

LEGAL ASSISTANCE OVERVIEW ¹

Before World War II, service members who needed help with personal civil legal problems had to hire civilian lawyers. As a result of the massive inductions and immediate deployments that took place in the early years of the war, the military services soon realized that service members struggled with inadequate access to general practice legal services as a direct result of their military service. Military attorneys could not even draft a power of attorney for the service member to allow the family to take care of matters while the member was gone. Starting in 1940, the military services cooperated with the American Bar Association to provide legal assistance to service members. Formal legal assistance programs were created in 1943. Congress officially recognized the military services' legal assistance programs in 1984 by enacting 10 U.S.C. § 1044. Section 1044 authorizes the provision of free legal assistance to eligible persons in connection with their personal civil legal affairs, "[s]ubject to the availability of legal staff resources."

PURPOSE OF MILITARY LEGAL ASSISTANCE PROGRAMS. The central purpose of the legal assistance program is to enhance the mission readiness of units by enabling active duty and Reserve members of the military to focus their full attention on their duties instead of worrying about legal matters at home. This is accomplished by providing services both to the service member and eligible family members. Eligibility for service is discussed below. An additional purpose is to enhance morale and welfare through the provision of quality legal services and preventative law programs to educate eligible clients regarding their personal legal rights and responsibilities.

PERSONS ELIGIBLE TO RECEIVE LEGAL ASSISTANCE. In addition to authorizing the military to provide legal assistance services, 10 U.S.C. § 1044 also defines those persons eligible for legal assistance. This list is further augmented by the service regulations of each of the military branches. As resources permit, legal assistance may be provided to the following categories of personnel:

- Members of the U.S. armed forces on active duty, to include reservists who are serving on active duty for 30 days or more;
- Dependents⁶ of active-duty personnel and dependents of personnel who died while on active duty;
- Retired military personnel;
- Dependents of retired members and dependents of deceased retired members;
- Reservists on active duty for single periods of 29 days or less and their dependents may be provided legal assistance in emergency cases;

¹ From Naval Justice School "Civil Law Legal Assistance Lawyers Study Guide" (Jan 10).

- Premobilization services for mobilizing active duty and inactive duty reservists;
- Civilian personnel and accompanying family members who are United States citizens, other than local hire employees, employed by, serving with, or accompanying the Armed Forces of the United States, when they are assigned to a foreign country or to a vessel or unit of the Armed Forces of the United States deployed in excess of 30 days;
- DoD civilian personnel deploying for at least 30 days to a combat zone, in support of a contingency operation, or aboard a Naval vessel, for a period of up to 30 days after return from deployment. Family member of these DoD civilian personnel may also be provided legal assistance on deployment-related matters;
- Non-DoD civilian personnel employed by the U.S. Government who are U.S. citizens, serving in a foreign country or on a vessel of the Armed Forces of the U.S., where legal assistance from non-military legal assistance providers is not reasonably available. Such legal assistance is generally limited to ministerial services;
- Members of allied forces and their dependents in the United States, serving with the Armed Forces of the United States; and
- Other persons authorized by the services.

PRIORITIZATION OF SERVICE. Active duty and mobilizing personnel are given the highest priority in terms of being offered access to legal assistance. In a pending deployment situation, this may result in the reduction or cessation of service to other eligible persons while the local legal assistance office provides support to deploying individuals or units.

ATTORNEY-CLIENT RELATIONSHIP. Legal Assistance attorneys may not provide legal assistance to anyone other than those authorized to receive legal assistance. Attorneys providing legal assistance do not speak for the United States nor their service, but rather as attorneys for their individual clients. An attorney-client relationship will not be established if a conflict of interest exists, or if the individual has retained civilian counsel on the same issue. Should a conflict of interest exist, military legal assistance offices will typically direct the individual to another military legal assistance provider or provide them with a civilian attorney referral list from the local bar association or from the office.

LEGAL ASSISTANCE SERVICES. Advice and other services regarding the following matters are normally available at military legal assistance offices. This is not an exhaustive list.

- Pre-deployment and preventive law briefings and assistance;

- Estate planning: wills, testamentary trusts, survivor benefits, advance medical directives, durable powers of attorney, beneficiary designations (Servicemembers' Group Life Insurance, etc.), nonprobate assets, retirement or separation benefits, and execution of documents;
- Family law/domestic relations: divorce, legal separation, annulment, support and nonsupport issues, custody, visitation, paternity, adoption, DoD adoption reimbursement program, name changes, dependent designation, early return of dependents from overseas, and military family care plan counseling;
- Immigration and naturalization;
- Powers of attorney;
- Notary services;
- Taxes: basic advice and filing assistance for Federal, State, and local taxes;
- Landlord/tenant relations and real estate;
- Consumer law, contracts, mortgage foreclosures, letters of indebtedness, involuntary allotments, and basic bankruptcy advice;
- Military rights and benefits: Servicemembers' Civil Relief Act, Uniformed Services Employment and Reemployment Rights Act, and other statutes dealing with military rights and benefits;

LIMITATIONS ON SCOPE OF LEGAL ASSISTANCE SERVICES . Legal assistance offices are prohibited from providing assistance in the following situations:

- **Business Matters.** Legal assistance attorneys may not normally assist clients with business matters. Exceptions to this rule include infrequent business transactions such as the sale of a personal residence or car, rental of a former residence, and preparation of Schedule C of Internal Revenue Service Form 1040 (Profit and Loss from business) for family home care providers
- **Military Justice and Administrative Discharge Matters (i.e., defense counsel advice).** When acting as a legal assistance attorney, a judge advocate may not provide advice with regard to courts-martial, investigations, nonjudicial punishment, administrative discharge processes, or other military justice matters. Individuals requesting such advice shall be referred to defense counsel, unless the attorney's commanding officer has also approved the attorney to perform defense counsel functions at that command. In such cases, the attorney is acting in two distinct roles and must observe the applicable rules and responsibilities for each job.

□ **Certain Claims Assistance.** Legal assistance providers may not advise nor assist in the prosecution of any tort, military, personnel, TRICARE, or other monetary claim against the United States or the defense of any monetary claim against the United States, except as authorized by instruction (e.g., adoption expense reimbursement claims, waiver of indebtedness assistance). However, legal assistance providers may inform an interested person about the applicable statute of limitations within which to bring a claim, how to obtain and complete claim forms, where to file the claim, and may further assist the claimant/potential claimant in communicating with the appropriate claims personnel to facilitate the process.

□ **Matters of Official Government Interest.** Legal assistance attorneys may not represent or assist an individual in a matter in which the United States has a direct and substantial interest, whether or not the Government's position is adverse to that of the individual, except where there is a specific authorization otherwise.

□ **Conflict of Interest.** If two or more eligible persons with conflicting interests seek advice from the same legal assistance office, the party that first establishes an attorney-client relationship will be provided representation. This rule applies even if the conflicted party is the service member. Once this happens, the legal assistance office should make every effort to refer the party with the conflicting interest to another free source of legal assistance or, if no such source is available, to a civilian attorney. Powers of attorney and notary services do not usually give rise to conflicts of interest, and such services may typically be provided to conflicting parties.

□ **Advice to Third Parties.** The confidential and privileged nature of the attorney-client relationship requires personal and private communication with the client. Except in situations where the client is unable to communicate adequately with the attorney, advice or assistance should not be provided through third parties. When command representatives seek information or assistance on behalf of service members assigned to their command, they should normally be instructed to have the service member obtain a legal assistance appointment.

□ **Representation in Civilian Courts Unless the Case Has Been Approved Under the Expanded Legal Assistance Program (ELAP).** Designated legal assistance attorneys may provide in-court representation to certain categories of clients who cannot afford private attorney fees or to service members with cases that involve a significant issue that affects other service members, such as a case involving enforcement of the Servicemembers' Civil Relief Act. Attorneys will first need to meet the requirements the respective state has set forth to allow them to take these types of cases. Due to the time commitment required and the limited resources available in many offices, cases chosen for ELAP usually have a foreseeable impact beyond the individual being represented, e.g., Servicemembers' Civil Relief Act cases; systematic abuse of service members by a landlord, consumer scams that specifically target service members, etc.

□ **Telephone/E-mail Advice.** Legal assistance will not ordinarily be provided over the telephone or via e-mail unless the person has already been receiving assistance from the office or the person seeking assistance has been properly screened and is capable of being identified. When the potential client is in a remote location and needs immediate legal assistance, most offices will provide assistance upon receipt of documentation confirming the caller's identity and eligibility for legal assistance.