

An Introduction to Legal Services for Military Personnel and their Family Members

This article highlights common legal services available to military personnel and their family members, as well as military retirees, through military legal assistance offices. Non-military legal aid providers often are unaware of these sources of help for clients with a “military” connection. At a minimum, practitioners should be aware that certain unique statutory protections apply to military members. Military legal assistance attorneys are frequently well-versed in the interpretation and application of these laws and can provide legal aid attorneys with helpful guidance.

There are three broad categories of legal need for clients with a “military” connection: (1) help with criminal defense; (2) help obtaining veterans’ benefits; and (3) help with personal civil matters, such as estate planning and drafting of wills, power of attorney, family law, landlord-tenant law, and consumer law. After a brief discussion of the first two categories, this article focuses on the third because it is the only one typically supported by military legal assistance offices.

Criminal defense. As a rule, military legal assistance attorneys do not represent clients on cases involving criminal defense, although they may contact civilian court officials or prosecutors to request delays, dismissals or reduction of charges.¹ Clients who have non-military criminal defense needs should be referred to the public defender or the local bar. As for those facing military criminal prosecution (referred to as courts-martial), military defendants are provided free representation by military attorneys who serve in a role similar to public defenders; however, these attorneys, often referred to as trial defense or area defense counsel, do not provide assistance on other matters (such as veterans’ benefits, non-military criminal matters, or civil matters). Military defendants can also hire civilian defense counsel.

Veterans’ Benefits. Depending on the characterization of their discharge from the military (e.g., honorable vs. dishonorable)² and other factors (e.g., where and when they served, the nature of their injury or condition), veterans may qualify for an extensive array of benefits provided by the Department of Veterans Affairs (VA) and other federal and state agencies. These benefits can be worth hundreds of thousands of dollars over the life of a veteran, and may take the form of free medical and mental health care, disability pension, priority hiring for government jobs, special contracts set aside for veteran-owned small businesses, payment of college and other post-military education costs (the G.I. Bill), subsidized home loans, and the list goes on.³

1. See *The Army Legal Assistance Program*, Army Regulation 27-3, para 3-6(j) at page 9.

2. Characterization of discharge (honorable, general, under other than honorable, dishonorable) is reflected on a form given to servicemembers upon release from active duty. The form is DD Form 214, Certificate of Release or Discharge from Active Duty. It is a good practice for those assisting veterans to obtain and review a copy of the form.

3. For VA eligibility criteria for various benefits, see www.vba.va.gov/VBA/benefits/factsheets/#BM1

For some of these benefits, the VA provides an administrative review process with appeal rights to federal court. Veterans may be represented by counsel, but as a rule, the legal fees are paid by the veteran.

If a legal aid client needs assistance obtaining any of these benefits, there are at least three places to look before resorting to the formal appeals process or the courts. The first is the VA itself, which employs social workers and others to help veterans understand their benefit entitlements and obtain them. A second source to consider is the various Veterans Service Organizations (VSOs), such as, the Disabled American Veterans (DAV), Veterans of Foreign Wars and the American Legion, to name but a few of many.⁴ A third resource is state and county veterans service agencies. Many states have a cabinet level agency tasked with assisting veterans. Some counties, such as those in Ohio, have veteran service commissions that provide assistance to veterans in need.⁵

Civil Matters. The main focus of this article is on the third category of need – personal civil matters. For clients who qualify, a wide-range of free legal services are available from military legal assistance attorneys and paralegals. These include estate planning and preparation of wills, powers of attorney, and advanced medical directives. Federal law grants special status to these documents when prepared by a military legal assistance attorney, exempting them from state requirements of form, formality or recording.⁶

Other free services include help with naturalization and citizenship applications, adoptions, child support, separations and custody, dissolution and divorce, landlord-tenant disputes, consumer law issues, vehicle insurance and registration issues, small claims court and even minor criminal matters, such as traffic tickets. Most military legal offices also manage extensive volunteer income tax assistance (VITA) programs. Typically, several hundred thousand federal and state tax returns for military personnel and their families are processed each year – many of them electronically - through military VITA programs.⁷

Who qualifies? Generally speaking, a client qualifies if he or she is on active duty with the U.S. Armed Forces,⁸ or is a reservist or member of the National Guard who has begun pre-mobilization processing. National Guard and reserve personnel who have been activated and are serving on extended active duty are also eligible.⁹ Family

4. A list of VSOs is found here: www1.va.gov/VSO/index.cfm?template=view. Note that only certain VSOs are chartered by either Congress or the VA (or both) to represent servicemembers for claims representation. Several of the articles in this edition of the *Poverty Law Journal* discuss these resources in more detail.

5. See: http://dvs.ohio.gov/home/county_veterans_service_officers.aspx

6. See 10 U.S.C. §1044.

7. A list of these and other benefits (legal and non-legal) available to military personnel and their families is found at the Military One Source web site at: www.militaryonesource.com.

8. Members of the Army, Air Force, Coast Guard, Marine Corps and Navy.

9. Activated National Guard and reserve personnel are normally serving under orders issued pursuant to Title 10 of the United States Code. Thus, some military legal assistance providers will ask a guardsman or reservist if he or she is “on Title 10 orders.”

members are eligible, as are retired personnel. Priority usually is given to junior enlisted personnel¹⁰ and those deploying overseas.

An easy way to identify eligible clients is to see if they possess a military identification card. Every active duty, reserve and National Guard member will have a military ID card; as will every military retiree and military dependent.¹¹ Veterans who once served on active duty but did not serve long enough to qualify for retirement or who did not join the reserve or National Guard after their active service typically do not have an identification card and are not entitled to receive free legal services.

In addition to asking for a military ID card, it is a good idea to ask clients if they possess “military orders.” Personnel currently serving on active duty or those being activated should possess written orders that identify their unit, location and period of deployment - which may prove helpful in locating the nearest military legal assistance offices or tracking down non-supportive parents or spouses.

Locating Services. Resource availability is a problem. The pool of potential military clients is in the millions while the number of military legal providers (attorneys and paralegals) is in the thousands. Most military legal assistance providers are concentrated on large military installations or with deployed units overseas. For eligible personnel stationed or living away from large installations, the chance of finding free services is slim.

How can you find the nearest military assistance office? Go to the U.S. Armed Forces Legal Assistance web site at “legalassistance.law.af.mil.” The web site contains a locator service based on zip code plus answers to basic questions about eligibility, available services and attorney-client relationships. Even if your legal aid office is not close to a military installation, give the locator a shot. There may be a small legal assistance office nearby that you are unaware of – such as the Coast Guard legal assistance offices in Cleveland or San Francisco.

Legal Assistance to Military Personnel (LAMP) and Military Pro Bono Project. For those unable to find a military legal assistance office nearby, two other sources of help are the ABA Standing Committee on Legal Assistance to Military Personnel (LAMP) and its Military Pro Bono Project. One of LAMP’s goals is to

10. Junior enlisted personnel are usually considered to be those in an enlisted grade of E-4 or below. Grades are divided into officer (O-1 to O-10) and enlisted (E-1 to E-9) and are sometimes referred to as one’s “pay grade” because monthly pay is based on grade and does not vary among branches of service. Service personnel will often refer to themselves by their rank, not their grade. Ranks for similar grades vary from service to service. For example, an E-4 in the Marines holds the rank of corporal, in the Navy and Coast Guard the rank of petty officer third class, and in the Army either the rank of specialist or corporal. A listing of ranks broken down by grade and service is found here: usmilitary.about.com/od/theorderlyroom/1/blenlrnk.htm. Current pay tables broken down by grade and time in service are found here: www.dfas.mil/militarypay/militarypaytables.html

11. For a variety of reasons, not all dependents entitled to a military dependent identification card will have one in their possession. In some cases, the military member deploys before he or she is able to get cards for family members. In other cases, military members are unaware of or fail to advise family members of this entitlement. Possession of the card is critical because it is the basis for dependents receiving medical, legal and other free services. Clients who need an ID card should be directed to the nearest military installation for assistance in getting the card.

“Promote the delivery of legal services to military personnel and their family members and to persons accompanying the armed forces outside the United States, on their personal legal affairs.”¹² It does this in a number of ways. One is through a collection of helpful military legal guides posted on its web site.¹³ Another is through Operation Standby, which provides military legal assistance attorneys with a state-by-state directory of volunteer consulting attorneys who specialize in family law.¹⁴ The most recent and perhaps the most promising is the Military Pro Bono Project, which utilizes a web portal to allow military attorneys to refer servicemember clients to the Project, which then tries to place the case with a qualified volunteer pro bono attorney.¹⁵ The Project is designed to take referrals from military legal assistance attorneys; however, legal aid attorneys interested in referring military clients to the Project are encouraged to contact the project director (Jason Vail at vailj@staff.abanet.org) for special consideration.

State Bar and Law School Clinics. Legal aid attorneys should also canvas their state bar and law schools to see what military specific offerings are available. Some state bars, such as North Carolina and Georgia, have very active standing committees devoted to assisting attorneys and their military clients. Some law schools, such as George Mason, offer clinical programs that provide legal representation for military personnel.

Military Legal Assistance Attorneys (LAAs). If you are able to network with or refer your client to a military legal assistance attorney (LAA), here’s what to expect. Full-time LAAs probably number less than two thousand world-wide and are found in every branch of the service, including the Coast Guard. All are licensed attorneys. Most are military officers (typically referred to as JAGs – shorthand for members of the Judge Advocate General’s department of each service.) Some are civilian employees who, in many cases, previously served as a JAG.¹⁶

A typical legal assistance attorney is a recent law school graduate who has completed several months of basic officer and JAG training at one of three military service schools. Many LAAs also will attend a special weeklong course focusing just on military legal assistance issues that is offered by the Army JAG School in Charlottesville, Virginia.¹⁷ Even so, most LAAs are inexperienced and at the bottom of a steep learning curve complicated by personnel rotation policies that keep many of them in a legal assistance billet for six months or less before moving on to another position at their current duty location or overseas should their unit deploy.

The level of support provided to military clients is heavily dependent on resource availability and command emphasis. LAAs work under the direction of a senior military attorney (sometimes referred to as a staff judge advocate or SJA) who typically are very

12. See LAMP Mission Statement at <http://www.abanet.org/legalservices/lamp/>.

13. <http://www.abanet.org/legalservices/lamp/resources.html>

14. <http://www.abanet.org/family/military/operationstandbylist.pdf>

15. <http://www.militaryprobono.org/>

16. The author falls into this last category – having served twenty-one years on active duty in the Air Force, before signing on as a LAA for the Coast Guard in Cleveland in the fall of 2001.

17. The Army Judge Advocate General’s Legal Center and School is located on the campus of the University of Virginia, adjacent to the UVA law school. It has a large number of full-time faculty, several of whom are experts on military legal assistance. For more info about the school see: <https://www.jagcnet.army.mil/8525736A005BC8F9>.

supportive of the legal assistance program, particularly for the Army, Navy, Marine Corps and Coast Guard. Program services and eligibility requirements are detailed in military regulations.¹⁸

Most LAAs do not provide in-court representation, in part because they often are not admitted to practice in the state where stationed – but there are exceptions. A number of states, such as Virginia, Illinois and Florida, allow JAGs to litigate in state court on behalf of military clients – even when the JAG is not admitted to practice locally. In addition, some JAGs use state pro hac vice provisions to represent military clients when appropriate.

LAAs are governed by their state bar's code of ethics on conflicts of interest and other rules of professional responsibility, including maintenance of client confidentiality. They are also governed by their military department's code of ethics. LAAs are expected to zealously advance their client's interest. However, they are not authorized to advise or represent clients in claims against the government; such cases are best handled by the local bar. Note too that sometimes LAAs wear two hats – working as a military prosecutor on a particular court-martial, while providing legal assistance services – when there is no conflict of interest.

Statutory Basis and Purpose. The primary statutory basis for the legal assistance program is found at 10 U.S.C. §1044.¹⁹ The main purpose of the program is to facilitate military readiness. Congress recognized that the relative youth and inexperience of junior military personnel, coupled with frequent moves, multi-jurisdictional issues, and stresses associated with family separations and the harsh nature of the “mission,” could lead to a crippling set of legal complications, unless the military established a legal assistance program.

The program is also intended to help servicemembers assert special federal civil protections, such as those contained in the Servicemembers Civil Relief Act (SCRA)²⁰, the Uniformed Services Employment and Reemployment Rights Act (USERRA),²¹ and the Uniformed Services Former Spouses Protection Act.²² Legal aid attorneys assisting military clients should be familiar with both, as well as other federal and state laws that provide unique due process, jurisdictional, tax and contractual rights to military personnel and even to their dependents in some cases.

Servicemembers Civil Relief Act. Formerly known as the Soldiers and Sailors Civil Relief Act (SSCRA), the SCRA was renamed and significantly revised in 2003.

18. The Air Force legal assistance program is governed by Air Force Instruction (AFI) 51-504; the Army by Army Regulation (AR) 27-3; the Coast Guard by Commandant Instruction 5801.4E; and the Navy and Marine Corps by 32 CFR Part 727.

19. 10 U.S.C. §3013(g) authorizes legal services for Reserve and National Guard personnel.

20. 50 U.S.C. App. §§501 et seq.

21. 38 U.S.C. §§4301 through 4334. Both the SCRA and USERRA are covered in great detail by other authors in this edition of the *Poverty Law Journal*.

22. 10 U.S.C. §1408. The SCRA, USERRA and FSPA are covered in greater detail by other authors in this edition of the *Poverty Law Journal*.

LAAs are often called upon to assert SCRA protections on behalf of military clients. The SCRA offers servicemembers, and in some cases their dependents and other third parties, powers that are stunning at first glance. For example, at any stage before final judgment in a civil action or proceeding, a servicemember is entitled, upon petition to court or administrative authority, to a stay of at least 90 days. Servicemembers may also reopen default judgments up to sixty days after they leave active duty. Courts are authorized to vacate or stay an attachment or garnishment of property, money or debts, and can even restructure contracts based on equity. Statutes of limitation are tolled during periods of military service. The one condition for virtually all of these provisions is that personnel must be able to show that their ability to represent or defend themselves was impaired by their military service.

The SCRA permits early termination of certain contracts without breach and without early termination penalties. So, for example, an active duty member who receives permanent change of station (PCS) orders outside the continental United States (OCONUS), or who is being deployed for 180 days or more, may terminate a motor-vehicle lease without penalty. The rules are broader for residential leases. Those with PCS orders to any location, and those being deployed for 90 days or more, can terminate a residential lease without penalty. There are certain formalities that must be followed, such as providing the landlord with a copy of the PCS or deployment orders. Similar protections are provided to civilians who join the military and need to terminate a lease, and also for reservists who are recalled to active duty.

The SCRA can impact contracts in other ways, too. For example, it caps interest rates at six percent for many pre-service loans, including home mortgages, vehicle loans, and credit cards. Interest charged in excess of six percent is forgiven for those whose ability to repay is “significantly impacted” by their military service. Personnel have until 180 days after release from military service to invoke this provision, with interest forgiven retroactive to the date of entry on active duty.

Uniformed Services Employment and Reemployment Rights Act. The SCRA is just one of several pieces of federal legislation that provides special protection for military personnel. The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides reinstatement rights for persons who held a civilian job prior to entering active duty. Primary enforcement of USERRA is handled by the Department of Labor and Department of Justice, although the statute gives servicemembers the right to bring suit on their own.

Uniformed Services Former Spouses Protection Act (FSPA). In the area of family law, the Former Spouses Protection Act provides special rules for continued access to military services (such as medical care and the commissary) and distribution of military retirement to ex-spouses of career military personnel. Frequently misunderstood by clients and counsel alike, legal aid attorneys should proceed with caution when advising clients regarding division of military retired pay. One persistent myth is that the FSPA only permits division of military retired pay if a couple has been married for a minimum of ten years. This is false, but I have heard it recited as good law by

experienced counsel on too many occasions. Legal aid attorneys desiring a better understanding of the FSPA should consult with LAAs and should also obtain a copy of *The Military Divorce Handbook* by Mark Sullivan.²³

State Statutory Protections for Military Personnel and Family Members.

Many states provide special protections and rights to military personnel that mirror or even go beyond those contained in the aforementioned federal legislation.

For example, California law allows a brief but almost total break from creditors to guardsmen and reservists who are mobilized involuntarily “as part of the Iraq and Afghanistan conflicts.” Members may get these protections by providing a letter signed under penalty of perjury to creditors stating that they have been so mobilized and are requesting a deferment of payments under this section of the CMVC. A financial institution may request proof that the member’s civilian employer does not provide continuing support of 90% or more of civilian pay during mobilization. Protections include staying property taxes, up to two auto loans, and residential mortgage, credit card, or retail contract payments. In order to qualify, the obligation must have been incurred before an involuntary mobilization. Once invoked, this protection will last for the lesser of 1) 180 days or, 2) the period of active duty plus 60 days. No interest on principal or interest or penalties may be added during this period. The lender or seller may not foreclose on or repossess property during this period. In the case of a mortgage, selling or further encumbering the property will negate these protections.²⁴

California also provides special protections for students activated by the National Guard or reserves. Students who must take academic leave from a learning institution in order to perform military service are entitled to credit for tuition and fees toward a subsequent academic term equal to 100% of what the student paid for the academic term in which the student withdrew. In order to claim this right, the student must inform the institution of the circumstances not more than one year after returning from military service. A student leaving an institution to perform military service is entitled to a full refund of tuition and fees if withdrawing before the withdraw date established by the institution. Upon returning from academic leave for military service, the institution will restore the student to the status attained before the leave, without loss of academic credits, scholarships, or grants. The student must notify the institution within one year of returning from military service, and must not have been dishonorably discharged.²⁵

Many other states afford similar protections to their service personnel and veterans. Attorneys assisting military personnel need to be familiar with them.

23. Sullivan, Mark E., *The Military Divorce Handbook*, ABA Publishing (2006). Includes CD-ROM.

24. Military Families Financial Relief Act, CVMC §800-811. Thanks go to my colleague Mike Marken, Coast Guard legal assistance attorney at Alameda, California, for this information. He and his staff compiled an eleven page list of rights and benefits available in California to Reservists, Guardsmen, Active Military and Veterans. He has given me permission to share the list among the legal assistance and legal aid community. Email me at stephen.t.lynnch@uscg.mil, if you would like a copy.

25. CVMC §824. Thanks again to Mike Marken.

Conclusion. This article highlights common legal services and protections available to military personnel and their family members. Legal aid offices should screen clients for a potential “military” connection that may entitle them to free legal assistance. Legal aid attorneys should combine their expertise with local military legal assistance attorneys to ensure that military clients receive the best service possible. Both need to be aware of unique federal and state statutory protections that apply to the military personnel.