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United States Coast Guard

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COMDTINST 5801.4D

DEC 20 2002

COMMANDANT INSTRUCTION 5801.4D

Subj: LEGAL ASSISTANCE PROGRAM

1. **PURPOSE**. This Instruction prescribes regulations, policies and guidance for the management and direction of the Coast Guard Legal Assistance Program established under authority of Title 10 U.S. Code, Section 1044. The provisions in this Instruction apply to all personnel providing or receiving Coast Guard legal assistance.

2. **ACTION**. The Chief Counsel of the Coast Guard has the authority and responsibility for the overall management and supervision of the Coast Guard Legal Assistance program. Area commanders, Maintenance and Logistics commanders, district commanders and commanding officers of headquarters units shall ensure that the intent of this program to provide access to legal assistance is accomplished; that a program is implemented to provide regular visits to units remote from a legal assistance office; that notice is given periodically to all personnel about how, when, where, and from whom legal assistance may be obtained and what local limitations have been placed on legal assistance. When justified to meet extraordinary requirements, such as the imminent departure of a cutter, assignment of additional temporary legal assistance personnel may be requested from Commandant (G-LPD). Internet release authorized.

3. **DIRECTIVES AFFECTED**. Legal Assistance Program, COMDTINST 5801.4C is cancelled.

4. **DISCUSSION**. Legal Assistance is a program critical to the personnel readiness of our units. The Coast Guard traditionally has recognized the importance of providing legal support for our personnel in connection with their personal civil legal affairs. Providing such legal support enhances readiness for our personnel, helping to relieve the stress and uncertainty associated with their duties and thus improving both morale and efficiency. Prompt assistance with other personal legal difficulties has a

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beneficial effect, so the Commandant's policy is to provide legal assistance to eligible personnel to the fullest extent possible under the law.

5. **ELIGIBILITY FOR LEGAL ASSISTANCE**.

   a. Title 10, U.S. Code, Section 1044 authorizes the provision of legal assistance to certain specified personnel in connection with their personal civil legal affairs, subject to the availability of legal staff resources.

   b. Legal assistance may be provided to:

      (1) Members of the armed forces who are on active duty (including reservists on active duty or scheduled for deployment).

      (2) Members and former members entitled to retired or retainer pay or equivalent pay.

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

      (4) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

   c. This statutory authority does not extend to civilian employees, except as discussed below in conjunction with income tax filing assistance and civil notary services.

   d. This statutory authority does not extend to members of the Coast Guard Auxiliary whether or not acting under official orders.

   e. Civilian employees and military members may also be eligible to participate in the Coast Guard Work Life program's Employee Assistance Program (EAP) that includes a legal services component. This consultation and referral service is not part of the legal assistance program and may result in legal fees. Details on this program are available from local EAP coordinators.

6. **PRIORITY FOR LEGAL ASSISTANCE**. When providing support to eligible personnel, the highest priority shall be given to Coast Guard military personnel who need legal assistance due to the nature of their assigned duties. Examples of such high priority needs include pre-deployment assistance to regular and reserve personnel, especially when the deployment is unanticipated, and will, power of attorney and advance medical directive preparation for personnel involved in significant travel or hazardous duty. The next highest priority shall be personnel who have the least ability to obtain legal services provided by the civilian bar (for example junior enlisted personnel with limited financial means). In legal offices/staffs where a full-time legal assistance attorney position is assigned, legal assistance shall be suspended only in cases of severe resource limitations. To the maximum extent possible, legal assistance services shall be provided to eligible beneficiaries of other services. Command Directors of Legal Assistance may prioritize these services to ensure the readiness of Coast Guard personnel.

7. **LEGAL ASSISTANCE SERVICES PROVIDED**. Subject to the imitations below, Command Directors of Legal Assistance may offer legal assistance services involving consultation, advice and

assistance to eligible clients on personal civil legal matters. When the quality of advice given would be impaired by office work load or the legal assistance attorney's lack of expertise in the relevant area of the law, the legal assistance attorney shall refer the client to another armed forces legal assistance office, lawyer referral service or civilian attorney in accordance with this instruction. Legal assistance may be provided as follows:

a. **Wills and Estate Planning**. Basic estate planning services, including drafting of wills, basic testamentary trusts and SGLI advice may be provided. Estate planning in the sense of arranging a client's affairs to minimize taxation of his or her estate, normally will be offered only by legal assistance attorneys who possess the special competency to do so. Likewise, while testamentary trusts can be part of a basic estate plan, complex trusts are normally beyond the scope of the legal assistance program.

b. **Military Testamentary Instruments (MTI)**. Federal law provides for the recognition of testamentary instruments by any state or jurisdiction without regard to specific legal requirements as to form, formality or recording imposed by that state or jurisdiction when the instrument is prepared pursuant to 10 USC 1044d and executed by a person authorized to receive legal assistance.

(1) A military testamentary instrument shall:

(a) 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).

(b) Be executed in the presence of a legal assistance attorney acting as presiding attorney.

(c) 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/testatrix execution of the instrument by signing it.

(d) Include a statement or preamble in form and content, substantially as outlined in enclosure (1).

(e) Include, or have attached to it, a self-proving affidavit, in form and content, substantially as outlined in enclosure (2).

(f) Nothing in this instruction <u>requires</u> the use of the Military Testamentary Instruments. Legal assistance attorneys may use the MTI authority or comply with state formalities as appropriate within their professional discretion.

c. **Advanced Medical Directives (AMD) or "Living Wills."** Legal assistance attorneys may prepare AMDs when requested by a client. AMDs may be prepared using existing state law provisions or as a Military Advance Medical Directive.

d. **Military Advanced Medical Directives (MAMD).** 10 USC 1044c requires states to recognize AMDs which are prepared by legal assistance attorney for eligible persons to the same extent as

an AMD "prepared and executed in accordance with the laws of the state concerned." In order for a legal assistance client to take advantage of a MAMD, the directive must contain the standard preamble contained in enclosure (3).

e. **Landlord-Tenant & Consumer Affairs**. Advice may be given in these areas, including review and preparation of lease agreements and correspondence to creditors and landlords.

f. **Soldiers' and Sailors' Civil Relief Act** (SSCRA) and **Uniformed Services Employment and Reemployment Rights Act** (USERRA). Clients may be counseled concerning the provisions of the SSCRA and USERRA. Related correspondence and documents may be prepared.

g. **Real Property**. Assistance in this area may take the form of specific advice and review and/or preparation of documents, including purchase and sale agreements and deeds for personal residences.

h. **Civil Suits**. General advice may be given in civil suit matters. Cases requiring in-court representation will normally be referred to private civilian counsel (except for those cases suitable for ELAP). Extensive advice on small claims court procedures may be given, and assistance may be provided in preparing documents and correspondence.

i. **Taxes**. General advice and assistance may be given in the area of federal, state and local taxes. Tax forms may be made available for filing returns and clients may be assisted in preparing appropriate forms. Command Directors of Legal Assistance are encouraged to participate in the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) and electronic filing ("E-File") programs. Tax filing assistance is authorized for civilian Coast Guard employees in the same manner as for eligible military members, as determined by G-L memo 5801 dated February 26,1997.

j. **Nonsupport and Indebtedness**. Clients may be counseled concerning claims pending against them. Advice and assistance may be provided to persons wishing to make claims of nonsupport.

k. **Civil Rights Matters**. Concerning complaints of discrimination in the civilian community, legal assistance attorneys may provide advice regarding applicable federal, state and local laws, and may work with the local Civil Rights Counselor/Facilitator to resolve the complaint. Advice in this area should be considered high priority. Legal assistance services may not be provided for complaints of discrimination internal to the Coast Guard.

l. **Adoptions and Name Changes**. Advice regarding adoption and change of name may be given, together with assistance in preparing the necessary documentation.

m. **Domestic Relations**. Legal assistance may be provided in marriage, annulment, legal separation, divorce, financial nonsupport, child custody and visitation, and paternity cases to the extent qualified legal assistance resources are available. The state bar of the attorneys involved regulates representation of both parties in domestic relations cases by attorneys from the same legal office, and it is discouraged. Efforts should be made to refer one of the parties to a legal assistance attorney outside the office (including DoD legal assistance resources), a pro bono or court sponsored program such as a court facilitator, or to a local civilian attorney.

n. **Powers of Attorney**. Special and general powers of attorney may be prepared, notarized and delivered.

o. **Military Power of Attorney**. Federal law (10 USC 1044b) provides special status for powers of attorney executed by legal assistance clients. Military powers of attorney are exempt from state law requirements as to form, substance, formality, or recording and are entitled to the same legal effect as a power of attorney prepared and executed in accordance with local requirements. Military powers of attorney must claim this special status; to do so, the standard preamble contained in enclosure (4) shall be used.

p. **Minor Criminal Matters**. Legal assistance attorneys may provide advice in the case of minor criminal matters such as traffic infractions. Assistance in these matters may include activities such as correspondence, preparation of documents, and advice for pro se representation. In providing this advice special care should be taken to avoid any possibility of conflict with potential UCMJ matters. No advice will be provided for any Federal criminal proceeding (including any military criminal justice matter under the UCMJ and cases before a Federal Magistrate's Court).

q. **Notarizations** of documents may be provided in accordance with the policies outlined in paragraph 9.d below.

r. **Decedent & Casualty Affairs**. Though not strictly within the legal assistance program, legal assistance attorneys may receive questions about entitlements and procedures when a member dies or is injured on active duty. Legal assistance attorneys thus should familiarize themselves with these procedures and entitlements, develop working relationships with local CACOs and casualty affairs staffs and may provide basic information and assistance to clients regarding them. Questions may be referred to G-LMJ-1/PDES Counsel at CG Headquarters.

s. **Torts**. Assistance may be provided in matters dealing with personal injury and other torts when in the judgment of the Command Director of Legal Assistance it is necessary for personnel readiness. Assistance normally should not be provided for those cases in which the likelihood of monetary damages would facilitate the availability of civilian representation.

(1) **FMCRA**. In cases involving personal injury to Coast Guard personnel the requirements of the Federal Medical Care Recovery Act (FMCRA) must be met. Commandant Instruction 6010.16(series) directs commanding officers to ensure that "beneficiaries at their units," that is, assigned members and their dependents who have received medical care at government expense, complete and submit a form CG-4899 for any injury for which a third party may be liable. This form provides the Coast Guard all the information needed to begin the process of recovering the cost of medical care from the parties responsible. An essential element of representing a personal injury client is ensuring that the government lien established by the FMCRA is considered and liquidated in the course of the representation. Early notice to the government also ensures that the attorney will be provided all the medical records and a unified billing statement for medical costs. Even though the legal assistance client cannot recover for these medical costs, such documentation also benefits the legal assistance client because other damages, such as pain and suffering, are often based on the amount of medical expenses. Legal

assistance attorneys advising members in matters in which the FMCRA may apply, shall explain the FMCRA legal requirements and inform clients that they must comply with the notice requirements. Failure to do so before settling a case could result in the Coast Guard instituting debt collection measures against the client. In such cases, legal assistance clients may agree to waive any attorney client confidentiality with regard to the matter so the legal assistance attorney can file the notice for them. Legal assistance attorneys may file form CG-4899 on behalf of the client. The Office of Claims & Litigation (G-LCL) at CG Headquarters can provide additional information and assistance. G-LCL also has the authority to waive or compromise the United States FMCRA lien against any settlement or judgment the legal assistance client may receive.

t. **Other Services**. Assistance also may be provided in matters dealing with bankruptcy, naturalization and citizenship to the extent that legal assistance resources and expertise permit.

8. **LIMITATIONS ON LEGAL ASSISTANCE SERVICES**. Requests for legal assistance should be screened prior to scheduling an appointment with a legal assistance attorney. This will ensure that members seeking assistance in areas falling outside the scope of the legal assistance program are promptly referred to appropriate alternative resources, and will also avoid the inadvertent formation of inappropriate attorney-client relationships. Legal assistance may not be provided in the following areas:

a. **Military administrative matters**. The legal assistance program does not encompass representation, advice or assistance to an individual with a complaint under Article 138 of the UCMJ, a petition for relief to the Board for Correction of Military Records (BCMR) or the Personnel Records Review Board (PRRB), a rebuttal to a decision of a medical board or from the physical disability evaluation system (PDES), evaluation appeals or rebuttals, or any other similar administrative complaint. Members seeking advice on military administrative matters should be referred to the appropriate staff element or command advisor. No attorney-client relationship is established by this referral. Although legal assistance attorneys should avoid entering into attorney-client relationships in cases involving military administrative matters, nothing in this instruction precludes a Coast Guard attorney, acting in the role of command legal advisor, from bringing appropriate matters to the attention of the cognizant command or staff element and providing pertinent legal advice. A legal assistance provider may not represent, advise or assist an individual with the presentation of any discrimination, other civil rights, or constitutional claim or complaint against the Government. A legal assistance provider may not represent, advise or assist an individual who is a party, witness, or subject of an official criminal or administrative investigation of the Coast Guard, Department of Transportation, Department of Defense or any agency within DOT or DOD, concerning that official investigation.

b. **Private income producing matters**, including but not limited to, issues pertaining to the establishment and management of small business organizations (i.e., partnerships and small, closely-held corporations). The lease of a principal residence shall not be considered a private income-producing matter for purposes of this Instruction.

c. **Claims.** Legal assistance providers may not advise or assist in the prosecution of any tort, military, personnel, TRICARE/CHAMPUS or other monetary claim against the United States, or

the defense of any monetary claim by the United States against an individual, except as authorized. Legal assistance providers may inform an interested person about the statute of limitations, how to obtain claim forms or where to file them, and direct the claimant/potential claimant to the appropriate claims office or provide referral assistance to retain civilian counsel.

d. **Complex estate planning and probate matters**. If a client requires estate planning assistance because of the size and/or complexity of his or her estate or other special considerations, the client should be advised to seek expert civilian assistance. Complex estate plans may require coordination of a variety of legal and financial instruments and the continuous management of property, all of which are beyond the scope of legal assistance.

e. In-court representation of members except as permitted under the Extended Legal Assistance Program (ELAP) program.

9. ORGANIZATION AND RESPONSIBILITIES.

a. **Coast Guard Chief of Legal Assistance**. A member of the Chief Counsel's staff will be designated as the Coast Guard Chief of Legal Assistance, and as such is responsible for the overall management of the Coast Guard Legal Assistance Program. The responsibility of the Coast Guard Chief of Legal Assistance includes furnishing information about current developments in the law, model programs and suggested procedures to Legal Assistance Attorneys. The Coast Guard Chief of Legal Assistance also shall maintain such liaison with the American Bar Association, other civilian bar associations and the other Armed Services' Directors of Legal Assistance as deemed advisable. The Coast Guard Director of Legal Assistance is the Coast Guard's representative to the Joint Service Committee on Legal Assistance.

b. **Command Director of Legal Assistance**. The following positions are designated Command Directors of Legal Assistance and have the responsibility for the delivery of legal assistance services within their respective commands and local geographic areas of responsibility: The Chiefs of the Maintenance and Logistics Command Legal Divisions, District Legal Officers, Legal Officers at the Coast Guard Academy, Training Center Yorktown, Training Center Cape May, Coast Guard Yard, and the assigned Greater Antilles Section Office attorney. The Seventeenth District Legal Officer is designated the Command Director of Legal Assistance for all of Alaska (including ISC Kodiak). The Chief Counsel will designate, from among the G-L staff a director for Headquarters and the National Capital Area. Currently, the Command Director of Legal Assistance for CGHQ is the Chief, Office of Military Justice. Command Directors of Legal Assistance shall:

(1) Coordinate the provision of legal assistance services to eligible personnel located within their geographic area. Legal assistance services are provided on the basis of geographic proximity, rather than chain-of-command lines of authority. Thus, all eligible personnel are free to seek legal assistance services from the nearest Coast Guard legal office.

(2) Determine the nature and extent of legal assistance to be made available based upon the office workload, staff resources and expertise.

(3) Appoint personnel to provide legal assistance and supervise, direct and control the assistance rendered. This includes the approval of Coast Guard law specialists serving in non-legal assignments to provide legal assistance services to their commands.

(4) Ensure that each attorney, paralegal, legal technician and administrative support staff who provides (or assists in providing) legal assistance is thoroughly briefed on the office legal assistance program, including the principal types of problems encountered as well as any peculiarities in the law of the local jurisdiction that may impact upon the assistance given.

(5) Ensure that only qualified individuals provide legal assistance.

(6) Maintain such liaison with local bar organizations and legal aid services as deemed advisable.

(7) Conduct an ongoing exchange of legal assistance information within the office to ensure dissemination of developments and changes in the law.

(8) Maintain individual client or matter records. These records shall contain information regarding the type, quantity, and result, of all legal assistance services provided. Electronic case management tools shall be used whenever possible. Consistent with other Coast Guard records management practices, legal assistance case records shall be maintained for a minimum of three (3) years, or longer if required by an attorney's state bar. Legal Assistance files are included under the system notice DOT/CG 511 for Privacy Act purposes.

(9) Develop effective liaison with other Armed Forces legal assistance offices within their area of responsibility.

c. **Legal Assistance Attorneys.**

(1) **Definition.** A legal assistance attorney is any active duty or reserve law specialist, civilian attorney employed by the Coast Guard, reservist (officer or enlisted) who is a licensed attorney but not a CG law specialist, or qualified member of the Coast Guard Auxiliary, who is authorized or directed by appropriate authority to provide legal assistance services.

(2) **Designation and Qualification.** Each legal assistance attorney shall be a member of the bar of a Federal court or the highest court of a state, territory or the District of Columbia. A Command Director of Legal Assistance may designate any qualified person to perform legal assistance duties for eligible personnel. With the approval of the Command Director, civilian attorneys employed by the Coast Guard and Coast Guard law specialists occupying non-legal billets may provide legal assistance. Officers in the latter category shall obtain their Commanding Officer's consent in addition to the approval of the Command Director prior to providing legal assistance services. Coast Guard Reserve attorneys may provide legal assistance with the consent of the attorney's command and the approval of the appropriate Command Director of Legal Assistance. Qualified members of the Coast Guard Auxiliary serving under orders may also provide legal assistance with the approval of the Command Director of Legal Assistance.

(3) **Duties and Responsibilities**. In providing legal assistance, legal assistance attorneys may develop attorney-client relationships and shall represent clients zealously within the bounds of professional ethics. Legal assistance attorneys, acting within the scope of their authority, perform an official Coast Guard duty. However, attorneys providing legal assistance do not speak for the United States nor for the Coast Guard, but rather as attorneys for their individual clients. Whenever a legal assistance attorney interacts with third parties (including other members of the Coast Guard) on behalf of their client, the attorney shall ensure that the third party is advised that the legal assistance attorney acts on behalf of the client and not as a representative of either the Coast Guard or U.S. Government. Legal assistance attorneys are authorized to sign correspondence on Coast Guard letterhead using the title "Legal Assistance Attorney." Attorney-client relationships shall be carefully guarded, and all correspondence, files, and information received shall be considered and treated as legally privileged and administratively confidential. Administrative and clerical personnel involved in the delivery of legal assistance services shall safeguard the confidential nature of client matters. Legal assistance attorneys, acting in conformance with applicable rules of professional conduct, may refuse to accept a client, refuse to establish an attorney-client relationship, or terminate any such relationship at any time while performing legal assistance duties. Upon request, attorneys taking such action shall provide a brief explanation of the reason for doing so to the responsible Command Director.

d. **Legal Assistance Notaries**.

(1) Pursuant to 10 USC 1044a, the following individuals, including reservists, have the general powers of notary public and of a consul of the United States in the performance of all notarial services to be used by any of the individuals listed in subparagraph (2) below.

(a) All law specialists.

(b) All civilian attorneys employed by the Coast Guard serving as legal assistance attorneys.

(c) Chief Warrant Officers and Petty Officers assigned to a Coast Guard legal office or staff, serving under the immediate supervision of a Legal Assistance Attorney. "Immediate supervision " means under the direct guidance or management of another. Immediate supervision does not require a supervisor to be present at all times when the individual being supervised is performing assigned duties, nor does it require a performance rating relationship. However, the supervisor and the person supervised must perform duty in the same general location.

(d) Commissioned Officers and Petty Officers when designated in writing by the responsible Command Director of Legal Assistance, acting under the training and supervision of a legal assistance attorney. Notarial authority for this section is limited to documents prepared by a legal assistance attorney.

(2) Individuals listed in subparagraph d (1) above may provide notarial services for the following:

(a) All members of any of the United States Armed Forces.

(b) All other individuals eligible for legal assistance under the provisions of 10 USC 1044 and this instruction.

(c) All individuals serving with, employed by, or accompanying the Armed Forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(d) All other individuals subject to the Uniform Code of Military Justice (UCMJ) outside the United States.

(3) **Records**. All Legal Assistance Notaries shall maintain a personal log of notarial acts including the name of the client, nature of the document and date of notarization and annotation that the client provided their military identification card.

(4) **Seals**. The Command Director of Legal Assistance shall provide to each Legal Assistance Notary within their area of responsibility, such seals or stamps as may be necessary in the performance of their duties. Such seals or stamps shall at a minimum recite the authority under which the Legal Assistance Notary acts: i.e. 10 USC 1044(a).

e. **Civil Notaries**. Many legal offices have staff members qualified and commissioned as notaries within their local jurisdictions. The services provided are within the limits of the commission under the rules and regulations for the jurisdiction and may include notarizations for civilian employees. No fees may be charged for these services.

10. EXPANDED LEGAL ASSISTANCE PROGRAM (ELAP). Command Directors of Legal Assistance may authorize the provision of expanded legal services to those military personnel and their dependents that cannot reasonably afford legal fees without undue financial hardship. Subject to the restrictions enumerated below, state bar requirements, and local court rules, expanded legal services may include in-court representation before federal, state, and local courts and administrative agencies in minor civil and criminal matters (those not involving possible incarceration), except when the United States of America is an adverse party. With the approval of the Command Director, legal assistance attorneys may associate themselves with other attorneys to facilitate representation by civilian counsel from other jurisdictions. Command Directors of Legal Assistance shall determine eligibility requirements for determining whether a legal assistance client may receive ELAP services, including representation in civilian courts. In developing these requirements Command Directors of Legal Assistance may utilize the guidelines of the Legal Services Corporation found in 45 CFR 1611.1 *et seq.*

11. PREVENTIVE LAW. Informing and educating Coast Guard members and their dependents regarding their legal rights, privileges, obligations and responsibilities is an important part of the Coast Guard legal assistance program. To this end, legal assistance offices are encouraged to have an active preventive law program.

a. **Preventive Law Objectives**.

(1) Improve the overall readiness, efficiency and performance of personnel.

(2) Decrease the number of personal legal problems faced by Coast Guard units.

(3) Encourage persons to anticipate potential legal problems and seek professional counsel when necessary.

(4) Provide commanding officers and their staffs with a channel of communication for legal assistance matters.

b. **Preventive Law Actions**. Initiative and creativity are important parts of an effective preventive legal assistance program. Typical activities include:

(1) Informational briefings, seminars and discussions.

(2) Publications & newsletters.

(3) Videotapes.

(4) Use of Internet web sites and pages.

c. **Circuit-Riding Program**. Command Directors of Legal Assistance will ensure, to the fullest extent practicable, that the availability of legal assistance does not rest solely on proximity to a legal office. The effective delivery of legal services to all personnel requires the regular scheduling of routine legal assistance visits and training on legal assistance and preventative law topics by legal assistance attorneys at commands remote from legal offices. It is appropriate to combine legal assistance visits with those made to provide other on-scene legal support for the command. Legal assistance visits should not be made unless the sponsoring officer is prepared to dedicate the resources necessary to satisfy all requests for legal assistance in a timely manner.

d. **Legal Readiness**. Commanding Officers are encouraged to seek legal assistance services for their personnel. This should include adding legal assistance readiness checks to "check-in" procedures to ensure members have the proper wills, powers or attorney, etc. before an emergency arises. Command Directors of Legal Assistance will assist by providing legal readiness checklists, information and legal assistance visits.

12. VOLUNTARY SERVICES. Several mechanisms exist to accept voluntary services in support of the legal assistance program. Command Directors of Legal Assistance are encouraged to consult with their servicing civilian personnel offices to determine what intern and other volunteer programs may be available for legal, paralegal and administrative. In addition, the use of Coast Guard Auxiliary attorneys to support legal assistance efforts is authorized and encouraged. Qualified members of the Coast Guard Auxiliary may be designated as legal assistance attorneys and be placed under orders to provide legal assistance services to eligible beneficiaries (see 14 USC §822).

13. **ETHICS AND PROFESSIONAL RESPONSIBILITY**. Legal assistance attorneys exercise independent professional judgment on behalf of clients within the scope of the legal assistance program as defined by this directive. Each attorney is a professional responsible for their own work product and that of any paralegal, legal technician, administrative or clerical personnel to whom legal assistance functions are delegated. Supervisory attorneys are responsible for the work of their subordinates.

a. **Rules of Professional Responsibility**. The Coast Guard does not have its own set of professional responsibility rules for military law specialists and civilian attorneys. Rather, legal assistance attorneys are responsible to their licensing jurisdiction for compliance with rules of professional conduct & responsibility. Additional guidance may be found in the American Bar Association Model Rules of Professional Conduct as well as ABA formal and informal ethics opinions. There may be times when Coast Guard practice may raise questions of conflict with these local rules and regulations. If this situation arises, the legal assistance attorney should first request advice and guidance from their immediate supervisor and their Command Director of Legal Assistance. If the issue cannot be resolved it will be forwarded to the Coast Guard Director of Legal Assistance. The Chief Counsel's Office of Legal Policy & Program Development (G-LPD) has the responsibility of assisting in the resolution of questions and conflicts involving ethical issues and rules of professional responsibility.

b. **Electronic Advice**. The explosion in the use of electronic media of all types has created great opportunities to provide legal assistance to individual remote from the legal assistance office. Special care must be taken to safeguard client confidentiality when using email, fax, video teleconferencing and other forms of electronic media. However, because technology and its uses are advancing so rapidly, it is difficult to provide definitive guidance. The ABA has issued rules and guidance on the use of such media as email and legal assistance attorneys are advised to review such opinions.

c. **Conflicts**. Within a legal assistance office, individual legal assistance attorneys shall not knowingly undertake to represent a client whose interest in a matter conflicts with that of a preexisting legal assistance client in that office. When a conflict exists, the excluded party should be referred to another legal assistance office, to an independent duty law specialist or reservist legal assistance attorney or to a DoD legal assistance office. Command Directors of Legal Assistance are encouraged to coordinate work with other Armed Forces legal assistance offices within their areas of responsibility to facilitate the handling of conflicts cases among each other. When no alternative legal assistance provider is reasonably available, conflicted individuals should be provided information on how to retain civilian counsel.

(1) **Conflict Checking**. As a matter of sound legal practice, conflict checks shall normally be performed before accepting a legal assistance client and establishing an attorney-client relationship. A non-attorney staff member normally accomplishes these during the "intake" process. The electronic CMMT system shall be used as the primary means of performing conflict checking. It is recognized there may be times when normal conflict checking is not possible (e.g. emergency situations, technical difficulties, etc.). In such times the Command Director of Legal Assistance shall make a determination as to procedures to be followed and what services (if any) may be provided.

(2) **Sole Practitioners**. The legal officer billets at Training Centers Yorktown and Cape May and the Coast Guard Yard pose unique problems of potential conflicts of interest because, in addition to being command legal assistance attorneys, they are also the Staff Judge Advocate. These independent duty legal officers shall not see a legal assistance client who is under investigation of potential UCMJ violations, or has current UCMJ charges pending. Any question or doubt whether or not there is an on-going military justice issue shall be resolved by the independent duty legal officer declining representation for legal assistance. The attorney in these situations shall assist the client by providing referrals to alternate sources of legal assistance.

d. **Referrals**. On occasion, the legal assistance attorney may be unavailable, or a client may present a complicated case requiring specialized legal skills or which ultimately must be handled in court. In each of these instances, the client shall be referred to a legal services office, a local bar referral service or in rotation from a list of local attorneys who have provided competent service for reasonable fees to service members in the past. The names of no fewer than three attorneys or two attorneys and a bar or legal service office shall be given to a client desiring referral. Referrals shall not be routinely made solely to retired or reserve Coast Guard members.

e. **Non-Attorney Staff**. Command Directors of Legal Assistance and legal assistance attorneys shall be guided by the American Bar Association Model Rules of Professional Responsibility, Rule 5.3, *Responsibilities Regarding Non-Lawyer Assistants*, in reviewing ethical and conflict of interest issues in respect to their non-attorney staff engaged in assisting in the provision of legal assistance to clients. The comment to rule 5.3 states, "A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline."

f. **Standards of Conduct and Ethics**. Legal assistance personnel are reminded to ensure their actions conform to the standards of conduct applicable to military personnel and government employees. (See 5 CFR Part 2635). For questions regarding these rules, legal assistance attorneys should consult their appropriate ethics advisors.

g. **Prohibition Against Compensation for Legal Assistance Services**. Legal assistance is a free service for eligible recipients. No legal assistance attorney, paralegal, legal technician, administrative or clerical staff, active duty, reserve, civilian or military, may accept or receive any compensation in any form, directly or indirectly, other than official government compensation, for any legal assistance services provided.

h. **Complaints Against Legal Assistance Attorneys**. Alleged professional misconduct by Coast Guard legal assistance attorneys should be reported, together with appropriate supporting information, to the Command Director of Legal Assistance who has supervisory responsibility for that attorney. Allegations involving Command Directors of Legal Assistance shall be

forwarded to the Coast Guard Chief of Legal Assistance. Coast Guard legal officers, staff judge advocates, or other legal staffs who receive such complaints shall immediately forward them to the responsible Command Director (or Chief of Legal Assistance). Command Directors may refer to Section 6-G of the Coast Guard Military Justice Manual (COMDTINST 5810.1(series)) for general guidance in the handling of allegations of professional misconduct against legal assistance attorneys but shall at a minimum conduct an initial screening of the complaint and if warranted by the screening shall convene an official inquiry into the complaint. The inquiry shall follow the procedures for a one-officer standard informal administrative investigation (see, Administrative Investigations Manual (AIM), COMDTINST M5830.1 (series)) to the extent practical. The Chief Counsel shall be the Final Action on such inquiries.

14. LEGAL ASSISTANCE AWARDS AND RECOGNITION.

a. **ABA LAMP Award**. Annually, the American Bar Association Standing Committee on Legal Assistance for Military Personnel (LAMP) recognizes individuals or commands that have accomplished exceptional achievement(s) or exceptional service to the armed forces legal assistance effort. The Chief Counsel and/or the Coast Guard liaison to the committee make nominations for these awards. Recommendations for award nominations shall be submitted between September 1st and November 30th of each year and should encompass a twelve (12) month period ending during that period. Recommendations should be forwarded to the Coast Guard Director of Legal Assistance in the format specified annually by the LAMP Committee (which will be provided upon receipt).

b. **Chief Counsel Recognition**. The Chief Counsel will also appropriately recognize outstanding efforts in legal assistance. Forward requests for Chief Counsel recognition (such as Flag Letter, letter of appreciation, etc.) by electronic mail via the appropriate Command Director of Legal Assistance to the Coast Guard Director of Legal Assistance. Include a brief statement of what recognition is recommended along with a summary of the action being recognized.

c. **Official Awards**. Command Directors of Legal Assistance should use the official military and civilian awards and recognition system as appropriate, to recognize attorneys and support staffs that contribute beyond the expected to the CG's legal assistance effort. In addition, Coast Guard Pubic Service Awards should also be considered as appropriate for recognition of members of the general public.

15. RELATIONS WITH OTHER ORGANIZATIONS.

Legal assistance attorneys are strongly encouraged to establish and maintain liaison with the legal assistance offices of other Armed Forces commands within their area of responsibility. Legal assistance attorneys should establish and maintain contact with Coast Guard reservists who are attorneys, local bar associations, consumer protection associations, and legal referral offices through which legal services may be available. If another service fails to provide legal assistance to Coast Guard personnel in an area lacking a local Coast Guard legal office, the Command Director of Legal Assistance should notify the Coast Guard Director of Legal Assistance.

16. **DATA COLLECTION**. There is an ongoing requirement for case management in the legal assistance practice. This provides for timely and accurate case tracking and the underlying information necessary for effective conflict checking. There is also a recurring requirement for specific legal assistance data and information. This permits effective practice area management as well as provides information needed for reports to the Joint Services Legal Assistance Committee and the ABA Standing Committee on Legal Assistance. To provide this capability, legal assistance attorneys will use the standard Case, Matter Managements & Timekeeping (CMMT) computer application maintained by the legal program. Specific details on the use of the current CMMT are laid out in Implementation of the Legal Automated Workstation Database, COMDTINST 5230.53(series) and are included in enclosure (5) to this Instruction. Legal assistance practice area management information will normally be collected via the CMMT twice a year in conjunction with the development of the Chief Counsel's annual and mid-year reports.

17. **TECHNOLOGY TOOLS**. Technology is an integral part of the practice of law and its effective use will enhance our practice. A core competency of Coast Guard lawyers is the effective use of technology in the delivery of legal services. Specific technology applications are provided by the legal program to aid in the delivery of effective services.

    a. **DLWills**. The standard will-writing software used by all Armed Forces legal assistance programs is DLWills, a commercial application produced in a special version for the military. The DLWills application provides automated will, power of attorney and advance medical directive preparation.

        (1) **Use**. Use of DLWills is encouraged but not required. Each legal assistance attorney must choose, based on their professional judgment, the best means of preparing a will and estate plan for a client. However, DLWills is the only computer-based will preparation software approved and maintained by the Coast Guard.

        (2) **Changes**. Recommendations for changes to DLWills and identification of problems or errors should be sent to the Coast Guard Director of Legal Assistance who will pass them on as needed to the Joint Services Legal Assistance Committee or the Chief Counsel IT staff as appropriate.

        (3) **Licenses**. DLWills requires a license for each workstation/computer the application is installed on. Legal offices requiring additional licenses should contact the Office of Legal Policy & Program Development IT staff.

    b. **DocuShare**. DocuShare is a commercial (Xerox), web-based document management system that lets you easily store, access, and share information in a secure and collaborative work environment. DocuShare also allows any user on any system to post and retrieve information in any format. Text, scanned images, video clips, Microsoft Office documents, sound files, executables, web links, bulletin boards, calendars and more can be managed over the Web, without using complex software, browser plug-ins, or client-side applications. DocuShare is the Coast Guard legal program's primary legal document archiving, storage, and retrieval system, and is a key element in its Knowledge Management efforts. Within the legal assistance practice area, DocuShare affords legal assistance offices and attorneys the capability to store and share

information across the entire range of legal assistance subject areas. It also can provide a secure means to collaborate among legal assistance attorneys and even share materials with clients.

(1) **Use**. The DocuShare Legal Assistance Collection will be organized by legal assistance subjects and shall be used to store materials and information that may be useful to others in the program, be valuable for historical purposes, or otherwise is worthy of archiving. All legal assistance attorneys shall become familiar with the use of DocuShare and its features. GG-LPD can provide training as required.

(2) **Contributions**. The success and utility of the DocuShare legal assistance knowledge base relies on contributions by legal assistance attorneys. Command Directors of Legal Assistance should ensure materials of value for reference, historical, and collaborative purposes are added to the DocuShare legal assistance collections.

c. **FLITE**. Access to the US Air Force managed FLITE legal information database is available to all CG legal assistance attorneys and support staff. FLITE may be accessed via the Coast Guard DocuShare system.

d. **JAGCNET**. The US Army JAGCNET legal information system represents a wealth of information and material of value to legal assistance attorneys. Furthermore, the JAGCNET forums provide the means to access the entire Army legal assistance community for questions and information. Legal assistance attorneys are encouraged to use and participate in JAGCNET legal. JAGCNET may be accessed via the Internet at: https://www.jagcnet.army.mil. A password is required which all CG attorneys may obtain from the Army via the JAGCNET web site.

e. **Internet**. The Legal Assistance home page and web site on the CG Internet provides a means to deliver legal assistance information directly to eligible beneficiaries wherever they may be. It also provides information on how to access legal assistance services. The success of the legal assistance web page depends on timely contributions of materials from legal assistance offices. Command Directors of Legal Assistance are encouraged to contribute timely, relevant materials of interest to legal assistance clients.

f. **New Tools**. Recommendations for new technology tools and changes to the way existing tools are used should be made to the Coast Guard Director of Legal Assistance for consideration. The Coast Guard Director of Legal Assistance will consult with the legal program IT coordinator and, where appropriate, the Chief Counsel's Technology Advisory Group regarding the practicality of procuring new applications. Since computer applications are expensive and resource intensive, legal assistance needs must be prioritized against all other legal program requirements.

18. TRAINING. Legal assistance attorneys and paralegals should endeavor to remain current on the law. In support of this, the Office of Legal Policy & Program Development (G-LPD) shall include legal assistance training as part of the legal program formal training plan. This training represents a "minimum". Command Directors of Legal Assistance should seek local training on topics relevant to the delivery of legal assistance services within their jurisdictions. Funding for courses contained within the legal program's formal training plan will be provided by G-LPD. Other professional development opportunities must be funded locally. A current list of legal assistance courses, which

are contained in the legal program's formal training plan, may be contained from G-LPD. Suggestions for additions to this list should be forwarded to G-LPD.

R. F. Duncan
Chief Counsel

Encl: (1) Military Testamentary Preamble
(2) Military Testamentary Instrument Self-Proving Affidavit
(3) Military Advanced Medical Directive Preamble
(4) Military Power of Attorney Preamble
(5) Law Manager Instructions
(6) Department of Defense Directive 1350.4
(7) MOA Establishing the Joint-Service Committee on Legal Assistance.

MILITARY TESTAMENTARY PREAMBLE

This is a MILITARY TESTARMENTARY 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 a possession of the United States. Federal law specifies that this document shall receive the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. It shall remain valid unless and until the testator revokes it.

MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT

AFFIDAVIT

WITH THE ARMED FORCES

AT _____

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

_____	_____
Testator/Testatrix	Printed Name
_____	_____
Witness Signature	Printed Name
_____	_____
Witness Signature	Printed Name

Subscribed, sworn, to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date _____.

(Signed)

_____

_____

(Official Capacity of Person Administering the Oath)

MILITARY ADVANCED MEDICAL DIRECTIVE PREAMBLE

This is a MILITARY ADVANCED 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 advanced medical directive from any requirement of form, substance, formality, or recording that is provided for advanced medical directives under the laws of a State. Federal law specifies that this advance medical directive shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the state concerned.

MILITARY POWER OF ATTORNEY PREAMBLE

This is a MILITARY POWER OF ATTORNEY prepared pursuant to section 1044b of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is provided for powers of attorney 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 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.

POLICY & GUIDANCE FOR THE USE OF LAW MANAGER IN THE LEGAL ASSISTANCE PRACTICE AREA

1. **Law Manager**. Law Manager is a commercial off the shelf computer application (COTS) designed for legal case and matter management tailored for use by the Coast Guard legal program. It employs a web-based interface to provide individual attorneys and office managers a flexible tool for managing case-related information, while at the same time gathering essential program data. Law Manager is to be used in accordance with Commandant Instruction 5230.53(series) as modified by the below requirements.

2. **Case/Matter Management**. Law Manager provides tools to assist attorneys, support staff and supervisors. These tools include the capability to open and describe cases and matters in terms of various pre-determined Practice Areas and types of legal work performed. A scheduler is available to track deadlines and events, a contact manager provides a record of persons related to cases, and also provides the conflict checking capability. There is also notes and narrative capability, as well as the ability to link other documents and files to Law Manager cases and matters. Offices can track case-load by unit. In addition to containing a full text search capability, pre-defined reports can be generated. Ad Hoc reporting is available to provide additional information sorted by any of the data items entered in the system.

3. **Definitions**.

   a. **Legal Assistance Case**. A "case" for tracking legal assistance matters is defined as: *A distinct legal matter handled for an eligible recipient of legal assistance services (a client).* A single eligible recipient may be involved in several cases involving several distinct legal matters. A "matter" is generally used to describe projects or tasks that do not involve individual representation. For the purposes of Law Manager use, no distinction between case and matter is required.

      (1) For example, a member who received legal assistance advice on a landlord/tenant matter, had a will/living will prepared, and was assisted on a debt matter has been involved in 3 "cases".

      (2) Similarly, a client who is seen by a legal assistance attorney many times regarding the same matter is 1 case. The added resource used for these "high maintenance" cases can be reflected in timekeeping.

   b. **Practice Area**. Practice Areas are the general areas of law in which CG attorneys work. *Legal Assistance* is one Practice Area.

   c. **Practice Area Type**. Describes the legal assistance services provided. Types are the same for all legal assistance offices and can only be changed by the System Administrator at G-LPD. Legal

Assistance "types" are listed below. Recommendations for changes to the legal assistance types should be made to the Coast Guard Director of Legal Assistance.

1. **Sub-Type.** Can be used to further define a type.

2. The current legal assistance practice area types are:

   Advance Medical Directives/DPOA/Living Wills
   Casualty Assistance
   Guardianship
   Probate
   Wills and Estates
   Adoption
   Child Custody
   Dissolution and Separations
   Name Change
   Family Support
   Paternity
   Bankruptcy
   Claims
   Consumer
   Contracts
   Debts
   Domicile
   Insurance
   Landlord/Tenant
   Personal Property
   Powers of Attorney
   Real Estate
   SSCRA
   Tax
   Disaster Relief
   Notary
   Minor Civil Criminal
   Immigration and Citizenship
   Torts
   Veterans Reemployment
   Articles
   Classes/Briefings/Training
   Tax- Electronic Tax Filing
   Tax- VITA/Form Preparation
   Tax- VITA/Questions
   Motor Vehicle

Office Management
Personal Finances
Family Law
Veterans Reemployment, USERRA
Mobilization

d. **Matter Owner.** The attorney to which the case or matter is assigned.

e. **Matter Player**. A person who has a role in a case or matter.

4. **Requirements**.

a. For every legal assistance case, the following minimum information is required.

Matter Name:	Specific name of the case; local offices may develop their own naming policies and conventions.
Matter Type:	The specific type of legal assistance being provided; selected from drop-down list.
Client Name:	Name of the client; not the CG unit or organization (except for preventive law matters)
Entity Type:	The status, *member* or *dependent*, of the client.
Service:	Client or sponsor's armed force (enter the armed force of the sponsor for dependent clients; do not use "none")
Sponsor:	Client or sponsor's military status (active, reserve, etc.)
Player:	In the Matter Notebook; designating the roles of related people, including the responsible legal assistance attorney is a key to complete conflict checking.
Owner:	In the Matter Notebook; this must be the legal assistance attorney assigned to the case.
Time:	Enter time spent on a case as required by supervisor; minimum increment is 15 minutes (.25); The legal assistance program requirement is for time collection in accuracy of 1 hour; updated at least monthly, preferably more frequently.
Program:	Set to default to "personnel".

b. Other information such as address, phone, notes, documents, etc. may be added as desired and required for accurate conflict checking and case management.

5. **Conflict Checking**. Law Manager provides for robust conflict checking using the entity notebook. By performing a search on any name, Law Manager will identify matches with other entities already entered into the database. Using more specific identifiers can provide more detailed results.

In addition, if the relationship of clients to matters and cases is established, the Legal Assistance Attorney can easily review the nature of the matters any particular entity is involved with to establish whether or not a conflict exists. Of course the software will not do everything for you! Someone must examine the information presented by Law Manager to determine if a conflict does in fact exist. Further, Law Manager will only display the information inputted to it. To make conflict checking work, people (entities) need to be entered and their roles in cases defined.

a. Conflict checking is accomplished using the **Entity Notebook**. The general procedures are as follows:

   1. Law Manager should be logged in and running on the desktop (this should be the normal practice by Legal Techs and other support staff who do client intake).
   2. If not already open, select and open the *Entity Notebook*; this will bring up the main entity detail screen and the *Explorer* tab.
   3. Enter the name of the potential client in the name fields; select *Find* (the binoculars in the toolbar).
   4. The results will be displayed by indicating if the potential client is already in the database (the entity main screen will return filled out). Anyone already in the database and related to the potential client will be indicated in the *Explorer* tab below.
   5. By using the *Explorer* tab, relationships can be examined for possible conflicts.

6. **Reports & Queries.**

a. *Queries* are searches of the database. They permit the user to specify the way in which LM displays information on their computer. This can greatly streamline the process of data entry. Users can store multiple queries for different purposes. For example, a legal assistance paralegal may use one query to view all cases and the documents related to them and another to speed timekeeping. A legal assistance manager may have a query that shows all the cases, listed by attorney (i.e. "owner") for the office and another query set up for just their cases. The effective use of saved queries can greatly reduce the time spent looking for information and entering data.

b. *Reports*. Law Manager information that can be formatted in a desired way and outputted, either by printing or exporting to another format (text, spreadsheet, etc.). A set of standard reports for legal assistance have been created by the Coast Guard Director of Legal Assistance with the help of the Office of Legal Policy & Program Development (G-LPD). Requests for assistance in creating custom reports should be directed to G-LPD/IT. The Law Manager reporting tool is somewhat limited in the types of reports it can produce. The System Administrator may produce more detailed reporting information from the database. Please ask if you require these services. Samples of standard reports useful to legal assistance are attached. Standard legal assistance report formats may be found in DocuShare.

7. **Feedback**. Your feedback and suggestions for improvement are desired. Furthermore, others will benefit from your Law Manager successes and use. Please share your tips, hints, queries, reports, etc. in the "Best Practices" collection in DocuShare: https://afls16.jag.af.mil/dscgi/ds.py/View/Collection-4450. Problems, suggestions, etc., should be forwarded to the System Administrator in G-LPD via email.

8. **Data Calls.** Because of the centralized structure of the Law Manager database, no field data calls are required. The Coast Guard Director of Legal Assistance is able to directly access practice area information based on the required data entries described above. No personal information regarding any clients or cases will be used for headquarters practice area reporting.

DEPARTMENT OF DEFENSE DIRECTIVE 1350.4

Department of Defense

DIRECTIVE

NUMBER 1350.4

April 28, 2001

Administrative Reissuance Incorporating Change 1, June 13, 2001

USD(P&R)

SUBJECT: Legal Assistance Matters

Reference: (a) Title 10, United States Code

1. PURPOSE

This Directive implements reference (a) for persons eligible for military legal assistance by establishing a uniform approach for the execution of military testamentary instruments.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy.

3. DEFINITIONS

3.1. Estate Planning. The continuing process of arranging for the use, conservation, and transfer of one's property and wealth during life and upon death. The process produces a plan that may include some or all of these: a testator/testatrix will, military testamentary instrument, a trust, life insurance, an advance medical directive, a healthcare power of attorney, designation of anatomical gifts, and other dispositive documents.

3.2. Military Advance Medical Directive. A written document, prepared in accordance with this Directive, which explains one's wishes about medical treatment if one becomes incompetent or unable to communicate, or which governs the withholding or withdrawal of life-sustaining treatment from the maker of the document in the event of an incurable or irreversible condition that will cause death within a

relatively short period of time, and when the maker is no longer able/competent to make decisions regarding his/her medical treatment.

3.3. Military Legal Assistance Counsel. A judge advocate, as defined in section 801(13) of title 10, United States Code (reference (a)), or a civilian attorney serving as a legal assistance officer, under the provisions of section 1044 of reference (a).

3.4. Military Power of Attorney. A written instrument, prepared in accordance with this Directive, whereby one person, as principal, appoints another as his/her agent and confers authority to perform certain specified acts, kinds of acts or full authority to act on behalf of the principal.

3.5. Military Testamentary Instrument. An instrument that is prepared with testamentary intent in accordance with this Directive and that:

3.5.1. Is executed in accordance with this Directive (paragraph 4.2.) by (or on behalf of) a person, as a testator/testatrix, who is eligible for military legal assistance.

3.5.2. Makes a disposition of property of the testator/testatrix, and takes effect upon the death of the testator/testatrix. It has 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. However, it is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State.

3.6. Testator/Testatrix. A person who makes a will or military testamentary instrument disposing of his or her property at death.

3.7. Will. A written instrument prepared consistent with State law for a testator/testatrix to dispose of the testator/testatrix property upon the testator/testatrix death. A will is often the principal document in an individual's estate plan.

4. POLICY

It is DoD policy that:

4.1. General

4.1.1. Although not every person needs a will or military testamentary instrument, all military personnel shall consider the advisability of making either. Whether a will or military testamentary instrument is necessary or desirable, and its form and execution, depend on the individual's desires, circumstances and the interstate succession laws of the appropriate State. Ultimately, those eligible for legal assistance must decide for themselves whether to prepare any estate planning document(s).

4.1.2. The Military Departments, within the limits of available resources and expertise, shall inform and educate persons eligible for legal assistance on estate planning generally, and the advisability of preparing a will or military testamentary instrument. It is especially important that military personnel be educated with respect to these matters before mobilization, deployment, or similar actions.

4.1.3. All commanding officers shall urge military personnel to seek legal counsel regarding an estate plan well 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.

4.2. Military Testamentary Instrument. A military testamentary instrument shall:

4.2.1. 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).

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

4.2.3. 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/testatrix execution of the instrument by signing it.

4.2.4. Include a statement or preamble in form and content, substantially as outlined at enclosure 1.

4.2.5. Include (or have attached to it), a self-proving affidavit, in a form and content, substantially as outlined at enclosure 2.

4.3. Military Power of Attorney. Section 1044b of title 10, United States Code, (reference (a)), requires recognition of powers of attorney prepared for persons eligible for legal assistance. If prepared, such documents will include a statement or preamble in form and content, substantially as outlined at enclosure

4.4. Military Advance Medical Directive. Section 1044c of reference (a), requires recognition of military advance medical directives prepared for persons eligible for legal assistance. If prepared, such documents will include a statement or preamble in form and content, substantially as outlined at enclosure 4.

4.5. Reserve Component Members. Subject to the availability of legal staff resources, the Secretaries of the Military Departments may provide legal assistance in connection with their personal civil legal affairs to members of Reserve components and their dependents, following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense). Eligibility for such legal assistance shall be for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense (Personnel and Readiness) shall manage implementation of this Directive.

5.2. The Secretaries of the Military Departments shall insure compliance with this Directive and establish policies and procedures to implement this Directive.

6. EFFECTIVE DATE

This Directive is effective immediately.

Enclosures - 4

E1. Military Testamentary Instrument Preamble

E2. Military Testamentary Instrument Self-Proving Affidavit

E3. Military Power of Attorney Preamble

E4. Military Advanced Medical Directive Preamble

E1. ENCLOSURE 1

MILITARY TESTAMENTARY PREAMBLE

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

E2. ENCLOSURE 2

MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT

AFFIDAVIT

WITH THE ARMED FORCES

AT_____

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

_____

Testator/Testatrix

_____

Print Name

_____

_____

Witness Signature

Print Name

_____

_____

Witness Signature

Print Name

Subscribed, sworn to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date_____.

(Signed)

_____

_____

(Official Capacity of Person Administering the Oath)

E3. ENCLOSURE 3

MILITARY POWER OF ATTORNEY PREAMBLE

This is a military Power of Attorney prepared pursuant to section 1044b of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Service. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

E4. ENCLOSURE 4

MILITARY ADVANCE MEDICAL DIRECTIVE

This is a military advance medical directive prepared pursuant to section 1044c of title 10, United States Code. It was prepared by an attorney authorized to provide legal assistance for an individual eligible to receive legal assistance under section 1044 of title 10, United States Code. Federal law exempts this advance medical directive from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State. Federal law specifies that this advance medical directive shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.

MEMORANDUM OF AGREEMENT

ESTABLISHING

THE JOINT-SERVICE COMMITTEE

ON

LEGAL ASSISTANCE

PURPOSE

This Memorandum of Agreement establishes a Joint-Service Committee on Legal Assistance (JSCLA) and defines the roles and responsibilities of the JSCLA in reviewing and proposing initiatives to enhance the delivery of legal assistance services.

A. APPLICABILITY AND SCOPE

This Memorandum applies to the military departments and is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, it's agencies, its officers, or any person.

B. DEFINITIONS

1. Legal assistance is the delivery of free legal advice and services by members of the military to service members, their families, and other eligible clients on their personal legal programs and needs. Legal assistance is authorized, subject to the availability of resources, by Title 10, U.S. Code, section 1044, and military department regulations and instructions, in addition to other legal authority, and is provided in order to meet the military needs of maintaining readiness, morale, and a quality force. Legal assistance includes those preventative law measures designed to prevent personal legal problems from arising.
2. Legal assistance attorney is any military attorney, or civilian attorney employed by the military departments, whose duties involve providing legal assistance.

3. Legal assistance software includes all computer software programs used by military legal offices in providing legal assistance services or to compile legal assistance statistics.

4. Military department includes the Department of the Army, the Department of the Air Force, the Department of the Navy (including the Marine Corps), and the U.S. Coast guard, regardless of the department under which it is operating.

5. Military installation or command includes any for, base, yard, camp, station, or other command of a military department located within or outside the United States.

D. POLICIES

1. Consistent with the unique policies and resources of each of the military departments, the military departments will seek to identify areas where cooperative efforts in the provision of legal assistance are feasible to (a) improve the availability and quality of legal assistance services to all eligible clients and (b) maximize the savings in personnel and other resources that can be achieved through cooperative efforts. The military departments will encourage commands and installations closely located to each other to consider and, if practical, develop cooperative arrangements consistent with this policy.

2. The military departments will work together to develop or procure legal assistance software for use throughout the military departments.

3. The military departments will take such other cooperative efforts deemed appropriate to enhance the availability and quality of legal assistance services within the military.

E. PROCEDURES

1. The JSCLA shall consist of one representative for each of the following: The Judge Advocate General of the Army, The Judge Advocate General of the Air Force, The Judge Advocate General of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Chief Counsel, United States Coast Guard.

2. The JSCLA will strive to reach agreements supporting the policies identified in paragraph D above and will make recommendations to the military departments concerning ways to enhance legal assistance services.

3. The JSCLA may establish internal rules governing its operation.

F. RESPONSIBILITIES

The Judge Advocate General of the Army, Navy, and Air Force, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Chief Counsel, United States Coast Guard are responsible for appointing their representative to the JSCLA.

G. EFFECTIVE DATE

This Memorandum is effective immediately.

FOR THE U.S. ARMY:

//S// — 27 APRIL 1995

Michael J. Nardotti, Jr.
Major General, U.S. Army
The Judge Advocate General

Date

FOR THE U.S. NAVY:

//S// — 24 APRIL 1995

H. E. Grant
Rear Admiral, JAGC, U.S. Navy
Judge Advocate General

Date

FOR THE U.S. AIR FORCE:

//S// — 20 APRIL 1995

Nolan Sklute
Major General, USAF
The Judge Advocate General

Date

FOR THE U.S. MARINE CORPS:

//S// — 25 APRIL 1995

M. C. Wholley
Brigadier General, U.S.M.C.
Staff Judge Advocate to the
Commandant of the Marine Corps

FOR THE U.S. COAST GUARD

//S// — 25 APRIL 1995

J. E. Shkor
Rear Admiral, U.S. Coast Guard
Chief Counsel