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From: Judge Advocate General

Subj: NAVY LEGAL ASSISTANCE PROGRAM

Ref: (a) 10 U.S.C. § 1044  
(b) JAGINST 5800.7F (JAGMAN)

Encl: (1) Legal Assistance Manual

1. Purpose. To promulgate policy, prescribe procedures, and assign responsibilities for execution of the Navy Legal Assistance Program.
2. Cancellation. JAGINST 5801.2A of 26 Oct 05 is cancelled.
3. Applicability. This instruction applies to all personnel providing legal assistance services, including all Navy judge advocates, civilian attorneys, and volunteer attorneys; legalmen; civilian paralegals; civilian legal assistants; and other personnel providing legal assistance to authorized beneficiaries under the auspices of the Navy Legal Assistance Program.
4. Background. Legal assistance has been provided for members of the armed forces since 1943. Congress officially recognized the military services' legal assistance programs in 1984 by enacting reference (a), which authorizes the provision of legal assistance "subject to the availability of legal staff resources." Though not separately funded, legal assistance is now perceived as one of the benefits of military service, as Navy personnel have been provided assistance with their personal legal affairs over the course of their military careers.
5. Policy. Legal assistance provided by the Navy legal community is a vital and meaningful contribution to the individual readiness, mission readiness, and general welfare of our servicemembers, their dependents, and our Navy. Given the importance and positive impact of legal assistance services, legal assistance providers will make every effort to satisfy the legal assistance needs of clients and customers.

Subj: NAVY LEGAL ASSISTANCE PROGRAM

6. Action. Chapter VII of reference (b) establishes key guidelines for the management and operation of the Navy Legal Assistance Program. Enclosure (1), the Legal Assistance Manual, amplifies and expands upon those guidelines via promulgation of policies and procedures to best execute Navy legal assistance. All personnel providing legal assistance services under the auspices of the Navy Legal Assistance Program shall execute their duties in accordance with these policies and procedures.



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**LEGAL ASSISTANCE MANUAL (JAGINST 5801.2B (Series))  
THE NAVY LEGAL ASSISTANCE PROGRAM**

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**LEGAL ASSISTANCE MANUAL (JAGINST 5801.2B (Series))  
THE NAVY LEGAL ASSISTANCE PROGRAM**

**I**

**LEGAL ASSISTANCE PROGRAM OVERVIEW**

1-1. Mission. The mission of the Navy Legal Assistance Program is to provide effective, efficient, and high quality legal assistance services to eligible persons, thereby enhancing morale, welfare, and combat readiness. As resources permit, legal assistance services will be provided to active duty service members and their family members, retirees and their family members, to other eligible persons listed in Chapter VII, section 0705 of JAGINST 5800.7F (the Manual of the Judge Advocate General, subsequently referred to as "JAGMAN"), and to those specifically authorized by the Judge Advocate General. An eligibility table is available in Appendix A of this Manual.

1-2. Authority. Authority to establish and operate the Navy Legal Assistance Program, as a necessary and proper incidence of accomplishing the Department of the Navy's mission, has been provided continuously since 1943. Legal assistance is provided in accordance with federal statute (10 U.S.C. §1044 et. seq.), regulation (32 C.F.R. Part 727, SECNAVINST 5430.27(series), JAGMAN Chapter VII), this Manual, and local Navy standard operating procedures. Legal assistance is subject to the availability of legal staff resources.

## II

**SUPERVISION AND COORDINATION OF LEGAL ASSISTANCE SERVICES**2-1. Authority of the Judge Advocate General

a. The Judge Advocate General has the statutory authority and responsibility to establish, manage, and supervise the Navy Legal Assistance Program. See 10 U.S.C. §1044 et. seq.

b. All active-duty, Reserve Component, and Department of the Navy civilian personnel who provide legal assistance services are subject to supervision and regulation by the Judge Advocate General and are subject to the regulations and guidelines contained in this Manual. This shall include but is not limited to:

(1) Active-duty and Reserve Component judge advocates, including independent Staff Judge Advocates (SJAs) and SJAs assigned to Region Legal Service Offices (RLSOs);

(2) Active-duty and Reserve Component legalmen, including independent duty legalmen;

(3) Commissioned officers of the rank 04 and above who provide notarial services;

(4) Active-duty officers certified as Legal Officers when providing notary services;

(5) Active-duty personnel on limited duty status who are assigned to provide administrative support to legal assistance or staff judge advocate offices;

(6) Qualified legal assistance volunteers (see 10 U.S.C. §1588, OPNAVINST 5380.1A, JAGINST 5803.1(series), and section 4-3 of this Manual).

c. All attorneys providing legal assistance services practice under the authority of the Judge Advocate General, and they shall conform to the rules set forth in JAGINST 5803.1 (Series), Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate General, and shall strive to uphold the highest standards of the legal profession.

2-2. Controlling regulations. This Legal Assistance Manual, the JAGMAN, and such other directives as the Judge Advocate



General may from time to time issue, constitute the controlling regulations for the delivery and operation of legal assistance services and shall be liberally construed to accomplish the mission of the Navy Legal Assistance program as set forth in section 1-1 of this Manual.

2-3. Scope and applicability. This Manual clarifies and expands upon the authorization for the legal assistance program set forth in 10 U.S.C. §1044 et. seq. and upon the guidelines set forth in the JAGMAN to accomplish the uniform delivery of legal assistance services across Naval Legal Service Command (NLSC) and the Fleet. All Navy legal assistance providers, as defined herein, shall comply with this Manual. This manual further clarifies and expands upon the general program guidance of the NLSC Manual and shall serve as the controlling guidance and standard operating procedures for the provision and delivery of all legal assistance services within the Navy.

a. A current copy of this Manual shall be maintained in an easily accessible format at the offices of all legal assistance services providers.

b. Any Navy legal assistance attorney may, via his or her chain of command, request permission to deviate from the provisions of this Manual, including the standardized forms. Such requests shall include a justification for the proposed deviation and shall be forwarded to the Deputy Assistant Judge Advocate General (Legal Assistance).

2-4. Management and coordination. Within the Department of the Navy, the following officers shall assist the Judge Advocate General in regulating the delivery of legal assistance services:

a. Commander, Naval Legal Service Command (CNLSC) and Chief of Staff-Region Legal Service Offices (COS-RLSO). The Deputy Assistant Judge Advocate General for Legal Assistance (Division Director, Code 16) shall manage the Navy's Legal Assistance Program; including:

(1) Issuing or causing to be issued such mandatory policy guidance, mandatory standardized forms, and best practices policies as may be necessary to further the mission of the program;

(2) Coordinating efforts to support legal assistance providers with information and resources to enhance their practices;

(3) To the extent practicable, coordinating the Navy Legal Assistance Program with the programs of the other military and Government services; and

(4) Inspecting the Navy program and providers to ensure quality of the programs and compliance with binding policy guidance.

b. Commanding Officers of Region Legal Service Offices (CO-RLSOs) and SJAs specifically authorized to provide legal assistance services pursuant to Chapter XI of this Manual, as applicable, shall oversee the legal assistance practice within their respective chains of command, and have broad authority to administer the provisions of this Manual. These duties will include:

(1) Assisting the Judge Advocate General's efforts to conform the legal assistance practice to the standards of professional competence, responsibility, and ethics made applicable by this Manual, JAGINST 5803.1 (Series), and various other laws and regulations of the Government and the legal profession.

(2) Ensuring that legal assistance services are provided only to eligible persons as set forth in JAGMAN § 0705 and section 5-9 of this Manual (as illustrated in Appendix A) and that all other persons are properly referred to other legal service providers, other legal assistance organizations in the community, or to the private sector of the bar in compliance with Joint Ethics Regulation DoD 5000.7-R, 5 C.F.R. part 2635, 5 C.F.R. part 3601, and this Manual.

(3) Establishing and monitoring a quality assurance program for legal assistance providers under their authority. The quality assurance program shall be carried out with due regard for confidentiality of client information. Such a program may include, but is not limited to, any or all of the following:

(a) the active dissemination and exchange of information relevant to a legal assistance practice;

(b) the use and review of client satisfaction questionnaires;



(c) periodic visits to legal assistance offices and independent legal assistance attorneys to determine the needs of the legal assistance providers and to assess compliance with the requirements and policies of the Legal Assistance Program; and

(d) active sampling and audits of legal assistance work product.

(4) Coordinating with the legal assistance offices of the other military services and related service providers (e.g., Fleet and Family Support Centers) within their geographic area of responsibility to develop a vigorous area-wide preventative law program. Every preventative law program shall emphasize service member rights and responsibilities under the Servicemembers Civil Relief Act (SCRA).

(5) Encouraging the exchange of information and ideas between legal assistance attorneys and local community organizations (such as national, state and local bar associations). They shall encourage joint training between those organizations and legal assistance attorneys on topics of mutual interest (e.g., SCRA, family law, consumer law, etc.).

(6) Seeking maximum interaction between Reserve and Active Duty legal assistance attorneys, encouraging Active Duty legal assistance personnel to train Reserve attorneys on Navy legal assistance policy and procedure, while encouraging Reserve attorneys to train Active Duty attorneys in their specific areas of expertise.

(7) Executing legal assistance services themselves, when necessary; however, delivery of such services must be provided with sensitivity to the possibility of, and success in avoiding actual or apparent conflicts of interests with attorneys under their authority. They may not personally represent an individual whose interest directly conflicts with that of another client represented by a subordinate in their chain-of-command. See JAGINST 5803.1 (series), Rule 1.7.

c. While CO-RLSOs are ultimately responsible for the provision of legal assistance services within their offices, Legal Assistance Department Heads (LADH) and/or OICs are responsible for the day-to-day activities of a legal assistance department. The LADH shall normally be an active-duty legal assistance attorney. Assignment of a civilian attorney to the LADH position requires the express written approval of CNLSC. Once assigned, a civilian LADH's duties are identical to those

of an active-duty LADH, unless otherwise directed by the CO or OIC. No approval from CNLSC is required to appoint a civilian attorney as an Assistant Department Head.

(1) LADHs/OICs will ensure that judge advocates, civilian attorneys and support staff under their supervision properly complete initial JAG Corps and local professional development qualification standards and thereafter receive continuing legal education (CLE) in the areas of the law, policy, and professional responsibility that are relevant to legal assistance (including use of software applications involved in delivering legal assistance services such as DL Wills and HotDocs). These CLEs shall cover the laws and localized practices impacting legal assistance matters in their relevant jurisdictions.

(2) LADHs/OICs shall have primary responsibility for ensuring that legal assistance services are provided in compliance with this Manual, and all other relevant instructions, directives, and regulations; and that the rules of professional responsibility are adhered to in the delivery of these services. Furthermore, they shall keep the COs informed of any corrective action or remedial training required to ensure such compliance.

(3) LADHs/OICs have primary responsibility for the delivery, substance, and success of preventative law activities in their areas of responsibility (AORs), to include appropriate outreach to the bar in their locations.

d. Civilian legal assistance attorneys assigned to RLSOs are the legal assistance subject matter experts (SMEs) for the substantive practice of law in the AORs in which they are employed. All civilian legal assistance attorneys, in addition to the LADH, shall serve as active case review supervisors for all legal assistance matters which are handled in their respective offices. These civilian SMEs are expected to routinely engage with command legal assistance providers, review their work product, and report any irregularities to the LADH. Review of legal assistance work product shall include powers of attorney, estate planning documents, SCRA-related correspondence, and any other correspondence executed on behalf of clients. While each legal assistance attorney is ultimately responsible for his or her own work and for supervising the work of legal assistance support staff to whom he or she has assigned legal work (as defined in section 4-1 of this Manual), the civilian SME and the LADH must routinely review legal assistance

work product to ensure quality and compliance with current instructions, directives, regulations, NLSC/Code 16 policies and procedures, the rules of professional conduct, and best practices.

e. Leading Chief Petty Officers (LCPOs) or Leading Petty Officers (LPOs) within the legal assistance department shall, along with the LADH, be primarily responsible for supervising paralegal and clerical staff whose duties include eligibility screening, client and customer intake, generating powers of attorney (POAs), generating affidavits, delivery of notary services by subordinate legalmen and civilian notaries, and ensuring that trained personnel are available to support estate planning execution and POA evolutions within the office and at offsite locations. Legalmen may supervise the work of civilian legal assistance clerical personnel as directed by their supervising attorneys or the LADH or the Assistant LADH. Detailed information on proper delegation and supervision by attorneys is contained in Chapter III of this instruction.

### III

#### LEGAL ASSISTANCE ATTORNEYS

3-1. Definition. A "legal assistance attorney" is any Active Duty or Reserve Component judge advocate, civilian attorney employed by the Navy or other attorney properly certified by the Judge Advocate General or his or her designee as a legal assistance attorney who is authorized or directed by appropriate authority to provide legal assistance services.

3-2. Qualifications

a. Generally. All legal assistance attorneys must be admitted to the practice of law before the highest court of at least one state, territory, the District of Columbia, or Federal court, and maintain a status considered to be in "good standing" at all times with the attorney's licensing authority. Overseas RLSO offices may seek CNLSC approval to hire or retain foreign civilian attorneys to provide legal assistance. However, unless such foreign attorneys are admitted to practice in the highest court of a state, territory, the District of Columbia, or to a Federal court, such foreign attorneys shall not advise clients in matters involving federal or state law of the United States. In order to be qualified as legal assistance attorneys, attorneys must also comply with one of the following categories:

(1) Active-duty and Reserve Component legal assistance attorneys (Navy designator 2500 or 2505). All Active-duty and Reserve judge advocates are qualified to act as legal assistance attorneys. New accession attorneys, regardless of the extent of their prior civilian practice, will be considered qualified and certified only upon successful completion of the Naval Justice School (NJS) Basic Lawyer Course. Designation prior to completion of the NJS Basic Lawyer Course may be requested as outlined in paragraph (3) below.

(2) Civilian legal assistance attorneys. A civilian attorney (including a foreign attorney) may provide legal assistance services when such duties are authorized by the attorney's position description and directed by the attorney's supervisor.

(3) Other cases. A licensed attorney who does not satisfy either of the preceding sections may request designation as a legal assistance attorney. Such request shall be submitted in writing, via the chain of command, to the Judge Advocate

General. The Judge Advocate General, or his or her designee, as appropriate, may consider an applicant's professional experience (including specific expertise and length of previous legal practice), education, training, and other appropriate factors in determining whether the applicant is qualified and competent to perform legal assistance duties. All attorneys certified to provide legal assistance under this section are also governed under JAGINST 5803.1 (Series).

### 3-3. Legal assistance attorney responsibilities

a. Legal ethics and professional responsibility. Legal assistance attorneys shall exercise independent professional judgment on behalf of their clients within the scope of the legal assistance program. Each attorney is professionally responsible for his or her own work product and that of any legal assistance paralegal, clerical, or other support staff to whom functions are delegated. Supervisory attorneys are responsible for the work of their subordinates as provided in the applicable ethics regulations. The civilian and military attorneys, the paralegals, and clerical support staff who provide legal assistance within the DON are subject to the rules of JAGINST 5803.1(Series).

b. Provision of client services by legal assistance attorneys. All client services within the Navy Legal Assistance program shall be provided by or under the supervision of a legal assistance attorney as described in JAGMAN § 0703 and this Manual.

(1) Client services. Client services are services that call for the professional advice and expertise of a legal assistance attorney and give rise to an attorney-client relationship. Generally, anytime an eligible person has a question about his or her rights or responsibilities with regard to another person (including a minor child) or entity, that individual is requesting a client service.

(2) Customer services. Customer services are services which may be provided by non-lawyers as defined in JAGMAN § 0704, and which do not give rise to the need for or the formation of an attorney-client relationship. Generally, customer services are purely clerical or ministerial and require no legal advice or opinion that might be construed as calling for the professional judgment of an attorney. Customer services include preparation of general and special powers of attorney,

notarization services, predeployment briefings, and other general explanations of legal-related matters.

(3) Unauthorized practice of law (UPL). UPL takes place when an individual who is not authorized to practice law provides client services without proper supervision by a properly authorized attorney.

c. Attorney delegation of work to support staff

(1) The ability to effectively delegate work to support staff is essential to the efficient accomplishment of the legal assistance mission. Such delegation must be accomplished in accordance with JAGINST 5803.1 (Series) and must balance the need for effective and efficient mission accomplishment against the requirement to vigilantly guard against UPL. Legal assistance attorneys are expected to explore ways to expand the role of legal assistance support staff to enhance the delivery of client services and preventative law activities within the framework of the professional and ethical rules governing the Navy Legal Assistance Program.

(2) A legal assistance attorney may delegate work to legal assistance paralegals, legal assistants, and clerical personnel as defined in Chapter IV of this Manual, as appropriate, provided that the attorney:

(a) maintains direct contact with the client and does not disassociate himself or herself completely from a particular case by delegating all client contact and case work to support staff;

(b) supervises the support personnel in the performance of the delegated work;

(c) assumes complete professional responsibility for the work product; and

(d) ensures that clients and third parties understand that members of the support staff are not attorneys and that members of the support staff are never represented to clients as attorneys.

## IV

**LEGAL ASSISTANCE SUPPORT STAFF**

4-1. Legal assistance support staff. The terms "legal assistance support staff" and "support staff" refer to both legal assistance paralegals and legal assistance clerical staff when used in this Manual.

4-2. Legal assistance paralegals

a. Definition. The term, "legal assistance paralegal" applies to all Active Duty and Reserve Component members of the legalman rating (including Reserve members of the legalman rating who are civilian attorneys), Marine legal services specialists who are assigned to a Navy legal assistance office, or a billet supporting an independent legal assistance attorney, and legalmen assigned to designated independent duty legalman billets. The term "legal assistance paralegal" also includes civilian personnel employed in paralegal positions in legal assistance offices or in support of an independent legal assistance attorney.

b. Duties. The precise duties assigned to a legal assistance paralegal depend on the specific needs of the office, the legal assistance paralegal's experience and training, and the feasibility of adequate legal assistance attorney supervision. Legal assistance paralegals may supervise the work of legal assistance clerical staff as directed by the paralegal's supervising attorney.

4-3. Legal assistance clerical staff ("clerks"). The term, "legal assistance clerical staff" or "clerks" applies to all military or civilian personnel who are neither attorneys nor paralegals and who are assigned to or employed at a legal assistance office, are assisting an independent legal assistance attorney, or who are designated as "legal officers" for their respective commands. Also included in this category are properly trained and authorized civilian volunteers under 10 U.S.C. § 1588 (and see OPNAVINST 5380.1A) in clerical support positions in legal assistance offices. A typical example is a civilian military spouse interested in a career in law who volunteers and is properly authorized to assist in a legal assistance office. See JAGINST 5803.1 (Series).

4-4. Prohibition against unauthorized practice of law. Support staff personnel are vital to the provision of quality and timely



legal assistance to eligible clients and customers; they are, however, absolutely restricted by ethical rules of the legal profession from engaging in the unauthorized practice of law.

4-5. Prohibition against accepting any form of compensation. Apart from their regular government compensation, neither paralegals nor clerical staff shall ever accept any form of compensation from or on behalf of a client or customer for services rendered to a legal assistance customer or client.

4-6. Rules and duties

a. Generally. There is no prohibition restricting a paralegal or clerk from assisting an attorney as long as the attorney remains professionally responsible to the client and supervises the paralegal or clerk. Other than as specifically authorized by the Judge Advocate General, or his or her designee, a legal assistance paralegal or clerical staff member shall not provide any legal advice to a client or render any other service to a client that constitutes the practice of law, unless such service is provided under the supervision and at the direction of a legal assistance attorney.

b. Office administration. Legal assistance paralegals and clerical staff may, as part of the administration of the legal office, conduct client screening for program eligibility and conflicts of interest; supervise and maintain master calendars and tracker systems; supervise administration of the law library; supervise and administer training programs for office personnel; supervise and maintain office file systems and conduct file searches; and develop and implement information retrieval systems.

c. Non-attorney customer services. Legal assistance paralegals and clerical staff may provide customer services that are purely clerical or ministerial and require no legal advice or opinion that might call for the professional judgment of an attorney. Generally speaking, these types of services include the preparation of affidavits, general and special powers of attorney, 10 U.S.C. § 1044a notary services (if qualified as described in JAGMAN § 0902), and state notary services (if qualified under state law as described in JAGMAN § 0903). When a customer requests guidance in selecting the appropriate type of power of attorney, a member of the support staff may assist the customer in making that choice only if the staff member was specifically trained by a legal assistance attorney in power of

attorney selection and is continually and regularly supervised by that attorney.

d. Document production. Legal assistance paralegals and clerical support staff may perform basic legal research; prepare client-specific legal memoranda for use by the legal assistance attorney based upon information obtained from client interviews and from legal research; prepare informational handouts for distribution to clients; prepare routine legal assistance correspondence including military non-support letters; prepare Servicemembers Civil Relief Act (SCRA) "six percent" request letters; prepare *pro se* or *pro per* and Expanded Legal Assistance Program pleadings; draft simple wills; draft SGLI and DD-93 designations to accompany simple wills; "*Shepardize*" and "*Bluebook*" legal citations; proofread documents; and proofread and re-format estate planning documents. Each of these documents must be produced under the direct supervision of a legal assistance attorney. Any office correspondence bearing the legal assistance department letterhead must be signed only by a legal assistance attorney in accordance with Section 5-4 of this Manual.

e. Initial client interview

(1) If authorized by the supervising legal assistance attorney, legal assistance paralegals and clerical staff may conduct an initial client interview prior to an attorney-client meeting. During the interview, the paralegal or clerk shall ascertain the general nature and particular facts of the client's case. Given the likelihood that privileged information will be discussed, this interview must be conducted in a confidential setting.

(2) The legal assistance paralegal or clerk may provide the client with basic information about laws, regulations, rules, policies and procedures that may be relevant in view of the general nature of the client's case. Use of informational handouts to assist in this regard is encouraged to ensure consistency in basic information provided in similar cases.

(3) The legal assistance paralegal or clerk should include a complete summary and recommendation for action when informing the attorney about the case. Following the client's consultation with an attorney, the paralegal or clerical support staff clerk may draft correspondence, various other documents including *pro se* or *pro per pleadings*, and take such other action as the attorney may direct.

f. Pre-deployment/mobilization and post-deployment/de-mobilization briefs. Properly qualified legal assistance paralegals and clerical staff may conduct both pre- and post-deployment/mobilization information briefs, as well as preventative law briefs. Legal assistance paralegals or clerks providing these briefs must be particularly trained to do so by supervising attorneys, must observe the presentation of such briefs on at least three occasions, and must be observed successfully providing such briefs by an attending attorney before being qualified to deliver these briefs independently. It is particularly important that attending/supervising attorneys assure that legal information is delivered accurately during such briefs and that the paralegal or clerk providing avoids any unauthorized practice of law. When the audience for a particular brief will be composed largely of senior officers, it is recommended that only legal assistance attorneys provide the brief.

g. Preventative law program. Legal assistance paralegals and clerks shall assist attorneys in the administration of a vigorous legal awareness and preventative law program. They may be trained and qualified to prepare and deliver informational lectures and seminars, including unit education programs. Under the supervision of an attorney, a legal assistance paralegal or clerk (including limited duty personnel supporting the department under TAD orders) may prepare and distribute preventative law materials such as articles, handouts, brochures, and outlines. It is noted that Senior enlisted legal assistance paralegals, by virtue of their experience, perspective, and status as senior petty officers or noncommissioned officers, are uniquely qualified to deliver an effective preventative law message to younger enlisted personnel. Absent exigent circumstances, civilian legal assistance clerical staff below the level of GS-7 shall not be used to brief a uniquely Active Duty audience unless that staff member has a personal Active Duty background.

4-7. Safeguarding client and customer confidences. Support staff must safeguard customer information, client confidences, and privileged information; disclosing such information only at the direction of a supervising legal assistance attorney.

4-8. Confidentiality generally. Legal assistance attorneys and support staff shall maintain confidentiality of client information. Adequate steps must be taken to prevent unauthorized disclosures, including: training all legal

assistance personnel in the ethical requirements of confidentiality; proper safeguarding of any work-product that contains confidential information; physical security; proper disposal of records, finalized documents, and drafts of documents; and respect for privacy during client screening and interviews. In particular, initial screening of legal assistance clients shall be accomplished in a manner that ensures confidentiality. Avoid conducting any screening or client interviews in public waiting areas and avoid placing Personally Identifiable Information (PII) on publicly available forms or waiting lists.

4-9. Initial estate planning client interview and delegation of duties to support staff. Nothing in section 4-4 or any other section of this Manual shall be construed to prohibit legal assistance attorneys from delegating an initial estate planning client interview to properly trained and supervised legal assistance support staff, provided that the legal assistance attorney interviews the client prior to the execution of the will to ensure the will reflects the needs and desires of the client as discussed in section 7-15.f. of this Manual.

## V

**OPERATING POLICIES FOR LEGAL ASSISTANCE PROVIDERS**

5-1. Case management and tracking within NLSC via Case Management and Tracking Information System (CMTIS). CO-RLSOs are ultimately responsible for ensuring the proper recording and accurate tracking of all legal assistance services under their cognizance. COs shall take reasonable steps to verify that all legal assistance attorneys and support staff, including participating Reservists, properly utilize CMTIS in accordance with established business rules to record legal assistance services. COs are further responsible for ensuring that support staff are adequately trained to input data from the standardized client intake sheet into the CMTIS database.

5-2. Case management and tracking by independent duty legalmen and SJAs. All independent duty legalmen and independent SJAs providing legal assistance services who are unable to access CMTIS shall maintain hardcopy records of all customer services rendered. These records shall include, at a minimum, the eligibility status, rank/paygrade, and nature of the services provided. All independent duty legalmen and independent SJAs providing legal assistance shall keep the senior SJA within the direct chain of command informed of these metrics, as directed by the senior SJA. Independent duty legalmen without a senior SJA within the direct chain of command shall keep the SJA for the immediate superior in command (ISIC) informed of these metrics, as directed by the ISIC JAG. See Chapter XI for additional guidance on provision of legal assistance by SJAs.

5-3. Investment in legal assistance program directives, policies, and procedures. Legal assistance attorneys and support staff serve as the front line of the Navy Legal Assistance Program. Accordingly, continuing analysis, evaluation, and examination of the Program by these personnel is critical to the effective and efficient delivery of legal assistance services. Legal assistance attorneys and support staff are thus encouraged to continuously evaluate Program directives, policies, and procedures, and to suggest modifications, adjustments, and corrections that will enhance the delivery of legal assistance and advance the purpose of the legal assistance mission. Suggestions or recommendations for change should be thoughtfully considered, vetted by the appropriate chain of command, and forwarded in writing to Code 16 for review.

5-4. Correspondence. Legal assistance providers must ensure that their correspondence in no way implies Navy, JAG Corps, NLSC or their own command's endorsement of their particular efforts in a specific case. Thus, the following practices shall be observed:

a. Legal assistance correspondence shall be prepared on distinctive legal assistance letterhead consisting of the command's name, address, and commercial and DSN telephone and facsimile numbers. No other information shall appear in the letterhead portion of the document, other than the standard correspondence serialization code and date. Under no circumstances shall official command letterhead be used for a legal assistance matter.

b. Legal assistance correspondence addressed to non-U.S. military recipients shall follow the Department of the Navy Correspondence Manual business letter format rather than the standard military letter format.

c. Legal assistance correspondence addressed to military recipients shall follow the Department of the Navy Correspondence Manual standard military format.

d. Disclaimer language shall be included in all outgoing Navy legal assistance correspondence and shall be pre-printed on the legal assistance stationary in a footer. The following disclaimer language is required for all Navy legal assistance correspondence:

**This letter is written by a legal assistance attorney on behalf of an individual client, and does not represent an official position of the Department of the Navy or the United States Government.**

e. Legal assistance providers must sign correspondence as a representative of the client. Language such as "by direction" shall not be used in Navy legal assistance correspondence. The following signature block format is required for all Navy legal assistance correspondence:

**I.M. COUNSEL  
Lieutenant, Judge Advocate General's Corps  
United States Navy  
Legal Assistance Attorney**

f. Nothing in this section precludes a legal assistance attorney from "ghost writing" correspondence for a client's signature, so long as such drafting is not prohibited by the rules of the cognizant court.

g. Legal assistance correspondence files shall be maintained separately from other command correspondence to safeguard confidentiality. A copy of all external correspondence must be maintained in a "read only" file for CO, XO, LADH, OIC review to ensure that all correspondence is within acceptable standards for Navy correspondence. As the file contains Personally Identifiable Information (PII), it must be specially protected in accordance with governing regulation.

h. Mailing envelopes shall bear the distinctive return address of the particular legal assistance office, including the name of the attorney providing the underlying service, so that any return or returned correspondence can be delivered directly to the servicing attorney without compromising the confidential attorney-client nature of the correspondence.

i. A serialized log of all legal assistance correspondence shall be maintained by the legal assistance department and include the serial number of the correspondence; date; addressee; sender; and if certified mail return receipt requested, the U.S. Postal Service receipt number. The log may be maintained electronically or in hard-copy but must be kept separate from other correspondence logs and shall be secured to protect PII and prevent unauthorized access.

#### 5-5. Communications

a. Sharing case information to obtain professional assistance and guidance. Unless a client has expressly requested that information remain confined to a particular attorney or attorneys, or in cases where another attorney has an actual or apparent conflict of interest, legal assistance attorneys may communicate on matters of substantive law as well as procedural law among themselves, with their CO and other supervisors, or directly with Code 16 regarding cases within their department. See JAGINST 5803.1 (Series), Rule 1.6.

b. Sharing information about legal assistance appointments. Once an attorney client relationship has been formed, information concerning any client's appointments or meetings with an attorney or legal assistance staff shall not be disclosed to anyone, including a service member's own CO,



without the express informed consent of the client or without a bona fide legal exception to the rules of confidentiality. See JAGMAN 0706b. This includes confirmation of the appointment itself.

c. Client requests for restricted information sharing. In any situation where a client has requested limited information sharing, the servicing legal assistance attorney shall take all appropriate measures to shield client confidences and privileged information.

d. Communications with third parties. Unless a client has otherwise requested limited information sharing, legal assistance attorneys may communicate with third parties, including persons and organizations within the Department of the Navy, on behalf of their clients, as well as with opposing parties subject to the constraints of JAGINST 5803.1 (Series). When communicating with third parties, legal assistance attorneys must clearly state that they are advocating on behalf of their individual client rather than on behalf of the government. As noted previously, when communicating with third parties in writing, the disclaimer must also be in writing. Neither officers nor civilian attorneys may use, or threaten to use, their official positions for the improper benefit of clients. Such actions violate 5 C.F.R. 2635, Standards of Ethical Conduct for the Executive Branch Employees, DOD5500.7R Joint Ethics Regulation, and COMNAVLEGSVCCOMINST 5800.1 (Series) § 1310.

e. Methods of communication. In addition to the telephone and regular mail, government electronic mail (email) and facsimile transmissions are authorized methods of attorney-client communication. When approved by the CO, legal assistance providers may also communicate with clients via Defense Connect Online (DCO) when such communication methods are deemed essential for zealous or expedient representation of the client's interests. See section 5-11 below for provision of remote legal assistance services.

5-6. Case referrals to outside agencies or civilian attorneys. When a legal assistance attorney seeks to refer a case to the Department of Justice (DOJ), the Consumer Financial Protection Bureau (CFPB), or a similar agency, the attorney shall obtain the advance written consent of the client. The DOJ will evaluate cases stemming from violations of a service member's rights with regard to the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), the Uniformed and Overseas Citizen

Absentee Voting Act of 1986 ("UOCAVA"), the Servicemembers Civil Relief Act ("SCRA") and the Americans With Disabilities Act ("ADA"). Referral of cases to DOJ requires coordination with Code 16. Attorneys seeking referral of matters for DOJ action shall provide comprehensive factual and evidentiary support to warrant DOJ engagement on behalf of a particular client. Any attorney seeking DOJ referral should contact Code 16 for more information.

5-7. Attorney-client relationships generally

a. A confidential setting is required to establish and maintain client and customer confidentiality. Legal assistance attorneys meeting with and advising or guiding eligible clients on matters within the scope of the legal assistance program as defined by Federal law and regulations form attorney-client relationships with their clients. Legal assistance support staff acting under the supervision of a legal assistance attorney shall also maintain attorney-client privilege and confidentiality.

(1) Physical environment generally. Delivery of legal assistance services in a military environment will necessarily occur under a variety of conditions and circumstances. To promote and protect client confidentiality and the attorney-client privilege, all communications and interviews executed prior to and during the relationship shall be conducted in as confidential a setting as possible.

(2) Attorney offices. To the maximum extent possible, legal assistance attorneys shall provide services in individual private offices with full floor-to-ceiling walls and doors that close and lock. These conditions promote the confidentiality of client consultations and case records. In circumstances where services are not provided in the legal assistance office, (e.g., will visits to commands) the servicing attorney must take reasonable measures to ensure client confidentiality.

b. Prohibition against advice to third parties. The attorney-client relationship requires personal and confidential communication. Advice shall not be provided to or through a third party intermediary [see section 6-2.b.(11) of this Manual], nor shall information that is personal to the client or which would normally be shielded by the attorney-client privilege be sought through a third party. In particular, wills, living wills, powers of attorney, or other documents affecting the legal rights of any individual eligible for legal

services under the Navy Marine-Corps Legal Assistance Program shall not be drafted at the request of or from information provided by any person other than the actual client or customer.

(1) Independent Third Party Interpreters. In any situation where the client or customer is a non-English speaker, or the attorney or staff member feels the client's ability to comprehend English is compromised, the attorney or LADH shall require the client or customer to bring an independent third party interpreter of the client's own choosing to interpret the communications relevant to the service being provided. Note: if the attorney or staff member is fluent in the native language of the client or customer, a third party interpreter is not required, provided the attorney or staff member can effectively communicate with the client or customer.

(a) The interpreter shall be required to execute an affidavit attesting to his or her ability to speak both the relevant foreign language and English and that he or she has acted as a neutral interpreter and translated all communications to the best of his or her abilities.

(b) In no event shall a person who has an economic or other interest in the legal service being provided be permitted to serve as the interpreter.

(c) Refusal by the proposed client or customer to comply with this requirement shall be grounds to deny further services and for referral of the client to the local bar association, legal aid, or a private practitioner.

(2) These restrictions shall not be construed to limit the attorney's ability to communicate with or via a third party in situations covered under Rule of Professional Conduct 1.14, Client with Diminished Capacity. Nor shall these restrictions be construed to limit the use of a certified translator, sign language interpreter, or like individual to facilitate client communication.

5-8. Respecting an ongoing attorney-client relationship. An ongoing attorney-client relationship must and shall be respected, and clients returning for a follow-up appointment or with a new question concerning the same or substantially the same legal matter shall be directed to the same attorney, unless that attorney has transferred from the command or the client requests another attorney. Whenever it is necessary to transfer responsibility for an ongoing case to another attorney (e.g., in

cases of a PCS transfer or release from active duty) the client must be notified.

a. Attorney temporarily unavailable. In the event that the original attorney is only temporarily unavailable, a different attorney may, with the client's consent, be assigned to handle the immediate issue. However, the original attorney shall handle any subsequent follow-up matters with that client, and any file created by the substitute attorney shall be provided to the original attorney as soon as possible.

b. Attorney transferring. In the event the attorney is transferring to another command or is being released from active duty, the case must be transferred to another legal assistance attorney or completed and closed by the departing attorney.

c. Attorney not transferring; client objects to new attorney. In ongoing cases where an attorney is not transferring to another command or being released from active duty, but being reassigned to non-legal assistance duties, and where the client objects to another attorney undertaking representation in place of the initial attorney, the initial attorney will normally continue representation. If appropriate and permitted by the CO or his designee, the attorney may be permitted to terminate representation and return the original papers and property to the client.

d. Regardless of the duration of the representation, the legal assistance office must maintain a copy of the client's closed file for a period of two years at which time the file may be shredded as long as there are no original client documents in the file. Attorneys are reminded to return all original documents to their clients retaining only copies in the office files. (See SECNAVINST 5212.5D).

#### 5-9. Client eligibility and the priority/allocation of legal resources

a. Authority for legal service. Per 10 U.S.C. §1044 and JAGMAN § 0705, legal assistance services are intended primarily for active-duty personnel. As resources permit, legal assistance services may be provided to other categories of eligible persons in accordance with JAGMAN § 0705 and 10 U.S.C. § 1044. Please see Appendix A for an eligibility table.

b. Highest priority to active-duty personnel and mobilizing reservists. In an effort to promote legal readiness, the highest priority for legal assistance services shall be afforded to active-duty personnel attached to deploying units, other deploying active-duty personnel, and Reservists and National Guard members deploying under recall to active-duty. A deploying service member is considered to be legally "ready" when his/her personal legal matters will not impact or detract from his/her ability to focus on mission. When deployment is imminent, securing a service member's legal readiness shall be accomplished as quickly as possible, whether by efficient legal assistance support or via expedited referral to a civilian provider.

(1) To enhance the readiness of mobilizing Reserve personnel, pre-mobilization legal counseling and assistance may be provided to active or inactive Reserve personnel consistent with their personal mobilization readiness needs.

(2) Such pre-mobilization assistance will normally consist of drafting or updating wills, advance medical directives, and powers of attorney.

(3) Other assistance may be provided if it is related to recall or mobilization. Such assistance includes advice concerning rights under the SCRA or USERRA.

(4) Pre-mobilization legal assistance services are not authorized for dependent family members of mobilizing Reservists. Pursuant to JAGMAN §0705, dependent family members of Reservists become eligible for legal assistance services once the member is mobilized.

(5) In providing mobilization or deployment support, the priority and allocation of legal assistance resources should be based on genuine need and the availability of those resources. Providing commands must seriously consider the best interests of the deploying pool in provision of services. For example, active-duty personnel are not required to have a last will and testament. The decision to create a will is a matter of personal choice. The absence of a last will and testament does not render a service member non-deployable. However, the absence of a Health Care Power of Attorney and/or Springing Durable Power of Attorney may create significant burdens or costs for commands or the service member's dependents/family members if the service member is seriously injured or incapacitated. Thus, the advice and counsel provided to

deploying personnel by servicing attorneys is critical, and execution of an actual will may be less of a priority in situations of limited time or resources. When time and/or legal resources are limited, the priority for drafting and executing last will and testament packages should generally be afforded to service members in the following circumstances:

- (a) when the service member has a minor child;
- (b) when the service member's primary beneficiary is a minor; and/or
- (c) when service members desire property distributions differing from the manner that would occur per applicable intestate succession laws or under an existing will.

The drafting and execution of last will and testament packages for all other service members may be delayed until additional legal resources are available following mobilization or deployment.

c. Subsequent priority for legal assistance services. As resources permit, legal assistance services will be provided to all other active-duty members, followed by active-duty dependents, then eligible retirees and their dependents, and then to other eligible persons specified in JAGMAN §0705 (b) and as may be expanded and authorized by the Judge Advocate General per JAGMAN §0705 (b) (13).

d. Clients with life-threatening conditions or who are the next of kin of deceased active duty service members. To the extent possible per the priorities established in this section, every reasonable preference should be afforded in handling the special needs of clients with life-threatening injuries or illnesses and to 10 U.S.C. § 1044 eligible "primary next of kin" in Casualty Assistance Calls Officer (CACO) type matters (e.g., probate advice, pro se estate settlement, referral to civilian counsel in non-pro se matters, and survivor benefits).

e. Requests to expand legal assistance eligibility. The Judge Advocate General may authorize additional persons or classes of persons, not specified in JAGMAN §0705, to receive legal assistance services. Requests to expand eligibility for legal assistance services shall be command endorsed and addressed to the Judge Advocate General via the Deputy Assistant Judge Advocate General (Legal Assistance) and shall clearly address:

- (1) who is to be assisted;
- (2) the types of services to be offered and provided;
- (3) the period for which authorization to provide services is sought; and
- (4) the reasons why the extension sought furthers the mission of the local command and the Navy.

f. General prohibitions on formal representations. Nothing in this section shall be construed to authorize legal assistance attorneys to formally represent a member or former member of the uniformed services as described in JAGMAN §0705(a), or a dependent of such a member or former member, in any civilian or criminal or quasi-criminal legal proceeding in court or before an administrative board or panel nor in an arbitration or mediation proceeding. Such representation shall only be authorized in accordance with the Expanded Legal Assistance Program as described in Chapter XIII of this Manual.

#### 5-10. Screening system for clients and customers

a. Each legal assistance provider or office shall maintain an electronic and a duplicate non-internet based eligibility and conflicts screening system (see section 5-1 of this Manual) to verify eligibility for legal assistance services and to minimize the potential for conflicts of interest among clients. When the primary eligibility and conflicts screening system is entirely internet-reliant, each legal assistance service provider and office shall be prepared to utilize the non-internet back-up system or process to verify eligibility and screen conflicts when the primary system is offline.

b. Screening methods must protect PII. For example, photocopies of Armed Forces Identification cards used to determine eligibility for remote services shall be shredded once eligibility has been verified. (See section 5-11 below for additional guidance regarding the provision of remote services).

c. All Navy legal assistance service providers shall use the OJAG standardized client/customer intake screening sheet to intake clients/customers. These standardized intake screening sheets are available on Navy Knowledge Online (hereinafter, NKO) via the Legal Assistance Community of Practice page, at <https://wwa.nko.navy.mil/portal/jag/legalassistance>. This



standardized form is updated by Code 16 to reflect changes in eligibility regulations or emerging matters of interest in the delivery of legal assistance services. Field modifications to this form are not authorized. Recommendations for modification of this form may be forwarded to Code 16 by any legal assistance provider; recommendations shall be forwarded in writing, via the relevant chain of command with a clear justification why the modification should be made.

d. Training on screening and conflict of interest procedures. All legal assistance attorneys and support staff shall be trained to identify potential conflicts of interest, with the basic understanding that a legal assistance attorney shall not knowingly undertake to represent a client whose interest in a particular matter is the same or is substantially related to, and/or is materially adverse to, that of a current or former legal assistance client of an attorney in the same legal assistance office. (See Chapter VIII of this Manual for detailed guidance). Legal assistance attorneys and support staff shall be trained to make appropriate referrals of conflicts of interest cases in accordance with section 8-6 of this Manual.

5-11. Provision of remote legal assistance services. When authorized by the CO, provision of initial legal assistance services may be provided via remote means, to include use of Defense Connect Online (DCO) or the telephone to meet mission requirements. Nothing in this section shall be construed to prevent subsequent or follow-up legal assistance services from being provided via remote means so long as the client has authorized such means and signed the Disclosure and Authorization to Provide Remote Legal Assistance Services form addressed in paragraph a.(2) below. However, no legal assistance services shall be performed without first verifying client and customer eligibility per 10 U.S.C. §1044.

a. Screening procedures for remote clients and customers. Where the potential client or customer is unable to appear in person to present identification for verification of eligibility for services, alternate verification must be accomplished by the following procedure:

(1) The potential client/customer/referring office shall email or fax the receiving office a fully completed client intake questionnaire (including a completed "For Office Use Only" box with verification of client eligibility for services, when forwarded by a referring office); and

(2) The potential client/customer/referring office shall email or fax the receiving office a completed standardized Disclosure and Authorization for Remote Legal Services form (available on NKO); and

(3) The potential client/customer/referring office shall email or fax the receiving office a legible copy of the front and back of the potential client's Uniformed Services Identification and Privilege Card, or the Department of Defense Guard and Reserve Family Member Card, or the United States Uniformed Services Identification Card (Retired) or the Retiree Dependents Identification Card.

b. Authority to photocopy military identification cards for eligibility screening. Per paragraph 6.1.7 of DoD Instruction 1000.13, "Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals," and DoD Directive-Type Memorandum (DTM) 08-003, "Next Generation Common Access Card (CAC) Implementation Guidance" photocopying of military identification cards to facilitate or secure military-related benefits (e.g., legal assistance) is specifically authorized. Accordingly, legal assistance offices are authorized to copy military identification cards for purposes of facilitating legal assistance for eligible persons.

5-12. NLSC procedure for assisting prospective or current clients identified as crime victims

a. Definitions of victim. Per OPNAVINST 5800.7A, a victim is defined as "a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime in violation of the Uniform Code of Military Justice (UCMJ), or in violation of the law of another jurisdiction in cases where military authorities have been notified." However, for legal assistance purposes, the OPNAV definition of "crime victim" is not exhaustive, and other eligible legal assistance clients who are identified by the legal assistance team as crime victims shall also be provided services in accordance with this section.

b. Initial advisement of rights. When a prospective or current client is identified as a crime victim (as defined by OPNAVINST 5800.7A) by any member of the legal assistance team at any point during the intake or interview process, substantive legal assistance advice shall be suspended until an appropriate conflicts of interest analysis can be completed by the LADH or

his or her designee. However, the victim shall immediately be provided the Navy Legal Assistance Program Victim Acknowledgement Form by a legal assistance attorney (See Appendix B).

(1) The legal assistance attorney shall review the Navy Legal Assistance Program Victim Acknowledgement Form with the victim in its entirety and ensure the victim is fully informed of his or her rights with respect to the Victim/Witness Assistance Program, the military justice process, and the plethora of services and support available for the protection and support of the victim and his/her family (e.g., military protective orders, transitional compensation, counseling services) as discussed in subparagraph f. below and in section 7-14, Victim/Witness Assistance Program (VWAP) and Crime Victim Rights Information.

(2) Extreme care shall be exercised so as to avoid the formation of an attorney-client relationship, or the perception of such by the victim, until a proper conflicts of interest analysis can be completed. (See subparagraph d. below)

c. General rule for RLSO crime victim conflict management. Crime victims may be provided substantive advice and support by legal assistance providers assigned to the same RLSO prosecuting (and/or providing command services advice regarding) the related accused. However, the RLSO trial counsel or command services attorney(s) assigned to that case shall not provide substantive legal assistance advice to the related victims. A local legal assistance attorney independent of the subject prosecution/adjudication shall be assigned to provide any substantive advice and assistance.

d. Crime victim conflict screening. Before any substantive legal advice (as opposed to general "information" regarding crime victim rights, as discussed above) is provided, the LADH, or his or her designee, shall determine whether any conflict of interest (as defined in section 8-1 of this Manual) prevents the servicing office or servicing legal assistance attorney from providing substantive legal advice and assistance to the crime victim.

(1) If such a conflict of interest exists, the victim shall be effectively referred to an alternate legal assistance provider in accordance with section 5-12.e below.

(2) Even where no conflict of interest exists, (including conflicts arising from current or former clients of the servicing attorney), the LADH or his or her designee must also ensure that the servicing legal assistance attorney has not or is not participating in the prosecution or disciplinary processing of the subject defendant.

(3) If there is no conflict and the servicing legal assistance attorney has no connection to the subject case, that attorney may provide the substantive advice and assistance.

(4) If, in an abundance of caution, the LADH or command leadership believe referral of a victim to another RLSO site or an external legal assistance provider is in the best interests of the immediate RLSO's MILJUS mission execution, or when an alternate legal assistance attorney is not available at the local RLSO site, referral of a victim to another RLSO or an external legal assistance provider is authorized so long as the mandates of subparagraph e. below are satisfied.

e. Effective crime victim referral. In any instance where a crime victim is referred to an external provider for substantive legal assistance advice due to a conflict of interest (e.g., the defendant is a former legal assistance client in which the victim is the opposing party), the victim must be provided an Acknowledgement of Limited Services form by the referring LADH (see Appendix C), on which the LADH will indicate whether the crime victim accepts or declines referral. The LADH, XO, or CO of the referring RLSO will make direct contact with the LADH or command leadership of the receiving provider to ensure the victim will receive timely and effective support. This should normally be accomplished before the victim departs the referring RLSO spaces. Provision of a referral list or indirect contact with alternate providers is not authorized. In addition, victims shall be referred to community Victim and Witness Assistance Program "service providers," (as defined in OPNAVINST 5800.7A) as necessary.

f. Basic victim rights information. Legal assistance attorneys shall advise ALL victims [as defined in section 5-12.a.], regardless of whether a victim is identified as a conflict, of their basic rights in the following matters:

(1) The Victim/Witness Assistance Program, including:

(a) the rights and benefits afforded to a victim;

(b) the role of a potential Victim Advocate; and

(c) the privilege that exists between a victim and a Victim Advocate.

(2) The differences between restricted and unrestricted reporting in sexual assault cases.

(3) General information concerning the military justice system, including the roles and responsibilities of the trial counsel, defense counsel, and investigators. This may include the ability of the government to compel cooperation and testimony.

(4) Services available to the victim from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(5) The availability of and protections offered by civilian and military restraining orders.

(6) Eligibility for and benefits potentially available through the transitional compensation benefits established in 10 U.S.C. §1059, and other state and federal victims' compensation programs.

(7) Eligibility for traditional forms of legal assistance described in this Manual, including matters such as leases, taxes, consumer affairs, estate planning, and powers of attorney.

g. Scope of representation of crime victim-client. Once a victim becomes a "client" (normally after the initial rights advisement has been provided and a conflicts of interest analysis has been conducted), legal assistance attorneys may provide substantive legal advice to assist the victim with obtaining or enforcing his or her victim rights and benefits, subject to the limitations contained in section 6-2.b., Prohibited areas of legal assistance. Upon the victim's request, legal assistance attorneys may contact the local installation or command Victim/Witness Assistance Program Coordinator or command SJA on behalf of the victim, as appropriate, to assist the victim in obtaining or enforcing his or her rights and benefits.

(1) Limitations on representation. Legal assistance attorneys shall not undertake to represent a victim at an administrative or criminal forum with respect to the victim's rights. RLSO legal assistance attorneys who provide substantive

legal assistance advice to crime victims shall explain the limitations of the scope of their representation, including the difference between the role of a legal assistance attorney and the role of a trial/command services attorney. Extreme caution shall be exercised to avoid any expectation on the victim's part that a legal assistance attorney may in any way impact the outcome of any criminal or administrative proceeding.

(2) Referral to Victim Advocates/Sexual Assault Response Coordinators. Legal assistance attorneys shall also inform the victim of the differences between the role of a legal assistance attorney and a victim advocate. Legal assistance attorneys are not qualified to serve as Victim Advocates, and victims shall be referred to the appropriate Victim Advocate or Sexual Assault Response Coordinator for assistance with traditional victim support and services. (See OPNAVINST 5800.7A, OPNAVINST 1752.1B, and DoDD 6495.01, January 23, 2012)

#### 5-13. Equipment and software

a. Minimum requirements. At a minimum, each location where legal assistance is regularly provided shall have one personal computer with internet connectivity available for use by legal assistance personnel. For maximum efficiency, each legal assistance attorney, legal assistance paralegal, and legalman should be provided with a personal computer or workstation when possible. Access to a computer with internet access may be particularly important in delivering remote services.

b. Mandatory software programs within NLSC. Every RLSO Legal Assistance office shall maintain and utilize OJAG and CNLSC approved software programs designed to facilitate the execution of effective legal assistance support and the collection of legal assistance data. These mandatory programs include: (1) DL Wills, used to draft wills and other estate planning documents; (2) HotDocs, used to draft powers of attorney, client correspondence and other documents; and (3) CMTIS, used as the RLSO legal assistance data collection and conflict checking tool. Code 16 will notify commands and individual legal assistance attorneys of updates, upgrades, or replacements to these programs. Although this section specifically identifies only three mandatory software programs, any other software programs formally adopted by the JAG and CNLSC will be considered mandatory. Although DL Wills and HotDocs are designed to generate documents to meet the needs of legal assistance clients, legal assistance attorneys are reminded they remain responsible for reviewing these documents

to ensure they meet the specific needs and intent of their clients.

(1) Recommendations for modifications to mandatory software, utilization of additional software, or questions regarding the utility or nature of documents produced by such software shall be forwarded to Code 16 in writing via the relevant chain of command.

(2) Issues impacting the compatibility of mandatory programs with local command hardware, IT systems, and/or intra/internet operability shall be promptly reported to Code 16 for assistance in resolution.

c. Email Addresses. Every Navy legal assistance provider shall have a valid email address. Legal assistance providers who do not receive email services through NMCI shall provide their non-NMCI email address to [JAGIR@jag.navy.mil](mailto:JAGIR@jag.navy.mil) and Code 16.

d. Automated Research. All legal assistance offices shall maintain access to LEXIS or WESTLAW for efficient automated legal research.

#### 5-14. Legal assistance records and files

a. Official records. In general, legal assistance providers shall maintain only those official records and files essential to the operation of the legal office or required by statute.

b. Client or customer intake files. Each legal assistance office and independent legal assistance attorney shall maintain paper or electronic records reflecting client contact information and the general nature of the assistance or service provided, as well as the identity of the service provider and whether the provider was an attorney or a non-attorney staff member. Persons assigned to RLSOs shall maintain this information via CMTIS (or successor program). These records may be used to contact current and former clients and customers concerning assistance provided, to avoid conflicts of interest, and to develop statistical data on services rendered. Nothing in this section prohibits an attorney, paralegal, or legalman from maintaining his or her own personal log of clients and opposing parties as long as the party doing so assures that there is no personally-identifiable information (PII) vulnerability in maintaining that log.



(1) Intake sheets contain private and protected customer and client information that shall not be accessible to the public or to other persons within the legal assistance office or the command except as permitted by the Privacy Act and paragraph 5-5. This section does not prohibit the sharing of intake information for the purposes of internal command productivity evaluations or as required for mentoring.

(2) To avoid the improper release of attorney-client privileged information gained during representation, servicing legal assistance attorneys and staff shall not place such information on the hard copy of the intake sheet.

(3) Retention period. Hardcopy client and customer intake forms shall be retained at the legal assistance provider's location for two years after the completion of the services and shall then be disposed of in accordance with SECNAVINST 5212.5D (Series), Disposal of Navy Records. If the matters addressed in a particular intake form remain in dispute, or where further activity in the matter is foreseeable, the hardcopy may be retained indefinitely. Nothing in this section prohibits the servicing attorney from retaining a copy of the intake form for his or her own client files. When the attorney retains a copy of the intake sheet as part of his or her client file, the attorney shall prominently mark the word "COPY" on that sheet and all pages of the attorney's non-office file so that it is clear that these records are not part of the official Navy or JAGC case file.

c. Legal assistance case files. Legal assistance case files consist of the servicing attorney's private case records. These files contain personal information about clients and their legal matters. This information is private, privileged and confidential under federal law and applicable rules of professional conduct. Legal assistance case files may contain photocopies of original documents provided to the attorney by the client; attorney notes made during client consultations; research memoranda from paralegals, legalmen, or the attorney; and a wide variety of other documents pertaining to the handling of the case and the case outcome. Attorneys and support staff shall take all steps necessary to protect legal assistance case files and the client confidences and privileged information contained therein, to include securing all case files in locked drawers and behind locked doors.

(1) Access to legal assistance case files and information regarding the consultation is normally restricted to

the servicing legal assistance attorney, support staff assisting the client under the supervision of that attorney and, upon request, the supervisors of that attorney. Access by supervisors may be denied when disclosure would implicate a conflict of interest or violate applicable rules of professional conduct, as noted in Section 5-5.

(2) Upon closing a case or terminating representation of a client, all papers and other property belonging to the client, or to which the client is entitled, will be promptly returned to the client. The legal assistance attorney may retain in the case file copies of papers relating to the representation. All closed legal assistance case files of former clients will be retained in a locked drawer and/or behind a locked door at the relevant legal assistance office for two years after the completion of the services and then disposed of in accordance with SECNAVINST 5212.5D(Series).

(3) In instances where there is an internal conflict of interest (either within the legal assistance office or within a command), the servicing legal assistance attorney must take all reasonable measures to ensure that privileged and confidential client information is secured and protected from disclosure to other parties. These internal "firewalls" must be maintained as long as the conflict exists and may cross the mission boundaries of the servicing RLSO. As noted in section 5-5.d., in instances where a client has specifically directed the limited disclosure of information, that direction must be respected and relevant information must be protected from disclosure. The client shall be provided access to the case file and original documents contained therein in accordance with applicable ethical rules and the Privacy Act.

(4) Nothing in this section prohibits the legal assistance attorney or his or her supervisor from using copies of client case files for internal command training, as long as all PII or Privacy Act privileged or protected information is fully redacted and the underlying facts and circumstances of the case do not otherwise allow the client to be identified.

d. Crime victim case files. Due to the highly sensitive nature of crime victim case files, extreme care shall be exercised in maintaining customer or client privacy and anonymity.

(1) Records management. Hardcopy forms of the Crime Victim Acknowledgment, the Crime Victim Acknowledgement of

Limited Services, and any initial client or customer intake files associated with a crime victim shall be maintained by the LADH. Copies of the Crime Victim Acknowledgment and Crime Victim Acknowledgement of Limited Services shall not be part of the legal assistance case files maintained by the servicing attorney or the legal assistance office.

(2) Retention period. Hardcopies of crime victim case files shall be retained indefinitely in the LADH's office, or until otherwise directed by the JAG or his or her designee.

5-15. Fees, costs, and client funds; loans to clients prohibited. Legal assistance providers and their respective offices shall not maintain client trust funds of any kind, and any funds received for the benefit of a client shall be made payable to the client and promptly transmitted to the client. There is no prohibition against a client's funds being sent "in care of" the legal assistance provider at the legal assistance office. Any such funds received shall again be promptly transmitted to the client and an official receipt for such transfer secured by the legal assistance provider. A legal assistance attorney shall not advance any funds, either Government or personal, to any client for any purpose. The client shall pay all fees and costs, if any, connected with a legal assistance matter. Nothing in this section prohibits the legal assistance office from paying for the cost of mailing correspondence by U.S. mail or other means without reimbursement from the client.

5-16. Mandatory use of standardized forms within NLSC. Code 16 is charged with developing standardized forms and practices to streamline legal assistance delivery, leverage best practices, and advance collective proficiency. Following JAG and CNLSC approval, Code 16 promulgates these standardized products for mandatory use by Navy legal assistance providers. Providers and commands shall utilize these forms without modification or alteration in the execution of legal assistance. Current mandatory standardized forms and practices are noted in this Manual and located on the Navy Knowledge Online (NKO) Legal Assistance Community of Practice web page. Code 16 may promulgate additional standardized products for mandatory use and shall promptly notify providers of that action via LAPAs, email, or direct contact with command leadership. Thoughtful analysis and constructive evaluation of standardized forms and practices is encouraged in field providers. Input and recommendations for the modification of standardized products

may be submitted to Code 16 as detailed in section 5-3 of this Manual.

## VI

## SCOPE OF LEGAL ASSISTANCE SERVICES AND LIMITATIONS ON SERVICES

6-1. General scope of services

a. All Navy legal assistance attorneys shall provide Tier I legal assistance services to eligible clients as directed by JAGMAN §0707, applying the standards prescribed in this Manual. **The services cited as Tier I in JAGMAN §0707 shall always have priority over other services.**

b. To maximize the efficient and effective use of limited resources, legal assistance providers should generally concentrate their efforts and resources on those cases where a reasonable possibility of resolution exists without the necessity of referral to a civilian attorney. In cases where referral will be necessary, legal assistance providers shall make or advise early referrals of all matters to maximize the client's opportunity to achieve quickest resolution.

c. For matters which will inevitably require referral to civilian counsel, Navy legal assistance should be limited to brief advice, an explanation of the possible options, and referral as discussed in section 8-6 of this Manual. Normally, these services can be provided in a single interview. Early referral in these cases is appropriate to permit the civilian attorney maximum flexibility to develop and pursue issues to the maximum benefit of the client.

6-2. Limitations on services

a. General rule. Section 205 of Title 18 United States Code prohibits any officer or employee of the government from representing or assisting anyone in any claim or other matter in which the United States is a party or has a direct and substantial interest, other than in the "proper discharge of his official duties." Accordingly, a legal assistance attorney shall not represent an individual in a matter in which the United States has a direct and substantial interest, whether or not the government's position is adverse to that of the individual, except as provided in paragraphs b.(1) and b.(5) below and section 7-12 of this Manual, or with the prior and specific authorization of the JAG or his or her designee. This authority may be further delegated, in writing, to the relevant RLSO CO.

b. Prohibited areas of legal assistance. Certain matters falling outside the scope of the legal assistance program are noted below. An attorney may only provide client consultation in such matters when specifically authorized to do so by his or her CO.

(1) Claims. Legal assistance attorneys shall not advise or assist in the prosecution of any tort or other monetary claim against the United States, or the defense of any monetary claim by the United States against an individual, except as authorized by relevant DoD or Navy instructions. Such authorizations include assistance in seeking reimbursement for adoption expenses and/or waivers of indebtedness, among other issues. Legal assistance providers may assist personnel with basic claims information regarding the applicable statute of limitations, how to obtain and/or complete claim forms, where to file the claim, and assist claimants in contacting responsible claims processing authorities.

(2) Official investigations. Legal assistance attorneys shall not represent, advise, or assist an individual who is a party to, witness, or subject of an official criminal or administrative investigation of the DOD or any agency within the DoD, concerning that official investigation. In such cases, the individual shall be referred to the appropriate defense office.

(3) Administrative complaint processes. Legal assistance attorneys shall not represent, advise, or assist individuals seeking to file complaints under the Uniform Code of Military Justice (UCMJ) or U.S. Navy Regulations; a petition for relief to the Board for Correction of Naval Records or the Naval Discharge Review Board; a rebuttal to a decision of the Central Physical Evaluation Board; fitness report or evaluation rebuttals; or any other similar administrative complaint. All such matters shall be referred to the appropriate defense office, Formal Physical Evaluation Board counsel, or a private attorney.

(4) Civil rights. Legal assistance attorneys shall not represent, advise, or assist an individual with the presentation of any discrimination, other civil rights, or constitutional claim or complaint against the U.S. Government.

(5) City/State/Federal criminal matters. Legal assistance attorneys shall not provide advice or representation in civilian criminal matters. Active-duty personnel requesting legal assistance for criminal matters shall normally be referred

to the appropriate DSO or private sector civilian counsel as appropriate. Dependents or other eligible civilians requesting legal assistance for criminal matters shall normally be referred to private sector counsel. However, legal assistance attorneys may provide basic procedural information (e.g., local rules of court, how to contact a court) to such personnel if they are barred in the relevant jurisdiction, have the corresponding experience to provide such information, and have the express permission of their CO.

(6) Advice concerning military justice and/or administrative discharge proceedings. Legal assistance attorneys shall not provide advice regarding court-martial processing, disciplinary investigations, nonjudicial punishment, administrative discharge processing, or other military justice matters. While legal assistance attorneys may provide information and advice to victims of crimes per sections 5-12 and 7-14 of this Manual, they shall be limited in that advice to the matters contained in section 7-14 and shall not discuss specific case details, strategies, or processing issues with such victims. Any crime victim seeking such information should be referred to the relevant trial or command services department, and any potential defendant seeking such guidance shall be referred to the relevant defense office.

(7) Advice concerning adverse Family Advocacy Program Case Review Committee (FAP CRC) determinations. Legal assistance attorneys shall not assist personnel impacted by adverse FAP CRC determinations; such personnel shall be referred to the relevant defense office.

(8) Advice concerning Civilian Administrative Forum (CAF) Actions. Legal assistance attorneys shall not provide substantive advice to dependents concerning CAF actions. Assistance shall be limited to procedural information, and no attorney-client relationship shall be formed. Active-duty personnel with CAF related issues shall be referred to the appropriate defense office.

(9) Advice concerning personal commercial enterprises. The Legal Assistance Program is designed to assist eligible individuals in personal civil legal matters. Thus, legal assistance services shall not be provided to larger organizations, for private business ventures, or for private entities that have been chartered by appropriate authority to function on military installations (e.g., spouses clubs, booster clubs, command fundraising event committees, and social

committees). Exceptions to this policy may include individual assistance with infrequent personal sales or business transactions, such as advice concerning the sale of a personal residence, the sale of a personal vehicle, preparation of a Schedule C (Profit and Loss from Business) tax return for Family Home Care Providers certified to provide child care in government quarters, and advice concerning leasing a single family residence due to a service member's receipt of Permanent Change of Station (PCS) orders.

(10) Advice concerning Government standards of ethics or post-Government service. Legal assistance attorneys shall not provide advice concerning Government standards of conduct or ethics, or post-Government service or employment restrictions. Clients seeking such advice shall be referred to the cognizant ethics counselor.

(11) Third party advice. Legal assistance attorneys shall not provide advice sought for the benefit of third parties, whether the third party is eligible for legal assistance or not. However, this prohibition shall not bar delivery of substantive advice to court-appointed guardians on behalf of an eligible ward, or to an agent on behalf of an incapacitated or disabled principal where such agent is acting under a duly executed power of attorney or by court appointment, or to an otherwise ineligible parent of a 10 U.S.C. § 1044 eligible dependent child of a service member or retiree.

(12) Employment matters. Legal assistance attorneys shall not provide advice on any employment matters other than matters related to the Uniformed Services Employment and Reemployment Rights Act (USERRA).

(13) Real estate transfers. Legal assistance attorneys shall not perform title examinations, issue title opinions, or conduct real estate closings. In addition, legal assistance attorneys shall not draft real estate sale or purchase documents. Drafting quit claim deeds or community property transfers as an incident of marriage or divorce is authorized only if performed by an attorney who is licensed to practice by the jurisdiction in which the property is located and when the attorney has permission to do so from his or her CO.

6-3. Discretion to expand services. Per JAGMAN §0707 (b), CO-RLSOs may authorize the provision of more complex legal assistance services as personnel, resources, and expertise



permit. Many of those services are identified as Tier II, III, and IV services in JAGMAN §0707.

6-4. Discretion to limit services. CO-RLSOs may limit the scope of services delivered by any legal assistance provider or legal assistance office under his or her authority, as necessary.

a. Limitation of services may be necessary in the case of emergent requirements, increased demand for Tier I services, personnel shortages, limited resources, or the unavailability of requisite expertise to adequately address the requested service.

b. No legal assistance attorney shall attempt to provide complex services for which the attorney lacks the time, resources, experience, or expertise to provide a high-quality product.

6-5. Additional considerations for CO-RLSOs. CO-RLSOs must be especially sensitive to the combination of legal assistance support with command services and MILJUS prosecution in the execution of their mission requirements. Privileged and confidential information gained from legal assistance clients must be protected from unauthorized disclosure to other RLSO personnel. Legal assistance in matters including family law and indebtedness may be particularly ripe for potential improper exposure. To reduce even the appearance of impropriety, the same RLSO attorney shall never provide legal assistance, command services, or prosecution services impacting the same client. CO-RLSOs are expected to develop comprehensive command policies and training to prevent the improper transfer of privileged information among their personnel.

## VII

## STANDARDS FOR LEGAL ASSISTANCE SERVICES

**The following standards apply to the delivery of legal assistance services by all legal assistance attorneys. Services may include, but are not limited to, the following areas:**

7-1. Adoption and name changes

a. Legal assistance providers shall counsel and advise clients regarding adoptions and name changes. Reference (c), JAGINST 5801.3A, Navy Legal Assistance Practice Guide Checklists, provides detailed interview and practice checklists for the various types of adoptions. Providers shall ensure that clients are aware of entitlements that may be available under the Adoption Expense Reimbursement Program. (See DODINST 1341.9 (Series), DFAS-CLINST 1341.1 (Series), and 10 U.S.C. § 1052). Attorneys and paralegals may assist in preparing and forwarding claims for reimbursement under this program. For those expenses not reimbursed by the Adoption Expense Reimbursement Program, legal assistance providers shall also counsel and advise clients on the federal income tax adoption credit.

b. Where practical under local law and court procedures, and when legal assistance resources permit, legal assistance providers may draft *pro se* pleadings for step-parent adoptions or name changes, so long as such conduct is permissible under local law and applicable ethics rules. In jurisdictions where *pro se* actions are not authorized, and in non-step-parent adoptions, assistance will normally be limited to information, advice and referral.

7-2. Civil suits

a. Assistance in civil suits will normally be limited to advice, referral, and explanation of local court procedures. Preparation of *pro se* documents may be provided at a client's request where *pro se* action is appropriate; where resources of the legal assistance office permit; when permissible under local law and applicable ethics rules; and when authorized by the cognizant CO. General advice shall include information on applicable statutes of limitation, general civil procedure, and any effect of the SCRA.

b. ELAP representation. ELAP representation of plaintiffs in civil courts is addressed in Chapter XIII of this Manual.

### 7-3. Consumer affairs

a. Legal assistance attorneys shall advise clients on consumer law problems and issues; review contracts, warranties, and other documents; and may contact and negotiate with businesses with which clients have a dispute. Attorneys are encouraged to liaise with consumer agencies on behalf of their clients. Legal assistance attorneys must advise clients that representation will not include litigation, and that civilian counsel or referral to the ABA Pro Bono Program or the Consumer Financial Protection Bureau (CFPB) may be necessary if negotiations or alternative dispute resolution efforts fail. See reference (c) for a detailed practice guide.

b. Consumer Financial Protection Bureau (CFPB) and Military Sentinel. Legal assistance attorneys shall be aware that additional assistance for clients is available via the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission's Military Sentinel complaint system. The websites for both agencies provide complaint portals and valuable education resources for consumers. As a best practice, attorneys should assist clients in executing the CFPB complaint process while the client is in the office. The CFPB's complaint system automatically engages with the Federal Trade Commission's Military Sentinel complaint system (<http://www.ftc.gov/sentinel/military>), so there is no need to enter complaints in both systems. When a client files a complaint through the CFPB, the CFPB's Consumer Response Division will forward the complaint to the relevant commercial entity, which has 10 days to respond. If the matter is not resolved satisfactorily, the CFPB may investigate the matter further.

### 7-4. Domestic relations

#### a. Divorce/dissolution/annulment

(1) In most instances, legal assistance attorneys are not able to provide complete services for personnel seeking divorce or separation given limitations in representing clients in state family law courts. Marital dissolution is dependent on state law and local procedures. Accordingly, a person seeking a divorce or separation will ordinarily have to retain civilian counsel. Early referral of these clients to civilian counsel or the ABA Pro Bono Program (when appropriate) is essential to protect the client's interests.

(2) Nonetheless, many clients seek to discuss divorce and separation issues with a Navy legal assistance attorney to better understand the implications of a divorce; their attendant rights and responsibilities; the implications of the Uniformed Services Former Spouse's Protection Act (USFSPA); and the general nature of marriage dissolution procedure. Military legal assistance attorneys shall be prepared to discuss general issues of assets and debts; child custody and visitation; child support; spousal support; and military support guidelines with such clients. Detailed practice checklists are provided in reference (c).

(3) After providing the level of assistance possible, the attorney may refer the client to civilian counsel or to the ABA Pro Bono Program (when appropriate) for further assistance. If the client is already represented by civilian counsel, the military legal assistance attorney must decline to discuss the case without the knowledge and agreement of that civilian counsel. This may occur when the civilian counsel is unfamiliar with military rights and benefits or there is a desire for a Military Protective Order.

(4) In most cases, assistance will be limited to consultation. However, in locations where resources permit, and more extensive services are authorized, a legal assistance attorney or paralegal working under an attorney's supervision may draft *pro se* pleadings for clients in simple dissolution cases, so long as such assistance is permissible under local law. Simple dissolution cases are those matters where the parties have no children from the marriage or where there are no custody/visitation issues; where the length of the marriage is 10 years or less; and where there are no complex property distribution issues involved.

(5) Legal assistance providers are encouraged to develop general informational handouts, pamphlets or electronic materials for distribution detailing the basic mechanics of obtaining a divorce. This general information should address state divorce law issues and military implications including the USFSPA, military pension division, and military family care plan issues related to child custody. While the practice of conducting a group seminar or presentation as a means of dispensing general information is permissible, useful, and encouraged, clients shall not be required to attend a public seminar as a prerequisite to meeting with an attorney.

b. Separation agreements

(1) Every attorney must review the detailed guidance contained in Appendix D and reference (c) before reviewing or drafting any legal documents affecting the division or waiver of military retirement benefits. Appendix D contains detailed guidance concerning the division or waiver of military retirement benefits and the potential consequences to a dependent spouse.

(2) Laws concerning child custody; child visitation and child support; spousal support; and division of marital or community property are complex and vary from state to state. Legal assistance attorneys must obtain training to develop and maintain expertise in these and other aspects of family law practice. This is particularly true for cases involving substantial property holdings, dual military career couples, or a where significant investment by a service member towards a military career implicates the divisibility of retired pay and survivor benefit protection. As requirements for separation agreements vary widely among the states, and even among local courts within the same state, it may be difficult for legal assistance attorneys to develop and maintain sufficient proficiency to properly draft separation agreements, even if authorized to do so.

(3) Despite these challenges, legal assistance attorneys are permitted to draft separation agreements, when resources permit and when authorized by the cognizant CO. Where separation agreements are drafted, legal assistance providers shall limit their assistance to agreements conforming to state laws where they have developed proficiency. This caveat is especially important for legal assistance attorneys stationed overseas who may lack the mentors or direct experience to provide appropriate services. In those cases, it is highly recommended that, unless the attorney drafting the agreement is personally licensed in the jurisdiction where the document would be relevant, the client be referred to a legal assistance office in the jurisdiction at issue so that the matter can be more efficiently and competently executed. In these cases, legal assistance attorneys are to consult with a civilian subject matter expert to ensure that any separation agreement drafted comports with applicable state law.

(4) Legal Assistance providers shall exercise caution in drafting marital settlement agreements in matters involving early return of dependents, so as not to inadvertently encourage

a command or service member to require entry into a separation agreement as a condition of terminating command sponsorship and moving a dependent spouse and his or her property back to the United States.

7-5. Immigration and naturalization services. Legal assistance attorneys shall provide eligible service members with counsel and assistance in matters relating to applications for naturalization and for dependent family member immigration. Current law and procedures relating to immigration issues are discussed in the "Immigration and Naturalization Law Desk Reference," which is available on NKO.

7-6. Indebtedness and bankruptcy

a. Debt claims. Attorneys shall counsel, advise, and assist clients seeking to challenge or avoid a claim of debt owed. Likewise, assistance may be provided to eligible clients seeking to enforce a personal claim of indebtedness against another person or firm. Services may include correspondence and negotiation on behalf of the client and assistance in the use of alternative dispute resolution processes. Legal assistance attorneys must advise clients that representation will not include litigation, and that civilian counsel may be necessary if negotiations or alternative dispute resolution efforts fail.

b. Involuntary allotment/garnishment. Legal assistance attorneys shall counsel and assist service members whose pay is subject to involuntary allotment as a result of a civil or domestic judgment of indebtedness. All clients shall be advised of the rights of judgment creditors and state child and spousal support collection agencies to obtain garnishment under 5 U.S.C. §5520a, DODINST 1344.12(Series) and DODINST 1344.09(Series). Assistance may continue throughout the DoD allotment/garnishment process. However, legal assistance attorneys shall not under any circumstances undertake client representation in a formal administrative or judicial hearing.

c. Bankruptcy. Given the complexity and ramifications of declaring personal bankruptcy, legal assistance advice regarding bankruptcy shall be limited to counseling and advice regarding the possible consequences of a bankruptcy declaration on security clearances and the ability to obtain future credit and/or rent a home. Clients desiring to file for bankruptcy shall be referred to a civilian bankruptcy attorney. Bankruptcy cases are not appropriate for ELAP (see Chapter XIII of this Manual for ELAP policies and procedures). Drafting bankruptcy

pleadings is specifically prohibited unless the legal assistance attorney possesses particular legal training and expertise in the subject matter and has received direct authorization from his or her CO.

d. Indebtedness to the Government and military pay matters. Advice and assistance may be provided to eligible military personnel to obtain or clarify a member's entitlement to military pay, allowances, and other benefits. Advice and assistance may be provided to eligible military personnel, other than an accountable official, concerning indebtedness to the Government as a result of overpayment of pay or allowances, or for any other non-disciplinary reason, provided the client is advised that services will be limited to attempting resolution of the problem through fiscal and administrative channels. Legal assistance attorneys may contact cognizant authorities on behalf of clients to attempt resolution of a pay problem or to obtain a waiver of indebtedness, and may assist the client in completing any forms and drafting any necessary correspondence or waiver requests. In many cases, the assistance requested will not involve the practice of law and can be appropriately handled by legal assistance support staff.

#### 7-7. Landlord-tenant and real estate

a. Tenant services. Legal assistance attorneys shall provide counseling and advice to tenants regarding standard lease provisions and issues. Specifically, legal assistance attorneys may review leases (including public-private venture housing leases); provide draft language for military clauses or other suggested modifications to leases; and advise clients on their rights, responsibilities, and remedies under local landlord-tenant law and the SCRA. Legal assistance attorneys may contact landlords on behalf of eligible tenants, and may negotiate settlements or provide advice to tenants who elect or are forced to elect alternative dispute resolution. Resources permitting and with written approval of their CO (or his or her designee) attorneys may represent tenants in alternative dispute resolution if that process will not require that the attorney be identified as an attorney of record in any current or prospective court proceeding. Unless properly authorized to provide ELAP (see Chapter XIII of this Manual), legal assistance attorneys must advise clients that representation will not include litigation and that civilian counsel may be necessary if negotiations or alternative dispute resolution efforts fail. See reference (c) for detailed guidance.

b. Landlord advice. The only parties eligible for "landlord" legal assistance services are active-duty members or Reservists recalled to active-duty seeking to rent a former principal residence due to a pending PCS move. Authorized assistance includes preparation and review of leases; draft language for military clauses or other suggested modifications to leases; and advisement of the rights, responsibilities, and remedies under local landlord-tenant law and the SCRA. Legal assistance attorneys may also assist landlord clients in negotiating with tenants or prospective tenants and in the use of alternative dispute resolution procedures. Attorneys may not participate in alternative dispute resolution programs without the approval of their CO. Again, there must be no possibility that participation might result in consideration as an attorney of record in any existing or prospective court proceeding. As with tenant services, clients shall be advised that representation will not include litigation. As legal assistance services are not extended to business matters, services will not be provided regarding properties held primarily for investment or production of income. See reference (c) for detailed guidance.

c. Other real estate matters

(1) Assistance in other real estate matters shall only be provided by civilian SMEs or Reserve Component attorneys who are qualified and competent to provide real estate advice in the jurisdiction in which the real estate is situated. Such advice shall be limited to identifying potential issues for further discussion with a private practitioner. Legal assistance attorneys must have specific CO, Director JLC, or OIC of LSSS approval to provide such advice.

(2) Mortgage payment and foreclosure issues. Attorneys are authorized to discuss the foreclosure process, recourse loans, non-recourse loans, forgiveness of debt and tax implications, and the basic provisions of federal and state government programs designed to assist military families and other eligible persons with selling a home or refinancing a mortgage. Attorneys shall be able to competently discuss deeds in lieu of foreclosure, short sales, and federal programs such as the Homeowners Assistance Program. Attorneys who are competent in this area of law and have the approval of their CO may draft letters to banks, mortgage companies and other parties in interest in efforts to facilitate refinancing of a client's outstanding loans.



7-8. Nonsupport of dependents. Legal assistance attorneys shall provide counseling, advice, and appropriate letter drafting (utilizing HotDocs templates) in matters concerning military nonsupport of dependents. This assistance may include information on the policies and procedures for support of dependents of each military service; what types of payments constitute "support"; the consequences of failing to provide support; criteria and procedures to obtain a waiver of the obligation to provide support; and requirements and procedures for obtaining a voluntary allotment of pay for child or spousal support.

(1) Communication with alleged obligor and alleged obligor's chain of command. When a dependent client raises concerns or complaints about the level of support he or she is receiving, the legal assistance provider should draft and forward a letter to the alleged obligor seeking information or resolution as an "investigatory" first step. Legal assistance attorneys are specifically authorized to communicate with the alleged obligor to the extent authorized under JAGINST 5803.1 (Series). If the matter remains unresolved after this effort, legal assistance attorneys are authorized to draft and forward a letter providing facts and seeking resolution to the obligor's CO. In instances where the alleged obligor failed to reply to the first letter, or if unusual circumstances prevented forwarding of the first letter to the alleged obligor, the subsequent letter to the CO shall clearly acknowledge that the information contained therein is based upon allegations which the attorney has been unable to confirm. See reference (c) for further details.

(2) Establishing/enforcing state court-ordered child and spousal support. Legal assistance providers are authorized to counsel and advise clients, draft appropriate demand letters and court documents (pleadings), and communicate with state or federal child support agencies in efforts to enforce court-ordered child and/or spousal support to the extent those activities comport with the Rules of Court in the relevant jurisdiction. Legal assistance attorneys may also negotiate on behalf of clients with adverse parties concerning the obligation and amount of support, but shall not represent the client as counsel of record at a court hearing or similar nonsupport proceeding, except in accordance with an approved ELAP case as discussed in Chapter XIII this Manual. Attorneys shall become familiar with the child and spousal support laws of the jurisdiction in which they are providing services so they may

competently advise clients in these matters. See reference (c) for further details.

(3) State support guidelines. When advising clients on state child support procedures, legal assistance attorneys shall be familiar with the jurisdiction's child support formulas and be able to calculate the level of support that a court is likely to award based on the respective incomes of the parties and the specific facts of the case. Links to child support calculators for most states can be found by running an internet search for the words "support guidelines" and the particular state.

(4) Garnishment. Legal assistance attorneys shall advise clients regarding the enforcement of child and spousal support court orders, including the DFAS wage garnishment process. Information on the DFAS wage garnishment process is available at [www.dfas.mil/dfas/garnishment.html](http://www.dfas.mil/dfas/garnishment.html).

(5) Paternity. Legal assistance attorneys must be competent to counsel and advise clients regarding the establishment of paternity, to include provision of information regarding civil judicial procedures, Navy policies and procedures, matters of parental rights and responsibilities, and resulting support obligations. Single parent clients with custody of children must also be advised of custody issues raised in military family care plans. No active-duty service member can be ordered to pay child support, to submit to blood or DNA tests, to enroll a minor as a dependent in the Defense Enrollment Eligibility Reporting System (DEERS), or to list the minor as a dependent on the member's page 2 unless a court of competent jurisdiction has issued such an order. Members who have voluntarily completed an affidavit of paternity and caused the same to be filed with PSD and/or the relevant state agency addressing vital statistics and parentage may also be required to make such payments. See reference (c) for further details.

7-9. Notarizations. The requirements of this section apply to state commissioned and 10 U.S.C. § 1044 notaries.

a. Military notary authority. Under the authority of 10 U.S.C. §1044a, JAGMAN CH IX, §0902d (1)(b), and JAGMAN §0705, the following persons may perform the notarial acts listed in subparagraph (2) below for customers eligible for legal assistance and for others as authorized in 10 U.S.C. §1044a:

(1) All civilian attorneys serving as legal assistance officers;

(2) All civilians employed by the Department of the Navy (DON) supporting legal assistance offices, when notarial acts are performed at locations outside the United States;

(3) All adjutants, assistant adjutants and personnel adjutants, including Reserve members when not in a duty status;

(4) All officers in the grade of O-4 and above;

(5) All commanding, executive, and administrative officers;

(6) All legal and assistant legal officers;

(7) All Marine Corps officers with MOS of 4430 while assigned as legal administrative officers;

(8) All judge advocates, including Reserve judge advocates when not in a duty status;

(9) All limited duty officers (law) and all legalmen; except that all limited duty officers and all legalmen shall become eligible to perform notarial acts only upon successfully:

(a) completing requisite notary training;

(b) signing a Duties and Responsibilities Form;

(c) receiving certification from their Commanding Officer or ranking Staff Judge Advocate (paygrade 04 or above) establishing their qualifications; and

(d) registering as a 10 U.S.C. §1044a notary with OJAG Code 16. Registration to execute notarial acts shall be linked to the relevant duty assignment and shall not transfer to subsequent assignments (which will require re-completion of the above steps); and

(10) All Marine Corps legal services specialists E-4 and above, while serving in legal assistance billets, when authorized by the cognizant Marine Corps authorities.

b. State notary authority

(1) State notary authority is governed by state law and requires fulfillment of specific state application and procedural requirements. For purposes of the Navy Legal Assistance Program, state/territory notary authority is generally only exercised by civilian personnel employed by the United States Navy and/or DoD entities and assigned to a legal assistance office. In limited circumstances, limited duty personnel may become certified to exercise state notary authority. Civilian and limited duty personnel who are lawfully commissioned state notaries may exercise their notarial authority in compliance with this Manual and applicable state law to augment the Navy Legal Assistance Mission.

(2) State notary training, commission, and errors and omissions insurance. All legal assistance offices are authorized to expend command training funds to pay for state notary training and/or examinations, including errors and omissions insurance (in states where there is a minimum level of errors and omissions coverage required by statute), and commission fees for those members of the support staff who wish to become licensed and bonded state notaries. Staff members considered for such funding shall demonstrate good judgment and maturity, execute services and a work schedule commensurate with state notarizations for clients, work under the direct supervision of an attorney, and be assigned to the command for at least nine months following certification. Staff commissioned as state notaries via expenditure of command funds shall restrict their notarial acts to the legal assistance office in which they are assigned unless authorized by their LADH to perform these services at other locations within the staff member's state of notary commission.

(3) Where a civilian has secured a state notary commission without government reimbursement, notarial acts performed aboard the military installation shall only be provided to eligible legal assistance beneficiaries per 10 U.S.C. § 1044.

c. Prohibition on compensation for notary services. No Navy legal assistance provider shall accept, request, or receive any fee or compensation of any kind (other than official government compensation) for notarial acts performed for eligible clients under the legal assistance program.

d. Training and certification of all notaries. The following training and certification procedures shall be completed by all persons providing notary services whether civilian, enlisted, or officer. As noted in section 7-9.a.(9) above, notary authority for limited duty officers (law) and legalmen is predicated on successful completion of the below requirements. While notary authority for judge advocates and civilian notaries is not predicated on completion of these training and certification requirements, the notary certification training and exam shall be completed by all officers and civilians performing notary services to ensure they maintain competency and currency to perform notarial acts within the scope of the Legal Assistance Program.

(1) Timeline for certification. All officers and all civilian notaries shall complete these requirements every three years. All limited duty officers and legalman shall complete these requirements upon check-in at each duty station.

(2) Required training. A Powerpoint training presentation must be reviewed before taking the Notary Certification Exam. The training presentation, titled "10 U.S.C. §1044a Notary Certification Training," is available via the Naval Justice School portal on Army Knowledge Online (AKO) at <https://jag.ellc.learn.army.mil>. Registration for an AKO account is required to access the Notary training.

(3) Certification exam. The Notary Certification Exam is also available via AKO at <https://jag.ellc.learn.army.mil>. A score of 75% or higher is required for successful completion of the certification exam.

(4) Notary Duties and Responsibilities Form. Following completion of the required training and exam, the Notary Duties and Responsibilities form shall be reviewed and signed. This form is available on both the Legal Assistance Community of Practice page on NKO and through the Naval Justice School portal on AKO.

(5) Certification from the RLSO CO, ranking SJA, or Code 16. Upon successful completion of the training and passage of the exam, certificates of training shall be issued by the RLSO CO (or his or her designee) or ranking SJA (pay grade 04 or above) for official certification. Independent duty legalmen or independent judge advocates shall provide proof of successful exam passage to Code 16 for official certification. The certificate of training shall be prominently displayed in that

individual's workstation. The template for the certificate of training is available from Code 16.

(6) Yearly registration of certified notaries with Code 16. Each command shall provide a roster of all certified 10 U.S.C. §1044a notaries and all civilian state notaries to Code 16 no later than 1 December of each year. Independent duty SJAs and legalmen performing notary services shall similarly provide updated certification statuses to Code 16 no later than 1 December of each year. Information on state notaries will also include the date the commission was issued, the date the commission expires, the amount and duration of errors and omissions insurance, and the notaries' state identification number located on his or her seal.

e. Overseas civilian notary certification and reporting requirements. Requests for approval of an overseas civilian to act as a 10 U.S.C. §1044a notary shall be forwarded to the Judge Advocate General, in writing, via Code 16. Any such civilian will be required to complete the notary training and requirements cited in paragraph d. above. Each overseas command with an overseas 10 U.S.C. §1044a notary shall provide a roster of notaries to Code 16 no later than 1 December of each year.

f. Notary logs, seals, and records

(1) All 10 U.S.C. §1044a legal assistance notaries shall use the OJAG Standardized Notary Log. All state commissioned notaries shall also use the OJAG Standardized Notary Log as their notary journal unless specifically exempted from this requirement by Code 16 in a written notice of exception as provided below.

(a) Exceptions for state commissioned notaries. Exceptions may include notaries whose jurisdictions statutorily require a particular, state-issued or notary-purchased log or journal. In these circumstances, exemption requests identifying the specific state statute establishing such requirements shall be forwarded to Code 16, and if approved, renewal requests shall be forwarded annually.

(b) State notary compliance with OJAG Standardized Notary Log requirements. Where an exemption is approved, state notaries will confirm the state-based log or journal comports with the requirements of the OJAG Standardized Notary Log and this section, and they shall augment their state-based notary to meet these requirements.

(2) All notarial acts performed by civilian state/territory notaries and 10 U.S.C. §1044a notaries shall be neatly recorded using the OJAG Standardized Notary Log or, when applicable, the civilian notary's statutorily mandated state notary log/journal, sequentially ordered by date of act performed, and address each of the following elements:

- (a) the date and place of the notarial act;
- (b) the identifier for, or the title of, the document(s) being notarized;
- (c) the customer or client's first and last name, street address, city, and state of residence;
- (d) the type of identification card used to prove 10 U.S.C. §1044 eligibility (e.g., Common Access Card (CAC), military dependent identification card, military retiree identification card) along with the expiration date;
- (e) the type of identification relied upon by the notary to verify the signature of the customer or client (e.g., state identification card, U.S. passport, or other state or federal issued identification card with the client or customer's signature) along with the expiration date;
- (f) the client's or customer's signature;
- (g) the client's or customer's thumbprint (using an inkless fingerprint stamp).

(3) Thumb-prints. All notaries, state and federal, shall obtain the thumb-print for every notarial act. Commands shall provide all 10 U.S.C. § 1044a and civilian notaries with an inkless thumb-print pad for recording the client or customer's thumb print. If a client or customer refuses to provide the requested thumb print, the notary shall make a note in the thumb-print column of the notary log indicating that refusal.

(4) Seals and embossers. Commands shall provide all 10 U.S.C. §1044a with a personalized 10 U.S.C. §1044a rubber ink seal. Use of a metal embosser (though not required for 10 U.S.C. §1044a notaries) is highly recommended as increasing the general perception of legitimacy of 10 U.S.C. § 1044a notarial acts among the larger civilian and commercial community. State notary laws vary as to whether a civilian notary is required to utilize a metal embosser, a rubberized seal, and even the color

of the ink impression made in using a seal. If a state notary does not perform notarial acts outside the scope of Navy Legal Assistance, the command shall reimburse the member for the state-required seal.

(5) Maintenance and security of notary logs. All notaries are required to properly maintain and secure their notary tools and logs. The log is the property and responsibility of the notary. Civilian notaries shall maintain such additional records of notarial acts as may be required by statute of the state issuing their notary public commission or where use of the OJAG Standardized Notary Log is insufficient to meet state requirements.

g. Witnessing requirements. All witnesses to 10 U.S.C. § 1044(d) based wills, durable powers of attorney, health care directives and living wills shall also be required to sign the notary log book following the witnessing of notary executions for any relevant client or customer. The address noted in the logbook for RLSO command personnel servicing as witnesses, whether civilian and military, shall be the Navy Personnel Command, PERS-312, 5720 Integrity Drive, Millington, Tennessee 38055-3130. For Marine Corps personnel and personnel from other military branches, the address noted shall similarly be that service's personnel and records management division. Where a witness is a civilian not employed by the military, that person's residential address shall be noted as the relevant address in the notary log.

h. PII protection. Notaries shall not collect or record social security numbers, DoD identification numbers, passport numbers, drivers license numbers, or identification card numbers that can be associated to a particular individual in their notary log books. When a client is signing the log book or completing an entry, the notary should use a sheet of paper to cover the PII of other customers and clients whose information has been recorded in that log book.

i. Signatures - notary presence required. Legal assistance notaries shall not certify a signature unless it is made in the physical presence of the notary, or when the maker, after proper proof of eligibility and identity, personally appears before the notary and acknowledges the signature on the document is his or her signature. When the signer is acknowledging his or her own signature, the notary shall require the client or customer to sign again in the space above, below, or next to the signature that was not made in the notary's



presence. When verifying a signature, whether the signature occurs in the presence of the notary or not, the notary must compare the signature presented with that contained on a valid state or federally issued photo identification card or passport. CACs do not contain signatures; therefore, CACs may be used to verify eligibility for legal assistance services but not to certify the authenticity of a signature for a notarial act.

(1) Exception (A): 10 U.S.C. §1044a Notary Reliance on CAC for active-duty members in limited circumstances where it is impossible or impractical for an active-duty member to retrieve his or her state or federally issued identification. In exigent circumstances, to include immediate deployment or missing state or federal identification card or passport, a CO (or his or her authorized designee) may authorize a 10 U.S.C. §1044a notary to perform a notarial act without verifying the active-duty service member's signature as described above. In those cases, the CAC will suffice as the sole source ID Card to confirm both the active-duty service member's eligibility for services and his or her signature for notarial purposes.

(2) Exception (B): Use of credible witness. In exigent circumstances, where it is impossible or impractical for an active-duty member to retrieve his or her state or federally issued identification card, to include immediate deployment or a missing state or federal identification card or passport, both 10 U.S.C. §1044a notaries and state notaries may use their personal knowledge of an active duty service member or the personal knowledge of a credible witness to verify the active duty service member's identity without comparing the service member's signature to a state or federally issued identification card or passport. A state notary shall only rely on this exception when his or her state notary laws permit this form of verification of identity. When relying on "personal knowledge" or the "knowledge of a credible witness" to identify the signer, the notary shall complete the following steps:

(a) The notary shall write "PK" (personal knowledge) or "CW" (credible witness) to reflect the manner in which the identity of the signer was established in column 3 of the OJAG Standardized Notary Log;

(b) The notary shall require the person who has the personal knowledge or is the credible witness to sign the notary Log and prove himself or herself by the applicable required form of identification in column 3 of the Log; and

(c) The notary shall record the applicable state or federally issued identification number and expiration date for that witness. The remainder of the log book shall be completed as described in section 7-9.f.(2) above.

j. Jurats (oaths or affidavits). Notaries may be asked to notarize documents in which the client is swearing or affirming to the truth of the matters asserted in that document. In that situation, the notarial act is referred to as a "jurat" and requires a specific statement by the notary that differs from a normal acknowledgment.

(1) Format. If the document already has a jurat included, the notary may use that format. If there is no jurat included in the document, the notary shall use the format provided in Appendix E.

(2) Notary's responsibilities generally. The notary is responsible for ensuring that an appropriate oath is administered to the client, that the declarant's eligibility as a client or customer has been verified as required, and that the client or customer's signature on the document appears to be the same as the signature on an officially issued state or federal government identification card. Note that the use of a CAC is not valid for signature verification purposes.

(3) Notary's responsibility for verifying accuracy of underlying information. Generally, the notary is not responsible for verifying the accuracy of the underlying information contained in the affidavit or document. However, where the notary has personal knowledge of the facts or circumstances asserted in the document, the notary is prohibited from performing notarial services on that document where the facts as asserted are personally known to the notary to be false. Additionally, when the notary is asked to notarize a jurat that includes the signer's birth date or age, the notary must verify that information by reviewing a certified copy of a birth certificate or identification card provided by the signer.

(4) "Loose" jurats. If a jurat is not included on the same page as the information being acknowledged, it is considered a "loose" jurat. Loose jurats must also contain a description of the document, to include title, type, number of pages, date, and additional signers (if any) to minimize the possibility of fraud via attachment of a loose jurat to an entirely different document.

(5) Statutory language in a jurat or acknowledgment.

Several states require state notaries to use specific language in notarial acknowledgements. State notaries shall verify state law before using any notary block on a document presented for state notarization. Generally, notaries shall strike any language that does not apply to that particular notary (such as plurals when there is only one signer, feminine pronouns if the signer is a male, or where the notary verbiage states "he/she/they"). The notary shall strike out inapplicable items and/or circle applicable items.

k. Certified true copies. No legal assistance attorney or provider shall certify documents as "true and accurate" copies of original documents, unless the original was created by the legal assistance office itself or is maintained by the legal assistance office itself as part of its official responsibilities or records. Certification of a document as a true and accurate copy of the original document is NOT a notarial act. Certifying a document as a true copy verifies the authenticity of the document. Only the entity or business that created the document or maintains the original can certify a document as a "true and accurate" copy of the original document. The only exception to this prohibition is certification of a duplicated copy of an original power of attorney affecting title to real estate; a durable power of attorney; or health care power of attorney created by the legal assistance office itself as a "true copy," where the local jurisdiction requires recording the original document with the recorder of deeds or the recorder of titles. As of October 1, 2012, the states requiring such recording are North Carolina, Ohio, Rhode Island, South Carolina, Texas, Vermont and Washington. Code 16 will update this list via a LAPA as changes occur.

(1) Alternative to a certified true copy. A notary may notarize the statement and signature of the customer who wishes to make a sworn affidavit that he or she represents a copy to be a true and accurate copy of the original document. Whether such an affidavit will be accepted by the agency requesting the certification is unclear. It is generally best to refer the requestor back to the original document's issuing agency for creation of true and accurate copies. For example, a true copy of a birth certificate may be obtained from the relevant bureau of vital statistics, a true copy of a driving record may be obtained from the local department of motor vehicles, and a true copy of immigration documentation may be obtained from the United States Citizenship and Immigration Service.

7-10. Powers of attorney

a. Legal assistance attorneys and support staff under the supervision of attorneys may prepare, notarize and deliver various powers of attorney requested by a client. Several web sites and vendors advertise a variety of "fill-in-the-blank" powers of attorney. Navy legal assistance providers shall neither use nor distribute these forms. Where the need for and effect of the document are unquestionably clear, and no legal advice is required, legal assistance support staff may, after interviewing the client, prepare any power of attorney other than those listed in subparagraph b. below, using HotDocs software or other forms promulgated by Code 16. Support staff may provide customer service without the requirement of an attorney-client meeting unless the customer expresses a desire to meet with an attorney, an issue arises that the staff member believes requires the attention and involvement of an attorney, or an issue arises calling for a legal opinion. Legal assistance support staff may also, under the supervision of an attorney, remind customers that some powers of attorney must be recorded before they can take effect and that in most jurisdictions only the original of the power of attorney may be recorded. As noted previously, when a customer intends to have a power of attorney recorded, the staff member who created the original power of attorney may concurrently issue a certified true and correct copy of that same power of attorney so that the customer can maintain a copy in his possession while satisfying recording statutes.

b. Powers of Attorney requiring attorney consultation. "Springing" powers of attorney (also known as "conditional" or "contingent" powers of attorney) and "durable" powers of attorney for making health care directions (often accompanying a living will) may only be prepared and executed after meeting with a legal assistance attorney. Supervising attorneys may specify other situations that require an attorney-client meeting prior to the preparation or delivery of a power of attorney by support staff.

c. General powers of attorney. A general power of attorney (GPOA) gives the attorney-in-fact the authority to act on behalf of the principal in almost any situation. GPOAs expire automatically upon the principal becoming mentally ill or otherwise incapacitated. The use of GPOAs is discouraged, as they lack the specificity necessary for many important transactions and the breadth of authority they purport to grant may be easily abused. When a GPOA is sought, the legal

assistance attorney or support staff member shall inquire about the specific use intended for the instrument, and, whenever feasible, shall suggest more specific and limited special powers of attorney (SPOAs) to accomplish the client's goals. GPOAs, when drafted, shall be limited in duration to the minimum period necessary, as many businesses are less likely to accept GPOAs that indicate significant duration. In almost every case, GPOAs shall be drafted to be effective for no more than one year. However, individual facts and circumstances may require a longer or shorter period (e.g., for a service member deploying for a period close to or in excess of a year).

d. Durable powers of attorney. Powers of attorney can be rendered "durable" by the inclusion of a durability clause, intended to keep the power of attorney in force beyond its stated expiration date in certain situations. Durable powers of attorney remain in effect despite a principal becoming incapacitated, suffering a physical or mental disability, or, if properly inserted as a clause, despite a principal being classified as "missing in action" or as a "prisoner of war." A durable power of attorney expires immediately upon, or very soon after, the death of the principal. As noted previously, a non-durable power of attorney expires upon the principal's legal incapacitation or when the principal revokes the power of attorney. When a client requests a "durability clause" in a standard GPOA or SPOA created in preparation for deployment, where that durability clause only refers to "missing in action" and/or "prisoner of war" situations, legal assistance support staff may include that durability clause in drafting and executing the power of attorney without client consultation with a legal assistance attorney. In all other cases where the client expresses the desire for a durable power of attorney, the client must meet with a legal assistance attorney and only that attorney may draft (or delegate the drafting to a subordinate under that attorney's supervision) the durability clause.

e. Contingent or springing powers of attorney. A contingent or springing power of attorney delegates powers that cannot be exercised by the agent until the occurrence of a specified time or at a specified event. Such powers of attorney are especially appropriate for health care and advance medical directives, as long as the legal assistance attorney confirms the requirements of the client's domicile. In all other cases, when a client requests a springing power of attorney, a legal assistance attorney will discuss the basis of that request with the client. If the client requests a springing power of attorney because he or she does not trust the attorney-in-fact

with control over his or her finances, the client shall be advised to not give that person a power of attorney at all. Springing powers of attorney shall only be written by, or under the direct supervision of, a legal assistance attorney, and only after that attorney has thoroughly interviewed the client.

f. Military powers of attorney executed under 10 U.S.C. § 1044b. Federal law grants special status to powers of attorney executed on behalf of eligible legal assistance customers and clients. 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 powers of attorney prepared and executed in accordance with state requirements.

(1) Military Power of Attorney as default format. To preserve these rights, military powers of attorney shall include the "MILITARY POWER OF ATTORNEY 10 U.S.C. §1044b" preamble at the top of the power of attorney. See Appendix F for the military power of attorney preamble. Given these protections, powers of attorney prepared at Navy legal assistance offices shall be prepared as military powers of attorney.

(2) Exceptions. Under the following circumstances, non-military powers of attorney may be prepared:

(a) If the client or customer is a domiciliary of the state in which the power of attorney is being prepared, and a supervising attorney barred in that state is available for consultation, a legal assistance attorney or staff member may prepare the power of attorney as a state power of attorney.

(b) If the document is to be used in a territory or possession of the United States or in another country, the document should be prepared in a fashion that is more likely to be accepted in that jurisdiction. For example, the Philippines generally will not accept a 10 U.S.C. §1044 power of attorney for real estate transactions when that document is notarized by a 10 U.S.C. § 1044 legalman or attorney. When a customer states that he or she wants a POA for use in the Philippines, the legal assistance office shall require that a state notary serve as the notary for such POA in accordance with 10 U.S.C. § 1044b, relying upon the verbiage for a state notary rather than the verbiage of a military notary commission. This allows the notary commission to be verified by the secretary of state or the notary licensing authority in that state.

(3) Nothing in this section shall be construed as requiring or suggesting that all real property powers of attorney be notarized only by state licensed notaries. That decision must be driven by a variety of factors specific to the client or customer's situation.

g. Persons authorized to serve as a notary for 10 U.S.C. § 1044b powers of attorney. 10 U.S.C. § 1044b powers of attorney may be notarized by either a state notary or a 10 U.S.C. §1044a notary regardless of the presence of the military preamble. If a state notary is notarizing the document, then a state notary block for the state in which the document is being notarized shall be included; if a 10 U.S.C. § 1044a notary is notarizing the document, then a 10 U.S.C. § 1044a notary block shall be used (see Appendix E).

h. HotDocs and other power of attorney resources. Every legal assistance office shall utilize Code 16-approved software to generate powers of attorney that are created for non-estate planning purposes. The current software is HotDocs. HotDocs contains power of attorney templates reviewed and edited by Code 16 for currency and legal sufficiency. Legal assistance offices may wish to add their own specialized templates to HotDocs to better accommodate local circumstances and aid local clients. Any such templates must be forwarded to Code 16 for review and potential inclusion in HotDocs. HotDocs is currently available via CMTIS. SJAs or legal officers without CMTIS access may contact Code 16 to gain access to HotDocs, unless they are assigned in locations with limited or non-existent internet access. In such instances, these personnel may contact Code 16 for direct distribution of templates.

i. JAGMAN § 0906(h). This section shall serve to supersede JAGMAN §0906(h), as promulgated 26 June 2012, with regard to the requirement that all acknowledgments of instruments that affect title to real property be witnessed by three persons, none of whom are the notary. As of 1 October 2012 there are nine (9) jurisdictions requiring either one or two witnesses to any power of attorney affecting title to real estate: Arizona, Connecticut, Florida, Georgia, Illinois, Oklahoma, Pennsylvania, South Carolina, and Vermont. Accordingly, effective 1 October 2012, legal assistance offices are required to use only two witnesses and one notary for the execution of documents affecting real property in the aforementioned jurisdictions. In all other jurisdictions, these documents may be notarized without witnesses. Code 16 will



update this list via Legal Assistance Practice Advisories as changes occur.

7-11. SCRA. Legal assistance attorneys shall be prepared to advise clients on all aspects of the SCRA. See reference (c) for further details.

a. Scope of advice. Advice shall include information regarding stays of civil court and administrative proceedings; repossession protections; default judgment protections; interest rate cap provisions; lease termination; cellular telephone contract termination; eviction protection provisions; and tax and residency protection. Legal assistance attorneys must advise clients that representation will not include litigation.

b. In the event a client requests an "SCRA" power of attorney for litigation purposes, the attorney must advise the client that such power of attorney does not authorize a non-lawyer to argue or present the client's case in court; but rather serves to authorize the agent to file documents on the client's behalf or to engage the services of a licensed attorney to present the client's case.

c. Legal assistance attorneys shall be alert to situations where a client is facing a civil lawsuit as a result of actions taken within the scope of that client's official duties (for example, a Sailor or Marine on duty injures someone while driving a government vehicle). These clients may be entitled to representation by the Department of Justice (DOJ). Contact Code 16 or Code 14 for more information or assistance.

7-12. Personal tax advice

a. Legal assistance attorneys may provide advice to eligible clients on a wide range of federal, state, and local income tax issues; electronic tax filing; and property and other state and local tax issues impacted by the SCRA. Legal assistance attorneys shall not prepare actual tax forms (with the exception of VITA/ELF support). When advising a client on tax matters, the legal assistance attorney shall inform the client that services will be limited to office consultation and will not include, without the express permission of the JAG or his or her designee, any appearance before the Internal Revenue Service (IRS) or any state or local tax board or agency. Attorneys shall not receive payment for tax advice. Code 16 can provide tax guidance and resources to legal assistance attorneys.



b. A legal assistance attorney may provide limited procedural advice to eligible clients who are audited by the IRS or state tax authorities, but will not register as the taxpayer's representative or accompany the taxpayer to an audit without prior authorization from the JAG or his or her designee, as appropriate.

c. A legal assistance attorney may contact the IRS, or appropriate state or local tax authority, for tax information or to determine the agency's position on a client's personal tax situation. As all Navy-wide tax policies and matters are coordinated through Code 16, individual legal assistance attorneys shall not contact the IRS or a state or local tax authority seeking an opinion on the application of tax laws or regulations to Navy, Marine Corps, or military personnel in general. Legal assistance attorneys shall refer questions and issues of general or service-wide tax application, and instances of questionable activities by Federal, state or local tax authorities, to Code 16 to ensure appropriate coordination with the Armed Forces Tax Council pursuant to DODDIR 5124.3.

d. As an exception to the eligibility rules contained in JAGMAN §0705 and section 5-9 of this Manual, family home care providers who have been certified to provide child care in their Government quarters pursuant to Navy or Marine Corps (or other service equivalent) regulations may receive assistance in preparing a Schedule C (Profit and Loss from Business) tax form.

e. Tax forms. During the months of January through April, legal assistance offices shall ensure a wide range of Federal personal income tax forms are available for client review. Most Federal and state tax forms are available via the Internet. Legal assistance offices may register with the IRS' Banks, Post Offices and Libraries (BPOL) program or the Embassy program for tax form distribution. Additionally, attorneys may register as members of the IRS Tax Practitioner Program to receive informational copies of IRS forms, instructions and publications. Stocks of local state forms shall also be made available when and where practicable.

f. VITA/ELF Programs. As noted previously, legal assistance attorneys shall not ordinarily prepare client tax forms, except in support of the Volunteer Income Tax Assistance/Electronic Filing (VITA/ELF) Program. Legal assistance attorneys and support staff may serve as managers and/or volunteers at Navy VITA/ELF sites at the discretion of their command leadership.

A Navy legal assistance attorney is typically appointed to organize and manage local execution of VITA/ELF services. Legal assistance attorneys may also be called upon to act as back-up advisors to VITA/ELF volunteers preparing returns. In this context, attorneys are not providing advice, as they are merely inserting customer data into the software. Any VITA/ELF customer seeking assistance regarding a tax notice from the IRS or from a state taxing authority must meet independently with a legal assistance attorney. Code 16 is responsible for promulgating VITA/ELF policy and eligibility guidelines each year in cooperation and coordination with the IRS.

7-13. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

a. Legal assistance attorneys shall provide advice to eligible clients seeking reemployment under USERRA (38 U.S.C. §§ 4301-4333) and comparable state statutes subject to the following restrictions:

(1) The primary responsibility for enforcing USERRA protections rests with DOJ and the Department of Labor (DOL) via the Veterans' Employment and Training Services (VETS) program. DOL and DOJ will not pursue any relief in a reemployment case where an attorney represents a service member. Thus, Navy legal assistance in veteran reemployment matters shall be limited to preserve the client's ability to file a USERRA claim. Specific advice shall be limited to: advising returning service members of their rights under USERRA and applicable state law, if any; providing DoD Employer Support of the Guard and Reserve (ESGR) program approved sample letter formats for use by returning service members in asserting their USERRA rights with their employers; referring service members to the DOL VETS program or the ESGR; providing service members with DOL Form 1010 (Eligibility Data Form: Veterans' Reemployment Rights Program) to open a file with VETS and assisting in the preparation of that form; and periodically contacting service members who have requested assistance with employment problems to determine if their employment problems have been solved.

(2) Legal assistance on USERRA matters may be coordinated with officials within appropriate state agencies or DOL if required by the circumstances of the case. As legal assistance attorneys must not take any action that might be interpreted as representing a service member, attorneys shall not contact particular employers or draft and forward demand letters. VETS remains the appropriate resource for most service members in

these cases and will investigate an alleged violation; attempt to negotiate a resolution; and if that attempt fails, refer the matter to DOJ for appropriate action. In such cases, DOJ and the United States may act on behalf of the service member as a party in interest in a U.S. District Court at no cost to the member. For instructions on filing a USERRA claim, go to <http://www.dol.gov/elaws/vets/userra/1010.asp>. The DoD Employer Support of the Guard and Reserve (ESGR) program provides additional resources available at [www.esgr.org](http://www.esgr.org).

(3) The restrictions noted above do not apply to attorneys providing legal assistance for clients seeking redress exclusively in state courts or state administrative agencies (for example, pursuant to state-enacted veteran reemployment or anti-discrimination law).

7-14. Victim/Witness Assistance Program (VWAP) and Crime Victim Rights Information. All crime victims (as defined by section 5-12 of this Manual) who are eligible for legal assistance services are also eligible to receive VWAP and crime victim rights information from legal assistance attorneys acting as "service providers" as discussed in OPNAVINST 5800.7 (Series). All clients or prospective clients identified as crime victims shall be provided with the following information in accordance with section 5-12:

a. The Victim/Witness Assistance Program, as described in OPNAVINST 5800.7A, including:

- (1) the rights and benefits afforded to a victim;
- (2) the role of a potential Victim Advocate; and
- (3) the privilege that exists between a victim and a Victim Advocate.

b. The differences between restricted and unrestricted reporting in sexual assault cases.

c. General information concerning the military justice system, including the roles and responsibilities of the trial counsel, defense counsel, and investigators. This may include the ability of the government to compel cooperation and testimony.

d. Services available to the victim from appropriate agencies or offices for emotional and mental health counseling and other medical services.

e. The availability of and protections offered by civilian and military restraining orders.

f. Eligibility for and benefits potentially available through the transitional compensation benefits established in 10 U.S.C. §1059, and other state and federal victims' compensation programs.

g. Eligibility for traditional forms of legal assistance described in this Manual, including matters such as leases, taxes, consumer affairs, estate planning, and powers of attorney.

7-15. Wills, trusts, and estate planning. Basic or simple estate planning, as defined in subparagraph n. below, including drafting wills, advanced medical directives, living wills, durable powers of attorney, and SGLI and DD-93 beneficiary designations, is a fundamental pillar of the legal assistance program. Every effort must be made to meet the individual needs and desires of the client concerning the disposition of property and the care of minor children. Complex estate planning services, as defined in subparagraph o. below, shall not be provided unless resources permit, prior approval is granted, and the servicing legal assistance attorney possesses the particular legal training and expertise necessary to provide effective support.

a. Client interviews. A legal assistance attorney shall individually interview, in as private a location as possible, each client requesting a will before the execution of the document by that client. Completion of this interview serves to best determine the client's wishes and to ensure that the client is legally competent, understands the nature of the issues presented, and has provided all information critical to the effective drafting and execution of his or her personal estate planning package.

b. Interviews with deaf, blind, ill, injured, fragile or elderly clients accompanied by a third party. Clients facing physical challenges who are brought to a legal assistance office by a third party (either spouse or non-spouse), shall be interviewed privately outside the presence of the third party to ensure competency and the true nature of the client's

intentions. Legal assistance attorneys conducting such interviews shall specifically note the circumstances encountered in writing in the individual and legal assistance office case files. After concluding the interview, the legal assistance attorney has sole discretion to determine whether the client is competent to participate in the estate plan drafting and execution process.

c. Hospital, bed-side, and death bed interviews. When an eligible client is in a hospital, nursing home, or confined to his or her own home, the servicing attorney or support staff shall obtain a signed, written statement or affidavit from the client's treating or attending physician or psychiatrist attesting to the mental competency and legal capacity of the client, regardless of whether there is cause to believe the client has diminished legal or testamentary capacity or not. The statement shall identify the doctor's name, licensing authorities, length of treatment relationship with the patient, the date of the mental competency and legal capacity evaluation, a list of prescriptions or medicine currently being administered to the patient, whether the patient is mentally and legally competent and, if so, whether the prescriptions or medications currently prescribed are likely to reduce the patient's mental faculties. If the patient has predictable intervals of lucidity or mental competency, the statement shall indicate a time period during which the attorney could be more confident that the patient would not be impaired. Failure to comply with this requirement shall be grounds for the attorney to refuse to provide the requested legal services. In such cases, the client shall receive appropriate civilian referral resources. The decision to proceed with the delivery of estate planning services for such clients is within the sound discretion and professional judgment of the servicing attorney. If the attorney is satisfied with the level of mental and legal capacity and testamentary intent of the client and chooses to proceed with the estate plan, power of attorney, or delivery of other legal services, the attorney shall take the following steps:

(1) Maintain the physician's statement in the individual and legal assistance office case files; which shall also include the completed will worksheet, other worksheets and any attorney notes;

(2) Take all reasonable steps to re-confirm the legal and mental competency of the client prior to any follow-up interviews and document execution. The attorney shall retain a

summary of the procedure used to determine the client's legal and mental capacity and the results thereof in relevant case files; and

(3) Obtain affidavits or statements from each witness and the notary indicating their understanding of the competency of the client. Such statements shall be written or notarized immediately after the execution of the estate planning documents and secured along with the physician's statement in relevant case files.

d. Delivery of estate planning documents to clients. The legal assistance attorney shall not normally deliver unexecuted estate planning documents to a client. However, office policy may permit clients to remotely review documents to promote efficiency. In these instances, the legal assistance attorney or support staff shall, to the extent possible per current law and in compliance with DoD and DoN PII directives and instructions, provide the documents to the client in a portable document format (PDF) file. Each page of the PDF shall contain a watermark reading, "DRAFT DOCUMENT DO NOT EXECUTE." When transmitting the documents to the client, the legal assistance attorney or support staff shall provide the client with a cover letter or message informing the client that the documents are not final and should not be interpreted or relied on as such; directing the client to closely review the documents; and advising the client to immediately contact the provider with any necessary modifications, questions, or concerns for resolution prior to formal execution.

e. Group or videotaped informational presentations. Clients shall not be required to attend group or videotaped estate planning informational sessions as a prerequisite for completing a will questionnaire or meeting with a legal assistance attorney. These presentations may be offered, however, as optional general information sessions prior to an initial one-on-one private interview with an attorney.

f. Delegation of duties to legal assistance support staff. Nothing in this section shall be construed to prohibit a legal assistance attorney from delegating the initial estate planning client interview to a member of the legal assistance support staff, provided that the staff member has been properly trained and all of the staff member's work is subject to final review and approval by the supervising attorney, and provided that the legal assistance attorney interviews the client prior to the execution of the will to ensure the will reflects the needs and

desires of the client. Legal assistance support staff may assist attorneys by drafting wills, drafting ancillary documents (including the DD-93 and SGLI beneficiary designation forms), and proof-reading and formatting estate planning documents.

g. Standardized will worksheet. All estate planning interviews shall be conducted utilizing the OJAG Standardized Will Interview Worksheet, available on NKO. The worksheet may be completed by the client, a member of the support staff, or by the attorney. In all cases, the client must sign at the end of the worksheet indicating his or her approval of the information contained therein and his or her request for the preparation of estate planning documents.

h. Preparation of statutory or "fill-in-the-blank" wills. Navy legal assistance attorneys shall not participate in the preparation of preprinted "fill-in-the-blank" or statutory wills and shall not rely on such documents for the drafting or execution of estate planning documents. Clients presenting such documents shall be provided the Standardized Will Interview Worksheet, scheduled for a later appointment (if necessary) to review and complete that worksheet, and specifically advised that free estate planning services are available at that legal assistance office. If a command believes that exigent circumstances require assistance with such products, Code 16 shall be contacted for guidance and approval.

i. Execution of statutory or "fill-in-the-blank" wills. As above, Navy legal assistance providers shall not execute preprinted "fill-in-the-blank" wills, as this service might imply Navy legal assistance review, endorsement, or guarantee of the product. Clients presenting such documents for execution shall be advised that free estate planning services are available at that legal assistance office, provided with the Standardized Will Interview Worksheet, and scheduled for a later appointment (if necessary) to review and complete that worksheet if Navy legal assistance estate planning support is desired. If a command believes that exigent circumstances require assistance with such products, they shall contact Code 16 for guidance and approval.

j. Will drafting software. Navy legal assistance attorneys shall utilize the most current version of "will drafting" software as approved and distributed by Code 16. The current approved will drafting software is DL Wills.

(1) DL Wills generates estate planning documents that largely meet the form requirements of most states. Collaterally, 10 U.S.C. § 1044d protections provide military clients' estate plans with a rebuttable presumption of regularity in terms of execution if executed as a Military Testamentary Instrument (MTI). It is NLSC policy that the default format for all estate plans is the MTI, with limited exceptions noted in paragraph 7-15.m. below.

(2) While DL Wills provides state specific will templates for most jurisdictions within the United States, it is not designed to produce wills for domiciliaries of Louisiana, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands. The following guidance is provided to assist clients domiciled in these jurisdictions:

(a) Louisiana: A Navy legal assistance attorney shall not draft Louisiana estate plans, unless they are currently licensed and barred in the state of Louisiana or specifically authorized by their CO to do so. When a client presents as a domiciliary of Louisiana, the attorney shall provide the client with the OJAG Standardized Will Interview Worksheet and conduct the will interview with the client. Once the worksheet is completed, the attorney or his or her designee shall forward the will worksheet to RLSO SE Branch Office New Orleans, where the estate planning documents will be drafted by a Louisiana estate planning SME. The Louisiana SME may independently contact the client for additional information necessary to properly draft the estate plan consistent with the client's intentions. Once completed, the will and other estate planning documents will be returned to the original attorney with specific directions for execution. If the client wishes to make any additional modifications, the executing attorney must first consult with the New Orleans RLSO attorney to ensure that the proposed modifications do not violate Louisiana law.

(b) Clients domiciled in Guam, Puerto Rico, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands: A Navy legal assistance attorney shall not, unless specifically authorized by their CO and currently licensed and barred in the pertinent jurisdiction, draft an estate plan using DL Wills for any of these jurisdictions. If no attorney at the legal assistance office is competent to draft such estate planning documents, the attorney shall advise the client of the following options:



(i) the client should retain a qualified estate planning attorney licensed by the particular jurisdiction; or

(ii) the client may request that the legal assistance attorney draft an estate plan under the jurisdiction in which the client currently resides as the controlling jurisdiction. The client must be advised, however, that if the client's estate contains any real property, or if the client has minor children or a spouse or surviving parents, several parts of the will might not survive review if those provisions prove contrary to the laws of the client's actual domicile. If the client chooses this option, the drafting attorney shall select the relevant state in the DL Wills drafting process, but remove all reference to the specific jurisdiction in the completed document. The will shall be rendered in as generic a form as possible, while powers of attorney and health care directives shall conform to the laws of the state in which client currently resides.

k. Military Testamentary Instrument (MTI) Format. As Navy legal assistance clients are generally a mobile population, and state estate planning laws are constantly changing, reliance on the MTI format for most estate planning services helps to ensure successful probate regardless of any deviation from state statutory formalities of execution. Thus, Navy legal assistance attorneys shall use MTIs in their estate planning practices as the default format.

(1) Standard format and execution. When the estate plan is drafted as an MTI, it shall be executed by a military legal assistance attorney acting as presiding attorney and notary. Furthermore, the estate plan must contain:

(a) The MTI preamble (see Appendix F); and

(b) The MTI self-proving affidavit (see Appendix F).

(2) Exceptions. Under the following limited exceptions, the MTI format (including the MTI preamble and the MTI self-proving affidavit) is not required. In these cases, an MTI is not necessary and state notaries may notarize the estate planning documents. Wills that are not prepared as MTIs shall not contain the MTI preamble or the MTI self-proving affidavit but instead shall conform to the laws of the jurisdiction for which they were drafted.

(a) the client is a retiree or dependent of a retiree and domiciled in the state in which the document will be executed;

(b) the client is a Reservist who indicates that he or she does not intend to move from the current state of residence;

(c) the client's domicile actually coincides with the state in which the document will be executed.

1. Will executions. Wills shall be executed only after the client has had the opportunity to carefully review and seek modifications to the document and to discuss its provisions with the drafting legal assistance attorney. If the drafting attorney is unavailable, the client may be provided such opportunity with another legal assistance attorney at the same location, so long as the client consents. A standard operating procedure ("Standardized Will Execution Script") for MTI will executions and executions involving self-proving affidavits is available on the Legal Assistance Community of Practice page on NKO to assist attorneys in successfully navigating the legally significant and complicated will execution process. The standard operating procedure specifically outlines the requirements for the will execution ceremony and the questions that must be asked of the clients and the witnesses. Powers of attorney, including health care and advance directives, shall be executed in accordance with their particular requirements.

(1) Prohibition against mass will executions. "Mass will executions" attempt to complete will execution procedures for multiple clients at the same time. Navy legal assistance providers shall not conduct such efforts, as executions involving too many clients are likely to exceed the limits of responsible control of execution proceedings and thereby undercut the ability and duty of Navy legal assistance personnel to ensure the legal sufficiency and accuracy of execution procedures. Absent exigent circumstances or operational necessity, to include an unexpected surge or a pre-deployment ship will visit, will executions of more than six persons per attorney or state notary are prohibited. Even during "exigent circumstance" events, extreme care must be exercised by legal assistance providers to maintain an orderly execution process so that each service member's individual documents are kept separate and organized for proper execution. In no event shall the legal assistance attorney executing the documents be a member of the same deployable command as all of the clients and witnesses participating in the group execution. Likewise, it is

recommended that a legal assistance attorney bring his or her own neutral witness, or obtain a non-deployable witness from the command, to serve as one of the two required witnesses.

(2) Exigent circumstances prevent execution of an MTI Last Will and Testament by a 10 U.S.C. 1044 qualified legal assistance attorney. In the rare circumstance where an estate planning package must be forwarded to a service member who is underway or forward-deployed, the legal assistance attorney may arrange for an appropriate legal officer (see 10 U.S.C. §1044a and JAGMAN §0902 for persons authorized to act as federal notaries) to perform the execution of non-MTI wills and ancillary estate documents under the written direction of the drafting legal assistance attorney. It is critical that any attorney drafting such a plan do so as a NON-MTI instrument relying on state law execution procedures. This is because Legal Officers notarizing these documents may not execute a 1044d MTI. The drafting legal assistance attorney shall provide specific and detailed instructions for the execution procedure to the Legal Officer and the client. The instructions shall include direction to the Legal Officer to provide written confirmation of the date, time, and place where the execution occurred and that execution was completed in strict compliance with the instructions. This information shall be noted in the Legal Officer's notary logbook and provided to the drafting attorney. The instructions shall also direct that the will shall not be executed if the service member disagrees with any of its provisions, has any questions regarding the provisions, or does not understand any will provisions.

m. Mandatory content for estate planning documents. The following content shall be included in all estate planning documents:

(1) Attorney information. All wills shall cite the name of the attorney drafting the will (or the name of the supervising attorney if drafted by support staff), the state where that attorney is admitted to practice law (with bar number if one is issued), and the telephone number and address of the legal assistance office where that attorney is assigned. This information shall be placed on the cover page of the will in the lower left quadrant.

(2) Address for military witnesses. The address noted in the witness blocks for Navy personnel serving as witnesses shall be Navy Personnel Command, PERS-312, 5720 Integrity Drive, Millington, Tennessee 38055-3130.

n. Simple wills. As noted previously, most estate planning support consists of preparing simple wills and their ancillary documents. Simple wills dispose of the client's property, name executors, and name guardians of minor children and their estates (where appropriate). Estate planning advice often includes designating the recipient of the death gratuity, unpaid pay and allowances (DD-93), and completing of the Servicemember's Group Life Insurance (SGLI) beneficiary designation forms. Every legal assistance attorney shall become competent to explain and draft these instruments. Some basic wills may also require the discussion and inclusion of testamentary pre-residuary and/or residuary trusts for minor child beneficiaries.

o. Complex wills. Preparation of complex wills is a Tier IV service. Complex wills address more complicated estate planning issues including credit shelter trusts, disclaimer credit shelter trusts, marital deduction trusts, qualified terminable interest property (QTIP) trusts and Qualified Domestic Trusts. Advice, analysis, and implementation of these sophisticated tax-minimizing provisions requires specialized training and competency.

(1) With the approval of the LADH and resources permitting, civilian legal assistance attorneys and Reserve SMEs who practice in the area of Wills, Trusts and Estates may be authorized to prepare complex wills so long as they maintain proficiency to effectively deliver these services.

(2) Active-duty judge advocates shall not normally prepare, or be expected to prepare, complex wills. However, all legal assistance attorneys must remain aware of changes in federal and state law that impact the financial threshold meriting complex will consideration. If an active-duty judge advocate desires to prepare complex wills, he or she may do so with the approval of the LADH, but only under the supervision of a senior, experienced civilian legal assistance attorney or Reserve SME.

(3) If a client desires or requires a complex will, and no competent provider is available or resources prohibit provision, that client shall be advised to seek the expertise of a private sector civilian estate and tax attorney. Preparing a basic estate plan for such a client is not recommended.

p. Revocable and irrevocable living trusts. Some clients may seek advice regarding the utility of a revocable or irrevocable living trust, as they own real estate in multiple jurisdictions and want to avoid probate or own significant probate assets and are nearing the monetary threshold implicating federal estate taxes. While all legal assistance attorneys are expected to provide general legal advice in this matter, Navy legal assistance attorneys are prohibited from drafting such documents. If a client, after receiving advice concerning SGLI and DD-93 Death Gratuity and Unpaid Pay and Allowances benefits, desires to name a revocable or irrevocable trust as the beneficiary of those assets, the client shall be referred to a competent civilian attorney to prepare the trust and the beneficiary designation forms.

q. Servicemember's Group Life Insurance (SGLI) and DD-93 Death Gratuity and Unpaid Pay and Allowances Benefits; Survivor Benefits Plan (SBP); Social Security Benefits; Dependent Indemnity Compensation (DIC); miscellaneous state and federal benefits; Thrift Savings Plans.

(1) As these potential benefits often comprise the majority of a service member's estate, all legal assistance attorneys must be familiar with these benefits and be able to advise their clients regarding the nature and applicability of these benefits. The rights, benefits, and privileges (including coverage of spouse and children) available to clients via SGLI and the death gratuity and disposition of unpaid pay and allowances shall be explained to all eligible service members seeking information or advice regarding estate planning. The interviewing attorney shall notate on the OJAG Standardized Will Worksheet that this discussion was completed, and indicate whether the service member requested the preparation of a new Form DD-93 and/or SGLI beneficiary designation form (Form SGLV 8286). Clients who wish to name a minor child as a principal or contingent beneficiary of their SGLI, death gratuity, or any of their unpaid pay and allowances should be advised that these benefits cannot be paid directly to a minor. These clients shall be advised of the need for a custodial or trust account for the minor child.

(2) Legal assistance attorneys shall explain to their clients that beneficiary designations remain in place until a new beneficiary designation form is submitted. However, per 38 C.F.R. § 9.16(h), each time there is a break in service the previous beneficiary designation form is cancelled. Thus, it is

important for recalled Reservists (and anyone who has a break in service) to complete a new form on each recall.

(3) Consequences of failure to properly designate a beneficiary for SGLI and DD-93 death gratuity. Per 38 U.S.C. § 1970, failure to name a beneficiary on the SGLI Form 8286 and the form DD-93 death gratuity will cause those benefits to default to the surviving spouse; or if none, then to the member's children per capita (taking into consideration any descendants of a deceased child); or if none, then to the parent or parents in equal shares; or if none, then to the executor or administrator of the estate; and if none, then to other next of kin of the member. DD-93 unpaid pay and allowances will be distributed to the executor or personal representative of the estate of the decedent if not properly designated.

(4) Prohibited beneficiary designations. The use of the phrase "by law" to designate SGLI beneficiaries is prohibited. The use of this phrase is also discouraged when designating other types of beneficiaries, as reliance on statutory distribution schemes may result in harsh or unintended consequences. Additionally, while a client may leave all of his unpaid pay and allowances to any individual or entity of his or her choosing, there is a strict prohibition against leaving any part of the death gratuity to anyone other than a natural person. Finally, when making DD-93 designations, the total distribution must always equate to 100% of the amount available.

(5) Recommended trustee language for the benefit of a minor under a testamentary trust or custodial account. When directing assets to a testamentary trust for the benefit of minor children, the will must be executed before the client signs the SGLI Form 8286 and the DD-93. Once complete, the client should provide both documents to his or her personnel support detachment (PSD) or personnel office. Recommended trustee language for both the trust and the custodial account is located at Appendix G of this Manual.

(6) Authorities governing the requirement for personnel support detachments (PSDs) to accept forms DD-93 and SGLV 8286. Attorneys and support staff who receive complaints that a PSD or PSD Afloat refuses to accept the completed DD-93 or SGLV 8286 may cite BUPERSINST 1070.27C (1 Nov 2010) or its successor instruction to secure acceptance. Attorneys may cite DoDI 1300.18, of January 8, 2008, at page 25, § 7.2 to verify that the DD-93 is mandatory.

r. Uniform Gifts to Minors Act (UGMA)/Uniform Transfers to Minors Act (UTMA) Custodial Accounts and Testamentary Trusts.

Legal assistance attorneys are advised to consult the specific laws of the jurisdiction before discussing UGMA/UTMA custodial accounts with a client (see Appendix H for a list of jurisdictions and links to check the law). All interviewing attorneys confronting issues of minor beneficiaries shall explain the differences between custodial accounts under UGMA/UTMA custodial bank accounts and testamentary trusts, including: FDIC limits covering custodial accounts; the need for court accounting for some trusts (with acknowledgement of the potential benefits of court control and delayed distribution to immature children); the contrasting lack of court supervision over custodial accounts (and the fact that the money will be distributed directly to the minor upon reaching the age of 18 under most circumstances); potential court costs associated with trusts; that potential tax returns may be required for both trust and custodial account income; the critical importance of selecting a truly trustworthy person or financial institution to manage trust or account assets; and the reality that either designation will require a court hearing to confirm either the creation of the trust or to confirm the client's nomination of the custodian (unless the custodial account is established before the client dies).

(1) During an estate planning interview with clients with dependent children, the attorney shall also advise the client that other sources of income may be additionally available to the client's children, including Dependent Indemnity Compensation, Social Security benefits, and GI Bill education grants to assist in their maintenance and welfare separate and distinct from SGLI benefits, the death gratuity, and the unpaid pay and allowances.

(2) In the event that the clients choose to leave these benefits to their surviving children as alternate beneficiaries, the attorney shall modify the language in the draft version of the DL-wills generated Last Will and Testament [in the pre-residuary and/or residuary trust section] so that these benefits actually pour into the named trust(s) for the benefit of the children. Both NJS and Code 16 are available to guide attorneys who might need any assistance in effecting the proper language.

s. Advance medical directives and living wills. Advance medical directives, living wills, advance health care directives, and directives to physicians are all written declarations seeking or prohibiting the withdrawal or



withholding of life-prolonging procedures when the declarant has a terminal physical condition or is in a persistent vegetative state. These directives may also authorize another person to make health care decisions for the principal (the declarant) if he or she becomes incompetent to make such decisions for him or herself.

(1) Advising the client. Legal assistance attorneys shall advise clients seeking these declarations that, in completing these documents, they are providing the most comprehensive personal guidance possible regarding their medical care. Clients shall also be informed that while many medical professionals defer to a spouse or adult child when a person becomes incapacitated, there is little statutory authorization for family members to authorize the termination of life support or to insist that life support be continued against all odds without these documents in place. Legal assistance attorneys must fully understand the nature and implications of these documents so they can fully explain their import and consequences to clients.

(2) Meeting client objectives. DL Wills produces generic language and provisions for medical directives and living wills. This language may be used as a starting point for discussions between the attorney and the client. If the client desires more detailed language, the attorney is free to draft such language to give best effect to the client's wishes.

(3) 10 U.S.C. §1044c. Not all states recognize all components of an advance medical directive, and some states limit the scope of these documents. 10 U.S.C. §1044c requires states to recognize advance health care directives that were prepared by legal assistance attorneys for persons who are eligible for legal assistance services per 10 U.S.C. §1044. The law requires that these advance health care directives be recognized to the same extent as an advance health care directive "prepared and executed in accordance with the laws of the state concerned". 10 U.S.C. §1044c does not require any state to recognize the advance health care directive if that state does not otherwise recognize and enforce such directives. Nothing in this section shall be construed to limit the legal assistance attorney's ability to delegate the drafting of these documents to a non-attorney so long as the legal assistance attorney remains responsible for the final product.

(4) Required preamble. In order to take advantage of the protections provided by 10 U.S.C. §1044c, the advance medical



directive must contain the Military Advance Medical Directive Preamble (see Appendix F of this Manual). It is critical that the Preamble be included verbatim to conform to the requirements of the U.S. Code. While a 10 U.S.C. §1044c military advance medical directive indicates in its preamble that it was prepared by an attorney, nothing in this section or in the preamble shall be construed as prohibiting a non-attorney from drafting the advance medical directive under the direct supervision of a military legal assistance attorney.

(5) State requirements. Absent exigent circumstances, it is best to meet state requirements for advance medical directives in order to minimize the potential for misunderstandings. Generally, the advance medical directive shall be prepared using DL Wills in accordance with the laws of the state to which the client has the strongest ties or to which the client is most likely to be medically treated or evacuated. Legal assistance attorneys may draft non-10 U.S.C. §1044c advance directives for Retirees and other clients who are domiciliaries of that jurisdiction in instances where the legal assistance office has a supervising attorney who is barred in the state in which the services are being provided.

(6) Advance medical directive execution. Advance medical directives and similar documents may be executed by a state commissioned notary or a 10 U.S.C. §1044 notary. If a state notary is notarizing the document, then a state notary block for the state in which the document is being notarized shall be used; if a 10 U.S.C. §1044 notary is notarizing the document, then a 10 U.S.C. §1044 notary block shall be used (see Appendix E).

(7) Disposition of remains. As a best practice, attorneys should include specially created provisions addressing the disposition of remains, military honors, disposition of burial flags provided by the government and/or the estate, and/or natural death declaration in both the advance health care directive and a last will and testament, as directed by the client.

## VIII

## CONFLICTS OF INTEREST AND PROFESSIONAL RESPONSIBILITY

8-1. Definitions

a. Conflict of interest. A "conflict of interest" is present when "the representation of one client will be directly adverse to another client" or when "there is a significant risk that the representation of one or more clients will be materially limited by the covered attorney's responsibilities to another client, a former client or a third person or by a personal interest of the covered attorney". JAGINST 5803.1 (series), JAG Rules of Professional Conduct 1.7 (a) and (b) allow attorneys to represent conflicting clients when: (1) the covered attorney reasonably believes that he or she will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law or regulation; (3) the representation does not involve the assertion of a claim by one client against another client represented by the covered attorney in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

b. Current and former clients. An individual who is eligible for legal assistance services becomes a client once he or she actually receives legal advice from a legal assistance attorney, even if there will be no subsequent communication between the client and the attorney or any other legal assistance support staff. A current client is a client for whom an attorney is still providing services and assistance on the subject matter presented during the consultation. A client becomes a former client once the attorney has completed action on the subject matter addressed. In order to properly close a case in situations where the attorney created an ongoing case file, the attorney shall normally advise the client in writing that the attorney has completed action on the client's issue, that the attorney is closing the client's file, and that the client may retrieve any personal documents from the office. The client shall be notified that if he or she chooses not to retrieve those documents, they will be shredded in accordance with the document retention and destruction policy as described in SECNAVINST 5212.5D (Series).

c. Prospective client. A prospective client is one who has a pending appointment with a legal assistance attorney for the receipt of attorney services, and who has not yet

established an attorney-client relationship with a legal assistance attorney on any legal matter. If the prospective client fails to keep his or her appointment, he or she is a "no-show" (as opposed to a former client) and is not considered to be a client. If the prospective client keeps the appointment but in preliminary discussions it is revealed the client is conflicted then there has been no attorney-client relationship formed unless the attorney actually provided legal advice to the prospective client. Nothing in this section shall be construed as relieving the attorney of the ethical duty to maintain confidentiality of all communications during the initial meeting in which it was inadvertently discovered that a conflict existed.

8-2. General rule. Within a single legal assistance office as defined in this Manual, an attorney shall not knowingly undertake to represent a client whose interest in a particular matter is the same or is substantially related to and/or materially adverse to that of a current or former legal assistance client. When representation of a current/prospective client is determined to be a direct conflict, the excluded party will be referred to another legal assistance provider per section 8-6 below. Under no circumstances, except as defined in section 8-7, shall one attorney represent both opposing parties in the same matter.

8-3. Duration of the attorney-client relationship. Attorney-client relationships in legal assistance are transactional. This means that the relationship exists as an on-going current attorney-client relationship as long as the attorney (and his or her designated staff) is assisting and advising the client on the same matter. Once assistance on that matter is complete, the case file is closed and the client becomes a former client. Although the attorney-client relationship has ended, the attorney and the office shall continue to protect all confidential and privileged client information from disclosure.

8-4. Duty to former clients. Legal assistance offices must regularly determine whether the interests of a former client intersect in a material way with those of a prospective client. Under the JAGINST 5803.1 (Series) Rule 1.9, potential conflicts of interest between a former client and current or prospective client must be carefully reviewed before undertaking representation of the prospective client. The rule prohibits a lawyer from representing a new client in cases that are materially adverse to the interests of a former client unless that former client gives written consent. Even if the attorney

receives written consent, that attorney cannot use confidential information obtained from the former client to the benefit of the new client.

8-5. Conflict screening. CO-RLSOs shall maintain effective conflict screening procedures and ensure that instances involving a conflict of interest as set forth in JAGINST 5803.1 (Series) are referred to other legal assistance providers, as outlined below.

8-6. Conflict of interest avoidance and referrals

a. As noted above, within a single legal assistance office, an attorney shall not knowingly undertake to represent a client whose interest in a particular matter is the same or is substantially related to and/or materially adverse to that of a current or former legal assistance client. Such conflicts may arise not only in domestic relations cases, but also in cases involving contracts, sales, and other matters in which there may be parties with adverse interests. Attorneys must take early and decisive action to avoid conflicts of interest to ensure independent representation for all.

b. In order to promote efficient and effective referral of legal assistance conflict clients, all RLSO command offices (regardless of classification as a detachment (DET), branch office (BROFF), or main office) shall operate as "closed offices" so as to preclude access to other offices' CMTIS case records. Conflict checks shall be conducted relying solely on the conflicts database uniquely limited to the particular office at which the prospective client will be seen. For example, a clerk in Groton shall only check the local Groton database for potential conflicts. No personnel shall have the authority to conduct regional conflicts checks for any potential client. RLSO DET and BROFF OICs shall routinely update RLSO COs, XOs, and other leadership on specific legal assistance metrics or individual case developments as requested or required, subject to client confidentiality as discussed in sections 4-7, 4-8, and 5-5 of this Manual.

(1) Subject to section 5-5, if an attorney providing assistance to a conflicted party requires mentoring from a more experienced legal assistance provider, that attorney must not consult the same supervisory attorney or SME consulted by the attorney assisting the opposing party. Alternate sources of guidance may be sought via a different RLSO, a Reserve SME, or Code 16.

c. When a conflict of interest exists, the legal assistance office shall refer the conflicted party to an alternate legal assistance provider. Alternate military legal assistance providers (e.g., another RLSO or a Reserve Component judge advocate) may render assistance via remote means, including the telephone, email, or web-based communications in accordance with section 5-11 of this Manual. Referrals shall be directed (in order of preference) to:

(1) A legal assistance provider attached to a DET, BROFF, or main office of the same RLSO Command, but located on a different installation;

(2) A legal assistance provider at a different RLSO Command;

(3) An independent duty SJA not attached to a RLSO;

(4) A Reserve Component judge advocate in a legal assistance billet not involved in the subject case. A referral shall not be made, however, to a Reserve judge advocate who performs annual training (AT) or inactive duty for training (IDT) drills at the same legal assistance office as the unit making the referral;

(5) Another military service legal assistance office;

(6) Local qualified and non-conflicted DSO counsel, in exigent circumstances, when no other military or RLSO counsel are reasonably available;

(7) A local, county, or state low-income or free legal assistance provider; or

(8) A local, county, or state bar association lawyer referral service, as the circumstances warrant.

d. CO-RLSOs are encouraged to coordinate with other military services within their area of responsibility to facilitate the referral of conflicted clients as prescribed herein.

e. Attorneys, including independent duty SJAs who are not attached to any RLSO, whose primary duties are not legal assistance must be especially sensitive to the potential for conflicts of interest when providing legal assistance services.

For example, an independent duty SJA who provides advice to a conflicted RLSO client must avoid any future conflicts of interest implicated in advising his or her Commander concerning allegations of indebtedness, nonsupport, or paternity made against a member of the command. Likewise, an attorney providing defense services advice for a Lance Corporal shall not later undertake representation of the Lance Corporal's wife in a situation where her interests are opposed to the Lance Corporal's (e.g., a claim of non-support, or advice regarding divorce). RLSO COs and LADHs must be especially attuned to the potential conflicts of interest issues implicated in the transfer of attorneys from DSOs when those attorneys will be utilized as legal assistance providers. DSO leadership must carefully monitor the provision of any conflict-based legal assistance for any resulting impact on the provision of defense services.

f. When there is no actual conflict of interest between a prospective client and a current or former client (i.e., the issue for which the prospective client is seeking advice is unrelated to the issue for which the current or former client sought services), then the prospective client may be assisted by another attorney within the same legal assistance office at the RLSO. CO-RLSOs must establish procedures to preserve client confidences and facilitate attorneys' duties of independent judgment and loyalty to their clients.

8-7. Dual representation waiver of conflicts. Nothing in this section shall preclude a legal assistance attorney from representing both the husband and wife in any of the following service categories, as long as the attorney obtains an executed Dual Representation Waiver of Conflicts written consent form (standardized template available on NKO) from both the husband and the wife. The Dual Representation Waiver of Conflicts form must be executed before the attorney commences the following joint services:

- a. Joint estate planning and will drafting services;
- b. Joint name change petition for a biological child of both parties where such child was given another name at birth;
- c. Joint application for guardianship (conservatorship) of a minor or adult disabled child;
- d. Joint consumer law issue;

- e. Joint adoption petition for adoption of a child that is not the biological child of either party;
- f. Joint personal income tax issues;
- g. Joint request for advice concerning a Department of Child Services Investigation;
- h. Joint request for advice concerning juvenile court and a minor child of this relationship/marriage; and
- i. NLSC does not provide ADR services, and RLSO attorneys are not authorized to offer or conduct ADR services under the Navy Legal Assistance Program.

8-8. Referrals to private sector agencies or attorneys

a. Referrals to private sector agencies. When the prospective client's needs are beyond the capabilities of the Navy Legal Assistance Program, or when no other military legal assistance referral office is available, a referral to the private sector is appropriate. Preferred referral organizations are free or low cost assistance organizations such as the American Bar Association Pro Bono Lawyer Referral Program, Legal Aid, and Volunteer Lawyers.

b. Referrals to private counsel. Upon client request, or if referral to a free or low cost organization or the Expanded Legal Assistance Program (ELAP) (as described in JAGMAN §0710 and Chapter XIII of this Manual) is not available, a prospective client may be referred to qualified private counsel. Substantial care must be taken to avoid the appearance of endorsement or preferential treatment with respect to referral to a specific private attorney. Local or state bar association referral services shall be utilized whenever possible. When no such services are available or when such a service proves ineffective, the legal assistance attorney may furnish the client with a list of local private counsel. (Commands choosing to develop such a list must do so in accordance with the guidelines in this section and its subparts). Upon making the referral, the client shall be advised that he or she is responsible for the payment of all fees associated with private representation and that the legal assistance office cannot vouch for any private attorney's competence or ability to handle the client's matter.

(1) Required due diligence for private attorney referral lists. For those AORs where referral lists are deemed to be of value by the CO, the following minimum steps are mandatory in order to avoid allegations of negligent referral and/or referral for the personal or professional gain of the referring attorney. In order to be considered for inclusion on a referral list, civilian attorneys are required to submit to the legal assistance office (and resubmit annually) a statement of their qualifications, subject matter areas of expertise, state bar license number, a statement of good standing, and proof of professional malpractice insurance. Copies of these documents shall be maintained at any legal assistance offices creating a referral list. Before placing an attorney on the referral list, the legal assistance office shall search state bar records for instances of discipline or reprimand. An applicant for the attorney referral list must agree, in writing, to immediately notify the legal assistance office if he or she ceases to carry the minimum level of malpractice insurance or becomes subject to disciplinary action by the state bar. The legal assistance office shall also provide the attorney applicant with written notice of the reserved right to remove that attorney from the referral list if the office receives complaints about attorney misconduct that cannot be resolved; and clear, written notice that no referral fees, gifts, or gratuities may be extended to Navy legal assistance providers regardless of any state or local law to the contrary.

(2) Referral gratuities prohibited. Legal assistance providers, whether attorneys or support staff, shall not accept or receive any compensation of any kind, directly or indirectly, for referral of clients to an attorney or law firm, whether or not such payments are otherwise permissible under state or local law or ethics rules.



## IX

**PRE-DEPLOYMENT, PRE-MOBILIZATION, AND PREVENTATIVE LAW SERVICES**

9-1. Scope of services generally. As the primary mission of the Navy Legal Assistance Program is to provide successful legal assistance support to enhance combat readiness, the regular provision of pre-deployment, pre-mobilization, and preventative law services reinforces and advances the discharge of that mandate. Legal assistance offices shall make programs enhancing legal readiness a top priority by establishing comprehensive outreach and education services to prepare eligible legal assistance clients and customers for deployment/mobilization and to alert area service members to important legal rights and interests.

a. Pre-deployment services. Pre-deployment services shall be provided to active-duty service members who are within 180 days or less of being deployed. As resources permit, pre-deployment services may also be provided to dependent family members of deploying active-duty service members.

b. Pre-mobilization services. Pre-mobilization services will generally be provided to all Reserve service members under a call or orders to active-duty for a period of 30 days or more, as requested by Navy Reserve Component Commands and Navy Mobilization Processing sites. Family members of Reserve personnel may also receive pre-mobilization services as resources permit. In addition, Reserve units may request the provision of annual pre-mobilization legal briefs and training as part of their pre-mobilization preparedness cycle. Reserve Judge Advocates and Reserve support staff should provide this annual pre-mobilization training to the maximum extent possible.

c. Preventative law programs. Preventative Law programs shall educate area service members and their dependents in pressing legal matters via general education and informative legal briefs and handouts. This outreach may include education in:

(1) The Servicemembers Civil Relief Act (SCRA), including default judgment protections, eviction and mortgage protections, the availability of court requests for anticipatory relief from certain financial obligations, requests for the reduction of pre-service interest rates to 6%; and the limitations of the right of the member's legal representative to

appear before a court of law pursuant to a military power of attorney;

(2) the Uniformed Services Employment and Re-Employment Rights Act (USERRA);

(3) Life insurance designations, to include a discussion of the designations available under the Servicemembers Group Life Insurance (SGLI);

(4) Death Gratuity and Unpaid Pay and Allowances (DD-93) benefits and designation of beneficiary options;

(5) Dependent support obligations and the availability of expedited court hearings to modify child support;

(6) Family Care Plan requirements;

(7) The need for a court approved child custody order if the member is a single parent of a minor child;

(8) Estate planning information, including information regarding wills, powers of attorney, advance health care directives, and living wills;

(9) Proper use (including recording rules) of powers of attorney over finances;

(10) Consumer law issues, including contracts, leases, cellular phones, vehicle storage, and maintaining property and vehicle insurance on vehicles and real estate;

(11) Placing active duty fraud alerts on the service member's credit report;

(12) Additional topics as desired for the local area of responsibility and as resources permit.

9-2. Additional outreach efforts. The following additional outreach efforts may be executed as resources permit:

a. Law Day. Advertise and publicize the Preventative Law and legal outreach program on "Law Day" which is normally recognized 1 May of each year. Law Day was established by Public Law 80 on April 7, 1961. Program representatives can organize recognition of the day with appropriate activities and events for service members and their families. Other Government

and private organizations may be recruited to participate in events.

b. Area command contact. Ensure area unit commanders, legal officers, and local military personnel maintain awareness of legal assistance services. Advise local commanders of availability to present educational/informational briefs and general military training to commands at staff meetings, welcome aboard briefs, and other occasions. Ensure unit commanders understand DoD policy under DODDIR 1350.4, Legal Assistance Matters. Advise commanders to urge military personnel to seek legal counsel regarding wills, living wills, advance medical directives, and powers of attorney well before mobilization, deployment, or similar activities.

c. Preventative law articles. Legal education via publication of preventative law articles can be especially helpful in promoting the legal readiness and awareness of area personnel. Articles may cover a broad variety of topics and be published in a number of publications. These may include newsletters, bulletins, and circulars distributed by local Reserve, retired, and family associations/organizations, and base or local newspapers. Additionally, legal assistance providers may develop and distribute topical legal advisories or reminders for inclusion in unit "Plan of the Day", "Plan of the Month" or other training evolutions. Innovative use of newsletters, emails, websites, and other media to inform service members is highly encouraged. All such efforts shall note the location, telephone numbers, and office hours of legal assistance providers and that legal assistance services are provided free of charge.

d. Videotaped presentations. Where resources permit, the legal assistance office may compile a library of videotapes addressing a number of common legal assistance issues that might be checked out or duplicated for area command use. Access to these presentations will enhance general military community education and enable local legal assistance providers to reach a wider audience. Creating videotapes to generally advise members in matters including consumer fraud, identity theft, auto leasing and purchasing, the importance of proper designations on forms DD-93 and the SGLI beneficiary form, and relevant state laws is a valuable way to educate large numbers of service members on important issues.

e. Active base/community engagement. Legal assistance offices shall maintain points of contact within their local AORs

and coordinate with each of the following organizations to further the legal assistance and legal education/awareness missions:

- (1) Public Affairs;
- (2) Financial Management Offices;
- (3) Fleet and Family Support Centers/Offices;
- (4) Armed Forces Disciplinary Control Boards;
- (5) Base or unit officials responsible for monitoring businesses or services, including insurance agents;
- (6) Base and unit commanders;
- (7) Military housing/housing referral offices;
- (8) Voting Officers;
- (9) local Victim Witness Assistance Coordinators (VWAC);
- (10) local Sexual Assault Prevention and Response (SAPR) personnel;
- (11) base and area Chaplains;
- (12) base and area Family Advocacy Program (FAP) personnel;
- (13) The local branch or arm of the American Bar Association (ABA) [including the ABA's Legal Assistance for Military Personnel (LAMP) Committee], local and state bar associations, military law committees and discussion groups;
- (14) State Attorneys General;
- (15) The National Association of Attorneys General;
- (16) Local courts and administrative hearing departments;
- (17) United States Citizenship and Immigration Services (regional and lower offices only);

(18) IRS and state or territory taxing authorities.

f. Legal education/awareness program resources. Legal assistance attorneys shall be proactive and innovative in their outreach programs, but be cautious of violating copyright restrictions on nongovernmental materials. Additional materials and support may be obtained from:

(1) Code 16;

(2) OJAG (Code 16) Legal Assistance Practice Advisories and Immigration Advisories located on NKO;

(3) the Air Force FLITE system;

(4) the Federal Trade Commission's (FTC) Military Sentinel and Consumer Sentinel;

(5) the Consumer Financial Protection Bureau (CFPB);

(6) the ABA Military Pro Bono Program.

g. Facebook, Twitter, and other social networking media. Nothing in this section shall preclude a legal assistance office from creating its own Facebook page or other social media internet site designed to heighten awareness of the legal assistance services available in the area. These sites may promulgate preventative law handouts and be used for other acceptable purposes as set forth in this Manual, as long as they are created and maintained in compliance with the guidelines promulgated in JAG/COMNAVLEGSVCCOMINST 5728.1 (Series).

9-3. Limitations. Legal education and awareness programs and efforts should be focused on the scope of services detailed in section 6-1. Local COs-RLSOs may further refine the scope of these programs as necessary to meet the immediate legal readiness needs of deploying or mobilizing service members and their dependent family members.

**X****TRAINING**

10-1. Policy. Training in the substantive law, procedures, policies, and issues impacting the DON legal assistance practice is necessary to maintain competence. Navy supervisory judge advocates shall conduct routine and comprehensive training programs to assure the continuing competency and currency of legal assistance providers. Within NLSC, RLSO Professional Development Officers (PDOs) shall ensure adherence to JAG Corps and local professional development standards.

10-2. Training objectives

a. Training objectives for legal assistance attorneys. Legal assistance attorneys must maintain competency to provide Tier I services pursuant to JAGMAN §0707 and section 6-1 of this Manual. While initial legal assistance training is delivered via the NJS Basic Lawyer Course (BLC) or a civilian legal assistance attorney equivalent, all legal assistance attorneys must actively participate in Continuing Legal Education (CLE) and professional development training to maintain legal assistance proficiency. This training shall focus largely on Tier I services. Where Tier II, III, and IV services are authorized, training may include those topics. COs, PDOs, and LADH are encouraged to coordinate with state and local CLE programs, as well as the legal schools of other military services to provide opportunities for legal assistance training. Commands shall keep accurate records of both attorney and support staff legal assistance training.

b. Training objectives for legal assistance support staff including LPEP students and graduates. Legal assistance paralegals and clerical support staff must be trained regarding the laws and regulations applicable to legal assistance, and shall seek training relevant to their duties. Support staff whose primary duties are legal assistance shall also complete CLE and/or professional development training. Commands shall record this training in either an enlisted training tracker or the Civilian Education and Training Tracker as appropriate. Important training objectives include:

(1) Customer service. All legal assistance support staff, and especially those with primary responsibility for customer intake and interaction, shall be trained to provide prompt, attentive, courteous, and professional customer service.

(2) Internal office procedures. Legal assistance support staff tasked with executing client eligibility screening shall be trained on appropriate screening and intake procedures, including established case management and tracking practices.

10-3. Sources of legal assistance training

a. Naval Justice School. As noted, the BLC at NJS provides a basic introduction to a wide variety of legal assistance matters. While the instruction provided at the BLC covers a great deal of information, time is limited and the BLC cannot fully address every issue noted in the Tiers of Service, as detailed in JAGMAN §0707. Accordingly, Navy supervisory attorneys are responsible for ensuring that all legal assistance attorneys can competently provide Tier I Services, whether or not such services are fully addressed by the BLC. Commands shall take advantage of additional, specialized legal assistance training courses provided or coordinated by NJS including the Legal Assistance Refresher Course and Reserve Lawyer Course to augment local training.

b. The Judge Advocate General's Legal Center and School (TJAGLCS). The U.S. Army TJAGLCS' one week legal assistance course, offered twice per year, is a comprehensive training program tailored to military legal assistance practitioners. Legal assistance attorneys are strongly encouraged to attend this course. More information on attendance can be provided by the NJS Training Coordinator.

c. Other resources. A wealth of other training opportunities and forums exist to assist in maintaining the proficiency of DON legal assistance providers. This includes CLE seminars, live presentations and videotaped programs from a variety of sources, including the various JAG Schools, civilian law schools, universities, commercial firms, and national, state, and local bar associations. NJS and OJAG routinely provide web-based legal assistance training via Defense Connect Online (DCO) and on NKO. See JAGINST 1500.4 (Series), and JAG/COMNAVLEGSVCCOM INST 12410.1. Commands creating their own training materials addressing topics or issues not otherwise available through NJS training are highly encouraged to submit those materials to both Code 16 and NJS for evaluation and potential distribution the NLSC legal assistance enterprise.

d. Resources for overseas and afloat legal assistance attorneys. Access to CLE and training materials is just as

critical for overseas and afloat legal assistance attorneys. Overseas commands are encouraged to leverage all training opportunities noted and Code 16 and NJS are available to assist more remote practitioners in maintaining currency.

10-4. Local training directives. Legal assistance attorneys and support staff, including LPEP students and graduates, shall consult local training directives and initiatives in addition to the training guidance provided in this Manual.



## XI

## PROVISION OF LEGAL ASSISTANCE BY STAFF JUDGE ADVOCATES

11-1. Limited provision of services. Subject to the exceptions of section 11-2 below, provision of legal assistance services by all SJAs shall normally be limited to notary services, powers of attorney, affidavits, and SCRA letters. Personnel receiving these services are typically classified as customers vice clients and great care must be exercised to prevent these customers from perceiving an attorney-client relationship has been formed in the receipt of these ministerial services. SJAs shall typically forward requests for all other legal assistance to the appropriate RLSO Legal Assistance Department; both to leverage the currency and experience of dedicated RLSO legal assistance providers and to maintain objectivity in delivering counsel to their organizational clients. This policy shall apply to both RLSO-based and independent SJAs. Nothing in this section prohibits an otherwise non-conflicted SJA from providing crime victims with advisement of their rights in accordance with sections 5-12 and 7-14.

11-2. Exceptions. SJAs may provide legal assistance in the following circumstances:

a. If RLSO-based: SJAs attached to a RLSO shall not normally provide legal assistance services requiring the formation of an attorney-client relationship unless specifically authorized to do so by their respective CO.

b. If independent: Independent duty SJAs may provide legal assistance services in emergent circumstances and in the following instances:

(1) In provision of powers of attorney and notarial services for unit personnel as desired and as resources allow;

(2) In support of clients conflicted at a servicing RLSO per section 8-6 of this Manual;

(3) In major crises (e.g., mass evacuations of naval personnel and/or dependents, events of Navy-wide or national interest) which require the augmentation of RLSO legal assistance departments;

(4) In non-crisis situations, resources permitting, when unable to make an effective referral to the appropriate

RLSO and failure to provide the requested service will impede the overall operational readiness of the SJA's command.

11-3. Conflicts of interest. SJAs electing to provide or tasked with providing legal assistance support must be mindful of the importance of careful conflicts of interest analysis and management in providing that support. Provision of legal assistance for a particular client may render a SJA unable to assist a larger organizational client in further action on the matter. All judge advocates owe a duty of zealous representation and protection of confidential information when undertaking responsibility for individual client interests. See Chapter VIII of this Manual and JAGINST 5803.1 (Series).

11-4. Remote services encouraged. SJAs are authorized and encouraged to leverage all available Department of the Navy technologies to assist in the referral of clients to RLSO Legal Assistance Departments. This may be particularly important in more remote locations where dedicated legal assistance providers are unavailable. SJAs are encouraged to establish clear lines of communication with their servicing RLSOs to promote effective referrals, and shall remain liaisons that may at times be called upon to physically assist clients with telephonic, email or web-based contact with servicing RLSO legal assistance providers. See section 5-11 for more information regarding the provision of remote services.

11-5. Reporting requirements. SJAs providing legal assistance shall track all legal assistance services via CMTIS if CMTIS is available. If CMTIS access is unavailable, SJAs shall maintain written customer and client records. Records shall include, at the minimum, the eligibility status, rank/paygrade, and nature of the service provided.

**XII****PROVISION OF LEGAL ASSISTANCE BY DEFENSE SERVICE OFFICE (DSO)  
PERSONNEL**

12-1. Limited DSO provision of legal assistance services. DSO staff shall not normally provide legal assistance services, except under the following circumstances:

a. When directed by CNLSC, COS-DSO, or pursuant to an agreement by COS-RLSO and COS-DSO;

b. In major crises (e.g., mass evacuations of naval personnel and/or dependents, events of Navy-wide or national interest) which require the augmentation of RLSO legal assistance departments. In such instances, RLSOs shall conduct training, as required, to enable DSO personnel to provide the necessary services;

c. In non-crisis situations, resources permitting, when the request is made by an otherwise eligible person (per JAGMAN §0705) for a purely ministerial service (power of attorney or notarial act) and failure to provide the requested service will negatively impact the legal readiness of the service member sponsor;

d. DSO Counsel may provide legal assistance services to their own court-martial and administrative board clients and personal representation ("Persrep") customers when qualified to do so and when referral to RLSO for any service would not be in the best interest of the client or would present a potential conflict of interest. Any DSO Counsel seeking to provide such services may contact Reserve SMEs not affiliated with the RLSO or Code 16 for advice and support.

e. In any instance where legal assistance services are requested of DSO staff and RLSO legal assistance providers are not immediately available, the relevant DSO staff or counsel shall clearly inform the requestor that no attorney-client relationship may be formed and solicit only enough information to evaluate the nature of the request; then seek appropriate referral to RLSO.

12-2. Reporting requirements. Where unable to access CMTIS, DSO staff providing legal assistance shall maintain written customer and client records. Records shall include, at a

minimum, the eligibility status, rank/paygrade, and nature of the service provided.

12-3. DSO Commanding Officer Responsibilities for ensuring quality legal assistance services. Whenever DSO staff provide legal assistance services, the DSO CO shall assume oversight responsibility for his or her staff in accordance with section 2-4 of this Manual, and shall provide training and resources to attorneys and support staff in order to ensure the DSO's legal assistance practice is competent and effective. DSO COs may contact Code 16 for assistance in executing any legal assistance matter.

## XIII

## NLSC EXPANDED LEGAL ASSISTANCE PROGRAM (ELAP)

13-1. ELAP generally

a. Scope and general guidelines. ELAP authorizes attorneys in approved legal assistance offices to provide in-court representation to eligible active-duty military personnel and dependents who could not otherwise afford legal representation. In rare circumstances when Tier I, II, and III services are fully resourced and staffed, JAGMAN §0707 authorizes possible ELAP support as a Tier IV service. ELAP execution must be approved by the JAG or his or her designee, and individual ELAP cases must be pre-approved by the Deputy Assistant Judge Advocate General (Legal Assistance).

b. ELAP authorization. As noted, ELAP services may be provided only with the prior authorization of the JAG or his or her designee. Requests for provision of ELAP services shall be forwarded to the JAG via Code 16. ELAP services are provided in addition to, rather than in place of, normal legal assistance services. Thus, ELAP services will only be authorized for offices able to confidently commit sufficient personnel and resources to maintain an active and effective legal assistance program in addition to ELAP. Given these limitations, ELAP will not normally be authorized for independent legal assistance attorneys.

c. ELAP case authorization. As noted, legal assistance attorneys shall not undertake ELAP services in a particular case until authorized to do so by Code 16. Attorneys seeking to execute such a service shall forward a formal request to the Deputy Judge Advocate General (Legal Assistance) for review and approval.

d. ELAP request contents. ELAP requests shall include confirmation that ELAP execution will not undercut an office's satisfaction of normal legal assistance demand. This may include information regarding the number of legal assistance attorneys providing services at the requesting command and the amount of time required from those attorneys to meet legal assistance demand. The request shall detail case specifics and the names and bar affiliations of legal assistance attorney(s) seeking ELAP engagement. When applicable, the request shall also contain a copy of any agreement with the local bar, courts, and/or licensing authority addressing ELAP and authorizing ELAP

practice by legal assistance attorney not otherwise admitted to practice in the local jurisdiction. The request must be endorsed by the attorney's CO and forwarded via the chain of command. The request shall detail the client's eligibility for the program and any steps taken to confirm that the client is not eligible for an alternate source of representation. Attorneys providing ELAP services must be admitted or authorized to practice law in the jurisdiction where the representation will take place.

e. Written decisions. Written notification of the decision regarding any request for ELAP execution will be provided by the JAG or his or her designee.

f. Duration, expiration, and renewal of authorizations. ELAP authorizations expire 60 days after the change of command of the relevant CO unless sooner renewed. Renewal applications must be in provided in writing and contain a report on the program's status; to include an accounting of cases handled since authorization or last renewal, and any significant personnel or manning changes that might impact ELAP feasibility. Renewal applications must be forwarded for review and potential approval 30 days prior to expiration to seek uninterrupted authorization.

13-2. Types of cases. Subject to such limitations as may be imposed by competent authority and any local ELAP instruction, ELAP representation may be provided in any matter within the scope of the Navy Legal Assistance Program except contested marital dissolution cases; cases for which there is an attorneys fees statute; cases not yet referred or declined by the ABA Pro Bono Program; and cases not yet referred and declined by the CFPB. Given the rare circumstances when ELAP may be provided, commands are encouraged to carefully screen potential ELAP cases for matters where larger Sailor and Marine welfare may be advanced by individual representation (e.g., systematic landlord abuse of service members and consumer scams specifically targeting service members). Where ELAP representation has been authorized, detailed case results shall be provided to Code 16 by the servicing attorney.

13-3. Client eligibility. Persons eligible for ELAP include:

a. Active-duty military personnel in paygrade E-3 and below;

b. Active-duty military personnel in paygrade E-4 and below who have dependents;

c. Dependents of active-duty personnel in paygrade E-4 and below;

d. Other active-duty personnel and their dependents who are unable to afford an attorney without significant financial hardship; or

e. Service members with cases implicating issues of great import or consequence to other service members or the larger military community.

#### 13-4. Attorney qualifications

a. Any legal assistance attorney assigned to an authorized legal assistance office may participate in the ELAP program.

b. In-court appearances, and other actions that constitute an appearance as attorney or counsel of record in a matter under local law or rules of court, will only be executed by:

(1) a legal assistance attorney who is licensed to practice law in that state and admitted to practice before the court where the matter is pending or to be filed; or

(2) a legal assistance attorney specially admitted to practice before that court, either generally or for the particular matter, by special agreement with the court and licensing authority, or is otherwise in conformity with the law and rules of that jurisdiction.

c. Legal assistance attorneys participating in an ELAP are subject to local state ethics rules and rules of court in all ELAP matters.

13-5. Limitations. Before recommending a case for ELAP, the recommending attorney shall research all available referral options. As suggested previously, ELAP recommendations shall be made only for those cases where:

a. Referrals to the ABA Pro Bono Program, American Immigration Lawyers Association, the Department of Justice, the Consumer Financial Protection Bureau, and local legal aid and volunteer lawyer programs have been unsuccessful; or

b. Such organizations report that they are unable to locate a volunteer; or

c. Such panels confirm for the referring attorney that they cannot handle the case in the time required to prevent a default judgment from being entered against the client; or

d. Such panels confirm for the referring attorney that they cannot handle the case within the time required by the Statute of Limitations to prosecute the action.

e. If a case cannot be referred to a local legal aid or other pro bono program, the referring attorney must research all applicable state and federal statutes and applicable contractual provisions to determine whether there is any authority for the recovery of attorney fees and costs to the prevailing party. If such authority exists and it would minimize the substantial economic hardship the client would otherwise face, the attorney shall refer the client to a private sector civilian attorney instead of making a recommendation for ELAP.

13-6. Relations with state bar, licensing authority, and courts

a. No special agreement with state or local authorities is required to execute ELAP services utilizing only legal assistance attorneys licensed to practice in that state and admitted to practice before the courts of that state. However, a memorandum of understanding (MOU) with these authorities, and with local bar associations, is recommended. Such an MOU might address matters including exemptions from mandatory *pro bono* or CLE requirements for ELAP attorneys.

b. Where legal assistance attorneys not licensed or admitted to practice in the particular state may be executing ELAP support, special arrangements for their qualifications and admittance to practice must be secured. This may typically be accomplished via an agreement between the state licensing authority and the local court(s). Depending on the particular jurisdiction, establishing ELAP may require a court order, or modification of the state or local rules of court.

13-7. Fees, costs, and client funds. The client shall pay all fees and costs connected with an ELAP case, and the attorney is prohibited from advancing any fees or costs on behalf of the client in furtherance of the case. Should a court award attorney's fees for the actions of an ELAP attorney, such fees are the property of the United States and must be paid into the



Treasury. Care must be taken to avoid committing the United States to open-ended financial arrangements or indemnity agreements, which may violate the Anti-Deficiency Act, 31 U.S.C. § 1341.

13-8. ELAP supervision. The JAG or his or her designee will designate, in writing, the local authority responsible for the proper conduct of ELAP when requests for ELAP execution are approved. That authority must assure compliance with this Manual, applicable ethical standards, and local rules of court. He or she may limit the scope of practice of ELAP attorneys within his or her authority, may direct any ELAP attorney to refrain from any case or type of case, and may promulgate any additional restrictions to benefit the program and the clients served.

## ELIGIBILITY TABLE FOR LEGAL ASSISTANCE\*

\*Use of this table should not replace consultation with a primary authority, such as JAGMAN §0705. The JAG may authorize legal assistance services to be provided additional persons not listed below.

Shading Key:

Green	Yes, eligible for type of service
Yellow	May be eligible for type of service, see comment number below
Red	Not eligible for type of service
White	Not Applicable

Type of Service	Active Duty (AD)	AD Dependent Family Members (DFM)	Reservists, National Guard and DFM on AD 30 days or more	Reservists on AD for single periods of 29 days or less	DFM of Reservists on AD for single periods of 29 days or less	Reservists and DFM following release from AD 30 days or more	Inactive Reservists	Retired mbrs and DFM of retired mbrs entitled to retired/retainer pay and/or military disability/VA compensation	DFM of deceased Retirees
Notary, Power of Attorney	Yes	Yes	Yes	1, 3	1	2, 3	3	Yes	Yes
Will	Yes	Yes	Yes	1, 3	1	2, 3	3	Yes	Yes
Pre-Mobilization Advice	Yes	Yes	Yes	Yes	No	N/A	Yes	N/A	N/A
Post-Mobilization Advice	Yes	Yes	Yes	Yes	No	2, 3	Yes	N/A	N/A
General LA Attorney Services	Yes	Yes	Yes	1, 3	1	2, 3	3	Yes	Yes

Notes	Comments
1	Reservists on active duty for single periods of 29 days or less and their dependent family members may be provided legal assistance in emergency cases. See JAGMAN §0705(a)(1), §0705(b)(4), and §0705(b)(5).
2	Members of Reserve components following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority, as determined by the Secretary of Defense, for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty. See JAGMAN §0705(a)(2) and §0705(b)(6).
3	For the purpose of enhancing readiness of Reserve personnel for mobilization, pre-mobilization legal counseling and assistance may be provided to active duty or inactive Reserve personnel consistent with mobilization readiness needs. Pre-mobilization assistance normally will consist of drafting or updating wills, advance medical directives, and powers of attorney. Other assistance may be provided if it relates to recall or mobilization. Examples include SCRA, USERRA. Pre-mobilization legal assistance services are not authorized for dependent family members with the exception of dependent family members of Reserve personnel with mobilization orders for more than 30 days. See JAGMAN §0705(b)(5).

Type of Service	Department of Defense (DoD) civilian personnel and DFM deploying for 30 days or more	U.S. citizen DoD civilian personnel and DFM when overseas, attached to vessel or deployed for 30 days or more	Non-DoD U.S. citizen personnel employed by the U.S. Government when overseas or attached to a vessel	U.S. citizen civilian contractor personnel who are serving with or accompanying U.S. forces in a theater of operations	Members of the allied forces and DFM in the U.S., serving with the Armed Forces	20/20/20 unmarried former spouses as defined in 10 U.S.C. §1072	Spouses, former spouses and children who are victims of abuse by members losing the right to retired pay under 10 U.S.C. §1408(h)	Dependents of members separated for dependent abuse consistent with 10 U.S.C. §1059
Notary, Power of Attorney	4	5	6	7	Yes	Yes	Yes	Yes
Will	4	5	6	7	Yes	Yes	Yes	Yes
Pre-Mobilization Advice	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Post-Mobilization Advice	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
General LA Attorney Services	4	5	6	7	Yes	Yes	Yes	Yes

Notes	Comments (continued)
4	DoD civilian personnel deploying for at least 30 days to a combat zone, or in support of a contingency operation, or aboard a naval vessel may be provided pre-deployment legal assistance services within current means and capabilities. Legal Assistance may also be provided to dependent family members of these civilian personnel, both before and during deployment, on deployment-related matters. Additionally, legal assistance services are authorized to be provided to civilian personnel and their dependent family members for a reasonable period, but not to exceed 30 days, after he or she returns from deployment to close out ongoing legal assistance matters related to deployment that arose before or during deployment. See JAGMAN §0705(b)(8)(a).
5	DoD civilian personnel who are U.S. citizens, other than local hire employees, employed by, serving with, or accompanying the U.S. Armed Forces, when assigned to a foreign country or to a vessel or unit of the Armed Forces of the U.S. deployed in excess of 30 days. Dependent family members who accompany DoD civilian personnel authorized under this section are also eligible. See JAGMAN §0705(b)(8)(b).
6	Non-DoD civilian personnel employed by the U.S. Government who are U.S. citizens, serving in locations in a foreign country or on a vessel of the Armed Forces of the U.S., where legal assistance from non-military legal assistance providers is not reasonably available. Such legal assistance is general limited to ministerial services (for example, notarial services), legal counseling (review and discussion of legal correspondence and documents), legal document preparation (limited to powers of attorney and advanced medical directives), and help with retaining civilian lawyers. See JAGMAN 0705(b)(8)(c).
7	Civilian contractor personnel who are U.S. citizens and are serving with or accompanying U.S. forces in a theater of operations, and produce documentation of an employment contract that requires the U.S. government to provide legal assistance, may be provided with services as addressed in the contract. If the employee's contract does not specify services, services shall be limited to notarizations and provision of deployment-related powers of attorney. See JAGMAN 0705(b)(8)(d).

**LEGAL ASSISTANCE FOR VICTIMS OF CRIMES  
NAVY LEGAL ASSISTANCE PROGRAM  
VICTIM ACKNOWLEDGMENT**

(1) The attorney below has explained, and I fully understand, that as a crime victim, I am eligible for legal assistance services per 10 U.S.C. § 1044 and JAGINST 5800.7F, the Manual of the Judge Advocate General (JAGMAN), and that I am also eligible to receive specialized victims' rights information from a Navy Legal Assistance Attorney in the following matters:

- (a) The Victim/Witness Program, including:
  - a. the rights and benefits afforded to me as a victim, including the right to expedited transfer and the right to obtain records of all court-martial proceedings;
  - b. the role of a potential Victim Advocate; and
  - c. the privilege that exists between the victim and the legal assistance attorney and between the victim and a Victim Advocate
- (b) The differences between the two types of reporting in sexual assault cases: restricted and unrestricted.
- (c) General information concerning the military justice system, including the roles and responsibilities of the trial counsel, defense counsel, and investigators. This may include the ability of the government to compel cooperation and testimony.
- (d) Services available to me from appropriate agencies or offices for emotional and mental health counseling and other medical services.
- (e) The availability of and protections offered by civilian and military restraining orders.
- (f) My eligibility for and benefits potentially available to me as part of the transitional compensation benefits established in 10 U.S.C. § 1059, and other state and federal victims' compensation programs.
- (g) My eligibility for forms of legal assistance including matters such as leases, taxes, consumer affairs, estate planning, and powers of attorney.

Furthermore, the attorney has advised me that I may contact the Region Legal Service Office (RLSO) for questions regarding my eligibility for legal assistance services, and for questions regarding the types of services available to me. The online U S. Armed Force Legal Assistance Locator is available at <http://legalassistance.law.af.mil/content/locator.php>

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Attorney: \_\_\_\_\_ Signature: \_\_\_\_\_

## **CRIME VICTIM ACKNOWLEDGMENT OF LIMITED SERVICES**

(1) The attorney below has fully explained, and I fully understand, that a conflict of interest prevents this specific Region Legal Service Office (RLSO) site from providing me legal assistance advice and/or representation. I further understand that due to this conflict of interest, I cannot discuss the details of my legal assistance issue with an attorney assigned to this RLSO site.

(2) I understand that although a conflict of interest exists, I will be provided with general information on the Victim and Witness Assistance Program (VWAP) and my rights as a victim of a crime, including a physical copy of a Legal Assistance for Crime Victims Notice. I understand that my receipt of this general information in no way constitutes the formation of an attorney-client relationship, and as a result no attorney-client privilege will attach to our conversation. I further understand that I cannot discuss any confidential information about my personal situation, the potential exercise of my rights under the VWAP, or my underlying legal assistance issue with any attorney at this office.

(3) To ensure I do receive full legal assistance support, I understand that this office will arrange for an alternate, equally qualified legal assistance attorney to provide me with standard legal assistance services; I understand that when I meet with that attorney, I will have the benefit of complete confidentiality and privileged communications at that time.

(4) I understand I have the right to decline referral to another military legal assistance office and may seek advice from a local Legal Aid organization or seek the services of a private attorney at my own expense.

(5) If I desire referral to another military legal assistance attorney, I understand that such attorney will contact me at the number listed below to initiate legal advice concerning my legal issue.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

### **LADH/DESIGNEE PLEASE INITIAL APPROPRIATE BOX**

**Accepts referral:**

**Declines referral:**

DATE LEGAL ASSISTANCE FOR CRIME VICTIMS FORM PROVIDED AND  
ALTERNATE PROVIDER (if elected) ARRANGED: \_\_\_\_\_

CUSTOMER PHONE NUMBER FOR REFERRAL FOLLOW-UP: \_\_\_\_\_

Attorney Name: \_\_\_\_\_ Signature: \_\_\_\_\_

LADH/Designee Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**PROVIDE ORIGINAL TO CUSTOMER. RETAIN COPY IN SECURE LOCATION.**

# ROLL CALL

Newsletter of the Military Committee, ABA Family Law Section

Vol. 2008-1  
Summer, 2008

## Greetings from the Chair

In this issue of **Roll Call**, Georgia attorney John Camp explains the ins and outs of military medical care coverage when a spouse or former spouse is not entitled to 20/20/20 coverage (20 years of marriage, 20 years of service, and an overlap of 20 years). John specializes in military divorce cases, and he spent many hours researching this topic to give us a thorough summary of this little-known aspect of family support in military divorce cases.

The issue's editor, Scott Merrifield, is an Army Reserve judge advocate who was called up to active duty at the time that **Roll Call** was "going to press." He's in Iraq right now, and we wish him well and a speedy return. The next few issues, in his absence, will be edited by Henry DeWoskin, a Missouri attorney and (what else?) a judge advocate in the Army Reserve.

The next issue will cover military custody legislation in the 50 states, an immensely important issue these days when visiting and custodial parents are being deployed (when on active duty) and mobilized (Guard/Reserve).

If you have any questions or comments about **Roll Call**, a suggestion for the Committee, an issue you'd like to see profiled here, or an article you would like to write for us, please send them to me at [papy@parasapvreiss.com](mailto:papy@parasapvreiss.com).

Patricia Apy, Chair  
Military Committee

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## THE CONTINUATION OF HEALTH CARE BENEFITS PROGRAM (CHCBP) AS A LONG-TERM HEALTH CARE OPTION FOR FORMER MILITARY SPOUSES

by Wm. John Camp  
Attorney at Law, Warner Robins, GA

**SCENARIO:** LTC Jones' wife has had a significant history of mental and physical problems during their turbulent 11-year marriage. As LTC Jones nears the end of his 20-year military career, he decides it is time to divorce Mrs. Jones. LTC Jones first offers to pay her alimony, and perhaps a share of his future military retired pay. However, he is adamant that he will not agree to former spouse coverage for Mrs. Jones under the Survivor Benefit Plan, claiming that term life insurance is a much better deal, and that he will share the premiums 50-50 with her. Mrs. Jones perks up with the mention of alimony but, upon learning for the first time that she will be losing her TRICARE health coverage, she drifts into panic over the thought of not having any health insurance after their divorce. She complains she has not worked outside the home, she has numerous pre-existing medical and mental conditions, and all of her "good years" have been spent making LTC Jones successful in his

career. She fears that, in her sickly and emotionally broken condition, she is not likely to find anyone to remarry. Mrs. Jones is not just asking, she is demanding that her husband provide health insurance *for the rest of her life*. You are her family law attorney in the case. **YOUR CHALLENGE:** *"Is there a way to arrange lifetime health coverage for Mrs. Jones without breaking the bank on a commercial health insurance policy?"*

**DISCUSSION:** Some attorneys are aware of the TRICARE health care options for "20/20/20 former spouses" under 10 USC §1072(2)(F), and "20/20/15 former spouses," found at 10 USC §1072(2)(G) and (H). These two groups of "military former spouses" have continuing coverage under the TRICARE system if they have been married at least 20 years to a servicemember(SM) who has served at least 20 years, with an overlap of at least 20 (or, for some, 15) years. But they forfeit the coverage if they remarry at any time or become covered under an employer-sponsored health insurance plan. Most family law attorneys are also aware that one can obtain up to 36 months of temporary health care coverage through the Continuation of Health Care Benefits Program (CHCBP), found at 10 USC §1078a. For those not familiar with these former spouse health care options, there is an excellent discussion of "Military Medical Benefits for the Spouse or Former Spouse" at pp. 4-5 of *Roll Call*, Vol. 2003-1, July 2003, located at the website of the ABA Family Law Section's Military Committee: [http://meetings.abanet.org/webupload/commupload/FL115277/newsletterpubs/rc\\_aug03.pdf](http://meetings.abanet.org/webupload/commupload/FL115277/newsletterpubs/rc_aug03.pdf).

Is there anything else you can suggest as an option to satisfy the long-term health care demand by Mrs. Jones? You might hear from the TRICARE Service Center that your client should enroll in CHCBP after the divorce, but then you think, "Well, that is awfully expensive, and the longest Mrs. Jones can be covered is 36 months, provided she can afford it."

When Congress created CHCBP, it gave all former spouses of military personnel a *temporary* health care coverage option under 10 USC §1078a(a) that was similar to that provided to former spouses of federal civilian employees under 5 USC §8905a. (The latter is called Temporary Continuation of Coverage (TCC) under the Federal Employee Health Benefits (FEHB) plan). But as an extension of the transitional military coverage, Congress also created an *unlimited* CHCBP coverage option that could provide certain military former spouses with a long-term health care coverage option similar to the OPM Spouse Equity Coverage under the FEHB plan for former spouses of federal civilian employees. See 10 USC §1078a(g)(4), and compare to 5 USC §8901(10) and §8905(c)(1).

Recognizing that many lawyers are not aware of the unlimited CHCBP coverage option available to military former spouses, this article will focus generally on how CHCBP works and how it can offer first *transitional* (i.e., 36 months) and then *long-term* (i.e., indefinite) health care coverage for those



qualifying former spouses of members of the armed forces.

**RESEARCH:** There is little literature or previous research on the use of the CHCBP as a long-term health care option. Some of the information comes from a critical review of the enabling statute, 10 USC §1078a(g)(4), the Department of Defense (DoD) implementing regulation, 32 CFR §199.20, and the available literature for administering CHCBP (the *CHCBP Handbook* from Humana). Also helpful were personal discussions with individuals in the Office of the Assistant Secretary of Defense for Health Affairs, discussions with a Senior Health Care Analyst Team Leader for TRICARE, and discussions with several Customer Service Representatives at the CHCBP Office in Louisville, KY (800-444-5445). The author also talked with the Director of a TRICARE Customer Service Center at a military medical facility and had discussions with several clients who have “navigated” the course to arrange their long-term health care coverage under CHCBP.

Case law involving CHCBP is almost non-existent. Only one reported case contained a fact pattern of two parties attempting to arrange for long-term health care of a former spouse by using CHCBP. *Lowe v. Swartz*, 738 N.W.2d 63, (S.D., 2007). A search on Westlaw did not reveal any federal cases or other legal precedent on this subject.

It would appear that the U.S. Court of Federal Claims (<http://www.uscfc.uscourts.gov/>) is the federal court most likely to have jurisdiction to decide litigated cases on this issue, and there were no reported cases. Administratively, the Defense Office of Hearings and Appeals (DOHA) (<http://www.dod.mil/dodgc/doha/>) has a Memorandum of Understanding (<http://www.dod.mil/dodgc/doha/tricare.html>) with the TRICARE Support Office to adjudicate all administrative claims by beneficiaries as to coverage under TRICARE, which would presumably include denial of coverage under CHCBP. There were no reported cases accessible at the DOHA website.

The statutory authority for CHCBP is 10 USC §1078a, with implementing regulations at 32 CFR §199.20. A word of caution is offered that neither the statute or the regulation is understandable upon a first reading. Be prepared for confusing references to other subsections, different statutes and CFR citations. As you first read 32 CFR §199.20, it is worthwhile to take a moment to circle (and isolate) the 19 major paragraphs, (a) through (s), in §199.20 and note their headings. Notice that Paragraph (d), “Eligibility and Enrollment,” and subparagraph (d)(6), “Period of Coverage,” contain most of the critical information on “former spouse” and “unlimited coverage”. There is a clearer explanation on the details of CHCBP at the TRICARE website, <http://www.humana-military.com/chcbp/main.htm>. There you will find a link to the *CHCBP Handbook*, or you can go directly to it at <http://www.humana-military.com/CHCBP/handbooktoc.htm>. In talking with TRICARE Service Centers and the CHCBP Customer Service Center in Louisville, KY, this author found that the *CHCBP Handbook* seems to be what everyone uses as their “ready reference” for administering the Program. It provides in a comprehensible format essential information on enrollment, cost, coverage, and claims filing. For initial enrollment into CHCBP, a client can go to a TRICARE Service

Center or simply complete DD Form 2837 (CHCBP Application), which is available both at the CHCBP website and from <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2837.pdf>. The enrollment form also has a good basic discussion of the CHCBP.

#### **THE CHCBP CONTRACT ADMINISTRATOR:**

The DoD contractor is Humana Military Healthcare Services, Inc., Attn: CHCBP, P.O. Box 740072, Louisville, KY 40201. It publishes the *CHCBP Handbook* and maintains the CHCBP website. With luck, perseverance and a tireless finger to select “phone options” when you phone in, you can eventually speak with a Customer Service Representative at 1-800-444-5445. This author found that by using the Menu Option for “Enrollment Eligibility,” after making a few initial entries, one can access a “real person” by touching “0.” (Note: Former spouses who call in may no longer be in D.E.E.R.S., and they should use their *former sponsor’s* Social Security Number when asking for initial assistance. Once enrolled in CHCBP, an entry is made in the former military sponsor’s D.E.E.R.S. concerning the former spouse’s CHCBP coverage. *CHCBP Handbook*, p. 20.) This author found the CHCBP Customer Service Representatives helpful, but they were often unable to answer technical questions on some of the “eligibility” and “period of coverage” nuances in CHCBP. When they reached the point they could not answer the question by referring to the *CHCBP Handbook*, they would ask the caller to submit a request in writing. So either they didn’t know the answer or it was “company policy” to *get rid of the call*. Polite persistence seemed to pay off, and a request to be referred to someone who could answer the question often led to supervisors and answers.

**MISINFORMATION GALORE:** CHCBP can be confusing. Some former spouses may think that their enrollment in CHCBP is enrollment in TRICARE. It is important to advise the client that CHCBP is *not* TRICARE (32 CFR §199-20(a)). CHCBP beneficiaries are also not enrolled in D.E.E.R.S. and they will not continue to have a Military ID Card. They should be advised that they *may not* obtain their health care at military medical facilities or have their drug prescriptions filled at military pharmacies. However, the TRICARE Network of Civilian Providers and TRICARE Civilian Pharmacies are available to them under the same co-pays and with similar drug formularies as for TRICARE Standard. Former spouse CHCBP beneficiaries receive a “CHCBP Insurance Card,” and their claims are processed by the same DoD Contractor that handles TRICARE claims. 32 CFR §199-20 (e) thru (s) explains other provisions of TRICARE applicable to the CHCBP beneficiary.

Clients may also be confused over eligibility for CHCBP due to the length of the marriage. Unlike former spouses who must qualify under 10 USC §§1072(2)(F), (G) and (H) as either a 20/20/20 or 20/20/15 former spouse, those who obtain CHCBP former spouse coverage instead fall under 10 USC §1078a, which does not have the lengthy “marriage concurrent with military service” requirement. As will be discussed later in this article, upon satisfying the criteria for “eligibility” and “period of coverage,” a military former spouse could qualify for the 36 months of CHCBP coverage after having been married to the military sponsor for *just one day*. For unlimited CHCBP coverage, the marriage could be *as short as 18*

*months.* So every military divorce case will involve a former spouse entitled to at least 36 months of CHCBP coverage, and former spouses who managed to stay married for 18 months may be eligible for unlimited coverage.

Clients should be warned about misinformation they may receive from TRICARE Service Centers about the availability of coverage under CHCBP *beyond 36 months*. Callers are often told that “36 months is the *maximum period of coverage*” available to a former spouse. Technically this is for divorced military spouses seeking *transitional coverage*. This author found, however, that the TRICARE Service Centers were not at all familiar with the statute allowing unlimited CHCBP coverage for certain “qualifying former spouses.” This could arise from the fact that even in the *CHCBP Handbook*, there is no listing for “unlimited coverage” in the Table of Contents. One must read virtually the entire *Handbook* to find a discussion (at pages 23-24) of this provision. (Note: The same discussion of unlimited coverage found in the *CHCBP Handbook* is also available at the Humana-Military website, <http://www.humana-military.com/CHCBP/coverage.htm>.

**ENROLLING WITHIN 60 DAYS OF LOSS OF TRICARE COVERAGE:** It is essential to advise the client that *initial enrollment in CHCBP must be made within 60 days of the date the former spouse lost his/her eligibility for TRICARE coverage.* If the client has missed the 60-day “window,” there may be a second chance to enroll if the client did not receive notification of the CHCBP option at the time she lost her TRICARE eligibility. There is a “Notification of Eligibility” requirement imposed on DoD under 32 CFR §199.20(d)(3). Most former spouses will receive their notification at the time they are “dropped” from D.E.E.R.S. if they visit a Military Personnel Office. But as family law attorneys well know, it is typically the military sponsor who is “doing the updating” in D.E.E.R.S., they often are not out to do any favors for the former spouse, and they may simply “forget” to notify the former spouse of the 60-day requirement to enroll in CHCBP. Military family law attorneys should usually advise eligible former spouse clients in writing of their need to seek enrollment in CHCBP within 60 days of their divorce from the military sponsor or, in the case of a 20/20/15 spouse, within 60 days of their losing their one-year TRICARE coverage under 32 CFR §199.20(d)(4)(i)(C). When working with someone who has missed enrolling during the 60-day window, consider pleading “lack of notification” to the CHCBP Customer Service Center and see if they will accept a late application.

**WHO IS ELIGIBLE?** There are several categories of spouses and former spouses who can enroll in CHCBP. The different categories and their respective qualifying criteria are outlined in the *CHCBP Handbook*. At the end of this article is a useful flow-chart on “Health Care Coverage for Spouses and Former Spouses” (Appendix 1) prepared by Attorney Mark Sullivan of Raleigh. By starting at the top of the page, anyone can trace eligibility for CHCBP coverage.

**PAY OR “GO NAKED”:** In the past, the CHCBP option was often rejected due to its premium cost. Unlike TRICARE, which is substantially underwritten by DoD, CHCBP is a premium-based health insurance plan based generally upon the rates for the FEHB plan for federal employees. The type of

health benefits that are provided is intended to mirror TRICARE Standard coverage. 32 CFR §199.20(a). Humana Military Healthcare Service, Inc, is the DoD Contractor which manages the CHCBP.

There are two levels of coverage under the CHCBP, “family” and “individual.” Individual coverage is presently \$933 *per quarter*, and family coverage is \$1996 *per quarter*. The premium for CHCBP is equal to the cost of the federal employee premium, plus the federal agency’s premium, plus 10% for overhead expenses. For clients accustomed to getting health care for free, these *quarterly* premiums may appear high. However, when considered as a *monthly* premium (\$311 for individual, and \$665 for a family), and when compared to current commercial health insurance plans, the cost and benefits of CHCBP are quite reasonable in today’s health insurance market. This is attractive for the former spouse without prospects of employment which would offer employer-sponsored insurance. It is also attractive for those who have significant pre-existing medical conditions which would prevent them from obtaining private health insurance without “exclusion of pre-existing conditions” clauses. CHCBP is certainly better than “going naked” on health insurance altogether. If the monthly premiums will be a significant problem for the former spouse, in an appropriate case the military family law attorney can arrange for a cost-sharing of the CHCBP premiums through an alimony award (or an additional portion of military retired pay) to assist the former spouse in paying the premiums. Selling this to the military member involves pointing out that such periodic payments would qualify for tax treatment as alimony under Sections 215 and 71 of the Internal Revenue Code so long as the termination of such payments is tied to the death of the payee former spouse.

There is but one method for paying the CHCBP premiums. Whether CHCBP Family or Individual Coverage is involved, the premiums must be paid quarterly, not monthly. Also, default in making the payments leads to permanent disenrollment from CHCBP under 32 CFR §199-20(q) (1) and (2).

**THE TRANSITION FROM “TEMPORARY” TO “UNLIMITED” COVERAGE:** When a qualified former spouse applies for CHCBP coverage, she does not automatically go into “unlimited CHCBP coverage.” For example, a 20/20/15 *former spouse* must first use one year of TRICARE eligibility under 10 USC §1072(2)(G), then use her regular 36 months of CHCBP coverage; and then they apply for “unlimited coverage” with each renewal period thereafter. Other former spouses must first enroll in the 36 months of “temporary” CHCBP coverage, and they later apply for “unlimited coverage” upon each renewal period thereafter.

**CRITERIA FOR “TEMPORARY” AND “UNLIMITED” COVERAGE:** Attorneys should recognize there are different criteria for eligibility for *enrollment* in CHCBP and for determining *length of coverage*. Military family law attorneys should advise clients that they must first be *eligible to enroll* in CHCBP, and thereafter meet additional criteria to determine *how long* they will be covered in CHCBP.

**FORMER SPOUSE ELIGIBILITY FOR CHCBP COVERAGE:** The following is an extract from pages 14-15 of



the *CHCBP Handbook*. “Enrollment in the CHCBP is open to...

3. A person who:

- a. Is an “un-remarried” former spouse of a member or former member of the uniformed services; and,
- b. On the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health plan under TRICARE or TAMP (Transitional Assistance Management Program) as a dependent of the member or former member; and,
- c. Is not eligible for TRICARE as a 20/20/20, or 20/20/15 former spouse of a member or former member.”

This is the qualifying criteria applied by Humana Military Healthcare Services, Inc., which administers CHCBP, to determine if a former spouse is eligible for coverage. Once one has been determined eligible, then the question becomes, “For how long?” The following is how the booklet explains this.

**LENGTH OF FORMER SPOUSE CHCBP COVERAGE:** There are two periods of coverage that are available to a former spouse, 36 months and unlimited. Any former spouses who *continuously* meets the above eligibility criteria may have up to 36 months of CHCBP coverage. The 36-month period commences on the latter :

- a. The date of the final decree of divorce, dissolution, or annulment; OR
- b. The date which is one year after the date of the divorce, dissolution, or annulment, if the former spouse is eligible for one-year transitional coverage under TRICARE (i.e., the 20/20/15 former spouse); OR
- c. The date the military sponsor became ineligible for medical or dental care under a military health care plan as an active-duty member. (Comment: Consult page 23 of the *CHCBP Handbook* as the above is an abstract of a lengthy paragraph. This apparently is to cover those who leave military service prior to retirement, or who are ending their coverage under TAMP).

As previously discussed, the 20/20/15 spouse can have actually 48 months of *transitional* health insurance coverage simply by not remarrying within that period or enrolling in an employer-provided health insurance plan (i.e., twelve months of TRICARE coverage under 10 USC §1072(2)(G), and another 36 months of CHCBP under 10 USC §1078a).

However, the former spouse *who meets the following additional criteria* may have upon request *unlimited* (i.e., indefinite) CHCBP coverage under 10 USC §1078a(g)(4) and 32 CFR §199.20(d)(6)(iv), which state that the limitations for an un-remarried former spouse do not apply and the length of coverage can be for an unlimited period of time, if the former spouse:

- a. Has not remarried before the age of 55; AND,

- b. Was enrolled in CHCBP or TRICARE as the dependant of an involuntarily separated member during the 18-month period before the date of the divorce, dissolution, or annulment (Comment: Don’t be thrown off by the phrase “involuntarily separated member.” Separation for reasons of retirement also satisfies this criteria. (10 USC §1078a(g)(4)(B)); AND,
- c. Is receiving any portion of the retired or retainer pay of the member, or former member, OR an [SBP] annuity based on the retired or retainer pay of the member; OR,
- d. Has a court order for the payment of any portion of the retired or retainer pay; OR,
- e. Has a written agreement (whether voluntary or pursuant to a court order) which provides for an election by the military member or former member to provide an [SBP] annuity to the former spouse.

**CRITERIA FOR CHCBP ELIGIBILITY COMPARED TO UNLIMITED COVERAGE:** There are several issues that military family law attorneys should know in advising former spouses about arranging “unlimited CHCBP coverage.” There are no complete or authoritative answers to many of the nuances simply because there are no “open sources” or legal precedents to cite as authority, other than the enabling statute and the Code of Federal Regulations. Practically speaking, most clients must convince the DoD contractor (Humana Military Healthcare Services, Inc.) of the merits of their position if they are caught in one of the following situations:

1. **QUESTION:** “*How long must a spouse or former spouse have been covered under TRICARE to be eligible for coverage under CHCBP?*” Note that the general *eligibility* criteria for CHCBP coverage is that the individual need only to have been covered under TRICARE for *one day* before the divorce, dissolution or annulment. However, the criteria for “unlimited coverage” requires *18 months* of TRICARE coverage before the final decree of divorce, dissolution or annulment. Thus, a former spouse who had only a few months of TRICARE coverage before the divorce would not thereafter be able to obtain the necessary 18 months of TRICARE coverage to qualify for “unlimited coverage” while she was using the 36 months of CHCBP coverage. To be eligible for TRICARE coverage, a dependent must be enrolled in D.E.E.R.S. as a person entitled to receive TRICARE, and a military sponsor who allows a *lapse* of D.E.E.R.S. enrollment could effectively disqualify the former spouse from being eligible for post-divorce coverage.

2. **QUESTION:** “*What are the consequences of remarriage?*” For 20/20/20 and 20/20/15 former spouses to remain eligible for TRICARE coverage under 10 USC §1072(2)(F),(G) and (H), *remarriage at any time, or at any age ends coverage*. The requirement to remain unmarried also is part of the eligibility criteria to enroll in CHCBP. But compare the criteria for *enrollment* to that for *unlimited coverage*, which apparently provides that remarriage is not a disqualifier if it occurs *after* the former spouse was achieves his/her 55<sup>th</sup> birthday. Will this present a “Catch-22” for the former spouse who elects to remarry after age 55? That is, to enroll in CHCBP one cannot be *remarried*, but one can have *unlimited coverage* by

postponing the remarriage until after age 55. Would one fail to meet the criteria to *enroll* in CHCBP, but still meet the criteria for *unlimited coverage*? This confusion in the statute may have come from an attempt by Congress to make the “unlimited CHCBP coverage” mirror the Spouse Equity Coverage for former spouses of federal employees offered through the Office of Personnel Management. (*Compare* the legislative purpose of 10 USC 1078a(a) and the criteria found in 10 USC §1078a(g)(4) with the criteria for former spouses of federal employees at 5 USC §8901(10) and §8905(c)(1)). The “no remarriage before age 55” requirement seems to be tied to the loss of survivor annuity coverage that exists in both the military SBP (Survivor Benefit Plan) and Federal Civil Service survivor annuity. It appears that so long as the former spouse seeking to retain her CHCBP coverage does not remarry until after age 55, she would not jeopardize her ability to enroll in CHCBP. However, as a “preferred practice” for military family law attorneys advising a client who needs to retain her eligibility for CHCBP, it is highly recommended to seek an advisory opinion from the CHCBP Customer Service Office to verify that the ability of the client to enroll or retain CHCBP coverage, especially “unlimited coverage,” would not be compromised due to the remarriage.

3. **QUESTION:** “*Can a 20/20/20 spouse who lost her TRICARE coverage due to remarriage nevertheless then qualify for “unlimited CHCBP coverage” if the remarriage occurred after age 55?*” Would a 20/20/20 former spouse (with TRICARE coverage under 10 USC §1072(2)(F)) who didn’t remarry until *after* age 55 and who otherwise met the criteria for “unlimited CHCBP coverage” qualify for CHCBP? Again, the impact of remarriage on CHCBP eligibility comes into play even before we can reach the issue of “period of coverage” for the former spouse who remarries after age 55. Note that such a “20/20/20, over 55, now-remarried” former spouse must first satisfy the CHCBP *enrollment eligibility* criteria, which clearly states that the applicant must be “unmarried.” 10 USC §1078a(b)(3). But it would certainly seem an injustice that a 20/20/20 former spouse could not qualify for CHCBP because of her remarriage after age 55, while someone who was married just 18 months to a military sponsor (and perhaps none of it occurring during active duty) could remarry after age 55 and still qualify for CHCBP. Once again, the military family law attorney who is faced with advising a 20/20/20 former spouse client who must retain her DoD health care coverage should seek an advisory opinion- from the CHCBP Customer Service Office prior to the marriage taking place.

4. **QUESTION:** “*What about loss by the former spouse of SBP coverage or not receiving a portion of military retired pay?*”

- a. What would happen in the case of the former spouse who is basing her CHCBP “unlimited coverage” upon only receipt of a portion of retired/retainer pay, if the military member happened to predecease her? Would the former spouse no longer satisfy the CHCBP criteria for “unlimited coverage” since she was no longer *receiving* a portion of military retired/retainer pay, even with a court order saying that she was entitled to receive it? Recall that death ends the right to receive a

military pension. Therefore how could a court order satisfy the criteria if there was no pension to receive? Obviously, a back-up entitlement to former-spouse SBP coverage could serve as the second basis for satisfying the criteria for unlimited CHCBP coverage. But former spouse SBP is not always awarded as part of a divorce, and it may not be available as “back-up” if it was waived at the time the military member retired.

- b. What happens in the event of a waiver of military retired pay to receive some other form of compensation? Suppose the military member waived his/her military retired pay to receive VA disability compensation or used active military service to obtain an enhanced Civil Service Retirement? Would the fact the military member was then no longer receiving military retired pay, even with the former spouse entitled to receive a portion of the retired pay by court order, prevent the former spouse from being eligible for unlimited CHCBP coverage?
- c. What if the former spouse could not satisfy the “10/10 Rule” at the time of divorce and DFAS was not making direct payments to the former spouse under 10 USC §1408 (USFSPA)? Suppose that the military member was making alimony payments (in place of pension share payments) to the former spouse? Would receiving alimony be a “legal substitute” under 10 USC §1078a(g)(4)(B)(iii) for receiving a “portion of military retired pay”? What if the alimony was being paid directly by DFAS from the military member’s retired pay?
- d. What if the former spouse has a court order for Survivor Benefit Plan coverage, but then did not timely file a “Deemed Election”? Would the court order, by itself, be sufficient to satisfy the criteria even if no SBP benefit could be paid?

Examining the statute (10 USC §1078a(g)(4)(B)(iii) (I) and (II)) will answer some of the above questions. Notice that these two subsections of the statute are joined by “or,” and thus must be interpreted to mean that either “*actually receiving* a portion of retired pay or an SBP Annuity” or “*having the court ordered right* to receive such payments” should satisfy the criteria. However, nowhere is *alimony* mentioned in the criteria, even if it had been used to divide the military retirement (as might have been the case if the “10/10 Rule” could not be satisfied). Thus, where no portion of retired/retainer pay is being received (only alimony), this criteria for “unlimited CHCBP coverage” may not be met by the former spouse.

There are no federal cases or administrative law decisions to help answer these hypothetical questions. The only reported case is *Lowe v. Swartz*, 738 N.W.2d 63 (S. D., 2007). It

seems to suggest that “receiving only a portion of military retired pay” was insufficient to allow a former spouse seeking to qualify for the “unlimited CHCBP coverage,” and that it was essential for the former spouse to also have SBP coverage. It is worth noting that in the *Lowe* case, it was part of the argument of the former spouse that in order to continue to maintain her eligibility for CHCBP, she had to have *both* a portion of the military member’s retired pay *and* former spouse coverage under the SBP. Was the former spouse really needing the SBP coverage, as she maintained, or was it simply an attempt to obtain an additional benefit out of the divorce under the ruse of needing it to maintain her CHCBP coverage? Her appeal to the South Dakota Supreme Court was upon her attempt to “reopen” the divorce judgment in order to amend the judgment and additionally to obtain former spouse coverage under the military member’s SBP. The *Lowe* case does not serve as useful precedent concerning CHCBP issues, but it might serve as a caution that having *both* a portion of military retired pay and former spouse coverage under the SBP is a wise move.

5. **QUESTION:** “*Must the amount of retired pay or former spouse SBP coverage be of a “threshold amount” to satisfy the “unlimited coverage” criteria?*” No specific dollar amount of military retired pay or of SBP coverage is specified in the “unlimited coverage” criteria of 10 USC §1078a(g)(4)(B)(iii). Since CHCBP premiums are paid directly by the former spouse and need not be deducted from the military retirement (as is the case for SBP premiums), an agreement or order providing for a minimum SBP benefit or a division of military retired pay of just \$1.00 would technically satisfy the criteria. This author would strongly advise getting both a portion of the military retirement and former spouse SBP coverage, given that the entitlement to receive a portion of the retired pay terminates upon the death of the military member. Being able to also qualify with an entitlement to a survivor annuity might assist the former spouse in meeting the criteria for unlimited CHCBP coverage. (*See discussion of Lowe v. Swartz, supra.*)

6. **QUESTION:** “*What is the consequence for a former spouse who has based a claim upon a court-ordered division of retired pay, or upon a survivor’s annuity, if the military member does not retire?*” Consider our original scenario. LTC Jones agreed to share a portion of his military retirement and provide former spouse SBP coverage for Mrs. Jones. Now let us alter the facts and assume that *after* the divorce and *instead of retiring*, he receives severance pay, such as a Voluntary Separation Incentive (VSI), or a Special Separation Bonus (SSB), or he is court-martialed and discharged and gets nothing? What if the divorce had occurred much earlier in his career such as at the 10-year point and LTC Jones just decides to leave the military and go to work with the Postal Service, and then enhances his Federal Employees Retirement System (FERS) retirement by converting his active military time to civil service credit? Finally, what if LTC Jones simply leaves the military and takes a civilian job where he received *no credit* for his military service? How would these facts affect Mrs. Jones, who had been basing her CHCBP enrollment eligibility upon her husband’s eventually retiring for longevity, and her receipt of “unlimited CHCBP coverage,” if she could not now *actually receive a portion of military retired pay*? Would her former husband’s post-divorce actions divest her of access to her much-needed long-term DoD health care under CHCBP?

An argument can be made that the former spouse’s CHCBP *enrollment* eligibility and right to request “unlimited CHCBP coverage” is not dependent upon what the former sponsor does subsequent to the divorce. Rather, a former spouse’s eligibility for enrollment into CHCBP is determined the date she first applies for CHCBP benefits, and upon her otherwise meeting the special qualifying criteria for “unlimited coverage.” (*Comment:* Start with pages 23-24 of the *CHCBP Handbook*. Here compare ¶E.1.c.(1) (un-remarried former spouse seeking 36 months of CHCBP coverage) with subparagraph (2) (former spouse seeking “unlimited” coverage). Note in particular that the event of the sponsoring military member leaving active duty (and losing coverage under a DoD health or dental care plan) is tied to the eligibility criteria for the “36-month CHCBP” coverage, *but* it does not appear in subparagraph (2) dealing with “unlimited coverage.” This is consistent with the language in the corresponding provisions of 10 USC §1078a(g)(4) and 32 CFR §199.20.)

The former spouse might argue that the statute only requires that she have a “court order or agreement” that gives her *the right to receive a portion of retired pay or SBP coverage*, and that “actual receipt” is not mandated in the CHCBP statute. Still, eligibility and coverage might be denied by the CHCBP Office on the basis that military member’s leaving military service prior to retirement results in the former spouse then losing any right to receive either a portion of military retirement or to have SBP coverage regardless of what a divorce settlement agreement or domestic court order might provide. Remember as well, the D.E.E.R.S. enrollment for the military member will be closed when the sponsoring military member leaves active service prior to retirement, and the former spouse must act through the military sponsor’s D.E.E.R.S. to obtain her CHCBP coverage. The forward-thinking family law attorney must consider the possibility that the military sponsor might not eventually achieve retirement as represented during the divorce proceedings.

7. **QUESTION:** “*What should the family law attorney advise the client concerning the consequences of taking alimony rather than a portion of military retired pay or waiving SBP and taking life insurance?*” In advising a former spouse concerning either waiving SBP coverage (in favor of life insurance), or accepting alimony instead of a court-ordered portion of military retired pay, the attorney should carefully document the advice given that eligibility for “unlimited CHCBP coverage” may be lost, and that coverage may *be limited to 36 months*. Failure to advise a client properly on making the decision to waive either of these (or both), could result in a malpractice claim or, at the very least, a state bar grievance, for being negligent in advising the client. As a matter of professionalism, not to mention avoiding a malpractice suit, documenting the advice in writing and having the client sign and acknowledge the advice is a good practice pointer for the practitioner. See Appendix 2 for a sample letter to a client regarding this advice.

h. **QUESTION:** “*What is the consequence of other health insurance being available to the spouse/former spouse seeking CHCBP coverage?*” Recall that eligibility for TRICARE coverage for 20/20/20 and 20/20/25 spouses under 10 USC §§1072(2)(F) and (G) is lost if they “have medical coverage under an employer-sponsored health plan.” The *eligibility* for, or

enrollment in, another (non-DoD) medical insurance plan by a former spouse does not appear to be a disqualifier for CHCBP enrollment and coverage. (It is clear that a spouse or former spouse cannot be concurrently enrolled in CHCBP and any other DoD health care program (*CHCBP Handbook*, page 21)). At least for the temporary (i.e., 36 months) coverage, this would be consistent with the legislative purpose of the CHCBP to provide transitional health benefits. 10 USC §1078a(a). Consider that a person with a pre-existing medical condition may not have coverage until she has been under another health insurance plan long enough to meet an exclusionary period for a pre-existing condition. Dual enrollment or double coverage under CHCBP and another (private) health insurance plan might be necessary to provide “full medical coverage” for the former spouse with significant pre-existing conditions.

Dual enrollment (a.k.a. double coverage) under CHCBP and another health insurance plan is addressed at 32 CFR §199-20(h), which then refers to 32 CFR §199.8 (“Double Coverage”). The effect of double/dual coverage appears to be that CHCBP becomes the secondary payor of claims, such that any claim that could not be honored by CHCBP (were it the sole insurer) also could not be paid if it were the secondary payor of the claim. However, caution should be exercised in the case of the former spouse who qualifies for “unlimited CHCBP coverage” and also decides to seek dual enrollment or double coverage under another insurance policy. Obviously such a former spouse would not need the transitional 36-month CHCBP coverage as the exclusion period for a pre-existing condition may no longer exist. Once again it may be a wise move to first seek an advisory opinion from the CHCBP Office before advising a former spouse to enroll in another medical insurance plan.

**APPEALS:** One of the possible reasons that no federal cases exist concerning CHCBP is that the appeal process for CHCBP cases is complex. A brief discussion of appeals is found at page 21 of the *CHCBP Handbook*. However, the regulations really bring to life the horrors of prosecuting an appeal. The CHCBP implementing regulation, 32 CFR §199.20, at paragraph (j) incorporates the general appeal and hearing procedures for the Civilian Health and Medical Program of the Uniform Services (CHAMPUS) found at 32 CFR §199.10. Be certain to read 32 CFR §199-10 very carefully if an appeal is contemplated. There are strict requirements for timeliness and avenues for reconsideration, informal review, formal appeal, etc. Note that 32 CFR §199-10 provides that formal appeals and hearings are to be conducted by the Chief, Office of Appeals and Hearings, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora CO 80011-9066. By memorandum of understanding, however, such appeals are instead heard by the Defense Office of Hearings and Appeals (DOHA) (*See <http://www.dod.mil/dodgc/doha/tricare.html>*). All decisions are reviewed by the Director, OCHAMPUS and are either “accepted or rejected,” or referred to the Assistant Secretary of Defense (Health Affairs). Once this rather long administrative remedy is exhausted, then an “aggrieved CHCBP beneficiary” would have access to the Court of Federal Claims.

**CONCLUSION:** When it comes to DoD health care options, all is not lost if the former spouse cannot satisfy the 20/20/20 Rule for TRICARE Coverage. Inexpensive government health care is certainly preferable to costly private coverage!

The availability of any DoD *long-term health insurance* option is worth understanding and considering for military family law attorneys, who must advise their clients of all of the available options. This is true particularly in military divorces, where often a former spouse has not worked outside the home, may have significant health issues, and has no health care coverage available upon divorce. The Continuation of Health Care Benefits Program can provide both temporary and unlimited CHCBP coverage to those qualifying former spouses eligible under 10 USC §1078a(g)(4). This premium-based coverage is comparable to the TRICARE health care coverage available to former spouses who satisfy the 20/20/20 Rule.

**ANSWER TO HYPOTHETICAL QUESTION:** As the military family law attorney advising Mrs. Jones, you should discuss the following avenues to providing her with a lifetime health care option:

1) Divide LTC Jones’ military retired pay as marital/community property under 10 USC §1408, and provide for payments to Mrs. Jones from DFAS. Do not agree to a proposed award of alimony in lieu of pension division. If alimony must be used as the means of the former spouse being paid, then arrange to have it paid directly by DFAS from the military member’s retired pay.

2) In addition, insist that the divorce settlement include former spouse beneficiary status under the Survivor Benefit Plan as part of the divorce settlement. The SBP base amount should be high enough that, should LTC Jones predecease Mrs. Jones, the SBP annuity would be sufficient to continue to pay her portion of the military retired pay and the CHCBP quarterly premiums after LTC Jones’ death. Do not accept life insurance as a substitute for the former spouse SBP coverage since insurance does not satisfy the criteria for “unlimited CHCBP coverage.”

3) If possible, arrange for an alimony payment (or an increase in Mrs. Jones’ share of military retired pay) sufficient to pay all (or part) of Mrs. Jones’ CHCBP quarterly premiums. It would be preferable to use a separate alimony award so that it could terminate upon any number of future events (i.e., remarriage, enrollment in a employer-sponsored health plan, etc.) It should be made modifiable only upon an increase in the CHCBP premium. In order to satisfy IRS requirements for being deductible for the payor, state that it ends no later than the payee’s death.

4) Ensure that LTC Jones may not act to re-characterize, waive, or convert his military retired pay without indemnifying and holding harmless Mrs. Jones for any loss to her, including CHCBP coverage.

5) Advise Mrs. Jones in writing that she must enroll in CHCBP within 60 days of the filing of her decree of divorce or dissolution. Provide her a copy of the DD Form 2837, “Continuation of Health Care Benefit Program (CHCBP) Application,” refer her to the TRICARE Customer Service Office, and provide her with a copy of the *CHCBP Handbook*.

6) Advise Mrs. Jones *in writing* that her remarriage prior to age 55 could forfeit her right to enroll in

CHCBP and her right to receive SBP survivor's benefits.

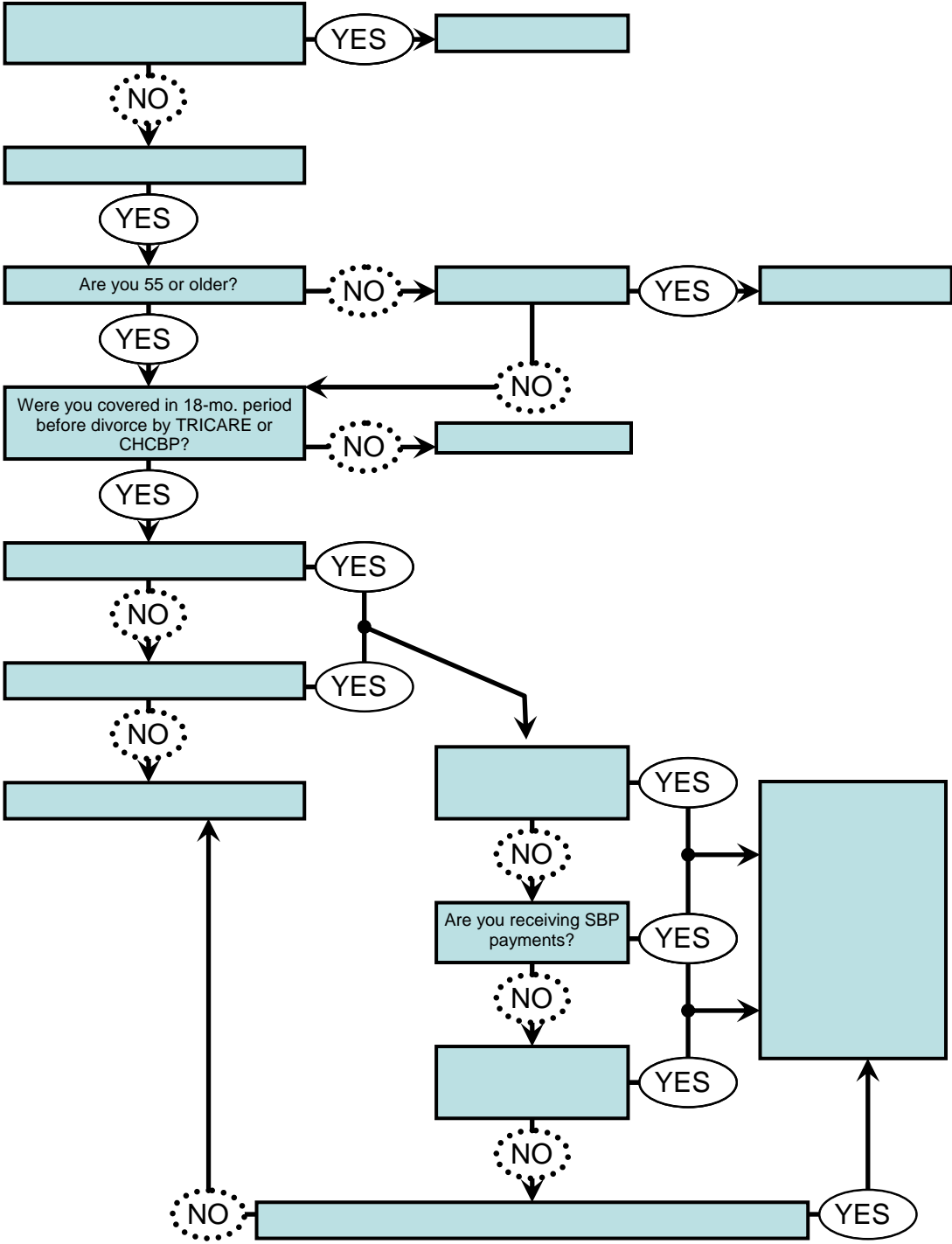
7) Advise Mrs. Jones *in writing* that CHCBP is not TRICARE but only "looks like TRICARE." Advise her that CHCBP is not free and that failure to pay the quarterly payments could cause her to be permanently unenrolled and to lose any health care coverage.

8) Point out to Mrs. Jones (in the *CHCBP Handbook*) the CHCBP Customer Service telephone number and address: 1-800-444-5445; Humana Military Healthcare Services, Inc., ATTN: CHCBP, PO Box 740072, Louisville KY 40201.

9) Finally, in addition to all the above, advise Mrs. Jones to maintain a record of all of her calls and correspondence with the CHCBP Administrator. In particular, advise her that, should she decide to obtain "dual enrollment" with another health care insurer or to remarry, she should consult the CHCBP Administrator before doing so and request an advisory letter as to the consequences for her continued eligibility for enrollment and unlimited coverage CHCBP.

\* \* \*

**Appendix 1 – Flow Chart**  
**Military Health Care Coverage through CHCBP (10 U.S. Code 1078a) for Spouses and Former Spouses**



## Appendix 2

Dear \_\_\_\_\_,

This letter is to confirm our conversation regarding your marital settlement agreement. Despite my advice, you have elected to waive any interest you have in your spouse's military retirement benefits. In doing so, you are not only waiving a share of retired pay and a survivor annuity, but you are also waiving certain other rights which are linked to these benefits. One of the most important of these is the right to continued medical coverage.

Certain medical benefits are unrelated to a waiver of military retirement benefits. If you have been married to your servicemember spouse for at least 20 years, with at least 20 years overlapping the period of creditable military service, you are placed in a special category of beneficiaries called "20/20/20 spouses." As a 20/20/20 spouse, you will retain most of your military benefits unless you remarry. These include commissary, exchange, medical coverage and legal assistances services. The medical benefits are extended to you at the retiree rate for life, or until you remarry. Even if you remarry and you then divorce again, all of your rights are reinstated EXCEPT your medical coverage. This benefit is yours by federal statute, regardless of the terms of your divorce.

If you have been married to your servicemember spouse for at least 20 years, and he or she has at least 20 years of creditable service but only 15 years of the marriage overlap the time in service, you are a "20/20/15 spouse." As such, you are entitled to one full year of medical coverage from the date of the divorce. If at the end of that year are not remarried or covered by an employer sponsored health care plan, you qualify for continued coverage in a DOD-sponsored health care plan for as long as you meet those requirements. Once again, the 20/20/15 benefit belongs to you under federal law, regardless of the terms of your divorce or settlement.

If, as in your case, you do not qualify as a 20/20/20 or a 20/20/15 spouse, you are still entitled to medical coverage at the retiree rate under certain circumstances. Retaining your right to a portion of your spouse's retirement benefits (either retired pay or Survivor Benefit Plan coverage, known as SBP) is *essential* to your qualifying for continued medical benefits.

Federal law guarantees the right of former military spouses to continued medical benefits when four conditions are met. First, you cannot be covered by any type of employer-sponsored medical coverage. However, you can refuse your employer-sponsored medical benefits and retain the military medical benefits. You would also be disqualified if you have individually-obtained medical insurance. Second, you cannot remarry before the age of 55. Third, you must have been enrolled in a Department of Defense (DoD) medical benefits program at any time in the 18 months prior to the divorce. Finally, you must obtain a court order showing that you have retained an interest in your spouse's military retirement (pension share or SBP). This interest in your spouse's military retirement can be as little as 1% to qualify for this important benefit.

If you meet all four criteria, you may qualify for DoD-sponsored health insurance through the Continued Health Care Benefit Program (CHCBP). This medical coverage lasts as long as you wish (so long as you remain eligible) and the premiums are reasonable. Please note that this program is available to you even if your current employer offers health insurance but you prefer to continue with your DoD sponsored benefits. While CHCBP is not TRICARE and you will not be entitled to use base facilities, there is a Network of Providers available to you that will provide TRICARE-like services to meet your needs.

Please consider this information carefully and weigh the consequences of your choice to relinquish any interest in your spouse's retirement. Waiving any and all rights to your spouse's retirement benefits, as you propose to do, will disqualify you from having CHCBP available to you in the future should you need medical insurance. On the other hand, retaining a share of the military retirement rights could provide you with reasonably priced medical insurance, especially in the event that you have any pre-existing conditions.

Please sign below to acknowledge your receipt of the advice I have provided above.

\_\_\_\_\_  
Signature of client

Date: \_\_\_\_\_

## **SAMPLE JURAT AND ACKNOWLEDGEMENT**

### **Sample Jurat:**

**WITH THE UNITED STATES ARMED FORCES**

**AT [NAME OF COMMAND, INSTALLATION, AND PHYSICAL LOCATION]**

[Insert substance of the affidavit or other sworn instrument]

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Signature of person making statement

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Printed name of person making statement

I, the undersigned notary, granted general powers of a Notary Public under 10 U.S.C. § 1044a, do hereby certify that the foregoing instrument was subscribed and (sworn) (affirmed) before me on \_\_\_\_\_ by \_\_\_\_\_ who has presented a valid (state)(federal) identification card, and is the identical person who is described therein, who signed and executed the foregoing instrument. I, do further certify that I am, on the date of this certificate, a person with the power described in Title 10 U.S.C. § 1044a of the position or grade, branch of service, and organization stated below in the service of the United States Armed Forces, and that by statute, no seal is required on this certificate, under authority granted to me by 10 U.S.C. § 1044a.

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NOTARY'S SIGNATURE  
Printed Name, Rank, Title  
Command/Department  
NO SEAL REQUIRED



**Sample Acknowledgement:**

[Body of document to be acknowledged at least three lines of text must precede the witness block below].\_\_\_\_\_

\_\_\_\_\_

WITNESS the following signature this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Customer/client's name

**WITH THE UNITED STATES ARMED FORCES**

**AT [NAME OF COMMAND, INSTALLATION, AND PHYSICAL LOCATION]**

I, the undersigned notary, granted general powers of a Notary Public under 10 U.S.C. § 1044a, do hereby certify that on \_\_\_\_\_ before me, personally appeared \_\_\_\_\_ who has presented a valid Federal or state identification card, and is the identical person who is described therein, who signed and executed the foregoing instrument, and having first made known to him/her the contents thereof, he/she personally acknowledged to me that he/she signed the same, on the day it bears, as his/her true, free, and voluntary act and deed, for uses, purposes and considerations therein set forth. I, do further certify that I am, on the date of this certificate, a person with the power described in Title 10 U.S.C. § 1044a of the position or grade, branch of service, and organization stated below in the service of the United States Armed Forces, and that by statute, no seal is required on this certificate, under authority granted to me by 10 U.S.C. § 1044a.

\_\_\_\_\_  
NOTARY'S SIGNATURE  
Printed Name, Rank, Title  
Command/Department  
NO SEAL REQUIRED

## **MILITARY PREAMBLE LANGUAGE**

Reference: DODD 1350.4, April 28, 2001 (Incorporating Change 1, June 13, 2001)

### **MILITARY TESTAMENTARY PREAMBLE**

This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to section 1044d of title 10, United States Code, 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 provided for testamentary instruments under the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this document shall receive the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. It shall remain valid unless and until the testator revokes it.

### **MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT AFFIDAVIT**

WITH THE ARMED FORCES

AT \_\_\_\_\_

We, the testator/testatrix and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that in the presence of a military legal assistance counsel and the witnesses the testator/testatrix signed and executed the instrument as the testator/testatrix military testamentary instrument and that [he][she] had signed willingly (or willingly directed another to sign for [him][her]), and that [he][she] executed it as [his][her] free and voluntary act for the purposes therein expressed. It is further declared that each of the witnesses, in the presence and hearing of the testator/testatrix and a military legal assistance counsel, signed the military testamentary instrument as witness and that to the best of [his][her] knowledge the testator/testatrix was at that time eighteen years of age or older or emancipated, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator/Testatrix

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature Print Name

\_\_\_\_\_  
Witness Signature Print Name

Subscribed, sworn to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date \_\_\_\_\_.  
(Signed)

\_\_\_\_\_

\_\_\_\_\_  
(Official Capacity of Person Administering the Oath."g0 0Tcpm"Vkrq."Eqo o cpf "P co g)

## **MILITARY POWER OF ATTORNEY PREAMBLE**

This is a military Power of Attorney prepared pursuant to section 1044b of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Service. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a State, the District of Columbia, or a commonwealth, territory, 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.

## **MILITARY ADVANCE MEDICAL DIRECTIVE PREAMBLE**

This is a military advance medical directive prepared pursuant to section 1044c of title 10, United States Code. It was prepared by an attorney authorized to provide legal assistance for an individual eligible to receive legal assistance under section 1044 of title 10, United States Code. 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.

## ESTATE PLANNING – DD-93/SGLI BENEFICIARY DESIGNATION RECOMMENDED LANGUAGE

When a client creates a testamentary trust or custodianship for the benefit of his or her children, the designated trustee or custodian (in her or her specifically authorized capacity) must be identified as a beneficiary of the client's SGLI or Death Gratuity benefits and unpaid pay and allowances to ensure proper distribution of these funds into the children's trust or custodial account.

### TRUSTEE DESIGNATION LANGUAGE

The following language is recommended for designating a trustee on SGLI Beneficiary Designation Form 8286 or the Form DD-93. Note: On the SGLI Beneficiary Designation Form, this language should be inserted into the Primary or Secondary beneficiary block as appropriate. On Form DD-93, this language should be inserted into Block 11(a) Beneficiaries for Death Gratuity and Block 14, Continuation/Remarks (for successor trustees).

*To (name), as trustee [**or (name) as successor trustee**] of the trust established in my will for the benefit of [**insert names of children, identifying by name and relationship, e.g. “my daughter Ann”**] and any child born hereafter to me and my wife/husband (name), for distribution as designated in my will. [**If no spouse, delete that portion**] If the trust is invalid for any reason, or if I die without a valid will, then to (name), as custodian, or (name) as successor custodian under the laws of the state of (state where first custodian is domiciled or state where beneficiaries are domiciled) for the benefit of the above named children for outright distribution in equal shares for each such child at age (choose age of 18 or older. Check state statute!), or [**select per capita = “in equal shares to the survivors of this class of children” or per stirpes = “in equal shares to the surviving issue of such deceased child.”**]*

Note: Although the client can designate children to receive money outright at any age (or a variety of ages) under a trust, state law controls the age at which a child receives funds under a custodial account. Custodial accounts must be distributed to the beneficiary at a single specific age, and they cannot be staggered; for example, ½ at 21 and ½ at 25, as is possible with a trust. Review state law to choose an appropriate age for the custodial account portion of this language.

Note: There may be a single trust created for each beneficiary or there may be multiple beneficiaries of a single trust. Regardless, the DL Wills program crafts the language to satisfy the formation of the trust or trusts. The attorney, in drafting this recommended language, is setting up the funding parameters for the trust or trusts that DL Wills has created. Consult Code 16 if you have any concerns or difficulty choosing language.

### CUSTODIAN DESIGNATION LANGUAGE

The following language is recommended for designating a custodian as the proposed beneficiary of either the SGLI Beneficiary Designation Form 8286 or the Form DD-93 is:

*To (name), as custodian [or (name) as successor custodian] under the laws of the state of (state where first custodian is domiciled or state where beneficiaries are domiciled) for the benefit of [insert names of children, identifying by name and relationship, e.g. “my daughter Ann”] and any child born hereafter to me and my wife/husband (name) [If no spouse, delete that portion] for outright distribution in equal shares when each such child attains age (choose age of 18 or older. Check State statute!) or [select per capita = “in equal shares to the survivors of this class of children” or per stirpes = “in equal shares to the surviving issue of such deceased child.”]*

Note: There can be only one beneficiary per custodial account. When the custodian opens the custodial account, he or she must open a separate account for each child. Note: custodial accounts must be distributed to the beneficiary at a single specific age, they cannot be staggered, for example, ½ at 21 and ½ at 25, as is possible with a trust. Review state law to choose an appropriate age for the custodial account portion of this language.

Note: Clients should be counseled on the limits of FDIC protection. A custodian may have to open multiple custodial accounts in order to maintain that protection for all of the custodial account assets.

## LINKS TO UGMA/UTMA STATUTORY REFERENCES

**Territories** [for specific territories go to <http://www.pacii.org/databases.html> for a search of the respective laws]

American Samoa authorizes guardianships over a person, an estate, or both.<sup>52</sup> Jurisdiction for a guardianship requires either the ward to be domiciled or the property to be located in American Samoa.<sup>53</sup> A guardian must be twenty-one years old, a resident of American Samoa, and mentally competent.<sup>54</sup> The Code makes no provisions for the court to waive the requirements of an individual guardian to post a bond or to file annual inventories and accountings. Link to American Samoa Code: <http://www.asbar.org/>

Commonwealth of the Northern Mariana Islands (CNMI) THIS TYPE OF ACCOUNT IS NOT AVAILABLE. [Laws available at <http://www.pacii.org/databases.html>]

Guam 19 GCA Personal Relations, Chapter 12 Uniform Gifts To Minors Act located at <http://www.justice.gov.gu/compileroflaws/gca/19gca/19gc012.PDF> [Also see <http://www.guamcourts.org/CompilerofLaws/index.html>]

Puerto Rico has not enacted UGMA or UTMA. Puerto Rico has “Tutorship” [See *Beyond DL Wills* at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/10-2005.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/10-2005.pdf)]

Puerto Rico’s Tutorship: Tutorship In Puerto Rico, tutorship corresponds to guardianship in other U.S. jurisdictions. A testator may appoint a tutor for a minor child in his will. To qualify, a tutor must be a resident of Puerto Rico.<sup>296</sup> The Civil Code requires the tutor to provide a bond, but the testator can relieve the tutor of this requirement in his will. The tutor must provide annual accounts and a final account of the tutorship. P.R. LAWS ANN. tit. 4,31, 32 et seq

United States Virgin Islands. Code tit. 15, § 1251a *et seq.*

### Uniform Gifts to Minors Act Jurisdictions

S.C. Code § 20-7-140 *et seq.*

Vt. Stat. tit. 14, § 3201 *et seq.*

### Uniform Transfers to Minors Act Jurisdictions

Ala. Code § 35-5A-1 *et seq.*

Alaska Stat. § 13.46.010 *et seq.*

Ariz. Rev. Stat. § 14-7651 *et seq.*

Ark. Code § 9-26-201 *et seq.*

Cal. Prob. Code § 3900 et seq.

Colo. Rev. Stat. § 11-50-101 et seq.

Conn. Gen. Stat. § 45a-557 et seq.

Del. Code § 12-4501 et seq.

District of Columbia. Code § 21-301 et seq.

Fla. Stat. § 710.101 et seq.

Georgia Code - Property - Title 44, Section 44-5-112

Haw. Rev. Stat. § 553A-1 et seq.

Idaho Code § 68-801 et seq.

760 Ill. Comp. Stat. § 20/1 et seq.

Ind. Code § 30-2-8.5-1 et seq.

Iowa Code § 565B.1 et seq.

Kan. Stat. § 58a-101 et seq. (Under the Uniform Trust Code)

Ky. Rev. Stat. § 385.012 et seq.

La Code TITLE 9 Civil code-ancillaries :: RS 9:759 Manner of creating custodial property and effecting transfer; designation of initial custodian; control

Me. Rev. Stat. tit. 33, § 1651 et seq.

Md. Code, Est. & Tr. art., § 13-301 et seq.

Mass. Gen. L. ch. 201A, § 1 et seq.

Mich. Comp. L. § 554.521 et seq.

Minnesota Code Chapters 524 - 532 Estates of Decedents; Guardianships Chapter 527  
Uniform Transfers to Minors Act

Miss. Code § 91-20-1 et seq.

Mo. Rev. Stat. § 404.005 et seq.

Mont. Code § 72-26-501 et seq.

Neb. Rev. Stat. § 43-2701 et seq.

Nev. Rev. Stat. § 167.010 et seq.

N.H. Rev. Stat. § 463-A:1 et seq.

N.J. Stat. § 46:38A-1 et seq.

N.M. Stat. Ann. § 46-7-11 et seq.

New York Estates, Powers & Trusts - Part 6 - (7-6.1 - 7-6.26) Uniform Transfers to Minors Act

N.C. Gen. Stat. § 33A-1 et seq.

ND Title 47-24.1 Uniform transfer to Minors Act

Ohio Rev. Code § 5814.01 et seq.

58 Okla. Stat. § 1201 et seq.

Or. Rev. Stat. § 126.805 et seq.

Pa Uniform Transfers to Minors Act (sometimes known as PAUTMA or UTMA, or, formerly, as the Pennsylvania Uniform Gifts to Minors Act, or PUGMA) located at 20 Pa.C.S.A. § 5301, et seq

Rhode Island Code - CHAPTER 18-7 — Uniform Transfers to Minors Act

South Dakota Code Title 55 - FIDUCIARIES AND TRUSTS  
Chapter 10A - Uniform Transfers To Minors Act

Tenn. Code § 35-7-201 et seq.

Texas Property Code Title 10, Subtitle A, Chapter 141 Transfers to Minors (TUTMA)

Utah Code § 75-5a-101 et seq.

Utah Code § 75-5a-101 et seq.

Virginia Code Title 31 – Guardian and Ward.  
Chapter 6 - Virginia Uniform Transfers to Minors Act (31-37 thru 31-59)

Wash. Rev. Code § 11.114.010 et seq.



West Virginia Chapter 36. Estates and property.  
Article 7. Uniform Transfer to Minors Act

Wisconsin Code Chapter 54. Guardianships and conservatorships.  
54.854 -54.898 Uniform Transfers to Minors Act

Wyoming Title 34 Property, Chapter 13 Sections 114-137 Transfers to Minors