



OUR ANNUAL TAX ISSUE !!

KAISERSLAUTERN LEGAL SERVICES CENTER



KAISERSLAUTERN LEGAL INFORMER

MEET K-TOWN'S NEW GERMAN ATTORNEY



Holger Blug, who spent the last six years as the German Attorney-Advisor in Baumholder, has joined the staff of the Kaiserslautern Legal Services Center.

by Steve Smith

While some military communities in USAREUR are getting smaller or closing down altogether, Kaiserslautern's population is growing. With the relocation of many units to Sembach, this trend is likely to continue. The demolition of stairwell quarters to make room for new duplex housing, which only houses a fraction of what the stairwells housed, means that more and more Americans stationed in the KMC must find private rental housing or purchase a home on the economy. This has dramatically increased the demand for German legal counsel.

Since his arrival in Kaiserslautern in 2005, German Attorney-Advisor Joerg Modellmog has seen the backlog for clients who wish to make an appointment with him grow to three weeks or more.

That is too long to wait when you are trying to negotiate a lease, or when your landlord is trying to evict you. There was too much demand for one man.

That's why a second German attorney was added to the Kaiserslautern Legal Services Center's staff for 2012. Holger Blug, a native of Schwalbach/Saar and a graduate of the University of the Saarland, who spent the last six years serving as the German Attorney-Advisor for the Baumholder Law Center, began work in Kaiserslautern in January. Since then, the appointment backlog to see a German attorney has dropped to less than a week.

We welcome Holger, his wife Denise, and their daughters, Elena and Alyssa, to the 21st TSC JAG family. We're delighted to have this capable, experienced German legal advisor on our client services team — *fighting for you!*

IN THIS ISSUE...

- German Taxation
- Changes for Tax Year 2011
- Offshore Account Reporting
- Tax Rules for Dependent Children
- 10 Good Reasons to Come to Claims
- German Contracts
- Service of Process
- The Hatch Act
- And much more!



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

When the German Taxman Asks for Your W-2

by Joerg Modellmog

Editor's Note: The purpose of this article is not to alarm our readers. The German tax authorities are not out to tax every American who is stationed in Germany. But we have noticed an increasing number of American tax clients who have been asked by the Germans to furnish information on their U.S. Government income. Most of those clients thought they were immune from German taxation because of their NATO status, and most of them were married to someone who filed a German tax return using a "married" filing status. All of them sought the assistance of our Senior German Attorney-Advisor, Joerg Modellmog, who has advised scores of clients over the years on German tax matters. He incorporated some of the lessons he learned along the way into this article.



If your spouse files a German tax return and the German tax authorities (a.k.a., "Finanzamt") subsequently send you a letter asking to see a copy of your W-2 or Leave & Earnings Statement, something is seriously wrong!

Based on Article X of the NATO Status of Forces Agreement (SOFA), all NATO personnel are exempt from German taxation on their U.S. Government pay – as long as you are in Germany **solely** in your NATO capacity. If you actively seek to prolong your tour in Germany based on reasons that are not related to your job (e.g., because you have a German spouse), it could call into question whether you are here solely in your NATO capacity.

German tax law requires that you be able to prove your intent to return to the U.S., if called upon to do so by the German tax authorities, during any tax year. How do you prove such intent? No one can look inside your head, but circumstantial evidence can help demonstrate intent, e.g., maintaining a current U.S. driver's license, frequently traveling back to the U.S. (save the flight tickets!), participating in U.S. elections, driving a car with U.S. specifications, or owning real estate in the U.S. as opposed to Germany.

If your spouse files German taxes, he or she should file **single** ("Einzelveranlagung"), since, based on Article X of the NATO SOFA, you are not legally present in Germany for tax purposes. If your spouse uses the married filing joint ("Zusammenveranlagung") or married filing separate ("getrennte Veranlagung") filing status when filing a German tax return, it will likely trigger the kind of request for information on your U.S. income mentioned above.

If you file a German tax return using the married filing joint or married filing separate status, your spouse and you make a (presumably incorrect) affirmative declaration that Germany is your domicile and that you have no intent to return to the U.S. In such a case, the German tax authorities may question your entitlement to the taxation shield the NATO SOFA provides other members of the force who are in country "solely" because of their job. They will likely rely on Article 19 of the revised German-American Tax Treaty ("Doppelbesteuerungsabkommen"), which entered into force on December 28, 2007, to fully tax your U.S. Government pay. [Note: a limited exception applies to those who were working in their U.S. Government job on or prior to August 28, 1989, and continue to do so.]

To avoid getting into a tug of war with the German tax authorities, keep a watchful eye on your spouse's German income tax declaration. Your spouse should be in German income tax class I ("Steuerklasse I") and file a German tax return using the **single** filing status ("Einzelveranlagung"). You may want to warn your spouse about the potential consequences of using any other filing status in Germany.

If you have questions concerning your spouse's German tax filing status, or the German tax authorities send you a request for information, make an appointment to see a German legal assistance attorney by calling DSN 483-8848 or Civilian 0631-411-8848.

Changes for Tax Year 2011

by Donald Davis

The biggest change most taxpayers will notice when they visit our tax assistance centers to have their 2011 federal income tax returns prepared is that their refunds are not as large as they were last year. This is due to the elimination of the Making Work Pay Credit, which added \$400 to taxpayers' refunds on their 2009 and 2010 returns (\$800 if they were married filing jointly). Schedule M, which was used to calculate the credit, is a thing of the past. The good news is, now that Congress has finally extended the payroll tax cut through the end of 2012, taxpayers should receive more each payday because their Social Security tax withholdings will be lower. That should help make up for the loss of the Making Work Pay Credit.

Schedule B has more specific questions at the bottom about foreign bank accounts than in prior years. See Mark Christensen's article on page 4 for more information on the perils of not reporting foreign bank accounts and other foreign financial assets.

Taxpayers will also notice major changes to Schedule D. In prior years, you reported capital gains and losses on Schedule D itself. Now, you have to report them on the new Form 8949, and transfer the totals to Schedule D.

Taxpayers who sold real estate in 2011 will likely receive a 1099-S form, which reports the gross proceeds from real estate transactions, which must also be reported on Form 8949.

We've also noticed an increase in the number of clients who come in with 1099-C forms, which report cancellation or forgiveness of debt. This is usually deemed to be taxable income. The theory is that the taxpayer has been enriched to the extent that he no longer has to pay back a debt he owed. This can come as a real shock to our clients.

We're also doing more state tax returns than in past seasons. Remember, just because you are overseas doesn't mean you don't have to pay state taxes. It all depends on the law of your state of legal residence. Some states have no income tax. Some do but don't tax you if you meet a "three-part test." Others have special tax breaks for the military. And still others tax you regardless of whether you are in the military or overseas. This is a very complicated and tricky business, and the best advice I can give you is to visit our tax assistance centers and let the tax experts figure it out for you. We have special guides and software that can be a big help, **and the service is absolutely free!**

While the stateside filing deadline is April 17th this year, taxpayers overseas enjoy an automatic extension of the deadline to file until June 15th. **This is not an extension of the time to pay any taxes you owe!** If you owe taxes, you must pay by April 17th to avoid paying interest and late payment penalties. Our tax centers will remain open through June 15th to assist taxpayers who avail themselves of the overseas filing extension. It's a valuable program; use it or lose it!



KAISERSLAUTERN LEGAL SERVICES CENTER

**Building 3210
Kleber Kaserne**

Legal Assistance 483-8848

Tax Assistance 483-7688

Claims 483-8414/8862

International Affairs 483-8854

Trial Defense Service 483-8397

[Civilian: 0631-411-XXXX]

Administrative Law 484-8747

Criminal Law 484-7419

[Civilian: 0631-413-XXXX]

TY 2011 KEY FIGURES:

Average Exchange Rate:

\$1.00 = .7188 Euros

Mileage Rates:

Business: **51 cents/mile (Jan-Jun)**

55.5 cents/mile (Jul-Dec)

Moving/Medical:

19 cents/mile (Jan-Jun)

23.5 cents/mile (Jul-Dec)

Charitable: **14 cents/mile (all yr.)**

**Maximum Foreign Earned
Income Exclusion: \$92,900**

Standard Deductions:

MFJ/Qual. Widow(er) **\$11,600**

Single/MFS: **\$5,800**

Head of Household: **\$8,500**

Personal Exemptions: \$3,700

More on Offshore Account Reporting!

by Mark Christensen

Taxpayers are again reminded to comply with laws concerning the disclosure of financial accounts outside the United States. The first obligation is if you have a financial interest in or signature authority over a financial account located in a foreign country. Complete Line 7 of the Schedule B and file the schedule with your tax return.

Next, any U.S. person who has signature authority over non-U.S. financial assets must disclose the assets to the U.S. Department of the Treasury if the combined value of those assets converted to dollars exceeds \$10,000 at any time during the year. The disclosure is done using Department of the Treasury form TD F 90-22.1, available at <http://www.irs.gov/pub/irs-pdf/f90221.pdf>. This requirement does not apply to accounts held in U.S. financial institutions located on American military installations such as our credit unions or banks. The disclosure is due June 30, 2012 for calendar year 2011, and is not filed with a tax return. Instead, you must mail it directly to a U.S. Treasury office in Detroit—the address is on the form. Note that the form must be received in Detroit (not just postmarked) by June 30th, so the sooner you mail it, the better. There are criminal penalties for failure to file this form.



Finally (for now), certain U.S. taxpayers holding non-U.S. financial assets must report the holdings on the new Form 8938 with their tax return. Those taxpayers include the following:

1. Unmarried and separate filing taxpayers living in the U.S. if the total value of specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year. For married taxpayers living in the U.S., the thresholds are \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.
2. Joint return filers living outside the U.S. if the value of your specified foreign asset is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the year. For taxpayers living outside the U.S. who do not file a joint return, the thresholds are \$200,000 on the last day of the tax year or more than \$300,000 at any time during the year.

Look closely at the instructions for Form 8938 at <http://www.irs.gov/pub/irs-pdf/i8938.pdf> if you have questions about this new disclosure obligation.

There are no taxes or payment obligations associated with these disclosures; the requirement is simply to disclose. The disclosure requirements stem from government efforts to identify illegal offshore accounts held by U.S. persons. For purposes of the disclosure requirements, a U.S. person includes United States citizens and resident aliens. This includes those who possess lawful permanent residence status with the U.S. (green card holders).

Failure to disclose ownership or signature authority over specified accounts can result in financial penalties and criminal liability. The IRS opened another Offshore Voluntary Disclosure Initiative (OVDI) program this year, designed to encourage folks to get compliant. Under the OVDI, the penalties for nondisclosure can be reduced to 27.5% of the highest aggregate value of the non-U.S. accounts during the eight years these requirements have been in place. Some taxpayers may be eligible for penalties of 5% or 12.5%, depending on the nature of their disclosures.

If you have questions about these rules, contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848, and make an appointment to speak to a tax attorney.

Tax Rules for Dependent Children

by Steve Smith

Military taxpayers often approach me with questions about how to handle their children's taxes. This article provides answers to their most frequently-asked questions.

Many service members who marry foreigners ask how they can obtain an Individual Taxpayer Identification Number (ITIN) for their German step-children, so they can claim them as dependents. The short answer is, they can't. The IRS won't issue an ITIN for someone who can't be claimed as a dependent, and in order to claim a dependency exemption the child must be a citizen or resident alien of the U.S., Canada, or Mexico. Germany is none of the above. Parents get pretty upset about this, and protest that "I've got the child's dependent ID card right here!" Just because someone is a military dependent does not make them a dependent for tax purposes.

I'm often asked if a child who worked in the summer hire program needs to file a tax return. The answer is usually no. Single taxpayers who are claimed as a dependent on their parents' return and who made less than \$5,800 in earned income, or less than \$950 in unearned (*e.g.*, investment) income, in 2011 have no obligation to file a federal income tax return. [Note: these threshold amounts change every year, so always look for the chart in the front of the instructions for Form 1040 "for children and other dependents" to see who must file.]

Just because a dependent doesn't have to file a tax return doesn't mean they shouldn't. If they had federal income tax withheld from their earnings, the only way to get it back is to file a return and claim a refund.

Summer hires are U.S. Government employees, and are therefore ineligible for the Foreign Earned Income Exclusion. The situation is different for dependents who work as baggers at the Commissary. They are not DECA employees, and do not receive a W-2. They work for tips. If they made more than \$5,800 in tips in 2011, they are technically required to file a return, but since they are eligible for the Foreign Earned Income Exclusion, they would most likely wind up paying no tax on their earnings. That's why most of them never even file.

Things get more complicated when children have investment income (*e.g.*, interest, dividends, and capital gains distributions) which is reported on 1099 forms bearing the child's social security number. Under certain conditions, parents can elect to report a child's interest and dividend income on the parents' return, using Form 8814. However, there is a cautionary note at the top of Form 8814 that warns parents that the tax on the child's investment income might be less if they were to file a separate return for the child, rather than include the investment income of the child on the parents' return.

If the child has investment income of more than \$1,900, a separate return must be filed for the child with Form 8615 attached. This method normally results in the child's investment income being taxed at the parents' tax rate, which is usually higher.

This is a complicated area, and parents who have questions about the issues addressed above should download a copy of IRS Publication 929, entitled "Tax Rules for Children and Dependents," from the IRS website at: <http://www.irs.gov/pub/irs-pdf/p929.pdf>



We Tackle Taxes:

21st TSC tax attorneys Steve Smith, Mark Christensen, and Joerg Moddelmog answered tax questions on AFN radio's "Open-Line" tax call-in program on February 8th.

In our first month of operations, 21st TSC's tax assistance centers in Kaiserslautern, Landstuhl, Stuttgart, Brussels, Chievres, Mons, and Schinnen prepared over 2,000 federal and state tax returns, saving military taxpayers over \$300,000 in commercial tax preparer fees and generating over \$4.3 million in refunds.



21st TSC Staff Judge Advocate COL Ralph Tremaglio presents a certificate of appreciation to IRS Senior Tax Analyst Monica Merchan, our 2012 VITA Instructor.*



The Kaiserslautern Tax Team received four days of basic tax training from Ms. Merchan, and another three days of advanced tax training from 21st TSC's tax experts.



21st TSC Commanding General BG Aundre Piggee and Special Duty Soldier SPC Phillip Wyatt cut the ribbon at the Kaiserslautern Tax Center's Grand Opening.



Special Duty Soldier PFC Adam Collison making appointments at the Kaiserslautern Tax Assistance Center. Walk-in and drop-off services are also available.

* "VITA" stands for Volunteer Income Tax Assistance, a long-standing IRS tax training and outreach program.

Angelika Stepholt to Retire in March ***After More Than 46 Years of Service to the Army in Kaiserslautern***

by Teresa Robison

We bid a fond farewell this month to Angelika Stepholt, who has served for the last 16 years as a paralegal in the Administrative & Civil Law Division of the 21st TSC Office of the Staff Judge Advocate. Angie will be retiring at the end of March after more than 46 years of dedicated service to the United States Army in Kaiserslautern.

Prior to assuming her current position in 1996, Angie served in a wide variety of clerical positions with the Quartermaster Corps, the US Army Medical Materiel Center-Europe, and the 21st TSC G-staff. As a paralegal, Angie provided superb support to generations of JAG personnel, displaying a willingness to assist in any way she could, both within the realm of her duties, and in helping “newbies” adjust to the customs, traditions, and language of the host nation. Her network of friends across the local commands proved invaluable. Her skillful digital archiving of administrative law opinions will facilitate legal research for many years to come.



Angie will be sorely missed by all who worked with her. She will now have more time to spend with her wonderful family: her husband, Dieter, two sons, Ralf and Marcus, and three beautiful grandchildren, Tamara, Laetitia, and Hendrik. Angie’s retirement luncheon will take place on Thursday, March 15th at the Idyll Restaurant in Eselsfuerth, beginning at 1130 hours. Friends and co-workers who wish to attend the luncheon should R.S.V.P. by March 9th to Teresa Robison at DSN 484-7449 or Civilian 0631-413-7449.

OUR 2012 TAX CENTER STAFF — ONE TEAM, ONE FIGHT!



KMC WEST: The staff of the Landstuhl Tax Assistance Center, which is located on the ground floor of Bldg. 3701 at Landstuhl Regional Medical Center (just below the Education Center and next to the Laundrette) includes (from left to right) SPC Elise Polk and SPC Angelique Jefferson (front row), Gary Tassler and SPC Jonathan Ahrem (back row).

Call DSN 486-6334 or Civilian 06371-86-6334.



KMC EAST: The staff of the Kaiserslautern Tax Assistance Center, which is located in Room 101 of Bldg. 3210 on Kleber Kaserne, includes (from left to right) SPC Cheng Chen, Steve McCollum, Wanda Canada, 21st TSC Tax Program Coordinator Donald Davis, Cindy Rivas, SPC Jesse Santos, Volunteer Basia Holscher, SPC Phillip Wyatt, and PFC Adam Collison (not pictured).

Call DSN 483-7688 or Civilian 0631-411-7688.

10 Good Reasons to "Come to Claims"

by CPT Yolanda Williams

Editor's Note: Now that most claimants file their claims directly with the carrier, there is no need to visit the local Military Claims Office (MCO), right? A lot of claimants assume this, but nothing could be further from the truth. There are many things the MCO can do to help facilitate filing a claim with a carrier, and there are still a lot of claims that can only be filed with an MCO. Our Claims Judge Advocate identifies 10 good reasons you should "Come to Claims!"



1. We can help make sure that your notice of loss or damage (notification document) is properly dispatched to the carrier in a timely manner. While obvious loss or damage should be noted at the time of delivery on the carrier's "Notification of Loss or Damage at Delivery" form (or DD Form 1840), all additional loss or damage discovered as you unpack must be noted on the carrier's "Notification of Loss or Damage after Delivery" form (or DD Form 1840R) and dispatched to the carrier within 75 days of delivery. Claimants frequently have difficulty dispatching these forms, and carriers routinely deny claims because they did not receive timely notification. If your shipment is with the Defense Personal Property System (DPS), it is imperative that you come see us because the online filing system is not operating properly and many people, some very computer savvy, have not succeeded in completing the notice document filing process and have had their claims denied by the Transportation Service Provider (TSP). Your Military Claims Office (MCO) can assist in the notification process. We can review your notification form to make sure it is properly filled out, and we can make sure the carrier receives it. We fax it to the proper number and mail it to the proper address, and follow up by phone or e-mail to make sure the carrier received it. In so doing, we help preserve your right to file a claim for the loss or damage.

2. We can assist you in entering data into DPS and PClaims, and in getting a waiver when DPS doesn't work as it should. Anytime you experience a computer malfunction when you are uploading or filing documents for your claim, you should "Come to Claims!" Even if you think you have done everything correctly, but are unable to verify its accuracy, come see us! The problem with the current online filing system is that you may not realize or know whether you have accurately filed, uploaded, or submitted your notice documentation or claim with the TSP. **So come see us!** Our staff is trained to identify common issues with claims software, whether you are filing a claim with a carrier through DPS or a claim with the Government using PClaims. We can also assist you in obtaining a waiver of the requirement to use online filing methods under certain circumstances.

3. We can request a copy of the carrier's claims packet for you. If you have difficulty getting a carrier to send you the forms you must fill out to file a Full Replacement Value (FRV) claim, we can intercede on your behalf. Your MCO can track down contact information on the carrier and help persuade the carrier to furnish the requisite forms.

4. We can help you fill out the carrier's claims forms and answer your questions about the claims filing process. We can help you go over the claims forms that you receive from your carrier. While a MCO is not permitted to serve as a mediator between the claimant and carrier, we have extensive experience in the claims business and can help make sure your forms are properly filled out. We can also advise you on how the claims process works, and what your options are as a claimant.

[continued on page 9...]

10 Reasons to "Come to Claims!" (continued)

5. If you are not satisfied with the way the carrier handled your claim, we can help you convert it to a claim with the Government. If you are unhappy with the carrier's adjudication of your claim, or have lost faith in the carrier's willingness to fairly settle the claim, the MCO can assist you in transferring all or part of your claim to the Government. We will settle your claim in a timely, fair, and accurate manner, in accordance our governing claims regulations.

6. If you file a claim with the Government, we have to depreciate, but if we're successful in recovering FRV from the carrier, we will pass the difference on to you. Unfortunately, MCOs do not have the authority to pay FRV. When a claim is filed with the Government, we are required to apply depreciation. However, if you gave timely notice of loss or damage to the carrier, filed your FRV claim with the carrier in a timely manner, and waited for 30 days after filing for your claim to vest with the carrier before transferring your claim to the Government, you can still be paid FRV. If we are successful in recovering FRV from the carrier, the difference will be forwarded to you. So, while you may not be able to obtain FRV right away, you may receive it "at the end of the day."

7. If you miss the deadline for filing a claim with the carrier, we can help you file a claim with the Government, as long as you do so within two years of delivery. Claimants often miss the deadline to file their claim with the carrier. Many assume that because they gave timely notice that also means they filed their claim. Providing notification of loss or damage and filing a claim are two separate and distinct procedures. Providing notification merely puts the carrier on notice that you intend for file a claim. Claims against the carrier for FRV must be filed within 9 months of delivery. If you miss that deadline, all may not be lost. If you gave timely notice to the carrier and it has been less than two years since you took delivery, you can still file your claim with the Government. It pays to "Come to Claims!"

8. If you suffer damage or loss from theft, fire, flooding, hail, vandalism, or some other unusual occurrence, we can help you file an incident-to-service claim, after you settle with your insurer.

Not all claims involve shipment of household goods or vehicles. The Personnel Claims Act also allows us to compensate claimants for a wide variety of events that occur incident to their service. If your bicycle is stolen, if your property suffers smoke damage from a fire, if your basement storage room floods, or if your car suffers damage from a hail storm or vandalism while parked on post or at your quarters, we can help you file a claim with the Government. If you have insurance that covers the damage or loss, you must first file with your insurer, but that does not preclude you from filing with the Government for whatever your insurer does not cover. We will walk you through the procedures for filing your claim and assist you in entering the data into PClaims.



9. If you suffer personal injury or damage to your personal property because of negligence on the part of the Government, we can help you file a tort claim. The Military Claims Act allows us to compensate claimants for loss or damage due to negligence on the part of the Government and its employees. Our office handles more tort claims than any other MCO in USAREUR. Come see the experts!

10. If you suffer damage from an AAFES car wash, MWR Auto Skills Shop, or other NAFI, we can assist you in filing a claim. Our office also has extensive experience in handling what we call "Chapter 12" claims, in which the claimant suffers loss or damage due to the negligence of a non-appropriated fund instrumentality (NAFI) such as an AAFES car wash or a MWR Auto Skills Shop. We can assist you in filing this type of claim. We then investigate and adjudicate the claim, and, if we determine it is payable, we settle the claim with you and turn it over to the NAFI for payment. It's one more reason to "Come to Claims!"

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 483-8414/8862 or Civilian 0631-411-8414/8862.

The Ins & Outs of German Contract Law

Getting out of a contract can be much harder than getting into one...

by Holger Blug

While stationed in Germany, you will probably sign German contracts to lease a house or apartment, rent a car, and obtain cell phone service. You may also wind up signing contracts to purchase a vehicle or furniture on the German economy. So the more you know about German contract law, the better.

Entering into a contract in Germany.

A contract can be entered into orally or in writing. You can even enter into a contract over the telephone. However, a written contract or a written confirmation is preferable, so you can read and understand the details of your contract, especially its general terms and conditions. You should keep any documents or paperwork pertaining to your contract, in case any dispute over the details or interpretation of the contract arises. Also, keep the receipts for any payments you make under a contract. Writing trumps talking.



Terminating your contract.

While it is very easy to enter into a contract in Germany, getting out of a contract can be much more difficult. A contract that runs for an indefinite period of time requires notice of termination, which must normally be given during the so-called "cancellation period," which is usually one to three months **prior** to the effective date of the termination. Even if your contract does not require written notice of termination, you should terminate it in writing anyway, since you will have the burden of proving the termination if it is contested. If a company denies having received your termination letter, you have to prove that they received it and when they received it, so it is best to send your written termination notice by special registered mail, ("*Einwurf-Einschreiben*"), as the mailman confirms delivery electronically when he drops the letter in the mailbox, whereas a letter sent by certified mail, return receipt requested ("*Einschreiben mit Rueckschein*") will be returned if the recipient refuses to sign, proving non-delivery. If you hand-deliver your termination notice, have the other party sign an acknowledgement of receipt.

Automatic renewal clauses.

Most German contracts are for an indefinite period of time, although you might easily assume otherwise. The reason they are indefinite is the automatic renewal clause. You will find this clause in most phone contracts. It is also standard for ADAC and BahnCard contracts. Having a one-year or a 24-month contract does not mean that the contract automatically ends at that point. It just means that you cannot terminate the contract before then. And if you do not terminate the contract within the cancellation period, it will automatically renew itself.

Early termination of a contract.

If you sign a one-year or a 24-month contract, you have no right under German law to terminate it early, unless you have an "important reason" for doing so. Since the highest German court has opined that moving to a new home is not an important enough reason to terminate a contract, you may have a hard time getting out of a contract because of a deployment or a PCS move. However, some companies will let you out of a contract if you provide them a copy of your orders, but they only do so in an effort to preserve customer good will. There is no legal requirement for them to do so, and they will charge you a flat sum for the service. Other grounds for early termination include medical reasons (e.g., you have a terminal illness), issues with the purchased item (e.g., it doesn't work), and lack of service (e.g., the cell phone you contracted for will not work where you

[continued on page 11...]

The Ins & Outs of German Contract Law (continued)

live). If you want to terminate a contract because the item you purchased doesn't work, you can't just cancel the contract—you must first give the other party two chances to fix the item. Lack of service is a limited defense when it comes to cell phones as it was never guaranteed in writing that the cell phone would work where you live. Are you beginning to get the picture? German contract law tends to favor the other party when it comes to early termination. Since it isn't easy to terminate early, the best advice I can give you is to carefully consider the duration of a German contract before you sign it.

Before entering into a German contract of any kind, you should make an appointment to see a German attorney at the Kaiserslautern Legal Services Center to discuss the possible pitfalls. If possible, bring a copy of the unsigned contract with you so the attorney can review it. To make an appointment, call DSN 484-8848 or Civilian 0631-411-8848.

Legal Assistance & Conflicts of Interest

by Mark Christensen

The Legal Assistance Office of the Kaiserslautern Legal Services Center (KLSC) on Kleber Kaserne provides assistance on a broad variety of legal issues, including many issues in which a dispute has developed between two people, or between a person and an organization. Lawyers providing legal assistance take extreme care to ensure their activities do not constitute a conflict of interest; sometimes avoiding a conflict of interest can be frustrating to someone who needs legal help.



For instance, it is common in the KMC for a Soldier to sell a car to another Soldier. But if the buyer later finds out the vehicle had been in a serious accident and the seller did not disclose this information to the buyer, the buyer may seek legal advice at the KLSC to find out whether he has any legal recourse against the seller. If lawyers at the KLSC provide legal assistance to the buyer, the seller will not be able to come to the KLSC for help identifying his rights or responsibilities. If the seller contacts the KLSC for an appointment, he will be referred to another legal office, usually at Ramstein Air Base or Baumholder. The seller will not be told why he cannot be seen at the KLSC, as that information is privileged.

When this scenario is expanded into other conflicts such as divorces or child custody disputes, it sometimes appears to the second party (whether spouse or Soldier) as if the KLSC is only interested in serving the first party. However, under the requirements of Army Regulation 27-3, we do not discriminate against clients. If a client sees a lawyer at the KLSC concerning a dispute, the opposing party, whether a Soldier or spouse or civilian employee, will not be able to confer with that lawyer or any other lawyer at the KLSC. The result is that our lawyers give divorce advice to Soldiers, retirees, civilian employees, family members, husbands, and wives, but in any given case we can only provide legal services to the first party to be a client in our office.

If you are involved in a dispute and need legal assistance, please be aware that the paralegal who takes your request is required to do a conflict search before letting you see a lawyer, and, if there is a conflict, the paralegal cannot tell you why you cannot be seen in our office. That does not mean the paralegal is singling you out; it just means you should contact another legal office for help with your case.

Contact the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 if you have questions about these rules (but not for disclosures of privileged information!).

Serving German Court Documents & Traffic Tickets

What Commanders & Supervisors Need to Know & Do...

by CPT Jeff Rohrbach

Commanders and supervisors of DA civilians are responsible for ensuring compliance with the NATO Status of Forces Agreement (SOFA) and the German Supplementary Agreement (SA) to the NATO SOFA. Additionally, all individuals with NATO SOFA status have a personal responsibility to comply with the NATO SOFA and SA. Failure to comply can result in serious host nation criminal or civil legal consequences. This article addresses responsibilities for serving German court documents and traffic tickets on individuals with NATO SOFA status.



Who has NATO SOFA status and to whom does this apply?

Soldiers, dependents, DA civilians, and U.S. contractor personnel are all subject to the NATO SOFA and its SA. Additionally, any individual receiving individual logistic support from the U.S. is also subject to the NATO SOFA and its SA.

As a commander or supervisor, what should I do when I receive a ticket to serve on one of my Soldiers or subordinates?

You will receive an envelope with a cover memorandum containing instructions, a copy of the ticket, a Certificate of Service document, and a payment voucher for each ticket issued. The commander or supervisor is responsible for serving the individual with the ticket and payment voucher only. The commander or supervisor personally completes the Certificate of Service and returns the original to the point of contact at the Office of the Staff Judge Advocate (OSJA) indicated on the cover memo. The cover memo can be discarded. Should the Soldier or subordinate no longer work for you, immediately notify the POC on the cover memorandum and forward it to the individual's new commander or supervisor, if known.

What should I do when I receive notice that one of my Soldiers has a German court document to be served?

German court documents include payment orders, subpoenas, complaints, judgments, and numerous other legal documents. The German civil court system is different than the U.S. court system, especially when it comes to service of process. In the U.S., a civil court typically allows 30 days to respond once the opposing party has been personally served with a court document. In Germany, under the SOFA and its SA, service of process can be done directly by a German court officer, or it can be done through the local JAG office. If the German court document is served through the local JAG office, unless, during a relatively short period of time, that office can notify the German court that the Soldier is deployed or TDY or otherwise unavailable, the court document is presumed to have been served on the Soldier and is legally binding on him. Once the actual or presumed service of process occurs, that court can take action in the case, which can result in a default judgment and other serious legal implications. Ensuring your Soldiers and subordinates promptly report to the JAG office upon receiving notice of a court document requiring service is therefore of the utmost importance. The failure to do so can result in significant, unnecessary legal problems for your Soldiers or subordinates.

[continued on page 13...]

Serving German Court Documents (continued)

What should I do if one of my dependents receives a German traffic ticket?

Dependents with NATO SOFA status are subject to the exact same requirements and obligations as their sponsors. Commanders or supervisors of the sponsor should personally serve dependents with traffic tickets and return the Certificate of Service to the OSJA.

What should I do if one of my dependents receives notice of a German court document?

The commander or supervisor should make every effort to ensure dependents follow the same procedure as listed above for Soldiers and subordinates. Explain the differences between the U.S. and German service of process procedures and the consequences of not responding.

It is our duty and obligation under international agreements and Army in Europe regulations to ensure we comply with host nation laws. The failure to do so not only has negative legal consequences for the individual to be served, but can also adversely impact on our relations with the host nation.

For more information on service of German court documents and traffic tickets, contact the author at DSN 483-7708 or Civilian 0631-411-7708, or Karl-Heinz Oberlaender at DSN 483-8854 or Civilian 0631-411-8854.

Breaking News: Baumholder Law Center to Become a 21st TSC OSJA Branch Office

by Steve Smith

The 21st TSC Office of the Staff Judge Advocate will take over supervisory responsibility for the Baumholder Law Center from V Corps this spring.

As part of USAREUR's continuing transformation, it was recently announced that the 170th Infantry Brigade Combat Team in Baumholder will be deactivated. While the 170th will leave, other units in USAREUR will move to Baumholder, which is on the list of enduring USAREUR military communities.

Baumholder was a branch office of the 8th Infantry Division and the 1st Armored Division SJA offices prior to becoming a V Corps branch office. V Corps will not be returning to Wiesbaden following its deployment to Afghanistan this summer.

The 21st TSC Commanding General will assume General Court-Martial jurisdiction over Baumholder on 1 April 2012. We anticipate a significant increase in our military justice business as a result.

The Baumholder Law Center has a large and talented staff, including a number of experienced civilian employees who know the community well and will provide key continuity during the transition.

We welcome all members of the Baumholder legal staff to the 21st TSC OSJA family, and look forward to the opportunity to work with them in the years to come to meet the legal needs of the Baumholder military community and to make the Baumholder Law Center ***"First in Support!"***



Staying in the Army Gets Tougher

by CPT Aaron Lancaster

Editor's Note: Kermit was right: "it isn't easy being green." And with the recent announcement of the Secretary of the Army's "Army Retention Initiative," it just got a lot harder to stay green. Commanders and Soldiers alike need to familiarize themselves with the new rules of the retention game. CPT Aaron Lancaster, a 21st TSC Trial Counsel based in Stuttgart, explains the provisions, and the impact, of the new initiative. Brace yourselves for a lot more bars to reenlistment...



Effective 1 March 2012, the Secretary of the Army's Directive 2012-03 (Army Retention Initiative) went into effect. This directive will impact the future force of the Army by focusing on retention and reenlistment. No longer will Soldiers be eligible for automatic reenlistment. Specifically, the Directive enumerates criteria for determining whether a particular Soldier will be qualified for reenlistment and mandates initiation of bars to reenlistment for various types of misconduct. The Secretary's Directive was issued to ensure that only the best qualified Soldiers with the greatest potential for future service are allowed to continue serving within the Army's ranks. The Directive is broken into three parts: reenlistment qualifications, bars to reenlistment, and reenlistment objectives.

The section on reenlistment qualifications expands upon the Army Retention Program and applies to all non-commissioned officers (NCO) in the rank of Staff Sergeant and above. These NCOs will now be considered unqualified for reenlistment if their Official Military Personnel File (OMPF) contains any of the following: a Relief-for-Cause Noncommissioned Officer Evaluation Report (NCOER); a "No" listed in Part IV (Army Values/Attributes/Skills/Actions) of any NCOER; a senior rater rating of 4 (fair) or 5 (poor) in Part V – Overall Performance and Potential of any NCOER; or a Service School Academic Evaluation Report indicating a failure in any NCO Education System course. For reenlistment purposes, it is irrelevant when one of the four was placed in the NCO's OMPF. Simply having one of these in their OMPF will make the NCO unqualified to reenlist. The only exception to these criteria would be a waiver from the Commander of the United States Army Human Resources Command. This change will not impact NCOs currently serving on an indefinite reenlistment contract.

The Directive also expands situations in which Commanders are required to initiate bars to reenlistment upon their Soldiers. Bars to reenlistment are designed for Soldiers whose immediate separation under administrative procedures is not warranted, but whose reentry into or service beyond their current contract with the Active Army is not in the best interest of the military service. Previously, Commanders were required to initiate a bar to reenlistment on any Soldier who failed to make satisfactory progress in the Army

[continued on page 15...]

Staying in the Army Gets Tougher (continued)

Weight Control Program or who failed two consecutive APFTs. The new Directive adds five additional reasons for which Commanders will be required to initiate a bar to reenlistment. These include barring Soldiers who, starting 1 March 2012, lose their primary military occupational specialty (MOS) qualification due to the fault of the Soldier as well as Soldiers who are denied Command List Integration for promotion by the unit commander. In addition, a bar to reenlistment will be placed on any Soldier who, during their current enlistment/reenlistment period: 1) has an incident involving the use of illegal drugs or alcohol which results in the Soldier receiving an officially filed letter of reprimand, a finding of guilty under Article 15 of the Uniform Code of Military Justice (UCMJ), a civilian criminal conviction, or a conviction by court martial; 2) has two or more separate proceedings under Article 15, UCMJ, resulting in a finding of guilty by a field grade commander; or 3) is absent without leave for more than 96 hours. This change will have no effect upon Soldiers currently serving on an indefinite reenlistment contract.

For Soldiers in Europe, the requirement for a bar to reenlistment for alcohol misconduct will likely have the greatest effect. A General Officer Reprimand is required to be issued to any Soldier caught drinking and driving with a blood alcohol content of .05% or higher. If this letter of reprimand is placed in the Soldier's OMPF, the Commander will be required to place a bar to reenlistment upon the Soldier. In addition, Soldiers who become disorderly or involved in a fight at a fest or a local bar and are found guilty under Article 15, UCMJ, will also be required to have a bar to reenlistment placed upon them. Either of these could have the effect of ending the Soldier's military career.

Bars to reenlistments placed under the new Directive will remain in effect and be treated the same as all other bars to reenlistment issued under the Army Retention Program. Among others, these requirements direct the initiation of separation of Soldiers upon completion of the second 3-month review if the bar is not removed.

Finally, the Directive discusses general reenlistment objectives to assist Commanders in better determining which Soldiers will be allowed to reenlist and which Soldiers will not. Commanders have been instructed that they should use the "Whole Soldier" concept, which includes the consideration of Soldier attributes, competencies, leadership potential, adherence to standards, duty performance, and evaluations that demonstrate the ability of a particular Soldier to serve in any MOS prior to making any determination that a Soldier will be allowed to reenlist. Under this approach, some fully qualified Soldiers may be denied reenlistment.

Contact the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 if you have questions about these how the "Army Retention Initiative" could impact you. Legal Assistance Attorneys can assist Soldiers in responding to bars to reenlistment. For more serious matters that could result in punishment under Article 15, UCMJ, or worse, consult with a Trial Defense Service Attorney. The Kaiserslautern Trial Defense Service Office is also located in the Kaiserslautern Legal Services Center, and can be reached at DSN 483-8397 or Civilian 0631-411-8397.

The Ethics Corner...

by Rick Schwartz

***POLITICS & THE MILITARY
WORKPLACE A CAUTIONARY NOTE***

Editor's Note: Our readers may recall a Stars & Stripes cover story a few weeks ago that had a picture of this political rally and the headline:

“Something Wrong In This Picture?”

An Army Reservist not only appeared on-stage in his ACUs, but went on to take the microphone and endorse the candidate and his foreign policy, on live television.

Given all the publicity this event subsequently engendered, and the fact that we still have a long way to go until the November presidential election, we thought our readers might appreciate a primer on the Hatch Act and related DoD directives. Ignorance of the law is no excuse...

Tempted to weigh in on the upcoming elections or handicap a particular candidate's chances? Looking to use your military or Federal Government background to show others what kind of support a particular candidate has got going for him? You should know first that there are specific restrictions related to this intersection of politics and our working environment designed to preserve the military and the civil service as professional non-partisan institutions. Although this article largely relates to restrictions applicable to DoD civilian employees under the Hatch Act, similar restrictions on active military personnel are described at DoD Directive 1344.10.

In the 21st TSC, most, if not all, of us will fall into the Hatch Act category of “Less Restricted” employees. Less Restricted employees are prohibited from:

- using their official authority or influence to interfere with or affect the result of an election;
- knowingly soliciting, accepting, or receiving a political contribution from any person (this may be done in certain limited situations by federal labor or other employee organizations);
- knowingly soliciting or discouraging the participation in any political activity of anyone who has business pending before their employing agency;
- being candidates for public office in partisan political elections; or
- engaging in political activity while on duty, in a government office, **wearing an official uniform**, or using a government vehicle.

For example, these prohibitions effectively prevent Less Restricted employees from doing any of the following:

- hosting or inviting anyone to a political fundraiser;
- accepting or receiving a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group;
- using an official title or position while engaged in political activity; or
- inviting your subordinate employees to political events or otherwise suggesting to subordinates that they attend the political event or undertake any partisan political activity.

[continued on page 17...]

POLITICS & THE MILITARY WORKPLACE (CONTINUED)

In addition, Less Restricted employees are prohibited from any of the following examples while on duty and/or in any federal room or building:

- distributing or displaying campaign materials or items;
- wearing partisan political buttons, t-shirts, or other items;
- performing campaign-related chores;
- making political contributions to a partisan political party, candidate for partisan political office, or partisan political group;
- posting a comment to a blog that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group; or
- using any e-mail account to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.

Penalties for violating the Hatch Act are steep: An employee “shall be removed from their position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than a 30-day suspension without pay shall be imposed.” (emphasis added)

In addition, the Office of Special Counsel (OSC) has issued guidance concerning display of the President's picture, now that he is a candidate for re-election. It may be found at: <http://www.osc.gov/documents/hatchact/federal/2011-04-05%20FAQ%20Re%20Presidential%20photographs%20and%20candidacy%20for%20reelection.pdf>. The OSC is an independent agency with exclusive jurisdiction to investigate and prosecute Hatch Act complaints before the Merit Systems Protection Board (MSPB).

Two relatively recent cases illustrate the OSC and MSPB's stringent application of the penalties for violations. Following its June 2010 decision in *Special Counsel v. Pattie Ware*, in which the MSPB ordered Ms. Ware's removal from her position for Hatch Act violations, the MSPB published an August 2010 decision in *Special Counsel v. Phillip Mark*, imposing a penalty of a 120-day suspension (reduced from the original penalty of removal).

Mr. Mark violated the Hatch Act when he forwarded one campaign e-mail, from then-presidential candidate Barack Obama soliciting online contributions, to a number of individuals, including co-workers who were not under his supervision. In the forwarded e-mail, which was sent on duty from his government office and contained his name, title, group, duty location, and telephone number, Mr. Mark stated: “FYI ... if you want to help out the campaign! PS ... If you are tired of getting e-mails from me, just let a brotha know! [sic]”

Since Mr. Mark admitted he had violated the Hatch Act, the MSPB only considered the penalty. In reducing Mr. Mark's original penalty of removal, the MSPB pointed out that in its June removal decision, Ms. Ware sent two e-mails seeking political contributions, one of which also invited a number of people to a fundraiser for Barack Obama. Since she also solicited money from three government employees over whom she had authority, the MSPB considered her offenses more egregious. Although the MSPB also found the fact that Mr. Mark was not a political operative or otherwise engaged in political fundraising to be a mitigating factor, his actions still warranted a 120-day suspension.

One last thing to keep in mind is that the MSPB did not accept Mr. Mark's contention that he was ignorant of the Hatch Act, proving the old adage that “ignorance of the law does not excuse.” This article is meant to provide only an overview of Hatch Act considerations, and you should bear in mind that the analysis for each individual situation is fact-specific.

For additional information, to report a violation, or to request an advisory opinion from the OSC as to whether activity you propose to engage in would violate the Hatch Act, please visit the OSC's website at: <http://www.osc.gov/hatchact.htm>.



Celebrating 195 Years of Federal Service. 21st TSC OSJA civilian personnel were recognized at a Length of Service Ceremony on February 3rd in Kaiserslautern. From right to left: Stuttgart German Attorney-Advisor Werner Sukup (15 years), Paralegal Marion Themann (35 years), Legal Liaison Karl-Heinz Oberlaender (25 years), K-town Chief of Client Services Mark Christensen (20 years), 21st TSC SJA COL Ralph Tremaglio, K-town Senior German Attorney-Advisor Joerg Moddelmog (15 years), Senior Claims Examiner Martina Berndt (30 years), Tax Program Coordinator Donald Davis (10 years), and Senior Civilian Attorney Steve Smith. Not pictured: Chief of International Law Joe Hall (40 years) and Ethics/Fiscal Law Attorney Rick Schwartz (5 years). Photo by CPT Yolanda Williams.

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.

