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Law

LEGAL ASSISTANCE, NOTARY, AND PREVENTIVE LAW PROGRAMS

 COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

This instruction describes legal assistance, notary, and preventive law programs in the California Air National Guard. It implements 10 U.S.C. §1044a and California Civil Code §1183.5 which authorize certain military personnel to act as notaries.

Chapter 1
LEGAL ASSISTANCE PROGRAM
1.1. Authorization and Purpose.

1.1.1. Authorization. California Air National Guard judge advocates are authorized to provide personal legal assistance to eligible beneficiaries as provided in this instruction while performing inactive duty for training or active duty under Title 32, United States Code, or while on state active duty.

1.1.2. Purpose. Legal offices provide legal assistance for two purposes: (1), to ensure that personal legal issues of military members do not adversely affect commend effectiveness or readiness (*mission-related legal assistance*); and (2), to assist certain categories of beneficiaries as resources permit (*non-mission related legal assistance*). The legal assistance program thus is a key component in both accomplishing the mission and maintaining the readiness and morale of the California Air National Guard.

1.2. Scope. Legal assistance consists of advice on personal, civil legal issues to eligible beneficiaries. Legal assistance is not authorized for any other legal concern. Legal assistance officers may enter into attorney-client relationship with eligible beneficiaries for issues within the scope of legal assistance as defined herein.

1.2.1. Limits. Do not enter into any attorney-client relationship on these issues:

- Issues involving personal commercial enterprises, unless related to the Soldiers' and Sailors Civil Relief Act.
- Criminal matters under the Uniform Code of Military Justice (UCMJ), the California Military and Veterans Code (CMVC), or any other federal or state criminal law.
- Standards of conduct issues.
- Law of armed conflict issues.
- Official matters in which the Air Force or Air National Guard has an interest or is involved in the final resolution.
- Legal issues raised on behalf of another individual, even if that other individual is eligible for legal assistance.
- Drafting or reviewing real estate sales or closing documents, separation agreements, divorce decrees, or inter vivos trust.

1.3. Mission-related Legal Assistance. Base legal offices must provide mission-related legal assistance. Mission-related legal assistance covers the following categories:

1.3.1. National Guard, Reserve, and Active Duty Members. For National Guard and Reserve members, regardless of duty status, active duty members, and family members of National Guard, Reserve, and active duty members when such family members are entitled to identification cards, mission-related legal assistance includes:

- Wills, living wills, powers of attorney, and notary services.
- Dependent care issues.
- SSCRA issues.
- Veterans re-employment rights.
- Casualty affairs.
- Landlord-tenant issues.
- Tax assistance.
- Involuntary allotment issues.
- Issues deemed mission-related by HQ CA ANG, the wing or group commander, or the base SJA.

1.4. Non-Mission-Related Legal Assistance. Base legal offices may provide non-mission-related legal assistance to eligible beneficiaries as resources as expertise permit. SJAs may establish priorities and set limits among the specific non-mission-related legal assistance services their office offer and among the legible beneficiaries they serve.

1.4.1. Beneficiaries. Eligible beneficiaries include the following:

- National Guard, Reserve, and active duty members of the armed forces.
- Family members of National Guard, Reserve, and active duty members of the armed forces, when such family members are entitled to an identification card.
- Retired National Guard, Reserve, and active duty members of the armed forces.
- Family members of retired National Guard, Reserve, and active duty members, including unremarried former spouses, when such family members are entitled to an identification card.

1.5. Supervisory Responsibilities.

1.5.1. HQ CA ANG/JA:

- Monitors the legal assistance program in the California Air National Guard.
- Communicates with bar associations and other organizations as necessary to further the legal assistance program.
- With the concurrence of HQ CA ANG/CC, may add requirements for mission-related legal assistance and may limit non-mission-related legal assistance.
- Manages legal assistance for personnel assigned to HQ CA ANG, and with 129 RQW/JA, coordinates legal assistance for personnel assigned to HQ 162CCG and 149CCS.
- Coordinates legal assistance issues as necessary with other HQ CA ANG staff offices, the California Army National Guard and the Office of the Adjutant General.
- Communicates with other military legal offices as necessary to further the legal assistance program.

1.5.2. Base SJAs:

- Manage legal assistance at their offices consistent with this instruction.
- Communicate with bar associations and other organizations as necessary to further the legal assistance program.
- May add requirements for mission-related legal assistance and may limit non-mission-related legal assistance.
- May engage State Military Reserve judge advocates or civilian attorneys on a voluntary, *pro bono* basis to provide legal assistance under this instruction.
- Publicize the availability of legal assistance.

1.6. Ethical Responsibilities and Rules. SJAs administer the legal assistance program in strict compliance with the Air Force Rules of Professional Responsibility, the Rules of Professional Responsibility for Air National Guard Judge Advocates, and the California Rules of Professional Conduct.

1.6.1. Only attorneys give legal advice.

1.6.2. Information received from a client during legal assistance, attorney work-products, and documents relating to the client are legally confidential. Release them only with the client's express permission, pursuant to a court order, or as otherwise permitted by the Air Force Rules of Professional Responsibility, the Rules of Professional Responsibility for Air National Guard Judge Advocates, or the California Rules of Professional Conduct.

1.6.3. Legal assistance attorneys must have private office space available.

1.6.4. Legal assistance attorneys must avoid creating the impression that they represent the Air National Guard's interests in resolving the client's concerns or that the Air National Guard has an interest in the outcome of the matter. When writing letters on a client's behalf, do not use official letterhead. Include a statement in the letter making it clear the Air National Guard does not represent the client in resolving the matter.

1.6.5. Legal assistance attorneys may not interfere with an existing attorney-client relationship.

1.7. Referrals. People seeking legal assistance often need referral to other agencies or attorneys with whom they can deal directly. Follow these guidelines when making referrals:

1.7.1. For civilian criminal matters, refer the person to a civilian attorney.

1.7.2. For matters involving criminal action under the UCMJ or CMVC or adverse administrative action, refer the person to the appropriate military defense counsel.

1.7.3. For matters requiring special expertise or involving an appearance before a court, tribunal, or other governmental agency, refer to a civilian attorney. SJAs may decide that certain subject areas are beyond the expertise of their office prospectively, based on the subject.

1.7.4. For matters in which the person has already retained an attorney, refer to that attorney.

1.8. Referral Procedures. When referring persons to civilian attorneys, use the following procedures:

1.8.1. Direct the person to the local bar referral service when one exists. Obtain the consent of the local bar before making other referrals.

1.8.2. If an organized bar or lawyer referral service does not exist, refer the person to a local listing of attorneys or prepare a list of at least three attorneys, if possible. Do not refer a person to a civilian attorney by name, except with the advance approval of the SJA.

1.9. Records. Offices may record legal assistance visits on an AF Form 1175, Legal Assistance Record, or by using through any other system that compiles the required information about clients and services.

1.9.1. Do not keep formal files on legal assistance clients. Return original documents to clients as soon as possible.

1.10. Forms. Offices may use the AF Form 165, General Power of Attorney, and AF Form 831, Special Power of Attorney, for legal assistance.

Chapter 2

NOTARIAL ACTS AND OATHS

2.1. Notarial Acts.

2.1.1. Federal Authority. Title 10 U.S.C Section 1044a grants specific people the general powers of a notary public and of a consul of the United States. Notary acts performed under Title 10 U.S.C. Section 1044a are legally binding throughout the world for federal and non-federal purposes.

2.1.2. State Authority. California Civil Code section 1183.5 recognizes notarial acts performed by *officers* under 10 U.S.C. § 1044a.

2.1.3. Role of Notary. A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary and has the authority to administer oaths and affirmations. Every notary act affects the legal rights of others. SJAs will make sure that notaries do not abuse their authority.

2.1.4. Persons with Notary Authority. Under the authority of 10 U.S.C. Section 1044a, the following persons have the general powers of a notary public and of a consul of the United States for notary acts executed for eligible legal

assistance beneficiaries:

- Judge advocates on active duty or performing inactive duty training.
- Enlisted paralegals, E-4 or higher, on active duty or performing inactive duty training.

2.1.5. Who is Eligible to Use Military Notary Services. The following persons may receive notary service:

- Members of any of the U.S. Armed Forces.
- Persons eligible for legal assistance.

2.1.6. Other Military Members and Civilian Employees as Notaries. Commanders may name other military members and civilian employees to serve as notaries as part of their official duties. Any military member other than those designated in 10 U.S.C. §1044a or any civilian employee must qualify as a notary under the provisions of California Government Code §§ 8200 *et seq.* .

2.1.6.1. Designations of employees as notaries must be in writing. Reimbursement for expenses is authorized. These expenses may not exceed the actual cost of any fees, bonds, seals, perforating devices, and any other expenses incurred. Make reimbursements in accordance with local procedures.

2.1.6.2. Commanders may delegate their designation authority to the base SJA.

2.1.6.3. Non-JA notaries are bound by the same rules set out for attorney, paralegal and civilian notaries under this instruction. In addition, non-JA notaries must comply with the following rules:

2.1.6.3.1. The notary shall not exercise notary authority until the base SJA has determined that the notary has been properly trained.

2.1.6.3.2. The notary may not provide legal advice. The notary may not assist another in preparing or completing legal documents, including wills, deeds, contracts, leases, affidavits, separation agreements and powers of attorney, except for completing the notary jurat on such documents.

2.1.7. E-4 Paralegals as Notaries. Staff judge advocates will not allow E-4 paralegals to perform notary duties until they have received proper training. This means that only those E-4 paralegals who have been task-certified to perform notary acts as specified in the Career Field Education and Training Plan (CFETP) will act as notaries.

2.1.8. Authenticity and Seals. When signing documents in their official capacity, notaries specify the date and location, list their title and office, and use a raised seal or inked stamp citing Title 10 U.S.C. Section 1044a. SJAs are encouraged to acquire authenticating seals or stamps as soon as possible.

2.1.8.1. Powers of attorney should contain substantially the following statement:

“This is a military power of attorney as defined by 10 U.S.C. §1044b. Notwithstanding any requirement of form, substance, formality or recording for powers of attorney under state law, this power of attorney shall be given the same legal effect as a power of attorney prepared and executed under the laws of the state of California.”

2.9. Notary Guidelines. If you are exercising notary authority under Title 10 U.S.C. Section 1044a, follow these guidelines:

2.1.9.1. Before performing a notary act, verify the identity of each person whose signature you will notarize.

2.1.9.2. Do not accept any signature as genuine on the word of a third person. The person whose act is the subject of the notary act must personally appear before the notary.

2.1.9.3. Administer oaths for any sworn document. The person being sworn must appear before the notary.

2.1.9.4. Do not certify a copy of any document as accurate without comparing it against the original. Do not certify court records, birth certificates, divorce decrees or similar documents, or any document that on its face indicates that it may not be copied.

2.1.9.5. Maintain a notary log. The log must include the signer's name and signature, the type of document, date, and location. There is no prescribed form for the log as long as the required information is maintained.

2.2. Oaths.

2.2.1. The United States Code authorizes military members to administer oaths. SJAs will make sure their staff is familiar with the following:

2.2.2. Title 10 U.S.C. Section 936a, which grants specific people the authority to administer oaths for military administration, including military justice.

2.2.3. Title 10 U.S.C. Section 936b, which authorizes specific people to administer oaths when necessary to perform their duties.

2.2.4. Title 10 U.S.C. Sections 502 and 1031, which authorize U.S. Armed Forces commissioned officers to administer oaths of enlistment (section 502) and oaths of appointment in the Armed Forces (section 1031).

Chapter 3

PREVENTIVE LAW PROGRAM

3.1. Purpose. Educating commanders, members, and their families on legal issues prevents legal problems and reduces the time and resources needed to correct legal errors.

3.2. Scope. Because preventive law is very important, every base will have an active preventive law program. The SJA determines the extent of the base program.

3.2.1. Preventive law programs include information on all legal matters, not just legal assistance issues.

3.2.2. Preventive law programs stress those legal areas where the Air National Guard has a direct interest in the outcome. At a minimum include:

3.2.2.1. Deployment Preparation. Educate members on their personal legal needs for mobility readiness and deployment and their rights under the SSCRA and the Veterans' Reemployment Rights Act. Stress the importance of preparing wills, powers of attorney, and other necessary documents before deployment. Stress to commanders the importance of making predeployment planning a priority within their units.

3.2.2.2. Commander Awareness. Educate commanders and staff agencies on the full range of legal services provided by the legal office (not just legal assistance matters), the advantages to the command of timely use of these legal services, and all legal matters affecting command, including, as examples, fraud, waste and abuse, standards of conduct, environmental issues, contract issues, military justice issues, and claims matters. Communicate with commanders and staff agencies on the status of legal services.

3.2.2.3. Tax Assistance. Establish an active, aggressive, well-publicized tax program.

3.2.2.4. Legal Assistance and Consumer Protection. Provide information on personal, civil legal matters.

3.3. Program Management. Base SJAs appoint a preventive law officer to manage the base-level preventive law program. SJAs communicate with other military legal offices in the state and appropriate state agencies, such as consumer protection agencies. SJAs may utilize State Military Reserve judge advocates or civilian attorneys on a voluntary, *pro bono*, basis to conduct preventive law activities under this instruction.

Chapter 4

SCOPE OF AUTHORITY

4.1. General. Legal assistance, preventive law activities, and notarial services authorized in this instruction are within the scope of employment of CA ANG judge advocates, paralegals, and persons authorized to serve as notaries under paragraph 2.1.6. These personnel are entitled to the privileges, immunities, and defenses which may attach as a result of performance of duties under this instruction, including, but not limited to the provisions of Title 10, United States Code, section 1054, and section 392 of the California Military and Veterans Code.

4.2. Duty Status of Military Personnel. Activities authorized under this instruction may be conducted by CA ANG judge advocates and paralegals in any duty status, or when not in a duty status.

4.3. State Military Reserve Personnel. SMR personnel who render services under this instruction are not covered by section 1054 of Title 10, U.S. Code, or by section 392 of the California Military and Veterans Code. SMR personnel who conduct activities under this instruction will comply with the Air Force Rules of Professional Responsibility, the Rules of Professional Responsibility for Air National Guard Judge Advocates, and the California Rules of Professional Conduct.

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Commander