



KAISERSLAUTERN LEGAL INFORMER

TALENTED TAXMAN MAKE\$ TAXE\$ LE\$\$ TAXING!



PROFESSIONAL PROFILES...

This is the second in a series of profiles of members of the staff of the Kaiserslautern Legal Services Center. We're proud of the team of attorneys and paralegals who meet the legal services needs of the largest community of Americans overseas. By getting to know our staff better, our readers will know who they can turn to for help with a legal problem. As is so often the case when it comes to resolving legal matters, it's who you know that counts...

by Steve Smith

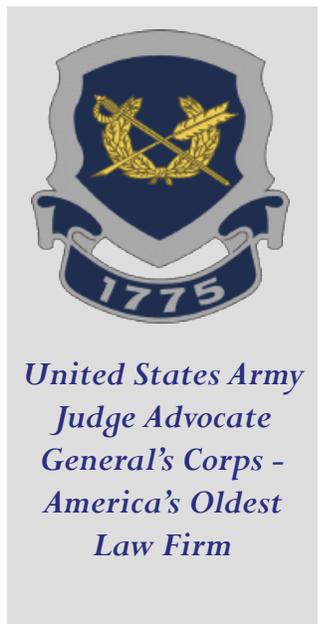
Donald Davis serves as Tax Program Coordinator for the 21st TSC Office of the Staff Judge Advocate. He oversees a free tax assistance program that annually saves military taxpayers over a million dollars in commercial tax preparer fees, and generates in excess of \$13 million in refunds. A more valuable service would be hard to imagine.

Mr. Davis supervises the day-to-day operations of the Kaiserslautern Legal Services Center's tax centers on Kleber Kaserne and at Landstuhl Regional Medical Center, while providing technical assistance to 21st TSC tax centers in Mannheim, Stuttgart, Garmisch, Belgium, and the Netherlands. Tax attorneys and e-filers all over Europe routinely seek his advice on how to resolve issues involving TaxWise software and how to make their tax centers operate more efficiently.

Mr. Davis brings a wealth of tax experience to the table. Prior to assuming his current duties, he served for several tax seasons as an e-filer with the 1st Infantry Division, which at the time ran the largest tax assistance program in the Army. Prior to that he supervised a network of financial planning offices located in every military community in Europe.

Mr. Davis specializes in handling complicated tax returns involving investments, foreign tax issues, rental properties, and retiree tax issues. He also helps chronic non-filers "get right with the Government." Taxpayers from all over Europe beat a path to his door to seek his wise counsel and technical expertise. He makes it worth the trip.

We are extremely fortunate to have the best taxman in Europe on our staff. He is a big part of what keeps the 21st Theater Support Command "First in Legal Support."



Naturalization Benefits for Service Members

by Jim Wiley

“Before you became citizens of this nation, you courageously stepped forward to defend her. You have proved yourselves willing to pay the ultimate sacrifice for this country—and on behalf of the President and a grateful nation, I thank you for your brave service.” -USCIS Director Emilio Gonzalez naturalizing military members at Walter Reed Medical Center

One of the most important decisions a Soldier can make is whether to become an American citizen. By deciding to become a citizen you are showing your dedication and commitment to the United States. When you are naturalized you obtain the benefits, as well as the responsibilities, of being a U.S. citizen. As a member of the U.S. Armed Forces, you may be eligible to apply for citizenship under special provisions provided for in the Immigration and Nationality Act.

The Immigration and Nationality Act (INA) covers not only the four major services but also the Coast Guard. The INA can also apply to certain sections of the Reserve components, the National Guard, the Selected Reserve, and the Ready Reserve. The INA makes it easier for qualified service members to become U.S. citizens if they choose to file a naturalization application (I-400). Not only is the process easier but the process is also expedited

for those who are serving on active duty or have recently been discharged.

It is important to note that to become naturalized a service member must have good moral character, a good command of the English language, a solid knowledge of American government and history, and also be willing to take an oath of allegiance to the U.S. Constitution. There are no general exceptions to these requirements. Generally, service members must have both residency and physical presence in the United States. Recognizing that service members may have to serve overseas, Sections 328 and 329 of the INA created an exception to the residency and physical presence in the United States requirements for service members stationed outside of the United States, as well as expediting the naturalization process.

Those currently serv-

ing in the U.S. Armed Forces or those who have already been honorably discharged from the service may qualify under Section 328 to waive residency and physical presence requirements and enjoy the privileges of expedited services if:

- the service member has served honorably for a total of one or more years,
- the service member is a lawful permanent resident, and
- the service member will be filing an application for naturalization while still in the service or within six months of being discharged.

Further, U.S. service members who serve on active-duty during authorized periods of conflict may have the right to waive residency and physical presence requirements and enjoy the privileges of expedited services under the provisions of Section 329 if:

- the service member

served honorably in the U.S. Armed Forces during an authorized period of conflict (the President signed an Executive Order identifying September 11, 2001 and after as an authorized period of conflict), and,

- after enlistment, they were lawfully admitted as a permanent resident of the United States, OR at the time of enlistment, reenlistment, or induction they were physically present in the United States or a qualifying territory.

If you believe you qualify for naturalization under the Immigration and Nationality Act, contact Mr. Dan Washington [DSN 483-7659 or 0631-411-7659] at the Passport Office in Bldg. 3245 on Kleber Kaserne to begin the application process. If you have legal questions or concerns please contact your local legal assistance office at DSN 483-8848 or 0631-411-8848.

This article is based on materials obtained at <http://www.uscis.gov> and www.jagcnet.army.mil.

Text of Brigadier General Scott G. West's Law Day 2007 Proclamation:

Law Day is a national day set aside to celebrate our nation's great heritage of liberty, justice and equality under law. Law Day underscores how the law and the legal process have contributed to the freedoms that all Americans share.

This year, we celebrate Liberty Under Law: Empowering Youth, Assuring Democracy. As good stewards of our democracy, we are obligated to assure that our youth are equipped with the knowledge and skills necessary to effectively make their voices heard within our democracy.

A Democracy is a government by and for the people. We always need to remember that our youth are a current, vital component of "the people," and that they will be the future stewards of our democracy. As a result, we all need to take an active role in the lives of our children, to guide and mentor them on the meaning, rights, obligations and duties of democracy; and to ensure that they know how to and have the chance to effectively and constructively participate in and preserve our Democracy.

Embrace this year's Law Day theme as we fight for Democracy. For if we do not ensure that our future generations are able to take care of Democracy, then our deeds of today in defending Democracy will be fruitless.

Please join me in celebrating our youth and empowering them so they can know what it is to be a part of a Democracy, on this Law Day 2007.

SCOTT G. WEST
Brigadier General, USA
Commanding

21st TSC OSJA Celebrates Law Day 2007 by CPT Desirée K. Helmick

May 1st is Law Day, USA. This year's Law Day theme is "Liberty Under Law: Empowering Youth, Assuring Democracy." Attorneys and paralegals from the Kaiserslautern Legal Services Center and the 21st TSC Office of the Staff Judge Advocate are joining forces to commemorate Law Day with a series of special events.

The Staff Judge Advocate will host a luncheon at Armstrong's to which German judges, prosecutors, attorneys, and law enforcement officials from throughout Rheinland-Pfalz and the Saarland have been invited. BG West will be the guest speaker. This annual event reinforces our cordial working relationship with our German legal counterparts. Attorneys and paralegals are also giving classes and conducting mock trials in local DODDS schools to help students develop a better appreciation of their civil liberties and of courtroom procedural safeguards. Students are also participating in a media-based project competition on this year's Law Day theme. It will challenge them to indulge their creativity while learning more about our legal system.

Foreign Earned Income Exclusion Changes by Steve Smith

A recent change in the tax law may have a major impact on taxpayers who use Form 2555 or Form 2555-EZ to exclude their foreign earned income (FEI) from taxation.

While employees of the US Government (to include local national employees) *cannot* exclude their wages from US taxation, there are a lot of taxpayers in the military community who can and do take the FEI exclusion. It can be taken by those who are self-employed (e.g., FCC providers) and those who work on the German economy, as well as by those who work for:

- overseas campuses of US universities,
- credit unions or the Community Bank,
- the Red Cross and the USO.

The exclusion can also be taken by:

- technical experts,
- independent contractors,
- referees, dance instructors, church organists, and others who receive “non-employee compensation” reported on Form 1099-MISC.

In past tax years, the FEI exclusion was simple. You reported your excludable income on line 7 of Form 1040 and subtracted it out on line 21, and that was the end of the story.

The “Tax Increase Prevention and Reconciliation Act of 2005” changed the

rules for taxpayers who take the FEI exclusion. The Act increases the rate of income tax on non-excluded income (i.e., income on which you do pay tax) by adding the excluded income back in to establish the tax rate on the non-excluded income.

Since this change takes effect in tax years beginning after 2005, we are only now beginning to see the impact of this change in our tax assistance centers. Long story short, if your only source of income is excludable (e.g., if you are single and your only source of income is your University of Maryland salary), the FEI exclusion should work as it has in the past, and you should notice no major increase in your tax bill. But if your return also includes taxable income (either yours or your spouse's), the rate of tax you pay on that income will likely be higher this year.

This means that many taxpayers overseas may experience a nasty surprise when they calculate their tax obligations for 2006. Many who were used to getting refunds in the past will wind up having to pay tax this year. Depending on how much FEI they earned, and how much tax they had withheld, they could wind up owing thousands of dollars in tax.

The sooner taxpayers who have FEI calculate their taxes, the sooner they

will know whether they will be adversely impacted by this change in the law. If they owe tax for 2006, they needed to pay it by 17 April 2007 to avoid interest and late payment penalties. [Just because the overseas filing deadline is 15 June does not mean they can wait until then to pay.]

Since this change to the law was new in 2006, the IRS is not assessing under-withholding penalties on returns with FEI for tax year 2006. The IRS will probably start assessing those penalties on 2007 returns. Taxpayers with FEI would be well-advised to adjust their withholdings on Form W-4 to ensure they are paying in at least 90% of what they will owe in tax in 2007.

Taxpayers who are adversely impacted by this change in the tax law may wish to make an appointment with a legal assistance attorney to explore options for minimizing the increase in their tax bill.

For more information, contact the Kaiserslautern Tax Assistance Center at DSN 483-7688 or 0631-411-7688.



Would you like more information on the JAG Corps?

WWW.JAGCNET.ARMY.MIL



Mr. Jim Wiley receives a LRMC commander's coin and certificate for conducting an emergency SRP for deploying medical personnel. CPT Marvin McBurrows, CPT Ryan Krohn, and SSG Everett Wilson were also recognized.

NEWS FLASH...

The 21st TSC Office of the Staff Judge Advocate bids farewell to CPT Carl Hill, CPT Jocelyn Stewart, SSG Jeremy Arnold, SGT Teira Arnold, SGT Jeri Cobb, and SGT Sigfredo Mendez, and welcomes our new Labor Law Attorney, Douglas Chicka, our new Fiscal Law & Ethics Attorney, Jeannine Smith, and our new SJA Administrative Assistant, Leigh Anne Newcomer .

“I didn’t do it!” – How to avoid endangering the return of your rental security deposit.

by Joerg Modellmog

In the last issue of the Kaiserslautern Legal Informer, I discussed the correlation between your rental security deposit and final utility bills. In this issue, we address how to avoid having your security deposit eaten up by your landlord’s claims for damages.

There are only two defenses for a tenant against a landlord’s claim for damages: pre-existing damage (*i.e.*, damage already listed on the moving-in protocol) or damage consistent with normal wear and tear.

Normal wear and tear means deterioration that results from the intended use of a dwelling but does not include deterioration that results from negligence, carelessness, accidents, or abuse of the tenant’s household by residents, pets, or guests.

There is a rebuttable presumption that damages to an apartment were caused by the tenant. The tenant is responsible for any damages exceeding normal wear and tear. The standards for what constitutes normal wear and tear are, however, often in dispute; *e.g.*, stains on walls, cigarette burns on the carpet,

or damage done to floors caused by pointed heels would not be considered normal wear and tear under German law.

The best way to document preexisting damages is by doing a “moving-in protocol.” Every crack, dent, chip, and scratch needs to be identified on that list. It is the only way to make certain that the defect, which will surely be listed on the moving-out protocol, can be identified as pre-existing. Have the landlord or the landlord’s representative cosign the moving-in protocol and return a copy to the Housing Office for filing purposes.

If the landlord or his/her representative refuses to sign the moving-in protocol (or later on the moving-out protocol), you can meet your burden of proof by having a representative from the Housing Office inspect the premises and put his/her statement in a memorandum for record. If you forgot to do a detailed moving-in protocol, you may want to consider writing to your landlord informing him/her about your concerns with respect to noted pre-existing damage. In such a case, be sure

to keep proof that you sent such a letter (send it by special registered mail/*Einwurf-Einschreiben*).

Even if the landlord’s claim for damages is basically justified, the amount of compensation often remains an issue. The landlord is not to be put in a better position than he/she was before. An old carpet may be replaced with a new one but you only owe the landlord the price of an old one. Like in a car sale transaction, the bluebook value of the damaged item needs to be determined. The landlord cannot simply renovate the house at your expense using your security deposit.

Finally, if the landlord sets off or subtracts his/her claim for damages against your rental security deposit, don’t forget to remind him about the interest that accrued on your rental security deposit. Too often landlords conveniently forget to provide proper proof of the accrued interest.

If you have further questions, you can pick up a detailed handout at your Legal Assistance Office or make an appointment by calling DSN 483-8848 or civilian 0631-411-8848.



Brigadier General Scott G. West, Commander, 21st TSC, presents claims examiner Martina Berndt with a an award for 25 years of service with the United States Army. Martina and five other awardees from the OSJA represented 105 years of combined government service. Receiving awards were:

- Donald Davis-5 years**
- Joerg Modellmog-10 years**
- Jim Wiley-15 years**
- Karl-Heinz Oberlaender-20 years**
- Martina Berndt-25 years**
- Marion Themann-30 years**



The Office of the Staff Judge Advocate is proud to announce that Specialist Samantha Ortiz has been promoted to the rank of Sergeant. She was promoted by her husband, SGT Yasir Ortiz, and CPT Desirée Helmick.

Compulsory German Military Service

by Joerg Modellmog

Being a German citizen by birth (due to his biological German parent), your son might be concerned about compulsory German military service when he turns 18. In fact, he will get notification thereof sometime after his 17th birthday.

Compulsory military service in Germany lasts nine months. Conscientious objectors may opt for nine months of non-military service. Women may serve in the

Armed Forces only on a voluntary basis. However, while compulsory German military service will not endanger your son's US citizenship, any voluntary(!) military service in the US Forces can deprive him of his German citizenship.

If your son enjoys SOFA status as your dependent, you will be interested to know that Article 7 of the Signatory Protocol to the Supplementary Agreement and the NATO Status of Forces Agreement

provides some comfort. Your son will be exempt from compulsory German military service as well as non-military service, provided he intends to PCS with you to the USA later on.

If your son receives a request to perform military service from the German Armed Forces, contact your Legal Assistance Office for help in drafting an appropriate response to any such German request.



Some articles in this newsletter are based in part on materials distributed by The Judge Advocate General's School through the Kaiserslautern Legal Services Center, Office of the Staff Judge Advocate, Legal Assistance Office, located in Building 3210, Kleber Kaserne.

Contact us at DSN 483-8848 or 0631-411-8848 for answers to your legal assistance questions.

Is This Where I File for a Legal Separation? by CPT Ryan Krohn

As an attorney in the Legal Assistance Office, this is a question I get daily. The short answer is no. The long answer is still no. Let me explain.

A legal separation, like a divorce, can only be granted by a court of law. The court will issue an order stating the married couple no longer lives together and all issues regarding the marriage, such as child support and property distribution, have been resolved. However, unlike a divorce, the couple is still married. Spouses are not free to marry other individuals as they are still married. Also, service members should be aware that a legal separation is not a ticket to go out and date again. In the eyes of the military, the spouses are still married and service

members who date or live with members of the opposite sex can face UCMJ charges.

The biggest advantage of a legal separation is the fact that it is a court order. If a party does not perform as obligated under the court order, such as not paying child support, a garnishment order can be issued by a court or obtained through a state's Child Support Enforcement Agency. With the garnishment order, the amount owed can be taken directly out of paychecks and bank accounts. Also, in extreme circumstances, if one spouse does not follow the court order, they can be held in contempt of court and face fines and jail time.

By now, you may be asking yourself, "Why did my First Sergeant tell me to go

to legal to get a legal separation?" Well, while we cannot do a legal separation, we can prepare a separation agreement for you. A separation agreement is essentially a contract between spouses who want to separate for a time. The separation agreement, like a legal separation, may resolve issues regarding child support, spousal support, child visitation, and property distribution. The agreement is valid until the parties reconcile, a divorce is finalized, or a court order changes the terms of the agreement. Also, as is the case with a legal separation, after signing a separation agreement, you are still married.

Up until this point, the legal separation and the separation agreement are very similar. However, if a party

does not follow the separation agreement, the other spouse's remedy is to file suit in a court of law for breach of contract. Any award would be the result of a broken contract, but the court is not going to issue a contempt order for failing to pay under an agreement.

What a separation agreement can do is help when you are applying for an Early Return of Dependents and changing your pay rate after your family has returned to CONUS. It can also help protect you in the future if a claim is made to your command that you are not adequately supporting your dependents. For further information, contact Legal Assistance and make an appointment to speak with an attorney.

Army Seeks Officers for Funded Legal Education Program

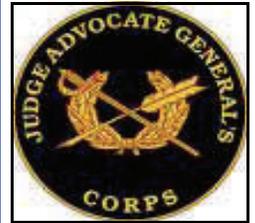
by COL Daria Wollschlaeger

The Office of The Judge Advocate General (OTJAG) is now accepting applications for the Army's Funded Legal Education Program. Under this program, the Army projects sending up to 25 active duty commissioned officers to law school at government expense if funding permits. Selected officers will attend law school beginning in the fall of 2008, and will remain on active duty while attending law school.

Interested officers should review Chapter 14, AR 27-1 (The Judge Advocate General's Funded Legal Education Program) to determine their eligibility. This program is open to commissioned officers in the rank of Second Lieutenant through Captain. Applicants must have at least two but not more than six years of total active Federal service at the time legal training begins. Eligibility is governed by statute (10 U.S.C. 2004) and is non-waivable.

Eligible officers interested in applying should immediately register for the earliest offering of the Law School Admission Test (LSAT). Applicants must send their request through command channels, to include the officer's branch manager at AHRC, with a copy furnished to the Office of The Judge Advocate General, ATTN: DAJA-PT (Ms. Yvonne Caron), 1777 North Kent Street, Rosslyn, VA 22209-2194, to be received before 1 November 2007. Submission of the application well in advance of the deadline is advised.

Interested officers should contact COL Wollschlaeger at the 21st TSC Office of the Staff Judge Advocate, DSN 484-7431 or civilian 0631-413-7431, for further information...



The Judge Advocate General's School & Legal Center in Charlottesville, Virginia, is responsible for training all JAGC personnel.



“Can I Get a Divorce in Mexico?” by CPT Ryan Krohn

“Can I get a divorce in Mexico?” Sure, you're a legal resident of Mexico, right? You're not? Is your spouse a legal resident of Mexico? No? Well then, that presents a real problem.

To obtain a divorce in any jurisdiction, you have to follow the rules and regulations of that state or country. Every state and just about every foreign country in which a divorce order would later be recognized have residency requirements. Residency requirements are different from state to state and from country to country, but they all ultimately require you to be a resident of the jurisdiction for anywhere from a week to a year in some places. Mexico requires you to be a legal resident for at least six months prior to filing for a divorce or annulment. You will even have to obtain a certificate from the Mexican Ministry of the Interior stating you have the requisite legal status to file for divorce.

Before you decide to file for divorce in any foreign country or use a company claiming they can obtain an immediate divorce for you in a foreign country, you should contact a licensed attorney in that state or country. If you do not follow the jurisdiction's laws and regulations regarding residence, your divorce decree will be nothing more than an expensive piece of paper that does not carry any weight. Be particularly skeptical of any company which claims they can obtain a divorce for you in a foreign country without your ever setting foot in the country.

KAISERSLAUTERN LEGAL SERVICES CENTER

Building 3210
Kleber Kaserne

Legal Assistance 483-8848
Claims 483-8414
Tax Assistance 483-7688
International Affairs 483-8854
Trial Defense Service 483-8165
Administrative Law 484-7450
Criminal Law 484-8311

WE'RE ON THE WEB AT:

<http://www.21tsc.army.mil/SJA/index.htm>

DO YOU WANT TO KNOW MORE ABOUT THE JAG CORPS?

[HTTPS://WWW.21TSC.EUR.ARMY.MIL/SJA/HISTORY/HISTORY2.HTM](https://www.21tsc.eur.army.mil/SJA/HISTORY/HISTORY2.HTM)

Making the Most of Your Legal Assistance Appointment...

by Jim Wiley

Please:

- call DSN 483-8848 or 0631-411-8848 for an appointment.
- show up 10 minutes early.
- let our staff know if you have been here before.
- bring:
 - all legal documents you have sent or received
 - all correspondence you have sent or received
 - all e-mail traffic
 - all points of contact.
- call to cancel if you cannot make your appointment.
- pick up will worksheets prior to visiting us either in Building 3210, Room 104 or ask one of our clerks to fax or e-mail you one.
- ask a lot of questions.
- file a comment card and let us know how we are doing.
- be diligent in following up.

Directions to Kleber Kaserne. (Detour due to construction) 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 exit/Ausfahrt. Turn right as you leave the exit ramp and drive downhill until you reach the stop light. Turn right and proceed straight until the 2nd stoplight. Watch out for traffic in the oncoming lanes as you turn left. Drive past the large building with the clock tower, and you will see the Kleber gate in front of you. Follow the priority road once you are on the post and park in the Shoppette parking lot. Enter Bldg. 3210 from the end door, closest to the Shoppette.

