

## CHAPTER 21

### LEGAL ASSISTANCE IN OPERATIONS

#### REFERENCES

1. U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM (21 Feb. 1996) (RAR 13 Sept. 2011).
2. U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS (1 May 1992).
3. U.S. DEP'T OF ARMY, REG. 600-8-101, PERSONNEL PROCESSING (IN-, OUT-, SOLDIER READINESS, AND DEPLOYMENT CYCLE SUPPORT) (19 Feb. 2015).
4. U.S. DEP'T OF AIR FORCE, INSTR. 51-504, LEGAL ASSISTANCE, NOTARY, AND PREVENTIVE LAW PROGRAMS (27 Oct. 2003, incorporating through change 2, 24 May 2012).
5. JAGINST 5801.2A, NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM (26 Oct 2005).
6. COMDTINST 5801.4E, LEGAL ASSISTANCE PROGRAM (26 Oct. 2005).
7. U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY (26 Jan. 2012).
8. CENTER FOR LAW AND MILITARY OPERATIONS (CLAMO), FORGED IN THE FIRE: LESSONS LEARNED DURING MILITARY OPERATIONS (1994–2008).
9. 2015 CLIENT SERVICES DESKBOOK, Chapters A-B, available at <https://www.jagcnet2.army.mil/Sites/legalassistance.nsf/document.xsp?&documentId=A01E4FF9BE7387F385257DFC005A30E5&action=openDocument>.
10. <https://www.milsuite.mil/book/groups/army-legal-assistance>.

#### I. INTRODUCTION

A. Personal legal problems can affect Soldiers' combat efficiency and detract from their ability to concentrate on the military mission at hand. One objective of the Army Legal Assistance Program is to enhance combat efficiency by assisting Soldiers with their personal legal issues.

B. From an operational standpoint, servicing Judge Advocates (JAs) must ensure that Soldiers' personal legal affairs are in order prior to deployment. Once deployed, JAs assist Soldiers in resolving their problems quickly and efficiently. The broad nature of the legal assistance mission makes it impossible to summarize all of the laws and resources a practitioner may need during a deployment. This chapter outlines certain situations, identifies resources and highlights some recurring substantive issues that may arise.

#### II. PREPARATION FOR EXERCISES, MOBILIZATION, AND DEPLOYMENT

A. Aggressive pre-deployment preventive law efforts can often eliminate or reduce legal assistance problems that arise during deployment.

B. The Office of the Staff Judge Advocate (OSJA) and Brigade Judge Advocate (BJA) must ensure Soldiers' legal affairs are reviewed and updated at least annually, and more frequently as expected deployments near. Judge Advocates should look for opportunities to raise awareness of frequently encountered issues to deploying Soldiers. Prior to deployment, both the Soldier and the Soldier's family must be prepared. For the Soldier, this preparation is an ongoing effort that should begin upon arrival at the unit and end only upon transfer.

#### III. SOLDIER READINESS PROGRAM (SRP)

A. AR 600-8-101 establishes the SRP and mandates that Soldiers of the Active Army (AA), the Army National Guard (ARNG), and those who serve with units in the United States Army Reserve (USAR) undergo a comprehensive SRP annually and within thirty days of a deployment.<sup>1</sup>

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<sup>1</sup> See U.S. DEP'T OF ARMY, REG. 600-8-101, PERSONNEL PROCESSING (IN-, OUT-, SOLDIER READINESS, AND DEPLOYMENT CYCLE SUPPORT) (19 Feb. 2015).

1. Ten functional areas comprise the SRP: deployment validation; personnel; finance; legal; logistics; training; security; medical; dental; and vision. Accordingly, the legal portion of the SRP is part of a broader assessment of a Soldier's readiness and availability for deployment.

2. DA Form 7425 serves as a checklist and the focal point for the SRP.<sup>2</sup> Judge Advocates must ensure the most current edition of the DA Form 7425 is being used by the SRP, as previous editions created the foundation for a violation of client confidence with the Lautenberg Amendment check.

B. At a minimum, the SRP requires Soldiers receive counseling about wills and powers of attorney (POA).<sup>3</sup> DA Form 7425 requires a determination of whether or not the Soldier has a domestic violence investigation pending. This latter requirement is important to the command because servicemembers with "a qualifying crime of domestic violence are non-deployable for missions that require possession of firearms or ammunition."<sup>4</sup> Legal Assistance Attorneys (LAAs) may counsel individual servicemembers regarding domestic violence matters; however, LAAs must be aware of the potential for creating a confidentiality issue under AR 27-26.<sup>5</sup> At the SRP, DA Form 7425 requires the G-1 to confirm whether there is a domestic violence issue. If there is a problem, personnel from that section report it to the command and should send the Soldier to the LAA for help. Finally, in the area of training, the SRP requires a check on whether Soldiers have received certain briefings. Depending on the nature of the deployment and the unit, these briefings could cover the UCMJ, the Geneva Conventions, the law of land warfare, the Servicemembers Civil Relief Act (SCRA), and the Uniformed Services Employment and Reemployment Rights Act (USERRA). An SRP standardized training packet is available on JAGCnet.

#### **IV. OSJA, BCT, AND LAO PREPARATION AND PLANNING FOR THE SRP AND DEPLOYMENT**

A. In broad terms, effective legal support for deployment depends on the following factors:

1. Familiarity with the general legal support needed during mobilization and deployment, so that legal services at the BCT or OSJA, are organized.
2. Knowledge of the requirements in each substantive area of the law (including tax law) so that all legal personnel are properly trained and proper references and forms are available.
3. Opportunities to participate in predeployment exercises to test deployment plans and training.
4. Effective utilization of RC legal personnel wherever feasible.
5. Establishment of good working relationships with key Corps, Division, and installation personnel.

B. LAOs and BCT JAs should aggressively sponsor preventive law programs to educate Soldiers and their families before deployment occurs. At a minimum, topics covered should include:

1. Eligibility for legal assistance.
2. SGLI designations.
  - a. Ensure proper designation and coordination with will and other estate planning documents.

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<sup>2</sup> Similar to DA Form 5123. U.S. Dep't of Army, DA Form 5123, In- and Out-Processing Records Checklist (April 2010). Like DA Form 7425, DA Form 5123 can be an indicator of the Soldier's individual readiness posture. See U.S. DEP'T OF ARMY, REG. 600-8-101, PERSONNEL PROCESSING (IN-, OUT-, SOLDIER READINESS MOBILIZATION, AND DEPLOYMENT PROCESSING) (18 July 2003).

<sup>3</sup> The instructions for DA Form 7425 on this point are as follows:

All deployees will be encouraged to attend the Premobilization Legal Briefing and take care of all their legal needs at Home Station. This includes the need for a will (wills if married), power(s) of attorney and other legal issues. If required, deployees will be afforded the opportunity to obtain legal advice regarding all legal issues. Certification will be made by a judge advocate or other qualified personnel who are supervised by a judge advocate (paralegal or NCO/Specialist . . . .

U.S. Dep't of Army, DA Form 7425, Readiness and Deployment Checklist at Instruction Section V, Item 1 (Sep. 2010).

<sup>4</sup> *Id.* at Sec. II, Item 22.

<sup>5</sup> U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS (1 May 1992).

b. If the servicemember has or wants a testamentary pre-residuary trust, often for the benefit of minors, that is to be funded using life insurance (e.g., SGLI proceeds), then the servicemember needs to ensure that the SGLV 8286 (i.e., the life insurance beneficiary designation form) lists the beneficiary as follows: “To my trustee to fund a trust established for the benefit of my children (or other designated beneficiary) under my will.”

c. If the servicemember prefers to put his SGLI proceeds in a custodial account for the benefit of his minor children rather than in a trust, then the servicemember needs to ensure that the SGLV 8286 (i.e., the life insurance beneficiary designation form) lists the beneficiary as follows: “To X, as custodian for each of my children pursuant to UGMA / UTMA of State Y with distribution to each minor when that minor reaches age ... (e.g., 18 or 21).”

### 3. Wills.

a. Educate clients on the need for comprehensive estate planning, such as estate building, asset protection and allocation, and beneficiary designation. Provide them information about other ancillary documents they may need, to include living wills (i.e., advanced medical directives), health care POAs (i.e., health care proxies), durable POAs, and mortuary planning.

b. Educate clients on the need and the best way to provide for minor children using such means as testamentary trusts, custodial accounts (e.g., UGMA/UTMA), and guardianships.

c. Provide information to clients regarding possible estate tax savings provisions that may be used in their estate plan, such as credit shelter or bypass trusts, marital deduction trusts (e.g., QTIPs and QDOTs), and gifting property.

d. Educate clients on the need for their spouses to create wills, advanced medical directives, and POAs.

e. Educate clients on the need for executors to file estate tax returns in a timely manner in the event of a spouse’s death. By timely filing an estate tax return and making the requisite election, the surviving spouse may be able to use the unused portion of the decedent spouse’s unified tax credit (i.e., portability).

f. Educate clients on the importance of preventing conflicts or ambiguity with respect to designating a person authorized to dispose of a Soldier’s remains. Generally, active duty servicemembers should avoid designating such a person in their will if one is already designated on their DD 93, which is updated more frequently.<sup>6</sup>

g. Visit [http://www.loc.gov/rr/frd/Military\\_Law/Admin-Law-Department.html](http://www.loc.gov/rr/frd/Military_Law/Admin-Law-Department.html) for more information.

### 4. POAs.

a. Due to possibly long durations of deployments, servicemembers should anticipate the likelihood that a POA might expire prior to their return and be briefed on the availability of obtaining POA services in theater.

b. Although valid without raised seals, a raised notary seal often promotes broader acceptance of the POA by businesses or persons outside the military.

c. No business or other entity is required to accept or honor a POA. Soldiers should confirm with businesses at which the POAs might be used whether the businesses will accept a POA issued by the military, or whether the business requires the use of a POA that the business, itself, has created. Some business may require a special, or limited, POA.

d. Educate clients on the nature, effects, and consequences of general and special POAs, and the prudence of Soldiers utilizing special, or limited, POAs over general POAs.

### 5. SCRA.

a. Soldiers should be briefed on the SCRA’s provisions governing a Soldier’s ability—or inability—to change or delay court dates now or while deployed.

b. Soldiers should be briefed on the SCRA’s applicability to residential lease terminations, car lease terminations, cell phone contract terminations, and other applicable provisions.

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<sup>6</sup> See generally U.S. DEP’T OF DEF., FORM 93, RECORD OF EMERGENCY DATA (Jan. 2008). The person authorized to direct disposition (PADD) is located at block 13.

c. Soldiers should be briefed on the SCRA's 6% interest protection for pre-active duty obligations. Please note that 6% interest rate protections frequently change, often expanding in applicability. Legal Assistance Attorneys must keep current on all SCRA updates.

#### 6. Family law issues.

a. Soldiers must understand that a Family Care Plan (FCP) that proposes to place the Servicemember's child with some person other than the other biological parent of that child (unless the child remains with the child's new adoptive parent) may be subject to challenge in court. Soldiers should be briefed on prophylactic measures that may help head off later challenges to a FCP by a non-military parent. Some measures may include the desirability of obtaining written consent from the other biological parent, or a court order in the event the Soldier plans to place the child in the custody of a third party, non-biological, and non-adoptive parent.

b. Servicemembers must understand that their support obligations under applicable service family support regulations are not relieved by deployment. They must plan for the continued support of family members during the period of deployment.

c. Soldiers must understand that the SCRA will afford little relief, in the form of continuances or delays, in family law actions in which the well-being of a child (e.g., child support or custody) is at issue.

d. Soldiers sometimes seek to be married by proxy while deployed. Four states (Colorado, Montana, Texas, and solely for servicemembers abroad, California) allow marriages by proxy or by VTC. Montana permits double proxy marriages.

#### 7. Consumer law issues.

a. Be aware of and inform Soldiers of the current consumer scams in the local area, and warn them that dependents may be targeted by unscrupulous businesses during the deployment.

b. Single Soldiers should forward mail to a trusted family member or friend to look for bills.

c. Advise Soldiers not to purchase high-priced items during deployments so they do not lay the foundation for a lifestyle beyond their means upon redeployment.

d. Provide information to Soldiers on the common pitfalls involved with purchasing a car. Educate Soldiers on the proper way to purchase a car, which includes negotiating for not only the cost of the car, but also the cost of the credit to purchase the car, as well as the insurance.

e. Provide information on how to properly manage the additional income that comes with a deployment.

f. Educate Soldiers on the Consumer Financial Protection Bureau's (CFPB) Office of Servicemember Affairs<sup>7</sup>, and the resources provided by this government agency to our Soldiers.

g. Judge advocates should seek redress for businesses who violate the consumer rights of Soldiers with the Armed Forces Disciplinary Control Board (AFDCB) with jurisdiction for the affected units.

#### 8. Tax issues.

a. Provide information to servicemembers regarding whether the area is designated a Qualified Hazardous Duty Area (QHDA) or Combat Zone (CZ) for income tax purposes. Servicemembers who are deployed in a QHDA or CZ are eligible for tax relief.

b. Provide information to servicemembers regarding extensions of time to file taxes and other delays of tax actions. In general, servicemembers have 180 days after the later of the servicemember's return from deployment to a CZ or the last day of any continuous qualified hospitalization for injury from service in a CZ, plus the number of days that were left for the Soldier to take the action with the IRS when the Soldier entered the CZ. For example, generally, a taxpayer has 3 ½ months (i.e., until April 15) to file his tax return. Any days of this 3 ½ month period that were left when a Soldier entered the CZ are added to the 180 days when determining the last day allowed for filing the Soldier's tax return. See IRS Pub 3, Armed Forces' Tax Guide at [www.irs.gov](http://www.irs.gov).

c. If the IRS sends a notice of examination before learning that the taxpayer qualifies for a deadline extension, the taxpayer should return the notice with "COMBAT ZONE" written across the top. No penalties or

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<sup>7</sup> <http://www.consumerfinance.gov/servicemembers/>

interest will be imposed for failure to file a return or pay taxes during the extension period. The deadline for filing tax returns, paying taxes, filing claims for refund, and taking other actions with the IRS is automatically extended if either of the following is true: the servicemember is in a combat zone or has qualifying service outside of a combat zone, or the servicemember is a on deployment outside the United States away from his permanent duty station while participating in a contingency operation.

d. For more information, visit [http://www.loc.gov/rr/frd/Military\\_Law/Admin-Law-Department.html](http://www.loc.gov/rr/frd/Military_Law/Admin-Law-Department.html) or milBook at <https://www.milsuite.mil/book/groups/army-tax-professionals>.

9. Reemployment rights issues (USAR and ARNG).

a. Army Reserve and National Guard member must receive a USERRA briefing during pre & post mobilization process. They are also required to receive a USERR briefing yearly.

b. Servicemembers should be briefed on notice requirements, waiver provisions (or the lack thereof), and seniority rights.

c. Servicemembers should also be briefed on USERRA rights regarding health insurance, reemployment disqualifications (5 year rule), and the ESGR.

C. BCT JAs and Chiefs of Legal Assistance should ensure that their offices have an SRP SOP. To tailor the SOP, BCT JAs and Chiefs of Legal Assistance need to be familiar with the installation/unit SRP SOP or operations plan and should coordinate, in advance, with other staff elements. A key issue will be to ensure that the installation/unit plans to conduct the SRP in a suitable location; that is, a location conducive to the delivery of competent and confidential legal services. Some issues to address in the SOP might include:

1. Establishing the simultaneous administration of the SRP site and the LAO.
2. Designating the teams of attorneys and paralegal specialists who will staff the SRP site.
3. Designating the teams of attorneys and paralegal specialists who will staff the LAO during the SRP.
4. Anticipating whether and how to reschedule LAO hours of operation.
5. Anticipating whether it will be necessary to suspend the delivery of certain routine legal assistance services during the SRP.
6. Considering whether RC JAs and paralegal specialists are available for rotations at the SRP site.<sup>8</sup>
7. Considering whether RC JAs and paralegal specialists are available for rotations at the LAO.

## V. DEPLOYMENT

A. Legal Assistance occurs during deployment. Brigade Judge Advocates must plan ahead for the delivery of this service. They must determine in advance what resources will be available in theater, what the supported unit will provide, and what appropriated or contingency funds will be available.

B. The nature of combat causes legal assistance services to become more urgent in Soldiers' minds. Legal issues take on significant immediate importance to the client, the command, and the servicing attorney. The provision of legal assistance during combat deployments may occur anywhere within the theater, and JAs should expect to respond to inquiries from Soldiers in-country. All deployed attorneys should anticipate being requested to provide assistance to Soldiers.

C. Deployed JAs should expect to:

1. Handle the same legal assistance problems seen in garrison.

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<sup>8</sup> Before and during large operations, local civilian attorneys may contact SJAs offering to volunteer in the LAO or at SRPs. SJAs in the grade of Lieutenant Colonel or higher may accept voluntary legal services. The services accepted must be within the scope of the Army Legal Assistance Program, and the volunteer attorneys must be licensed in the jurisdiction where they provide the legal assistance services. See Memorandum, Office of the Judge Advocate General, U.S. Army, Legal Assistance Policy Division, subject: Acceptance of Voluntary Service (29 Apr. 2003).

2. Establish liaison with communication, transportation, and aviation elements for contact and courier service with JAs in the rear detachment (the installation from which the deployment took place) and for service throughout the theater.

3. Establish liaison with the U.S. Consulate at the deployment location for overseas marriage and adoption coordination, and the implementation of emergency leave procedures.

4. Establish a client tracking system, perhaps in coordination with the rear detachment.

5. Find a dedicated area to work, with a phone and unclassified internet access. Try to locate an area that allows for confidential discussion.

6. Answer questions regarding marriage to, or adoption of, foreign nationals.

7. Handle a high volume of family law issues, including the need to obtain CONUS civilian counsel for clients.

8. Help servicemembers apply for citizenship.

9. Establish a plan to handle client conflicts during the deployment.

10. Coordinate travel to other locations to provide legal assistance support throughout the area of operations (AO).

11. Determine which civilian contractors in the AO are eligible to receive legal assistance by reviewing the applicable DoD contracts.

12. Coordinate for legal assistance coverage when potential conflicts of interest arise within the office providing legal assistance.

13. Beginning on 1 November 2013, the Army instituted a Special Victims Counsel (SVC) Program through TJAG Policy Letter 14-01. The manpower for the SVC Program is currently being drawn from the JAs in Legal Assistance Offices around the world. When planning for a deployment, SJAs must forecast that the Legal Assistance Attorney assigned to an SVC position could be called at any time to conduct the responsibilities of that position, and therefore not be available for pre-deployment operations, nor possibly standard legal assistance duties while deployed. An SVC JA's primary duty is to conduct the duties of the SVC, over other legal assistance duties.

D. Deployed JAs should plan on delivering tax assistance in theater. Although family members can file tax returns at the home station with POAs, JAs in theater will probably need to produce an information paper addressing basic tax issues, including a discussion of filing extensions. Both JAs and paralegals should obtain tax training before deployment. They will also want to consider opening a tax center.

## **VI. RECURRING SUBSTANTIVE DEPLOYMENT LEGAL ASSISTANCE ISSUES**

### **A. Family Care Plans (FCP).<sup>9</sup>**

1. Army Regulation 600-20 requires single parent Soldiers and dual military couples with minor children to implement a FCP to provide for the care of their family members when military duties prevent the Soldier from doing so.<sup>10</sup> Plans must be made to ensure dependent family members are properly and adequately cared for when the Soldier is deployed, on TDY or otherwise not available due to military requirements. Commanders have the responsibility to ensure Soldiers complete FCPs.

2. Significant problems have arisen when the caretaker designated in the FCP is not the other biological parent of the minor children. A biological parent has, absent other considerations, superior custodial rights over others the Soldier-parent may wish to designate in a FCP. There have been several cases where a non-custodial biological parent has sought to exercise parental rights while the Soldier is deployed. Soldiers have unsuccessfully attempted to defend against such lawsuits by invoking the SCRA. Several states have passed laws protecting a Soldier-parent's custodial rights when a deployment disrupts them. Also, through the 2015 National Defense Authorization Act, Congress amended the Servicemembers Civil Relief Act to include a provision requiring that

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<sup>9</sup> See U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY (6 Nov. 2014).

<sup>10</sup> *Id.* para. 5-5.

temporary child custody orders based solely on a Servicemember's deployment or anticipated deployment will expire upon the servicemember's redeployment.

3. Family care plans are not effective in preventing judicial scrutiny of the Servicemember's proposed custodial arrangement. If deploying Soldiers wish to place their children in the custody of someone other than the other biological or the adoptive parent of the child, this should be accomplished by executing an agreement that is judicially reviewed for appropriateness, or by securing a court order to that effect. Recognizing these problems and resolving them before deployment is critical to success with this issue.

## **B. Naturalization and Immigration.**

### **1. Naturalization: Becoming a U.S. Citizen.**

#### **a. Expedited Naturalization of Non-U.S. Citizen Servicemembers.**

(1) Eligibility. Waivers of age, lawful permanent resident status, and physical presence requirements are available for non-citizens who wish to apply for U.S. citizenship and who served honorably during WWI, WWII, the Korean War, Vietnam,<sup>11</sup> Operations Desert Shield/Desert Storm,<sup>12</sup> or any subsequent period of armed conflict designated by presidential executive order.<sup>13</sup> This benefit is currently in effect for servicemembers on active duty for any period since 11 September 2001<sup>14</sup>; however, judge advocates should be aware that this benefit will expire upon mission completion of current hostilities. Upon expiration, servicemembers can still obtain a waiver for physical presence requirement of the naturalization, provided he served honorably for one year and applies for naturalization while in service or within six months of separation.<sup>15</sup>

(2) Process. To begin the naturalization process, with service designated representative's assistance, a servicemember must complete naturalization forms N-400 and N-426, have fingerprints<sup>16</sup> and photos taken, prepare supporting documents, and submit the packet to the U.S. Citizenship and Immigration Services (USCIS) Nebraska Service Center.<sup>17</sup> Deploying or overseas servicemembers may request overseas processing of naturalization.<sup>18</sup>

b. Naturalization of Deceased Servicemembers. A non-citizen servicemember who served during a designated period of armed hostilities<sup>19</sup> and died due to service-related injury or disease qualifies for posthumous U.S. citizenship.<sup>20</sup> The next of kin or Secretary of Defense (or the service designee to the USCIS) with next of kin's consent must apply within two years of servicemember's death by filing naturalization form N-644 to the California Service Center.<sup>21</sup> Posthumous citizenship will provide surviving non-citizen spouse or dependents with a special immigration or naturalization benefit.<sup>22</sup>

#### **c. Naturalization of Servicemember's Non-U.S. Citizen Spouse and Dependents.**

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<sup>11</sup> Exec. Order No. 12,081, 43 Fed. Reg. 42237 (Sept. 18, 1978) (designating the period from Feb. 28, 1961 to Oct. 15, 1978).

<sup>12</sup> Exec. Order No. 12,939, 59 Fed. Reg. 61231 (Nov. 22, 1994) (designating the period from Aug. 2, 1990 to Apr. 11, 1991).

<sup>13</sup> 8 U.S.C.A. § 1440 (West 2012); *see also* 8 C.F.R. pt. 329 (2012).

<sup>14</sup> Exec. Order No. 13,269, 67 Fed. Reg. 45287 (July 3, 2002).

<sup>15</sup> 8 U.S.C.A. § 1439; *see also* 8 C.F.R. pt. 328.

<sup>16</sup> For servicemembers within the United States and its territories, fingerprints must be taken at U.S. Citizenship and Immigration Services (USCIS) Application Support Center, and for those outside of U.S. territories, USCIS will accept fingerprints taken by MP or security manager. U.S. HUMAN RES. COMMAND, THE SOLDIER'S GUIDE TO CITIZENSHIP APPLICATION 9–10 (Sept. 2011)[hereinafter SOLDIER'S NATURALIZATION GUIDE], *available at* <https://www.hrc.army.mil/site/ASSETS/PDF/SoldierGuideCit.pdf>

<sup>17</sup> *See id.*; U.S. DEP'T OF NAVY, U.S. NAVY GUIDE TO NATURALIZATION APPLICATIONS BASED ON QUALIFYING MILITARY SERVICE (8 U.S.C. 1439 and 1440) (22 June 2011), *available at* [http://www.jag.navy.mil/organization/documents/Navy\\_Immigration\\_Guide.pdf](http://www.jag.navy.mil/organization/documents/Navy_Immigration_Guide.pdf); U.S. MARINE CORPS, MARINE CORPS ORDER (MCO) P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION 14-10 to -24 (31 Aug. 1999) (C5, 28 Nov. 2005) [hereinafter LEGADMINMAN], *available at* <http://www.donsapro.navy.mil/PolicyandInstructions/MCO%20P5800.16A%20CH%201-5.pdf>; U.S. AIR FORCE PERS. CTR., PERSONNEL SERVICE DELIVERY GUIDE: TOTAL FORCE U.S. CITIZENSHIP (1 Nov. 2011), *available at* <http://www.jber.af.mil/shared/media/document/AFD-110209-045.pdf>.

<sup>18</sup> SOLDIER'S NATURALIZATION GUIDE, *supra* note 15, at 12–14.

<sup>19</sup> *See supra* notes 8–12 and accompanying text.

<sup>20</sup> 8 U.S.C.A. § 1440-1 (West 2012); *see also* 8 C.F.R. pt. 392 (2012).

<sup>21</sup> U.S. CITIZENSHIP & IMMIGR. SERVS., USCIS POLICY MANUAL ch. 8 (2013) [hereinafter USCIS POLICY MANUAL], *available at* <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter8.html#S-B>; *see also* LEGADMINMAN, *supra* note 15, at 14-24 to -25.

<sup>22</sup> 8 U.S.C.A. § 1430(d); 8 C.F.R. § 319.3; USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. D.

(1) A spouse of U.S. citizen servicemember who will deploy or be stationed overseas will be eligible for an expedited naturalization process, waiving period of residence and physical presence requirements.<sup>23</sup>

(2) A surviving spouse, child, or parent of a U.S. citizen servicemember (including posthumous naturalized citizen) who served honorably during a designated period of armed hostilities and died due to service-related injury or disease is eligible for naturalization process, waiving period of residence and physical requirements.<sup>24</sup>

(3) Since 2008, a lawful permanent resident spouse who resides with the servicemember-spouse abroad under official orders is eligible for overseas naturalization processing.<sup>25</sup>

(4) A foreign born, biological or adopted child of U.S. citizen servicemember is eligible for U.S. citizenship automatically when the child is a lawful permanent resident of the United States, is under the age of eighteen, and resides in the United States.<sup>26</sup> If the foreign born child resides abroad, such child is eligible for overseas naturalization when the child is under the age of eighteen and the U.S. citizen parent meet certain physical presence requirement in the United States.<sup>27</sup> These benefits do not apply to a step child of a U.S. citizen servicemember.<sup>28</sup>

## 2. Immigration: Becoming a Lawful Permanent Resident (“Green Card Holder”).

a. Servicemember’s Marriage to a Foreign Citizen. Provided service policy<sup>29</sup> on marrying a foreign citizen abroad is met, a servicemember may sponsor a foreign fiancé(e) for K-1 nonimmigrant visa<sup>30</sup> before marriage in the United States or may sponsor a foreign spouse for immigrant visa<sup>31</sup> after marriage abroad. Both situations will require USCIS approval of the visa petition and the servicing consular office’s issuance of the visa.<sup>32</sup> If the foreign spouse is in the United States and the servicemember is a U.S. citizen, the servicemember can apply for an immigrant visa and the foreign spouse can apply for lawful permanent resident status simultaneously through USCIS.<sup>33</sup> The foreign spouse of a non-citizen servicemember has similar benefit, but is of a lower preference.<sup>34</sup>

b. Servicemember Sponsoring Foreign Relatives. Servicemembers may sponsor most foreign relatives for immigrant visa or adjustment of status; however, the processing time is dictated by servicemember’s citizenship status, visa numbers available to the foreign relative’s country, and degree of family relationship.<sup>35</sup>

c. Deferred Action for Childhood Arrivals (DACA). This benefit is a prosecutorial discretion exercised by U.S. Department of Homeland Security to defer eligible illegal immigrants from being removed (deported) for a period of two years, which is renewable: it does not provide lawful status in the United States but provides the eligible illegal immigrants work authorization.<sup>36</sup> The benefit contemplates servicemembers who may not have lawful status and provides a specific category of eligibility for having served in armed services.<sup>37</sup>

<sup>23</sup> 8 U.S.C.A. § 1430(b); 8 C.F.R. § 319.2; USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. B.

<sup>24</sup> 8 U.S.C.A. § 1430(d); 8 C.F.R. § 319.3; USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. D.

<sup>25</sup> 8 U.S.C.A. § 1430(e)(2); USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. D.

<sup>26</sup> 8 U.S.C.A. § 1431; 8 C.F.R. pt. 320; USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. C.

<sup>27</sup> 8 U.S.C.A. § 1433; 8 C.F.R. pt. 322; USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. C.

<sup>28</sup> USCIS POLICY MANUAL, *supra* note 20, ch. 9, para. C.

<sup>29</sup> *See, e.g.*, U.S. Navy, NAVPERS 15560D, NAVY MILITARY PERSONNEL MANUAL 5352-030 (22 Aug. 2002) (C22, 17 Mar. 2008).

<sup>30</sup> *Family of U.S. Citizens*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=1d383e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=1d383e4d77d73210VgnVCM100000082ca60aRCRD> (last updated on Apr. 4, 2012) (follow “Fiancé(e) Visa” hyperlink).

<sup>31</sup> *Id.* (follow “Spouse” hyperlink).

<sup>32</sup> *Id.* (follow “Fiancé(e) Visa” and “Spouse” hyperlink).

<sup>33</sup> *Id.* (follow “Spouse” hyperlink).

<sup>34</sup> *Family of Green Card Holders (Permanent Residents)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=75783e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=75783e4d77d73210VgnVCM100000082ca60aRCRD> (last updated on Apr. 1, 2011).

<sup>35</sup> *See supra* notes 29–34 and accompanying text.

<sup>36</sup> *Consideration of Deferred Action for Childhood Arrivals Process*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD> (last updated on Jan. 18, 2013).

<sup>37</sup> *Id.*

### C. Casualty Assistance and Survivor Benefits.

1. Casualties may occur on deployment and at home station. When casualties occur, the SJA elements, both on the exercise/deployment and with the rear detachment, must assist the Soldier's next of kin, the command, and the Casualty Assistance Officer (CAO).

2. Among the many issues that attend the death of a Soldier are: reporting the casualty; notifying the next of kin; appointing an CAO and providing legal advice to that officer; disposing of the remains, including a possible autopsy; advising the next of kin concerning their legal rights and benefits; appointing a summary court officer; and conducting a line of duty investigation. Accordingly, pre-deployment preparation is essential.

a. Familiarity with the Army's casualty regulation, AR 600-8-1,<sup>38</sup> is vital.

b. Judge advocates will become involved in helping the next of kin of Soldiers missing in action or taken prisoner. The DoD pay manual is something that the judge advocate must understand.<sup>39</sup> Judge advocates should also be prepared to brief surviving Family members on survivor benefits.

c. Prior to deployment, Soldiers should be encouraged to review their DD Form 93 (Record of Emergency Data) closely. This form designates beneficiaries of pay and allowances, might designate the Death Gratuity beneficiary (Block 9a; if no spouse or children), and designates the Person Authorized to Direct Disposition (PADD) of remains (Block 13, Continuation/Remarks block).<sup>40</sup>

### D. Servicemembers Civil Relief Act (SCRA).<sup>41</sup>

1. Overview. The SCRA provides a number of substantive benefits and procedural protections to members of the Armed Forces on active duty. Some of these benefits and protections are extremely important during exercises, deployments, and times of mobilization. LAAs must familiarize themselves with the following SCRA issues, at a minimum, and be prepared to assist servicemembers in resolving those issues.

#### 2. Interest rate reduction.<sup>42</sup>

a. Soldiers who are mobilized from the RC, and those who join the Army from civilian life, may reduce to six percent the interest on liabilities incurred prior to entry on active duty.

b. Creditors may obtain relief in certain circumstances.

#### 3. Rental property protections.

##### a. Eviction.<sup>43</sup>

(1) Soldiers and dependents may not be evicted from rented housing except pursuant to a court order.

(2) This protection is available when the amount of rent does not exceed \$3,217.81 per month.<sup>44</sup>

(3) When a Soldier's military service affects his or her ability to pay rent, and the Soldier applies for a stay, the court must stay the eviction proceedings for a period of 90 days.

##### b. Lease termination.<sup>45</sup>

(1) The SCRA allows Soldiers upon entry to active duty to terminate their "residential, professional, business, [and] agricultural" leases executed prior to entry to active duty.

(2) Soldiers also may terminate their leases when they undergo a permanent change of station or when they are deployed "for a period of not less than 90 days."

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<sup>38</sup> U.S. DEP'T OF ARMY, REG. 600-8-1, ARMY CASUALTY PROGRAM (30 Apr. 2007) (Note – see the published change: Army Directive 2009-02).

<sup>39</sup> U.S. DEP'T OF DEFENSE INST., 7000.14-R, DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATIONS, VOLUME 7A, MILITARY PAY POLICY AND PROCEDURES – ACTIVE DUTY AND RESERVE PAY, Chap. 36 (Jan. 2012).

<sup>40</sup> See *supra* note 6 and accompanying text.

<sup>41</sup> Pub. L. No. 108-189, 117 Stat. 2835 (2003) (codified at 50 U.S.C. App. §§ 501–596 (Westlaw 2011)).

<sup>42</sup> 50 U.S.C. app. § 527.

<sup>43</sup> *Id.* app. § 531.

<sup>44</sup> This amount is subject to annual adjustment. *Id.* app. § 531(a). The figure listed is for 2013.

<sup>45</sup> *Id.* app. § 535.

4. Automobile leases.<sup>46</sup>

a. Soldiers may terminate their automobile leases when they are transferred outside the continental United States (OCONUS) or from OCONUS states and territories back to CONUS.

b. Soldiers also may terminate their automobile leases when they “deploy with a military unit for a period of not less than 180 days.”

5. Cell phone contract termination/suspension.<sup>47</sup>

a. Soldiers may terminate or suspend a cell phone contract when they relocate for a period of not less than 90 days to a location that does not support the contract.

b. Soldiers must have entered into a contract prior to receiving orders. Family plans are contemplated. Legal assistance attorneys must analyze each situation.

6. Stays of proceedings.<sup>48</sup>

a. Soldiers may seek to have litigation before civil judicial and administrative proceedings stayed when their military service materially affects their ability to participate in the litigation.

b. The stay may be granted on the court’s own motion, and shall be granted for a period of 90 days upon a motion by the Soldier.

c. The application for the stay must include a letter from the Soldier establishing that the current military service materially affects the Soldier’s ability to participate in the litigation. The Soldier must also provide a date when he or she will be able to appear in court.

d. The application must also include a statement from the Soldier’s commander stating that the Soldier’s military service precludes attendance, and that leave is currently not authorized for the Soldier.

7. Mortgage Protections<sup>49</sup>

a. Applies to purchases of real or personal property that a servicemember makes prior to entry on active duty that are secured by a mortgage or trust deed.

b. Court order required for foreclosure: If a servicemember breaches the obligation, a sale, foreclosure, or repossession action is not valid unless there is a court order or a waiver from the servicemember.

c. As of 3 Feb 13 the protection extends for one year beyond the period of active duty. (From 30 Jul 08 – 2 Feb 13 the period of protection was increased from 90 days to 9 months.) The additional one year beyond the period of active duty protection is in effect until 31 December 2014, after which the protection period following active duty will be revert to 90 days, absent additional legislation.

**E. USERRA.**

1. USERRA<sup>50</sup> protects the rights of Guardsmen and Reservists to return to their civilian employment following periods of military service and provides major benefits to these servicemembers.<sup>51</sup> Judge Advocates should be acquainted with its major tenets.

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* app. § 535a.

<sup>48</sup> *Id.* § 522.

<sup>49</sup> *Id.* § 533.

<sup>50</sup> Pub. L. No. 103-353, 108 Stat. 3149 (1994), codified as amended at 38 U.S.C.S. §§ 4301–4334 (LexisNexis 2008).

<sup>51</sup> In fact, the Act’s protections are much broader, and the law works as any anti-discriminatory legislation. As the law states, it “prohibit[s] discrimination against persons because of their service in the uniformed services.” 38 U.S.C. § 4301(a)(3) (2008). In a more complete sense, the law tells employers that “[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.” *Id.* § 4311(a).

2. To take advantage of the law, the servicemember must provide his or her employer with notice of the pending absence.<sup>52</sup> Periods of absence, per employer, must not exceed five years,<sup>53</sup> and the service must be characterized as “honorably” or “under honorable conditions.”<sup>54</sup> For a typical weekend drill or “battle assembly,” the servicemember must report back “not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person’s residence.”<sup>55</sup> If the absence is for a longer period, the servicemember must make an application for reemployment within specified times.<sup>56</sup>

3. Although there are a number of protections, the law provides that employers must promptly reinstate their returning servicemembers to the same, or like, position that they left, and with accrued seniority.<sup>57</sup> They also must attempt to qualify the servicemember for the return to the position, if such re-qualification is necessary as a result of the person’s absence for military service.<sup>58</sup>

4. Servicemembers who experience difficulties with employers may find that the volunteer services of local ombudsmen from the National Committee for Employer Support of the Guard and Reserve (ESGR) will prove useful.<sup>59</sup> While those with more serious problems may file suit with a private attorney, assistance also is available through the Secretary of Labor.<sup>60</sup>

5. LAAs must be cautious when providing assistance on such matters. The Department of Labor and Department of Justice may not undertake a servicemember’s representation if that servicemember has been previously represented by counsel. Notwithstanding the limits of the Legal Assistance Program, a client could encounter problems later when seeking in-court representation from the Departments of Labor or Justice.<sup>61</sup> However, giving briefings to groups of Soldiers regarding USERRA, referring clients to the Department of Labor’s Veterans’ Employment and Training Service (VETS) or the ESGR, and following up with VETS should not present a problem for a servicemember who later decides to seek in-court representation.<sup>62</sup>

## VII. CONCLUSION

A. Legal Assistance is an essential JA mission. It becomes critical during exercises, deployments, and combat operations. This chapter has examined some of the issues relevant to the successful delivery of this important service.

B. Checklists for supplies and other resources follow.

C. Several resources exist for deployed JAs who require expertise from civilian practitioners with expertise in a particular area of the law or jurisdiction. Many civilian practitioners will assist Servicemembers on a reduced fee or pro bono basis.

1. The services jointly maintain a legal assistance database with a wealth of substantive and timely information at information at: <http://legalassistance.law.af.mil/>

2. The American Bar Association (ABA)’s Standing Committee on Legal Assistance for Military Personnel (LAMP) has two initiatives aimed at assisting deployed servicemembers, through military legal assistance counsel,

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<sup>52</sup> *Id.* § 4312(a)(1).

<sup>53</sup> *Id.* § 4312(a)(2). There are a number of exceptions to the five-year provision. In fact, most types of service, such as regularly-scheduled drills, mobilizations under the Presidential call-up and the partial mobilization, qualify as exceptions and do not count toward the five-year cap.

<sup>54</sup> *Id.* § 4304.

<sup>55</sup> *Id.* § 4312(e)(1)(A)(i).

<sup>56</sup> *See id.* § 4312(e)(1)(C), (D).

<sup>57</sup> *Id.* § 4313(a).

<sup>58</sup> *Id.*

<sup>59</sup> Information from the ESGR on USERRA and its own programs is available at <http://www.esgr.org>.

<sup>60</sup> *See* 38 U.S.C. § 4322(a); *see also id.* § 4321 (providing for preliminary assistance from the Department of Labor through its Veterans’ Employment and Training Service). Federal employees receive an assessment and assistance through the Office of Special Counsel. *Id.* § 4324.

<sup>61</sup> *See* U.S. DEP’T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 3-5e(2)(a) (21 Feb. 1996) (RAR 13 Sept. 2011).

<sup>62</sup> *Id.* para. 3-5e(2)(b).

with legal problems. Operation Enduring LAMP and the ABA's Military Pro Bono Project are both available at: <http://www.abanet.org/legalservices/lamp/>.

3. The George Mason University School of Law runs the Clinic for Legal Assistance to servicemembers and accepts applications from military members. Information is at <http://www.law.gmu.edu/academics/clinics/clas>.

**APPENDIX – DEPLOYED LEGAL ASSISTANCE READY BOX CHECKLISTS AND REFERENCES**

**Table 1: Sample Ready Box**

<i>Item</i>	<i>Quantity</i>	<i>O/H</i>
Notebook computer/printer	4	
DL Wills Version 10 with latest supplement update		
QuickScribe program		
Client Information System (CIS) program		
TaxWise Program		
Printer toner cartridges	5	
Manual typewriter/ribbons/correction tape	1	
Client Interview Cards	200	
Electrical extension cords	6	
Will Cover Sheets	200	
Envelopes, 4" x 9 ½" (DA)	150	
Envelopes, 4" x 9 ½" (plain)	150	
Markers, red	10	
Masking tape, rolls	5	
Scotch Tape, rolls	5	
Paper, Printer (Ream)	12	
Paper, tablets	14	
Pens, boxes	5	
Regulations & References if on-line resources are unavailable		
Seals (authority of 10 U.S.C. § 1044a)*	2	
Signs (Legal Assistance)	2	
Staple removers	2	
Stapler w/extra staples	4	
3 inch Binders	20	
3 hole punch	1	
Will Interview Worksheets	150	

\* 10 U.S.C. § 1044a only requires the signature of an authorized military notary as evidence of the notarization. Though no seal is required, it does help to ensure acceptance of military-prepared legal documents by organizations and persons outside the military.

\*\* In addition to the above, it is advisable to bring local reference material to deployed locations, such as a local telephone book. Clients oftentimes simply seek information about the local area, attorneys and other experts.

**Table 2: Deployment Legal Assistance References**

<i>Regulation</i>	<i>Title</i>
AR 27-3	The Army Legal Assistance Program (21 Feb. 96)
AR 27-55	Notarial Services (17 Nov. 03)
AR 600-8-1	Army Casualty Programs (7 Apr. 07)
AR 600-8-101	Personnel Processing (In- and Out- and Mobilization Processing) (18 July 03)
(AR 600-15 was rescinded)	
AR 600-20	Army Command Policy (18 Mar. 08) (RAR 20 Sep 12)
AR 608-99	Family Support, Child Custody, and Paternity (29 Oct. 03)