

Administrative Change to AFPD51-3, *CIVIL LAW, ACQUISITION LAW AND LITIGATION*

OPR: AFLOA/JACC Claims and Tort Litigation Division

Change paragraph 2.4.4. to read; “Compensate military members and civilian employees for property loss or damage incident to their service, to the maximum extent possible in accordance with applicable laws and directives, understanding, however, that the Air Force Claims Program does not and is not designed to make the United States an insurer of the personal property of claimants.” 24 January 2019.

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**AIR FORCE POLICY DIRECTIVE 51-3**

**28 NOVEMBER 2018**



**LAW**

**CIVIL LAW, ACQUISITION LAW AND  
LITIGATION**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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Certified by: AF/JA  
(Lt Gen Jeffrey A. Rockwell)

Supersedes: AFPD51-3, 21 May 1993,  
AFPD51-5, 27 September 1993

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Pages: 8

This publication implements 10 United States Code (U.S.C.) §§ 939, 1044, 1044a, 1044e 1095, 1565b(a)1(A), 2737, 2738, 9801 through 9804; 31 U.S.C. §§ 3711 through 3719; 32 U.S.C. § 715(d); 42 U.S.C. § 2653; 46 U.S.C. § 30101; 28 Code of Federal Regulations (C.F.R.) §43.3; DoD Directive (DoDD) 1350.4, *Legal Assistance Matters*; DoDD 5515.3, Settlement of Claims Under Sections 2733, 2734, 2734a and 2734b of Title 10 United States Code; DoDD 5515.10, Settlement and Payment of Claims Under 31 U.S.C. 3701 and 3721, "The Military Personnel and Civilian Employees' Claims Act of 1964"; DoDD 6000.6, Defense of Certain Medical Malpractice Claims Against Department of Defense Healthcare Providers; DoD Instruction (DoDI) 1340.21, *Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests*; DoDI 5515.08, *Assignment of Claims Responsibility*; and Office of the Secretary of Defense memorandum, Delegation of Settlement Authority Under the Federal Tort Claims Act date 10 March 2009. This policy interfaces with various legal publications, specifically AFD 51-2, *Administration of Military Justice*, AFD 51-11, *Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters* and AFD 51-12, *Alternative Dispute Resolution*.

This publication applies to all Air Force personnel, including the Air National Guard and Air Force Reserve.

Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the Air Force Form 847, *Recommendation for Change of Publication*; route Air Force Forms 847 from the field through major command functional managers. Ensure all records created as a result of processes prescribed in this publication are maintained in

accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System.

## ***SUMMARY OF CHANGES***

This document has been substantially revised and must be completely reviewed. Changes include administrative and related updates, removal of items better addressed in the implementing instructions, and rescinding both Air Force Policy Directive (AFPD) 51-3 and AFPD 51-5 entitled *Measuring and Displaying Compliance with Policy*.

**1. Overview** . This publication establishes policy for the practice of civil law and acquisitions law and the provision of direct and indirect support to litigation involving Air Force interests. It also establishes policies defining the conditions under which the Air Force will provide legal support to eligible beneficiaries on personal, civil legal affairs in which the Air Force is not a party.

## **2. Policy. The Air Force shall:**

2.1. Provide zealous, competent and ethical legal representation of and counsel to the Department when it is involved in:

2.1.1. Civil litigation and other matters of legal controversy or challenge, to include contract claims, bid protests, appeals, and other contract-related disputes before Federal courts, the Government Accountability Office, the Armed Services Board of Contract Appeals, and other agencies, in order to resolve these matters favorably to the Air Force and in a timely and efficient manner.

2.1.2. All non-litigation facets of civil law and related legal practices, to include, but not limited to:

2.1.2.1. Adjudicating, processing, prosecuting and defending against, as appropriate, household goods and personal property claims, tort (negligence) claims, foreign claims and claims resulting from the non-combat activities of the Air Force.

2.1.2.2. Environmental, real property, and energy law.

2.1.2.3. Employment and labor, information, tax, constitutional torts, and military personnel law.

2.1.2.4. Acquisition planning and strategy; acquisition methods and authorities; contract formation, administration and litigation; intellectual property law; bankruptcy and surety; and fiscal law concerning acquisition. Acquisition policies will reflect litigation developments among risk factors.

## **Section 2A—Civil Litigation**

2.2. Remain impartial in private litigation in which the United States does not have an interest.

2.2.1. Expeditionously review requests to produce its employees to testify as fact, expert and opinion witnesses, both in cases where the United States is a party and where it is not.

2.2.2. Ensure the release of official information for use in Federal and State courts, and other proceedings, complies with applicable laws, regulations, instructions, and policies.

2.3. Coordinate significant litigation and other matters involving the Department of Justice in accordance with applicable laws and higher headquarters policies.

#### **Section 2B—*Administrative Claims For or Against the Air Force***

2.4. Establish and administer a vigorous Air Force Claims Program to:

2.4.1. Expeditiously investigate and process all administrative claims for or against the Air Force.

2.4.2. Adjudicate all claims, whether or not any statute provides for a judicial remedy, in a fair and equitable manner.

2.4.3. Promptly pay valid claims in an amount necessary to restore claimants, as nearly as possible, to their position before the incident on which the claim is based, subject to applicable laws and regulations.

2.4.4. Compensate military members and civilian employees for property loss or damage to their service, to the maximum extent possible in accordance with applicable laws and directives, understanding, however, that the Air Force Claims Program does not and is not designed to make the United States an insurer of the personal property of claimants.

2.4.5. Actively pursue amounts owed to the United States by negligent or other legally liable third parties, to include carriers of Air Force employees household goods to the extent permitted by law and ensure proper distribution of funds where appropriate.

#### **Section 2C—*Medical Law***

2.5. Develop and implement a robust program to train and support medical law attorneys and paralegals to provide medical law advice and support to military treatment facilities and the Office of the Air Force Surgeon General.

#### **Section 2D—*Ground and Aerospace Accident Investigations***

2.6. Provide in an expeditious manner a publicly releasable accident investigation report of aircraft, remotely-piloted aircraft, missile, space, ground and other on-duty mishaps in accordance with applicable laws and directives.

2.7. Gather and preserve evidence in accident investigations for use in litigation, claims, disciplinary actions, adverse administrative actions, and for other lawful purposes.

#### **Section 2E—*Legal Assistance and Preventive Law***

2.8. Provide legal assistance services to eligible beneficiaries in connection with personal, civil legal affairs, with a primary focus on servicing those beneficiaries and services that support readiness. Legal assistance services include:

2.8.1. Advising and assisting with personal, civil legal affairs, to include assisting victims of all types of crimes, producing last wills and testaments and powers of attorney, and providing limited representation assistance, as permitted by law and subject to the availability of funds and resources.

2.8.2. Notary services.

2.9. Produce preventive law programs to educate and train eligible beneficiaries and, as appropriate, other members of the public sector to help military communities avoid legal problems and prepare for mobilization, deployment, or similar actions.

### **Section 2F—Acquisition Law and Litigation**

2.10. Develop and implement a robust program to train and support acquisition personnel in regard to acquisition planning, contract award, contract management, contingency contracting, fraud remedies, intellectual property, and contract and commercial litigation. Oversee and direct acquisition law programs that ensure synchronized action worldwide in line with Air Force Acquisition goals. Acquisition law programs include:

- 2.10.1. Advising on significant acquisition policy matters and legislative initiatives.
- 2.10.2. Advising program executive offices on litigation risk and mitigation, pursuant to Bid Protest Review Teams.
- 2.10.3. Support of Multidisciplinary Independent Review Teams.
- 2.10.4. Advising on procurement fraud investigations and remedies.

2.11. Represent the Air Force, United States Special Operations Command, United States Transportation Command, and United States Cyber Command in all litigation concerning acquisition and commercial law programs, to include pre-award and post-award bid protests, contract claims, appeals of contracting officer final decisions, intellectual property-related litigation, and defense of Government interests in bankruptcies filed by contractors.

### **3. Responsibilities.**

3.1. The Air Force Judge Advocate General and the Air Force General Counsel are responsible, consistent with the division of labor prescribed in Headquarters Air Force Mission Directive 1-14, *General Counsel and The Judge Advocate General*, for diligently safeguarding and advancing the civil, acquisition, intellectual property and related legal interests of the Department of the Air Force. To that end, the respective official shall, to the extent applicable:

3.1.1. Develop and implement instructions and related guidance to:

- 3.1.1.1. Manage and conduct the representation of the Department of the Air Force by members of the Air Force Judge Advocate General's Corps in close collaboration with the Office of the Air Force General Counsel. Representation includes the various facets of civil law, acquisition law, commercial law, intellectual property law, and other related legal practices for which this directive establishes Air Force policy.
- 3.1.1.2. Guide the participation of the Department of the Air Force and its employees in civil litigation and other interactions with civil judicial and administrative systems.
- 3.1.1.3. Determine the parameters of legal assistance services to be provided to eligible beneficiaries in connection with personal, civil legal affairs.

3.1.2. Establish and administer a vigorous Air Force Claims Program.

3.1.3. Investigate, adjudicate, and where necessary litigate all claims against or in favor of the Air Force. The Judge Advocate General will settle, deny, or waive claims within delegated claims settlement authority, and closely collaborate with the General Counsel

when providing advice to the Secretary of the Air Force when Secretarial involvement is necessary or required.

3.1.4. Support major commands in the conduct of ground and aerospace accident investigations. This support includes policy guidance, subject-matter expertise, and when available, personnel to serve as legal advisors and recorders.

3.1.5. Enter into support agreements with the Air Force Surgeon General to formalize legal support to the military medical community.

3.1.6. Provide the necessary authorities, supervision, and training of those personnel within their respective departments who are tasked to conduct the activities addressed in this policy directive.

3.2. The Air Force Legal Operations Agency shall:

3.2.1. Provide that type and level of legal service support to the Air Force Judge Advocate General and the Air Force General Counsel as The Air Force Judge Advocate General, or the Air Force General Counsel with the consent of The Air Force Judge Advocate General, request to implement the policies and responsibilities set forth in this directive.

3.2.2. Within the scope of Air Force Mission Directive (AFMD) 32, *Air Force Legal Operations Agency (AFLOA) Mission Directive*, provide advice and support, including reach back support, to organizations Air Force-wide at and below the Headquarters Air Force-level, to ensure Air Force activities and officials comply with all applicable laws and regulations.

HEATHER WILSON  
Secretary of the Air Force

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

- 10 U.S.C. § 939, *Redress of Injuries to Property*
- 10 U.S.C. § 1044, *Legal Assistance*
- 10 U.S.C. § 1044a, *Authority to Act as Notary*
- 10 U.S.C. §§ 1044b, *Military Powers Of Attorney: requirement for recognition by States*
- 10 U.S.C. § 1044c, *Advance Medical Directives of Members and Dependents: requirement for recognition by States*
- 10 U.S.C. § 1044d, *Military Testamentary Instruments: requirement for recognition by States*
- 10 U.S.C. § 1044e, *Special Victims' Counsel for Victims of Sex-Related Offenses*
- 10 U.S.C. § 1095, *Coordination of Benefits Program*
- 10 U.S.C. § 1565b(a)(1)(A), *Victims of Sexual Assault: access to legal assistance and services of sexual assault response coordinators and sexual assault victim advocates*
- 10 U.S.C. § 2733, *Military Claims Act*
- 10 U.S.C. § 2734, *Foreign Claims Act*
- 10 U.S.C. §§ 2734a, 2734b, *International Agreement Claims Act*
- 10 U.S.C. § 2737, *Use of Government Property Claims Act*
- 10 U.S.C. § 2738, *Property Loss: reimbursement for certain losses of household effects caused by hostile action*
- 10 U.S.C. § 8019, *General Counsel*
- 10 U.S.C. § 8037, *Judge Advocate General, Deputy Judge Advocate General: appointment; duties*
- 10 U.S.C. §§ 9801-9804, *Air Force Admiralty Claims Act*
- 28 U.S.C. § 2672, *Administrative Adjustment of Claims*
- 31 U.S.C. §§ 3701, 3721, *Military Personnel and Civilian Employee's Claims Act*
- 31 U.S.C. §§ 3711-3719, *Federal Claims Collection Act*
- 32 U.S.C. § 715(d), *National Guard Claims Act*
- 42 U.S.C. §§ 2651-2653, *Federal Medical Care Recovery Act*
- 46 U.S.C. 30101, *Extension of Jurisdiction to Cases of Damage or Injury on Land*
- Public Law 104-320, *Administrative Dispute Resolution Act of 1996*
- 28 C.F.R. § 43.3, *Recovery of Cost of Hospital and Medical Care and Treatment furnished by the United States*

DoD Directive (DoDD)1340.20, *Settling Personnel and General Claims and Processing Advance Decision Requests*, 31 May 2007.

DoDD1350.4, *Legal Assistance Matters*, 1 December 2003.

DoDD 5405.2, *Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses*, 21 November 2003.

DoDD 5505.5, *Implementation of the Program Fraud Civil Remedies Act*, 30 August 1988.

DoDD 5515.3, *Settlement of Claims Under Sections 2733, 2734, 2734a and 2734b of Title 10 United States Code*, 31 October 2006.

DoDD 5515.10, *Settlement and Payment of Claims Under 31 U.S.C. 3701 and 3721, "The Military Personnel and Civilian Employees' Claims Act of 1964,"* 31 October 2006.

DoDD 6000.6, *Defense of Certain Medical Malpractice Claims Against Department of Defense Healthcare Providers*, 31 October 2006.

DoD Instruction (DoDI) 1340.21, *Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests*, 12 May 2004.

DoDI 1342.19, *Family Care Plans*, 7 May 2010.

DoDI 5030.7, *Coordination of Significant Litigation and Other Matters Involving the Department of Justice*, 22 August 1988.

DoDI 5145.05, *Alternative Dispute Resolution (ADR) and Conflict Management*, 27 May 2016.

DoDI 5515.08, *Assignment of Claims Responsibility*, 30 August 2016.

DoDI 6055.07, *Mishap Notification, Investigation, Recording, and Record Keeping*, 6 June 2011.

DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, 12 May 2014.

Office of the Secretary of Defense Memorandum, *Delegation of Settlement Authority Under the Federal Tort Claims Act*, 10 March 2009

AFPD 51-2, *Military Justice*, 4 November 2011.

AFPD 51-11, *Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters*, 8 September 2016.

AFPD 51-12, *Alternative Dispute Resolution*, 5 March 2010.

HAF Mission Directive 1-14, *General Counsel and The Judge Advocate General*

AFMD 32, *Air Force Legal Operations Agency (AFLOA) Mission Directive*

### ***Prescribed Forms***

None

### ***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*



*Abbreviations and Acronyms*

**AFPD**—Air Force Policy Directive

**C.F.R.**—Code of Federal Regulations

**DoD**—Department of Defense

**DoDD**—Department of Defense Directive

**DoDI**—Department of Defense Instruction

**U.S.C.**—United States Code