

# MIDLANT Legal Compass

*Guiding Warfighters through Legal and Ethical Waters*

**INSIDE THIS ISSUE:**

Potential Harm from Expedited Funds Availability	2
Legal Primer for Hampton Roads	4
RLSO MIDLANT's Services	8
MIDLANT Adjudged Court-Martial Sentences	9
MIDLANT Board of Inquiry Results	10
Command Services POCs	11

***Basic Legal Information Your Sailors Should Know.***

This edition of the Legal Compass discusses the law and best practices surrounding check clearing when selling big ticket items; local area court resources; and legal definitions and information for common issues servicemembers may encounter. For the most up-to-date guidance and advice, contact your local RLSO MIDLANT Command Services Office.

As always, we end with our courts-martial and Board of Inquiry results. This gives you a snapshot of the cases that were completed this quarter and their results. For questions about these cases, please contact the trial department and SJA, Commander Navy Region Mid-Atlantic (CNRMA), respectively.

If there are ever topics you are interested in us covering or seeking additional information, please contact our Legal Compass Editor, the Command Services Department Head, LCDR Cheryl Ausband.

Very Respectfully,  
/s/  
David G. Wilson  
CAPT, JAGC, USN  
Commanding Officer, RLSO MIDLANT

The primary mission of Region Legal Service Office Mid-Atlantic (RLSO MIDLANT) is to provide prosecution, command services, and legal assistance support to eligible commands and persons in support of Fleet operational readiness.

The *MIDLANT Legal Compass* is a periodic newsletter published by the RLSO MIDLANT Command Services Department.



## Potential Harm from Expedited Funds Availability

By Dwain Alexander, Legal Assistance Attorney

Petty Officer (PO) Smith was transferring and wanted to sell his vehicle before his move. He listed his vehicle on Craigslist for \$18,800.00 (\$15,000.00 loan balance \$3,800.00 FMV) and received a response from a buyer in Pennsylvania. He contacted his credit union for information on how to arrange payment. The credit union indicated that they would accept an electronic check. The next day he had a three way call with the buyer and credit union to execute the electronic check for payment. The buyer asked when he would receive possession and PO Smith stated he wanted to wait for the check to clear. The next day (day 1) he contacted the credit union and asked when the deposit would clear, he was informed that it was in processing. The following day (day 2) checked his account and the funds, all \$18,800.00, were reflected in his accounts. The loan was paid in full and the difference was in his savings account. He asked the credit union if the funds had been deposited in his account and the check had cleared, he was informed that it had. Being extra cautious he waited another day (day 3). He again asked the credit union if the check had cleared. He was informed that it had, the funds were in his accounts, and loan was paid in full. In fact, the representative stated “we have your back the funds are here.” The next day (day 4) he delivered the vehicle to the buyer. Day five the credit union indicated that the check did not clear. The credit union took back the deposit and reinstated the loan. PO Smith no longer had his vehicle and still owed the full loan balance. The vehicle was posted for sale on Face book by a buyer in Pennsylvania. What did PO Smith do wrong? Who is responsible for this loss?

Every bank and credit union has a legal duty to conduct its business in good faith and in accordance with reasonable commercial standards in the industry. The availability of funds from check deposits is regulated by federal law, the Expedited Funds Availability Act (EFAA 12 U.S.C. 4001 *et seq*) and the Federal Reserve Board Regulation CC. The law and regulations govern how soon funds must be made available, not how soon checks must clear or what notification must be provided to the consumer on the status of the check. Under the regulations consumers are allowed access to funds deposited in their account as soon as possible which usually means one or two business days. However, there are specific exceptions for checks from another Federal Reserve Region, deposits in excess of \$5,000.00, and checks with doubtful collectability. Under the Federal Reserve guidelines access to the full amount of the buyer’s deposit in to PO Smith’s account could have been delayed for up to 16 days. The first \$100.00 should have been available on the next day following deposit. Because the check was nonlocal the next \$4,900.00 should have been available after five business days (business days do not include weekends or holidays) for a total of \$5,000.00. The credit union could have held the remaining \$13,800.00 under the large deposit or the doubtful collectability exception. The nonlocal hold for an additional five business days would have saved PO Smith from delivering his vehicle to a thief.

*Pitfalls to avoid  
when selling a big  
ticket item.*

*Basic information  
and legalese for the  
non-lawyer.*

This true story was able to occur because the Act requires that funds be made available on a set schedule. The regulatory scheme established by the EFAA sets the minimum availability period. Financial institutions can and do make funds available sooner as they compete for market share and customer satisfaction. The Act also requires that financial institutions provide disclosures to the consumer regarding the availability of funds and their liability for deposits that are not honored. These disclosures are usually made in fine print in the middle or lower portion of a long list of information. The disclosure is made more challenging to consumers by the use of mobile devices which make the information smaller and less accessible. The availability of expedited funds and illusive liability disclosures mislead many consumers who do not understand that deposited funds appearing in their account are not permanently credited to the account until the bank actually receives the funds which can take up to 10 days. This gap between appearance and reality in account deposits has created fertile ground for fraud. Schemes like the Nigerian check scam and other similar methods to separate consumers from their money are fed by the misplaced belief that when a bank account shows the presence of deposited money the funds are actually present. This problem could be remedied or at least limited by conspicuously displayed warnings about fund availability.

**THE FUNDS DEPOSITED TODAY WILL BE AVAILABLE IMMEDIATELY**

**IF THE DEPOSIT IS NOT HONORED BY THE ISSUING INSTITUTION THE FUNDS WILL BE DEDUCTED FROM YOUR ACCOUNT- IF YOU HAVE USED THE FUNDS YOU MAY HAVE A NEGATIVE BALANCE AND BE SUBJECT TO ADDITIONAL FEES.**

**IF YOU DO NOT KNOW THE SOURCE OF THIS DEPOSIT OR QUESTION ITS CLEARANCE, CHECK THIS BOX AND THE BANK WILL SEND YOU NOTICE WHEN THE DEPOSIT HAS BEEN HONORED.**

The Fair Credit Billing Act (FCBA) (15 USC 1631 et seq) and the Electronic Funds Transfer Act (EFTA) (15 USC 1693) place the liability for unauthorized use of credit and debit (ATM) cards on the financial institution. When the losses from identity theft and unauthorized use became a problem to the financial industry it created advanced auditing and monitoring programs to track consumer usage, identify anomalies, verify unauthorized use and deny access to fraudulent users. The EFAA places the liability for the deposit of checks on the depositing consumer not the issuer or the issuing institution. In fact, the law expressly excludes financial institutions from reporting non-payment within the time frame for providing access to funds. If the financial institution was responsible for providing real time access to cleared funds, the same motivation that resulted in changes for credit and debit card misuse could be applied protect check deposits. The Act provides for modification by the Federal Reserve and the Consumer Financial Protection Board if the financial institutions experience unacceptable losses from fraud. However, because the risk of loss is shifted to the consumer this modification may never occur.

## **Legal Primer for the Hampton Roads Area**

By Dwain Alexander & LTJG Tommy Walker, JAGC, USN, Legal Assistance Attorneys

The following is practical guidance provided by local court personnel and judges on procedural matters and best practices to help Sailors handle their legal issues and court appearances.

### **Definitions**

- Continuance – a postponement of proceedings until a later date
- Civil case – case in which non-criminal and non-traffic matters are at stake, i.e. money, custody, divorce
- Clerk of court – the person (often an attorney), who facilitates cases going to judges and handles most administrative matters for the court
- Servicemembers Civil Relief Act (SCRA) – federal law that allows service members to postpone court proceedings where there's a conflict with military service, among other things
- Juvenile and Domestic Relations Court – handles family law and juvenile issues, i.e. custody, support, domestic violence, etc.
- Small claims court – court in which a person can file for claims up to \$5,000, where attorneys are explicitly barred; in Norfolk only held twice a month
- General District Court – both criminal and civil issues
- Circuit Court – felony criminal cases and civil issues amounting to over \$25,000

### **Online Resources**

- Almost every form a client needs to file in court can be found online <http://www.courts.state.va.us/forms/district/home.html>
- Case information is also available online <http://www.courts.state.va.us/caseinfo/>
- General legal information for Virginia is available from Legal Aid <http://www.valegalaid.org/>

### **General Best Practices from the Courts**

- Continuances are granted the vast majority of time they are asked for with a letter from the command or JAG to the judge or the clerk
- Asking for a continuance post-facto is never a good idea
- SCRA issues can be addressed directly to the judge or the clerk of court
- Court personnel are happy to direct people to forms to file, procedures to follow, etc., as long as they are not asking for legal advice

### **1. All Traffic and Criminal cases:**

- Continuances should be received 10 days before trial where possible
- Send in your continuance request on command letter head signed by direction with a point of contact in case the court needs to follow up or verify the correspondence.
- Penalties: for offenses below a class 1 misdemeanor the trial will be held in absentia.

*Time saving  
best practices  
for any  
appearance in  
court.*

*Contact information for local traffic and criminal courts, and how to request a delay for your case.*

- For offenses class 1 misdemeanor and above a warrant will be issued
- For minor criminal/traffic issues such as car registration expiring while underway, most judges will waive any fines if you bring proof to court that you were underway
- If you comply with a technical issue like car registration after the fact, you can usually show proof at the traffic court window and avoid court

### **Court Contacts**

- **Chesapeake**
  - Chesapeake Clerk: Ms. Deborah A. Ellington:  
[dellington@courts.state.va.us](mailto:dellington@courts.state.va.us)
  - Chesapeake Traffic: Phone 757-382-3119; Fax 757-382-3171
  - Chesapeake Criminal: Phone 757-382-3134; Fax 757-382-3172
- **Hampton**
  - Hampton Clerk: Ms. Barbara K. Fagley
  - Hampton Traffic: Phone (757) 727-6260; Fax (757) 727-6035
  - Hampton Criminal: Phone (757) 727-6260; Fax (757) 727-6035
- **Newport News**
  - Newport News Traffic: Clerk Ms. Karen J. Routten;  
Phone: (757) 926-8876/(757) 926-8725/26; Fax: (757) 926-7025
  - Newport News Criminal: Clerk Ms. Faye L. Rogers;  
Phone: (757) 926-8811; Fax: (757) 926-7026
- **Norfolk**
  - Norfolk Clerk: Mr. Thomas E. Baldwin Sr. (757) 664-4910
  - Traffic: Phone: (757) 664-4911/12; Fax: 757-640-8319
  - Criminal: Phone: (757) 664-4915 /16; Fax: 757-640-8320
- **Portsmouth**
  - Portsmouth Clerk: Ms. Lenna Jo Davis
  - Portsmouth Traffic: Phone: (757) 393-8506; Fax: (757) 393-8010
  - Portsmouth Criminal: Phone: (757) 393-8681 Fax: (757) 393-8634
- **Virginia Beach**
  - Virginia Beach Clerk: Mr. David M. O'Dell;  
[DOdell@courts.state.va.us](mailto:DOdell@courts.state.va.us)
  - Virginia Beach Traffic: Phone (757) 385-8531; Fax: 757-385-1063
  - Virginia Beach Criminal: Phone (757) 385-8531; Fax: 757-385-1065

## **2. All Civil Cases**

- Continuance for Preparation: Must contact opposing part and agree on a date. If the parties agree the Plaintiff will contact the court and schedule a new date. If the parties do not agree the court will usually grant a request

for continuance but the movant must be present to present the matter.

- Continuance Unavailable due to Military duty: Continuances (50 USC Appx 522) require two letters. A letter from the servicemember indicating unavailability due to military duty with the date s/he will be available and one letter from the commanding officer on letter head signed by direction indicating that leave will not be provided and a date after which the hearing may proceed.
- Chesapeake General District Court: Clerk: Ms. Deborah A. Ellington  
Phone: 757-382-3143; Fax: 757-382-3113;
- Hampton General District Court: Clerk: Ms. Barbara K. Fagley  
Phone: (757) 727-6480; Fax: (757) 727-6035;
- Newport News General District Court: Clerk: Ms. Karen J. Routten  
Phone: (757) 926-3520; Fax: (757) 926-7024;
- Norfolk General District Court: Clerk: Mr. Thomas E. Baldwin Sr  
Phone: (757) 664-4913; Fax: 757-664-4914;
- Portsmouth General District Court: Clerk Ms. Lenna Jo Davis  
Phone: (757) 393-8624; Fax: (757) 399-6736;
- Virginia Beach General District Court: Clerk: Mr. David M. O'Dell  
Phone: (757) 385-8531; Fax: 757-385-6381

### **3. Court Attire**

- Civil matters may not need a command representative; however, the servicemember should be in appropriate dress for court either civilian or military. Dress for court should be business casual if civilian or navy service uniform (not NWU or casual) if military.

### **4. Protective Orders**

- Probable Cause (reasonable belief based on articulable facts) that someone poses a threat is required to obtain a protective order
- Protective orders are often automatically issued in domestic violence cases
- Emergency protective orders can be obtained 24/7 from the magistrate's office, which in Norfolk is located at 811 East City Hall Ave.
- Generally easy for clients to obtain pro se (without an attorney) by asking the intake personnel at the court, who will then direct clients to the proper form

### **5. Child Support**

- There are both administrative and court-ordered support decrees
  - Administrative support decrees have an automatic appeal process which is usually listed on the order or which is available

*Civilian Protective Orders can be obtained in addition to Military Protective Orders.*

*How to establish or modify child support from anywhere.*

- through online forms
- It is possible to apply to amend court-ordered support decrees via filing at the intake window of the Juvenile and Domestic Relations Court, though there will be a hearing
- Out-of-state orders
  - Either the original or sealed/exemplified out-of-state order must be registered with the court before it can be amended, and the party must ensure the court gives notice to the other party
- State support guidelines and formulas are almost always abided by, absent compelling circumstances
  - A copy of Virginia's guidelines can be found here: <http://leg1.state.va.us/000/cod/20-108.2.HTM>
- Support is almost always routed through the state Division of Child Support Enforcement
- The Uniform Interstate Family Support Act is a federal statute that requires cooperation among child support enforcement agencies, so if there is an issue of support in one state, that states' enforcement agency can be helpful in enforcement against a person in another state

## **6. Paternity**

- It is possible to have a court-ordered paternity test any time paternity is at issue
- Court-ordered tests cost \$70 per person in Norfolk, so if one Sailor wants a test for one child, it is a total of \$210: \$70 for the Sailor, \$70 for the partner, and \$70 for the child
- There is a default presumption of paternity where: a child is born while a couple is married, the father accepts paternity, the father holds himself out as the father
- It is possible to rebut and disestablish paternity even if it has been admitted or encribed on the birth certificate
- Contact the Court of Juvenile and Domestic Relations intake office for more information

## **7. Divorce**

- Virginia Beach judges recommend never filing for divorce pro se (without an attorney) in Virginia Beach; it almost never succeeds due to procedural issues that are messed up
- Norfolk Circuit Court does allow for fairly easy pro se divorce applications where the divorce is uncontested (the couple has agreed on the division of most assets)

**Legal Assistance:** If your Sailors are in need of personal advice services, you should direct them to the RLSO MIDLANT Legal Assistance Department. For example, do they need a will? Are they going through a divorce and need general advice? Are they in a dispute with their landlord?

If one of your Sailors needs legal assistance advice in the Hampton Roads area, direct them to the Legal Assistance Department onboard Naval Station Norfolk, located in Building A-50, 9620 Maryland Ave., Suite 100. Below are LA Department's hours of operation:

**Powers of Attorney and Notary Services Walk-ins:**

Mon – Thurs, 0800-1530

**Will Walk-ins:**

Mon, 0800-1100 & 1300-1530

**IA/NMPS Wills:**

Tues, 1230-1530

**Family Law:**

Tues & Thurs 0740

**Appointments for all other legal issues under the LA umbrella:**

***Starting 1 June 2015, new appointment line number is (757-433-2230)***

Appt Line is open: Mon, 1000 - 1300

**Ship Visits:**

If your command is deploying, the Legal Assistance Department can send attorneys to your command to do will intakes and executions on-site for 20 or more personnel. If you would like to organize a will workshop in the Hampton Roads area, please contact Will Visit Coordinator at [RLSOMIDLANTWillRequests@navy.mil](mailto:RLSOMIDLANTWillRequests@navy.mil) or 757-341-4489.

**RLSO MIDLANT (Northeast Locations) Legal Assistance Service**

**Hours:** If your Sailor requires legal assistance in the Northeast AOR, please contact Legal Assistance office at the respective detachment office for their hours of operation:

**Groton:** (860) 694-3741

**Newport:** (401) 841-3766

**Earle:** (732) 866-2066

***Command Services:*** Attorneys in the Command Services Department provide legal advice and support to commands and command representatives (i.e. legal officers) that do not have an assigned Staff Judge Advocate (SJA). Covered areas include investigations, NJPs and other disciplinary proceedings, administrative separation boards, and ethics. To speak with an attorney in Norfolk's Command Services Department, please call 757-444-1266.

If your command is located in the Northeast AOR, please see the complete listing of SJAs on page 11.

---

### ***RLSO MIDLANT Adjudged Court-Martial Sentences April – May 2015***

#### **General Courts-Martial**

In Norfolk, VA, on 16 April 2015, an E-5 was found not guilty of sexual assault, abusive sexual contact, and assault consummated by a battery by a panel of members.

In Groton, CT an O-5, USN, was found guilty of 3 Specifications of false official statement. On 17 April 2015, a panel of members sentenced forfeiture \$2,500.00 pay per month for 12 months and a reprimand.

In Norfolk, VA, an O-4, USN, was found guilty of two specifications of false official statement. On 7 May 2015, the Military Judge sentenced forfeiture of \$2500.00 a month for three months.

In Norfolk, VA, an E-6, USMC, was found guilty of one specification of negligent dereliction of duty, and one specification of failure to obey a lawful general order (hazing). On 8 May 2015, a panel of members sentenced reduction in rank to paygrade E-5.

In Norfolk, VA, on 18 May 2015, an E-5, USN, was acquitted of abusive sexual contact by a panel of members with enlisted representation.

**Special Courts-Martial**

In Norfolk, VA, an E-4, USMC, pleaded guilty to larceny (theft of non-military property valued over \$500). On 15 May 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-1, and confinement for 90 days.

In Norfolk, VA, on 28 May 2015, an E-6, USN, was found not guilty of dereliction of duty and abusive sexual contact by a panel of members with enlisted representation.

---

***RLSO MIDLANT Board of Inquiry Results  
April – May 2015***

During a board held on 9 April 2015 an O-4, USN, was ordered to show cause for retention due to misconduct under Article 133 and 134 (two specifications). The board found that the member did not commit Misconduct. The board recommended that the member be retained on active duty.

During a board held on 6 May 2015 an O-5, USN, was ordered to show cause for retention due to substandard performance of duty. The board found that the member failed to conform to prescribed standards of dress, weight, personnel appearance, or military deportment. The board recommended the member be retained on active duty.

During a board held on 6 May 2015 an O-5, USNR, was ordered to show cause, for retention due to misconduct Article 133. The board found that the member did not commit misconduct. The board recommended the member be retained on active duty.

*RLSO MIDLANT*  
*COMMAND SERVICES TEAM*

HAMPTON ROADS AOR

RLSO Command Services Department  
(757-444-1266)

- [LCDR Cheryl Ausband](#) (DH)
- [LCDR Andrea Dewdney](#) (Asst DH)
- [LT Halley Allaire](#)
- [LTJG Andrea Bertucci](#)
- [LTJG Ben Haight](#)
- [LTJG Jake Honigman](#)  
(Tenant Command Services)

Post-Trial Processing Division

- [Ms. Aubrey Lombardi](#)  
(757-341-4568)

NAVSTA Norfolk SJA

- [LT Maren Kaiser](#)  
(757-444-1266)

NAS Oceana / Dam Neck Annex SJA

- [LCDR Adam Yost](#)  
(757-433-2946)

JEB Little Creek-Fort Story SJA

- [LT Ani Ruiz](#)  
(757-462-7224)

Naval Weapons Station Yorktown SJA

- [LT Dayton Krigbaum](#)  
(757-341-4485)

NSA Hampton Roads SJA

- [LCDR Cheryl Ausband](#)  
(757-322-3065)

TPU NORFOLK SJA

- [LT Charity Barr](#)
- [LN1 Sarah Kelly-Alston](#)  
(757- 444-1340)

NORTHEAST AOR

RLSO MIDLANT DET Groton  
(860-694-3361)

- [CDR Brendan Burke](#) (OIC)
- [LCDR Craig Morris](#) (Trial)
- [LT Matthew Sonn](#) (Command Services detachment DH, NSA, Saratoga Springs SJA)
- [LTJG Ashley Belyea](#) (Tenant Command Services)
- [LNC Lesli Carpenter](#) (LCPO)

NSB New London SJA

- [LT Chris Hutton](#)  
(860-694-4739)

NAVSTA Newport SJA

- [LT Erin Schmitt](#)  
(401-841-2609)

NSY Portsmouth SJA

- [LT Taylor Frazao](#)  
(401) 841-3766, Ext 201

NWS Earle/NSA Lakehurst/NSA Mechanicsburg/NSA Philadelphia SJA

- [LT Sean Geary](#)  
(732-866-2576)

*RLSO Mid-Atlantic welcomes suggestions for articles and recommendations for improvement. For addition to the RLSO Legal Compass distribution list or to make suggestions or recommendations, please email:*

[RLSOMIDLANTNEWSLETTER@navy.mil](mailto:RLSOMIDLANTNEWSLETTER@navy.mil).

**Region Legal Service  
Office Mid-Atlantic**  
9620 Maryland Avenue  
Suite 201  
Norfolk, VA 23511

