



KAISERSLAUTERN LEGAL INFORMER

GERMAN ATTORNEY WINS ABA AWARD



The Kaiserslautern Legal Services Center's Senior German Attorney-Advisor, Joerg C. Moddelmog, has been named a winner of the 2012 American Bar Association's Legal Assistance for Military Personnel Distinguished Service Award.

by Steve Smith

The American Bar Association's Legal Assistance for Military Personnel Committee sponsors an annual competition for its coveted Distinguished Service Award, which recognizes individuals and offices that have gone "above and beyond" when it comes to providing legal assistance to service members and their families.

Winners of the 2012 competition were announced this spring. Joerg C. Moddelmog, who has served as a German Attorney-Advisor in Kaiserslautern since 2005, enjoys the distinction of being the only Army winner this year, and the first foreign attorney ever to receive the award.

Mr. Moddelmog was recognized for his extraordinary work ethic, his prodigious publishing of preventive law handouts and articles (he is a regular contributor to this

newsletter), his highly effective teaching and mentoring, and his exemplary efforts to protect American service members and DoD civilian employees from host nation taxation of their salaries.

21st TSC Commanding General MG Aundre F. Piggee announced Mr. Moddelmog's selection for this award at a German-American Law Day luncheon in early May, to the delight of the German and American jurists who have had the pleasure of working with him. The award itself will be presented later this summer.

As news of the award spread throughout the JAG Corps and the Kaiserslautern community, many of Mr. Moddelmog's clients, coworkers, and supervisors, past and present, have said how very pleased they are to see his exceptional efforts recognized. He is a big part of what keeps our legal team **"First in Support!"**

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

The Future of Free Tax Help?

by Steve Smith

The 2013 tax season, which ended on June 17th, almost didn't happen. Given budgetary constraints and procedural hurdles brought on by sequestration, we were not able to hire as many civilian tax preparers to work in our tax assistance centers as we did in past seasons, and it looked for awhile back in January as if those we had just hired and trained might be laid off simply because they were temp hires. Extending a few of our temp hires past the 15th of April was a herculean task, requiring an exception to policy from a three-star General. We had to fight for everything we got this year.

Was it worth it? Absolutely! The figures which appear in the yellow box at the bottom of this page speak volumes about the value of this service. Despite the availability of do-it-yourself tax software and various free on-line tax filing options, not to mention paid preparers, nearly 8,000 taxpayers in the military communities we serve beat a path to the door of their tax assistance center to seek the free professional help we offer. We saved them over \$1.6 million in commercial tax preparer fees (up from \$1.2 million in 2012) and generated over \$15.4 million in refunds (up from \$13.9 million in 2012). We anticipate even more demand for our services next season, given the fact that approximately 1,000 members of the Heidelberg Retiree Council who used to have their taxes done in Heidelberg will likely fall in on Kaiserslautern, the next-closest military community.

Despite the fact that this program continues to do so much good for so many, a lot of people are predicting that, because of continuing fiscal constraints, the Army tax assistance program will not be funded next year. If funding dries up, we won't be able to hire the talented civilians, including accountants, former IRS employees, and lawyers, who have made such a huge qualitative difference in our program. We would have to impose strict limits on whom we would assist. Many who have become used to our free service would find themselves writing checks for hundreds of dollars to commercial tax preparers. Civilian employees who have had their pay frozen for several years and are about to be furloughed or worse (see page 3) can ill afford to shell out big bucks for tax help. Those on fixed incomes, like retirees and widows, would also find themselves in a world of hurt.

For years, I've been reminding taxpayers that "this is a valuable service; use it or lose it!" Well, you have used it, in record numbers, but that doesn't guarantee it will still be available next season. If you are one of the thousands of satisfied customers who have used our free tax services and want to continue to be able to do so in future seasons, now is the time to make your voice heard. ***You need to let your leaders know how much you depend on the program, and how few acceptable tax preparation alternatives exist overseas.***

It took many years to build this valuable program. Take a few minutes to ensure its future by expressing your concern to those who are in a position to save it.



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 484-8747

Criminal Law 484-7419

[Civilian: 0631-413-XXXX]

21st TSC 2013 Tax Assistance Program Results:

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

7,840

Tax Refunds Generated:

\$15,419,076

Savings to Taxpayers:

\$1,630,102

**THANKS FOR USING
OUR SERVICE!**

Audit Triggers LQA Anxiety for Civilians

An attorney explains what Legal Assistance can and cannot do...

by Mark Christensen

On May 1, 659 civilian employees in Europe were notified that an audit resulted in a decision that they were erroneously receiving living quarters allowance (LQA). Audit results were forwarded to DFAS. DFAS will review individual pay records to calculate the specific amount of erroneous LQA payments, and separately notify employees of the dollar amount of their debt. The DFAS notice will also include information about requesting hardship collection relief or a waiver of collection.

Employees identified as recipients of erroneous LQA will continue to receive LQA for one year. The one-year LQA authorization will not add to any debt calculated for previous LQA receipts. The authorization of LQA for one year means most affected employees will not have to make immediate decisions to leave Europe, terminate residential leases, or alter employment.

Civilian employees notified of an LQA debt have difficult decisions to make. The first is whether to challenge or dispute the original decision that previous LQA payments were in error. The original notice directs appeals to the Office of Personnel Management (OPM), with a web link that routes to <http://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/compensation-leave/>. The webpage discusses filing an OPM claim with supporting contents.

Employees who do not dispute the decision may submit a request for a waiver of collections using DD Form 2789. Requesting a waiver means the employee is not disputing the decision concerning erroneous LQA payments, but requests that the debt not be collected. Initial guidance is that requests for the waiver by employees who received LQA through no fault of their own will be reviewed favorably. These include employees who were unaware they were not entitled to LQA and situations where there is no evidence of misrepresentation, fraud, or deception by the employee to acquire LQA. DFAS has indicated that it will delay collection of LQA debt pending decisions on waiver requests. [This is a departure from normal DFAS debt collection practices, under which DFAS collects 15% of a debt per pay period, and employees may request a reduced hardship deduction as low as \$25 per pay period.]

Under the Army's Legal Assistance regulation, AR 27-3, our legal assistance attorneys may not provide advice or assistance concerning employment matters or claims against the United States Government. We have been advised that we may not assist employees who choose to dispute or challenge the decision of erroneous LQA payment. However, we are permitted to assist employees who will file the DD Form 2789 waiver request. We can advise them on indebtedness issues, explain due process and appellate rights, and assist them with collateral legal issues such as credit ratings, security clearances, and termination of residential leases.

Affected employees should immediately begin collecting available documents in order to either appeal the erroneous payment decision or request a waiver. These packets of supporting documents will assist an appeal of the decision or clarify eligibility for a waiver. Employees who choose to appeal the decision and want legal help or representation will be referred to private counsel. Employees who want legal assistance preparing a waiver request, or for collateral effects of the debt, may contact the Kaiserslautern Legal Services Center on Kleber Kaserne at DSN 483-8848 or Civilian 0631-411-8848 for an appointment to meet with a Legal Assistance Attorney. Employees who contact me at mark.d.christensen2.civ@mail.mil will be sent current documents including FAQs and forms that may be helpful for making decisions.



The Refund Offset Program

A tax attorney warns of the pitfalls of big tax refunds...

by Steve Smith

The bigger your tax refund, the better. Right? Not necessarily. Big refunds usually result from over-withholding (*i.e.*, having more tax withheld from your pay than is required to meet your tax obligation). Many taxpayers like to use the IRS as a savings bank. They spend their big tax refunds at the Exchange on large screen TVs and other amusements. What most of them don't realize is that there are serious dangers in "banking" with the IRS. Others can withdraw your savings. Federal and state governmental agencies that claim you owe them money can block the IRS from sending you your refund, and have the refund sent to them instead. This is known as the "refund offset program."



Here's how it works. A tax refund offset generally means that the U.S. Treasury has reduced your federal tax refund to pay for certain unpaid debts. The Treasury Department's Financial Management Service (FMS) is the agency that issues tax refunds and conducts the refund offset program. If a taxpayer has unpaid debts, such as overdue child support, state or federal income tax, or student loans, FMS may apply part or all of your tax refund to pay that debt. Other examples of unpaid debts include past due amounts on VA mortgages and your Star card (that's right, folks, AAFES is a governmental agency, too; *they go where you go!*).

You will receive a notice from FMS if an offset occurs. The notice will include the name of the agency receiving the offset payment and that agency's contact information. If you believe you do not owe the debt or you want to dispute the amount taken from your refund, you need to contact the agency that received the offset amount, not the IRS or FMS.

Taxpayers who receive notices from FMS informing them that some or all of their refund has been sent to some governmental agency come to Legal Assistance incensed, asking "Can they do this? Is this legal?" Unfortunately, "they" routinely do this and it is perfectly legal, and what is worse, it is all preventable. All you have to do is fill out a new W-4 form, using the worksheets that come with the form to make sure you are only having enough withheld to pay what you are going to owe in tax and not a penny more, and turn in the W-4 form to whichever office handles your payroll. This will have the happy effect of increasing your take-home pay each pay period throughout the year, and reduce the chances of any refund being offset.

I am not recommending that taxpayers avoid paying legitimate debts owed because of unpaid child support or the like. The fact of the matter is that many taxpayers have their refunds offset because of a simple keypunch error – their SSN is similar to some deadbeat dad's, and the next thing you know, the \$5,000 refund they were expecting has vanished. It can take months or years of letter writing to rectify the error. Even if you do owe the debt, how you go about paying it back should be your decision. And if you filed a joint return and lost your tax refund because of your spouse's unpaid debt, there is a way to get back the portion of the refund attributable to your earnings and withholdings. I'll write about that in my next column.

Summer Transitions Ahead for OSJA

Editor's Note: Major transitions will take place this summer in the 21st TSC Office of the Staff Judge Advocate. COL Ralph J. Tremaglio, III, who has served as our SJA since the summer of 2011, will PCS to Fort Lee, Virginia, to become the SJA of the U.S. Army Combined Arms Support Command & Fort Lee. He will be replaced by COL Jonathan A. Kent, who spent the last two years as SJA of U.S. Army Medical Command in Washington, DC.

Deputy SJA LTC Sean McMahon departed in May for new challenges at Fort Bragg. His successor, LTC Eugene Kim, who arrives in July, comes to us from the Contract & Fiscal Law Division of the Office of The Judge Advocate General in Washington, DC.

CW2 Jah'love Shakur, our Legal Administrator since 2011, heads to Fort Knox this summer. His replacement, Pittsburgh Steelers fan CW4 Chris Swires, (below right), who spent the last three years with the U.S. Army Trial Defense Service's Regional Defense Counsel Office on Kleber Kaserne, is already on board. CW4 Swires will be assisted by WO1 John Sosebee, who arrives in July.

MAJ Brian Owens, who served as Chief of Military Justice for the last two years, headed to Fort Campbell, Kentucky, in June. His successor, MAJ Trevor Barna, who comes to us from the Graduate Course at The Judge Advocate General's School & Legal Center in Charlottesville, Virginia, is already on board.

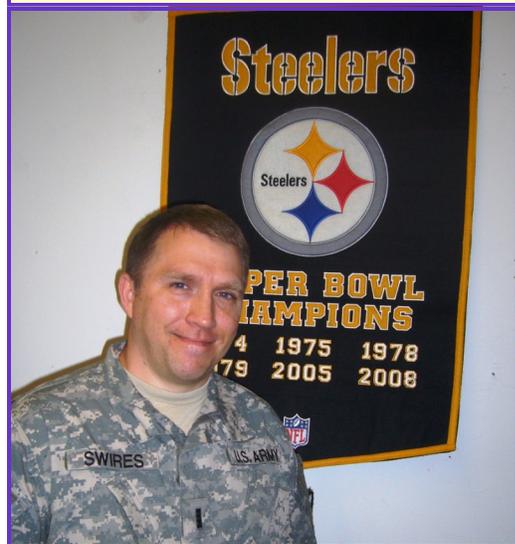
CPT Mike Eaton, who served as Senior Trial Counsel since 2011, along with Trial Counsels CPT Mike Gilbertson and CPT Courtney Cohen, has moved on. Our new Senior Trial Counsel is CPT Tulsi Rogers, and our new Trial Counsels are CPT Sara Nicholson and CPT Nicholas Lucchetti.

Our Claims Judge Advocate, CPT Dan O'Connor, will become Chief of Operational Law in July. Our new Claims Judge Advocate is CPT Andrew Browell. Legal Assistance Attorney CPT Jilliane Jaeger moved to Administrative Law since our last newsletter was published. Her replacement in Legal Assistance is CPT Christopher Leighton.

GS-13 Teresa Robison, who spent the last four years serving as our Labor Law Attorney, left in June for a GS-14 position with the Defense Contract Management Agency at Fort Lee. We wish her all the best.



The 21st TSC Commanding General, MG Aundre F. Piggee (left), presents the Legion of Merit to outgoing Staff Judge Advocate COL Ralph J. Tremaglio, III.



A Great Training Opportunity

Florida attorney Patricia E. Lee and Munich-based attorney Christian Thier, both from the law firm of Urban Thier Federer & Chinnery, P.A., provided instruction on international domestic relations law and related topics in the courtroom of the Kaiserslautern Legal Services Center in June. The training session was attended by 25 Army and Air Force attorneys from Kaiserslautern, Ramstein, Baumholder, and Wiesbaden; attorneys from Stuttgart and Mons, Belgium also participated in the training via VTC. It was a unique opportunity for attorneys in the private and public sectors to compare notes and practice tips. Kaiserslautern Chief of Client Services Mark Christensen (left) and MAJ Karin Chelluri presented certificates of appreciation to the instructors.



Transitions: 21st TSC SJA COL Ralph J. Tremaglio, III (left), welcomed his successor, COL Jonathan A. Kent. COL Kent comes to us from U.S. Army Medical Command, where he has served as SJA for the last two years.



Transitions: MAJ Brian Owens (left), who served as the 21st TSC OSJA's Chief of Military Justice for the last two years, passed the baton to his successor, MAJ Trevor Barna, before heading to Fort Campbell in June.



Transitions: Paralegals Marianne Ehligler and Marion Themann bid farewell to Labor Law Attorney Teresa Robison (center), who assumed new duties with the Defense Contract Management Agency at Fort Lee in June.



MAJ Karin Chelluri, OIC of the Kaiserslautern Legal Services Center, presented the Achievement Medal for Civilian Service to Mark Dent, Gary Tassler, and Maria Feliciano, who served as tax preparers this season.

Meet Our New Lead Court Reporter

by Steve Smith

Alejandra Bustamante-Aviles is no ordinary employee. A retired Air Force Master Sergeant who began her career as an Air Traffic Controller before becoming a Paralegal and Military Court Reporter, she was hired by the 86th Airlift Wing as a GS-8 Court Reporter in the summer of 2011. 18 months later, she won both the 86th Airlift Wing, Wing Staff Agencies, Civilian of the Quarter and Civilian of the Year competitions. Along the way, she earned six degrees and certifications, including a Master's in Instructional Technology. She will join the staff of Kaiserslautern Legal Services Center this summer as our GS-10 Lead Court Reporter, where she will carry on the good work of her talented predecessor, Conchita Dunn, who left Kaiserslautern last fall and now serves as a Court Reporter at Moody Air Force Base in Valdosta, Georgia. The Army's loss became the Air Force's gain, and vice versa.



Alejandra brings sterling court reporting credentials to the table, and is involved in a wide variety of volunteer activities that have made her a Kaiserslautern Military Community icon. We are delighted to welcome Alejandra and her family to the 21st TSC legal team!

French Breathalyzer Law Will Not Be Enforced

by Joerg Modellmog

Since July 1, 2012, France has required all drivers to carry an unused breathalyzer kit (*un éthylotest*) in their vehicles. Failure to comply was supposed to lead to a fine. However, shortages in breathalyzer kit production and supply caused enforcement of the law to be postponed several times.

As of March 1, 2013, the French Prime Minister issued a decree suspending the fine but keeping the obligation to have a kit on board.*

Since the law can no longer be enforced, it amounts to little more than a recommendation. Should French police or gendarmes attempt to fine you on-the-spot for not having a breathalyzer on board, you should refuse to pay the fine, or you can avoid the situation altogether by continuing to carry a kit in your glove box.

The best legal advice I can give you when it comes to driving in France is really quite simple: if you drink, don't drive, and if you drive, don't drink.

For details on the French legal limits on alcohol while driving and other French traffic and safety regulations, see my article in the Spring 2012 edition of the Kaiserslautern Legal Informer.



* <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027119723&dateTexte=&categorieLien=id>

Army Provides Law Enforcement Info To Commanders of Newly-Assigned Soldiers

by CPT Austin Ribelin

Army Directive 2013-06, which took effect on February 14, 2013, requires a criminal history check of all Soldiers involved in a PCS, intra-installation, or intra-theater reassignment. These criminal history checks will be conducted by the Office of the Provost Marshal General and will be forwarded to each installation Provost Marshal/Director of Emergency Services ("PM/DES"). The results will include only offenses which were founded at the end of the investigative process. Any listed offense will include adjudication information of each founded offense, if available. Adjudication information is found on DA Form 4833 (Commander's Report of Disciplinary and Administrative Actions) and contains the level of adjudication (Company Grade Article 15, Administrative Action, Court-Martial, etc.) and the resulting findings of any action taken such as guilty or not guilty. In cases where the action taken for a specified offense is not known, the report will list the adjudication decision as "unknown."

Once this report has been created and passed along to the PM/DES, the report will then be provided directly to brigade-level or higher commanders only. Once a brigade commander has received the report, the commander is then authorized to share the criminal history reports only with personnel with an official need to know, including individuals with risk assessment and management responsibility, chain of command, judge advocates, paralegal NCO's, and administrative personnel.

The goal of this new directive is to allow command teams to identify high risk Soldiers immediately upon their arrival at a new post. The intent is to help commanders foster a positive environment and promote and safeguard the morale, physical well-being, and general welfare of inbound Soldiers and the gaining unit. Where counseling, treatment, or assistance is required, commanders must take proactive steps to ensure a high risk Soldier is receiving the proper attention, support, and assistance.

For the Soldier

Note that only "Founded" investigations will be forwarded to your gaining command. This means that someone involved in an investigation that was determined not to have committed the listed offense will have a report forwarded to their commander with a negative entry. A negative entry means that no offenses will be listed on the criminal history report. However, do keep in mind that any offense for which you were titled will remain on your criminal history report for a period up to 40 years. While very difficult to do, it is possible under certain circumstances to remove your name from the title block of an offense. If you believe you were wrongfully titled for an offense, you should contact your servicing Legal Assistance Office to review your options.

Additionally, if you arrive at a new duty location and you are informed that the offense for which you are titled is unknown or guilty, you should confirm with your command team that the information is accurate. For instance, if you were found not guilty of an offense at an Article 15 hearing, you should ensure your command team is aware of the finding. Your command team should then work to correct or update the DA Form 4833 to reflect the adjudication you received. It is therefore important for you to retain copies of any administrative, judicial, or non-judicial actions in order to ensure your record accurately reflects your background.

[continued on page 9...]



Law Enforcement Info Provided (continued)

For the Command

Command teams must use this information to ensure Soldiers with a criminal history are in compliance with any reporting/registration requirements. Specifically, Soldiers must be in compliance with AR 600-20, paragraph 4-23, the Domestic Violence Amendment to the Gun Control Act of 1968 (a.k.a., the Lautenberg Amendment) and they must have completed DA Form 7439, Acknowledgement of Sex Offender Registration Requirements, if they have been found guilty of certain types of offenses.

It is important for the command to understand that just because a Soldier has an entry on their criminal history report, it does not mean that administrative, judicial, or non-judicial action can or must be taken. In many instances, the offenses may have already been adjudicated or there may not have been sufficient evidence to take administrative, non-judicial, or judicial action. A founded offense does not necessarily mean there was sufficient evidence to take further action against a Soldier. In cases where no action was taken, it may be possible to obtain the investigation in order to make a well-informed decision on what, if any, action should be taken. Please consult with your servicing Judge Advocate about any specific issues that arise so that Soldiers are being treated fairly and are not unduly prejudiced based on the new requirement.

If a Soldier provides evidence that a certain offense is not accurately reflected on their report, or if they were acquitted of the offense, the command must assist the Soldier by contacting their previous command to ensure that completion and submission of the DA Form 4833 is accurate and timely.

Keep in mind that one goal of this directive is to ensure high risk Soldiers are receiving the assistance needed to make them strong and healthy contributors to our Army. Unit health and welfare is of the utmost importance as we draw down our force, and providing the proper support to Soldiers and their families immediately upon their arrival will go a long way toward preventing further misconduct.

Lastly, all parties involved in this new directive must remember that Soldiers can be rehabilitated and that while a Soldier may have had some missteps in his or her past, we must strive to look beyond previous misconduct in order to give a Soldier a true opportunity to show they have been rehabilitated. Having said that, because the Army is striving to keep its most qualified Soldiers, sometimes the difficult decision must be made to help a Soldier transition back to civilian life.

Soldiers with questions on the impact of Army Directive 2013-06 should make an appointment to see a Legal Assistance Attorney. Commanders should consult with their servicing Trial Counsel.

Editor's Note: CPT Ribelin is a Trial Counsel with the 21st TSC Office of the Staff Judge Advocate.

We're On the Web!

Current editions of the "Kaiserslautern Legal Informer" are posted on the 21st TSC website at: <http://www.eur.army.mil/21TSC/mags.asp>

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> Articles and information papers on claims topics are 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.

New German Custody Rules for Unmarried Parents

by Joerg Modellmog

On May 19, 2013, the German legislature enacted new custody rules affecting unmarried parents. In the past, it was only possible for the father to get joint custody if the mother agreed to it. Since the European Court of Human Rights in Strasbourg (in 2009) and the German Federal Constitutional Court (in 2010) held that practice to be in violation of higher law, the German legislature had to enact new rules.

Under the new rules, fathers have several options to obtain joint (or even sole) custody. First and foremost, joint custody can be established by marriage. If the parents marry each other, there will automatically be joint custody with respect to their joint children. Even in any subsequent divorce, joint custody will remain in effect and there does not need to be any ruling on that issue by the court, unless one of the parents files for sole custody and furnishes sufficient supporting proof of a need to deviate from the preferred statutory concept of joint custody.

Second, the parents can make a declaration of joint custody either before a German *Notar* or for free before the German Youth Welfare Office (*Jugendamt*).*

Third, the father of an illegitimate child is now allowed to file a court petition for joint (or even sole) custody if the mother refuses to voluntarily give him any custody rights. That right did not exist before, as the father couldn't do anything against the mother's objection.

In the final analysis, the decisive factor for the court will be: "What is in the best interest of the child?" While the law now presumes that joint custody is in the best interest of the child, this presumption can be rebutted if the parents do not get along and there is no common ground between them in the first place. Furthermore, it remains to be seen how German courts will interpret the new law if it turns out that the parents will soon live on different continents or that, besides the geographical distance, there is also an emotional one between the unmarried parents.

If the unmarried parents do not have joint custody, the mother can obtain a so-called "negative joint-custody certificate"*** from the Youth Welfare Office that has jurisdiction over her place of residence, proving the fact that she has sole custody.

If one parent does not yet have custodial rights, and the other parent wishes to take the child out of the country, a petition based on endangerment of the child's welfare (§ 1666 BGB) could be considered to stop the custodial parent's actions, given appropriate factual circumstances.

Finally, custody decisions in no way affect a parent's support obligations or a parent's visitation rights. Ultimately, it's not the judgment on paper that matters but communication and cooperation that are the key to successful parenthood.



**** Representatives from the Kaiserslautern City Youth Welfare Office visit the Kaiserslautern Legal Services Center on a quarterly basis to make it easier for members of the American military community to transact business with them. Contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 for more information on their next visit, for a copy of a detailed handout on German paternity rules, or to schedule an appointment to consult with one of our German Attorney-Advisors.***

"Das Auto, Des Deutschen Liebstes Kind"

by Holger Blug

As the saying goes, the car is the Germans' favorite child. After all, it was a German invention! In 1886, Carl Friedrich Benz applied for a patent on his gasoline-powered vehicle with a four-stroke engine, and the rest is history. Americans love cars and rely on them just as much as Germans do, but, as with any love story, there can be a lot of legal issues and heartache along the way.

It all starts when you purchase a car. Make sure you buy it from a trustworthy dealership or individual. This becomes very important if you realize after the purchase that the vehicle is defective. Some buyers who purchased a used car don't even have a last name or an address of the seller, which makes it almost impossible to pursue any kind of claim. So make sure that you get complete information on the seller.

If you discover that the vehicle is defective, German "lemon law" requires you to contact the seller and ask him to fix it. If you start doing repairs on your own, you might compromise your warranty rights.

Vehicles tend to break down after the warranty has expired, which means you wind up paying for repairs out of pocket. If this happens, you need to be very clear when placing a repair order. If you just tell the repair shop to "fix the vehicle," there is no telling how much they will charge you. You should put your work order in writing. And if you don't know what the problem is, make sure that the mechanic does a diagnostic check first, before proceeding with any expensive repairs. You might even ask for a written estimate (*Kostenvoranschlag*), before you decide whether repairs should be done. Fighting about repair bills can be very stressful, since the repair shop, as a lienholder, has a legal right to refuse to release the vehicle unless the repair bill is paid. You might need an expert to determine whether the invoice is correct, which can take several days or weeks. If you decide to pay to get the vehicle back immediately, you should only pay under protest (*unter Vorbehalt*), reserving the right to ask for a refund in case it turns out that the invoice was incorrect.

If your vehicle is involved in a traffic accident, you need to contact your insurer. If you caused the accident, your insurance will handle the adverse party's claim and, if you have full coverage, they will also take care of your own damages. If the other party is responsible, you can file a claim against his insurer. However, if both parties are responsible, the other party's insurer will only cover a percentage. Whoever is involved in an accident has to release information about his insurance to the other party. If the other party refuses to provide this information, it is simple to figure out, as long as you jot down his license plate number.

Not all love stories last forever. When it comes time to sell your vehicle, make sure you sell it without any warranty ("as is") and that this is expressed in a written document, such as a bill of sale, so it can be proven. Failure to take this important extra step can leave you on the hook for the cost of repairs to the vehicle after the sale.

If you have questions about automotive legal issues, contact the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848, and schedule an appointment to meet with one of our German Attorney-Advisors.



Check Your Stuff Before They Wreck Your Stuff!

by CPT Dan O'Connor

The summer PCS-move season is upon us. There are certain steps you can and should take now to make sure that any claim you file against your Transportation Service Provider (TSP) is paid in full.

One important way to protect yourself is by substantiating the condition of your property on your household goods inventory. If the mover lists pre-existing damage (PED) codes on the inventory like "SC," meaning that item has scratches, you should ask the mover to remove the code if it is incorrect. If you do not take notice of the code and do not note an exception, the TSP will likely deny your claim if the movers scratch your property, citing PED as the reason for the denial.



Here are some other ways you can protect yourself:

- Take photos or video of your household goods just prior to the mover packing them. This way, you can demonstrate that your TV was working because it was on when you filmed it, and you can also show that there were no visible scratches or other PED.
- Note exceptions to the TSP's codes on the inventory itself. You can write on the inventory, in the area provided for "exceptions," that the TV is not scratched, so that the TSP knows that you do not agree with their assessment. This can be helpful if you end up transferring your claim from the TSP to a Military Claims Office (MCO), because it shows you had a valid basis for disagreeing with the TSP's denial of your claim.
- Call or visit the Kaiserslautern Claims Office in Room 112 of Building 3210 on Kleber Kaserne. We can help answer any claims-related questions you may have before you PCS.

When it comes to shipping your POV, special rules apply. Double check your Vehicle Inspection & Shipping Form (VISF) at drop-off to make sure any PED listed by the shipper is not exaggerated, and be extra vigilant when checking your POV for damage when you pick it up. Failure to note obvious loss or damage before you depart the Vehicle Processing Center (VPC) can result in denial of your claim. Failure to return to the VPC within a few hours to note any loss or damage that was not obvious at pick-up can have the same effect. Here are some other tips for vehicles:

- Give your vehicle a hard look; open and shut the doors, hood, and trunk, to make sure nothing is amiss. If you notice loss or damage, list it as an exception on the back of the VISF before you depart the VPC.
- Pick up your vehicle in the morning. That way, you can have it washed so you can identify any damage that was not visible at pick-up and can make it back to the VPC the same day to report it.
- Do not settle on the spot unless you are 100% sure that you will be satisfied with the settlement. If you accept an on-the-spot payment upon receiving your vehicle, you cannot later go back to the MCO to request more money because your claim is considered settled in full.

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 and consult with our claims experts.

Travel safe and ship smart!

Editor's Note: CPT O'Connor serves as the Claims Judge Advocate for the Kaiserslautern Legal Services Center.

Big Changes Made to Army's Property Accountability Regulation...

by CPT Jilliane Jaeger

On May 10, 2013, the Army released an updated version of the Property Accountability Policies regulation, AR 735-5, which became effective on June 10, 2013. This new version contains 19 significant changes and many small revisions throughout that clarify the regulation's detailed procedures. While many service members and DA civilians are not familiar with this regulation by its name and number, most are familiar with its infamous Chapter 13, Financial Liability Investigations of Property Loss (FLIPL). This article will focus on changes made to Chapter 13.



There are certain situations when a FLIPL must be initiated. New scenarios have been added to the 2013 version of the regulation. The new scenarios are: (1) a Soldier's refusal to sign a DD Form 362, (2) the value of the admitted loss, damage, or destruction of Government property exceeds 1/12th of the annual salary of a civilian employee, (3) serial number changes involving more than two characters for sensitive items, (4) the loss involves public funds or other negotiable instruments and the value is \$750 or greater, (5) losses due to combat where equipment is determined captured, abandoned, or a physical loss (no residue), and (6) the total dollar value of Government-owned vehicle damage loss exceeds \$1,000.

In every FLIPL, an Army officer or DA civilian employee is authorized to appoint financial liability officers and to approve financial liability investigations of property loss. In the past, the regulation authorized Army officers in command positions in the grade of O-5 or above or DA civilians in a supervisory position in the grade GS-14 or above to act as appointing authorities. The new version of AR 735-5 has increased the requisite grade for the appointing authority. Now, appointing authorities must be Army officers in command positions in the grade of O-6 or above or DA civilians in a supervisory position in the grade of GS-15 or above.

If a financial liability investigating officer or appointing authority recommends that an individual should be held liable for the loss of or damage to Government property, then the individual must be given notice and an opportunity to review the investigation. In the past, AR 735-5 only authorized notice delivery by hand or by mail. The 2013 version of the regulation has added notice delivery via the individual's AKO e-mail address as a viable means of giving notice.

Before a FLIPL's approving authority can determine whether or not to hold an individual liable for loss of or damage to Government property, the investigation must receive a legal review by an administrative law attorney. The attorney reviews the FLIPL to ensure that it was done in accordance with the regulation. If the FLIPL was done in accordance with the regulation, then it is considered legally sufficient. The focus of the attorney's review is the analysis that explains why the individual who had responsibility for lost or damaged Government property was (or was not) negligent and was (or was not) the proximate cause of the loss or damage. This analysis is called the findings and recommendation. In the past, if the attorney determined that the findings and recommendation were legally insufficient, the appointing authority could still assess liability against the individual. In the new version of AR 735-5, a restriction has been added that prohibits the approving authority from assessing financial liability against an individual if an attorney determines that the findings and recommendations are legally insufficient.

For a complete list of changes to AR 735-5, consult the Summary of Change page located at the beginning of the regulation.

Editor's Note: CPT Jaeger is an Administrative Law Attorney for the 21st TSC Office of the Staff Judge Advocate.

Volunteer Recognition Corner...

KLSC Mediation Program Kicks Off

by MAJ Karin Chelluri

This quarter we are introducing a new feature to this newsletter to highlight the outstanding volunteer support we receive; in this edition, we recognize the contributions of Ms. Emily Spess to the Kaiserslautern Legal Services Center (KLSC). Emily joined our team in October of 2012. Since that time she has been working diligently to establish our client mediation program. Emily brought a wealth of experience working collaborative family law cases in Annapolis, Maryland, before moving to Kaiserslautern with her husband in 2012. Emily is thrilled to see all her hard work establishing a mediation program for the Kaiserslautern Military Community come to fruition. Through her dedicated efforts, the KLSC's mediation program will be assisting its first clients this summer.

About the KLSC Mediation Program

The KLSC mediation program cannot guarantee specific results; however, mediation has a lot of benefits:

Economical: Mediation is generally less expensive when contrasted to the expense of litigation or other forms of the traditional adversarial legal process.

Rapid Settlements: Traditionally when working toward an agreement parties spend hours with attorneys transmitting documents back and forth, often with only incremental change resulting in a lengthy process; mediation offers the opportunity for the clients to sit down and identify their objectives together to arrive at a solution, often in a single sitting.

Mutually Satisfactory Outcomes: Clients are generally more satisfied with solutions that have been mutually agreed upon, as opposed to solutions that are recommended by attorneys or imposed by a judge.

High Rate of Compliance: Clients who have crafted their own agreement through mediation are more likely to follow through and comply with its terms than those whose resolution has been imposed by a third party decision-maker.

Predictability of Outcome: Clients who negotiate their own settlements have more control over the outcome of their dispute.

Personal Empowerment: Clients who negotiate their own settlements often feel more powerful than those who use advocates, such as lawyers, to represent them. Mediation negotiations can provide a forum for learning about and exercising personal power and give clients the opportunity to identify their interests and ensure specific needs and concerns are addressed.

For more information about the Kaiserslautern Legal Services Center's new mediation program, contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848.



Editor's Note: MAJ Chelluri is the Officer-in-Charge of the Kaiserslautern Legal Services Center.

German & U.S. Jurists Compare Notes

Building international understanding & friendships...

by Joe Hall

How long should a member of the US Forces stay in German pretrial confinement? What happens when notice of a German paternity suit comes to the quarters of a deployed Soldier? These are two of many questions that might arise on a daily basis, as we live and work in Germany.

The answers to the type of questions posed above are frequently, but not always, found in international agreements.

The NATO Status of Forces Agreement (SoFA) and its German Supplementary Agreement (SA) provide a very good framework of legal rights and privileges and duties and obligations imposed upon the host nation, and upon the US Forces and its individual military and civilian members and their family members. However, the agreements cannot cover all aspects of life or the law, and they also do not cover all the details of their implementation.

Also, although the treaty words may read the same, at times the same word may have a different meaning for the host nation and the US Forces. The result of that can potentially lead to misunderstanding and frustration and, in a worst case, impact our ability to perform our assigned mission.

To try and avoid diverging interpretations of the NATO SoFA and its SA, or to help fill in the blanks in circumstances where there is no specific treaty language, the Office of the Staff Judge Advocate works to build ties to the German legal community, and thereby to share and explain and advocate how we believe the treaties should be interpreted and implemented. The goal is to have a balanced and fair common understanding of the treaties that will give the US Forces the greatest possible flexibility to facilitate mission accomplishment.

Recently, the Office of the Staff Judge Advocate had two opportunities to meet with German government jurists and private practitioners to compare and share understandings of US, German, and international law: a liaison visit to the Saarbruecken Regional Court in April and a Law Day legal liaison event held at the Sembach Community Club in May.

The Saarbruecken visit was initiated and hosted by the President of the Regional Court, Hans-Peter Freymann, and included the Kaiserslautern and Zweibruecken Regional Court Presidents, and the Attorney General of Saarbruecken, among other German guests. The US Forces were represented by the 21st TSC Staff Judge Advocate, COL Ralph J. Tremaglio, III, the Chief Military Judge of the 5th Judicial Circuit, COL R. Peter Masterton, and other members of the 21st TSC OSJA staff (see photo on page 18).

Topics addressed included the “right to a speedy trial,” the use of German courts for civil actions by and against US Forces personnel, and service of civil process. The topics related to the questions posed at the beginning of this article. The resulting discussion was good and helpful.



While our host was exceptionally gracious, and called for the meeting’s working language to be English, Judge Masterton (left) reciprocated by giving his presentation, on the Role and Function of the Military Judge, in German – helping to further cement the bonds of understanding and the friendships that were made or reinforced that day.

Liaison events like these provide opportunities to forge professional relationships with our German counterparts that help ensure that our legal environment remains mission responsive.

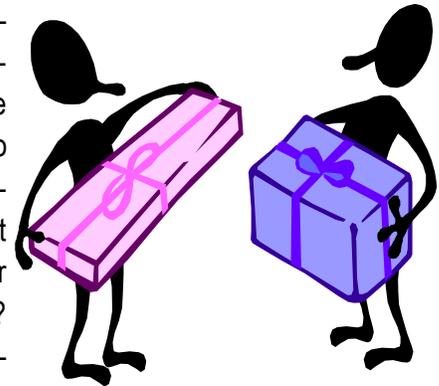
Editor’s Note: Joe Hall serves as Chief of International Law for the 21st TSC Office of the SJA.

The Ethics Corner...**AN UPDATE ON GIFT GIVING**

by Rick Schwartz

“So long, Farewell, Auf Wiedersehen, Good-bye”

With so many *adieux* approaching us this summer, it's probably time to refresh our memories about when it's acceptable to offer a gift to our boss or accept one from those who work for us. Though the standard is that we don't give or accept gifts from those in a superior-subordinate relationship (or those who earn disparate pay), it is understandable that we will sometimes want to recognize our boss for the impact they've had on us. At the same time, it's important to do so in a way that doesn't put the boss or us in an awkward situation. For example, can your office create a pool to jointly get a PCS or retirement gift? Maybe, but there are some things you should know before you begin. Individual facts and circumstances are going to vary, so we always want to look to the Joint Ethics Regulation and the Code of Federal Regulations for specific guidance. Of course, as with all other aspects of the Government Ethics rules, keep in mind that even if the rules would otherwise permit an action, it is equally important to consider the appearance of taking that action.



Each of us as an Executive Branch employee is generally prohibited from directly or indirectly giving gifts to, or soliciting contributions for, our superiors (note that this is broader than immediate supervisors). In turn, our superiors 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. Rules in this area are intended to preserve integrity in the federal workplace: not only do they prevent inappropriate influence or bias from being brought to bear, but just as important, they prevent the very appearance of impropriety. Failing to observe the rules can be vexing to both donor and recipient, in some cases putting the recipient in the unfortunate position of having to either pay for the gift or give it back.

Keeping in mind two common exceptions can avoid the unhappy occurrence:

(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. Typically we would say that an occasional basis includes birthdays or gift-giving holidays, such as Christmas. Making a contribution of food or beverages for sharing in the workplace by several employees, extending an invitation to a colleague or superior to a meal at one's home, 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.

There are specific rules about how the \$300 limit is to be applied in our PCS/change of command exception. A "donating group" includes all employees (uniformed or civilian) contributing to the group gift, and an employee should generally not contribute to more than one group. If an employee does so, the value of all gifts from groups with a

[continued on page 17...]

AN UPDATE ON GIFT GIVING (continued)

common donor must be aggregated as if the gift was from a single donating group for purposes of the \$300 limit.

There are also considerations involved with soliciting for a group gift:

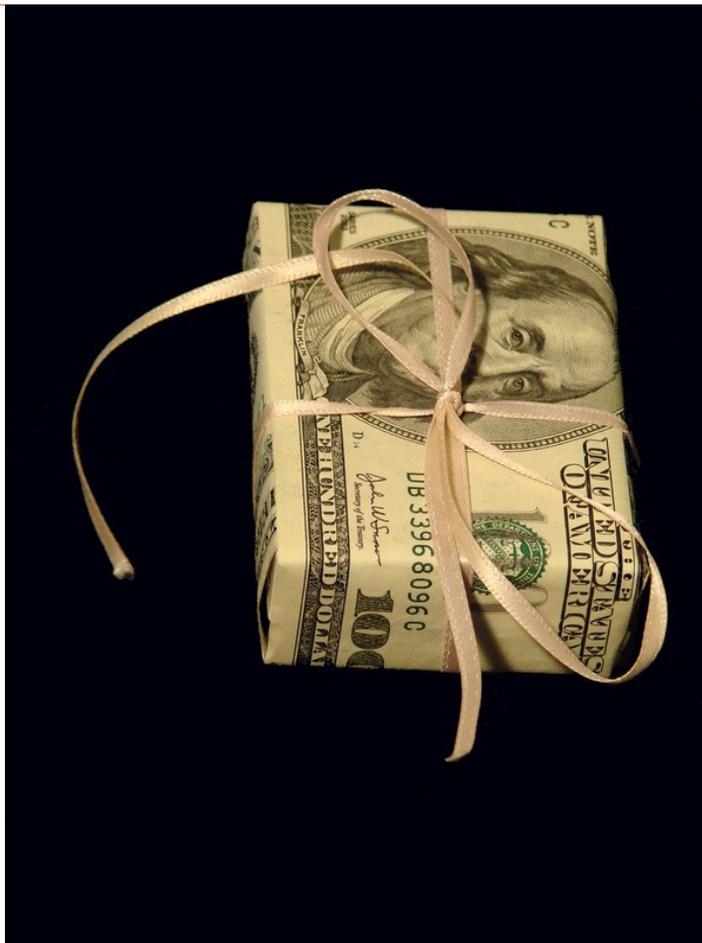
- Those doing the collecting for the group gift may not ask for more than \$10 from other Federal employees (contractor employees may not be solicited at all), but only for gifts that fit into our second exception above, or for the occasional sharing of food and refreshments in the work-space.
- The solicitor may recommend a specific amount up to \$10, as long as they also state 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.

Note also that absent an independent basis of support (e.g., a pre-existing personal relationship), gifts 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.

Fortunately, there is no general prohibition or limit on the amount which a superior may gift to his subordinates, subject to the ever-present 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).

For questions on how the rules on giving or accepting gifts would apply to your specific scenario, get in touch with your servicing Ethics Counselor for advice.



Editor's Note: Rick Schwartz serves as Ethics & Fiscal Law Attorney for the 21st TSC Office of the Staff Judge Advocate.



Saarbruecken Regional Court President Hans-Peter Freymann (5th from left) and fellow German jurists welcome 21st TSC Staff Judge Advocate COL Ralph J. Tremaglio, III (6th from left), Chief Military Judge COL R. Peter Masterton (4th from right), and other members of the 21st TSC OSJA staff to the library of the Saarbruecken Regional Court, following a morning of briefings and a tour of the courthouse in April. For more on this visit, see the article on page 15 by Joe Hall, 21st TSC Chief of International Law (far right).

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.

