

New Developments

Administrative & Civil Law

Legal Assistance

Eligibility for Legal Assistance—Former Spouses

The Legal Assistance Policy Division was recently asked to revisit the question of whether former spouses are eligible for legal assistance services. In the process of denying service to one potential client, a legal assistance office discovered that the glossary section of AR 27-3, *The Army Legal Assistance Program*, provides “[a]s to eligibility for legal assistance, ‘family members’ include,” among others, “[a] sponsor’s former spouse who is eligible for commissary and exchange privileges under the Uniform Services Former Spouses Protection Act and applicable regulations.”¹

Based on the legal assistance office’s request for clarification, the Legal Assistance Policy Division reviewed the history of former spouse eligibility and found the following.

(1) The Uniform Services Former Spouses Protection Act (USFSPA) was part of the 1983 DoD Authorization Act. The USFSPA allowed for the divisibility of military retired pay during a divorce action. It also granted certain benefits to qualified 20/20/20 spouses. These benefits include medical, commissary and PX benefits. It did not include Legal Assistance within the list of eligible benefits.

(2) The 1984 version of AR 27-3, which was published shortly after the USFSPA, did not address the eligibility of former spouses.

(3) The 1989 version of AR 27-3 contained language similar to that in the current regulation, but this eligibility language appeared in the body of the regulation rather than in the glossary.

Based on the language contained in the glossary of the current AR 27-3, it is appropriate to extend legal assistance services to individuals who meet the criteria described above. Those individuals should possess an identification card that says “Unremarried Former Spouse.” —Lieutenant Colonel Oren H. McKnelly

¹ U.S. DEP’T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM glossary (21 Feb. 1996).

Military Personnel Law

“Don’t Ask, Don’t Tell”—Update

On 25 March 2010, Secretary of Defense Robert Gates announced Department of Defense (DoD) implementation changes to the “Don’t Ask, Don’t Tell” policy. The modifications affect DoD Instructions 1332.14² and 1332.30.³ Specific items of interest include: only a general officer (GO) may initiate a fact-finding inquiry or administrative separation for homosexual conduct; only an O-5 or above may conduct a fact-finding inquiry; only a GO may separate a Soldier for homosexual conduct; “credible information” required for initiating the fact-finding inquiry should be given under oath and reliance on hearsay should be dissuaded; a “reliable person” who may have motivation to harm a Soldier by raising an allegation should be carefully scrutinized; and information from or provided to the following sources will not be used to substantiate homosexual conduct discharges: lawyers, clergy, psychotherapists (Military Rules of Evidence 502⁴ and 513⁵), medical or public health professionals for the purposes of treatment, professionals involved in domestic or physical abuse assistance, and security clearance investigations. All changes are effective immediately and shall be applied to existing matters.

Army Substance Abuse Program (ASAP), Army Regulation (AR) 600-85

The Department of the Army issued a Rapid Action Revision (RAR) to AR 600-85, *The Army Substance Abuse Program*, on 2 December 2009. The RAR includes a number of notable changes. Battalion commanders should ensure that the number of unit inspection urinalysis tests administered under the “unit sweep” category should be limited to seventy-five percent of the number of random inspections submitted annually.⁶ Additionally, commanders in the grade of O-6 and above are authorized to suspend or reduce drug testing programs while deployed, for safety, security, or operational concerns.⁷

² U.S. DEP’T OF DEF., INSTR. 1332.14, ENLISTED ADMINISTRATIVE SEPARATIONS (28 Aug. 2008) (C1, 29 Mar. 2010).

³ U.S. DEP’T OF DEF., INSTR. 1332.30, SEPARATION OF REGULAR AND RESERVE COMMISSIONED OFFICERS (11 Dec. 2008) (C1, 29 Mar. 2010).

⁴ MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 502 (2008).

⁵ *Id.* MIL. R. EVID. 513.

⁶ U.S. DEP’T OF ARMY, REG. 600-85, THE ARMY SUBSTANCE ABUSE PROGRAM para. 4-2e (2 Feb. 2009) (RAR, 2 Dec. 2009).

⁷ *Id.* para. 4-7b.

Army Grade Determination Review Board (AGDRB), United States Army Reserve (USAR)

On 19 February 2010, USAR Command implemented a policy charging all major subordinate commands and general officer commands with determining whether to initiate an AGDRB review for retirement-eligible officers.

Officer Separations, USAR, AR 135-175

On 9 December 2009, U.S. Army Reserve Command issued procedural requirements for the elimination of officers under AR 135-175, *Separation of Officers*.⁸ Specific changes of interest are that major subordinate command and general officer commanders must notify a respondent officer in writing of an impending involuntary separation action, and the duty may not be delegated. Other procedural requirements and templates may be found in the memorandum.⁹ —Major James A. Barkei

Training Developments Directorate—Distributive Learning

JAGU: The e-Learning Home of The Judge Advocate General's Legal Center and School

The Judge Advocate General's Legal Center and School (TJAGLCS) has a long history of providing excellence in residential education and training to The Judge Advocate General's Corp (JAGC). A key component of TJAGLCS's educational mission in today's Information Age is JAG University (JAGU), the e-learning home for the Army's JAGC. The Training Developments Directorate, Distributed Learning Division (TDD-DL) at TJAGLCS maintains JAGU and uses state-of-the-art technology to distribute operationally-oriented training and education vital to the success of judge advocates in the contemporary operating environment. JAGU, supports a number of e-learning tools, including (1) the online components of resident courses on JAGU, such as the Judge Advocate Officer Advanced Course (JAOAC) and Judge Advocate Officer Graduate Courses, (2) The Judge Advocate General's University Video Library, which houses Standard Training Packages as one of its collections, and (3) standalone, online courses, such as Judge Advocate Tactical Staff Officer Course (JATSOC).

In addition, JAGU contains a number of organizations, such as the JAG Reserve Component, which is managed by the U.S. Army Reserve (USAR) Legal Command in cooperation with TDD-DL. The JAG Reserve Component organization consists of mandatory directives for USAR Soldiers assigned to the Legal Command; however, the directives do not necessarily apply outside of the Legal Command. The JAG Reserve Component organization and other JAGU organizations are open to all JAGU users.

To enroll in an organization, such as the JAG Reserve Component or TJAG Training 2010, users should follow these simple steps:

(1) Log onto JAGU from <https://www.jagcnet.army.mil>.

(2) Click on the "Community" tab found directly to the right of the JAGU Home tab. The "Community" tab provides access to the JAGU Organization Catalog, as well as a direct link to any organizations in which you are enrolled.

(3) Select "JAG Organization," and a listing of the JAG Organizations will appear.

(4) You may enroll in any listed organization by clicking on the "Enroll" button located to the right of the organization's name. You will then be prompted to follow the enrollment procedures specific to the organization.

(5) Once you have enrolled in an organization, the organization will appear under the "Community" tab. Follow steps (1) and (2) for subsequent access to organizations in which you have enrolled. (If you enroll in the JAG Reserve Component, the JAG Reserve Component tab to the right of the JAGU Home tab will become operational; you will be able to access the JAG Reserve Component organization using its tab or the "Community" tab. No other organization has its own tab at this time.)

For further information, including help with enrolling in courses or organizations on JAGU, contact the JAGU Helpdesk at <https://jag.learn.army.mil>. —Ms. Sonya N. Bland-Williams

⁸ U.S. DEP'T OF ARMY, REG. 135-175, SEPARATION OF OFFICERS (28 Feb. 1987).

⁹ Memorandum from Headquarters, U.S. Army Reserve Command, for Deputy Chiefs of Staff, G-1, USAR Major Subordinate Commands (MSC) and General Officer Commands (GOCOM), subject: Procedural Guidance for Officer Involuntary Separations Under Army Regulation (AR) 135-175, Separation of Officers, Chapter 2 (9 Dec. 2009).