

# Disposing of a Deceased Soldier's Personal Effects

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## Introduction

Federal statutes and Army regulations prescribe how commanders shall account for, and dispose of, the personal effects of soldiers who die on active duty. When commanders deviate from the rules and improvise, they can create problematic situations. A proactive judge advocate can prevent these problems by teaching commanders the rules before they face the crisis of a soldier's death.

This article summarizes the information that judge advocates must know to advise commanders accurately. First, the article explains the duties of the installation commander's representative. These duties include collection of personal effects, withdrawing certain types of effects, and delivery of the personal effects. Next, this article explains when a summary court-martial should be appointed, and explains the mandatory and discretionary duties of the summary court-martial. Finally, this article addresses some contentious issues that may arise when disposing of a deceased soldier's personal effects.

## Overview

A federal statute<sup>1</sup> imposes upon commanders the duty to collect and inventory personal effects of deceased soldiers, and to ship them at government expense to specific persons identified in the statute.<sup>2</sup> When necessary, commanders will appoint officers as summary courts-martial (SCMs) to complete these tasks. Commanders, SCMs, or other appointed individuals who dispose of a soldier's effects under the statute are not acting as executors or administrators of the soldier's estate. They do not transfer title or ownership of the effects to the persons who

receive them. Rather, they merely transfer custody of the property to facilitate distribution of the soldier's estate.<sup>3</sup>

The Army explains the command's obligations in two publications: *Army Regulation (AR) 638-2*<sup>4</sup> and *AR 600-8-1*.<sup>5</sup> Judge advocates should consider these sources when interpreting the federal statute. Where the Army regulations provide imprecise or inaccurate guidance, judge advocates should rely on the clear-cut provisions of the federal statute.

## The Commander's Duties

When a soldier dies while on active duty, the installation commander, or his designated representative, must collect and inventory the deceased's personal effects left on the installation. He must then withdraw certain items and arrange for delivery of the remaining effects to the appropriate "person eligible to receive effects" (PERE).<sup>6</sup> The deceased soldier's unit commander will typically act as the installation commander's representative, absent instructions to the contrary.<sup>7</sup> The unit commander may delegate the task to a first sergeant, platoon leader, or platoon sergeant, but will bear overall responsibility for seeing that the delegate completes the task.

## Collection

As soon as possible after the soldier dies, the installation commander's representative must collect and secure the deceased's personal effects.<sup>8</sup> Personal effects are essentially any personal property that the deceased owned when he died, including cash, negotiable instruments, jewelry, clothing, ste-

1. 10 U.S.C.A. § 4712 (West 1998).

2. *Id.* § 4712(a)-(b), (d). Command authority to collect and deliver personal effects extends only to "effects of the deceased that are . . . in camp or quarters" after the soldier dies. *Id.* § 4712(a)-(b).

3. U.S. DEP'T OF ARMY, REG. 638-2, DECEASED PERSONNEL: CARE AND DISPOSITION OF REMAINS AND DISPOSITION OF PERSONAL EFFECTS, paras. 17-7, 17-8 (9 Feb. 1996) [hereinafter AR 638-2].

4. *See id.* chs. 17-18.

5. U.S. DEP'T OF ARMY, REG. 600-8-1, PERSONAL AFFAIRS: ARMY CASUALTY OPERATIONS/ASSISTANCE/INSURANCE, app. S (20 Oct. 1994) [hereinafter AR 600-8-1]. Judge advocates should take care to use the current issue of *AR 600-8-1*, and not the identically numbered regulation that the Army published in 1986. *See* U.S. DEP'T OF ARMY, REG. 600-8-1, PERSONNEL—GENERAL: ARMY CASUALTY AND MEMORIAL AFFAIRS AND LINE OF DUTY INVESTIGATIONS (18 Sept. 1986). The current *AR 600-8-1* and *AR 638-2* superseded the portions of the 1986 publication that dealt with disposition of personal effects.

6. AR 638-2, *supra* note 3, para. 18-1a. For a detailed explanation of precedence among PEREs, *see infra* notes 39-56 and accompanying text.

7. An installation commander should not specifically designate a representative other than the unit commander, because most or all of the soldier's personal effects will be located in the unit's buildings.

reo equipment, and automobiles.<sup>9</sup> Collecting the effects quickly is particularly important if the deceased shared a barracks room with another soldier. The PERE may later claim that the roommate pilfered valuables that the command should have delivered to the PERE. The command will have a hard time refuting the claim if it fails to establish accountability quickly.

The representative must collect and secure effects located only in areas under military control.<sup>10</sup> Thus, he need not—and may not—retrieve property from a soldier’s off-post apartment. The representative also need not recover property from the PERE. Accordingly, the representative would not try to recover effects from on-post family quarters.<sup>11</sup> Within these limitations, however, the representative’s search for effects must be thorough. At a minimum, the representative should check the deceased’s work area for personal effects. If the decedent lived in the barracks, the representative should also check the barracks room, the hold-baggage storage room, and the common areas.<sup>12</sup> The representative should ask the deceased’s friends whether he had property in other locations—for example, the deceased might have left tools or other property at the post auto shop.

Occasionally, a soldier will die while moving from one unit to another on the same installation. When this happens, the representative should ensure that the deceased left no property in his former unit. Although the losing commander may attend to

this, the representative must make sure that the losing command does not overlook any personal effects.

Once the representative has assembled all the effects, he must inventory them. *Army Regulation 638-2* requires that the representative “record all items of effects sent to the [PERE]” on *Department of Army (DA) Form 54-R*.<sup>13</sup> The representative must list valuable items, such as cameras, watches, video and stereo equipment, and jewelry in block 8 of the form.<sup>14</sup> The representative must also list in block 8 any important documents and credit cards he found among the deceased’s effects.<sup>15</sup> Finally, the representative must list in block 9 any funds and negotiable instruments he recovered, and state how he disposed of them.<sup>16</sup> The representative will not include in this inventory any items he has withdrawn from the personal effects.<sup>17</sup>

### *Withdrawing Certain Items*

*Army Regulation 638-2* requires that the representative withdraw from the deceased’s effects any military property the deceased possessed when he died; any gruesome, obscene, or obnoxious items that would embarrass or sadden the deceased’s family or friends if delivered to the PERE; any items of no monetary or sentimental value; any items that could damage other effects; and any items that postal or customs regulations prohibit the representative from shipping.<sup>18</sup> The representative must also screen opened mail, papers, photographs, video

8. AR 638-2, *supra* note 3, para. 18-1a.

9. *See id.* glossary, at 117 (defining “effects”); *see also* AR 600-8-1, *supra* note 5, app. S, para. S-1a (stating that personal effects include all personal property of the deceased). “Effects” include those personal items that are normally with the person, such as watches, rings, jewelry, wallets containing personal papers, pictures, and money. Personal effects also include household goods and automobiles. *See id.* A deceased’s effects may include a house trailer or mobile home and its contents, but will not include other types of trailers, tractors, large commercial trucks or busses, or airplanes. *See id.*

10. *See* AR 638-2, *supra* note 3, para. 18-1a (directing the installation commander or representative to collect and safeguard effects located in camp or quarters); *cf. id.* para. 17-9 (noting that a summary court-martial may collect only those effects “found in places under Army jurisdiction and control”).

11. *Cf.* AR 600-8-1, *supra* note 5, app. S, para. S-1a (noting that a PERE who is present at the place of death will normally possess all of the deceased’s effects, except for items found on the remains and items located in the unit area). *See id.* “Under those circumstances, the items *not already in possession* of the [next of kin (NOK)] will be inventoried by the deceased’s commander, or his representative, and delivered to the NOK.” *Id.* (emphasis added).

12. Unit commanders sometimes assume that soldiers keep all of their property in their barracks rooms. When these commanders act as representatives or SCMs, this assumption can have tragic consequences. Consider the example of dealing with a mother whose son—an initial entry trainee—had committed suicide. She was convinced that the SCM had not returned all of her son’s effects, and named as missing specific items that she knew her son had possessed when he died. The company commander swore he had turned over all of the deceased soldier’s effects to the SCM. Five months after the mother gave up in disgust, a platoon sergeant found a large, unmarked carton in the barracks storage room. The carton contained the property of several soldiers. It also held most of the effects that the mother had identified as missing.

13. AR 638-2, *supra* note 3, para. 18-1a(2); *see also id.* para. 18-2a (describing the procedures that the commander or representative must follow when filling out the inventory form). *See generally* U.S. Dep’t of Army, DA Form 54-R, Record of Personal Effects (Jan. 1994). A copy of DA Form 54-R for local reproduction is located in AR 638-2. *See id.* para. 18-1(a)(1).

14. AR 638-2, *supra* note 3, para. 18-2a(1). The representative must identify electronic items, such as televisions and videocassette recorders, by serial number. *Id.* He must describe jewelry by color of metal (not metal content), by the presence and color of stones, if any, and by any inscriptions appearing on each item. *Id.*

15. *Id.* para. 18-2a(2)-(3). Important documents include, but are not limited to, wills, marriage licenses, divorce decrees, adoption certificates, powers of attorney, and titles to motor vehicles. *See id.* para. 18-2a(2).

16. *Id.* para. 18-2c. The SCM also follows these rules. *See id.* para. 17-17c.

17. *Id.* para. 18-2b. *See generally infra* notes 18-22 and accompanying text.

tapes, and similar media for suitability, and must process and screen exposed film.<sup>19</sup>

The representative has discretionary authority to withdraw offensive items; however, the representative must exercise his discretion carefully.<sup>20</sup> The command ultimately will destroy most, if not all, of the items that he withdraws.<sup>21</sup> This may prove more distressing to the deceased's family or friends than receiving the items might have been.<sup>22</sup>

The representative must prepare a detailed list of all of the items that he withdraws.<sup>23</sup> The list can describe each item in sufficient detail to allow the command to identify the item. The

list can also explain briefly why the representative withdrew each item, and must state what the representative did with each item.<sup>24</sup>

### *Delivering the Effects*

The representative may deliver the deceased soldier's effects, less withdrawn items, directly to the soldier's surviving spouse or legal representative, if either is present at or near the installation.<sup>25</sup> Alternatively, if the surviving spouse will receive the effects, the designated casualty assistance officer may deliver the effects and obtain the spouse's signature for them.<sup>26</sup>

18. AR 638-2, *supra* note 3, para. 18-1a(3) (incorporating by reference AR 638-2 para. 17-11). Government property includes organizational uniforms and TA-50. *Id.* para. 17-11a. It does not include the decedent's personal military clothing. *Id.* para. 17-11b. "Gruesome" items include burned, soiled, or bloodstained clothing or similar items. *See id.* para. 17-11c. For example, a representative should withdraw from a soldier's effects the cracked helmet and shredded and bloody shorts, T-shirt, and running shoes that the soldier wore when he died in a high-speed motorcycle crash. The representative must launder all clothing, whether gruesome or not, but must withhold any items he cannot make presentable. *See id.* para. 17-11d. "Obscene" items include pornography, as well as opened personal correspondence, photos, and videos revealing the decedent's involvement in "inappropriate personal relationships or activities." *Id.* paras. 17-11c, 17-18. The regulation does not define obnoxious items, but these could include racist literature and drug paraphernalia. Items of no monetary or sentimental value include opened food items, such as a partially consumed jar of peanut butter, used personal hygiene items, such as old toothbrushes and partially expended bottles of shampoo. *Id.* para. 17-11f. Items that could damage other effects include shoe dye, lighter fluid, and leaky batteries. *See id.* Items prohibited by customs and postal regulations include bottles and cans containing alcoholic beverages and some privately owned weapons and ammunition. *See id.* para. 17-11h.

19. *Id.* para. 17-11e. The regulation expressly states that the SCM must only screen these items. *See id.* This screening, however, is an unavoidable prerequisite to withdrawing offensive items—a task the regulation specifically directs the representative to perform. *See id.* para. 18-1a(3).

20. *See id.* paras. 17-18, 18-1a(3).

21. *See id.* para. 17-18. *See generally infra* note 35 and accompanying text.

22. For example, in one case the author was involved with a commander who wanted to withdraw from a soldier's effects a number of books, notebooks and drawings that related to the soldier's involvement in the role-playing game "Dungeons and Dragons." Because the commander associated this game with satanic worship, he feared that including these items with the soldier's other property would offend the soldier's parents. He later learned, however, that the parents already knew their son had played the game. They had actually given their son some of the books that the commander wanted to withhold—and they wanted them back. Ultimately, the commander did not withdraw the items.

23. *See* AR 638-2, *supra* note 3, para. 7-11i ("A list will be made of all prohibited items [sic] withdrawn and their disposition.").

24. *Army Regulation 638-2* does not require the representative to describe the items or to explain his reasons for withdrawing them. Nevertheless, these are sensible precautions. Should the PERE later question the command about the missing items, the detailed information will help the command—and the representative—frame a reasonable response.

25. *See* 10 U.S.C.A. § 4712(a) (West 1998) (stating that "the commanding officer of the place or command shall permit the legal representative or surviving spouse of the deceased, if present, to take possession of the effects"); *cf.* AR 638-2, *supra* note 3, para. 17-3a (requiring appointment of a SCM only "when the surviving spouse or legal representative is not present to take possession of the personal effects [of the] deceased soldier"). Unfortunately, the guidance that AR 638-2 offers is, overall, confusing and contradictory. The regulation also directs the installation commander or representative to deliver effects to "the PERE [if that person] is present at the installation where [the] effects are located." AR 638-2, *supra* note 3, para. 18-1a(4) (emphasis added). If the soldier died unmarried, and has no legal representative, the person eligible to receive his effects might be the soldier's father, mother, or sibling. *See* 10 U.S.C.A. § 4712(b); AR 638-2, *supra* note 3, para. 17-10a. The federal statute confers no authority on the commander's representative to deliver the effects directly to these individuals. The command should interpret and execute the regulation in a manner consistent with the statute. Thus, only the spouse and legal representative can take the effects directly from the commander's representative.

The regulation's use of the term "legal representative" is similarly confusing. The regulations preceding AR 638-2 identified the legal representative as "[a]n administrator or executor of a decedent's estate who has been duly appointed or approved by an appropriate court, or an individual authorized by power of attorney to act in behalf of the person to receive the person's effects." U.S. DEP'T OF ARMY, REG. 600-8-1, PERSONNEL—GENERAL: ARMY CASUALTY AND MEMORIAL AFFAIRS AND LINE OF DUTY INVESTIGATIONS, glossary, at 193 (18 Sept. 1986) (emphasis added); U.S. DEP'T OF ARMY, PAM. 643-50, PERSONAL PROPERTY: DISPOSITION OF PERSONAL EFFECTS OUTSIDE COMBAT AREAS, para. 2d (13 Oct. 1965) (emphasis added). This definition conflicts with the Army's current interpretation of the federal statute. 10 U.S.C.A. § 4712. *See* AR 638-2, *supra* note 3, para. 17-10a(1)(a) ("An individual to whom the deceased . . . person gave a power of attorney is not a legal representative within the meanings of the statute and regulation, and has no rights to delivery of personal effects.") This language appears plain enough. Regrettably, AR 638-2 also includes in its glossary the Army's old definition of legal representative. *See id.* glossary at 117. A commander's representative who relies on old standard operating procedures (SOPs) and the current glossary definition may deliver a decedent's effects to a mere attorney-in-fact, in violation of express Army policy.

Judge advocates can prevent most misunderstandings that could result from these regulatory vagaries by periodically teaching commanders the correct rules for disposing of effects. They should also review SOPs and letters of instruction to ensure that old regulations are not used.

The spouse or legal representative may arrange with the installation travel office to have the effects shipped to a particular destination at government expense. He may do this before or after the commander's representative delivers the effects to the PERE.<sup>27</sup>

### Duties of the Summary Court-Martial

If the soldier died without a spouse or legal representative, or if neither the spouse nor the legal representative is present, a commander with summary court-martial convening authority (SCMCA) over the soldier's unit will appoint an SCM to

arrange delivery of the personal effects to the PERE.<sup>28</sup> If the soldier died leaving personal effects at two or more locations, an SCMCA at each location will appoint an SCM to care for the personal effects.<sup>29</sup> The SCM appointed by the SCMCA for the soldier's unit of assignment will bear primary responsibility for all the personal effects.<sup>30</sup>

The SCM's mandatory duties consist of collecting and safeguarding the effects, determining the PERE, and delivering or shipping the effects to the PERE.<sup>31</sup> The SCM's discretionary duties are the collection and payment of local debts.<sup>32</sup>

26. See AR 600-8-1, *supra* note 5, app. S, para. S-1a (describing in detail the procedures for shipping a deceased soldier's effects to a particular destination at government expense). Unfortunately, AR 600-8-1 suffers from imprecise language similar to that which undermines AR 638-2. Army Regulation 600-8-1, appendix S authorizes the command to ship a deceased's effects to the place directed by the NOK—not the PERE. The two terms are not synonymous. The friend of a deceased soldier named as the executor of his estate is the decedent's legal representative. He thus may be the PERE. See AR 638-2, *supra* note 3, para. 17-10a(1)(a). The friend is *not* the deceased soldier's NOK. See AR 600-8-1, *supra* note 5, para. 4-1 (defining the NOK in terms of an individual's familial relationship with the deceased). Of the two regulations, AR 638-2 complies more closely with the governing statute. See 10 U.S.C.A. § 4712(d) (naming the decedent's *legal representative*, along with the spouse, as the person most entitled to receive shipment of the decedent's effects at government expense).

27. See AR 638-2, *supra* note 3, para. 18-3 ("If the PERE is present, the commander . . . or a designated representative will deliver the effects in person . . . . [Alternatively, at the PERE's request] he . . . will arrange for packing and shipment of effects at government expense . . . ."); see also AR 600-8-1, app. S, para. S-2b (implying that the casualty assistance officer will help the NOK arrange shipping of effects after the NOK receives them from the command).

28. AR 638-2, *supra* note 3, para. 17-3a. See generally MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 1301(a) (1996) [hereinafter MCM]. The appointing officer will typically be the deceased soldier's former battalion commander. Cf. MCM, *supra*, R.C.M. 1301(a). The individual serving as SCM must be a commissioned officer. AR 638-2, *supra* note 3, para. 17-4; see MCM, *supra*, R.C.M. 1301(a). Rule for Courts-Martial 1301 states that "[w]henver practicable" this officer should hold the rank of captain or higher. MCM, *supra*, R.C.M. 1301(a). The frequency with which first and second lieutenants serve as SCMs to dispose of a deceased soldiers' personal effects suggests that commanders rarely find that appointing a higher ranking officer for this duty is "practicable."

29. AR 638-2, *supra* note 3, para. 17-3b.

30. *Id.*

31. *Id.* para. 17-6.

32. *Id.*

*Collection*

The SCM's duty to collect, inventory, and safeguard the deceased's personal effects is essentially identical to that of the installation commander's representative. If the representative has been thorough, the SCM should be able to secure all of the deceased's effects simply by receiving them from the representative. Nevertheless, the SCM should not assume that the representative has recovered everything. He must verify that no effects remain unsecured.<sup>33</sup>

*Withdrawal*

The SCM's duty to withdraw certain effects is similar to the withdrawal duties of the commander's representative.<sup>34</sup> The SCM serves as a back-up, ensuring that no items that meet the AR 638-2 criteria for withdrawal pass to the PERE. Like the representative, the SCM may destroy any withheld item.<sup>35</sup> The SCM evidently may also sell some withdrawn items at a public sale.<sup>36</sup> The sale must be in the best interests of the government and the PERE, and the PERE must specifically consent to the sale.<sup>37</sup> *Army Regulation 638-2* stresses, however, that the SCM normally should avoid becoming responsible for selling such items.<sup>38</sup>

After collecting the deceased soldier's effects and money, the SCM must identify to whom the effects should be sent. Once that individual is identified, the SCM should send the effects at the expense of the United States.

The SCM should first determine whether the deceased soldier has a surviving spouse or legal representative.<sup>39</sup> If the deceased soldier has a surviving spouse, the SCM need not verify a spouse's claim for personal effects if the claimant is listed as the spouse in the deceased soldier's military records.<sup>40</sup> The SCM should seek legal advice when the spousal relationship derives from a common-law marriage, or when the couple was separated pending divorce.<sup>41</sup>

The SCM should recognize an individual as the decedent's legal representative only if that individual presents duly certified copies of letters testamentary, letters of administration, or other evidence of final qualification issued by a proper civil court of competent jurisdiction.<sup>42</sup>

If the deceased soldier does not have a surviving spouse or legal representative, the SCM should deliver the effects to a natural or adopted child of the deceased.<sup>43</sup> If several children survived the deceased, the SCM will deliver the effects to the eldest child.<sup>44</sup>

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33. The SCM's authority to seek out the decedent's personal effects is subject to the same jurisdictional limits that restrict the representative's collection efforts. *Army Regulation 638-2* emphasizes that the SCM "is not authorized or permitted to secure personal effects not found in places under Army jurisdiction or control. Accordingly, [before acting, the SCM must determine] the status of the place where personal effects are located." *Id.* para. 17-9.

34. Both the representative and the SCM must apply the same criteria when deciding whether to withdraw an item. *See id.* para. 7-11. *See generally supra* notes 18-22 and accompanying text. The principle difference between the two is that the SCM normally screens the effects for withdrawal only after the representative has already done so.

35. *See* AR 638-2, *supra* note 3, para. 7-18 (describing criteria and procedures for destroying withheld items). The SCM will destroy these items by incineration, shredding, or mangling. *Id.* The SCM must ensure that no one recovers items marked for destruction. *See id.* The SCM must destroy the items completely, rendering the items useless and worthless, and obliterating any trace of the former owner's identity. *Id.*

36. *See id.* para. 17-17.

37. *Id.* These requirements implicitly prohibit sale of gruesome, obscene, or offensive effects. Selling these items would not be in the best interest of the government or the PERE. *Cf. id.* para. 17-17a(4) (noting that "[e]xamples of items that usually meet [the] criteria [for sales] are . . . electrical appliances used outside the United States that are not designed to work with standard U.S. electrical currents, and automobiles that are inoperable or cannot be shipped to CONUS").

To conduct the sale, the SCM must obtain a power of attorney from the PERE to sell the property. *See id.* para. 17-17a(3). The SCM must conduct the sale publicly and must document all sales on the DA Form 54-R. *See id.* para. 17-17b-c.

38. *Id.* para. 17-17.

39. 10 U.S.C.A. § 4712(d)(1) (West 1998); AR 638-2, *supra* note 3, para. 17-10a(1)-(2). In discussing PERE precedence, AR 638-2 suggests that the spouse has lower priority than a legal representative does. *See id.* This distinction is unsupported by law. The federal statute assigns both the same priority. *See* 10 U.S.C.A. § 4712(d)(1).

40. AR 638-2, *supra* note 3, para. 17-10a(2)(a).

41. *Id.* The judge advocate who advises the SCM will determine the claimant's marital status under the law of the decedent's state of domicile. *See id.*

42. *Id.* para. 17-10a(1)(a). If the decedent has more than one legal representative, the SCM will deliver the effects to the first representative to submit a claim. *Id.* para. 17-10a(1)(b). The SCM should also advise each representative that delivery merely transfers possession of, and not title to, the decedent's personal effects. *See id.*

If the deceased soldier does not have a surviving spouse, legal representative, or child, the SCM should deliver the effects to a parent of the deceased.<sup>45</sup> If both parents survived the deceased, and are currently married, the SCM will deliver the effects to the elder parent, unless the elder parent abandoned support of the family while the deceased was still a minor.<sup>46</sup> The same rule applies if both parents survive, but were divorced after the deceased achieved majority.<sup>47</sup> If the parents divorced while the deceased was still a minor, or if the parents were never married, the parent who had primary custody of the deceased during his minority will receive the effects.<sup>48</sup> Adoptive parents have priority over biological parents, and the above rules apply when both adoptive parents still live.<sup>49</sup> Stepparents do not qualify for delivery under this provision, although they may receive the effects in priority below that of the next of kin (NOK).<sup>50</sup>

If the deceased soldier is not survived by any of the relations listed above, the SCM will deliver the effects to the deceased soldier's eldest brother or sister.<sup>51</sup> When the deceased has full siblings and half siblings, the SCM will attempt to locate full siblings, by order of seniority, and then half siblings, by order

of seniority. The decedent's stepsiblings are not PEREs. Adoptive siblings are considered as full siblings.<sup>52</sup>

The SCM may send the deceased soldier's effects to the NOK when the decedent has no legal representative and is not survived by a spouse, children, parents, or siblings.<sup>53</sup> In order of priority, the blood relatives are grandparents, in order of seniority; aunts and uncles, in order of seniority; and cousins, in order of seniority.<sup>54</sup> Relations by marriage are not PEREs.<sup>55</sup>

If the deceased soldier is not survived by an NOK, the SCM should deliver the effects to any other individual whom the deceased named as a beneficiary in his will.<sup>56</sup>

When preparing to ship the effects, the SCM should follow the specific packing instructions in AR 638-2.<sup>57</sup> The SCM will then send the effects directly to the PERE, or to where the PERE requests.<sup>58</sup> The United States will normally pay all the costs of shipping. Some types of personal effect, however, are not covered.<sup>59</sup> The SCM should contact the transportation office for specific guidance.<sup>60</sup> If the government intends to decline to pay any part of the shipping cost, the SCM should notify the PERE before shipping the effects.

43. See 10 U.S.C.A. § 4712(d)(2); see also AR 638-2, *supra* note 3, para. 17-10a(3) (noting that the child may be born in or out of wedlock).

44. AR 638-2, *supra* note 3, para. 17-10a(3). Delivering the deceased soldier's personal effects to a minor child will give the child's surviving parent or guardian effective control over the effects. This may cause intense inter-family friction. To avoid entanglement, the SCM should closely follow the guidance that appears in AR 638-2. *Id.* para. 17-10a(3)(a)-(c).

45. 10 U.S.C.A. § 4712(d)(3); AR 638-2, *supra* note 3, para. 17-10a(4).

46. AR 638-2, *supra* note 3, para. 17-10a(4)(a).

47. *Id.* para. 17-10a(4)(b).

48. *Id.* para. 17-10a(4)(c)-(d). See *id.* para. 17-10a(4)(e) (providing guidance on how to avoid friction between a decedent's divorced or never-married parents).

49. *Id.* para. 17-10a(4)(f).

50. See *id.* para. 17-10a(4)(g). See generally *infra* note 56.

51. 10 U.S.C.A. § 4712(d)(4) (West 1998); AR 638-2, *supra* note 3, para. 17-10a(5).

52. AR 638-2, *supra* note 3, para. 17-10a(5).

53. 10 U.S.C.A. § 4712(d)(4); AR 638-2, *supra* note 3, para. 17-10a(5).

54. AR 638-2, *supra* note 3, para. 17-10a(6).

55. *Id.*

56. 10 U.S.C.A. § 4712(d)(6); AR 638-2, *supra* note 3, para. 17-10a(8). *Army Regulation 638-2* recognizes a class of PERE not mentioned in the federal statute: persons standing *in loco parentis* to the decedent—for example, foster parents and stepparents. *Army Regulation 638-2* places these individuals after the decedent's blood relatives, but ahead of his beneficiaries. See AR 638-2, *supra* note 3, para. 17-10a(7).

57. See AR 638-2, *supra* note 3, para. 17-16d.

58. *Id.* para. 17-16a (stating that "effects will be shipped to the PERE"); see AR 600-8-1, *supra* note 5, app. S, para. S-2c (stating that the SCM will "send the effects . . . to the place requested by the NOK"). See generally *supra* note 26 (rationalizing the Army's use of the terms PERE and NOK).

59. See, e.g., AR 638-2, *supra* note 3, para. 17-16e-f (describing regulatory limits on shipping motor vehicles and mobile homes); AR 600-8-1, *supra* note 5, app. S, para. S-1b (noting that the government will pay to ship an automobile to the NOK only if it is "operable and the value of the automobile is commensurate with the shipment").

## Duties of the Summary Court-Martial: Discretionary Duties

The federal statute authorizes the SCM “to collect debts due the decedent’s estate by local debtors, pay undisputed debts of the deceased to the extent permitted by money of the deceased in the SCM’s possession, and take receipts for those payments.”<sup>61</sup> Nevertheless, AR 638-2 encourages SCMs to “make every effort to avoid becoming involved with collection and payment of . . . debts.”<sup>62</sup> The regulation also stresses that a SCM must not enter into any civil or legal actions in an effort to collect or pay disputed debts.”<sup>63</sup>

## Contentious Issues

### *When the Summary Court-Martial Cannot Find a PERE*

If the SCM cannot find a PERE, he will securely package and seal the effects and place them in temporary storage.<sup>64</sup> If the SCM finds any money or checks among the effects, he will deposit them with the local finance and accounting office (FAO).<sup>65</sup> The SCM will then submit an interim report to the appointing authority. The report will state that the SCM could not locate a PERE, and describe his efforts to safeguard the effects while awaiting instructions from the U.S. Army Total Personnel Command (PERSCOM).<sup>66</sup> Once the appointing

authority has reviewed and approved the report, the SCM will file it with PERSCOM.

If PERSCOM cannot find a PERE, it will direct the SCM to sell by public sale all personal effects except sabers, insignia, decorations, medals, watches, trinkets, and articles valuable chiefly as keepsakes.<sup>67</sup> The SCM will include a complete record of all sales in his final report, and will attach notarized copies of all bills of sale to the report.<sup>68</sup> The SCM should deposit the proceeds of the sale with the local FAO.<sup>69</sup> Any mementos and other effects that the SCM could not lawfully sell, he should send to the PERSCOM.<sup>70</sup>

### *Effects Held in Law Enforcement Investigations*

Civilian and military law enforcement agencies may keep personal effects as evidence as long as required. When a civilian agency retains some effects, the SCM will give the PERE the agency’s address and telephone number, and advise the PERE to submit inquiries to the agency.<sup>71</sup> When a military law enforcement agency holds the effects, the SCM will advise the evidence custodian to deliver any released effects to the SCM as the regulation and the statute require.

One of the most difficult situations that a SCM can encounter arises when the PERE wants the SCM to release effects that the United States Army Criminal Investigation Command (CID) agents have seized as evidence in a suicide investigation. The CID typically proceeds very slowly and carefully

60. See AR 600-8-1, *supra* note 5, app. S, para. S-1e.

61. 10 U.S.C.A. § 4712(c). The SCM must file the receipts with his final report. See *id.* See generally *infra* note 68 (discussing reporting requirements).

62. AR 638-2, *supra* note 3, para. 17-6.

63. *Id.*

64. *Id.* para. 17-20b(3).

65. *Id.* para. 17-20b(2). The FAO will issue the SCM a receipt for these items. *Id.*

66. *Id.* para. 17-20b(4).

67. AR 638-2, *supra* note 3, para. 17-20d. The Army regulation limits the SCM’s statutory authority by requiring a public sale. The statute alone would permit the SCM to sell the effects publicly or privately. Compare AR 638-2, *supra* note 3, para. 17-10a(9), with 10 U.S.C.A. § 4712(e) (West 1998).

68. AR 638-2, *supra* note 3, para. 17-20d(1) (implementing 10 U.S.C.A. § 4712(e)). The SCM submits the final report to the PERSCOM after review and approval by the appointing authority. *Id.* para. 17-20d(3). See *id.* fig. 17-6 (providing a sample report).

69. *Id.* para. 17-20d(1).

70. *Id.*; see 10 U.S.C.A. § 4712(f). Items in this category include not only keepsakes, but also important documents—such as wills—that relate to the decedent’s estate, and bonds, securities, and similar instruments. 10 U.S.C.A. § 4712(f); AR 638-2, *supra* note 3, para. 17-20d(3). The PERSCOM commander will forward all these items through the Army secretariat to the director of the Armed Forces retirement home. See 10 U.S.C.A. § 4712(f). See also 24 U.S.C.A. § 420 (West 1998) (describing how the retirement home manages these effects).

71. AR 638-2, *supra* note 3, para. 17-14a. The SCM should not become involved with the civilian agency. For example, a SCM persuades the police department to release to him a weapon that the decedent used to kill himself. The SCM then includes the weapon in the personal effects that he sends to the decedent’s parents. The SCM violated the Army’s policy in two ways. First, he sought and collected an item that was located outside of military jurisdiction and control. See *id.* para. 17-9. Second, he sent the PERE an effect that probably added to the parents’ grief. See *id.* para. 17-11c.

when it reviews reports of investigation. Until it completes this review, it will not permit agents to release effects with evidentiary value. The SCM can do nothing to hurry this process. If the PERE is anxious, the SCM must simply endure the PERE's anxiety.

To dispose of a deceased soldier's effects properly need not be difficult. Commanders' representatives and SCMs can avoid failure through adequate preparation. A knowledgeable judge advocate can ensure that they receive the preparation they need.

### **Conclusion**