

DON personnel who are witnesses in criminal or civil proceedings, provided, the case is directly related to the Armed Services, or its members, and the Armed Services have a genuine and compelling interest in the outcome.

PART 726—PAYMENTS OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031, and 5148; 37 U.S.C. 601-604, and 1001; 32 CFR 700.206 and 700.1202.

SOURCE: 56 FR 55088, Oct. 24, 1991, unless otherwise noted.

NOTE: This part 726 is chapter XIV, of the Manual of the Judge Advocate General of the Navy.

§ 726.1 Purpose.

This part explains the procedures for convening competency boards and how to appoint trustees for members of the Naval service who have been determined to be mentally incompetent in accordance with title 11 of chapter 37, United States Code.

§ 726.2 Scope.

(a) The Secretary of the Navy has authority to designate a trustee in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a State court of competent jurisdiction. 37 U.S.C. 601-604. Trustees receive the active duty pay and allowances, amounts due for accrued or accumulated leave, and retired pay or retainer pay, that are otherwise payable to a member found by competent medical authority to be mentally incapable of managing his affairs.

(b) *Member* as used in this chapter refers to:

(1) Members of the Navy or Marine Corps on active duty (other than for training) or on the retired list of the Navy or Marine Corps; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 726.3 Authority to appoint trustees.

The Judge Advocate General or his designee is authorized to act for the Secretary of the Navy to appoint trustees to receive and administer Federal monies for members and to carry out the provisions of this chapter.

§ 726.4 Procedures for convening competency boards.

(a) *Competency Board.* (1) The commanding officer of the cognizant naval medical facility will convene a board of not less than three medical officers or physicians, one of whom will be a psychiatrist, when there is evidence that a member who is a patient in the naval medical facility may be incapable of handling his affairs. The board will be convened in accordance with chapter 18, Manual of the Medical Department. The board may include members of the Reserve components on active or inactive duty. When active duty Navy or Marine corps members are hospitalized in nonnaval medical facilities, the regional Naval Office of the Medical/Dental Affairs will ensure compliance with chapter 18.

(2) The Judge Advocate General or his designee may direct the commanding officer of any naval medical facility, or request the commanding officer of another service medical facility or administrator of a Department of Veterans Affairs medical facility, to convene a board in accordance with this section to determine the mental capability of a member to manage his affairs.

(3) A finding of restoration of competency or capability to manage personal and financial affairs may be accomplished in the same manner specified in chapter 18, Manual of the Medical Department, except that the board may consist of one or two medical officers or physicians, one of whom must be a psychiatrist.

(4) At least one officer on the board, preferably the psychiatrist, will personally observe the member and ensure

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that the member's medical record, particularly that portion concerning his mental health, is accurate and complete.

(5) The requirement for the competency board is in addition to and separate from the medical board procedures. Each board member will sign the report of the board and will certify whether the member is or is not mentally capable of managing his affairs. After approval by the convening authority, the original board report is forwarded to the Judge Advocate General.

(b) *Records.* (1) The convening authority will forward the original of each board report to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

(2) In the case of a finding that a member is not mentally capable of managing his affairs, the forwarding endorsement will set forth the name, relationship, address, and telephone number(s), of the member's next of kin and any other data to help identify a prospective trustee.

§ 726.5 Procedures for designation of a trustee.

(a) Upon receipt of a report of a board convened under section 1404 that a member has been found mentally incapable of managing his affairs, the Judge Advocate General or his designee 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 the Judge Advocate General. The Judge Advocate General or his designee may direct any Navy or Marine Corps activity to appoint an officer to interview a prospective trustee and make recommendations concerning suitability. The Judge Advocate General will provide the interviewing officer with complete instructions pertaining to the interview of the prospective trustee, including the forms required to be completed by the prospective trustee that will be returned by the interviewing officer to the Judge Advocate General.

(b) The interviewing officer will: (1) Determine whether the prospective

trustee can obtain an appropriate bond as directed by the Judge Advocate General or his designee;

(2) Ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all monies will be applied to the use and benefit of the member and his legal dependents and that no fee, commission, or charge, for any service performed by the trustee, except for payment of the required bond, will be paid from Federal monies received by the trustee.

(3) Forward recommendations to the Judge Advocate General for appropriate action.

§ 726.6 Travel orders.

The Chief of Naval Personnel or the Director, Personnel Management Division, Headquarters, Marine Corps, may issue travel orders to a member to appear before an examining board convened to determine whether the member is mentally capable of managing his affairs. In the case of permanently retired members, however, travel for an appearance before a board convened pursuant to section 1404, above, will be at no cost to the Government unless the Judge Advocate General or his designee determines that unusual hardship exists and requests that appropriate authority fund the travel expenses.

§ 726.7 Status of pay account.

(a) Upon notification by the commanding officer of the medical facility preparing the incapacitation determination that a member has been declared mentally incompetent to manage his affairs, the cognizant disbursing officer will take appropriate action and immediately send the member's personal financial record to the appropriate finance center following the guidelines in the Department of Defense Military Pay and Allowances Entitlements Manual, Part Four, chapter 2. The Judge Advocate General or his designee will then direct the appropriate finance center to suspend the member's pay. Thereafter, the Judge Advocate General or his designee will direct payment of monies to:

(1) The appointed trustee;

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

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

(b) The Commanding Officer, Navy Finance Center, or Commanding Officer, Marine Corps Finance Center, will notify the Judge Advocate General of any fact affecting the pay of a member mentally incapable of managing his affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or, notice of appointment of a legal representative by a State court of competent jurisdiction. At the request of the Judge Advocate General or his designee, the appropriate finance center will report all disbursements from the member's account.

(c) The Navy or Marine Corps Finance Center will seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his affairs.

§ 726.8 Emergency funds.

(a) Until a trustee is appointed, the Judge Advocate General or his designee may appoint the member's commanding officer or other appropriate official to receive emergency funds up to \$1,000.00 from the pay account of the member without bond. The money will be used for the benefit of the member and his legal dependents.

(b) The commanding officer of any naval medical facility may designate an officer of the command to receive and account for up to \$35.00 per month for the health and comfort of a member who is found mentally incapable of handling his affairs and who is a patient at the naval medical facility, if:

(1) A trustee has not been designated under this chapter and a committee, guardian, or other legal representative has not been appointed by a State court of competent jurisdiction;

(2) The member has no other funds available for use in his own behalf; and

(3) The funds are necessary for the purchase of items necessary for the health and comfort of the member.

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(c) This section will be cited on the pay voucher as authority for payment and receipt of such funds.

§ 726.9 Reports and supervision of trustees.

(a) *Accounting reports.* The trustee designated under this chapter will submit accounting reports annually or at such other times as the Judge Advocate General or his designee directs. The Judge Advocate General 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 the Judge Advocate General. 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 the Judge Advocate General or his designee, or an accounting is unsatisfactory, the Judge Advocate General or his designee will notify the trustee in writing. If a satisfactory accounting is not received by the Judge Advocate General within the time specified, the trustee will be declared in default of the trustee agreement and will become liable for all unaccounted trustee funds. If a trustee is declared in default of the trustee agreement, the appropriate finance center will be directed to terminate payments to the trustee and, if necessary, a successor trustee may be appointed. The trustee and surety will be notified in writing by the Judge Advocate General or his designee 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 the Judge Advocate General 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.