



KAISERSLAUTERN LEGAL INFORMER

FBAR Deadline is June 30th!

by Steve Smith

As was reported in the last edition of this newsletter, U.S. persons have until June 30, 2014, to file a Report of Foreign Bank and Financial Accounts (FBAR) covering calendar year 2013. "U.S. persons" include U.S. citizens and resident alien "green card" holders, among others. They are required to file an FBAR if they had a financial interest in or signature authority over foreign financial accounts and the aggregate value of those accounts exceeded \$10,000 at any time during the previous calendar year.

This is not a new requirement. In past years, FBARs were filed by filling out Form TD F 90-22.1 and mailing it to the Treasury Department in Detroit. That form is now obsolete. FBAR filers must now submit their report electronically using [FinCEN Report 114](#). They should print out and read the 22 pages of [FinCEN 114 Instructions](#) before they attempt to file their FBAR. ***Don't wait until the last minute to do this!***

Accounts with U.S. Military Banking Facilities such as Community Bank or Service Credit Union are not considered foreign bank accounts for FBAR purposes; however, accounts with Postbank, a Sparkasse, or other German banks are. You should carefully review your foreign financial account statements to see if the aggregate balance in those accounts exceeded \$10,000 at any time during 2013. Even if the balance went over that amount for only a day (e.g., to pay a large oil bill), you must file an FBAR.

Within two business days after you electronically file your FinCEN Report 114, you should receive an e-mail acknowledging receipt of the report. You should print out this e-mail and keep it with your records for future reference, to prove you filed your report in a timely manner.

There are serious civil and criminal penalties for failure to file an FBAR. The U.S. Government has been cracking down on FBAR noncompliance. If you should have filed FBARs in prior years and did not, you should make an appointment with a tax attorney to discuss the situation. Call DSN 483-8848 or Civilian 0631-411-8848.



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

21st TSC OSJA WINS FIVE DA-LEVEL AWARDS



The Army Chief of Staff and The Judge Advocate General have again recognized 21st TSC's preeminence in providing legal assistance and claims services.

by Steve Smith

The 21st TSC Office of the Staff Judge Advocate has won five more awards for excellence in legal assistance and claims, bringing the number of DA-level awards for client legal services it has won since 2001 to 76.

The Kaiserslautern Legal Services Center and the Stuttgart Law Center were the only legal offices in USAREUR to win both the FY12 Army Chief of Staff Award for Excellence in Legal Assistance and the FY12 TJAG Award for Excellence in Claims. The Northern Law Center in Mons, Belgium, also won the FY12 Army Chief of Staff Award for Excellence in Legal Assistance. 21st TSC won five of the eight awards won in USAREUR in the FY12 competitions, underscoring the 21st TSC motto, **"First in Support!"**

These awards recognize the experience of our attorneys and paralegals, the quality of our facilities, our aggressive tax assistance program, our innovative efforts to assist claimants (such as our new claims kiosks), and our preventive law initiatives (such as the newsletter you are reading).

FY12 marked the seventh consecutive year that the Kaiserslautern Legal Services Center won awards in both the legal assistance and claims competitions. Our clients can rest assured that when they consult with our attorneys regarding family law, consumer law, landlord-tenant law, or any of the other areas of our practice, they will receive first rate service from an award-winning team of legal professionals. The same holds true for those who come see us for assistance in filing income tax returns or advice on how the claims process works. **We're here to help!**

Imminent Danger Pay Changes

by CPT Karen Berggren

Effective June 1, 2014, a number of areas where service members used to receive imminent danger pay (IDP) were decertified. IDP provides compensation bonuses to service members deployed in locations that are relatively dangerous. The current IDP rate is \$7.50 a day up to a maximum of \$225.00 a month.

The following land areas and the airspace above them were decertified: Bahrain, Kuwait, Montenegro, Qatar, Saudi Arabia, and Serbia.

The following land areas were decertified: East Timor, Haiti, Liberia, Oman, Rwanda, Tajikistan, United Arab Emirates, Kyrgyzstan, and Uzbekistan.

The following sea areas were decertified: Arabian Sea, Gulf of Aden, Gulf of Oman, the Red Sea, and the Persian Gulf (including the airspace above it).

Areas recertified for IDP included: Afghanistan (including airspace,) Algeria, Azerbaijan, Burundi, Chad, Columbia, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Greece (Athens only), Indonesia, Iran, Iraq (including airspace), Israel, Jordan, Kenya, Kosovo, Lebanon, Libya (including airspace), Malaysia, Pakistan, Philippines, Somalia (including airspace), Sudan (including airspace), Syria, Tunisia (including airspace), Turkey, Uganda, Yemen, the Mediterranean Sea, and the Somalia Basin.

The loss of IDP does not necessarily mean loss of one's Combat Zone Tax Exclusion (CZTE) benefit. If you are serving in a combat zone, as designated by Executive Order, you are still be eligible for the CZTE. However, loss of IDP will result in the loss of the CZTE benefit for those service members who are in direct support of military operations, but are not located in the designated combat zone (such as those in Kyrgyzstan, Tajikistan, and Uzbekistan).

Service members deployed to Kosovo do not receive a combat patch, and they no longer receive the Kosovo Campaign Medal, but they still receive IDP and qualify for the CZTE.



KAISERSLAUTERN LEGAL SERVICES CENTER

**Building 3210
Kleber Kaserne**

Legal Assistance 483-8848

Tax Assistance 483-8848

Claims 483-8855/8856

International Affairs 483-8854

Trial Defense Service 483-8397

[Civilian: 0631-411-XXXX]

Administrative Law 484-8043

Criminal Law 484-7419

[Civilian: 0631-413-XXXX]

WHAT IF YOU STILL NEED TAX HELP?

While our tax assistance centers closed their doors in the middle of June and won't reopen until next tax season, **year-round tax preparation assistance is available through the Kaiserslautern Legal Service Center's Legal Assistance Office.** If you still need to file, if you need to amend current year or past year returns, or if you receive a notice from the IRS and need help deciphering it, call DSN 483-8848 or Civilian 0631-411-8848 and ask for an appointment with Donald L. Davis, our tax program coordinator.



Donald L. Davis

21st TSC 2014 Tax Assistance Program Results:

**Federal & State Income
Tax Returns Prepared:**

8,002

Tax Refunds Generated:

\$14,520,798

Savings to Taxpayers:

\$1,646,445

**THANKS FOR USING
OUR SERVICE!**

Family Law Counseling at the KLSC

A legal assistance attorney outlines our family law services...

by Mark Christensen

A large portion of the legal assistance service requests we receive at the Kaiserslautern Legal Services Center (KLSC) involve family law. Our U.S. and German attorneys are available to provide information and assistance to eligible clients who have questions or cases involving guardianship, adoption, extended family arrangements, paternity, child custody and visitation, financial support, and marital separation or divorce. Our free services help clients identify options and obligations to guide decision making.



Obtaining guardianship through a U.S. court or completing an adoption can result in adding family members for military and civilian employee administrative purposes. Some families have extended family members residing with them. These kinds of life events present opportunities for command sponsorship in Germany or immigration to the United States based on the nature of the relationship, court order, and status of the sponsor, ward, adopted child, or other family member.

Situations involving children also include establishing paternity and custody or visitation rights and responsibilities. Parents who do not have a working written agreement may need to go to court to set, clarify, or change the terms of how the child will be parented. Determining the right court depends on prior court actions and where the parents and child reside. Child custody or visitation arrangements based on agreement or court order identify parental rights to child and passport possession, local and international visitation, and expenses associated with visitation travel.

Financial support obligations derive from German and U.S. laws, military regulations, agreements, administrative assessments, or judicial orders. Obligations can be enforced through direct payment, allotment, or judicial garnishment. Modification or termination of support obligations often requires formal processes by the involved parties, military commanders, agencies, or courts.

Marital separations and divorces involve dividing marital property, assigning responsibility for marital debt, addressing financial support, as well as outlining custody and visitation for any children. Marital property may include retirement accounts and benefits, homes or time-share assets, life insurance policies, investments, and bank accounts. Common debts are individual and joint credit cards and personal loans, marital or pre-marital student loans, vehicle liens and home mortgages, and state or federal tax obligations. Financial support may involve temporary or long-term child or spousal support or alimony and division of future benefits such as retirement pay, annuities, or other benefits.

These family law processes are complicated by our presence outside the United States, the presence of non-U.S. spouses or family members, one's status as a member of the military or civilian component of the U.S. Forces, citizenship and residency, and international treaties or agreements. The German and American legal assistance attorneys at the Kaiserslautern Legal Services Center can help you navigate these turbulent waters.

For an appointment to consult with a legal assistance attorney, call the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848.

Separation Agreements

A way to settle your marital differences out of court...

by CPT Christopher Leighton

The Kaiserslautern Legal Services Center is the primary provider of legal support to America's largest and most diverse OCONUS military community. To meet this challenge, we offer expanded legal assistance to mitigate the geographic disadvantages associated with overseas service. One of the most valuable of these additional services is the negotiation and preparation of separation agreements.

What is a separation agreement? Separation agreements are binding written contracts through which separating spouses address and resolve important issues in their relationships (e.g., spousal support, custody, child support, visitation, insurance, tax matters, legal fees, and the division of property, accounts, assets, debts, and pensions). Contract terms are tailored to the parties who retain the flexibility to choose which matters to resolve and which to defer until a later date. In the event that parties reach an impasse, they may be referred to our volunteer civilian mediator, a neutral third party certified in alternative dispute resolution techniques.

Why enter into a separation agreement? Separation agreements in the civilian sector can cost anywhere from several hundred to tens of thousands of dollars, depending on their complexity and the disposition of the parties. Our services are free of charge. Moreover, many states specifically authorize or even require separation agreements in certain divorce proceedings, resulting in expedited processing for collaborative parties. But, most importantly, separation agreements empower the parties by allowing them to take important personal matters into their own hands and out of the judge's.

How to obtain a separation agreement? The first step is an in-person consultation with a legal assistance attorney who can analyze your situation, render tailored legal advice, and provide a comprehensive questionnaire. When the completed questionnaire is returned to the Legal Assistance Office your attorney will begin drafting a formal agreement, which you may then present to your spouse. Spouses are strongly encouraged to seek independent review of the draft at Army legal assistance offices in Baumholder, Wiesbaden, or Stuttgart. Once an informed agreement is reached, parties can execute notarized originals of the document at any legal office and legally enforceable obligations are created.

Divorce and separation counseling sessions are by appointment only. Please contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 to schedule an appointment to meet with an attorney. Appropriate cases may be referred to mediation, schedule permitting.



Drinking & Driving Don't Mix in Germany

Our Chief of Justice lays down the law, and the consequences...

by MAJ Trevor Barna

Spring has given way to summer. With the nice weather comes the opportunity to travel throughout Germany enjoying the dining and culture our host nation has to offer. Many cities and festivals throughout Germany are within a day's drive, offering Kaiserslautern community members a chance to get away for a quick trip. For those who also enjoy alcoholic beverages, whether it be a cool Hefeweizen or sweet Riesling, it is important to understand the rules about drinking and driving before getting behind the wheel. Because there are a number of different rules and regulations regarding driving while intoxicated, including what intoxicated even means, the following is a short discussion of those rules and how they may apply to you.



Blood Alcohol Tests:

There are two methods used by law enforcement to measure the level of alcohol present in a person's body: breath or blood. Breath tests are used routinely at the scene of a traffic stop or accident to quickly determine the amount of alcohol in a driver's system. The result from the breath test is translated into a blood alcohol content (BAC) level. Blood tests are used less frequently and blood is normally drawn by a professional health care provider at a local hospital.

Host nation laws:

Under NATO Status of Forces Agreement rules, offenses committed by dependents or members of the civilian component are dealt with by German authorities and the Civilian Misconduct Action Authority, while service members generally answer to the military.

In Germany, drivers under the age of 21 or drivers who have held their license for less than two years risk losing their license if they have any alcohol whatsoever in their system while driving.

For administrative offenses, the BAC limit in Germany is quite low, 0.05 grams of alcohol per 100 milliliters of blood. A driver who is a first-time offender with a BAC level over 0.05g/100ml will be fined €500,00 and have his driving rights suspended by the German authorities for one month (and by American authorities for an additional 60 days — see chart on page 7).

Under German law, a criminal offense occurs if a driver has a BAC level of 0.11g/100ml or higher. However, even a BAC level of 0.03g/100ml can trigger a criminal offense (and will no longer be treated as an administrative offense) if there is an alcohol-related operational fault (e.g., running a red light or causing an accident).

In Germany, you can even lose your driver's license for riding your bicycle while intoxicated, because a bicycle is considered a vehicle.

[continued on page 7...]

Drinking & Driving Don't Mix... (continued)

U.S. Army regulations:

Army Regulation 190-5 details the BAC limits throughout the Army and provides for consequences should a driver violate the regulation. Additionally, Army in Europe Regulations 190-1 and 27-9 provide specific BAC levels and consequences for USAREUR-licensed drivers.

The following chart describes a few of the consequences drivers may face if they drive with alcohol in their system above the limit allowed by USAREUR regulation or German statutes. (See Army Regulation 190-5, paragraph 2-7; Army in Europe Regulation 190-1, paragraph 2-14b(3)&(5), 2-15a(2), and 2-17).

BAC Level *	Soldier	Family Member
0.05 to 0.079	GOMOR may be issued. 90-day license suspension.	90-day license suspension.
0.08 to 0.10	GOMOR must be issued. License is revoked for 1 year.	License is revoked for 1 year.
0.10 or higher	GOMOR must be issued. License is revoked for 1 year. Violation of Art. 111, UCMJ.	License is revoked for 1 year.
Refusal to take BAC test	GOMOR must be issued. License is revoked for 1 year.	License is revoked for 1 year.

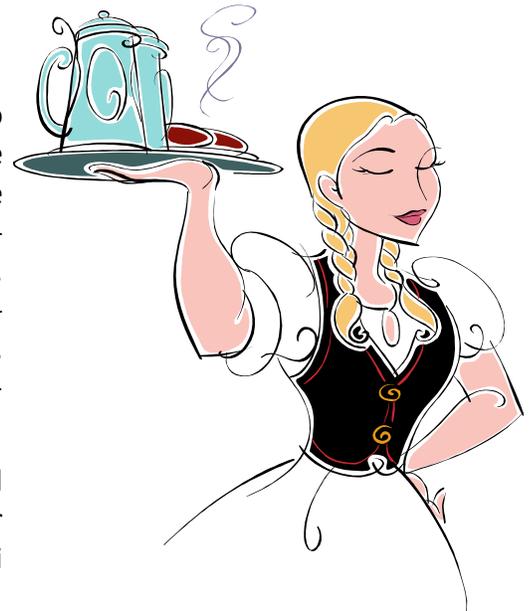
* Drivers under 21 who are found to have any measurable alcohol in their blood up to 0.049% will receive a 30-day license suspension for a first offense, 60 days for a second offense, and 90 days for a third offense.

How to stay out of trouble:

The only tried and true method to avoid violating the law is to simply avoid driving with any alcohol in your system. While there are several devices available for purchase which claim to provide an immediate BAC result, those devices will not override the results obtained using the Military Police or German Polizei devices. Moreover, because blood alcohol content can rise over time depending on rate of consumption, amount of alcohol consumed, body weight, and numerous other factors, any attempt to determine a BAC level before driving is fraught with inaccuracy.

So by all means, enjoy all the festivals, markets, food, and beverages Germany has to offer. However, to avoid having your road trip end in the back of a Military Police or German Polizei vehicle, make sure you have a designated driver.

For more information on "Drinking and Driving Rules in Germany," pick up a copy of our client hand-out by that title from the Kaiserslautern Legal Services Center's Legal Assistance Office, or click on: <http://www.eur.army.mil/21TSC/SJA/LegalAssist/Areas-German%20&%20EU%20Issues/01-05-DUI.pdf>



Contract Cancellation Rights in Germany

A German attorney explains your rights under host nation law...

by Holger Blug

You've had your eyes on a fancy brand-name shirt for a long time. One day you go into a local clothing store on the German economy and buy it. When you get home, your wife tells you the shirt doesn't fit and makes you look fat. You decide to take it back to the store, get your money back, and shop around for another shirt...

Many people believe they have a general right to cancel a contract if they later decide that they don't like the goods or don't need them anymore, but German contract law is based on the principle of "*pacta sunt servanda*," which means agreements must be kept. Only if the goods are defective and the seller is not able to replace or repair them does the buyer have a statutory right to revoke a contract. If a sales contract contains a cancellation clause, the buyer may be able to return the goods and get his money back. Although some stores allow customers to return merchandise without having to give a reason for the return, merchants are not required to do this under German law; they merely do it as an act of good will.



Door-to-Door Sales

The situation is different if a travelling salesman shows up at your front door to solicit a sale. The German Civil Code (BGB) includes a special right to cancel ("*Widerrufsrecht*"), which applies to door-to-door sales. It gives the buyer the right to cancel a contract within 14 days without having to state any reasons.

Ordering Goods by Telephone or Internet

The same holds true when you order merchandise over the phone or on the internet instead of buying it at a local store. There are special consumer protection rules for these kinds of sales. The 14-day cancellation period does not start before the consumer receives the goods, and the 14-day period only starts running if the consumer is informed by the seller of his right to cancel ("*Widerrufsbelehrung*").

Some changes in a consumer's right to cancel a contract took effect on June 13, 2014. Since the changes were mandated by a European Union Consumer Rights Directive*, you will find similar rules in all EU-member states:

- **The cancellation right can be lost.** Under the old law the consumer never lost his right to cancel if the seller failed to inform him of his cancellation rights, but according to the new rules a consumer can no longer cancel a contract if more than 12 months and 14 days have passed since he received the goods.
- **The cancellation must be received to be effective.** When sending the goods to the consumer, the seller has to provide a pre-printed cancellation form which the buyer can use to cancel the contract. The buyer doesn't have to use this form. He can prepare his own cancellation notice and, according to the new rules, the buyer also has the option to cancel online or cancel orally. However, it is always better to cancel in writing, so you have written proof of the cancellation, as the burden of proof is on the consumer to demonstrate he cancelled in a timely manner.

* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

Contract Cancellation Rights (continued)

- **Return costs.** The seller has to return the purchase price, as well as any costs the buyer incurred when he purchased the goods (e.g., shipping and handling fees), within 14 days after receiving the cancellation notice from the buyer, but the seller has the right to hold on to the money until he receives the returned merchandise or the buyer is able to prove that he already shipped the goods back to the seller. Under the new law, the buyer is obligated to pay the shipping fees to send the goods back to the seller, if he was informed of his cancellation rights by the seller and if the seller has not agreed to pay for the return shipment costs. This is a big change, since under the old law the seller had to bear those costs too, if the value of the goods was more than €40,00.
- **Loss of value.** The buyer will have to compensate the seller for loss of value if the goods are damaged or have traces of use above what is considered normal when goods are just being tried out and tested. The seller has to inform the buyer of this consequence, too.

The cancellation rights discussed above do not apply to all internet and telephone sales, as there is no cancellation right for goods which are individually designed for the buyer, nor for sealed goods when the seal is removed, nor for perishables, etc. This is admittedly a confusing and constantly-changing area of the law. If you have questions about consumers' cancellation rights or if you have trouble cancelling a contract, feel free to contact the Legal Assistance Office.



Meet Our Host Nation Attorneys!

The 21st TSC Office of the Staff Judge Advocate has a "world class" team of host nation attorney-advisors, all of whom see legal assistance clients and advise them on a wide variety of legal issues involving host nation, European, and international law. From left to right: Holger Blug (Kaiserslautern), Jarin Nijhof (Schinnen, NL), Joerg Moddelmog (Kaiserslautern), Marianne Schoonjans (Mons, BE), Werner Sukup (Stuttgart), and Christian Geier (Baumholder). "First in Support!"

We're On the Web!

Current and back editions of this newsletter and articles we've published on legal assistance topics are posted on the 21st TSC OSJA website at: <http://www.eur.army.mil/21TSC/sja/LegalAssist/LegalAssistance.asp>

Claims articles, information papers, brochures, and related information is posted at: <http://www.eur.army.mil/21TSC/SJA/Claims/Claims.asp>

The "KLI" is also posted on JAGCNet and shared with legal assistance and claims practitioners Army-wide.

How to Avoid Becoming the Victim of an Illegal Business Practice

by Joerg Modellmog

This spring, a German employee of a cell phone shop located near Ramstein Air Base had to stand trial before the Local Court (“*Amtsgericht*”) of Landstuhl on charges of fraud and embezzlement. Because of the shop’s proximity to Ramstein, most of the victims of his criminal actions were Americans. The accused had an (almost) perfect plan in attracting and targeting his American customers. All witnesses described the accused as being eloquent with a fluent command of the English language that made them feel comfortable and welcome. There are valuable lessons to be learned from what transpired in this case:

The accused promised and indeed gave all his customers a €5,00 discount on their cell phone bills as long as they came in and paid their bills in cash (“walk-in credit”), using a combination of his own profits and embezzled money to finance the discount. No bill reflected this discount.

Lesson #1: If you get a discount that is available nowhere else, it might be a deal too good to be true, particularly if it is not reflected on your regular bill. Always ask for a copy of your bill right away, even if you can’t read/translate it.

The accused had collected a security deposit from most of his clients but managed to override/trick the cell phone company’s software, allowing him to pocket that money himself. Regrettably, his customers often weren’t in a position to enforce a return of their deposit because they had simply forgotten about the payment or had violated lesson #2.

Lesson #2: If you pay a security deposit, keep proof that you actually paid it and store such proof safely. Make sure the receipt correctly reflects the amount, business address, date, and signature.

The accused had put a strong emphasis on cash transactions. Nevertheless, he had also collected the banking information from his customers – “just to be on the safe side.” Later on he used that banking information to make small withdrawals.

Lesson #3: Check your monthly bank statements closely, even for small withdrawals. The fluctuation of the exchange rate may make tracking difficult, but it’s not impossible.

The accused sold “new” phones to his customers that were in fact used and/or repaired ones. And when new ones were sold, he did not issue proper receipts, allowing a second collection of that debt.

Lesson #4: New products should not come with a broken seal. You should not allow a salesperson to open the wrapping in a back room alone.

The accused was sentenced one year in prison, but the sentence was suspended and will only be enforced if he commits another offense within the next three years. In his closing argument, the public prosecutor had asked for a prison term of only 10 months with a three-year suspended sentence. The defense attorney had argued for an acquittal. It is quite rare for a German court to impose a more severe sentence than was asked for by the prosecutor, and it underscores how seriously the court viewed this matter. The accused will have to be on his very best behavior for the next three years, or he could wind up in the slammer.

The German criminal system will not tolerate offenses committed by businessmen. If you notice or suspect any wrongdoing, call the Kaiserslautern Legal Services Center Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 to make an appointment to consult with a German attorney about the possible criminal and/or civil consequences. The case described above was partially based on information provided by our Legal Assistance clients. The system works!

Criminal Custody of U.S. Forces Personnel

by Joe Hall

In the last edition of this newsletter, we addressed the status of forces (SoFA) aspects of autopsies of U.S. Forces personnel. The rule under Article 16 of the Supplementary Agreement (SA) to the NATO SoFA is relatively simple: autopsies on U.S. Forces personnel – uniformed or civilian – will be done in all circumstances only in U.S. Forces facilities. Military police, OSI/CID investigators, and legal advisors should not permit any exception to that rule; no autopsies on these persons should be conducted in German facilities.

Now, let's look at criminal custody. Criminal custody of U.S. Forces-affiliated



personnel is regulated under Article 22, SA. The custody rule is also relatively simple. We always keep, and where necessary ask for, custody of our uniformed members.

Article 22, paragraph 1(a), provides that where the U.S. Forces have jurisdiction over the criminal case, *i.e.*, exclusive jurisdiction or primary concurrent jurisdiction, or where the Germans have waived their jurisdiction, the U.S. Forces have automatic custody over the suspect/accused uniformed members. Military police, OSI/CID investigators, and legal advisors should not permit any exception to that rule.

Article 22, paragraph 2, provides that where the Germans have exclusive or unwaived primary concurrent jurisdiction and have arrested a Soldier or Airman, the arrested service member will be turned over to the U.S. Forces (without undue delay) if the U.S. Forces make a custody request. We will always make that custody request. Military police, OSI/CID investigators, and legal advisors should make that custody request to their German counterparts as soon as they are aware of the service member's arrest. If it appears that there will be any undue delay in the Germans releasing the service member, the International Law Division at the Kaiserslautern Legal Services Center or at the 21st TSC Office of the Staff Judge Advocate should be notified.

Once we have custody of the service member, we apply our own rules on custody, restriction, and pre-trial confinement.

Although we always assert our right to take custody of our uniformed members, that does not preclude close cooperation with German investigative authorities; we do continue to make the service member available for German police interviews, line-ups, and other investigative procedures.

Dependents and DoD civilian employees generally fall under German criminal custody procedures, as we have no court-martial jurisdiction over them during peacetime, something they should consider before they commit a crime.

Claims Tips to Know, Before You Go

by CPT A.J. Browell

While we all hope and pray that the shipment of our household goods will go off without a hitch, it is important to prepare for a claim – just in case. Setting yourself up for success in any military move requires knowledge and action ahead of time.

In order to have a valid claim, you must demonstrate three things: 1. That you actually owned the items and the items were in a certain condition prior to transfer to the carrier; 2. That you transferred the items to the carrier; and 3. That the carrier caused loss or damage to your items.

There are many ways you can show that you owned the items and the condition of the items prior to shipment. One thing you can do is photograph or film your household goods; high quality photos or videos can prove not only that you owned the items, but also that the items were in good condition (free of scratches/dents, operational, etc.). Additionally, the carrier will list the condition of your items on the “condition at origin” section of your standard inventory. Ensure that any damage listed is in fact present on your items. If you disagree, simply note it on the inventory prior to signing. Armed with photos/videos of your items and any disagreement noted on the inventory, you stand a better chance of demonstrating your items were in good condition prior to shipment.



The key to showing that you transferred items to the carrier is both the regular inventory and the high risk/high value inventory. If you own items that are more expensive, ensure they are specifically listed on the inventory and/or the high risk/high value inventory. With the listing and photos/videos discussed above, you will improve your chances of receiving fair compensation for any lost or damaged items. The carrier will likely tell you that you only need to list items that have a value in excess of \$100 per pound on your high risk/high value inventory. Remember, this is only a threshold. You may list any item that is important to you on this inventory. In my experience, items specifically listed on the high risk/high value inventory are rarely lost or damaged in shipment.

It is presumed that the carrier caused loss or damage to your items if you provide notice to the carrier **within 75 days of delivery**. That said, you should take care to notify the carrier of any obvious loss or damage at delivery on the “Notification of Loss or Damage at Delivery” form, DD Form 1840 (*a.k.a.* “the pink form”), or similar form. Examples of obvious loss or damage include, but are not limited to, a cracked television screen, missing boxes or furniture, moldy boxes, shattered dinner plates, etc. Finally, you must file your claim with the carrier **within nine months of delivery** if you want full replacement value. If you miss that deadline, you can still file your claim against the Government as long as you file it **within two years of delivery**, but we can only pay you depreciated value.

The most common mistake claimants make is failing to adhere to the deadlines. There are a number of causes for this, but the main cause is difficulty using the Defense Personal Property System (DPS) at www.move.mil to file notice of loss or damage and to file the claim itself. You should therefore allow yourself sufficient time to work through any problems in DPS so you do not miss the deadlines.

If you have further questions about these or other claims-related issues, call the Kaiserslautern Claims Office at DSN 483-8855/8856 or Civilian 0631-411-8855/8856, or visit the office, located in Room 112 of the Kaiserslautern Legal Services Center, and consult with our claims experts.

When in Doubt, Go Without... ***(Bumper Stickers, that is...)***

by MAJ Karin Chelluri

If you look around these days you're likely to see lots of cars decked out with German flags and other patriotic symbols because it's time for the World Cup. As you see these flamboyant displays of vehicular décor, it's a good time to remember that as personnel subject to Army in Europe Regulation 190-1 we can't put just anything on our cars.

First, we're discouraged as a matter of force protection from putting decals, stickers, flags, etc. on our vehicles that show our connection with the United States. In fact, installation inspection decals, American slogan decals, and even the oval USA decal are prohibited on vehicles with U.S. Forces-provided German license plates.

Second, while we're on the subject of prohibited decals, AE Reg. 190-1 prohibits U.S. personnel from displaying any indecent or obscene matter on a vehicle. AE Reg. 190-1 defines "indecent or obscene" as "written or graphic material that describes or depicts sexual or excretory activities or organs in terms or in a way that is offensive, as measured by contemporary community standards." That means any of the most commonly-recognized words in the English language such as s__t or f__k may not be displayed in any fashion on a USAREUR-registered vehicle. Despite the regulation's guidance, people may differ on what they define as offensive. Stickers that say, for example, "I'm an English teacher, you do the math," are permissible. If you are ever uncertain as to the acceptability of a particular decal the best course of action is not to place it on your vehicle. The next best course of action is to ask your commander or supervisor for their guidance. This precautionary step could save you from adverse consequences because violations of AE Reg. 190-1 can result in the suspension of your USAREUR license for up to one year and the withdrawal of your vehicle registration privileges for up to 180 days.

Further, if you are informed that you are required to remove a decal or sticker under the provisions of this regulation and refuse to do so, you can be prohibited from entering any area under the control of U.S. Forces. If you are a service member, you could be charged with violating Article 92 of the UCMJ, Failure to Obey an Order or Regulation. If you are a civilian employee or family member, you are also subject to the imposition of administrative and disciplinary penalties through the civilian misconduct office.

We must always remember that we are ambassadors of our nation while stationed abroad and that conduct as seemingly innocuous as affixing an offensive bumper sticker to our vehicle can diminish our country's esteem. So when in doubt, go without (bumper stickers, that is).

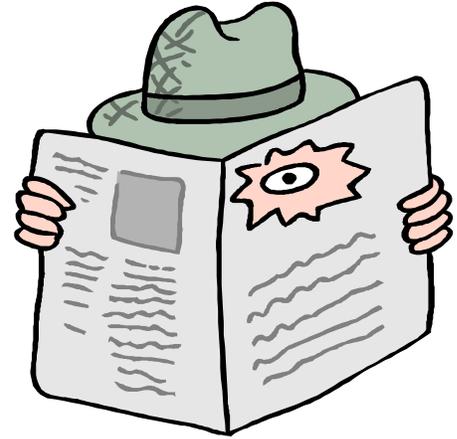


Contracting Officer's Representatives: Private Eyes on the Battlefield

by LTC Louis Aldini

So you have been asked to be a Contracting Officer's Representative (COR)! Now what? Are you obligated to accept? Do you need any specialized training or qualifications? Are there any personal conflicts of interest? Are the required duties and responsibilities of being a COR in addition to your regular and duties and responsibilities? Is this the "other duties as assigned" that are at the backend of most job descriptions?

These are just some of the questions that come to mind if you are chosen by your Command or selected by a Contracting Officer (KO) to act as a COR or in some circumstances a Contract Officer's Technical Representative (COTR) by providing assistance to the KO in performing the technical and/or administrative functions of a particular Contract or Task Order.



The reliance by the Federal Government and in particular the Department of Defense (DoD) on private sector Contractors is a well-established and continually-expanding practice. The use of CORs/COTRs is an essential part of the contract surveillance process. The COR/COTR acts as the eyes and ears of the KO. The COR/COTR monitors a Contractor's performance relative to the terms and conditions of a particular contract and communicates any issues or concerns to the KO.

The Defense Federal Acquisition Regulation Supplement (DFARS) 252.201-7000 defines COR as "an individual designated in accordance with subsection 201.602.2 of the DFARS and authorized in writing by the KO to perform specific technical and administrative functions."

The COR/COTR does not have the authority to obligate the Government or modify the terms and conditions of a contract (DFARS 201.602-2). Members of the requiring organization are designated specific authority by the KO to verify that the Contractor is fulfilling the requirements of the Contract. The COR/COTR documents the Contractor's performance and acts as liaison between the Government and Contractor when fulfilling surveillance responsibilities. This documentation becomes a part of the official Contract file. It is important that the COR/COTR documents everything, including conversations and meetings with the Contractor, performance expectations, and any other relevant occurrence that involves the Contractor or the Contract.

CORs/COTRs are strictly prohibited from making any informal commitments such as:

- a. Encouraging a Contractor to incur costs or perform work prior to receiving authorization from the KO to perform under a particular Contract/Task Order or an executed Contract/Task Order modification for additional work;
- b. Requesting or requiring a Contractor to make changes or take any action beyond the requirements of the Contract/Task Order without an executed Contract/Task Order modification approved by the KO;

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Contracting Officer's Representatives (continued)

c. Providing approval for a Contractor to incur costs under a Contract/Task Order in excess of those costs contractually allowable; and

d. Committing the Government to a course of action under a contract with regard to any Contract/Task Order change, claim, or dispute.

Only the KO maintains the expressed written actual authority to bind the Government. A COR/COTR may provide the impression of authority but it is merely apparent authority derived from their position and cannot be used or implied to commit the Government. An overly assertive COR/COTR runs the risk of creating an "unauthorized commitment" which is not binding, since the COR/COTR who made it lacked the authority to enter into that agreement on behalf of the Government and without KO authorization.

In certain situations ratification may be used as a means of approving an unauthorized commitment by an official (KO) who has the authority to do so. However, the possibility of ratification of an unauthorized commitment should not be relied upon by the COR/COTR as a means of corrective action, since there are no assurances that the ratification will be authorized or approved. This creates the very real possibility that the COR/COTR may be personally and financially liable for the commitment made with the Contractor.

To avoid this awkward misstep a COR/COTR should never stray beyond their level of authority and only perform the COR/COTR functions listed below:

- Obtain appropriate certification and be prepared to perform the duties/responsibilities as designated by the KO.
- Monitor Contractor performance and maintain appropriate files and records which shall be available for review by the KO, the Inspector General, officials of the Government Accountability Office, Defense Contract Management Agency, Defense Contract Audit Agency, and any other officials as authorized by the KO.
- Review and understand the terms and conditions of the Contract.
- Do not appoint, designate, or delegate any COR/COTR responsibilities to any other person.
- Provide timely reports regarding Contract performance to the KO.
- When advised by the KO that your services are no longer required or if for some reason you are unable to perform you should ensure that all reports/records/communications are made available to the KO.

Being selected or volunteering to be a COR/COTR by your Command or local KO is an important responsibility that should not be taken lightly and should be considered an important and commendable part of Government service.

LTC Aldini is a Reservist with the 91st Legal Operations Detachment in Forest Park, Illinois, and an expert in the field of contract fraud litigation. He spent two weeks working in the 21st TSC OSJA's Administrative & Civil Law Division this spring on Overseas Deployment Training (ODT). The ODT program brings us subject matter experts from a wide variety of legal disciplines, providing invaluable training opportunities for the Reservists and for our permanent staff. They help keep us "First in Support!"

The Ethics Corner...**ETHICS GUIDANCE ON GIFT GIVING...**

by Rick Schwartz



Summer transfer season is a good time for a reminder about when it's acceptable to offer a gift to a departing senior official or accept one from individuals who are subordinates (or who earn less pay). Though this is intended as a short summary of the rules, keep in mind that appearances are as important a consideration as whether or not a given action is otherwise permissible. Mindful of the general rule that Executive Branch employees may not give or accept gifts from those in a superior-subordinate relationship (or those who earn disparate pay), it is understandable that individuals will sometimes want to recognize a boss in a personal way for the positive impact they've made. At the same time, it's important to go about it in a manner that doesn't put the senior official or those offering the gifts in a predicament regarding the ethics rules. Consider, for example, whether your office can create a pool to jointly get a PCS or retirement gift? It's certainly possible, but there are some things you should know before you begin. Individual facts and circumstances are going to vary, so always be mindful of the Joint Ethics Regulation (JER) and the Code of Federal Regulations (CFR) for specific guidance.

Each Executive Branch employee is bound by the general prohibition against directly or indirectly giving gifts to, or soliciting contributions for, an official superior (note that this is broader than immediate supervisors). By the same token, those officials are generally prohibited from soliciting or accepting gifts from lower paid employees or those subordinate to them in a supervisory chain, unless the donor and recipient are personal friends and there is no superior-subordinate relationship. These restrictions aim to preserve integrity in the federal workplace by preventing inappropriate influence or bias from being brought to bear, as well as the appearance thereof. There are specific requirements when the rules have been violated; in some cases requiring the recipient to either pay fair market value for the gift or give it back.

The Government Ethics rules helpfully provide for two commonly-used exceptions:

(1) On an **occasional** basis, gifts may be given, provided that the aggregate value of the non-cash gift is \$10 or less per occasion. Generally speaking an occasional basis includes birthdays or gift-giving holidays, such as Christmas. A contribution of food or beverages to share in the workplace among several employees, extending an invitation to a colleague or superior to a meal at a residence, as well as customary gifts to a host or hostess (*e.g.*, flowers or a bottle of wine) upon accepting such an invitation of personal hospitality, are also appropriate applications of the occasional basis exception.

(2) **Special, infrequent occasions** may also support an exception to the general prohibition, as long as the gift is appropriate to the occasion and has a market value of less than \$300 per "donating group." Typical examples of when this is appropriate would include those of personal significance, such as marriage, serious illness, or the birth or adoption of a child. They also include situations that sever a subordinate-official superior relationship, such as retirement, re-assignment, or separation. Of course, this is the exception we typically are applying when arranging for a gift to a departing official superior.

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ETHICS GUIDANCE ON GIFT GIVING (Continued...)

In applying that exception to the summer rotation season (or any other time of year, for that matter), exacting guidelines must be complied with. A “donating group” consists of every employee (uniformed or civilian) who contributes to any given group gift. For that reason, personnel should generally not contribute to more than one group. Where multiple groups have a common donor, the value of all gifts from those groups must be aggregated as if the gift was from a single donating group for purposes of the \$300 limit.

Soliciting others for contributions to a group gift raises its own concerns:

-- No more than \$10 may be asked of any other Federal employee as a contribution (contractor employees may not be solicited at all), but only for gifts that fit into our second exception above, or for the occasional sharing of food and refreshments in the workplace. Contributing is entirely a personal choice of each individual.

-- Recommendations of a specific amount up to \$10 are acceptable, as long as the person doing the soliciting also states that the contributing employee is free to contribute less than the recommendation or nothing at all. Although one should never ask for more than \$10, donors may give more than \$10 if they choose to do so.

-- To ensure that contributions are truly voluntary, the junior person doing the soliciting should not be anywhere in the supervisory chain and a list of those who contribute should not be made.

-- If the gift for this special, infrequent occasion is to be presented at a party for this purpose and the recipient's expenses are to be paid for by contribution, employees should be told that the funds will be used for both the gift and the party. They should also be told that they are free to contribute to both, either one alone, or neither. In such cases, the cost of food, refreshments and entertainment received by the donor would not be included with the gift in determining whether the \$300 limit is exceeded.

Remember also that unless there is an independent basis of support (*e.g.*, a pre-existing personal relationship), a gift from one employee's spouse to another's spouse will be considered a gift between the two employees, and thus subject to the rules described above and considered a part of the sponsor's gift for purposes of the \$300 limit.

There is no general prohibition or limit on the amount which a superior may gift to his subordinates, subject to the consideration of appearances or a lack of impartiality.

Lastly, keep in mind that these rules only apply to gifts between Federal government employees, and are not applicable to gifts from contractor employees or outside sources. There is no corresponding PCS/re-assignment exception for gifts from contractors or non-Federal entities (such as private associations or clubs, even when primarily composed of members of the military community or their dependents). To be acceptable, any gift from these sources must comply with the more limited exceptions available under the Government Ethics rules. ***Whenever you have questions on how to apply the gift rules to your specific scenario, contact your servicing Ethics Counselor for advice.***



Major General John R. O'Connor, Commanding General of the 21st Theater Sustainment Command, thanks Beate Reich, Undersecretary in the Ministry of Justice and for Consumer Protection in Rheinland-Pfalz, for the remarks she delivered as the keynote speaker at this year's annual Law Day luncheon, which was held at the Sembach Community Activities Center on May 8th. Frau Reich addressed German and American jurists on the Law Day theme for 2014: "American Democracy and the Rule of Law: Why Every Vote Matters."

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. Parking on Kleber Kaserne is difficult—allow a few extra minutes to circulate until you find an open spot. Bldg. 3210 is directly across from the former site of the Kleber Shoppette. Enter Bldg. 3210 from the door on the east end of the building.

