



## DEPARTMENT OF THE AIR FORCE

WASHINGTON, D.C. 20330-1000

AFI51-504\_AFGM2016-01  
15 DECEMBER 2016

MEMORANDUM FOR DISTRIBUTION C  
MAJCOMs/FOAs/DRUs

FROM: HQ USAF/JA  
1420 Air Force Pentagon  
Washington, DC 20330-1420

SUBJECT: Air Force Guidance Memorandum 2016-01 to AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*

By Order of the Secretary of the Air Force, this Guidance Memorandum immediately implements changes to Air Force Instruction 51-504, *Legal Assistance, Notary, and Preventive Law Programs*, dated 27 October 2003, to provide guidance on the Special Victims' Counsel Program and clarify that units are not required to detail Unit Tax Representatives to support base-level Tax Assistance Programs. Compliance with this memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails IAW AFI 33-360, *Publications and Forms Management*.

Current guidance in AFI 51-504 remains in effect with the following changes:

**Delete para 1.4.14 and its subparagraphs.**

**(ADD NEW) Chapter 4, Air Force Tax Assistance Program.**

**4.1. Purpose.** Air Force Tax Assistance Programs are command programs, separate and distinct from the Legal Assistance Program, designed to provide free tax assistance and filing service for eligible beneficiaries. Although not required, a healthy Tax Assistance Program often involves base volunteers in addition to legal office personnel. Resourced and managed properly, an active, aggressive, well-publicized program can enhance morale and help beneficiaries address some of the unique income tax aspects associated with a military lifestyle.

**4.2. Scope.** Each installation is unique in many ways including its population, size, mission, and location, which directly impacts the availability and scope of installation Tax Assistance Programs. As such, installation commanders (or equivalent), in consultation with their servicing SJA, shall determine what is best for their installation, including the possibility of not having a Tax Assistance Program. When making a determination about whether to have a Tax Assistance Program, and if so, the scope of the program, commanders and SJAs should consider factors such as: competing mission requirements; available volunteer support; the availability of IRS software and training support; the negative impacts to program continuity (e.g., loss of future IRS support, loss of future volunteer support, loss of institutional knowledge) should the installation want to continue the program at a later date; budgetary constraints; morale; the demand for tax services; the availability

of free online filing services and other nearby Volunteer Income Tax Assistance (VITA) Programs accessible for all beneficiaries; and the availability of other professional filing services near the installation. Additionally, commanders and SJAs for commands serving in a host or supporting role on joint bases are advised to review support agreements for any provisions regarding the tax program.

**4.3. Oversight.** If the installation commander (or equivalent) decides to have a Tax Assistance Program, SJAs provide program oversight. Consistent with the installation commander's (or equivalent) intent, SJAs supervise and manage these programs at their bases, exercising discretion concerning the scope of assistance provided, eligible beneficiaries, and sources of support for training and electronic filing.

4.3.1. VITA Program. Air Force Tax Assistance Programs may use resources provided by the IRS VITA Program, to include electronic filing software and training materials to train tax assistance volunteers and provide electronic filing services at their bases. Volunteers in the Tax Assistance Program are not legal office volunteers IAW paragraph 1.8, and they will adhere to IRS Volunteer Standards of Conduct and other training requirements. Attorney-client privilege does not apply to the preparation of income tax returns.

4.3.2. Other Sources of No-Cost Tax Assistance. Air Force Tax Assistance Programs may take advantage of other viable sources of support to train tax assistance volunteers and to provide electronic filing services at their bases. Also, consider complimenting traditional VITA Programs involving individual appointments with the provision of self-service kiosks and referrals to free filing websites such as the Military OneSource website or the filing options available on the IRS website by the IRS Free File Alliance. Avoid the appearance of endorsing any nonfederal sources of assistance.

**4.4. Eligible Beneficiaries.** Tax Assistance Program beneficiaries are those entitled to full legal assistance services under Chapter 1 of this instruction. In consultation with, and consistent with the installation commander's (or equivalent) intent, SJAs can further limit eligible beneficiaries for the tax program. Additionally, SJAs may authorize preparation and electronic filing of tax returns for federal civilian employees, to the extent permitted by the IRS VITA Program. In making this determination, SJAs should consider whether the resources available and volunteer support is sufficient to support the increased demands such an extension of support would entail. When they seek tax assistance, federal civilian employees must adhere to applicable rules concerning use and accounting of their time.

**4.5. Reporting.** All base legal assistance offices must file an annual statistics report for their Tax Assistance Programs in JAGUARS, even if the base has elected not to sponsor a Tax Assistance Program. Do not use WebLIONS to input client information or tax program workload. SJAs must ensure interim reports are submitted by 15 June for Continental United States (CONUS) activities and 15 July for programs based outside the Continental United States (OCONUS). **(T-3)**. SJAs must ensure final reports are submitted by 1 February of the next calendar year. **(T-3)**

**4.6. Communication.** All judge advocates may communicate directly with each other and with relevant organizations and persons about administration of Tax Assistance Programs. Tax center leadership is encouraged to join the Tax Center News forum in on WebFLITE under the Legal Assistance Knowledge Management page. The forum facilitates communication among other

programs and AFLOA/CLSL. Programs needing assistance are free to contact AFLOA/CLSL directly.

4.6.1. AFLOA/CLSL liaises with the IRS, the Office of the Under Secretary of Defense, and sister services in support of installation programs. This does not preclude installation program points of contact from directly contacting local IRS or sister service personnel in support of their programs.

4.6.2. SJAs of OCONUS installations electing to have a program for the upcoming season shall inform AFLOA/CLSL of this determination via e-mail no later than 20 September. SJAs of CONUS installations electing to have a program for the upcoming season shall inform AFLOA/CLSL of this determination via e-mail no later than 15 October. **(T-3)**. Relaying this information in a timely manner ensures the IRS will provide appropriate support and current Electronic Filing Identification and Site Identification Numbers.

## **(ADD NEW) Chapter 5, Special Victims' Counsel (SVC) Program.**

### **5.1. Purpose.**

5.1.1. The Air Force provides legal assistance and representation in the military justice process to eligible victims of sexually-related offenses. The program, through its SVCs, delivers victim-centered advice and advocacy through comprehensive, independent representation to sexual assault victims worldwide, assists them in obtaining support and recovery resources, and promotes greater confidence in the military justice process and the United States Air Force.

5.1.2. As a measurement of compliance for the SVC program goals, the Circuit's Senior SVC (SSVC) shall perform and document periodic (no less than semi-annually) assessments of each SVC location within the SSVC's Circuit using this Instruction and appropriate checklists derived from this Instruction. (T-2) The report will be discussed with the SVC and with the Chief, Special Victims' Counsel Division upon completion. (T-2) Copies of the completed assessments will be sent to AFLOA/CLSV within five working days of completion of the documentation. (T-3) The SSVC shall ensure each SVC location complies with this Instruction and recommend and ensure implementation of corrective actions when necessary. (T-3)

### **5.2. Scope.**

5.2.1. SVCs are legally authorized to enter into attorney-client relationships with eligible victims of sexually-related offenses. The SVC's primary responsibility is to his or her client and the SVC is bound by professional ethical responsibilities to him or her.

5.2.2. For purposes of Chapter 5, unless otherwise specified, "sexually-related offense" means a violation of the UCMJ Articles 120, 120a, 120b, 120c, or 125 and attempts of those Articles pursuant to Article 80, respectively (including previous versions of the UCMJ, Article 120). See 10 U.S.C. 1044e(g). **(T-0)**

5.2.3. SVCs provide independent legal representation which might include opposing the government of the United States in order to promote the individual interests of their clients without regard to how their actions might otherwise affect the Air Force as an institution. **(T-0)**

5.2.4. An SVC's legal representation includes advocacy to relevant entities within the Air Force, representation in courts-martial proceedings, post-trial and appellate review and advocacy or assistance regarding related matters outside the military justice process in accordance with 18 U.S.C. § 205(c). SVCs also represent victims when said offenses set forth a basis for a Board of Inquiry, consistent with the provisions of AFI 51-602, *Board of Officers*, and the provisions of the specific Air Force Instruction authorizing the board.

5.2.5. SVCs and Special Victims' Paralegals (SVPs) have the authority to review relevant and necessary records within the control of the government to assist them in the performance of their official duties pursuant to the scope of representation outlined in paragraphs 5.9 and 5.11. Such official use requests are processed as an official use request and not under the Freedom of Information Act (FOIA). **(T-0)**. Reliance on the SVC's reasonable explanation as to why a particular Privacy Act or non-Privacy Act record is necessary for them to carry out their official duties is usually sufficient to meet the official use request test under DoD 5400.11-R, *Department of Defense Privacy Program* (14 May 2007). Requests should be processed as a functional/official use request. **(T-0)**. Additionally, SVCs and SVPs may assist their clients in making a personal, formal FOIA request for Air Force records. **(T-2)**

5.2.6. SVCs may represent victims' legal interests in any UCMJ proceeding or in any Board of Inquiry proceeding in which the victim has an interest, as referenced in paragraph 5.2.4, above. SVCs shall receive copies of pleadings, motions, and other documents relating to those matters within a timely manner. **(T-0)**

5.2.7. SVCs and SVPs may be provided information which, if disclosed to the victim would be harmful to, or adversely affect, the client's interests. Before sharing such information with their clients, SVCs will comply with *Air Force Rules of Professional Conduct* (Attachment 6 of AFI 51-110, *Professional Responsibility Program* (5 August 2014)) and their state bar rules of professional conduct. **(T-0)**

5.2.8. SVCs and SVPs will comply with the restrictions on publicity in Rule 3.6 of the *Air Force Rules of Professional Conduct*. **(T-0)**

### **5.3. SVC and SVP Qualifications.**

5.3.1. SVCs must be certified as trial or defense counsel under Article 27(b), UCMJ. **(T-0)**

5.3.2. SVCs must be designated as a Special Victims' Counsel by The Judge Advocate General of the Air Force. **(T-0)**

5.3.3. Judge advocates must be recommended for the SVC position by their current SJA or equivalent through the Professional Development Directorate (JAX) nomination process. The SJA should consider the unique characteristics necessary to provide victim services when making recommendations to include, but not limited to, court-martial and legal assistance experience, independence, competence, courage, compassion, creativity, personality, and leadership qualities. **(T-1)**

5.3.4. Paralegals must have a 5-skill level or higher and a minimum of 12 months military justice experience. The Director, Community Legal Services Directorate, may waive the 12-month military justice requirement. **(T-3)**

5.3.5. SVPs are Special Duty Category (SPECAT) volunteer positions. The volunteer must meet certain criteria including a favorable recommendation from their current SJA or equivalent. The SJA should consider the unique characteristics necessary to provide victim services when making recommendations to include, but not limited to military justice and legal assistance experience, independence, competence, courage, compassion, creativity, personality, and leadership qualities.

5.3.6. SVCs and SVPs must successfully complete a specialized JAG Corps SVC course as soon as practicable upon assignment selection and must have completed a child representation-specific course before representing children. **(T-0)**

5.3.7. Department of the Air Force civilian attorneys required to perform SVC duties pursuant to their position description may be appointed by the Chief, Special Victims' Counsel Division AFLOA/CLSV, to represent clients on a case-by-case basis provided that they:

5.3.7.1. Have successfully completed a specialized JAG Corps SVC course, and

5.3.7.2. Are certified as competent by The Judge Advocate General.

5.3.8. SVCs and SVPs are assigned to non-deployable billets. **(T-0)**

**5.4. SJA's Support of the SVC Office.** The quality of the SVC's facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit SVC offices will not perceive that the system is operating on a level playing field unless SVC facilities and equipment achieve this standard. SJAs are responsible for assisting SVCs in obtaining and maintaining suitable facilities and equipment.

### **5.5. Obtaining SVC Services.**

5.5.1. Victims of sexually-related offenses shall be informed of the availability of SVC assistance as soon as the victim seeks assistance from a SARC, SAPR Victim Advocate (SAPR VA), Family Advocate Program (FAP) staff member, military criminal investigator, victim liaison, Trial Counsel (TC), Defense Counsel (DC), chaplain, mental health, or medical provider. **(T-0)**

5.5.2. Victims, or in a case involving a child, the child and/or the child's non-offending parent or guardian, may contact SVC offices directly to obtain SVC representation. **(T-0)**

5.5.3. SVCs may not receive restricted sexual assault reports as defined by AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program* (21 May 2015). SVCs may facilitate a victim making a restricted report to individuals designated to receive them. **(T-0)**

5.5.4. Notwithstanding an SVC's inability to receive a "restricted report," communications between an SVC and their client will remain confidential in accordance with the SVC's rules of professional responsibility and Military Rule of Evidence 502 under the UCMJ.

5.5.5. SVCs representing an individual who files a restricted report shall inform the client of the option to permit a military criminal investigative organization (MCIO), on a confidential basis without affecting the restricted nature of the report, to access certain information that may identify individuals suspected of committing multiple sexual assaults. **(T-0)**

5.5.6. SARC is the preferred entity through which to submit SVC referrals. To ensure proper eligibility, at a minimum, the following referral information must be provided to the servicing SVC office (see Attachments 4 and 5 for sample referrals):

5.5.6.1. General information about the incident, to include: (1) Date of the incident, (2) Date incident was reported, (3) Date the SVC was requested, (4) Date of next event in investigation or case, and (5) Whether the report is unrestricted or restricted if the victim is an adult (note, if the victim is a minor the referral is required to be unrestricted).

5.5.6.2. Information regarding the organization submitting the referral, to include: (1) Name of person submitting the referral, (2) Rank or title, (3) Official phone number of person submitting the referral, (4) Official e-mail of person submitting the referral, (5) Organization of person submitting the referral (6) Base/location of referral organization, and (7) Defense Sexual Assault Incident Database (DSAID) number.

5.5.6.3. Information regarding the victim of a sexually-related offense:

5.5.6.3.1. For all referral victims: (1) Name, (2) Rank or title, (3) Status (i.e., affiliation in relation to the Air Force and Title 10/32 status), (4) Preferred phone, (5) Preferred e-mail, (6) Preferred method of contact (e.g., phone, e-mail, text message), (7) Preferred time of contact (e.g., mornings, afternoons, evenings), (8) Location or base, organization, and commander's name (if military), (9) If applicable, location and status of expedited transfer, (10) Identification of any physical safety concerns, and (11) Whether a protective order was issued.

5.5.6.3.2. Additional information for minor referral victims: (1) Current non-offending parent/custodian/guardian name, (2) Whether other siblings are potentially victims, and (3) If the minor victim is a military dependent and the parent/custodian/guardian is different than the sponsor, provide the sponsor's rank, name, status, unit, base, commander's name.

5.5.6.4. Alleged perpetrator's information, to include: (1) Full name (if known), (2) Rank or title, (3) Status of the perpetrator in relation to Air Force at time of assault and currently (if known), (4) Unit, branch of service, and base (if known or applicable), and (5) relationship to the victim.

5.5.6.5. Other information, to include: (1) Identification of additional victims, if any, and (2) Brief description of what happened to the victim (refrain from discussing any alleged misconduct of the victim in the description).

5.5.7. The Chief, Special Victims' Counsel Division, AFLOA/CLSV, designee, or Senior Special Victims' Counsel (SSVC), details Air Force SVCs to eligible victims for representation.

5.5.8. Requests for specific SVCs will be considered on a case-by-case basis for detailing by AFLOA/CLSV.

5.5.9. The Chief, Special Victims' Counsel Division, AFLOA/CLSV, or designee, details appellate representation to eligible victims.

#### **5.6. Individuals Eligible for Air Force SVC Representation.**

5.6.1. Active Duty, provided that:

5.6.1.1. The member is a victim of a sexually-related offense or analogous law under a competent jurisdiction criminalizing the sexually-related offense,

5.6.1.2. The victim filed an unrestricted or restricted report, and

5.6.1.3. The sexually-related offense occurred while the victim was on active duty in the Air Force.

5.6.1.4. The sexual assault occurred while the victim was on active duty (i.e. the assault was not pre-service). **(T-0)**

5.6.2. Air Force Reserve and Air National Guard, provided that:

5.6.2.1. The member is a victim of a sexually-related offense or analogous law under a competent jurisdiction criminalizing the sexually-related offense,

5.6.2.2. The victim filed an unrestricted or restricted report, and

5.6.2.3. The circumstances of the alleged sexually-related offense have a nexus to the victim's readiness to mobilize or deploy. **(T-0)**

5.6.2.4. The sexual assault occurred while the victim was on active duty (i.e. the assault was not pre-service).

5.6.2.5. Air National Guard members will be referred to the National Guard SVC Program. **(T-3)**

5.6.3. Air Force retirees, provided that:

5.6.3.1. The retiree is a victim of a sexually-related offense,

5.6.3.2. The victim filed an unrestricted or restricted report,

5.6.3.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

5.6.3.4. The victim is receiving or entitled to retired, retainer, or equivalent pay and former members of reserve components entitled to retired pay under 10 U.S.C. § 12731. Individuals eligible under this provision include members and former members receiving retired pay as a result of retirement due to permanent disability or placement on the temporary disability retired list. **(T-0)**

5.6.4. Adult dependents of Air Force Active Duty, Air Force Reserve, Air National Guard, Air Force retirees, and civilian employees of the Department of Defense (excluding Non-Appropriated Fund personnel and Air Reserve Technicians) provided that:

5.6.4.1. The individual is a victim of a sexually-related offense,

5.6.4.2. The victim filed an unrestricted or restricted report,

5.6.4.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

5.6.4.4. The victim has a DoD identification card or qualifies as a dependent under AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel* (17 June 2009). **(T-0)**

5.6.5. Minor dependents of Air Force Active Duty, Air Force Reserve, Air National Guard, and Air Force retirees provided that:

5.6.5.1. The individual is a victim of a sexually-related offense,

5.6.5.2. The victim filed an unrestricted report,

5.6.5.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

5.6.5.4. The victim has a DoD identification card or qualifies as a dependent under AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel* (17 June 2009). **(T-0)**

5.6.6. Officers of the Commissioned Corps of the Public Health Service provided that:

5.6.6.1. The individual is a victim of a sexually-related offense,

5.6.6.2. The victim filed an unrestricted or restricted report,

5.6.6.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

5.6.6.4. The victim is on active duty or entitled to retired or equivalent pay. **(T-0)**

5.6.7. Entry-level Regular Air Force, Air Force Reserve, and Air National Guard members provided that:

5.6.7.1. The individual is a victim of a sexually-related offense, or the victim is alleged to have been involved in an unprofessional relationship, as defined by Air Education and Training Command Instruction 36-2909, *Recruiting, Education and Training Standards of Conduct*, that involves conduct of a sexual nature with basic military training or technical training faculty or staff,

5.6.7.2. The victim filed an unrestricted or restricted report, and

5.6.7.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ. **(T-0)**

5.6.8. Eligible members and dependents from other Services. Anyone eligible for an SVC or Victims' Legal Counsel (VLC) from another Service (members, their dependents, those entitled to retired or retainer pay, or civilians deployed OCONUS) will be referred to their respective Service branch's SVC or VLC Program for representation. An Air Force SVC may be detailed if the other Service is unable to provide representation. **(T-3)**. The Chief, Special Victims' Counsel Division, AFLOA/CLSV, or designee, after notification of the request for representation, will coordinate the detailing of an SVC/VLC with the Program Managers of the other Service. **(T-3)**

5.6.9. SVC services are subject to availability of staff resources and capabilities.

### **5.7. Extraordinary Circumstances Request (ECR) for SVC Representation.**

5.7.1. An SVC may be detailed to persons not specifically identified above as eligible. Extraordinary Circumstances Request (ECR) for SVC Representation may be granted on an individual basis consistent with 10 U.S.C. §§ 1044, 1044e, and 1565b. Threshold requirements include:

5.7.2.1. The individual is a victim of a sexually-related offense,

5.7.2.2. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

5.7.2.3. The victim filed an unrestricted or restricted report if an adult, or

5.7.2.4. The victim filed an unrestricted report if a minor.

5.7.3. Factors to be evaluated when considering an ECR for SVC Representation include:

5.7.3.1. Whether the perpetrator was an Air Force member;

5.7.3.2. Whether the type of service requested is within the SVC scope of services;

5.7.3.3. Whether the victim has had or will have an active and ongoing participation in an Air Force investigation or the military justice process;

5.7.3.4. Whether the statute of limitations is a bar to prosecution;

5.7.3.5. Whether the alleged sexually-related offense could be considered an abuse of authority;

5.7.3.6. If the case involves multiple victims, whether the other victims are eligible for and have obtained SVC services;

5.7.3.7. If the victim was an active duty Air Force member and has subsequently separated, whether the victim made a restricted report before separation;

5.7.3.8. If the victim is no longer a dependent of an Active Duty Air Force member, whether the former dependent made an unrestricted report prior to termination of the Active Duty Air Force dependent status; and

5.7.3.9. Whether other special circumstances support detailing an SVC.

5.7.4. ECR requests will be submitted by a Senior Special Victims' Counsel to the Chief, Special Victims' Counsel Division, AFLOA/CLSV. If approved, an SVC will be assigned. If denied, the ECR will be appealed automatically to the Director, Community Legal Services, AFLOA/CLS. If approved, an SVC will be assigned. If denied, the ECR will be appealed automatically to the AFLOA commander. In the absence of the AFLOA commander, the AFLOA Vice Commander will act on the ECR. In the absence of both the AFLOA commander and vice commander, the Deputy Judge Advocate General (DJAG) will take final action. The decision by the AFLOA commander, or the Vice Commander or DJAG in the commander's absence is final.

5.7.5. AFLOA/CLSV will notify the requesting office, as well as the servicing Staff Judge Advocate, of the ECR decision. This responsibility may be delegated no lower than an SSVV.

5.7.6. AFLOA/CLSV will maintain an electronic copy of all decisions on ECRs for SVC representation, which will include a summary of the facts, analysis, any coordination, and a final decision.

5.7.6. SVC services are subject to availability of staff resources and capabilities.

## **5.8. Contact with the Represented Victim.**

5.8.1. MCIOs, law enforcement agencies, investigating officers, TCs, military DC, civilian defense counsel, and their support staffs must obtain consent from the SVC prior to communicating with a represented victim. **(T-0)**

5.8.2. In a case with concurrent jurisdiction, prior to referring charges, the Special Court-Martial Convening Authority (SPCMCA) SJA will inform victims of sexually-related offenses of their ability to recommend a preference for adjudicating the sexually-related offenses in a civilian or military court IAW AFI 51-201, *Administration of Military Justice* (6 June 2013), para 7.11.9 and figure 7.5. For victims represented by an SVC, the notification and preference request will be provided to the SVC and the victim. If a victim prefers a civilian prosecution, the SVC will notify the convening authority and the convening authority's SJA of this preference. The convening authority's SJA will ensure that the civilian authority is notified of the victim's preference and ensure that the victim is notified of the civilian authority's decision. **(T-0)**

**5.9. Scope of SVC Services Provided for Adult Victims.** The SVC will execute a Scope of Representation memorandum with the client explaining the areas in which the SVC can provide legal representation and advice. At a minimum, SVCs are authorized to provide legal assistance, consultation, or information on the following matters:

5.9.1. Entities involved with the representation of a victim of a sexually-related offense, to include but not limited to:

5.9.1.1. VWAP,

5.9.1.2. SARC,

5.9.1.3. FAP,

5.9.1.4. Medical or mental health,

5.9.1.5. Chaplain,

5.9.1.6. MCIO,

5.9.1.7. Military justice entities,

5.9.1.8. Civilian victim support agencies,

5.9.1.9. Air Force personnel entity (for personnel actions),

5.9.1.10. Any administrative board or hearing where the victim has an interest,

5.9.1.11. Military Equal Opportunity,

5.9.1.12. Inspector General complaints,

5.9.1.13. Congressional complaints, and

5.9.1.14. Retaliation, ostracism and maltreatment.

5.9.2. Collateral misconduct. **(T-0)**

5.9.2.1. Collateral misconduct means misconduct allegedly committed by a victim of a sexually-related offense while on active duty in the Air Force and that misconduct has a direct nexus to the sexually-related offense.

5.9.2.2. For those victims entitled to services of an Area Defense Counsel (ADC), the SVC will advise the victim of his or her right to seek assistance from an ADC. **(T-0)**

5.9.2.2.1. In the event a victim of a sexually-related offense indicates a desire to meet with an ADC, the SVC will contact the servicing Senior Defense Counsel (SDC) or the Trial Defense Division (AFLOA/JAJD) to request an ADC be detailed to assist the victim as needed. **(T-3)**. In these circumstances the ADC will serve as the lead counsel for collateral misconduct committed by the victim. **(T-3)**

5.9.2.2.2. The victim may choose representation by the SVC in lieu of the ADC for collateral misconduct that result in adverse administrative action.

5.9.2.2.3. In cases where the collateral misconduct may result in court-martial, if the victim requests SVC representation for this collateral misconduct an individual military defense counsel (IMDC) request should be processed through AFLOA/JAJD for detailing. **(T-3)**

5.9.3. Crime Victims' Rights. SVCs may provide representation, consultation, and advocacy concerning crime victims' rights as outlined in 10 U.S.C. § 806b, UCMJ, VWAP services and rights delineated in AFI 51-201, *Administration of Military Justice* (6 June 2013), para. 7.11, and any additional rights provided by federal law. **(T-0)**

5.9.4. The military justice process. This includes, but is not limited to:

5.9.4.1. The Government's authority to compel cooperation and testimony, the victim's responsibility to testify, and other duties to the court; **(T-0)**

5.9.4.2. Legal representation of the client at any proceeding including, but not limited to, interviews in connection with the reporting, military investigation, and military prosecution of the alleged sexually-related offense; **(T-0)**

5.9.4.3. Asserting and protecting the victim's evidentiary privileges as listed in the Military Rules of Evidence in trial and appellate courts; and **(T-0)**

5.9.4.4. Understanding the availability of, and obtaining any protections offered by, military protective orders. **(T-0)**

5.9.4.4. Boards of Inquiry, consistent to the provisions of AFI 51-602, *Boards of Officers*, and the provisions of specific Air Force Instructions authorizing the board, when the victim is a basis set forth for said Board of Inquiry. **(T-0)**

5.9.5. Legal assistance. This includes, but is not limited to:

5.9.5.1. IG Complaints, Equal Opportunity Complaints, Complaints of Wrong under Article 138, Claims for Redress under Article 139, Congressional Complaints, or other similar matters with a nexus to the sexual assault IAW 18 U.S.C. § 205(c); **(T-0)**

5.9.5.2. Military and veterans' benefits eligibility and requirements, such as transitional compensation benefits found in 10 U.S.C. § 1059 and other state and federal victims' compensation programs; and **(T-0)**

5.9.5.3. Availability of review of a client's administrative separation action to the General Court-Martial Convening Authority (GCMCA) who serves as the separation authority following an unrestricted report of a sexual assault. **(T-0)**

5.9.6. Limited civilian actions. This includes:

5.9.6.1. Potential for civil litigation against parties other than the DoD;

5.9.6.2. Personal, civil legal affairs in accordance with 10 U.S.C. § 1044; and

5.9.6.3. Understanding the availability of, and obtaining any protections offered by, civilian protective or restraining orders. **(T-0)**

5.9.7. Advocacy to Air Force and DoD Agencies. SVCs may advocate a victim's interests to any Air Force or DoD agency including, but not limited to, commanders, convening authorities, the SJA, TC, the accused's MDC IAW the Manual for Courts-Martial (MCM), federal law or court order IAW 18 U.S.C. § 205(c). **(T-0)**

5.9.8. Advocacy to Civilian Agencies. Within the limitations of the Air Force and applicable State Rules of Professional Responsibility, SVCs may advocate a victim's interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies where there is a nexus to the client's status as a victim. This does not provide an SVC the authority to represent a victim at any civilian proceeding or investigative interview. **(T-0)**

5.9.9. Integrated Disability Evaluation System (IDES). If a client is already represented by the SVC and undergoes IDES processing for a matter directly related to the sexually-related offense, the SVC may assist the attorney assigned to represent the victim from the Office of Airmen's Counsel (AFLOA/CLSA), with the client's consent. The SVC should coordinate this with an Office of Airmen's Counsel attorney if one is assigned. Assistance may be provided on a time-available basis. **(T-0)**

## **5.10. Representation of Child Victims and Victims with Diminished Capacity.**

5.10.1. Establishing representation.

5.10.1.1. Children sixteen (16) years of age and older. Victims 16 years of age and older are presumed to have the capacity to independently direct their own representation. **(T-0)**

5.10.1.2. Children under sixteen (16) years of age. Prior to reviewing the Scope of Representation letter with any child victim under the age of 16, the SVC will act in conformity with Rule 1.14 of the *Air Force Rules of Professional Conduct* to determine whether the victim has a diminished capacity preventing him or her from being competent to enter into an attorney-client relationship. **(T-0)**. There is no presumption that a child under 16 years of age has diminished capacity. The SVC will assess the child's competency throughout the term of the attorney-client relationship.

5.10.1.3. The SVC should consider all relevant factors in assessing a child's capacity to enter into an attorney-client relationship, including but not limited to the following:

5.10.1.3.1. Ability to understand the nature of a client-directed relationship;

5.10.1.3.2. Ability to understand the scope of the SVC's representation;

5.10.1.3.3. Ability to understand that the SVC will maintain ethical obligations to the child;

5.10.1.3.4. Ability to communicate their direction to the SVC;

5.10.1.3.5. Ability to deliberate and reach conclusions about their own choices;

5.10.1.3.6. Ability to understand possible consequences of their choices; and

5.10.1.3.7. Opinions and input of others, which may include, but are not limited to, family members and multi-disciplinary child abuse team members. **(T-0)**

5.10.1.4. In establishing an attorney-client relationship, the SVC shall review the Scope of Representation letter with the victim after establishing competency and shall execute the agreement. For victims the SVC determines incompetent or of diminished capacity (as required in para. 5.10.1.2) the SVC shall review the Scope of Representation letter with a non-offending parent or guardian, who shall execute the agreement on the victim's behalf. **(T-0)**

5.10.2. The child victim, of any age, of a sexually-related offense is the SVC's client at all times for purposes of the SVC's ethical obligations, regardless of the name appearing as the signatory on the Scope of Representation letter. **(T-0)**

5.10.3. The SVC's duty is to represent the expressed interests of the child client and not what the SVC or any third party believes is in the best interests of the child client. **(T-0)**

5.10.4. An SVC may consider exploring the appointment of a guardian ad litem to protect the child's best interests in extraordinary circumstances. Consideration of any such action shall be coordinated with AFLOA/CLSV and JAX/PR. **(T-0)**

## **5.11. Scope of SVC Services Provided for Child Victims.**

5.11.1. At a minimum, SVCs are authorized to provide legal assistance, consultation, or information on the following matters:

5.11.1.1. Entities involved with the representation of a victim of a sexually-related offense, to include but not limited to:

5.11.1.1.1. VWAP,

5.11.1.1.2. SARC,

5.11.1.1.3. FAP,

5.11.1.1.4. Medical or mental health,

5.11.1.1.5. Chaplain,

5.11.1.1.6. MCIO,

5.11.1.1.7. Military justice entities,

5.11.1.1.8. Civilian victim support agencies,

5.11.1.1.9. Air Force personnel entity (for personnel actions),

5.11.1.1.10. Any administrative board or hearing where the victim has an interest

5.11.1.1.11. Inspector General complaints,

5.11.1.1.12. Congressional complaints, and

5.11.1.1.13. Retaliation, ostracism and maltreatment.

5.11.1.2. Crime Victims' Rights. SVCs may provide representation, consultation, and advocacy concerning crime victims' rights as outlined in 10 U.S.C. § 806b, UCMJ, VWAP services and rights delineated in AFI 51-201, *Administration of Military Justice* (6 June 2013), and any additional rights provided by federal law or regulation. **(T-0)**

5.11.1.3. The military justice process. This includes, but is not limited to:

5.11.1.3.1. The Government's authority to compel cooperation and testimony, the victim's responsibility to testify, and other duties to the court; **(T-0)**

5.11.1.3.2. Legal representation of the client at any proceeding including, but not limited to, interviews in connection with the reporting, military investigation, and military prosecution of the alleged sexually-related offense; **(T-0)**

5.11.1.3.3. Asserting and protecting the victim's evidentiary privileges as listed in the Military Rules of Evidence in trial and appellate courts; and **(T-0)**

5.11.1.3.4. Understanding the availability of, and obtaining any protections offered by, military protective orders. **(T-0)**

5.11.1.3.5. Boards of Inquiry, consistent to the provisions of AFI 51-602, *Boards of Officers*, and the provisions of specific Air Force Instructions authorizing the board, when the victim is a basis set forth for said Board of Inquiry. **(T-0)**

5.11.1.4. Legal assistance. This includes, but is not limited to:

5.11.1.4.1. IG complaints, Congressional complaints, or other similar matters with a nexus to the sexual assault IAW 18 U.S.C. § 205(c); **(T-0)**; and

5.11.1.4.2. Military and veteran's benefits eligibility and requirements, such as transitional compensation benefits found in 10 U.S.C. § 1059 and other state and federal victims' compensation programs. **(T-0)**

5.11.1.5. Limited civilian actions. This includes:

5.11.1.5.1. Potential for civil litigation against parties other than the DoD; **(T-0)**

5.11.1.5.2. Personal, civil legal matters in accordance with 10 U.S.C. § 1044; **(T-0)**

5.11.1.5.3. Legal rights afforded to child victims under federal law in the context of a criminal justice proceeding (e.g., 18 U.S.C. § 3509); and **(T-0)**

5.11.1.5.4. Understanding the availability of, and obtaining any protections offered by, civilian protective or restraining orders. **(T-0)**

5.11.1.6. Advocacy to Air Force and DoD Agencies. SVCs may advocate a victim's interests to any Air Force or DoD agency including, but not limited to, commanders, convening authorities, the SJA, TC, the accused's MDC, IAW the MCM, federal law or court order IAW 18 U.S.C. § 205(c). **(T-0)**

5.11.1.7. Advocacy to Civilian Agencies. SVCs may advocate a victim's interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies where there is a nexus to the client's status as a victim. **(T-0)**

5.11.1.8. Additional services may be provided in exceptional circumstances with the approval of the Chief, Special Victims' Counsel Division, AFLOA/CLSV, or designee.

5.11.2. Matters outside the scope of representation. SVCs shall not represent victims in civilian criminal courts; civil courts of delinquency; custody, neglect, or divorce matters; or in civilian school system or board matters. **(T-0)**

5.11.3. SVCs shall comply with federal and state mandatory reporting laws involving child, elderly, and other abuse and state rules of professional conduct. **(T-0)**

5.11.4. Under 10 U.S.C. § 806b(c), UCMJ, when an Article 6b Representative has been appointed to promote and preserve the Article 6b, UCMJ, crime victim rights of a minor or diminished capacity victim, the SVC cooperates with that representative to enforce the victim's rights, subject to the confidentiality, consent, and representation agreement requirements. Any conflict between the Article 6b Representative and the SVC should immediately be brought to the attention of AFLOA/CLSV. **(T-0)**

## **5.12. Termination or Declination of SVC Services.**

5.12.1. Individuals who enter into an attorney-client relationship with an SVC remain eligible for SVC assistance, limited to matters directly related to the investigation and prosecution of the alleged sexually-related offense, even if they otherwise lose their eligibility for legal assistance. Such assistance will usually terminate as specified in the Representation Agreement signed by the individual and the SVC at the time representation commenced. **(T-0)**

5.12.2. Transfer of counsel due to deployments, expedited transfers, or other circumstances will be made through AFLOA/CLSV, with the consent or request of the victim. **(T-0)**

5.12.3. If the detailed SVC separates or retires from active duty, the SVC is no longer authorized to perform SVC duties under the authority of the United States Air Force. **(T-0)**

5.12.4. An SVC may decline or terminate representation IAW *Air Force Rules of Professional Conduct* or the SVC's state bar Rules of Professional Conduct, the representation requirements as defined by the scope of the representation and after consultation with AFLOA/CLSV. **(T-0)**

5.12.5. When appropriate, SVCs may refer clients to the servicing legal assistance office for traditional legal assistance services unrelated to the sexual-related offense. **(T-3)**

5.12.6. The SVC will execute a termination memorandum with the client after all matters relating to the sexual assault, including potential appellate issues, are completed. This memorandum will terminate the attorney-client relationship between the SVC and client. If the victim seeks additional SVC representation after the memorandum has been executed, the victim must make a new request for an SVC.

5.12.7. If, after termination, the SVC is made aware of a new legal issue or matter that relates back to the prior representation, the SVC may contact the client in order to inform the client of the new matter. If the SVC is no longer assigned to AFLOA/CLSV, the Chief, Special Victims' Counsel Division or designee may appoint a new counsel to contact the former client. The SVC and former client shall then determine if a new scope of representation should be executed to address the new matter.

This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon publishing of an Interim Change or rewrite of the affected publication, whichever is earlier.

//signed//

CHRISTOPHER F. BURNE  
Lieutenant General, USAF  
The Judge Advocate General

## AFI 51-504\_AFGM2016-01

## (UPDATED) Attachment 1

## GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

**References**

5 U.S.C. 5945, *Notary Public Commission Expenses*  
10 U.S.C. 502, *Enlistment Oath: Who May Administer*  
10 U.S.C. 806b, Art. 6b. Rights of the Victim of an Offense Under This Chapter  
10 U.S.C. 936, Art. 136. *Authority to Administer Oaths and to Act as Notary*  
10 U.S.C. 938, Art. 138. *Complaints of Wrongs*  
10 U.S.C. 1031, *Administration of Oath*  
10 U.S.C. 1044, *Legal Assistance*  
10 U.S.C. 1044e, *Special Victims' Counsel for Victims of Sex-Related Offenses*  
10 U.S.C. 1052, *Reimbursement of Adoption Expenses*  
10 U.S.C. § 1059, *Dependents of Members Separated for Dependent Abuse: Transitional Compensation; Commissary and Exchange Benefits*  
10 U.S.C. 1408, *Payment of Retired or Retainer Pay in Compliance with Court Orders*  
10 U.S.C. 1565b, *Victims of Sexual Assault: Access to Legal Assistance and Services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates*  
10 U.S.C. 1588, *Authority to Accept Certain Voluntary Service*  
10 U.S.C. 12731, *Age and Service Requirements*  
18 U.S.C. 205, *Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government*  
18 U.S.C. § 3509, *Child Victims' and Child Witnesses' Rights*  
38 U.S.C. 4301-4333, *Employment and Reemployment Rights of Members of the Uniformed Services*  
50 U.S.C. App. 501-593, *Soldiers' and Sailors' Civil Relief Act*  
AFI 36-2906, *Personal Financial Responsibility*  
AFI 36-2908, *Family Care Plans*  
AFI 36-2909, *Recruiting, Education and Training Standards of Conduct*  
AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel*  
AFI 51-110, *Professional Responsibility Program*  
AFI 51-201, *Administration of Military Justice*  
AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program*  
AFPD 51-5, *Military Legal Affairs*  
ARC-1, *Rules of Professional Conduct for Air Reserve Component Judge Advocates*  
Army Pub. 260, *Soldiers' and Sailors' Civil Relief Act Guide*  
DoDI 1100.21, *Voluntary Services in the Department of Defense*  
DoDD 1341.9, *DoD Adoption Reimbursement Policy* (Jul 93)  
DoDD 1350.4, *Legal Assistance Matters* (Apr 01)  
DoDI 1400.32, *DoD Civilian Workforce Contingency and Emergency Planning Guidelines and Procedures*  
DoDI 3020.37, *Continuation of Essential DoD Contract Services During Crises*  
DoD 5400.11-R, *Department of Defense Privacy Program* (14 May 2007)  
P.L. 87-20, *Law Day*, 7 April 1961

*TJS-2, Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct*

*TJS-3, Air Force Standards for Criminal Justice*

*TJS-8, Legal Services Volunteer Confidentiality Agreement*

Manual for Courts-Martial

## AFI 51-504\_AFGM2016-01

## Attachment 4

## SAMPLE SPECIAL VICTIMS' COUNSEL REFERRAL MEMO– ADULT VICTIM

Date

MEMORANDUM FOR AFLOA/SVC (Servicing Base Name)

FROM:

SUBJECT: FOUO// Special Victims' Counsel Referral – Adult Victim

1. Please provide all information below. If information does not apply, please insert "N/A." E-mail the completed form to the servicing SVC office and call to confirm receipt. Ensure proper protection of the sensitive information contained on a completed form.

## 2. PRIVACY ACT NOTICE:

a. PURPOSE(S): To obtain information required for official purposes, to include legal representation through the Special Victims' Counsel Program.

b. ROUTINE USES: The Privacy Act, 5 U.S.C. 552a,"Routine Uses" is applicable as is the DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices, located at [www.defenselink.mil/privacy/notices/usaf](http://www.defenselink.mil/privacy/notices/usaf); and other Routine Uses listed under the Legal Assistance and Judge Advocate Personnel Records Air Force Judge Advocate Privacy Act System of Record Notices. Such routine uses outside of DoD for other than DoD official purposes include responding to congressional requests and law enforcement requests. These routine uses may also be reviewed at the [defenselink](http://defenselink).

c. DISCLOSURE IS VOLUNTARY: You are not required to provide this information. However, failure to do so may result in your not receiving legal assistance services and representation through the military justice or administrative process.

## 3. General Information:

Date of the Incident:

Date Incident Reported:

Date SVC Requested:

Next Event in Case &amp; Date:

Unrestricted/Restricted Report:

Date Interviewed by OSI:

## 4. Referrer's Information:

Name:

Rank/Title:

Phone:

E-mail:

Organization:

Location/Base:

DSAID Number:

**5. Victim's Information:**

Name:

Rank/Title:

Phone:

E-mail:

Preferred Method of Contact:

Preferred Time of Contact:

Status When Reported:

Status at Time of Incident:

Current Location/Base:

Location of Incident:

Is a Protective Order Issued?:

By Whom?:

List Physical Safety Concerns:

If Victim is Military, Answer the Following, Otherwise Indicate "N/A":

Unit (if applicable):

Commander's Name:

Was Expedited Transfer Requested?:

Requested Location:

Was Incident Pre-Service?:

**6. Perpetrator's Information:**

Name:

Rank/Title:

Status When Reported:

Status at Time of Incident:

Location/Base:

**7. Additional Information:**

List Other Victims, If Any and Relationship to This Victim:

Briefly Describe Incident (refrain from discussing any alleged misconduct of the victim).

## AFI 51-504\_AFGM2016-01

## Attachment 5

## SAMPLE SPECIAL VICTIMS' COUNSEL REFERRAL MEMO– MINOR VICTIM

Date

MEMORANDUM FOR AFLOA/SVC (Servicing Base Name)

FROM:

SUBJECT: FOUO// Special Victims' Counsel Referral – Minor Victim

1. Please provide all information below. If information does not apply, please insert "N/A." E-mail the completed form to the servicing SVC office and call to confirm receipt. Ensure proper protection of the sensitive information contained on a completed form.

## 2. PRIVACY ACT NOTICE:

a. PURPOSE(S): To obtain information required for official purposes, to include legal representation through the Special Victims' Counsel Program.

b. ROUTINE USES: The Privacy Act, 5 U.S.C. 552a,"Routine Uses" is applicable as is the DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices, located at [www.defenselink.mil/privacy/notices/usaf](http://www.defenselink.mil/privacy/notices/usaf); and other Routine Uses listed under the Legal Assistance and Judge Advocate Personnel Records Air Force Judge Advocate Privacy Act System of Record Notices. Such routine uses outside of DoD for other than DoD official purposes include responding to congressional requests and law enforcement requests. These routine uses may also be reviewed at the [defenselink](http://defenselink).

c. DISCLOSURE IS VOLUNTARY: You are not required to provide this information. However, failure to do so may result in your not receiving legal assistance services and representation through the military justice or administrative process.

## 3. General Information:

Date of the Incident:

Date Incident Reported:

Date SVC Requested:

Next Event in Case &amp; Date:

Unrestricted Report—Minor Victim

Date Interviewed by MCIO:

## 4. Referrer's Information:

Name:

Rank/Title:

Phone:

E-mail:

Organization:

Location/Base:

DSAID Number:

**5. Victim's Information:**

Name:	Rank/Title:
Phone:	E-mail:
Preferred Method of Contact:	Preferred Time of Contact:
Status When Reported:	Status at Time of Incident:
Current Location/Base:	Location of Incident:
Is a Protective Order Issued:	By Whom:
List Physical Safety Concerns:	

If Victim is DoD Dependent, Answer the Following, Otherwise Indicate "N/A":

Was Expedited Transfer Requested:	Requested Location:
Sponsor's Name:	Sponsor's Rank/Title:
Sponsor's Phone:	Sponsor's E-mail:
Preferred Method of Contact:	Preferred Time of Contact:
Sponsor's Status:	Sponsor's Location/Base:
Sponsor's Unit:	Commander's Name:

**6. Non-Offending Parent/Custodian/Guardian Information:**

Name:	Rank/Title:
Phone:	E-mail:
Preferred Method of Contact:	Preferred Time of Contact:
Status:	Location/Base:

**7. Perpetrator's Information:**

Name:	Rank/Title:
Status When Reported:	Status at Time of Incident:
Location/Base:	

**8. Additional Information:**

List Other Victims, If Any and Relationship to This Victim:

Briefly Describe Incident (refrain from discussing any alleged misconduct of the victim).

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**AIR FORCE INSTRUCTION 51-504**

**27 OCTOBER 2003**

*Incorporating Through Change 3, 24 May 2012*



**Law**

**LEGAL ASSISTANCE, NOTARY, AND  
PREVENTIVE LAW PROGRAMS**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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**ACCESSIBILITY:** Publications and forms are available on the e-Publishing website at [www.e-publishing.af.mil](http://www.e-publishing.af.mil) for downloading or ordering.

**RELEASABILITY:** There are no releasability restrictions on this publication.

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OPR: AFLSA/JACA  
(Lt Col Timothy Alan Guiden)

Certified by: AFLSA/JAC  
(Col Evan L. Haberman)

Pages: 37

Supersedes: AFI 51-504, 1 May 1996.

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This instruction implements AFPD 51-5, *Military Legal Affairs*, and DoDD 1350.4, *Legal Assistance Matters*, April 2001. It describes the Air Force legal assistance, notary, and preventive law programs. It implements 10 U.S.C. 1044, which authorizes legal assistance as resources permit; 10 U.S.C. 1044a, which authorizes certain military personnel to act as notaries public and identifies the eligible beneficiaries for military notary services; 10 U.S.C. 1044b, which establishes the legal effect of military powers of attorney without regard to state law, exempting them from any requirement as to form, substance, formality, or recording; 10 U.S.C. 1044c, which establishes the legal effect of military advance medical directives, exempting them from any requirement as to form, substance, formality, or recording; and 10 U.S.C. 1044d, which defines the requirements for preparation of military testamentary instruments and establishes their legal effect, exempting them from any requirement as to form, formality, or recording.

**SUMMARY OF CHANGES**

This interim change removes the reference to rescinded Department of Defense guidance on providing legal assistance to contractor personnel, incorporates congressional authorization for providing legal assistance to agents of service members who die on active duty or as a result of an injury incurred while on active duty, incorporates Department of Defense guidance regarding legal assistance for family care planning, clarifies the responsibility to provide legal assistance to victims of crime, provides guidance on the use of the Air Force Legal Assistance Website, and removes the minimum enlisted grade requirement for a paralegal to act as a notary.

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## Chapter 1

### LEGAL ASSISTANCE PROGRAM

**1.1. Purpose.** Legal offices provide legal assistance in connection with personal civil legal matters to support and sustain command effectiveness and readiness. Under 10 U.S.C. §1044, the ability to offer legal assistance and legal services to the eligible categories of personnel is contingent upon the availability of legal staff resources and expertise. Although legal assistance is not separately funded, it has been provided for members of the armed forces since 1943 and is now perceived as one of the benefits of military service. Therefore, Staff Judge Advocates (SJAs) should make every effort to satisfy legal assistance needs, assigning mobilization- and deployment-related legal assistance the highest priority. Mobilization- and deployment-related legal assistance is not determined by the subject matter of legal assistance provided, but by the relationship between Command readiness and solving the member's specific legal issue(s). For example, although wills and powers of attorney are generally associated with pre-deployment legal assistance, a landlord-tenant issue is also mobilization- and deployment-related if it would have an adverse effect on the member's ability to perform his or her duties if not solved prior to deployment.

**1.2. Scope.** Legal assistance establishes an attorney-client relationship and consists of Air Force attorneys providing advice on personal, civil legal matters to eligible beneficiaries. For any other legal concern, the Air Force remains the client. On such other matters, do not provide advice to, or enter into an attorney-client relationship with, individuals or entities. Air Force attorneys, acting in an official capacity, may not enter into an attorney-client relationship in the following areas:

- 1.2.1. Official matters in which the Air Force has an interest or is involved in the final resolution.
- 1.2.2. Criminal issues under the *Uniform Code of Military Justice (UCMJ)*, or any local, state or federal criminal law.
- 1.2.3. Standards of ethical conduct issues.
- 1.2.4. Law of Armed Conflict (LOAC) issues.
- 1.2.5. Issues involving personal commercial enterprises (unless such advice is related to the Soldiers' and Sailors' Civil Relief Act [SSCRA]).
- 1.2.6. Legal issues or concerns raised on behalf of third parties, even if the third party is eligible for legal assistance.
- 1.2.7. Drafting or reviewing real estate sale or closing documents, separation agreements or divorce decrees, and inter vivos (living) trusts. This limitation does not preclude a general review to identify potential problems for which the client may require more expert assistance or to protect a client from signing an unconscionable agreement. If the SJA determines that an attorney in the office, whether active duty or reservist, has the expertise to draft or review and edit these documents, then the SJA may authorize that attorney to do so.
- 1.2.8. Private organizations (e.g., spouses clubs and squadron booster clubs) that have been chartered by appropriate authority to function on Air Force installations. Although prohibited

from entering into an attorney-client relationship with private organizations, under the auspices of the Civil Law program Air Force attorneys may provide legal guidance and advice through the base private organizations monitor to ensure private organizations are properly chartered and comply with pertinent statutes and regulations.

1.2.9. Representation of the client in a court or administrative proceeding.

**1.3. Eligibility for Legal Assistance.** Among the eligible beneficiaries outlined in the subparagraphs immediately following, the highest priority shall be given to Air Force personnel who need mobilization- or deployment-related legal assistance that facilitates Command readiness. Assigning this priority is especially important when the deployment is on short notice. The following categories of personnel are eligible for legal assistance subject to the availability of legal staff resources and expertise.

1.3.1. Members of the armed forces who are on active duty, including reservists, National Guard members, and contract ROTC cadets on federal active duty under Title 10, United States Code.

1.3.1.1. Air Reserve Component members performing Active Guard/Reserve (AGR) tours, including those under 10 USC § 10211, 10 USC § 12310 or 32 USC § 502(f), are eligible for legal assistance.

1.3.2. Members entitled to retired or retainer pay or equivalent pay and former members of reserve components entitled to retired pay under 10 U.S.C. §12731 (formerly 10 U.S.C. §1331). Persons eligible under this provision include members and former members receiving retired pay as a result of retirement due to permanent disability or placement on the temporary disability retired list.

1.3.3. Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

1.3.4. Members of reserve components not covered in paragraph 1.3.1 and 1.3.2 following release from active duty under a call or order to active duty for more than 30 days issued under mobilization authority (as determined by the Secretary of Defense). Eligibility for such legal assistance shall begin on the date of the release and continue for a period of time equal to twice the length of the period served on active duty under that call or order to active duty. SJAs may require reservists and National Guard members to present a copy of the pertinent orders at the legal office to verify eligibility for legal assistance under this provision.

1.3.5. Dependents of members and former members listed in 1.3.1, 1.3.2, 1.3.3, and 1.3.4, who are entitled to an identification card.

1.3.6. Civilian employees deploying to or in a theater of operations are furnished the opportunity and assistance to prepare and execute wills and any necessary powers of attorney, in accordance with DoDI 1400.32, *DoD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures*.

1.3.7. Civilian contractor personnel who are deploying to or in a theater of operations, and produce documentation of the contract that requires the government to give the contractor employees legal assistance, may be provided with limited legal assistance for wills and deployment related powers of attorney.

1.3.8. Inactive Reservists or National Guard Members. For members of the reserve components subject to federal mobilization (National Guard, Ready Reserves, contract ROTC cadets) in an inactive status, provide mobilization- and deployment-related legal assistance. Subject areas include wills, advance medical directives, powers of attorney, protections and responsibilities under the Soldiers' and Sailors' Civil Relief Act and Uniformed Services Employment and Reemployment Rights Act, and notary services. This list is not exhaustive. SJAs retain discretion to determine whether the circumstances of a reserve component member warrant the provision of legal assistance to ensure readiness for mobilization and deployment. Provide no other legal assistance to members of the reserve components until the member is on federal active duty under Title 10, United States Code, and for the period of time after release from active duty noted in paragraph 1.3.4. Dependents of reserve component personnel are not authorized legal assistance except during the time the reserve component member is on federal active duty under Title 10, United States Code, or for the period of time after release from active duty noted in paragraph 1.3.1.4.

1.3.9. Civilian employees of the Department of Defense and the military departments assigned outside the United States and its territories and their dependents residing with them.

1.3.10. Foreign military personnel, and their dependents, assigned to the United States either permanently or temporarily under official orders for purposes of combined missions with United States personnel and for training in programs sponsored by the United States. This assistance does not extend to foreign military personnel present in the United States solely to carry out another nation's unilateral mission, such as use of ranges on a United States installation to test the foreign nation's weapons system without the participation of United States personnel in the training.

1.3.10.1. Assistance provided under this section should be limited in scope to matters involving the interpretation or application of United States domestic law only. Such matters involve issues pertinent to a person's relocation and requirement to be present in the United States to carry out official duties. Examples include but are not limited to landlord-tenant, consumer affairs, driver's licenses, customs, tax relief, and similar assistance. Assistance should not be provided for matters implicating the laws of the sending state, such as wills and domestic relations, nor should any legal assistance be provided on matters that would impact the person's status in the United States.

1.3.11. Unique Situations. When it benefits the command, SJAs may authorize legal assistance to persons not specifically identified above as an eligible beneficiary. These situations must involve people who have a present, past and future military obligation relevant to the legal problem. Examples are reservists or National Guard members who have demobilized; Reserve Office Training Corps Cadets who must meet dependent care responsibilities; and next-of-kin of someone killed on active duty.

1.3.12. Provide legal assistance, including tax assistance, on an expedited, prioritized basis to the executor, personal representative, administrator, or legally recognized estate representative for matters relating to the settlement of estates of service members who die on active duty or as a result of an injury or disability that resulted in retirement from active duty. When uncertainty exists about the status of those listed in this paragraph, or when otherwise appropriate, legal assistance shall be provided to the primary next-of-kin to the same degree as noted in this paragraph.

**1.4. Legal Services Provided.** Legal assistance may be provided for personal civil legal matters subject to the availability of legal staff resources and expertise. The subparagraphs in this section provide guidance and context for personal civil legal matters commonly encountered in the legal assistance program. They are not intended as an exhaustive list of the subject matter on which clients may receive legal assistance.

1.4.1. Wills. Wills distribute the property of the testator/testatrix after death. All Commanding Officers shall urge military personnel to seek legal counsel to assess their need for a will before mobilization, deployment, or similar activities. However, any testamentary instrument, to be legally effective, must be the free and voluntary act of the person making it.

1.4.1.1. The basic will is the primary document attorneys in the Office of the Judge Advocate General (OTJAG) will prepare for legal assistance clients. This document effectively serves the needs of the vast majority of our clients, including the following: statement of residency; payment of final expenses of the estate; specific and residuary bequests with contingent beneficiaries; distributions to minors and appointment of guardians of minors; and appointment of executor/executrix and alternates. Additionally, the basic will contains the simplest of trusts, allowing assets intended for a minor beneficiary to be passed in trust to a trustee named in the will, who generally serves at no cost to the estate or the minor's assets. If the basic wills legal assistance attorneys provide do not contain these simple trust provisions, state probate courts will appoint trustees to act on behalf of minor beneficiaries at a cost to the estate. The will-drafting program employed by legal offices must be able to prepare these simple testamentary trusts. When used properly, the *DL Wills* program will include the required provisions in the will.

1.4.1.2. Every will shall be prepared and executed as a military testamentary instrument. In accordance with 10 U.S.C. 1044d and DoDD 1350.4, *Legal Assistance Matters* (April 2001), a military testamentary instrument shall:

1.4.1.2.1. Be executed by the testator/testatrix (or, if the testator/testatrix is unable to execute the instrument personally, executed in the presence of, by the direction of, and on behalf of the testator/testatrix).

1.4.1.2.2. Be executed in the presence of a military legal assistance counsel as presiding attorney.

1.4.1.2.3. Be executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator's/testatrix's execution of the instrument by signing it.

1.4.1.2.4. Include a statement of preamble in form and content, substantially similar to the following:

"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/testatrix revokes it."

Programs such as *DL Wills* may produce preambles for wills substantially similar to the above. In the event the will preparation program used by the legal office does not include an acceptable preamble, insert a verbatim copy of this preamble at the top of the first-page of each will prepared.

1.4.1.2.5. Include a self-proving affidavit. A self-proving affidavit is a notarized, written declaration signed by each witness and the testator/testatrix that attests to the circumstances under which the will was executed. Include (or have attached to the will), a self-proving affidavit, in form and content, substantially similar to the following:

"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's/testatrix's] 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 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."

Programs such as *DL Wills* may produce self-proving affidavits substantially similar to the above. Self-proving affidavits that address all the basic elements of the above affidavit in a different order or that use different wording for some elements are considered substantially similar to the above. If the program used does not produce substantially similar language, use the above language verbatim to prepare the self-proving affidavit for each execution.

1.4.1.3. Will questionnaires or worksheets should be used to record basic information as to domicile, family situation, designation of guardians and personal representatives, the nature and approximate value of assets owned so as to establish federal estate tax thresholds, and the testator's/testatrix's intentions for disposition of property and other assets. The questionnaire should be the starting point for the individual interview with the client. See the AFLSA/JACA website at [https://aflsa.jag.af.mil/GROUPS/AIR\\_FORCE/JAC/jaca/index.html](https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/JAC/jaca/index.html) for sample will questionnaires.

1.4.1.4. Due to the potential for conflicts of interest during the representation, legal assistance attorneys should consider using a dual representation letter when providing advice on and drafting wills and related documents for married couples. The letter accomplishes a number of key objectives in the dual representation situation. It informs the married couple of the scope of matters that will be covered in the representation. It also alerts the married couple that information received from either client during the representation of both shall not be confidential between them. Finally, the dual

representation letter advises the married couple that the attorney may withdraw from representation of either client and advise both to obtain individual representation in the event of a conflict of interest between them. If dual representation letters are used, legal offices should retain them in a file dedicated to that purpose for a period of at least 1 year from the date the clients endorse the letter. A sample dual representation letter is at [Attachment 2](#) to this instruction.

1.4.1.5. Will executions. The signing of the will and self-proving affidavit represents one of the most significant legal events a client will undertake. Conduct the execution ceremony with the dignity appropriate to the significance of these documents to the client and his or her family. To assist offices in this process, [Attachment 3](#) to this instruction provides a Standard Operating Procedure for use in the execution of wills as military testamentary instruments. The procedure outlines the requirements for the execution ceremony and the questions to be asked of the testator/testatrix and witnesses. Documents signed following the will execution, such as advance medical directives and powers of attorney, will be completed in accordance with their particular requirements.

1.4.1.5.1. Mass will executions involving large numbers of people exceed the presiding attorney's and witness' reasonable capacity to control the proceeding. These mass actions thus render a will susceptible to a challenge and therefore are strongly discouraged. However, separate execution ceremonies for each individual or couple are not required. Multiple persons may execute their wills simultaneously before the presiding attorney and the required two witnesses, provided the group is not so large as to exceed the ability of the attorney and witnesses to engage with the clients to ensure they understand and properly complete the execution procedures and to respond to any questions regarding the execution process. SJAs and their staffs exercise their discretion, governed by reasonableness and maintaining customer service standards and the dignity of the process, in determining the number of document executions to conduct simultaneously. Persons with questions about the content of their wills and related documents should be excused from the room where the execution is taking place to ensure confidentiality.

1.4.1.6. If clients have sophisticated estate planning problems or complex financial situations that exceed the professional capabilities of a legal office, then refer them to other attorneys (paragraph [1.7](#)).

1.4.2. Advance Medical Directives. Advance medical directives include living wills and medical powers of attorney. A living will states a person's desires regarding the termination of life support in the event of a terminal, incurable medical condition. A client uses a medical power of attorney to appoint a trusted person to make medical care decisions in the event of incompetence or inability to communicate decisions or desires. Although drafting programs such as *DL Wills* produce both living wills and medical powers of attorney, the legal assistance attorney remains responsible for reviewing these documents to ensure they effect the client's intent and are consistent with each other or otherwise create confusion about the client's desires.

1.4.2.1. Advance medical directives shall be prepared in accordance with DoDD 1350.4 and must include a statement or preamble, in form or content, substantially similar to the following:

"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 law 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."

Programs such as *DL Wills* may produce preambles for military advance medical directives substantially similar to the above. If the program used does not, insert a verbatim copy of this preamble at the top of the first-page of each advance medical directive prepared. Also, check to ensure that preambles of living wills and powers of attorney to make health care decisions cite section 1044c, and not section 1044b of Title 10, United States Code. The latter provision applies not to advance medical directives but to powers of attorney generally.

1.4.3. Powers of Attorney. Section 1044b of Title 10, United States Code, requires recognition of general and special powers of attorney prepared for persons eligible for legal assistance. Although *DL Wills* produces general powers of attorney and *WebLIONS* produces general and special powers of attorney, the legal assistance attorney remains responsible for reviewing the documents produced by these programs to ensure they are accurate and effect the client's intent.

1.4.3.1. Powers of attorney shall be prepared in accordance with DoDD 1350.4, and must include a statement or preamble, in form and content, substantially similar to the following:

"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 Services. 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."

Programs and forms such as *DL Wills*; Air Force *WebLIONS*; AF Form 165, *General Power of Attorney*; and AF Form 831, *Special Power of Attorney* may produce preambles for military general or special powers of attorney substantially similar to the above. If the program used to prepare powers of attorney does not, insert a verbatim copy of the preamble set forth immediately above at the top of the first-page of each power of attorney prepared.

1.4.3.2. The Soldiers' and Sailors' Civil Relief Act (SSCRA) at 50 U.S.C. App. §591 mandates all powers of attorney for military personnel categorized as prisoners of war or missing-in-action are deemed durable for the entire period of such status.

1.4.4. Notary Services. Notary services are authorized by 10 U.S.C. §1044a, and are discussed in [Chapter 2](#).

1.4.5. Dependent Care Issues. All Air Force members with families must have family care arrangements that reasonably cover all situations, both short- and long-term, in accordance with AFI 36-2908, *Family Care Plans*. Legal assistance is provided to assist members in making adequate family care arrangements. Legal assistance attorneys advise and assist clients in the drafting and execution of documents and with other preparations necessary for the effective transfer of care and custody of dependents in the event the family care plan must be executed.

1.4.5.1. Legal assistance attorneys shall, when appropriate, provide a full explanation of the potential consequences of not including the non-custodial biological or adoptive parent in the creation of a family care plan.

1.4.5.2. Legal assistance attorneys shall, when appropriate, discuss with the client the benefits of validating, with an appropriate court, temporary custody arrangements and the return of the child to the member upon the member's return.

1.4.6. Adoption. Legal assistance attorneys research and provide general information on state adoption laws and requirements, coordinate when appropriate with the relevant state adoption agency, and advise on questions derived from adoption documents. Attorneys, paralegals, and civilian notaries provide notarization services to assist members in the completion of adoption documents. Legal assistance attorneys also advise on the DoD's adoption reimbursement program. Under 10 U.S.C. §1052, the DoD may reimburse "qualifying adoption expenses" incurred by a service member in the adoption of a child under 18 years of age. The statute identifies the expenses that qualify for reimbursement and distinguishes those expenses the program does not cover. DoDD 1341.9, *DoD Adoption Reimbursement Policy* (July 1993), implements the statute and addresses qualifying adoptions, qualifying expenses, eligible members, and procedures for requesting reimbursements. Reimbursement is authorized up to \$2,000 per child with a maximum reimbursement to one service member or military couple not exceeding \$5,000 in any calendar year. Expenses either not qualifying for reimbursement under the DoD program or exceeding the program's reimbursement ceiling may be eligible for the adoption expenses tax credit when the member files his or her federal income tax return. Expenses reimbursed under the DoD Adoption Reimbursement program do not qualify for the adoption expenses tax credit and are not to be considered in its calculation.

1.4.7. Financial Responsibility. Air Force members, retirees, and their dependents may receive advice and assistance on personal financial responsibilities under AFI 36-2906, *Personal Financial Responsibility*, such as adequate financial support to family members and responding to allegations of paternity. Additionally, legal offices provide assistance on issues of financial responsibility under federal and state laws, including involuntary allotments/garnishments to satisfy civil debts and the Uniformed Services Former Spouses' Protection Act (see 10 U.S.C. §1408).

1.4.8. Domestic Relations. Subject to the limitations stated in paragraph 1.2.7 with respect to separation agreements and divorce decrees, legal assistance attorneys research applicable state laws and provide advice on marriage, dissolution of marriage or divorce, child support, child custody, property distribution, and related family law matters.

1.4.9. Soldiers' and Sailors' Civil Relief Act (SSCRA). The SSCRA, 50 U.S.C. App. §§501–593, codifies Congressional recognition of the need to protect persons in military service by

suspending the enforcement of certain civil obligations. For protection under most SSCRA provisions, service members must demonstrate: 1) a financial obligation initiated prior to entering active federal service and that service materially affects the service member's ability to meet the obligation; or 2) active federal service materially affects the service member's ability to participate and preserve rights in civil judicial proceedings, mortgage foreclosures, or lease evictions. Some categories of protection include: maximum interest rates of 6% (excluding student loans); stays of judicial proceedings and reopening default judgments; limitations on the enforcement of mortgage foreclosures, installment contracts (excluding automobile leases unless otherwise provided for in the lease--legal assistance attorneys should use §590 of the SSCRA to support a member's effort to terminate an automobile lease entered prior to active duty where military service materially affects the member's ability to continue payments or otherwise honor the terms of the lease), rents, and liens; continuation of commercial life insurance policies; and reinstatement of commercial health insurance policies upon release from active duty. The SSCRA at 50 U.S.C. App. §591 mandates all powers of attorney for military personnel categorized as prisoners of war or missing-in-action are deemed durable for the entire period of such status. Army Publication 260, *Soldiers' and Sailors' Civil Relief Act Guide*, provides detailed guidance on SSCRA issues.

1.4.9.1. Legal assistance attorneys and paralegals may not file requests for stays of proceedings under the SSCRA with a civil court. Nor may legal assistance attorneys and paralegals send letters under their own signatures to a court requesting a stay of civil proceedings. These types of civil filings are outside the scope of the legal assistance program and may, if improperly handled in SSCRA cases, subject the member to the jurisdiction of the court or otherwise adversely affect the member's rights and options in the case. Legal assistance attorneys may draft or assist in drafting correspondence for the client's or relevant Commander's signature requesting or supporting a request for stay of civil proceedings.

1.4.10. Veterans' Reemployment Rights. Sections 4301 through 4333, Title 38, United States Code, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and comparable state statutes afford eligible active and reserve component members the right to return to civilian jobs when they are released from active duty. Legal assistance attorneys advise service members on USERRA eligibility, their obligations to provide appropriate notice to their employers, and their reemployment rights and benefit entitlements under USERRA.

1.4.10.1. Legal assistance attorneys should not contact service members' employers concerning relief under USERRA. This action could cause the service member to forfeit assistance from the Department of Labor's Veterans' Employment and Training Service (VETS), the federal agency responsible for enforcement of USERRA. Instead, legal assistance attorneys should refer service members experiencing employment problems or concerns deriving from their military service to the Ombudsmen Services in the National Committee for Employer Support of the Guard and Reserve (ESGR), a DoD entity, and the VETS for pursuit of relief under USERRA. Legal assistance attorneys may assist service members in preparing DOL Form VETS-1010, *Eligibility Data Form: Veterans' Reemployment Rights Program*, to open a file with VETS. Access information on ESGR assistance at <http://www.esgr.org/> and the VETS at <http://www.dol.gov/vets/welcome.html>.

1.4.11. Casualty Affairs. Legal offices assist Casualty Assistance Representatives in providing casualty assistance to the primary next of kin of military members and retirees, in accordance with AFI 36-2002, *Casualty Services*. Casualty Assistance Representatives are responsible for counseling family members and other beneficiaries regarding rights, helping to file applications for benefits and privileges, and resolving problems and complaints. Legal assistance attorneys may provide dependents only preliminary advice on probate and settlement of estates, court appearances, preparation of inheritance tax returns, civil employment, and business matters. Since direct assistance to resolve these matters falls outside the scope of the legal assistance program, it may be necessary to refer dependents to civilian attorneys (see paragraph 1.7).

1.4.12. Landlord-Tenant. Legal assistance practitioners review lease agreements prior to signing and propose changes to best protect the service member's interest as either tenant or landlord, especially with respect to military clauses allowing for early termination on a tenant's receipt of permanent change of station orders or reentry of a military landlord on receipt of orders to return to the property's location. Of note, ownership and renting of property as a commercial enterprise exceeds the scope of the legal assistance program, as per paragraph 1.2.5 of this instruction. Legal assistance practitioners review the particular facts and circumstances of each military landlord's situation in making this determination. Clients may also receive advice and assistance in resolving landlord/tenant disputes. Areas of particular concern include security deposits, pre- and post-lease inspections, lease terms, condition of premises, and early termination of leases.

1.4.13. Consumer Affairs. Legal assistance attorneys provide counseling on a wide range of consumer issues such as bankruptcy, consumer fraud, identity theft, retail purchases, and vehicle leases. An exceptional tool in assisting clients in this area is the Military Sentinel web site, a joint operation by the DoD and Federal Trade Commission (FTC). This site allows service members and their families to file consumer fraud and identity theft complaints online directly with the FTC. Military Sentinel also provides easy access to a wealth of consumer education and fraud prevention material. Access the web site at <http://www.consumer.gov/military/>. In addition, the FTC's main web site provides consumer protection educational materials and information on FTC and state consumer protection actions. Access the site at <http://www.ftc.gov/>.

1.4.14. Taxes.

1.4.14.1. Under the legal assistance program, Air Force attorneys provide advice and assistance on legal matters pertaining to federal, state, and local tax problems. Air Force attorneys also provide assistance filing current and prior year individual income tax returns throughout the year. Examples of this type of legal assistance include responding to letters from the IRS or state tax authorities, advising on responding to audits, and assisting in non-income tax matters, like real estate taxes or personal property taxes. Bases report this type of legal assistance in WebLIONS (see paragraph 1.9 of this instruction).

1.4.14.2. In addition to the service provided under paragraph 1.4.14.1, Air Force tax assistance programs (which remain separate and distinct from the legal assistance program) involve JA staff, detailed service members, and base volunteers preparing and filing federal and state income tax returns for those eligible to receive this assistance.

SJAs will supervise and manage these programs at their bases, exercising discretion concerning the scope of assistance provided, eligible beneficiaries, and sources of support for training and electronic filing. All Air Force bases will operate individual income tax assistance programs, to include electronic filing services.

1.4.14.2.1. Air Force tax assistance programs may take advantage of the Internal Revenue Service (IRS) Volunteer Income Tax Assistance (VITA) and electronic filing programs, or other viable sources of support, to effect training of tax assistance volunteers and provision of electronic filing services at their bases. Other sources include commercially available training programs and electronic filing software.

1.4.14.2.2. Eligible beneficiaries include active duty service members and their dependents and retirees and their dependents. Additionally, SJAs may authorize preparation and electronic filing of tax returns for federal civilian employees, to the extent permitted by the IRS Volunteer Income Tax Assistance (VITA) program. In making this determination, SJAs must consider whether the resources available to the installation tax program are sufficient to support the increased demands such an extension of support would entail. When they seek tax assistance, federal civilian employees must adhere to applicable rules concerning use and accounting of their time.

1.4.14.3. Bases file statistics for their tax assistance programs in the Tax Program Reporting System (TPRS) at [https://aflsa.jag.af.mil/training/jaguar/tax/tax\\_home.php](https://aflsa.jag.af.mil/training/jaguar/tax/tax_home.php). Do not use WebLIONS either to input client information or tax program workload.

1.4.15. Issues that The Judge Advocate General (TJAG), Major Command (MAJCOM) SJAs, Numbered Air Force (NAF) SJAs, Commanders, or the base SJAs deem connected with personal civil legal affairs.

1.4.16. Victims of Crime. Provide legal assistance to victims of crimes, including sexual assault, consistent with the availability of resources, the expertise within the legal office as currently organized and staffed, and the SJA's ability to manage conflicts of interest. If resources at the legal office do not permit providing legal assistance to a victim of crime, the SJA shall inform the next judge advocate in the functional chain of command.

## **1.5. Supervisory Responsibilities.**

1.5.1. The Judge Advocate General (TJAG):

1.5.1.1. Establishes and manages the Air Force Legal Assistance and Preventive Law Programs.

1.5.1.2. Communicates with the American Bar Association (ABA) and other associations TJAG deems necessary to further the legal assistance and preventive law programs.

1.5.1.3. Delegates authority to operate these programs to the Legal Assistance and Preventive Law Division, Air Force Legal Services Agency (AFLSA/JACA).

1.5.2. AFLSA/JACA:

1.5.2.1. Monitors the Air Force Legal Assistance and Preventive Law Programs.

1.5.2.2. Carries out the overall administration of the Air Force Legal Assistance and Preventive Law Programs.

1.5.2.3. Gives advice on legal assistance, notary, and preventive law matters that affect Air Force personnel worldwide.

1.5.2.4. Monitors the Web-based Legal Information Online System (WebLIONS) outlined in paragraph 1.9, the *DL Wills* program, and the Tax Program Reporting System (TPRS).

1.5.3. MAJCOM, Field Operating Agency (FOA), and Direct Reporting Unit (DRU) SJAs:

1.5.3.1. Supervise functional program staffs within their Commands.

1.5.3.2. Ensure compliance with this instruction.

1.5.3.3. May add requirements for mobilization- and deployment-related legal assistance (paragraphs 1.1 and 1.3) and may impose limits on non-mobilization- and deployment-related legal assistance (AFPD 51-5 subparagraph 12.2).

1.5.4. NAF SJAs: May add requirements for mobilization- or deployment-related legal assistance to ensure mission readiness.

1.5.5. Wing/Base SJAs:

1.5.5.1. Manage the personnel providing legal assistance and the operation of the legal assistance program at their offices consistent with this instruction.

1.5.5.2. Brief the office staff, including reservists, on the purposes of legal assistance, the base program, and this instruction. Conduct this briefing as frequently as necessary to assure the quality of the legal assistance program but at least once annually.

1.5.5.3. Communicate with local bar organizations, legal aid offices, and appropriate federal and state agencies.

1.5.5.4. Publicize the office's limits on non-mobilization- and deployment-related legal assistance.

1.5.5.5. Manage legal services volunteers (paragraph 1.8).

1.5.6. AFLSA/JAS (Legal Information Services). AFLSA/JAS provides hardware and software support for WebLIONS.

1.5.7. AF/JAZ (Strategic Plans and Policy). AF/JAZ provides software support for the Tax Program Reporting System (TPRS).

**1.6. Ethical Responsibilities and Rules.** SJAs administer the legal assistance program in strict compliance with Air Force ethical responsibilities and rules such as TJAG Policy Memoranda TJS-2, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct*; TJS-5, *TJAGD Professional Responsibility Program*; and ARC-1, *Rules and Standards for Professional Conduct for Air Reserve Component Judge Advocates*. Of note, in the event of conflicts or differences between the applicable Air Force rules of professional responsibility and the equivalent state rules, the Air Force provisions will control (TJS-2). TJAG's Professional Responsibility Administrator (AFLSA/PR) serves as the dedicated focal point for professional

responsibility advice and counsel. Access Professional Responsibility Program information at <https://aflsa.jag.af.mil/cgi-bin/genwebhtml.pl?jagmail=profresp>.

1.6.1. Only attorneys give legal advice. Paralegals and clerical staff members shall not provide any legal advice to a client, or render any other services to a client that constitute the practice of law unless under the direct supervision of an Air Force legal assistance attorney.

1.6.1.1. Paralegals and clerical staff members may question prospective clients to determine the subject matter of their concerns and whether it is within the scope of the legal assistance program. They may also prepare and maintain legal documents under the direct supervision of an attorney and perform such acts as notarizations and the preparation of routine powers of attorney using approved legal office forms.

1.6.1.2. A paralegal may conduct an initial client interview, preliminary to an attorney-client meeting. During this interview, the paralegal should ascertain the general nature and pertinent facts of the client's legal problem or concern. Because of the likelihood privileged information will be discussed, this interview should occur in a confidential setting. The paralegal may provide the client with handouts or references providing basic information about laws, regulations, rules, policies and procedures that may be relevant to the client's situation.

1.6.2. Information received from a client during legal assistance, attorney work-product, and documents relating to the client are confidential. Release them only with the client's express permission, pursuant to a court order, or as otherwise permitted by the *Air Force Rules of Professional Conduct* and the *Air Force Standards for Civility in Professional Conduct* and other Air Force rules pertaining to ethical conduct and professional responsibility. Such release should only be accomplished after contacting AFLSA/JACA through the appropriate supervisory chain.

1.6.3. Judge advocates and civilian attorneys who perform legal assistance must have private offices.

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

1.6.5. Legal assistance attorneys may not interfere with an existing attorney-client relationship. When a member is already represented by counsel, the legal assistance attorney ordinarily should refer the member to his or her attorney. In some cases, however, the legal assistance attorney can play a valuable supporting role for the member, such as in the identification of military-unique considerations or the interpretation and discussion of military-specific statutes, regulations, and instructions. In this situation, the legal assistance attorney may consult with the member represented by counsel provided the attorney communicates to the legal assistance attorney the desire for this support. Otherwise, advising a client already represented by an attorney, providing a "second opinion," is not permitted.

**1.7. Referrals.** The nature of a client's legal problem may exceed the competence of the initial attorney consulted or the scope of the Air Force legal assistance program. In such cases, the legal assistance attorney should refer the client to, as appropriate, another Air Force attorney, another

Armed Forces legal assistance office, or civilian lawyer referral services. Follow these guidelines when making referrals:

1.7.1. For civilian criminal matters, refer military members to the appropriate military defense counsel and civilians to the local civilian criminal defense bar.

1.7.2. For matters with the potential to involve the prospective client in adverse action under the UCMJ or adverse administrative action, refer the person to the appropriate military defense counsel. As the client provided the information to the legal assistance attorney in an attorney-client relationship, the legal assistance attorney may not disclose information concerning past criminal acts or other acts of misconduct to investigators or other attorneys in the legal office who may work on a case involving this person.

1.7.3. For a prospective client seeking assistance in filing a complaint under Article 138, UCMJ, refer the person to the appropriate military defense counsel or the Office of the Inspector General.

1.7.4. For military members who are or may be the subject of court-martial charges or other disciplinary action, the appropriate military defense counsel shall coordinate any need for legal assistance with the appropriate SJA, even if the matter would ordinarily fall within the scope of legal assistance.

1.7.5. For matters in which the person has already retained a civilian attorney, refer to that civilian attorney. Serving as a source of a "second opinion" for a client already represented by an attorney is not appropriate. However, as noted in paragraph 1.6.5 of this instruction, in some cases the legal assistance attorney can play a valuable supporting role for the member represented by a civilian attorney, such as in the identification of military-unique considerations or the interpretation and discussion of military-specific statutes, regulations, and instructions. Where the civilian attorney communicates to the legal assistance attorney the desire for this support, the legal assistance attorney may consult with the client.

1.7.6. In foreign areas, with the consent of consular officials and after consultation with the national bar, if appropriate, prepare a list of attorneys in accordance with the applicable status of forces agreement or implementing instruction. Refer persons who may face charges before a foreign court to the military legal advisor (see AFI 51-703, *Foreign Criminal Jurisdiction*).

1.7.7. Referral Guidelines. It is essential that each office establish referral guidelines that are free from favoritism or other impropriety. When referring persons to other attorneys, use the following guidelines:

1.7.7.1. Referrals should be made to the source best able to assist the client in the resolution of the particular problem or concern at the earliest time. For matters exceeding the particular legal assistance attorney's expertise, there is no need to exhaust military referrals, such as another legal assistance attorney, either active duty or reservist, or legal assistance attorneys in another military legal office, before referring a client to civilian bar referral services. The goal is to facilitate the client's consulting with an attorney competent to provide the required assistance. Options include another attorney on the legal office staff whether civilian or military, active or reserve; another military legal office, regardless of service; and the civilian bar.

1.7.7.2. Where the client's situation requires specialized expertise beyond the scope of the military legal assistance programs, refer to bar referral services operated by the American Bar Association (ABA) or state or local bar associations. If an organized bar or lawyer referral service does not exist in a base's area, refer the client to a local listing of attorneys who have expressed interest in serving military clients.

1.7.7.3. Make referrals based on the knowledge of or experience with the particular military attorney, military legal assistance office, civilian bar referral service, or, in the case of locations lacking a referral service, the local legal community.

1.7.7.4. Ensure the client understands that the decision to consult with or be represented by another legal assistance attorney, or to consult with and retain the services of a civilian attorney recommended through a bar referral service, is solely that of the client. The client is free to consult with and retain any lawyer.

1.7.7.5. Make clear to the client that referral to bar referral services operated by the ABA or state or local bar associations, or to a list of local attorneys maintained by the legal office in locations not covered by a referral service, does not constitute a federal or Air Force endorsement of any of the individual attorneys participating in these services.

#### 1.7.8. Referral Services.

1.7.8.1. The American Bar Association (ABA) and many state and local bar associations operate bar referral services. Legal assistance attorneys should familiarize themselves with the services available through these bar associations. Contact with representatives of the bar associations is encouraged to determine how the lists are compiled and maintained and what standards apply for an attorney's inclusion on the lists. Providing information of this sort to clients enhances their ability to make informed decisions about use of the referral service. Prior contact will also yield information on any special programs the bar association may operate to assist military legal assistance attorneys and military clients and ensures the bar association is willing to accept referrals of military clients.

1.7.8.1.1. *Operation Enduring LAMP* is one example of a bar referral service. In 2001, the ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) launched *Operation Enduring LAMP*, a project to help organize and educate civilian attorneys who wish to provide *pro bono* legal assistance to military personnel who are mobilized for military service and their family members who will be left behind. Most state bar associations participate in *Operation Enduring LAMP*; however, each state's program differs. Therefore, SJAs are encouraged to contact the base's state bar association regarding the registration and referral of participating *Operation Enduring LAMP* attorneys. Access information on this program at <http://www.abanet.org/legalservices/helpreservists/home.html>.

1.7.8.1.2. The ABA and state and local bar associations may maintain listings of attorneys who have volunteered to provide advice and guidance to military legal assistance attorneys. For example, *Operation Stand-By* is a project of the ABA Family Law Section's Military Committee through which attorneys agree to take calls, e-mail or other correspondence from JAG officers and answer inquiries about family law issues in their state. Access information on *Operation Stand-By* and a list,

by state, of the participating attorneys at <http://www.abanet.org/family/military/opstandby.doc>.

1.7.8.1.3. State and local bar associations may maintain lists of attorneys who have expressed interest in providing military clients with either *pro bono* service or service at reasonable fees.

**1.8. Legal Services Volunteers.** SJAs may accept the services of a licensed attorney, paralegal, or other legal professional to provide legal assistance under 10 U.S.C. §1044 and in accordance with 10 U.S.C. §1588(a)(5); DoDI 1100.21, *Volunteer Services in the Department of Defense*; and TJS-8, *Use of Legal Services Volunteers*. DoDI 1100.21, TJS-8 and the AFLSA/JACA web site provide detailed guidance on the process of accepting voluntary legal services and the scope and limitations of voluntary legal services. General guidance consistent with DoDI 1100.21 follows.

1.8.1. Volunteer services agreement and volunteer confidentiality agreement. All volunteers shall read and sign the appropriate part of DD Form 2793, *Volunteer Agreement for Appropriated Activities or Nonappropriated Fund Instrumentalities*. Also, legal services volunteers must be briefed on, understand, and comply with the same confidentiality requirements applicable to all members of the legal office staff, such as TJAG Policy Memorandums TJS-2, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct* and TJS-3, *Air Force Standards for Criminal Justice*. All legal services volunteers shall read and sign the *Legal Services Volunteer Confidentiality Agreement* attached to TJAG Policy Memorandum TJS-8. Acceptance of the volunteer services and confidentiality agreements shall be acknowledged before an individual is allowed to provide volunteer services. Copies of the signed agreements should be given to the volunteer prior to commencing volunteer services.

1.8.2. When required, volunteers must be licensed, privileged, appropriately credentialed or otherwise qualified under applicable laws, regulations, or policy to provide the voluntary services involved. Prior to acceptance as a volunteer, attorneys must provide a letter of good standing from each state Bar of which they are a member.

1.8.3. Supervision and scope of legal assistance. Legal services volunteers, even if licensed attorneys, may not be permitted to provide direct, unsupervised advice to Commanders or other agency clients on matters affecting Air Force interests, or to legal assistance clients. Also, legal services volunteers cannot perform the functions of a judge advocate or other inherently governmental services, such as representing clients in an area defense counsel office. They can, however, perform paralegal-type functions or provide other legal services, including advice and assistance to legal assistance clients, if acting under the direction, supervision, and control of an Air Force military or civilian attorney. Supervisory authority with respect to volunteers will be through designation of authorized duties, training, counseling, assessment of the quality of service provided, and determinations regarding continuation of acceptance of voluntary services. The degree of supervision of volunteers will be comparable to that provided with respect to paid employees providing similar services. Examples of permissible uses include researching, drafting legal opinions for review and signature by an Air Force attorney, and helping with legal assistance matters.

1.8.4. Legal services volunteers are not employees of the United States or any instrumentality thereof, except for certain purposes relating to compensation of injuries

occurring during the performance of approved volunteer services, tort claims, the Privacy Act, criminal conflicts of interest, and defense of suits arising out of legal malpractice.

1.8.5. Expenses. The Air Force may not compensate legal services volunteers. However, legal services volunteers may use dedicated legal office or desk space, equipment, supplies, computers, and telephones as needed to accomplish assigned duties. Expenses directly connected to assigned duties that are incurred off base, such as long distance telephone calls, may be reimbursed as incidental expenses. Submit Standard Form 1164, *Claim for Reimbursement for Expenditures on Official Business*, to the servicing finance office for reimbursement of incidental expenses. Installations may accept voluntary services from host-nation or third-country citizens so long as the installation determines that acceptance of voluntary services from such persons will not subject the United States to potential liability or unauthorized expenses. This includes payment of employment benefits for a volunteer due to host-nation labor or voluntary service laws, U.S.-host-nation treaties, Status of Forces Agreements, or other arrangements.

**1.9. Records/Reports. Effective 1 Jan 03,** offices must record legal assistance visits and workload in the Web-based Legal Information Online System (WeblIONS). As a web-based program, WeblIONS eliminates the requirement for base legal offices and higher headquarters to prepare and compile the annual report of legal assistance. Statistical data of each office will be available to that office and its higher headquarters through WeblIONS on demand. Offices are not permitted to employ alternative automated data management and workload tracking systems for legal assistance. (RCS: JA(A)7501) This report is designated emergency status code C-2. Continue reporting during emergency conditions, normal precedence. Access WeblIONS at <https://lions.jag.af.mil>.

1.9.1. Offices should retain AF Forms 1175, *Legal Assistance Record*, for temporary use in the event of interruption of WeblIONS access or service. On these occasions, information recorded on the cards must be entered into WeblIONS when service resumes.

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

**1.10. Personal Legal Readiness Briefings.** SJAs support readiness at their installations by ensuring personnel tasked for deployment at their bases are personally contacted and briefed on preparing their personal and family legal affairs for deployment. Subject areas include, but are not necessarily limited to, wills; SGLI designations; general and special powers of attorney; medical planning, including advance medical directives (living wills and medical or health care powers of attorneys), and designation of anatomical gifts; guardians or in loco parentis powers of attorney to ensure care of minor children; landlord-tenant matters; income exclusions and/or tax return filing extensions applicable to potential deployment locations; property and financial affairs management; protections under the Soldiers" and Sailors" Civil Relief Act (SSCRA); protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA) for reserve personnel deploying; and ensuring important documents are maintained in safe, secure, and reasonably accessible locations.

1.10.1. According to requirements described in AFPD 51-5, attachment 2, offices must report the percentage of personnel tasked for deployment who are personally contacted and briefed on their personal legal needs or who receive mobilization- and deployment-related legal assistance every 15 months. This period aligns with the standard Aerospace

Expeditionary Force (AEF) cycle. Base legal offices report this information by letter, through the MAJCOM, to be received by AFLSA/JACA upon entering their AEF window for deployment.

**1.11. Software Licenses.** *DL Wills* software is currently used to prepare documents such as wills, advance medical directives, and powers of attorney, and is licensed and copyrighted by a non-governmental corporate entity. Use of the software is governed by a licensing agreement that requires a separate license for each computer the program is installed upon. The AFLSA/JACA web site provides strict guidance on license acquisitions, controls and restrictions. Base SJAs and LOMs should ensure their offices have licenses for each computer on which *DL Wills* software is installed.

**1.12. Communications.** Legal assistance practitioners may communicate directly with other legal assistance officers or paralegals. When necessary, seek guidance from your higher headquarters legal offices before contacting AFLSA/JACA.

**1.13. Air Force Legal Assistance Website.** Every legal office shall incorporate the Air Force Legal Assistance Website (LAWS) into its legal assistance program. The LAWS provides a valuable preventive law education tool through its "Legal Assistance Topics" section. The LAWS enhances the provision of legal assistance by allowing clients to complete online worksheets for wills, healthcare documents and powers of attorney. Finally, the LAWS collects online feedback that allows us to identify areas of strength and weakness in our legal assistance program and to make adjustments as needed.

1.13.1. The Judge Advocate General established the Legal Assistance Website Honor Roll to recognize legal offices that excel at integrating the document production and feedback features of the LAWS into their legal assistance program. The Honor Roll recognizes both feedback and efficiency honorees.

1.13.1.1. A legal office must meet two requirements to be recognized for excellence in garnering feedback as a "Feedback Honoree." First, the average customer satisfaction rating on website surveys for the preceding month must be 4.0 or higher. Second, the office must receive website surveys for 10 percent or more of the office visits in the previous month. The office visits are tracked in WebLIONS, and can be viewed on the annual report.

1.13.1.2. "Efficiency Honorees" are those offices that use the website to produce 20 percent or more of their special powers of attorney, general powers of attorney, advanced medical directives and wills. The document numbers are tracked in WebLIONS, and can be viewed on the annual report. It is important that if the office utilizes a LAWS will worksheet to produce more than one document it select the appropriate indicators in WebLIONS.

1.13.2. The LAWS enhances legal assistance by increasing the efficiency of the process of obtaining legal assistance documents. The system is designed so that a client can consider the necessary decisions, and obtain the necessary information, for their legal documents from the comfort of their home. Legal offices can utilize the client's "Legal Worksheets" function of the LAWS in their legal offices in order to educate clients about the advantages of the LAWS. Legal offices shall not force clients to utilize the LAWS prior to receiving legal

assistance, and shall not institute procedures that decrease efficiency for the client in order to obtain recognition on the Honor Roll.

1.13.3. Feedback should be personally submitted by the client directly into the LAWS, and shall not be input by members of the legal office.

**1.14. Legal Assistance Training Requirements.** The below requirements will ensure legal assistance attorneys possess the requisite training for excellent legal assistance representation, and all judge advocates maintain currency in this core practice area.

1.14.1. **Annual Refresher Webcast.** Each January, The Air Force Judge Advocate General's School broadcasts a webcast with updates and changes to the law impacting the provision of legal assistance. Viewing the webcast is mandatory for all active duty and Air Reserve Component (ARC) judge advocates and for any civilian attorneys whose core document or position description references legal assistance. Those unable to view the webcast live must watch the recorded version by 15 April of the same year.

1.14.2. **Advanced Core Training (ACT).** Starting in 2012, four ACT modules will be released on CAPSIL Learning Management System (CAPSIL): Estate Planning, SCRA, Consumer Law, and Family Law. Certain judge advocates and civilian attorneys will be required, as follows, to complete the training.

1.14.2.1. Active duty judge advocates assigned to an office that provides legal assistance must complete all four ACT modules within 120 days of assignment.

1.14.2.2. ARC judge advocates assigned or attached to an office that provides legal assistance, as well as judge advocates assigned at Air National Guard state headquarters offices, must complete all four ACT modules within one year of assignment or attachment.

1.14.2.3. Any civilian attorney whose core document or position description references legal assistance must complete all four ACT modules within 120 days of employment in the position.

1.14.2.4. During the initial release of the ACT modules in 2012, the required timelines in **paragraphs 1.14.2.1** through **1.14.2.3** apply from the date of module release. The ACT modules are a one-time requirement that may be completed during any period of military service or employment with The Judge Advocate General's Corps. For example, a civilian attorney who completed the ACT modules while previously serving as a judge advocate would not have to complete them again.

1.14.3. **Military Continuing Legal Education (MCLE) in Legal Assistance.** MCLE is legal assistance training provided, sponsored, or co-sponsored by the judge advocate component of a military Service. Legal assistance in-residence courses, annual refreshers, webcasts, CAPSIL training modules, SJA approved office-wide training, sessions at Keystone and Annual Survey of the Law, and ABA LAMP CLE are examples of MCLE. Training not affiliated with the military, such as estate planning training offered by a state bar, would not qualify as MCLE.

1.14.3.1. All active duty judge advocates, as well as any civilian attorney whose core document or position description references legal assistance, must certify completion of four hours of MCLE in legal assistance each year.

1.14.3.2. All ARC judge advocates must certify completion of four hours of MCLE in legal assistance every other year.

1.14.3.3. MCLE certification will be accomplished through PR CERT, an automated program used to annually certify certain professional responsibility requirements. Each year the certification period is publicized in advance by AF/JAA-PR.

1.14.3.4. Training completed via CAPSIL will be tracked automatically.

## Chapter 2

### NOTARIAL ACTS AND OATHS

#### 2.1. Notarial Acts.

2.1.1. Federal Authority. Section 1044a of Title 10, United States Code, grants the specific categories of persons listed in paragraphs [2.1.3](#) and [2.1.7](#) of this instruction the general powers of a notary public and of a consul of the United States. This authority derives from the federal statute and is distinct from the notary authority created by each state's laws. Notarial acts performed under 10 U.S.C. §1044a are legally binding throughout the world for federal and non-federal purposes.

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

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

2.1.3.1. All judge advocates, including judge advocates of the Air Force Reserve whether or not in a duty status.

2.1.3.2. Civilian attorneys, licensed to practice law in the United States, employed by the Air Force and serving as legal assistance attorneys.

2.1.3.3. All adjutants, assistant adjutants, and personnel adjutants, including reserve members on active duty or performing inactive duty training.

2.1.3.4. Enlisted paralegals on active duty or performing inactive duty training (see paragraph [2.1.6](#)).

2.1.3.5. Active duty Air Force personnel who satisfy **all three** of the following criteria:

2.1.3.5.1. A commissioned officer or senior non-commissioned officer (holding the rank of Master Sergeant or higher);

2.1.3.5.2. Stationed at a geographically separated unit (GSU) or remote location where no judge advocate or paralegal notary is also assigned; and,

2.1.3.5.3. Appointed in writing, by the unit's servicing general court-martial (GCM) convening authority SJA to exercise notary authority under 10 U.S.C. 1044a and this instruction.

2.1.3.6. At locations outside the United States, civilian Air Force employees appointed by the SJA servicing the base to serve as notaries under the authority of 10 U.S.C. §1044a(b)(5).

2.1.4. Individuals Eligible To Use Military Notary Services. In accordance with 10 U.S.C. §1044a, the following persons may receive notary service:

2.1.4.1. All members of the United States Armed Forces.

2.1.4.2. All other individuals eligible for legal assistance under this instruction.

2.1.4.3. All individuals serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands.

2.1.4.4. All individuals subject to the UCMJ outside the United States.

2.1.4.5. Where a document requires signatures of multiple persons, notarize only the signatures of those persons eligible for military notary services per the above four classifications.

2.1.5. Civilian Employees as State Notaries (other than civilian legal assistance attorneys). Staff Judge Advocates may designate civilian employees to serve as notaries as part of their official duties. The notarial authority created by 10 U.S.C. Section 1044a does not cover this type of designation. Therefore, any designated civilian employee must qualify as a notary under the laws of the state where he or she will perform notarial duties.

2.1.5.1. Designations of employees as notaries must be in writing and state that reimbursement for expenses is authorized. Title 5 U.S.C. Section 5945 authorizes reimbursement of commission expenses. These expenses may not exceed the actual cost of any fees, bonds, seals, perforating devices, and any other expenses actually incurred. Make reimbursements in accordance with local procedures.

2.1.5.2. Where an installation has multiple SJAs, each SJA may make this designation for his or her respective Command or agency.

2.1.5.3. As the notaries designated under this provision are reimbursed for commission expenses, they may only provide notary services for the eligible beneficiaries specified in paragraph 2.1.4 above.

2.1.6. Paralegals as Notaries. Staff Judge Advocates will not allow paralegals to perform notary duties until they have received proper training. This limitation means that only those paralegals who have been trained to perform notary acts as specified by the Career Field Education and Training Plan (CFETP) will act as notaries.

2.1.7. Non-JA Notaries at Geographically Separated Units (GSU). GCM SJAs are responsible for identifying those units where a non-JA notary should be appointed. Staff Judge Advocates are advised to appoint only the number of non-JA notaries necessary to avoid undue hardship to members at the GSU or remote site. All notary appointments must be in writing. The GCM SJA will maintain a copy of the written appointment letter for at least two years beyond the end of the notary's assignment. The GCM SJA may revoke the non-JA notary's authority at any time, with or without cause.

2.1.7.1. The base legal office that supports the GSU or remote site will provide all support to non-JA notaries. This support will include, at a minimum, training and supervision. The base legal office is responsible for notifying the GCM SJA when the non-JA notary is reassigned from the unit, an event that terminates the notary's authority.

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

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

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

2.1.7.2.3. The notary may only exercise notary authority while performing official duties at the duty site. The notary may not perform notary duties while in a TDY or leave status.

2.1.7.2.4. The notary's authority automatically terminates when the notary is re-assigned from the GSU or remote unit. The notary will deliver, or ensure delivery of, his or her personal notary log to the servicing base SJA. The notary seal or stamp will be retained at the duty location at which the notary worked for use by the notary appointed to succeed the departing notary. In the event a new notary is not appointed, the seal or stamp will be returned to the servicing base SJA.

2.1.8. Authenticity and Seals. When signing documents in their official capacity, notaries specify the date and location, list their title and office, and use a raised seal or inked stamp citing 10 U.S.C. §1044a (for military notaries) or state authority (for civilian employee notaries designated pursuant to paragraph [2.1.5](#) of this instruction).

2.1.8.1. Installations should employ a raised seal or inked stamp citing the authority of 10 U.S.C. §1044a and including the identifiers "U.S. Air Force" and "Judge Advocate." Experience with the Authentication Division of the Department of State demonstrates these identifiers are essential to acceptance of military notarizations on documents being presented to foreign governments. The issue arises most frequently in connection with international adoptions by military families. Use of the identifiers will ensure documents with military notarizations are accepted as authentic.

2.1.9. Notary Guidelines.

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

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

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

2.1.9.4. Notaries should familiarize themselves with state law requirements for acknowledgement of documents. Questions or concerns should be resolved by research of the appropriate state statutes or consultation with the entity requiring the document be notarized.

2.1.9.5. Do not notarize incomplete documents. A client's assurance to add missing information subsequent to the notarization is not adequate and must not be honored. Documents must include all required information at the time of signing and notarization. Please note some documents are completed in stages, requiring the addition of

information and signatures subsequent to the signatures for which notarization is sought. In such cases, ensure the document is complete to the stage in the process at which the client is seeking notary services.

2.1.9.6. Consistent with paragraph **2.1.4.5** of this instruction, notarize only the signatures of persons eligible for military notary service. The military notary program does not extend to other signators on a document not eligible for military notary service under paragraph **2.1.4** of this instruction.

2.1.9.7. Certification of a document as a true and accurate copy of the original document is not a notarial act. Such a certification requires verification of the authenticity of the document represented by the client to be the original. Only the entity that created the document or maintains the original document or electronic record as part of its official responsibilities can make this verification. Therefore, notaries and other members of the legal office staff may not certify documents as true and accurate copies of original documents which are neither created by the office nor maintained by the office as part of its official responsibilities.

2.1.9.7.1. Notaries may notarize the certification of authenticity and signature of the document custodian from the office responsible for maintaining the original document or electronic record. This act establishes the authenticity of the certification of the document or record as a true and accurate copy of the original version maintained by the responsible office. Additionally, if sufficient to meet the client's needs, the notary may notarize the signed statement of the client that a document is a true and accurate copy of the original record he or she has received and maintained. For example, clients often request legal assistance practitioners to notarize copies of a DD Form 214 or NGB Form 22 as true and accurate reproductions of the original documents. Legal office notaries may not make this certification. Specific agencies can certify a copy of a DD Form 214 as a true and accurate reproduction of the original. JACA has published guidance to the field through The Judge Advocate General's Online News Service. As another example, although a notary may not certify copies of a service member's medical records to be true and accurate, the notary may notarize the statement and signature of the medical records custodian certifying the copies to be true and accurate.

2.1.9.8. Maintain a notary log. All legal assistance notaries, both military and civilian, shall maintain a personal log of notary acts performed. The log must include the signer's name and signature, the type of document, date, and location. Military notaries take their notary logs with them when they make a PCS move, except non-JA military notaries who provide the logs to the servicing base SJA consistent with paragraph **2.1.7.2.4** of this instruction. On separation or retirement, military notaries leave the notary log at their last duty station. Civilian employee notaries must follow the relevant state law regarding disposition of notary logs. If state law is silent, civilian employee notaries moving to a new position or location in federal civil service take their notary logs with them. Retiring civilian employee notaries and those leaving government will leave their notary logs at their last office of employment.

2.1.9.9. Security of Notary Equipment. Notaries must maintain vigilance to prevent misuse, loss, or theft of notary seals, stamps, and log books. Persons not authorized to

serve as notaries under this instruction shall not use or maintain notary equipment. When not in use, secure notary seals, stamps, and log books in a desk drawer or file cabinet. Each notary shall ensure his or her notary equipment is similarly secured at the end of each duty day.

**2.2. Oaths and Affirmations.** The United States Code authorizes military members to administer oaths and affirmations. SJAs will ensure that their staffs are familiar with the following:

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

2.2.2. Title 10 U.S.C. Section 936(b), which authorizes specific people to administer oaths and affirmations when necessary to perform their duties.

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

**2.3. Notary Restrictions.**

2.3.1. Compensation. Under 10 U.S.C. §1044a(c), no fee may be paid to or received by any person for the performance of a notarial act authorized under the legal assistance program.

## Chapter 3

### PREVENTIVE LAW PROGRAM

**3.1. Purpose.** No legal assistance program can succeed without a vigorous preventive law program. Educating Commanders, members, and their families on legal issues prevents legal problems and reduces the time and resources needed to resolve legal problems. Preventing legal problems enhances Command effectiveness and readiness, especially during periods of mobilization and deployment of personnel. Effective preventive law activities require full communication and cooperation among Air Force legal office staff members, Commanders, and base personnel, both uniformed and civilians.

**3.2. Scope.** Every base will have an active preventive law program. The SJA implements the program for his or her installation or organization. All attorneys have a responsibility to integrate preventive efforts into legal assistance consultations and presentations to base audiences on legal programs.

3.2.1. Preventive law programs focus on education and recommend preventive measures in legal areas where the Air Force has a direct interest in the outcome as well as those likely to impact base readiness and morale. At a minimum, include the following subject areas:

3.2.1.1. Mobilization and Deployment Preparation. Educate members on their personal legal needs to ensure readiness for mobilization and deployment. Examples include preparing their personal and family legal affairs for the demands of and dislocations caused by mobilization and deployment, training on their rights under the SSCRA and the USERRA, and disseminating information through all effective media on other matters pertaining to legal readiness.

3.2.1.1.1. Stress to Commanders the importance of making predeployment planning a priority within their units. For example, in accordance with DoDD 1350.4, *Legal Assistance Matters*, all Commanding Officers shall 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. Although not specifically cited in DoDD 1350.4, First Sergeants hold a similar responsibility. Ultimately, the decision to prepare and execute any of these documents must remain the free and voluntary act of the member. However, Commanders and First Sergeants play a vital role in highlighting and emphasizing the importance of seeking legal assistance as part of readiness preparations.

3.2.1.2. Commander/First Sergeant Awareness. Educate Commanders, First Sergeants, and staff agency chiefs on the full range of legal services provided by the legal office (not just legal assistance matters); the advantages to the Command or organization of timely use of these legal services; and all legal matters affecting the installation, including, as examples, fraud, waste and abuse, standards of conduct, environmental issues, contract issues, military justice issues, and claims matters. Communicate with Commanders, First Sergeants, and staff agencies on the status of legal services. Advise unit Commanders and First Sergeants of the legal office's availability to present informational briefings concerning the scope of the legal assistance program and preventive law measures at

Commanders' and First Sergeants' seminars, Commanders' Calls, staff meetings, base committee meetings, and newcomers' orientations.

3.2.1.3. Promote service member awareness of the importance of recognizing legal issues and seeking timely legal advice. Promote service member awareness of the importance of considering the legal consequences of their actions prior to signing legal documents such as purchase agreements, contracts, leases, and separation agreements. Ignoring legal issues or concerns and signing documents without advice on their terms and significance leads to legal problems later.

3.2.1.4. Identify common legal problems encountered by service members and family members. With its capability to provide statistical reports on demand, WebLIONS is an excellent resource for developing this information. Develop materials providing information and guidance aimed at preventing or minimizing service member and family member exposure to these potential legal problems.

3.2.1.5. Maintain vigilance to identify novel legal concerns, such as new consumer scams. Promptly develop and disseminate educational materials to help the base community make informed decisions and avoid potential legal problems.

3.2.1.6. Encourage the following base-wide activities:

3.2.1.6.1. Submission of articles for base newspapers, daily bulletin boards, and military legal publications on current legal assistance issues.

3.2.1.6.2. Distribution of handouts or pamphlets on preventive law measures at legal offices or other appropriate offices, such as the Family Support Center and squadron orderly rooms.

3.2.1.6.3. Development and maintenance of legal office web sites that provide office operating hours and contact information and that provide or link to current preventive law materials.

3.2.1.6.4. Presentation of preventive law lectures and seminars.

3.2.1.7. Law Day is observed each year on the first day of May to draw attention to the principles of justice and the practice of law, by an annual Proclamation of the President of the United States in accordance with Public Law 87-20 of April 7, 1961, as amended. Each year, in advance of 1 May, TJAG announces a Law Day theme. Staff Judge Advocates and preventive law officers join thousands of national organizations, businesses and schools and participate in innovative Law Day activities such as a high school mock trial, a middle school art and essay contest, or a community question and answer panel discussion.

3.2.1.8. Encourage legal office attorneys to participate in state or local bar associations to gain information on support programs available through these associations to benefit military clients and preventive law efforts and to educate civilian attorneys on the military in general and military legal programs in particular.

3.2.1.9. Seek support from bar associations to provide no-fee or reduced-fee legal services for service members and family members, particularly those with low incomes.

3.2.1.10. Encourage participation by local attorneys and state and local bar associations in programs sponsored by the ABA's Standing Committee on Legal Assistance for Military Personnel (LAMP), such as *Operation Enduring LAMP*, and the Military Committee of the ABA's Family Law Section, such as *Operation Stand-By*.

3.2.1.11. Tax Assistance. The Internal Revenue Service operates the Volunteer Income Tax Assistance (VITA) Program. If approved by base Commanders, establish an active, aggressive, well-publicized tax assistance program as outlined in **1.4.14.2**.

**3.3. Program Management.** See AFPD 51-5, Section C, for a full description of responsibilities in the program.

3.3.1. MAJCOM SJAs supervise the programs within their Commands.

3.3.2. To manage the base-level preventive law program, base SJAs appoint a Chief of Preventive Law or preventive law officer, charged with developing and implementing educational initiatives as a primary duty. In performing these duties, the appointed leader should review preventive law materials disseminated by AFLSA/JACA, which are maintained on its web site (see paragraph **3.5.1** of this instruction). Also, he or she should communicate with other military legal offices, particularly those in the same state, higher headquarters legal offices, and appropriate federal, state, and local agencies, such as bar referral services and consumer protection agencies.

**3.4. Communication.** All judge advocates may communicate directly with each other and with relevant organizations and persons about preventive law matters.

**3.5. Preventive Law Resources.**

3.5.1. AFLOA/AFJAGS' web site provides information on legal assistance subject areas covered under the legal assistance program, field guidance, and preventive law updates. Access the site at: <https://aflsa.jag.af.mil/AF/lynx/afjags/>.

3.5.2. WebFLITE. AFLSA/JAS's WebFLITE includes a "Web Links" page that provides access to a wide-range of Air Force and legal assistance internet and intranet web sites. WebFLITE also provides helpful links to other agencies, statutes and regulations, and specific legal assistance subject areas. Access these links at: <https://aflsa.jag.af.mil/flite/links.php>.

**3.6. Forms Prescribed.**

3.6.1. AF Form 165, **General Power of Attorney.**

3.6.2. AF Form 831, **Special Power of Attorney.**

3.6.3. AF Form 1175, **Legal Assistance Record.**

**3.7. Forms Adopted.**

3.7.1. DOL Form VETS-1010, **Eligibility Data Form: Veterans' Reemployment Rights.**

3.7.2. DD Form 2793, **Volunteer Agreement for Appropriated Activities or Nonappropriated Fund Instrumentalities.**

3.7.3. SF 1164, **Claim for Reimbursement for Expenditures on Official Business.**

RICHARD C. HARDING  
Lieutenant General, USAF  
The Judge Advocate General

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

5 U.S.C. 5945, *Notary Public Commission Expenses*

10 U.S.C. 502, *Enlistment Oath: Who May Administer*

10 U.S.C. 936, *Art. 136. Authority to Administer Oaths and to Act as Notary*

10 U.S.C. 938, *Art. 138. Complaints of Wrongs*

10 U.S.C. 1031, *Administration of Oath*

10 U.S.C. 1044, *Legal Assistance*

10 U.S.C. 1052, *Reimbursement of Adoption Expenses*

10 U.S.C. 1408, *Payment of Retired or Retainer Pay in Compliance with Court Orders*

10 U.S.C. 1588, *Authority to Accept Certain Voluntary Service*

10 U.S.C. 12731, *Age and Service Requirements*

38 U.S.C. 4301-4333, *Employment and Reemployment Rights of Members of the Uniformed Services*

50 U.S.C. App. 501-593, *Soldiers' and Sailors' Civil Relief Act*

AFI 36-2906, *Personal Financial Responsibility*

AFI 36-2908, *Family Care Plans*

AFPD 51-5, *Military Legal Affairs*

ARC-1, *Rules of Professional Conduct for Air Reserve Component Judge Advocates*

Army Pub. 260, *Soldiers' and Sailors' Civil Relief Act Guide*

DoDI 1100.21, *Voluntary Services in the Department of Defense*

DoDD 1341.9, *DoD Adoption Reimbursement Policy (Jul 93)*

DoDD 1350.4, *Legal Assistance Matters (Apr 01)*

DoDI 1400.32, *DoD Civilian Workforce Contingency and Emergency Planning Guidelines and Procedures*

DoDI 3020.37, *Continuation of Essential DoD Contract Services During Crises*

P.L. 87-20, *Law Day, 7 April 1961*

TJS-2, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct*

TJS-3, *Air Force Standards for Criminal Justice*

TJS-8, *Legal Services Volunteer Confidentiality Agreement*

**Attachment 2****DUAL REPRESENTATION AUTHORIZATION**

Legal assistance attorneys may use the following form to inform clients of the parameters of, and to secure their consent to, dual representation. Each client should independently read and sign a letter to confirm that each wishes to be dually represented by a single attorney.

Dear Client:

You and your spouse have indicated that you wish to meet with an attorney together to discuss and execute both of your wills and related documents. There exists the potential for conflicts of interest to arise between spouses concerning the division and distribution of their property. For this reason, each may retain separate, independent counsel at the outset to avoid the possibility that advice given to one of you is influenced by the representation of the other. Where both spouses express the desire to be represented by a single attorney, it is the practice of this office to raise the potential for conflicts of interest with you and require your independent consent prior to proceeding with dual representation. Your signature below will confirm the following:

1. You and your spouse have requested the same legal assistance attorney represent each of you in advising on and preparing your wills and related documents.
2. You recognize that you and your spouse's wills and related documents need not be uniform. They may be entirely unique from each other in content. Each of you will review your documents prior to execution to ensure they reflect your individual wishes.
3. The scope of this representation will include the following:
  - Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the manner in which the title was then held;
  - Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, marital, community, or quasi-community property;
  - Discussion concerning the manner in which you wish to dispose of any property you may have the power to dispose of at the time of your death; and
  - Preparation of the documents necessary to accomplish the desired disposition of your property.
4. You are aware that during the course of the representation, disagreements may arise between you and your spouse regarding ownership and disposition of property.

5. Difference of opinion regarding the disposition of property does not, in and of itself, prevent an attorney from representing both husband and wife. However, during the course of the representation, conflicts of interest between you and your spouse may arise that might preclude me from further representing either of you.

6. If a conflict of interest does occur, and it is of such a nature that I believe it impossible for me to ethically perform services for either of you, I will immediately cease all representation of both of you in this matter and advise that you both obtain independent counsel.

7. You agree that there will be complete and free disclosure of all information I receive from either of you within the course of representing you and your spouse. You further agree that such information shall not be confidential between you and your spouse regardless of whether I obtain such information when you and your spouse are both present or when only one of you is present. This disclosure authorization includes any conferences that may have taken place before the date of this letter.

Very Respectfully,

SIGNATURE BLOCK

Legal Assistance Attorney

I, (print your name) \_\_\_\_\_, have read and understand the foregoing letter and consent to being represented by \_\_\_\_\_, our legal assistance attorney, together with my spouse, \_\_\_\_\_, in the creation of our individual testamentary instruments. I likewise consent to the free disclosure and exchange between my spouse and I of information received by said attorney within the scope of his/her representation of us in the same.

Signed the \_\_\_ day of \_\_\_\_\_, 20XX

\_\_\_\_\_  
Client

### Attachment 3

#### STANDARD OPERATING PROCEDURE FOR EXECUTING WILLS

The following procedure, or one covering substantially the same points, is recommended as a standard for the execution of wills. This procedure meets the requirements for execution of military testamentary instruments, the standard for the execution of wills in the United States Air Force.

A. Present for the execution should be the following:

(1) the testator/testatrix

(2) two witnesses, who must be persons who have no interest, vested or contingent, in the property disposed of by the will or in the testator's/testatrix's estate in the event of intestacy. An attorney presiding over the execution ceremony may NOT act as a witness. Under 10 USC §1044d(c)(3), the two witnesses must be "in addition to the presiding attorney."

(3) the presiding attorney - 10 USC §1044d requires a military testamentary instrument to be "executed in the presence of a military legal assistance counsel acting as presiding attorney."

(4) notary - as the notary will notarize the signatures of the witnesses, the notary cannot serve as one of the witnesses.

a. Execution of the document as a military testamentary instrument does not require use of a military notary acting under 10 USC §1044a.

b. The statute does not preclude the presiding attorney from notarizing the will and other documents. Taking that approach would require notarization under the authority of 10 USC §1044a, with use of the appropriate captions in the documents. However, if questions are raised later concerning how the will was executed, this approach risks a significant problem. If an attorney served as notary, particularly a JAG, he or she will likely have PCSed or maybe even left the Air Force by the time questions come up. The witnesses will likely fall into similar situations. They will be difficult to find at best. Even when found, because they may have executed the will years ago, they will rely on distant memories of how the process was accomplished. In contrast, because civilian notaries often work in the same office for years they are most familiar with a particular office's will execution practices and are best placed to respond to questions concerning the execution of the documents.

B. If the will consists of more than 1 page, the pages should be fastened together securely. The will should specify the exact number of pages of which it consists (e.g., number each page at the bottom "1 of 3," "2 of 3," "3 of 3"). This page numbering does not include the self-proving affidavit, unless it has been incorporated as part of the will. The self-proving affidavit should, however, be fastened to the will.

C. The testator/testatrix should read the will and the self-proving affidavit in their entirety and the legal assistance attorney should ensure understanding of all terms prior to the execution.

D. The presiding attorney and/or notary should ask for and examine the identification cards of the testator/testatrix and witnesses.

E. The attorney or notary presiding at the execution ceremony should ask the testator/testatrix the questions from the section below entitled "Will Execution Requisites."

F. Assuming appropriate responses to the questions, the testator/testatrix then initials and dates in the margin at the bottom of each page of the will except the page including the testator's/testatrix's signature at the end of the will. This step assures identification and prevents subsequent addition and substitution of pages. The testator/testatrix also signs in the appropriate space at the end of the will. The witnesses should be seated or standing in a position to observe the signing and/or initialing.

G. The attorney or notary presiding at the execution ceremony asks the witnesses the listed questions from the section below entitled "Will Execution Requisites."

H. Each witness should read and then declare that the attestation clause is a true and correct statement.

I. Each witness then initials and dates in the margins in the same area as the testator/testatrix (again, this step assures identification and prevents subsequent addition and substitution of pages) **and** signs in the appropriate places at the end of the will. The witnesses also read and sign the self-proving affidavit. The witnesses' printed or typed name and rank (if military) and printed or typed duty address should be included under or next to their signatures.

## **WILL EXECUTION REQUISITES**

The presiding attorney or notary asks each Testator/Testatrix the following questions. The witnesses must be assured the Testator/Testatrix understands the questions and responds to them consistent with the intent to execute the document as his/her last will and testament.

For executions involving multiple clients, substitute the phrase "each of you" for "you" in each question and request the clients to answer aloud and make the appropriate nod for affirmative or negative.

**(1) Do you (state full name of testator/testatrix) declare in the presence of (state the names of the witnesses) that this document is your will?**

**(2) Are you at least 18 years of age?**

**(3) Do you consider yourself to be of sound mind?**

**(4) Have you read the will in its entirety and do you fully understand its terms?**

**(5) Do you have any additions or corrections you desire made to the will?**

**(6) Does the will as drafted represent your intentions as to how you wish your property to be distributed in the event of your death?**

**(7) Have you prepared and are you executing this document voluntarily?**

**(8) Do you feel you have been under any sort of duress, coercion, or undue influence as you discussed and provided information for the preparation of the will or now as you get ready to sign the will?**

**(9) Do you publish and declare this document to be your last will and testament?**

**(10) Do you desire that we (state the names of the witnesses) witness your signature and execution of this will?**

**Questions to the witnesses:**

**(1) Does the testator/testatrix appear to be at least 18 years of age?**

**(2) Does the testator/testatrix appear to be of sound mind?**

**(3) Does he/she appear to understand the nature of his/her actions?**

**(4) Does he/she appear to be acting under duress or coercion?**