



DEPARTMENT OF THE NAVY

OFFICE OF THE JUDGE ADVOCATE GENERAL

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ALEXANDRIA, VA 22332-2400

IN REPLY REFER TO

JAGINST 5801.2

JAG 36

11 Apr 97

JAG INSTRUCTION 5801.2

From: Judge Advocate General

Subj: NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM

Ref: (a) 10 U.S.C. § 1044(b)
(b) JAGMAN Chap. VII

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 Navy and Marine Corps judge advocates, civilian attorneys, legalmen, legal services specialists, civilian paralegals, 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 JAG Corps community to the morale and welfare of our servicemembers, their dependents, and other eligible beneficiaries. Because of its importance as a significant "quality of life" benefit, judge advocates will make every effort to satisfy the legal assistance need.
5. Action
 - a. Reference (b) establishes general 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

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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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JAG Special List 40
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HQ, USMC (Code JAL) (25 copies)

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 persons regarding their personal legal rights and responsibilities.

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

(1) direct client assistance services afforded to eligible persons; and

(2) 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 a high-quality service. Quality defines and drives this program; each client is entitled to receive the attorney's best effort in the case. If, because of limited time or 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. 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 manage and supervise the Navy-Marine Corps Legal Assistance Program. 10 U.S.C. § 1044.

b. All persons providing legal assistance services, including active duty members, civilian employees of the Department of the Navy, and reserve personnel (whether on active duty, in a drill status, or providing services despite not receiving drill points or pay), 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*).

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c. The Judge Advocate General issues regulations for the implementation and management of the Navy-Marine Corps Legal Assistance Program. This manual, Chapter VII of JAGINST 5800.7C (the *Manual of the Judge Advocate General*, hereinafter referred to as "JAGMAN"), and such other directives as the Judge Advocate General 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. 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 and the Deputy Assistant Judge Advocate General (Legal Assistance) shall assist in the management of the Navy Legal Assistance Program, and the Staff Judge Advocate to the Commandant of the Marine Corps (Codes JA and JAL) shall assist the management of 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; and

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

(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, senior staff judge advocates, Directors of Joint Law Centers, and Officers in Charge of Legal Service Support Sections (LSSS), 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 this 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. Such a program may include, but is not limited to, any or all of the following: the active dissemination and exchange of information relevant to a legal assistance practice; the use and review of client satisfaction questionnaires; 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 a sampling review of legal assistance work product. The quality assurance program shall be carried out with due regard for confidentiality of client information.

(3) They are not automatically 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 conflict of interests with attorneys under their authority.

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

2-3. Trial Service Office Provision of Legal Assistance Services.

a. Judge advocates and paralegals assigned to a Trial Service Office (TSO) shall not normally provide legal assistance services. However, when directed by Commander Naval Legal Service Command or pursuant to an agreement between the TSO commanding officer and the respective Naval Legal Service Office (NLSO) 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, etc.) which requires the augmentation of the NLSO legal assistance department. NLSOs will conduct "just in time" training, as required, to enable TSO 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 TSO attorney or paralegal and NLSO personnel are not available, TSO personnel whose services are requested will evaluate the request and:

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

(2) Assuming all of the following conditions exist:

- NLSO services are not reasonably available;
- the requested legal assistance requires prompt action; and
- the requested legal assistance action is within the competency of the TSO attorney or paralegal;

then, TSO personnel may provide the legal assistance appropriate to the situation. For example, a TSO attorney on temporary duty to a remote location, or onboard a deployed ship, requested to provide legal assistance to a service member facing imminent adverse civil action in the member's home state, would be authorized to provide assistance.

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

(b) If the requesting individual objects to the possible transfer of the matter to a NLSO attorney, the TSO attorney will render as much assistance as appropriate and feasible under the circumstances. The TSO attorney will advise the individual, however, no further action on behalf of the individual by the TSO attorney rendering assistance will be made beyond action taken on scene. At the conclusion of the

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meeting with the individual the TSO attorney will return to the individual all documents previously provided.

c. Whenever TSO personnel provide any legal assistance, statistical accounting must take place. See paragraph 5-1A(1)(a), below.

d. While administering legal assistance services, commanding officers of TSOs shall assume oversight responsibility over their personnel in accordance with paragraphs 2-2B(1)-(3), above.

III

Legal Assistance Attorneys

3-1. **Definition.** A legal assistance attorney is any active duty or reserve judge advocate, or civilian attorney employed by the Navy or Marine Corps, who is authorized or directed by appropriate authority to provide legal assistance services.

3-2. **Qualifications.** 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.

a. 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 upon successful completion of the Naval Justice School Basic Lawyer Course; designation prior to completion of the NJS Basic Lawyer Course may be requested under paragraph 3-2C herein.

b. 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.

c. Other cases. A licensed attorney who does not satisfy either of the preceding paragraphs may request designation as a legal assistance attorney. Such a request shall be submitted in writing, via the chain of command, to the Judge Advocate General. The Judge Advocate General, or his designee (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), 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.

3-3. **Legal assistance attorney training**

a. Policy. Training in the substantive law, procedures, and issues affecting a legal assistance practice is the touchstone for maintaining competence. Continuing legal education programs and courses refresh the attorney's knowledge and sharpen skills in those areas of the law relevant to a 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.

b. Coordination with training plans. The legal assistance training objectives herein are coordinated with the broad training goals for all judge advocates set forth in JAGINST 1500.1(Series) (*Professional Development Plan*) and JAGINST 1500.4(Series) (*JAG Corps Training Program*). The latter instruction

proposes a goal of 4 hours of professional training per month for each judge advocate. Locally applicable training directives should be consulted, as they may state a different objective; for example, JAG/COMNAVLEGSVCCOMINST 1500.3(Series) (*Training Plan in Furtherance of Professional Development and Quality Improvement Within the Office of the Judge Advocate General and Headquarters, Naval Legal Service Command*), provides a goal of 6 hours of professional training per month for each assigned attorney.

c. Legal assistance training objectives defined

(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. Enclosure (11c) of JAGINST 1500.4(Series) suggests many such 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 expect to be assigned to such duties, should conform to the appropriate training objective during the 3 months preceding assignment to legal assistance duties.

(4) These training objectives should not be interpreted as rigid requirements. Rather, they underscore the importance of continuous training to develop the potential of each legal assistance attorney to deliver high quality client services.

d. Sources of legal assistance training

(1) Naval Justice School (NJS) courses. All judge advocates receive initial training in legal assistance as part of the Basic Lawyer Course at the Naval Justice School. Legal assistance updates are included in a variety of survey courses offered by the school, including the SJA and Reserve Lawyer courses.

(2) Army JAG School. The Army JAG School's one-week legal assistance course, offered each February and October, is a comprehensive, advanced 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 NJS, from the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), or from the Deputy Assistant Judge Advocate General (Legal Assistance).

(3) Other resources. Live presentations and videotaped programs relevant to a legal assistance practice are readily available from a wide variety of sources, including the JAG Schools of the Armed Forces; law schools and 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 accentuated for overseas and afloat legal assistance attorneys because of the unique features of these practices, often including remote locations and limited community resources. Overseas and afloat legal assistance attorneys who encounter difficulty in obtaining needed materials should consult the Naval Justice School, the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), or the Deputy Assistant Judge Advocate General (Legal Assistance) for assistance.

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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, who may be assisted by legalmen, legal clerks, civilian paralegals, and clerical personnel.

b. Various client services may be provided by legalmen, legal clerks, or paralegals without necessity of an attorney-client meeting, including preparation of certain powers of attorney (see paragraph 7-2C), notarization services (see paragraph 7-2D), and certain tax assistance (see paragraph 7-3B(1)(c)). Other services may be specifically authorized by the Judge Advocate General, or his designee (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate). Although these services may be provided independent of any attorney-client contact, the supervising legal assistance attorney remains responsible and accountable for them.

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 a legalman, legal clerk, or paralegal, 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, or from an entire class of cases or clients, by "delegating" all client contact and case work to a legalman, legal clerk, or paralegal);

(b) supervises the legalman, legal clerk, or paralegal in the performance of the delegated work;

(c) assumes complete professional responsibility for the work product of the legalman, legal clerk, or paralegal; and

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

(2) 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 nonlawyer assistants.

IV

Legal Assistance Paralegals & Clerical Staff

4-1. Definitions

a. Legal assistance paralegals. These are either:

(1) Active duty members and reserve members of the legalman rating, or Marine legal clerks, who are assigned to a legal assistance office, to a billet supporting an independent legal assistance attorney, or a legalman assigned to a designated independent duty legalman billet; or

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

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b. Legal assistance clerical staff. These are military or civilian personnel assigned to or employed at a legal assistance office, or assisting an independent legal assistance attorney, but who are neither attorneys nor paralegals.

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. 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 a lawyer. 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 which 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; the forms in question are usually lawyer-approved and relatively simple (e.g., powers of attorney).

b. General rules. Other than as specifically authorized in this manual or otherwise by the Judge Advocate General, or his designee (Commander Naval Legal Service Command; Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate), a legal assistance paralegal or clerical staff member shall not provide any legal advice to a client, or render any other service to a client that constitutes the practice of law, unless under the supervision and at the direction of a legal assistance attorney. 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.

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 nonlawyer assistants.

4-3. Duties of legal assistance paralegals

a. The precise duties assigned to a paralegal depend on the specific needs of the office, the paralegal's experience and training, and the feasibility of judge advocate 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

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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 legalman or paralegal); 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 paragraph 3-4); a paralegal may assist the delivery of client services as requested by the attorney.

(a) A few client services may be provided by a legal assistance paralegal without an attorney-client meeting: preparation of most powers of attorney (see paragraph 7-2C), notarization services (see paragraph 7-2D), and certain tax assistance (see paragraph 7-3B(1)(c)). Additional services may be authorized by the Judge Advocate General, or his designee (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate).

(b) Initial client interview. A legal assistance paralegal may conduct an initial client interview, preliminary to an attorney-client meeting. During this interview the 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 should be conducted in a confidential setting. The 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. When informing the attorney about the case, the paralegal is encouraged to include a complete assessment and recommendation for action. Following the client's consultation with an attorney, the paralegal may draft such correspondence or other documents, or take such other action, as the attorney may direct.

(4) Preventive law activities. Legal assistance paralegals should assist attorneys in the administration of a vigorous preventive law program. They may prepare, supervise, and participate as a speaker at informational lectures and seminars, including unit education programs. A legalman or legal clerk, by virtue of his or her experience, perspectives and status as a senior petty officer or non-commissioned officer, is uniquely qualified to deliver an effective preventive law message to younger enlisted personnel. Legal assistance providers are encouraged to use legalmen and legal clerks 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. **Training and professional development.** Legal assistance paralegals 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 JAG Schools or other schools of the military services, through civilian personnel offices or other Federal Government agencies, through national or local paralegal associations, or through individual command preparation and presentation. See JAGINST 1500.4(Series) for further information and guidance.

V

Policies for Legal Assistance Providers

5-1. **Operating policies.** The policies in this section apply to all attorneys and paralegals providing legal assistance services at Navy or Marine Corps activities, independently or as part of a legal assistance office.

a. Reports. Legal assistance statistics shall be reported as prescribed herein and by other directives of the Judge Advocate General or his designee (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate).

(1) Periodic statistical reporting.

(a) Naval Legal Service Command legal assistance offices will report statistics as directed by Commander Naval Legal Service Command [currently via the JAG Management Information System (JAGMIS) 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 paragraph 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). See Appendix V(A) herein. 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 staff judge advocate 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 shall be reflected in the productivity reports of the particular active duty office.

(2) Commanding officers of Reserve JAG units providing legal assistance services not otherwise reported per paragraph 5-1C(1) shall report such services in accordance with paragraph 5-1B.

(d) The Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL) shall use the quarterly report:

(1) To compile a world-wide register of legal assistance providers, which shall be used to disseminate advisories, no-cost materials, and information about resources to support the delivery of legal assistance; and

(2) To maintain a data base that, in conjunction with JAGMIS, 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 designee, (Deputy Assistant Judge Advocate General (Legal

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Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate), via the chain-of-command.

(2) Professional assistance. To enhance the process of giving professional assistance to a client, 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, 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 channels 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 a when a naval message is deemed essential for zealous representation of the client's interests.

c. Attorney-client relationships

(1) Legal assistance attorneys are authorized to form attorney-client relationships with 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.

(2) Authorized attorney-client relationships shall be respected, and clients returning for follow-up appointments on the same matter normally will be assigned to the same attorney unless that attorney has transferred or the client requests another attorney. Whenever it is necessary to transfer responsibility for pending cases to another attorney (e.g., attorney transfer, illness, or other cause), the client must be notified. If the client objects to another attorney undertaking representation in place of the departing attorney, the provider will terminate representation and return original papers and property to the client. See paragraph 5-3A(2)(c).

(3) Certain cases, including those involving military justice matters, administrative separations, official investigations, or standards of conduct/post-Government service employment restrictions, are beyond the scope of the legal assistance program. See paragraph 7-3C herein. Legal assistance attorneys, while acting in that capacity, shall not knowingly enter into an attorney-client relationship in such cases. However, representation in such cases may be accommodated by attorneys acting in other capacities *outside* the legal assistance program, pursuant to special assignment or in the regular course of duties (e.g., an attorney at a NLSO Detachment who is "double-hatted" as a part-time defense counsel and a part-time legal assistance attorney).

d. Client eligibility

(1) Per JAGMAN 0706(a), legal assistance is intended primarily for active duty personnel. As resources permit, services also may be provided to other categories of persons specified in JAGMAN 0706(b). Personnel who are receiving benefits under the transition assistance program subsequent to discharge from active duty, and former spouses of active duty and retired personnel, are not eligible for legal assistance.

(2) 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 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 missions of the local command and the Navy.

(3) 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 conflict of interests among clients.

e. Conflict avoidance

(1) Within a single legal assistance office, individual attorneys shall not knowingly undertake to represent a client whose interest in a matter conflicts with that of a preexisting legal assistance office 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.

(2) Within the Naval Legal Service Command, the legal assistance offices at NLSOs, DETs, and BROFFs will be considered separate offices for purposes of determination and resolution of conflict of interests. That the NLSO Legal Assistance Department Head, the Officer in Charge of a DET, and the Head of a Branch Office all report for various purposes to the NLSO Commanding Officer, will not in and of itself nullify the separate character of these organizations.

(3) When a conflict exists, the excluded party should be referred to another legal assistance office or independent active duty or Reserve (Reservist not then performing AT, IDTT, drills at gaining command) legal assistance attorney, separate Reserve IMA Detachment, or to a legal assistance office or attorney of another service. NLSO commanding officers, senior staff judge advocates, Directors, Joint Law Centers, and Officers in Charge, Legal Service Support Sections, are encouraged to coordinate work with other-service authorities in their area of responsibility to facilitate handling of conflicts cases. Legal assistance offices with video teleconferencing (VTC) facilities are encouraged to establish cooperative agreements with other VTC-equipped offices to facilitate handling of conflicts cases. See paragraph 5-11 concerning VTC.

(4) When no alternative external legal assistance provider is reasonably available, attorneys providing services as part of a NLSO, DET, or Marine Corps legal assistance office may refer the conflicted person to a separate department of the same NLSO, DET, or Marine Corps office, subject to the individual's informed consent and approval by the commanding officer, staff judge advocate, Director, Joint Law Center, or Officer in Charge, Legal Service Support Section, as appropriate. At the same time, the conflicted individual also must be provided with information and an offer of assistance to obtain civilian counsel. See paragraph 5-11 concerning referrals. Commanding officers, staff judge advocates, Directors, Joint Law Centers, and Officers in Charge, Legal Service Support Sections, must establish

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procedures to ensure protection of client confidences and facilitate the attorney's duty of loyalty to the client in such cases.

(5) Where no other military attorneys are available to provide legal assistance, the excluded party will be advised to seek civilian counsel. See paragraph 5-1L concerning referrals. Under no circumstances shall one attorney represent both opposing parties in the same matter. Preparing reciprocal wills for spouses is permitted unless a conflict arises in providing such services. However, this does not preclude the attorney from acting as a mediator or arbitrator under an Alternate Dispute Resolution program.

(6) Attorneys who are assigned duties outside the Navy-Marine Corps Legal Assistance Program must be especially sensitive to the possibility that conflict of interests 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 command members in such matters. Similarly, an attorney acting as defense counsel for Seaman or Lance Corporal "X" should not, after shifting into a legal assistance role, undertake representation of Mrs. "X," who is seeking divorce advice. Attorneys must take early and decisive action to avoid those conflicts, thereby ensuring independent representation for all.

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 in which 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 and 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, paralegal or clerical support person, should be accomplished in a manner to ensure confidentiality concerning the nature of the case (e.g., avoid 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 another person should not be drafted on instructions of, or information provided by, a 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. The electronic revolution has created opportunities to provide legal assistance to individuals remote from a legal assistance attorney. Because the technology is advancing so quickly, guidance can be provided only in terms of general principles:

(1) In the absence of unusual or compelling circumstances, 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.

(2) Video teleconferences may be used to allow legal assistance attorneys to serve clients at remote sites. Facsimiles of relevant documents should be sent to the legal assistance attorney for review prior to or contemporaneously with the video teleconference. Attorneys participating in such conferences should be aware of the presence of other individuals, e.g., technicians, who can observe or overhear the conference and take steps to ensure client confidences are protected.

j. Prohibition against compensation for legal assistance services. Legal assistance is a free service for eligible beneficiaries. No legal assistance attorney, paralegal or clerical staff member, whether active duty, reserve, or civilian, shall accept 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 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 are cautioned to 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 5803.1(Series). Situations that may violate these restrictions include 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 anyone in the provider's household, or any relative with whom the provider has a close personal relationship (e.g., parents, siblings, etc.); or taking any official action with regard to entities with whom the provider is negotiating for employment.

l. 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 some other 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 private counsel may be made through a local or state bar association referral service, and should be utilized when the referring attorney is unfamiliar with local civilian counsel. In locations where a referral service is not practicable, the legal assistance provider may furnish clients with a list of local civilian counsel. Caution should be used in making referrals to specific private attorneys, as there may be an obligation on the referring attorney to ascertain that the receiving attorney is competent in the specific area of the law. Also, care must be taken to avoid even the appearance of impropriety or preferential treatment in making repeated referrals to a specific private attorney. Referrals to specific private attorneys, therefore, should be limited to clients with particular needs that require the attention of qualified attorneys in specialized areas of practice.

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

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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. All fees and costs, if any, connected with a legal assistance case shall be paid by the client.

n. Legal assistance correspondence. Legal assistance providers must ensure that their correspondence does not imply Navy, Marine Corps, or command sponsorship or endorsement; accordingly, the following practices shall be observed:

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

(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 Staff Judge Advocates, Directors, Joint Law Centers, or Officers in Charge, Legal Service Support Sections, may establish specific requirements within their chains of command. The following 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 Navy or the United States Government.

(3) Correspondence will be signed by the legal assistance provider in the capacity of a representative of the client; terminology such as "by direction" will not be used.

(4) Legal assistance correspondence will be filed separately from other command correspondence to safeguard confidentiality; see paragraph 5-3(A)(3).

(5) 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 doors to safeguard confidentiality of consultations with clients.

b. Equipment/software

(1) If possible, each legal assistance attorney and 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) Navy legal assistance offices are encouraged to use software products (word processing, communications, and other applications) compatible with those used by the Office of the Judge Advocate

General and Naval Legal Service Command units to facilitate the sharing of information and documents via electronic means; questions concerning OJAG/NLSC standard software may be addressed to OJAG (Code 63).

(3) Each legal assistance provider is strongly encouraged to obtain an e-mail user account on the Internet as well as access to the Navy JAG World Wide Web Home Page. These two communications media 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. Additionally, Internet e-mail and the World Wide Web are a principal means used by legal assistance providers to exchange information and to obtain research support in individual cases.

c. Library/automated legal research. Legal assistance providers cannot operate without adequate library or automated legal research support, preferably at their own activity, or at another location nearby.

(1) Basic 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 (Legal Assistance), the Army JAG School, and the Naval Justice School. The Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL) will promulgate information on how copies of legal assistance publications may be obtained by Navy and Marine Corps legal assistance providers.

(2) Legal assistance offices should have automated legal research access, in-house or at a nearby activity, for matters beyond the scope of available library resources.

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 card files. Records reflecting client contact and the general nature of assistance will be maintained by each legal assistance office or independent legal assistance attorney for administrative and statistical purposes. Information in these records is used to contact clients and former clients concerning assistance provided, to ensure against conflict of interests, and to develop statistical analyses of services rendered. See Appendix V(B) for an example of this record. It is anticipated that this type of record will be used at legal assistance offices that do not maintain an electronic database. Use of "electronic client card files" is authorized.

(a) Card files contain privacy information that is not accessible to the public or to persons within the command except as permitted by the Privacy Act. Information on card files may be revealed to personnel in other departments of the command involved in the preparation of legal assistance productivity reports. Thus, legal assistance attorneys should not include attorney-client privileged information on card files to avoid release of information to the detriment of their clients.

(b) Closed legal assistance card files generally will be retained at the legal assistance provider's location for 2 years after completion of the services, and disposed of as required by SECNAVINST 5212.5(Series) (*Disposal of Navy and Marine Corps Records*). Files may be maintained indefinitely if a future legal dispute or inquiry about the matters addressed in the files is reasonably foreseeable.

(2) Legal assistance case files. Legal assistance case files contain personal and privileged information about the client and the legal matter(s) for which the client is seeking assistance, including

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various documents related to the client's case, such as: copies of client records provided to the attorney; memoranda of attorney-client interviews and attorney-client telephone conversations; memoranda of meetings and telephone conversations with relevant third-parties; copies of statutes and case law relevant to the case; attorney research and notes; copies of correspondence and documents prepared; and a record of the results obtained. Legal assistance case files are Government records. They shall be stored by the legal assistance provider 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 an actual conflict of interest exists, 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 it 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 will be retained at the legal assistance provider's location 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 future legal dispute or inquiry about the matters addressed in the files is reasonably foreseeable.

(3) Chronological File. Each legal assistance provider shall maintain a monthly chronological reading file, not indexed by personal identifiers, of all documents and correspondence prepared for clients. This file may be reviewed from time to time by appropriate supervisory authority 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 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.

VI

(Reserved)

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 who will handle a case in court to develop and frame the 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 section 0708, applying the standards prescribed in this manual. A NLSO commanding officer, a TSO commanding officer (providing legal assistance services in accordance with paragraph 2-3, above), senior staff judge advocate, Director, Joint Law Center, or Officer in Charge, Legal Service Support Section, may limit the scope of services furnished by any legal assistance provider under his or her authority.

(2) Limitations on services may be necessary because of the level of client demand for services, personnel shortages, or 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. Legal assistance attorneys should not attempt services for which the attorney lacks the time, resources or expertise to provide a high-quality product.

(3) Additional consideration for supervisory attorneys. A TSO commanding officer (providing legal assistance services in accordance with paragraph 2-3, above), staff judge advocates, Directors, Joint Law Centers, and Officers in Charge, Legal Service Support Sections, are cautioned to avoid providing legal assistance services for cases where there is a reasonable probability of advising the command about official action. Examples of such matters are nonsupport of dependents, paternity, and indebtedness/involuntary allotments.

c. Coordination of services. Where several legal assistance providers practice at a particular location, the NLSO commanding officer, senior staff judge advocate(s), Directors, Joint Law Centers, and Officers in Charge, Legal Service Support Sections, are encouraged to coordinate efforts to allow smaller offices and independent legal assistance attorneys to concentrate on particular practice areas for which they are able to provide high-quality services.

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. Wills, trusts, and estate planning. Basic estate planning service, including drafting of wills, is a central part of the legal assistance program. Every effort must be made, within the scope of the available

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basic service, to meet the individual needs and desires of the client concerning disposition of property and care of children.

(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 gymnasium or in a mess tent, for example, vice in 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 may be useful as a means of providing general information to clients preliminary to individual consultations. Client questionnaires may be used to speed the drafting process, but the attorney should review these with the client to ensure that the client properly understands each question and the ramifications of his or her answer. *The attorney's name and state of admission (state most recently admitted to) shall be placed on each will prepared by the attorney.*

(b) Paralegals. Legal assistance paralegals may assist attorneys in providing will drafting services, but shall not prepare a will unless specifically directed by an attorney who has individually consulted with the client. Paralegals may assist clients in filling out 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. Complex will drafting and estate planning services are not routinely provided in the Navy-Marine Corps Legal Assistance Program.

(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) The preparation and execution of preprinted "fill-in-the-blank" wills is 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.

(3) Will executions

(a) Wills normally will be executed under the direct supervision of the drafting attorney. Execution shall not occur until the client has had the opportunity to carefully read the document and discuss in confidence any questions about its provisions with the attorney. If it is not practicable for the drafting attorney to supervise the will execution, another legal assistance attorney at the same location may, with the client's consent, respond to any questions the client has about the will and supervise its execution.

(b) 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.

(c) Occasionally it is not practicable for any legal assistance attorney or paralegal to supervise the execution of a will. For example, if unexecuted wills 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 also furnish a copy of those instructions directly to his or her client. The instructions should request 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.

(d) Legal assistance attorneys should avoid delivering unexecuted wills directly to clients except in unusual circumstances when execution in the normal manner, or by alternative supervised means, cannot be accommodated. If an unexecuted will is delivered directly to a client, it should be accompanied by detailed instructions for proper execution.

(e) "Mass" will executions render the wills susceptible to a challenge, and therefore are discouraged.

(4) Estate planning advice

(a) Estate planning, in the sense of arranging a client's affairs to minimize taxation of his or her estate, will not normally be offered by legal assistance attorneys unless the particular attorney has special competence. Because inflation has eroded the real value of the \$600,000 gross estate that may pass free of federal estate taxes, increasing numbers of married legal assistance clients may benefit from preparation of wills containing a disclaimer trust or a credit shelter trust. Legal assistance attorneys are encouraged to obtain training to develop and maintain expertise in the preparation of these types of wills.

(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 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.

(5) Trusts

(a) Legal assistance attorneys should become 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, and its use is encouraged in appropriate cases. Complex testamentary trusts are 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 *inter vivos* (or "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 normally available from legal assistance providers. Clients may be advised, however, of the general nature and legal effect of such strategies. This restriction does not apply to the drafting of an *inter vivos* SGLI trust; see paragraph (6)(d) below.

(6) Disposition of SGLI proceeds

(a) For many service members, especially junior personnel, the bulk of their personal estate is the Servicemen's Group Life Insurance (SGLI) benefit. As with other life insurance, SGLI does not

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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.

(b) Legal assistance providers are encouraged to maintain a supply 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 dispositive wishes about this valuable asset.

(c) Clients should be advised to designate one or more specific SGLI beneficiaries (which may be individual(s), the estate of the client, or a trust; *see* 38 C.F.R. pt. 9). The Deputy Assistant Judge Advocate General (Legal Assistance) and the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), shall coordinate distribution of information and sample beneficiary designations for use by legal assistance providers.

(d) Legal assistance providers may prepare an *inter vivos* 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, when the intended beneficiaries are minor children.

(e) 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.

b. Advance medical directives

(1) 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 himself or herself.

(2) Legal assistance attorneys will prepare AMD's when requested by a client.

(3) Until 1996, AMD's were governed exclusively by state laws. 10 U.S.C. § 1044c now requires states to recognize AMD's 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.

(4) 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 by 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.

(5) Although we now have this protection for military AMD's, it is best to try to meet state requirements in order to minimize the potential for misunderstandings. State laws regarding the content and wording of AMD's differ. If using the *DL Wills* 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 (4) above shall be inserted in the document in order to provide a fail-safe.

(6) 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 AMD's.

c. 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, 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 by the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), or provided by a supervising legal assistance attorney. Paralegals may provide this client service without need for an attorney-client meeting unless the client expresses a desire to see an attorney or if the paralegal encounters a problem or issue that, in the paralegal's judgment, requires the attention of an attorney.

(3) The powers of attorney listed below may be prepared and executed only after a meeting between attorney and client. The supervising legal assistance attorney may specify other situations which 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 medical 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, such as selling or purchasing real estate, general powers of attorney may be rejected and rendered ineffective when needed most. Furthermore, because of the breadth of authority they grant, general powers of attorney are not advisable for some clients. When general powers of attorney are sought, the legal assistance attorney or paralegal should inquire about the specific use(s) 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 a staleness problem.

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(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. Such clauses should not be included as routine boilerplate in *all* powers of attorney prepared at a legal assistance office. 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 medical 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 clients. 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, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

(7) 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 efficient production of high-quality powers of attorney.

d. 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), and certain Marine Corps legal services specialists (E-5 and above, while serving in legal assistance billets, when authorized by the cognizant commander, senior staff judge advocate, Director, Joint Law Center, or Officer in Charge, Legal Service Support Section) 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, 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, 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 0903 and 0910. 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. Civilian notaries shall maintain such records of notarial acts as may be required by the state issuing their notary public commission. All legal assistance notaries 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. JAGMAN 0909.

(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 0908.

e. Domestic relations. No area of legal assistance practice is more charged with emotion than domestic relations. Great care must be taken to avoid disserving 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 not only on state law, but often on vagaries of 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 find it helpful to discuss their cases with a legal assistance attorney to better understand the implications (including military implications) of a divorce, and the attendant rights and responsibilities. Accordingly, a legal assistance attorney will meet individually with a client seeking advice or assistance in connection with a divorce, subject to conflict of interests restrictions, so long as that client is not already represented by other counsel. 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 a client is already represented by other counsel, 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 those locations in which a more complete service than consultation is available to the client in simple dissolution cases, the legal assistance attorney may continue representation throughout the case, including drafting of *pro se* pleadings for clients so long as such conduct is permissible under local law and applicable ethics rules. A legal assistance attorney may not, however, appear in court as counsel of record in a marital dissolution proceeding, except in accordance with an approved Expanded Legal Assistance Program (ELAP).

(d) Legal assistance providers are encouraged to develop handouts to dispense general information about obtaining a divorce. While the practice of conducting a group seminar or presentation as a means of dispensing general information is permissible, providers 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.

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(2) Separation agreements

(a) Laws concerning child custody and support, spousal support, and division of marital or community property are complex. 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. Furthermore, legal assistance attorneys must deal with a national clientele; 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 generally encouraged. Where separation agreements are drafted, legal assistance providers should consider placing reasonable limitations on the scope of the service (for example, the service may be limited to clients E-5 and below, or officers with less than 4 years active duty service, or their spouses; and only in accordance with the laws and procedures of, and for intended use in, the local jurisdiction).

(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) Advice may 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 may include assisting the client with the preparation and forwarding of nonsupport complaints to commanding officers and other appropriate offices. Depending on the facts of the individual case, legal assistance attorneys should consider preparation of correspondence for the client's signature, vice the attorney's. 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 Expanded Legal Assistance Program (ELAP).

(4) Paternity. Legal assistance providers may 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. Services and limitations include those outlined in the preceding paragraph.

f. Adoption and name changes

(1) 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.

(2) Legal assistance 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-CL INST 1341.1(Series). Attorneys and paralegals may assist persons in preparing and forwarding claims for reimbursement under this program.

g. Indebtedness and bankruptcy

(1) Debt claims. Attorneys may 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 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) Involuntary allotment/garnishment

(a) Legal assistance attorneys may 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) (Pub. L. 103-94), 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 (Pub. L. 103-94); 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 may be necessary or desirable to fully protect their interests.

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

(4) Bankruptcy. Because of the complexity and ramifications of opting to declare bankruptcy, legal assistance service normally should be limited to providing basic information. Clients who desire to pursue a bankruptcy action should be advised to consult a civilian bankruptcy attorney.

h. Landlord-tenant and real estate

(1) Tenant services. Legal assistance attorneys may review 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. 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

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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, and drafting language for lease modifications such as "reverse" military clauses. 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.

i. Civil suits. Normally, services will be limited to advice and referral, or explanation of local court procedures and preparation of *pro se* documents where *pro se* action is appropriate and desired by the client (e.g., small claims court procedures) so long as such conduct is permissible under local law and applicable ethics rules. Advice may include information on applicable statutes of limitations, time available for response to process, and effect, if any, of the Soldiers' and Sailors' Civil Relief Act. 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 an articulable defense, and no right to paid representation exists under an insurance contract or otherwise.

j. Soldiers' and Sailors' Civil Relief Act (SSCRA)

(1) Legal assistance attorneys should be prepared to advise clients on all aspects of the SSCRA.

(2) Care should be taken when invoking SSCRA protections before a court, particularly if the member intends to object to any exercise of the court's jurisdiction over him or her. Moving a court for positive relief (such as a stay under the SSCRA) may constitute consent to jurisdiction. Even simple correspondence to a court advising of the service member's status and invoking the Act may be viewed as a *pro se* petition for relief and consent to jurisdiction.

(3) Correspondence to a court signed by the legal assistance attorney on behalf of the client should be avoided as this may be construed as an appearance by counsel of record. As an alternative, the attorney should consider corresponding directly with opposing counsel instead of with the court, or preparing correspondence to the court for signature by the client's commanding officer.

k. Consumer affairs. 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.

1. 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.

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 designee (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate). This authority may be further delegated, in writing, to but not lower than the cognizant commander, senior staff judge advocate, Director, Joint Law Center, or Officer in Charge, Legal Service Support Section.

b. Permissible areas of legal assistance

(1) Taxation. Legal assistance attorneys should be prepared to 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 Soldiers' and Sailors' Civil Relief Act. Expert guidance and resources will be provided to legal assistance attorneys by the Head, Navy Tax Branch, located at OJAG (Legal Assistance) or by the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL).

(a) Tax forms. Legal assistance offices should, during the months of January through August, stock a full range of Federal personal income tax forms. Legal assistance offices may register for the 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. All legal assistance offices are encouraged to cooperate with the Internal Revenue Service (IRS) in administering the Volunteer Income Tax Assistance (VITA) and Electronic Tax Filing (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.

(c) Paralegal tax assistance

(1) Legal assistance paralegals may guide eligible clients in the selection of appropriate tax forms, advise them how to obtain forms and publications not in stock locally, 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, paralegals are encouraged to complete VITA training

and assist eligible clients with tax return preparation. This service normally will be offered within the parameters of the VITA/ELF programs (i.e., form preparation assistance is generally limited to relatively simple cases).

(3) Paralegals shall not in any case sign any form as a paid preparer or appear for or with the client before an agent of the Internal Revenue Service.

(d) Attorney tax assistance

(1) 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. Attorneys shall not in any case sign any form as a paid tax preparer. A legal assistance attorney may advise clients on any individual Federal, state or local tax issues, 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 (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate), any appearance before the IRS or any state or local tax board or agency.

(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 (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), 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 Head, Navy Tax Branch, 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 Head, Navy Tax Branch, or to 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 DOD Directive 5124.3.

(4) As an exception to the prohibitions contained in JAGMAN 0709(a) 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 child care 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 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, without permission of the Judge Advocate General or his designee (Deputy Assistant Judge Advocate General (Legal Assistance) or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate), accompanying the individual to a hearing before any board or agency.

c. Prohibited areas of legal assistance. Certain areas outside the scope of the legal assistance program are listed below. An attorney may 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 NLSO 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 staff judge advocates, Directors of Joint Law Centers and Officers in Charge of Legal Service Support Sections constitute competent authority and may approve representation by Marine Corps attorneys of clients within these areas.

(1) Claims. Legal assistance providers may not advise or assist in the prosecution of any tort, military, personnel, CHAMPUS or other monetary claim against the United States, or the defense of any monetary claim by the United States against an individual, except as authorized herein or otherwise (e.g., Adoption Expense Reimbursement claims, waiver of indebtedness assistance, etc.). Legal assistance providers may inform an interested person about the statute of limitations, how to obtain claim forms or where to file them, and direct the claimant/potential claimant to the appropriate claims office or provide referral assistance to retain civilian counsel.

(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 the Department of Defense or any agency within DOD, concerning that official investigation.

(3) Administrative complaint processes. The Navy-Marine 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 rebuttals, or any other similar administrative complaint. Legal assistance attorneys may, of course, be ordered by competent authority to perform other duties such as acting as legal counsel for administrative complaint matters and therefore may handle such cases.

(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 (including military criminal justice matters under the UCMJ). No assistance is authorized.

(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 in these areas to avoid release of information to the detriment of individuals seeking ethics advice.

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 Expanded Legal Assistance Program 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

(1) 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.

(2) Assisting Navy or Marine Corps organizations and non-Federal entities (e.g., command wives' clubs) on legal matters is outside the scope of the Legal Assistance Program. A request from an individual officer of an organization for assistance on an organizational matter is considered to be a request for assistance to the organization, notwithstanding that the officer or members are eligible to receive legal assistance for personal matters.

VIII

Expanded Legal Assistance Program

8-1. **Scope and general guidelines.** The Expanded Legal Assistance Program (ELAP) allows attorneys from authorized 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 (Commander Naval Legal Service Command; Deputy Assistant Judge Advocate General (Legal Assistance); or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), 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 (Commander Naval Legal Service Command; Deputy Assistant Judge Advocate General

(Legal Assistance); or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), 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 the local ELAP plan, 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 normally 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 (Commander Naval Legal Service Command; Deputy Assistant Judge Advocate General (Legal Assistance); or the Staff Judge Advocate to the Commandant of the Marine Corps (Code JAL), as appropriate).

a. Application contents. Providers shall include in an ELAP application brief descriptions of the present legal assistance program, the proposed ELAP, and 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 attorneys not otherwise admitted to practice in the local courts; see paragraph 8-5 herein.

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 sixty days after the change of command of the commanding officer or assumption of duty of the senior staff judge advocate, Director of the Joint Law Center, or Officer in Charge of the Legal Service Support Section with cognizance over a legal assistance office with an ELAP program unless sooner renewed. Authorizations issued prior to 1 January 1997 will expire on 31 December 1997 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 guidelines or restrictions to benefit the program and the clients served thereby.

8-4. Attorney qualifications

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

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b. In-court appearances, and other actions which 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 in the court where the matter is pending or to be filed; or

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

c. Legal assistance attorneys participating in an ELAP are subject to local 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 and admitted to 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 in the state are to be used in ELAP, special arrangements for their qualification and admittance to practice must be made. Usually this will be accomplished through an agreement with both the state licensing authorities 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.

c. Inclusion of the state and local bar associations in the process of arranging special agreements for ELAP, although not always required, is strongly recommended. Many state bar associations have military law committees that may be able to assist the conclusion of an ELAP agreement with state authorities.

d. 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.

8-6. Fees, costs, and client funds. All fees and costs connected with an ELAP case shall be paid by the client. See paragraph 5-1M. Should attorney's fees be awarded by a court for the actions of a legal assistance attorney, such fees are the property of the United States and must be paid into the Treasury.

IX

Preventive Law Activities

9-1. Policy. Preventive law 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. All legal assistance providers are encouraged to have vigorous programs of preventive law activities.

9-2. Preventive law objectives

a. To improve the overall readiness, efficiency, and performance of naval personnel. Naval personnel are members of a routinely deploying military force. Insofar as possible, they must maintain their

personal legal affairs in order at all times. Personal legal difficulties undermine readiness by detracting from high morale and creating the potential for disciplinary problems. A vigorous preventive law program enhances readiness by educating the military community on personal legal issues, as well as services available from legal assistance providers. Effective preventive law activities require full communication and cooperation among Navy and Marine Corps judge advocates and civilian attorneys, and coordination with appropriate operational commanders and civilian officials.

b. To decrease the number of personal legal problems confronting military units, bases and localities. A preventive law 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. To 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. To provide commanding officers and their personnel with a broad channel of communication on legal assistance matters. An active preventive law program advertises the availability, breadth and limitations, of legal assistance services to commanders and their personnel. In addition, preventive law 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.** NLSO commanding officers, senior staff judge advocates, Directors, Joint Law Centers, and Officers in Charge, Legal Service Support Sections, shall oversee and coordinate preventive law activities within their authority. Attorneys and paralegal personnel are encouraged to dedicate time during each working day for these activities.

9-4. **Typical activities.** Initiative, creativity and perseverance are vital ingredients of effective programs, which must be tailored to local needs and conditions. Typical activities include:

a. Informational lectures and seminars. Attorneys and paralegals should advise area commands of their availability to participate as a "guest lecturer" for general military training and similar unit education programs. Likewise, attorneys and paralegals are encouraged to sponsor and participate in other lectures, seminars, forums, and meetings that seek to inform service members, dependents and retirees about legal problems and issues. Participating lecturers should maximize the effective use of handouts, audio-visual aids, and other innovative means to reinforce their message.

b. Publications. Legal assistance attorneys are encouraged to write regular columns and periodic articles in base or local newspapers, on legal assistance topics of current interest. 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.

c. Videotaped presentations. Where resources permit, compiling a library of videotapes that can be checked out or duplicated for area commands will enhance unit education programs and enable legal assistance providers to reach a wider audience more quickly.

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d. Involvement with other service organizations. Legal assistance attorneys and paralegals are encouraged to be active on committees and in programs established at other base service organizations, such as hospitals and Family Service Centers. Coordination with quality of life programs of other activities ensures that the "legal assistance angle" is considered.

X

Alternate Dispute Resolution Programs

(To be promulgated at a later date)

APPENDICES

QUARTERLY REPORT OF LEGAL ASSISTANCE

(see instructions on reverse side)

NAVJAG 5801/4 (Rev. 12-96)

RCS JAG 5801-1

ACTIVITY				PERIOD OF REPORT _____ to _____, 19__			
TYPES AND NUMBER OF LEGAL ASSISTANCE SERVICES							
CASE TYPE	NUMBER	CASE TYPE	NUMBER				
Divorce/Separation/Custody		Property/Lease/Landlord-Tenant					
Nonsupport/Paternity		Taxation					
Adoptions/Name Change		Notarizations					
Wills/Estate Planning		Powers of Attorney					
Living Will/Advance Med Directive		Military Rights & Benefits					
Consumer Law		Civilian Criminal					
Immigration/Visa/Citizenship		Other					
NUMBER OF CLIENTS ASSISTED BY ATTORNEY							
ACTIVE DUTY CLIENTS	E1-E6	E7-E9	W1-O3		O4-O10	TOTAL A/D	
OTHER CLIENTS	A/D DEPENDENT	RET & RET DEP	RES	MISC	TOTAL OTHER	TOTAL CLIENTS	
NUMBER OF NON-ATTORNEY ASSISTS							
A/D ASSISTS	E1-E6	E7-E9	W1-O3		O4-O10	TOTAL A/D	
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 clerks _____			
Number of civilian paralegals _____				Number of clerical staff _____			
NAME & RANK OF (SENIOR) LEGAL ASSISTANCE ATTORNEY			SIGNATURE			DATE REPORT SUBMITTED	

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INSTRUCTIONS FOR COMPLETING QUARTERLY REPORT OF LEGAL ASSISTANCE

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 the Navy JAG Management Information System (JAGMIS). 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 (Legal Assistance Division), 200 Stovall Street, Alexandria, Virginia 22332-2400 (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 data base to facilitate the preparation of periodic statistical reports.

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 in three different categories ("Wills/Estate Planning," "Living Will/Advance Med Directive," and "Powers of Attorney"), even though only 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 "Wills/Estate Planning" category. Notarizations unrelated to any other legal assistance service may be recorded in the "Notarizations" category; however, notarization service that is 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).

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 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 _____; cmcl _____
 Fax telephone number: DSN _____; cmcl _____
 Internet e-mail address: _____

SAMPLE LEGAL ASSISTANCE CARD FILE

Case#: _____ Request Date: _____
 Appointment Date: _____
 Client Last Name: _____ Follow-up Date: _____
 Client First Name: _____ Completion Date: _____

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY
PRINCIPAL PURPOSES
ROUTINE USES

5 U.S.C. 301, 10 U.S.C. 3013, 44 U.S.C. 3101.
 Data collected on this form and within client case files enables legal assistance office personnel to help you with your legal matter. Information may be used to provide legal advice, to prepare legal correspondence and documents, to assign counsel to you, to monitor case status, and to prepare periodic reports on the case load of this office.
 Disclosure is voluntary. However, failure to provide the information requested may constitute grounds to deny you legal assistance.

DISCLOSURE

SIGNATURE OF CLIENT: _____ DATE: _____

Client Data:

Relationship to Sponsor: _____ Sponsor's rank/rate: _____
 Branch of Service: _____ Home address: _____
 Work phone: _____ Home phone: _____
 Names of Opposing Parties Involved in this Legal Matter: _____

Provider Data:

Provider Category: (Enter "X" below) Provider Name: _____
 ATTORNEY -- Active Duty _____ Reserve _____ Civilian _____
 PARALEGAL -- Active Duty _____ Reserve _____ Civilian _____

TYPES AND NUMBER OF LEGAL ASSISTANCE SERVICES

CASE TYPE	NUMBER	CASE TYPE	NUMBER
Divorce/Separation/Custody		Property/Lease/Landlord-Tenant	
Nonsupport/Paternity		Taxation	
Adoptions/Name Change		Notarizations	
Wills/Estate Planning		Powers of Attorney	
Living Will/Advance Med Directive		Military Rights & Benefits	
Consumer Law		Civilian Criminal	
Immigration/Visa/Citizenship		Other	

NUMBER OF CLIENTS ASSISTED BY ATTORNEY

ACTIVE DUTY CLIENTS	E1-E6	E7-E9	W1-O3	O4-O10	TOTAL A/D	
OTHER CLIENTS	A/D DEPENDENT	RET & RET DEP	RES	MISC	TOTAL OTHER	TOTAL CLIENTS

NUMBER OF NON-ATTORNEY ASSISTS

ACTIVE DUTY CLIENTS	E1-E6	E7-E9	W1-O3	O4-O10	TOTAL ACDU	
OTHER CLIENTS	ACDU DEPENDENT	RET & RET DEP	RES	MISC	TOTAL OTHER	TOTAL ASSISTS

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The legal assistance card file is intended as a statistical record reflecting client contact and the general nature of the assistance provided. See paragraph 5-3A(1). The above is an example of such a record, which may be adopted or tailored to meet local needs. It is anticipated that this type of record will be used at legal assistance offices that do not maintain an electronic database. The information categories on the example facilitate client contact, monitor time between a request for and delivery of services, provide a means for a conflict of interest check, and assist the completion of the Quarterly Report of Legal Assistance (NAVJAG 5801/4).

Most of the information categories are self-explanatory. The "Case #" line permits insertion of a locally-assigned case tracking number.