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IN REPLY REFER TO

JAGINST 5801.2A

JAG 16

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JAG INSTRUCTION 5801.2A

From: Judge Advocate General

Subj: NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM

Ref: (a) 10 U.S.C. § 1044
(b) JAGINST 5800.7D (JAGMAN)

Encl: (1) Legal Assistance Manual

1. Purpose. To promulgate policy, prescribe procedures, and assign responsibilities for the Navy-Marine Corps Legal Assistance Program.
2. Applicability. This instruction applies to all attorneys providing legal assistance services, including all Navy and Marine Corps judge advocates, civilian attorneys, and volunteer attorneys; legalmen; legal services specialists; civilian paralegals; civilian legal assistants; and other personnel who provide legal assistance to authorized beneficiaries under the auspices of the Navy-Marine Corps Legal Assistance Program.
3. Background. Legal assistance has been provided for members of the armed forces since 1943. Congress officially recognized the military services' legal assistance programs in 1984 by enacting reference (a), which authorizes provision of legal assistance "subject to the availability of legal staff resources." While the legal assistance program is not separately funded, Navy and Marine Corps personnel historically have been provided assistance with their personal legal affairs; such assistance is now perceived as one of the benefits of military service.
4. Policy. Legal assistance is a vital and appreciated contribution made by the Navy and Marine Corps legal community to the morale and welfare of our servicemembers, their family member dependents, and other eligible beneficiaries. Because of its importance as a significant "quality of life" benefit, legal assistance personnel will make every effort to satisfy the legal assistance needs of servicemembers and their families.

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5. Action

a. Chapter VII of reference (b) establishes the controlling policies for the Navy-Marine Corps Legal Assistance Program. Enclosure (1) promulgates additional policies and procedures. Activities and personnel providing services under the program shall comply with these directives. In the event of conflict between enclosure (1) and reference (b), the latter shall prevail. Such conflicts should be called to the immediate attention of the Deputy Assistant Judge Advocate General (Legal Assistance).

b. Supervisory judge advocates designated in Section 0702b of reference (b) may draft local implementing instructions consistent with reference (b) and enclosure (1) as may be necessary to accomplish the program's mission.

c. All persons providing legal assistance services are encouraged to coordinate their efforts, to the extent practicable, with the legal assistance activities of the other military services in their locality to maximize effective delivery of client services.



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Distribution:
JAG Special List 40
Director, Judge Advocate Division
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LEGAL ASSISTANCE MANUAL

I

THE NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM

1-1. Mission. To enhance the readiness of active duty and Reserve members of the Navy and Marine Corps, and to protect and enhance their morale and promote their welfare, by providing quality legal services regarding personal civil legal matters to eligible persons; and to educate eligible personnel regarding their personal legal rights and responsibilities.

a. Components. This mission will be accomplished by providing:

(1) Pre-deployment and pre-mobilization services to active duty, drilling or mobilized Reservists, and family members of both;

(2) Direct client assistance services to eligible persons; and

(3) A vigorous preventive law program that educates and informs the military community through a variety of creative and stimulating outreach efforts.

b. Quality. Accomplishment of this mission, as well as compliance with the ethical requirements of the legal profession, demand that each client be provided with high-quality service. Quality defines and drives this program; each client is entitled to receive the attorney's best effort. If, because of limited time, resources, or a lack of subject matter expertise, a legal assistance provider is unable to provide the high-quality service demanded in a particular case, the client should be referred to another source of assistance.

1-2. Authorization. Authority to establish and operate the Navy-Marine Corps Legal Assistance Program, as a necessary and proper incidence of accomplishing the Department of the Navy's mission, has been provided continuously since 1943 by various means, including Secretarial directive, Federal regulation (32 C.F.R. pt. 727), and Federal statute (10 U.S.C § 1044). Legal assistance is provided subject to the availability of staff legal resources. See 10 U.S.C. §1044(a).

II

SUPERVISION AND COORDINATION OF LEGAL ASSISTANCE SERVICES

2-1. Authority of the Judge Advocate General

a. The Judge Advocate General has the authority and responsibility to establish, manage, and supervise the Navy-Marine Corps Legal Assistance Program. See 10 U.S.C. § 1044.

b. All persons providing legal assistance services, including active duty members, civilian employees of the Department of the Navy, reserve personnel (whether on active duty, in a drill status, or providing services despite not receiving drill points or pay), and qualified volunteers, are subject to supervision and regulation by the Judge Advocate General. Attorneys providing legal assistance services are practicing under the authority of the Judge Advocate General and shall conform to the rules set forth in JAGINST 5803.1(Series), Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate General.

c. The Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps issue regulations for the implementation and management of the Navy-Marine Corps Legal Assistance Program. This manual, Chapter VII of JAGINST 5800.7D (the Manual of the Judge Advocate General, hereinafter referred to as "JAGMAN"), Marine Corps Order P5800.16 (LEGADMINMAN), and such other directives as the Judge Advocate General and the Staff Judge Advocate to the Commandant of the Marine Corps may from time to time issue, constitute such regulations; these are to be liberally construed to accomplish the mission of the Navy-Marine Corps Legal Assistance Program as set forth in section 1-1 of this manual. A copy of this manual shall be available at the offices of all legal assistance providers.

2-2. Management and coordination. Within the Department of the Navy, the following officers shall assist the Judge Advocate General in regulating the delivery of legal assistance services:

a. Commander, Naval Legal Service Command (COMNAVLEGSVCCOM) and the Deputy Assistant Judge Advocate General (Legal Assistance) (henceforth referred to as designee) shall manage the Navy Legal Assistance Program, and the Staff Judge Advocate

to the Commandant of the Marine Corps (Codes JA and JAL) (henceforth referred to as designee) shall manage the Marine Corps Legal Assistance Program, including:

(1) Issuing or causing to be issued such mandatory policy guidance as may be necessary to further the mission of the program;

(2) Coordinating efforts to support legal assistance providers with information and resources to enhance their practices;

(3) To the extent practicable, coordinating the Navy-Marine Corps Legal Assistance Program with the programs of the other military and Government services; and

(4) Inspecting Navy and Marine Corps programs and providers to ensure quality programs and compliance with binding policy guidance.

b. Commanding officers of Naval Legal Service Offices (NAVLEGSVCOFFs), senior staff judge advocates (SJAs), Directors of Joint Law Centers (JLCs), and Officers in Charge of Legal Service Support Sections (LSSSs), as applicable, shall oversee the legal assistance practice within their respective chains of command, and have broad authority to administer the provisions of this manual.

(1) They shall assist the Judge Advocate General's efforts to conform the legal assistance practice to the standards of professional competence, responsibility, and ethics made applicable by the manual, JAGINST 5803.1 (Series), and various other laws and regulations of the Government and the legal profession.

(2) They shall prescribe and monitor a quality assurance program for legal assistance providers under their authority. The quality assurance program shall be carried out with due regard for confidentiality of client information. Such a program may include, but is not limited to, any or all of the following:

(a) the active dissemination and exchange of information relevant to a legal assistance practice;

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(b) the use and review of client satisfaction questionnaires;

(c) periodic visits to legal assistance offices and independent legal assistance attorneys to determine the needs of legal assistance providers and to assess compliance with the requirements and policies of the Legal Assistance Program; and

(d) a sampling review of legal assistance work product.

(3) They are not prohibited from personally providing client services because of their oversight responsibilities. However, they must be sensitive to the possibility of, and seek to avoid, actual or apparent conflicts of interests with attorneys under their authority.

(4) They shall coordinate with the legal assistance offices of the other military services and related service providers (e.g., Fleet and Family Support Center financial counselors) within their geographic area of responsibility to develop a vigorous area-wide preventive law program.

c. NAVLEGSVCOFFs are the primary providers of legal assistance services within the Navy to eligible persons. Generally, a NAVLEGSVCOFF Legal Assistance Department including detachments and branch offices operating under one Legal Assistance Department Head will be considered a single legal assistance office. Detachments and branch offices operating a legal assistance program separate from the main NAVLEGSVCOFF Legal Assistance Department and not in the Chain of Command of the main office Legal Assistance Department Head will ordinarily be considered a separate office.

2-3. Trial Service Office (TRISVCOFF) or Region Legal Service Office (RLSO) provision of legal assistance services

a. Except in cases referred because of a conflict of interest (see section 5-1e for conflict of interest policy and procedures), judge advocates and paralegals assigned to a TRISVCOFF/RLSO shall not normally provide legal assistance services. However, when directed by COMNAVLEGSVCCOM or pursuant to an agreement between the TRISVCOFF/RLSO commanding officer and the respective NAVLEGSVCOFF commanding officer, legal assistance may be provided under the following circumstances:

(1) In a major crisis (e.g., mass evacuations of naval personnel and/or families, events of Navy-wide or national interest) which requires the augmentation of the NAVLEGSVCOFF legal assistance department. NAVLEGSVCOFFs will conduct "just in time" training, as required, to enable TRISVCOFF/RLSO personnel to provide the necessary services; or

(2) In non-crisis situations, resources permitting, and when the request is for powers of attorney or notarial acts and not providing the service will cause unnecessary and unreasonable inconvenience to eligible persons.

b. Where individual legal assistance services are requested of a TRISVCOFF/RLSO attorney or paralegal and NAVLEGSVCOFF personnel are not available, TRISVCOFF/RLSO personnel whose services are requested will evaluate the request and

(1) Attempt to arrange timely legal assistance services from the responsible NAVLEGSVCOFF, as appropriate to the circumstances; however,

(2) If NAVLEGSVCOFF services are not reasonably available; and the requested legal assistance requires prompt action; and the requested legal assistance action is within the competency of the TRISVCOFF/RLSO attorney or paralegal; then, TRISVCOFF/RLSO personnel may provide the legal assistance appropriate to the situation. For example, a TRISVCOFF/RLSO attorney on temporary duty to a remote location, or aboard a deployed ship, requested to provide legal assistance to a servicemember facing imminent adverse civil action would be authorized to provide assistance.

(3) If legal assistance action taken will necessitate follow-on action (e.g., letters, telephone calls), the attorney will advise the individual seeking assistance that the attorney may transfer the matter to a legal assistance attorney assigned to the cognizant NAVLEGSVCOFF as soon as an appropriate turnover can be arranged.

(4) If the individual seeking assistance objects to transfer of the matter to a NAVLEGSVCOFF attorney, and an attorney-client relationship has been formed, the TRISVCOFF/RLSO attorney will continue to render assistance as appropriate under

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the circumstances, consistent with rules regarding termination of legal services.

c. Whenever TRISVCOFF/RLSO personnel provide any legal assistance, statistical accounting and reporting is required. See section 5-1a(1)(a).

d. While administering legal assistance services, commanding officers of TRISVCOFFs/RLSOs shall assume oversight responsibility over their personnel in accordance with sections 2-2b(1)-(3).

III

LEGAL ASSISTANCE ATTORNEY

3-1. Definition. A legal assistance attorney is any active duty or Reserve judge advocate, a civilian attorney employed by the Navy or Marine Corps, or other attorneys properly certified by the Judge Advocate General or his designee as legal assistance attorneys who are authorized or directed by appropriate authority to provide legal assistance services.

3-2. Qualifications

a. Generally. All legal assistance attorneys must be admitted to the practice of law before the highest court of at least one state, territory, commonwealth, or the District of Columbia, maintain a status considered in "good standing" at all times with the attorney's licensing authority and comply with the following:

(1) Active duty and Reserve legal assistance attorneys (Navy designator 2500 or 2505, or Marine Corps designator 4402). All active duty and Reserve judge advocates are qualified to act as legal assistance attorneys. New accession attorneys, regardless of the extent of their prior civilian practice, will be considered qualified and certified upon successful completion of the Naval Justice School (NAVJUSTSCOL) Basic Lawyer Course. Designation prior to completion of the NAVJUSTSCOL Basic Lawyer Course may be requested under section 3-2a(3).

(2) Civilian legal assistance attorneys. A civilian attorney (including a foreign attorney) may provide legal assistance services when such duties are authorized by the

attorney's position description and directed by the attorney's supervisor.

(3) Other cases. A licensed attorney who does not satisfy either of the preceding sections may request designation as a legal assistance attorney. Such request shall be submitted in writing, via the chain of command, to the Judge Advocate General. The Judge Advocate General, or his designee, as appropriate, may consider an applicant's professional experience (including areas and length of previous legal practice), education and training, and other appropriate factors in determining whether the applicant is qualified and competent to perform legal assistance duties. All attorneys certified to provide legal assistance under this section are covered attorneys under JAGINST 5803.1(Series).

b. Expanded Legal Assistance Program (ELAP). Although military attorneys are authorized to provide legal assistance to clients by Federal statute, states ultimately control the practice of law within their jurisdiction. Attorneys practicing under the ELAP, as set forth in Chapter VIII of this manual, must be a licensed active member of the bar in the state in question or be specially admitted to practice with the licensing authority in the state in question for the matter at issue.

3-3. Legal assistance attorney training

a. Policy.

(1) Training in the substantive law, procedures, and issues affecting legal assistance practice is necessary to maintain competence. All U.S. Navy (Navy) legal assistance attorneys will be trained to provide all Tier I legal assistance services listed in Appendix A. Initial legal assistance training for all Navy and Marine Corps judge advocates is provided in the Basic Lawyer Course at the NAVJUSTSCOL. Naval Legal Service Command (NAVLEGSVCCOM) Offices (NAVLEGSVCOFFs, TRISVCOFFs and RLSOs) that provide legal assistance will ensure, through command and local training, that all legal assistance attorneys can provide Tier I services including addressing local and state law issues.

(2) Continuing legal education programs and courses refresh the attorney's knowledge and sharpen skills in those areas of the law relevant to legal assistance practice. Because

of the breadth of the legal assistance program, attorneys providing services thereunder must actively seek and maximize utilization of training opportunities and resources. Commanding officers of NAVLEGSVCCOM commands; senior SJAs; Directors, JLCs; and Officers in Charge of LSSSSs are encouraged to coordinate legal assistance training with local and state Continuing Legal Education (CLE) programs.

b. Coordination with training plans. The legal assistance training objectives herein implement the broad training goals for all Navy legal assistance providers set forth in JAGINST 1500.4(Series), JAG Corps Training Program. Four hours of professional development training per month, or 48 hours per year, is recommended for all command members. Locally applicable training directives should be promulgated to implement professional training requirements.

c. Legal assistance training objectives. Navy legal assistance attorneys must maintain competency to provide services as provided in Appendix A. Legal assistance training objectives promote this competency through initial basic lawyer training or equivalent for civilian legal assistance attorneys, CLE, and professional development training provided within the legal assistance office. Professional development training for a Navy legal assistance attorney should focus primarily on Tier I services and Tier II legal assistance services provided by the attorney's office.

(1) Attorneys providing legal assistance services as their primary duty should, as a goal, dedicate one-half of their monthly professional training to topics bearing directly on their legal assistance practice. JAGINST 1500.4 (Series) suggests many professional training topics.

(2) Attorneys providing legal assistance services as a collateral duty should, as a goal, dedicate one-quarter of their monthly professional training to topics bearing directly on their legal assistance practice.

(3) Attorneys not currently providing legal assistance, but who may be assigned to provide legal assistance as a primary or collateral duty should, as a goal, adopt the appropriate training objective outlined above during the three months preceding assignment.

d. Sources of legal assistance training.

(1) NAVJUSTSCOL courses. Specialized legal assistance training and updates are included in a variety of survey courses, including the Family Law, Consumer Law, Estate Planning, SJA, and Reserve Lawyer courses.

(2) Army JAG Legal Center and School (JAGLCS). The Army JAGLCS's one-week legal assistance course, offered two times a year, is a comprehensive training program tailored to military legal assistance practitioners. All legal assistance attorneys are strongly encouraged to attend this course. Information on how to apply for this course is available from the Training Coordinator at NAVJUSTSCOL or from the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL).

(3) Other resources. CLE seminars, live presentations and videotaped programs relevant to a legal assistance practice are readily available from a wide variety of sources, including the Armed Forces' JAG Schools, law schools, universities, commercial firms, and national, state, and local bar associations.

(4) Overseas and afloat legal assistance attorneys. The need for access to continuing education materials is critical for overseas and afloat legal assistance attorneys. Overseas and afloat legal assistance attorneys unable to obtain needed materials should consult the NAVJUSTSCOL, the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), or the Deputy Assistant Judge Advocate General (Legal Assistance) for assistance.

3-4. Legal assistance attorney responsibility

a. All client services within the Navy-Marine Corps Legal Assistance Program shall be provided by or under the supervision of a legal assistance attorney. A legal assistance attorney may be assisted by legalmen, legal services specialists, civilian paralegals, and clerical personnel, as appropriate.

b. Certain client services may be provided by legalmen, legal service specialists, or paralegals (hereinafter referred to as legal assistance paralegals) without necessity of an attorney-client meeting, including preparation of powers of attorney, notarization services, tax assistance and other

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matters not requiring legal advice. See sections 7-2 and 7-3. Although these services may be provided independent of any attorney-client contact, the supervising legal assistance attorney remains responsible and accountable for all legal assistance services provided by legal assistance office personnel.

c. Delegation of work. Effective delegation of work by attorneys is essential to the efficient accomplishment of the legal assistance mission.

(1) A legal assistance attorney may delegate work on behalf of a client to legal assistance paralegals or legal assistance clerical staff provided that the attorney:

(a) maintains direct contact with the client (i.e., a legal assistance attorney may not disassociate himself or herself completely from a particular case by "delegating" all client contact and case work to a legal assistance paralegal);

(b) supervises the legal assistance paralegal in the performance of the delegated work;

(c) assumes complete professional responsibility for the work product of the legal assistance paralegal; and

(d) ensures that the legal assistance paralegal is clearly represented as such, and not as an attorney, to the client and to third parties.

(2) See section 4-2 and JAGINST 5803.1(Series) for further guidance on the ethical responsibility of attorneys to prevent the unauthorized practice of law and for the performance of non-attorney assistants.

IV

LEGAL ASSISTANCE PARALEGALS AND CLERICAL STAFF

4-1. Definitions

a. Legal assistance paralegals.

(1) Active duty and Reserve members of the legalman rating and Marine legal services specialists who are assigned to

a legal assistance office or to a billet supporting an independent legal assistance attorney, legalmen assigned to designated independent duty legalman billets, or

(2) Civilian personnel employed in paralegal positions in legal assistance offices or in support of an independent legal assistance attorney.

b. Legal assistance clerical staff (clerks). Military or civilian personnel assigned to or employed at a legal assistance office, or assisting an independent legal assistance attorney, who are neither attorneys nor paralegals. Also included are properly trained and authorized civilian volunteers under 10 U.S.C. § 1588 in clerical support positions in legal assistance offices.

4-2. Prohibition against unauthorized practice of law. Paralegals and clerical personnel are vital to the provision of quality and timely legal assistance to eligible clients; they are restricted, however, by ethical rules of the legal profession from engaging in the practice of law. See JAGMAN § 0705.

a. What constitutes the practice of law. The most widely accepted definition of "practicing law" is providing a service that requires the professional judgment of an attorney. Many jurisdictions consider three broad categories of activity to be included in the practice of law: representing others before judicial or administrative bodies; advising others on their legal rights and responsibilities; and preparing legal instruments and documents that affect legal rights. Notwithstanding this last category, many jurisdictions, consistent with established custom, permit paralegals to complete standard forms and documents with factual information supplied by a client.

b. General rules. Paralegal assistance to an attorney may, and frequently will, involve delegated activities that could be considered the practice of law; however, there is no prohibition restricting a paralegal from assisting the attorney, who remains professionally responsible to the client. Other than as specifically authorized in this manual or otherwise authorized by the Judge Advocate General, or his designee, a legal assistance paralegal or clerical staff member shall not provide any legal advice to a client or render any other service to a

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client that constitutes the practice of law, unless under the supervision and at the direction of a legal assistance attorney.

c. See JAGINST 5803.1(Series) for further guidance on the ethical responsibility of attorneys to prevent the unauthorized practice of law and for the performance of non-attorney assistants.

4-3. Duties of legal assistance paralegal

a. The precise duties assigned to a legal assistance paralegal depend on the specific needs of the office, the legal assistance paralegal's experience and training, and the feasibility of adequate legal assistance attorney supervision. While it may be necessary for them to perform some clerical work, it is an inefficient use of their valuable skills to limit paralegals to clerical tasks. Legal assistance attorneys are encouraged to explore ways to expand the role of legal assistance paralegals in a manner that will enhance the delivery of client services and preventive law activities, without violating professional and ethical rules governing the Navy-Marine Corps Legal Assistance Program.

b. The following is a non-exhaustive list of duties that may be assigned to a legal assistance paralegal:

(1) Office administration. Legal assistance paralegals may conduct client screening for program eligibility, conflicts, and type of case; supervise and maintain master calendars and tickler systems; supervise administration of the law library; supervise and administer training programs for office personnel; supervise and maintain office file systems and conduct file searches; and develop and implement information retrieval systems.

(2) Document production. Legal assistance paralegals may perform basic legal research; prepare client-specific legal memoranda for use by the legal assistance attorney, based on information obtained from client interview(s) and from legal research; prepare informational handouts for distribution to clients; prepare and sign routine office correspondence (taking care always to clearly identify himself or herself as a paralegal); prepare military nonsupport and Servicemembers Civil Relief Act (SCRA) six percent letters; prepare pro se and Expanded Legal Assistance Program pleadings; draft simple wills;

check, "Shepardize" and "Bluebook" legal citations; and proofread documents.

(3) Client services. All legal assistance client services will be provided by or under the supervision of a legal assistance attorney (see section 3-4); a legal assistance paralegal may assist the delivery of client services as requested by the attorney.

(a) A legal assistance paralegal may provide client services such as preparation of powers of attorney, notarization services, and certain tax assistance without an attorney-client meeting. A legal assistance paralegal may provide other client services that do not require the professional judgment of an attorney. For guidance on other client services that do not require the professional judgment of a legal assistance attorney, the state law where the legal assistance office is located should be consulted regarding the definition of unauthorized practice of law and guidance on services legal assistance paralegals may perform independent of attorney supervision.

(b) Initial client interview. A legal assistance paralegal may conduct an initial client interview. Where legal assistance paralegals are assigned duties to assist clients with production of documents, research, or case preparation (i.e. military nonsupport cases, credit collection cases, SCRA 6 percent letters) the legal assistance paralegal should conduct a client interview. During this interview, the legal assistance paralegal should ascertain the general nature, and particular facts, of the client's case. Because of the likelihood that privileged information will be discussed, this interview must be conducted in a confidential setting. The legal assistance paralegal may provide the client with basic information about laws, regulations, rules, policies, and procedures that may be relevant in view of the general nature of the client's case. The use of informational handouts to assist in this regard is encouraged to ensure consistency in basic information provided to clients in similar cases. The legal assistance paralegal should include a complete agreement and recommendation for action when informing the attorney about the case. Following the client's consultation with a legal assistance attorney, the legal assistance paralegal may draft correspondence, various documents, or take other action as the attorney may direct.

(4) Pre-deployment/pre-mobilization activities. Legal assistance paralegals may conduct pre-deployment and pre-mobilization briefings. They must be conscious that although they may be able to answer many of the legal questions arising during these briefings, they should not do so because providing such legal advice based on specific facts may constitute the unauthorized practice of law.

(5) Preventive law activities. Legal assistance paralegals should assist attorneys in the administration of a vigorous legal awareness and preventive law program. They may prepare, supervise, and participate as a speaker at informational lectures and seminars, including unit education programs. Senior enlisted legal assistance paralegals, by virtue of their experience, perspective, and status as senior petty officers or noncommissioned officers, are uniquely qualified to deliver an effective preventive law message to younger enlisted personnel. Legal assistance providers are encouraged to use legal assistance paralegals for these purposes. Under the supervision of an attorney, a legal assistance paralegal may prepare and distribute preventive law materials such as articles, handouts, and outlines.

4-4. Duties of legal assistance clerical staff

a. The precise duties assigned to legal assistance clerical staff depend on the specific needs of the office; the clerk's ability, experience, and training; and the feasibility of adequate legal assistance attorney supervision. The primary role for the clerical staff should be clerical work.

b. The following is a non-exhaustive list of duties that may be assigned to legal assistance clerical support personnel:

(1) Office administration. Legal assistance clerical staff should conduct client screening for program eligibility, conflicts, and type of case; maintain master calendars and tickler systems; maintain office file systems and conduct file searches; and develop and implement information retrieval systems.

(2) Document production. Legal assistance clerical staff may perform basic legal research; prepare client-specific legal memoranda for use by the legal assistance attorney, based on information obtained from client interview(s) and from legal

research; prepare routine office correspondence for another's signature; prepare informational handouts for distribution to clients; check, "Shepardize" and "Bluebook" legal citations; and proofread documents.

(3) Client services. All legal assistance client services will be provided by or under the supervision of a legal assistance attorney (see section 3-4); legal assistance clerical staff may assist the delivery of client services as requested by the attorney.

(a) If authorized by the supervising attorney, legal assistance clerical staff may provide client services such as powers of attorney, notarization services, and certain tax assistance without an attorney-client meeting.

(b) Initial client interview. If authorized by the supervising attorney, legal assistance clerical staff may conduct an initial client interview preliminary to an attorney-client meeting. During this interview, the clerk should ascertain the general nature and particular facts of the client's case. Because of the likelihood that privileged information will be discussed, this interview must be conducted in a confidential setting. The clerk may provide the client with basic information about laws, regulations, rules, policies, and procedures that may be relevant in view of the general nature of the client's case. The JAGINST 5801.2A use of informational handouts to assist in this regard is encouraged to ensure consistency in basic information provided in similar cases. The clerk should include a complete assessment and recommendation for action when informing the attorney about the case. Following the client's consultation with an attorney, the clerk may draft correspondence, other documents, or take such other action as the attorney may direct.

(4) Pre-deployment/pre-mobilization activities. Under the supervision of a legal assistance attorney, legal assistance clerical staff may conduct pre-deployment and pre-mobilization briefings. They must be conscious that although they may be able to answer many of the legal questions arising during these briefings, they should not do so because providing such legal advice based on specific facts may constitute the unauthorized practice of law.

(5) Preventive law activities. Legal assistance clerical staff should assist attorneys in the administration of a vigorous legal awareness and preventive law program. They may prepare, supervise, and participate as a speaker at informational lectures and seminars, including unit education programs. Under the supervision of an attorney, legal assistance clerks may prepare and distribute preventive law materials such as articles, handouts, and outlines.

4-5. Legal assistance paralegal and clerical staff training objectives

a. Initial legal assistance paralegal training for Navy Legalmen, Marine Corps legal specialists, and civilian paralegals is provided through paralegal training courses at the NAVJUSTSCOL or through equivalent military or civilian training.

b. All legal assistance paralegals and clerks will be provided training in customer service, client eligibility, and local office screening and intake procedures.

c. All Navy legal assistance paralegals and clerks will be trained to provide support and assistance to attorneys providing Tier I legal assistance services.

d. Legal assistance paralegals and clerks should endeavor to keep current regarding the laws and regulations bearing on a legal assistance practice and should seek training relevant to their legal assistance duties. Such training may be available through the Armed Forces JAG Schools or other military schools, civilian personnel offices or other Federal Government agencies, national or local paralegal associations, or individual command preparation and presentation. See JAGINST 1500.4(Series) for further information and guidance. Locally applicable training directives should be consulted to implement professional training requirements.

V

POLICIES FOR LEGAL ASSISTANCE PROVIDERS

5-1. Operating policies

a. Reports. Legal assistance statistics shall be reported as prescribed herein and by other directives of the Judge Advocate General or his designee, as appropriate.

(1) Periodic statistical reporting.

(a) NAVLEGSVCCOM legal assistance offices (NAVLEGSVCOFFs, TRISVCOFFs and RLSOs) will report statistics as directed by COMNAVLEGSVCCOM as prescribed by COMNAVLEGSVCCOMINST 5800.3(Series), Naval Legal Service Command Productivity Report.

(b) Legal assistance offices, independent duty legalmen, and independent legal assistance attorneys not reporting legal assistance data under section 5-1a(1)(a) shall report legal assistance statistics quarterly to the Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as applicable, on the Quarterly Report of Legal Assistance, NAVJAG Form 5801/4(Appendix B), or through other means as designated by appropriate authority. Additionally, to facilitate monitoring by senior judge advocates of the quantity and types of client services being provided within their authority, legal assistance providers shall, unless otherwise directed, furnish a copy of the quarterly report form to the next most senior Navy SJA within their chain of command.

(c) Reserve legal assistance providers shall report productivity statistics as follows:

1. Legal assistance services provided by Reserve providers, while attached to an active duty legal assistance office and serving on active duty for training, shall be reflected in the productivity reports of the particular active duty office; and

2. Commanding officers of Navy Reserve JAG units providing legal assistance services not otherwise reported per section 5-1c(1), such as pre-mobilization assistance during inactive duty for training (IDT) periods, shall report such services in accordance with section 5-1a(1)(b) on NAVJAG Form 5801/4.

(d) The Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the

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Commandant of the Marine Corps (Code JAL) shall use quarterly reports:

1. to compile a world-wide register of legal assistance providers, which shall be used to disseminate advisories, information, and resource material to support the delivery of legal assistance, and

2. to maintain a database that, in conjunction with other statistical reporting within COMNAVLEGSVCCOM, will be used for the preparation of such statistical reports as may from time to time be required for the management of the legal assistance program.

b. Communications.

(1) Program directives, policies, and procedures. Legal assistance attorneys are encouraged to continuously evaluate Navy-Marine Corps Legal Assistance Program directives, policies, and procedures, and to suggest modifications that will enhance the delivery of legal assistance and advance the mission of the program. Attorneys may inquire at any time about directives, policies, and procedures that may affect their delivery of legal assistance services; such inquiries may be made directly to the Deputy Assistant Judge Advocate General (Legal Assistance) or to the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL). Recommendations to modify policies or directives should be forwarded, in writing, to the Judge Advocate General or his designee as appropriate, via the chain-of-command.

(2) Professional assistance. To enhance the process of giving professional assistance to a client, pursuant to JAGINST 5803.1(Series), legal assistance attorneys may communicate on matters of substantive law or procedure directly with any other legal assistance attorney who is not precluded by a conflict of interest from discussing the particular case, or directly with the Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL).

(3) On behalf of clients. When acting on behalf of a client, pursuant to JAGINST 5803.1(Series), a legal assistance attorney may communicate with any person or agency, including persons and organizations within the Department of the Navy, provided the communication identifies the attorney as a legal

assistance attorney representing an individual client rather than the United States. In addition to the telephone and regular mail, the use of Government electronic mail (E-Mail) and facsimile transmissions is authorized. With approval of the legal assistance attorney's command, the use of naval messages is authorized when other communications media are unavailable or when a naval message is deemed essential for zealous representation of the client's interests.

c. Attorney-client relationships.

(1) Legal assistance attorneys, paralegals, or clerks meeting with and advising eligible clients on matters within the scope of the legal assistance program as defined by Federal law and regulations, including Chapter VII of the JAGMAN and this manual, form attorney-client relationships with these clients. To ensure and protect client confidentiality and the attorney-client privilege, all interviews should be conducted in a confidential setting.

(2) An individual eligible for legal assistance becomes a client once he or she consults with a legal assistance attorney and forms an attorney-client relationship. A current client is a client for whom an attorney is still providing services and assistance on the subject matter presented during the consultation. A client becomes a former client once the attorney has completed action on the subject matter addressed. Attorneys should normally advise the client in writing that the attorney has completed action on the client's issue and that the attorney is closing the client's file.

(3) A prospective client is one who has a pending appointment with an attorney for the receipt of attorney services, but has not yet established an attorney-client relationship. If the prospective client fails to keep his/her appointment, he/she is a "no-show" (as opposed to a former client) and is not considered an office client.

(4) Attorney-client relationships in legal assistance are transactional. This means the relationship exists as an ongoing current attorney-client relationship while the attorney is assisting and advising the client on the same matter. Once assistance on that matter is complete, the case file is closed and the client becomes a former client. Although the attorney-client relationship has ended, the attorney and the office shall

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continue to protect all confidential and privileged client information from disclosure.

(5) A customer is an individual eligible for legal assistance who presents at the legal assistance office but requests and/or receives only power of attorney and notarization services. Once an individual consults with an attorney on a matter, that individual becomes a client.

(6) Ongoing attorney-client relationships shall be respected, and clients returning for follow-up appointments on the same matter will be assigned to the same attorney unless that attorney has transferred from the command or the client requests another attorney. Whenever it is necessary to transfer responsibility for ongoing cases to another attorney (e.g., attorney transfer, illness, or other cause), the client must be notified.

(a) In ongoing cases, where the attorney is transferring to another command or is being released from active duty, the case must be transferred to another legal assistance attorney or completed and closed by the departing attorney.

(b) In ongoing cases where an attorney is not transferring to another command or being released from active duty, and where the client objects to another attorney undertaking representation in place of the initial attorney, the initial attorney will continue representation. If appropriate, the attorney may be permitted to terminate representation and return original papers and property to the client. In both cases, the legal assistance office must maintain a copy of the client's closed file. See section 5-3a(2)(c) and (d).

d. Client eligibility and priority/allocation of legal resources.

(1) Per 10 U.S.C. § 1044 and JAGMAN § 0706(a), legal assistance is intended primarily for active duty personnel. As resources permit, services may also be provided to other categories of persons specified in 10 U.S.C. § 1044 and JAGMAN § 0706(b). Priority for providing services will be as follows:

(a) personnel attached to deploying units, other deploying active duty personnel, and reservists deploying under recall order to active duty;

(b) all other active duty personnel; and

(c) all other eligible clients, resources permitting, per priority order listed in JAGMAN § 0706b(6).

(2) For the purpose of enhancing the readiness of Reserve personnel for mobilization, pre-mobilization legal counseling and assistance may be provided to active duty or inactive Reserve personnel consistent with mobilization readiness needs. Pre-mobilization assistance normally will consist of drafting or updating wills, advance medical directives, and powers of attorney. Other assistance may be provided if related to recall or mobilization. Such assistance includes advice concerning rights under the SCRA or the Uniformed Services Employment and Reemployment Rights Act (USERRA). Pre-mobilization legal assistance services are not authorized for family members of mobilizing reservists.

(3) During mobilization or deployment, the priority and allocation of legal resources should be based on need. The absence of a will does not make a servicemember non-deployable. The need for a routine will for a servicemember being mobilized or deployed must be weighed against the needs of other deploying service members for wills and other legal services (e.g., resolving child custody, landlord-tenant, or consumer law problems). When legal resources are limited, the priority for drafting and executing wills should generally be given to service members to whom any of the following applies:

(a) those who have a minor child;

(b) those whose primary beneficiary is a minor; and

(c) those who desire their property to be distributed in a manner different from that which would occur under the applicable laws of intestate succession or under an existing will (this will include members with spouses who desire that the spouse receive the entire estate). The drafting and execution of wills for all other service members may be delayed until such time that legal resources are available following mobilization or deployment.

(4) The Judge Advocate General may authorize additional persons or classes of persons, not specified in JAGMAN § 0706,

to receive legal assistance services. Requests to designate additional legal assistance beneficiaries should be addressed to the Judge Advocate General via the Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate, and should state:

(a) who is to be assisted;

(b) the types of services to be offered and provided;

(c) the period for which authorization to provide services is sought; and

(d) the reasons why the extension being sought furthers the mission of the local command and the Navy or the Marine Corps, as appropriate.

(5) Each legal assistance provider shall have a screening system for all incoming clients to verify eligibility for legal assistance services and to minimize the potential for conflicts of interest among clients. Screening methods should minimize potential Privacy Act violations and susceptibility to identify theft, i.e. Armed Forces ID cards should not be photocopied and made part of the client or customer's intake sheet. The Navy standard intake sheets for attorney and non-attorney services are provided at Appendices C and D.

(6) To the extent possible under the priority set by 5-1d(1), preference should be given to handling the special needs of clients with life-threatening injuries or illnesses and to eligible primary next of kin regarding Casualty Assistance Calls Officer (CACO) matters including will probate, estate settlement, and survivor's benefits of servicemembers who die while in an active duty military status.

e. Conflicts of Interest Avoidance.

(1) Within a single legal assistance office, an attorney shall not knowingly undertake to represent a client whose interest in a particular matter is the same or is substantially related and is materially adverse with that of a current or former legal assistance client. Such conflicts may arise not only in domestic relations cases, but also in cases involving

contracts, sales, torts, and other matters in which there may be adverse parties eligible to receive legal assistance services. Powers of attorney and notary services do not usually give rise to conflicts of interest. See sections 2-3 and 5-1c. Attorneys must take early and decisive action to avoid conflicts of interest to ensure independent representation for all.

(2) Within a NAVLEGSVCOFF a Legal Assistance Department including all detachments and/or branch offices operating under one Legal Assistance Department Head will ordinarily be considered a single legal assistance office for purposes of determining and resolving conflicts of interest. NAVLEGSVCOFF detachments and branch offices operating a legal assistance program separate from the main NAVLEGSVCOFF Legal Assistance Department and not in the Chain of Command of the main office Legal Assistance Department Head will ordinarily be considered a separate office for purposes of determining and resolving conflicts of interest.

(3) NAVLEGSVCOFF commanding officers, senior SJAs, Directors, JLCs, and Officers in Charge of LSSSs, shall maintain effective conflict screening procedures and ensure that only instances involving a conflict of interest as set forth in JAGINST 5803.1(Series) are referred to external legal assistance providers.

(4) When a conflict of interest exists, the excluded party should be referred in order of preference to:

(a) a separate legal assistance office at a local NAVLEGSVCOFF detachment or branch office.

(b) an attorney with current legal assistance experience assigned to a different Department (i.e. the defense department) within the same NAVLEGSVCOFF, JLC or LSSS.

To effectuate a proper referral under subsection (a) or (b) informed consent should be obtained from both the prospective and current/former client.

(c) an independent active duty SJA; a TRISVCOFF/RLSO attorney; a Reserve legal assistance attorney; a separate Reserve IMA Detachment; or to a legal assistance office or attorney of another service. A referral shall not however be to a Reserve judge advocate performing annual training (AT) or

inactive duty for training (IDT) drills at the same legal assistance office as the gaining command. NAVLEGSVCOFF commanding officers, senior SJAs, Directors of JLCs, and Officers in Charge of LSSSSs, are encouraged to coordinate work with other services in their area of responsibility to facilitate handling of conflicts of interest cases.

(5) When no alternative legal assistance provider is available a prospective client may be referred, with both the prospective and current/former clients informed consent and approval by the commanding officer, as appropriate, to another attorney within the same legal assistance office of the NAVLEGSVCOFF, JLC, or LSSS. NAVLEGSVCOFF commanding officers, senior SJAs, Directors of JLCs, and Officers in Charge of LSSSSs, must establish procedures to ensure protection of client confidences and facilitate attorneys' duties of independent judgment and loyalty to the client. Representation of conflicting legal assistance clients within the same legal assistance office shall occur only with written notice to the prospective and current/former client. Moreover, each attorney is independently responsible for ensuring that such representation is permissible under the rules of that attorney's licensing authority.

(6) Where no other legal assistance attorneys are available to provide legal assistance or the prospective, current, or former client is determined inappropriate, the excluded party will be advised to seek civilian counsel. See section 5-11 concerning referrals. Under no circumstances shall one attorney represent both opposing parties in the same matter. However, preparing wills for spouses is permitted unless an actual conflict of interest arises in providing such services. A dual representation letter may be required when preparing wills for spouses. This does not preclude a legal assistance attorney, if properly authorized, from acting as a mediator or arbitrator under an established Alternate Dispute Resolution program.

(7) Attorneys whose primary duties are not legal assistance must be especially sensitive to the possibility that actual conflicts of interest may develop. For example, an SJA may need to advise his commander concerning allegations of indebtedness, nonsupport, or paternity made against a member of the command; accordingly, the SJA should refrain from advising and representing individual command members in such matters.

Commanding officers of TRISVCOFFs/RLSOs providing legal assistance due to a conflict of interest at the NAVLEGSVCOFF must guard against potential conflicts between prosecutorial and command advice responsibilities and individual legal assistance clients, and must guard against conflicts between legal assistance clients. Similarly, an attorney acting as defense counsel for Seaman or Lance Corporal "X" should not, after shifting into a legal assistance position, undertake representation of Mrs. "X," who is seeking divorce advice.

(9) Commanding officers of TRISVCOFFs/RLSOs (with assistance upon request from NAVLEGSVCOFFs) shall provide training and resources to TRISVCOFF/RLSO legal assistance attorneys and legal assistance paralegals to ensure competency in areas of legal assistance practice. Whenever TRISVCOFF/RLSO personnel provide legal assistance, statistical accounting and reporting is required. See section 5-1a(1)(a).

f. Legal ethics and professional responsibility. Legal assistance attorneys exercise independent professional judgment on behalf of clients within the scope of the legal assistance program. Each attorney is professionally responsible for his or her own work product and that of any paralegal and clerical personnel to whom functions are delegated. Supervisory attorneys are responsible for the work of their subordinates as provided in applicable ethics regulations. Legal assistance practice, whether by military or civilian attorneys, is subject to the rules of JAGINST 5803.1(Series). Additional guidance in resolving ethics/professional responsibility issues may be found in the American Bar Association Model Rules of Professional Conduct, ABA formal and informal ethics opinions, and the ethics rules and opinions of the jurisdiction(s) where the attorney is licensed and practice occurs.

g. Confidentiality. Legal assistance providers shall maintain confidentiality of client information. Adequate steps must be taken to prevent unauthorized disclosures including training of all legal assistance personnel in the ethical requirements of confidentiality; proper safeguarding of work in progress involving confidential information; physical security; proper disposal of office and attorney records; and respect for privacy during client interviews. In particular, in-person screening of legal assistance clients, whether by an attorney, legal assistance paralegal, or legal assistance clerical support

person, should be accomplished in a manner to ensure confidentiality concerning the nature of the case (e.g., avoid conducting screening interviews in a public waiting area or open office).

h. Third party advice. The attorney-client relationship requires personal and confidential communication. Advice shall not be provided to or through a third party intermediary, nor should information personal to the client or which would normally be shielded by the attorney-client privilege be sought through a third party. In particular, wills, living wills, powers of attorney, or other documents affecting the legal rights of a spouse or other intermediary should not be drafted on instructions of, or information provided by, that spouse or other intermediary. This restriction does not apply to the use of a translator, sign language interpreter, or like individual to assist communications between the attorney and the client.

i. Telephonic and electronic advice. Telephonic and electronic media have created opportunities to provide legal assistance to individuals remote from a legal assistance attorney. Generally, the initial communication with a client should not be done telephonically or by E-Mail. These media make it difficult to determine the client's eligibility for legal assistance and may deny the legal assistance provider an opportunity to view relevant documents. However, if eligibility can be confirmed and relevant documents may be scanned and E-Mailed or sent via facsimile to a provider, individuals in remote locations or requiring access to a legal assistance attorney at another location because of a conflict of interest, may be provided services by telephonic, video telephone conferencing, or electronic media. The attorney must ensure reasonable safeguards are in place to protect client confidences.

j. Prohibition against compensation for legal assistance services. Legal assistance is a free service for eligible beneficiaries. No legal assistance attorney, legal assistance paralegal, or legal assistance clerk, whether active duty, Reserve, or civilian, shall solicit or receive, directly or indirectly, any fee or compensation, in cash or otherwise, other than official Government compensation, for legal services, advice or consultation provided to any person eligible for services under the legal assistance program. See 18 U.S.C. §§ 203 and 209, and JAGINST 5803.1(Series).

k. Standards of conduct and ethics. Legal assistance personnel must ensure that their actions conform to the standards of conduct and ethics applicable to military personnel and members of the Executive Branch of the Government. See DOD 5500.7-R (DOD Joint Ethics Regulation), Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. pt. 2635), and JAGINST 803.1(Series). Situations that violate these restrictions include but are not limited to taking any official action, including making a referral, when doing so will have a direct and predictable effect on the financial interests of the legal assistance provider, or taking any official action with regard to entities with whom the provider or anyone in the providers' household, or any relative with whom the provider has a close personal relationship (e.g., parents, siblings) is negotiating for employment.

1. Referrals.

(1) Preference for no-cost or low-cost referrals. When a client needs assistance beyond the capability of the particular legal assistance attorney or office, or beyond the scope of the legal assistance program, referral of the matter to another Navy or Marine Corps legal assistance provider, to a legal assistance office or attorney of another service, or to a nongovernmental source of free or low-cost assistance (such as a free or low-cost legal services organization), is encouraged.

(2) Referrals to private counsel. Referrals to a list of qualified private counsel may be made; however, no referral to or endorsement of a specific private counsel may be made. Local or state bar association referral services should be utilized whenever possible. When no such services are available, legal assistance providers may furnish clients with a list of local civilian counsel. Care must be taken to avoid the appearance of endorsement, impropriety, or preferential treatment with respect to a specific private attorney. Referrals to private attorneys should be limited to clients with particular needs requiring the attention of attorneys qualified in specialized areas of practice. In all cases in which a referral to private counsel is made, the client should be advised that the client is solely responsible for the payment of all fees associated with representation, and that the Government is not responsible for any fee or charge incurred by such a referral.

(3) Referral gratuities prohibited. A legal assistance attorney shall not accept or receive any fee or compensation of any kind, directly or indirectly, for referral of clients to an attorney or law firm, whether or not such payments are permissible under local law or ethics rules.

m. Fees, costs, and client funds. Legal assistance offices and attorneys shall not maintain client trust funds of any kind, and any funds received for the benefit of a client must be

promptly transmitted to the client. A legal assistance attorney shall not advance any funds, either Government or personal, to any client for any purpose. The client shall pay all fees and costs, if any, connected with a legal assistance case.

n. Legal assistance correspondence. Legal assistance providers must ensure that their correspondence does not imply Navy, Marine Corps, or command sponsorship or endorsement of their legal analysis in a particular case. Accordingly, the following practices shall be observed:

(1) All legal assistance correspondence shall be prepared on distinctive legal assistance letterhead, and use Navy correspondence manual business letter format rather than standard military letter format regardless of the identity of the addressee, and

(2) Disclaimer language will be included in all outgoing correspondence, either pre-printed on legal assistance stationary, in a "footer" printed at the bottom of a page, or in the letter's text. Marine SJAs, Directors of JLCs, or Officers in Charge of LSSSs may establish specific requirements within their chains of command.

(3) The following disclaimer language is recommended for use in Navy legal assistance offices:

This letter is written by a legal assistance attorney on behalf of an individual client, and does not represent an official position of the Department of the Navy or the United States Government.

(4) The legal assistance provider will sign correspondence as a representative of the client; terminology

such as "by direction" will not be used. A recommended signature block is below.

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Lieutenant, Judge Advocate General's Corps
United States Naval Reserve
Legal Assistance Attorney

(5) Legal assistance correspondence files will be maintained separately from other command correspondence to safeguard confidentiality. See section 5-3.

(6) Mailing envelopes should bear the distinctive return address of the legal assistance office or attorney providing the client service.

5-2. Legal assistance facility standards. Delivery of legal assistance services in a military environment will necessarily occur under a variety of conditions and circumstances. The following standards represent objectives, applicable to all legal assistance providers, to facilitate delivery of high-quality professional services.

a. Attorney offices. Attorneys providing legal assistance should be provided with individual private offices with full floor-to-ceiling walls and closable, lockable doors to safeguard confidentiality of consultations with clients and client files kept by the legal assistance attorney.

b. Equipment/software.

(1) If possible, each legal assistance attorney and legal assistance paralegal should be provided with a personal computer or workstation. At a minimum, each location where legal assistance is provided should have one personal computer available for use by legal assistance personnel.

(2) Naval Legal Service Command units must have and utilize the Office of the Judge Advocate General (OJAG) and COMNAVLEGSVCCOM approved software to facilitate sharing information and documents via electronic means, and to develop further efficiencies in the provision of legal assistance. The standard software package contains DL Wills used to draft wills and other estate planning documents, Hot Docs used to draft powers of attorney, client correspondence and other documents,

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and Time Matters/HELM used as a legal assistance case management tool.

(3) Other Navy legal assistance offices are encouraged to use software products compatible with those used by the OJAG and NAVLEGSVCCOM units to facilitate the sharing of information and documents via electronic means; questions concerning OJAG/NAVLEGSVCOM standard software may be addressed to OJAG (Code 65).

(4) Each Navy legal assistance provider is strongly encouraged to ensure his/her current email account has been provided to OJAG (Code 65) and the Navy-Marine Corps White Pages. Each provider must have access to the Internet to be able to easily access Navy and Marine Corps web sites including Navy Knowledge Online (NKO). These methods of communication are the primary means used to promulgate information about legal assistance program policy, operating procedures, and developments in the law relevant to a legal assistance practice.

c. Library/automated legal research. Legal assistance providers must have access to adequate library resources, automated legal research support, and to the Internet, preferably at their own activity, or at another location nearby.

(1) On-line Navy resources may be found at Navy Knowledge Online (NKO) www.nko.navy.mil. The legal assistance resources on NKO provide a library of forms, handouts, and practice advisories for Navy legal assistance providers. Navy legal assistance providers should subscribe to NKO or coordinate through OJAG (Code 16) to access these materials on the NKO website.

(2) Further library resources for Navy legal assistance providers are set forth in JAGINST 5070.1(Series), Navy Field Law Library Program. Additional free legal assistance publications are available from various sources, including OJAG (Code 16), the Army JAG Legal Center and School, and the NAVJUSTSCOL.

(3) All legal assistance offices should have automated legal research access. Automated research and other internet-based searches will satisfy the majority of legal assistance provider research needs.

5-3. Legal assistance records and files

a. Official records. In general, legal assistance providers shall maintain only those official records and files essential to the operation of the office.

(1) Legal assistance intake records. For administrative and statistical purposes, each legal assistance office or independent legal assistance attorney, will maintain paper or electronic records reflecting client contact information and the general nature of assistance. Information in these records is used to contact current clients, former clients, and customers concerning assistance provided, to avoid conflicts of interest, and to develop statistical data of services rendered. Navy legal assistance offices should use Appendix C (NAVJAG Form 5801/5) and Appendix D (NAVJAG Form 5801/6) for client/customer intake when complete electronic intake is not available or not feasible.

(a) Intake sheets contain private client information that is not accessible to the public or to persons within the command except as permitted by the Privacy Act. Information on intake sheets may be revealed to personnel in other departments of the command involved in the preparation of legal assistance productivity reports. To avoid release of privacy act-protected client information, legal assistance attorneys should not include attorney-client privileged or otherwise private information on hard copies of intake sheets.

(b) Closed legal assistance intake sheets generally will be retained at the legal assistance provider's location for two years after completion of the services, and then disposed of as required by SECNAVINST 5212.5D(Series), Disposal of Navy and Marine Corps Records. Intake sheets may be maintained indefinitely if a dispute or inquiry about the matters addressed in the sheets is reasonably foreseeable.

(c) Hardcopy or electronic intake sheets will be used to capture statistical data collected for analysis. These sheets will also be utilized to check for conflicts of interest between prospective, current, and former clients. Customers, those who have used legal assistance services of the office, but have not established an attorney-client relationship with any attorney in the office, will not be screened as part of the

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conflict of interest screening process. Client sheets used for such screening shall be maintained for two years in accordance with SECNAVINST 5212.5D(Series).

(2) Legal assistance case files. Legal assistance case files contain personal and privileged information about clients and the legal matters involved, including various documents such as: copies of client records provided to the attorney; memoranda of attorney-client interviews and attorney-client telephone conversations; memoranda of paralegal-client interviews and paralegal-client telephone conversations; memoranda of meetings and telephone conversations with relevant third parties; copies of statutes and case law relevant to the case; attorney, paralegal, or clerk research and notes; copies of correspondence and documents prepared; and a record of the results obtained. Legal assistance case files are Government records. The legal assistance provider shall store files in a manner to protect client confidences and the privileged information therein.

(a) Access to legal assistance case files normally is restricted to the legal assistance attorney directly assisting the client, other legal assistance office personnel assisting the client, and appropriate supervisory authority. See JAGMAN § 0707b. Additional limitations on access may be necessitated whenever a conflict of interest exists within the office or when the client instructs that particular information be confined to one (or more) attorney(s). The client's concerns will always be respected and client confidences will be protected. The client will be provided access to the case file, and original documents therein, in accordance with applicable ethical rules and the Privacy Act.

(b) To the extent this can be accomplished without compromising the privileged nature of the files, material in legal assistance case files, whether open or closed, may be consulted for specimen forms or used for training within the legal assistance office.

(c) Upon terminating representation of a client, all papers and property belonging to the client, or to which the client is otherwise entitled, will be promptly returned. The provider may retain, in the case file, copies of papers relating to the case to the extent permitted by law and ethical rules.

(d) Closed legal assistance case files of former clients will be retained at the legal assistance office for two years after completion of the services, and disposed of as required by SECNAVINST 5212.5(Series). Files may be maintained indefinitely if a dispute or inquiry about the matters addressed in the files is reasonably foreseeable.

(3) Chronological file. Each legal assistance office or provider should maintain a monthly chronological reading file, not indexed by personal identifiers, of all documents and correspondence prepared for clients. The appropriate supervisory authority should review this file from time to time for quality assurance purposes. As this file is likely to contain privileged material, appropriate measures shall be taken by the legal assistance provider to safeguard the file and maintain the confidences of clients.

b. Individual attorney files. Individual legal assistance attorneys are encouraged to maintain, distinct from the legal assistance case files, their own personal working files with copies of documents, notes and materials from their cases. Each legal assistance attorney shall be permitted to copy at Government expense all case files upon which he or she works. Individual attorney files are private property, rather than Government records. They must be maintained in a manner to protect client confidences and the privileged information therein.

VI

PRE-DEPLOYMENT, PRE-MOBILIZATION, AND LEGAL READINESS LEGAL ASSISTANCE SERVICES

6-1. Scope of Services Generally. Mission readiness is the primary focus of the Navy-Marine Corps legal assistance program. The regular provision of pre-deployment, pre-mobilization, and legal readiness services by legal assistance attorneys, active and Reserve, is essential in ensuring the individual readiness of Sailors and Marines and their family members. Legal assistance offices shall establish comprehensive programs that prepare eligible legal assistance clients to deploy or mobilize.

a. Pre-deployment and pre-mobilization programs should educate and provide services specifically related to, among other topics:

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- (1) Servicemembers Civil Relief Act (SCRA);
- (2) USERRA;
- (3) Life insurance (including SGLI) designations;
- (4) Child and dependent support (including modifications prior to deployment);
- (5) Estate planning; and
- (6) Consumer Law.

b. Pre-deployment Services. Pre-deployment services will be provided to active duty service members who are within 180 days or less of deployment. Pre-deployment services may also be provided, as resources permit, to family members of deploying servicemembers.

c. Pre-mobilization Services. Pre-mobilization services will generally be provided to all Reserve servicemembers under a call or orders to active duty for a period of 30 days or more and to Reserve unit members annually as part of a pre-mobilization preparation cycle. Family members of Reserve members under a call or orders to active duty for 30 days or more may also be provided pre-mobilization services, as resources permit. Navy Reserve members must receive a legal briefing at the time they are recalled to active duty under NAVADMIN 068/03.

d. Scope of Pre-deployment and Pre-mobilization Services. Pre-deployment and pre-mobilization services generally will consist of a legal briefing, readiness checklist review, and preparation of appropriate legal documents for the deploying or mobilizing members. Legal documents will often include wills, powers of attorney, advance medical directives (living wills), and various SCRA protection letters. Other legal assistance services should be provided as resources permit, if the member anticipates the legal issues will create potential distractions while the member is deployed or activated.

e. Legal Readiness Services. Legal readiness services should be provided to active duty servicemembers annually in accordance with the requirements of OPNAVINST 5801.1(Series). Legal readiness services include review of readiness checklist;

review of personal legal documents such as will, powers of attorney, and advanced medical directives; and discussion of personal legal affairs including estate plan, family care plan (if appropriate), SGLI designations, and SCRA rights.

6-2. Limitations on Pre-deployment, Pre-mobilization, and Legal Readiness Services. For active duty members and their family members, the scope of legal assistance services provided for pre-deployment or as legal readiness review will be subject to the limitations placed on services identified in sections 7-1 through 7-4 of this manual. Additionally, local NAVLEGSVCOFF commanding officers; senior SJAs; Directors, JLCs; and Officers in Charge of LSSSs may further limit services as necessary to meet the immediate pre-deployment, pre-mobilization, and legal readiness needs of deploying or mobilizing servicemembers and their families.

VII

STANDARDS FOR LEGAL ASSISTANCE CLIENT SERVICES

7-1. Scope of Services Generally

a. Preference for complete services and early referrals.

(1) To maximize the efficient use of limited resources, legal assistance providers should concentrate their efforts on those cases for which continuing representation of the individual until final resolution, without the necessity of referral to a civilian attorney, is a reasonable possibility.

(2) For those problems which will inevitably require referral to civilian counsel, legal assistance should be limited to brief advice, explanation of options, and referral; normally, these services will be provided in a single interview. Early referral in these cases is appropriate to permit the civilian attorney maximum flexibility to develop and pursue issues to the maximum benefit of the client.

b. Normal services and limitations.

(1) Legal assistance providers normally will offer the services listed in JAGMAN § 0708, applying the standards prescribed in this manual. For Navy legal assistance providers, these services will include those listed in Appendix A.

However, a priority will always be placed on providing pre-deployment services as outlined in sections 6-1 and 6-2 of this manual.

(2) NAVLEGSVCOFF commanding officers, TRISVCOFF/RLSO commanding officers (providing legal assistance services in accordance with sections 2-3 and 2-4), and senior Navy SJAs may provide more complex legal assistance services as personnel, resources, and expertise permit. Any services provided in addition to those in Appendix A but not otherwise prohibited by JAGMAN Chapter VII or this manual are considered Tier II legal assistance services.

(3) NAVLEGSVCOFF commanding officers, TRISVCOFF/RLSO commanding officers (providing legal assistance services in accordance with sections 2-3 and 2-4), senior Navy SJAs, Directors of JLCs, or Officers in Charge of LSSSs may limit the scope of services furnished by any legal assistance provider under his or her authority, as necessary.

(4) Limitations on services may be necessary due to emergent requirements, overall demand for services, personnel shortages; limited resources; or because the expertise required for a complex practice area does not match the competence or experience of the attorneys currently assigned at that office. A legal assistance attorney should not attempt to provide services for which the attorney lacks the time, resources, experience, or expertise to provide a high-quality product.

(5) Additional consideration for supervisory attorneys. TRISVCOFF/RLSO commanding officers (providing legal assistance services in accordance with section 2-3), Navy SJAs, Directors of JLCs, and Officers in Charge of LSSSs are cautioned to avoid providing legal assistance services for cases where there is a reasonable probability that information obtained pursuant to the legal assistance may be relevant to legal advice provided to the command about official action that could result in a conflict of interest between the legal assistance client and the command's disciplinary issue. Examples of such matters are nonsupport of dependents, paternity, and indebtedness/involuntary allotments.

7-2. Client service standards for matters not involving official Government interests. The following standards apply to the delivery of specific legal assistance services by all legal assistance offices and independent legal assistance attorneys:

a. All Navy legal assistance attorneys will provide Tier I legal assistance services to eligible clients. The minimum level of competency at which these services will be provided to clients is set by the Tier I services checklists distributed by the Deputy Assistant Judge Advocate General (Legal Assistance). Providers should not limit the level of service provided to the checklists but should use the checklists as a guide to ensure a consistent level of service is provided to all clients throughout the Navy. Navy legal assistance providers are expected to incorporate into the checklists local and state issues relevant to the service provided.

b. Wills, trusts, and estate planning. Basic estate planning service, including drafting of wills or advanced medical directives, is a central part of the legal assistance program. Every effort must be made, within the scope of the available basic service, to meet the individual needs and desires of the client concerning disposition of property and care of children. Complex will drafting and estate planning services are not routinely provided in the Navy-Marine Corps Legal Assistance Program unless the individual legal assistance attorney possesses particular legal training and expertise in the applicable subject matter.

(1) Will drafting.

(a) Attorneys. A legal assistance attorney will individually and privately interview each client who requests a will (it is recognized that in some emergency situations or under field conditions, "individually and privately" may involve the attorney and client meeting at a table in a gymnasium or in a mess tent, for example, instead of a private office; however, in all circumstances there must be a one-on-one meeting between attorney and client). Group or videotape consultations alone are not sufficient, although such presentations are useful as a means of providing general information to clients prior to individual consultations. Group or video consultation cannot be made a prerequisite to completing a questionnaire or seeing an attorney. Client questionnaires should be used to speed the drafting process, but the attorney should review the questionnaire with the client to ensure that the client properly understands each question and the ramifications of his or her answer. The responsible attorney's name and state of admission shall be placed on each will drafted by the attorney or a legal assistance paralegal under his or her supervision.

(b) Legal assistance paralegals. Legal assistance paralegals may assist attorneys by providing will-drafting services, but should only draft wills under the supervision of the attorney who has individually consulted with the client. Legal assistance paralegals may assist clients in completing will questionnaires.

(2) Will content. In most cases, assistance will be limited to preparation of a basic will disposing of the client's property, and naming executors and guardians, as appropriate. Basic wills may include testamentary trusts, especially when there may be minor children as beneficiaries and the supervising attorney has authorized provision of these services. Wills prepared as military testamentary instruments under 10 U.S.C. § 1044d must comply with the requirements of 10 U.S.C. § 1044d and Department of Defense Directive (DODDIR) 1350.4 (April 28, 2001). See paragraph 7-2a(3)(f). Wills that are not prepared as military testamentary instruments should not contain the military testamentary instrument preamble or self-proving affidavit. These wills should be drafted and executed in accordance with the laws of the state where it is most appropriate for the client.

(a) The Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL) will coordinate distribution of resources to legal assistance providers that will facilitate the production of high-quality basic wills.

(b) Navy and Marine Corps legal assistance attorneys shall utilize the most current version of the "will drafting" software approved and distributed by the Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL).

(c) The preparation and execution of preprinted "fill-in-the-blank" wills is discouraged. However, on the rare and limited occasions when use of "fill in the blank" forms is necessary, use of these forms must be limited to clients authorized to use such wills under the applicable state statute, and whose testamentary needs are, in the professional judgment of the attorney, satisfied by the use of such a form will. The use of this type of form will does not alter the requirement for individual attorney consultation with the client.

(d) Pursuant to DODDIR 1350.4 (April 28, 2001), if a legal assistance attorney drafts a military testamentary instrument (i.e., a will under 10 U.S.C. § 1044d) it must contain a military testamentary preamble, military testamentary instrument self-proving affidavit, and must be executed by a military legal assistance attorney as defined by DODDIR 1350.4.

If preparing a military testamentary instrument, the preamble for the will must read as follows:

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 such State, the District of Columbia, or 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.

(3) Will executions.

(a) Wills will be executed under the supervision of a legal assistance attorney. A military legal assistance attorney must execute wills prepared as military testamentary instruments under 10 U.S.C. § 1044d. Execution shall not occur until the client has had the opportunity to carefully read and modify the document and discuss, in confidence, any questions about its provisions with the drafting attorney. If it is not practicable for the drafting attorney to answer client questions, another legal assistance attorney at the same location may, with the client's consent, respond to any questions the client has about the will.

(b) If the requirements set forth in section 7-2a(3)(a) have been satisfied, a legal assistance paralegal may supervise the execution of a will when directed to do so by a legal assistance attorney. The paralegal must refrain from advising the client about the meaning of the will's provisions.

Substantive questions shall be referred to the drafting attorney or, if not practicable, to another legal assistance attorney. However, wills written as military testamentary instruments under 10 U.S.C. § 1044d must be executed in the presence of a military legal assistance attorney. See section 7-2a(3)(f).

(c) Every attempt should be made for the legal assistance attorney or legal assistance paralegal to supervise the execution of the will. However, there may be rare and exigent circumstances when it is not practicable for any legal assistance attorney or legal assistance paralegal to supervise the execution of a will. For example, due to an unforeseen exigency, if an unexecuted will prepared at a legal assistance office must be mailed to a ship, the legal assistance attorney may arrange for an appropriate individual (such as a ship's legal officer) to supervise the execution of the will. In such cases, the attorney shall provide that individual with detailed instructions for executing the will and furnish a copy of those instructions directly to his or her client. The instructions should require that the individual supervising the execution provide to the legal assistance attorney confirmation of the date and place of the execution and that the execution was conducted in accordance with the attorney's detailed instructions. The instructions should further direct that the will should not be executed if the service member does not agree with any of the will provisions, has further substantive questions regarding the will, or does not understand certain will provisions.

(d) Legal assistance attorneys should not normally deliver unexecuted wills directly to clients. Clients may receive a copy clearly marked "draft" on each page of the document.

(e) "Mass" will executions are discouraged unless exigent circumstances dictate otherwise. Under such circumstances, extreme care must be taken by the legal assistance attorney to maintain an orderly process wherein each servicemember's individual papers are kept separate and organized. In no case shall the legal assistance attorney executing the wills be from the same deployable command as all testators/trix and witnesses.

(4) Estate planning advice.

(a) Legal assistance attorneys will not normally offer estate planning, in the sense of arranging a client's affairs to minimize estate taxation of his or her estate upon death. Attorneys must have special training and competency to provide this service. Moreover, as the Federal estate tax threshold has been subject to regular revisions, legal assistance attorneys must stay apprised of the current law regarding the estate tax threshold (paying particular attention to the monetary threshold when an estate will be subject to Federal estate taxes) and the interplay between the Federal gift tax and Federal estate tax.

(b) If a client clearly needs estate planning assistance because of the size of his or her estate or other special considerations, the client should be advised to seek expert civilian assistance. Complex estate plans typically may require coordination of a variety of legal instruments and continuous management of property. Preparing a basic will for a client who needs comprehensive estate planning is a disservice. For clients whose estate exceeds the Federal estate tax exemption amount, legal assistance attorneys should not provide any estate planning advice except where provision of these complex services has been authorized by the attorney's commanding officer, senior SJA, Director JLC, or Officer in Charge of LSSS, as applicable.

(5) Trusts.

(a) Legal assistance attorneys should be familiar with basic testamentary trusts. A testamentary trust is, for many military families, the best way for property to pass to and be managed for the benefit of minor children. Complex testamentary trusts are normally beyond the scope of the legal assistance program. A client who desires or requires this service should be advised to consult an expert estate planning professional.

(b) Drafting or managing revocable or irrevocable *inter vivos* ("living") trusts to transfer assets out of a person's estate, avoid estate taxes, or reduce probate expenses, is a complex estate planning service not available from legal assistance providers. Clients may be advised, however, of the general nature and legal effect of such strategies.

(c) Drafting or managing special needs trusts to establish a trust for the benefit of a disabled child, parent,

or other beneficiary is complex estate planning service not normally available from legal assistance providers. However, counseling and advice regarding special needs trusts should be made available.

(6) Servicemembers' Group Life Insurance (SGLI).

(a) Counseling. The rights, benefits, and privileges, including spouse coverage, available under SGLI should be explained to all eligible service members entitled to coverage. A servicemember who wishes to name a minor as a principal or contingent beneficiary, directly by name or by relationship, should be advised that SGLI proceeds cannot be directly paid to a minor, except for a minor spouse.

(b) Designation and Counseling Regarding SGLI Proceeds. For many servicemembers, especially junior personnel, the bulk of their personal estate is the SGLI benefit. As with other life insurance, SGLI does not usually pass to beneficiaries through the member's probate estate but rather by virtue of the member's contractual designation of one or more beneficiaries.

(c) Use of "by law" or "by will". The use of the words "by law" to designate beneficiaries is prohibited; reliance on the distribution scheme mandated by the SGLI statute, 38 U.S.C. § 1970, through either a "by law" designation or no designation at all, can yield harsh and unintended results.

(d) Legal assistance providers are encouraged to maintain a supply of the most recent revision of Form 8286 (SGLI Beneficiary Election), to discuss SGLI beneficiary election with every will client, and to complete the form during the attorney-client meeting. It is a disservice to a client to provide a basic will that controls disposition of little, if any, property, while ignoring a client's wishes about this valuable asset.

(e) Legal assistance providers may prepare a trust within the will instrument (i.e., a testamentary trust) to receive SGLI proceeds; such an instrument may afford the best means for swift payment of the insurance proceeds and management of those proceeds in the manner desired by the member, particularly when the intended beneficiaries are minor children.

A servicemember who desires to create a trust outside the will instrument should be referred to competent civilian counsel.

(f) Designation of beneficiaries. A service member may designate any person, firm, corporation, or legal entity, including a charitable organization or a trust, as a beneficiary.

1. Beneficiaries. A principal (first) and a contingent (second) beneficiary may be designated. When a servicemember designates more than one beneficiary, the SGLI Form 8286 must clearly show each beneficiary designated as either "principal" or "contingent." When the servicemember designates two or more beneficiaries as principal or contingent, the fraction of SGLI proceeds to be paid to each beneficiary will be shown on the form. Note that unless otherwise indicated designated beneficiaries take per capita not *per stirpes*.

2. Children. As with adults, children may be designated by name. However, they may also be designated by relationship when the servicemember desires to provide the same amount of SGLI proceeds to each child.

3. Uniform Gifts to Minors Act (UGMA) and Uniform Transfers to Minors Act (UTMA). A servicemember may designate a custodian for a beneficiary who is a minor under the UGMA or UTMA. This process permits the servicemember, not a court of law, to determine who will act in the minor's best interest. Designation of a custodian will normally ensure that there is no delay in payment of the SGLI proceeds.

4. Trustee Named in a Will. A servicemember may designate a trustee under a trust established in a will. The will must be executed prior to completing the SGLI Form 8286. When designating a trust as the beneficiary the suggested language for the SGLI form is as follows:

To the Trustee of the trust established in my will for the benefit of (name beneficiary, such as "my children") and if the trust is invalid for any reason or if I die without a valid will, to (name beneficiary such as "my children").

5. Designation of a Trustee named in a Trust document (Outside a Will). A servicemember may designate a trustee under a trust established in a trust document (outside a will). This document may be titled a "Trust Agreement" or a "Declaration of Trust." The servicemember must have the trust document prepared and signed (executed) prior to completing the SGLI Form 8286. Moreover, a civilian attorney with particular expertise in the practice of estates and trusts should prepare this document.

6. Duration of Designation. Designation of all beneficiaries will remain in effect until properly changed by the servicemember or until the SGLI is automatically canceled or terminated. Termination of one period of military duty and entry into another period of military duty will not automatically cancel the designation, except where there is a break in service. Where there is a break in service, the previous beneficiary designation is canceled. See 38 C.F.R pt. 9.16.

7. Failure to Properly Name a Beneficiary. Servicemembers should be advised that if beneficiaries are not designated, or the designation fails (for example, the designated beneficiary predeceases the servicemember or a trustee is designated, but no trust was established), SGLI proceeds will be paid in accordance with 38 U.S.C. § 1970, which provides for SGLI proceeds to be paid in the following order:

a. widow or widower; if none, to-

b. child or children in equal shares with the share of any deceased child distributed among the descendants of that child; if none, to-

c. parent(s) in equal shares; if none, to-

d. the executor or administrator of the service member's estate; if none, to-; or

e. other next of kin.

b. Survivor Benefit Plan and other survivor benefits.

(1) Advice should be provided concerning the Military Survivor Benefit Plan, and of survivor benefits including Dependents Indemnity Compensation, Social Security, and the military death gratuity.

(2) Typical services provided should outline the provisions of the Survivor Benefit Plan, particularly highlighting differences in the plan when a service member has less than 20 years of active service and when a service member has over 20 years of active service.

(3) Legal assistance attorneys should also advise members and family members on requirements for receiving Dependents Indemnity Compensation, Social Security benefits, and other military and veterans survivor benefits.

c. Advance medical directives. Advance medical directives (AMD), commonly referred to as "living wills," are written declarations that provide for the withdrawal or withholding of life-prolonging procedures when the declarant has a terminal physical condition or is in a persistent vegetative state. These directives may also authorize another person to make health care decisions if the declarant becomes incompetent to make such decisions him or herself.

(1) State law governed AMDs until 1996. Section 1044c of Title 10, U.S.C. requires states to recognize AMDs that are prepared by legal assistance attorneys for persons who are eligible to receive legal assistance to the same extent as an AMD "prepared and executed in accordance with the laws of the state concerned." The Act does not require any state to recognize the AMD if that state does not otherwise recognize and enforce such directives. In order for the legal assistance client to take advantage of this federally mandated recognition of an AMD, the directive shall contain the following statement in bold type:

This is a MILITARY ADVANCE MEDICAL DIRECTIVE prepared pursuant to 10 United States Code, section 1044c. It was prepared b an attorney who is authorized to provide legal assistance for an individual who is eligible to receive legal assistance. 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.

(2) Except when exigencies require, it is best to try to meet state requirements for AMDs in order to minimize the potential for misunderstandings. If using the authorized will drafting software to prepare an AMD, it should be prepared in accordance with the laws of the state in which the client normally resides. In the case of clients who move frequently, or are stationed overseas, the directive should be prepared in accordance with the laws of the state to which the client has the strongest ties or the state to which the client is most likely to be medically evacuated. In any event, the preamble language specified in subparagraph section 7-2c(1) shall be inserted in the document in order to provide a fail-safe.

(3) The Deputy Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL) will coordinate distribution of resources to legal assistance attorneys that will facilitate the preparation of high-quality AMDS.

d. Powers of attorney.

(1) Legal assistance attorneys may prepare, notarize, and deliver various powers of attorney requested by a client.

(2) Where the need for and effect of the document are unquestionably clear and no legal advice is required, a legal assistance paralegal, or clerk after interviewing the client, may prepare any power of attorney except those indicated below, using forms promulgated by the Deputy Assistant Judge Advocate General (Legal Assistance), or provided by a supervising legal assistance attorney. Legal assistance paralegals and clerks may provide the legal customer service without need for an attorney-client meeting unless the individual expresses a desire to see an attorney or if the legal assistance paralegal or clerk encounters a problem or issue that, in the legal assistance

paralegal or clerk's judgment, requires the attention of an attorney.

(3) The powers of attorney listed in paragraphs (a) and (b) below may be prepared and executed only after a meeting between attorney and client. The supervising legal assistance attorney may specify other situations that will require an attorney-client meeting prior to the preparation or delivery of a power of attorney.

(a) Any "springing" power of attorney (also known as a "conditional" or "contingent" power of attorney);

(b) A "durable" power of attorney for making health care decisions (the document that often accompanies a living will).

(4) General powers of attorney. The use of general powers of attorney should be discouraged because they lack the specificity desired for many important transactions. Furthermore, because of the breadth of authority they grant, the person designated as the agent may easily abuse a general power of attorney. When general powers of attorney are sought, a legal assistance attorney or paralegal should inquire about the specific use intended for the instrument, and, whenever feasible, should encourage the use of more specific, and limited special powers of attorney. General powers of attorney, if drafted, should be effective for the minimum necessary period, and usually no longer than one year, to avoid staleness.

(5) Durability language in a power of attorney. The use of a durability clause, intended to keep a power of attorney in force beyond its stated expiration date and despite a member's physical injury, mental disability, or status as "missing in action," should be restricted to those situations where such a clause is necessary to effectuate the purpose of the particular power of attorney. Examples of powers of attorney for which durability language is usually appropriate are a general power of attorney, a broad deployment special power of attorney, or a durable power to make health care decisions.

(6) Military powers of attorney (10 U.S.C. § 1044b). Federal law grants special status to powers of attorney executed by military legal assistance customers. Military powers of attorney are exempt from state law requirements of form,

substance, formality, or recording, but are entitled to the same legal effect as a power of attorney prepared and executed in accordance with those requirements. Military powers of attorney must identify this special status; accordingly, the following preamble shall be inserted into all such instruments:

PREAMBLE: This is a MILITARY POWER OF ATTORNEY prepared pursuant to Title 10, United States Code § 1044b, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a state, District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

(7) The Deputy Assistant Judge Advocate General (Legal Assistance) will maintain an up-to-date list of sample powers of attorney. These can be accessed through the legal assistance providers community on the NKO website.

e. Notarizations.

(1) Military notary authority. Military and civilian legal assistance attorneys, limited duty (law) officers, certain legalmen (including E-7 or above, independent duty legalmen, and legalmen supporting a legal assistance provider), certain Marine Corps legal services specialists (E-5 and above, while serving in legal assistance billets, when authorized by the cognizant commanding officer, senior SJA, Director, JLC, or Officer in Charge of LSSS), and civilian legal assistance paralegals and assistants overseas may perform notarial services for eligible clients. See 10 U.S.C. § 1044a, and JAGMAN § 0902. This authority is Federal in nature and independent of any state law limitations.

(2) State notary authority.

(a) Some civilian legal assistance attorneys, legal assistance paralegals, and clerical staff have been commissioned as notaries public under state law. Notarial acts may be

performed for eligible clients within the limits of the law of the state granting notarial authority. A civilian legal assistance attorney, legal assistance paralegal, or clerical staff member who is a state notary public shall not accept or receive any fee or compensation of any kind, other than official government compensation, for notarial acts performed for eligible clients under the legal assistance program.

(b) Certain military members (usually only officers) may exercise state notary authority pursuant to and subject to special grants in state statutes. See JAGMAN Chapter IX. Unlike military notary authority granted under Federal law, state notary authority for military members is subject to conditions and limitations imposed in each state's law.

(3) Records. All legal assistance notaries, military and civilian, shall maintain a personal log of notarial acts performed, including the name of the client, the nature of the document, and the date of notarization. Collection of social security numbers in the personal notary log is not required and is discouraged. Civilian notaries shall maintain such records of notarial acts as may be required by the state issuing their notary public commission if the above personal log is insufficient under their state law.

(4) Legal assistance notaries shall not notarize a signature unless made in the notary's presence, or when the maker personally appears before the notary and acknowledges the signature. Other general instructions for notaries are detailed in JAGMAN Chapter IX.

f. Domestic relations. No area of legal assistance practice is more charged with emotion than domestic relations. Great care must be taken to avoid injuring the client's interest.

(1) Divorce/dissolution/annulment.

(a) In most cases the legal assistance attorney is not able to provide a "complete" service. Marital dissolution is dependent on state law and local judges and customs. Accordingly, a person seeking a divorce, in most jurisdictions, will often have to retain civilian counsel. Early referral of

clients to civilian counsel is essential to protect the client's interests.

(b) Nonetheless, many clients seek to discuss their cases with a legal assistance attorney to better understand the implications of a divorce, and the attendant rights and responsibilities, including military implications such as the Uniformed Services Former Spouse's Protection Act (USFSPA) and military pension benefits. After advising and assisting the client to the extent possible under the circumstances of the case, the attorney may refer the client to civilian counsel. If other civilian counsel already represents a client, the legal assistance attorney should decline to discuss the case with the client except when coordinated by agreement of the legal assistance attorney, the client, and the client's other counsel.

(c) In most cases, assistance will be limited to consultation. However, in locations where a more extended service is available a legal assistance attorney or paralegal, under an attorney's supervision, may draft *pro se* pleadings for clients in simple dissolution cases so long as such conduct is permissible under local law and applicable ethics rules. Simple dissolution cases include circumstances where the parties do not have children from the marriage or there are no custody/visitation issues, the length of the marriage is 10 years or less, and there are no complex property distribution issues. A legal assistance attorney may not, however, appear in court as counsel of record in a marital dissolution proceeding.

(d) Legal assistance providers are encouraged to develop general informational handouts, pamphlets or electronic materials for distribution about obtaining divorce. This general information should address local state divorce law issues and military implications including the USFSPA, military pension division, and military family care plan issues related to child custody. While the practice of conducting a group seminar or presentation as a means of dispensing general information is permissible, useful, and encouraged, the provider shall not require an individual to appear at a public seminar on divorce as a prerequisite to meeting with an attorney. Such a practice is inconsistent with safeguarding client confidences.

(2) Separation agreements.

(a) Laws concerning child custody and support, spousal support, and division of marital or community property are complex and vary from state to state. Legal assistance attorneys must endeavor to obtain training to develop and maintain expertise in these and other aspects of family law practice. This is particularly true for cases involving substantial property holdings, dual career couples, or a significant investment by a service member toward a military career with attendant issues of divisibility of retired pay and survivor benefit protection. However, because requirements for separation agreements vary widely among the states, and even among local courts within the same state, it may be difficult for legal assistance attorneys to maintain sufficient current information for other than the local jurisdiction(s).

(b) Despite these difficulties, drafting separation agreements by legal assistance attorneys is permitted subject to the availability of resources and when authorized by the cognizant commanding officer, senior SJA, Director JLC, or Officer in Charge of LSSS. Where separation agreements are drafted, legal assistance providers should consider placing reasonable limitations on the scope of the service such as drafting agreements only in accordance with the laws and procedures of, and for intended use in, the local jurisdiction. Attorney's stationed overseas should be wary of drafting separation agreements based on state laws they are not sufficiently familiar with. Often, written agreements limited to temporary support for only limited periods of time are sufficient for parties proceeding to divorce.

(c) Entry into separation agreements may not be imposed as a condition of terminating command sponsorship and moving a dependent spouse and his or her property back to the United States. Owing to the inherently coercive nature of this situation, it is unlikely that either or both of the parties will truly enter into the agreement voluntarily, thus rendering the agreement suspect, if not voidable.

(3) Nonsupport of dependents.

(a) Counseling, advice, and appropriate document drafting should be provided concerning nonsupport of dependents, including, but not limited to: Navy or Marine Corps policies and procedures for support of dependents; the consequences of

failing to provide support; criteria and procedures to obtain a waiver of the obligation to provide support; requirements and procedures for obtaining garnishment or involuntary allotment of pay for child or spousal support; and state support enforcement laws and procedures.

(b) Typical services should include assisting the client with the preparation and forwarding of nonsupport complaints to commanding officers and other appropriate offices. Additional services may include the preparation of documents to obtain garnishment or involuntary allotments from pay for child or spousal support; preparation of a request for waiver of support obligation; and correspondence with appropriate state or Federal agencies. Legal assistance attorneys also may negotiate on behalf of clients with adverse parties concerning the obligation and amount of support, but shall not represent the client as counsel of record at a court hearing or similar nonsupport proceeding, except in accordance with an approved ELAP (see Chapter VIII of this manual).

(4) Paternity. Legal assistance providers should counsel and advise clients concerning establishment of paternity, including judicial procedures, scientific evidence, and Navy or Marine Corps policies and procedures; and concerning parental rights and responsibilities, including support obligations. Single parents with custody of children should also be advised of custody issues raised in military family care plans.

g. Adoption and name changes.

(1) Legal assistance providers should counsel and advise clients regarding adoptions and name changes. Providers should ensure that clients are aware of entitlements that may be available to them under the Adoption Expense Reimbursement Program. See DODINST 1341.9(Series) and DFAS-CLINST 1341.1(Series). Attorneys and paralegals may assist persons in preparing and forwarding claims for reimbursement under this program.

(2) Where practical under local law and court procedures, legal assistance providers may draft *pro se* pleadings for adoptions or name changes for clients so long as such conduct is permissible under local law and applicable

ethics rules. In those jurisdictions where *pro se* actions are not authorized, assistance normally will be limited to information, advice and referral.

h. Indebtedness and bankruptcy.

(1) Debt claims. Attorneys should counsel and advise and assist clients in cases in which the client is seeking to challenge or avoid a debt claim. Likewise, assistance may be provided to eligible clients seeking to enforce a personal claim of indebtedness against another person or firm. Services may include correspondence and negotiation on behalf of the client, and assistance concerning use of alternative dispute resolution processes. Unless acting under ELAP, legal assistance attorneys must advise clients that representation will not include litigation, and that civilian counsel may be necessary if negotiations or alternative dispute resolution efforts fail.

(2) For cases involving a challenge to, or request for waiver of, indebtedness to the United States, see section 7-3(b)(2).

(3) Involuntary allotment/garnishment.

(a) Legal assistance attorneys should counsel and represent service members whose pay is subject to involuntary allotment as a result of judgment indebtedness; see 5 U.S.C. § 5520a(k), DODINST 1344.12(Series) and DODDIR 1344.9(Series). Representation of a service member may continue throughout the DOD process to determine whether such an allotment will be ordered.

(b) Civilian Federal employees who are otherwise eligible for legal assistance may be advised about garnishment of Federal pay pursuant to 5 U.S.C. § 5520a. However, such service will not include representation as counsel of record at a state court garnishment hearing or other litigation, and clients should be advised that consultation with civilian counsel might be necessary or desirable to fully protect their interests.

(4) Bankruptcy. Because of the complexity and ramifications of opting to declare bankruptcy, legal assistance services should be limited to counseling and advice. Clients

who desire to pursue a bankruptcy action should be advised to consult a civilian bankruptcy attorney. Bankruptcy cases are normally not available for ELAP. Drafting bankruptcy pleadings services are not routinely provided in the Navy-Marine Corps Legal Assistance Program unless the individual legal assistance attorney possesses particular legal training and expertise in the applicable subject matter.

i. Landlord-tenant and real estate.

(1) Tenant services. Legal assistance attorneys should provide counseling and advice on landlord/tenant matters. Specifically, providers may review leases including public-private venture housing leases, provide draft language for military clauses or other suggested modifications to leases, and advise clients on their rights, responsibilities, and remedies under local landlord-tenant law and the SCRA. Legal assistance attorneys may contact landlords on behalf of eligible tenants, and may negotiate settlements or participate in alternative dispute resolution proceedings on behalf of eligible tenants. Unless acting under ELAP, legal assistance attorneys must advise clients that representation will not include litigation, and that civilian counsel may be necessary if negotiations or alternative dispute resolution efforts fail.

(2) Landlord advice. Eligible clients who are renting out a former principal residence may be provided services, including preparation and review of leases, draft language for military clauses or other suggested modifications to leases, and advised of their rights, responsibilities, and remedies under local landlord-tenant law and the SCRA. Legal assistance attorneys may also assist landlord clients in negotiating with tenants or prospective tenants and in use of alternative dispute resolution procedures. As with tenant services, clients should be advised that representation will not include litigation. Because the legal assistance program does not extend to business matters, services will not be provided regarding properties held primarily for investment or production of income.

(3) Other real estate matters. Services are limited to review of and advice on sale or purchase contracts, and advice regarding rights, responsibilities, and remedies on other property issues affecting a homeowner or potential homeowner. Performing title examinations, issuing title opinions, and

conducting real estate closings are beyond the scope of the legal assistance program.

j. Civil suits. Normally, services will be limited to advice, referral, and explanation of local court procedures. Preparation of *pro se* documents may be provided where *pro se* action is appropriate, where resources of the legal assistance office permit, when authorized by the cognizant commanding officer, senior SJA, Director JLC, or Officer in Charge of LSSS, and where the client desires preparation so long as such conduct is permissible under local law and applicable ethics rules. Advice should include information on applicable statutes of limitation, time available for response to service of process, and effect, if any, of the SCRA. ELAP representation of plaintiffs ordinarily will be limited to minor cases (not likely to be fee-generating to a civilian practitioner) where there is a clear claim and an unjustified refusal to pay. For defendants, ELAP representation ordinarily will be limited to minor cases in which the defendant has a potentially meritorious defense and no right to paid representation exists under an insurance contract or otherwise.

k. SCRA. Legal assistance attorneys should be prepared to advise clients on all aspects of the SCRA.

(1) Advice should include information regarding stays of civil court and administrative proceedings, default judgment protections, interest rate cap provisions, lease termination and eviction protection provisions, and tax and residency protection. Unless acting under ELAP, legal assistance attorneys must advise clients that representation will not include litigation.

(2) Those providing legal assistance should be alert to situations where a client is facing a civil lawsuit as a result of actions taken within the scope of his or her official duties (for example, a Sailor on duty injures someone while driving a government vehicle). These clients may be entitled to representation by the Department of Justice (DOJ). Contact the Deputy Assistant Judge Advocate General (Legal Assistance) or the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) for the Navy or the Staff Judge Advocate to the Commandant (Code JAL) for the Marine Corps.

1. Consumer affairs.

(1) Legal assistance attorneys should advise clients on consumer law problems and issues, review contracts, warranties and other documents, and may contact and negotiate with businesses with which the client has a dispute. Attorneys are encouraged to liaise with consumer agencies on behalf of their clients. Unless acting under ELAP, legal assistance attorneys must advise clients that representation will not include litigation, and that civilian counsel may be necessary if negotiations or alternative dispute resolution efforts fail.

(2) Legal assistance attorneys should also notify clients about the Military Sentinel, the Federal Trade Commission's fraud and identity theft reporting system. Individuals can make a report of fraud and identity theft crimes by going to www.consumer.gov/military/. Clients should be notified that information from these complaints will help target law enforcement actions and consumer education initiatives and will result in better protection for consumers in the DOD and military communities.

m. Civilian criminal matters. Services normally will be limited to advice on minor traffic offenses and misdemeanors. No advice or assistance will be provided for any Federal criminal proceedings, including cases before the Federal Magistrate's Court.

n. Victim and Witness Assistance Program (VWAP). Although primary responsibility for the administration of the VWAP rests with trial counsel in an ongoing military justice case, legal assistance officers may be called upon to provide advice as "service providers," as discussed in OPNAVINST 5800.7(Series). This advice may include general information about VWAP, the Victim's Bill of Rights, programs for counseling or treatment, and the Federal and state compensation programs. Before providing such advice, legal assistance attorneys shall determine the status of any ongoing military justice case and avoid establishing an attorney-client relationship as long as members of the same NAVLEGSVCOFF are involved in the case with trial defense or appellate responsibilities. In such cases, the person seeking assistance may be referred to the trial counsel or another "service provider," such as Fleet and Family Support

Center personnel, chaplains, health care personnel, and other advocates who assist victims and witnesses of a crime.

o. USERRA Act of 1994. Legal assistance should be provided to those seeking reemployment under USERRA (38 U.S.C. §§ 4301-4333), and comparable state statutes subject to the following restrictions:

(1) Under USERRA, service members who leave civilian jobs to go on active duty generally have the right to return to those jobs when they are released from active duty. The primary responsibility for enforcing the protection afforded by USERRA rests with the United States Department of Labor (DOL) through its Veterans' Employment and Training Services (VETS). DOL and DOJ will not pursue any relief in a reemployment case where an attorney represents a service member. Therefore, in cases where a service member desires to pursue relief pursuant to USERRA, attorneys providing legal assistance will not take any action that could be viewed as legal representation of the service member (e.g., contacting an employer on a USERRA case constitutes legal representation).

(2) Legal assistance on veteran reemployment matters should be limited to the following:

(a) conducting mobilization briefings and advising service members of the notice requirements of USERRA;

(b) conducting demobilization briefings and otherwise advising returning service members of their rights under USERRA and applicable state law, if any;

(c) providing sample letter formats for use by returning service members in asserting their USERRA rights with their employers;

(d) referring service members to VETS or the National Committee for Employer Support of the Guard and Reserves (ESGR);

(e) providing service members DOL Form 1010 (Eligibility Data Form: Veterans' Reemployment Rights Program) to open a file with VETS and assisting in the preparation of the form; and

(f) periodically contacting service members who have sought help on employment problems to determine if their employment problems have been solved.

(3) Legal assistance on USERRA matters should be coordinated with officials within appropriate state agencies or DOL if required by the circumstances of the case.

(4) The restrictions set forth above do not apply to attorneys providing legal assistance for clients seeking redress exclusively in state courts or state administrative agencies (for example, pursuant to state-enacted veteran reemployment or anti-discrimination law).

7-3. Client service standards for matters involving official Government interests. The following standards apply to the delivery of specific legal assistance services by all legal assistance offices and independent legal assistance attorneys.

a. General rule. Section 205 of Title 18 United States Code prohibits any officer or employee of the government from representing or assisting anyone in any claim or other matter in which the United States is a party or has a direct and substantial interest, "otherwise than in the proper discharge of his official duties." Accordingly, a legal assistance attorney shall not represent or assist an individual in a matter in which the United States has a direct and substantial interest, whether or not the government's position is adverse to that of the individual, except as provided herein or with the prior and specific authorization of the Judge Advocate General or his designees. This authority may be further delegated, in writing, but not lower than the cognizant commanding officer, senior SJA, Director, JLC, or Officer in Charge of LSSS.

b. Permissible areas of legal assistance.

(1) Taxation. Legal assistance attorneys may provide advice to eligible clients on a wide range of federal and state income tax issues, electronic tax filing, as well as property and other state and local tax issues impacted by the SCRA. The Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL) can provide expert guidance and resources on tax matters to legal assistance attorneys. However, preparation of

tax forms does not normally involve the practice of law or the provision of legal advice; accordingly, to ensure the efficient use of professional time and program resources, legal assistance attorneys normally should not provide direct tax form preparation assistance, except as permitted by the Volunteer Income Tax Assistance (VITA) and Electronic Tax Filing (ELF) programs discussed below.

(a) Tax forms. Legal assistance offices should, during the months of January through August, ensure a full range of federal personal income tax forms are available. Most Federal and state tax forms are available via the Internet. However, legal assistance offices may register for the Internal Revenue Service (IRS) Banks, Post Offices and Libraries (BPOL) program or the Embassy program for tax form distribution. In addition, attorneys may register as members of the IRS Tax Practitioner Program to receive informational copies of IRS forms, instructions and publications. Stocks of local state forms also should be maintained if practical.

(b) VITA/ELF programs.

1. All legal assistance offices are encouraged to cooperate with the IRS in administering the VITA and ELF programs in their localities. In these programs, the IRS trains VITA volunteers to provide tax form preparation assistance. Unless local VITA coordination is undertaken by some other activity, a legal assistance paralegal or attorney should serve as coordinator of the program, acting as the local point of contact for the IRS trainers. Legal assistance attorneys should be prepared to act as back-up advisors to VITA volunteers.

2. NAVLEGSVCCOM VITA/ELF programs should prioritize clients based on availability of resources. Priority should be given to eligible clients E-6 and below and family members with forms 1040EZ and 1040A and equivalent state returns. All other eligible clients should be seen as resources permit.

(c) Legal Assistance paralegal and clerical tax assistance.

1. Legal assistance paralegals and clerical staff may guide eligible clients in the selection of appropriate

tax forms, advise them how to obtain forms and publications, and provide information from official IRS or state publications.

2. Particularly at overseas or remote locations where alternative assistance is not available, and elsewhere if sufficient resources are available, legal assistance paralegals or clerks are encouraged to complete VITA training and assist eligible clients with tax return preparation within the parameters of the VITA/ELF programs.

3. Legal assistance paralegals or clerks shall not in any case sign any form as a paid tax preparer or appear for or with the client before an agent of the IRS.

(d) Attorney tax assistance.

1. A legal assistance attorney may advise clients on any individual Federal, state, or local tax issue, including cases involving requests for refunds, provided the client is informed that services will be limited to office consultation and will not include, without permission of the Judge Advocate General or his designee as appropriate, any appearance before the IRS or any state or local tax board or agency. Attorneys shall not in any case sign any form as a paid tax preparer.

2. A legal assistance attorney may provide advice to eligible clients called for audit by the IRS or state tax authorities, but will not register as the taxpayer's representative or accompany the taxpayer to an audit without prior authorization from the Judge Advocate General or his designee, as appropriate.

3. A legal assistance attorney may contact the IRS, or appropriate state or local tax authority, for tax information or to determine the agency's position on a client's personal tax situation. Because all service-wide tax policies and matters are coordinated through the Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), individual legal assistance attorneys may not contact the IRS, or a state or local tax authority, seeking an opinion on application of tax laws or regulations to Navy, Marine Corps, or military personnel generally. Legal assistance attorneys shall refer tax questions

and issues of general or service-wide application, and instances of questionable activities by Federal, state or local tax authorities, to the Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL) to ensure appropriate coordination with the Armed Forces Tax Council pursuant to DODDIR 5124.3.

4. As an exception to the prohibitions contained in JAGMAN § 0709a and sections 6-3a and 7-4b of this manual, assistance in preparing a Schedule C (Profit and Loss from Business) may be provided to Family Home Care Providers who have been certified to provide childcare in their Government quarters pursuant to Navy or Marine Corps (or other Service equivalent) regulations.

(2) Indebtedness to the Government and military pay matters.

(a) Advice and assistance may be provided to eligible military personnel to obtain or clarify a member's entitlement to military pay, allowances, and other benefits.

(b) Advice and assistance may be provided to eligible military personnel, other than an accountable official, concerning indebtedness to the Government as a result of overpayment of pay or allowances, or owing to any other cause not involving an allegation of an offense by the service member, provided the client is advised that services will be limited to attempting resolution of the problem through fiscal and administrative channels. The legal assistance attorney may contact cognizant authorities on a client's behalf to attempt resolution of a pay problem or to obtain a waiver of indebtedness, and may assist the client in completing any forms and drafting any necessary correspondence or waiver requests. In many cases, the assistance requested will not involve the practice of law and can be appropriately handled by legal assistance paralegal personnel.

(3) Non-DOD Federal administrative matters. A legal assistance attorney may advise and assist clients on any individual Federal administrative matter not involving the Department of Defense or any agency within DOD, provided the client is informed that services will be limited to office consultation and an attempt to resolve the matter through

administrative channels. Services normally will not include accompanying the individual to a hearing before any board or agency, without permission of the Judge Advocate General or his designee, as appropriate.

(4) Immigration and Naturalization Services. Legal Assistance attorneys shall provide eligible service members with counsel and assistance in matters relating to applications for naturalization and family immigration. Current law and procedures relating to immigration issues are discussed in the "Immigration and Naturalization Law Primer" promulgated by the Deputy Assistant Judge Advocate General (Legal Assistance). The Primer is available on NKO and through OJAG (Code 16).

c. Prohibited areas of legal assistance. Certain areas outside the scope of the legal assistance program are listed below. An attorney may only represent clients in such matters when detailed by competent authority. For example, in the Navy, an attorney normally assigned to a legal assistance office may act as a defense counsel in individual cases when assigned such duty by a NAVLEGSVCOFF commanding officer; while acting as a defense counsel, that attorney is not subject to restrictions that may be imposed by JAGMAN Chapter VII and this manual on legal assistance providers. Marine Corps senior SJAs, Directors, JLCs, and Officers in Charge of LSSSs constitute competent authority and may approve representation of clients by Marine Corps attorneys within these areas.

(1) Claims. Legal assistance providers may not advise or assist in the prosecution of any tort, military, personnel, TRICARE, or other monetary claim against the United States, or the defense of any monetary claim by the United States against an individual, except as authorized in this manual or another instruction (e.g., adoption expense reimbursement claims, waiver of indebtedness assistance). Legal assistance providers may inform an interested person about the applicable statute of limitations, how to obtain and/or complete claim forms, where to file the claim, and may further assist the claimant/potential claimant in communicating with the appropriate claims personnel to facilitate the claims process.

(2) Official investigations. 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 DOD or any agency within DOD, concerning that official investigation.

(3) Administrative complaint processes. The Navy-Marine Corps Legal Assistance Program does not encompass representation, advice, or assistance to an individual with a complaint under UCMJ Article 138 or Navy Regulations Article 1105, a petition for relief to the Board for Correction of Naval Records or the Naval Discharge Review Board, a rebuttal to a decision of the Central Physical Evaluation Board, fitness report or evaluation rebuttals, or any other similar administrative complaint. Legal assistance attorneys may be ordered by competent authority to perform such duties in a non-legal assistance attorney capacity.

(4) Civil rights. 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.

(5) Federal criminal matters. No assistance is authorized. For matters involving military justice see section 7-3c(9).

(6) Standards of conduct/post-Government service employment restrictions. It is the function of ethics counselors to advise individuals with questions or issues

pertaining to Government standards of conduct, ethics, or post-Government service employment restrictions. While providing such advice to individuals, ethics counselors are acting as representatives of the United States and form no attorney-client relationship with the individual concerned. Legal assistance attorneys are cautioned not to offer assistance to individuals seeking ethics advice. Accordingly, legal assistance attorneys shall refer the individual to the local TRISVCOFF/RLSO or regional ethics counselor for ethics advice.

(7) Private business activities. Service members seeking assistance on private business activities should be informed that providing such help is outside the scope of the legal assistance program. Exceptions to this rule include infrequent business transactions, such as the sale of a

personal residence or car, and preparation of the Schedule C (Profit and Loss from business) for family home care providers certified to provide childcare in Government quarters pursuant to military regulations.

(8) Employment matters. All employment matters, except those involving enforcement of USERRA, are outside the scope of the legal assistance program.

(9) Military justice and administrative discharge proceedings. When acting as a legal assistance attorney, a judge advocate will not provide advice with regard to courts-martial, investigations, nonjudicial punishment, administrative discharge processes, or other military justice matters, and will not form an attorney-client relationship concerning these matters. Individuals requesting such advice shall be referred to a defense counsel. However, when personnel are limited, or in other appropriate circumstances, a commanding officer or other competent authority may assign defense-related tasks to a legal assistance attorney. In such circumstances, however, the judge advocate is acting in two distinct roles and shall observe the difference in responsibility for each.

7-4. Other restrictions on client services

a. Representation in civilian courts. Limited resources preclude representation of clients in civilian courts or administrative hearings in most cases. A legal assistance attorney shall not represent, or undertake to represent, any legal assistance client in a civilian court proceeding or civil administrative hearing, unless such representation is within an ELAP authorized under Chapter VIII of this manual, or is otherwise specifically authorized in advance by the Judge Advocate General or his designee.

b. Business matters and assistance to organizations. The legal assistance program extends to the personal legal matters of authorized individual clients only. See 10 U.S.C. § 1044. Accordingly, legal assistance shall not be provided to organizations, nor shall assistance be provided to individuals concerning business matters. For purposes of the Navy-Marine Corps Legal Assistance Program, legal issues associated with limited transactions such as the sale of an individual's car, or the rental of a client's former residence, are considered

personal matters and not business matters. Assisting Navy or Marine Corps organizations and non-Federal entities (e.g., command spouses' clubs) on legal matters is outside the scope of the legal assistance program. Such entities/organizations should be referred to the local TRISVCOFF/RLSO or Regional Ethics Counselor.

VIII

EXPANDED LEGAL ASSISTANCE PROGRAM

8-1. Scope and general guidelines. The ELAP authorizes attorneys in approved legal assistance offices to provide in-court representation in limited circumstances to eligible active duty military personnel and dependents who could not otherwise afford legal representation.

a. JAG authorization required. ELAP may be established only with the prior authorization of the Judge Advocate General or his designee, as appropriate. ELAP is in addition to, rather than in place of, a normal legal assistance program, and will be authorized only for activities willing to commit sufficient personnel and resources to maintain an active legal assistance program as well as ELAP. Because of these limitations, ELAP normally will not be authorized for independent legal assistance attorneys.

b. Eligible clients. Personnel eligible to receive ELAP services are enumerated in JAGMAN § 0711. The clients described in JAGMAN § 0711b(4) must submit a written request to the Judge Advocate General or his designee, as appropriate, detailing the nature of the case, the nature and extent of the expected ELAP service, and facts establishing the substantial financial hardship that would result if civilian counsel were retained.

c. Types of cases. Subject to such limitations as may be imposed by competent authority and any local ELAP instruction, ELAP representation may be permitted for any matter within the scope of the Navy-Marine Corps Legal Assistance Program as defined in JAGMAN Chapter VII and this manual, except that ELAP representation is not authorized for marital dissolution cases. Given limited personnel resources that can be devoted to ELAP, commands are encouraged to select cases for ELAP representation that will have a foreseeable impact beyond the individual Sailor

or Marine being represented (e.g., systematic landlord abuse of service members and consumer scams that specifically target service members).

8-2. ELAP authorization. Written application to establish ELAP shall be submitted to the Judge Advocate General or his designee, as appropriate.

a. Application contents. Providers shall include in an ELAP application brief descriptions of the present legal assistance program, the proposed ELAP, the proposed regular legal assistance program after ELAP is implemented, the number of attorneys presently assigned to legal assistance (and time devoted to legal assistance by part-time attorneys), and the names and bar affiliations of the legal assistance attorneys who will participate in ELAP. Attach a copy of any agreement with the local bar, courts, and licensing authority regarding ELAP and authorizing or consenting to ELAP practice by legal assistance attorney not otherwise admitted to practice in the local courts. See section 8-5.

b. Written decision. Written notification of the decision on the application to establish an ELAP will be provided.

c. Duration, expiration, and renewal of authorizations. Authorizations expire 60 days after the change of command of the commanding officer or assumption of duty of the senior SJA, Director, JLC, or Officer in Charge of LSSS, with cognizance over a legal assistance office with an ELAP program, unless sooner renewed. Renewal applications must be in writing and contain a report on the program's status, including those cases handled since authorization or last renewal, and personnel changes which have occurred or are anticipated. Renewal applications shall be forwarded in time to reach the authority who granted the initial approval not later than 30 days prior to expiration of the existing authorization.

8-3. ELAP supervision. The Judge Advocate General or designee's written authorization to establish an ELAP will designate the local authority who shall be responsible for the proper conduct of ELAP. Such authority must ensure compliance with this manual, applicable ethical standards and local rules of court. He or she may limit the scope of practice of ELAP attorneys within his or her authority, may direct any ELAP

attorney to refrain from any case or type of case, and may promulgate any additional restrictions to benefit the program and the clients served.

8-4. Attorney qualifications

a. Any legal assistance attorney at an authorized legal assistance office may participate in the ELAP program.

b. In-court appearances, and other actions that constitute an appearance as attorney or counsel of record in a matter under local law or rules of court, will be done only by:

(1) a legal assistance attorney who is licensed to practice law in that state and admitted to practice before the court where the matter is pending or to be filed; or

(2) a legal assistance attorney specially admitted to practice before that court, either generally or for the particular matter, by special agreement with the court and licensing authority, or is otherwise in conformity with the law and rules of that jurisdiction.

c. Legal assistance attorneys participating in an ELAP are subject to local state ethics rules and rules of court in all ELAP matters.

8-5. Relations with state bar, licensing authority, and courts

a. No special agreement with state or local authorities is required to operate an ELAP using only legal assistance attorneys licensed to practice in that state and admitted to practice before the courts of that state. However, a memorandum of understanding (MOU) with these authorities, and with local bar associations is recommended. Such an MOU might address such items as exemptions from mandatory *pro bono* or CLE requirements for ELAP attorneys.

b. Where legal assistance attorneys not licensed or admitted to practice in the state are to be used in ELAP, special arrangements for their qualifications and admittance to practice must be made. Usually this will be accomplished through an agreement with both the state licensing authority and the court(s) in which practice is contemplated; depending on the

particular jurisdiction, establishing ELAP may require a court order, or modification of the state or local rules of court.

8-6. Fees, costs, and client funds. The client shall pay all fees and costs connected with an ELAP case. See section 5-1m. Should a court award attorney's fees for the actions of a legal assistance attorney, such fees are the property of the United States and must be paid into the Treasury. Care must be taken to avoid committing the United States to open-ended financial arrangements or indemnity agreements, which may violate the Anti-Deficiency Act, 31 U.S.C. § 1341.

IX

PREVENTIVE LAW AND LEGAL AWARENESS PROGRAM

9-1. Policy. Preventive law and legal awareness activities are an integral part of the Navy-Marine Corps Legal Assistance Program, informing and training service members about their legal rights, privileges, and responsibilities. Each legal assistance office shall create and maintain a preventive law and legal awareness program which offers timely, concise, educational information to the military community regarding consumer and legal issues relevant to the local active duty community. For the Navy, OPNAVINST 5801.1(Series) establishes a legal check-up program that should be used to enhance military readiness. Topics for the legal awareness program should include identity theft, unfair and deceptive trade practices, life insurance designations, estate planning issues, and other significant legal issues unique to military life.

9-2. Preventive Law and Legal Awareness Program Objectives

a. Improve the overall readiness, efficiency, and performance of naval personnel. Naval personnel are members of a routinely deploying military force, and they must maintain their personal legal affairs in order at all times. Personal legal difficulties undermine readiness. A vigorous legal awareness program enhances readiness by educating the military community on personal legal issues, methods for avoiding legal problems, as well as the services available from legal assistance providers. An effective legal awareness program requires full communication and cooperation among Navy and Marine Corps judge advocates and civilian attorneys and

coordination with appropriate operational commanders and civilian officials.

b. Decrease the number of personal legal problems confronting military units, bases, and localities. A legal awareness program recognizes and anticipates noncriminal legal issues, and helps prevent the recurrence and proliferation of problems that may affect entire commands or installations. When a legal problem with widespread implications for morale or discipline arises, vigorous preventive efforts are necessary to highlight and resolve the problem.

c. Encourage persons to anticipate potential legal problems and seek professional legal counsel before problems arise. The importance of considering the legal consequences of one's actions prior to signing documents such as contracts, leases, and separation agreements must be stressed repeatedly to service members. Once a potential problem is identified, personnel should understand how and where to seek assistance, as well as the perils of choosing to ignore the issue.

d. Provide commanding officers and their personnel with a broad channel of communication on legal assistance matters. An active legal awareness program advertises the availability, breadth, and limitations of legal assistance services to commanders and their personnel. In addition, legal awareness activities facilitate the exchange of information between legal assistance providers and the client population, and may provide a mechanism by which attorneys can learn early about legal problems affecting personnel and their dependents.

9-3. Program Responsibilities. NAVLEGSVCOFF commanding officers, senior SJAs, Directors, JLCs, and Officers in Charge of LSSSs shall oversee and coordinate the legal awareness program within their authority. Legal assistance attorneys, legal assistance paralegals, and clerical staff are encouraged to dedicate time during each working day for these activities.

9-4. Legal Awareness Program Functions

a. Outreach. Legal awareness programs shall distribute to as many eligible legal assistance clients as possible information about legal rights and issues. Legal awareness programs shall take steps to promote the existence and location

of legal assistance offices and the scope of free legal assistance services. Legal awareness programs should also accomplish the following:

(1) Legal Advisories. Post advisories on widely available media regarding important legal issues that affect eligible legal assistance clients. Examples of appropriate topics include family, consumer, estate planning, insurance law and other legal advisories.

(2) Website. Maintain Legal Assistance and/or Legal Awareness websites publicly available to eligible legal assistance clients and containing up-to-date and useful legal information.

(3) Education.

(a) Law Day. Publicize the legal awareness program on "Law Day" which is normally recognized on the first day of May each year. Law Day was established in Public Law 87-20 on April 7, 1961. Program representatives should organize recognition of the day with appropriate activities and events for service members and their families. Other Government and private organizations should be sought to participate in events.

(b) Command Representatives. Ensure unit commanders, legal officers, and other command members maintain awareness of available legal assistance services. Advise commanders of availability to present educational/informational briefs to commands, staff meetings, general military training, welcome aboard briefs, and other occasions. Ensure unit commanders understand DOD policy under DODDIR 1350.4, Legal Assistance matters, that commanders should urge military personnel to seek legal counsel regarding wills, living wills, advance medical directives, and powers of attorney well before mobilization, deployment, or similar activities.

(c) Articles. Legal awareness programs should publish writings on important legal issues on a broad variety of topics, and in a variety of publications. Organizations that normally welcome articles include reserve, retired, and family associations or organizations; and base or local newspapers. Additionally, legal assistance providers should develop and make available to area commands a collection of ready-to-use notes

suitable for publication in a Plan of the Day or similar publication. Newsletters, E-Mails, websites, and other innovative use of media to inform servicemembers are highly encouraged. The following themes should be stressed in every publication:

1. the existence of legal issues that affect eligible legal assistance clients;

2. the existence of rights or benefits for eligible assistance clients;

3. the importance of advance planning of legal matters, particularly with regard to deployment or PCS;

4. the importance of seeking legal advice prior to signing documents or executing waivers; and

5. the location, telephone numbers, free services, and office hours of local legal assistance offices.

(d) Videotaped presentations. Where resources permit, the legal assistance office should compile a library of videotapes that can be checked out or duplicated for area commands. Such practice will enhance education programs and enable legal assistance providers to reach a wider audience more quickly. Creating videotapes to advise members regarding wills, divorce, consumer fraud, and local state law is encouraged as a valuable way to educate large numbers of service members.

b. Liaison. Legal assistance offices shall maintain points of contact within their Area of Responsibility and coordinate with, the following organizations in order to further the legal assistance and legal awareness program's mission:

- (1) Public Affairs;
- (2) Financial Management offices;
- (3) Fleet and Family Support offices;
- (4) Armed Forces Disciplinary Control Boards;

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(5) Base or unit officials responsible for monitoring businesses or services, including insurance agents;

(6) Base and unit commanders;

(7) Military housing/housing referral offices;

(8) Voting Officers;

(9) Federal Trade Commission (FTC) (at minimum the Division for Planning and Information and the Consumer Sentinel/Military Sentinel);

(10) American Bar Association (ABA) (including the ABA's Legal Assistance for Military Personnel (LAMP) Committee), local and state bar associations, military law committees and discussion groups;

(11) State Attorneys General;

(12) The National Association of Attorneys General;

(13) Local courts and administrative hearing departments;

(14) United States Citizenship and Immigration Services (regional and lower offices only); and

(15) IRS.

c. Legal Awareness Program Resources. Legal assistance attorneys should be proactive and innovative in their programs, but be cautious of violating copyright restrictions on nongovernmental materials. Additional materials may be obtained from:

(1) Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL);

(2) Legal Assistance Toolkit CD (available through Code JAL);

(3) OJAG (Code 16) Legal Assistance Practice Advisories and Immigration Advisories at <https://www.nko.navy.mil/> and JAL Advisories at <http://www.usmc.mil>;

(4) TJAGLCS CLAMO DC (available through TJAGLCS);

(5) Air Force FLITE; and

(6) FTC's Military Sentinel; <http://www.consumer.gov/military> and FTC's Consumer Sentinel; <http://www.consumer.gov/sentinel>).

APPENDICES

TIERS I AND II SERVICES IN LEGAL ASSISTANCE
(APPENDIX A)

1. **Tier I** services in legal assistance are those services and products designed to address personal legal matters that, if left unaddressed, could significantly impact the service member's ability to focus on his or her mission, and those services and products that every legal assistance attorney shall be competent to provide.

2. **Tier II** services are those services and products that might be available at a local Navy legal assistance office but are not Tier I.

3. Tier I services:

a. Pre-deployment briefings and assistance

- (1) Pre-deployment briefings
- (2) Pre-mobilization briefings
- (3) Demobilization briefings

b. Family Law/Domestic Relations

- (1) Divorce, dissolution, annulment counseling, and advice
- (2) Separation agreement, divorce pleadings, counseling, and advice (drafting not required)
- (3) Nonsupport/support counseling, advice, and document drafting (service obligations)
- (4) Child custody, support, and visitation counseling and advice
- (5) Paternity counseling and advice
- (6) Adoption counseling and advice
- (7) Navy/DOD adoption reimbursement
- (8) Guardianship counseling and advice
- (9) Page 2 dependent designation
- (10) Early return of dependents (when assigned overseas)
- (11) Military family care plan counseling and advice

c. Consumer law

- (1) Bankruptcy counseling and advice
- (2) Credit collection, indebtedness issues counseling, advice, and action to resolve
- (3) Car contracts issues counseling, advice, and action to resolve

(4) Government indebtedness, involuntary allotment, garnishment, issues counseling, advice and action to resolve

(5) Credit report counseling and advice, Federal consumer law statutes counseling and advice

(6) Consumer fraud/ID theft issues counseling, advice, and action to resolve

(7) Personal contract review (not including real estate)

(8) Landlord/tenant issues counseling, advice, and action to resolve

d. Estate planning counseling and advice

- (1) Will counseling and advice
- (2) Basic will drafting
- (3) Advanced medical directives, living will counseling, advice and drafting
- (4) Durable power of attorney counseling, advice and drafting
- (5) Testamentary trust minors), pre-residuary counseling, advice, and drafting
- (6) Special needs trust counseling and advice
- (7) SGLI/insurance counseling, advice, and beneficiary designation
- (8) Other survivor benefits counseling and advice
- (9) Will/ancillary document execution

e. Military rights and benefits advice

- (1) Service members Civil Relief Act counseling, advice, and drafting correspondence
- (2) Uniformed Services Employment and Reemployment Rights Act counseling and advice

f. Powers of Attorney counseling, advice and drafting

g. Notary services

h. Service member immigration and naturalization counseling and advice

**QUARTERLY REPORT OF LEGAL ASSISTANCE
(APPENDIX B)**

NAVJAG 5801/4 (Rev. 08-05)

ACTIVITY	PERIOD OF REPORT _____ to _____
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TYPES AND NUMBER OF LEGAL ASSISTANCE SERVICES

CASE TYPE	NO.	CASE TYPE	NO.
Property/Landlord-Tenant		Citizenship for military personnel	
Consumer Fraud/Abuse		Simple Wills	
Creditor/Debtor		1044D Will Executions	
Military Nonsupport		Military Rights and Benefits	
Divorce/Separation/Spousal Support		Notarizations	
Child Custody/Child Support		POA Executions	
Adoption		Other Service	
Paternity			

NUMBER OF CLIENTS ASSISTED BY ATTORNEY

	E1-E6	E7-E9	W1-03	04-010	TOTAL A/D	
ACTIVE DUTY CLIENTS						
OTHER CLIENTS	A/D DEPENDENT	RET & RET DEP	RES	MISC	TOTAL OTHER	TOTAL CLIENTS

NUMBER OF NON-ATTORNEY ASSISTS

	E1-E6	E7-E9	W1-03	04-010	TOTAL A/D	
A/D ASSISTS						
OTHER ASSISTS	A/D DEPENDENT	RET & RET DEP	RES	MISC	TOTAL OTHER	TOTAL ASSISTS

LEGAL ASSISTANCE PERSONNEL

Number of legal assistance attorneys
Number of legalmen or legal assistance clerks
Number of civilian legal assistance paralegals
Number of clerical staff

NAME & RANK OF [SENIOR] LEGAL ASSISTANCE ATTORNEY	SIGNATURE	DATE REPORT SUBMITTED

INSTRUCTIONS FOR COMPLETING QUARTERLY REPORT OF LEGAL ASSISTANCE

APPENDIX

1. This is a statistical report of the cases and clients served within the Navy-Marine Corps's Legal Assistance Program at the reporting activity for the calendar quarter indicated. The report is to be submitted by all legal assistance providers who do not report legal assistance statistics monthly via JAGINST 5800.3(Series), this will include SJAs and reserve units providing mobilization legal assistance. If more than one legal assistance attorney is assigned at the reporting activity, the senior attorney should sign the completed report on behalf of the entire office.

2. This report should be mailed to the Office of the Judge Advocate General, 1322 Patterson Ave., SE, Suite 3000, Code 16, Washington Navy Yard, DC 20374-5066 (Navy reports) or to the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), 2 Navy Annex (Code JAL), Washington, DC 20380-1775 (Marine reports), not later than the 15th day after the conclusion of the quarter being reported. The Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), will cause the statistics reported to be entered into a database to facilitate the preparation of periodic statistical reports. A copy of this statistical report should be provided to the Staff Judge Advocate of the command immediately superior in the chain of command.

3. **Types and Number of Legal Assistance Services.** For each case type, enter the number of times during the quarter that assistance was provided in any form (simple advice, the drafting of a document, or more complex services). This section does not seek to measure the number of clients, but rather the kinds and amounts of services being performed. For example, assume only one client was served during the entire quarter, but that client obtained a will, a living will, and a general power of attorney; the number "1" would be entered the category "1044D Will Execution" and one client will be reflected in the "Number of Clients" section that follows on the form. If wills are provided to both a husband and wife, report 2 cases in the "1044D Will Execution" category. What counts: one-on-one discussion with attorney about substantive topic, may have more than one service per client per meeting. What does not count: telephone calls and E-Mails (unless servicing remote clients), scheduling of appointments, handing out forms, and referrals. A service is provided when an attorney enters into a substantive discussion with a client, providing advice and info on a particular topic. The mere mention of a topic to a client does not qualify as providing a service. For example, if an attorney, in the course of providing divorce advice, mentions that the couple's apartment lease may be an issue, this does not count as a providing LL/T service. If, however, an attorney enters into a substantive discussion with a client about the lease, that would be a service. Follow up assistance for clients cannot be counted as additional services.

4. Description of selected categories.

a. *Consumer Fraud/Abuse* will include client advice related to bankruptcy assistance, personal contracts, and other consumer protection issues not included in the specific categories of property/lease/landlord/tenant or creditor/debtor issues.

- b. *Citizenship of Military Personnel* includes naturalization and citizenship matters, residency permits, visas, employment eligibility, and other immigration-related matters.
- c. *Simple Wills* includes estate planning/counseling and advice that does not involve a trust other than a simple testamentary trust for a children).
- d. *1044D Wills* includes estate planning counseling and advice concerning estate plans other than simple estate plans (i.e. estate plans that include inter vivos, revocable/irrevocable, and testamentary trusts used for tax purposes. (e.g., QTIP, special needs, marital deduction, and credit shelter trusts)).
- e. *Military Rights and Benefits* will include client advice provided on Service Members Civil Relief Act, Uniformed Services Reemployment Rights Act, and other military or Veteran's Administration rights and benefits related issues. This will not include advising on issues such as DIC, SS Benefits, or SGLI related to estate planning or CACO matters. These services should be counted as Other.
- f. *Notarizations* unrelated to any other legal assistance service may be recorded in the "Notarizations" category; however, notarization service provided incident to preparation of a document should not be separately recorded (for example, if a power of attorney is prepared, executed and notarized at the activity, record that service only in the "Power of Attorney" category).
- g. *Other services* will include all legal assistance services provided by an attorney that does not fit into one of the delineated categories. Include tax advice in other services. Tax advice/assistance included here will only be those tax services provided outside of the VITA/ELF program or returns prepared outside of the annual tax season and not prepared in the NLSC sponsored tax center. VITA/ELF statistics should be reported to OJAG Legal Assistance Division separately.

4. **Number of Clients Assisted by Attorney.** Enter the number of clients assisted by an attorney for each of the active duty ("A/D") and other categories indicated on the form. Count husbands and wives who received wills as separate clients, even though the service was provided to them together. A client who visited the office multiple times for the same case should be counted as only one client. The sum of "Total A/D" and "Total Other" should be entered in the accented "Total Clients" block.

5. **Number of Non-Attorney Assists.** Enter the number of individuals who were provided assistance solely by personnel other than an attorney for each of the active duty ("A/D") and other categories indicated on the form. For example, if a legal assistance paralegal, acting without direct attorney-client contact, prepared a routine special power of attorney for an individual or notarized a pre-printed document, the assist should be recorded in the appropriate block of this section. On the other hand, if a client was served by the combined efforts of attorney and paralegal (for example, the attorney prepared a will that was executed before and notarized by a paralegal) record that client only in the "Clients Assisted by an Attorney" section. The sum of "Total A/D" and "Total Other" should be entered in the accented "Total Assists" block.

COMMENTS:

Legal Assistance Provider
Mailing address:

Telephone number: DSN/COMMERCIAL: _____

Fax telephone number: DSN/COMMERCIAL: _____

Internet E-Mail address:

Legal Assistance Client Intake Questionnaire

(APPENDIX C)

Time In: _____ Date: _____

For Staff Use Only _____ ID Card Screen _____ Conflict Check
 _____ TM Data Entered Conflicted: Yes No

Atty: _____

(NAVJAG 5801/5 - Rev. 08-05)

Client Information: Active Duty Reserve Retired Dependent

Name: _____ Maiden: _____
(Last, First, Middle Initial)

Rank/Rate: _____ EAOS: _____ SSN: _____

Address: _____
(City/State/Zip Code)

Phone: W: _____ H: _____ Other: _____

E-Mail: _____

Sponsor's Information: (If you are active duty, you are your own sponsor. Write "self.")

USN USMC USAF
 USA USCG

Name: _____ Maiden: _____

Rank/Rate: _____ EAOS: _____ SSN: _____

Command: _____

Phone: _____

Attorney Client Relationship:

Attending a seminar, viewing a video, or receiving services from a non-attorney from one of our offices does not create an attorney-client relationship. An attorney-client relationship may be formed when a client meets with an attorney. The attorney-client relationship is terminated when the attorney's involvement with the specific transaction or issue presented ends. Other attorneys within this legal assistance office may be consulted to assist your attorney. However, generally, privileged and confidential information will not be divulged outside of the legal assistance office without your permission.

Conflicts of Interest:

If an opposing party is entitled to legal assistance and comes into one of our offices, we cannot advise or represent that party if you have an existing attorney-client relationship here. We must then inform them that this office cannot represent them. We may be asked to disclose that we represent you.

Do you consent to this office disclosing that we represent you? Yes No

Have you discussed this with another attorney? Yes No

If so, please provide attorney's name and date(s) you were seen: _____

Have you seen a Legal Assistance attorney before? Yes No

Have you received services from this NLSO before? Yes No

If so, when and what services did you receive? _____

Opposing Party Information - If there is an opposing or adverse party in your situation, please provide the following information (if known):

Name: _____

Address: _____

Contact Info: (W) _____ (H) _____ (Other) _____

Rank/Rate: _____ SSN: _____

Command: _____

For what issue are you seeking assistance? Check all that apply:

- | | |
|-------------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> Real Property/ Landlord/ Tenant | <input type="checkbox"/> Paternity |
| <input type="checkbox"/> Consumer Fraud/ Abuse | <input type="checkbox"/> Citizenship
for military personnel |
| <input type="checkbox"/> Debtor/Creditor | <input type="checkbox"/> Simple Wills |
| <input type="checkbox"/> Military Nonsupport | <input type="checkbox"/> 1044D Will Execution |
| <input type="checkbox"/> Divorce/Separation/Spousal Support | <input type="checkbox"/> Military Rights and Benefits |
| <input type="checkbox"/> Child Custody/Child Support | <input type="checkbox"/> Notarization |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Power of Attorney |
| <input type="checkbox"/> Other _____ | |

Briefly explain the nature of your problem on the back of this form.

Your signature: _____

Date: _____

Privacy Act Statement - Social Security Number Principal Purposes and Routine Uses:

Authority: 5 U.S.C. § 301 & 44 U.S.C. § 3101 (Executive Order 9397). Information provided is used to assign and monitor the caseloads of personnel in legal assistance offices.

Mandatory/Voluntary Disclosure - Consequences of Refusal to Disclose:

Disclosure of Social Security Number is voluntary and there will be no adverse consequence from refusal to disclose. An individual may be requested to establish eligibility for legal assistance by other means (e.g., production of military identification). Refusal to establish eligibility for legal assistance will preclude the requested assistance. Disclosure of all other requested information is voluntary, however, failure to provide such information may limit this office's ability to provide legal assistance.

Legal Assistance Intake Form
LN/Paralegal Services
(APPENDIX D)

Date: _____

For Staff Use Only ID Card Screen: _____

LN/Paralegal: _____

(NAVJAG 5801/6 - Rev. 08-05)

Client Information: Active Duty Reserve Retired
 Dependent

Name: _____
(Last, First, Middle Initial)

Rank/Rate: _____ EAOS: _____

SSN: _____

Address: _____
(City/State/Zip Code) _____

Phone: W: _____ H: _____

Other: _____ E-Mail: _____

Sponsor's Information: (If you are active duty, you are your own sponsor. Write "self.")

USN USMC USCG USAF USA

Name: _____
(Last, First, Middle Initial)

Rank/Rate: _____ EAOS: _____ SSN: _____

Command: _____

Phone: _____

Are you currently represented by an attorney? Yes No

If yes, the attorney's name : _____

Have you seen a Legal Assistance attorney before? Yes No

If yes, the attorney's name : _____

Have you received services from this NLSO before? Yes No

If so, when and what services did you receive?

For what issue are you seeking assistance? Check all that apply:

- Citizenship of Military Personnel
- Military Nonsupport (Spouse/Children)
- Notary / Certified Copy
- Special Power of Attorney
- General Power of Attorney
- Affidavit
- Other _____

Your signature: _____

Date: _____

Privacy Act Statement - Social Security Number Principal Purposes and Routine Uses:

Authority: 5 U.S.C. § 301 & 44 U.S.C. § 3101 (Executive Order 9397). Information provided is used to assign and monitor the caseloads of personnel in legal assistance offices.

Mandatory/Voluntary Disclosure - Consequences of Refusal to Disclose:

Disclosure of Social Security Number is voluntary and there will be no adverse consequence from refusal to disclose. An individual may be requested to establish eligibility for legal assistance by other means (e.g., production of military identification). Refusal to establish eligibility will preclude the requested assistance. Disclosure of all other requested information is voluntary, however, failure to provide such information may limit this office's ability to provide legal assistance.