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will initiate action to appoint a trustee, provided no notice of appointment of a committee, guardian, or other legal representative by a State court of competent jurisdiction has been received by DFAS–CL(CGA).

[73 FR 64207, Oct. 29, 2008]

§ 726.6 Travel orders.

The Chief of Naval Personnel or the Deputy Commandant, Manpower & Reserve Affairs, may issue travel orders to a member to appear before a competency board convened to determine whether the member is mentally capable of managing his financial affairs. In the case of permanently retired members, travel will be at no cost to the Government.

[73 FR 64207, Oct. 29, 2008]

§ 726.7 Status of pay account.

Upon notification by the commanding officer of the medical facility preparing the board report that a member has been declared mentally incapable of managing his financial affairs, DFAS–CL(CGA) will suspend the member's pay. Thereafter, DFAS–CL(CGA) or his designee will direct payment of monies to:

(a) The appointed trustee;

(b) The legal representative appointed by a State court of competent jurisdiction; or

(c) Directly to the member following a determination the member is capable of managing his financial affairs.

[73 FR 64207, Oct. 29, 2008]

§ 726.8 Emergency funds and health and comfort.

Until a trustee is appointed, DFAS–CL(CGA) may appoint the member's designated next of kin to receive emergency funds equal to, but not to exceed the amount of pay due the incompetent member for a period of one month. These funds will be deducted from the member's pay account and will be used for the benefit of the member and any legal dependents.

[73 FR 64207, Oct. 29, 2008]

§ 726.9 Reports and supervision of trustees.

(a) *Accounting reports.* The trustee designated by DFAS–CL(CGA) will submit accounting reports annually or at such other times as DFAS–CL(CGA) or his designee directs. DFAS–CL(CGA) will provide forms to be used by trustees for the required accounting report. The report will account for all funds received from the Navy or Marine Corps on behalf of the member. When payments to a trustee are terminated for any reason, the trustee will submit a final accounting report to DFAS–CL(CGA). Upon approval of the final accounting report, the trustee and the surety will be discharged from liability.

(b) *Failure to submit a report and default.* If an accounting report is not received by the date designated by DFAS–CL(CGA) or an accounting is unsatisfactory, DFAS–CL(CGA) will notify the trustee in writing. If a satisfactory accounting is not received by DFAS–CL(CGA) within the time specified, the trustee will be declared in default of the trustee agreement and will be liable for all unaccounted trustee funds. If a trustee is declared in default of the trustee agreement, DFAS–CL(CGA) will terminate payments to the trustee and, if necessary, a successor trustee may be appointed. The trustee and surety will be notified in writing by DFAS–CL(CGA) of the declaration of default. The notification will state the reasons for default, the amount of indebtedness to the Government, and will demand payment for the full amount of indebtedness. If payment in full is not received by DFAS–CL(CGA) within an appropriate period of time from notification of default, the account may be forwarded to the Department of Justice for recovery of funds through appropriate civil action.

[73 FR 64207, Oct. 29, 2008]

PART 727—LEGAL ASSISTANCE

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6026, Mar. 6, 1973, unless otherwise noted.

§ 727.1 Purpose.

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this part is to provide guidelines for the continuation of the program.

§§ 727.2–727.4 [Reserved]

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. Legal assistance is intended primarily for the benefit of active duty personnel during active service, including reservists (and members of the National Guard) on active duty for 30 days or more. As resources permit, legal assistance may be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, reservists on active duty for single periods of 29 days or less, members of Reserve Components following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense), for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty, and in overseas areas, civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible, and other persons authorized by the Judge Advocate General of the Navy.

[69 FR 20541, Apr. 16, 2004]

§ 727.6 Functions of legal assistance officers.

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him/her:

(1) Shall counsel, advise, and assist persons eligible for assistance in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in § 727.9.

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings, as are appropriate.

(3) Shall, in appropriate cases and under guidelines prescribed in the Manual of the Judge Advocate General contemplating agreements or liaison with appropriate civilian bar officials, serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

(4) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(5) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and pertinent Navy instructions.

(b) *Nature of assistance.* Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

(c) *Duty to client.* A legal assistance officer should exercise his independent professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

(d) *Professional legal advice.* Legal assistance is authorized for personal legal affairs only, as contrasted with military justice problems, business ventures, or matters that are not of a personal nature. Legal assistance duties are separate and apart from responsibilities of trial counsel, defense counsel, or others involved in processing courts-martial, nonjudicial punishments, administrative boards or proceedings, and investigations. Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under the Code of Professional Responsibility of the American Bar Association.

[41 FR 26863, June 30, 1976, as amended at 47 FR 41561, Sept. 21, 1982; 65 FR 26748, May 9, 2000]

§ 727.7 Limitations on service provided.

(a) *Assistance in official military matters.* Legal Assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a service member accused or suspected of an offense or conduct leading to an administrative proceeding will request advice from the legal assistance officer. In such a case, the service member should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for respondent, or counsel for a party.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may provide advice concerning the legal and practical implications of divorce, legal separation, annulment, custody, and paternity. Assistance and advice in domestic violence cases will be consistent with the Department of the Navy family advocacy program. If two or more eligible persons with conflicting interests seek legal assistance from the same office on the same matter, the party first establishing an attorney-client relationship will be provided representation. Other parties shall be advised that they are also eligible for assistance, but that it must be obtained from another source, with the assistance of and referral by the first office.

(c) *Nonlegal advice.* The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and

refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone. This does not prohibit appropriate follow-up telephone discussions between the legal assistance attorney and the client.

[41 FR 26863, June 30, 1976, as amended at 65 FR 26749, May 9, 2000]

§ 727.8 Confidential and privileged character of service provided.

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by § 727.13 of this part. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. While case files are not subject to the control of the Department of the Navy and therefore do not constitute a ''system of records'' within the meaning of the Privacy Act of 1974 (5 U.S.C. 552a), no information which identifies an individual legal assistance client by name or any other particular, such as social security number, shall be extracted from the case files and incorporated into any file or index system aside from or in addition to the information contained on the legal assistance form (NAVJAG 5801/9) or locally used equivalent. Strict adherence to the foregoing will ensure compliance with the Privacy Act. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

[42 FR 35957, July 13, 1977, as amended at 65 FR 26749, May 9, 2000]

§ 727.9 Referrals to civilian lawyers.

(a) *General.* If it is determined that the legal assistance requested is beyond the scope of this part, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization for assistance in obtaining reliable, competent, and sympathetic counsel, or to a civilian lawyer designated by such organization.

(b) *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

§ 727.10 Fees, compensation, solicitation, and representation in civilian courts.

(a) *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person

entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and whether or not the service is rendered during duty hours as part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity.

(b) *Solicitation.* Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or advising that any person entitled to legal assistance under this part retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office spaces; *Provided* that nothing herein shall prevent such person from being referred to civilian counsel as provided in § 727.9.

(c) *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of § 727.6, or the Expanded Legal Assistance Program, or under guidelines prescribed in the Manual of the Judge Advocate General, before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, the administrator of the applicable program, or the Commander, Naval Legal Service Command, as appropriate. Requests for such permission may be in the form prescribed in the Manual of the Judge Advocate General.

[47 FR 41561, Sept. 21, 1982, as amended at 65 FR 26749, May 9, 2000]

§ 727.11 Supervision.

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, officers in charge of Naval Legal Service Offices, and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall ensure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

[42 FR 35957, July 13, 1977]

§ 727.12 Communications.

(a) Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

(b) The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in Department of Defense Instructions. Naval Legal Service Offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply United States Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in § 727.8.

[42 FR 35958, July 13, 1977, as amended at 65 FR 26749, May 9, 2000]

§ 727.13 Reports.

Each legal assistance office shall, by the 10th day of October of each year, prepare and submit to the Judge Advocate General one copy of the Legal Assistance Report (NAVJAG 5801/3 Rev. 12–78)) covering the preceding fiscal year. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in § 727.11. Reports symbol JAG–5801–1 is assigned for this reporting requirement.

[38 FR 6026, Mar. 6, 1973, as amended at 47 FR 41561, Sept. 21, 1982]

§ 727.14 Files and records.

(a) *Case files*. The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore maintain only such files as are necessary for the proper operation of the office.

(b) [Reserved]

[38 FR 6026, Mar. 6, 1973, as amended at 43 FR 17355, Apr. 24, 1978]

§ 727.15 Liberal construction of part.

The provisions of this part are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

PART 728—MEDICAL AND DENTAL CARE FOR ELIGIBLE PERSONS AT NAVY MEDICAL DEPARTMENT FACILITIES

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