



OUR SUMMER FURLOUGH EDITION—20% SHORTER...

KAISERSLAUTERN LEGAL SERVICES CENTER



KAISERSLAUTERN LEGAL INFORMER

NEW SJA MANAGEMENT TEAM TAKES CHARGE



COL Jonathan A. Kent (left) is the new 21st TSC Staff Judge Advocate. LTC Gene Kim (right) is the new 21st TSC Deputy Staff Judge Advocate.

by Steve Smith

The 21st TSC Office of the Staff Judge Advocate is under new management. Recent months have seen a lot of changes in the office's "Foundation of Five," the term the JAG Corps uses for an OSJA's management team. MSG Dwayne Dozier replaced MSG Scott Haarer as Chief Paralegal NCO in January. CW4 Chris Swires replaced CW2 Jah'love Shakur as Legal Administrator this spring. And this summer, our new Staff Judge Advocate and Deputy Staff Judge Advocate arrived.

Colonel Jonathan A. Kent comes to us from U.S. Army Medical Command in Washington, DC, where he also served as SJA. He brings a wealth of managerial experience to the table. This marks his fourth SJA assignment. He has also served as a Deputy SJA three times.

Colonel Kent is a former Army aviator, a voracious reader, and a military history enthusiast. He is no stranger to USAREUR, having previously served with V Corps in Heidelberg (and later in Iraq). He is accompanied by his wife, Moonhee, and their children, Stephanie, Joseph, and Isabella.

Lieutenant Colonel Gene Kim, our new Deputy SJA, comes to us from the Contract and Fiscal Law Division of the U.S. Army Legal Services Agency at Fort Belvoir, Virginia, where he served as Chief of Trial Team I. He has a lot of OCONUS experience, having had assignments in Korea, Japan, and Iraq. This is his first USAREUR assignment. He is accompanied by his wife, Jeannie, and their daughter, Deborah.

We welcome these experienced managers and their families to the 21st TSC legal team.

IN THIS ISSUE...

- LQA Audit Update
- Tax Relief for Injured Spouses
- Host Nation Attorney-Advisors
- Buying & Selling Used Cars
- German Evictions
- They Broke It; They Buy It...
- Organizational Day Tips
- And much more!



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

An LQA Audit Update

by Mark Christensen

Many of our readers have been following the plight of certain civilian employees who were notified in May that they had received erroneous LQA payments. After the initial notification to employees, the information was forwarded to DFAS where audits of individual pay accounts are being conducted. As audits are completed, employees are notified of the overpayment amount and issued debt letters.

Once in receipt of the DFAS notification, the employees have the option to request a waiver of collection 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. Although a waiver request means an employee is not disputing the decision, it is not an admission of liability. Requesting a waiver does not affect any separate legal rights an employee might have, and has been described as an administrative process determining whether the erroneous payments were received in good faith by the recipient.

So far nearly 300 Europe-based employees have submitted waiver requests to DFAS. The first batch of 18 requests has been processed, and all 18 have been granted. This is encouraging news. DFAS has committed to prompt adjudication of these waiver requests, appreciating the impact on the employees, their families, and their organizations, and more adjudications should be released each week. More information about submitting a waiver request can be found at their website: <http://www.dfas.mil/lqaissue>.

659 employees were initially notified of erroneous LQA payments. As DFAS audits produce more notifications and debt letters, we recommend that employees consider requesting a waiver of the debt. Employees who want legal assistance preparing a request for waiver or hardship collection reduction, 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 lawyer. Employees who wish to dispute their indebtedness are not eligible for Army legal assistance on that issue, as it is employment-related and beyond the scope of our practice.

Employees who contact me at my office e-mail address, mark.d.christensen2.civ@mail.mil, will be sent current documents including FAQs and forms that may be helpful for making decisions.



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]

BREAKING NEWS!!!

**THE KAISERSLAUTERN
LEGAL SERVICES CENTER
HAS BEEN NAMED A
WINNER OF BOTH THE
FY 2012 ARMY CHIEF OF
STAFF AWARD FOR
EXCELLENCE IN LEGAL
ASSISTANCE, AND THE
FY 2012 TJAG AWARD
FOR EXCELLENCE IN
CLAIMS SUPPORT.**

**THIS MARKS THE 7th
CONSECUTIVE YEAR
KAISERSLAUTERN HAS
WON BOTH AWARDS!**

**CONGRATULATIONS TO
OUR DEDICATED CLIENT
SERVICES STAFF!**

Tax Relief for "Injured Spouses"

A tax attorney explains how to increase your tax refund...

by Steve Smith

In my last column, I warned our readers about the dangers of over-withholding, and explained how the IRS "refund offset program" works. Using the IRS as a savings account can backfire if some governmental agency claims you owe them money for things like past due child support, taxes, student loans, or VA mortgage payments. The IRS is required by law to send your refund to that agency, and if you want to dispute it, you have to deal with the agency directly. I closed that column by noting that 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, and promised to provide more information about how that works in my next column.



This only works in situations where both spouses work, each spouse has income and withholdings, and they file a joint return. That's a pretty common scenario. In fact, most of the clients we see in our tax assistance centers match that profile. When we finish the return, we tell the clients "We've got great news for you! You're entitled to a huge refund!" That's when one of the spouses, usually (but not always) the wife, pipes up and says "we haven't received a refund in years because this one (referring to her husband) fell behind on his child support." What she is really telling us is that when her husband stopped paying child support, a governmental agency had to step in and use public funds to support the child, and the agency subsequently made a claim against the IRS so that any tax refund owed to the husband would be sent to the agency instead of him, to reimburse the agency for the public funds expended.

That's when we tell the "injured spouse" (*i.e.*, the spouse who is losing her portion of their joint refund to pay for the other spouse's past-due obligation) about Form 8379, the so-called "Injured Spouse Allocation." By including that form with their joint tax return, we can get back the portion of their refund that is allocable to the injured spouse's earnings and withholdings. The term "Injured Spouse" has nothing to do with domestic violence; one spouse has suffered a financial injury because of the other spouse's offset, and filing Form 8379 is a way to cure the financial injury.

Form 8379 contains three columns. In the first column, we enter figures from the couple's joint tax return. In the next two columns, we break down those figures, showing how much was allocable to the injured spouse and how much was allocable to the other spouse. We also write "Injured Spouse" at the top of the Form 1040, to warn the IRS that the return contains a Form 8379 and will require special handling. Form 8379 can also be filed separately, after a joint return has been filed for the current year or for past years.

Only the injured spouse needs to sign Form 8379. The form also allows the injured spouse to list an address other than the one on the joint tax return where a refund check can be mailed. The injured spouse can also elect to have her refund check issued in her name only, if she is divorced or legally separated from the spouse with whom she filed the joint return. For more information on Form 8379, contact your local tax assistance center or a Legal Assistance Attorney.

Recognizing Exceptional Effort!

21st TSC Senior Civilian Attorney Steve Smith (right) presented the Department of the Army Commander's Award for Public Service to U.S. Citizenship & Immigration Services Field Office Director Kristina Carty-Pratt at a farewell reception in her honor at the American Consulate in Frankfurt on July 9th. Ms. Carty-Pratt was recognized for her exceptional efforts to educate USAREUR attorneys on the fine points of immigration law at workshops she set up at the Consulate and at USAREUR Legal Assistance conferences over the last five years. In an era when mind-numbing phone menus have become the norm, Ms. Carty-Pratt's willingness to get personally involved in checking on the status of cases made a big difference to our clients.



Farewell to a Claims Guru!

U.S. Army Claims Service, Europe (USACSEUR) personnel claims experts Howard Trout (4th from left) and Doris Brummer (2nd from right) conducted claims training in the Warren G. Argue Courtroom in Kaiserslautern in August. The training session was attended by 21st TSC claims attorneys and claims examiners from Kaiserslautern and Baumholder. Mr. Trout retires in September after serving as the Chief of Personnel Claims at USACSEUR for more than 15 years. USACSEUR will be moving from its current location on Spinelli Barracks in Mannheim to its new offices on Clay Kaserne in Wiesbaden in late September.

We're Here to Help!

Kerstin Siegler (left) and Stefanie Hüttenberger (center), of the Youth Welfare Office ("Jugendamt") for the City of Kaiserslautern, discuss paternity issues with an American Soldier (photo posed). Youth Welfare Office officials conduct regular meetings on paternity and child support issues at the Kaiserslautern Legal Services Center (KLSC) to spare our clients the hassle of having to travel downtown and pay for parking. These meetings are completely voluntary, and make it easier for clients to acknowledge paternity, begin making child support payments, and visit their child. Holding the meetings at the KLSC has the extra advantage of having German Attorney-Advisors right next door if the client desires a legal consultation. For more information, or to set up an appointment to meet with these Youth Office officials, contact our Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848.



NOTE: The next Youth Welfare Office visit to the KLSC is scheduled for the afternoon of September 12, 2013.

"They Broke It; They Buy It!"

by CPT A.J. Browell

PCS season can be very stressful. This stress is often exacerbated when moving overseas. With so many things occurring all at once (finding a place to live, adapting to a new culture, getting into a new battle rhythm in your new assignment, enrolling your family members into various programs, etc.), it is easy to forget to take the steps necessary to ensure you receive the money to which you are entitled for household goods and unaccompanied baggage damaged during shipment.

Previously, if your belongings were damaged during a military move, you were only compensated based on the depreciated or fair market value of the item. This changed in 2007 when the Department of Defense (DOD) entered into a new contract with transportation service providers (TSPs) which now enables claimants to obtain the full replacement value (FRV) of destroyed or lost items. That is, the TSP is



required to replace lost items with a new item, or pay the cost of a new item of the same kind and quality. As this change can mean more money in your pocket, it pays to be fully informed on the process.

First, you must provide notice of loss or damage to the TSP. Obvious loss or damage discovered during delivery must be recorded on the "Notification of Loss/Damage at Delivery" form. Examples of obvious loss or damage are missing boxes, a shattered television, a major gouge running across your dining room table, etc. All other damage must be reported to the TSP within **75 days** of the date of delivery, using the Defense Personal Property System (DPS). Second, you must file your claim with the TSP within **nine months** of delivery, also using DPS.

DPS is a web-based program located within www.move.mil. If you haven't already done so, you can create a DPS account through www.move.mil by providing your personal information. Once registered, you can use DPS to settle claims online directly with your TSP.

U.S. Transportation Command promotes DPS as a centralized, integrated system that is the one-stop source for managing personal property moves. DPS is a sophisticated and valuable resource when it works. However, many claimants report having difficulty accessing DPS; claimants also report difficulty in filing their notice of loss and claims in DPS, even with access.

Your claims office recognizes the difficulties that claimants are experiencing with DPS and stands ready to assist you during every step of the claims process. In fact, all claims offices within the 21st TSC have dedicated computer terminals for accessing DPS, as well as detailed instructions and in-person support on utilizing the program.

If you are unsatisfied with how the TSP is settling your claim, you may transfer your claim, in whole or in part, to your local military claims office after the TSP makes you a settlement offer or 30 days after your claim's submission to the TSP, whichever is sooner, without forfeiting FRV. ***The important thing to remember is to "Come to Claims!"*** Our claims attorneys and claims examiners can explain how the system works, and how the Army may be able to bring more leverage to bear on the TSP than you can as the claimant.

Finally, it is important to note that the TSP has certain rights under its contract with DOD. The TSP has the right to inspect damaged items during the claims adjudication process; the TSP also has the right to take possession of any item for which it has agreed to pay full replacement value or any item it actually replaces. However, items that are hazardous or dangerous to the health or safety of the claimant or the claimant's family (e.g., broken glass and moldy fabric items) may be thrown out. That said, be sure to document those items with photographs to support your claim before disposing of them.

As always, your claims office understands the sometimes challenging nature of the claims process. Claims personnel are standing by to assist every step of the way!

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.



What Our Host Nation Attorney-Advisors Can Do For You...



by Steve Smith

As we celebrate the remarkable accomplishment of Joerg C. Modellmog, Kaiserslautern's Senior German Attorney-Advisor, in becoming the first Host Nation Attorney-Advisor to receive the American Bar Association's prestigious Legal Assistance for Military Personnel (LAMP) Distinguished Service Award (see photo on page 14), it provides us an opportunity to reflect on the important role Host Nation Attorney-Advisors play in our legal assistance practice. They help Americans stationed overseas deal with big, bewildering foreign legal problems. What can these attorneys do for you? A lot more than you might imagine...

Landlord-Tenant Issues: If you've just arrived in country and your family is staying in temporary lodging while you try to rent a home for them, our German Attorney-Advisors can be a huge help when it comes to advising you on how leases work. Landlord-tenant law is a big part of their practice, particularly in areas like Kaiserslautern and Stuttgart where the vast majority of Americans have to live on the German economy due to shortages of on-post housing. They can also help if your German landlord decides to try to evict you from your rented quarters so he or a member of his family can use them—see the article on page 9 of this newsletter for more information on that issue. And they can advise you on how to get your security deposit refunded.

Family Law Issues: Our Host Nation Attorney-Advisors provide information on how to get married while stationed in Europe, and how to get "unmarried" if things don't work out. Separation and divorce counseling, including advice on child custody and support of dependents, is a big part of what they do. Advising clients on illegitimate paternity, parental kidnapping, and adoption options is also part of their practice.

Traffic Accidents & Tickets: Germany is 11 times more densely populated than the U.S. Sooner or later, you are likely to have a traffic accident, whether it is your fault or not. Our Host Nation Attorney-Advisors can help you sort through the legal consequences of these "entanglements." They can also help you file objections to parking and speeding tickets (*e.g.*, "I wasn't driving that car that day; I was TDY in Garmisch") and remind you of rights you enjoy under German law (*e.g.*, you are not required to provide evidence against your spouse). They can also advise you on how to respond when the Germans enforce traffic tickets from other EU countries.

Phone & Internet Contracts: As cell phones and Internet connections proliferate, so do the legal issues associated with them (*e.g.*, how do I go about cancelling my contract, and what happens if I am accused of illegal downloading?). Tax-free landline phone and Internet contracts are another area where Host Nation Attorney-Advisors can offer valuable advice.

Consumer Law Issues: You head off to the Black Forest to buy a cuckoo clock, and when you get home it does not work. The dealership that repaired your car refuses to release it until you pay for an expensive engine repair you never authorized. You are sick of wasting money on rent and are thinking of buying a home in Germany. *Who you gonna call? You guessed it!* You need the wise counsel of a Host Nation Attorney-Advisor.

[continued on page 7...]

What Host Nation Attorneys Can Do (continued)

Wills & Estates: You married a German and she inherited property here in Germany. You want to make sure the property winds up in the right hands should one of you die before the other. You need to see a German Attorney-Advisor, who can help you sort this out and advise you on the rules regarding wills and estates in Germany.

Double Taxation: This is an extremely complicated area. If Host Nation tax authorities send you a notice indicating their intent to tax your salary, and you already paid tax on it to the U.S., you need professional help. One of the reasons Mr. Moddelmog was nominated for the ABA award is that he is a genuine expert in this area. We would not dare go on the air without him when we do live “Open-Line” AFN radio call-in shows each tax season.

I’ve only scratched the surface here, but I hope you’re getting the picture. Our Host Nation Attorney-Advisors use their linguistic and legal skills to tackle tough issues for us, so we can keep our minds on the mission we were sent here to accomplish. They play a vital role in the Army’s legal assistance practice overseas. Hat’s off to them!



21st TSC's Award-Winning Team of Host Nation Attorney-Advisors (from left to right): Jarin Nijhof (Schinnen, NL), Joerg Moddelmog (Kaiserslautern), Marianne Schoonjans (Mons, BE), Werner Sukup (Stuttgart), Holger Blug (Kaiserslautern), and Christian Geier (Baumholder).

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.

Buying & Selling Used Cars in Germany

by Joerg Modellmog

Are you thinking about buying a used car downtown or are you about to sell your car to a fellow service member? Then you might be interested to know that in both cases the sale/purchase will be subject to German law. Therefore, it is good to know what host nation laws say on the subject of warranties and defects.

Even though oral contracts are valid and fully enforceable in Germany, only a written agreement enables you to adequately prove the terms of the agreement and clarify each other's obligations under it. All terms should be reduced to writing and signed by the parties because written contracts are presumed to be correct, complete, and without binding oral (side) agreements.

The buyer should have the car thoroughly checked out and tested before the sale is concluded. The car should be inspected by a trustworthy independent third party, *e.g.*, a garage.

Passing inspection is hardly enough proof that the car will remain reliable, since it does not say anything about the real condition of the car. It just shows that the car is doing fine at that one moment. A clause like "inspection guaranteed" means only that the seller has the duty – and the right – to place the car into such a condition that it passes inspection.

Normal wear and tear usually does not constitute a legally relevant defect, even if it impairs the functioning of a used car, unless the buyer demanded a clear, concrete, and binding representation from the seller to the contrary.

Therefore, the buyer should ask the seller for specific assurances, express warranties, or guarantees if a certain condition is important to him or her. It should be put down in writing.

In Germany the average total life span of a car is 10 years. After eight years, rust is a significant danger for almost every car in Germany and is, therefore, considered to be normal wear and tear.

When buying a car from a dealership, the warranty period is two years. It can be reduced to one year if you buy a used car from a dealer. Only when buying from a private person can the warranty be excluded completely by terms like "as is," "with all faults," or "*Gebraucht wie besichtigt.*"

It is also important to verify the seller's name on the bill of sale and to keep a copy of the power of attorney if the seller is selling on behalf of another person. Do not hesitate to ask to see the seller's ID. Also, keep the seller's local address and phone number on file, in case you need to contact him later should a problem arise.

If you should encounter problems buying or selling a used car, contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 and ask for an appointment to speak with one of our German Attorney-Advisors.

Editor's Note: This article was originally published in the "Kaiserslautern American" on July 26th. It is reprinted here for the benefit of newcomers to the Kaiserslautern Military Community who may have missed the article when it was first published.



When Your German Landlord Wants You Out

by Holger Blug

Imagine this scenario: You just PCSed to Germany and, after weeks of searching during the summer rush, you finally found a place to rent. You put in new carpeting, had drapes made for all the windows, and no sooner did you move in than you received a termination notice from your landlord, saying he needs the place for his son who has decided to get married. He wants you out in three months. What do you do?

Under German law, landlords have very few options when it comes to terminating a lease. There must be a valid reason. The landlord can't terminate the lease just because he doesn't like the tenant anymore.

Several grounds for termination are mentioned in the German Civil Code. They include non-payment of rent and violation of contractual duties, but the most common ground is personal need ("*Eigenbedarf*"). This means the landlord can legally terminate a lease if he needs the premises as a dwelling for himself, members of his family, or members of his household.

Even though personal need is a valid reason for termination, you should make an appointment to see a German Attorney-Advisor if you receive such a termination notice, to see if anything can be done to avoid the eviction.

First, the attorney will review the termination notice to determine whether there are any formal grounds for challenging its validity. The notice has to be in writing and must be signed by the landlord. In addition, the courts have already established certain criteria for the validity of a termination notice due to personal need. Just including the term "*Eigenbedarf*" is not sufficient. The landlord needs to explain the personal need in the termination notice. He needs to say who is going to move into the apartment and also what the current housing or living situation of this person is (*i.e.*, why this person needs to move now and why into this particular house or apartment). If the letter does not meet these requirements, the landlord might have to start all over again and provide a new termination notice with another three months' notice. This can at least buy you some more time.

The termination might also be invalid for substantive reasons. If the landlord pretends to move into the apartment, although he never really had the intention to do so (*e.g.*, if he just wants to get rid of his tenant), the termination is invalid. This might result from previous disputes over rent or utilities. If it turns out later that there was no personal need, the tenant could be entitled to compensation for the cost of his move and the higher rent he wound up paying elsewhere.

Also, if the landlord owns other apartments or houses which he is able to use, he cannot terminate the lease to move into the tenant's home. If the reasons for the termination were already in place before he rented the premises to the tenant, then the landlord had an obligation to inform the potential tenant of this when signing the lease. Finally, the tenant has the right to object to the termination if moving would cause the tenant an unjustifiable hardship. This might be the case if the tenant is not able to find a new home on reasonable terms, especially if the tenant has only a few months left in Germany. Other reasons for an objection include pregnancy or serious illness.



If you have questions about German landlord-tenant law, 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.

Let Your Will Be Done! ***The importance of military estate planning...***

by CPT Chris Leighton

Military estate planning gets a bad rap. Many view the process as a morbid, last minute stop on the pre-deployment checklist. But the truth is that estate planning is about life rather than death, and is one of the most valuable services available at your legal office. Take advantage of the opportunity to make a lasting **contribution to your family's well-being** by letting our attorneys draft your Will. The alternative – state intestacy laws and probate court – is an impersonal legal mechanism with potentially dire consequences.



The most effective planning document for most individuals is a Last Will and Testament. This document allows you to create your own property distribution blueprint in which you nominate the people you want to carry out your wishes. By stating your preferences in the form of a properly executed Last Will and Testament, you eliminate the uncertain and often traumatic prospect of your surviving family members guessing as to what you would have liked. A good Will can also nip potential litigation in the bud.

You are the Testator or Testatrix. An Executor (or Personal Representative) is the person who will take care of your property after you die, settle your affairs, and distribute your property to your beneficiaries. Beneficiaries are those who will receive your property. Guardians of the person and/or property are individuals you appoint to stand in your parental shoes with respect to minor children and/or manage property left for their benefit.

If you die without a Will or do not adequately provide for your children, these matters may be decided by a probate judge after lengthy and expensive litigation. There is no guarantee that a judge will do what is best for your family. So, what should you do?

1. **Get an Estate Planning Questionnaire**. The questionnaire is used to signal your intentions to the drafting attorney. There is ample space to communicate additional details. We have separate estate planning questionnaires for testators with children (who generally have more complex estate planning issues), and those without children. The attorney will contact you if he or she needs clarification after reviewing the questionnaire.

2. **Meet with an attorney**. You will be contacted by the attorney once he or she has finished drafting your document. The attorney will schedule a mutually convenient time for you to meet in the office and go over the Will to ensure accuracy and completeness.

3. **Execute the Will**. Once you are satisfied that the document clearly represents your final wishes, the attorney and his or her staff will provide everything necessary to properly execute your Will.

Do not wait until the rush of pre-deployment processing to act. Let our attorneys help you ensure that **your** desires are followed in the event of your death.

If you have questions about military estate planning, 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 Legal Assistance Attorneys.

Editor's Note: CPT Leighton is a Legal Assistance Attorney with the Kaiserslautern Legal Services Center.

A Special Area of Emphasis...***Divorce: First A Decree, Then You're Free*****by Mark Christensen**

We are often asked questions about when a divorce is final. This is important because marital status can directly relate to tax filing status, the ability to remarry, property ownership rights, and other purposes. Whether a person is single, married, or legally separated can also affect military benefits such as command sponsorship and pay entitlements. Not to be forgotten is UCMJ Article 134, prohibiting adultery and bigamy, where a person may be punished for having sex with or marrying another person while either of them is married to someone else.



The answer is that a divorce is final when a court of competent jurisdiction executes a divorce decree or judgment of divorce. The couple might execute a marital separation agreement in which the terms of a separation or divorce are settled between the spouses. A court might enter preliminary orders before a divorce is final, including an order recognizing a legal separation. However, until a divorce decree or judgment of divorce is properly executed by a court, the couple continues to be legally married to each other and must comply with financial support or other obligations based on their married status.

We also recommend divorcing clients carefully review the divorce decree. Some states provide that a divorce is not final until some time has passed after the decree is issued. In California, six months must pass from the date the case is filed until the couple is divorced. Even if the court enters a divorce order earlier than six months, the couple is not legally divorced until the six months have passed and the order becomes effective. In addition, Germany will recognize a U.S. divorce order only after any permitted appeal period has passed (normally 30 days).

Remember that a court of competent jurisdiction is generally not Mexico or another jurisdiction where a “quickie-divorce” is possible without notice or residency.

A common situation is where someone comes to our office and says their former spouse told them they would “take care” of the divorce after they separated. Years pass and the spouse apparently “assumes” the divorce took place. Without a divorce decree we cannot verify the divorce actually took place, Soldiers cannot disenroll former spouses from DEERS, taxpayers cannot file tax returns using a single filing status, and Soldiers risk violating the UCMJ.

If you have questions about separation and divorce, taxes, or related issues, contact the Kaiserslautern Legal Assistance Office for more information. If you have been charged with a violation of the UCMJ, contact the U.S. Army Trial Defense Service. Commanders should consult their servicing Trial Counsel for advice.

Kaiserslautern Welcomes New Chief Judge ***Drawing on many years of military justice experience...***

by **COL Pete Masterton**

Colonel David Robertson arrived this summer to take over as the Chief Circuit Judge for Europe and Southwest Asia. In his new position he will be responsible for all cases tried in Germany, Italy, Afghanistan, and Kuwait. He is also responsible for supervising the other judges in theater.

Colonel Robertson already has a great deal of experience as a military judge. He comes to us from Fort Eustis where he served as a military judge for the past year. Before that he was the Chief Circuit Judge at Fort Bliss, where he was responsible for all cases tried in the Southwest United States. He has also had numerous assignments in the specialty of criminal law. From 1999 to 2001 he served as the Senior Defense Counsel at Fort Campbell, Kentucky. From 2001 to 2004 he was a Criminal Law Professor at the U.S. Army Legal Center and School in Charlottesville, Virginia.

From 2004 to 2006 he was a Regional Defense Counsel at Fort Meade, Maryland, where he was responsible for the defense of extremely senior personnel and handled a number of high-profile cases.

Colonel Robertson is no stranger to Germany. He served as a Staff Judge Advocate for the rear detachment of V Corps in Heidelberg from 2006 to 2007. From 1996 to 1997 he served as a Brigade Trial Counsel in Kirch-Goens, Germany. He has also deployed a number of times, heading to Bosnia in 1996 and to Kosovo from 2007 to 2008.

Colonel Robertson is joined by his wife, Sharron, and two daughters, Alexandra and Sarah. We wish them a successful tour of duty in Kaiserslautern.



Editor's Note: COL Masterton served as COL Robertson's predecessor as Chief Circuit Judge for Europe & Southwest Asia. He will be retiring at the end of September after a 30-year career in the Judge Advocate General's Corps, much of it spent in Germany. We wish COL Masterton, his wife, Ilona, and their daughter, Jennifer, all the best. Look for coverage of his retirement ceremony in our fall edition.



Want More Information on Our Claims Services?

Stop by the Kaiserslautern Claims Office in Room 112 of the Kaiserslautern Legal Services Center, look for the miniature display rack (left), and pick up copies of our new tri-fold brochures on a wide variety of claims topics, including: Proper Party Claimants, Before You PCS, Household Goods Claims, Full Replacement Value, Receiving Your POV, Article 139 Claims, Power Surges, POV Vandalism Claims, Flood Claims, and related topics. Or call one of our Claims Examiners at DSN 483-8855/8856 or Civilian 0631-411-8855/8856 and ask them to e-mail you one or all of the brochures.

The Ethics Corner...**ORGANIZATIONAL DAY**

by Rick Schwartz

How to Incorporate Civilian Employees...

Units that observe an Organization Day are taking the unique opportunity to build camaraderie and *esprit-de-corps* among the present members of the unit while also commemorating a special day in the unit's history and thereby strengthening the link to those who have served before. It may therefore seem counter-intuitive that not every member of the organization is going to be able to participate, but in organizations like ours it is important to remember that the laws on employment of civil servants and Local Nationals (LNs) take precedence over military traditions applied to mixed organizations. How the event is structured and funded will make all the difference in who can be compelled to attend as a place of duty.



The underlying premise is that Government resources are for official use and authorized purposes only. Each employee's duty time is in itself a Government resource subject to that rule, though we have considerably more flexibility in accounting for the unofficial time of military personnel than we do with that of civilian employees. For civil servants, the normal tour of duty is 40 hours per week and there are limited means to excuse an individual from their place of duty without it becoming a chargeable absence. The agreements governing employment of LNs provide for one excused absence in the calendar year (a "*Betriebsausflug*") and thus limit the additional administrative time that could be granted for similar unofficial outings.

Whether your event is official or unofficial is not affected by how you characterize it. Organization Days can range from a light day of games and a picnic to formal participatory programs designed to improve effectiveness and provide training outside the office (and everything in between). If the Organization Day is designed to be official, then the events that take place during the scheduled time will reflect that mission-related purpose rather than looking like a series of social events or casual sports games designed to ensure unit members have fun together. Remember that we're talking about the full duration of the event, so simply having a formal speech sometime during the course of otherwise unofficial events doesn't transform the whole day. Also, as with any other place of duty, you will have to build accountability and periodic roll calls into your organization day if you want it to be official. The schedule, role of civilian employees, and their uniform should all be planned out.

How you choose to fund your event can also be revealing. It's common to use unit funds provided under authority of AR 215-1 at Organization Days. Since they're only available for "off-duty recreational purposes" that relate to the MWR of unit members, you have essentially made a decision that the event will be unofficial for purposes of this discussion (and the activities you are using unit funds for should reflect this MWR aspect). What is recreation for uniformed personnel and their guests is not going to be official duty for civilian employees. Conversely, official events are funded with appropriated funds, including potentially costs of travel to get employees back and forth to the alternate duty location and to cover compensation claims in the event a civilian is injured in the course of his alternate duty.

So, if you want to plan and fund a great unofficial Organization Day for your uniformed personnel, but also maximize participation of your civilian employees, what should you do? You can certainly encourage the use of annual leave, leave without pay, or the accrued use of compensatory time. You should also consult with your servicing labor counsel regarding (i) the potential to adjust start and end times of the normal duty day so as to make up any time spent at the event, or (ii) consideration of whether a short excused absence (e.g., a long lunch period) could be authorized. Be sure to factor in the role of the Works Council.

As always, to obtain specific legal advice on how these general principles apply to your specific Organization Day plans, get in touch with your servicing Ethics Counselor or Labor Counsel for advice.



Major General John R. O'Connor (left), the Commanding General of the 21st Theater Sustainment Command, presented the American Bar Association's Legal Assistance for Military Personnel (LAMP) Distinguished Service Award to Joerg C. Modellmog, the Kaiserslautern Legal Service Center's Senior German Attorney-Advisor, in a special ceremony in the Warren G. Argue Courtroom in Kaiserslautern on August 15th. This marked the first time in the 30-year history of the award that it was presented to a Host Nation Attorney.

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.

