c) If the criteria are met, no person may rescind or terminate the contract or repossess the property for nonpayment or any other breach occurring prior to and during military service - except by court action. This provision generally does not allow the military member to cancel the agreement.

d) Judicial relief.

(1) Court may condition termination and resuming possession of property on repayment of prior installments or deposits, or

(2) Court **shall (on application by service member)** and may (on its own motion) order a stay **unless** ability of service member to comply with terms of contract is not materially affected by service, or

(3) Make other equitable disposition to conserve interests of all parties.

**Note:** The creditor must go to court to terminate or repossess regardless of "material effect."

## 9. **MORTGAGES, TRUST DEEDS, AND OTHER SECURED OBLIGATIONS** (50 U.S.C. APP. § 532)

a) In court actions to enforce mortgage obligations, court **shall** (upon application by service member) and may (upon its own motion) **grant relief to**

**service member [or dependent]** pursuant to § 536] **unless** military service does not materially effect ability to comply with obligation.

b) Criteria for relief.

(1) Obligation is secured by a mortgage, trust deed, or other security in the nature of a mortgage upon real **or** personal property,

(2) Obligation entered **before** entry into military service,

(3) Property owned by service member **[or dependent]** before entry into military service

(4) Property is still owned by service member or dependent at time relief is sought, and

(5) Military service **materially affects** ability to comply with terms of obligation, such breach occurring **prior to or during** period of such military service. (Generally, a showing that in-service income is insufficient to reasonable maintain the payment the payment schedule.)

c) Judicial relief. Court **shall (upon application by service member)** and may upon its own motion,

(1) Stay proceedings, and/or

(2) Where foreclosure has been ordered -- a reopening or setting aside of the judgement. If sale has occurred – a redemption period.

(3) Grant other equitable relief to conserve interests of all parties (i.e., reduce or suspend installment payments)

(4) **unless** there is no "material effect."

d) No sale, foreclosure, or seizure of property shall be valid if made during the period of military service or within 3 months thereafter, except pursuant to an agreement (§ 517), **unless** upon an order previously granted by the court and a return thereto made and approved by the court.

## 10. **REINSTATEMENT OF NON-EMPLOYEE HEALTH INSURANCE COVERAGE** (50 USC § 593)

- a) A service member may be entitled to reinstatement of any health insurance which
  - (1) Was in effect the day the service commenced, and
  - (2) Was terminated effective on a date during the period of service.
- b) An exclusion or waiting period may not be imposed if:
  - (1) The condition arose before or during training or service,
  - (2) An exclusion or waiting period would not normally be imposed
  - (3) The condition of such person has not been determined by the VA to be a disability incurred or aggravated in the line of duty.

**11. PROTECTION FROM ADVERSE CREDITOR ACTIONS/ ADVERSE CREDIT REPORTS FOR ASSERTING SSCRA RIGHTS (50 USC § 518)**

When a service member exercises his/her rights under the SSCRA, that alone **cannot** justify the creditor doing the following:

- a) Concluding that the service member is unable to pay the obligation.
- b) Denying or revoking credit.
- c) Changing the terms of an existing credit arrangement other than the 6%.
- d) Refusing to grant credit to the same person under substantially the same terms or amount.
- e) Making an adverse report to a credit bureau concerning the service members ability to pay
- f) Refusing to insure a service member by an insurer.

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## ***Chapter 11. Estate Planning***

### **1. REFERENCE:**

- a) AR 27-3 Legal Assistance
- b) JA 262, Legal Assistance Will Guide

### **2. ARMY-WIDE GUIDANCE IAW AR 27-3.**

- a) Legal assistance will be provided on wills, testamentary trusts for the benefit of minors,
- b) guardianships, and the designation of beneficiaries under life insurance policies (including the Servicemen's Group Life Insurance (SGLI). Legal assistance will also be provided on preparing AMDs, and anatomical gift designations. Legal assistance on other aspects of estate planning may be based on the availability of expertise and resources.
- c) Every service member for whom a will is prepared will be provided legal advice on designating beneficiaries under SGLI (or other insurance policies as applicable) that will best carry out the service member's intent in light of his or her personal situation. As a matter of Army policy, attorney's will not recommend so called "by-law" or "by-will" (or "to –my-estate") SGLI beneficiary designations to any service member, regardless of military service affiliation where the insured is a soldier, "by-law" and "by-will" designations are prohibited. Non-Army clients who indicate that they desire that their SGLI benefits be distributed "by law" should be advised of the effect of such a distribution. A "by will" designation generally should be discouraged. The service member will be assisted in executing a SGLV-8286 (Servicemen's Group Life Insurance Election and Certificate). This form may be obtained through normal channels. Any designation or change of beneficiary by a soldier on a SGLV-8286 is not effective unless received by the custodian of the soldier's DA Form 2-1 (Military Personnel Records Jacket (MPRJ), U.S. Army) before the soldier's death. All clients should be advised to file newly executed forms in their military records. They should also be provided the telephone and room and building numbers (or address) of the custodian for those records.
- d) Attorneys who provide legal assistance should maintain sufficient copies of SGLV 8286 for use by their clients.
- e) Those providing legal assistance to soldiers during EDREs, REMOBES, MODREs, SRPs, and NEOs should request to be stationed before the personnel and finance sections so that soldiers can receive legal advice before they

designate SGLI and final pay beneficiaries. This advice should be made available to soldiers regardless of whether or not wills are prepared for them.

f) No will may be executed until an attorney interviews the client and reviews the will. An attorney shall be present to supervise the execution of the will and to review the will after the client and witnesses have signed it. The attorney who drafts the will shall insert his or her name on the will as its drafter, together with the designation for a state or other legal bar of which he or she is a member, using the following language: "This document was prepared under the authority of 10 U.S.C. § 1044 and implementing military regulations or instructions by (name of attorney,) who is licensed to practice law in name of one state or other legal bar. "

g) The same legal and professional standards that apply to preparing and executing wills within an Army legal office apply to those that are prepared and executed during an EDRE, REMOBE, MODRE, SRPs, or NEO. Where those standards cannot be met during the exercise, follow-up legal assistance appointments should be made to prepare or execute wills for soldiers who need them. In appropriate cases, soldiers may be encouraged to have wills (or new wills) drafted and executed following their mobilization or deployment.

h) The execution of preprinted fill-in-the-blank wills is limited to clients domiciled in states that specifically authorize the execution of such wills. If authorized by statute, a properly drafted and executed fill-in-the-blank will complies with Judge Advocate General Corps (JAGC) standards. See Chapter 4 of JA 262 concerning state statutes.

i) After a casualty occurs, very effort will be made to assist PNOK in probating wills and settling estates (particularly uncontested or exempt-from-administration proceedings) of service members who die while in a military duty status. When available resources, personnel, or expertise are insufficient to provide the legal assistance required, clients should be referred to other attorneys who provide legal assistance or to civilian lawyers. Reference may be made to Chapter 13 of this handbook and cited references. Attorneys assisting a PNOK with a problem related to a soldier's designation of SGLI beneficiaries should review the provisions of Chapter 38, Code of Federal Regulations, Part 9 (Servicemen's Group Life Insurance and Veterans' Group Life Insurance) for restrictions on beneficiary entitlements.

### **3. WILL PREPARATION**

Will preparation is one of the most basic and frequent services provided by the LAO. As such it is advisable to establish set procedures for the preparation of these documents. These procedures must be carefully thought out to best serve the sometimes competing interests of the individual client making the will, and unit commanders seeking to maintain readiness. The procedures must allow the client

adequate time to develop his/her testamentary intent, and give the LAO sufficient time to produce a quality product (use of the LAAWS will program reduces this particular problem significantly). The procedures must also be flexible enough to allow soldiers the opportunity to visit the LAO without placing too high a burden on unit's training priorities. Will procedures that schedule all will-related activities on one day each week are not recommended for this reason. Finally, when making so serious a document as a will, clients should be treated with dignity. Will procedures using a walk-in and wait in line format should also be avoided. (**Appendix A** of this guide contains a sample will preparation SOP, **Appendix G** contains will-related checksheets and a will worksheet)

Additionally, care should be taken to recommend to some service members that a civilian attorney specializing in estate planning should be consulted concerning their estate. If the service member's gross estate (including insurance proceeds) exceeds \$625,000 (for 1998) then private counsel should be recommended for tax purposes. The attorney should also discuss issues such as guardianship of minor children, testamentary trusts, and the need for periodic review of the will and estate plan.

#### **4. WILL PRIORITIZATION POLICY**

The following is the Army doctrine on establishing wills-screening criteria by grouping soldiers into two categories: (1) Those who should be encouraged to have Wills; and (2) Those who should be provided Wills only upon request when resources are available or become available following mobilization or deployment.

##### **a) PRIORITY ONE - ENCOURAGE WILLS**

- (1) Single Parent with a minor child, Either Custodial Or Non-Custodial
- (2) Primary Beneficiary Is A Minor
- (3) Value Of Estate, Excluding Insurance And Jointly Held Property, Exceeds \$10,000; Or
- (4) Client Desires Property To Be Distributed In A Manner Different From What Would Occur Under The Applicable Laws Of Intestate Succession

##### **b) PRIORITY TWO - PROVIDE WILLS IF REQUESTED**

- (1) Client Has No Children
- (2) Primary Beneficiary Is Not A Minor
- (3) Value Of Estate, Excluding Insurance And Jointly Held Property, Does Not Exceed \$10,000; Or

(4) Client Does Not Desire Property To Be Distributed In A Manner Different From What Would Occur Under The Applicable Laws Of Intestate Succession



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## **Chapter 12. Powers of Attorney, Oaths & Notarizations**

### **1. REFERENCES**

- a) 10 U.S.C. §§ 936 and 1044.
- b) AR 27-55, Notarial Services (10 April 1997)

### **2. AUTHORITY OF U.S. MILITARY PERSONNEL TO ADMINISTER OATHS AND PERFORM NOTARIAL ACTS**

- a) 10 U.S.C. § 1044a grants named individuals general powers of a notary public and of a consul of the United States.
- b) 10 U.S.C. § 1044b enhances the acceptability of general and special powers of attorney prepared by legal assistance attorneys on behalf of their clients. (see below)
- c) 10 U.S.C. § 936 grants named individuals power to administer oaths necessary for military administration (to include military justice) and necessary in the performance of their duties.
- d) 10 U.S.C. § 1044c is intended to enhance the acceptability of advanced medical directives prepared by legal assistance attorneys on behalf of their clients.

### **3. GENERAL OVERVIEW**

- a) Authority to administer oaths and perform notarial acts may be based on state or federal law.
- b) The authority granted by federal statutes (10 U.S.C. § 1044a and § 936) to administer oaths and perform notarial acts is
  - (1) Separate and apart from, and additional to,
  - (2) Any authority provided by state law.

c) Oaths administered pursuant to 10 U.S.C. § 936 are legally effective for the purposes for which the oaths are administered (e.g., military administration).

d) Notarial acts performed under 10 U.S.C. § 1044a are legally effective as notarial acts for all purposes in all states (pursuant to the Supremacy Clause).

e) **PRESCRIBED PREAMBLE FOR MILITARY POWERS OF ATTORNEY**

This preamble should be included at beginning of each general and special power of attorney in capital letters)

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044**b** AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

f) **Advanced Medical Directives.** 10 U.S.C. § 1044c, is identical to the military power of attorney provision except it deals with advanced medical directives.

(1) **STATEMENT TO BE INCLUDED:** 10 U.S.C. § 1044c requires similar language on all advanced medical directives as is on military power of attorneys. Substitute the words "Title 10, United States Code, Section 1044c" for "Title 10, United States Code, Section 1044b" and the words "advanced medical directive" for "power of attorney" in the above language to make this protection effective. [ The LAAWS program includes this language in the Clipper 1.7 version of the power of attorney and advanced medical directive programs.]

Sample Power of Attorney clauses for both general and special POAs can be found in **Appendix F**.

#### **4. OATHS**

Oaths and affirmations are pledges whereby the individual making the oath swears or affirms the truth of statements made by them. Oaths and affirmations are used when taking affidavits or sworn instruments.

a) Oaths for Military Administration:

Under 10 U.S.C. § 936(a), the following U.S. Armed Forces members on active duty, reservists serving on active or inactive duty for training, and Army National Guard members when serving on active duty under Title 10 U.S.C., may administer oaths for purposes of military administration, including military justice under the UCMJ:

- (1) All JAs and legal officers of the Army.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.
- (5) Persons empowered to authorize searches pursuant to MRE 315(d), MCM, 1984, for any purposes relating to search authorizations.
- (6) Other persons designated by Armed Forces regulations or by statute.

b) Other duty-related oaths:

Under 10 U.S.C. § 936(b), the following U.S. Armed Forces members on active duty, reservists serving on active or inactive duty for training, Army National guard members when serving on active duty under Title 10 U.S.C., may administer an oath to any person when it is necessary in the performance of their duties:

- (1) President, military judge, trial counsel and assistant trial counsel, for all general and special courts-martial.
- (2) President and counsel for any court of inquiry.
- (3) All officer designated to take a deposition.
- (4) All personnel designated to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

c) Oaths administered under other statutes:

Any U.S. Armed Forces commissioned officer of any Regular or Reserve component, whether or not on active duty, may administer:

- (1) Oath of enlistment (10 U.S.C. § 502).
- (2) Oath required for the enlistment or appointment of any person in the Armed Forces (10 U.S.C. § 1031).
- (3) Any other oath required by law in connection with enlistment or appointment of any person in the Armed Forces (10 U.S.C. § 1031).

## 2. NOTARIAL ACTS

a) Persons with notarial powers:

Under the authority of 10 U.S.C. § 1044a, the following persons have the general powers of notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the individuals listed in paragraph B:

- (1) All DA Civilian attorneys.
  - (2) All judge advocates;
  - (3) All adjutants, assistant adjutants, and personnel adjutants;
  - (4) All other persons who are designated by regulations of armed forces or by statute to have those powers.
- (a) *The following also qualify as military notaries with the following restrictions pursuant to AR 27-55:*
- (i) Active duty and reserve component NCOs (including corporals) and legal specialists (authorized by their supervising SJA pursuant to para. 1-6) who -
    - (a) *Possess a primary MOS of 71D; **AND***
    - (b) *Serve under the immediate supervision of a judge advocate or DA civilian attorney employee;*
  - (ii) NCOs E6 and higher with primary MOS of 71D assigned as legal NCO to a brigade or higher unit even if not under the immediate supervision of an attorney

- (iii) Active duty and reserve component E3 and E4 legal specialists with a primary MOS of 71D may serve as military or civilian notaries when the SJA certifies in writing to the Legal Assistance Policy division that:
  - (a) *the soldier possesses appropriate judgment and maturity;*
  - (b) *the soldier is serving under the immediate supervision of a judge advocate or DA civilian attorney; AND*
  - (c) *the soldier is trained pursuant to AR 27-55.*

NOTE: ENLISTED RESERVE COMPONENT NOTARIES CANNOT PERFORM NOTARY SERVICES IN A NON-DUTY STATUS WITHOUT THE AUTHORIZATION OF THE RESERVE COMPONENT SJA.

- b) Persons provided with notarial services:  
Individuals listed above may perform notarial acts for the following:

- (1) Members of any armed forces;
- (2) Other persons eligible for legal assistance under the provisions of section 1044 of this title, AR 27-3, or regulations of the Department of Defense;
- (3) Persons serving with, employed by, or accompanying the armed forces outside the U.S. and outside the commonwealth of Puerto Rico, Guam, and the Virgin Islands;
- (4) Other persons subject to the UCMJ outside the United States.

### **3. NOTARIAL CERTIFICATIONS AND CONTENTS OF OATH**

- a) 10 U.S.C. § 936: The signature of the officer taking acknowledgments or sworn instruments, together with the title of his or her office, is prima facie evidence of the officer's authority, and an impressed or raised seal is not required.
- b) 10 U.S.C. § 1044a: The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and should be accompanied by a citation that the person is authorized to perform a notarial act.



## ***Chapter 13. Casualty Assistance and Survivor Assistance***

### **1. REFERENCES**

- a. AR 600-8-1, Army Casualty Operations/ Assistance/ Insurance (24 Oct 1994).
- b. DA Pam 608-4, A Guide for the Survivors of Deceased Army Members (23 Feb 1989).
- c. JA 422, Operational Law Handbook

### **2. CASUALTY ASSISTANCE**

In addition to legal assistance problems arising at the deployment location, casualties may occur, both on deployment and at home station. If so, the SJA elements, both on the exercise and with the rear detachment, must assist the next of kin of the soldier, the command, and the Survivor Assistance Officer (SAO). Pre-deployment preparation is essential to this process. Additionally, these questions may arise during preventive law briefing and should be addressed.

Among the many issues that attend the death of a soldier are:

- a) reporting casualties,
- b) notifying the next of kin,
- c) appointing a SAO and providing legal advice to that officer,
- d) disposition of the remains (including possible autopsy),
- e) advising the next of kin concerning their legal rights and benefits,
- f) appointing a summary court officer, and
- g) conducting a line of duty investigation.

JA's will also become involved in helping the next of kin of soldiers missing in action or taken prisoner.

Prior to deployment, soldiers should be encouraged to review closely their DD Form 93 (Record of Emergency Data) which designates beneficiaries of pay and allowances and who will be notified in case of an emergency.

### 3. SURVIVOR BENEFITS AVAILABLE

The JA's should be aware of the benefits available to survivors and the next of kin of missing in action personnel or prisoners of war. Each survivor benefit has its own eligibility requirements. The Legal Assistance Attorney must be aware of these programs and advise the SAO of their applicability. The following is a list of potential benefits available:

- a) **Dependency and Indemnity Compensation (DIC)** – payment made to the surviving spouse and dependent children on a monthly basis by the VA. Soldier serving on active duty (or Reserve in AD, ADT, or IDT status) are entitled if death is “service connected.”

#### **Considerations concerning DIC:**

(1) The death must be service connected. This means that the injury or disease causing death occurred while on active duty was not due to the service member's willful misconduct. If the soldier was on active duty, a presumption arises that the death was service connected. The VA determines whether the death was service connected.

(a) The VA defines willful misconduct as conduct involving deliberate or intentional wrongdoing with knowledge of or wanton disregard of consequences, that proximately causes the injury, disease, or death.

(b) It is important that the investigating officer knows the standard for willful misconduct and applies the facts correctly. A determination of misconduct will severely limit the survivor benefits. Autopsies, witness interviews and expert testimony may be required to make an adequate determination.

(c) If the death is determined to be the result of willful misconduct then the DIC benefit is lost. This determination is similar to the one made in a Line of Duty investigation and in fact, the VA will likely use the LD report to determine NOK benefits. If a determination of willful misconduct is made then appeal should be taken to the Court of Veterans Appeals.

(2) The benefit is also available to retirees in two circumstances:

(a) if the death is related to a service connected cause (not due to willful misconduct) or

(b) even if the death is not due to service connected causes, the decedent would be entitled if he or she held a total service- connected disability rating.

(3) Beneficiaries - generally the surviving spouse and any children are beneficiaries. However, the spouse must have continuously cohabited with the deceased member since the date of marriage minus separations not due to the fault of surviving spouse.

(a) The children generally receive benefits up until the age 18 and may receive benefits up to the age of 23 if proof is provided that the child is attending a qualifying school (one approved by the VA).

(b) Recipients must apply within 12 months of death to receive full payment from that time. If after 12 months, payments begin retroactive to the date of application. Timeliness should be stressed in this area.

- b) **Survivor Benefit Plan (SBP)** – insurance plan in which a soldier eligible to retire or retired participates. Payments are received monthly. The soldier may also elect to add supplemental insurance under this plan.

#### **Considerations for SBP:**

(1) Enrollment in the plan with maximum coverage is automatic when eligible to retire, unless the service member chooses less coverage or declines to participate before becoming entitled to retirement pay. The spouse must concur if the service member declines or chooses less than maximum coverage.

(2) Beneficiaries - the service member can elect to cover the spouse, the children or both the spouse and the children. If the spouse is covered that person must have been the spouse of the retiree at the time of retirement or married to the retiree for at least 1-year before the death or a child was born to them.

(a) Spouse must also be aware that remarriage before the age of 55 will terminate the payments unless the remarriage ends due to death, annulment or divorce; then the payments will resume. If the remarriage occurs after age 55, the payments will continue.

(3) Payments - There are a variety of factors that effect the amount and duration of the payments:

(a) If the death is service-connected, any SBP payment will be reduced by the amount received under DIC. If the DIC exceeds SBP payment, the SBP is eliminated. In these cases, costs (premium payments) may be refunded to the service member.

(b) This is an annuity where the base amount can be anything from \$300 to the full amount of the soldier's retirement pay. The soldier has a premium deducted from each retirement check. If the retiree dies before the spouse, the spouse will begin receiving 55% of the base amount chosen. This payment will be reduced to 35% when the widow becomes 62. The spouse must be aware of the reduction and plan accordingly. Because of the drop in payments, a retiree may elect supplemental coverage by paying an increased premium.

(b) The rate of the premium depends on who the beneficiary is - widow, widow and children, children only, or natural person with an insurable interest.

(c) A determination of "presumed dead" for SBP purposes may be made when a retiree who is participating in the SBP has been missing 30 days or more. The Legal Assistance office, DFAS will make the determination, when the circumstances under which the retiree is missing would lead a reasonably prudent person to conclude that the member is dead. Upon this determination, the surviving eligible beneficiary will be paid an annuity based on coverage elected by the retiree.

(d) Retired soldiers must elect type and amount of coverage within 30 days of retirement. This election may be withdrawn between the 2d and 3d anniversary from the date of enrollment with the concurrence of the spouse.

- c) **Servicemen's Group Life Insurance (SGLI)** – group term life insurance for members of the armed forces purchased by the government from private insurers, and partially subsidized by the government. Payments are made to the designated beneficiary in either a lump sum or 36 monthly installments based on the soldier's election.

### **Considerations:**

(1) SGLI covers service members while on active duty and for 120 days following separation. No premiums are required during this additional 120-day period.

- (2) SGLI benefits may also be lost for the following reasons:
- (a) The service member has been AWOL for 31 days.
  - (b) There has been 31 days of civil confinement.

(c) Service member has been confined in court-martial status over 31 days.

(d) Other factors which include refusal to serve due to conscientious objection or following a conviction for of certain serious crimes (i.e. treason).

(3) The cause of death is irrelevant under SGLI (unless death penalty case). There is no service connection requirement. Additionally, the service member may designate anyone as a beneficiary, except the "by-law" designation discussed in Chapter 11. The soldier and family should also be aware that any event occurring after the soldier completes the election form, such as divorce or annulment, will not change the beneficiary designation, nor will a Will or POA. The only way to change the designation is to change affirmatively the election form. This situation may arise when the NOK disputes the designation of an ex-spouse listed on the beneficiary form.

d) **Veterans Group Life Insurance (VGLI)** – five-year renewable group term life insurance available after the soldier leaves active duty.

**Considerations:**

(1) The service member must elect for this coverage within 120 days of leaving the service.

(2) Any soldier who was totally disabled at the time of separation or retirement may be eligible for a free 1-year extension of their SGLI coverage as long as the total disability extends the entire year.

e) **Dependents Educational Assistance (DEA)** – gives assistance to dependents for their education under the same circumstances that make them eligible to receive DIC.

**Considerations:**

(1) Eligible dependents include the spouse and the children of deceased members and the dependents of a totally disabled, but living veteran may qualify.

(a) Spouse's period of eligibility extends to 10 years from the date of the veteran's death; extension is possible if this time period expires; remarriage permanently stops DEA payments.

(b) A child's eligibility ends when the child turns 26 (unless certain conditions are met). Children must choose between DEA and DIC. DIC may not be received once educational benefits begin. Election of DEA is irrevocable.

- f) **Social Security Benefits** – If the soldier was fully insured prior to death, the surviving next of kin might be entitled to both a lump sum death benefit and monthly survivor benefit payments.

**Considerations:**

(1) Monthly payments may be made to children under the age of 18 and widowers with children under the age of 16 or children who are fully disabled. These payments will be made if the soldier is deceased or fully insured. Payments may also be made to a widower over the age of 60 if the service member was fully insured.

(2) If the death was service connected, the VA will make up any shortfall that exists in the social security payments.

(3) Social security benefits may be reduced if surviving spouse has earned income. Generally, VA benefits are not paid retroactively; therefore, the NOK should be advised to apply for VA benefits as soon as possible.

- g) **Death Gratuity** – If a soldier dies while on active duty or with 120 days of release from active duty (and the death resulted from a disease or injury incurred while on active duty) then survivor will be entitled to a lump sum payment of \$6000.

**Considerations:**

(1) Lump sum payment does not depend on the rank or years of service of the deceased.

(2) An important determination in receiving the death gratuity when the soldier has been released from active duty is whether the death resulted from a disease or injury incurred while on active duty. The VA makes this determination. The autopsy or medical records should reflect the cause of death and the medical history. The soldier must also have received an under honorable conditions discharge from active duty.

- h) **Unpaid Pay and Allowances** – the next of kin is entitled to any remaining pay and allowances due the soldier at death including accrued leave time.
- i) **Burial Benefits** – assistance in making the necessary burial arrangements and in some cases a primary burial allowance and internment allowance will be authorized.

**Considerations:**

- (1) Active duty personnel and veterans who served a minimum period of time on active duty (2 years) and who were discharged with an other than dishonorable characterization are eligible to receive some assistance.
  - (2) The next of kin for active duty soldiers receive:
    - (a) a primary burial allowance to cover the expenses of recovery, preparation, casketing, and transportation of the body. The NOK may request that the Army provide these services in lieu of the allowance.
    - (b) an internment allowance which is designed to include the costs of funeral expenses and purchase of a plot. The amount depends on the circumstances.
    - (c) reimbursement for the NOK's travel to the burial site.
  - (3) Other veteran's NOK receive a burial allowance if the death is service connected and a max of \$450.00 for burial costs if interred at a private cemetery.
- j) **Other Benefits** – the survivor may also be entitled to assistance with relocation, access to medical care, access to PX/Commissary facilities, emergency funds from AER, and state specific benefits.

Each case should be evaluated individually and assistance should be given in filing out forms and ensuring that survivor benefits the next of kin is entitled to are received. The legal assistance attorney should also provide information on tax issues including when forgiveness of taxes would be available and the taxable consequences of each survivor benefit.

#### 4. MEDICAL RETIREMENT VERSUS REMAIN ON ACTIVE DUTY

One of the issues that legal assistance attorneys may have to advise on is whether a service member, who is terminally ill, should be medically retired or should the service member remain on active duty. There are advantages and disadvantages to each choice.

- a) Favoring retirement:
  - (1) First, there is the availability of the survivor benefit plan for those service members who have not yet reached 20 years. This would give the member's family and annuity for a long period of time, both for the spouse and for the children if that option is chosen.

(2) Second, there is the availability of Service Disabled Veteran's Life Insurance which allows the veteran \$20,000 of life insurance to disabled retirees who are otherwise uninsurable.

(3) Third, if the service member is to medically retire, his retirement pay is calculated based on his disability rating. For example, if the service member is given a 75% disability rating then he receives 75% of his base pay as his retirement pay. This base carries over as the base amount for the SBP.

(4) Fourth, the family will likely receive the DIC because the death will be service connected.

(5) Fifth, The SGLI would continue to cover the soldier because the death is likely to occur within the 120-day window of extended coverage. If the death does not occur, the retiree has the option of electing to take VGLI with the payment of the premiums.

b) Factors favoring continued active duty

(1) If the family and the service member anticipate a need for extensive medical care then consideration should be given to access to military treatment facilities or VA hospitals. If the service member is in a civilian hospital, costs not covered by Tricare after retirement may be high and place a strain on the family financially.

(2) The eligibility for the death gratuity payment and the extended coverage of SGLI expire after 120-days of retirement.

(3) Burial expenses may not be fully reimbursed.

Specific procedures must be used to retire someone who is considered an "imminent death" case. See **Appendix J** for processing information.

## **Chapter 14. The Uniformed Services Employment and Reemployment Rights Act (USERRA)**

### **1. References:**

- a) JA 270 – The Uniformed Services Employment and Reemployment Rights Act (USERRA) Guide
- b) USERRA, 38 USC §§ 4301 – 4333
- c) AR 27-3, 10 September 1995

### **2. Purpose:**

The purpose of USERRA is to entitle service members to return to their former civilian positions, with accrued seniority, provided they meet the law's eligibility criteria. This law applies to both voluntary and involuntary service. The law also provides a means for Reserve Component members and prior service members to prevent discrimination based upon prior or current military status as to hiring, reemployment, retention in employment, promotion, or any other benefit of employment.

### **3. Criteria:**

To obtain rights under USERRA, the service member must meet five (5) eligibility criteria:

- (a) Service Member must have held a civilian job
  - (1) The job does not have to be labeled a permanent job but there must have been a "reasonable expectation that such employment would last indefinitely or for a significant period." 38 USC § 4312 (d)(1)(c)
- (b) Service Member must have given notice to the employer that he was leaving his position for a job in the uniformed services
  - (1) Prior notice may be excused as a requirement if such notice is precluded by military necessity or if such notice is "impossible or unreasonable." 38 USC § 4312 (b).
  - (2) Written notice to the employer is recommended.
- (c) The period of service must not exceed five years

- (1) The five-year limit is cumulative with the same employer, although many types of service are exempted under 38 USC § 4312(c).
- (d) Service Member must be released from service under “honorable conditions”
- (e) Service Member must report back to his or her civilian job in a timely manner or have submitted a timely application for reemployment.
  - (1) The deadline for the service member to return to work or to reapply for employment depends on the duration of the service or training.
    - (a) For service of 30 consecutive days the soldier, the service member must report back to work the next regular working day after the service member returns home plus 8 hours of rest.
    - (b) For service between 31-180 consecutive days, the Service member has to report or reapply within 14 days of return.
    - (c) For service greater than 181 days- the service member must report or reapply within 90 days of return.
  - (2) Application does not need to be in writing.

#### **4. Entitlements under USERRA:**

- (a) Prompt reinstatement
- (b) Accrued seniority
- (c) Status – The service member may not be entitled to the exact same job back, but they are entitled to a comparable position.
- (d) Health insurance coverage
- (e) Other non-seniority benefits
- (f) Training, retraining, or other accommodations
- (g) Special protection against discharge, except for cause.

## **5. Non-Discrimination towards Military Members and Veterans**

- (a) Employers may not discriminate against military members or prior service members because of their military status in hiring, reemployment, retention, promotion or any other benefit of employment.
- (b) The standard for finding employer discrimination is whether an employee's military status was a "motivating factor" in the adverse employer action against an employee.
- (c) Willful employer misconduct can result in double damages
- (d) In non-federal agency cases, where there are liquidated damages, a jury trial may be requested.
- (e) Employees may seek reinstatement, back pay, attorney fees, expert witness fees, and court costs.
- (f) Federal employees may receive free representation against their agency for USERRA violations by the Office of Special Counsel (OSC).
- (g) Private employer and state/local government employees receive free representation against their employer/agency from the Department of Justice.

## **6. Legal Assistance Offices:**

The primary responsibility for assisting service members in claiming their USERRA rights is the Veterans' Employment and Training Service (VETS) under the Department of Labor.

- a) Guidance for Legal assistance attorneys.

Where a service member wishes to pursue their USERRA rights, legal assistance attorneys will not take any action, which could be viewed as legal representation of the service member. (i.e. contacting the employer)

- b) Legal Assistance attorneys are limited to the following:
  - (1) Advising service members of their rights and obligations under USERRA
  - (2) Conducting mobilization briefings that discuss USERRA
  - (3) Providing sample letters to assist service members in asserting their rights

- (4) Referring service members to VETS or the National Committee for Employer Support of the Guard and Reserves (NCESGR) at 1-800-336-4590.
- (5) Periodically contacting service members who experienced reemployment problems to determine if those issues have been resolved.

c) Websites are as follows:

- (1) DOL/VETS: <http://www.dol.gov/dol/vets>
- (2) NCESGR: <http://www.ncesgr.osd.mil/>

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**APPENDIX A**  
**SAMPLE STANDARD OPERATING PROCEDURES**

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**A. *Will Preparation SOP***

The following is one standard operating procedure (SOP) for preparation of Wills, Living Wills (Advance Medical Directives) and Durable Powers of Attorney. It has been created using a combination of the procedures used at the Fort Knox and Fort Stewart legal assistance offices. As with any example, it is expected that modifications would be necessary to comply with local conditions.

The preparation of Wills, Living Wills (AMDs) and Durable POAs consists of three (3) phases. Phase I involves scheduling a will appointment receiving and filling out a will worksheet. Phase II involves the client's meeting with a Legal Assistance Attorney (LAA) to discuss the client's needs and involves preparation of the necessary documents at the Legal Assistance Office (LAO). Phase III involves the execution of the documents.

**1. PHASE I SCHEDULING AND WORKSHEET:**

- (1) Client calls or walks-in asking for a will appointment
- (2) Reception desk asks client to come in to pick-up a will worksheet (if a call)
- (3) When client arrives to pick up worksheet, client asked to complete a client card (if a first-time client) and conflict checked. Client given a will worksheet (**Appendix H**) and letter of instruction. Client scheduled for an appointment with a LAA at a time convenient for client.
- (4) Client takes will worksheet home to contemplate testamentary wishes and completes worksheet.

**2. PHASE II APPOINTMENT WITH LAA:**

- (1) On the designated day, client arrives for appointment with Legal Assistance Attorney.
- (2) LAA will meets with client one-on-one to review client's testamentary intentions as described in the will worksheet. Lawyer

reviews pertinent issues concerning the testamentary plan with client and actively seeks client questions. (See **Appendix B** for a generic outline for discussing these issues with client) The LAA will also determine whether the client requires or desires a Living Will or Durable POA.

(3) IAW AR 27-3, the LAA also will advise each active duty client concerning designation of beneficiaries under Servicemen's Group Life Insurance (SGLI). Copies of the most current SGLI election form will be available in the LAO. If the client desires to change the designation of beneficiaries under his/her SGLI, the LAA will assist the client in filling out the form properly, then ensure that the client takes the form to the appropriate personnel office for processing. (See **Appendix F** for sample designation of beneficiary clauses for SGLI)

(4) After completing interview, LAA re-directs client to reception desk for scheduling a will execution appointment.

(a) *In cases of unusual distribution plans, attorney may schedule client for an additional interview before completing documents.*

(b) *When circumstances require, documents can be prepared for same-day execution.*

(5) Client's will and other documents are prepared (using LAAWS program where appropriate) by the LAO.

(6) LAA reviews documents to ensure they will properly carry-out client's intentions.

(7) Once the client interview is completed and the necessary documents generated, the LAA will schedule the client for an appointment (during designated times) to execute the document(s). If emergency circumstances exist, the appointment for execution will be for that same day. Otherwise, the appointment for execution will be made for the following week. The LAA will provide the client with an appointment card indicating the date and time of scheduled execution and the LAA's name. The client may review the document when the document is generated [this depends on LAA work load] or 30 minutes prior to execution time.

### **3. PHASE III DOCUMENT EXECUTION:**

(1) The Chief, Legal Assistance, will designate document execution times on a given day. An LAA and a Notary Public will be assigned, on a rotating basis, the responsibility for conducting the executions.

(2) The client will be scheduled to arrive at the LAO one-half hour prior to the time for execution in order to review the document(s), which have been prepared. If any corrections are needed, corrections will be made on the spot. If client wishes to make substantive changes to the document(s), he/she must first consult the LAA who prepared the document(s).

(3) When all clients are prepared to execute their Wills, Living Wills and/or Durable POAs, the LAA in charge of executions will move the clients into his/her office (or other designated area). General questions may be answered by the LAA at this time. More specific questions involving private matters should not be answered in this group setting.

(4) The Last Will and Testament execution ceremony will take place first and will be performed as follows (variations eliciting the below information are acceptable):

(a) *A LAA will conduct the execution ceremony and a Notary Public will be present.*

(b) *Each testator/testatrix will be asked the following questions, to which an affirmative answer must be received before proceeding:*

(i) "Are you           (name of testator/testatrix)          ?"

(ii) "Do you declare in the presence of these witnesses that this is your Last Will and Testament?"

(iii) "Are you at least eighteen (18) years of age?"

(iv) "Have you read this document and does it express your desires concerning the disposition of your property upon your death?"

(v) "Are you signing this document voluntarily, free from any duress or coercion?"

(vi) "Do you request that these individuals witness the signing of your Last Will and Testament?"

(5) At this point, the Last Will and Testament shall be signed by the testator/testatrix.

(6) After the Wills have been signed, each of the witnesses will be asked the following questions, to which an affirmative answer must be received before proceeding:

- (a) *"Does each testator/testatrix appear to be of sound mind?"*
- (b) *"Does each testator/testatrix appear to understand the nature of his/her actions?"*
- (c) *"Does any testator/testatrix appear to be under any duress or coercion to sign his/her Last Will and Testament?"*
- (d) *"Did you see each of the testators/testatrixes sign his/her Last Will and Testament?"*

(7) The LAA should then ensure that none of the witnesses are beneficiaries of the Will being executed before proceeding (generally occurs with Husband and Wife).

(8) At this point, the LAA should have each will witnessed by appropriate witnesses.

(9) After all Wills have been executed and witnessed, the Notary Public (present during the execution ceremony) notarizes each will. Unless the client has a Living Will or Durable POA, he/she may leave at this time with his/her executed Will.

(10) Living Wills and Durable POAs will then be executed according to the formalities of the state in which the client is domiciled.

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## **B. Soldier Readiness Processing SOP**

The following is an example standard operating procedure for conducting soldier readiness processing. This example provides excellent guidance for assigning responsibilities throughout the procedures. The JAGSA has edited this procedure, originally developed to support Fort Stewart's readiness mission.

The legal SRP readiness of the unit is the joint responsibility of the Commander and the LAO supporting that unit. Therefore, the LAO should work closely with the Commander to achieve and maintain a unit legal SRP readiness rating of 100%.

### **1. LAO CONTRIBUTION TO THE SRP**

The LAO contributes to the accomplishment of the SRP mission in three (3) phases. In the first phase, the LAA responsible for the unit scheduled for the SRP will, upon request, provide all soldiers with a legal briefing concerning the availability and necessity of obtaining POAs and wills. In the second phase, the legal representative on the SRP team evaluates the legal readiness of the unit at the SRP site and reports the results in a statistical format to the LAO. The third phase takes place after the SRP and involves record-keeping and informing commanders of results.

### **2. COORDINATING THE SRP**

The unit Commander will coordinate with ACofS, G1/AG, Deputy AG, 45 to 60 days prior to their expected date of SRP (cite local regulation). Subsequently, ACofS, G1/AG will task OSJA to provide legal support for the SRP. OSJA should be informed of the unit, number of soldiers, time and date, location and point-of-contact (POC) for coordination concerning the SRP. The LAO is then tasked with ensuring that the necessary legal support is provided for the SRP.

### **3. RESPONSIBILITIES WITHIN THE LAO**

- a) The Legal Assistance (LA) NCOIC will:
  - (1) Record the mission on the office calendar;
  - (2) Notify the Chief, LA of the mission;
  - (3) Notify the LAA responsible for that unit of the mission, and;
  - (4) Notify the Consolidated Legal Center (CLC) NCOIC, through the OSJA NCOIC, of the date of the SRP, the availability of pre-SRP classes concerning Wills and POAs, the name of the LAA supporting the mission and the mission requirements (including the need to keep statistics). The CLC NCOIC shall task a legal clerk to provide support for the SRP. The legal clerk tasked must be a certified Notary Public.

#### **4. PHASE I - UNIT PREPARATION:**

a) As soon as possible after notification of an upcoming SRP, the Chief, LA will send a memorandum to the unit Commander. This memorandum will advise the Commander of the standard for receiving a "GO" for the legal portion of the SRP: no soldier should leave the SRP desiring, but not having a POA or a will. The memorandum will also explain that wills cannot be completed at the SRP site. The Chief, LA will offer the following services to the Commander (see **Appendix D** for sample memoranda):

(1) Conduct classes in Preventive Law to reduce the number of legal problems confronting soldiers and their families, and;

(2) Brief soldiers (before the SRP) on the necessity of placing their legal affairs in order prior to deployment. This briefing provides soldiers with information about the availability and necessity of POAs and wills. The Commander and the soldiers will be informed of the dates and times available at the LAO for will and POA preparation. It is the responsibility of the Commander to ensure that each soldier desiring a Will or POA has the opportunity to see a LAA at the LAO for Will and POA preparation.

(3) Schedule soldiers identified as requiring wills for appointments to complete wills before the SRP if possible.

#### **5. PHASE II - UNIT EVALUATION:**

a) The LAO is responsible for providing legal support for the SRP, but the Commander must ensure that:

(1) soldiers present for duty attend the SRP;

(2) the Personnel Readiness Folder (PRF) for each unit member is available at the SRP site, and;

(3) the appropriate legal clerk has screened PRFs of all soldiers present for duty prior to the SRP.

b) The LAA and the legal clerk(s) comprise the legal SRP team. At the SRP site, the legal clerk will:

(1) assist the soldier in completing Form (insert local form number), having the soldier verify that he/she has received a legal briefing and

indicating his/her informed choice regarding a POA and will (NOTE: Form (\_\_\_\_) is maintained in the soldier's PRF and is updated during subsequent SRPs. It provides the legal SRP team and the unit Commander with a simple method of determining an individual's legal readiness for deployment. This form records the individual's status regarding POAs and a will.);

(2) prepare and notarize POAs on request (allowing the soldier to maintain the original POA);

(3) inform all soldiers desiring a will of the dates and times that a will may be obtained at the LAO. **Wills are not prepared at the SRP site** (except during EDREs/Deployments--see below). The LAA may hand out Will worksheets (see **Appendix G** for sample will worksheet) and explain the procedure to the soldier. A list of the name, unit and duty phone of all soldiers desiring wills should be provided to the Commander and the LAO within two (2) days of the SRP completion;

(4) maintain legal readiness statistics for soldiers processing through the SRP station. These statistics should be provided to the LAO within two (2) days of the SRP completion;

(5) IAW AR 27-3, para 3-6b(1), advise soldiers concerning designation of beneficiaries under Servicemen's Group Life Insurance (SGLI). The legal clerk will have and be familiar with the LAO Information Paper entitled "Designation of Beneficiaries Under SGLI" (**Appendix E**). The legal clerk will only answer questions addressed in the Information Paper. Soldiers with unanswered questions will be directed to the LAO. IAW AR 27-3, para 3-6b(1)(b), the "legal" SRP station should be stationed before the personnel and finance stations so soldiers can receive necessary legal advice before they designate SGLI and final pay beneficiaries.

(6) assist the LAA as necessary.

c) During an Emergency Deployment Readiness Exercise (EDRE) or an actual Deployment, Phase II procedures will be altered. In addition to the procedures outlined in subparagraph b (above), the legal SRP team will prepare and execute wills. During EDREs, however, the LAA reserves the right to refuse to prepare wills if he/she feels that the desired will is too complex for on site preparation or the maker has not had sufficient time to reflect on testamentary intentions. In such cases, the soldier will be required to visit the LAO for preparation of a will at a later date. The will preparation/execution will be conducted as follows:

(1) At the legal SRP station (preferably the first SRP station), those soldiers desiring a will shall complete the will worksheet (**Appendix G**). The LAA will review the questionnaire to ensure that the soldier has properly recorded his/her testamentary wishes. The soldier should complete the other SRP stations while the will is being prepared;

(2) Once prepared, the will shall be delivered to a second legal SRP station located at the end of the SRP site. At this station, wills are executed. IAW TJAG policy, all will executions shall be conducted by a LAA. Other personnel required at this station include at least one legal clerk (notary public) and three (3) witnesses. If possible, the witnesses should not be from the same deploying unit as the testator. Ideally, the witnesses should be civilian employees. Using unassociated witnesses helps to ensure that at least one witness will be available to attest to the validity of the will and speeds the preparation process.

## **6. PHASE III--POST SRP ACTIVITIES**

a) Using the legal readiness statistics prepared at the SRP, the Chief, LA will inform the Commander of the legal readiness of the unit (see **Appendix C** for sample memoranda).

b) The LAO will maintain a file for the SRP. Each SRP file should contain the initial letter to the Commander from the Chief, LA offering pre-SRP legal services and the post-SRP letter to the Commander informing the Commander of the legal readiness of the unit.

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## **C. *Inprocessing (Soldier Readiness) SOP***

The following SOP provides an excellent compliment to the Soldier Readiness Processing SOP provided above. It provides for soldiers to be “legally ready” at the earliest possible time after arriving at the new station. Responsibilities for the various functions are delegated effectively, and understandable instructions are provided in this example.

### **1. INTRODUCTION**

The most important readiness issue for a Legal Assistance Office (LAO) is the Soldier Readiness Program (SRP). Ensuring the legal readiness of service members and family members in case of deployment should be a primary and ongoing concern. Satisfying this objective starts with the inprocessing of each service member at the installation.

Since the inprocessing of service members is a daily occurrence, one legal NCO should be tasked to provide continuing assistance to the installation inprocessing center. The responsibilities of that legal NCO and the Office of the Staff Judge Advocate should be clearly defined in a written Standard Operating Procedure (SOP).

The legal NCO should provide standard SRP processing for each incoming service member. Powers of Attorney (POAs) should be prepared on the spot. Anyone desiring a will should be assisted in picking up a will worksheet (see **Appendix G** for sample), and scheduling an appointment with the LAO for preparation.

All inprocessing service members should also be briefed concerning local laws and regulations that may affect them. Such topics can include automobile registration and emissions requirements, voting assistance, landlord-tenant, and claims, to name a few. Service members should also be told what additional services the LAO offers, and how to schedule an appointment if needed.

### **2. OSJA RESPONSIBILITIES TO THE INPROCESSING CENTER**

- a) Soldier Readiness Processing (SRP) Records Check
- b) Family Legal Preparedness Check
- c) Education

These responsibilities will be accomplished by one Legal NCO (or as the inprocessing center requires).

### **3. LEGAL NCO RESPONSIBILITIES TO THE LEGAL ASSISTANCE OFFICE**

The Legal NCO providing SJA support to the inprocessing will be assigned to the Legal Assistance Branch, and will have the following additional responsibilities:

- a) Ensure all soldiers passing through the SJA station sign in using the Legal Assistance Sign-In Log, and ensure that the log is properly annotated depending on the type of assistance provided to each soldier.
- b) Ensure input of the Daily Log into the LA Front Desk computer for inclusion in the monthly and annual LA Reports. The hard-copy log should be properly dated and then filed under the inprocessing file maintained in the LAO.
- c) Keep the Chief, Legal Assistance informed of any recurrent legal problems faced by either inprocessing or outprocessing soldiers.
- d) Attend weekly Legal Assistance Staff Meetings taking special note of consumer and legal issues likely to affect inprocessing and outprocessing soldiers.
- e) Coordinate with supply clerk to maintain a one-month supply of pertinent documents for the OSJA inprocessing station.
- f) Obtain certification as a (state) Notary Public.

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#### ***D. Legal NCO Responsibilities at Processing Station***

### **1. LEGAL NCO RESPONSIBILITIES TO INPROCESSING SOLDIERS**

The Legal NCO will be responsible for providing and explaining, within each of SJA's three responsibilities, the following to each incoming soldier:

- a) Soldier Readiness Processing (SRP) Records Check.
  - (1) Each soldier desiring a power of attorney (POA) will be both informed of the different types and offered an opportunity to obtain one on the spot.
  - (2) Soldier Readiness Processing (SRP). Provide and review with each incoming soldier (local form number) (Individual Statement of SJA Processing for SRP Qualification), asking appropriate questions to determine if the soldier's legal affairs are in order. Explain how appointments for wills, durable POAs can be obtained.

(3) The SRP packet should be stapled shut upon completion of all SRP processing so as to prevent loss of documents prior to the soldier reaching his/her unit.

b) Family Legal Preparedness Check.

(1) Automobile registration, insurance, and emissions testing. Each soldier will be advised concerning (state) automobile registration procedures, insurance requirements, and emissions requirements and will be provided a Service member's Ad Valorem Tax Affidavit.

(2) Voting Assistance. Each incoming soldier will be provided an information paper explaining both voter registration procedures and the consequences of registering to vote in (state), and may be given a voter registration/absentee ballot request upon request.

(3) Claims. Each incoming soldier will be offered an appropriate claims packet, and will be briefed concerning the significance of and time limitations. Claims may be submitted on a walk-in basis during duty hours each day at the Claims Office, Building \_\_\_\_, extension \_\_\_\_\_.

c) Education.

(1) Soldiers requiring emergency assistance or a legal assistance appointment will be assisted in obtaining them on the spot.

(2) Consumer Affairs. Each incoming soldier will be provided with a list of area off-limits establishments, and will be advised of certain business practices which, in the opinion of the OSJA, soldiers should be alerted to.

(3) Uniform Code of Military Justice. Each incoming soldier will be provided with a personal copy of "The Ten Rules of the UCMJ".

## **2. LEGAL NCO RESPONSIBILITIES TO OUTPROCESSING SOLDIERS**

The OSJA Welcome Center stop is purely voluntary for outprocessing soldiers. As always, the OSJA will remain available for emergency appointments with soldiers who have legal problems preventing them from clearing (i.e. landlord/tenant disputes, veterans benefits problems, adverse administrative actions, etc.).



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## Appendix B

### SAMPLE BRIEFING OUTLINES

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#### **A. *Family Deployment Briefing***

The following is a sample outline for conducting Family Deployment Briefings. Soldiers *and* their family members usually attend these briefings. The briefing usually includes a number of speakers, one of which will be a Legal Assistance Attorney (LAA). The LAA will usually be asked to speak for ten (10) or fifteen (15) minutes. As such, this SOP is designed fit that time constraint. If the unit desires a longer briefing, the LAA should add to the information contained herein. This outline is only a guide for LAAs. Each LAA is encouraged to add his or her insightful comments.

This briefing is designed to prepare families for times when the soldier will be absent from the family for a substantial time due to training and/or actual missions. The five (5) topics that are covered in this SOP include powers of attorney (POA), wills, insurance, tax assistance and Soldiers' and Sailors' Civil Relief Act (SSCRA). This is not a comprehensive list of subjects that may be covered.

#### **1. POWERS OF ATTORNEY**

##### a) What is a POA?

A POA is a document authorizing another person (i.e., your "agent") to act on your behalf and conduct your business while you are absent. Basically, the POA will give your agent the ability to sign for you and that signature will have the same legally binding effect as if you had personally signed.

Businesses are not required to accept a POA. No one can force a business, including a bank, to accept the POA. You should check with your bank and other businesses to be sure they will honor the POA.

##### b) Who needs a POA?

If you and your spouse have joint bank accounts and own all of your property jointly (i.e., cars, houses, investments, etc.), then you may not need a POA. If everything is jointly owned, your spouse is probably already able to take care of all family business in the your absence. However, where property is not jointly owned, a POA may be needed. Only you know your business affairs. Therefore, it is up to you to determine whether or not a POA is required.

##### c) What kind of POA do I need?

- (1) There are two (2) types of POAs:
  - (a) *General POA* -- gives your agent virtually unlimited authority to act on your behalf. This is the most powerful POA.
  - (b) *Special POA* -- gives your agent the authority to do one or more specified acts. You specify on the POA document what acts the agent may perform on your behalf (i.e., sell or register a car, ship or receive household goods, cash paychecks, etc.). This is a more limited and less powerful POA since the agent's authority to act is limited to only those specific acts, which you have authorized.
- (2) In deciding which type of POA is needed, always remember the general rule -- DON'T GIVE AWAY ANY MORE POWER THAN IS ABSOLUTELY NECESSARY. Don't get a General POA if all you need is a Special POA.
- (3) In deciding whom to give a POA to (i.e., your agent), there are three (3) important factors to keep in mind -- TRUST, TRUST AND TRUST. If you give someone a General POA, he or she will be able to do virtually anything concerning your business. You had better have a lot of trust in that person.
- (4) To use the POA, your agent must have the original signed document. Though POAs can be revoked at any time, the only way to effectively revoke a POA is to destroy the original signed document. Otherwise notice of the revocation must be given to anyone who might be presented with the POA, since this could be anybody, giving this kind of notice is difficult.
- (5) POAs may be obtained from the Legal Assistance Office (location, phone, hours, and appointments).

## **2. WILLS**

- a) Who needs a will?

Not everyone needs a will. Unmarried soldiers with no children generally do not need a will if they intend their property to be distributed to their closest relatives, usually mother and father, and siblings if the parents are deceased. This is usually how state law will control distribution if you do not have a will. However, if some other distribution is desired, then a will is advisable.

During actual deployments, there is not enough time to prepare will for every soldier requesting one. Priorities will be established based on legal "need". If you want

to complete a will the right time to do it is now before an emergency occurs. That way you'll be sure not to be at the end of the priority line.

b) Where can I get a will prepared?

Soldiers and family members can have wills prepared, free of charge, at the Fort [ ] Law Center, Building [ ]. Clients desiring a will shall be seen on an appointment basis. A follow-up appointment will be required to sign "execute" the will. If you have minor children, discuss with your spouse guardianship provisions before coming to our office. Many times this decision takes time and also entails talking with the prospective guardians to ensure they are willing to act in that capacity. If you are married, your spouse may also have a will prepared by the Legal Assistance Office. You can schedule your appointment together. This can speed up the process of getting both wills ready and can clear up possible conflicts in guardianship arrangements etc.

During deployments, the LAO will have a will station at the SRP site. Again, it is recommended that you have your will prepared prior to deployment.

### **3. INSURANCE**

All soldiers who have private insurance (other than SGLI) should check with their insurance agent, to make sure the policy doesn't contain what is called a "war clause" or "combat exclusion clause". These clauses state that the insurance policy will pay **nothing** if you are killed during combat. Obviously, this is not the best kind of insurance policy for people in the army, so find insurance without this kind of clause.

### **4. TAX ASSISTANCE**

The LAO offers free tax assistance with the filing of tax returns. We even have electronic tax filing. This is a valuable service, which soldiers, and their family members should take advantage of.

Spouses should not become delinquent in filing their tax returns just because the soldier is deployed. Before filing time comes around, the spouse can just bring financial records to the LAO and we will help.

### **5. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT**

The SSCRA is a federal law designed to protect soldiers (and in many circumstances their dependents) from **some** legal obligations when military service interferes with them. The Act can allow a soldier to postpone certain civil (not criminal) actions during their absence, reduce interest rates to 6% on their pre-service loans, have protection against foreclosures and repossessions without court order, and

request prospective relief of the court for certain financial obligations they can't meet because of military service. Also, this is the law that allows soldiers to keep their home state as their domicile while in the military (i.e., continue to pay income and personal property taxes only in the state you call home).

The SSCRA is a technical law, and there are obstacles to being able to use its protections. For example, it protects you mainly from obligations you entered into **before** you joined the army. Come see us at the LAO before a problem arises, if possible.

## **6. CONCLUSION**

Regular Legal Assistance services will still be available for all family members during deployments.

If you have a legal problem, come see us first. This briefing was designed to provide general information. If you have a specific legal problem, you should contact the legal assistance office to schedule an appointment. Usually the wait between your call and the appointment is (\_\_\_\_) days. For real emergency situations, we see you sooner.

## **7. ANY QUESTIONS?**

## **8. POINT OF CONTACT**

POC is [                    ], OSJA, Legal Assistance Office, Building [    ], ext. [    ].

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## **B. Will Briefing (To Individual)**

This briefing covers the main topics that should be explained to the client. It by no means is an exhaustive treatment of these topics nor by excluding other topics does it mean to indicate that they should not be briefed. It is simply designed to be a guide. Individual attorneys should feel free to vary from it.

### **1. INTRODUCTION**

The underlying purpose of a will is to ensure that your property is distributed after death according to your wishes. There are, however, some other purposes you should keep in mind during the will preparation and execution process.

- a) Avoidance of unnecessary costs in the probate process, e.g., bonds, court supervision, or taxes.
- b) Avoidance of unnecessary delays, e.g., avoidable will contests caused by confusion in the language of the will.
- c) Each state has slightly different laws that establish will formalities, taxes, etc. Generally, your state of legal residence will control, regardless of whether you die in that state.

### **2. TOTAL REVOCATION OF PREVIOUS WILLS**

Execution (signing before the appropriate number and type of witnesses) of this will totally revokes any previous wills or codicils (amendments to a will).

Generally, an earlier will can't be "resuscitated" once you complete and execute (sign) a new one. To avoid confusion and unnecessary delays in future administration of your will, once this new will is executed (signed and notarized) it is a good idea to destroy (e.g., tear up) any previous wills and their copies. You can bring old wills with you to your execution appointment, and we will run them through our shredder.

### **3. SAFEGUARDING WILLS**

- a) Only the original, signed and witnessed, Will can be presented to a court for probate after your death (with one very narrow exception).
- b) Copies only serve the purpose of convenience in informing personal representatives/executors and beneficiaries how the will deals with them.
- c) The exception to the rule that only the original can be presented to the court arises in the "lost will" situation.

d) There is a very heavy presumption in the law that if the original will cannot be found at your death it is because you destroyed it with the intention of revoking it and dying without a will altogether. As a result of this presumption and the attendant burden of proving to the contrary, almost never can someone prove that the will was merely lost and not revoked.

(1) About the only way to overcome the presumption is for someone to testify that he or she talked to you within hours of death, and you told them that the will was still valid, had never been revoked, but was somehow lost; either you did not know where it was or when the witness went to look for it, he or she could not find it.

(a) *The situation above, as a practical matter almost never happens. The more common occurrence is that "Aunt Emily" talked to the Testator a year, a month, or maybe even as little as a few days prior to the death, but that in the meantime, the Testator had the opportunity to revoke the will either physically or by a clear and express intention to revoke.*

(b) *If a "lost will" can be proven to the satisfaction of the court, then and only then, a copy may come in as evidence of what the lost will would have said.*

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The bottom line is: safeguard the original will.

e) The will should be kept someplace safe from fire, theft, damage, or other loss.

(1) A fire-proof safe or lock box in your home would be an appropriate location as long as the survivors would have access to it by giving them a key or the combination or telling them where same can be found (this place of course being someplace similarly safe from loss).

(2) Your safety deposit box is not a good place to keep your will. In many states, law requires that the box be sealed upon the death of the owner. In order to access the sealed box, a court order is necessary. To get the order, the will usually must have been shown to the court. If the will is in the box, it is easy to see the problem that arises. The best advice is to ask the bank about the safety deposit laws prior to placing the will in it. Of course the problem would not exist if the will is in someone else's box, but you should avoid the box of a member of your same household

(your spouse) because in a tragic car accident you both could be killed, and the same result would occur.

f) Make sure that the survivors know where the original will is stored. If you give copies of the will to personal representatives or beneficiaries, be sure to indicate on them where the original is located. Any time this location is changed, update this information on the copies.

#### **4. DOCUMENTS TO KEEP WITH THE WILL**

a) Property Inventory.

(1) With the original will you should keep an inventory of all real and personal possessions as well as certain financial information.

(2) The inventory should include a description and location of all important property: real estate, life insurance policies, bank accounts, safety deposit boxes, stocks, bonds, debts owed to you, business interests, significant personal property, credit accounts, loans, and important legal documents such as the will, birth certificate, marriage certificate, and discharge papers.

b) Letter of Instruction.

(1) Unless your state recognizes and your will contains a "Memorandum Clause" which allows for a separate written instrument to dispose of personal property then the Letter of Instruction is not legally binding on your survivors. This non-binding feature can often be an advantage. It allows you to express your desires as to what the executor and/or beneficiaries should do with the property, but allows them to do otherwise if conditions change. For example, it might seem to you that it would be a good idea to set aside \$10,000 for an education fund for children, but at your death the money might be better spent for living expenses if the financial picture has changed. The Letter of Instruction would not bind the beneficiary; but, it would still allow you to make your desires known. This letter of instruction is also an excellent place to suggest who should get small items of that don't have great financial value. The non-binding feature of this separate letter of instruction also allows you to change these requests without having to create an entire new will.

(2) Items to place in a Letter of Instruction include information about the use of property, last words to the survivors, and instructions concerning burial accommodations. This last item should be as specific

as possible. This area is one of the hardest ones for the survivors to deal with and by putting it in a Letter of Instruction, you relieve the survivors of trying to determine what you would have wanted, all too often an area of considerable disagreement among survivors.

## 5. ESTATE TAXES

### a) General

When you die, your estate may be subject to taxes. The federal government, a state government, or both could levy these taxes, variously called death taxes, estate taxes, or inheritance taxes.

### b) Federal Estate Tax.

(1) In very broad terms, federal estate taxes do not play a part until the value of your personal estate reaches \$625,000. (**Note:** This number is being phased up to 1,000,000 in the year 2006) Keep in mind that this figure includes life insurance proceeds.

(2) If you estimate your individual estate to be worth \$625,000 or more then you should consult a civilian attorney who specializes in estate planning. The fees you pay to the attorney will usually be much less than the tax savings.

## 6. INSURANCE CONSIDERATIONS

a) - An option available for life insurance policies, including SGLI, is to name your estate as the beneficiary of the policy ("By Estate" for SGLI). The effect is that the insurance is paid to the named beneficiaries in the Will. There may be a good reason to do so if advised by a civilian estate-planning expert, but for most people, it is not a good idea.

b) - Time Delay. Generally, life insurance is paid to the beneficiaries within days. Unfortunately, an estate may not be settled for months. In the mean time, the beneficiaries must wait for the insurance proceeds.

c) - Tax Consequences. If the estate is the beneficiary of insurance, then the insurance proceeds will be taxed as if the money existed in the estate before your death. In some cases, the insurance will be the factor to make the entire estate taxable if, by including it, the estate value exceeds the tax "floor." Insurance proceeds payable on death to an individual are generally not subject to tax. Naming the estate as beneficiary may change this.

## **7. LIVING WILLS**

- Some states recognize what is commonly called a "Living Will" or Advanced Medical Directives. In basic terms, it is a set of instructions to "pull the plug" under certain circumstances.
- A typical example: "If in the professional opinion of my attending physician and one other physician, I am (1) comatose; (2) as a result of a fatal condition from which in medical probability I will not recover; and (3) I am being kept alive by artificial means, such as a respirator, heart-lung machine or other extraordinary means, sometimes including intravenous feeding, but this varies from state to state, and (4) I direct that such artificial means be discontinued."
- These documents can often become extremely important. If you have any desires along this line, the Legal Assistance Office can assist you here also.

## **8. REVIEWING AND UPDATING YOUR WILL**

- You should periodically review the will to ensure that it meets your current situation. Generally, you should update your will upon:
  - a) --The death of any person named in the will.
  - b) --Marriage or divorce.
  - c) --Substantial change in your financial condition.
  - d) --Mental or physical disability of someone in your will.
  - e) --Any other event which might influence distribution of your property.

If you ever want to change or update your Will, DO NOT cross out, add any words or make any marks in it. Any such alterations may completely invalidate the entire will. Make changes on a copy if you wish or simply write down the changes you wish to make and then see an attorney to update your will.

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**C. Law of War Briefing  
(The Geneva Convention)**

The 1949 Geneva Conventions cover four categories: (1) Wounded and Sick in Armed Forces in the Field, (2) Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, (3) Treatment of Prisoners of War, and (4) Protections of Civilian Persons in Time of War.

**1. REFERENCES**

- a) - Elliot, "Theory and Practice: Some Suggestions for the Law of War Trainer," *The Army Lawyer*, July, 1983 at 1.
- b) - Addicott and Hudson, "The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons," 139 *Mil. L. Rev.* at 153 (1993).
- c) - DOD Directive No. 5100.77, *The DOD Law of War Program* (10 Jul 79).
- d) - AR 350-216, *Training - The Geneva Conventions of 1949 and Hague No. IV of 1907, para. 5a* (7 Mar 75) (though this regulation has been canceled, it has not been rewritten)
- e) - FM 27-2, *Your Conduct in Combat*
- f) - FM 27-10, *The Law of Land Warfare*
- g) - DA Pam 27-1, *Treaties Governing Land Warfare*
- h) - *Commentary on the Geneva Conventions of 1949, Vols. I-IV* (J. Pictet ed. 1958)
- i) - *Army Training Film - TF 21-4228, The Geneva Conventions and the Soldier.*

**2. CLASS OUTLINE**

The Army is the training proponent for the law of war for all branches of the military. In response to the DOD mandate found in DOD Directive No. 5100.77, The Army has developed a ready-made lesson plan for the law of war instructor, which includes discussion in the following areas:

- a) The rights and obligations of U.S. Forces personnel regarding the enemy, other personnel, and property;
- b) The rights and obligations of U.S. Forces personnel if captured, detained, or retained;
- c) The requirements of customary and conventional law pertaining to captured, detained, or retained personnel, property, and civilians;
- d) The probable results of acts of violence against, and inhumane treatment of, personnel;
- e) Illegal orders;
- f) Rules of Engagement; and
- g) The procedures for reporting war crimes.

The one thread that runs throughout the complex web of ensuring compliance with the law of war is the role of the judge advocate. To ensure that American forces comply with all aspects of the law of war, the Army has expanded its use of military attorneys dramatically. For example, all combat forces have an 'operational law' attorney assigned at the division level. This judge advocate advises operational commanders on decision-making and training to ensure that their units comply with and adhere to the law of war. The operational law advisor also examines the full range of international and domestic law that impacts 'specifically upon legal issues associated with the planning for and deployment of U.S. forces overseas in both peacetime and combat environments. Addicott and Hudson, "The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons," 139 Mil. L. Rev. at 182 (1993)

See **Elliott, "Theory and Practice: Some Suggestions for the Law of War Trainer," The Army Lawyer, July 1983 at 1** for an excellent discussion of the judge advocate as LOW teacher.



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**Appendix C**

**SAMPLE MEMORANDA**

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**A. *Pre-SRP Memo to Unit Commander***

(OFFICE SYMBOL)

(DATE)

MEMORANDUM FROM LEGAL ASSISTANCE OFFICE

MEMORANDUM FOR COMMANDER (UNIT), FORT (\_\_\_\_\_)

SUBJECT: Legal Preparation for the Soldier Readiness Program/Processing (SRP) scheduled on (DATE)

1. As the Chief, Legal Assistance, I will be supervising the legal support provided for your SRP scheduled on (DATE).
  
2. In order to receive a "GO" at the legal station of the SRP, your soldiers must receive a briefing concerning wills and powers of attorney and no one should leave the legal processing point requiring, but not having these documents. Powers of attorney can be prepared at the SRP site, but wills cannot. In order to prepare a will, each soldier must complete a will questionnaire (this involves consulting with loved ones and potential guardians for children) and be interviewed by a Legal Assistance Attorney at the Legal Assistance Office. Once the will is prepared, it must be formally executed to take effect. This takes time. These briefings must be scheduled well in advance of the SRP to provide the needed legal documents.
  
3. To aid in your goal to have all soldiers SRP qualified, I offer the following services prior to the SRP:
  - a. Brief your soldiers on the necessity of having their affairs in order and provide them with information on how to obtain powers of attorney and wills at this pre-SRP briefing we can also identify those soldiers who do not have, but need wills and/or powers of attorney so that these documents can be prepared before the SRP.
  
  - b. Conduct Preventive Law classes to decrease the likelihood of legal problems developing for your soldiers and their families;

c. Schedule soldiers requiring wills for appointments at the LAO to complete wills before the SRP.

4. After the SRP, I will provide you with a statistical analysis of the legal readiness of your unit.

5. I am here to support you. If you have any questions or desire to discuss the assistance available, please contact me at Building \_\_\_\_, telephone \_\_\_\_/\_\_\_\_.

(NAME)  
CPT, JA  
Chief, Legal Assistance

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**B. Post-SRP Memo to Unit Commander**

(OFFICE SYMBOL)

(DATE)

MEMORANDUM FROM LEGAL ASSISTANCE OFFICE

MEMORANDUM FOR COMMANDER, (UNIT), FORT (\_\_\_\_\_)

SUBJECT: Legal Readiness of (UNIT)

1. During the SRP held on (DATE), statistics were obtained to evaluate your unit's legal readiness. The following statistics are based on only those soldiers who processed through the legal SRP site. Of the (#) soldiers assigned or scheduled to perform the SRP, \_\_\_\_\_ soldiers (or \_\_\_\_\_ %) were processed. Of those \_\_\_\_\_ soldiers, \_\_\_\_\_ soldiers did not have a Last Will and Testament, though they desired one. Consequently, they were not legally prepared for deployment. Enclosed is a list of those soldiers desiring a Last Will and Testament.

2. The following is a breakdown of the statistics:

<b>Soldiers scheduled for SRP</b>	_____	<b>Soldiers processed</b>	_____
<b>Soldiers needing wills</b>	_____	<b>Soldiers with wills</b>	_____
<b>Soldiers needing powers of attorney</b>	_____	<b>Soldiers with powers of attorney</b>	_____

3. A good percentage (\_\_\_\_\_ %) of the soldiers processed are legally prepared for deployment. Soldiers desiring wills and powers of attorney should contact the Legal Assistance Office, Building \_\_\_\_, phone \_\_\_\_\_/\_\_\_\_\_. I am always available to improve your unit's deployment readiness.

(NAME)  
Captain, JA  
Chief, Legal Assistance

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**C. Letter to Creditor for Interest Rate Reduction**

**[LETTERHEAD]**

**[Date]**

Legal Assistance Office

**[CREDITOR ADDRESS]**

Dear **[Sir or Madam]**:

I am a legal assistance attorney writing on behalf of **[CLIENT]**. **[CLIENT]** informs me that **[he/she]** is currently obligated to your company for a loan bearing an interest rate of **[%]**. I further understand that this obligation was entered into on **[DATE]**.

Since incurring this obligation, **[CLIENT]** has entered the active military service of the nation in the U.S. **[SERVICE]** on **[DATE]**. This entry into active military service has materially affected **[CLIENT]'s** ability to meet this obligation. Under these circumstances, federal law prescribes the maximum interest rate which **[CLIENT]** may be charged.

The Soldiers and Sailors Civil Relief Act (50 U.S.C. App. § 526) prescribes a ceiling of 6% annual interest on any obligation under the circumstances described above. This interest rate must be maintained for the entire period that **[CLIENT]** is on active duty. The percentage cap includes all service charges, renewal charges, and fees. The rate is applied to the outstanding balance of the obligation as of the date of entry onto active duty mentioned above. Any interest charge above this statutory ceiling must be forgiven, not accrued.

Please ensure that your records reflect this statutory ceiling and that any charges in excess of a 6% annual rate are withdrawn. You should also be aware that federal law (50 U.S.C. App. § 531) circumscribes the manner in which you may enforce certain rights under the contract, including any right to repossession of property.

I thank you in advance for your attention to this matter. Should there be any questions, please feel free to contact me at the address above.

Sincerely,

**[ATTORNEY NAME]**

**[RANK]**, U.S. Army

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**D. Letter to Opposing Counsel Requesting a Stay of Proceedings**

[LETTERHEAD]

[Date]

Legal Assistance Office

[COUNSEL'S ADDRESS]

Dear [Sir or Madam]:

I am a military legal assistance attorney writing on behalf of [CLIENT]. [CLIENT] is the defendant in an action you filed on behalf of [OPPOSING PARTY] in [COURT]. The mission of our office is to provide initial counseling to soldiers to help them make more informed decisions about their legal obligations. We are not allowed to represent soldiers in any fashion in these types of civil actions. Consequently, I am not [CLIENT]'s attorney for the underlying matter and this letter should not be construed as an appearance or submission to jurisdiction. Rather, I am simply assisting [CLIENT] in protecting his interests until such time as he can obtain proper legal counsel.

[CLIENT] is currently in the active military service of the nation in the U.S. [SERVICE]. Federal law affords such service people certain rights prescribed by the Soldiers and Sailors Civil Relief Act. Among these rights is the stay of all legal proceedings during the period of active service when the service member's ability to conduct a defense is materially affected. 50 U.S.C. App. § 201. In this case, [CLIENT] informs me that he will not be able to attend any proceedings and protect his interests until [DATE]. This inability to appear is caused by [REASONS], direct results of his military service. [CLIENT]'s inability to attend is supported by the attached memorandum from his commanding officer.

Because [CLIENT]'s military service prevents his appearance, I request that you advise the court of [CLIENT]'s status and request a stay until [DATE]. I further request that you advise [CLIENT] of any action you take at [ADDRESS].

Thank you in advance for your help in affording [CLIENT] an opportunity to participate in the legal process while meeting his obligations to the defense of our nation.

Sincerely,

[ATTORNEY NAME]

**[RANK]**, U.S. Army

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**E. Letter to the Clerk of Court Requesting a Stay of Proceedings**

**NOTE:** *This letter should be prepared for the signature of the client's commanding officer. At least one court has construed a letter directly from a legal assistance attorney to be an "appearance" causing the client to lose valuable rights!*

**[LETTERHEAD]**

**[Date]**

Commander

**[CLERK OF COURT ADDRESS]**

Dear **[Sir or Madam]**:

I am an officer in the U.S. **[SERVICE]** writing on behalf of **[CLIENT]**, who is the defendant in an action now pending before your court, **[CASE ID NUMBER]**. **[CLIENT]** is currently serving in the active military service of the nation at **[INSTALLATION]**. He is assigned to my command.

**[CLIENT]** will be unable to attend any hearings, present any type of defense, or effectively protect his interests in the matter in question until **[DATE]** because of his military duties. Until this date, **[CLIENT]** is needed by this unit to/because **[REASONS]**<sup>1</sup>. My legal officer advises me that federal law allows a stay of proceedings for service members on active duty when their ability to defend themselves is materially affected by their military service (50 U.S.C. App. § 521). In this instance, **[CLIENT]**'s critical role in the national security mission of this command precludes his participation in court proceedings until **[DATE]**. He will be unable to present any defense at all due to his duties.

Request that you grant a stay in the proceedings until **[DATE]** to allow **[CLIENT]** to properly attend to both of his obligations. I will personally ensure that he is placed on leave immediately following the completion of the duties described above, so that he may appear at the next scheduled court date after **[DATE]**. I should note that I am not an attorney and am not making this request based on any attorney-client relationship between myself and **[CLIENT]**. I am not representing **[CLIENT]** with regard to the proceedings pending in your court. This letter should not be considered an appearance by **[CLIENT]**. Rather, it is a request in my capacity as a commander charged with a

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<sup>1</sup> "Reasons" should clearly outline the duties to which the soldier must attend and why he cannot take leave. Examples would be "to participate in a unit deployment to the National Training Center," "to deploy to Bosnia as part of the UN Implementation Force," or "to prepare forces for deployment to Haiti." Whatever reason is given, the reasons why the soldier is critical to this mission must be explained.

mission supporting the national security of this nation, that you delay the proceedings to allow this soldier to perform his critical part in that mission.

Thank you in advance for your assistance in this matter. I request that you inform me or **[CLIENT]**, at the above address, of any action taken regarding this request.

Sincerely,

**[COMMANDER NAME]**  
**[RANK]**, U. S. Army  
Commanding Officer



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## Appendix D

### SAMPLE INFORMATION PAPERS

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#### A. *Legal Assistance Services*

##### INFORMATION PAPER

**SUBJECT:** Legal Assistance Services

1. **PURPOSE:** To inform commanders and individuals of the legal assistance services available at Fort \_\_\_\_\_ .

2. **FACTS:**

a. Legal assistance is an Army-wide program for soldiers on active duty (and others as resources permit). Legal assistance is also available at Fort \_\_\_\_\_ to family members of soldiers, retirees and their family members.

b. The following services are available to eligible clients: domestic relations, paternity, non-support, wills and estates, adoptions and name changes, indebtedness, taxes, landlord-tenant relations, consumer affairs, adverse administrative actions (i.e., reports of survey, bars to reenlistment, OER/EER appeals, letters of reprimand), powers of attorney, notary services, immigration and naturalization, veterans affairs, medical disability processing, and general advice concerning civil suits, and other matters.

c. The attorneys at the Fort \_\_\_\_\_ legal assistance office see clients on an appointment basis Monday, Tuesday, Thursday and Friday. The office opens at 0830 Monday thru Friday and closes at 1700 Monday, Tuesday, Wednesday and Friday, and at 1600 on Thursday. The office will see clients with bona-fide emergencies on a walk-in basis or as soon as possible. Powers of attorney, electronic tax filing (through 15 August) and notary services are provided on a walk-in basis between 0830 and 1700, Monday through Friday. Please note that attendance at a divorce/separation briefing is not a prerequisite to a divorce/separation appointment. Domestic relations matters (divorce, adoption, non-support, custody, etc.), are seen by appointment. Additionally, victims of domestic violence and other crimes may seek emergency representation and assistance.

d. The Fort \_\_\_\_\_ legal assistance office is located at, Building \_\_\_\_\_, telephone numbers \_\_\_\_\_. This office is a branch of the Office of the Staff Judge Advocate, \_\_\_\_\_.

3. The legal assistance branch also offers preventive law classes and pre-SRP (Soldier Readiness Processing) briefings for the benefit of soldiers, retirees and their family members. During the preventive law briefings, a legal assistance attorney will address various legal topics, including estate planning and a discussion of pitfalls in the consumer law area. In the pre-SRP briefing, the attorney will advise the soldiers of the importance of powers of attorney, and whether or not the soldier should have a will. When the legal assistance branch is notified of any upcoming SRP, the legal assistance office will contact the commander, and provide a briefing to the unit if one is desired. The overall purpose of this program is to ensure that the soldiers are continuously SRP qualified so that the minimum amount of time is needed to finish processing for movement.

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THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS YOU SHOULD CONSULT THE CHIEF, LEGAL ASSISTANCE.

Legal Assistance Branch  
Office of the Staff Judge Advocate  
CPT \_\_\_\_\_/phone \_\_\_\_\_

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**B. Soldier Readiness Program**

**INFORMATION PAPER**

**SUBJECT:** Soldier Readiness Program (SRP)

1. **PURPOSE:** To inform Commanders about the services provided by the Legal Assistance Office in preparation for SRPs.

2. **FACTS:**

a. SRPs are the mechanism through which Commanders ensure the readiness of their units, legally and otherwise. The following information details the steps involved for the "legal" portion of a SRP.

b. All SRPs must be coordinated through ACofS, G1/AG between 45 and 60 days prior to the date of the SRP. ACofS, G1/AG will then notify the SJA that a SRP has been scheduled. The Chief, Legal Assistance, will then send a Memorandum to the Commander offering our services in "legally" preparing the unit for the SRP.

c. If the Commander desires, an attorney from the Legal Assistance Office will give instruction to the unit concerning the uses and necessity of Powers of Attorney and Wills. Those soldiers who need to have a will or power of attorney prepared should come to the Legal Assistance Office. Powers of attorney can be prepared in just a matter of minutes. However, since will preparations take a minimum of one week, scheduling this class well in advance of the SRP is advisable in order to maximize the number of soldiers who will be considered legally qualified at the SRP.

d. After the SRP, the Chief, Legal Assistance will provide the Commander with a status report regarding the legal preparedness of the unit. Remember that an SRP is really just a "records check" from a legal perspective. The Commander must be proactive in order to ensure that the unit is legally prepared at the time of the SRP.

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THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT THE LEGAL ASSISTANCE OFFICE.

Legal Assistance Office  
Office of the Staff Judge Advocate  
Building \_\_, ext. \_\_\_\_/\_\_\_\_

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**C. SGLI Beneficiary Designations**

**INFORMATION PAPER**

**SUBJECT:** Designation of Beneficiaries Under Servicemen's Group Life Insurance (SGLI)

1. **PURPOSE:** To assist soldiers in properly designating desired beneficiaries under SGLI.

2. **FACTS:**

a. Soldiers must designate beneficiaries by name on their SGLI election form (SGLV-8286). Designation of beneficiaries by name ensures that the proceeds will be distributed according to the soldier's true intent. Use of the by-law designation on SGLI election forms is no longer authorized. However, soldiers will not be required to change their current SGLV-8286 even if they have used the by-law designation. Changes to these forms will be made when soldiers routinely update their SGLI-8286s in the future.

b. If one or more of the following occurs:

- (1) none of the beneficiaries designated by name on the SGLI election form survives you; or
  - (2) if you do not name a beneficiary to receive the proceeds of your insurance; or
  - (3) if you direct the proceeds to a trust that is not properly established; or
  - (4) if your SGLV-8286 still contains the by-law designation,
- the proceeds will be distributed in the following order:

- (1) to your surviving spouse if none, it is payable to --
- (2) to your child or children in equal shares with the share of any deceased child distributed among the descendants of that child; if none, it is payable to --
- (3) to your surviving parent(s) in equal shares; if none, it is payable to --
- (4) a duly appointed executor or administrator of your estate; if none to --
- (5) other next of kin.

Note: The terms "child" and "children", as used above, do not include step-children. Likewise, the term "parent(s)" does not include step-parents.

c. You may name minor children as beneficiaries. If you name a minor child as a beneficiary, payment of the proceeds will be paid to a court-appointed guardian of the child. The guardian will usually be the surviving parent, if one, of the child. Legal fees and court costs will usually have to be paid for appointing a guardian before the proceeds may be distributed.

d. You can establish a trust for the benefit of a child and name the trust as the beneficiary. A trust names a trustee (someone you choose) to be legally responsible for administering the insurance proceeds for the child. Some legal fees and court costs may be avoided. If you have already established a trust for either principal or contingent beneficiaries, the language in either (1) or (2) below should be used to direct the proceeds to the trust:

- (1) For a living (inter-vivos) trust: "My trustee, (name), under trust agreement dated (insert date)."
- (2) For a testamentary trust: "My trustee, (name), under my last will and testament."

Note: The language in d(1) and d(2) above does not establish a trust. You must see a military or civilian lawyer to establish a living trust agreement or to establish a trust in your will.

e. You may change the beneficiary of your SGLI at any time, even without the knowledge or consent of the beneficiary. This right cannot be waived or restricted. However, no designation or change of beneficiary will be valid unless you complete and sign a new SGLI election form (SGLV-8286) and your Uniformed Service receives it before your death.

f. If you have any questions about the legal effect of your designation on the SGLI election form, you may obtain advice from a military lawyer at no expense.

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THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT THE LEGAL ASSISTANCE OFFICE.

Legal Assistance Office  
Office of the Staff Judge Advocate  
Bldg. \_\_\_\_\_ phone \_\_\_\_\_

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**D. Powers of Attorney (sample 1)**

**INFORMATION PAPER**

**SUBJECT:** Powers of Attorney

1. **PURPOSE.** To provide Legal Assistance clients with information regarding a Power of Attorney.

2. **FACTS.**

a. A Power of Attorney (POA) is one of the strongest legal documents that an individual can give to another person. A POA is a document authorizing a designated person to act on your behalf. This person is called your agent or attorney-in-fact. A POA is generally used at times when you are not available to personally take care of your affairs. Acts performed by your agent or attorney-in-fact as designated by your POA are legally binding on you. Thus, a POA should only be used when absolutely necessary. Your agent should be mature, able to exercise good judgment, and be intelligent. PLEASE NOTE third parties (banks, businesses, etc.) DO NOT have to accept or acknowledge your POA. It is totally within their discretion to do so. However, the majority of persons, businesses and institutions will accept your POA. Check with a particular business or financial institution BEFORE obtaining or using a POA to be sure that it will be accepted.

b. General Power of Attorney (GPOA). A GPOA authorizes your agent to act for you in all matters, to include the following:

- \* Access to any banking, checking, leave and earnings statement (LES), safety deposit box, or other accounts.
- \* Ability to borrow money in your name (i.e., signature loans).
- \* Ability to use your credit account to incur additional debt in your name only.
- \* Ability to sell or mortgage your property.
- \* Ability to sign any kind of contract in your name.

This type of POA is rarely needed and usually not recommended because an agent can easily misuse it. This POA gives the agent the "power" to make almost any decision on your behalf. You may only find out about the decision when it is too late to change the obligation. A GPOA should only be given in a case where prolonged absence or unavailability is anticipated and actions to protect your property or family's welfare are likely to be necessary. As a rule, you should almost never grant a GPOA if a special POA would be sufficient. However, a GPOA to your spouse for a limited period of time is often useful.

c. Special Power of Attorney (SPOA). A SPOA authorizes your agent to perform a certain specified act. The following are examples:

- \* Sell or ship you automobile
- \* Ship or receive household goods
- \* Cash your paycheck or tax return
- \* Authorize medical care for children in your absence

A Special Power of Attorney can be preferable to a GPOA because it is limited in scope. It can help protect your against an error in judgment or dishonesty by your agent.

d. Safeguarding your POA.

- \* Never have a POA unless you need one.
- \* If you feel you might need a power of attorney, but are not certain, have one prepared but do not sign it until you need it.
- \* Always put an expiration date on your POA; never make a power of attorney that lasts indefinitely.
- \* Make sure your expiration date is for a fairly short period of time.
- \* Never use a GPOA where a SPOA will do.

e. Expiration and Revocation of a POA.

Your POA automatically terminates:

- \* Upon your death
- \* Upon the death of your agent
- \* On the expiration date specified in the POA, or
- \* When you revoke the POA

You can revoke a POA by:

- \* Destroying the original and all copies,
- \* Informing your agent of the revocation, or
- \* Preparing and executing a Revocation of Power of Attorney and giving a copy of the revocation to any person that might deal or might have dealt with the person to whom you gave your POA.

f. Making a POA. POAs are available on a walk-in basis at the Fort \_\_\_\_\_ Legal Assistance Office from 0800-1600 hours. The POA must be signed before a notary or someone authorized to administer oaths.

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THIS INFORMATION PAPER IS INTENDED ONLY FOR GENERAL INFORMATION REGARDING POWERS OF ATTORNEY. YOU SHOULD CONTACT A LEGAL ASSISTANCE ATTORNEY FOR ALL SPECIFIC QUESTIONS.

Office of the Staff Judge Advocate  
Legal Assistance Division  
CPT \_\_\_\_\_ phone \_\_\_\_\_

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**E. Powers of Attorney (sample 2)**

**INFORMATION PAPER**

**SUBJECT:** POWERS OF ATTORNEY

**PURPOSE:** To provide legal information to soldiers and other individuals regarding the creation, use, and revocation of powers of attorney.

**FACTS:**

1. Q. What is a power of attorney?
  - A. A power of attorney is a document that allows someone else to act as your legal agent. Thus, a power of attorney can be used to allow a friend to sell your car, to let your spouse ship your household goods or to authorize a relative to take your child to the hospital. It can also be used to sell or buy property. It can create valid and legal debts in your name or it can authorize a person to pay off your debts.
2. Q. Are there different kinds of powers of attorney?
  - A. Yes. The two types are general and special powers of attorney. A general power of attorney allows the person you name (or your agent) to do any and all things that you could legally do, from registering a car to selling a house. A special (or limited) power of attorney lists a particular act that the agent is authorized to do and limits the agent to that act. The agent can, of course, be authorized to do more than one legal act in a single special power of attorney.
3. Q. When does a power of attorney expire?
  - A. A power of attorney should never be made indefinite or permanent. The best course is to set a date for the power of attorney to expire, and this can be written into the power of attorney. That way, the power of attorney will be no good after the expiration date that you set unless, of course, you renew it by preparing a new power of attorney.
4. Q. What are some of the things a special power of attorney can do?
  - A. You can use a special power of attorney to allow someone to do almost all legal actions that you can do yourself. Thus, for example, you could prepare a special power of attorney that lets your designated agent:

- a. Buy or sell real estate;
- b. Purchase a car or sell your furniture;
- c. Sign your paycheck or withdraw money from your bank account;
- d. Admit your child to the hospital for necessary medical care;
- e. Ship or store your luggage and household goods;
- f. Sign your name to a lease or an agreement to connect utilities, such as electricity, gas, oil, or telephone service;
- g. Cash or deposit tax refund check or transfer stocks and bonds.

These are just a few of the many things that can be done with a special power of attorney. All you have to do is prepare the special power of attorney with a specific description of what is the particular act or deed to be done (and who is the agent that you authorize to do it).

5. Q. Are there any things a power of attorney cannot do?  
  
A. While a power of attorney will be accepted as valid for most purposes, in many states there are some items that cannot be accomplished by using a power of attorney because these actions are so personal in nature that they cannot be delegated to another. Thus, for example, a marriage ceremony or the execution of a will cannot be done by power of attorney. In addition, there are times when a certain form of power of attorney is required and none other will be accepted - an example is the special form of power of attorney used by the Internal Revenue Service when a person allows a friend or relative to cash an IRS refund check.
  
6. Q. All this sounds like a good deal - why doesn't everyone have a power of attorney?  
  
A. A power of attorney can be very useful if you have one in effect when you need it. But a power of attorney can be abused as well as used; there can be disadvantages to having one as well as advantages. A husband who just separated from his wife might use the power of attorney she gave him to clean out her individual bank account. A well-meaning older person might give a power of attorney to a younger relative, only to discover that the relative squandered and spent the assets of the older person. A power of attorney always has the potential for being a very helpful or a very dangerous document for those reasons. The important thing to remember is that you are going to be legally responsible for the acts of your agent. Therefore, you must exercise great care in selecting the person to be your agent.
  
7. Q. What steps can I take to prevent improper use of my power of attorney?

- A. There is no way to guarantee your power of attorney will not be misused. Here are some guidelines and precautions that will help prevent abuse:
- a. Never have a power of attorney unless you need one.
  - b. If you feel you might need a power of attorney, have one prepared but don't sign it until you need it.
  - c. Always put an expiration date on your power of attorney; never make a power of attorney that lasts indefinitely.
  - d. Make sure your expiration date is for a fairly short period of time. While this will vary from one person to another, periods of one, two or three years are not uncommon on powers of attorney. Check the policy of the legal assistance office to determine its policy on limiting the duration of powers of attorney.
  - e. Never use a general power of attorney when a special one will do.
  - f. If you want to cancel or terminate a power of attorney before it expires, you can prepare and execute a Revocation of Power of Attorney. Give a copy of the revocation to any person that might deal with the person to whom you gave your power of attorney. In some states you may also record the revocation in the county register of deeds office where the original power of attorney was recorded or was to be used. Just remember that it is usually impossible to cancel effectively a power of attorney, since the safest way to do this is to get back all the copies and originals you have given to your agent, as well as all the photocopies that may have been made by banks, realtors, merchants, landlords and other people who are relying on the power of attorney you have signed.
8. Q. Are there any special requirements for powers of attorney?
- A. A power of attorney must always be signed in front of a notary public. If you wish, it can be recorded at the county register of deeds office in location where it is to be used. As a general rule, however, a power of attorney does not need to be recorded in order to be effective.
9. Q. Does every business or bank have to accept my power of attorney?
- A. No. Every business or bank is free to accept or not to accept a power of attorney. Some businesses or banks require that the power of attorney be recorded while others do not. Some banks will accept only a special power of attorney. The bottom line is you should check with the business or bank before obtaining or using a power of attorney to be sure that it would be accepted.
10. Q. Does a power of attorney expire upon my death or mental incapacity?

A. A power of attorney expires on the death of the grantor (the person signing it) or of the agent named in it. Many people choose to have an additional clause in a power of attorney that makes provision for mental incapacity. In such a case, the power of attorney would usually state that it would survive beyond any mental incompetence of the grantor. In many states, such a power of attorney must be recorded at the county register of deeds if the grantor later becomes mentally incapacitated. You should remember, however, that a valid power of attorney must be signed while the grantor is sane and mentally competent.

11. Q. What if I have other questions or specific problems I want help in solving?

A. See a legal assistance attorney or a private attorney as soon as possible. Seeing a lawyer early may not only solve a problem you have; it may also resolve or avoid a problem in the future, on this or other unrelated subjects. Seeing your lawyer early is practicing "Preventive Law."

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**F. Reserve Component Demobilization**

**INFORMATION PAPER**

**SUBJECT:** Demobilization Legal Issues for Reserve Component (RC) Units and Individuals

**PURPOSE:** To provide legal information to RC units and individuals concerning demobilization.

**FACTS:**

1. UNIFORM CODE OF MILITARY JUSTICE (UCMJ). The UCMJ, at Article 2, and the Manual for Court Martial, United States, 1984 (MCM), at Rule for Court-Martial (RCM) 202, provide for continuing jurisdiction (expanded RC UCMJ authority) over RC personnel, when they return to their RC status. The Army only loses jurisdiction over those soldiers who totally terminate their relationship with the Army. Accordingly, the chain of command will be able to administer military justice for offenses that occur during active duty, but are discovered after demobilization. Also, there is authority to retain RC soldiers on active duty for disposition of UCMJ offenses. Commanders should attempt to resolve all outstanding military justice actions prior to redeployment/demobilization from the Area of Responsibility (AOR).

2. REEMPLOYMENT RIGHTS.

a. The Uniformed Services and Reemployment Rights Act (38 U.S. Code Sections 4301-4333) provides for reemployment of RC soldiers.

b. The RC soldier, prior to mobilization, must have held a civilian job and that the soldier had "a reasonable expectation that such employment would last indefinitely or for a significant period."

c. The RC soldier must have left the position for the purpose of entering active duty and given notice to the employer.

d. The RC soldier's service, during the period of mobilization, must be characterized as "under honorable conditions" to receive the benefits of the law.

e. For soldiers called up for a period of service between 31-180 consecutive days, application for reemployment with the pre-service employer must be made within 31 days after demobilization. For those activated for greater than 180 days, the application

period is 90 days. In all cases, demobilizing soldiers are urged to apply for reinstatement as soon as possible after release from active duty.

f. The demobilizing RC soldier, under USERRA, is entitled to the same level of position, in terms of seniority, status, and rate of pay, that the RC soldier would have attained if the soldier had remained continuously employed, instead of serving on active duty.

g. The USERRA provides the demobilizing RC soldier a six-month period of special protection against discharge from the civilian position without cause

h. The Secretary of Labor, through the Office of Veterans' Employment and Training Service (VETS), shall render aid in the reinstatement of a RC soldier in the former position, if the employer does not comply with the law. The National Committee for Employer Support of the Guard and Reserve (NCESGR) will assist the Secretary of Labor, by providing employers and employees informal guidance, mediation, and, where necessary, referral, should reemployment rights problems arise. Soldiers experiencing reinstatement problems should contact the NCESGR Ombudsman at 1-800-336-4590, or their local Department of Labor, Veterans' Employment and Training Service representative for assistance.

### 3. HEALTH INSURANCE REINSTATEMENT.

a. USERRA provides for the reinstatement of health insurance upon reemployment. The statute states that a reemployed military member is entitled to the medical insurance benefits that an employer provides as if he or she had never been activated and his/her civilian employment had never been interrupted.

b. The SSCRA, Section 593, also requires an insurer - upon the release of a service member from military duties - to reinstate his or her health insurance coverage (and that of his or her family), which was in effect on the day before military service began, and which was terminated during the period of military service. The amendment also states that said person and his/her family are entitled to the health insurance coverage, which they would have received if no military duties had intervened.

c. Note that the above provisions are meant only to provide for health insurance reinstatement for those injuries, which are other than "service connected". For advice concerning "service connected" injuries, contact the nearest Military Treatment Facility prior to demobilization. "Service Connected" injuries involve injuries of a soldier either incurred or aggravated during military service, which are not due to the soldier's personal conduct.

### 4. SOLDIERS' and SAILORS' RELIEF.

a. The Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. Section 501, et seq.), provides for the suspended enforcement of civil liabilities in certain cases for RC soldiers on active duty.

b. Generally, the period of time the act covers is the duration of active service. However, the various sections of the act qualify the period of service, and provide additional periods after termination of active service, and, in some instances, back-date certain coverage under the Act.

c. RC soldiers who took advantage of the six percent (6%) interest cap under the Act are reminded to immediately notify their lender of their demobilization, to avoid penalties for wrongfully claiming the lower rate after release from active duty.

d. RC soldiers have 90 days from discharge to request reopening of default judgments entered against them during their term of active service.

e. For RC soldiers, certain statutes of limitation (a time period to bring a lawsuit) may be suspended during their term of active service.

f. Consult with the Demobilization Station (DAMS) Staff Judge Advocate (SJA) for applicability of the Act in your particular circumstances.

## 5. CLAIMS.

a. Soldiers should file claims for lost or damaged personal property to the servicing SJA office as soon as possible prior to redeployment/demobilization. This will allow the soldier time to obtain the required documents to support the claim, and assist in the expeditious adjudication of the claim.

b. The claimant should document claims that result from damage to personal property during redeployment or demobilization as soon as possible. The RC soldier should obtain documentation to support the claim that the damage or loss was the result of government activities.

c. Claims will be investigated, and claim packets prepared in accordance with AR 27-20. Claims submitted after demobilization will be filed with the claims office supporting the area where the RC soldier resides. Unit commanders can obtain the address of these claims office from the DMS SJA office during demobilization.

6. REVOCATION OF POWERS OF ATTORNEY (POA). Soldiers who gave a POA to a holder prior to activation or mobilization are reminded that the POA does not necessarily expire automatically upon deactivation or demobilization. If you want to revoke your POA, see your DMS SJA.

## 7. COMBAT ZONE TAX ISSUES

a. An executive order signed by the President on 21 January 1991, effective 17 January 1991, triggers several benefits under the Internal Revenue Code for all soldiers who served in Operation Desert Shield/Storm in the "Combat Zone". The President has also signed P.L. 105-117, which established a "Qualified Hazardous Duty Area" in the former Yugoslavia that is treated as if it were a combat zone. The law was effective retroactively to November 21, 1995.

b. The "Combat Zone" and "Qualified Hazardous Duty Area" cover the Persian Gulf, the Red Sea, the Gulf of Oman, that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude, the Gulf of Aden, and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, the United Arab Emirates, Macedonia, Bosnia, Herzegovina, and Croatia. Members outside the Combat Zone and Qualified Hazardous Duty Area can also take advantage of the Combat Zone exclusion (see c. below), if their service is in direct support of military operations in the Combat Zone and they are receiving Hazardous Duty Pay.

c. The first benefit is a Combat Zone exclusion from income of military pay for the tax year deployed. All military compensation received by enlisted and warrant officers and up to the maximum enlisted pay authorized for officers, for any month served, or for any part of a month served in the Combat Zone, is excluded from income. The exclusion also applies for up to two years if the soldier is hospitalized after termination of combatant activities in the Zone as a result of wounds, disease, or injury incurred while in the Combat Zone.

d. The second benefit is an automatic extension to file tax returns while in the Combat Zone, or hospitalized, due to an injury received in the Zone, or 180 days after leaving the Zone or in the hospital. This provision applies to anyone serving in the Zone from 2 August 1990 forward. Interest and penalties on unpaid taxes are also waived. If the soldier is due a refund, interest will be paid on it at the Federal short-term rate from 15 April of the next year.

e. The third benefit is an abatement (forgiveness) of taxes for the tax year in which a soldier dies while serving in the Combat Zone or as a result of wounds, disease, or injury incurred while so serving. This also applies to any prior taxable year ending on or after the first day served in the Zone.

f. For soldiers or civilians who die at any time as a result of wounds or injury incurred outside the U.S. in a terroristic or military action, all income received in the year of death and the year in which the wounds or injury occurred (if before the year of death) and the year prior to either of these years is abated (forgiven). However, there must be some causal relationship between the death and the military action for the abatement to apply.

g. The words of the qualifying area should be written at the top of any tax return, envelope or correspondence to the IRS, to take advantage of any of the above special relief afforded those persons serving in a combat zone or a qualified hazardous duty

area and their spouses. If you receive an audit notice, contact the official immediately to correct the error.

h. IRS offices will help spouses and any others representing persons serving in qualified areas, including free electronic filing, "when authorized, and where that is available".

j. Virtually all the states with income taxes allow the same and exemptions set forth above. Some are unwilling, however, to pay interest retroactive to 15 April on refunds claimed after the normal filing date. Some also require copies of orders for extension and exemption purposes.

9. LEGAL SERVICES AFTER DEMOBILIZATION. Each DMS SJA will provide legal service for commanders and soldiers of units demobilizing on their installation. After demobilization, their servicing RC SJA will service RC units and soldiers. The RC unit commander will receive advice and assistance from the servicing RC SJA office on legal issues occurring during mobilization that remain to resolved subsequent to demobilization.

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THIS INFORMATION PAPER IS INTENDED FOR GENERAL INFORMATION REGARDING DEMOBILIZATION LEGAL ISSUES AFFECTING RESERVE COMPONENT SOLDIERS AND UNITS. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT A LEGAL ASSISTANCE ATTORNEY.

CPT \_\_\_\_\_ phone \_\_\_\_\_

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**G. Making a Will**

**INFORMATION PAPER**

**SUBJECT:** MAKING YOUR WILL

**PURPOSE:** To provide legal information to soldiers and other individuals regarding preparation of a last will and testament.

**FACTS:**

1. Q. WHAT IS A LAST WILL AND TESTAMENT?  
A. A Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your children after your death. A will is not effective until death. As long as you are living, your will has no effect and no property or rights to property are transferred by it.
2. Q. CAN MY LAST WILL AND TESTAMENT BE CHANGED?  
A. Yes. Changes to a will are made by drafting a new will and destroying the old one, or by adding a "Codicil." A Codicil is a legal document, which must be signed and executed in the same manner as your will. **NEVER MAKE ANY CHANGES TO YOUR WILL** without consulting an attorney. Changes on the face of your original will may make it invalid.
3. Q. WHAT IS MY LEGAL RESIDENCE?  
A. Your legal residence is the state in which you have your true, fixed and permanent home and to which, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, motor vehicle registration and so on, are some indicators of one's legal residence. If you are a citizen of the United States, you must be a legal resident of some state. You cannot be a citizen at large. If you are a naturalized U.S. citizen, you are considered to be a resident of the state in which you were naturalized.
4. Q. IS MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL?

- A. Yes. Your legal residence affects where your will is probated and the amount of state inheritance or estate taxes (if any) that must be paid at death.
5. Q. WHAT IS MY ESTATE?
- A. Your estate consists of all your property and personal belongings that you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobile, etc. Although, the proceeds of insurance policies may be considered part of your estate, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy, although part of your estate for tax purposes in North Carolina, will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.
6. Q. TO WHOM SHOULD I LEAVE MY ESTATE?
- A. A person who receives property through a will is known as a "Beneficiary." You may leave all of your property to one beneficiary, or you may wish to divide your estate among several persons. You may designate in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two levels of beneficiaries: "Primary beneficiaries: - those who will inherit your property in the event the "Primary beneficiaries" die before you. You may want to select a third level beneficiary in the event that both the primary and secondary beneficiaries die before you.
7. Q. MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY?
- A. Almost, but not quite. For example, in North Carolina, a married person cannot completely exclude a spouse. Generally, you are free to give away your property to whomever you desire. However, most states have laws, which entitle spouses to at least part of the other spouse's estate. Some states, such as Louisiana, also provide shares of the estate to children of the decedent. Other provisions of the law may control insurance proceeds and jointly owned property. If you have questions concerning the statutory share law in your home state, you should ask a legal assistance officer.
8. Q. SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?
- A. Yes, Usually the surviving spouse is designated as the guardian of any minor children. By so naming the spouse in the will, you can sometimes relieve him or her of any requirement to post bond through a court. You should also give serious consideration to naming a substitute guardian.

This would provide for a guardian for your children in the event that your spouse dies before you or you and your spouse die at the same time. This substitute guardian need not be the same person in both your will and your spouse's will.

9. Q. WHAT IS AN EXECUTOR?

A. An executor (executrix, if female) or personal representative is the person who will manage and settle your estate according to the will. You should also consider naming a substitute executor in the event that the named executor is unable or unwilling to act as the executor of your estate. By the wording of your will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive this requirement, thereby saving expense to your estate. The choice is yours.

10. Q. WHAT IF I WANT TO SET UP A TRUST?

A. The resources available in this office do not permit the drafting of trust agreements. To accomplish this, you should consult your bank's trust department or contact a civilian attorney.

11. Q. WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

A. Ask them while your legal assistance officer is preparing your will. Be sure that you convey accurately your wishes for the distribution of your property to him or her.

12. Q. HOW LONG IS A WILL GOOD?

A. A properly drawn and executed will remains valid until it is changed or revoked. However, changes in circumstances after a will has been made, such as tax laws, marriage, birth of children or even a substantial change in the nature or amount of a person's estate, can affect whether your will is still adequate or whether your property will still pass in the manner you chose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will, with the help of your legal assistance officer.

13. Q. DOES A WILL INCREASE PROBATE EXPENSE?

A. No. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills to take full advantage of the federal and state tax laws. Drawing a will can avoid the expense of posting bond or appointing a guardian for

your children. A will can save money for you and your family if it is properly drafted.

14. Q. HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?

A. Everyone who owns any real or personal property should have a will regardless of the present amount of his estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real state, stocks and other securities, inheritances from relatives and other factors.

15. Q. WHAT HAPPENS WHEN YOU DON'T MAKE A WILL?

A. When a person dies without a will (or dies "intestate," as the law calls it) the property of the deceased is distributed according to a formula fixed by law. In other words, if you don't make a will, you don't have any say as to how your property will be divided. Take the case of a North Carolina resident dying without a will, for example. If this person dies without a will, leaving children, the surviving spouse would share the estate with the children. With no will, the surviving spouse receives the first \$15,000 in value and 1/3 of the remaining estate when there is only one child. Now usually a person would prefer that all of his estate, if it were not large, to the surviving spouse. If there are any children under 18, the property cannot be delivered to them and a guardian must be appointed for them. A guardian will require considerable expense and could create legal problems that might have been avoided with a will. Most important for mothers and fathers, however, is not the disposition of their property after their death but rather the proper care and custody of their minor children. Grandparents, other family members and godparents do not automatically receive custody of children who do not have a surviving parent. Your will should specify the individual, as well as an alternate, you would like to designate as the guardian of your children. This decision on your part will be of great assistance to the court in determining who will receive the custody of your children.

16. Q. WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?

A. Joint bank accounts and real property held in the names of both husband and wife usually pass to the survivor by law and not by the terms of the deceased's will. There are many cases, however, in which it is not to your advantage to hold property in this manner.

17. Q. IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

- A. No. Life insurance is only one kind of property which person my own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

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**H. All About Probate**

**INFORMATION PAPER**

**SUBJECT:** ALL ABOUT PROBATE

**PURPOSE:** To provide legal information to soldiers and other individuals regarding the process of probating a will

**FACTS:**

1. Q. What is probate?
  - A. Probate is the procedure of settling the estate of a deceased person. The estate of one who has died consists of the property of that person upon death.
2. Q. Who is responsible for probating my estate?
  - A. If you have made a will, you have probably named such a person, called Executor or Personal Representative, in that document. If you have no will, the court will appoint someone, usually the next-of-kin, to be the Administrator of your estate for this purpose.
3. Q. What are the duties of my Executor or Personal Representative?
  - A. The duties of the Executor or Personal Representative are the same as those of the Administrator. They include the obligations to:
    - a. Safeguard the estate's property;
    - b. Inventory the property;
    - c. Submit accounts and inventories to the court as needed or required;
    - d. Pay the debts and expenses of the deceased (including funeral and burial expenses as well as costs of last illness or outstanding medical bills);
    - e. Pay any federal or state death taxes; and
    - f. Distribute the estate to those named in the will or, if no will exists, to the next-of-kin.
4. Q. Who pays for all this?

- A. Your estate does. In general, your estate is responsible for all your debts, bills and expenses. These must be paid before any remaining assets in your estate can be given to your next-of-kin or your heirs under the will. Your Executor or Personal Representative has no duty to pay these costs out of his or her own pocket and is not normally personally liable for your debts. Your Executor or Personal Representative has the duty to release enough of your assets to allow the payment of expenses such as taxes, credit card balances and hospital bills.
5. Q. If I am appointed as someone's Executor or Personal Representative, do I get paid?
- A. An Executor – (Administrator or Personal Representative) - can request the court to provide two types of compensation:
- a. Direct reimbursement for out-of-pocket expenses, such as postage stamps, bank charges and mileage; and
  - b. Payment for services rendered as an Executor, Administrator or Personal Representative unless the will directs otherwise.

The amount of this latter payment will vary, of course, depending on the amount of work done, the time spent on the estate, the complexity of the work and the size of the estate.

6. Q. Does my Executor or Personal Representative have to pay a fee or post a bond to settle my estate?
- A. There are various expenses necessary to settle an estate. Fees must be paid to the court upon filing and closing the estate. A bond is sometimes required, especially if there are minor children or an out-of-state Executor/Administrator involved. The estate, of course, pays these costs.
7. Q. Are my creditors notified of my death?
- A. Your Executor/Administrator/Personal Representative must place a legal notice in the newspaper for your creditors after the court has appointed him or her to handle your estate. The notice must:
- a. Give the name of the deceased and the name and address of the Executor, Administrator or Personal Representative;
  - b. Be published once a week for three weeks in a row in the locality where the deceased had his or her home; and
  - c. State that all claims of creditors must be made within a certain amount of months from publication of the notice. (The time frame differs depending on applicable state law).

Once this is done, the publisher prepares an Affidavit of Publication and this is put in the court file. Any claims not presented to the Executor, Administrator or Personal Representative within the determined months need not be paid under most state laws.

Those claims which are valid and which are presented within the time period, including debts and expenses known to the Executor, Administrator or Personal Representative, must be paid out of the available funds in the estate.

8. Q. What are the inventories and accounts I must file as an Executor, Administrator or Personal Representative of someone's estate?
- A. Using North Carolina as an example, when you initially apply to the Clerk's Office for appointment, you will need to fill out an initial inventory. This is so you can give a preliminary account or a rough estimate of the assets in the estate. Within the first three months after you are appointed, you must file the Ninety-Day Inventory, which is the first formal accounting of the assets in the estate of the deceased -- real estate, cars and trucks, furniture, pension benefits, bank accounts, jewelry and so on. If you have completely settled the estate within twelve months of qualifying as Executor or Administrator, you will then file the Final Inventory, listing the following:
- a. Amount of total assets as shown on the Ninety-Day Inventory you have already filed;
  - b. Additional assets received by the estate since the filing of the Ninety-Day Inventory (with description and fair market value);
  - c. Expenses, debts, taxes and bills paid by the estate; and
  - d. Distribution of the estate to the heirs (how and to whom).

If you haven't completed settlement of the estate, you must file an Annual Inventory showing items a, b, and c, above. A simple estate can usually be closed in a period of 8-12 months.

9. Q. Can I get into the safe deposit box of the deceased?
- A. Yes - the law provides that you can have access to the safe deposit box of the person whose estate you are settling, so long as you are accompanied by an official from the Office of the Clerk of Superior Court on your first visit. At that time, the official (usually a deputy or assistant clerk) will supervise the opening of the box, inventory the contents and turn the contents, which belong in the estate over to you for safekeeping. The inventory is returned to the Clerk's Office for filing.
10. Q. How do I handle the money of the deceased?

- A. You should immediately set up an "estate account" at a local bank as soon as you have been appointed Executor, Administrator or Personal Representative. You can arrange this at any local bank, and there is a small charge for printing the checks showing your name, your title (Executor/Administrator), the name of the deceased and other information. Having a separate account is a step toward preventing the mixing or "commingling" of your own personal funds and those that belong to the estate. With the estate account set up, you can deposit or transfer the funds of the deceased into this separate account. Some items, such as paychecks, insurance premium refunds or employee death benefits, may be deposited directly into the estate account. In the case of other assets, such as bank accounts, certificates of deposit, stocks and bonds, you will need to obtain a tax waiver from the state Department of Revenue (if the item is worth more than a specified sum under state law) to be able to transfer the asset into the estate account. The tax waiver application form is available from any local office of the Department.
11. Q. Are life insurance proceeds part of the estate?
- A. For tax purposes, life insurance proceeds are counted as part of the taxable estate if the deceased owned the policy. You must account for the proceeds of such a policy on the tax return (state and, if necessary, federal) of the estate. On the other hand, only life insurance proceeds payable to the estate are listed on the inventory filed with the Clerk. Those policies and proceeds made payable to individual beneficiaries pass by contract, outside of the estate, directly to the named beneficiary.
12. Q. Once I have paid all the fees and expenses and accounted for all the property, how do I close the estate?
- A. First you would prepare the applicable state Inheritance and Estate Tax Return if required and, if a large estate is involved, a Federal Estate Tax Return for the estate as well. A state tax return must usually be prepared, but federal law does not tax estates valued at less than \$625,000 for the year 1998. The state Department of Revenue will furnish you with a form for estates in that state, upon payment of any taxes due, which certifies that the estate is cleared for closing. The next step is to distribute the estate among the heirs-at-law (if there is no will) or the designated beneficiaries (if a will has been admitted to probate). You should obtain a receipt from all heirs or beneficiaries stating that they have received their entire share of the estate of the deceased (signed, dated and witnessed). After you have distributed or divided the property, submit those receipts along with the Final Inventory to the Clerk's Office. You will also need canceled checks or "paid receipts" for all expenses, fees, and bills that

have been paid. Once that Office is satisfied that you have accounted for all assets and expenses, the estate will be closed.

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***I. Soldiers and Sailors Civil Relief Act***

**INFORMATION PAPER**

**SUBJECT:** THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

**PURPOSE:** To provide legal information to soldiers and other individuals regarding the protection s of the soldiers' and sailors'' civil relief act.

[A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel]. Revised by TJAGSA, ADA-LA, November 1993

**FACTS:**

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended, was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard (when in active federal service) are also protected under the SSCRA. The protection begins with the date of entering active duty service and terminates upon release from active duty.

**QUESTIONS AND ANSWERS:**

1. Q. Can service members get out of a lease or rental agreement?
  - A. Yes - a lease covering property used for dwelling, professional, business, agricultural or similar purposes may be terminated by a service member. Two conditions must be met:
    - a. The lease/rental agreement was signed before the service member entered active duty; and
    - b. The service member or his or her dependents have occupied the leased premises for the above purposes.
2. Q. How does the service member go about terminating the lease?
  - A. To terminate the lease, the service member must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty.

Oral notice is not sufficient. The effective date of termination is determined as follows:

- a. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination.
- b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

3. Q. Can I get a refund of security deposit or prepaid rent?

A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the service member upon termination of the lease (however, if the service member damaged the premises, an appropriate amount of the deposit may be withheld for repairs). The service member is required to pay rent only for those months before the lease is terminated.

4. Q. Can I stop an eviction action by my landlord?

A. If the property is rented for \$1,200 per month or less, you may ask the court to delay the eviction action for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by either your military service or your spouse's military service.

5. Q. Does the SSCRA apply to time payments or installment contracts?

A. Service members who signed an installment contract before active duty for purchase or lease with intent to purchase real or personal property will be protected if their ability to make the payments is "materially affected" because of active duty service. Remember-

- a. The service member must have paid, before entry into active duty, a deposit or installment payment under the contract.
- b. If the service member is not able to make payments because of his or her military duty, the SSCRA applies.
- c. The vendor (seller) is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the

contract or to repossess the property, unless authorized by a court order.

- d. The court may determine whether a service member's financial condition is "materially affected" by comparing the service member's financial condition before entry on active duty with his or her financial condition while on active; other factors may also be considered.

6. Q. What about my credit cards - can I stop paying on them?

A. No - you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

7. Q. What about the interest rates on my debts and mortgage payments - do they go down when I enter military service?

A. Yes. When an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The term "interest" includes service charges.

8. Q. Are there protections against mortgage foreclosures?

A. The SSCRA protects service members against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The property was owned by the service member or dependent before entry on active duty status;
- d. The property is still owned by the service member or dependent at the time relief is sought;
- e. The ability to meet the financial obligation is "materially affected" by the service member's active duty obligation.

9. Q. Can judicial proceedings be delayed?

A. A service member who is involved in civil (not criminal) judicial proceedings as either a plaintiff or defendant is entitled to a stay of these proceedings if the court finds that his or her ability to prosecute or defend an action is "materially affected" by reason of his or her active duty service. Courts are reluctant to grant long-term stays of proceedings and tend to require service members to act in good faith and be diligent in their efforts to appear in court. A service member's ability to prosecute or defend a civil suit is

shown to be "materially affected" when it can be satisfactorily demonstrated to the court that his or her military duties prevent him or her from appearing in court at the designated time and place. An affidavit setting out all the facts and circumstances is usually required.

10. Q. If a service member is sued, can a default judgment be entered against him or her in his or her absence?

A. When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the service member's response. When no response is filed on time, a default is usually entered against the defendant. The SSCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service before a default can be taken. When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent, in a very limited capacity, the service member defendant. The court appointed attorney will only represent the service member's SSCRA interests by determining if a request for a stay of proceedings should be made to allow the service member an opportunity to appear and defend. It will be up to the service member to retain an attorney to represent him or her during the trial. The filing of a false affidavit subjects the filer to a misdemeanor prosecution. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as the service member's civilian attorney.

11. Q. What if I cannot pay my income taxes because of a call to active duty?

A. The service member's ability to pay the tax must be "materially affected" (impaired) by reason of the active duty service. If this is the case, the SSCRA defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

## **Tax Relief for Those Affected by Operation Joint Guard**

\*\* Note: These questions and answers may be found at  
<http://www.dfas.mil/money/milpay/not96-34.htm>

### **PART 1 - MILITARY PAY EXCLUSION**

**I am a member of the U.S. Armed Forces stationed in Italy. I fly patrols over Bosnia and Herzegovina, in direct support of the military operations there, for which I receive hostile fire/imminent danger pay. Is any part of my military pay excluded from gross income?**

Yes. Under the Act and regulations in effect prior to the Act, you are treated as serving in the qualified hazardous duty area because you are a member of the U.S. Armed Forces serving in direct support of military operations in the qualified hazardous duty area for which you receive hostile fire/imminent danger pay.

**If I am injured and hospitalized while serving in the U.S. Armed Forces in the qualified hazardous duty area, is any of my military pay excluded from gross income?**

Yes. Military pay received by enlisted personnel who are hospitalized as a result of injuries sustained while serving in the qualified hazardous duty area is excluded from gross income. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month. These exclusions from gross income for hospitalized enlisted personnel and commissioned officers end 2 years after the date of termination of the qualified hazardous duty area designation.

**My wife is currently serving in the U.S. Armed Forces in the qualified hazardous duty area and will be eligible for discharge when she returns home. If she is discharged upon her return, will the payment for the annual leave that she accrued during her service in the qualified hazardous duty area be excluded from gross income?**

Yes. Annual leave payments made to enlisted members of the U.S. Armed Forces at the time of their discharge from the service are

excluded from gross income to the extent the leave was accrued during any month in any part of which the member served in the qualified hazardous duty area. If your wife is a commissioned officer, a portion of the annual leave payment she receives for leave accrued during any month in any part of which she served in the qualified hazardous duty area may be excluded. The leave payment cannot be excluded to the extent it exceeds the maximum enlisted amount for the month of service to which it relates less the amount of military pay already excluded for that month.

**My brother, who is a civilian in the merchant marine, is on a ship that transports military supplies between the United States and the qualified hazardous duty area. Is he entitled to the qualified hazardous duty area military pay exclusion?**

No. Those serving in the merchant marine are not members of the U.S. Armed Forces. The qualified hazardous duty area military pay exclusion applies only to members of the U.S. Armed Forces. The U.S. Armed Forces include all regular and reserve components of the uniformed services that are under the control of the Secretaries of Defense, Army, Navy, and Air Force, as well as the Coast Guard.

**My husband is a member of the U.S. Armed Forces performing services as part of Operation Joint Endeavor in Germany. He is not receiving hostile fire/imminent danger pay. Is he entitled to the military pay exclusion?**

No. U.S. Armed Forces personnel serving outside the qualified hazardous duty area are not entitled to the military pay exclusion, unless they are serving in direct support of military operations in the qualified hazardous duty area for which they receive hostile fire/imminent danger pay.

## **PART 2 - EXTENSION OF DEADLINES**

**My son is a member of the U.S. Armed Forces who is now serving in the qualified hazardous duty area. Is he entitled to an extension of time for filing and paying his federal income taxes? Are any assessment or collection deadlines extended?**

For both questions, the answer is yes. In general, the deadlines for performing certain actions applicable to his federal taxes are extended for the period of his service in the qualified hazardous duty area on or after November 21, 1995, plus 180 days thereafter. During this extension period, assessment and collection deadlines

will be extended, and interest and penalties attributable to the extension period will not be charged.

**Assuming the same facts as above, would my son still have an extension for filing and paying his federal individual income taxes if he has unearned income from investments?**

Yes. The extension applies without regard to the source of your son's income.

**Assuming the same facts as above, will the deadline extension provisions continue to apply if my son is hospitalized as a result of an injury sustained in the qualified hazardous duty area?**

Yes. The deadline extension provisions will apply for the period that your son is continuously hospitalized outside of the United States as a result of injuries sustained while serving in the qualified hazardous duty area. For hospitalization inside the United States, the extension period cannot be more than 5 years.

**Do the deadline extension provisions apply only to members of the U.S. Armed Forces serving in the qualified hazardous duty area?**

No. The deadline extension provisions also apply to individuals serving in a qualified hazardous duty area in support of the U.S. Armed Forces, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces.

**My son is a civilian explosive specialist who is in Macedonia training U.S. Armed Forces personnel serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my son?**

Yes. The deadline extension provisions apply to your son because he is serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

**My husband is a private businessman working in Bosnia and Herzegovina on nonmilitary projects. Do the deadline extension provisions apply to my husband?**

No. Other than military personnel, the only individuals working in the qualified hazardous duty area that are entitled to the deadline extension provisions are those serving in support of the U.S. Armed

Forces.

**I am a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my husband who is in the United States?**

Yes. The deadline extension provisions apply not only to members serving in the U.S. Armed Forces (or individuals serving in support thereof) in the qualified hazardous duty area, but to their spouses as well, with two exceptions. First, if you are hospitalized in the United States as a result of injuries received while serving in the qualified hazardous duty area, the deadline extension provisions would not apply to your husband. Second, the deadline extension provisions for your husband do not apply for any tax year beginning more than 2 years after the date of the termination of the qualified hazardous duty area designation.

**Assuming the same facts as above, will my husband have to file a joint tax return in order to benefit from the deadline extension provisions?**

No. The deadline extension provisions apply to both spouses whether joint or separate returns are filed. If your husband chooses to file a separate return, he will have the same extension of time to file and pay his taxes that you have.

**My husband is serving in the U.S. Armed Forces in the qualified hazardous duty area. In 1998, our son, who is 12 years old, received \$700 of interest income. Our daughter, who is 17 years old, received \$2,000 of earned income from part-time work and \$900 of interest income. We claim both children as dependents on our federal individual income tax return. Are federal individual income tax returns required to be filed for our children while my husband is in the qualified hazardous duty area?**

No. Federal individual income tax returns for your dependent children are not required to be filed while your husband is in the qualified hazardous duty area. Instead, these returns will be considered timely if filed on or before the deadline for filing your federal individual income tax return under the deadline extension provisions. The U.S. Armed Forces will provide your husband with instructions on how to notify the IRS of your children's eligibility to receive this extension of time to file. Since your older child may be entitled to a refund of tax, she may want to file her federal individual income tax return and obtain her refund.

**I am a member of the U.S. Armed Forces serving in Croatia. My spouse and our three children live in our home in the United States. During 1998, a child care provider took care of our children in our home. We are required to file a Schedule H, Household Employment Taxes, as an attachment to our federal individual income tax return to report the federal employment taxes on wages we paid to our child care provider. Do the deadline extension provisions apply to the filing of Schedule H as an attachment to our federal individual income tax return?**

Yes. The deadline extension provisions apply to all schedules and forms that are filed as attachments to the federal individual income tax return.

**I am a member of the U.S. Armed Forces who served in the qualified hazardous duty area from December 10, 1997, through May 15, 1998. When will I be required to file my federal individual income tax return for 1997?**

You must file your 1997 federal individual income tax return on or before February 25, 1999, 286 days after you left the qualified hazardous duty area. The deadline extension period consists of the sum of the following:

(1) 180 days from the date you left the area	180
(2) The number of days remaining (as of the date you entered the area) to perform the required act (in your case, filing your 1997 federal individual income tax return, 1/1/98 to 4/15/98)	106
Total	286

**My wife is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Can she make a timely qualified retirement contribution for 1998 to her individual retirement account (IRA) after April 15, 1998, and on or before the due date of her 1998 federal individual income tax return after applying the extension of deadline provisions?**

Yes. Your wife can make a timely qualified retirement contribution for 1998 to her IRA on or before the extended deadline for filing her 1998 income tax return under the deadline extension provisions.

**My brother, who served in the U.S. Armed Forces in the qualified hazardous duty area from December 1997 through February 1998, did not make his fourth estimated tax payment for 1997. Will my brother be liable for estimated tax penalties?**

No. Your brother is covered by the deadline extension provisions and will not be liable for any penalties if he files and pays any tax due by his extended filing due date. The U.S. Armed Forces will provide your brother with instructions on how to notify the IRS of his eligibility to receive tax relief.

**My son, who is a member of the U.S. Armed Forces, was on an installment payment plan with the IRS for back taxes before he was assigned to the qualified hazardous duty area. What should be done now that he is in the qualified hazardous duty area?**

The IRS office where your son was making payments should be contacted. Because your son is serving in the qualified hazardous duty area, he will not have to make payments on his past due taxes for his period of service in the qualified hazardous duty area plus 180 days. No penalties or interest will be charged during the deadline extension period.

**My son, who is a member of the U.S. Armed Forces serving in the qualified hazardous duty area, will file his federal individual income tax return for 1997 after April 15, 1998, but on or before the end of the deadline extension for filing that return. He expects to receive a refund. Will the IRS pay interest on the refund?**

Yes. The IRS will pay interest from April 15, 1998, on a refund issued to your son if he files his 1997 federal individual income tax return on or before the due date of that return after applying the deadline extension provisions. The U.S. Armed Forces will provide your son with instructions on how to notify the IRS of his eligibility to receive tax relief. If his 1997 return is not timely filed on or before the due date after applying the deadline extension provisions, no interest will be paid on the refund except as provided under the normal refund rules.

**Do the deadline extension provisions apply to federal tax returns other than the federal individual income tax return?**

Yes. The deadline extension provisions also apply to federal estate and gift tax returns. However, the deadline extension provisions do not apply to other federal tax and information returns, such as

those for corporate income tax or employment taxes.

**I am a member of the U.S. Army that was deployed to Germany to perform services as part of Operation Joint Guard. My permanent duty station is in the United States where my spouse resides. Do the deadline extension provisions for filing and paying our federal individual income taxes apply?**

Yes. Any member of the U.S. Armed Forces who is performing services as part of Operation Joint Endeavor outside of the United States while deployed away from that individual's permanent duty station qualifies for the deadline extension for filing and paying federal individual income taxes. The deadline extension provisions also apply to that member's spouse.

**My husband, who is a member of the U.S. Armed Forces, is at his permanent duty station in Germany performing services as part of Operation Joint Guard. Do the deadline extension provisions apply?**

No. U.S. Armed Forces personnel serving at their permanent duty station outside the qualified hazardous duty area are not entitled to the deadline extension provisions.

**I am a Department of Defense civilian employee stationed in Hungary away from my permanent duty station in the United States. I am performing services as part of Operation Joint Guard. Do the deadline extension provisions apply to me?**

Yes. The deadline extension provisions apply to you. Although you are not serving in the qualified hazardous duty area, you are a Department of Defense civilian employee performing services away from your permanent duty station as part of Operation Joint Guard.

**My husband and I are civilian employees of defense contractors. I work in the United States and my husband temporarily works in Germany. Our jobs involve the production of equipment used by the U.S. Armed Forces for Operation Joint Guard. Do the deadline extension provisions apply to either of us?**

No. The deadline extension provisions do not apply to civilian employees of defense contractors unless they are serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

### **PART 3 - MISCELLANEOUS PROVISIONS**

**My daughter is a member of the U.S. Armed Forces serving in the**

**qualified hazardous duty area. She makes calls to me here in the United States. Are these calls exempt from the federal excise tax on toll telephone service?**

Yes. Telephone calls that originate within the qualified hazardous duty area and that are made by members of the U.S. Armed Forces serving there are exempt from the federal excise tax on toll telephone service. If a calling card or collect call is made, a certificate of exemption must be furnished to the telephone service provider receiving payment for the call. The exemption certificate (which may be obtained from the telephone service provider) should be signed and dated by the telephone subscriber and contain the following information: the amount, time, and date of the call, the name of the person who called from the qualified hazardous duty area, a statement that the person who called was a member of the U.S. Armed Forces performing service in the qualified hazardous duty area, and the name and address of the telephone subscriber.

**If the federal excise tax has already been paid on the toll telephone service in question above can a refund be obtained?**

Yes. If the federal excise tax has already been paid on that toll telephone service, a refund may be obtained either from the telephone service provider that collected the tax, or from the IRS by filing Form 8849, Claim for Refund of Excise Taxes.

**How will my military pay for active service in the U.S. Armed Forces in the qualified hazardous duty area be reported on my 1998 Form W-2, Wage and Tax Statement?**

Military pay attributable to your active service in the qualified hazardous duty area that is excluded from gross income will not be reported on your 1998 Form W-2 in the box marked "Wages, tips, other compensation." However, military pay for such service is subject to social security and medicare taxes and will be reported on your 1996 Form W-2 in the boxes marked "Social security wages" and "Medicare wages and tips."

**I'm an officer serving in the qualified hazardous duty area. I have made monthly contributions to an individual retirement account (IRA) for 1998. In view of the military pay exclusion for my service in the qualified hazardous duty area, I may have little or no taxable compensation for 1998 and may not be eligible to make an IRA contribution for 1998. If my taxable compensation is less than \$2000, should I withdraw the portion of my contributions that exceeds my taxable compensation?**

Yes. In general, any amount contributed to your IRA that is more than the smaller of (1) your taxable compensation, or (2) \$2000, is an excess contribution and must be withdrawn to avoid a 6 percent excise tax. Once you are sure that your taxable compensation will be less than \$2000, you should withdraw the portion of your contributions that exceeds your taxable compensation. You will not be taxed on the distributed amount if you receive the distribution on or before the deadline for filing your 1998 federal individual income tax return after applying the deadline extension provisions. You may not take a deduction with respect to these distributed contributions. You must also withdraw the amount of net income attributable to the distributed contributions while they were assets of the IRA. Any of that net income is includible in your gross income for 1996. For further information, see Publication 590, Individual Retirement Arrangements (IRA).

**Assuming the same facts as the question above how will the financial institution that distributes my 1998 IRA contributions to me report this distribution?**

The financial institution will report the entire amount of the distribution (1998 distributed contributions and attributable net income) on Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, it should report only the amount of any net income attributable to the distributed contributions as the "Taxable amount" on Form 1099-R.

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## Appendix E

### SAMPLE DESIGNATION OF BENEFICIARY CLAUSES FOR SGLI

(DAJA-LA Proposed formats for  
SGLI Beneficiary Designations - Nov 92)

#### 1. BY-NAME

Single Principal Beneficiary - "My wife, Mary A. Doe, SS#, address, 100%, Lump Sum."

Two Principal Beneficiaries - "My father, John E. Doe, SS#, address, 50%, Lump Sum;  
and to my Mother, Mary A. Doe, SS#, address, 50%, Lump Sum."

Multiple Principal Beneficiaries - "My sister, Ann E. Doe, SS#, address, 33 1/3 %, 36  
payments; my brother, James E. Doe, SS#, address, 33 1/3 %, 36 payments; and my  
friend, Jerry Smith, SS#, address, 33 1/3%, 36 payments."

Do not place Principal Beneficiaries on the Contingent Beneficiary Lines of the form.

When designating Contingent Beneficiaries, the designation is done in the same  
manner as explained above for Principal Beneficiaries.

#### 2. LIVING TRUST

Trust for Minor Children - "My trustee, John A. Doe, to fund a Trust established for the  
benefit of my children, under Trust Agreement dated \_\_\_\_\_. 100% Lump Sum."

Trust for an Individual Child - "My Trustee, John A. Doe, to fund a Trust established for  
the benefit of my Son, Jerry A. Doe, under Trust Agreement dated \_\_\_\_\_. 100%  
Lump Sum."

Trust for an Adult - "My Trustee, John A. Doe, to fund a Trust established for the benefit  
of my Mother, Mary A. Doe, under Trust Agreement dated \_\_\_\_\_. 100% Lump  
Sum."

#### 3. TESTAMENTARY TRUST

Trust for Minor Children - "My trustee, John A. Doe, to fund a Trust established for the benefit of my children, under my Last Will and Testament dated \_\_\_\_\_. 100% Lump Sum."

Trust for an Individual Child - "My Trustee, John A. Doe, to fund a Trust established for the benefit on my Son, Jerry A. Doe, under my Last Will and Testament dated \_\_\_\_\_. 100% Lump Sum."

Trust for an Adult - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Mother, Mary A. Doe, under my Last Will and Testament dated \_\_\_\_\_ 100% Lump Sum."



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## Appendix F

### **SAMPLE POWER OF ATTORNEY CLAUSES**

#### **INCLUDE THIS PREAMBLE FOR ALL MILITARY POWERS OF ATTORNEY**

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY, OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

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**A. Forms for Special Powers of Attorney**

**1. BASIC SPECIAL POWER OF ATTORNEY**

The following sample is a streamlined and updated version of a special power of attorney form that is commonly used in Army legal assistance offices. This is, of course, only one way to draft the basic form. Practitioners are encouraged to develop basic forms that more closely conform with local preferences.

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned \_\_\_\_\_, SSN \_\_\_\_\_, a legal resident of the State of \_\_\_\_\_, United States of America, now in the military service of the United States Army, currently assigned to \_\_\_\_\_, by this document do make and appoint \_\_\_\_\_, SSN \_\_\_\_\_, whose present address is \_\_\_\_\_, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after \_\_\_\_\_, 19\_\_.

**2. SPECIAL POWER OF ATTORNEY WITH "DURABLE" CLAUSE**

Some states and federal agencies require a "durable" power of attorney clause if the power of attorney is to continue to be effective in the event the principal becomes mentally incompetent.

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned \_\_\_\_\_, SSN \_\_\_\_\_, a legal resident of the State of \_\_\_\_\_, United States of America, now in the military service of the United States Army, currently assigned to \_\_\_\_\_, by this document do make and appoint \_\_\_\_\_, SSN \_\_\_\_\_, whose present address is \_\_\_\_\_, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

This Power of Attorney shall continue to be effective should I become disabled, incompetent or incapacitated prior to the below-stated expiration date.

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after \_\_\_\_\_, 19\_\_.

(Add appropriate notarial clause.)

### 3. SPECIAL POWER OF ATTORNEY WITH POW/MIA EXTENSION CLAUSE

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned \_\_\_\_\_, SSN \_\_\_\_\_, a legal resident of the State of \_\_\_\_\_, United States of America, now in the military service of the United States Army, currently assigned to \_\_\_\_\_, by this document do make and appoint \_\_\_\_\_, SSN \_\_\_\_\_, whose present address is \_\_\_\_\_, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after \_\_\_\_\_, 19\_\_.

Notwithstanding my inclusion of a specific expiration date herein, if on the above specified expiration date, or if at any time immediately preceding that specified expiration date, I should be, or have been, carried in a military status of "missing," "missing in action" or "prisoner of war," then this Power of Attorney shall automatically continue to remain valid and in full effect until \_\_\_\_\_ days after I have returned to the United States military control following termination of such status UNLESS OTHERWISE REVOKED OR TERMINATED BY ME.

(Add appropriate notarial clause.)

**4. SPECIAL POWER OF ATTORNEY WITH  
"DURABLE" AND POW/MIA EXTENSION CLAUSES**

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned \_\_\_\_\_, SSN \_\_\_\_\_, legal resident of the State of \_\_\_\_\_, United States of America, now in the military service of the United States Army, currently assigned to \_\_\_\_\_, by this document do make and appoint \_\_\_\_\_, SSN \_\_\_\_\_, whose present address is \_\_\_\_\_, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

This Power of Attorney shall continue to be effective should I become disabled, incompetent or incapacitated prior to the below-stated expiration date.

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after \_\_\_\_\_, 19\_\_.

Notwithstanding my inclusion of a specific expiration date herein, if on the above specified expiration date, or if at any time immediately preceding that specified expiration date, I should be, or have been, carried in a military status of "missing," "missing in action" or "prisoner of war," then this Power of Attorney shall automatically continue to remain valid and in full effect until \_\_\_\_\_ days after I have returned to the United States military control following termination of such status UNLESS OTHERWISE REVOKED OR TERMINATED BY ME.

(Add appropriate notarial clause.)

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## **B. Special Powers of Attorney for Deployment**

### Instructions for Execution

1. The special power of attorney for deployment is designed to be used by the service member only under deployment conditions. This power of attorney may be kept in the service member's SRP packet and will be put into use only when an actual deployment occurs. This power of attorney is not a general power of attorney. If the service member desires a power of attorney of any sort, for any reason, (s)he should visit the legal assistance office during normal duty hours.

The special power of attorney for deployment can give the designated attorney (agent or person acting for the service member) various limited powers, including the power:

- a. To operate, register, and insure vehicles.
- b. To cash government checks issued to the service member.
- c. To take possession of and to ship the service member's personal property and household goods.
- d. To exercise temporary guardianship over children.
- e. To authorize medical care for dependent children.
- f. To obtain identification cards for the spouse and dependent children.
- g. To arrange for the travel of the spouse and dependent children.
- h. To sign for, accept, and clear government quarters.

2. If you DO NOT desire to give your agent one or more of these powers, you should line through that specific power and place your initials next to the beginning and ending of the line at the time you sign the power of attorney.

3. DO NOT SIGN THIS POWER OF ATTORNEY UNLESS YOU ARE ACTUALLY BEING DEPLOYED.

THIS DOCUMENT IS INTENDED FOR USE IN CONJUNCTION WITH AN ACTUAL DEPLOYMENT OF FORCES AND NOT FOR USE DURING TRAINING EXERCISES.

4. DO NOT SIGN THIS DOCUMENT UNTIL YOU ARE ACTUALLY IN THE PRESENCE OF A PERSON DESIGNATED TO ACT AS A NOTARY PUBLIC.

To have this document properly notarized, you must present your Armed Forces Identification Card to the notary and actually sign the document in his or her presence. Only a commissioned member of the Judge Advocate General's Corps or a commissioned officer who has been designated as an Adjutant or an Assistant Adjutant may act as a notary public. After you sign the power of attorney, the notary will sign the document, and place his or her seal, if any, on the document.

5. A person acting in a notarial capacity should not place his or her rank on the document, but will place the notarial authority (adjutant, assistant adjutant, or judge advocate) in the space provided.

**1. SPECIAL POWER OF ATTORNEY FOR DEPLOYMENT-- FORT LEWIS MODEL**

GRANTOR'S NAME                      GRADE              SSN

\_\_\_\_\_  
RESIDING AT

\_\_\_\_\_  
NAMES AND AGES OF CHILDREN

\_\_\_\_\_  
\_\_\_\_\_  
KNOW ALL PERSONS BY THESE PRESENTS, that I,              (Name of Grantor)              do  
make, constitute, and appoint              (Name of Grantee)              my true and lawful attorney-  
in-fact to:

- (1) use, operate, insure, license, and register with any state or government agency any and all vehicles of which I am presently the registered or legal owner;
- (2) receive, endorse, cash, or deposit checks payable to the undersigned drawn on the Treasurer or other fiscal officer or depository of the United States, or of any sovereign state, authority, or instrumentality thereof;
- (3) take possession and order the removal and shipment of any of my personal property wheresoever located;
- (4) have custody, care and control over my child(ren), and to authorize and order all necessary items or services for my child(ren)'s welfare and benefit, to include,

but not limited to, medical, dental, and surgical care, schooling, clothing, housing, food, and other necessities of life and to otherwise act as temporary guardian;

(5) obtain medical care and treatment at any hospital for my child(ren), and to execute any consent and release of waiver of liability required by the hospital authorities incident to medical care and treatment for my child(ren);

(6) perform any and all acts and to sign, execute, and endorse any instrument necessary for the issuance or re-issuance of Dependent Identification cards for any of my legal dependents as defined by Army Regulation;

(7) perform any and all acts and sign, execute, and endorse any instrument necessary to arrange for travel, at government expense or otherwise, for my legal dependents as defined under Army Regulation;

(8) prepare, execute, and file income and other tax returns as may be required;

(9) sign for quarters, arrange for final inspection, clear quarters, and accept responsibility for the property therein; and

(10) sign in my name, place, and stead any document whatsoever necessary under the law to accomplish the above listed powers and to make, sign, endorse, act, receive, or accept any instrument of any kind or nature as may be necessary or proper to accomplish any of the above said powers.

This power of attorney shall not be affected by disability of the principal.

And I hereby declare that if I shall be reported or listed as "missing in action" as that phrase is used in military parlance, such designation shall not bar my attorney from fully and completely exercising and continuing to exercise any and all powers granted, and that such report of "missing in action" neither shall constitute or be interpreted as constituting notice of my death nor shall operate to revoke this instrument.

And I hereby declare that unless sooner terminated by me, all powers granted herein to my attorney shall terminate on the \_\_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_.

(Add appropriate notarial clause.)

ACKNOWLEDGED  
WITH THE UNITED STATES ARMED FORCES  
AT \_\_\_\_\_  
STATE OF \_\_\_\_\_

I, the undersigned officer, adjutant, assistant adjutant, or judge advocate, do hereby certify that on the aforementioned date personally appeared the aforementioned active duty service member, to me known to be the person who is described in and who executed the foregoing instrument, and having first made known to him/her the contents thereof, he/she personally acknowledged to me that he/she signed the same as his/her free and voluntary act for the uses and purposes therein set forth. And I do further certify that I am, at the date of certification, a commissioned officer, adjutant, assistant adjutant, or judge advocate of the branch of service and organization stated below on

active duty with the United States Armed Forces, and that by statute no seal or stamp is required on this document.

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Printed Name and Notarial Title  
of Certifying Official

With the Power of a  
Notary Public under  
the Law of the United  
States (Art. 136, UCMJ;  
10 U.S.C. ' 936 and 1044).  
NO SEAL OR STAMP IS  
NECESSARY.

\_\_\_\_\_  
Branch of Service and Organization

**2. SPECIAL POWER OF ATTORNEY FOR DEPLOYMENT-- FORT STEWART  
MODEL**

PRIVACY ACT STATEMENT (5 USC 552a)

AUTHORITY: Title 10 USC, Section 3012.

PRINCIPAL PURPOSE: To assist the attorney with the preparation of legal documents for client.

ROUTINE USE(S): To provide basic information necessary in preparation of such documents. When completed, one copy of the document will be given to client and the original will be placed in client's Personnel Readiness Folder.

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION: Voluntary. Failure to disclose the requested information will result in the attorney not being able to prepare the document for the individual.

KNOW ALL PERSONS BY THESE PRESENTS: that I, \_\_\_\_\_, have made, constituted, and appointed, and by these presents do make, constitute, and appoint \_\_\_\_\_, whose present address is \_\_\_\_\_ my true and lawful attorney to act as follows, GIVING AND GRANTING unto my said attorney full power to:

\_\_\_\_\_ 1. Exercise all rights and powers incident and pertaining to ownership of my motor vehicle, including the power of sale, possession, operation, and registration of the following motor vehicle:

(YEAR)	(MAKE)	(MODEL)	(IDENTIFICATION NUMBER)
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\_\_\_\_\_ 2. Authorize and request, in my behalf and name the shipment and storage of household goods, personal baggage, automobile, and any and all of my other personal property.

\_\_\_\_\_ 3. Authorize any and all medical, dental, and hospital care and treatment, either preventive or corrective, including major surgery, deemed necessary by a duly licensed physician or dentist for the health and well-being of my child(ren):

NAME	AGE	RELATIONSHIP
_____		
_____		
_____		

\_\_\_\_\_ 4. Pick up government treasury checks from the unit first sergeant, mail clerk, commander, or anyone designated by the commander to release said checks. Pick up my Leave and Earning Statement from the unit first sergeant or the finance office. Also, the above attorney-in-fact can cash said checks or deposit said checks in my account.

\_\_\_\_\_ 5. Effect the assignment or termination of U.S. Government quarters and to procure or return any and all U.S. Government property used in or for such quarters, and to execute all necessary documents, instruments, and papers therewith.

I DECLARE THAT THIS POWER OF ATTORNEY SHALL BECOME VALID AND EFFECTIVE ONLY AT AND FROM THE DATE THAT A COMMISSIONED OFFICER IN THE UNITED STATES ARMED FORCES AT \_\_\_\_\_ ATTESTS, BY HIS OR HER NOTARIZED SIGNATURE IN THE DEPLOYMENT CLAUSE BELOW, THAT I HAVE DEPLOYED FROM \_\_\_\_\_ IN THE ARMED SERVICE OF THE UNITED STATES. I ALSO DECLARE THAT SUCH NOTARIZED SIGNATURE OF AN OFFICER SERVING AT \_\_\_\_\_ SHALL ITSELF ALONE BE SUFFICIENT TO MAKE THIS POWER FULLY VALID AND EFFECTIVE. I HEREBY REQUEST AND AUTHORIZE THAT AS SOON AS POSSIBLE AFTER MY DEPLOYMENT THE SAID DEPLOYMENT CLAUSE BE COMPLETED AND SIGNED BY A COMMISSIONED OFFICER SERVING AT \_\_\_\_\_ AND THEN NOTARIZED.

FURTHER, I do authorize my aforesaid Attorney-in-Fact to sign for me all forms, papers, affidavits, statements of ownership, certificates, and receipts necessary to carry out the aforesaid authorizations and to perform any and all necessary acts in the execution of the aforesaid authorizations with the same validity as I could effect if personally present. Any act or thing lawfully done hereunder in my said attorney shall be binding on myself and my heirs, legal and personal representatives, and assigns.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "Attorney-in-Fact."

I FURTHER DECLARE that this power shall remain in effect even though I am reported or listed, officially or otherwise, as "missing," "missing-in-action," or "prisoner-of-war," it being my intention that the designation of such status shall not bar my said attorney from fully and completely exercising and continuing to exercise any and all powers and rights herein granted until this Special Power of Attorney is revoked by my death or as otherwise provided herein.

Notwithstanding my insertion of specific expiration date herein, if on the below specified expiration date, or if at any time within thirty (30) days immediately preceding that specified expiration date, I should be, or have been, carried in a military status of "missing," "missing-in-action," or "prisoner-of-war," then this Power of Attorney shall automatically continue to remain valid and in full effect until sixty (60) days after I have returned to United States military control following termination of such "missing," "missing-in-action," or "prisoner-of-war" status.

FURTHER, UNLESS SOONER REVOKED OR TERMINATED by me, this Power of Attorney shall become NULL and VOID from and after \_\_\_\_\_, nineteen hundred \_\_\_\_\_.

(Add appropriate notarial clause.)

### 3. DEPLOYMENT CLAUSE

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_  
(NAME) (RANK) & (ARMED FORCE)

being duly sworn, do hereby certify that I am a commissioned officer in the Armed Forces of the United States, that I am presently serving at \_\_\_\_\_, and that the aforementioned \_\_\_\_\_, the grantor of the Power of Attorney, is a member of the United States Armed Forces and has deployed from \_\_\_\_\_ in the Armed Service of the United States.

\_\_\_\_\_  
(Signature of Certifying Officer)

\_\_\_\_\_  
(Duty Position of Certifying Officer)

(Add appropriate notarial clause.)

**4. DURABLE POWER OF ATTORNEY FOR CHILD CUSTODY AND CARE UPON MOBILIZATION**

**GENERAL FORM**

Agreement made this [DAY-MADE] day of [MONTH-MADE], [YEAR MADE], between [PARENT1], [PARENT2], of [ADDRESS], [CITY], [STATE], [ZIP CODE] herein referred to as parents, and [CUSTODIAN/AGENT] of [ADDRESS], [CITY], [ZIP CODE] herein referred to as custodian. INSERT STATE CLAUSE HERE.

**RECITALS**

1. Parent(s) are the father and/or mother and sole legal custody of the following children:

NAME/S

DOB

SSN

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2. Custodian/agent desires to care for the child(ren) for the parent(s) upon mobilization of the parent(s) unit of the \_\_\_\_\_Army National Guard.

3. The parent wishes to form a durable power of attorney between the parent as principal and the agent/custodian. The parent wishes to appoint the agent immediately but limit his power to act upon either of the following contingencies:

a. When the custodian/agent is provided with a copy of the principal's mobilization orders.

b. When the custodian/agent is provided with a signed statement by the principal certifying he has been called to active duty.

4. The minor child shall become a member of the family of the custodian/agent upon the date of the contingencies outlined in 3A and 3B above, wherein the child shall be properly educated, cared for according to the laws of the State of \_\_\_\_\_.

5. The parents also delegate all of their powers regarding care, custody, and or property to the minor child, including consent for emergency medical treatment excepting their power to consent to marriage or adoption of the minor child(ren).
6. That pursuant to this durable power of attorney the custodian/agent agrees to serve without compensation to themselves.
7. That pursuant to this durable power of attorney I hereby give the power to the custodian/agent to endorse any check, money order, draft or similar article and to deposit the proceeds into my checking account at [NAME OF BANK], [ADDRESS], [CITY], [STATE], [ZIP CODE]. These monies would be to benefit the child(ren) and not inure to the benefit of the custodian/agent.
8. This durable power of attorney is to be effective in all other jurisdictions in all 50 states, the District of Columbia, U.S. Commonwealth and Territories and may be given the most liberal interpretation available for purposes of granting my agent the fullest amount of discretion in making medical decisions on my children's behalf. I also intend the laws of the State of \_\_\_\_\_ to apply to interpret the validity of this instrument.
  - a. I do  I do not  consent to give my agent/custodian the right to consent to my minor daughter to have an abortion.
9. That I as principal hold any third party harmless for any action taken at the request of the agent.
10. That the custodian/agent acting under this durable power of attorney shall not be held liable for an act upon the ground that the principal was not alive if the act was performed in good faith and without actual knowledge of the death of the principal. The fact that any principal has been reported as "missing" or "missing-in-action" or other similar status shall not in itself be considered as indicating the death of the principal. [See State Statute if applicable, e.g., WY, IA.]
11. Consent of minor if over 14 years of age

\_\_\_\_\_  
Signature of Minor

\_\_\_\_\_  
Typed Name of Minor

IN WITNESS WHEREOF, the parties to this agreement have hereunto signed.

\_\_\_\_\_  
Signature of Parent/s

\_\_\_\_\_  
Signature of Custodian/s

SEPARATE WITNESSES TO AGREEMENT

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

The foregoing instrument was acknowledged before me in person on the [DAY MADE] day of [MONTH MADE], [YEAR MADE], by [PARENT1], [PARENT2], and [CUSTODIAN/AGENT] each stating it to be their voluntary act and deed.

\_\_\_\_\_  
Notary Public

Seal

**5. SELF CERTIFICATION OF MOBILIZATION**

I \_\_\_\_\_ of the  
Name (Print) SSN

National Guard Reserves have been called to active duty pursuant to a general mobilization/individual mobilization order. I hereby order that my Durable "Springing" Power of Attorney for Child Care and Custody go into effect.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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**C.                   *Clauses for Special Powers of Attorney***

The following sample clauses are merely examples. The practitioner should take care to tailor these special power of attorney clauses to meet the specific needs of individual clients.

**1.       **BANKING TRANSACTIONS****

Many banks require that any authorizations given to third parties be made on special forms that are provided by the banks themselves. Clients should always check first with their bank to find out if the bank requires the use of a special form to transact the desired business. Also note special rules regarding treasury checks, savings bonds, and tax refund checks, below.

**a)       **Depositing Funds in a Bank Account****

To deposit in my name and for my account with any bank, banker, or trust company or other banking institution, all monies which may come in the hands of my said attorney as such attorney and all bills of exchange, drafts, checks, promissory notes and other securities, including but not limited to, such instruments as issued by or drawn by the Treasurer or other fiscal officer or depository of the United States, for money payable or belonging to me and for that purpose to sign my name in the manner provided herein, and indorse the same for deposit or collection.

**b)       **Withdrawing Funds from a Bank Account****

For me and in my name to draw (a check) (checks) against my account numbered \_\_\_\_\_, in the \_\_\_\_\_ Bank, in (city, state) \_\_\_\_\_, (in the amount of \_\_\_\_\_ dollars) (up to \_\_\_\_\_ dollars), (for the purpose of: \_\_\_\_\_).

**c)       **Depositing and Withdrawing Funds From a Bank Account****

For me and in my name to deposit in my (checking) (savings) account numbered \_\_\_\_\_, in the \_\_\_\_\_ Bank in (city, state) \_\_\_\_\_ (all funds including, but not limited to checks drawn on the Treasurer of the United States) (my monthly pay check issued by \_\_\_\_\_ employer) (other) which shall come to (him)(her) for such purpose, and to sign my name and to endorse (all) (those specific) checks, drafts, or other securities for money payable to me, for the purpose of deposit only in the above-described account (and from time to time withdraw monies deposited in the said account, with the following limits: \_\_\_\_\_)

**d) Endorsing Negotiable Instruments**

To endorse and negotiate for any and all purposes all promissory notes, bills of exchange, checks, drafts or other negotiable or nonnegotiable paper payable to me or to my order including but not limited to checks drawn on the Treasurer of the United States; to endorse for transfer all certificates of stock, bond, or other securities; to endorse and cash United States savings bonds and notes.

**e) Endorsing Paychecks**

To receive, sign for, endorse, and cash my monthly paycheck (drawn on the Treasurer of the United States) for the month(s) of (month(s)) , 19\_\_\_\_.

**f) Special Rules for Treasury Checks**

Any check drawn on the Treasurer of the United States may be negotiated under a specific power of attorney executed after the issuance of the check and describing it in full (31 C.F.R. ' 240.15(a) (1991)). Checks issued for the redemption of currencies or for principal or interest on U.S. securities, tax refunds, or payments for goods and services may be negotiated under a general or special power of attorney in favor of an individual, financial organization, or other entity (31 C.F.R. " 240.14(a), (b) and (c) (1991)). This includes military pay checks. Other Treasury checks, such as recurring V.A. benefits checks, may be negotiated under a special power of attorney which names a financial institution as attorney-in-fact and recites that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person (31 C.F.R. ' 240.15 3(c) (1991)).

**g) Special Rules for IRS Refund Checks**

The IRS requires that the power to receive refund checks be specifically granted to the agent. 26 C.F.R. ' 601.504 (1992). Department of the Treasury, IRS Form 2848 may be used for this purpose. The principal may grant the agent authority to receive refund checks without using Form 2848, but the power of attorney must reflect the information that would be provided by using Form 2848.

Note that 26 U.S.C. ' 6695(f) (West Supp. 1992) provides that any income tax preparer who endorses or otherwise negotiates a check payable to a taxpayer shall pay a penalty of \$500.

The U.S. Treasury standard forms can authorize an agent to endorse and collect checks drawn on the Treasurer of the United States. These forms may be used where appropriate, but are not required. These forms may be ordered in bulk from your servicing publications center.

**h) Special Rules for Redemption of U.S. Savings Bonds and Notes**

A request for payment of a United States savings bond or note may be signed by an attorney-in-fact who is authorized to sell or redeem the principal's Treasury securities. 31 C.F.R. " 315.40(d) and 353.40(d) (1991). However, only Federal Reserve Banks or Branches, not local commercial banks, have authority to redeem bonds or notes if the presenter is acting under a power of attorney. 31 C.F.R. ' 321.9 (1991). If the agent is acting on behalf of an incompetent or physically disabled principal, the power of attorney must provide that the principal's subsequent incapacity will not affect the authority granted. 31 C.F.R. " 315.65 and 353.65 (1991).

## **2. CREDIT TRANSACTIONS**

### **a) Borrowing Funds From a Financial Institution**

To contract for a loan (not to exceed \_\_\_\_\_ dollars) from a bona fide financial institution in my name and on my behalf under such terms as my said attorney shall see fit and to execute in my name applications or other documents which may be required by law or regulation to effect such loan; to receive, endorse and collect checks payable to me pursuant to this loan.

### **b) Borrowing Funds From Army Emergency Relief**

To contract loans and to borrow any sums of money or to apply for grants from Army Emergency Relief in my name and upon such terms as my said attorney shall see fit and to execute in the name of the undersigned a DD Form 139 and such other indemnities, applications or other documents which may be required by law or regulation to effectuate such loan or grant; to receive, endorse, and collect checks payable to the order of the undersigned obtained pursuant to such loans or grants.

### **c) Obtaining a Credit Card**

To contract for a line of credit or open charge account from a bank, financial institution, credit company, or department store in my name and on my behalf under such terms as my said attorney shall see fit and to execute in my name applications or other documents which may be required by law or regulation to obtain such credit status; to receive credit cards and hold them or forward them to me on my behalf.



**b) Selling Real Property**

To bargain, seal, set over, assign and convey, using the standard of a reasonable seller under no compulsion to sell and engaging in an arms length bargaining transaction, unto any person of his/her choice, all my right, title and interest in any or all of that house and tract or parcel of land located in       (county)(state)      , more particularly described as       (full address and or legal description)      , and to convey by (deed of general warranty with the customary covenants) (other); to receive payment of the purchase money on my behalf for the premises in any manner in which my said attorney in fact shall deem wise (to transmit said monies to me at \_\_\_\_\_), and to sign, seal, execute and deliver any and all deeds, contracts, or other documents necessary to carry out the foregoing.

**c) Renting/Leasing a Dwelling**

To do and perform any and all acts necessary or appropriate to rent or lease and to maintain as rental property the dwelling I own at       (full address)       to persons to be determined by my said attorney for a sum in the amount (previously agreed upon by myself and my attorney) (of \$\_\_\_\_\_ per month) until the       (date)      , and to enforce any and all lawful rights and claims I may have against any former, present, or future tenant or lessee thereof. Further, that my said agent is required and empowered to enter into a lease on my behalf for said premises, subject to such terms and conditions as I may hereinafter describe.

**d) Obtaining Civilian Living Quarters**

For me and in my name to rent, lease, receive, accept or otherwise acquire in my place and for my account property suitable for living quarters located in       place       for a fixed period of time upon such terms, considerations, and conditions as my said attorney shall think proper. Said attorney is empowered to take possession of and to enter into such property; also, to guard, defend, possess and otherwise secure all property, be it personal or mixed, contained in or attached to said premises. (To deposit in my name any amount of funds or property not to exceed       amount       to effectuate a security deposit for said premises.) In the event of damage to said property, intentionally or otherwise, to initiate, maintain, compromise or otherwise dispose of any legal or equitable suit or claim against the other party causing the damage for the loss, and to receive payment in reimbursement for said loss.

**e) Managing Real Property**

To take, hold, possess, lease, let, or otherwise manage my below-described real property; to charge adequate fees and/or rent (to cover mortgage payments); to deposit all income and proceeds in the account number \_\_\_\_\_ of

\_\_\_\_\_ Bank in (city, state), and to draw from such account \$ \_\_\_\_\_ each and every month, on or before the \_\_\_\_\_ day of the month in order to make the mortgage payment to \_\_\_\_\_ at (bank/mortgage company) in (city, state) ; to draw from such account any monies necessary to maintain insurance, make minor repairs and conduct general maintenance on said property (and to make improvements thereon to increase the value of the property); to draw from such account any monies necessary to pay all taxes and assessments on said property as they come due; to eject or remove tenants or other persons from and recover possession of such property by all lawful means.

#### 4. PERSONAL PROPERTY

While the following powers of attorney forms, dealing with the purchase, use, and sale of personal property may seem to be the most simple to utilize and execute, there are matters which should be considered by the client -- with the attorney's assistance -- such as insurance coverage, responsibility for wear and tear, loans to third parties by the agent, and so on. Drafting should be conservative and clearly designed to authorize only that which the client specifically intends.

##### a) Using and Maintaining Personal Property

To hold, use, register, license, maintain, service, insure and perform any other function except (sale) (rental, lease or sale) (loaning to uninsured third parties) of my (property), serial number \_\_\_\_\_.

##### b) Using, Maintaining, and Selling Personal Property

To hold, use, register, license, insure, maintain, service, and perform any other function necessary including the sale (at not less than \$\_\_\_\_\_) (at fair market value) (at whatever price my above-appointed attorney considers fair and reasonable) of my (property), serial number \_\_\_\_\_; and to do all acts necessary to transfer legal title to said property upon sale.

##### c) Attempting to Sell Personal Property

To bargain and sell my (property), serial number \_\_\_\_\_, for such price and upon such terms as to my above-appointed attorney shall deem satisfactory (within these guidelines: \_\_\_\_\_), and to execute and deliver any and all documents, instruments and papers necessary to effect the transfer of legal title thereto as required by law, and to collect and give receipt for all monies paid in consideration of such transfer, and to deposit said monies in my account numbered \_\_\_\_\_ in the \_\_\_\_\_ Bank in (city, state).

##### d) Purchasing Furniture or Other Household Items

This authorization may create many difficulties which should be discussed with the client before executing this power of attorney. The client must be very clear as to what he or she wants purchased: what brand or brands, what price range, and so on. The discretion on the part of the agent should be limited. Furthermore, there should be clear arrangements as to reimbursement of the agent by the principal and delivery of the item. Who will bear the risk of damage? Will the item be insured while it is in the hands of the agent? Also, be mindful that businesses may not honor the power of attorney for financing purposes if the agent is not the principal's spouse.

To act for me and purchase a/an \_\_\_\_\_, the price of which shall not exceed \$\_\_\_\_\_. (To borrow for and finance the purchase of said \_\_\_\_\_ in the amount of \$\_\_\_\_\_ and to pledge the said purchased \_\_\_\_\_ as security for said loan.)

**e) Registering, Licensing, and Insuring an Automobile**

Procedures of the state in question should be checked before the client relies on this clause. The state may have special requirements for an absentee owner to register his or her automobile and the power of attorney may not be effective.

To execute and deliver to the proper persons and authority in the state of \_\_\_\_\_ all documents, instruments, and papers necessary to effect proper registration, insurance, and license, in my name of my \_\_\_\_\_ (type car), serial number \_\_\_\_\_.

**f) Purchasing an Automobile**

To purchase a \_\_\_\_\_ (type car) in my name and upon such terms, considerations and conditions as my said attorney shall think proper, within these limitations: \_\_\_\_\_. Further, to execute and deliver to the proper persons and authority all documents, instruments, and papers necessary to effect proper registration and licensing of the \_\_\_\_\_ (type car). (To further execute any documents necessary to have any repairs my attorney deems necessary made on said automobile before I am able to take possession of the automobile.) To take possession of, operate, and maintain said automobile and to execute and deliver all necessary forms, papers, statements of ownership, and receipts to carry out the foregoing.

**g) Selling an Automobile**

If the sale is to occur overseas, the power of attorney should contain sufficient language to ensure that the principal is authorizing the agent to act only insofar as the agent complies with applicable customs restrictions.

To sell and to execute and deliver to the proper persons all documents, instruments, and papers necessary to effect the sale of my \_\_\_\_\_ (type car), serial number \_\_\_\_\_, and to effect the transfer of legal title thereto as required by law, and to collect and give receipt for all monies paid in consideration of such sale and transfer (and to deposit such monies in my account numbered \_\_\_\_\_ in the \_\_\_\_\_ Bank, \_\_\_\_\_ (city, state)) (and to hold such monies in my name for safekeeping until delivery of said proceeds is made to me, my agent, or assigns as I may designate); to have the power of control, use and possession of said car that may be incident to the sale, and to do any acts necessary to renew or cancel, in my name, the registration and/or insurance of said car.

**h) Obtaining and CANCELING Insurance**

To effect insurance on \_\_\_\_\_(item)\_\_\_\_\_, with (the \_\_\_\_\_name\_\_\_\_ (any) insurance company licensed and authorized to do business in any state in which the property may be located, on such terms as my attorney shall deem proper; to sign any application for such insurance, any representation of the condition and value of said property, articles of agreement, promissory or premium note, and all other papers that may be necessary to effect such insurance; and also to cancel and surrender any policy that he may obtain, and on such canceling or the expiration thereof to receive any dividends, with return premium, or deposit that may be due, and on such receipt to give full discharge therefor.

## 5. QUARTERS AND HOUSEHOLD GOODS

### a) Shipping Household Goods

To take possession and order the removal and shipment of my household goods, personal baggage, or other personal property and to cause such property to be removed from its present location at \_\_\_\_\_ and to cause it to be shipped on Government orders (to such place or places as my attorney in his/her discretion may deem appropriate) (to such military quarters as are designated and assigned to me by the Housing Office at \_\_\_\_\_) (to the following residential address: \_\_\_\_\_, (city, state)) or to any warehouse, depot, dock, or other place of storage or safekeeping, governmental or private directed by orders of appropriate U.S. Army transportation officials, and to execute and deliver all necessary forms, papers, certificates and receipts to carry out the foregoing.

### b) Shipping Hold Baggage

To take possession, and to order the removal and shipment of any of my property from \_\_\_\_\_ to \_\_\_\_\_, or any warehouse, depot, dock, or other place of storage or safekeeping, governmental or private, directed by orders or otherwise orally or in writing by appropriate U.S. Army transportation officials, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate, or other instrument necessary or convenient for such purpose.

### c) Removing, Shipping, and Receiving an Automobile

While the client may desire that the agent register and license his car in a particular state, the state of desired registration may be unwilling to do so under power of attorney. This matter should be resolved before the client attempts to rely upon this power of attorney.

To take possession of my     (type car)    , identification number \_\_\_\_\_, for the purpose of its removal and shipment from (dealer/place of storage), and to transport and deliver said automobile to the proper military terminal for government shipment to \_\_\_\_\_, and to execute any release, voucher, receipt or any other instrument necessary or convenient for such purpose (further to execute and deliver to the proper persons and authority in the state of \_\_\_\_\_, any and all documents, instruments and papers necessary to effect proper registration, insurance and license, in my name, of said car).

To take possession of my     (type car)    , identification number \_\_\_\_\_ following its delivery after shipment and delivery to any port, warehouse, depot, dock, or other place of storage or safekeeping, governmental or private; to execute and deliver any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such purpose (further to execute and

deliver to the proper persons and authority in the state of \_\_\_\_\_, any and all documents, instruments and papers necessary to effect proper registration, insurance and license, in my name, of said car) (and to transport said automobile to me at (city, town).)



necessary for the filing of any claims on my behalf against the U.S. Government on account of loss or damage to any or all of the goods; to have possession of said items for the purposes of permitting claims inspections and obtaining required bids or assessments; and to turn over such items and to sign such releases as are necessary to effectively process the claim; to receive on my behalf all monies paid by the U.S. Government as a result of the processing of the claim, and to (deposit same in my account numbered \_\_\_\_\_ in the \_\_\_\_\_ Bank in \_\_\_\_\_ (city, state)) (forward same to me at the following address: \_\_\_\_\_).

**i) Making Claim for Loss, Destruction, or Theft of Personal Property**

To execute vouchers in my behalf for any and all allowances, compensation, and reimbursements properly payable to me by the Government of the United States or any department or agency thereof for the loss, destruction or theft of \_\_\_\_\_ (fully describe the article) \_\_\_\_\_ and to receive on my behalf all monies paid by the U.S. Government as a result of processing this claim and to deposit same in my account numbered \_\_\_\_\_ in the \_\_\_\_\_ Bank in \_\_\_\_\_ (city/state) \_\_\_\_\_ (forward same to me at the following address: \_\_\_\_\_).

**6. CHILD CARE, EVACUATION OF DEPENDENTS, AND RELATED MATTERS**

The most common requests by clients in this area will be for documents that give baby-sitters and child care facilities authority to consent to emergency medical treatment for the child. While the special power of attorney form (with an appropriate parental consent clause) can be used, that form is certainly not necessary to accomplish the intended purpose and may be somewhat confusing. A simple form with straightforward language is preferable for most temporary child care arrangements; however, if a semi-permanent or permanent arrangement is envisioned -- such as the service member leaving the child with a grandparent or friend while he or she performs extended military service elsewhere, then a more formal document with more extensive terms is recommended to assist the guardian in doing such things as enrolling the child in school where the authority of the agent to enroll children in school is desired, the specific policy of the particular school district must be examined. Some will accept a power of attorney; others require a court order. Examples below include simple authorization forms as well as clauses that can be inserted into special power of attorney forms. Where "guardianship"-type child care arrangements are to be made, the attorney should be prepared to alert the parent-client to other legal considerations and obligations, such as the need for the parent to provide continuing support for the child, and to have continuing contact with the child lest, in extended separation circumstances, an action to terminate parental rights is instituted under applicable state law. Of course, more specific language should be used to meet any unique needs of the client.

Powers of attorney prepared to ensure that children are properly cared for should typically begin with the following language:

(We)(I), \_\_\_\_\_, the parent(s)) (legal guardian(s)) of the following minor child(ren):  
\_\_\_\_\_, age(s) \_\_\_\_\_,  
(respectively,) do hereby state that it is necessary to leave said child(ren) in the care of (full name) \_\_\_\_\_ of \_\_\_\_\_ (address) \_\_\_\_\_, phone number \_\_\_\_\_, from the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, until the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. The said \_\_\_\_\_ shall have (our) (my) full permission and consent:

In addition, such powers of attorney may contain whatever language will clearly identify the authority the grantor wishes the recipient of the power of attorney to exercise. Such may include one or more of the following:

**a) emergency Medical Treatment**

To give consent for emergency medical treatment as needed by said child(ren) in the event that (I) (we) cannot be immediately reached at the time of the emergency. The determination of the need for such care may be made by (name of person to whom this authorization is given).

**b) Limited Guardianship**

To authorize all necessary medical treatment, including surgery or hospitalization for said child(ren) while within the care of said \_\_\_\_\_. Further, \_\_\_\_\_ is authorized to take any and all other necessary actions to provide for the safety, education, and welfare of said child(ren), including the taking of all steps necessary for enrollment in a public school and the signing of all documents in connection with the care, maintenance, medical treatment, education, and activities of said child(ren).

**c) Guardianship**

To act as guardian(s) for the custody and control of said child(ren), to do all acts and authorize all things (he)(she)(they) deem(s) necessary or proper for the care, maintenance, control, and custody of said child(ren).

To act for me and in my name, place, and stead in all particulars for the purposes of providing care, for obtaining food, shelter, clothing, education, and medical care for my children.

Said guardian(s) shall not be required to post bond or any security for the faithful performance of duties.

Said guardian(s) (shall) (shall not) be the guardian(s) or administrator(s) of the estate of any or all of my children, or of any assets which they may acquire or inherit.

Said guardian(s) (is) (are) further authorized to consent to medical and dental care and treatment for my children in medical facilities of the United States Government or other facilities, or in a physician's office, including but not limited to inpatient and outpatient care, hospitalization, emergency treatment, ordinary treatment, surgery, anesthetics and any and all other medical or dental care or treatment that may be necessary or desirable for the well-being of my children, as determined by said guardian(s).

GIVING AND GRANTING unto my Guardian and Attorney full power and authority to do and perform every act, deed, matter and thing necessary, desirable or expedient to accomplish the foregoing specified purposes, including the execution of all documents, as fully to all intents and purposes as I might or could do if personally present.

**d) Authorize Agent to Act "In Loco Parentis"**

To perform any and all parental acts, as fully to all intents and purposes as I might or could if personally present, to include but not limited to discipline, maintenance, supervision, arbitration of disputes, enrollment in school, sports or other activities, and consent to any and all medical care and treatment necessary and appropriate for the general health and welfare of said child(ren).

**e) Evacuation of Dependents**

In the event of official orders or directives for the evacuation of military dependents from (the Republic of Korea) (the Federal Republic of Germany) (other), to perform any acts or functions and execute any documents necessary to accomplish the prompt and safe evacuation of my (children), \_\_\_\_\_ (names) \_\_\_\_\_ aged \_\_\_\_\_ from (the Republic of Korea) (the Federal Republic of Germany) (other) to \_\_\_\_\_ or to any other place in accordance with directions of proper evacuation authority or otherwise in the best interests of my said children.

**f) Medical and Dental Care for Children**

To authorize medical, dental and hospital care and treatment including but not limited to, the administration of examinations, diagnostic tests, and medications (including anesthetics), and the performance of surgery and any and all other medical and dental care or treatment deemed necessary or desirable by a duly licensed physician for the health and well-being of said child(ren), and to execute all such

consents, authorizations, forms, releases, and other papers as may be necessary in connection therewith.

**g) Temporary Custody Where the Principal Is Currently the Non-custodial Parent**

To act for me and in my name to take temporary custody of the following minor child(ren), \_\_\_\_\_, in the event the present custodian, \_\_\_\_\_, is for any reason unable to exercise custody of said child(ren), and to continue such temporary custody until such time as I am physically able to appear and take said child(ren) into my personal custody. (Name of temporary custodian) shall have my full permission and consent to authorize all necessary medical treatment, including surgery or hospitalization for said child(ren) while within the custody and care of \_\_\_\_\_. Further, \_\_\_\_\_ is authorized to take any and all other necessary actions to provide for the safety, education, and welfare of said child(ren), including the taking of all steps necessary for enrollment in a public school and the signing of all documents in connection with the care, maintenance, medical treatment, education, and activities of said child(ren).

## 7. TAX MATTERS

Where a taxpayer wants to authorize an attorney-in-fact to sign an individual or joint return or to represent the taxpayer before any office of the Internal Revenue Service, Form 2848 should be used. Optional power of attorney forms for use in certain other internal revenue matters are also available from the Internal Revenue Service. Local law should be consulted before using special power of attorney forms for local tax matters.

### a) **Authorizing Agent to Prepare and File State Income Tax Returns**

To prepare, execute, and file the \_\_\_\_\_ (name state) \_\_\_\_\_ income tax return(s) or declaration(s) of estimate tax required to be made by me for the taxable year 19\_\_.

## 8. LAWSUITS AND MISCELLANEOUS CLAIMS

### a) Initiating a Lawsuit

To begin, prosecute, and carry to completion all appropriate actions and legal proceedings against \_\_\_\_\_ (name(s)) \_\_\_\_\_; and if it shall in the discretion of said attorney seem wise, to compromise, refer to arbitration, or take such other steps as may be necessary to carry out the foregoing.

### b) Settling a Lawsuit - Defendant

To compromise and settle the action brought against me by \_\_\_\_\_ (name(s)) \_\_\_\_\_ now pending in the \_\_\_\_\_ (court) \_\_\_\_\_ for injuries suffered by the above plaintiff, at or near \_\_\_\_\_ (place) \_\_\_\_\_ on or about the \_\_\_\_\_ (date) \_\_\_\_\_ day of \_\_\_\_\_ (month, year) \_\_\_\_\_, to make payment to said plaintiff, and to obtain from said plaintiff a full and complete receipt, release, discharge, and satisfaction made out to me as the named defendant in the above action.

### c) Settling a Lawsuit - Plaintiff

To compromise and settle my action against \_\_\_\_\_ (name(s)) \_\_\_\_\_, now pending in the \_\_\_\_\_ (court) \_\_\_\_\_ for injuries received by me at or near \_\_\_\_\_ (place) \_\_\_\_\_ on or about the \_\_\_\_\_ (date) \_\_\_\_\_ day of \_\_\_\_\_ (month, year) \_\_\_\_\_, to collect and receive or sums of money, and to execute a full and complete receipt, release, discharge, and satisfaction thereof to the named defendant.

### d) Taking Action in the Event of Auto Theft

To institute, maintain, and prosecute any and all actions brought on my behalf against \_\_\_\_\_ (name(s)) \_\_\_\_\_ (any negligent persons, businesses, or governmental or private agencies or organizations) arising out of the theft of my \_\_\_\_\_ (type car) \_\_\_\_\_ automobile, serial number \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ (city, state) \_\_\_\_\_.

### e) Making Claims for Auto Damage

For me and in my name to file a claim against \_\_\_\_\_ with \_\_\_\_\_ Insurance Company for damage occurring to my \_\_\_\_\_ (type car) \_\_\_\_\_ automobile, vehicle identification number \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ (city, state) \_\_\_\_\_; to have control, use, and possession of said automobile for the purpose of permitting claims inspections and obtaining required bids or assessments; to compromise and settle such claim as my attorney shall in the attorney's sole discretion deem wise; and to receive on my behalf all monies paid by \_\_\_\_\_ Insurance Company as a result of the claim and to (deposit same in my account numbered \_\_\_\_\_ in the \_\_\_\_\_

Bank in \_\_\_\_ (city, state \_\_\_\_ (forward the same to me at the following address:  
\_\_\_\_\_).

**9. MISCELLANEOUS CLAUSES**

**a) Collecting Reimbursement**

To execute and deliver to the proper persons any and all documents necessary to effect the reimbursement of \$ \_\_\_\_\_ from \_\_\_\_\_, to which I am entitled as a result of the following circumstances: \_\_\_\_\_.

**b) Receiving Mail**

Unless otherwise directed, the United States Postal Service may deliver an addressee's mail to his or her employee or competent family member without any action on the part of the addressee. If the addressee wishes to designate another person to receive his or her mail, the United States Postal Service requires that such designation be in writing, although no special form is required. (United States Postal Service, Domestic Mail Manual ' 153.211 (1987).) If the addressee wishes to designate a commercial mail receiving agency to received mail, USPS Form 1583, "Application for Delivery of Mail Through Agent" must be used. Id. ' 153.212. The following power of attorney clause may be used when the service member desires to appoint an agent, other than a commercial mail receiving agency, to receive mail from the United States Postal Service and private carriers.

To receive, accept or otherwise acquire in my name, during my absence on (leave) (TDY) (emergency leave), all mail addressed to me and any packages sent by the United States Post Service, private carriers, or delivery services addressed to me.

**c) Access to Safety Deposit Boxes**

A bank may have its own forms and expect these to be used exclusively in accomplishing banking transactions. It is best to have the client investigate the bank's policies before the client executes a special power of attorney for access to safety deposit boxes.

To have access for all purposes to described safety deposit box number \_\_\_\_\_ in the \_\_\_\_\_ Bank in (city, state) \_\_\_\_\_, and to have full power to use the same for safekeeping any of my property or papers, and to remove therefrom at any time, or from time to time, all or any part of the contents of any such box or vault.

**d) Signing for a Widow/Widower in Survivor Benefit Matters**

To execute any and all documents, forms and/or applications necessary to assist me with all matters pertaining to Social Security, Veteran's Administration, insurance, and employment records of my deceased (husband) (wife), \_\_\_\_\_ (husband's/wife's name)\_\_\_\_\_.

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**D. Forms for General Powers of Attorney**

(include preamble - 10 U.S.C. ' 1044b)

General powers of attorney are to be used only in rare and exceptional cases when a special power of attorney or other legal means cannot accomplish the client's desires. Ideally, the attorney should counsel each client who wants such a document so that the client understands fully the breadth of power granted and the risks involved in such a grant. Additionally, the attorney should propose less risky alternatives to the client.

If the general power of attorney is to be used, the attorney should tailor the language to fit the major tasks that the attorney-in-fact will be called upon to perform.

**1. SHORT FORM**

KNOW ALL PERSONS BY THESE PRESENTS that I, (full name, grade, and SSN), a legal resident of (city, county, state, zip), United States of America, (now in the military service of the (Army, Air Force, etc.) of the United States and presently residing at \_\_\_\_\_) (now accompanying my spouse, who is the military service of the (Army, Air Force, etc.) of the United States, and currently stationed at \_\_\_\_\_),

DO HEREBY APPOINT AND MAKE \_\_\_\_\_, SSN \_\_\_\_\_, of (city, state), my lawful attorney to manage and conduct all my affairs and act in all matters concerning my estate in my name and my behalf. All lawful acts and deeds by said attorney in my place and on my behalf are authorized by me. These include, but are not limited to, the following:

1. To execute all documents needed for transportation of dependents and shipment of household goods and other property, as authorized by law and Army regulations.
2. To sign for and clear government or other quarters in the best interests of my dependents and in accordance with law and Army regulations.
3. To demand, act to recover, and receive all sums of money and all other things which are now or will become owing or belonging to me, and to institute accounts on my behalf and to deposit, draw upon or expend such funds of mine as are necessary or appropriate to support my dependents and conduct business on my behalf.

4. To transact all business of mine on my behalf, including the hiring and firing of any agents, counsel, or employees of my business, and including buying and selling personal property, making such investments as my attorney shall deem sound.

5. To take, hold, and possess any real property owned by me; to buy, receive, lease, accept or acquire, or to sell, convey, encumber, repair, improve or otherwise to enter contracts concerning my real property.

6. To institute and prosecute, or to appear and defend, any claims or litigation involving me, or my interests.

7. To handle all matters concerning my life insurance, including the right to change beneficiaries, method of payment of insurance proceeds, to borrow against the policy and so on.

8. To prepare and file all tax returns and governmental applications and requests; to have access to any safe deposit boxes in my name, or to rent such a safety deposit box.

9. To extend and renew all notes and liens as my attorney deems appropriate.

I HEREBY GIVE AND GRANT UNTO MY ATTORNEY FULL POWER AND AUTHORITY TO DO AND PERFORM EACH AND EVERY ACT AND MATTER CONCERNING MY ESTATE, PROPERTY, AND AFFAIRS AS FULLY AND EFFECTUALLY TO ALL INTENTS AND PURPOSES AS I COULD DO LEGALLY IF I WERE PRESENT.

The above described powers are merely examples of the general power herein granted and not in limitation or definition thereof.

I HEREBY RATIFY ALL THAT MY SAID ATTORNEY SHALL LAWFULLY DO OR CAUSE TO BE DONE BY THIS DOCUMENT.

(Optional "durable" power of attorney clause, which is required in some states if the power of attorney is to continue to be effective in the event the principal becomes mentally incompetent: "This Power of Attorney shall continue to be effective should I become disabled, incompetent or incapacitated prior to the below-stated expiration date.")

Further, unless sooner revoked or terminated by me, this Power of Attorney shall become NULL and VOID from and after \_\_\_\_\_, 19\_\_.

(Optional POW/MIA extension clause: "Notwithstanding my inclusion of a specific expiration date herein, if on the above-specified expiration date, or if at any time immediately preceding that specified expiration date, I should be or have been, carried

in a military status of "missing," "missing in action," or "prisoner of war," then this Power of Attorney shall automatically continue to remain valid and in full effect until \_\_\_\_\_ days after I have returned to the United States military control following termination of such status UNLESS OTHERWISE REVOKED OR TERMINATED BY ME.")

(Add appropriate notarial clause.)

## 2. LONG FORM

KNOW ALL PERSONS BY THESE PRESENTS, that I, (full name, grade, and SSN) \_\_\_\_\_, a legal resident of (city, county, state, zip) \_\_\_\_\_, (now in the military service of the (Army, Air Force, etc.) of the United States and presently residing at \_\_\_\_\_ (now accompanying my spouse, who is in the military service of the (Army, Air Force, etc.) of the United States and currently stationed at \_\_\_\_\_), desiring to execute a GENERAL POWER OF ATTORNEY have made, constituted and appointed, and by these presents do make, constitute, and appoint \_\_\_\_\_, whose present address is \_\_\_\_\_ (city, county, state, zip) \_\_\_\_\_, my true and lawful attorney,

GIVING AND GRANTING unto my said attorney full power to act as follows:

1. REAL PROPERTY TRANSACTIONS: (a) to buy, contract to buy, receive, lease or rent for any term, accept, or otherwise acquire real estate or any options thereon or interests therein, including any and all rights for the development of oil, gas or other mineral deposits, wherever situated, on such terms, conditions and considerations as my attorney-in-fact shall deem proper, in my name, or jointly in my name and that of any other party or parties including my attorney-in-fact;

(b) to sell, contract to sell, mortgage, encumber, exchange, lease or rent for any term, grant options to purchase or otherwise dispose of any or all real estate in which I now have or may hereafter acquire any right, title or interest, including any and all right for the development of oil, gas or other mineral deposits, whether such real estate be homestead or non-homestead, or whether such real estate be owned as community property, in joint tenancy, tenancy by the entireties, tenancy in common or in any other manner or capacity, and in my name, or jointly with any other party or parties, including my attorney-in-fact, on such terms, conditions and considerations as my attorney-in-fact shall deem proper to sign, seal, execute, acknowledge and deliver any and all instruments in writing of any kind and nature, as may be necessary or convenient, containing such terms my said attorney-in-fact shall deem advisable, and further to waive, relinquish and convey any homestead estates, rights under homestead exemption laws, dower or curtesy estates, and all other rights or interest to which I may at any time be entitled;

(c) to manage, utilize, conserve, demolish, repair, rebuild, alter or improve any real estate or structure thereon, owned or claimed to be owned by me in whole or in part, and to protect the same by action, proceeding or otherwise, including, but not limited to, the recovery of possession thereof and the removal of tenants or other persons, animals or objects therefrom.

2. PERSONAL PROPERTY TRANSACTIONS: (a) to buy, contract to buy, accept, sell, exchange, mortgage, pledge, lease or rent, contract for the repair of, and in any and every manner deal in and with any and all personal property of every kind whatever, tangible or intangible, which I may own or in which I now have or hereafter may acquire, any right, title or interest, on such terms, conditions and considerations as my attorney-in-fact shall deem proper;

(b) to execute and deliver to the proper persons and authority any and all documents, instruments and papers necessary to effect the proper registration and licensing of any automobiles in which I now or may hereafter have an interest;

(c) to enter into contracts for the storage of tangible personal property of every kind;

(d) to take possession and order the removal and shipment of any of my property from or to any station, post, warehouse, depot, dock, or other place of storage, safekeeping, or use, governmental or private, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate, or other instrument necessary or convenient for such purposes.

3. BUSINESS TRANSACTIONS: To demand, sue for, recover, receive, compromise, settle, adjust and pay all accounts, legacies, bequests, interest, dividends, annuities, demands, debts, taxes, and any and all other obligations, which may now or hereafter be due, owing or payable by or to me, and to carry on and transact every kind of business on my behalf, in my name or jointly in my name and that of any other person or persons, including my attorney-in-fact, and including, but not limited to, transactions concerning any and all investments and shares of stock, bonds, securities, certificates of deposit, on such terms, considerations and conditions as my attorney-in-fact may deem proper and to invest and reinvest and exchange investments, and to execute and deliver good and sufficient instruments for the accomplishment thereof, and to act as my attorney or proxy with respect to any stocks, shares, bonds or other investments, rights or interest as I may now or hereafter hold.

4. BANKING TRANSACTIONS: (a) to deposit or withdraw for any purpose, in or from any bank, building and loan association, trust company or other financial institution, including the United States Postal Service, any funds, checks, or other credits which I now or hereafter may have on deposit or be entitled to, and to endorse, cash and receive the proceeds of any and all checks, vouchers, or other orders for money, to open or close accounts, and to receive statements, vouchers, notices or

other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I may have an interest;

(b) to have access for all purposes to any or all safety deposit boxes or vaults rented in my name or in the names of any other person or persons and myself, with full power to use same for safekeeping any property or papers and to remove therefrom at any time, or from time to time, all or any part of the contents of any such box or vault;

(c) to borrow money and to execute in my name any instrument evidencing indebtedness incurred on my behalf and to extend and renew the same, as well as any indebtedness heretofore incurred by me, for the payment of which I may in any way be liable.

\*\*\*\*\*

\*\* [Note: The Fort Stewart Legal Assistance Office, during Desert Storm, incorporated language into its General POAs as follows:

"To close accounts and to receive statements, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I have an interest. The power to open new credit and/or banking accounts in my name or to increase and/or exceed credit limits on existing credit accounts is expressly disallowed."]

BORROWING MONEY: "To borrow money in my name, but only from those sources stated hereafter, when deemed necessary to my said attorney upon such terms as to my said attorney appear proper and to execute such instruments as may be required for such purpose. Said power to borrow money shall be limited to Army Emergency Relief (AER) loans and/or similar emergency loans available from the American Red Cross."

FINANCE: "To obtain from any military finance office my Leave and Earnings Statements (LES), or copies thereof, in my behalf and to further transact any business allowable by said finance office in my behalf and to execute such instruments as may be required for such purpose."

\*\*\*\*\*

5. TAXES: To make, execute and file income and all other tax returns and declarations of estimated tax required to be made by me by any law or regulation of any government or governmental department, board or court, to represent and act for me in any tax matters in dispute or litigation, in any governmental department, board or court, to receive, endorse, and collect checks in settlements of any refund of taxes, to execute consents agreeing to a later determination of taxes than is provided by statutes of limitation, to execute closing agreements relative to tax liabilities, to file claims for abatement, refund, or credit taxes, to make any adjustments or settlements and to sign any and all receipts, waivers, settlements or agreements pertaining to all income or other taxes assessed against me or my property by statute.

6. GOVERNMENT DOCUMENTS, VOUCHERS AND CHECKS: (a) to execute, sign and deliver any and all government reports, applications, requests, vouchers and demands in my behalf, including, but not limited to those for any and all allowances and reimbursements properly payable to me by the United States, such as for the transportation of family members or for the shipment of household effects or other property as authorized by law or regulations;

(b) to receive, endorse and collect the proceeds of checks payable to my order drawn on the Treasurer of the United States for whatever account, and to execute in my name and on my behalf, all bonds, indemnities, applications or other documents, which may be required by law or regulations to secure the issuance of substitutes for such checks, and to give full discharge for the same.

7. INSURANCE TRANSACTIONS: (a) to pay the premiums on, modify, rescind, release, terminate, or execute any rights, privileges, or options on any contract of life, accident, health, disability, liability, property or other insurance presently owned by me or by any person on my behalf, or hereafter acquired;

(b) to procure new, different, or additional contracts of insurance on my life or with respect to protecting me or my property from ill health, disability, accident, liability, or loss;

(c) to apply for, and receive, any loan on the security of any contract of insurance, to surrender and receive the cash surrender value, to exercise any election or conversion rights, and to demand, receive or obtain any money, dividend or other thing of value to which I am or to which I may become entitled as the proceeds or other return or profit arising out of any contract of insurance or of any one or more of the insurance transactions herein enumerated.

8. PERSONAL TRANSACTIONS: (a) to do all acts necessary for maintaining the customary living standard of my dependents including, by way of illustration but not limitation, provision of such living quarters and their maintenance and operation, food, clothing, medical, surgical and dental care, educational facilities, and other incidentals to which my dependents are accustomed;

(b) to continue the discharge of any service or duties assumed by me to my family, relatives or friends, and to continue payments incidental to my membership in, or affiliation with, any church, club, society, or other organization.

9. REPRESENTATION AND EMPLOYMENT OF ASSISTANCE: (a) on my behalf and in my name or the name of my attorney, to institute, prosecute, appear in, defend, compromise, arbitrate, settle, or dispose of any legal, equitable or administrative hearings, actions, suits, attachments, claims or other proceedings, to which I am or may become a party or in which I have an interest, and to engage and dismiss counsel in connection therewith, authorizing my attorney in-fact to assert or to waive any or all

rights, privileges and defenses available to me under the Soldiers' and Sailors' Civil Relief Act or other legislation designed for the protection of personnel in the armed forces or their family members;

(b) to hire, engage, employ and appoint agents, employees and counsel upon such terms and conditions and at such compensation as my said attorney-in-fact shall deem proper in the exercise of the powers herein granted; to dismiss and remove at pleasure any such agents, employees and counsel as well as any agents, employees and counsel heretofore or hereafter employed by me or in my behalf.

10. MISCELLANEOUS: (a) to sign, seal, acknowledge and deliver any instrument necessary to accomplish any of the powers herein granted;

(b) to modify, reform, re-negotiate or rescind any contract or obligation heretofore or hereafter made by me or in my behalf.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

I further declare that any act or thing lawfully done hereunder by my said attorney shall be binding on myself and my heirs, legal and personal representatives and assigns, whether the same shall have been done either before or after my death, or other revocation of this instrument, unless and until reliable intelligence or notice thereof shall have been received by my said attorney; and whether or not I, the grantor of this instrument, shall have been reported or listed, either officially or otherwise, as "missing in action" as that phrase is used in military parlance, or as "captured," it being my intent that such status designation shall not bar my attorney from fully and completely exercising and continuing to exercise any and all powers and rights herein granted and that such report of "missing in action" or "captured" shall neither constitute nor be interpreted as constituting notice of my death nor operate to revoke this instrument.

FURTHER, unless sooner revoked or terminated by me, this Power of Attorney shall become, NULL, and VOID from and after \_\_\_\_\_, 19\_\_\_\_.

Notwithstanding my insertion of a specific expiration date herein, if on the above specified expiration date I shall be, have been, carried in a military status of "missing", "missing-in-action" or "prisoner-of-war" then this power of attorney shall automatically continue to remain valid and in full effect until sixty (60) days after I have returned to United States military control following termination of such "missing," "missing-in-action" or "prisoner-of-war" status.

(Add appropriate notarial clause.)

**3. SAMPLE CLAUSES FOR GENERAL POWERS OF ATTORNEY EFFECTIVE ONLY UPON DISABILITY**

The practitioner should research the special requirements of the particular jurisdiction to determine whether the following clauses will be effective.

This Power of Attorney shall be effective only upon and not until my disability, as certified by two licensed physicians on the endorsement at the end of this document. Following such certification, this Power of Attorney shall continue in effect until it is certified by two licensed physicians on the endorsement at the end of this document that the disability has abated and I thereafter revoke this Power in writing.

The undersigned, Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_, being physicians licensed in the States of \_\_\_\_\_ and \_\_\_\_\_, respectively, hereby certify that they have examined the above-named maker of this Power of Attorney and find that the maker is physically and/or mentally disabled in that the maker is incapable of managing personal affairs.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

The undersigned, Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_, being physicians licensed in the States of \_\_\_\_\_ and \_\_\_\_\_, respectively, hereby certify that \_\_\_\_\_ they have examined the above-named maker of this Power of Attorney and finds that the disability described in the

above endorsement has abated and that the maker is capable of managing personal affairs.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

On this day personally appeared before me \_\_\_\_\_, to me known to be one of the physicians\*

\* A separate clause should be used for each physician. described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as a free and voluntary act and deed, for the uses and purposes therein mentioned.

(Add appropriate notarial clause.)

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**E. Forms of Acknowledgment**

These formats must be varied, amended, or altered to meet any special requirements of any jurisdiction. Additional guidance and forms are included in the Legal Assistance Notarial Guide.

**1. ACKNOWLEDGMENT BY CIVILIAN NOTARY PUBLIC**

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do hereby certify that I am a duly commissioned, qualified, and authorized notary public in and for the aforesaid (city/county) \_\_\_\_\_ and State, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally within the territorial limits of my warrant of authority appeared \_\_\_\_\_, who is known by me to be the identical person who is described in, whose name is subscribed to, and who signed the Power of Attorney annexed hereto as Grantor, and having been duly sworn, acknowledged that he/she executed said instrument after the contents thereof had been read and duly explained and that such execution was a free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affix my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

My commission expires \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
(Notary's Signature)

\_\_\_\_\_  
(Notary's Typed Name and Social Security Number)

**2. ACKNOWLEDGMENT BY QUALIFIED MILITARY PERSONNEL**

[The provisions of AR 27-55 (also see 10 U.S.C. § 1044a and b) should be carefully observed. Additional guidance is provided in the Legal Assistance Notarial Guide].

With the United States Armed Forces

At \_\_\_\_\_ (location)\*

\* Insert country, State, and county in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert, "In a foreign country" or "In a possession of the U.S. outside of the continental U.S."

I, \_\_\_\_\_, the undersigned officer, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared (name of person whose signature is being acknowledged) \_\_\_\_\_, \_\_\_\_\_ (SSN) \_\_\_\_\_, whose home address is \_\_\_\_\_ and who is known to me to be \_\_\_\_\_ (status\*\*

\*\* "A U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Forces member," or "a person serving with the U.S. Armed Forces," or other appropriate description of status.

and to be the identical person who is described in, whose name is subscribed to, and who made, signed, and executed the foregoing instrument, and having first made known to the maker the contents thereof, the maker signed and sealed the same, on the date it bears, as a true, free, and voluntary act and deed for the uses, purposes, and considerations therein set forth, and I do further certify that by statute no seal is required on this certificate, and the same is executed in my capacity as \_\_\_\_\_ \*\*\*

"a commissioned officer under statutory authority granted to me by" (state authority), or

"a commissioned officer assigned to duty with the JAGC (staff judge advocate, adjutant, etc.) under statutory authority granted to me by" (state authority), or

"a judge advocate (staff judge advocate, adjutant, etc.) under authority granted to me by Art. 136, UCMJ; 10 U.S.C. " 936 and 1044" (federal authority), or

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Typed Name of Officer)

---

(Official Capacity)

---

(SSN, Grade, and Branch of Service)

---

(Command or Organization)

---

(Permanent Home Address)

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**F. Revocation Of Power Of Attorney**

KNOW ALL PERSONS BY THESE PRESENTS:

That whereas I, \_\_\_\_\_, SSN \_\_\_\_\_, a legal resident of the State of \_\_\_\_\_, United States of America, now in the military service in the rank of \_\_\_\_\_ in the Army of the United States, did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by written instrument, empower \_\_\_\_\_, SSN \_\_\_\_\_, of \_\_\_\_\_, to act as my true and lawful attorney in my name and in my stead to do and perform the following: \_\_\_\_\_, and all matters and things pertaining thereto as fully as I myself could do them;

NOW, THEREFORE, I, FOR GOOD CAUSE, DO HEREBY REVOKE, COUNTERMAND, TERMINATE, AND MAKE VOID, the Power of Attorney so granted, and all powers and authorities therein given and contained.

IN WITNESS WHEREOF, I hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

(Add appropriate notarial clause.)



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## Appendix G

### SAMPLE CHECKLISTS, INSTRUCTIONS, & WORKSHEETS

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#### **A. *Family Member Pre-Movement Checklist***

[This document is the product of the North Carolina State Bar's Committee on Military Personnel, in conjunction with the America Bar Association's Standing Committee on Legal Assistance for Military Personnel]. \* Edited and revised by TJAGSA November 1993.

This checklist should be reviewed periodically and ALWAYS prior to a TDY or deployment.

#### **1. MEDICAL**

1. \_\_\_\_\_ Are all the immunizations for myself and my family members up to date?
2. \_\_\_\_\_ Do I know where my medical and dental records are kept?
3. \_\_\_\_\_ Do I know where these records for my family members are kept?
4. \_\_\_\_\_ Do I know how to get medical assistance if it is needed?
5. \_\_\_\_\_ Do I have one of more reliable sitters for absences or emergencies?

#### **2. FINANCE**

1. \_\_\_\_\_ Will I have my money available to me on a continuing basis during my sponsor's absence?
2. \_\_\_\_\_ Has my sponsor initiated an allotment to be sent to me or directly to the bank monthly?
3. \_\_\_\_\_ Will the allotment provide me with enough money to buy all the necessities needed to maintain in a household?

4. \_\_\_\_\_ If we are planning to leave the installation area, have we been saving for the move? [Neither Army Emergency Relief nor America Red Cross is authorized to lend money for such a move.]
5. \_\_\_\_\_ Do I know the address of banks where we have money?
6. \_\_\_\_\_ Do I know the account numbers and types of accounts that we have?
7. \_\_\_\_\_ Do I know the location of the bank books--checking and savings?
8. \_\_\_\_\_ Do we have a safe deposit box? Do I know where the key is?
9. \_\_\_\_\_ Do I know where each of our credit cards is? Are their numbers logged and kept in a safe place? Do I know the company address for each so I can notify them immediately of any loss?
10. \_\_\_\_\_ Am I prepared to take complete control over our checking accounts, know the balance at all times, and never write a check unless I am certain of sufficient funds in the bank?
11. \_\_\_\_\_ Do I know how to change the address to which an allotment is mailed? [Write to: U.S. Army Finance Center, ATTN: Allotment Operations, Fort Benjamin Harrison, Indiana 46249; request a change and also file a change of address with your serving post office immediately.]
12. \_\_\_\_\_ Do I know all payments that must be made--to whom (account numbers, addresses, phone numbers) and when for the following:
  - \_\_\_\_\_ a. Mortgage/Rent
  - \_\_\_\_\_ b. Telephone
  - \_\_\_\_\_ c. Water
  - \_\_\_\_\_ d. Electricity
  - \_\_\_\_\_ e. Trash collection
  - \_\_\_\_\_ f. Insurance (life, property, auto, etc.)
  - \_\_\_\_\_ g. Taxes
  - \_\_\_\_\_ h. Gas/fuel
  - \_\_\_\_\_ i. Credit cards
  - \_\_\_\_\_ j. Other debts
13. \_\_\_\_\_ Do I know whom to contact if my allotment check does not arrive?
  - a. Give the check three or four days after normal arrival time; then,
  - b. Contact Army Community Service if check still has not arrived.

### **3. AUTOMOBILE/TRANSPORTATION**

1. \_\_\_\_\_ If the vehicle is financed, do I know the name and address of the loan company?
2. \_\_\_\_\_ Do I have the title or know its location?
3. \_\_\_\_\_ Do I have the vehicle's registration?
4. \_\_\_\_\_ Do I have the vehicle's insurance policy?
5. \_\_\_\_\_ Do I know the renewal date for the license plate?
6. \_\_\_\_\_ Do I know when to renew the inspection sticker?
7. \_\_\_\_\_ Am I insured to drive?
8. \_\_\_\_\_ Do I have a valid car or truck state driver's license? When does it expire?
9. \_\_\_\_\_ Is our car or truck in good operating condition and do I know where to go for repairs?
10. \_\_\_\_\_ Do I have a duplicate set of all keys?
11. \_\_\_\_\_ Can I make emergency repairs on the car if the situation arises (such as overheating, flat tire, dead battery)?
12. \_\_\_\_\_ If I am not licensed to drive, have I made arrangements to have transportation available?

### **4. LEGAL/ADMINISTRATIVE**

1. \_\_\_\_\_ Are my family's identification cards up-to-date and valid until after the sponsor's return?
2. \_\_\_\_\_ Do I know where and how to obtain new identification cards?
3. \_\_\_\_\_ Has my sponsor executed a special power of attorney so I can take necessary action on important family matters during his or her absence?
4. \_\_\_\_\_ Has my sponsor executed a special power of attorney so that I can cash his or her monthly check (if the check will continue to be sent to my address)?
5. \_\_\_\_\_ Do I know where the general/special powers of attorney are kept?

6. \_\_\_\_\_ Do I have birth certification for myself and family?
7. \_\_\_\_\_ Do I have a copy of our marriage certificate?
8. \_\_\_\_\_ Do I have copies of any adoption papers? Do I know where they are kept?
9. \_\_\_\_\_ Do I have a Social Security card?
10. \_\_\_\_\_ Do I have copies of our federal and state tax records?
11. \_\_\_\_\_ Do I know where all of our insurance policies are kept?
12. \_\_\_\_\_ Do I know where any stocks, bonds, or other securities that we own are kept?
13. \_\_\_\_\_ Do I know where any deeds are kept?
14. \_\_\_\_\_ Have I safeguarded all of our important papers?
15. \_\_\_\_\_ Do my sponsor and I have up-to-date wills? Do I know where the originals are kept?

## 5. IMPORTANT DOCUMENT FILE

It is very important for the military family to keep copies of important documents and other valuable information in a safe place. It is equally important that the wife and husband jointly organize this file so that each knows how and where to find the documents when they are needed.

Your sponsor should have most of this information. . . **PLEASE SIT DOWN WITH HIM OR HER AND GATHER THIS INFORMATION AND THESE DOCUMENTS. THE HOUR YOU SPEND GOING OVER THIS WILL SAVE YOU TIME LATER ON. KEEP THE FOLLOWING DOCUMENTS IN A SPECIAL CONTAINER THAT YOU CAN DEFINITELY FIND IMMEDIATELY!!!** As a minimum, the following documents should be included:

1. \_\_\_\_\_ Marriage certificate.
2. \_\_\_\_\_ Birth Certificates for all family members.
3. \_\_\_\_\_ Citizenship papers, if any.
4. \_\_\_\_\_ Adoption papers, if any.
5. \_\_\_\_\_ Passports, if any.

6. \_\_\_\_\_ List of Social Security Numbers of family members.
7. \_\_\_\_\_ Shot records (up-to-date) for all family members.
8. \_\_\_\_\_ Powers of attorney, if any.
9. \_\_\_\_\_ Wills.
10. \_\_\_\_\_ Insurance policies (both government and civilian)--with a list of companies, policy numbers, types of insurance coverage, addresses and phone numbers of agents or companies.
11. \_\_\_\_\_ Vehicle titles, if any.
12. \_\_\_\_\_ List of all members of immediate families with current addresses and phone numbers.
13. \_\_\_\_\_ List of all credit cards and account numbers.
14. \_\_\_\_\_ List of all bonds and stocks where certificates are located.
15. \_\_\_\_\_ Court orders relating to divorce, child support, custody, alimony or property division, if any.
16. \_\_\_\_\_ Real estate documents--leases, deeds, mortgages and promissory notes, closing papers.
17. \_\_\_\_\_ Copies of any sales or installment contracts and finance agreements.
18. \_\_\_\_\_ List of bank accounts with types of accounts and account numbers.
19. \_\_\_\_\_ Armed Forces' identification cards for all family members 10 years of age or older.
20. \_\_\_\_\_ Nine (9) copies of your spouse's TDY and/or PCS orders. [If you must move by yourself, you will need extra copies of these orders. However, with these copies, you can have others made without cost to you by going to your sponsor's unit.]
21. \_\_\_\_\_ Current addresses and telephone numbers of all members of immediate families of both you and your spouse. [Immediate family includes father, mother, children, brother(s), sister(s). You should have all other important telephone numbers you may need in case of emergency.]

---

**B. SRP Tracking Checksheet**

UNIT: \_\_\_\_\_

POC: \_\_\_\_\_

**ACTION**

**DATE/INTLS**

1. SJA tasking letter for SRP received from G1/AG  
(standard - 45 day rule applies) \_\_\_\_\_
2. Chief, LA letter to Commander completed  
(standard - 24 hour turn around) \_\_\_\_\_
3. Ch, LA letter hand delivered by LA Legal Clerk  
Attorney tasked provided copy of all documents  
(standard - 24 hour turn around) \_\_\_\_\_
4. NCOIC of the CLC contacted, through NCOIC OSJA,  
to task legal clerk for notary support to pre-SRP brief  
and SRP (Provide: Trk sht/G1 ltr/Ch, LA ltr/AAR Form)  
(standard - 24 hour turn around) \_\_\_\_\_
5. Legal Clerk Tasked by NCOIC CLC: \_\_\_\_\_  
(standard - 24 hour turn around/notary public) \_\_\_\_\_
6. Commander contacted by attorney to inquire  
concerning need for pre-SRP legal brief  
(standard - NLT 45 days pre-SRP) \_\_\_\_\_
7. Commander Requests pre-SRP Legal Brief  
(standard - disallow if not at least two  
Wednesdays b/t requested brief date and SRP)  
Date/time of Brief: \_\_\_\_\_
8. Pre-SRP Brief conducted  
(standard - attorney brief/legal clerk serve  
as notary for POAs on the spot). \_\_\_\_\_
9. SRP Conducted  
(standard - legal clerk review "SRP Statement of  
SJA Processing" \_\_\_\_\_
10. After-Action Report Forwarded to Chief, LA

(standard - NLT 24 hours post-SRP)

\_\_\_\_\_

11. Unit Evaluation Completed/Forwarded to Commander  
by Chief, LA (standard - NLT 72 hours  
post-receipt of AAR)

\_\_\_\_\_

12. Response from Commander received

\_\_\_\_\_

CPT \_\_\_\_\_ - phone \_\_\_\_\_

---

**C. SRP Client Checksheet**

Date: \_\_\_\_\_

---

**RANK, NAME**

**SSN,**

**UNIT**

Check the blocks below which most correctly describe you.

**Marital status:**

\_\_\_\_ Single  
\_\_\_\_ Married

**Children:**

\_\_\_\_ None  
\_\_\_\_ Child(ren) less than 18 years of age Number \_\_\_\_\_  
\_\_\_\_ Child(ren) more than 18 years of age Number \_\_\_\_\_  
\_\_\_\_ Children from another marriage Number \_\_\_\_\_

**Property:**

\_\_\_\_ Do not own land  
\_\_\_\_ Own land and/or house in the state of \_\_\_\_\_  
\_\_\_\_ Approximate value of life insurance and property \_\_\_\_\_

**Will and Power of Attorney:**

\_\_\_\_ Have a will which is satisfactory to me  
\_\_\_\_ Have a current power of attorney  
\_\_\_\_ Desire to have a will prepared for me  
\_\_\_\_ Desire to have a power of attorney prepared for me  
\_\_\_\_ Appointment with SJA for will or POA not desired  
\_\_\_\_ Appointment with SJA for will or POA made for \_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

---

**D. *Preparing a Power of Attorney: Attorney Checklist***

The practitioner should watch for the following matters when counseling clients concerning a power of attorney:

1. What specifically does the service member wish to accomplish?
2. Does the service member really need a power of attorney to accomplish this task?
3. How long a period is reasonably needed to accomplish the task? Note that some states limit the length of time a power of attorney may be effective.
4. Is the agent or attorney-in-fact an individual who can be trusted to carry out the task?
5. Is the principal clearly identified in the power of attorney?
6. Is the agent clearly identified in the power of attorney?
7. If a bank or company is to be appointed as agent and an individual employee is named as the bank or corporate representative, is the individual named as agent on behalf of the bank or corporation clearly named in a representational capacity?
8. Are all appropriate account, serial, or registration numbers set forth accurately?
9. Are all conditions and restrictions on the agent clearly described?
10. What conditions, other than revocation date, will terminate the power of attorney? Note that in some states a power of attorney will terminate when the principal becomes mentally incompetent, unless specific language is placed in the power of attorney to have its effectiveness continue despite the mental incapacity of the principal.
11. Is the document signed and notarized? Notarization is not a legal requirement for all types of powers of attorneys in some states or for the transaction of business involving the government; however, businesses and agencies need not accept any powers of attorney, and even where notarization is not required by state law, the businesses will find it easier to refuse to accept powers of attorney if they are not notarized.

12. Does the power of attorney need to be recorded? Proper recordation will create a permanent record, facilitate revocation at some future time, and serve as a source from which certified copies can be obtained if necessary. Recordation of the power of attorney, however, makes it a matter of public record that the service member has given a power of attorney to a named agent. Note that in some states it is necessary to record the power of attorney if the agent will engage in transactions involving real property standing in the grantor's name. Also, some banks may require that the power of attorney be filed for record before they will honor it. If recordation is desirable or necessary, the power of attorney should be recorded in the county or counties where the service member owns real property, or, if the service member does not own real property, in the county where the service member or the agent is a permanent resident or, in the county where the power will be exercised. If the power of attorney is recorded and the service member subsequently executes a revocation of the power, the revocation should be recorded in the same place, as was the power.
13. Does the execution of the power of attorney require subscribing witnesses in addition to acknowledgment before a notary public? In cases where the power of attorney is to be used in conjunction with real estate transactions or in other matters where subscribing witnesses ordinarily are required, the power of attorney will likewise have to be witnessed.
14. How many executed copies does your client need? Anyone dealing with the grantor's agent may demand an executed (or certified) copy of the instrument. Some banks may keep a copy of the power of attorney on file. If it appears that additional copies will be needed and the service member will be unavailable to execute them, the power of attorney can be recorded in the office of the appropriate county recorder or county clerk and certified copies obtained for use in place of executed copies.
15. A power of attorney is effective only while the grantor is alive. Upon the grantee's death, the power of attorney terminates.

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**E. Power of Attorney: Attorney Worksheet**

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Date

Check Powers which will apply:

\_\_\_\_ DISPOSITION OF PROPERTY

\_\_\_\_ COLLECTION OF DEBTS

\_\_\_\_ RECOVERING POSSESSION OF PROPERTY

\_\_\_\_ ACQUISITION OF PROPERTY

\_\_\_\_ LITIGATION, REPRESENTATION, AND EMPLOYMENT OF ASSISTANCE

\_\_\_\_ ENDORSING CHECKS AND DEPOSITING MONEY

\_\_\_\_ WITHDRAWALS/CHECK WRITING

\_\_\_\_ SAFE DEPOSIT BOXES

\_\_\_\_ TAX RETURNS

\_\_\_\_ SHIPMENT OF PROPERTY

\_\_\_\_ MOTOR VEHICLE (Limited Power)

\_\_\_\_ PROPERTY MANAGEMENT

\_\_\_\_ MEDICAL CARE OF MINORS

\_\_\_\_ MAIL

\_\_\_\_ SAVINGS BOND

\_\_\_\_ GUARDIANSHIP

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**F. Estate Planning Attorney Checklist**

**1. GENERAL**

- (a) Has/Have the estate(s) wisely used the marital deduction and given adequate consideration to the use of trusts that will provide income for life to the surviving spouse, but enable maximum use of the unified credit by the estate of the first spouse to die? [Failure to qualify sufficient property for the marital deduction may result in an unnecessary tax burden at the estate owner's death. Over-qualification will tend to increase the federal estate tax due upon the surviving spouse's death.]
- (b) Would a gift program be advisable?
- (c) Is either the husband or wife the current or anticipated beneficiary of other estates or trusts? Has the effect of potential inheritances been considered in the planning process?
- (d) Are there any business interests or other assets that would require immediate attention following the estate owner's death?
- (e) Has a current inventory of estate assets been prepared to assist the executor?
- (f) Are the estate owner's wishes regarding burial and other personal matters (as opposed to binding dispositions of property) reflected in a letter or written memorandum kept with other important papers?
- (g) Are liquid assets available?
- (h) Are the names of all beneficiaries correct? [This is especially important with respect to charities.]
- (i) Has the corporate fiduciary, if any, been informed of its selection, reviewed the instrument, and accepted the instrument?
- (j) Have the settlor's insurance policy beneficiaries been changed in accordance with the estate plan, i.e., are policies made payable to the estate or the trustee if called for in the plan?

**2. WILLS AND TRUSTS**

Have both husband and wife executed current dispositive instruments?

- (a) Have the formalities of execution required by the state of domicile been met?
- (b) Will ancillary administration be required?
- (c) If an individual executor or trustee has been notified, has he or she agreed to accept this responsibility? Have an alternate and/or a successor been designated? Will the individuals named as executor and trustee, if any, qualify under the laws of decedent's domicile?
- (d) Has a guardian been appointed (or nominated) for minor children? Will the guardian qualify under the laws of decedent's domicile?
- (e) If a corporate fiduciary has been designated, will the corporate fiduciary qualify under the laws of decedent's domicile?
- (f) Is the fiduciary to be bonded?

### **3. PROPERTY OWNERSHIP**

- (a) Is title to any property held in joint tenancy with right of survivorship? Does the estate plan contemplate the fact that joint tenancies may nullify certain testamentary dispositions and may result in unintentional over-qualification for the marital deduction?
- (b) Are any assets held as community property? One-half of each asset held as community property is "owned" by each spouse by operation of law. This fact is important in valuing the estates of community property state domiciliaries.
- (c) Do the estate owners hold a beneficial or reversionary interest in any property? Such interests are easily overlooked unless specific inquiries are made. Their effect on the potential estate tax and the liquidity requirements of the estates of both husband and wife should be considered.

### **4. MILITARY, VETERANS, AND SOCIAL SECURITY BENEFITS**

- (a) Has a schedule of potential benefits to survivors been prepared? [The nature, amounts, and eligibility requirements for these benefits are subject to frequent modification.]

- (b) Has a survivorship annuity been elected under the Survivor's Benefit Plan?
- (c) Are beneficiary designations for all military and veteran's benefits current?
- (d) Has the estate owner been reminded that eligibility for certain social security and veteran's benefits may be forfeited if the surviving spouse supplements other income by working?
- (e) Are any benefits available to the estate owner's survivors by virtue of any civilian employment in which he or she has engaged?

## **5. LIFE INSURANCE**

- (a) Has the ownership of policies on the estate owner's life been ascertained? Are contingent owners designated? Would transfers of ownership be advantageous?
- (b) Does the estate owner hold any policies on the lives of others? Would contingent ownership be advisable to keep such policies out of the estate owner's probate estate?
- (c) Are all beneficiary designations current and properly designated?
- (d) Has the use of settlement options been considered? Even when the proceeds are to be paid in a lump sum, it is often advisable for the insured to elect to have the proceeds placed under the "interest only" option, giving the beneficiary full withdrawal rights and the right to elect other options. This gives the beneficiary maximum flexibility. It assures that interest will be credited from the date of death to the date of actual withdrawal, and gives the beneficiary time to obtain advice before being required to make any irrevocable decisions with regard to the ultimate disposition of the proceeds.
- (e) Do any settlement options elected by the insured include "spendthrift" provisions?
- (f) Do policy provisions and the provisions of state law regarding presumptions as to survivorship coincide with any presumptions established in the dispositive instruments? Has a "delay" clause been considered? "Delay" clauses provide for payment to the primary beneficiary only if such beneficiary survives the insured by a specified period of time. A clause of this type is frequently used to avoid adding to the costs of probating the beneficiary's estate when the beneficiary's death occurs shortly after that of the insured. Periods of 30 to 180 days are

usually specified. The proceeds will not qualify for the marital deduction, however, if the survivorship requirement exceeds 180 days.

- (g) Will policy loans or collateral assignments interfere with the planned distribution of insurance proceeds?
- (h) Have any policies on the insured's life been transferred for valuable consideration? Such a transfer may cause part of the death proceeds to be taxed as ordinary income to the beneficiary. See I.R.C. § 101(a).
- (i) Do any policies include options, endowment features, conversion privileges, supplemental benefits, or other provisions that deserve special consideration or require action by the policy owner? An Automatic Premium Loan, for example, is included in many policies to prevent the policy from lapsing due to the insured's failure to make a scheduled premium payment prior to the expiration of the grace period. If it is not included in the policy at the time of issue, most companies will add it, without cost, at the policy owner's request.
- (j) Are policy dividends being applied under the most favorable dividend options? Which dividend option is "most favorable" will depend upon the insured's situation. If an individual's longevity is significantly impaired, he or she should consider having dividends applied toward the purchase of paid-up additional insurance.
- (k) Is additional insurance needed to ensure estate liquidity or to provide a guaranteed level of income for surviving family members? Have all aspects of the estate plan been coordinated (or reviewed) by an attorney who is thoroughly conversant with the laws of the jurisdiction in which probate proceedings will be carried out?

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**G. Will Preparation Worksheet**

Welcome to the Legal Assistance Office. This Worksheet will answer common questions concerning wills, prepare you to discuss your needs and desires with an attorney, and provide a convenient form on which to record important information. This Worksheet starts the will preparation process. After you complete it you will discuss your Will with an attorney. **IF YOU HAVE ANY QUESTIONS, WHICH ARE NOT ANSWERED BY THIS WORKSHEET, PLEASE DISCUSS THEM WITH THE ATTORNEY.**

**Print your full name (FIRST, MIDDLE, LAST):**

---

**Have you ever been known by any other name? NO YES** (circle one)

**If yes print name:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_

**Do you currently have a will? NO YES** (circle one) **If "YES" please bring it with you to your appointment.**

**What is a will?** A will is a legal document, which states your desires concerning what happens to your property after your death. A will also contains other specific directions from you concerning who is to implement your instructions and perhaps, who will care for any minor children you may leave behind.

**Why should I make a will?** If you die without a valid will, the laws of your state of Legal Residence will govern the distribution of your property, and perhaps by the laws of the state in which you die. Your wishes usually won't be considered.

**Is all of my property controlled by my will when I die?** NO. For example, proceeds of insurance policies are distributed as you have designated in the insurance policy, and property, which you own jointly with another person, normally, automatically becomes the other joint owner's.

**What is probate?** Probate is a court procedure by which a will is proved to be valid or invalid. Probate proceedings also address the administration of your estate, taxes, the guardianship of children, etc. All wills are “probated”, only rarely though, is there a challenge to the validity of the will in the probate court.

**How do I determine my Legal Residence, and what difference does it make to my will?** Your Legal Residence is a place where you have been and which you consider your PERMANENT home. If you are on active duty or are the family member of an active duty service member, your Legal Residence is the place you intend to return to when you leave the Service. Your Legal Residence is important to your will because when you die the laws of your state of Legal Residence are used to interpret and implement your will.

Your state of legal residence: \_\_\_\_\_

State you are now living in: \_\_\_\_\_

Marital status: **NOW MARRIED** **FORMERLY MARRIED** **NEVER MARRIED**

Spouse’s full name: \_\_\_\_\_

Military Status: (Circle one) **ACTIVE DUTY** **RETIRED**  
**FORMER SERVICE MEMBER** **NEVER A SERVICE MEMBER**

Which Service?: (Circle one) **ARMY** **USAF** **USN** **USMC** **USCG**

List the full name and birth date of all your natural born, adopted, or step-children. Also indicate if natural born, adopted or a step-child.

_____	_____	_____
Child’s name	Birthdate	Status

_____	_____	_____
Child’s name	Birthdate	Status

_____	_____	_____
Child’s name	Birthdate	Status

_____	_____	_____
Child’s name	Birthdate	Status

_____	_____	_____
Child’s name	Birthdate	Status

\_\_\_\_\_  
Child's name

\_\_\_\_\_  
Birthdate

\_\_\_\_\_  
Status

**What is a personal representative?** A Personal Representative is a person that you name in your will to carry out your desires, as expressed in your will, and to settle your estate. Settlement includes paying, from your estate, any taxes and debts you may owe. Many married people name their spouse as personal Representative. Often a security fee, or bond, is required of this person; however, most states allow you to specify in your Will that you want the fee waived for your Personal Representative. Your Personal Representative will have an important role; choose him or her with care, and discuss the matter with him or her. Be sure that the person you name is one you trust and have confidence in.

**Who is the person you wish to name as personal representative:**

**SPOUSE** (Circle) **OTHER:** \_\_\_\_\_  
[print the person's name and his or her relationship to  
you]

**Alternate personal representative in the event your first choice is unable to serve**

\_\_\_\_\_  
[print the person's name and his or her relationship to  
you]

**Second Alternate**

\_\_\_\_\_  
[print the person's name and his or her relationship to  
you]

**How should I leave my property?** Generally speaking, you may state in your will that you are leaving your property to anyone you wish, although there are laws in some states which may give your spouse and/or your children a right to a portion of your property. Most married persons leave all their property to their spouse, and, if their spouse does not outlive them, then to their children.

**Can I just write a letter to tell how I want to leave my property?** Some states allow you to write a memorandum to your Personal Representative to tell her or him to dispose of your property. You should discuss this with your attorney.

**What if I want someone to manage my children's money and property for them?** As part of your Will you may name someone to be a financial custodian to manage any money or property that you leave to any child under 18 years old. Most states have a simple method of appointing some adult to the custodian for a child's property. If you

are interested in this sort of an arrangement, you should discuss it with the person who you want to name custodian and then discuss it with your attorney.

**Can I give specific things to specific people?** Yes, these are called Specific Bequests and you may make them by fully describing what you want to give and the person who is to receive it. You should be careful about Specific Bequests. If you dispose of the property that you describe, or if there is any doubt about the exact property that you have described in your Will, you may be creating difficulties for your Personal Representative.

**How do you want to leave your property when you die?**

**1. All to: SPOUSE (or) ALL TO:** \_\_\_\_\_  
[print the person's name and his or her relationship to you]

**2. If the person(s) named in #1 does not outlive you, then ALL TO:**

**YOUR CHILDREN**                      **OTHER:**  
\_\_\_\_\_ relationship to  
you]

\_\_\_\_\_ relationship to  
you]

**3. If the person(s) named in #2 does not survive you, then who do you want to have your property**

**YOUR GRANDCHILDREN (Circle)**                      **OTHER:**  
\_\_\_\_\_ relationship to  
you]

\_\_\_\_\_ relationship to  
you]

**What is a guardian?** A legal guardian is the person who will act as parent for any of your children who are minors at the time of your death. Normally, if your spouse

survives you, he or she becomes the children's guardian if he or she is the biological or adoptive parent of the children. However, it is recommended that you name a guardian and an alternate guardian in the event that both you and your spouse die. If you or your spouse have children not born of your current marriage, you should discuss the situation in detail with an attorney to determine the most appropriate way to provide for the children.

**If you have any children who are minors at the time of your death, who is your first choice to be their legal guardian?**

**YOUR SPOUSE** (Circle)

**OTHER**

you] \_\_\_\_\_  
[print the person's name and his or her relationship to

you] \_\_\_\_\_  
[print the person's name and his or her relationship to

**Do you wish to name an alternate guardian?**

you] \_\_\_\_\_  
[print the person's name and his or her relationship to

you] \_\_\_\_\_  
[print the person's name and his or her relationship to

**Make notes below about anything else that you want to discuss with your attorney concerning your will:**

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**H. Dual Representation Instruction  
(For new Estate Planning Clients)**

Re: Your Estate Plan

Dear Mr. and Mrs. \_\_\_\_\_:

This will confirm the following:

1. You have requested that I represent each of you and advise you on certain estate planning matters.
2. It is contemplated that the matters to which my representation will extend will include the following: (Choose from the following or modify as appropriate.)
  - a. Analysis of your existing wills, codicils, trust agreements, and property agreements if any;
  - b. Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the nature in which title was then held;
  - c. Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, community, or quasi-community property;
  - d. Discussions about the manner in which you wish to dispose of any property over which you may have any power of disposition at the time of your death;
  - e. Analysis of the tax impact of such disposition and recommendations for alternative dispositions; and
  - f. Preparation of the documents necessary to accomplish the desired disposition, including the drafting of wills, trusts, property agreements, and other documents as may be required.
3. I have advised each of you that, during the course of the estate planning work, conflicts may arise between you with respect to the ownership of your property (separate, community, or quasi-community property) and its desired disposition during your lifetimes and at your deaths. Differences of opinion on the disposition of the property, under ethical rules, do not prevent me from continuing to represent both of you. However, during the course of the estate planning, conflicts of interest between you may arise, such as issues regarding the ownership of certain property.

Ordinarily, under such circumstances, one attorney cannot represent both of you. It may be better for each of you, under such circumstances, to have separate independent counsel to avoid the possibility that my advice to one of you is influenced by my representation of the other. Nevertheless, you have requested, with a full understanding of your right to, and the advantages of, independent counsel, that I represent both of you in all of the above matters.

4. Although I doubt that it will happen, if conflicts do arise between the two of you of such a nature that I believe it impossible, in my judgment, for me to perform any obligations to either of you in accordance with this letter, I will withdraw from all further dual representation of both of you in this matter at that time and advise one or both of you to obtain independent counsel.

5. You have each agreed that there will be complete and free disclosure and exchange of all information that I receive from either or both of you in the course of my representation of you, and that such information shall not be confidential between you irrespective of whether I obtain such information in conferences with both of you or in private conferences with only one of you, including any conferences that may have taken place before the date of this letter.

Sincerely,

(Attorney's Signature Block)

APPROVED The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature of husband; typed name below)

(Signature of wife; typed name below)



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## Appendix H

### RESERVE FORCES ISSUES

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#### A. *The Reserve Component Mobilization Process*

##### 1. INTRODUCTION.

Use of ARNG and Army Reserve personnel can be critical to mission accomplishment. As General Collin Powell stated in December 1990 before the Senate Armed Services Committee, "[T]he success of the Guard and Reserve participation in DESERT STORM cannot be overemphasized. Their participation has been a significant factor in affording us flexibility and balance, and [it] reinforces... the Total Force concept."

##### 2. MOBILIZATION PROCESSING PROGRAM.

###### a) Mobilization in General

Mobilization is the process by which the Armed Forces or part of them are expanded and brought to a state of readiness for war or other national emergency. It includes calling all or part of the Reserve Components to active duty and assembling and organizing personnel supplies and material. Mobilization can be accomplished in a number of ways including:

- (1) A Presidential Selected Reserve Call-up, S-Day,
- (2) Partial mobilization, T-Day, or
- (3) Full mobilization, M-Day.

###### b) The Phases of Mobilization

- (1) Regardless of the type of mobilization used, there are 5 phases of federalizing/mobilizing RC units: *Phase I - Preparatory*. Concerns RC units at home station during peacetime. The units plan, train, and prepare to accomplish assigned mobilization missions.
- (2) *Phase II - Alert*. Begins when RC units receive notice of pending order to active duty and ends when units enter active Federal service.

(3) *Phase III - Mobilization at Home Station (HS)*. Begins units' entry onto active Federal duty and ends when unit departs for their power projection platforms (PPPs) or ports of embarkation (POE).

(4) *Phase IV - Movement to Power Projection Platforms (formally called Mobilization Stations)*. Begins with units departing from HS, by most expeditious and practical means available, and ends when units arrive at PPP or POE.

(5) *Phase V - Operational Readiness Improvement*. Begins when units arrive at their PPP and ends when they are declared operationally ready for deployment.

### **3. THE RESERVE COMPONENT LEGAL STRUCTURE**

The purpose of this section is to provide the AC SJAs with information on the nature, mission, and capabilities of ARNG and Army Reserve legal units and individuals and procedures to procure these RC legal personnel.

#### **a) Nature, Mission, and Capabilities of ARNG Legal Personnel**

ARNG legal personnel support both militia missions and preparation for mobilization in federal service missions. Approximately 50% of ARNG judge advocates are embedded in SJA sections in combat and support units. The TOE structure is the same in the National Guard units as in the AC. The remaining 50% of ARNG judge advocates are usually assigned to the state (STARC) or territory (TARC) headquarters and from there support both the militia and federal missions. Each of the fifty states, and Guam, Puerto Rico, Virgin Islands, and the District of Columbia have their own distinct independently commanded National Guards. Therefore, the roles and missions of the judge advocates assigned to the state and territory area commands vary.

Fifty-three of the fifty-four National Guards each have a single full time AGR judge advocate and most a senior drilling State Staff Judge Advocate. Their primary mission is to advise their respective Adjutant Generals. The AGR Judge Advocate or the State SJA are the POC for purposes of coordinating training and preparations for natural disasters, civil disturbance, civilian assistance, and counter-drug missions within their jurisdictions. They are also the POC for the post federal mobilization mission of legal assistance to all military family members within their jurisdictions beyond the support capability of Class 1 AC installations.

The SJA of ARNG combat or support units is the POC for training for his or her SJA office for the federal mobilization mission. Depending on other demands, the SJAs of these National Guard units are generally interested in one or two of their legal personnel working in an AC SJA office during a 15 day Annual Training period. ARNG judge advocates possess a broad range of experience and expertise. Many ARNG

judge advocates have prior AC judge advocate experience. Others have extensive civilian legal practices focusing on such areas as government regulation, labor law, environment, contracts, criminal law, and family legal practice. All have the experience of providing general legal services to their respective ARNG units. ARNG judge advocates because of their local community contacts are effective liaisons with local and state governments. ARNG SJAs recognize the necessity to develop AC training opportunities for ARNG enlisted personnel. Candid SJA to SJA contact is recommended in order to insure that the partnership established meets the expectations of both the AC and ARNG SJAs.

The POC for the Mil to Mil program and solicitations for ARNG judge advocate individual volunteers is the Office of the Judge Advocate, National Guard Bureau. The Key Personnel Upgrade Program (KPUP) permits individual volunteers to deploy for several weeks or longer to an AC unit. AC SJAs with specific training opportunities can request a KPUP tour through AC channels to the National Guard Bureau.

The ARNG POC's telephone numbers and addresses are listed in the JAGC Personnel and Activity Directory beginning at page 209.

b) Nature, Mission, and Capabilities of Army Reserve Legal Personnel.<sup>1</sup>

(1) Judge Advocate Service Organizations (JAGSOs).

JAGSOs are cellular TOE teams designed to provide legal services to non-divisional troops not otherwise provided sufficient organic legal support. JAGSOs also provide CONUS sustaining base support for mobilization, mobilization sustainment, and casualty assistance. Eight types of JAGSO teams exist.

(a) *Mission.*

JAGSOs provide combat, combat support, and combat service support commanders and soldiers' professional and responsive legal services in all functional areas to ensure mission accomplishment. In an area of operations, all JAGSO teams (except defense and military judge teams) function under and are responsible to the SJA and commander of the unit to which they are assigned. Such teams may be used to augment the existing SJA section or they may work as a remote detachment.

The Army assigns JAGSO teams to theater armies (TAs), theater army area commands (TAACOMs), corps, corps support commands (COSCOMs), corps artillery, and other organizations as required. TJAG is responsible for the technical supervision, training, and assignment of JAGSO personnel. Judge Advocate Reserve Component training and mobilization oversight is provided by U.S. Army Forces Command (FORSCOM) and the two Continental U.S. Armies (CONUSAs) at Fort Sam Houston, Texas, and Fort Gillem, Georgia. Assignment of JAGSO personnel is the responsibility of the Office of Guard and Reserve Affairs, OTJAG.

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<sup>1</sup> See Chs. 2-3, FM 27-100, Legal Operations, 3 Sep 1991

(b) *Legal Support Organizations (Formerly Military Law Centers).*

Among the eight teams, the LSO's size, structure and functions resemble those of a heavy division SJA section (one colonel, six lieutenant colonels, four majors, four captains, one warrant officer, five legal NCOs, four legal specialists, and two court reporters). There are now 20 LSOs, each commanded by an O6 RC JA. The Army expects to reduce the number of LSOs to 15. Seven of the 15 are allocated one to each of three corps, two theater armies, and two TACOMs. (These are the headquarters at echelons above division programmed to fight in two major regional contingencies.) The remaining eight function as Mobilization Support Organizations (MSOs). HQ, FORSCOM makes MSO assignments, on the basis of recommendations by HQ, USARCOM.

(c) *Other Types of JAGSOs.*

- (i) The International/Operational Law Team. This JAGSO team advises on the application of international and operational law to military operations. In particular, the team is trained to investigate and prepare reports on alleged violations of the law of war by enemy forces (one, major, one captain, one legal NCO).
- (ii) The Court-Martial Trial Team. This JAGSO team advises on matters related to the administration of military justice, including the disposition of alleged violations of the UCMJ. In particular, the team is trained to perform trial counsel duties at all levels of courts-martial and to act as recorders before administrative boards (one major, three captains, two court reporters, two legal NCOs).
- (iii) The Court-Martial Defense Team. Members of this JAGSO team perform all defense counsel duties in courts-martial and represents soldiers before administrative boards and other proceedings. Team members may also act as "consulting counsel" as required by law or regulation (one major, three captains, one legal NCO).
- (iv) The Legal Assistance/Claims Team. This JAGSO team receives, investigates, and adjudicates claims by and against the United States arising from military activities. In addition, members of the team provide

legal assistance services (one major, two captains, one legal NCO, two legal specialists).

- (v) The Administrative/Contract Law Team. In addition to performing all administrative law functions, this JAGSO team provides advice and assistance on all aspects of the acquisition process -- including combat contracting (one major, two captains, one legal NCO, one legal specialist).
- (vi) Military Judge Teams. Judges from the regular military judge team preside at general and special courts-martial; they also perform magistrate and other judicial duties. Senior Military Judge Teams perform the same functions as the regular team but also provide technical supervision to other military judges (one military judge, one legal NCO).

c) Employment of RC Legal Units and Personnel

(1) General. RC legal personnel are capable of providing legal support to AC units in many diverse ways. Here are some actual examples of such RC support.

(a) *Mobilization Legal Assistance. In the course of Operation DESERT STORM, AC JAs at Fort Sill, OK, recognized that they would not be able to provide all of the mobilization legal assistance (wills, powers of attorney, etc.,) needed by AC and RC personnel deploying from Fort Sill. Accordingly, the 218th JAGSO, headquartered in Bismarck, ND, was requested to help provide such assistance at Fort Sill. Similar support was provided at other installations around the country by other JAGSO units.*

(b) *Procurement Law. Soon after U.S. Forces began arriving in SWA for Operation DESERT STORM, AC JAs recognized the need for additional legal support to help with local procurement activities. Accordingly, the 207th JAGSO, headquartered near Washington, DC, was mobilized and deployed to SWA where they provided the majority of acquisition law services to U.S. Forces. In fact, the ARCENT and 22d SUPCOM (TAA) SJA offices were principally staffed with RC JAs.*

(2) Other examples include activation of teams to:

- (a) *Augment the Military Police/Enemy Prisoner of War Structure. Presently, the reserve EPW structure has an insufficient number of JAs to support the national and theater prisoner of war information centers and fourteen EPW battalions in the reserve structure.*
  - (b) *Augment STARC and TARC Headquarters. With usually one full time AGR and one or two other NG JAs, the STARCs and TARCs are not staffed to support military family members within their jurisdiction. Although these HQs have the mission, they lack the resources to staff casualty assistance centers, to assist family support groups, and to provide individual legal assistance to family members as well as function as the command judge advocate.*
  - (c) *Augment garrison SJA offices to replace deploying JAs.*
  - (d) *Augment theater army SJA offices to perform foreign claims commission function or war crimes investigation.*
  - (e) *Augment SJA offices to assist with civil affairs function and staffing of civilian military operation centers.*
- d) Procurement of RC Legal Units and Personnel
- (1) Corps/Division SJAs may be able to secure RC legal support depending upon several factors. First, the time factors: how quickly support is needed and for period. Second, the particular legal expertise required. Third, the number and grade of the people needed. And, fourth, the availability of funds.
  - (2) Funding may or may not be a problem. For example, when an entire RC unit and any individual member of the ARNG or Army Reserve performs annual training (AT), funds for such AT are usually set aside long before the two-week training period commences. Accordingly, to the extent that AC SJAs are able to secure legal support ARNG/Army Reserve units or individuals during their AT periods, funds for such training normally need not be provided by the AC unit seeking RC legal support. Furthermore, with sufficient advance notice RC units and individuals may be able to reschedule AT to fit the needs of the AC unit. During Operation Desert Storm, preparation of many AC and RC soldiers for overseas movement could not have been accomplished without the help of RC JAGSOs that rescheduled and performed their AT at installations where such soldiers were processed.

e) Scenarios for funding RC Personnel

While there are many possibilities, two scenarios will be discussed: first, a Corps SJA needs two company grade RC judge advocates for a single short period -- say 60 days of temporary active duty and, second, a Division SJA needs a dozen field and company grade JAs plus the enlisted members for two weeks to each year during an exercise to backfill most of the military staff of the Division SJA office.

(1) Two RC JAs for Two Months. First note that absent mobilization by the President, it is exceedingly difficult to get individual RC soldiers -- including JAs -- involuntarily activated for the performance of such duties. Even during DESERT STORM, individual RC JAs were not involuntarily activated under the 200K limitations. However, volunteers can be requested to fill this requirement for RC company grade JAs. Since the period of active duty is more than two weeks, such volunteers would not be able to use their AT period (and related funds) to provide such service. Accordingly, the first hurdle here may well be funding since the Corps may not have budgeted funds for such RC temporary active duty. Assuming the Corps supports such a request for RC personnel but does not have the funds, the Corps SJA might informally contact PPT&O, the FORSCOM SJA Office (and perhaps the USARCOM SJA Office) to explain the need for these RC JAs, to determine whether such temporary active duty could be funded, and to seek assistance in locating suitable RC volunteers.

(2) Dozen RC JAs for Two Weeks Annually. As the required period of active duty equals two weeks each year, any RC units or individuals who performed such duty for the Division SJA could do so during their regular AT periods without expending Division funds. To acquire such a group of JAs, the Division SJA has some less formal and more formal options available. On an informal basis, the Division SJA could contact the Commanders of the two or three nearest military law centers (MLCs) to make known the Division's need for legal support during the specified two-week period. For example, from time to time XVIII Airborne Corps SJA contacts such Commanders to invite them to consider AT at Fort Bragg, NC. Given the variety of legal expertise and experience within each MLC and its subordinate units, the MLC Commander might even be able to tailor a special AT group to fit the particular needs of the Division SJA. Once the Division SJA identifies a particular MLC with the appropriate personnel to support the Division on a long-term basis, consideration might then be given to a formal affiliation between the RC unit and the AC Division through the Army's CAPSTONE program. See AR 11-30.

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**B. Legal Assistance in the Reserves**

**1. GENERAL**

AR 27-3 addresses the following types of RC judge advocates:

- a) Those assigned to RC units, which include the following:
  - (1) ARNG judge advocates.
  - (2) All USAR judge advocates who are assigned to units (i.e., TPUs).
- b) USAR judge advocates in the Individual Ready Reserve (IRR) (i.e., those not assigned to RC units), including individual mobilization augmentees (IMAs).

**2. PROVISIONS OF AR 27-3 (1995)**

- a) AR 27-3 allows all USAR judge advocates assigned to TPUs and all ARNG judge advocates to provide legal assistance to qualified clients unless inconsistent with superior orders or other duties or responsibilities, even while in civilian status.
- b) Even if not serving with a TPU, an RC judge advocate may continue to provide legal assistance while not on active duty if authorized by the Chief, Legal Assistance Division, OTJAG. To do this, ARNG and USAR judge advocates, including IMAs and others in the IRR, should apply for authorization, even if not seeking to earn retirement points for legal assistance rendered. However, to earn retirement point, an RC judge advocate must submit an application to the Chief, Legal Assistance Division, OTJAG, and, as part of that application, must agree to be listed in the JAGC Reserve Officer Legal Assistance Directory (Directory). The purpose of this directory is to encourage RC judge advocates to assist other legal assistance attorneys on matters within their specialty. For instance, if a RC judge advocate practices family law in the state of Colorado, then he should be able to assist an AC judge advocate that has an issue dealing with Colorado family law. Additionally, the RC judge advocates may accept client referrals or volunteer to assist TJAGSA instructors update specific areas of the law that lie within their area of expertise.

c) The Office of the Chief, Legal Assistance Division, OTJAG, maintain a copy of the following for each RC judge advocate authorized to perform legal assistance work for retirement points:

- (1) DA Form 7206-R (Application to Provide Legal Assistance Work for Retirement Points and to be Listed in the JAGC Reserve Officer Legal Assistance Directory)
- (2) a copy of the letter authorizing the RC judge advocate to provide legal assistance for a period of three years; and
- (3) all copies of correspondence to, from, and on behalf of, the RC judge advocate concerned.

### **3. RESERVE COMPONENT LEGAL ASSISTANCE CLIENTS**

a) RC members and their family members are authorized to receive legal assistance under the following circumstances:

- (1) RC members serving on active duty for more than twenty-nine days, and their family members, may receive full legal assistance services.
- (2) Legal assistance for RC members serving on active duty for twenty-nine days or less, and their family members, receive limited services. If the RC member is on an active duty installation, the AC supervising attorneys may limit legal assistance to emergencies or to certain categories of cases based on the availability of resources or expertise.
- (3) RC judge advocates may provide legal assistance to RC members on:
  - (a) *Military administrative matters*
  - (b) *Issues concerning premobilization issues*
  - (c) *Personal legal problems and needs that adversely affect readiness*

(d) *Personal legal problems and needs that have arisen from, or aggravated by, their mobilization (within two years of release from active duty)*

b) In addition, RC and AC judge advocates may provide Premobilization Legal Preparation to RC soldiers and their family members



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## APPENDIX I

### CHECKLISTS FOR DEPLOYING THE LAO

#### 1. INTRODUCTION

- a) In the area of deployment, the Legal Assistance section should:
  - (1) Respond to inquiries from soldiers in country.
  - (2) Establish liaison with communications, transportation, and aviation elements for contact and courier service with JAs in the rear echelon (the installation from which the deployment took place).
  - (3) Establish liaison with US Consulate at deployment location for overseas marriage and adoption coordination, in addition to emergency leave procedures.

#### 2. LEGAL RESOURCES NEEDED

- a) If possible, Legal Assistance Attorneys should take the following resources with them to the theater of operations.
  - (1) Supply of pens and pencils
  - (2) Wills and POA worksheets
  - (3) Envelopes
  - (4) Lap top computer/printer (RDL)
    - (a) *LAAWS program*
    - (b) *Disks containing sample forms*
    - (c) *Downloaded disks with all relevant TJAGSA LA publications (See The Army Lawyer for downloading directions)*
    - (d) *CD ROM with publications (if available)*

(5) Tax forms (federal and state)

TJAGSA Publications on LAAWS Bulletin Board (available for downloading) and on CD ROM:

JA 260	Soldiers' & Sailors' Civil Relief Act
JA 261	Real Property Guide
JA 262	Wills Guide
JA 263	Family Law Guide
JA 265	Consumer Law Guide
JA 267	Legal Assistance Office Directory
JA 269	Federal Tax Information Series
JA 270	USERRA Guide
JA 271	Legal Assistance Office Administration Guide
JA 272	Legal Assistance Deployment Guide
JA 274	Uniformed Services Former Spouses Protection Act
JA 276	Preventive Law Series

b) To protect against the possibility of the event of computer failure or lack of electrical support, the following should also be included.

- (1) Manual typewriter with supply of ribbons (include correction ribbons).
- (2) Simple Form will for soldiers with no dependents.
- (3) Simple Form will for soldiers with spouse only.
- (4) Simple Form will for soldiers with spouse and children.
- (5) Statutory Form wills for states authorizing them.
- (6) Form Letters (250 each):
  - (a) *Form letter to creditor requesting extension of payment date because of deployment.*
  - (b) *Form letter to landlord/mortgagor requesting extension because of deployment.*
  - (c) *Form letter: Soldiers' and Sailors' Civil Relief Act (e.g., request for stay of proceedings; request for interest rate reduction to 6%). (See samples in SSCRA chapter herein)*

- (d) *IRS Forms requesting extension of filing deadline or local JAG office form letter requesting extension because of deployment.*
      - (e) *Form letters to state or municipal tax authorities requesting extension because of deployment.*
  - (7) Powers of Attorney Forms:
    - (a) *General Power of Attorney Form.*
    - (b) *Special Power of Attorney Form with standard clauses for special situations, e.g., sale of car, sale of house, ability to engage in particular banking transactions.*
- c) If available, copies of the following regulations, pamphlets, and legal publications should also be taken.

AR 15-6, Procedures for Investigating Officers and Boards of Officers  
AR 15-185, Army Board of Correction of Military Records  
AR 27-3, The Army Legal Assistance Program  
AR 27-10, Military Justice  
AR 27-20, Military Claims  
AR 27-26, Rules for Professional Conduct for Lawyers  
AR 27-55, Notarial Services  
AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing)  
AR 600-15, Indebtedness of Military Personnel  
AR 600-37, Unfavorable Information  
AR 600-4, Remission or Cancellation of Indebtedness for Enlisted Members  
AR 600-20, Army Command Policy (Family Care Plans)  
AR 600-290, Passports and Visas  
AR 601-280, Enlisted Personnel Update (Bars to Reenlistment)  
AR 608-99, Family Support, Child Custody, and Paternity  
AR 600-8-1, Casualty Operations  
AR 623-105, Officer Evaluation Reporting System  
AR 635-200, Enlisted Separations  
AR 735-5, Policies and Procedures for Property Accountability (Report of Survey)  
DA PAM 608-4, A Guide for the Survivors of Deceased Army Members  
Martindale-Hubbell Law Digests, vol. VIII (most recent edition).  
Consumer's Resource Handbook (U.S. Office of Consumer Affairs)

Uniformed Services Almanac  
IRS Publication 17

**3. SAMPLE READY BOX**

<b><u>Item</u></b>	<b><u>Quantity</u></b>
Lap top computer/printer	2
LAAWS program	
Disks containing sample forms	
Downloaded disks with all TJAGSA LA publications	
CD ROM with publications (if available)	
Manual Typewriter/ribbons/correction tape	2
Client Interview Cards (DA Form 2465, Jul 92)	100
Electrical extension cords	3
Will Cover Letters	200
Envelopes, 4" x 9 1/2" (DA)	50
Envelopes, 4" x 9 1/2" (plain)	50
Markers, red	10
Masking tape, rolls	2
Scotch Tape, rolls	5
Paper, tablets	2
Pens, boxes	5
DA Form 4944-R (Jul 92) Report on Legal Assist. Services	10
Powers of Attorney (10 USC 1044a Notary)	
General	200
Blanks	50
Special Power of Attorney Clause Formats	50
Check Cashing	50
Medical	50
Temporary Guardianship	50
Use of Car	50
Seals (authority of 10 USC 1044a)	2
Signs (Legal Assistance)	2
Staple removers	4
Stapler w/extra staples	4
Will Guides	3
Will Interview Worksheets	100
Simple Will Forms	100
Routine Form Letters	100 (each)
Tax Forms (federal and state)	300
Toner Cartridges	2

#### **4. HEAVY EQUIPMENT**

Items:

Cots

Folding Tables and Chairs (these may be hard to come by in theater)

Field desks

## SAMPLE PREDEPLOYMENT CHECKLIST

### Training the Force and Yourself

- ❑ Ensure the command has briefed the situation, mission, etc. down to soldier level. Do the legal assistance soldiers know where they are going and generally why?
- ❑ Read past AARs and continuity books within the JAG office.
- ❑ Are you and your legal NCO trained up on basic soldier skills, e.g. land navigation, NBC skills, marksmanship, etc.
- ❑ Military drivers licenses/driver's training for you and NCO.

### Coordination

- ❑ Are there any PAO (Public Affairs Office) personnel deploying? If not be prepared to do the PAO mission yourself as the default choice.
- ❑ Interpreters needed or provided for?
- ❑ Get SOFAs and other international agreements applicable to the area of operations.
- ❑ Get a country study. Any unique law, religious practices, customs, etc. that could be the source of trouble.
- ❑ Figure out your transportation, food, shelter, etc. (who will you ride with? Who is responsible for accounting for you and your equipment?)

### Uploading/ Packing for the Field

- ❑ Personnel
  - JAG Officer
  - JAG NCO
  - Clearances and Badges or passes
  - Shots and shot records
  - Will and POA yourself?
- ❑ Equipment
  - Get a vehicle if at all possible!
  - If you get a vehicles, you will need a radio and/or MSRT (Mobile Satellite radio telephone)
  - Weapons and magazines
  - Personal gear and equipment (consult the headquarters packing list and field SOP)
    - ❑ TA-50
    - ❑ Rucksack
    - ❑ A-bag NOTE: Often units pre-ship A-bags in MILVANs or otherwise. Check with the unit. Can put canned fuel and other stuff that is not allowed on airplanes in the A-bag if shipped this way.
  - Maps of the Area of Operation (AO), laminate the maps and have a protractor.

- Night Vision Devices (NODs)
  - All JAG personnel should have a list of each other's sensitive items and their serial numbers.
- Computers
    - Rucksack Deployable Law Office (RDL) complete with
      - Computer with batteries and A/C power
      - Printer with battery and A/C power
      - Scanner
      - Digital camera
      - FAX/modem card
      - Cables for power, etc. Power strip, extension cord, and multi-plug adapter!
    - Software to pre-load
      - Windows 95/ Office 95
      - LAAWS BBS (World Group Manager)
      - LOTUS Notes
      - Software for Printer driver
      - Software for scanner
      - Software for Digital Camera
      - Anti-virus program
    - CD ROMs or other software to bring
      - LAAWS CD ROM
      - West's MJ CD ROM
    - CLAMO (Center for law and Military Operations): Consult the Lotus Notes database and CLAMO to obtain/download pertinent materials and resources
    - Extension Cord, power strip, multiplug outlet converter
  - Office Supplies
    - Stapler, staples, clam clipper, clams
    - 3 hole punch
    - 3 ring binders for logs and documents
    - scissors
    - plain paper for printer
    - extra ink cartridges for printer
    - pens, pencils, map pens
    - highlighters
    - notepads
    - post-its
    - computer disks
    - plastic bags to cover computer and printer when not in use
    - saran wrap to cover key board
    - compressed air to blow/clean computer and printer
    - 100 mph tape

- Chem. Lights
  - Document protectors
  - File folders
  - Envelopes
  - Map protractors
- Forms and references

## APPENDIX J

### Attorney's Casualty Assistance Checklist and Questions to Consider

#### Dependency and Indemnity Compensation:

- Review the stated cause of death.
- Is there a line of duty determination?
- Was there a finding of willful misconduct that limits benefits? If yes, then no DIC.
- If the findings were not in Line of Duty or not service connected determine whether an appeal should be taken.
- Was there substantial evidence that the conduct involved deliberate or intentional wrongdoing with the knowledge of wanton disregard for the consequences?
- Were there actual and proximate cause?
- Was there a total service connected disability that entitled the family to DIC?
- Were the spouses separated during their marriage? Could this limit DIC?
- When did the beneficiary apply for benefits? If applied 12 months after the death, then back payments are limited to the date of application.

#### SBP

- Determine if the service member was eligible for coverage or elected coverage within 30 days of retirement.
- Did the service member, with spouse's consent, elect no coverage or reduced coverage?
- Has there been a remarriage by the widow before the age of 55, which would terminate payments?
- Was the death service-connected? If so, then payments will be reduced by the amount of DIC received.
- Is the widow over the age of 60 so as to reduce her payments to 35% of the base amount?
- Did the service member effectively withdrawal and SBP during the allotted withdrawal period? Conversely were payments made on time?

#### SGLI/VGLI

- Determine if the death occurred while the service member was on active duty or within 120 days of separation. If so, the SGLI would apply.
- Was the service member AWOL, civilly confined or in court martial status for over 31 days? Did the service member refuse to serve due to conscientious object? If so, then SGLI may not be paid.
- If after 120 days from separation, did the service member elect VGLI and make the payments?

- Was the soldier totally disabled at the time of separation? If so, a 1 year extension of SGLI may be available.

#### Dependents Educational Assistance

- Determine if DEA is eligible under the same criteria used for DIC (service connected etc.)
- Are the dependent children under the age of 16?
- Did the child choose between DIC and DEA? The child may only receive one form of payment between the two.
- Has the spouse used the benefit within 10 years of the death or requested an extension?

#### Social Security Benefits

- Was the service member fully insured? If so, payments may be made to the widow if over 60.
- Are there children under the age of 18 who are eligible to receive benefits?
- Does the widow have children under the age of 16 or who are fully disabled? If so, the widow may be able to receive benefits.
- Was the death service connected? If so, the payment shortfalls may be made up by the VA.

#### Death Gratuity/ Unpaid Pay and Allowances

- If the soldier died while on active duty then payment is authorized.
- Did the death occur with 120 days of release from active duty? If yes, then was the death a result of disease or injury that occurred while on active duty? If yes, then payment is authorized.

#### Burial Benefits

- If the deceased was on active duty then full assistance and benefits are available.
- Did the deceased serve on active duty for a minimum of 2 years? If so then assistance is available through the VA for benefits.
- Was the death service connected even if not on active duty? If so then a burial allowance is allowed.

RETIREMENT IN IMMINENT DEATH CASES  
DEPARTMENT OF THE ARMY  
U.S. ARMY PHYSICAL DISABILITY AGENCY  
FOREST GLEN SECTION-WRAMC  
WASHINGTON DC 20307-5001

TAPD-JA (635-40)

11 May 1994

MEMORANDUM FOR The Judge Advocate General's School, ATTN.: JAGS-  
ADA

(MAJ Peterson), 600 Massie Road, Charlottesville, VA  
22903-1781

SUBJECT: Physical Disability Processing for Imminent Death Cases

1. Enclosed you will find this Agency's SOP for processing imminent death cases. This SOP should provide you sufficient information about how the system works and what this Agency and the Physical Evaluation Board Liaison Officer (PEBLO) must do to quickly adjudicate one of these cases.
2. Also enclosed is a checklist for the imminent death processing and a DA Form 199. The DA Form 199 is the basic document which indicates this Agency's decisions and findings. This is the document which needs to be completed before the actual orders placing the soldier on the Temporary Disability Retired List (TDRL) is accomplished.
3. Agency procedures do not really change when processing an imminent death case; they only speed up. The key component in an imminent death case is having the treating physician and PEBLO aware of the procedure and to be supportive. They need to understand that death after retirement for physical disability provides more benefits for the soldier's family members. If a situation arises where a soldier is expected to die on active duty the treating physician and PEBLO must be aware of the ability of this Agency to medically retire him before death is announced. The Physical Disability Agency cannot initiate a case on its own. The case must be referred to the Agency from the PEBLO and Medical Treatment Facility (MTF). Each PEBLO has the home and office telephone numbers of the members of the Physical Evaluation Board (PEB) that services their MTF. One of the members will always be able to be contacted at any time of the day and they have the ability to begin the procedures outline in the SOP. Cases of soldiers located in a civilian hospital must be coordinated with the closest MTF and PEBLO.

TAPD-JA (635-40)

SUBJECT: Physical Disability Processing for Imminent Death Cases

4. As general information this Agency has three PEBs: FT. Sam Houston, TX, telephone 210-221-9447/9406 (DSN 471), fax 0912; FT. Lewis, WA, telephone 206-968-4427/4436, (DSN 782), fax 4433,; and, Walter Reed Medical Center, D.C., telephone 301-427-5213/5212 (DSN 291), fax 5001. The retirement orders are prepared by the Physical Disability Branch located in the Hoffman Building, Alexandria, VA, telephone 703-325-4559/0260 (DSN 221) fax 4573.

5. Should you need any further information, please contact me at 301-427-5068 (DSN 291).

Encls  
as

DENNIS A. BROWER  
LTC, JA  
Agency Judge Advocate

## Appendix F Expeditious Processing of Imminent Death Cases

### F-1. Purpose.

a. This appendix outlines the procedures to be followed by the Medical Treatment Facility (MTF) and the Physical Evaluation Board (PEB) when expediting the disability processing of a soldier whose death is imminent.

b. DOD Directive 1332.18 prohibits after-the-fact processing and the circumvention or omission of required procedures in the interest of timely processing. Care must be taken to ensure that all required actions are completed in the proper sequence and prior to retirement.

c. Figure F-1 is the checklist to be used for expeditious processing of imminent death cases.

### F-2. Sequence of events and required actions.

a. Attending physician:

(1) Confirm that death of soldier is imminent--expected within 72 hours.

(2) Alert Physical Evaluation Board Liaison Officer (PEBLO). Have PEBLO alert PEB.

(3) Complete and sign SF 502, Narrative Summary (NARSUM). NARSUM must include the statement that death is imminent within 72 hours.

b. Deputy Commander Clinical Services. Ensure that DA Form 3947, Medical Evaluation Board Proceedings (MEBD), is completed and approved.

c. PEBLO.

(1) Pending collection of required data, alert PEB according to notification procedures provided by the PEB

(2) Confirm status of line-of-duty determination. A line-of-duty determination must be made before the PEB can complete the adjudication of the case. The PEB can make the line of duty determination only for specific categories of injuries and only if there are no unusual or doubtful circumstances as to how the injury was incurred. See paragraph 4-19g(3), AR 635-40. AR 600-8-1, paragraph 39-2c, lists those circumstances requiring formal line of duty investigations.

(3) Obtain and telephone or fax to the PEB data for blocks 1-6 of DA Form 199, Physical Evaluation Board Proceedings, and the name, address, and telephone number of the next-of-kin (NOK) if soldier is mentally incompetent.

(4) Insure the soldier or NOK is counseled concerning the benefits to the surviving beneficiary when death occurs in retired status versus on active duty. Contact the Installation Retirement Services Officer for counseling on Survivor Benefits Program, as needed. Consideration must be given to whether the soldier is in a civilian hospital. Premature retirement may result in an undue burden on the family to pay the percentage of the hospital bill not covered by CHAMPUS. Counseling is mandatory. Final approval cannot be granted until financial counseling is accomplished.

(5) Obtain soldier's or NOK's signature on MEBD. This signature will be considered an acknowledgment that the soldier or NOK agrees with expeditious processing. If the soldier or NOK refuses to sign the MEBD, or the NOK cannot be located by the time the MEBD proceedings are completed, the MTF and PEB will continue to process the case to the point of completion of informal PEB adjudication and submission of election to the soldier or NOK.

d. PEB Member:

(1) Complete blocks 1-6 and 8b-g of DA Form 199.

(2) Confirm whether circumstances of an injury permit the PEB to make a line-of-duty determination in accordance with AR 635-40, para 4-19g(3). If not, PEB member confirms status of line-of-duty determination. Pending receipt of line of duty determination, expeditious processing continues up to the point of notification to the PEBLO of the findings and recommendations. If unfavorable determination is received, expeditious processing ceases.

(3) Contact the PEB medical officer and remaining PEB member and adjudicate the case. The PEB must insure that issues of EPTS and service aggravation are considered. Care must be taken with the cases of RC soldiers on active duty for 30 days or less in determining whether the disease or injury was the proximate result of performing duty, even though a favorable line of duty determination is received. Because death is imminent, the disability rating will be 100 percent. To protect the interests of the soldier and the government, recommended disposition will be placement on the TDRL with reevaluation in twelve months.

(4) Complete blocks 7, 8a, 9, 10, and 12 of DA Form 199.

(5) When favorable line-of-duty determination is received, or the circumstances permit the PEB to make the line-of-duty determination, telephone or fax to the PEBLO the informal PEB findings and recommendations.

e. PEBLO:

(1) Obtain soldier's or NOK's election in block 13 of DA Form 199. If NOK cannot be counseled in person, but can be reached by telephone, PEBLO will counsel the NOK over the telephone and prepare a memorandum of record of the NOK's election. If the NOK has not previously signed the MEBD, their signature must be obtained or memorandum of record prepared of NOK's verbal concurrence with the MEBD. If NOK does not agree with the MEBD or does not accept the informal PEB findings, expeditious processing ceases. The case will be processed in accordance with the election made and the ten-day time frame prescribed for receipt of election by PEB.

(2) Complete block 14 if soldier or NOK makes an election.

(3) Notify PEB by telephone and fax of the soldier's or NOK's election.

(4) Fax or express mail, at a minimum, the following documents: DA Form 199, DA Form 3947 with NARSUM, DA Form 2173 or DD Form 261.

f. PEB Member:

(1) Upon notification from PEBLO of an election of concurrence, contact the Physical Disability Branch to obtain the date and time of placement on the TDRL. If the soldier is a Medical Corps officer or general officer, follow the procedures in para F-3 below.

(2) Annotate the date and time of placement on the TDRL on the bottom of the DA Form 199.

(3) Pass all information and documents to the Administrative Technician for processing as soon as possible.

F-3. Special rules applicable to Medical Corps and general officers. DOD Directive 1332.18 requires DOD approval of a physically unfit finding on a Medical Corps officer or general officer. When processing such cases expeditiously, the PEB will alert HQ, USAPDA. The PEB should also alert ASD(HA) (DSN 225-6800). Once the election is obtained, the PEB will again contact ASD(HA) to confirm concurrence with the findings. If processing is initiated during non-duty hours, the PEB will contact ASD(HA) the next duty day.

