

ADMINISTRATIVE AND CIVIL LAW DEPARTMENT



CLIENT SERVICES DESKBOOK 2018

The Judge Advocate General's School
United States Army

CLIENT SERVICES DESKBOOK

2018

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CHAPTER A
THE ARMY LEGAL ASSISTANCE PROGRAM

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THE ARMY LEGAL ASSISTANCE PROGRAM

I. REFERENCES

- A. Army Regulation 27-3, The Army Legal Assistance Program (Rapid Action Review, 13 September 2011; 21 February 1996).
- B. Title 10, United States Code, Sections 1044, 1054, and 3013g.

II. ARMY LEGAL ASSISTANCE PROGRAM (ALAP) (AR 27-3)

- A. Purpose.
 - 1. Prescribes policies, responsibilities, and procedures for the Army Legal Assistance Program. Army Regulation 27-3 implements:
 - a) 10 U.S.C. § 1044. Authority to provide legal assistance to active and retired servicemembers and their dependents.
 - b) 10 U.S.C. § 3013g. Authority to provide legal assistance to other eligible clients.
 - 2. AR 27-3 does not create any right or benefit, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any other person. (AR 27-3, Paragraph 1-1.a.).
- B. Overview.
 - 1. Mission. The mission of ALAP is to assist those eligible for legal assistance with their personal legal affairs in a timely and professional manner by:
 - a) Meeting their needs for help and information on legal matters, and
 - b) Resolving their personal legal problems whenever possible.
 - 2. ALAP directly supports the military mission. Legal services must be continuous during both peace and war, and must provide more than just referral assistance. The ALAP is a commander's program that is based on the military needs below.

- a) Readiness.
- b) Morale.
- c) Discipline.
- d) Quality Force.

C. Responsibilities.

- 1. Commanders are responsible for providing ALAP services on installations (resources permitting), to include office space, facilities, resources, and CLE funding for attorneys.
- 2. Staff Judge Advocates (SJAs), or other supervising attorneys, are responsible for the operation of ALAP, to include determining the scope of assistance provided.
- 3. The Chief, Legal Assistance Policy Division, Office of the Judge Advocate General (OTJAG), is responsible for promulgating legal assistance policies and procedures.
- 4. The Chief, Legal Assistance Policy Division, OTJAG, is given the following authority:
 - a) Limited authority to grant exceptions on a case-by-case basis to the provisions of AR 27-3 that govern who is authorized to provide and receive legal assistance.
 - b) Authority to grant exceptions as to the nature of the legal assistance that may be provided.
 - c) Sole authority for authorizing Reserve Component (RC) judge advocates to earn retirement points for legal assistance work performed when not on active duty.
 - d) Authority as the supervising attorney for RC judge advocates not assigned to a troop program unit (TPU) or the Army National Guard (ARNG) "when they are performing legal assistance work for retirement points."

D. Scope.

- 1. The scope of the ALAP is defined in the following terms:

- a) Case types, which are defined in terms of the subject matter of a client's legal issue.
 - b) Services, which are defined in terms of the actions required for the attorney to assist the client.
 - c) Eligible clients, which are defined by reference to the client's relationship to the Army.
2. Authority to limit the scope of the ALAP. Within each of the categories above (case types, services, and eligible clients) the regulation has both mandatory and optional provisions. Commanders and SJAs have limited authority to narrow the scope of the legal assistance program by determining that certain case types, services, or clients will not be handled by legal assistance attorneys assigned within their command.
- a) Limiting case types.
 - (1) A commander of an active Army legal office may limit legal assistance to those case types that are required under AR 27-3 when space, facilities, or legal or supporting staff are unavailable. (Paragraph 2-6.a.(1)). See Appendix C for a listing of mandatory and optional case types.
 - (2) A supervising attorney may deny legal assistance for optional case types to an eligible client when available resources, personnel, or expertise are insufficient to provide the legal assistance needed. (Paragraph 3-5.c.).
 - (3) A commander of an RC-Army legal office may limit legal services (except those required to be provided) to certain types of legal assistance cases.
 - b) Limiting services.
 - (1) A commander of an active Army legal office may limit legal assistance to those services that are required under AR 27-3 when space, facilities, or legal or supporting staff are unavailable. (Paragraph 2-6.a.(1)).

- (2) A supervising attorney may deny optional services to an eligible client when available resources, personnel or expertise are insufficient to provide the legal assistance needed. (Paragraph 3-5.c.(2)).
 - (3) In addition to limited types of cases, a commander of an RC-Army legal office may limit legal services (except those required to be provided) to certain types of legal assistance services.
- c) Limiting client eligibility.
- (1) A commander of an active Army legal office may deny legal assistance to one or more of the following categories of eligible persons: (1) RC members on active duty for less than 30 days, (2) Active Component (AC) and RC members receiving retired or disability pay, (3) surviving family members of U.S. citizens and nationals who are civilians employees or DoD and accompanying the Armed Forces outside the U.S., (4) civilian employees serving with U.S. Armed Forces in a foreign country or the legal representative of such a deceased civilian employee, (5) fiduciaries, and (6) members of other military forces serving in the United States.
 - (2) A commander of an RC-Army legal office may limit legal services to any of the categories of eligible persons listed under paragraph 2-5.a. of AR 27-3.

3. SJA Authority.

- a) In addition to the limitations authorized above, an SJA may authorize variations in the scope of the legal assistance program for up to 30 days when necessary to ensure effective legal assistance services if not inconsistent with requirements set by statute, prescribed by executive order or required by higher authority.
- b) Before exercising this authority, the SJA should determine that available resources, personnel, and expertise are insufficient to provide the assistance needed. (Paragraph 3-5.c.(2)).

- c) Staff Judge Advocates authorizing temporary variations must provide notice to the Legal Assistance Division, OTJAG.

III. PERSONS AUTHORIZED TO PROVIDE LEGAL ASSISTANCE

- A. Active Duty (AD) judge advocates. Active duty judge advocates may provide legal assistance if not inconsistent with their assigned duties.
- B. Judge advocates on active duty regardless of component.
- C. Army National Guard (ARNG) judge advocates assigned to judge advocate positions, even while in non-duty status when providing legal assistance pursuant to AR 27-3.
- D. US Army Reserve (USAR) judge advocates assigned to judge advocate positions in troop program units (TPUs), even while in non-duty status when providing legal assistance pursuant to AR 27-3.
- E. Other RC judge advocates not assigned to the ARNG or USAR TPU who are authorized to provide legal assistance by the Chief, Army Legal Assistance Division.
- F. Department of Army (DA) civilian attorneys.
- G. Foreign licensed attorneys employed by DA who work under direction of a supervising attorney while providing legal assistance on foreign law matters.
- H. Reserve Component attorneys while not in IDT, AT, or ADT status may earn retirement points for certain pre-approved legal assistance work. (See AR 27-3, Paragraph 2-2.b.).

IV. PERSONS ELIGIBLE TO RECEIVE LEGAL ASSISTANCE

- A. Active component servicemembers and their dependents.
- B. Reserve Component servicemembers who:
 - 1. Are serving on active duty pursuant to orders for more than 29 days (and their dependents), or
 - 2. Are serving on active duty pursuant to orders for 29 days or less (and their dependents). Supervising attorneys may limit legal assistance to emergencies or certain categories of cases based on resources.

3. Are undergoing Premobilization Legal Preparation (PLP) (and their dependents). Supervising attorneys may limit legal assistance to emergencies or certain categories of cases based on resources.
- C. Reserve Component members, other than those above, on military administrative matters, personal legal problems that may adversely affect readiness or that arose or were aggravated by military service, legal assistance will generally be limited to that provided by RC judge advocates to RC members.
 - D. Active and reserve servicemembers receiving retirement or disability pay (and their families).
 - E. Surviving family members of active, reserve, and retired servicemembers who would have been eligible for legal assistance if the service or retired member were alive.
 - F. DoD civilian employees (includes DA employees).
 1. Against whom pecuniary liability has been recommended under AR 735-5 with regard to presenting matters in rebuttal to, or an appeal from, such charges, and/or
 2. Serving with the military in a foreign country (and their accompanying family members).
 3. Who are employed overseas by the U.S. government (services are limited).
 4. Who are employed in the continental United States, classified as "mission essential" or "emergency-essential", and are being deployed (services are limited).
 5. Who are neither "mission-essential" or "emergency essential," but who work in the U.S., its possessions, or territories, and who are notified that they are to deploy to a combat zone or on a contingency operations (services are limited).
 - G. DoD civilian contract employees accompanying U.S. Armed Forces outside the United States when DoD is contractually obligated to provide assistance.
 1. Eligibility must be verified by examining the DoD contract or by consulting with the government contracting officer.

2. Legal assistance provided pursuant to a DoD contract is limited to ministerial services, legal counseling, legal document preparation (limited to powers of attorney and advanced medical directives), and help on retaining a civilian lawyer.
- H. Primary next of kin (PNOK), executors, personal representatives, administrators, and estate representatives for matters relating to settling estates of:
1. Active or reserve servicemembers who die in a military duty status.
 2. U.S. citizens and nationals employed by DoD and serving with or accompanying US forces outside the United States at the time of death.
- I. Fiduciaries of:
1. Active or reserve servicemembers serving in combat zone.
 2. U.S. citizens and nationals employed by DoD and serving with or accompanying U.S. forces in a combat zone.
- J. Members of other military forces while serving in the United States (and their accompanying dependents).
- K. Prisoners confined at U.S. military facilities, even though discharged.

V. DENIAL OF LEGAL ASSISTANCE SERVICES

- A. Except for active duty servicemembers and reserve servicemembers on ADT for 30 days or longer, active component commanders may deny services to certain categories of clients listed in AR 27-3, Paragraph 2-6, based on the availability of space and facilities and the capabilities of the legal assistance staff. This includes sister-service personnel if their department does not routinely provide such services.
- B. Individual clients (for up to 1 year) due to abuse of legal assistance services, including, but not limited to:
1. Missing two or more appointments without good cause or prior notification.

2. Misconduct, dishonesty, or other unbecoming conduct during course of seeking, receiving, or using legal assistance.
3. Knowingly using legal assistance services for a purpose prohibited by law or regulation.
4. Supervising attorneys may request, through MACOM SJA, to limit or deny services beyond a year.

VI. TYPES OF LEGAL ASSISTANCE CASES

A. Family Law (AR 27-3, Paragraph 3-6.a.).

1. Cases which must be given assistance.
 - a) Marriage.
 - b) Annulment.
 - c) Paternity.
 - d) Child custody.
 - e) Financial nonsupport.
 - f) Legal separation.
 - g) Divorce.
2. Cases which may be given assistance depending on available resources and expertise.
 - a) Adoption.
 - b) Other family law cases.

B. Estate Planning (AR 27-3, Paragraph 3-6.b.).

1. Cases which must be given assistance.
 - a) Wills.

- b) Life insurance. In conjunction with estate planning the legal assistance attorney should discuss the SGLI beneficiary designation and advise on the effect of a "by law" designation. Army prohibits "by law" designation where insured is a Soldier.
 - c) Testamentary trusts for minors.
 - d) Guardianships.
 - e) Health care directives, including living wills, durable powers of attorney for health care, and anatomical gift designations.
 - 2. Other aspects of estate planning may be given assistance depending on available resources and expertise.
- C. Real Property (AR 27-3, Paragraph 3-6.c.).
 - 1. Cases which must be given assistance: landlord-tenant.
 - 2. Cases which may be given assistance depending on available resources and expertise.
 - a) Matters relating to the purchase, sale, and rental of a client's principal residence. (But see AR 27-3, Paragraph 3-8.a.(2) – may not represent a client in private business activities).
 - b) Assistance may include drafting documents for above.
- D. Personal Property (AR 27-3 Paragraph 3-6.d.).
 - 1. Cases which must be given assistance: Purchases of personal property, to include contracts, mortgages, security agreements, warranties, cancellations, and other consumer affairs matters.
 - 2. Cases which may be given assistance depending on available resources and expertise: selling or leasing personal property (But see, AR 27-3, Paragraph 3-8.a.(2), on prohibition against helping clients on private business activities).
- E. Economic (AR 27-3, Paragraph 3-6.e.).

1. Cases which must be given assistance.
 - a) Debtors in disputes over lending agreements.
 - b) Debtors requiring help on bankruptcy, garnishment orders, involuntary allotment applications for judgment indebtedness debt, banking, credit card, property insurance problems, and non-government claims (including Article 139 claims).
 - c) Assertion of rights under the Servicemembers Civil Relief Act (SCRA), including requests for interest rate reductions.
 - d) Veterans' reemployment rights (see cautionary note and limitations in AR 27-3, Paragraph 3-6.e.(2)).
2. Cases which may be given assistance depending on available resources and expertise: Creditors in disputes over lending agreements.

F. Civilian Administrative (AR 27-3, Paragraph 3-6.f.).

1. Cases which must be given assistance: notarizations (AR 27-55).
2. Cases which may be given assistance depending on available resources and expertise.
 - a) Name changes.
 - b) Immigration.
 - c) Naturalization.
 - d) Welfare assistance.
 - e) Other cases.

G. Military Administrative (AR 27-3, Paragraph 3-6.g.).

1. Cases which must be given assistance.
 - a) Those in which assistance is required by law or regulation.

- b) Line of Duty (LOD) investigations, financial liability investigations, OER and NCOER appeals, relief for cause reviews, memoranda of reprimand, Art. 138 complaints, Inspector General (IG) investigations, hardship discharges, compassionate reassignments, officer unqualified resignations, correction of military records.
 - 2. Cases which may be given assistance depending on available resources and expertise: Bars to reenlistment, waivers to allow reenlistment, security clearance revocations, suspension of favorable personnel actions, expungement of military records, physical evaluation boards, medical evaluation boards, flying evaluation boards, quality accreditation for doctors, qualitative management program, driving privileges.
- H. Torts (AR 27-3, Paragraph 3-6.h.).
 - 1. Cases which must be given assistance: those invoking whatever protections may be offered under the SCRA on matters related to the prosecution or defense of civilian lawsuits based on alleged tortious conduct. Any further assistance on tort cases is limited to counseling and assistance in retaining civilian counsel.
 - 2. Be alert to cases where client faces civil lawsuit as result of actions taken within the scope of his/her official duties. Refer to claims JA or U.S. Army Litigation Center.
- I. Taxes (AR 27-3, Paragraph 3-6.i.)
 - 1. Cases which must be given assistance.
 - a) Real and personal property tax issues.
 - b) Income tax return preparation.
 - 2. Cases which may be given assistance depending on available resources and expertise.
 - a) Electronic filing.
 - b) Estate, inheritance, and gift taxes.
 - c) Appealing tax rulings or findings.

3. Tax assistance on private business activities is outside the scope of the legal assistance program, with the exception of income for family child care providers.

J. Civilian Criminal Matters (AR 27-3, Paragraph 3-6.j.) .

1. Assistance may be provided based on expertise and resources.
2. In-court representation is prohibited, except for cases pending before U.S. Magistrate on a military installation.

*Note: In-court representation before a United States Magistrate should be the exception, rather than the norm, and supervising attorneys should carefully review requests for in-court representation on a case-by-case basis.

K. Limitations on Services (AR 27-3, Paragraph 3-8).

1. Unless authorized in a particular case by the Chief, Legal Assistance Division, OTJAG, the following are not considered or counted as legal assistance cases and no legal advice or assistance, other than referral to civilian lawyers or providing lists of lawyers, may be provided:
 - a) Military justice matters.
 - b) Private business activities.
 - c) Civil litigation against the United States.
 - d) Employment matters, except those involving enforcement of USERRA.
2. For the case types below, legal assistance attorneys may provide limited services.
 - a) Claims or civil lawsuits against the United States. Legal assistance is limited to general guidance on administrative or legal procedures and filing requirements. Attorneys providing legal assistance will neither advise, nor appear as counsel before any tribunal for a client concerning a claim against the United States or a civil lawsuit in which the United States has an interest.

- b) Contingent legal fee cases. Legal assistance is limited to general advice on these lawsuits, court procedures, filing requirements, and the potential merits of these cases.
- c) Prepaid legal representation cases. Legal assistance is limited to general advice on these lawsuits, court procedures, filing requirements, the potential merits of these cases, and on the client's need to contact the insurance company or other organization that will pursue or defend a potential lawsuit.
- d) Standards of conduct issues. Legal assistance attorneys are not designated ethics attorneys in relation to a legal assistance client and may not, therefore, provide an agency position (ethics opinion) regarding application of the Joint Ethics Regulation.
- e) Victim/Witness Assistance Program. A legal assistance attorney who is also assigned as a victim witness liaison may not serve both functions for the same person. Services provided by a victim/witness liaison fall outside the legal assistance program.

VII. PROFESSIONAL LIABILITY (AR 27-3, PARAGRAPH 4-3)

- A. Legal Assistance attorneys acting pursuant to AR 27-3 are performing an official function of the U.S. Army.
 - 1. 10 U.S.C. § 1054 – the exclusive remedy for injury or loss of property caused by negligent or wrongful act or omission of any attorney, paralegal, or other member of the Army legal office is a civil lawsuit against the United States under the Federal Tort Claims Act (28 U.S.C. § 2679) or the Military Claims Act (10 U.S.C. § 2733) depending on the situs of the act giving rise to the claim.
 - 2. If the U.S. Attorney General certifies that attorney or other person was acting within the scope of their office or employment, the United States will be substituted as the defendant.
- B. For purposes of professional liability, unit tax advisors and other personnel performing tax preparation duties, whether assigned or voluntary, under an installation tax assistance program are considered to be employees for purposes of the Federal Tort Claims Act.

VIII. REPORTING REQUIREMENTS (AR 27-3, CHAPTER 5)

- A. Active component Army legal offices must file an annual Legal Assistance Report with the Legal Assistance Division, OTJAG, by 1 February each year, and will reflect all legal assistance provided during the preceding calendar year.

- B. Active component Army legal offices must file an annual after action report on tax assistance (Income Tax Report) with the Legal Assistance Division, OTJAG, by 1 June for CONUS installations and 1 July for OCONUS installations.

APPENDIX A: CHECKLIST FOR NEW LEGAL ASSISTANCE ATTORNEYS

This checklist should assist the new legal assistance attorney (LAA) in becoming familiar with legal assistance office procedures and services.

1. **Read All Pertinent Publications.** Carefully read AR 27-3, Legal Assistance; AR 27-26, Rules of Professional Conduct for Lawyers; AR 25-50, Preparing Correspondence; AR 608-99, Family Support, Child Custody, & Paternity, and the LAAWS Legal Assistance Module Deskbook. Understanding the contents of these publications is crucial to the successful discharge of legal assistance duties.
2. **Read the Legal Assistance Office (LAO) SOP.** The standard operating procedure explains most basic information that the new LAA needs to know right away about the office (e.g., organization, hours, duties, and resources).
3. **Consult the LAO NCOIC and/or Civilian Paralegal.** The NCOIC should brief the new LAA on enlisted personnel and responsibilities. The NCOIC also can provide samples of standard correspondence and forms used in the office. Those LAOs with civilian paralegals and attorneys generally have an excellent institutional memory and can quicken the new LAA's transition. Usually, civilians will have been in the office for several years and will be familiar with common issues and problems, as well as many practical solutions and permissible shortcuts.
4. **Legal Assistance Office Reading Files.** Obtain several weeks or months of recent LAO reading files that have had personal identifying information (e.g., name, social security number) redacted. By reviewing these files, LAAs can identify the matters frequently handled by the LAO and can become familiar with appropriate formats, phraseology, and the correspondence errors the office strives to avoid.
5. **Observe Client Interviews.** Any good training program capitalizes on the experience of others. Seasoned LAAs should encourage the new LAA to observe several client interviews. Following the interview, the experienced LAA should answer any questions the new LAA may have on the interview or the legal advice rendered. After several interviews, the new LAA should conduct client interviews and consultations in the presence of the more experienced LAA. Thereafter, the two LAAs should discuss the interview process for the benefit of the new LAA.
6. **Question Colleagues.** Remembering the limits of confidentiality, the new LAA should nevertheless question colleagues, including but not limited to your Chief of Legal Assistance, regarding any matter about which the new LAA has a question. Asking questions is one of the best ways to narrow research and focus on the needs of specific clients.

CHAPTER D

NOTARIAL POWERS AND POWERS OF ATTORNEY

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I. REFERENCES

A. 10 U.S.C. §§ 936 and 1044.

1. FY 2017 National Defense Authorization Act Sec. 523 (Notary Updates)

B. AR 27-55, Notarial Services (17 November 2003).

C. AR 600-20, Command Policy (6 November 2014).

II. AUTHORITY OF U.S. MILITARY PERSONNEL TO ADMINISTER OATHS AND PERFORM NOTARIAL ACTS

A. 10 U.S.C. § 1044a grants named individuals the general powers of a notary public and of a consul of the United States. SJAs may appoint in writing non-attorney United States citizen employees located outside the United States to perform as military notaries. 10 U.S.C. § 1044a(b), AR 27-55, paras. 1-7b and 2-2a(5).

B. 10 U.S.C. § 1044b is intended to increase the acceptability of general and special powers of attorney prepared by legal assistance attorneys for their clients.

C. 10 U.S.C. § 1044c is intended to increase the acceptability of advanced medical directives prepared by legal assistance attorneys for their clients.

D. 10 U.S.C. § 1044d is intended to preempt state law (including Puerto Rico law) testamentary requirements by forcing states to recognize Military Testamentary Instruments executed in accordance with 10 U.S.C. 1044.

E. 10 U.S.C. § 936 grants named individuals power to administer oaths necessary for military administration, including military justice and those necessary in the performance of their duties.

III. GENERAL OVERVIEW

A. Authority to administer oaths and perform notarial acts is based on Federal, State, and foreign law.

B. The authority granted by federal statutes (10 U.S.C. § 1044a and § 936) to administer oaths and perform notarial acts is separate and apart from, and in addition to, any authority provided by state law.

C. Oaths administered pursuant to 10 U.S.C. § 936 are legally effective for the purposes for which the oaths are administered (*e.g.*, military administration).

D. Notarial acts performed under 10 U.S.C. § 1044a are legally effective as notarial acts for all purposes in all states (pursuant to the Supremacy Clause). In the past, not all states agreed; that is why Congress passed § 1044b in 1994.

10 U.S.C. § 1044b provides:

- (a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW -- A military power of attorney
 - (1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and
 - (2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.
- (b) MILITARY POWER OF ATTORNEY -- For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal Law.
- (c) STATEMENT TO BE INCLUDED -
 - (1) Each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).
 - (2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.
- (d) STATE DEFINED -- In this section, the term 'STATE' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

IAW AR 27-3, paragraph 3-7e, the following is the prescribed PREAMBLE FOR MILITARY POWERS OF ATTORNEY (insert at beginning of each general and special power of attorney in capital letters):

This is a MILITARY POWER OF ATTORNEY prepared pursuant to Title 10, United States Code, Section 1044b and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney under the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

E. Advanced Medical Directives. 10 U.S.C. § 1044c is identical to the military power of attorney provision, except it deals with advanced medical directives. 10 U.S.C. § 1044c

requires similar language on all advanced medical directives as is on military powers of attorney.

STATEMENT TO BE INCLUDED: Substitute the words "Title 10, United States Code, Section 1044c" for "Title 10, United States Code, Section 1044b" and the words "advanced medical directive" for "power of attorney" in the above language to make this protection effective.

F. Military Testamentary Instruments. 10 U.S.C. § 1044d(e) requires states to recognize a "military will," provided it includes the following language: "A military testamentary instrument (1) is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State; and (2) has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate."

IV. NOTARIAL ACTS

A. Under the authority of 10 U.S.C. § 1044a and AR 27-55, Paragraph 2-2a, the following persons (including RC members whether or not in a duty status) have the general powers of notary public and of a consul of the United States in the performance of all notarial services:

1. All judge advocates, and warrant officers who possess a primary MOSC of 270A. Note: Reserve component judge advocates and warrant officers may perform notarial services even in a non-duty status. However, enlisted Reserve component notaries cannot perform notary services in a non-duty status without the authorization of the Reserve component SJA.
2. Active duty and Reserve component NCOs (including corporals) and legal specialists (authorized by their supervising SJA pursuant to Paragraph 1-7a) who possess a primary MOSC of 27D and serve under the immediate supervision of a judge advocate or DA civilian attorney employee. AR 27-55 defines "immediate supervision" as "under the direct guidance or management of another." While "immediate supervision" does require that the supervisor and person supervised be co-located (*e.g.*, within the OSJA or at an SRP site), the term "does not require a supervisor to be present at all times" when the individual is performing assigned duties.
3. SJAs may appoint, in writing, Soldiers in the grades of E-3 and E-4 with a 27D MOSC to perform duties as military notaries. Soldiers appointed must:
 - (1) Possess appropriate judgment and maturity.
 - (2) Serve under the immediate supervision of a judge advocate or DA civilian attorney.
 - (3) Receive training in accordance with AR 27-55, Paragraph 1-8.
4. NCOs in the grade of E6 and higher with primary MOSC of 27D assigned as legal NCO to a brigade or higher unit, even if not under the immediate supervision of an attorney.

5. All DA civilian attorneys serving as legal assistance officers.
6. Those DA civilian employees appointed by their supervising SJA under AR 27-55, Paragraph 1-7b, serving under the immediate supervision of a judge advocate or DA civilian attorney. SJAs may appoint, in writing, non-attorney United States citizen employees located outside the United States to perform as military notaries. Those appointed must:

- (1) Possess appropriate judgment and maturity;
- (2) Serve under the immediate supervision of a judge advocate or DA civilian attorney;
- (3) Receive training in accordance with AR 27-55, Paragraph 1-8.

7. All Adjutants.

8. All civilian paralegals serving at military legal assistance offices, supervised by a military legal assistance counsel.

B. Under the authority of 10 U.S.C. § 1044a and AR 27-55, Paragraph 2-2b, the following individuals may receive notarial services:

1. Members of any of the U.S. Armed Forces;
2. Other persons eligible for legal assistance under AR 27-3 or regulations of the Department of Defense;
3. All individuals serving with, employed by, or accompanying the Armed Forces outside the United States (IAW AR 27-3, Paragraph 2-5a(7), civilian contractors may receive notarial services only “when DOD is contractually obligated to provide this assistance to such personnel as part of their logistical support”);
4. All other individuals subject to the UCMJ outside the U.S.; and
5. DOD civilian employees on matters relating to their official duties.

C. All Military notaries will maintain a notarial log. AR 27-55, Paragraph 3-5. Witnesses are not required to put their social security number on documents. AR 27-55, Figure 4-1.

D. In accordance with 10 U.S.C. § 973, paragraph 2-3 of AR 27-55 prohibits active duty commissioned and warrant officers from obtaining or retaining commissions as civil notaries. Reserve commissioned and warrant officers serving on active duty under a call to duty in excess of 270 days will not obtain or retain commissions as civil notaries. However, this prohibition does not affect the authority of an officer, without a civil notary commission, to actually serve as a civil notary under state law; the laws of most states authorize certain U.S. Armed Forces members to provide notarial services within the military without obtaining commissions or appointments as civil notaries.

V. OATHS

A. IAW AR 27-55, oaths and affirmations are pledges in which the individual making the oath swears or affirms the truth of statements made by them. Oaths and affirmations are used when taking affidavits or sworn statements and documents.

B. Under 10 U.S.C. § 936(a) and AR 27-55, Paragraph 3-1, the following U.S. Armed Forces members on active duty, reservists serving on active duty or inactive duty for training, and Army National Guard members when serving on active duty under Title 10 U.S.C., may administer oaths for all purposes of military administration, including, but not limited to, military justice, legal assistance, and claims:

1. All individuals granted authority as military notaries under AR 27-55, Paragraph 2-2a.
2. Officers appointed as summary courts-martial.
3. Individuals empowered to authorize searches pursuant to Military Rule of Evidence 315(d) for any purpose relating to search authorizations.

C. The following Army personnel are authorized to administer oaths to any individual when the oath is administered in conjunction with duties related to these positions:

1. President, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.
2. President and counsel for any court of inquiry.
3. All officers designated to take depositions.
4. Any individual conducting an authorized investigation.
5. All recruiting officers.
6. Civilian personnel officers and their designated representatives.

D. Any active or Reserve commissioned officer may administer:

1. Oath of enlistment (10 U.S.C. § 502).
2. Any other oath required by law in connection with enlistment or appointment of any person in the Armed Forces (10 U.S.C § 1031).

E. Procedures.

1. Oaths administered for military justice matters should be administered according to AR 27-10, chapter 10.
2. All other oaths should be administered as described in AR 27-55, paragraph 4-4.

VI. NOTARIAL CERTIFICATIONS

A. AR 27-55, Paragraph 4-2a. The signature of the officer taking acknowledgments or sworn instruments, together with the title of his or her office, is *prima facie* evidence of the officer's authority, and an impressed or raised seal is not required.

B. 10 U.S.C. § 1044a. The signature of any such person acting as notary, together with the title of that person's offices, is *prima facie* evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act. A seal is not required by the statute.

C. Notarization vs. Certification.

1. Notarization: The notary signature and seal (if required) just indicate that the person purporting to sign the document physically appeared before the notary, produced identification or was known personally by the notary, and signed the document in the presence of the notary.

2. Certification. Signifies that the document is an accurate and complete copy of the original document. Most public records and documents, like marriage licenses, birth certificates, divorce decrees, and titles, are recorded in public offices and those offices certify copies.

3. AR 27-55, paragraph 4-5, prohibits notaries from certifying copies of public documents or records except in the following circumstances:

a) Military administration, including finance or personnel administration.

b) Federal administration where allowed by law or regulation. For example, the Veterans Administration permits designated judge advocates to authenticate documents for VA administration.

c) The military notary must indicate the purpose for which public records are authenticated (*e.g.*, "Authenticated Copy for DFAS"). See figure 4-2, AR 27-55.

4. Typical public record documents that clients often wish Legal Assistance Offices to certify involve birth certificates and car titles. Certifying these records would violate AR 27-55.

VII. POWERS OF ATTORNEY (POAs)

A. Definition. AR 27-3.

1. A written instrument executed by one person, the principal,
2. Designating another individual, the agent or "attorney-in-fact,"
3. To perform specified acts on the principal's behalf.

B. Purpose.

1. To notify third parties of the agent's authority.
2. Powers of attorney are usually designated as either "special" or "general" depending on the specified act(s) or kind(s) of act(s) for which authority to act on behalf of the principal has been given.

C. Overview of Dangers.

1. Execute only when there is a reasonable or immediate need for the instrument.
2. No law requires third parties to recognize the authority of the agent to act on the principal's behalf as set forth in the POA. However, the majority of persons, businesses, and institutions will do so.
3. Personnel should be fully advised of the inherent dangers involved in granting to another the authority to act in their stead.

D. Special Powers of Attorney.

1. Special POAs give limited authority for a limited purpose.
2. To reduce the risk, a special POA should be used whenever it can fulfill the needs of the client, because the authority given is limited to the specific act or acts described in the instrument.

E. General Powers of Attorney.

1. General POAs give broad authority for a broad purpose.
2. General POAs can be dangerous instruments in the hands of persons inexperienced in business matters, persons of unstable temperament, or anyone in whom the grantor does not have the utmost trust and confidence.
3. The possibility of strained marital relations should be considered.
4. General POAs will not be notarized until an attorney has counseled the prospective grantor on the nature and effect of a General POA. AR 27-55, Paragraph 3-3a(11).
5. Under no circumstances should an unrestricted general POA be used or produced unless it contains a specific termination date or other provisions for revocation.

F. Termination or Revocation.

1. If the POA contains no expiration date, it continues in effect until statutory provisions for termination, operation of law (i.e., death of the principal or agent), or an act of the principal or agent evidencing intent to revoke the power.

2. Insert a termination clause in all POAs. For example, the principal may want the power to expire on or about the date of his or her expected return from an overseas tour of duty. This prevents the POA from being indefinite in duration and allows it to terminate on a specific date, unless sooner revoked.
3. If no termination date is inserted in a POA, or if the principal wishes to revoke the power prior to its stated termination date, notice of the revocation must be given to the agent.
 - a) Such notice preferably should be in writing, although it may be made orally, and
 - b) The principal should request the agent to acknowledge receipt of such notice.
4. Ordinarily, the revocation takes effect as soon as it is communicated to the agent.
5. As to third persons that have dealt with the agent, the revocation takes effect when they receive notice of the revocation.
6. Where a statute provides for the recording and revocation of POAs, third parties that do not have notice of an unrecorded revocation may be justified in relying on the continuance of the authority as recorded.
7. Additionally, in some states, the POA terminates upon the incapacity of the grantor, notwithstanding that the POA has no termination date or the termination date is subsequent to the date upon which the incapacity occurs.

G. Durable Powers of Attorney.

1. A durable POA is a special agency relationship that remains valid and operative despite the incapacity of the grantor.
2. Under common law, a POA becomes inoperative upon the disability of the principal. State statutory law has remedied this by giving powers to agents to act even during the incapacity of the principal.
3. Guardianship and conservatorship are a separate legal status that can conflict with the durable POA. Each state's separate rules control as to the relationship between these powers.
4. The lack of federal law addressing durable POAs is a continuing problem.
 - a) Since there is no federal law on the subject, state law controls and can be in the form of either state common law or state statutes.
 - b) Some statutes require the word "durable" to create a power that is capable of surviving the disability or incapacity of the principal.

c) The problem of having several different states involved is a conflict of laws question. The Restatement of the Conflict of Laws 2d § 291 states,

“The rights and duties of a principal and agent toward each other are determined by the local law of the state, which, with respect to the particular issue, has the most significant relationship to the parties in the transaction”

d) Another possible conflicts problem is the validity of the agent's acts. According to The Restatement on Conflict of Laws 2d § 292, the validity of the agent's acts is determined by the law of the state that has the most significant relationship to the parties and the transaction. In any case, a choice of laws clause should be included in the durable power of attorney.

H. Using Powers of Attorney for Child Care – Family Care Plans. AR 600-20, Paragraph 5-5.

1. Mission readiness and deployability needs especially affect Active Component (AC) and Reserve Component (RC) single parents and dual military couples with dependent family members.

2. AR 600-20, Paragraph 5-5, requires those Soldiers to implement a Family Care Plan to provide for the care of their family members when military duties prevent the Soldier from doing so.

a) 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.

(1) ARNG and RC Soldiers are subject to these policies and regulations and will implement plans during any periods of absence for Annual Training, regularly scheduled unit training assemblies, emergency mobilization and deployments, or other types of active duty.

(2) All married Soldiers who have dependent family members are encouraged, even if not required by the regulation, to complete and maintain a Family Care Plan.

b) Commanders are responsible for ensuring that affected Soldiers complete the Family Care Plan.

c) Affected Soldiers are considered nondeployable until a Family Care Plan is validated and approved.

d) The DA Form 5305 (Family Care Plan) is the means by which Soldiers provide for the care of their family members when military duties prevent the Soldier from doing so.

(1) DA Form 5305 (Family Care Plan) must include:

(a) Proof that guardians and escorts have been thoroughly briefed on the responsibilities they will assume for the sponsor/Soldier and on procedures for accessing military and civilian facilities and services on behalf of the dependent family members of the sponsor/Soldier.

(b) Attestation that the guardian and escort agree to provide care and have been provided all necessary legal authority and means to do so.

(c) Proof that the Soldier has obtained consent to the planned designation of guardianship from all parties with a legal interest in the custody or care of the child, or proof that reasonable efforts have been made in this regard.

(2) Proof of the foregoing will consist of (as a minimum) the following attachments to the DA Form 5305:

(a) DA Form 5841 (Power of Attorney), or equivalent delegation of legal control, which the legal assistance office prepares, the Soldier executes and has notarized, and the guardian/escort receives.

(b) DA Form 5840 (Certification of Acceptance as Guardian or Escort) which the guardian/escort completes, has notarized, and returns to the Soldier.

(c) DD Form 1172 (Application for Uniformed Service Identification Card—DEERS enrollment) which the Soldier executes for each dependent family member (AR 600-8-14 directs that ID cards will be issued for children under age 10 who reside with a single parent or dual military couple).

(d) DD Form 2558 (Authorization to start, stop, or change an allotment for Active Duty or Retired Personnel) or other proof of financial arrangements for the care of dependent family members.

(e) Letters of Instruction executed by the Soldier which contain additional pertinent information for escorts, or temporary or long-term guardians.

(f) DA Form 7666, if appropriate, as evidence of consent to the Family Care Plan from all parties with a legal interest in the custody of the minor child.

(3) DA Forms 5304, 5305, 5840 and 5841 will be locally reproduced.

VIII. HEALTH CARE POWERS OF ATTORNEY

A. Overview.

1. What They Are. A special type of durable POA, in which the grantor gives the agent the power to carry out the grantor's health care decisions in the event the grantor is incapable of making informed decisions.
2. Why They Are Useful. The grantor can provide the agent the authority to carry out all of the grantor's health care desires, in the event of the grantor's incapacity.
 - a. "Incapacity" in this sense refers to the grantor's inability to understand the nature, extent, and consequences of a proposed medical decision.
 - b. A determination of "incapacity" must be made by an attending physician (in writing), as well as a second physician or licensed clinical psychologist.
3. Compared with Living Wills.
 - a. Health Care POAs provide more flexibility than living wills.
 - b. Health Care POAs grant broad powers to the agent, who can make all health care decisions (unless otherwise specified). This includes matters concerning hospitalization, surgery, and care and treatment in a nursing home, for example. Clients can tailor Health Care POAs to apply to a variety of different medical situations.
4. State-Specific Provisions. Some states restrict the power of a health care representative in a Health Care POA.

B. Drafting Health Care Powers of Attorney.

1. DL Wills Program.
 - a. Agents: One; Acting Jointly; or Alternate.
 - b. Organ Donation.
2. Provisions. The drafting attorney and client must carefully review the POA to ensure the removal of objectionable provisions or the insertion, through word processing, of some desired provisions.

- C. Physical Location of Health Care POAs. Clients should ensure that their agent has a copy. Additionally, clients should ensure the inclusion of copies in their medical records.