

Army Regulation 27–3

Legal Services

The Army Legal Assistance Program

**Headquarters
Department of the Army
Washington, DC
1 May 2024**

UNCLASSIFIED

SUMMARY of CHANGE

AR 27–3

The Army Legal Assistance Program

This mandated revision, dated 1 May 2024—

- o Updates language to align with Army General Orders 2020–01 (para 1–4*a*).
- o Implements Public Law 116–283, Section 582(b)(7) (paras 1–4*b*(1)(*d*), 1–4*c*(1)(*e*), 3–5*k*(1), 3–6*a*(4), and 7–6*d*).
- o Adds clarifying language (paras 2–4*a*(6), 2–4*a*(14), 3–4*a*, and 3–5*f*(1)(*i*)).
- o Corrects reference from Section 1059, Title 10, United States Code to Section 1044, Title 10, United States Code (para 2–4*a*(8)).
- o Incorporates Army Directive 2023–03, Army Adverse Information Program (para 3–5*f*(1)(*i*)).
- o Removes specific external references in accordance with DA Pam 25–40 (para 3–5*f*(1)(*j*)).
- o Incorporates Army Directive 2021–22, Army Service by Transgender Persons and Persons with Gender Dysphoria (para 3–5*f*(1)(*n*)).
- o Removes reference to Schedule C–EZ (1040 Form (Net Profit From Business (Sole Proprietorship))) (para 3–5*h*(3) and 3–6*a*(3)).
- o Implements relevant provisions of DoDI 6400.06 (para 3–5*i*).
- o Updates language from “form” to “agreement” (para 4–2*b*(2)(*b*)5).
- o Modernizes language for paraprofessionals (para 4–5*a*(1) and 4–5*a*(2)).
- o Updates reference from Section 3013, Title 10, United States Code to Section 7013, Title 10, United States Code (para 7–2).
- o Updates paragraph title for clarity (para 9–2).
- o Replaces “Client Legal Assistance Record” with the form nomenclature “DA Form 2465” and removes references to automatically generated forms (para 9–2*c*).
- o Updates language from “application form” to “award process” (para 9–4*b*).
- o Updates references (appendix A).
- o Updates abbreviations and terms (glossary).


Legal Services

The Army Legal Assistance Program

By Order of the Secretary of the Army:

RANDY A. GEORGE
General, United States Army
Chief of Staff

Official:


MARK F. AVERILL
Administrative Assistant to the
Secretary of the Army

History. This publication is a mandated revision. The portions affected by this mandated revision are listed in the summary of change.

Summary. This regulation covers policies for the Army Legal Assistance Program.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to Department of the Army Civilians who are involved in any matter that falls

under the responsibility and authority of The Judge Advocate General, regardless of whether such person is a member of the Judge Advocate Legal Service. This regulation applies during partial and full mobilization.

Proponent and exception authority.

The proponent of this regulation is The Judge Advocate General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulation. The proponent may delegate this authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through higher headquarters to the policy proponent. Refer to AR 25–30 for specific requirements.

Army internal control process.

This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without approval from The Judge Advocate General (DAJA–LA), 2200 Army Pentagon, Washington, DC 20310–2200.

Suggested improvements. The proponent agency of this regulation is the Office of the Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to The Judge Advocate General (DAJA–LA), 2200 Army Pentagon, Washington, DC 20310–2200.

Distribution. This regulation is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Glossary

Chapter 1 Introduction

1–1. Purpose

This regulation prescribes policies, responsibilities, and procedures for the Army Legal Assistance Program. This regulation sets forth legal assistance practices, procedures, and services throughout the Department of the Army (DA). It preempts all other regulations within the DA on the delivery of legal assistance services as defined in this regulation. This regulation does not create any substantive or procedural right or benefit that is enforceable at law or in equity, by any party against the United States, its agencies, officers, or any other person.

1–2. References and forms

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

- a. The Judge Advocate General. TJAG will—*
 - (1) Maintain ultimate responsibility for the overall supervision and administration of the legal assistance program.
 - (2) Through the Director, Soldier and Family Legal Services (DSFLS)—
 - (a) Execute program director responsibilities for the Army Legal Assistance Program.
 - (b) Exercise technical supervision over the judge advocates (JAs) and civilian attorneys serving in the Office of Soldiers' Counsel (OSC) with the U.S. Army Medical Command (MEDCOM).
 - (c) Provide technical supervision over attorneys serving as special victims' counsel (SVC).
 - (3) Through the Chief, Legal Assistance Policy Division (LAPD), Office of The Judge Advocate General (OTJAG)—
 - (a) Develop policies and procedures for the legal assistance program.
 - (b) Authorize exceptions on a case-by-case basis to the provisions of paragraphs 2–2, 2–4, 3–4, 3–5, 7–4, 7–7, and 8–7 of this regulation, if not inconsistent with the requirements set by statute, prescribed by executive order (EO), mandated by applicable case law, or required by higher authority.
 - (c) Ensure JAs and Civilian legal assistance providers are trained in the legal assistance practices areas as specified in this regulation.
 - (d) Foster a joint-service approach, in conjunction with the other service Chiefs of Legal Assistance (CLAs), in delivering legal assistance services.
 - (4) Through the SVC program manager (PM), OTJAG—
 - (a) Manage SVC services in the Regular Army (RA) and the U.S. Army Reserve (USAR).
 - (b) Develop policies and procedures for the SVC Program.
 - (c) Authorize exceptions on a case-by-case basis to the provisions of paragraphs 7–4 and 7–7 of this regulation, if not inconsistent with the requirements set by statutes, prescribed by EO, mandated by applicable case law, or required by higher authority.
 - (d) Ensure SVC are trained and certified in accordance with Section 1044e, Title 10, United States Code (10 USC 1044e).
 - (e) Foster a joint-service approach, in conjunction with the other Service's SVC PMs in delivering SVC/Victim Legal Counsel services.
 - (f) Provide technical chain guidance and professional responsibility supervision to SVC, when the interests or desires of the SVC client conflicts with the interests of the command.
- (5) Through the Director, OSC—
 - (a) Ensure the provision of OSC legal services to eligible clients through all phases of the Army's Disability Evaluation System (DES) pursuant to AR 635–40, regardless of component or active duty status.
 - (b) Develop policies and procedures for the OSC program.
 - (c) Ensure OSC personnel are trained and certified in accordance with DoDI 1332.18.
- (6) Through the Chief, U.S. Army Trial Defense Service (USATDS), subject to other USATDS mission requirements, make USATDS attorneys available to provide legal assistance on the installations at which they are assigned

in accordance with AR 27–10. USATDS attorneys who provide legal assistance will do so in accordance with this regulation, USATDS guidelines, and locally established legal assistance policies and procedures.

(7) Through the Dean, The Judge Advocate General's Legal Center and School (TJAGLCS), in coordination with the Chief, LAPD, ensure that courses, instruction, and distance learning, together with course materials and outlines, are provided in legal assistance areas of the law, policy, doctrine, and professional responsibility.

(8) Through the Chief, Information Technology Division, OTJAG, produce, procure, distribute, and provide periodic updates and other changes and improvements to legal assistance software programs.

b. Regular Army and Reserve Component commanders. RA and Reserve Component (RC) commanders will provide legal assistance services in accordance with this regulation. Commanders, in making decisions on the allocation of resources and the staffing of positions within their commands, determine the extent to which legal assistance services will be provided on their installations or within their commands.

(1) Commanders who have one or more attorneys assigned to their staffs will, at minimum, provide either directly or through consolidated programs, the following legal assistance services:

(a) Legal assistance services required by Servicemembers and emergency-essential Department of Defense (DoD) civilian employees to ensure adequate preparation for mobilization or deployment.

(b) Ministerial legal services (para 3–4a).

(c) Legal referral services for eligible legal assistance clients (para 4–3).

(d) Assistance mandated by Public Law 116–283, section 582(b)(7), enumerated in paragraph 3–5c(1) for assistance to tenants in privatized housing, paragraph 3–5f(1)(i) for assistance with adverse information cases, paragraph 3–5i for assistance to victims of domestic violence, and paragraph 3–5k for assistance with special education law.

(2) Commanders who have one or more full- or part-time legal assistance attorneys assigned to their command, will provide—

(a) Adequate funding for the continuing legal education (CLE) of all attorneys performing legal assistance duties and legal assistance training for paralegal support staff.

(b) Office space within the command or on the installation that is easily accessible and that protects the confidentiality of attorney-client communications (see para 9–1).

(c) Command support and resources, including information technology support, that provide means for efficient and effective legal research, and confidential client communication. This requirement specifically includes command provision of sufficient access to computers with internet capabilities, compatible with existing legal assistance software, and sufficient quantities of other communication and office equipment (including, but not limited to telephones, copying machines, and digital senders or fax machines).

(d) When tax centers are established, resources and staff to electronically file income tax returns for eligible clients.

c. Staff judge advocate.

(1) The staff judge advocate (SJA), or other supervisory lawyer, as appropriate, is responsible for legal assistance services in the commands or on installations to which the SJA is assigned. The SJA will provide—

(a) Legal assistance services required by Servicemembers and emergency-essential DoD Civilian employees to ensure adequate preparation for mobilization or deployment.

(b) Ministerial legal services (see para 3–4a).

(c) Legal referral services for all other eligible legal assistance clients (see para 4–3).

(d) Ensure proper planning and coordination occurs to ensure deploying tenant units have access to adequate legal assistance services following their departure from home station (see chapter 6).

(e) Assistance mandated by Public Law 116–283, section 582(b)(7), enumerated in paragraph 3–5c(1) for assistance to tenants in privatized housing, paragraph 3–5f(1)(i) for assistance with adverse information cases, paragraph 3–5i for assistance to victims of domestic violence, and paragraph 3–5k for assistance with special education law.

(2) SJAs with one or more attorneys providing legal assistance on either a full- or a part-time basis as part of a duty or job description, will—

(a) Provide legal assistance services as required in paragraphs 3–4 and 3–5 for RA offices and in paragraph 5–1 for RC offices.

(b) Secure adequate facilities, equipment, supplies, and personnel for the provision of legal assistance services (see paras 1–4b(2) and 9–1).

(c) Execute preventive legal assistance initiatives and services that meet the needs of their commands (see paras 3–1 and 3–2).

(d) Establish, where appropriate, any limitations consistent with this regulation (see paras 2–5 and 3–6).

(e) Authorize temporary variations of less than 30 days duration in any one calendar year, from policies and procedures in this regulation, when necessary to ensure effective legal assistance services. The variation must be consistent with requirements set by statute, regulation, or other law. Notice of temporary variations will be sent by

memorandum to the Chief, LAPD. Requests to continue variations on a permanent basis for 30 or more days in any 1 calendar year will be processed in accordance with paragraph 1–5.

(f) Supervise legal assistance, including review of all office administrative procedures, reports of legal assistance services, client satisfaction surveys, and periodic review of incoming and outgoing correspondence (see para 8–6).

(g) Keep commanders advised of the nature and scope of Army legal assistance, including Army tax services, and the need, if any, to establish, continue, or discontinue commercial tax services on their installations.

(h) Encourage an energetic and innovative approach toward legal assistance, especially in the areas of client and preventive legal assistance, as well as legal technology.

(i) Provide training as required by paragraph 2–3 of this regulation.

(j) Provide all eligible clients, regardless of military department, installation, or command affiliation, with the same legal assistance services routinely provided to clients affiliated with their own installations or commands (see para 2–5b for exceptions).

(k) Enter into cooperative arrangements, evidenced by memorandum of agreement, with other military departments, installations, or commands in their geographical area to improve the availability, scope, and quality of legal assistance services and to maximize the savings in personnel and other resources that can be achieved through joint cooperative efforts.

(l) Notify the Chief, LAPD when a non-Army installation or command with assigned JAs or paralegal specialists denies legal assistance to Army clients that are routinely provided to its own clients.

(3) SJAs with one or more SVC provide overall supervision and responsibility for SVC serving in the commands or the installations to which they are assigned. This includes, but is not limited to—

(a) Nominating JAs to serve in the SVC role.

(b) Professional responsibility oversight and training when the interests or desires of the SVC client are not in conflict with the interests of the command (see para 7–6).

(c) Providing technical supervision and resources.

(d) Protecting the professional integrity and growth of SVC in their charge by—

1. Ensuring SVC are not the subject of retaliation or intimidation, especially when they must advocate a position for the client, which is contrary to that of the Government.

2. Emphasizing the importance of the SVC mission, and ensuring that part-time SVC are not adversely rated or otherwise professionally impacted in a negative manner by the time spent away from other assigned duties.

d. *Chief of Legal Assistance.* The CLA is the senior JA or DA Civilian attorney assigned to the legal assistance office and charged with overseeing the provision of legal assistance services for the SJA Office. The CLA will—

(1) Supervise legal assistance to ensure compliance with this regulation, including but not limited to, providing adequate training to all assigned personnel; reviewing all office administrative procedures, reports of legal assistance services, client satisfaction surveys; taking reasonable measures to ensure subordinate lawyers and non-lawyer assistants conform their conduct to the rules of professional responsibility (see AR 27–26, rule 5.1(b)); and periodic review of incoming and outgoing correspondence (see para 8–6).

(2) Establish local legal assistance policies and procedures consistent with this regulation.

(3) Coordinate with local courts, bar associations, and other appropriate organizations to establish procedures for the representation of clients in civilian courts and for clients to proceed pro se in civilian courts.

(4) Coordinate with local bar associations in order to facilitate client referrals to local civilian attorneys, as needed.

(5) Supervise the day-to-day provision of SVC services for that office. A part-time SVC will operate under the supervision of the CLA when performing SVC functions even if regularly assigned to a separate functional area of the SJA office. The CLA will provide a letter of input for consideration by the rating officials of part-time SVC assigned outside the legal assistance office.

e. *Special victims' counsel.* An Army SVC is a JA certified under Uniform Code of Military Justice (UCMJ), Article 27b, who has been designated as an SVC by their SJA, completed SVC training as approved by the SVC PM, and been certified by TJAG to serve as an SVC. An SVC serves as a legal assistance attorney when performing SVC services.

1–5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this publication are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in Army Records Information Management System (ARIMS)/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1-6. Exceptions

Submit requests for exceptions to this regulation through command channels to Office of The Judge Advocate General (DAJA-LA), 2200 Army Pentagon, Washington, DC 20310-2200.

Chapter 2

Legal Assistance Providers and Clients

2-1. General

a. The mission of the legal assistance program is to assist eligible clients with managing their personal legal affairs in a timely and professional manner by—

- (1) Meeting their needs for information on personal legal matters.
- (2) Resolving their personal legal problems whenever possible.

b. The legal assistance program is a commander's program. The mission of the legal assistance program is based on military needs of readiness, morale, discipline, and quality.

(1) *Readiness.* Because Soldiers and emergency-essential DoD civilian employees must be prepared for immediate mobilization and deployment, their personal legal affairs must be in order at all times.

(2) *Morale.* Fostering high morale of Soldiers and their Families is an important aspect of readiness. High morale is enhanced by providing Soldiers and their Families information, advice, and assistance responsive to their personal legal needs and problems.

(3) *Discipline.* Personal legal difficulties may cause low morale and disciplinary problems and may adversely affect combat readiness. Prompt legal assistance in resolving these difficulties is an effective preventive law measure.

(4) *Quality.* Providing legal assistance is part of the Army's ongoing effort to maintain a quality of life that will attract quality people. The Army must take care of its own if it is to recruit and retain a quality force.

2-2. Authorization to provide legal assistance

Unless inconsistent with superior orders or other duties or responsibilities, the following are authorized to provide legal assistance:

a. RA JAs.

b. Army National Guard (ARNG) or USAR JAs in troop program units (TPUs) when providing legal assistance in accordance with this regulation. When the ARNG or USAR JA is not branch qualified under AR 27-1, but has a conditional appointment to the Judge Advocate General Corps, they may provide legal assistance only with the approval of the legal support organization commander or RC SJA. The approving authority will ensure the conditionally appointed JA is properly trained in the unique aspects of military legal assistance.

c. DoD civilian attorneys.

d. Licensed or otherwise professionally qualified attorneys under foreign law who are employed by the U.S. Army and who work under the supervision of a CLA while providing legal assistance on foreign law matters.

e. Volunteers providing legal assistance authorized under paragraph 4-6.

2-3. Training

a. Supervisory lawyers (SJAs and CLAs) will ensure that all attorneys and non-lawyer assistants providing legal assistance services develop and maintain the requisite level of competence required by AR 27-26, rule 1.1.

b. Supervisory lawyers will ensure that—

(1) JAs and civilian attorneys under their supervision receive CLE in the areas of the law, policy, and professional responsibility relevant to legal assistance. Training should take advantage of courses sponsored by state and federal government agencies, national, state, and local bar associations and TJAGLCS. Additionally, supervisory lawyers should periodically conduct training covering the local laws affecting legal assistance cases. They should also coordinate with local bar associations, legal aid offices, local practitioners, and relevant state and local government agencies to provide relevant local training.

(2) Paralegal specialists, office intake personnel and receptionists receive training and instructions on safeguarding the privacy and confidentiality of client information, conflicts of interest, reporting procedures for violation of such standards, and other professional responsibility topics related to legal assistance. They should be encouraged to participate in local legal assistance training. Supervisory lawyers should encourage and support participation in the Army's Paralegal Degree Program for all paralegal Soldiers.

(3) Other attorneys who may be called to perform legal assistance duties receive appropriate training in legal assistance.

2-4. Persons eligible to receive legal assistance

- a.* Eligible clients, subject to the limitations described, are—
- (1) Regular component members of the Armed Forces, officers of the Public Health Service (PHS) Regular Corps, and members of the National Oceanic and Atmospheric Administration (NOAA) commissioned officer corps.
 - (2) Retired members of the Armed Forces, PHS, and NOAA who are entitled to or are receiving military retirement pay, to include individuals on the temporary disability retired list (TDRL). Retired RC members are not eligible to receive legal assistance until they receive retired pay.
 - (3) RC members of the Armed Forces of the United States who—
 - (a)* Are serving on active duty or full-time National Guard duty pursuant to orders for more than 29 days.
 - (b)* Are serving on active duty or full-time National Guard duty pursuant to orders for a period of 29 days or less.CLAs may limit legal assistance to emergencies or to certain categories of cases based on availability of expertise or resources.
 - (c)* Have received alert or mobilization orders, if the period of mobilization will be for more than 29 days. CLAs may limit legal assistance to issues related to the impending mobilization.
 - (4) RC members, who have been released from active duty under orders issued under a mobilization authority for a period of more than 30 days, are entitled to receive legal assistance services for a period not less than twice the length of the period of service on active duty for personal legal problems that occurred or were aggravated during their mobilization. Legal assistance services on other issues may be provided as resources allow.
 - (5) Legal assistance services for RC Soldiers not listed previously (for example, those performing inactive duty training (IDT)) should primarily be provided by RC JAs. If it is determined that RC JAs are not available, these services may be provided by RA legal assistance offices.
 - (6) Dependents of eligible persons listed in paragraphs 2-4a(1) through 2-4a(4). For purposes of this regulation, the term “dependent” has the same meaning as defined in 10 USC 1072(2) and 10 USC 1072(6), except that the requirement in 10 USC 1072(2)(F) and 10 USC 1072(2)(G) that the former spouse not have medical coverage under an employer-sponsored health plan does not apply. Such former spouses who have medical coverage under an employer-sponsored health plan are eligible to receive legal assistance.
 - (7) Surviving dependents of eligible persons listed in paragraphs 2-4a(1) through 2-4a(4) who would be eligible for legal assistance, if the Servicemember or retired member were alive.
 - (8) Individuals receiving transitional compensation under the provisions of 10 USC 1044.
 - (9) DoD civilian employees (including DA employees)—
 - (a)* Against whom financial liability has been recommended under AR 735-5 with regard to presenting matters in rebuttal to, or on reconsideration or appeal from, such charges.
 - (b)* Who are serving with the Armed Forces of the United States in a foreign country, and their family members who accompany them.
 - (c)* Who have accepted employment outside the U.S., or to a U.S. territory, or who, if already on such duty, return to the U.S. on home leave. Legal assistance may also be provided to their family members who will accompany, or have accompanied, them. Legal assistance is limited, as determined by the CLA, to matters that relate to processing for overseas employment or, for an employee on home leave, to help with an ongoing legal assistance matter being handled outside the United States.
 - (d)* Who are notified they are to deploy to a combat zone or on a contingency operation, and their family members while the employee is deployed. Legal assistance will be limited to issues as determined by the CLA that relate to deployment. Legal assistance is authorized for employees and family members for a reasonable period after the employee returns from deployment to close out ongoing legal assistance matters related to deployment that rose before or during deployment.
 - (e)* Who are designated as “mission-essential” or “emergency-essential” civilian personnel. These employees may receive legal assistance on matters related to their actual or possible deployment to a combat zone or contingency operation.
 - (f)* Who are serving in United States locations where legal assistance from non-military legal assistance providers is not reasonably available. Requests for designations of locations that meet this definition will be directed through the local SJA to the Chief, LAPD.
 - (10) Civilian contractors accompanying the Armed Forces of the United States outside the United States (and their family members who accompany them), when DoD is contractually obligated to provide this assistance to such personnel as part of their logistical support. The following limitations apply to this provision:
 - (a)* There is a presumption that contractors are not entitled to legal assistance services under this regulation. The burden of proof is on the contractor to provide evidence that legal assistance services are required by the contract. SJAs should recommend elimination of such contractual obligations when the contract is resolicited.

(b) The legal assistance provided must be in accordance with, and not prohibited by, applicable international agreements.

(c) Legal assistance is limited to ministerial services (for example, notarial services), legal counseling (to include the review and discussion of legal correspondence and documents), limited legal document preparation (powers of attorney and advance medical directives (AMDs)), and help retaining civilian lawyers (see paras 3-4a, 3-4b, 3-4e, and 3-4j.)

(11) Primary next of kin (as defined in AR 638-8), executors, personal representatives, administrators, and legally recognized estate representatives for matters relating to the settlement of estates of—

(a) Regular Component or RC members of the Armed Forces, officers of the commissioned corps of the PHS, and NOAA who die while in a military duty status or as a result of a disability that resulted in retirement from uniform service.

(b) U.S. citizens and nationals who are DoD civilian employees and who were serving with or accompanying U.S. Armed Forces outside the United States at the time of their deaths.

(12) Fiduciaries, including those who hold powers of attorney, who have been appointed by those listed below to manage their property or handle their personal affairs. Legal services are limited to those matters required to carry out the scope of the fiduciary duty.

(a) Regular Component or RC members of the Armed Forces, officers of the commissioned corps of the PHS, and NOAA who are serving in a combat zone or contingency operation.

(b) U.S. citizens and nationals who are DoD civilian employees and are serving with or accompanying U.S. Armed Forces in a combat zone or contingency operation.

(13) Guardians of persons eligible for legal assistance may obtain legal assistance for the benefit of the eligible person.

(14) Members of foreign military forces while serving in the United States (and their family members who accompany them). Legal services are limited to issues involving United States law and must be related to their assignment in the United States, that is, landlord/tenant issues, local consumer problems.

b. Individuals presenting a military identification (ID) card indicating that the individual is a 100 percent disabled veteran are not eligible for legal assistance. These individuals are not retirees; the ID card reflects their eligibility to commissary, exchange, and morale, welfare, and recreation privileges only (see AR 600-8-14/AFI 36-3026 Volume 1/BUPERS Instruction 1750.10D/MCO 512.11E/COMDTINST M5512.1B/NOAA Corps Directives, Chapter 1, Part 5/Commissioned Corps Manual 29.2 Instructions 1 and 2).

2-5. Limiting legal assistance

a. A commander, SJA, or CLA responsible for legal assistance services may limit legal assistance when space, facilities, or personnel are unavailable to provide full legal assistance services (see para 1-4).

(1) *Regular Army legal office.* A commander, SJA, or CLA may limit legal assistance to those cases and services that are required under paragraphs 3-4 and 3-5, and may deny services to one or more of the categories of eligible persons listed in paragraphs 2-4a(2), 2-4a(3)(b), 2-4a(6), 2-4a(7), 2-4a(8), 2-4a(9)(c), 2-4a(12), and 2-4a(14).

(2) *Reserve Component-Army legal office.* Consistent with the priorities established in paragraph 5-1b, A commander, SJA, or CLA may limit legal services to certain types of legal assistance cases and services and to any of the categories of eligible persons listed under paragraphs 2-4a(2), 2-4a(3)(b), 2-4a(6), 2-4a(7), 2-4a(8), 2-4a(9)(c), 2-4a(12), and 2-4a(14).

b. Legal assistance will not be denied or delayed on the basis of the command, installation, or military department to which a client is assigned or with which a client is affiliated except as indicated in paragraphs 2-5b(1) through 2-5b(3)(b):

(1) A commander may deny certain legal assistance services to eligible clients who are assigned to, or affiliated with, another military department that does not routinely provide such legal assistance services. For example, if one military service, as a matter of policy, does not prepare separation agreements for its clients, then an Army commander may direct that such agreements not be prepared by legal assistance attorneys for clients from that military service. A commander may delegate the authority to deny services to their SJA.

(2) The commander's decision will be based on the availability of Army legal assistance resources, and on the adverse effect that continuing legal assistance to non-Army clients would have on Army legal assistance services to Army clients.

(3) Before authorizing the denial of legal assistance, the SJA will—

(a) Attempt to resolve the problem through joint or cooperative efforts with other commands or installations in the geographical area that provide legal assistance services.

(b) Notify the Chief, LAPD, of any proposal to deny legal assistance services.

c. SJAs, or CLAs may limit legal assistance on certain categories of cases based on lack of expertise in the subject area, or insufficient personnel or resources.

d. The CLA may deny legal assistance for a period not to exceed one year to any eligible person who abuses legal assistance privileges. A person denied legal assistance services may submit a written explanation or rebuttal to the SJA. That decision, upon reconsideration, is final. Abuses that may result in denial of legal assistance privileges include, but are not limited to the following:

- (1) Missing two or more legal assistance appointments without good cause or prior notification.
- (2) Misconduct, dishonesty, or other unbecoming conduct during the course of seeking, receiving, or using legal assistance.
- (3) Knowingly using a legal assistance service for a purpose prohibited by law or regulation.

e. An SJA may request authority from the Chief, LAPD to limit or deny legal assistance beyond the limitations authorized by this paragraph in accordance with paragraph 1–5.

Chapter 3

Legal Assistance Services

Section I

Preventive Law

3–1. General

a. Preventive law services are an integral part of the Army legal assistance program. The purpose of preventive law services is to educate Soldiers and family members about their legal rights, privileges, and responsibilities. Legal assistance offices should strive to understand their communities' most pressing legal issues and actively engage in developing a plan to best address those issues. While the planning approach may vary among legal assistance providers, each office should proactively engage in utilizing various delivery mechanisms to disseminate preventative law information.

b. Legal assistance offices are encouraged to use innovative techniques to educate their clientele on common or emerging legal issues.

3–2. Preventive law measures

a. Each legal assistance office will initiate and maintain a preventative law program. The preventative law program will include—

- (1) Publishing one or more preventative law publications, per quarter, and distributing them via any medium easily accessible to eligible clients.
- (2) Participation in command newcomer orientation briefings, professional development programs, general military training, other unit education programs, and family readiness group presentations. Attorneys and paralegals are encouraged to sponsor and participate in lectures, seminars, forums, and meetings that inform Soldiers, family members, and retirees about legal problems and issues.
- (3) A legal assistance website or social media presence that contains information on the office hours, location, and services available. Legal assistance offices are encouraged to disseminate preventative law materials on these sites. All published material must be reviewed and updated at least quarterly to ensure accuracy.
- (4) Preventive law handouts available in the waiting room and other appropriate locations on the installation.

b. In addition to taking the above measures to educate Soldiers and their family members, CLAs should employ the following measures to prevent future legal issues:

- (1) Identify landlords and other businesses that take unfair advantage of Soldiers and family members and coordinate with local installation housing referral offices, local Armed Forces Disciplinary Control Boards (see AR 190–24/OPNAVINST 1620.2A/AFI 31–213/MCO 1620.2D/COMDINST 1620.1E), and local, state, and federal consumer protection agencies to develop procedures to enforce fair business practices.
- (2) Assess whether changes in law or regulation could prevent common legal problems and make regulatory or legislative suggestions to initiate those changes. Recommendations for changes to federal law, regulations, or other policy should be forwarded to the LAPD.

Section II

Client Services

3-3. Scope

a. Legal assistance is limited to eligible clients whose legal issue is within the scope of the legal assistance program. The scope of legal assistance is defined by the types of legal services (see para 3-4) and by the types of cases in which legal assistance may be provided (see para 3-5). See paragraph 5-1*b* for the priority of RC legal assistance. Legal assistance offices are not responsible for any costs associated with a client's legal matter, including but not limited to, court fees, costs, charges, filing fees, discovery fees, application fees, appeal bonds, fines, attorneys' fees, or any other cost.

b. Ministerial services, legal counseling, legal correspondence, and legal referral services will be offered in all required case types. The provision of all other types of services (see para 3-4) in required and optional case types (see para 3-5) is optional.

c. Legal assistance in optional cases (see para 3-5) may be provided based on the availability of resources and expertise.

d. SJAs and CLAs are responsible for developing and executing training programs that enable legal assistance personnel to develop and maintain the competence required to ethically provide the legal assistance services required in paragraph 3-4 for all of the required case types listed in paragraph 3-5 (see para 2-3). Nothing in this regulation, however, requires any legal assistance attorney to provide any legal service they are not competent to provide, pursuant to AR 27-26, rule 1.1.

3-4. Types of services

a. Ministerial services. Notary services, witnessing signatures to documents and other ministerial services are required and will be provided by attorneys or paralegals under their supervision. These services are a type of assistance that does not require the exercise of personal judgment or discretion, such as witnessing or notarizing documents.

b. Legal counseling. Legal counseling involves the collection of relevant facts, applying the facts to the applicable law, and providing legal advice to client regarding their legal obligations, rights, options, and remedies.

c. Legal correspondence.

(1) Legal correspondence generally refers to written communications made to a third party, by, or on behalf of, a client regarding a legal case or controversy. Legal correspondence includes letters signed by an attorney on the client's behalf, letters prepared by an attorney for the client's signature, or letters prepared by a client, but reviewed and edited by an attorney.

(2) All legal correspondence sent on behalf of clients should indicate that the attorney is representing a named client and include language indicating the attorney's representative capacity.

(3) Legal correspondence should not include disclaimers, including statements indicating that the correspondence represents an attorney's professional opinion and not the position of the U.S. Army.

d. Legal negotiation. Legal negotiation involves discussions between an attorney representing a client and another party (or through their attorney) whose interests are usually adverse to the client.

e. Legal document preparation. Legal document preparation is the preparation, drafting, editing, or execution of legal documents, including but not limited to legal pleadings, wills, power of attorneys (POAs), and separation agreements.

f. Legal document filing. Based on the availability of expertise and resources, legal assistance may be provided on filing legal documents in the appropriate court.

g. Pro se assistance. Pro se assistance includes preparation of pleadings, motions, orders, and other legal documents for the express purpose of filing such documents in a court or agency case, and guidance as to filing such documents with the appropriate court or agency. Legal assistance offices may assist clients with the completion of pleadings, motions, and other legal documents in the form of pre-printed legal forms and templates available from local and state bar associations or posted to court websites. Legal assistance personnel may also draft legal documents for execution by the client. They may also assist clients with filing these documents with local courts and explain how to accomplish service of process on opposing parties and counsel. Legal assistance personnel are not authorized to personally serve documents on opposing parties or counsel. Pro se assistance must be authorized by the CLA (see para 4-2*a*).

h. In-court representation. In-court representation includes extended representation in which an attorney enters an appearance as the client's attorney of record with a court. In-court representation should only be provided pursuant to an Expanded Legal Assistance Program or as otherwise approved by the SJA. Unless serving on active duty, USAR,

and ARNG JAs (including those assigned to TPUs) must also receive approval from the Chief, LAPD before providing in-court representation (see para 4–2b).

i. *Alternative dispute resolution.* Alternative dispute resolution includes any means of settling disputes outside of the court room, and includes, but is not limited to, settlement negotiations, mediation, mini-trials, and arbitration. Attorneys and other individuals who serve as mediators will complete appropriate training and comply with the ethical standards of AR 27–26, appendix B, rule 2.2.

j. *Legal referral.* Legal referral includes referral of a client to civilian or outside legal counsel. Although the provision of complete service within the Army legal assistance program is preferred, early referral to civilian counsel may be more appropriate in some cases (see para 4–3).

3–5. Types of cases

a. Family law.

(1) *Required assistance.* Legal assistance will be provided in marriage, annulment, legal separation, divorce, financial nonsupport, child custody and visitation, paternity cases, and in determining adequate Family care plans (FCPs). See paragraph 4–8b(2) for guidance regarding FCPs.

(2) *Optional assistance.* Legal assistance may be provided on other family law cases. Although an optional service, preparation of separation agreements/property settlement agreements is encouraged if the office has attorneys with appropriate expertise. When preparing child support provisions for these documents, attorneys will consult the appropriate state child support guidelines.

b. Estate planning.

(1) *Required assistance.* Legal assistance will be provided on estate planning subjects including wills, trusts, guardianships, durable powers of attorney, AMDs/living wills, health care powers of attorney, anatomical gift designations, the designation of beneficiaries under life insurance policies, including the Servicemembers' Group Life Insurance (SGLI) in accordance with AR 638–8, SGLI, Thrift Savings Plan, individual retirement arrangements, other property ownership transfer methods, survivor benefits, and the impact of federal or state estate taxes. Legal assistance offices will prepare wills (including wills with a testamentary trust for the benefit of a minor, if appropriate) for clients. Additionally, durable powers of attorney, AMDs, health care powers of attorney and other documents required to implement the client's estate plan will be prepared. Legal assistance will also be provided on casualty assistance matters.

(2) *Optional assistance.* If the legal assistance attorney has the necessary training preparation of wills containing more complex trust arrangements (such as qualified terminable interest property, qualified domestic, or special needs trusts) and assistance with probate may be provided. Reasonable efforts should be made to meet the legal requirements of the client.

(3) *Will worksheets.* Legal assistance personnel will use a will worksheet when providing estate planning advice to clients. The worksheet should be as detailed as necessary to elicit all the information needed by the attorney to develop a comprehensive estate plan. A sample will worksheet is located at: <https://www.jagcnet2.army.mil/willworksheet>.

(4) *Estate planning software.* Legal assistance personnel will use the will drafting software provided by the LAPD or a commercially available equivalent approved by the LAPD to prepare wills and associated estate planning documents. The attorney who drafts the will must insert their name on the will as its drafter.

(5) *Louisiana and Puerto Rico wills.* If the client is domiciled in Louisiana, the attorney will prepare estate planning documents only if that attorney is licensed in Louisiana. If not, attorneys should seek assistance from a legal assistance office in Louisiana for assistance in preparing appropriate estate planning documents. If the client is domiciled in Puerto Rico, see paragraph 4–8a(1)(a) for guidance on preparation of Puerto Rico wills.

(6) *Will execution.* Prior to executing any will, an attorney will interview the client and review the will. An attorney will be present to supervise the execution of the will and to review the will after the client and witnesses have signed it. Each office will adopt and use a will execution procedure which includes a script for will execution ceremonies. Mass will executions (more than five wills simultaneously) should be avoided. A suggested will execution procedure is located at: <https://www.jagcnet2.army.mil/willexecutionscript>.

c. Real property.

(1) *Required Assistance.* Legal assistance will be provided on landlord-tenant issues, including the termination of leases under the Servicemembers Civil Relief Act (SCRA) (50 USC 3901–4043) and residential communities initiative disputes. Legal assistance will also be provided on disputes involving a client's principal residence. Assistance to landlords is limited to issues involving the lease of property previously used as the client's principal residence.

(2) *Optional Assistance.* Legal assistance may be provided on matters relating to the purchase and sale of a client's principal residence (note, however, para 3-6a(3) regarding the prohibition against assisting clients on private business activities).

d. Consumer transactions.

(1) *Required Assistance.* Legal assistance will be provided to those purchasing personal property on matters relating to the purchase, including, but not limited to, contracts, chattel mortgages, security agreements, warranties, cancellations, defects/deficiencies of purchased goods, and other consumer affairs matters. Legal assistance will be provided to those requiring help with identity theft, banking, credit card, property insurance, debt (including disputes over lending agreements), limiting interest on pre-service obligations under the SCRA (50 USC 3901-4043), cancellation of indebtedness (see AR 600-4), bankruptcy, garnishment orders, involuntary allotment, claims (including Article 139, UCMJ claims, see AR 27-20). See paragraphs 3-6a(4) and 3-6b(1) concerning restrictions in assisting in claims against the government.

(2) *Optional Assistance.* Legal assistance may be provided to those clients selling or leasing personal property or who are creditors on disputes over lending or purchase agreements, subject to the prohibition in paragraph 3-6a(3) against assisting clients on private business activities.

e. Civilian administrative.

(1) *Required Assistance.* Legal assistance will be provided on Servicemember immigration issues and the naturalization process.

(2) *Optional Assistance.* Legal assistance may be provided on name change, welfare assistance, non-Servicemember immigration/naturalization issues, and other similar cases.

f. Military administrative.

(1) *Required Assistance.* Legal assistance will be provided to clients on military administrative matters if required by law or Army regulation (including this regulation). Legal assistance is required in the following military administrative matters:

- (a) Line of duty investigations (AR 600-8-4).
- (b) Financial liability investigations (AR 735-5).
- (c) Officer evaluation reports (OERs) (AR 623-3).
- (d) Noncommissioned officer (NCO) evaluation reports (AR 623-3).
- (e) Relief for cause reviews (AR 623-3).
- (f) Unfavorable Information (AR 600-37).
- (g) Article 138, UCMJ complaints (AR 27-10).
- (h) Inspector General activities and procedures (AR 20-1).

(i) Other investigations (AR 15-6). Representation during all phases of an investigation where the eligible client is a subject; however, assistance is at the discretion of the CLA when the client is a witness. If the investigation is reasonably likely to result in adverse or punitive action against the client typically involving USATDS representation, then coordination with the servicing USATDS field office is required to determine whether USATDS representation or legal assistance serves the client's best interest.

(j) Certain enlisted administrative separations (AR 635-200). Surviving sons or daughters, only, dependency or hardship, defective or unfulfilled enlistment agreements, pregnancy, retirement for length of service, selected change in service obligations, and Qualitative Management Program. AR 135-178: dependency or hardship, pregnancy, surviving sons or daughters, defective enlistments or reenlistments, and separation for other reasons.

(k) Compassionate reassignments (AR 614-100 (officer); AR 614-200 (enlisted personnel)).

(l) Officer unqualified resignations by reason of pregnancy, and resignations in lieu of discharge because of failure to meet statutory or regulatory requirements (AR 600-8-24).

(m) Correction of military records (AR 15-185).

(n) Legal assistance to transgender persons or persons with transgender dysphoria.

(2) *Optional Assistance.* Legal assistance may be provided on the following military administrative matters:

- (a) Bars to reenlistment (AR 601-280 and AR 140-111).
- (b) Waivers to allow reenlistment (AR 601-280 and AR 140-111).
- (c) Security clearance revocations (AR 380-67).
- (d) Suspension of favorable personnel actions (AR 600-8-2).
- (e) Inspector General investigations for civilian personnel otherwise entitled to legal assistance (AR 20-1).
- (f) Expungement of military records (AR 600-37).
- (g) Flying evaluation boards (AR 600-105).
- (h) Health care provider credentialing (revocation/suspension) (AR 40-68).
- (i) Military driving privileges (AR 190-5/OPNAV 11200.5D/AFU 31-218(I)/MCO 5110.1D/DLAR 5720.1).

- (j) Termination/suspension/probation from Army Graduate Medical Education programs (AR 351–3).
- (3) *U.S. Army Trial Defense Service operational referrals.* Subject to other USATDS mission requirements, USATDS attorneys should ordinarily assist Soldiers on the following military administrative actions:
 - (a) Officer elimination actions (AR 600–8–24).
 - (b) Officer resignations in lieu of administrative elimination proceedings and resignations for the good of the service (AR 600–8–24).
 - (c) All other enlisted administrative separation actions not listed in paragraph 3–5f(1)(j), above (AR 635–200, AR 135–178).
 - (d) Reductions in grade (AR 600–8–19).
 - (e) Recruiter misconduct (AR 601–1).
- (4) *U.S. Army Trial Defense Service mandatory referrals.* If any case listed in paragraphs 3–5f(1) or 3–5f(2) is initiated on the basis of an alleged UCMJ violation, or is related to an impending, pending, or recently completed UCMJ action, USATDS will assume responsibility for providing legal assistance to those clients.

g. Torts.

- (1) *Required assistance.* Legal assistance will be provided on invoking whatever protections may be afforded under the SCRA arising from the prosecution or defense of civil lawsuits resulting from tortious conduct.
- (2) *Optional assistance.* Other legal assistance may be provided, but such assistance will be limited to counseling and assistance on retaining a civilian lawyer (see para 4–3). See para 3–6 for other limitations and considerations on providing legal assistance on tort matters.
- (3) *Torts within the scope of official duties.* Those providing legal assistance should be alert to situations where a client is facing a civil lawsuit as a result of actions taken within the scope of their official duties (for example, a Soldier on duty injures someone while driving a government vehicle). These clients may be entitled to representation by the Department of Justice (DOJ) and should immediately be referred to a claims JA or the U.S. Army Litigation Division (see AR 27–40).

h. Taxes.

- (1) *Required assistance.* Legal assistance will be provided on real, personal property tax, and federal income tax issues.
- (2) *Optional assistance.* Legal assistance may be provided on estate tax, inheritance tax, gift tax, income tax, and appealing tax rulings and other findings. Based on the availability of resources, income tax returns may be prepared and electronically filed in cooperation with the Internal Revenue Service (IRS)’s Volunteer Income Tax Assistance (VITA) program. While an optional service, establishing VITA tax centers for the preparation of federal and state income tax returns provides an important service to clients and is strongly encouraged. Federal and state tax codes and related statutes contain many specialized and highly nuanced provisions specific to military service. As a result, Army legal assistance offices and tax centers are generally in the best position to provide the most accurate and comprehensive legal advice and tax return preparation services to the military community. The tax program directly facilitates combat readiness and Soldier and family resilience by providing a high-quality, free service that reduces the potential for future legal problems by facilitating timely compliance with applicable tax laws.
- (3) *Private business activities.* Tax assistance on substantial private business activities (for example, multiple rental properties that the client has not occupied as their principal residence) is outside the scope of the legal assistance program, except as noted in paragraph 3–6a(3) for Family childcare (FCC) providers. For purposes of this limitation, substantial private business activities are those that do not meet the IRS’s VITA program requirements for the preparation of Schedule C (1040 Form (Profit or Loss From Business (Sole Proprietorship))). When Schedule C is prepared, assistance may also be provided related to the calculation and payment of self-employment taxes.

i. Military criminal matters.

- (1) *Required assistance.* Legal assistance will be provided to victims of alleged domestic violence in accordance with Public Law 116–92, Section 548, and as outlined in the Domestic Violence Victim Representation Program (DVVRP). Legal assistance will be provided with respect to obtaining civil orders of protection and military orders of protection, to include ensuring military commanders in the victim’s and accused’s chain(s) of command, Provost Marshall staff, and military police personnel at the relevant military duty station(s) are aware of existing orders of protection. Assistance with civil orders of protection may include referrals to outside agencies such as legal aid or community resources.
- (2) *Optional assistance.*
 - (a) If allowed by local law, policy, and regulation, legal assistance may be given to victims of crimes being interviewed by local civilian law enforcement subject to the approval of the CLA, if the client is not otherwise eligible for representation from the SVC/DVVRP.

(b) Legal assistance may be provided to assist an eligible client, who is the victim of a crime tried before a court-martial, in preparing an unsworn victim impact statement during the presentencing phase of a court-martial (see RCM 1001) and a statement phase of a court-martial (see RCM 1001) and a statement to submit to the convening authority after the sentence is adjudged (see RCM 1106A), if the crime is not one that would make the client eligible for representation by an SVC or via the DVVRP. The eligible client should normally have a pre-existing attorney-client relationship with the legal assistance attorney. CLA may waive this requirement for good cause and subject to the availability of resources. See paragraph 3–6a(1) and 3–6a(2) for additional guidance on assisting in military criminal matters.

j. Civilian criminal matters (optional assistance).

(1) Legal assistance on civilian criminal matters may be provided, but such assistance will be limited to general advice such as explaining the nature of the criminal charge, possible punishments, and criminal procedure.

(2) Attorneys providing legal assistance may contact civilian court or prosecuting officials to obtain information.

k. Special education.

(1) *Required assistance.* Legal assistance will be provided on educational subjects associated with special education, in accordance with Public Law 116–283, Section 582(b)(7) including, but not limited to document review with respect to individual education plans (20 USC 1400 and 29 USC 794: commonly known as 504 plans), and pursuant to applicable federal and state laws.

(2) *Optional assistance.* Legal assistance may be provided to clients requesting special education related in-person representation at meetings with school officials or administrative hearings based on availability of expertise and resources.

3–6. Limitations on services

a. Attorneys providing legal assistance will not provide legal advice on matters that are outside the scope of the legal assistance program. A person seeking assistance on such matters may be referred to a civilian lawyer or agency, or provided a list of lawyers (see para 4–3). The following matters are outside the scope of the legal assistance program and are not reported as legal assistance cases:

(1) *Military justice matters.* Attorneys providing legal assistance (except those serving as SVC or assigned to USATDS) may not provide advice to Servicemembers seeking help on UCMJ issues or on proceedings being conducted pursuant to the UCMJ or implementing military regulations. These Servicemembers will be referred to USATDS attorneys, military defense counsel in one of the other military services, or to civilian lawyers, as appropriate (see para 4–3).

(2) *Victim/Witness Assistance Program.* Legal assistance attorneys are precluded from acting as victim/witness liaisons. However, legal assistance attorneys may provide authorized legal assistance and SVC services to victims who are eligible clients.

(3) *Private business activities.* Those seeking assistance on private business activities will be informed that providing such help is outside the scope of the legal assistance program. However, FCC providers who are eligible for legal assistance may be assisted with reporting their income from child care activities on their income tax returns (see para 3–5h(3) and AR 608–10). Consistent with paragraph 3–5h(3), income tax returns involving other private business activities may also be prepared.

(4) *Litigation against the United States.* 18 USC 205 generally prohibits employees of the U.S. Government from appearing as counsel before any tribunal for a client concerning a claim against the United States or a civil lawsuit in which the United States has an interest (see para 4–2); however, this restriction generally does not apply if the employee is acting within the scope of his or her official duties. Attorneys performing duties as legal assistance attorneys or paralegals may advise and assist clients with matters against the United States insofar as the representation is authorized by this regulation. Legal assistance attorneys can provide required services (see para 3–4) within authorized case types (see para 3–5) even when the interests of the client are against the interests of the United States. Examples include assisting clients with disputes with the IRS over non-criminal federal income tax matters and assisting clients with immigration matters. The prohibition also does not apply to representation of Soldiers before administrative processing for disability, including appeals to the Army Board for the Correction of Military Records or Physical Disability Board of Review, by an attorney with the OSC.

(5) *Employment matters.* All employment matters, except those involving enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and for consultation, advice, and assistance to military families on Status of Forces Agreements and other agreements with host nations affecting family employment, are outside the scope of the legal assistance program.

(6) *Standards of conduct issues.* Attorneys providing legal assistance may not provide clients with an agency position concerning post-employment, honoraria, procurement integrity, or similar standards of conduct issues. The

attorney will refer such clients to the ethics counselors of their organizations or commands and advise them that no attorney-client privilege or confidentiality exists between them and their ethics counselors.

(7) *Disability Evaluation System matters.* JAs and DA Civilian attorneys providing legal assistance (except those assigned to the OSC) may not provide advice to Servicemembers seeking help on DES issues or proceedings. Soldiers will be referred to OSC attorneys for DES assistance and non-Army Servicemembers will be referred to disability counsel in one of the other military services, as appropriate (see para 4–7).

(8) *Matters arising from sex-related offenses.* Legal assistance offices that perform an SVC function (either a full-time SVC assigned to the office or a part-time SVC that operates under the legal assistance office when performing the SVC function) will not represent clients on matters resulting from a report of a sex-related offense, even if the matter is otherwise within the scope of the legal assistance program, that is, responding to an adverse evaluation report. Such clients will generally be referred to USATDS attorneys (see para 8–7f).

b. Attorneys providing legal assistance may provide limited legal assistance on the cases described in this subparagraph. All clients seeking assistance on such matters may be referred to a civilian lawyer or to another office or agency or provided a list of lawyers (see para 4–3). Although attorney-client relationships may be formed, the following limitations will be observed:

(1) *Claims against the United States.* A person seeking to file a claim for personal property losses incident to government service will be referred to the Center for Personnel Claims Support. A person seeking to file other claims against the United States will be referred to the claims or other appropriate office responsible for handling claims on such matters on or off the installation. Legal assistance on these matters will be limited to general advice on administrative or legal procedures and filing requirements, and on the client’s need to retain a civilian lawyer in order to obtain further legal advice or assistance.

(2) *Prepaid-legal-representation cases.* These cases include those in which a person or organization is required by contract or law to provide the assistance required (for example, provision of legal defense in a tort case by an insurance company; preparation and filing of an amended income tax return by a commercial tax preparer to correct a mistake made by that preparer). Legal assistance will be limited to general advice on civil lawsuits, court procedures and filing requirements, the potential merits of the case, and on the client’s need to contact the insurance company or other organization that will pursue or defend the lawsuit or provide the assistance needed.

Chapter 4

Legal Assistance

4–1. Delivery of legal assistance services

a. In the absence of unusual or compelling circumstances, the initial communication with a client should occur in person. Use of electronic media for the initial consultation makes it difficult to determine the client’s eligibility for legal assistance and may deny the legal assistance provider an opportunity to view relevant documents.

b. If in-person consultation is not practical, the prospective client must provide proof of eligibility (that is, electronic transmission of an image of their DoD ID Card, or verification of the DoD ID number through the Defense Manpower Data Center). Copying the DoD ID Card for this purpose is authorized by AR 600–8–14/AFI 36–3026 Volume 1/BUPERS Instruction 1750.10D/MCO 512.11E/COMDTINST M5512.1B/NOAA Corps Directives, Chapter 1, Part 5/Commissioned Corps Manual 29.2 Instructions 1 and 2. Any use of electronic media to determine eligibility must ensure confidentiality.

c. Applicants for service must be given a private interview, whether conducted in person, telephonically or by electronic means. All communication with applicants and clients should be protected from improper disclosure to third parties.

d. Communication with applicants or clients via telephone or electronic means is authorized, provided the legal assistance office is able to protect against improper disclosures. Video teleconference technologies may be used only if there is no third party (that is, technicians) who can observe or overhear the conference.

4–2. Expanded legal assistance services

a. *Pro se assistance.*

(1) Consistent with this regulation, supervisory lawyers may authorize *pro se* assistance on a case-by-case basis or for certain categories of cases (see para 3–4g). An RA SJA may further authorize legal assistance personnel to accompany a client to the location of the civil proceedings in which a client is proceeding *pro se*.

(2) Clients receiving *pro se* assistance are responsible for paying court costs, administrative filing fees, and related expenses associated with the litigation.

b. *In-court representation.*

(1) *Staff judge advocate authorization.* Consistent with this regulation and AR 27–40, RA SJAs may authorize in-court representation on a case-by-case basis or for certain categories of cases to provide an attorney an opportunity to develop, maintain certain legal skills, or advance certain command objectives (for example, protecting Soldiers from certain unfair business practices) (see para 3–4h).

(2) *Types of in-court representation cases.*

(a) *Military administrative proceedings.* Attorneys providing legal assistance may represent clients in military administrative hearings only when representation by an attorney is authorized by military regulation. Ordinarily, USATDS attorneys represent clients in these hearings (see para 3–5f(3)).

(b) *Civil proceedings.* In-court representation is limited to Soldiers and family members eligible for legal assistance pursuant to paragraph 2–4a and for whom hiring civilian lawyers would entail substantial financial hardship to themselves or their Families.

1. SJAs will determine whether a client satisfies the substantial financial hardship test on a case-by-case basis.

2. SJAs may waive the financial hardship test when in the best interest of the military.

3. In-court representation may occur in any one or combination of the following methods:

a) *Bar membership.* The attorney providing legal assistance is qualified (through bar membership or otherwise) to represent clients in the particular federal, state, or foreign jurisdiction.

b) *State-approved program.* The attorney providing legal assistance is authorized to represent clients pursuant to a local bar or court rule, written agreement with the state bar or pursuant to a motion granted by an appropriate court of the State concerned.

4. Unless serving on active duty, USAR, and ARNG JAs (including those assigned to TPUs) may not provide in-court representation as a part of the legal assistance program without the approval of the Chief, LAPD.

5. Soldiers represented pursuant to this paragraph are responsible for paying associated court costs, opposing counsel fees (when so ordered by the court), and administrative filing fees. They must sign a consent agreement acknowledging this requirement before any in-court representation is undertaken. When practicable, legal assistance offices will provide supplies and as much clerical support as possible. An attorney providing legal assistance may claim costs (except for items or services provided by the Army) from an opposing party, but may not accept attorney fees (see para 8–5).

4–3. Referral

a. *General referral policy.* Clients should be assisted whenever possible without referral. Unnecessary referrals delay the delivery of legal assistance and cause inconvenience to clients. Unless required by this regulation, a client should only be referred when referral is in the best interest of the client.

b. *Considerations prior to making a referral.* An attorney providing legal assistance should weigh the following considerations before making an informed referral to the office, agency, or attorney who can best represent the client's interest:

(1) The goals or interests of the client.

(2) The attorney's expertise in the particular area of assistance required by the client.

(3) Convenience to the client.

(4) Cost to the client. Every effort should be made to minimize the legal costs to clients who are eligible for legal assistance. An attorney providing legal assistance may negotiate the fee for professional legal services with a civilian lawyer on behalf of a legal assistance client.

c. *Monitoring referrals.* Supervisory lawyers will monitor referrals. Excessive use of referrals among Army attorneys may indicate a need for additional resources, training, or supervision.

d. *Referral of matters outside the scope of legal assistance.* On matters outside the scope of the legal assistance program, clients should be referred to civilian lawyers or other offices or agencies from which assistance may be obtained.

e. *Prioritizing referrals to public agencies.* Before making a referral to another attorney, consider whether a public agency (such as state or local legal aid, child support enforcement agencies, consumer affairs agencies, state attorney general offices, or Army Community Services) exists that can assist the client without charge.

f. *Order of preference for referrals to other attorneys.* When referral to another attorney is appropriate, the following order of preference (if consistent with the goals or interest of the client and the other provisions of this regulation) should be considered:

(1) If not prohibited by conflict of interest rules, an attorney in the same Army legal office (for example, an attorney providing legal assistance as part of their duties, or an administrative law attorney).

(2) An attorney in another legal office of the same component in close proximity.

(3) An attorney in an Army legal office of another component (for example, a referral from an attorney in an RA legal office to a RC JA).

(4) A legal office of one of the other military departments in close proximity.

(5) A civilian lawyer willing to assist the client on a no-fee basis in an appropriate case (note that legal services provided *pro bono publico* are not always on a no-fee basis). The American Bar Association (ABA) and many state and local bar associations have established specific programs to provide *pro bono* representation to eligible military clients.

(6) A civilian lawyer willing to assist a client on a reduced-fee basis in an appropriate case.

(7) A civilian lawyer whose fees are reasonable for the locale in which they practice. A referral to a lawyer in this category may be preferable over all others because of the expertise of the particular lawyer or the needs of the client.

g. Providing referral lists.

(1) In some instances, a client may not desire a referral, but rather, is seeking the name or a list of names of civilian lawyers who possess a particular expertise and who practice in a particular geographical area.

(2) Attorneys may provide a client the name of a civilian lawyer, a list of names of civilian lawyers, or contact information for the state bar referral office without making an actual referral (see AR 27–26).

(3) When preparing a local referral list, the legal assistance office should contact each attorney to determine competence, areas of expertise, and fees. The legal assistance office should attempt to negotiate reduced fees for legal assistance clients.

h. Coordination of referrals and case closing. The attorney making the referral should, whenever practical, personally contact the attorney to whom the referral is being made to ensure that assistance will be provided. The attorney should then provide the client with the telephone number, office location, and name of the attorney to whom the client is being referred. Upon making the referral, the attorney should terminate the attorney-client relationship. In order to protect the interests of the client, legal assistance services may continue on other matters within the legal assistance program, or on the same matter, if legal assistance is requested by the civilian lawyer on behalf of the client.

i. Emphasizing client's choice. An attorney making any referral should make it clear to their client that any decision to consult with, or be represented by, the recommended lawyer is solely that of the client and that the client is free to retain any lawyer.

j. Disclaimer when expressing personal opinion. An attorney making a referral may express an opinion about the ability of a particular lawyer; however, the client should be advised that any opinion expressed about a particular lawyer is a personal, not official opinion, and in no way reflects the position of the U.S. Army or the United States government.

k. Avoiding perceptions of favoritism. In referring a client to a civilian lawyer on a fee basis, the attorney making the referral will take care to avoid the appearance of favoritism by regularly referring clients to one particular lawyer or to an unreasonably limited number of lawyers. Each referral should be based on a knowledge of the particular lawyer's skill and expertise, normal fee arrangements, and ability to meet the specific legal needs of the client.

l. Prohibited referrals. A referral will not be made to a civilian lawyer who is known to be pending disciplinary action by a court or other licensing body, or who is known to be practicing law without malpractice insurance or with less than a reasonable amount of malpractice insurance.

m. Compensation for referrals prohibited. Legal assistance attorneys may not accept any compensation for making a referral (see para 8–5d).

4–4. Tax program

a. Income tax assistance is an important aspect of a commander's legal assistance program. Tax assistance directly enhances readiness for mobilization or deployment. Soldiers who meet their federal and state tax obligations are able to focus on their wartime mission without fear of audit or collection actions. Supervisory lawyers should seek command support to hire temporary government employees, detail special duty (SD) Soldiers (see AR 570–4), and recruit volunteers to assist in providing tax assistance. When feasible, attorneys should seek command support to obtain equipment to electronically file federal and state income tax returns.

b. Supervisory lawyers should—

(1) Establish training programs for all tax assistance personnel.

(2) Sponsor training courses conducted by federal and state taxing authorities on the installation.

(3) Provide electronic and paper capabilities for filing returns and related petitions and appeals.

c. When legal assistance offices provide income tax preparation and electronic filing services under the auspices of the IRS VITA program, all VITA military program requirements will be met.

d. Subject to the availability of adequate resources and expertise, CLAs may authorize the provision of additional tax assistance services outside of the scope of the VITA program, but otherwise consistent with this regulation.

4–5. Use of non-lawyer assistants

a. Non-lawyer assistants are vital to the provision of quality and timely legal assistance to eligible clients. They are restricted, however, by ethical rules of the legal profession from engaging in the practice of law. See AR 27–26 for further guidance on the ethical responsibility of attorneys for the supervision and performance of non-lawyer assistants that prevents the unauthorized practice of law. Non-lawyer assistants include—

- (1) RA and RC paralegals/NCOs assigned to a legal assistance office or supporting a legal assistance attorney.
- (2) Civilian personnel employed in legal assistance offices, or in support of a legal assistance attorney as paraprofessionals, legal assistants, legal administrative specialists, student interns, and student externs.
- (3) Volunteers, including SD Soldiers working in a legal assistance office or tax center and students.

b. The precise duties assigned to a non-lawyer assistant depend on the specific needs of the office, the non-lawyer assistant's experience and training, and the degree of attorney supervision. Legal assistance attorneys must explore ways to maximize the role of non-lawyer assistants in a manner that will enhance the delivery of client services and preventive legal assistance activities, without violating professional and ethical rules governing the Army Legal Assistance Program.

c. A legal assistance attorney may delegate work on behalf of a client to a non-lawyer assistant provided the attorney does all of the following:

- (1) Maintains direct contact with the client (that is, a legal assistance attorney may not disassociate completely from a particular case, or from an entire class of cases or clients, by "delegating" all client contact and case work to a non-lawyer assistant).
- (2) Supervises the non-lawyer assistant in the performance of the delegated work.
- (3) Assumes complete professional responsibility for the work product of the non-lawyer assistant.
- (4) Ensures the non-lawyer assistant is clearly represented to the client and third parties as a non-lawyer assistant, and not as an attorney.

d. Some services may be provided by a non-lawyer assistant without an attorney-client meeting. These include preparation of powers of attorney (see restrictions in para 4–8a(2)), notarization services, and certain tax assistance matters. This assistance may be provided if an attorney has approved the document templates and procedures. Additional services may be authorized by the supervisory lawyer.

4–6. Acceptance of volunteer legal services

a. Voluntary attorney services may be accepted for the benefit of the Army only by TJAG. Voluntary paralegal services may be accepted for the benefit of the Army only by an SJA or Commander of a legal operations detachment (LOD). Services accepted must be within the scope and limitations of the legal assistance program as described in this regulation. Approved volunteers are protected from liability for actions taken within the scope of the legal assistance program in accordance with paragraph 8–3. JAs supervising individuals providing voluntary legal assistance services must ensure compliance with the requirement of DoDI 1100.21 before accepting legal assistance services. These requirements include, but are not limited to—

- (1) Ensuring that the volunteer is professionally competent to perform the services.
 - (a)* If the volunteer is an attorney, the attorney must present a copy of the transcript from the volunteer's accredited law school; an original certificate, no older than 6 months at the time of submission, showing that the volunteer attorney is licensed and in good standing with the bar of a U.S. state or territory or the District of Columbia; and a sworn statement stating that the volunteer's fitness to practice law has never been challenged in any jurisdiction (if the volunteer's fitness has been challenged, a sworn statement explaining the facts, circumstances, outcome, and any other information the volunteer considers appropriate must be presented). In accordance with 10 USC 1044(d)(1) and 10 USC 1588, volunteer attorneys do not have to be admitted to practice in the specific state in which Army legal assistance services will be performed.
 - (b)* If the volunteer is a paralegal, the paralegal must submit documentation of their status and their license, if appropriate.
- (2) Providing a clear written description of the duties and scope of responsibility of the volunteer position.
- (3) Ensuring that the volunteers are properly trained and informed that they must comply with this and other applicable regulations. Training must include— this regulation; AR 27–26, applicable provisions of the Privacy Act, and all military-specific provisions of law and regulation that are relevant to the duties to be performed by the volunteer.
- (4) Ensuring that volunteers operate under the supervision of a JA or a civilian legal assistance attorney. Supervisors must ensure that volunteers do not provide services in areas of the law in which they have not had adequate training.

(5) Establishing a system to document the volunteer's professional license and qualifications, whether the volunteer is a military retiree, the training received, hours of service performed, and a description of services provided.

(6) Ensuring that the volunteer has completed, signed, and received a copy of a DD Form 2793 (Volunteer Agreement for Appropriated Fund Activities & Non Appropriated Fund Instrumentalities) prior to providing any voluntary legal assistance service. At the completion of the volunteer services, part II of the DD Form 2793 will be completed and a copy provided to the volunteer. A copy of the DD Form 2793 and all other applicable records relating to the volunteer services will be retained for 3 years.

(7) The volunteer must receive no compensation (reimbursed incidental expenses may be authorized pursuant to AR 215-1, and AR 608-1).

(8) The services provided by the volunteer must not displace any employee.

b. Before the volunteer attorney may provide legal services, the supervising SJA must forward the volunteer attorney's certificate of good standing, law school transcript, sworn statement of fitness to practice law, resume, and a clear written description of the duties and scope of responsibility of the volunteer position to OTJAG (DAJA-LE) for review of the volunteer attorney's professional qualifications and acceptance by TJAG.

c. Student volunteers who assist those providing legal assistance (pursuant to 5 USC 3111) and who are subject to day-to-day control by appropriate Federal employees or officers may be considered to be Government employees for purposes of the Federal Torts Claims Act. In addition to the criteria listed in paragraph 4-6a, the following applies:

(1) The student volunteer must be enrolled full-time in a junior college, college, university, law school, or comparable recognized educational institution in or outside the United States.

(2) The voluntary services provided must be part of a program, established in conjunction with the educational institution at which the volunteer is enrolled, that is designed to provide educational experiences for students.

4-7. Disability Evaluation System legal services

a. *Purpose.* Advising and representing Soldiers undergoing disability evaluation processing is a highly complex and rapidly changing area of practice that requires attorneys and paralegals with specialized education and experience. This paragraph establishes that legal services to Soldiers processing through the DES or Military Occupational Specialty Administrative Retention Review (MAR2) process will be provided by the OSC. It also details the organizational structure of the OSC and the oversight and supervisory roles of OTJAG and the SJA, MEDCOM.

b. *Definitions and scope of work.*

(1) The DSFLS; Director, OSC; and the SJA, MEDCOM, have oversight responsibility for the OSC mission.

(2) Legal advice and representation in cases involving DES or MAR2 processing, or TDRL periodic review will be provided by appointed Soldiers' Medical Evaluation Board Counsel (SMEBC) or Soldiers' Physical Evaluation Board Counsel (SPEBC), upon the client's request. Pursuant to DoDI 1332.18, attorneys assigned to the OSC will be certified annually by TJAG or their designee to serve as SMEBCs or SPEBCs. Army attorneys not certified will refer clients to the appropriate OSC that services their area when presented with DES, MAR2, or TDRL issues. Exceptions to policy to represent Soldiers in the DES will be submitted to the SJA, MEDCOM, who, in consultation with the Director, OSC, will review and approve requests on a case-by-case basis. In lieu of appointed government counsel, Soldiers may choose to be represented by private counsel or a Veteran's Service Organization at no cost to the Army. Notwithstanding the limitations of paragraph 2-4, all RC Soldiers, without regard to their active duty status, undergoing DES or MAR2 processing are eligible for OSC services.

(3) The OSC is a client-services organization that provides personal legal advice and representation to Soldiers and individuals on the TDRL. OSC personnel may not advise or represent unit leaders or personnel from the Medical Evaluation Board (MEB), Physical Evaluation Board (PEB) or other medical command organizations.

(4) With the prior approval of the OSC Regional Supervisory Counsel (RSC), the appointed OSC attorney may provide general legal assistance services that are incident and directly related to the DES matter for which the OSC attorney has been appointed. All relevant provisions of this regulation will be followed when OSC personnel provide general legal assistance services.

(5) OSC attorneys have primary responsibility within the Judge Advocate General's Corps for counseling Soldiers pursuant to AR 600-110 who test positive for human immunodeficiency virus (HIV) infection, and who desire to submit unqualified resignations or voluntary releases from active duty under the provisions of AR 600-8-24 (officers), or voluntary requests for administrative separation under the provisions of AR 635-200 (enlisted Soldiers).

c. *Organizational structure.*

(1) *Director, Office of Soldiers' Counsel.* The OSC is led by the Director, who reports to the SJA, MEDCOM. The Director provides program management oversight for OSC operations.

(2) *Regional Supervisory Counsel.* Each region of the OSC is led by a RSC, who reports to the Director, OSC. The RSC manages and supervises all OSC operations and personnel within their respective region.

(3) *Office of Soldiers' Medical Evaluation Board Counsel.* SMEBC personnel provide advice and representation to Soldiers undergoing the MEB process at the medical facility located at their installation, regardless of the Soldier's component, duty status, or unit of assignment. SMEBC personnel may also provide services to clients requesting assistance with MAR2 appeals, and TDRL exams. SMEBC personnel may also be assigned an area of responsibility beyond their installation, as determined by the respective RSC. SMEBC personnel will provide timely, competent, and professional assistance to Soldiers who request services. Eligibility for representation begins upon referral to the MEB or receipt of a P3 or P4 DA Form 3349–SG (Physical Profile Record). Upon request, SMEBCs serve as the attorney of record for Soldiers during the MEB process and informal Physical Evaluation Board (IPEB) process. The SMEBC attorney-client relationship terminates upon whichever event occurs first: a Soldier's return to duty following the MEB process; a Soldier's concurrence of the IPEB decision and submission of any appropriate requests for a Department of Veterans Affairs Rating Reconsideration at the IPEB level; a Soldier's election for a formal Physical Evaluation Board (FPEB) hearing and the assignment of an appointed SPEBC; or when the client agrees to release the counsel. Upon the appointment of a SPEBC, the SMEBC will provide any appropriate support or assistance as requested by the assigned SPEBC of record, while maintaining attorney-client confidentiality. SMEBCs must inform their clients of the limits of their representation. After the assignment of an appointed SPEBC, the SPEBC becomes the attorney of record and a SMEBC will not provide legal advice or representation without prior coordination with the detailed SPEBC.

(4) *Office of Soldiers' Physical Evaluation Board Counsel.* SPEBC personnel provide advice and representation to Soldiers who request formal hearings before the PEB, regardless of the Soldier's component, duty status, or unit of assignment. SPEBC personnel will provide timely, competent, and professional assistance to Soldiers who request services. Upon the Soldier's FPEB election specifying their request for appointed counsel, the assigned SPEBC becomes the attorney of record. SPEBC representation is terminated upon the Soldier's separation, retirement, return to duty, or when the client agrees to release the counsel. SPEBCs must inform their clients of the limits of their representation.

(5) *Technical and supervisory control.* OSC personnel may be attached to local installations, regional health commands, or hospitals for administrative support. The technical and supervisory control of OSC personnel, to include positions designated in the corresponding table of distribution and allowances (TDA) and over-hire positions, falls under the Director, OSC, in coordination with the SJA, MEDCOM.

4–8. Military legal documents

a. Produced by legal assistance offices.

(1) Military testamentary instruments (10 USC 1044d).

(a) A military testamentary instrument (MTI) is a will executed with a self-proving clause as defined in DoDI 1350.04. The characterization of a will as a MTI is not determined by the status of the notary. An MTI can be notarized by either a military or a civilian notary and a state-specific self-proving clause may be notarized by either a military or a civilian notary. While an MTI will be admitted into probate without regard to state-specific self-proving requirements, it may require further efforts to educate the tribunal on the rules governing MTIs. Once admitted to probate an MTI must still comport with the substantive laws of the governing jurisdiction regarding disposition of property in order to be a valid testamentary document. Use of an MTI is not appropriate for all wills prepared for military legal assistance clients. It is preferable to draft a will in accordance with state requirements when domicile (or likely state of probate) can be determined. Puerto Rico law contains highly specific will execution procedures and recording requirements. Accordingly, a will for a Puerto Rico resident should be prepared as a MTI. Otherwise, it is Army legal assistance policy to only use MTIs when domicile or likely state of probate cannot be determined.

(b) An MTI that complies with 10 USC 1044d and DoDI 1350.04 is exempt from any form, formality, or recording imposed by state law and is entitled to the same legal effect as a will prepared and executed in accordance with state requirements. In order to identify this special status, a preamble will be included in bold type as the first paragraph of each MTI prepared in an Army legal office (see fig 4–1):

Note. This preamble should not be used if preparing a will with a state-specific self-proving clause.

This is a **MILITARY TESTAMENTARY INSTRUMENT** prepared pursuant to Title 10 United States Code, Section 1044d, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this document from any requirement of form, formality, or recording that is prescribed for testamentary instruments 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 document shall be given the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the jurisdiction in which it is presented for probate. It shall remain valid unless and until the Testator revokes it.

Figure 4–1. Preamble for military testamentary instrument

(2) *Powers of attorney.*

(a) *Requirement to honor facially valid military powers of attorney.* Powers of attorney are an important part of every Soldier’s pre-deployment preparation. They allow the Soldier to designate an agent to act on their behalf during their absence. In order to facilitate legal readiness for deployment, Soldiers must be confident that their military powers of attorney will be honored. Army organizations and activities must honor facially valid Military powers of attorney (see para 4–8a(2)(e)). While Army agencies may internally establish preferred forms and formats for special powers of attorney, Army agencies may not reject facially valid military general or special powers of attorney that do not comply with the agency’s preferred POA format.

(b) *General powers of attorney.* The use of general powers of attorney is ordinarily discouraged because of the breadth of authority general powers of attorney grant and the lack of the specificity desired for many important transactions. When general powers of attorney are sought, clients must be advised by an attorney of the potential for misuse and the serious legal problems that may arise. Clients should be encouraged, whenever feasible, to use a more specific and limited special POA. This advice may be provided to the client in person, in a videotaped briefing, or by a written handout prepared by an attorney. General powers of attorney, if drafted, should be effective for the minimum period necessary to accommodate the client’s needs.

(c) *Durable powers of attorney.* A “durable” POA enables the attorney-in-fact to continue to act for the client when the client lacks mental competency or is physically unable to make decisions, as when the client is “missing in action,” or a prisoner of war. The durable POA remains effective beyond the expiration date if the client lacks capacity on the expiration date. The durable POA will remain effective until the client regains capacity. Such clauses should be included only with the client’s knowing consent. The SCRA (50 USC 3901–4043) extends a POA if the POA expires while the Soldier is classified as missing in action and the POA names a relative as the attorney-in-fact. There is no comparable provision if the Soldier names a non-relative or becomes a prisoner of war; if it is the client’s intent to provide for continuing powers in those situations, then specific language must be added to establish the POA as durable.

(d) *Springing power of attorney.* A springing POA is not operative when signed, but only becomes operative upon the occurrence of a specific event. That is, it “springs to life” upon the happening of an event described in the POA. Often that event is the illness, disability, or prisoner of war status of the client. Because of its nature, a springing POA should also contain language that makes it durable.

(e) *Military powers of attorney (10 USC 1044b).* Federal law grants special status to powers of attorney executed by persons eligible for military legal assistance. Military powers of attorney are exempt from state law requirements of form, substance, formality, or recording, and are entitled to the same legal effect as a POA prepared and executed in accordance with state law requirements. In order to identify this special status, the preamble shown in figure 4–2 will be included in bold type as the first paragraph on each general and special POA prepared in an Army legal office.

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.

Figure 4–2. Preamble for general and special power of attorney

(3) Military advance medical directives, living wills, and healthcare powers of attorney.

(a) AMDs or “living wills” are written declarations that express the individual’s desires regarding the continuation of or withdrawal or withholding of life-prolonging procedures, when the declarant has a terminal physical condition or is in a persistent vegetative state. It only comes into effect when an individual becomes terminally ill. It allows an individual to describe the kind of treatment they want in certain situations but does not generally allow the individual to select someone to make decisions for them.

(b) A special POA for healthcare allows an individual to appoint someone to make healthcare decisions for them, gives the agent access to the client’s medical information and authority to fully participate with the treating physicians in deciding the care the client will receive. It generally becomes effective when the client is unconscious or unable to make medical decisions. Because it becomes effective when the client loses capacity to act on their own, it must be a durable POA.

(c) AMDs and special powers of attorney for healthcare complement each other and should generally be executed in conjunction with each other. Legal assistance attorneys will discuss the desirability of executing these documents with all clients seeking estate planning assistance.

(d) Federal law grants special status to AMDs and special powers of attorney for healthcare prepared by legal assistance attorneys and executed by persons eligible for military legal assistance (10 USC 1044c). These documents are exempt from state law requirements of form, substance, or formality and are entitled to the same legal effect as those prepared and executed in accordance with state law requirements. In order to identify this special status, the preamble shown in figure 4–3 will be included in bold type as the first paragraph on each AMD prepared in an Army legal office.

This is a **MILITARY ADVANCE MEDICAL DIRECTIVE** prepared pursuant to 10 United States Code, Section 1044c. It was prepared by an attorney authorized to provide legal assistance for an individual who is eligible to receive legal assistance. Federal law exempts this advance medical directive from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a state. Federal law specifies that this advance medical directive shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the state concerned.

Figure 4–3. Preamble for advance medical directive

(e) Notwithstanding 10 USC 1044c, eligible clients may prefer the use of a local, state-specific AMD form. Legal assistance providers may use such forms where appropriate. When preparing a non-military AMD, legal assistance providers should prepare it in accordance with the laws of the state in which the client normally resides, with the laws

of the state to which the client has the strongest ties, or of the state in which the client is most likely to receive medical treatment.

b. Ancillary Documents.

(1) Servicemen's Group Life Insurance beneficiary designations.

(a) Every Soldier provided legal advice on estate planning matters will be advised on the designation of beneficiaries under SGLI, Family Servicemen's Group Life Insurance (FSGLI), or other insurance policies. Legal assistance attorneys will not recommend "by-law," "by-will," or "to my estate" beneficiary designations to any Servicemember client.

(b) In cases where an existing designation does not comport with a Soldier's estate plan, the Soldier will be advised of the steps necessary to change their beneficiary designation (using the SGLI Online Enrollment System (SOES), SGLV Form 8286 (Servicemembers' Group Life Insurance Election and Certificate), or any other manner prescribed by the Department of Veterans Affairs). This is particularly important when a Servicemember's will establishes a trust to be funded by the SGLI.

(2) Family care plan.

(a) Requirements for FCP documents are set forth in AR 600–20. Many Soldiers and commanders are unaware that the FCP is not a legally binding document but is simply a documentation for Army purposes of the plan by which Soldiers provide for the care of their family members when military duties prevent the Soldier from doing so.

(b) Legal assistance personnel should educate Soldiers and commanders on the legal issues related to FCPs in preventive law programs and at Soldier Readiness Program (SRP) briefings. Existing child custody orders must be considered when a Soldier completes an FCP.

(c) Commanders should encourage Soldiers who have potential problems with their FCP to seek legal assistance.

(d) Legal assistance attorneys must recognize the potential perils and take appropriate action to protect their clients. If the FCP is going to designate anyone other than a natural parent of the child as a guardian, the Soldier should get the written consent of the other natural parent (often a former spouse). If the consent cannot be obtained, at the very least, the Soldier should be made aware of the potential risks.

Chapter 5

Legal Assistance in the U.S. Army Reserve and National Guard

5–1. Reserve Component legal assistance

a. Legal assistance services should primarily be provided by RC JAs. However, if RC JAs are not available, these services may be provided by RA legal assistance offices.

b. Priority of legal assistance service in the RC is as follows:

(1) Ensuring the legal readiness of RC Soldiers within the command.

(2) Providing legal assistance services to full-time Soldiers (RA, Active Guard Reserve (AGR), and activated RC Soldiers) and dependents who do not have access to an RA legal assistance office.

(3) Other legal assistance services authorized by this regulation subject to the availability of resources.

c. The LOD (multi-function) commanders within the USAR Legal Command, the USAR SJAs and ARNG SJAs will appoint an attorney responsible for legal assistance within the command. The attorney responsible for legal assistance may not be assigned to a Trial Defense Legal Field Detachment.

d. The LOD (multi-function) commanders within the USAR Legal Command, the USAR SJAs and ARNG SJAs will ensure that client information is collected as required by paragraph 9–2*b*.

5–2. Retirement points

a. RC JAs earn retirement points in accordance with AR 140–185, AR 140–1 and NGR 680–2. RC JAs may earn retirement points under the Army legal assistance program for—

(1) Providing legal assistance to an eligible client (see the limitation for in-court representation in para 4–2*b*(2)).

(2) Helping another attorney providing legal assistance to an eligible client.

(3) Performing pre-approved legal research on a legal assistance subject or publication.

b. RC JAs authorized to work on Army legal assistance matters in accordance with this paragraph may obtain retirement points by submitting a completed DA Form 1380 (Record of Individual Performance of Reserve Duty Training) to their assigned unit.

c. The supervisory lawyer signing the DA Form 1380 will perform the initial certification of the legal assistance work or research performed. An RC JA may perform legal assistance work as IDT at regularly scheduled unit training periods or additional paid IDT periods. The regularly scheduled IDT must be at least 4 hours in length for one retirement point or 8 hours in length for two retirement points (see DoDI 1215.06 and AR 140–185). A maximum of two

points is authorized for any single calendar day under the 4/8-hour rule. A USAR JA may voluntarily perform legal assistance work as IDT periods for retirement points only (without pay). The voluntary IDT will not be less than 2 hours (excluding roll call and rest periods), with a maximum of two points authorized for any 1 calendar day (see DoDI 1215.06).

d. Every officer will maintain case files and detailed records of time spent working on Army legal assistance matters for retirement points.

Chapter 6

Legal Assistance During Pre-Deployment and Premobilization, Deployment and Mobilization, and Redeployment and Demobilization

6–1. Pre-deployment and premobilization planning

Staff, brigade, and other command JAs are responsible for planning for the provision of legal assistance services, as part of the Military Decision Making Process, prior to a unit's deployment or mobilization. Legal support plans should address the provision of legal assistance services during the pre-deployment, deployment, and redeployment phases of the operation.

6–2. Pre-deployment and premobilization

a. *Pre-deployment guidance.* In order to be effective, legal assistance support during the pre-deployment phase must extend beyond SRP (see AR 600–8–101).

(1) Legal support planners must identify legal issues likely to arise during a deployment and adjust the preventive law program to address those issues (see chap 3, sect I).

(2) Determine whether the preventive law program should address other audiences besides Soldiers and their Families. For example, it may be necessary to engage with local governmental and business organizations to facilitate the recognition of military powers of attorney. Legal assistance offices should also coordinate with local courts and bar associations to facilitate the recognition of Soldiers' SCRA rights.

(3) Mobilizing RC Soldiers should be briefed on the USERRA (38 USC 4301–4333) and readmission requirements for Servicemembers (20 USC 1091c) as early as possible so they may provide the required advanced notice to their employers and academic institutions.

b. Soldier Readiness Program.

(1) The absence of a will does not make a Soldier non-deployable. When legal resources are limited, the priority for drafting and executing wills should be given to the following Soldiers:

(a) Those who have a minor child.

(b) Those whose primary beneficiary is a minor.

(c) Those who desire their property to be distributed in a manner different from that which would occur under the applicable laws of intestate succession or under an existing will.

(2) The drafting and execution of wills for all other Soldiers may be delayed until such time that legal resources are available. The supervisory lawyer at the SRP, exercising their independent professional judgment regarding a specific client's needs and situation, will determine the appropriate level of support.

(3) The execution of preprinted fill-in-the-blank wills is not authorized. The use of preprinted fill-in-the-blank powers of attorney should be avoided.

c. *Conflicts of interest.* The legal assistance office must plan for and provide a mechanism to screen Soldiers processing through the SRP for potential conflicts of interest.

6–3. Deployment or mobilization

a. *Deployment planning guidance.* At minimum, planning for the provision of legal assistance services during the deployed/mobilized phases of the operation should address who will provide the legal assistance services; and how the client will communicate with the provider.

(1) The unique circumstances of each deployed environment and the resources available to the command often dictate the personnel available to provide legal assistance. In mature theaters, the unit may be able to coordinate for the provision of legal assistance services at a pre-existing legal assistance office operated by the Army or another military service. When brigades or similar elements deploy as a unit with a centralized geographic footprint, a JA assigned to the unit for the express purpose of serving as a full- or part-time legal assistance attorney may be sufficient. When units deploy without the organic assets necessary to provide legal assistance internally, coordination with the

home station or another installation's legal assistance office, or the execution of a memorandum of understanding with the area USATDS office for the provision of remote services, may be the only viable option.

(2) In order to maximize the utility of organic assets, supervising JAs should empower paralegals to provide authorized paralegal services to the fullest extent possible at dispersed locations (see the guidance on use of non-lawyer assistant's in para 4–5). To maximize the availability of notarial services, supervising JAs may train and utilize unit adjutants in addition to unit paralegals in accordance with AR 27–55.

(3) While in-person consultation is the preferred method of providing legal assistance services, this is often not feasible when units are deployed in remote, austere environments and geographically dispersed by battalion, company, and even smaller elements. Accordingly, remote consultation (telephone, email, and so forth) may be the only feasible method in which to provide legal assistance services in a timely manner. When this occurs, legal support planners must be cognizant of the fact that units at the battalion level and below often have very limited organic internet and telephone capabilities. Accordingly, early coordination with the unit G–6/S–6 is necessary in order to develop the best possible communication plan under the circumstances. When remote methods of communication are used, the supervising JA should ensure compliance with paragraph 4–1c.

(4) Legal assistance providers in a deployed or mobilized environment will ensure that client information is collected as required by paragraph 9–2b.

b. Legal assistance facilities. Professional responsibility standards for legal assistance facilities do not change upon deployment. Designated confidential areas are required in order to maintain confidentiality when providing legal assistance.

c. Legal research.

(1) Deployed legal personnel must be prepared to deliver the full range of legal assistance services to clients dispersed throughout the area of operations. Accordingly, deployed legal personnel must be prepared to conduct legal research in austere and challenging environments. While the internet provides tremendous benefit to the military attorney practicing in an office environment, dependence upon it poses challenges to deployed legal practitioners with limited or unreliable automation capabilities. Deployed legal personnel should consider bringing electronic and/or paper copies of commonly used regulations and other frequently used legal resources.

(2) Deployed legal personnel should use available communication resources to contact their home installation or other non-deployed subject matter experts to seek guidance concerning difficult issues.

d. Client information and conflicts of interest.

(1) The rules of professional responsibility continue to apply when deployed (see AR 27–26).

(2) For attorneys that are neither legal assistance attorneys nor USATDS attorneys, the client is normally the Department of the Army. If attorneys enter into an attorney-client relationship with an individual Soldier on a legal assistance matter, confidentiality obligations may prohibit discussion of a related issue and impair their ability to provide legal advice to a commander.

(3) JAs should be alert to the possibility of conflicts of interest and use the best available methods to screen for conflicts while in the deployed environment.

6–4. Redeployment or demobilization

a. Services for demobilized Reserve Component Soldiers. RC Soldiers are eligible for demobilization legal assistance in accordance with paragraph 2–4a(4).

b. Reverse Soldier Readiness Program screening guidance. When units conduct reverse SRPs for redeploying or demobilizing Soldiers, legal assistance attorneys will screen Soldiers for issues pertaining to the SCRA, USERRA, higher education readmission requirements, consumer law, family law, estate planning, or other legal problems related to or arising from their deployment. Soldiers will also be screened for potential DES related matters and referred to local OSC personnel.

c. Uniformed Services Employment and Reemployment Rights Act (38 USC 4301–4333).

(1) Servicemembers and legal assistance providers may obtain information regarding USERRA from the office of the Employer Support of the Guard and Reserve (ESGR). The ESGR provides mediation services that Servicemembers may use to resolve USERRA disputes with their civilian employers. If unable to resolve the dispute, ESGR can facilitate a referral to the Department of Labor (DOL) for enforcement.

(2) DOL exercises primary responsibility over formal USERRA enforcement actions through its Veterans' Employment and Training Service (VETS). USERRA enforcement actions are initiated by filing a claim using VETS/USERRA/VP Form 1010 (Eligibility Data Form). DOL VETS will not investigate a USERRA complaint if the claimant is actively represented by an attorney or other third party if that representation interferes with the conduct of the DOL VETS investigation. This does not preclude a legal assistance attorney from advising a Soldier of their rights under USERRA and assisting the Soldier by contacting their employer to resolve a USERRA complaint.

d. Readmission Requirements for Servicemembers (20 USC 1091c).

(1) Servicemembers who cannot attend institutions of higher education due to federal active duty mobilizations of 30 days or more may exercise readmission rights under 20 USC 1091c. Additional rights may be available to Servicemembers under EO 13607.

(2) The U.S. Department of Education (DOE) enforces readmission requirements for Servicemembers through the Program Participation Agreement between DOE and the individual academic institution. When cases involving readmission requirements cannot be resolved directly with the applicable institution of higher learning, Servicemembers may seek redress through the DOE, Office of Postsecondary Education.

(3) Legal Assistance providers should be aware that in certain cases state law may afford Servicemembers additional readmission rights and causes of action.

Chapter 7

Special Victims' Counsel Program

7-1. Purpose

This chapter governs the operation of the SVC Program. It sets forth information, policies, and procedures applicable to the provision of SVC services throughout the Army.

7-2. Mission

The mission of the SVC Program is to provide legal representation to eligible clients who report they are victims of a sex-related offense. SVC services are enumerated in UCMJ, Art. 6b and 10 USC 1044e(b) and as authorized by the Secretary of the Army pursuant to 10 USC 7013(g).

7-3. Organization

a. The Special Victims' Counsel Office of the Program Manager (SVCOPM) is part of LAPD.

b. SVC are a part of the installation Office of the Staff Judge Advocate (OSJA) regardless of whether they are assigned to a TDA or modified table of organization and equipment (MTOE). SJA supervision and installation support responsibilities for SVC apply, regardless of the TDA or MTOE paragraph and line number that the SVC is assigned against (see paras 7-6 and 7-7).

c. The SVCOPM provides technical and policy oversight, resources, and training of the SVC Program and SVC.

d. Designated SVC regional managers (RM) have supervisory responsibility for all SVC within their regions. They will monitor the workload within the region, provide technical assistance and guidance, conduct regional SVC training, and assist in the SVC certification and child courses. When a CLA is unable to detail an SVC due to a conflict of interest, excess workload, or other reason, the CLA will refer the case to the SVC RM. The SVC RM has authority to detail the case to another SVC, assigned to an authorized SVC position, within their region.

e. The USAR SVC program operates within the Army SVC program. The SVC PM is responsible for the overall function, oversight, and implementation of the USAR SVC Program. U.S. Army Reserve Legal Command is responsible for operation of the USAR SVC Program. Operational oversight is provided by the USAR SVC deputy PM.

f. The National Guard Bureau (NGB) operates a consolidated SVC program for members of both the ARNG and the Air Force National Guard. The NGB Office of the Chief Counsel is responsible for functional and policy oversight to National Guard SVCs.

7-4. Special victims' counsel qualifications, training, and certification

a. SVC are JAs who must have—

(1) The maturity and good judgment to represent victims of sex-related offenses.

(2) Prior military justice or civilian criminal law experience, or relevant experience that demonstrates the JA is the best qualified available officer to serve as an SVC.

b. TJAG must certify counsel before they can serve as SVC. Certification will be conditional upon the SVC successfully completing an approved SVC certification course.

c. In addition to the SVC certification, SVC must complete an approved SVC child course prior to undertaking the representation of a child victim.

7–5. Special victims’ counsel duties and limitations

a. SVC deliver exceptional legal representation and advice to victims of sex-related offenses in accordance with 10 USC 1044e. SVC empower clients through professional competency and zealous advocacy to ensure their interests and rights are recognized and protected throughout the full spectrum of the military justice process.

b. SVC will notify, and receive approval from, the SVCOPM before representing a minor client.

c. In cases where a client is both a victim and an accused in the same incident, the client will be represented by both SVC and USATDS counsel. In those cases, SVC will limit their representation to matters related to the client’s status as a victim. USATDS counsel will provide advice and representation concerning all matters relating to the client’s status as an accused or subject. SVC and USATDS counsel should coordinate to ensure consistent representation.

d. SVC will not be appointed as preliminary hearing officers for Article 32, UCMJ hearings in cases involving sex-related offenses, domestic violence cases, or other matters where an actual or perceived conflict of interest could arise (see 10 USC 1044e(g)).

e. SVC will not be appointed as a representative under UCMJ, Art. 6, to assume the rights of a minor or incapacitated victim.

7–6. Professional oversight of special victims’ counsel

a. SVC duties may be full-time or part-time. When performing SVC duties, every SVC, either full-time or part-time, is also a legal assistance attorney and, as such, the SJA, through the CLA, provides oversight of the SVC. As the SVC’s direct supervisor, the CLA is responsible for the daily operations and continuing education of SVC. SJAs and deputy staff judge advocates (DSJAs) must ensure that all supervisors of part-time SVC are aware of the demands of SVC duties and that SVC are not adversely rated for prioritizing SVC duties.

b. In situations where the interests of the victim do not align with the government, the CLA and the SVCOPM will provide technical advice and professional responsibility supervision in accordance with AR 27–26. Communications between SVC and CLA/SVCOPM are an extension of the SVC’s representation of the client and as such will be protected under the strict standards of confidentiality (see para 8–6e).

c. Upon receipt of credible information that, if substantiated, would raise a substantial question as to an SVC’s honesty, trustworthiness, or fitness as a lawyer, the SJA should immediately contact the SVCOPM to discuss suspending the SVC from seeing clients and initiating a credibility determination or preliminary screening inquiry, as appropriate. In some situations it may be more appropriate for the SVCOPM to conduct the credibility determination or preliminary screening inquiry (see AR 27–1).

d. A legal assistance office will request SVC be assigned to represent the victim in the following cases:

(1) If the victim discloses that he or she is the victim of an alleged sex-related offense under 10 USC 1044e. In those cases, the victim will be referred to an SVC to determine eligibility.

(2) If the victim makes a restricted or unrestricted report of aggravated assault under UCMJ, Art. 128(b), Art. 128b(1), or 128b(5).

(3) Court-martial charges are preferred, the trial counsel requests an interview with the victim with the intent to prefer charges, or an adverse administrative separation or officer elimination hearing is initiated against the subject.

(4) In any other case where the legal assistance attorney as the primary attorney believes that SVC representation would further representation and the legal assistance office and SVC PM agrees to assign an SVC to the victim.

(5) If a victim is assigned both a legal assistance attorney and an SVC, the legal assistance attorney’s representation will focus on issues traditionally falling within the purview of a legal assistance office. These issues include, but are not limited to, marriage, legal separation, divorce, financial nonsupport, child custody and visitation, among other issues listed in paragraph 3–5. The SVC’s representation will focus on UCMJ and adjudicative matters. If these issues should become in conflict with one another, the legal assistance attorney and the SVC will seek advice through their respective technical chains.

7–7. Client eligibility

a. Subject to the following modifications, individuals eligible for legal assistance services under paragraphs 2–4a(1)–(8), 2–4a(9)(b) and 2–4a(14) who have made a report of a sex-related offense as defined in 10 USC 1044e(g) are eligible for SVC services. The report of sexual assault may be either restricted or unrestricted (see DoDD 6495.01 and DoDI 6495.02). Individuals who would be eligible for SVC services, but have not yet made either a restricted or unrestricted report of a sex-related offense may consult a legal assistance attorney. Except in the case of RA Soldiers, clients will be eligible for SVC services only when the Army has jurisdiction over the accused for criminal or adverse administrative actions.

(1) RA Soldiers who report that they are a victim of a sex-related offense under other state or federal laws are eligible for limited SVC assistance. RA Soldiers who were victims of a sex-related offense prior to enlistment or commissioning are generally not eligible for SVC representation, but may consult an SVC in their role as a legal assistance attorney.

(2) Servicemembers and retirees from other armed forces and their dependents generally are represented by an SVC from that armed force.

(3) RC members are eligible for SVC representation by a RC SVC under the following circumstances:

(a) When the sex-related offense occurred during a period in which the individual served or is serving in Title 10 or Title 32 status (for example, annual training, battle assembly, IDT, AGR, or active duty operational support tours).

(b) When the circumstances of the reported sex-related offense have a nexus to the military service of the victim.

(4) RC members who are the victim of a sex-related offense that occurred while the victim was serving in an active duty status may also request representation by a RA SVC.

(5) Dependents of RC Soldiers are eligible for SVC services regardless of their sponsor's duty status.

(6) DoD civilian employees who are otherwise ineligible for legal assistance services are eligible for SVC services. The scope of SVC services provided to these DoD civilian employees will be strictly limited to assistance with the investigatory, military justice or adverse administrative action processes. A DoD civilian employee eligible for SVC services under this provision is not eligible for any other legal assistance services.

b. Individuals eligible for SVC services at the time of the reported sex-related offense remain eligible for SVC services.

c. Individuals eligible for SVC services remain eligible for SVC services regardless of the outcome of any criminal investigation.

d. If a civilian perpetrator is accompanying the armed forces during overseas military operations, DoD will consult with the DOJ to determine whether the DOJ will exercise jurisdiction over the civilian. SVC may represent the victim's interest during the criminal investigative process and advocate for prosecution by the DOJ. SVC may provide legal assistance services to the victim, but may not represent the victim in civilian court.

e. Reserve Officer Training Corps (ROTC) cadets are eligible for SVC services similar to Army Reserve Soldiers. However, due to the unique considerations related to a cadet's duty status, questions regarding ROTC cadet eligibility must be directed to the SVC PM.

f. The SVC PM may grant exceptions to client eligibility in accordance with paragraph 1-4a(4).

7-8. Administrative and logistical support

a. SVC are legal assistance attorneys in the OSJA and will be provided logistical and administrative support commensurate to other assigned OSJA personnel.

b. OERs will be processed through the local OSJA. CLAs will provide OER input for SVC who are not rated by the CLA.

c. The OSJA will provide the SVC with a cellular telephone and a laptop with virtual private network capabilities. OSJAs may request funding from the SVCOPM for these expenses (see para 7-10).

d. When RC Soldier-victims participate in matters related to the military justice process arising out of a sex-related offense, such as a military law enforcement interview, trial counsel/defense counsel interview, court-martial, and so on, they must be offered Title 10 orders rather than invitational travel orders.

7-9. Reporting

a. SVC must maintain client information through the legal assistance software designated by LAPD (see para 9-2).

b. The CLA or senior SVC for each installation must submit a consolidated quarterly report utilizing the template provided by the SVCOPM. Reports will be submitted through the SVC RM, to the SVCOPM no later than 1 January, 1 April, 1 July, and 1 October for the preceding quarter.

c. CLAs must inform the SVCOPM, through the SVC RM, when new counsel are assigned to perform SVC duties and whether they are serving as a full-time or part-time SVC.

d. Subject to the rules of professional responsibility, SVC, through the CLA, will immediately notify the SVCOPM, through the SVC RM, whenever any of the following events occur (see AR 27-26):

(1) SVC believe they are the subject of retaliation.

(2) Cases with the potential to receive media attention arise.

(3) The victim is in contact or communication with Army senior leadership (DA level) or Members of Congress.

(4) When there is a change in duty assignment, office phone number, or government cell phone number.

(5) Upon closing their final case.

7–10. Funding responsibilities

- a.* Local units and OSJAs are responsible for funding office supplies and any resources needed for SVC to accomplish their daily mission. SVC or the OSJA may request funding for additional equipment and resources from the SVCOPM. SVC should work with their legal administrator to facilitate these unfunded requirements.
- b.* Travel related to performance of SVC duties is funded by the SVCOPM. OSJA legal administrator should assist SVC with the Defense Travel System (DTS).
- c.* Training related to performance of SVC duties is funded by the SVCOPM. SVC seeking to attend conferences must comply with DA conference approval requirements. Conference attendance funded by the SVCOPM must be processed for approval through the SVCOPM.
- d.* USAR SVC request travel and man-day funding through the SVCOPM.
- e.* National Guard SVC request travel and man-day funding through NGB Office of the Chief Counsel.

Chapter 8 Professional Matters

Section I

General

8–1. Professionalism

- a.* Attorneys providing legal assistance, including SVC, will exhibit the highest professionalism at all times. This professionalism will be reflected in—
 - (1) The appearance and quality of all work performed.
 - (2) The conduct and demeanor of attorneys and all those assisting them.
 - (3) The appearance of furniture, equipment, offices and other work areas, and reception and waiting rooms.
- b.* Attorneys providing legal assistance to clients will form attorney-client relationships with them, and will fully represent them within the bounds of the law, this regulation, and professional ethics.

8–2. Liaison with civilian bar

- a.* Attorneys providing legal assistance should establish and maintain liaison with national, state, and local bar organizations. Membership in professional organizations, especially local branches involved in providing legal services pertinent to the military community, and attendance at professional meetings and seminars is encouraged. See AR 360–1 regarding the use of appropriated funds to purchase such memberships.
- b.* Upon receipt of necessary approvals, to include any applicable DA conference approval requirements (see AR 1–50), legal assistance attorneys may attend meetings of private professional organizations at government expense or while on permissive temporary duty (see AR 600–8–10).
- c.* Legal assistance attorneys are encouraged to provide presentations to their civilian counterparts on military legal assistance issues.

8–3. Liability

- a.* An attorney who provides legal assistance under this regulation is performing an official function of the U.S. Army. Nevertheless, each action taken or opinion given by an attorney on behalf of a legal assistance client will reflect that attorney's individual, professional judgment.
- b.* The exclusive remedy for injury or loss of property caused by the negligent or wrongful act or omission of any attorney, non-lawyer assistant, authorized volunteer, or other member of an Army legal assistance office acting within the scope of their duties is a claim against the United States (see 10 USC 1054). If the acts complained of occurred in the United States, its possessions, commonwealths, or territories, the provisions of the Federal Torts Claims Act (28 USC 2671–2679) control. If the acts complained of occurred in a foreign country, the provisions of the Military Claims Act (10 USC 2733–2738) control.
- c.* If an action for negligence has been filed, the defendant should be immediately referred to the U.S. Army Litigation Division in accordance with AR 27–40, chapter 4. Upon certification filed with the court by the Attorney General of the United States that the legal assistant provider was acting within the scope of their office or employment at the time the incident out of which the claim arose, the United States will be substituted as the defendant. Information on representation by DOJ can be found in Part 50.15, Title 28, Code of Federal Regulations (28 CFR 50.15).

d. Soldiers appointed as SD Soldiers and other individuals who assist with the preparation of tax returns in Army legal assistance offices are considered to be employees for the purposes of the Federal Tort Claims Act and the Military Claims Act.

e. Volunteers who assist those providing legal assistance pursuant to 5 USC 3111 or DoDI 1100.21, and paragraph 4–6 of this regulation are considered to be government employees for purposes of the Federal Torts Claims Act and the Military Claims Act.

Section II

Professional Conduct

8–4. General

a. JAs or civilian attorneys authorized to provide military legal assistance, may provide that assistance in any jurisdiction, notwithstanding any law regarding the licensure of attorneys (see 10 USC 1044(d)).

b. Attorneys providing legal assistance exercise independent professional judgment on behalf of clients within the scope of the legal assistance program. Each attorney is professionally responsible for their own work product. Supervisory lawyers are responsible for the work of their subordinates as provided in applicable ethics regulations. Legal assistance practice is subject to the professional responsibility rules of AR 27–26. Additional guidance in resolving ethics/professional responsibility issues may be found in the ABA Model Rules of Professional Conduct, ABA formal and informal ethics opinions, and the ethics rules and opinions of the jurisdiction(s) where the attorney is licensed and in which practice occurs.

c. Attorneys providing legal assistance will not make statements or send correspondence that purports to be on behalf of the United States, the U.S. Army, or the command or legal office to which they are assigned. Those seeking an official interpretation or position should be referred to the person responsible for such matters (for example, an official legal opinion on the interpretation of an Army regulation should be requested through the SJA, and, when appropriate, to the proponent of the regulation).

d. Attorneys providing legal assistance should communicate directly with one another and with their supervisory lawyer, if not precluded by a conflict of interest, whenever necessary and appropriate to resolve a client’s legal issues. Assistance may also be sought from the technical chain of supervision, from instructors within the Client Services Branch of the Administrative and Civil Law Department at TJAGLCS, and from attorneys within the LAPD. Questions about Army legal assistance policy should be addressed to LAPD.

e. Subject to local SJA, CLA, and/or supervisory lawyer implementing guidance, legal assistance attorneys—

(1) Are encouraged to continuously evaluate Army Legal Assistance Program directives, policies, and procedures, and to suggest modifications that will improve the delivery of legal assistance and advance the mission of the program. Recommendations to modify policies or directives should be forwarded, in writing, through the CLA or SJA to the Chief, LAPD.

(2) May, when acting on behalf of a client, communicate with any person or agency, including persons and organizations within the DoD, provided the communication identifies the attorney as a legal assistance attorney representing an individual client rather than the United States.

8–5. Ethical standards

a. AR 27–26 sets forth the rules of professional conduct for all who provide legal assistance within the Army. See AR 27–1 and JALS Publication 1–1 for circumstances when TJAG approval is required before engaging in the private practice of law.

b. An attorney who provides legal assistance should refer a case to another lawyer whenever the client’s needs exceed either the attorney’s competence or authority to render assistance (see para 4–3). If the scope of legal assistance is limited by superior order, by this or another regulation, or by law, the attorney should advise the client of such limitation at the earliest opportunity.

c. If the legal assistance attorney is reassigned, otherwise unable to complete the representation, or has completed the representation of a client, the attorney must ensure that the attorney-client relationship is properly terminated. If the termination is due to a reassignment or an inability to complete the representation, the attorney must refer the client to another attorney (see para 4–3). Until the attorney-client relationship is properly terminated, an attorney providing legal assistance must carry through to conclusion all matters undertaken for a client. AR 27–26, rule 1.16 requires an attorney to give reasonable notice of pending termination to the client, allow time for employment of other counsel, if applicable, and to return any papers or property to which the client is entitled. The notice of termination should be in writing.

d. No one may request or accept any benefit or gratuity from any source as payment for performing official duties pursuant to this regulation. If an attorney or paralegal receives a perishable gift and it is not practical to return the gift, the gift may be given to an appropriate charity, shared within the recipient's office, or destroyed. The receipt of any benefit or gratuity will be promptly disclosed to the supervisory lawyer.

(1) A legal assistance attorney may not request or accept any actual or constructive compensation in connection with the referral of a matter to a lawyer in private practice.

(2) A legal assistance attorney may not refer a client with whom the attorney has communicated substantively on a legal assistance matter to themselves, or to the firm in which they work in a private capacity, for the same general matter for which the client sought legal assistance except on a no-fee basis. The same general matter includes one or more types of cases within any one of the ten categories of cases listed within paragraph 3–5, or which arises out of the same factual situation or course of events.

(3) Unless prohibited by other law or regulation, a legal assistance attorney, not on active duty, may represent an eligible client in a private capacity for a fee concerning new matters, even though an attorney-client relationship was established first in a legal assistance capacity for a different matter.

e. Legal assistance personnel will not maintain a client trust fund of any kind and will not advance funds to a client for any purpose.

f. Legal assistance personnel are reminded to ensure that their actions conform to the standards of conduct and ethics applicable to military personnel and members of the executive branch of the Government (see DoD 5500.7–R and 5 CFR 2635). Situations that may violate these restrictions include taking any official action, including making a referral, when doing so will have a direct and predictable effect on the financial interests of the legal assistance provider, anyone in the provider's household, or any relative with whom the provider has a close personal relationship; and taking any official action with regard to entities with whom the provider is negotiating for employment, or receiving a gift from a prohibited source.

8–6. Maintaining confidentiality of information relating to representation of a client

a. All information relating to representation of a client is confidential. The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege in the law of evidence (see MRE 502), and the rule of confidentiality established in rules of professional conduct (see AR 27–26, rule 1.6). The duty of confidentiality owed to clients is broader than the attorney-client privilege, which applies only in judicial and other proceedings in which a lawyer may be required to produce evidence concerning a client. The duty of confidentiality applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. The identity of a client, or prospective client, and whether or not that individual has sought or received legal assistance services, is information relating to the representation and is confidential.

b. A lawyer may not disclose information covered by the duty of confidentiality except as authorized or required by AR 27–26. Those providing legal assistance will carefully guard the attorney-client relationship and protect the confidentiality of all information related to their clients. If a client authorizes the disclosure of confidential information against the advice of counsel, or which harms the client's legal interests, such authorization should be obtained in writing and a copy of such authorization should be maintained by the attorney.

c. Adequate steps must be taken to prevent unauthorized disclosures of confidential information. At a minimum, this includes training of all legal assistance personnel in the ethical requirements of confidentiality, proper safe-guarding of client information and attorney work product, physical security, proper disposal of office and attorney records, and respect for privacy during client interviews. In-person screening of legal assistance clients, whether by an attorney or non-lawyer assistant, should be accomplished in a manner to ensure confidentiality (for example, screening interviews should not be conducted in a public waiting area or open office and clients should not be required to complete a sign-in sheet that can be viewed by others).

d. The attorney-client relationship requires personal and confidential communication. Absent instructions from the client to the contrary, advice will not be provided to or through a third party intermediary. This restriction does not apply to the use of a translator, sign language interpreter, or like individual necessary for communication between the attorney and the client, provided the third party intermediary is provided to facilitate the attorney-client relationship and has agreed to maintain the confidentiality of all information conveyed through the intermediary.

e. Supervisory lawyers, subject to the consideration in paragraph 8–7*c*, are authorized to review all office administrative activities, procedures, and in-coming or out-going correspondence. All client documents segregated for review by supervisory lawyers outside the legal assistance office as part of either a quality assurance program or chronological reading file should be redacted so that no identifying information is visible linking the document to a particular client. Additionally, the CLA should screen the documents to ensure that issues which might cause a conflict of

interest for supervisory lawyers advising the command are removed prior to such supervisory review. Supervisors of attorneys providing legal assistance will maintain and enforce the same strict standards of confidentiality.

8–7. Conflicts of interest

a. Those providing legal assistance will avoid conflicts of interest, or the appearance of a conflict of interest. A conflict may prevent an attorney, and in some instances, all the attorneys in an Army legal office from providing legal assistance to a particular client. See AR 27–26, appendix B, rules 1.7 through 1.10 regarding conflicts of interest and imputed disqualification. It is critical that legal assistance providers understand the different rules that apply to a conflict with a current client (Rule 1.7) and with a former client (Rule 1.9).

b. Supervisory lawyers will establish procedures to ensure that—

(1) All clients are screened to avoid inadvertent conflicts.

(2) Potential clients who cannot be assisted because of a conflict are referred in accordance with paragraph 4–3. The Rules of Professional Conduct prohibit an attorney from revealing the existence of a conflict of interest or the name of the client that creates the conflict, to a prospective client. A prospective client who cannot be assisted because of a conflict of interest should be informed that the particular office or attorney does not have the ability to provide the requested assistance, but that the prospective client may be referred to another legal assistance provider or a civilian attorney.

c. Supervisory lawyers and attorneys providing legal assistance will be sensitive to potential conflicts of interest. For example, if an attorney advises a Soldier on an appeal from an adverse evaluation report or on a financial liability investigation, a supervisory lawyer should neither provide advice to that attorney on that action, nor supervise or review the work product of that attorney-client relationship if they may later be called upon to advise the command on the same matter. This precaution especially applies to SJAs, DSJAs, and command or brigade JAs. Additionally, attorneys who provide legal assistance should advise their supervisory lawyers of the potential for such conflicts before requesting assistance or providing information related to the representation for review.

d. Attorneys who share office space, non-lawyer assistants, and other legal resources are prohibited from providing legal assistance to both parties involved in a legal dispute (other than referral to another legal assistance office or provision of a list of attorneys in accordance with paragraph 4–3). This does not prohibit an attorney from preparing wills for spouses if the spouses have been advised of the potential conflict of interest issue and signed a dual representation letter. Other attorneys in the same office, however, that do not share office space or non-lawyer assistants may provide legal assistance with approval of the SJA when other alternatives are not feasible (see AR 27–26, appendix B, rule 1.10, regarding imputed disqualification). SJAs will provide guidance on issues and cases involving imputed disqualification.

e. Attorneys considering providing legal assistance to prospective clients with potential conflicts of interests will disclose the risks of dual representation, including limitations on the duty of confidentiality and the effect of any potential conflict of interest, and obtain the written consent of each client before undertaking legal representation (see fig 8–1.) These requirements specifically apply in the following cases (this is not an exhaustive list):

(1) Joint requests by spouses for the preparation of wills or other estate planning documents, when either spouse has a child from a prior relationship, or other indicia of divergent interests exist.

(2) Joint requests by spouses for assistance with a step-parent adoption.

(3) Requests (or apparent requests) for legal assistance on behalf of a third party (for example, a younger person accompanying an elderly client who requests a will or POA on behalf of the client).

f. A legal assistance office, with an assigned SVC, may not undertake the representation of a Servicemember on any matter relating to or arising from a report that the Servicemember has committed a sex-related offense. The Chief, LAPD may grant an exception to this prohibition.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

[Date]

Dear (clients):

You have asked me to perform estate planning services for you and your spouse. Those services will include a review of your assets and liabilities, meeting with you to determine your financial and estate planning objectives, and the preparation of various documents, which may include Wills, Powers of Attorney, Advance Medical Directives and/or other estate planning documents.

Because I will be representing both of you, the rules of professional responsibility for attorneys require that I tell you both that a potential conflict of interest might arise that could prevent me from continuing as your lawyer in your estate planning. It is in your interest, and our ethical obligation to each of you, to ensure you fully understand the considerations involved in such "dual representation." Because I will be representing both of you, you are considered my client, collectively. Accordingly, matters that one of you might discuss with me may be disclosed to the other one of you. Ethical considerations prohibit me from agreeing with either of you to withhold information from the other. In this representation, I will not give legal advice to either of you or make any changes in any of your estate planning documents without your mutual knowledge and consent. Of course, anything either of you discusses with me is privileged from disclosure to third parties.

If a conflict of interest arises between you during the course of your planning or if the two of you have a difference of opinion, I can point out the pros and cons of your respective positions or differing opinions. Ethical considerations prohibit me, as the lawyer for both of you, from advocating one of your positions over the other. Furthermore, I would not be able to advocate one of your positions versus the other if there is a dispute at any time as to your respective property rights or interests or as to other legal issues between you. If actual conflicts of interest do arise between you of such a nature that in my judgment it is impossible for me to perform my ethical obligations to both of you, it would become necessary for me to withdraw as your joint lawyer.

Once documentation is executed to put into place the planning that you have asked me to implement, my engagement will be concluded and our attorney-client relationship will terminate. If you need legal services in the future, please feel free to contact the local legal assistance office. In the meantime, I will not take any further action with reference to your affairs unless and until I hear otherwise from you.

Figure 8–1. Sample dual representation letter

After considering the foregoing, if you consent to my representing both of you jointly, I request that you sign and return the enclosed copy of this letter. If you have any questions about anything discussed in this letter, please let me know. Additionally, you should feel free to consult with another lawyer about the effect of signing this letter.

Sincerely,

[Insert Signature]

CONSENT

We have read the foregoing letter and understand its contents. We consent to having you represent both of us on the terms and conditions set forth. We agree that you may, in your discretion, share with both of us any information regarding the representation that you receive from either of us or any other source.

Dated: _____ [Insert Date] _____ [Signature]

Dated: _____ [Insert Date] _____ [Signature]

Figure 8–1. Sample dual representation letter–Continued

8–8. Potential client currently represented by counsel

a. Collaboration. Legal assistance attorneys may provide legal services to clients who are already represented in the same or a related matter by private civilian counsel. Allowing legal assistance personnel to collaborate with private civilian attorneys by sharing their military-specific expertise can be highly beneficial to the client. Prior to collaborating with any attorney outside of the local legal assistance office, legal assistance attorneys must obtain the client's consent to disclose information related to the representation pursuant to AR 27–26, rule 1.6.

b. Second opinions. Unless otherwise prohibited by AR 27–26 (for example, due to a conflict of interest), legal assistance attorneys may meet with prospective clients who already have private civilian counsel but want a second opinion from a legal assistance attorney, or who want to consult with a legal assistance attorney before discharging their current private counsel. Before rendering a second opinion, legal assistance attorneys should be cognizant of the duty to provide competent representation pursuant to AR 27–26, rule 1.1. When giving a second opinion, legal assistance attorneys must carefully consider the basis of the current attorney's advice, while being alert to the possibility that the advice may have been shaped by nuanced legal and practical considerations, local factors, or other variables, that may not be readily apparent. Complying with this rule, may require contacting the client's current attorney in order to obtain a copy of the client's case file and discuss the basis of the attorney's advice. Prior to contacting the existing attorney, the client's consent must be obtained pursuant to AR 27–26, rule 1.6.

c. Scope of services. In cases involving collaboration and second opinions, CLAs retain the authority to appropriately limit the scope of representation, or deny legal assistance services entirely (with regards to the specific legal matter at issue), on a case-by-case basis, in order to ensure the efficient allocation of legal assistance resources and prevent abuse of the legal assistance program.

8–9. Reporting alleged ethics violations

Alleged violations of the Rules of Professional Conduct contained in AR 27–26, and other applicable ethics rules, will be processed in accordance with AR 27–1.

8–10. Requesting advisory opinions

Army attorneys are encouraged to seek interpretations of ethics rules from their supervisory chain, LAPD, or the Standards of Conduct Office before requesting an ethics opinion from their state bar (see AR 27–26, rule 9.1).

Chapter 9 Administration

9–1. Legal assistance facility standards

a. Legal assistance offices (to include SVC and OSC offices) should present a professional appearance and should be constructed in a manner that will protect the privacy of all attorney-client communications (see AR 27–1).

b. The following standards represent minimum objectives, applicable to all legal assistance providers, to accomplish delivery of professional legal assistance services:

(1) *In garrison.*

(a) Attorney offices. Attorneys providing legal assistance must do so in individual private offices with full floor-to-ceiling walls and closable doors to safeguard the confidentiality of consultations with clients. Additionally, each legal assistance attorney's office should include the display of appropriate diplomas, bar certificates, or other credentials.

(b) Paralegal areas. Adequate space must be available for use by legal assistance support staff when assisting clients to ensure that client confidentiality is protected.

(c) Client waiting area. Legal assistance offices should have a waiting area with adequate furnishings for client use while awaiting attorney consultation or other services.

(d) Library/automated legal research. Legal assistance providers require internet access and adequate library or automated legal research support.

(2) *In an Soldier Readiness Program or field environment.* Attorneys providing legal assistance must take appropriate measures to ensure that client confidentiality is maintained.

9–2. Legal assistance records management (recordkeeping) requirements

a. All Army records management (recordkeeping) requirements (record, form, and report numbers) for this prescribing directive are addressed and located in RRS–A.

b. In general, legal assistance providers may maintain only those official records and files essential to the operation of the office.

c. Those providing legal assistance will record client information and all legal assistance services rendered in the legal assistance database software designated by LAPD. DA Form 2465 (Client Legal Assistance Record) may be filed alphabetically in a manner and location that protects the clients' information.

(1) DA Forms 2465 contain private information that is not accessible to the public or to persons within the command except as permitted by the Privacy Act. Statistical and administrative information contained in legal assistance productivity reports may be provided in accordance with this regulation.

(2) DA Forms 2465 may be used, but are not required, for routine services such as notarizations and powers of attorney. At minimum, these services will be accounted for and reported as mass assistance through the legal assistance software designated by LAPD.

(3) Whether maintained electronically or in printed form, DA Forms 2465 are designated as "keep" records for AR 25–400–2 purposes, and will be retained for 5 years following the completion of all of the client's legal assistance services and the occurrence of all events making it impossible for a conflict of interest to be imputed to the legal assistance office under AR 27–26, rule 1.18. DA Forms 2465 will be disposed of in the manner specified by AR 25–400–2 for Privacy Act records.

d. A legal assistance provider's access to legal assistance software containing client specific information will be terminated upon reassignment of the provider from the legal assistance office. On the first duty day of each month, the CLA will review authorized users and ensure that only current members of the office have such access.

e. Legal assistance client case files contain personal and confidential information about the client and the legal matter(s) for which the client received assistance, including documents related to the client's case. Client case files, hardcopy and electronic, must be stored by the legal office in a manner that protects the confidential client information.

Legal assistance client case files are designated as “keep” records for AR 25–400–2 purposes, and will be retained for 5 years after completion of the services and disposed of in the manner specified by AR 25–400–2 for Privacy Act records (files related to VITA income tax services will be maintained no longer than the period prescribed by the IRS, currently 3 years). Legal offices may maintain closed case files in their possession indefinitely if a future legal dispute or inquiry about the matters addressed in the files is reasonably foreseeable. Offices maintaining such files must preserve client confidences in accordance with all applicable rules of professional conduct. Nothing in this paragraph restricts a legal assistance attorney’s ability to retain personal files related to the representation in order to comply with state rules of professional responsibility. A legal assistance attorney’s personal files are not part of any Army system of records.

(1) When possible, original papers, documents, and other materials provided by a client should be photocopied and returned to the client immediately. The client should be counseled to retain the originals in a safe, accessible place.

(2) Clients are entitled to have access to materials contained in the client case files. The client will be provided access to the case file, and documents therein, in accordance with applicable ethical rules and the Privacy Act. If a legal assistance attorney believes there is a valid reason to deny a client or former client such access, counsel should consult their supervisory JA for guidance.

(3) Access to legal assistance case files normally is restricted to the legal assistance attorney directly assisting the client, other legal assistance personnel assisting the client, and appropriate supervisors. Additional limitations on access may be appropriate whenever an actual or potential conflict of interest exists, or when the client instructs that particular information be restricted to one (or more) attorney(s).

(4) Upon terminating representation of a client, all papers and property belonging to the client, or to which the client is otherwise entitled, will be promptly returned. The provider may retain in the case file copies of papers relating to the case to the extent permitted by law and ethical rules.

9–3. Reports

a. Report on legal assistance services. Software provided by LAPD allows for the preparation of management reports for each legal office concerning clients, cases, services, and workload. Attorneys providing legal assistance in any context, whether or not assigned to a dedicated legal assistance office, are required to provide data regarding all client cases and services through the LAPD provided software (see para 9–2*b*). The LAPD will have access to the reports through the software program.

b. Tax season after action report.

(1) Each legal office that provides tax assistance will submit an after action report to LAPD by 1 June each year for legal offices in the U.S., and by 1 July each year for legal offices located outside the U.S. and Puerto Rico. The report will document all tax assistance services provided during the period 1 January through 30 April of that year for Army legal offices in the U.S., and the period 1 January through 15 June of that year for legal offices located outside the U.S. and Puerto Rico.

(2) Tax assistance provided by attorneys in legal offices (separate from any tax center assistance) will be reported as cases and not as tax center mass assistance entries (see para 3–5*h*).

(3) Interim reports on tax assistance may be required to meet IRS VITA requirements.

9–4. Chief of Staff, U.S. Army Award for Excellence in Legal Assistance

a. The Chief of Staff, U.S. Army annually recognizes RA and RC legal offices that excel in providing Soldiers, retirees, and their family members the services authorized by this regulation.

b. This award is based on the performance of the office over the fiscal year. Annually, the LAPD will publish the award process and announce the deadline for submission of the application.

c. Commanders and supervisory lawyers will review their legal assistance program to determine whether it merits nomination for this award.

Appendix A

References

Section I

Required Publications

AR 27–1

Judge Advocate Legal Services (Cited in para 2–2*b*.)

AR 27–10

Military Justice (Cited in para 1–4*a*(6).)

AR 27–20

Claims (Cited in paras 3–5*d*(1).)

AR 27–26

Rules of Professional Conduct for Lawyers (Cited in para 1–4*d*(1).)

AR 27–40

Litigation (Cited in para 3–5*g*(3).)

AR 140–185

Training and Retirement Point Credits and Unit Level Strength Accounting Records (Cited in para 5–2*a*.)

AR 600–20

Army Command Policy (Cited in para 4–8*b*(2)(*a*).)

AR 608–1

Army Community Service (Cited in para 4–6*a*(7).)

AR 638–8

Army Casualty Program (Cited in para 2–4*a*(11).)

DoDI 1215.06

Uniform Reserve, Training, and Retirement Categories for the Reserve Components (Cited in para 5–2*c*.) (Available at <https://www.esd.whs.mil/>.)

MRE 502

Lawyer-client privilege (Cited in para 8–6*a*.) (Available at <https://jsc.defense.gov/>.)

10 USC 1072

Definitions (Cited in para 2–4*a*(6).) (Available at <https://uscode.house.gov/>.)

20 USC 1091c

Readmission requirements for Servicemembers (Cited in para 6–2*a*(3).) (Available at <https://uscode.house.gov/>.)

38 USC 4301–4333

Uniformed Services Employment and Reemployment Rights Act (Cited in para 6–2*a*(3).) (Available at <https://uscode.house.gov/>.)

50 USC 3901–4043

Servicemembers Civil Relief Act (Cited in para 3–5*c*(1).) (Available at <https://uscode.house.gov/>.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication. The CFR is available at <https://www.ecfr.gov/>. DoD issuances are available at <https://www.esd.whs.mil/dd/>. The USC available at <https://uscode.house.gov/>.

AR 1–50

Army Conference Policy

AR 11–2

Managers' Internal Control Program

AR 15-6

Procedures for Administrative Investigations and Boards of Officers

AR 15-185

Army Board for Correction of Military Records

AR 20-1

Inspector General Activities and Procedures

AR 25-22

The Army Privacy and Civil Liberties Program

AR 25-30

Army Publishing Program

AR 25-55

The Department of the Army Freedom of Information Act Program

AR 25-400-2

Army Records Management Program

AR 27-55

Notarial Services

AR 40-68

Clinical Quality Management

AR 135-178

Enlisted Administrative Separations

AR 140-1

Mission, Organization, and Training

AR 140-111

U.S. Army Reserve Reenlistment Program

AR 190-5/OPNAV 11200.5D/AFU 31-218(I)/MCO 5110.1D/DLAR 5720.1

Motor Vehicle Traffic Supervision

AR 190-24/OPNAVINST 1620.2A/AFI 31-213/MCO 1620.2D/COMDINST 1620.1E

Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations

AR 215-1

Military Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities

AR 351-3

Professional Education and Training Programs of the Army Medical Department

AR 360-1

The Army Public Affairs Program

AR 380-67

Personnel Security Program

AR 570-4

Manpower Management

AR 600-4

Remission or Cancellation of Indebtedness

AR 600-8-2

Suspension of Favorable Personnel Actions (Flag)

AR 600-8-4

Line of Duty Policy, Procedures, and Investigations

AR 600-8-7

Retirement Services Program

AR 600–8–10

Leave and Passes

AR 600–8–14/AFI 36–3026 Volume 1/BUPERS Instruction 1750.10D/MCO 512.11E/COMDTINST M5512.1B/NOAA Corps Directives, Chapter 1, Part 5/Commissioned Corps Manual 29.2 Instructions 1 and 2
Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel

AR 600–8–19

Enlisted Promotions and Demotions

AR 600–8–24

Officer Transfers and Discharges

AR 600–8–101

Personnel Readiness Processing

AR 600–37

Unfavorable Information

AR 600–38

The Meal Entitlement Management System

AR 600–105

Aviation Service of Rated Army Officers

AR 600–110

Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus

AR 601–1

Assignment of Personnel to Army Recruiting Activities

AR 601–280

Army Retention Program

AR 608–10

Child Development Services

AR 608–18

The Army Family Advocacy Program

AR 608–99

Family Support, Child Custody, and Parentage

AR 614–100

Officer Assignment Policies, Details, and Transfers

AR 614–200

Enlisted Assignments and Utilization Management

AR 623–3

Evaluation Reporting System

AR 635–40

Disability Evaluation for Retention, Retirement, or Separation

AR 635–200

Active Duty Enlisted Administrative Separations

AR 735–5

Relief of Responsibility and Accountability

DA Pam 25–40

Army Publishing Program Procedures

DA Pam 25–403

Army Guide to Recordkeeping

DoD 5500.7–R

Joint Ethics Regulation (JER)

DoDD 6495.01

Sexual Assault Prevention and Response (SAPR) Program

DoDI 1100.21

Voluntary Services in the Department of Defense

DoDI 1332.18

Disability Evaluation System

DoDI 1350.04

Legal Assistance Matters

DoDI 6495.02

Sexual Assault Prevention and Response (SAPR) Program Procedures

EO 13607

Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members (Available at <https://obamawhitehouse.archives.gov/>.)

JALS Publication 1–1

Personnel Policies (Available at <https://www.jagcnet.army.mil/>.)

NGR 680–2

Automated Retirement Points Accounting Management (Available at <https://www.ngbpmc.ng.mil/>.)

RCM 1106A

Matters submitted by crime victim (Available at <https://jsc.defense.gov/>.)

UCMJ, Art. 6b

Judge advocates and legal officers (Available at <https://jsc.defense.gov/>.)

UCMJ, Art. 27

Detail of trial counsel and defense counsel (Available at <https://jsc.defense.gov/>.)

UCMJ, Art. 32

Preliminary hearing required before referral to general court-martial (Available at <https://jsc.defense.gov/>.)

UCMJ, Art. 138

Complaints of wrongs (Available at <https://jsc.defense.gov/>.)

UCMJ, Art. 139

Redress of injuries to property (Available at <https://jsc.defense.gov/>.)

5 CFR 2635

Standards of Ethical Conduct for Employees of the Executive Branch (Available at <https://www.gpo.gov/>.)

5 USC 3111

Acceptance of volunteer service

10 USC 101(a)(13)

Armed Forces: definitions; contingency operation

10 USC 1044

Legal assistance

10 USC 1044b

Military powers of attorney: requirement for recognition by States

10 USC 1044c

Advance medical directives of members and dependents: requirement for recognition by States

10 USC 1044d

Military testamentary instruments: requirement for recognition by States

10 USC 1044e

Special Victims' Counsel for victims of sex-related offenses

10 USC 1054

Defense of certain suits arising out of legal malpractice

10 USC 1565b

Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates

10 USC 1588

Authority to accept certain voluntary services

10 USC 2731–2740

Military Claims Act

10 USC 2733–2738

Military Claims Act

10 USC 7013

Secretary of the Army

28 USC 2671–2679

Federal Torts Claims Act

Section III**Prescribed Forms**

Unless otherwise indicated, DA Forms are available on the Army Publishing Directorate website (<https://armypubs.army.mil/>).

DA Form 2465

Client Legal Assistance Record (Prescribed in para 9–2c.)

Section IV**Referenced Forms**

Unless otherwise indicated, DA Forms are available on the Army Publishing Directorate website (<https://armypubs.army.mil/>); DD Forms are available from the Executive Services Directorate website (<https://www.esd.whs.mil/directives/forms/>).

DA Form 11–2

Internal Control Evaluation Certification

DA Form 1380

Record of Individual Performance of Reserve Duty Training

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 3349–SG

Physical Profile Record

DD Form 2793

Volunteer Agreement for Appropriated Fund Activities & Non Appropriated Fund Instrumentalities

Schedule C (1040 Form)

Profit or Loss From Business (Sole Proprietorship) (Available at <https://www.irs.gov/>)

SGLV Form 8286

Servicemembers' Group Life Insurance Election and Certificate (Available at <https://www.benefits.va.gov/>)

VETS/USERRA/VP Form 1010

Eligibility Data Form (Available at <https://webapps.dol.gov/>)

Appendix B

Internal Control Evaluation

B–1. Function

The function covered by this checklist is compliance with legal assistance pursuant to AR 11–2 and this regulation.

B–2. Purpose

The purpose of this checklist is to assist chiefs of legal assistance and SJAs in evaluating their key internal controls. It is not intended to cover all controls.

B–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

B–4. Test questions

a. Facilities and Administration.

- (1) Do legal assistance facility standards meet or exceed the requirements of paragraph 9–1 of this regulation?
- (2) Are client data and services properly documented in LAPD approved software in accordance with paragraph 9–2 of this regulation?
- (3) Are legal assistance records maintained in accordance with paragraph 9–2 of this regulation?
- (4) Are timely reports submitted as required by paragraph 9–3 of this regulation?
- (5) Are office administrative procedures, reports, client satisfaction surveys, and legal assistance correspondence reviewed in accordance with paragraphs 1–4c(2)(f) and 8–6e of this regulation?

b. Managing the Special Victims' Counsel Program.

- (1) Have all SVCs been designated by the SJA, completed SVC training, and been certified by TJAG as required by paragraph 7–4 of this regulation?
- (2) Have requests for SVC exceptions to this regulation been submitted and approved by the SVC PM?
- (3) Does the OSJA provide adequate resources in support of the SVC program?
- (4) Does the SJA protect the professional integrity of SVC in accordance with paragraph 1–4c(3)(d) of this regulation?
- (5) Is approval obtained from the SVCOPM prior to engaging in the representation of a minor as required by paragraph 7–5b of this regulation?
- (6) Do adequate screening procedures exist to ensure SVC services are only provided to eligible clients in accordance with paragraph 7–7 of this regulation?
- (7) Are required reports submitted in accordance with paragraph 7–9 of this regulation?

c. Managing the Legal Assistance Program.

- (1) Are minimum required legal assistance services provided in accordance with paragraph 1–4c(1) of this regulation?
- (2) When one or more attorneys provide legal assistance services on a full or part-time basis as part of a duty or job description, are all of the required legal assistance services provided in accordance with paragraphs 1–4c(2) and 3–3 through 3–5 of this regulation?
- (3) Are notices of approved temporary variations, and requests to continue variations for 30 or more days forwarded to LAPD in accordance with paragraph 1–4c(2)(e) of this regulation?
- (4) Are all eligible clients provided legal assistance services in accordance with paragraph 1–4c(2)(j) of this regulation, unless an exception is authorized under paragraph 2–5b?
- (5) Is the Chief, LAPD notified when a non-Army legal assistance office denies services to Army clients in accordance with paragraph 1–4c(2)(l) of this regulation?
- (6) Do adequate screening procedures exist to ensure services are only provided to eligible clients in accordance with paragraph 2–4 of this regulation?
- (7) When legal assistance services are limited, are the procedures in paragraph 2–5 of this regulation complied with?
- (8) Does the preventive law program comply with paragraph 3–2 of this regulation?

(9) Are adequate procedures in place to ensure that all services provided are within the scope of the legal assistance program in accordance with chapter 3, section II of this regulation?

(10) In legal assistance offices with full or part-time SVCs, are clients seeking assistance on matters resulting from allegations of sex-related offenses referred to USATDS in accordance with paragraph 3–6a of this regulation?

(11) Is all in-court representation authorized by the SJA or Chief, LAPD in accordance with paragraph 4–2 of this regulation?

(12) Are referrals managed and referral lists maintained in accordance with paragraph 4–3 of this regulation?

(13) If a tax center is established, are the requirements of the IRS VITA program and paragraph 4–4 of this regulation complied with?

d. Estate planning services.

(1) Do legal assistance personnel use will worksheets as required by paragraph 3–5b(3) of this regulation?

(2) Are wills drafted using appropriate will drafting software as required by paragraph 3–5b(4) of this regulation?

(3) Are Louisiana and Puerto Rico wills referred out or otherwise prepared in accordance with paragraph 3–5b(5) of this regulation?

(4) Are all will executions supervised by an attorney as required by paragraph 3–5b(6) of this regulation?

(5) Do all MTIs, military powers of attorney, and Military AMDs have the preamble required by paragraph 4–8a of this regulation?

(6) Is every Soldier who receives legal advice on estate planning matters also advised on the designation of SGLI, FSGLI, and other life insurance beneficiaries as required by paragraph 4–8b(1) of this regulation?

e. Deployment Planning. Do staff, brigade, and other command JAs plan for the provision of legal assistance services in support of deployments in accordance with chapter 6 of this regulation?

f. Professional Responsibility.

(1) Have all legal assistance providers been appropriately trained to ensure the competent provision of legal assistance services in accordance with AR 27–26 and paragraph 2–3 of this regulation?

(2) Are adequate measures in place to maintain client confidentiality in accordance with AR 27–26, rule 1.6 and paragraph 8–6 of this regulation?

(3) Are all clients screened for potential conflicts of interest in accordance with paragraph 8–7 of this regulation?

(4) Does the SJA approve intra-office representation of conflict of interest cases in accordance with paragraph 8–7d of this regulation?

(5) Is written consent obtained prior to engaging in the representation of clients with potential conflicts of interest in accordance with paragraph 8–7e of this regulation?

(6) Prior to using electronic media as a means of communication, is client consent obtained in accordance with paragraph 4–1c of this regulation?

(7) Are non-lawyer assistants supervised in accordance with paragraph 4–5 of this regulation?

(8) Are volunteers managed and supervised in accordance with paragraph 4–6 of this regulation?

(9) Is representation of a client properly terminated in accordance with paragraph 8–5 of this regulation?

g. Office of Soldiers' Counsel. Are cases involving DES or MAR2 processing, or TDRL periodic reviews referred to the OSC as required by paragraph 4–7 of this regulation?

h. Reserve Component Retirement Points. Are DA Forms 1380 prepared, certified, and submitted in accordance with paragraph 5–2 of this regulation?

B–5. Supersession

This evaluation replaces the evaluation for the Army Legal Assistance Program previously published in AR 27–3, dated 26 March 2020.

B–6. Comments

Help make this a better tool for evaluating management controls. Submit comments to The Judge Advocate General (DAJA–LA), 2200 Army Pentagon, Washington, DC 20310–2200.

Glossary

Section I

Abbreviations

ABA

American Bar Association

AFI

Air Force instruction

AGR

Active Guard Reserve

AMD

advance medical directive

AR

Army regulation

ARIMS

Army Records Information Management System

ARNG

Army National Guard

BUPERS

Bureau of Naval Personnel

CFR

Code of Federal Regulations

CLA

Chief of Legal Assistance

CLE

continuing legal education

COMDTINST

Commandant instruction

DA

Department of the Army

DA Form

Department of the Army form

DD Form

Department of Defense form

DES

Disability Evaluation System

DoD

Department of Defense

DoDD

Department of Defense directive

DoDI

Department of Defense instruction

DOE

U.S. Department of Education

DOJ

Department of Justice

DOL
Department of Labor

DSFLS
Director, Soldier and Family Legal Services

DSJA
deputy staff judge advocate

DVVRP
Domestic Violence Victim Representation Program

EO
executive order

ESGR
Employer Support of the Guard and Reserve

FCC
Family childcare

FCP
Family care plan

FPEB
formal Physical Evaluation Board

FSGLI
Family Servicemen's Group Life Insurance

ID
identification

IDT
inactive duty training

IPEB
informal Physical Evaluation Board

IRS
Internal Revenue Service

JA
judge advocate

JALS
Judge Advocate Legal Service

LAPD
Legal Assistance Policy Division

LOD
legal operations detachment

MAR2
Military Occupational Specialty Administrative Retention Review

MCO
Marine Corps order

MEB
Medical Evaluation Board

MEDCOM
U.S. Army Medical Command

MRE
Military Rules of Evidence

MTI
military testamentary instrument

MTOE
modified table of organization and equipment

NCO
noncommissioned officer

NGB
National Guard Bureau

NGR
National Guard regulation

NOAA
National Oceanic and Atmospheric Administration

OER
officer evaluation report

OSC
Office of Soldiers' Counsel

OSJA
Office of the Staff Judge Advocate

OTJAG
Office of The Judge Advocate General

PEB
Physical Evaluation Board

PHS
Public Health Service

PM
program manager

POA
power of attorney

RA
Regular Army

RC
Reserve Component

RCM
Rules for Courts-Martial

RM
regional manager

ROTC
Reserve Officer Training Corps

RRS–A
Records Retention Schedule–Army

RSC
Regional Supervisory Counsel

SCRA
Servicemembers Civil Relief Act

SD
special duty

SGLI

Servicemembers' Group Life Insurance

SJA

staff judge advocate

SMEBC

Soldiers' Medical Evaluation Board Counsel

SPEBC

Soldiers' Physical Evaluation Board Counsel

SRP

Soldier Readiness Program

SVC

special victims' counsel

SVCOPM

Special Victims' Counsel Office of the Program Manager

TDA

table of distribution and allowances

TDRL

temporary disability retired list

TJAG

The Judge Advocate General

TJAGLCS

The Judge Advocate General's Legal Center and School

TPU

troop program unit

UCMJ

Uniform Code of Military Justice

USAR

U.S. Army Reserve

USATDS

U.S. Army Trial Defense Service

USC

United States Code

USERRA

Uniformed Services Employment and Reemployment Rights Act

VETS

Veterans' Employment and Training Service

VITA

Volunteer Income Tax Assistance

Section II**Terms****Advance medical directive**

Defined by 10 USC 1044c(b).

Armed Forces of the United States

For the purpose of this regulation, this term includes the U.S. Army, U.S. Navy, U.S. Marine Corps, the U.S. Air Force, U.S. Space Force, and the U.S. Coast Guard.

Army legal office

A legal office within the RA, National Guard, or the USAR in which one or more attorneys provide legal assistance on a full- or part-time basis.

Combat zone

An area so defined by EO of the President of the United States.

Contingency operation

A military operation as defined by 10 USC 101(a)(13).

Emergency-essential civilian employee

Defined by 10 USC 1580.

Employment matters

Government civilian or private employment issues, such as hiring decisions, adverse personnel actions (including firing and revocation of security clearances), discrimination, unemployment benefits, workers' compensation, and other such employment matters.

In-court representation

Appearing, or providing notice of appearance, as counsel on behalf of a client in a military, civil, or civilian criminal proceeding, or taking any action which constitutes or could require counsel to appear as the attorney of record in any such proceeding.

No-fee basis

No fee for professional legal services is charged.

Principal residence

A family residence which, through rental or purchase, the client occupies, seeks to occupy, or once occupied, but, because of military orders, no longer occupies.

Private business activities

Personal and commercial business activities intended to result in an economic gain, including, but not limited to, sole proprietorships, partnerships, corporations, commercial investments, property purchased for the purpose of resale or lease, and commercial real estate dealings. This term does not include personal investments, such as individual retirement accounts or mutual funds, or the rental or sale of a principal residence or personal belongings of the type or in the quantity usually found within a principal residence.

Reduced-fee basis

The fee for professional legal services is reduced substantially below that which prevails for a particular legal service in the locale in which the civilian attorney practices.

Supervisory lawyer

A lawyer within an office or organization with authority over, or responsibility for, the direction, coordination, evaluation, or assignment of responsibilities and work of subordinate lawyers, paralegals, and other non-lawyer assistants.

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