

Department of the Navy, DoD

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Department of Justice to take appropriate legal action before the court issuing the subpoena. Determining authorities should consult promptly with the OJAG General Litigation Division or the Navy Litigation Office of the General Counsel if this course of action appears necessary, because some objections to subpoenas must be made either within ten days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require timely consultation with the Department of Justice. If no subpoena has been issued, the determining authority must decide whether to deny the request or, if appropriate, waive the fees.

(2) *Waiver or reduction of fees.* The determining authority may waive or reduce fees pursuant to 32 CFR 288.4, 288.9, provided such waiver or reduction is in the best interest of the DON and the United States. Fee waivers and reductions shall not be routinely granted, or granted under circumstances which might create the appearance that DON favors one party over another.

(3) *Witness fees required by the court.* Witness fees required by the rules of the applicable court shall be paid directly to the witness by the requester. Such amounts are to defray the cost of travel and per diem. In a case where the Government has paid the cost of travel and per diem, the witness shall turn over to his or her supervisor any payment received from a private party to defray the cost of travel that, when added to amounts paid by the Government, exceed the actual cost of travel. The supervisor shall forward the amount turned over by the witness to the Office of the Comptroller of the Navy for appropriate action.

(4) *Exceptional cases.* If neither the DON, nor an agency of the Federal Government is a party, appropriated funds may be used to pay, without reimbursement, travel and per diem of 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. 5013, and 5148; 37 U.S.C. 601-604, and 1001; 32 CFR 700.105 and 700.312.

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 Chapter 11 of Title 37, United States Code.

[56 FR 55088, Oct. 24, 1991, as amended at 73 FR 64206, Oct. 29, 2008]

§ 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. 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). This authority is exercised by the Defense Finance and

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Accounting Service-Cleveland Center (DFAS-CL), who has delegated it to DFAS-CL, Office of Continuing Government Activity (DFAS-CL(CGA)). 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.

[56 FR 55088, Oct. 24, 1991, as amended at 73 FR 64206, Oct. 29, 2008]

§ 726.3 Authority to appoint trustees.

DFAS-CL (CGA) 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.

[56 FR 55088, Oct. 24, 1991, as amended at 73 FR 64206, Oct. 29, 2008]

§ 726.4 Procedures.

(a) *Competency Board.* (1) The commanding officer of the cognizant Naval medical facility will convene a board of not less than three Medical Department officers or physicians, one of whom will be a Navy psychiatrist or clinical psychologist, when there is evidence that a member may be incapable of handling his financial affairs. The board will be convened in accordance with Chapter 18, Manual of the Medical Department (MANMED). 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 non-Naval medical facilities, the Military Medical Support Office will ensure compliance with Chapter 18, MANMED.

(2) DFAS-CL(CGA) may request 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, convene a competency board in accordance with this section to determine the mental capability of a member to manage his financial 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, MANMED, except that the board may consist of one or two Medical Department officers or physicians, one of whom must be a Navy psychiatrist or clinical psychologist.

(4) At least one officer on the competency board, preferably the psychiatrist or clinical psychologist, will personally observe the member and ensure that the member's medical record, particularly that portion concerning his mental health, is accurate and complete.

(5) The requirement to convene a competency board under this chapter is in addition to and separate from the medical board procedures. Each board member signs the report of the board and certifies whether the member is or is not mentally capable of managing his financial affairs. After approval by the convening authority, the original board report is forwarded to DFAS-CL(CGA).

(b) *Records.* The convening authority will forward the original of each board report to the Defense Finance and Accounting Service-Cleveland Center, Office of Continuing Government Activity (Code CGA), Post Office Box 998021, Room 2323, Cleveland, OH 44199-80216. If a member is found to be not mentally capable of managing his financial 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 information that will assist to identify a prospective trustee.

[73 FR 64206, Oct. 29, 2008]

§ 726.5 Procedures for designation of a trustee.

Upon receipt of a report of a competency board that a member has been found mentally incapable of managing his financial affairs, DFAS-CL(CGA)

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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727.1 Purpose.

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727.5 Persons eligible for assistance.

727.6 Functions of legal assistance officers.

727.7 Limitations on service provided.