



# THE MILLRIND

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## Legal Assistance in the Spotlight:

LCDR Paige Ormiston, Civil Law & Legal Assistance Department Head

As the Civil Law and Legal Assistance Department Head, I am pleased to introduce the latest edition of the Millrind! This edition of the Millrind covers a variety of common issues we see in CIVLAW: SCRA, OCONUS Divorce, OGE 450s, Defense Services, and Processing for Drug-Related Offenses. Our shipmates regularly bring us personal legal issues faced by them or their Sailors and we are here to help you and your command with your legal needs!



## How to Contact Your Region’s Legal Assistance Team!



**NAPLES**  
 Email: [naples.legal@eu.navy.mil](mailto:naples.legal@eu.navy.mil)  
[Tiziana.petrarca.it@eu.navy.mil](mailto:Tiziana.petrarca.it@eu.navy.mil) (soujourner permit)  
 DSN: 314-626-4576  
 COMM: +39 081-568-4576



**SIGONELLA**  
 Email: [sigonella.legal@eu.navy.mil](mailto:sigonella.legal@eu.navy.mil)  
 DSN: 314-624-2953  
 COMM: +39 095-86-2953



**SOUDA BAY**  
 Email: [M-SB-NSA-LEGAL-GS@fe.navy.mil](mailto:M-SB-NSA-LEGAL-GS@fe.navy.mil)  
 DSN: 314-266-1356  
 COMM: +30 28210-21356



**BAHRAIN**  
 Email: [nsa.legal.assistance@me.navy.mil](mailto:nsa.legal.assistance@me.navy.mil)  
 DSN: 318-439-4237  
 COMM: +973 1785-4237



**LONDON**  
 Email: [Jason.lawrance2.ln@mail.mil](mailto:Jason.lawrance2.ln@mail.mil)  
 DSN: 314-235-6193  
 COMM: +44-1895-616193



**ROTA**  
 Email: [rota.notary@eu.navy.mil](mailto:rota.notary@eu.navy.mil) (notary appointments);  
[Rota.legal.assistance@eu.navy.mil](mailto:Rota.legal.assistance@eu.navy.mil) (attorney appointments)  
 DSN: 314-727-2531  
 COMM: +34 956-82-3104/2531

## Nuts & Bolts: Service Members Civil Relief Act (SCRA)

### **Storage Lien Enforcement & Eviction Protections**

By LT Michael Killius, JAGC, USN

The SCRA is a **must-know** federal law providing legal protections and benefits to Service Members. This section highlights some key measures, but by no means covers them all!

When Service Members use **commercial property storage**, or **rent a residential property**, they are protected from certain adverse actions by the property landlord. Generally, landlords who believe their tenants are failing to hold up their end of the bargain can either seize (and probably sell) the property in the storage unit or even evict their tenants. **Ever watch the show Storage Wars? It's kind of like that!**

The SCRA, however, protects Service Members by requiring landlords to obtain a court order before taking such action. When combined with other SCRA protections, like the stay of proceedings discussed on the next page, the SCRA weaves a net of protections for homes and property, so that no one is legally prejudiced by military service.

**The safety net in practice:** Let's say a Service Member has missed a number of monthly payments on rent and storage fees. The landlord wants to evict the Sailor from his home and the storage company wants to seize and sell his property. Not so fast! By law, property owners must sue in court for a court order before evicting or selling personal stored property.

**“By law, property owners must sue in court for a court order before evicting or selling personal stored property.”**

Now let's further suppose the Service Member is **deployed overseas** and cannot return to defend himself in this lawsuit. If he finds out about the lawsuit, he can request a stay, and the court, applying the SCRA, must pause the proceedings. Meanwhile, his residence and property are secured while he makes the arrangements to come home and clear it up. And what if the Sailor never received any notice of the lawsuit while deployed? He can even have the default judgment — i.e., the automatic loss of the lawsuit due to failing to respond — overturned!

### **How to Get Interest Rates Capped at 6%**

By LT David Buros,  
JAGC, USN

**One of the best SCRA benefits is the six percent interest rate cap for certain loans that *predate* military service. This interest rate cap applies to credit cards, mortgages, student loans, auto loans, and more. Don't miss out on the savings!**

**For how long does the benefit apply?** For mortgages, the SCRA's interest cap covers both the period of military service and one year after. For all other obligations, the interest is capped for the duration of military service only.

**When do I need to notify my creditors?** A Service Member may notify their creditors at anytime during service, or within 180 days of separation.

**How do I receive this benefit?** Service Members must provide a creditor with *written* notice AND a *copy* of his or her military orders, or a letter from the commanding officer.

**What if I have already been paying interest greater than 6%?** Creditors must forgive this interest retroactively!

## Nuts & Bolts: SCRA

## Cutting the Cord & Contracts Abroad

By LT Lake Coreth, JAGC, USN



### Forgot to cancel a cell, internet, or TV contract before moving overseas?

Thankfully, it's not too late to cancel, keep your cellphone number, and avoid termination fees using the benefits of the SCRA.

The SCRA allows OCONUS Service Members to terminate TV, internet, and cell contracts "**at any time after the date the Service Member receives military orders,**" so long as orders are for 90 days or more overseas and the new location doesn't support the contract.

What does "**not support the contract**" mean? Let's say you're moving to Italy and your mobile carrier can't provide the same level of coverage or speed of data in your new location. This would almost certainly make your contract not supportable and make you eligible for SCRA protections. To avail yourself of these benefits, provide your carrier with **written notice** of your intent to terminate, the date you would like to terminate, and a copy of your military orders.

Although you won't be able to use your cell number while your contract is inactive, the SCRA requires mobile carriers to offer to save your number. So if you'd like to **keep your number**, let your servicer know in writing at the time of termination. Provided that you reinitiate your cell service within 90 days of relocating and that your overseas orders are for three years or less, the mobile carrier must set aside your number until you return CONUS.

**But what about dependents?** Dependents are protected under the SCRA only if they are listed on the same family plan as the Service Member and accompany the Service Member overseas. While this provision will cover many dependents, this provision will not protect a dependent who has a separate contract from the active duty member.

So if you're, say, a dependent spouse with a separate TV, phone, or internet contract, **it is in your interest to enter into a family plan before receiving orders.** SCRA protections only work if your TV, internet, or mobile contract predates the Service Member's orders. So unfortunately, if you and your dependent spouse already find yourselves OCONUS with separate contractual obligations, your dependent will not be eligible for SCRA cancellation.

Last, but not least, the SCRA protects military members from paying early termination and reinstatement fees. **Double check those bills** to make sure you haven't been illegally charged upon arriving or departing OCONUS!

### Getting a court order or subpoena to appear CONUS isn't just nerve-wracking, it's a logistical and practical impossibility!

Luckily, the SCRA has a process for asking courts to delay hearings for 90 days to allow Service Members to travel home or make alternate arrangements.

**How it does it work?** First, contact the local Legal Assistance office! An attorney will advise the Service Member of their rights, help draft a formal letter requesting a delay, and provide templates for the commanding officer's endorsement. The Member will also need to include their current OCONUS military orders to the court.

**But what if 90 days isn't enough time?** Ask again! Explain to the court why three months isn't enough. Keep in mind the likelihood of an additional stay depends on the type of hearing, the impact of the delay on the other parties, and the effect of delay on the court's schedule.

**The court didn't approve the stay request, what now?** The court is required to appoint a lawyer to represent you.

While this may sound like a win, it might not be in your best interest! **Pro-tip:** not all hearings require an in-person appearance. Try calling the court to see if you could call-in or use videoconferencing to appear at the hearing and contact the local Legal Assistance attorney for a consultation.

### Pressing Pause on Court Appearances

By LT Elisabeth Maddrell, JAGC, USN

## Nuts & Bolts: Divorcing in the U.S. While Overseas

By LT Michael Killius, JAGC, USN

**Wouldn't it be nice if there were a Uniform Code of Divorce Law?** Like the Uniform Code of Military Justice? One set of rules governing divorce from San Diego, to Sasebo, to Sigonella?

Unfortunately, there is nothing uniform about U.S. divorce law. In fact, all law about family relations — marriage, divorce, child custody, etc. — is owned by each individual state. That means we have 50 unique sets of law, with varying terms, rules, and procedures! But as different as each state's laws may be, there are many legal and practical challenges that are common to divorce throughout the U.S. Consider these:

**Where should I file for divorce in the U.S.?** If you're in need of a divorce, you must first ensure that the court has jurisdiction. Jurisdiction is a fancy word for legal authority to hear a case and take a particular action, like granting a divorce. In most states, courts will have the authority to end a legal marriage if at least one of the parties has lived in that state for a certain amount of time.

But bear in mind jurisdiction over the *marriage* is only part of the equation. Most couples need not just an end to the marriage, but a decision on how to divide debts and assets and how to set rules for the parties going forward. Whether a court has jurisdiction to compel a divorcee to assume debts or pay money, however, requires a different type of "legal authority" that might not exist in the state of a party's residence.

**How does it work if I'm living OCONUS?** Most people looking for a divorce want to physically separate long before a judge signs the divorce decree, and some states like Virginia even require separation before granting a divorce. Finding alternative housing abroad, however, may not be an option. If it is, Status-of-Forces Agreements (SOFAs) or similar agreements may restrict the ability of the parties to seek a job to supplement the cost of two households. Dependent spouses will also lose their SOFA status upon divorce.

Can't the dependent spouse just return to the U.S.? That's not so simple either. The Command may not support an Early-Return-Of-Dependents (ERD) just for a divorce. And if children are involved, bringing those children to the U.S. from just about anywhere in this Region without permission from the soon-to-be ex-spouse is what Hague Convention states like the U.S. might call "international child abduction." YIKES.

**What about the children?** To add insult to injury, a court with jurisdiction over the legal marriage or the parties does not necessarily have authority over the children. Only the "home state" of the children can make decisions regarding the future of the kids. But what even is "home" for a Navy brat born in Mayport, schooled in Norfolk, and holding a California learner's permit who lives in Rota? Well, unfortunately, the answer is "*it depends*" and is unique to each divorce.

**What about divorcing in the OCONUS country?** Because both the practicalities and the legalities of military service OCONUS make pursuing a divorce in the U.S. prohibitively difficult, some Service Members opt to pursue divorce in host nations. Challenges are manifest, however, and before making such a decision couples should consider the added complication of divorcing in a foreign language and system.

**Who can help me navigate this process?** We can! Legal Assistance attorneys analyze and counsel clients on jurisdiction, grounds for divorce, separation requirements, equitable distribution of assets, spousal support factors, the best-interest-of-the-child legal standard, and more. For a thorough consultation on your particular situation to include filing options, processes, and next steps, contact your local Legal Assistance office and make an appointment with an attorney. We provide divorce advice to all personnel eligible for legal assistance services, including dependents.

**“[A] court with jurisdiction over the legal marriage or the parties does not necessarily have authority over the children.”**

## Nuts & Bolts: Understanding Divorce Legalese

By LT Elisabeth Maddrell, JAGC, USN

### Legalese is indeed its own language!

And in the divorce realm, it can be even more confusing because many of us are familiar with the terms, but not necessarily the legal definition or impact. Exact definitions and processes will vary by state, but below are a few terms the average military divorce client should know.

**“Generally, there is no benefit or detriment to being the petitioner or respondent...[But] there may be a benefit to filing first, because . . . you can choose to file in the state with the laws most beneficial for you.”**

**Divorce:** The legal process of ending a marriage. The two types of divorce are uncontested and contested. An **uncontested divorce** is one where both parties agree on the terms of divorce and division of assets. A **contested divorce** is when the parties do not agree. When a divorce includes large property divisions, possible alimony, or child custody matters, the parties will often end up seeking a contested divorce and require a judge to determine the terms of divorce.

**Legal Separation:** Parties facing lengthy divorces may agree to temporary division of assets, spousal support, or custody matters in the meantime through a legal separation agreement. This agreement is valid until the final divorce is finalized. A separation agreement is not necessary for every divorce.

**Annulment:** Civil annulments occur when a judge determines the original marriage contract was void. Annulments are rare because one party must prove that the other spouse was incapable of entering marriage or that the original marriage was based in some form of fraud.

**Jurisdiction:** This is the state court’s ability to hear or rule on a case or issue. Legally, this is the biggest initial hurdle for OCONUS clients because typically one of the parties needs to be a resident of that state and, if the parties have children, the children must call that state their “home state,” as discussed in the previous article.

**Petitioner/Respondent:** The initial party to file for divorce is the petitioner, making the other party the respondent. Generally, there is no benefit or detriment to being the petitioner or respondent, it’s merely the legal term the court uses to refer to each party. However, in some instances there may be a benefit to filing first, because as the petitioner you can choose to file in the state with the laws most beneficial for you.

**Spousal Support/Alimony:** Payments from one party to another for a set period of time. There are no hard and fast rules for alimony and it is incredibly fact-specific.

**Child-support:** Court ordered payments from one party to another for the benefit of their children. These payments vary by state and most states have an online calculator parties can use to determine how much one party may be ordered to pay.

**MILPERSMAN 1754-030:** This article outlines the Sailor’s obligation to support their family members in lieu of a court order or mutual agreement, like a separation agreement.

## Nuts & Bolts: Host Nation Divorce Around the AoR



**Can I file for divorce in Italy?** Yes, if one spouse is an Italian national.

**How long does it take?** It can take over a year and you will likely need an Italian attorney.

**Is separation required before divorce?** Yes, and here are the options:

- 1) *Mutual consent* (uncontested divorce) is the traditional process of going before the President of the court to submit a request for separation. After 6 months of separation you can file for divorce.
- 2) *Judicial separation* (contested divorce) is when the spouses do not agree on the terms of the separation resulting in a contentious civil process. The Tribunal will rule on all controversies and establish rules for the separation.
- 3) *Assisted negotiations* is used to bypass the Tribunal and go directly to a lawyer, like mediation.

**How is the divorce finalized?** If there are no children and an agreement is reached, the agreement can be authorized by the public ministry. If there are no objections after a month, then the agreement will be transcribed at the Office of Civil State. If there are underage children, the couple has only 10 days to submit their agreement to the public ministry. To get a divorce, the petition must be filed within the territorial jurisdiction where the petitioner resides, or any court of the Republic of Italy if both spouses reside abroad.



**Can I file for divorce in Greece?** Yes, the initial filing location and applicable law will vary.

**How long does it take?** It can take up to a year and you will likely need a Greek attorney for contested divorces. If married in the Greek Orthodox church, additional steps are required.

**Is separation required before divorce?** Yes, and here are the options:

- 1) *Mutual consent* (uncontested divorce) is when both parties agree on the terms of divorce and need only appear before a notary to finalize a divorce decree through a notarial deed.
- 2) *Contested divorce* is when one spouse seeks dissolution of marriage due to a breakdown of the marriage, like irreconcilable differences, or if one spouse is declared missing or presumed dead.

**How is the divorce finalized?** For a contested divorce, parties will appear before a multi-member court who will determine the terms of divorce, division of assets, support, and any custody matters. The court will issue the final judgment.



## BAHRAIN



**Can I file for divorce in Bahrain?** As Bahrain follows Islamic law, it depends on your religion. Muslim divorces are handled in Family Court, and non-Muslim divorces are heard in Civil Court.

**Muslim Divorce:** This type of divorce only applies when the husband or both parties are Muslim. This applies to Muslim expats as well — provided that you were married through a Muslim (Sunni or Shiite) marriage contract. Prior to filing for this divorce, find out first if a divorce in Bahrain will be recognized in your home country, so that you do not run into any legal problems or issues in the future.

**Non-Muslim Divorce:** These divorces only apply to all non-Muslims, including expats. With this type of divorce, you must provide the court with certified copies of the laws of your home country, along with their Arabic translations. The court in Bahrain will apply the laws of your nationality. The court will tend to favor the laws of the husband's nationality regardless of the husband's religion. Hiring a local attorney in Bahrain is highly recommended for this process.



## SPAIN



**Can I file for divorce in Spain?** Yes, if the respondent is a European Union citizen and has lived in Spain for at least 6 months. If not an EU citizen, the respondent needs to have lived in Spain for the year prior to filing.

**How long does it take?** An uncontested divorce with no minor children takes a few weeks, but contested divorces may take a year or more.

**What are the grounds for divorce?** There is no need to state a particular reason for divorce as Spain is a no-fault state.



## ENGLAND



**Can I file for divorce in England?** Yes, provided (1) the parties have been married for at least 12 months and (2) the petitioner has been a resident in England for at least 12 months, i.e., in the U.K. on their orders for at least 12 months. Citizenship, nationality, or the fact that neither spouse was born in England are irrelevant.

**How long does it take?** Uncontested divorces take 4 to 6 months; contested may be a year or more. If contested, a solicitor (lawyer) may be required.

**What are the grounds for divorce?** You must prove the marriage has “irretrievably broken down.” This is established by showing (a) a spouse has committed adultery and that it is intolerable to live with them; (b) the spouse behaved in such a way that the other cannot reasonably be expected to live with them; (c) a spouse has deserted the other; (d) the parties have lived apart for a continuous period of at least two years and the respondent consents to the divorce; or (e) the respondent and petitioner have lived apart for at least five years (this can be used when one spouse does not consent to the divorce).

## OGE Form 450 Filing Requirements

By LT Christina Brito, JAGC, USN

The OGE Form 450 is a confidential financial disclosure form that must be submitted annually along with the annual ethics training. This form will help the filer avoid conflicts between their official duties and private financial interests or affiliations. The OGE Form 450 requires government employees within certain positions to disclose financial information regarding their assets, liabilities, outside positions, etc. An ethics official, usually a Staff Judge Advocate (SJA), will use the information provided by the filer to determine whether any potential conflicts exist.

**The OGE 450 “must be filed by military members and civilian personnel classified in a position at or below O-6/GS-15 (or a comparable pay level under other authority) who have personal and substantial involvement in certain government actions.”**

This form **must** be filed by military members and civilian personnel classified in a position at or below O-6/GS-15 (or a comparable pay level under other authority) who have personal and substantial involvement in certain government actions. These actions fall under three categories:

- (1) Those who participate personally and substantially in decision-making or the exercise of significant judgment, without substantial supervision and review in **Government action related to:**
  - Contracting or procurement decisions;
  - Administering or monitoring grants, subsidies, licenses, etc.; or
  - Regulating or auditing any non-federal entity.
- (2) Those who participate personally and substantially in decision-making or exercise of significant judgment, without substantial supervision and review in **financial interest of a non-federal entity.**
- (3) Other personnel who do not fall into either of the above categories, but whose supervisor decides that they should file to avoid involvement in conflicts of interest and to carry out their mission.

**“The OGE Form 450 intends to prevent Government employees from allowing personal interests to affect his official actions or duties and to avoid potential violations”**

These categories also apply to the employee’s spouse, minor child, general partner, an organization or entity where the employee serves as an officer, director, trustee, general partner or employee; and a person with whom the employee is negotiating for, or has an arrangement concerning, prospective employment.

An employee who has a financial interest in a particular matter may be prevented from being entirely objective.

The OGE Form 450 intends to prevent Government

employees from allowing personal interests to affect his official actions or duties and to avoid potential violations of 18 U.S.C. § 208 (a), which is subject to penalties.



## Protecting Your Sailors at the DSO

By LT A. Robin Donnelly, JAGC, USN, Defense Service Office North Det. Naples

### Who are we?

The Defense Service Office (DSO) is a team of lawyers and paralegals ready to serve and protect the rights of your Sailors, Marines, and Coastguardsmen who may be facing disciplinary or adverse administrative action. The Naples DSO is a detachment of DSO North, headquartered in Washington D.C.

The DSO is separate and distinct from the Region Legal Service Office (RLSO). In the EURAFCENT AoR, we have a wide network of defense Judge Advocates and Legalmen located in Naples, Rota, and Bahrain.

Our mission at the DSO is to provide Service Members with independent legal advice and representation to protect their rights guaranteed by the Constitution, the U.C.M.J., and other governing regulations. Ensuring that Service Members have full awareness of and access to our services guarantees that their rights are protected when facing adverse actions. Commanders are obligated to afford such rights to their subordinates and in so doing they also reduce risk to themselves and their command by ensuring DSO access.

### What do we do?

Our primary functions are to provide confidential advice to individual Service Members and to represent them at Administrative Separation (ADSEP) Boards and courts-martial. We do not advise commands, but rather, we advise individuals who are facing career- or disciplinary-related adverse actions, or who may have a complaint.

If you have a command member who is under investigation; going to DRB, XOI, or NJP; needs information about filing a complaint; is being notified of ADSEP; or facing any other formal adverse action, you should encourage the individual to seek a consultation from one of our defense attorneys.

Although DSO attorneys may not be able to form an ongoing representation of the Service Member, the attorney will provide them with one-on-one, privileged legal advice so that the individual may get the advice needed to best navigate their given situation. These services are confidential to ensure honest and thorough communication with customers, and we do not disclose whether an individual has sought advice from one of our attorneys.

### How do I get a defense lawyer?

If a member elects their right to an ADSEP board or has court-martial charges preferred against them, they will be detailed a defense counsel to represent them throughout the proceedings. In the case of ADSEP boards, commonly it is your command legal-officer who will coordinate the request for counsel for an attorney to be detailed to represent your Service Members. Court-martial requests for counsel are typically handled by RLSO staff.

Please note, we cannot represent Service Members facing legal issues “out in town,” though we may be able to advise them on potential career implications which follow such matters.

## Protecting Your Sailors at the DSO (cont'd)

### How can a Service Member contact us?

Under normal operating conditions, personnel may visit our offices in Naples, Rota, or Bahrain during walk-in hours from 0900-1200 during the work week. Office locations are as follows:

#### Office Locations

**Naples: Building 442A (Admin II), 2<sup>nd</sup> Deck (1<sup>st</sup> Italian Floor), Room 1059**

**Rota: Building 3292, 2<sup>nd</sup> Deck (1<sup>st</sup> Spanish Floor)**

**Bahrain: Building 100, 2<sup>nd</sup> Deck, Room 110m**

Once an individual arrives at our office they will need to complete an intake sheet and will then be seen by an available attorney. If a Service Member seeks advice outside of walk-in hours, that individual may still visit the office and complete an intake sheet, but may have to schedule an appointment for the following day depending on staff availability. In an emergency situation, we strive to provide an attorney as quickly as possible.

Under the current COVID-19 operating conditions and for those individuals located at installations where we do not have a physical office, remote services remain available. Our intake sheet is available directly on our website at: [https://www.jag.navy.mil/legal\\_services/documents/STANDARD\\_DSO\\_INTAKE\\_FORM\\_NORTH.pdf](https://www.jag.navy.mil/legal_services/documents/STANDARD_DSO_INTAKE_FORM_NORTH.pdf)

Once the individual completes the intake sheet, he or she will email the form to:

[DSONorthRequestForCounsel@eu.navy.mil](mailto:DSONorthRequestForCounsel@eu.navy.mil) (Europe & Africa) or

[NSA.Bahrain.DSO@me.navy.mil](mailto:NSA.Bahrain.DSO@me.navy.mil) (CENTCOM).

Our legalmen will process the request and connect the individual with a JAG. Members may also contact our [duty phone at +39 335-577-0493](tel:+393355770493). The duty JAG will collect the individual's email address and send them an intake sheet to complete. Advice will not normally be given without first completing the intake process.

Once intake is complete, a remote consultation will be provided to the member covering the same advice that would otherwise be provided in-person. It may take 24 hours to schedule a consultation with an attorney, so it is always best for Service Members to reach out as soon as an issue arises and individual rights are at stake.

For Army and Air Force members, while we may be able to provide advice in some limited circumstances, we will typically assist in coordinating advice with a JAG in their service.

**“Under the current COVID-19 operating conditions and for those individuals located at installations where we do not have a physical office, [remote services remain available.](#)”**

# MANDATORY PROCESSING FOR DRUG-RELATED OFFENSES

By LN1 Marta Motyl, USN



- ❑ NO BASIS. Member's CO must approve board's findings and recommendations unless the overwhelming weight of evidence of the record was not recognized by administrative board, in which case convening authority may reprocess case under Best Interest of the Service (BIOTS) for submission to SECNAV for final action. The ROP along with all enclosures and LOT should be sent to PERS via email [pers832adseps.fct@navy.mil](mailto:pers832adseps.fct@navy.mil). The command will receive a notification in a message format confirming retention and recommending NAVPERS 1070/613, Counseling and Warning, in certain cases.
- ❑ BASIS and recommend retention. In a comment section of the LOT, CO may approve board's findings and recommendations only for cases involving non-mandatory reasons for processing. Mandatory processing cases must be forwarded to PERS, [pers832adseps.fct@navy.mil](mailto:pers832adseps.fct@navy.mil).
- ❑ BASIS and recommend separation with GEN or OTH. \*3
  - When GEN is recommended, the separation is done locally with CO as the Separation Authority (SA). After the separation is completed, LOT along with enclosures and member's DD214 is sent to PERS.
  - When OTH is recommended, the member's GCMCA becomes the SA.

\*1. MILPERSMAN section 1910-146 and 1910-233. See SECNAVINST 5300.28F and OPNAVINST 5350.4D.

\*2. **Important!** The burden of proof at the administrative board hearing is the preponderance of evidence. Per Art. 112a, UCMJ, "Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused's body or from other circumstantial evidence. This permissive inference may be legally sufficient to satisfy the Government's burden of proof as to the knowledge."

**Important!** Per MILPERSMAN 1910-214, adverse matters from the previous enlistment may be considered when such records would have a direct value in determining whether separation is appropriate. However, may not be considered in recommending or authorizing characterization of service.

\*3. **Important!** Per MILPERSMAN 1910-702, in every involuntary separation case ensure that a review of the Service member's record has been conducted to determine whether the Service member served in an imminent danger pay area in the 2-year period prior to initiation of ADSEP processing. If the Service member has served in an imminent danger pay area, ensure that the member has completed all post deployment surveys and medical evaluations. Involuntary separations should be held in abeyance until any required evaluations and follow-on diagnoses are complete. For involuntary separation cases, if a Service member has been diagnosed with post-traumatic stress disorder (PTSD) or a traumatic brain injury (TBI), a determination must be made as to whether the diagnosed condition was a contributing factor to the conduct forming one or more of the bases supporting the ADSEP. This determination must be made by a mental health professional. In all cases involving PTSD or TBI diagnosis the Chief of Naval Personnel (CHNAVPERS) becomes the separation authority (MILPERSMAN 1910-704).