KAISERSLAUTERN LEGAL SERVICES CENTER

KAISERSLAUTERN LEGAL INFORMER

CLIENT SERVICES: WE'RE HERE TO HELP!

21st TSC Commanding General BG Aundre Piggee congratulates past and current members of the Kaiserslautern Legal Services Center's client services staff on winning DA-level awards in both legal assistance and claims for FY 2010.

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- And much more!

by Steve Smith

The *Kaiserslautern Wochenblatt* (Weekly Journal) recently reported that 49,972 Americans, more than the entire population of the city of Pirmasens, call the Kaiserslautern Military Community home. As more and more Americans are transferred from other communities to Sembach, that figure will likely increase.

A population that large requires an experienced team of lawyers and paralegals to handle a wide variety of legal issues. That's exactly what you find when you visit the Kaiserslautern Legal Services Center (KLSC) in Building 3210 on Kleber Kaserne. If you need advice or assistance regarding a German or American legal problem or help filing a claim or a tax return, the KLSC is the place to go. They're the best in the business.

That point was underscored in a special awards ceremony that took place on October 13th in the KLSC's courtroom. The 21st TSC Commanding General presented Department of the Army-level awards for excellence in legal assistance and claims to representatives from 21st TSC law centers in Kaiserslautern, Stuttgart, Mons, and Schinnen (see photo on page 16).

21st TSC won seven of the ten legal assistance and claims awards in USAREUR this year. Over the last ten years, the KLSC has been the most consistent winner of these coveted awards in Europe.

That should be reassuring news to anyone who is having trouble with their landlord, who must respond to an IRS notice, who needs help with a consumer or family law issue, or whose household goods were damaged in shipment. *We're here to help!*

United States Army Judge Advocate General's Corps - America's Oldest Law Firm

Online Shopping & Shipping Holiday Presents

by Joerg Moddelmog

The holiday season is upon us and that means shopping. Some of the best deals are available online. However, when you order presents online, you cannot verify their quality and condition right away, and you have to allow time for them to be shipped to you. That's when a seemingly easy process can become much more complicated.

Almost all goods for private use that are ordered online within the European Union (EU) are subject to EU Directive 97/7/EC on the protection of consumers in respect of distance contracts (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1997:144:0019:0027:EN:PDF). This directive requires the seller to describe the offered product and imposes a duty to inform the consumer about the main characteristics of the deal, to include the full and actual price (*i.e.,* no hidden fees).

The EU distance contract directive also gives consumers the right to cancel what they order online. This is an important right, because without it, the seller would be entitled to recover his lost profits on the sale. The EU directive grants consumers the right to cancel the transaction for no reason within at least seven working days, starting generally from the date of delivery (if goods are concerned) or the date of the conclusion of the contract (if services are concerned). German law is even more favorable: it allows consumers 14 days to cancel. But there are exceptions to the rule; for example, under the EU directive no cancellation right exists if the consumer unseals audio or video recordings or computer software. Break the plastic wrap and you're stuck with it!

Once you have placed an order for the desired goods, the seller will ask for a shipping address. Either for reasons of convenience or simply because the commercial carrier only delivers to a street address, you might provide your local German residential address rather than an APO address. If you shop within the EU, there should be no problems having the items delivered to your home address. However, whenever a non-APO address is used and the goods are to be delivered from a country outside the EU (the USA comes to mind), the goods will be routed through German customs and the commercial carrier will have to pay customs fees before the goods can be released for delivery. In such a case, the carrier will seek reimbursement of the customs fees from you. The only way to avoid becoming responsible for the fees (and to preserve your privilege of being exempt from these fees, codified in Article 66 of the Supplementary Agreement to the NATO SOFA), is to promptly submit AE Form 550-175A, enabling a reimbursement of any such fees paid. In fact, you may want to contact the carrier in advance to arrange for the AE Form 550-175A in order to avoid the reimbursement process. AE Form 550-175A can be obtained at the Customs Office located in Room 215 of Building 3245 on Kleber Kaserne.

For further information pick up a copy of our client handout on "Commercial Solicitation and Sales & Purchases in Germany" on our preventive law shelves in the Kaiserslautern Legal Services Center's Legal Assistance Waiting Room, or schedule an appointment with a German Attorney-Advisor if you have questions concerning your specific situation. To make an appointment, call DSN 483-8848 or Civilian 0631-411-8848.

Looking for Tax Preparers

by Steve Smith

Each fall, we canvas the community to find individuals who might be interested in serving in a paid or volunteer capacity in our tax assistance centers on Kleber Kaserne and at Landstuhl Regional Medical Center.

While prior experience in preparing taxes or an accounting background is helpful, it is by no means a requirement to work in our tax centers. We train our tax preparers from the ground up. They receive four days of basic instruction on how to prepare federal income tax returns from an IRS representative. We follow that up with several more days of advanced topics, including foreign and state tax issues, Puerto Rico returns, and how to prepare returns for Family Child Care providers and other self-employed taxpayers. In addition, we use the IRS Link & Learn training modules to bring our trainees up to speed, and each trainee takes certification exams to ensure they have the level of competence needed before they begin preparing returns for the public.

All our tax preparers, who also include Special-Duty Soldiers and 27D Paralegals, work under the watchful eye of our Tax Program Coordinator, Donald Davis, who has many years of experience preparing tax returns and running tax centers (see adjacent story), and the Chief of Client Services for the Kaiserslautern Legal Services Center, Mark Christensen, who also has years of tax experience under his belt and teaches each year at the USAREUR Tax Continuing Legal Education conference.

Many of our tax preparers from past seasons have returned to the States with a very marketable skill, and letters of recommendation that have helped them get their foot in the door and land paid positions in an increasingly difficult job market. All of them have found working in our tax centers to be a rewarding experience; the smiles on the faces of the taxpayers we assist make it all worthwhile. There is something special about helping those who defend our country get back their own money from the Government. Last season we got back $6.6 million in K-town alone!

Anyone interested in serving as a tax preparer in either a paid or volunteer capacity should contact Mr. Davis at DSN 483-7684 or Civilian 0631-411-7684, or you can send him an e-mail at donald.l.davis2.civ@mail.mil. He can tell you more about our tax assistance program and talk you through the application procedures. **Anyone interested in a paid position should keep an eye out for job announcements which appear on USAjobs in the late-November to mid-December time frame.**

Kaiserslautern Legal Services Center

Building 3210
Kleber Kaserne

Legal Assistance 483-8848
Tax Assistance 483-8848*
**after 1 February, call 483-7688*
Claims 483-8414/8862
International Affairs 483-8854
Trial Defense Service 483-8397
[Civilian: 0631-411-XXXX]

Administrative Law 484-7450
Criminal Law 484-8311
[Civilian: 0631-413-XXXX]

NEED TAX HELP?

Free tax services are available all year long at the Kaiserslautern Legal Services Center. If you need help preparing or amending a federal or state income tax return and cannot wait until our tax centers open in late January, or if you have tax questions, call DSN 483-8848 or Civilian 0631-411-8848, and ask to speak to Mr. Donald Davis.

Transitional Compensation for Abuse Victims

by CPT Jerrod Fussnecker, *in concert with "The Clash"*

"Should I Stay or Should I Go Now?"

"I would never let that happen to me. If my spouse hit me, I would leave right away for sure." This statement is a common response when discussing domestic violence. But if this attitude is so common, why does experience show that it is in fact common for victims to stay in abusive relationships?

"If I go there will be trouble. And if I stay it will be double."

"If I leave, my spouse will be kicked out of the military and I'll have no income to support myself and my children. If I stay, my children and I will continue to be abused." This is the unfortunate Catch-22 of most domestic violence victims. The Army places great emphasis on respecting and providing for family members who sacrifice in support of the Army mission. But what options are available to family members who are abused by their military spouses? If a victim reports the abuse, a Soldier is likely to face court-martial or administrative separation resulting in the victim suffering further due to the family's loss of income. Unfortunately, financial dependence on the spouses who abuse them is one of the most common reasons spouses stay in abusive relationships.

"If you don't want me, set me free."

To help victims set themselves free from patterns of abuse and financial dependence, Congress passed legislation in 1994 to provide battered spouses the support they need to report their abuse and begin a new life independent from their abusers. The Army has implemented the law through its transitional compensation program (see Army Regulation 608-1, paragraph 4-12).

Transitional compensation authorizes temporary monetary payments and benefits for families in which the active-duty Soldier has (1) been separated from active duty administratively or as a result of a court-martial conviction for abusing the family members, or (2) received a court-martial sentence of forfeiture of all pay and allowances for abusing the family members.

Abuse of family members includes domestic violence or sexual abuse. Spouses, former spouses, and children residing in the home at the time of the abuse may qualify for transitional compensation for up to 36 months. Payments cease when a spouse receiving payments remarries or the abusive Soldier resumes residing in the home with the abused spouse or children.

Currently, spouses approved for transitional compensation receive $1,154 per month and $286 for each eligible child. The payment is $488 per eligible child if there is no spouse payment. During the entitlement period, beneficiaries may also retain family member identification cards and may be eligible for commissary and exchange privileges, TRICARE medical benefits, and dental services, depending on whether they are in CONUS or overseas. While the temporary payments are intended to assist victims and their children in the wake of losing the income they relied upon from a military spouse, applications can be submitted as long as the abuse that resulted in the separation occurred after November 29, 1993.

"You gotta let me know."

Victims must know that help is available. The installation ACS Family Advocacy Program Victim Advocate can help victims apply for transitional compensation benefits and the Staff Judge Advocate's Victim Witness Liaison can help obtain the required documentation for the application. Check the "Services Locator" at https://www.myarmyonesource.com to identify the transitional compensation POC at your installation.

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Transitional Compensation (continued)

In order to prevent and mitigate the effects of domestic abuse, leaders must also know about the transitional compensation program and inform their Soldiers, civilians, and family members about the program through their organizational websites, newsletters, FRG meetings, and other appropriate venues. When initiating separation of a Soldier for domestic abuse, the commander should be sure to annotate domestic abuse as a basis for separation in the separation notification memorandum to the Soldier. The abused dependent will later use this memorandum to substantiate the application for transitional compensation. Command teams should consult their local trial counsel for more information on transitional compensation.

"I'll be here 'til the end of time."

Anyone with questions concerning transitional compensation should feel free to call me at DSN 385-3236 or Civilian 0621-730-3236, or e-mail me at jerrod.b.fussnecker.mil@mail.mil.

Individual Logistic Support for Family Members

by Mark Christensen

At the Kaiserslautern Legal Services Center we frequently get questions from folks on how to obtain individual logistic support (ILS) for people who are part of the family, or who are treated like part of the family. Because ILS generally involves freedom from host nation taxes, the categories of individuals eligible for ILS are strictly construed and enforced by US Forces and German host nation authorities. Eligibility for ILS is based on the individual's personal status under NATO Status of Forces Agreement (SOFA) and its German Supplement. The basic rules pertaining to ILS determinations are found in AER 600-77 and AER 600-700.

Spouses and Sponsors' Children. Under the NATO SOFA, spouses and the sponsor's children residing with him/her and dependent on the sponsor for support are generally eligible for SOFA status. As a first step, the newly-married or new-parent Soldier or civilian sponsor should enroll the family members in the Defense Eligibility Enrollment Reporting System (DEERS). Enrollment requires proof of the relationship, often done with marriage and birth certificates. For children placed into the home, a non-temporary court order of guardianship or adoption is necessary.

For most spouses and children, DEERS enrollment and issuance of an ID card is followed by a short visit to the SOFA stamp issuing office. That office will check the DEERS enrollment, and will check to ensure that the spouse/children are not from a non-EU country that requires a German entry visa. Once those checks are conducted, the SOFA stamp (normally a separate laminated card) is issued. With their SOFA stamp/card to prove their SOFA status, the spouse and children are able to legally shop in the Exchange and Commissary and use all the other ILS services. Spouses or children who are not U.S. citizens or resident aliens, and come from certain non-EU countries (see DOD 4500.54-G *https://www.fcg.pentagon.mil/fcg.cfm*), need to comply with German visa requirements, and will only be issued a SOFA stamp/card (and thus be eligible for ILS) after complying with the documentation and approval requirements in AER 600-77.

Parents and Other Family Members. The NATO SOFA does not provide for any SOFA status (so no ILS) for parents and family members other than the spouse and children of the sponsor. The German Government has been very generous in this regard, and established a special category of individuals to whom they have granted SOFA status – and thus granted ILS. The treaty term is "close relative." Sometimes the individuals are called "members of household." Those individuals can include a grandchild, a parent, a grandparent, or a brother or sister – among others. The close relative must be a U.S. citizen, or a lawful permanent resident of the United States, or an EU member-country citizen or national, must be residing with the sponsor, and must be dependent upon the sponsor financially or for reasons of health.

It is important to remember that ILS is a strictly construed set of benefits, and only available to individuals who have been granted SOFA status and who have a SOFA status stamp/card.

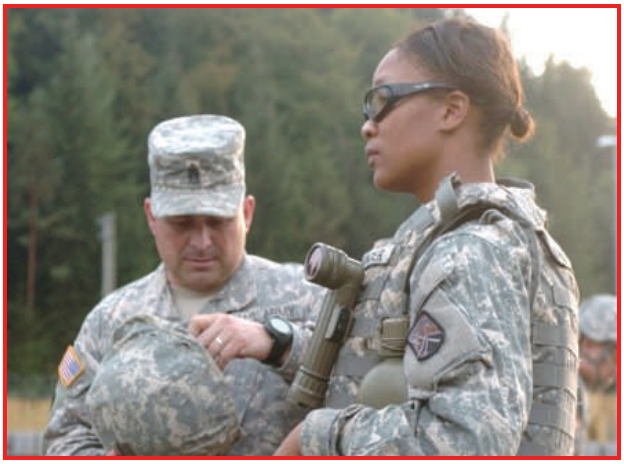
For more information about ILS, or to set up an appointment to discuss dependency or member of household status with a Legal Assistance Attorney, call DSN 483-8848 or Civilian 0631-411-8848.

The Pursuit of Excellence:

When it comes to providing client services (cover story), mastering Soldier skills, teaching others, or taking what we've learned and applying it in a deployed environment, 21st TSC's lawyers and paralegals set the standard. ***First in Support!***

21st TSC Chief Paralegal NCO MSG Scott Haarer presents SPC Jasmin Chatterton with the SJA Cup for winning the grueling 21st TSC Paralegal of the Year competition in September.

Former 21st TSC Staff Judge Advocate COL Claes Lewenhaupt is currently serving as Chief of Legal Development for the Afghan National Army/Ministry of Defense.



21st TSC Command Sergeant Major James Spencer inspects SPC Angel Hunter's headgear during the 21st TSC Paralegal of the Year competition.

21st TSC's legal assistance team at the 2011 USAREUR Legal Assistance CLE this fall. 21st TSC attorneys taught nine hours worth of classes at the conference.

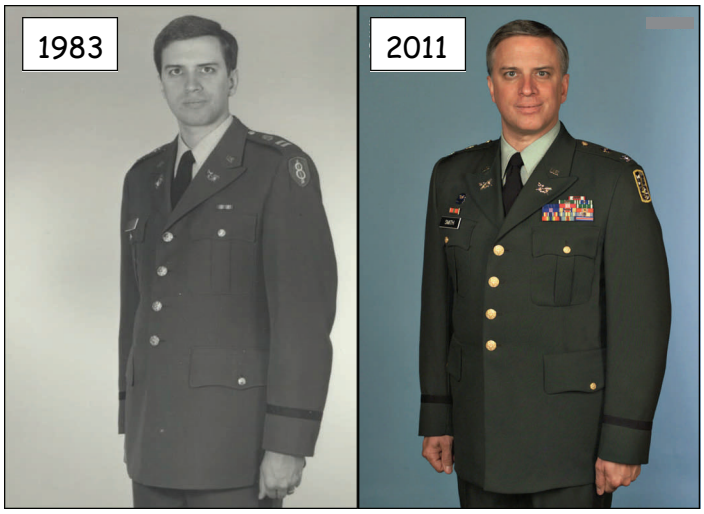
K-town Chief of Client Services Mark Christensen (right) and Legal Assistance Attorney CPT Austin Ribelin (left) taught a class at the CLE on "post-marital agreements."

Editor's Note: We congratulate our Deputy SJA, MAJ Sean McMahon, and the OIC of the Kaiserslautern Legal Services Center, CPT Jeffrey Rohrbach, on their recent selection for promotion to LTC and MAJ.

A FAREWELL TO ARMS

A Retiring JAG Reservist's Retrospective

by COL Steve Smith, USAR



On December 1st, I will "strike the tent" on my career as a Judge Advocate in the U.S. Army Reserve, which began when I took my oath as a directly-commissioned officer while studying law in Philadelphia in the early 1980s.

Shortly thereafter, I was assigned to Bad Kreuznach, West Germany, where I served as an International Affairs Officer. I spent a lot of time in German courts observing the trials of American service members and dependents. I'll never forget walking into my first German trial and looking around for the jury box, only to recall from my study of comparative law that juries don't exist in Germany, or the look on the face of the blood-soaked dependent husband who had just been apprehended for the murder of his Soldier-wife when I explained that, because he was not a service member, he would have to be tried in German court, and, if convicted, serve his sentence in German prison. He obviously had not considered that prospect.

It was a much different Army back then. When I came in some Soldiers were still sporting khakis. We wore olive drab fatigues, black boots, steel pots, and MOPP-4. Over 250,000 U.S. service members were stationed in Germany; we expected the Soviets to come plowing through the Fulda Gap at any moment. The 5 Divisions we had in Germany were supposed to hold the line for 10 days, until 10 more Divisions arrived to reinforce us (we don't even have 10 Divisions in today's Army). We regularly tore up farmers' fields with our tanks during annual REFORGER (Return of Forces to Germany) exercises. There were tons of maneuver damage claims; the concept of "computer battle simulation" did not yet exist. I also remember a supervisor taking me to task for using an IBM Selectric typewriter to hammer out my reports because "it just doesn't look right for one of my lawyers to be typing." Times certainly have changed.

I became a civilian attorney for the Army in 1986 and continued my military career serving in Reserve units in Heidelberg, where I met some brilliant Citizen-Soldiers and forged life-long friendships. My French-speaking skills led to multiple missions in France. I translated for D-Day and other ceremonies, escorted WWII veterans revisiting the battlefields where they had fought, and helped unveil battle monuments honoring their fallen comrades. I remember watching GEN George S. Patton's opera-singer granddaughter, Helen, as she sang "The White Cliffs of Dover" while cradling a veteran in her arms. Priceless!

Later, as a senior advisor to the US Army Claims Service at Fort Meade, I was tasked with responding to a Freedom of Information Act request by a reporter for the New York Times who wanted copies of every claim that had been filed for the death of an Iraqi civilian since 2003. What I saw in those files gave me a unique perspective on the true cost of war in human terms. It was my "shock and awe" moment.

I joined the Army after law school because I wanted to make some history while others were mostly focused on making money. The Army Reserve provided a way. I would do it all over again.

FRV & DP3: How to Make Dollars & Sense Out of New Claims Terms & Procedures

by CPT Yolanda Williams

They say the only constant thing in life is change. This is particularly true when it comes to filing claims. Recent years have witnessed some major changes in how household goods and unaccompanied baggage are shipped and how claims for loss and damage pursuant to Government-sponsored shipment are processed. All these changes can be very confusing.

Mastering the Basics:

Before we can even talk about the changes, we need a vocabulary lesson, to master the bewildering array of new claims acronyms:

- TSP (Transportation Service Provider) – a fancy name for the carrier.
- FRV (Full Replacement Value) – the new claims program under which claimants file directly with the TSP, who must pay full replacement value or cost of repair, whichever is lower. Each TSP has its own claims forms. There is no requirement under the FRV program for online filing.
- DP3 (Defense Personal Property Program) – a new DoD property movement system that follows the same rules as FRV, but requires filing through an online DoD system. [Note: while all shipments these days are FRV, not all of them are DP3.]
- DPS (Defense Personal Property System) – the online method for filing claims under the DP3 program.
- PCLAIMS (Personnel Claims Army Information Management System) – the new online method for filing claims with the Government (as opposed to the TSP) under the Personnel Claims Act (including claims for loss or damage when shipping household goods, unaccompanied baggage, or POVs, for damage from vandalism and floods, and for other losses incident to service).
- GFEBS (General Fund Enterprise Business System) – the new method by which claims filed against the Government are paid. It took effect this fall.
- MCO (Military Claims Office) – **THE PLACE TO GO FOR HELP**, whether you are filing a claim directly with the carrier or with the Government. For claimants in K-town, your MCO is located in Rooms 109 & 110 of the Kaiserslautern Legal Services Center, on the ground floor of Building 3210 on Kleber Kaserne.

How Things Have Changed:

Claimants used to be told to bring their notice documents (*a.k.a.*, "pink forms") to their local MCO within 75 days of delivery, and come back to the MCO within two years of delivery to file their claim. Everything, from notice to adjudication to payment, was handled through the MCO. Now, claimants under the FRV and DP3 programs are instructed to send their notice documents (which are not always pink) **directly to the TSP** within 75 days of delivery. This may be more convenient, but it has some potential risk, particularly if you are not certain about the correct address or means of sending notice to the TSP. It is critically important that you have

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How to Handle Sexual Harassment Complaints

by Teresa Robison

Sexual harassment is the over-arching term for a broad category of behaviors where an employee or group of employees harass another employee based on gender. While the stereotype is that males usually harass females, there are many cases in which females have harassed males. How should management recognize, and respond to, sexual harassment?

Sexual harassment can take a variety of forms, including those typically known as *quid pro quo*, where a supervisor makes some benefit of the job, such as a promotion or pay raise, contingent on sexual favors; reprisal, where a supervisor punishes a subordinate for failure to comply with sexual advances; or creation of a hostile work environment, where either a supervisor or fellow employees engage in conduct which unreasonably interferes with the victim's ability to perform his or her duties, creating an intimidating, hostile, or offensive working environment. Sexual harassment can take the form of verbal behavior, such as lewd comments or inappropriate requests. It can also be non-verbal, such as staring, or juvenile behavior, such as blowing kisses. Physical contact is probably the most intimidating form, and includes any inappropriate touching.

Recognition of sexual harassment in your organization can be a tricky, as most of the time it is quite subtle, and plays on the sensitivities of the particular victim. More often than not, the issue is raised through a complaint. Accordingly, management should be aware of the best ways to prevent sexual harassment, and, failing that, how to respond to complaints.

Prevention: The best prevention comes from awareness. Though conduct in the workplace will vary depending on the type of workplace, there are guidelines which can be applied in any workplace. Jokes based on gender should be discouraged, whether they are verbal or something sent around the workplace on e-mail (something that occurs more often than you would think). Lewd discussions and comments on appearance are also problematic, and should be clearly addressed as soon as management is informed. Calendars, posters, photos, or other mementos of a sexual nature should not be displayed in the office. Most important, an environment of mutual respect among employees and between management and subordinates is important.

Response: This is an area of great confusion for many managers. If a person believes they are the victim of harassment, they can start by addressing their fellow employee, then reporting it to management if that fails to stop the behavior. However, this is not a requirement. Many victims do not feel comfortable confronting their harasser, and if that is the case, they can, and should, report the problem to management. Once harassment is reported, management has an affirmative responsibility to check out the situation and resolve it. Failure to do so is likely to result in a finding against the Agency by the Equal Employment Opportunity Commission (EEOC). Management is required to investigate each report, and take action where appropriate. **Do not** tell the victim they must go to the harasser and tell them to stop before the victim can report; the burden should never be on the victim to take care of this problem. **Do not** tell the victim that if they have a problem they should go to EEO to resolve it; EEO does not have the authority to investigate and stop the conduct, management does. This approach also signals to the victim (and to the EEOC) that management does not take the problem seriously. Finally, **do not** bring both parties into a room together to "resolve" the issue. This is more likely to "re-victimize" the victim and create further anger and fear in both parties. Investigate the situation and, if founded, take appropriate steps to stop the conduct.

Army Announces Changes to MEB/PEB Process

by CPT Austin Ribelin

The New MEB/PEB - Integrated Disability Evaluation System (IDES)

Pursuant to ALARACT HQDA EXORD 295-11, the new Integrated Disability Evaluation System (IDES) became fully operational in OCONUS locations on 1 October 2011. While the new IDES retains many of the same procedures as the previous "Legacy" version of the Army Disability Evaluation System, there are significant changes Soldiers should be aware of. This article will briefly lay out the IDES process and highlight the notable changes. Additionally, because of the recent implementation of IDES, further change is possible.

Medical Evaluation Board (MEB)

A Soldier is referred to the IDES process upon the approval of a P3 or P4 profile. This indicates doctors working with a Soldier have determined the Soldier's conditions have stabilized and will not see any significant improvement; this is called the Medical Retention Determination Point (MRDP). Once a Soldier is referred to the IDES, the MEB phase of the process will begin.

The MEB phase of the IDES process will take place at a Military Treatment Facility (MTF) located in CONUS where a comprehensive evaluation will be conducted by a Department of Veterans Affairs (VA) doctor. Once the VA evaluation is returned to the MEB, it will review the evaluation and determine if any of the Soldier's conditions fail retention standards. A narrative summary (NARSUM) and a DA Form 3947 will be issued once the review is complete. A Soldier is then given seven working days to respond to the NARSUM and the results of the review. If the MEB findings determine one of the Soldier's conditions does not meet etention standards, the Soldier will be referred to the Physical Evaluation Board.

Due to the use of VA doctors at this early stage, personnel in OCONUS duty stations will be required to PCS to a WTU at one of six CONUS locations for completion of the IDES. Current guidance states the locations are Fort Bliss, Fort Hood, Fort Sam Houston, Fort Gordon, Fort Bragg, and Fort Lewis; however, these locations are subject to change. Ideally, a Soldier would be PCS'd to the WTU closest to home or family; realistically, while proximity to home and family will be taken into account, the needs of the Army may control.

Additionally, Medical Command (MEDCOM) has articulated exceptions to policy that may provide relief from the requirement to PCS back to a CONUS location. The exceptions which follow are extremely narrow and due to the recent implementation of this process, the probability of success of requesting one of these exceptions is unpredictable: (1) European Out; (2) Dual military assigned in Europe where impractical to PCS spouse; (3) Soldiers who are European citizens and desire to stay in Europe after military service; and (4) The significant illness or disability of European family members. The approval authority for a European Out exception is IMCOM-Europe. The approval authority for all other exceptions to policy is the Warrior Transition Battalion-Europe Commander, while the appellate authority is the ERMC Commanding General.

Legal counsel is available to Soldiers at the Soldiers' MEB Counsel offices (SMEBC) which are usually co-located with the Warrior Transition Unit (WTU) for a given area. Attorneys advise on the process, answer questions, and help Soldiers respond to the results of the MEB.

Physical Evaluation Board (PEB)

The PEB is first adjudicated informally. The Informal PEB will determine if any of the Soldiers' conditions render them "unfit" (*i.e.*, prevent them from performing their PMOS duties and/or basic Soldier skills). If a single condition is determined to render a Soldier unfit, the case will be sent to the VA. The VA will then rate all conditions and return the case to the PEB with a DA Form 199, which provides the Soldier with the VA ratings of any "unfit" conditions. The Soldier has the opportunity at this point to demand a formal board, to challenge the VA rating, or to challenge an "unfit for duty" finding. Once the case goes to the Formal PEB and a final

[continued on page 11...]

MEB/PEB Process Changes (continued...)

determination is presented, the Soldier may concur or appeal the findings. Appeals are reviewed by the Army Physical Disability Agency and its decision will be final. Soldiers in the PEB phase are provided access to Soldiers' PEB Counsel (SPEBC) during the process to advise and assist with rebuttals and appeals. SPEBC offices will be located at all locations to which a Soldier might be PCS'd. Counsel can also help Soldiers identify and gather evidence for formal hearings that may aid in achieving a Soldier's goals.

Conclusion

Planning is critical to successfully navigate the new Integrated Disability Evaluation System. The new process provides access to counsel at every phase and it is extremely important to utilize such assistance. Every Soldier going through this process must have a goal. MEB/PEB attorneys can help Soldiers develop a plan best designed to reach that goal. During this time of change, particular attention should be given to the use of legal counsel in order to assure that every Soldier going through the MEB/PEB process fully understands the benefits and repercussions of every decision made throughout this process.

Located at the Landstuhl Regional Medical Center, the Office of Soldiers Counsel provides legal advice to Soldiers in the KMC going through the MEB/PEB or IDES systems free of charge, and can be reached at DSN 590-8286, or Civilian 06371-9464-8286. Videos, FAQ's, and contact information concerning this process may also be found at the Judge Advocate General's Corps website at: https://www.jagcnet.army.mil/otjagosc

New Claims Terms & Procedures (continued)

proof that notice was properly and timely sent to the TSP. If you have any questions about this process, you should contact the Kaiserslautern Claims Office. The Claims Office can assist you in dispatching your notice document to the TSP, and make sure the TSP received it.

After you give notice, you only have **nine months** from the date of delivery to file your FRV or DP3 claim with the TSP.

FRV and DP3 enable the claimant to recover full replacement value for items that are lost, destroyed, or damaged beyond economic repair, unlike the traditional claims system that only permits payment of depreciated value. While the concept of receiving full replacement value is very appealing, in practice things don't always work out so well. Many claimants have experienced difficulty accessing the online DPS module. Never fear! The award-winning claims examiners at the Kaiserslautern Claims Office are happy to assist. They can help you obtain a waiver of the online DPS filing requirement if it is impossible to access the system. They can also help you fill out claims forms and answer claims questions. And, if you are not happy with the settlement you receive from the TSP, our claims examiners can help you file your claim against the Government using PCLAIMS and effect payment through GFEBS.

If only it were this simple!

While much has changed in the complex world of claims, one thing remains constant: the Kaiserslautern Claims Office is the place to go for claims help! Visit us in Rooms 109 & 110 of the Kaiserslautern Legal Services Center, or call us at DSN 483-8414 or Civilian 0631-411-8414.

In the Wrong Place, At the Wrong Time

A cautionary tale of tragedy, consequences, and criminal jurisdiction...

by Joe Hall

Unfortunately, there really are some folks with criminal tendencies, but not all those behind bars are hardened criminals; nor are all crimes planned or intended.

Sometimes everyday people become criminals and trusting innocents become victims, just because they were in the wrong place, at the wrong time, in the wrong circumstances.

One such scenario is date rape, a tragedy that typically occurs between 0200 and 0500 hours, and involves a volatile combination of alcohol and sex. It often stems from a celebration that went wrong, or sometimes through incomprehensible innocence betrayed. Besides sex offenses, in those dark hours a lack of sleep, too much alcohol, and other things can trigger crimes against property, assaults, and sometimes death: "want some fun?" – let's break mirrors on parked cars and walk on car roofs; "want some excitement?" – let's start a fire; "out of money?" – let's beat up the taxi driver to skip out on the fare, or beat up the passer-by and steal his money. The possibilities are endless. And the consequences can be extremely serious.

In most every case, the perpetrator is caught – many times the crime is out of character for the perpetrator – "he's a good Soldier; max'd his PT test; does his job really well," but some innocent person still has to suffer the economic loss, inconvenience, physical pain, and sometimes lasting grief of what everyone, including at times the perpetrator, thinks was a stupid act. The perpetrator can wind up in confinement, lose money, be demoted, or get kicked out of the service, and perhaps live with a lifetime of guilt, "when I just wanted to go out and have some fun."

The thought here is, anyone can become a criminal, or a victim – so be careful. If you are going out for late-night partying: choose your friends; stay with the group; know your alcohol limits; keep enough cash to pay for a taxi; and don't put a knife or other weapon in your pocket just to feel safe – you could seriously hurt someone with it, or they could use it to hurt you.

What happens when a crime occurs, be it late at night or at any other time of day? Commanders often want to act quickly on the offenses. Sometimes, for the "good Soldier" when the offense or its consequences do not seem particularly serious, the commander's intent is to put the event behind us and move on. In other more serious cases, the intent may be to get the case before a court-martial.

Can the commander just forget about the incident and move on? Can he take UCMJ action against the Soldier? The answer to both questions is, maybe. But before the commander acts or does not act, the issue of who has criminal jurisdiction over the case — the command or host nation authorities — has to be resolved.

Article VII of the NATO Status of Forces Agreement (SOFA) sets out the rules on who has criminal jurisdiction to prosecute offenses involving US Forces members in Germany (and all the other NATO host nations).

- If the Soldier commits an offense against another Soldier, against a SOFA-status US Forces civilian/dependent, or against US Government property, the US Forces/commander has primary jurisdiction and is free to take whatever administrative or UCMJ action he deems appropriate against the perpetrator.

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In the Wrong Place, At the Wrong Time (continued)

- If the offense is committed against a person without SOFA status, or against any non-US Government property, the host nation has primary jurisdiction over the matter. In such cases, the commander may not take any UCMJ action against the perpetrator, and must flag the Soldier, until the host nation releases jurisdiction to the US Forces. Commanders need to get with their supporting JAG Trial Counsel to determine if/when the host nation has released its jurisdiction. In most all cases, at least in the Kaiserslautern area, jurisdiction is released relatively rapidly to the US Forces.

As a postscript, once jurisdiction is released to the US Forces, the commander is free to take whatever administrative or UCMJ action he deems appropriate. In deciding what action to take, however, one of the factors to consider is the effect the commander's choice of action will have on the local host nation community – the commander's action not only furthers order and discipline within the unit, it also serves the interests of justice in both the Army and the host nation.

Self-Reporting of Criminal Offenses Now Required

by SPC Matthew Teemant

On September 21, 2011, Army Directive 2011-17, entitled "Self-Reporting by Officers and Senior Enlisted Members of Criminal Convictions," was issued. It applies to U.S. Army commissioned officers, warrant officers, and enlisted members in the pay grade of E-7 and above on Active Duty or in the Reserve Component. It requires these individuals to report to their commander any conviction announced on or after March 1, 2008 for violation of a criminal law of the United States.

"Convictions" include a plea or finding of guilty, a plea of no contest, and all other actions "tantamount to a finding of guilt," including deferred prosecution, pretrial intervention, and similar dispositions.

"Criminal law of the United States" includes any conviction of Federal criminal law or any State, district, commonwealth, territorial or equivalent criminal law or ordinance, as well as any criminal law or ordinance of any county, parish, municipality, or local subdivision of any such authority, "other than motor vehicle violations that do not involve a court appearance."

Upon receipt of a report of a conviction, commanders must forward the report to the Special Court-Martial Convening Authority (SPCMCA), along with any statements of mitigation or extenuation. The SPCMCA will forward the conviction and supporting paperwork to the General Court-Martial Convening Authority with a recommendation on whether to file the conviction in the local or performance fiche of the Soldier's OMPF.

Commanders at all levels may consider the conviction for all official purposes, including, but not limited to, evaluation reports, assignments, selection for schools, awards, initiation of separation, and suspension of security clearances.

Legal Assistance Attorneys can advise Soldiers on whether they have criminal convictions that require reporting, and help them ensure their reports are in the proper format, contain the requisite information, and are timely filed through the proper channels. They can also assist Soldiers in preparing statements of extenuation and mitigation.

If the nature of the conviction is such that the command may take adverse action against the Soldier, the Legal Assistance Attorney may refer the Soldier to the Trial Defense Service for additional advice or representation.

If you think this new self-reporting requirement may affect you, call DSN 483-8848 or Civilian 0631-411-8848 to make an appointment to discuss your situation with a Legal Assistance Attorney at the Kaiserslautern Legal Services Center.

The Ethics Corner...

AVOIDING CONFLICTS OF INTEREST...

by Rick Schwartz

In many parts of the world, it is not a straightforward proposition of government employment that individuals are placed in their positions to benefit only the public, and not themselves. In countries where the lines between acting for personal and public gain are blurred, or where civil and military offices are used outright to benefit the person, there are higher costs of carrying out needed interaction with the government, greater inefficiency in the delivery of government services, and less confidence in public institutions. Bribery, kickbacks, and other forms of public corruption are the most obvious examples; but in our tradition as public servants we are subject to a higher standard of conduct designed to promote transparency, trust, and confidence in U.S. Government institutions by ensuring we carry out our duties impartially and solely for the public good. As with all ethics rules, appearances matter, and the appearance of a violation is just as damaging to the public's confidence in the government as an actual ethical violation.

The rules governing conflicts of interest (of which conflicting *financial* interests are only one aspect) are one component of carrying out this principle. In short, each of us must take certain steps to address conflicts of interest. Conflicts of interest include any "personal interest or relationship, as defined by law or regulation, that conflicts with the faithful performance of official duty."

For example, the financial conflicts statute (18 U.S.C. § 208) generally prohibits us from participating in an official capacity in any particular matter that we know would have a direct effect on our financial interests or those of certain people close to us. We take as a given that Federal employees are honest, and yet the rule exists to not only prevent an employee from allowing personal interests to affect their official actions, but also to protect the process from any appearance of conflict of interest or loss of objectivity.

Note that the financial interests of our spouses, minor children, and organizations in which we serve as an officer are imputed to us for purposes of the statute. To illustrate common examples:

- A GPC holder cannot make a decision regarding the purchase of supplies from a store owned by a spouse. This would violate the rules, even if that store provides the best product at the best price, or even if the GPC holder's spouse sold the item at a financial loss.
- The secretary of a private organization could not be involved in a decision to use that private organization as a paid training provider for the Government because of the financial impact on the private organization;

While many of us don't have duties that could affect our financial interests, we should nonetheless be cautious of circumstances that could violate (or appear to violate) the obligation to remain impartial and not use our position for personal gain. In many ways this rule is much broader than the financial conflicts statute—if a reasonable person with knowledge of the relevant facts could question our impartiality in conducting official business regarding a particular matter involving specific parties, we are required to take steps to address the situation.

Once again, the rules cover our personal interests as well as interests of certain people close to us. The rules generally apply to interests of members of our household, certain of our relatives, and certain other persons, organizations, or entities. This last category would principally include those with whom we (or our close family) (i) have or seek a business or employment relationship, (ii) serve as officer or director, or (iii) are an active participant. Typical scenarios might include:

- a decision as to whether to provide official support to a private organization event our spouse is involved with, or
- whether official attendance by our organization is warranted at a conference held by a non-Federal entity in which we actively participate.

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AVOIDING CONFLICTS OF INTEREST (CONTINUED)

As with financial conflicts, the regulations specifically exclude the employee's reputation for honesty and integrity as a relevant determination in how to address the conflict.

Although the remedies for addressing conflicts vary based on the individual circumstances, the employee should always identify the conflict (often in writing), notify their supervisor or an ethics counselor of it, and not take any action related to the subject of the underlying conflict of interest until the determination of an appropriate remedy has been made. Conflicts of interest may not be solved by directing subordinates to act in the conflicted supervisor's place. Once an ethics counselor has reviewed the relevant facts and circumstances, resolution can range from disqualification from involvement to a waiver for the existing conflict. Keep in mind that it is always the agency's decision as to how to address the conflict, not the employee's, and that any resolution is only feasible if it will allow the agency to continue to receive the full benefit of the employee's position. Lastly, note that failure to observe these rules can lead to criminal penalties, depending on the circumstances.

As always, if you have any question about actual or potential conflicts of interest, or carrying out the related rules regarding maintaining impartiality and the appearance thereof, do not hesitate to contact your organization's Ethics Counselor.

Secretary of the Army Demands "Strict Fiscal Responsibility" in Conference Planning

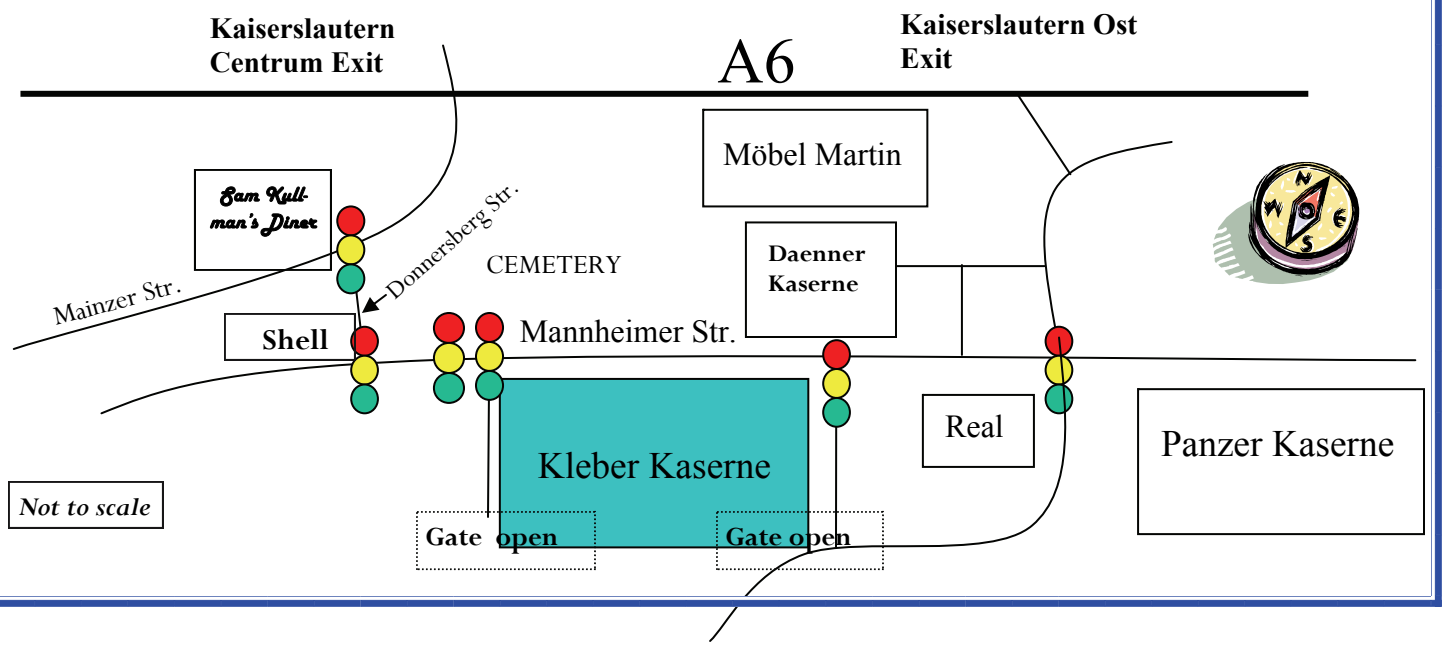
by MAJ Chris Beese

The Secretary of the Army, in an effort to ensure the exercise of "strict fiscal responsibility in planning and executing our programs and activities, including conferences," signed Army Directive 2011-20 on October 14, 2011. It became effective immediately and superseded or rescinded previous conference policies. This latest guidance regarding conference planning was intended to change the "business as usual" mindset as it relates to conferences and to make those who sponsor conferences accountable for compliance.

Army Directive 2011-20 is broadly applicable to any "meeting, retreat, seminar, symposium or event that involves attendee travel." Although it also includes certain training activities, it specifically excludes three narrow categories of event. The Directive requires each event to be approved by the USAREUR commander, although he may in the future delegate this authority to a limited extent. Accordingly, commanders (and others holding events) throughout the 21st TSC will continue to need to submit requests for such events up to the 21st TSC Headquarters for a determination of whether compliance with the new Directive is required in order to hold events. Although additional guidance is still forthcoming, the Directive currently encompasses local events such as battlefield staff rides, chaplain-led retreats, and other off-site (meaning both off-post and at on-post commercial facilities) training. The approval process will require completed requests to be submitted three to four months in advance of the event, in order to ensure that approvals are obtained within the specified timelines and to allow for contracting for goods and services to take place only after those approvals have been obtained.

All requests require the signature of a general officer or member of the Senior Executive Service who has ensured it complies with the overall policy relating to conference planning and is accurate. Among other requirements, it must include a detailed cost-benefit analysis, a breakdown of attendees (to ensure only the minimum necessary are attending), a substantive agenda, detailed information on the venue selection process, and a comprehensive legal review.

If you are planning an event that the Directive might apply to, you should contact your local OSJA to obtain detailed advice early in the planning process.

BG Piggee presents DA-level awards for excellence to representatives from 21st TSC Law Centers. Front row, left to right: CPT Jay McKenna (Stuttgart Claims), CPT Chad Brinton (Northern Claims), CPT Erik Lapin (Kaiserslautern Claims), and Steve Smith (21st TSC Chief of Client Services). Back row, left to right: German Attorney Joerg Moddelmog (Kaiserslautern Legal Assistance), Belgian Attorney Marianne Schoonjans (Northern Legal Assistance), 21st TSC SJA COL Ralph Tremaglio, BG Piggee, German Attorney Werner Sukup & German Paralegal Matthias Berger (Stuttgart Legal Assistance), and Dutch Attorney Jarin Nijhof (Netherlands Legal Assistance).

Directions to Kleber Kaserne: From Vogelweh, Ramstein, or Landstuhl take the A6 direction Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost Ausfahrt (exit). Turn right as you leave the exit ramp and drive downhill until you reach the stop light. Turn right and proceed straight until the next stoplight. Turn left and you will be beside Kleber Kaserne. Follow the perimeter until you come to an open gate. Once you are on post, park in the Shoppette parking lot. Bldg. 3210 is directly across from the ruins of the Kleber Shoppette. Enter Bldg. 3210 from the end door, closest to the Shoppette.