



## KAISERSLAUTERN LEGAL INFORMER

### LEGAL INTERNS BRING NEW TALENT TO OSJA



#### IN THIS ISSUE...

- Tax Season Results
- IRS Crackdown...
- Deployment Marriage for Profit
- FAQs on Separation Agreements
- Getting Ready for Your PCS Move
- How to Apply for "Kindergeld"
- Post Government Employment Rules
- And much more!

**The 21st TSC Office of the Staff Judge Advocate is fortunate to have four very talented legal interns from top law schools on its staff for the next two months. From left to right: Robert McCray, Nichole Venious, Ian Fiske, and Ryan Mylrea.**

by Steve Smith

The Judge Advocate Recruiting Office (JARO) in Washington, DC, annually recruits students who are going into their second or third year of law school to work as legal interns in JAG offices worldwide.

Four legal interns arrived in Kaiserslautern in June to spend the next two months working in various sections of the 21st TSC Office of the Staff Judge Advocate and the Kaiserslautern Legal Services Center. It's a win-win situation; they bring their freshly-honed research skills and legal training to the table, and in turn they get to see first-hand how law is practiced in the Army, and gain some valuable insights and experience.

Our 2009 team of legal interns includes Robert McCray (Howard University Law School), Nichole Venious (University of Michigan Law School), Ian Fiske (University of Virginia Law School), and Ryan Mylrea (Tulane University Law School).

Many legal interns have gone on to become commissioned officers in The Judge Advocate General's Corps. Anyone interested in the legal intern program should contact JARO at DSN 312-426-2822 or Civilian 001-703-696-2822. Information on the legal intern program is also available on the JAG Corps' website: <https://www.jagcnet.army.mil>. Just click on "Join JAG," and "Summer Intern Program."



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

## ***The 2009 Tax Season — By The Numbers!***

The 21st TSC Office of the Staff Judge Advocate operated seven tax assistance centers in Germany and the Benelux during the 2009 overseas tax filing season, which ended on June 15th. Thousands of taxpayers used the service and got back millions. Here are the results:

**8,642** customers signed in.



**9,255** Federal and State tax returns were generated.

We saved our customers **\$1,175,848**. [This is what they would have had to pay a commercial tax preparer for the same services we provided for free.]

And our customers got back **\$16,215,756** in tax refunds.

That's **BIG** money!



**Important Note:** While the filing season is over, tax assistance is still available through the Kaiserslautern Legal Assistance Office. We can prepare current and past year federal and state tax returns for those who missed the filing deadline and for those returning from deployments. **We can still electronically file 2008 returns through October 15th.** We can also amend federal and state tax returns, and help our clients respond to IRS notices. Tax help is available on an appointment basis. Call DSN 483-7688 or Civilian 0631-411-7688 to make an appointment.

# **IRS to Crack Down on Nonfilers of Form**

## **If you have over \$10,000 in foreign bank accounts...**

by Steve Smith

Taxpayers who have a financial interest in or signature authority over any foreign financial accounts, including bank, securities, or other types of accounts in a foreign country, must file a special 8-page form (the top of it is pictured below) with the Treasury Department by **June 30th** if the aggregate value of these accounts exceeded \$10,000 at any time during 2008.

Form TD F 90-22.1 is not a new form. It has been around for years. It is not a tax form, and is not supposed to be included with your income tax return. Instead, you must send it separately to the U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621. The 30 June deadline is fast approaching, and it cannot be extended.

The form helps the Treasury Department keep tabs on money laundering and related activities. There are criminal penalties for failure to file this form. The IRS has indicated it intends to start cracking down on taxpayers who fail to file this form.

Accounts in military banking facilities such as Community Bank or one of the various credit unions that serve the military community overseas are not considered "foreign bank accounts" for purposes of filing this form. However, many members of the military community maintain bank accounts on the German economy (*e.g.*, Postbank accounts) that they use for paying bills or their mortgages. Considering that the average exchange rate for calendar year 2008 was .68 Euros to the U.S. dollar, if you had more than 6,800 Euros in such an account (or accounts) at any time in 2008, you need to file this form.

U.S. citizens and resident aliens must file the form. So must those who filed a joint return with a non-resident alien spouse. By filing a joint return, you are electing to treat your spouse as if they were a U.S. resident alien for tax purposes, whether or not they currently hold a green card. Foreigners generally save much more than Americans do, so if you have a foreign spouse with a sizable foreign bank account or investments and you filed a joint tax return, you should take a good hard look at the instructions to Form TD F 90-22.1 to determine if you must file the form.

Form TD F 90-22.1 can be easily downloaded from the IRS web site at [www.irs.gov](http://www.irs.gov). If you have further questions, contact the Kaiserslautern Legal Assistance Office at DSN 483-7688 or Civilian 0631-411-7688 and ask to speak to Mr. Donald Davis.

### TD F 90-22.1

(Rev. October 2008)  
Department of the Treasury  
Do not use previous editions of this form after December 31, 2008

### REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Do NOT file with your Federal Tax Return

OMB No. 1545-2038

1 This Report is for Calendar Year Ended 12/31

Amended

#### Part I Filer Information

2 Type of Filer			
a <input type="checkbox"/> Individual   b <input type="checkbox"/> Partnership   c <input type="checkbox"/> Corporation   d <input type="checkbox"/> Consolidated   e <input type="checkbox"/> Fiduciary or Other—Enter type _____			
3 U.S. Taxpayer Identification Number		4 Foreign identification (Complete only if item 3 is not applicable.)	
If filer has no U.S. Identification Number complete Item 4.		a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other _____	
b Number _____		c Country of Issue _____	
5 Individual's Date of Birth MM/DD/YYYY			
6 Last Name or Organization Name		7 First Name	8 Middle Initial
9 Address (Number, Street, and Apt. or Suite No.)			
10 City	11 State	12 Zip/Postal Code	13 Country
14 Does the filer have a financial interest in 25 or more financial accounts?			
<input type="checkbox"/> Yes   If "Yes" enter total number of accounts _____			
(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information)			

## **Deployment Marriage for Profit...**

**Caution! Don't fall into this trap!!**



by CPT Carl Hill

Money-making schemes abound. In every circle there is a story brewing about how to acquire easy money. A popular one among troops scheduled for deployment is convenience marriage with a profit motive. The scheme is to marry shortly prior to deployment in order to qualify for extra pay and benefits. Since no one is home during the deployment, it does not change anyone's lifestyle, it only increases the amount of take home pay. Simply get a marriage license before deploying and divorce upon return from combat . . . at least that is how the idea is presented. It is surprising how many Soldiers fall into this trap.

For the moment, let's overlook the obvious moral issue of entering into a sham marriage. Let's skip past the legal risk of perpetrating a fraud against the government with an insincere marriage for monetary gain. Let's look at the risks and personal costs to Soldiers who take this path. I have recently returned from Iraq. As a Brigade Judge Advocate, I saw several Soldiers who fell into this trap. I would like for you to hear how the marriage for profit plan worked out for them. Their names and identifying details have been changed to preserve confidentiality.

Brad had just turned 19 when this idea was presented to him: get married, increase your income, and divorce when you return from deployment. Because of a shortage of housing, Brad would qualify for off post housing if he married. What could go wrong? Brad heard about this plan from Jasmine, who was employed at an "entertainment establishment" near post. Jasmine and Brad agreed to get married and establish a residence off post. Jasmine would maintain the house and attend to Brad's belongings and matters at home while Brad deployed to a forward operating base for 15 months. Brad believed he was shrewd. He did not leave Jasmine with a general power of attorney. At least Brad had that much going for him, but he still took a lot on faith when he entered this arrangement with Jasmine. The lease on the house and the associated accounts (electricity, telephone, water, and sewage, etc.) were in both of their names. Brad's personal belongings were stored at the off post residence. Because he left his pickup truck at the house, Brad left a special power of attorney with Jasmine granting her use and control over his vehicle. Brad deployed, making more money than ever, and now it was going to be untaxed income.

Brad's first visit to the legal desk on the FOB was a few months later. He did not understand why he was being forwarded unpaid utility bills and telephone bills when he was leaving money with Jasmine to handle that. A few weeks later, Brad returned to the legal desk with a claim for damages to the house he was renting. On his next visit, Brad brought a notice from the sheriff's department. The house Brad was renting was being used to produce and market methamphetamines. I hope that your knowledge of methamphetamines is limited, and you are just now learning that producing meth contaminates and virtually destroys a house.

With information from the sheriff's department, neighbors, and Jasmine's former employer, we learned what had happened at the happy home of Brad and Jasmine's convenience marriage. When Brad deployed, Jasmine's siblings moved into the house with her. The house was the scene of noisy parties that prompted neighbors to summon deputy sheriffs on several occasions. The house and yard were badly damaged. When Brad returned from his deployment, only some of his personal belongings remained. The rest of his property probably vanished in the back of his pickup truck that also was missing. How did Jasmine account for this? She did not. She disappeared shortly before the sheriff's department raided the house, arrested the occupants, and shut down the meth operation. Jasmine was gone, as was Brad's property, but the financial liability remained . . . with Brad.

*(continued on page 5...)*

## **Deployment Marriage for Profit** *(continued)*

Tina and Robert were both Soldiers in the same battalion. They were both scheduled for the same deployment. They were friends, but not in love. Tina and Robert discussed the possibility of obtaining added benefits by marrying strictly for the duration of the deployment. They were not intimate with each other. They did not cohabitate. They did not purchase, lease, or borrow anything jointly. They did not exchange powers of attorney nor include each other in their respective wills. With this very simple relationship, unencumbered by joint financial entanglements, their story should be nothing like Jasmine and Brad's story, right? That much is correct. Tina and Robert's story was very different. They got through the deployment with no visible troubles. Although he had recently been selected for promotion to E-6, Robert had seen all of Army life that he wanted. Through stop loss measures, Robert had been compelled to deploy with the battalion. Immediately upon his redeployment, Robert out-processed and left the Army. He went to Los Angeles and moved in with his boyfriend. No, that is not a typographical error. Robert moved in with his boyfriend. He then wrote to his battalion and proudly announced his homosexuality. He further described his personal story. What about the amicable divorce with Tina? It seems that Robert was in too much of a hurry to get on with his Los Angeles plans to bother with proper divorce proceedings. Tina was left with the burden of filing for divorce in embarrassing circumstances which Robert announced to the battalion. She also had to explain herself and her sham marriage to the commander, exposing herself to potential disciplinary action.

If these stories are not enough to convince you that the marriage for additional pay is a bad idea, there are other possibilities that you should consider. Divorce is by nature an adversarial process. While a Soldier may think that nothing can go wrong, a divorce tends to make people fight for whatever they can get from the other party. Depending upon which state law governs the marriage, property rights can attach even in a short term marriage. Do you want to risk losing half of your belongings to someone you never truly intended to be your spouse in the traditional sense? Have you calculated the cost of divorce proceedings? It can get very expensive, particularly if the parting couple disagrees on terms of the divorce. A divorce can also take a very long time to finalize. You might plan on being free of all entanglements within days of your return from combat, but divorce decrees are not available at a fast food drive through window. Do you want to pay financial support to your spouse during separation in accordance with Army Regulation 608-99? Property that is acquired during the marriage is jointly held. If you return from deployment and make a major purchase (automobile, motorcycle, etc.) before your divorce is finalized, your spouse has an interest in that new property. Is that the kind of monetary gain you had in mind? What if you are intimate with your temporary spouse and an unexpected child results? That incurs a lasting obligation of parenthood.

There are many moral, legal, financial, and personal reasons to marry only for the right purposes. The idea of getting a little extra money is significantly outweighed by the risks that come with an insincere marriage. I wish the two stories previously mentioned were the only tales of the plan gone bad, but there are more . . . too many more. Don't fall into this trap!



### **KAISERSLAUTERN LEGAL SERVICES CENTER**

**Building 3210  
Kleber Kaserne**

Legal Assistance 483-8848

Tax Assistance 483-7688

Claims 483-8414/8862

International Affairs 483-8854

Trial Defense Service 483-8165

**[Civilian: 0631-411-XXXX]**

Administrative Law 484-7450

Criminal Law 484-8311

**[Civilian: 0631-413-XXXX]**



# FAQs on Marital Separation Agreements

*What Legal Assistance can do for you when counseling is not enough...*

by CPT Daniel Curley & Ryan Mylrea

Military life can place a lot of stress on a marriage. Couples experiencing marital difficulties are strongly encouraged to take advantage of the services available to the military community. For example, the Military & Family Life Consultant Program, Army Community Service (ACS), and military chaplains are all available to counsel and assist couples, free of charge. If you and your spouse have already tried counseling, and reconciliation is not an option, a separation agreement is a wise first-step towards an amicable divorce.

## What can a separation agreement do?

Separation agreements are binding contracts between spouses. They can resolve matters relating to property division, marital debts, child custody, child support, and spousal support. Separation

agreements cannot bind third parties (such as banks or other creditors), and they will not “legitimize” adultery. Service members should be aware that extra-marital sexual conduct is still considered adultery under the UCMJ until a divorce is finalized. A separation agreement is not a “license” to commit adultery.

## Are separation agreements required before a divorce?

No. But they can help spouses negotiate and resolve contentious issues. For some couples, this may mean issues are resolved months ahead of a finalized divorce. In addition, some states will incorporate the terms of the separation agreement into the divorce decree. Separation agreements can also prove advantageous when trying

to avoid “surprises” at a divorce hearing.



## Where should I start?

Visit the Kaiserslautern Legal Services Center on Kleber Kaserne, Bldg. 3210, or call DSN: 483-8848 or Civilian 0631-411-8848 to schedule an appointment with a Legal Assistance Attorney. After a consultation, the attorney will give you a separation agreement worksheet to fill out and return to the office. It is important that you fill out the worksheet as completely as possible. Incomplete worksheets can cause unnecessary delays and added frustration. After you return the worksheet, a legal assistance attorney will

draft the agreement and schedule an appointment to go over the document with you, make appropriate changes, and execute the final copy of the agreement. By following these simple steps, you can be on your way to a legal separation.

## Should my spouse come with me?

No. Although both parties to a separation agreement are entitled to see a legal assistance attorney, our rules of professional ethics preclude one legal assistance office from representing both parties. In other words, we can only see one spouse. The other spouse should seek advice and/or representation from one of the other Air Force or Army legal assistance offices in or near Kaiserslautern (e.g., Ramstein, Baumholder, or Mannheim).

## **A Crossroads and a Conduit - An "Oplaw" Retrospective**

by **CPT Ryan Howard**

Looking back on the year I spent as an Operational Law or "Oplaw" attorney, I enjoyed a unique vantage point overlooking two distinct staffs – the Office of the Staff Judge Advocate (OSJA) and the Commanding General's Operations Center.

Within the OSJA, the operational lawyer sits at a critical crossroads – the intersection of all core legal functional areas. By definition, Operational Law is expeditionary international law, administrative law, fiscal law, contract law, legal assistance, claims, military justice, etc. Accordingly, my chief task was familiarizing myself

with each functional area to the degree I could identify legal issues across the spectrum of disciplines. The key to success is to meet early and often with each section chief and "pick their brains."

Outside the OSJA, the operational lawyer serves as an information conduit – the nexus between the OSJA and the G-3's Operators. In this context, my primary task was to master the world of the operators – military decision making, operations orders, planning, briefing, etc. Here, the operational lawyer's best bet is to study the Battle Staff Smart Book, which covers each of these non-legal skills.



As a member of both staffs, I was able to observe, participate, and learn in two very distinct cultures. As the Operators' lawyer, I brought an outsider's perspective to their plans, decisions, and briefs. As the Staff Judge Advocate's operator, I provided updated information on the G-3's plans and decisions. I enjoyed my time on these two distinct teams and hope the experience will make me a better lawyer and officer.

### ***In other news at this hour...***

- *The Kaiserslautern Legal Services Center has received The Judge Advocate General's Award for Excellence in Claims Support for FY 2008.*
- *The 21st TSC OSJA hosted a German-American Law Day luncheon at the Ramstein Officers' Club on May 19th. Dozens of German judges, prosecutors, attorneys, and other host nation officials attended.*
- *CPT Carl Hill is the new OIC of the KLSC. CPT Matthew Freeman is the new Chief of Legal Assistance. The 21st TSC OSJA's new Chief of Administrative & Civil Law is MAJ Robert Abbott, and our new Labor Law Attorney is Teresa Robison. More "hails and farewells" will appear in our summer edition.*
- *The staff of the 21st TSC Office of the Staff Judge Advocate held its annual Hail & Farewell at Brückweiher Lake west of Kaiserslautern on June 17th. Staff and family members from our branch offices in Mannheim, Stuttgart, the Netherlands, and Belgium joined us. This is the team that keeps 21st TSC "First in Legal Support."*



## Getting Ready for Your Next PCS Move...

by CPT Erik Lapin

The “summer rotation” season is about to start, and for many military families in the KMC, that means it is time to get ready for another permanent change of station (PCS) move. Before the movers arrive you should make your own inventory of all the items that you are going to ship. Record the make, model, serial number, date of purchase, and the purchase price of each item. You should also collect all receipts and take photographs of high value items. If you purchased antiques while you were in Europe, you should consider having them appraised (at your own expense) before you leave.



When compiling your inventory, don't “generalize” the description of an item of value. For example, do not write down “plates and glasses” when a plate or glass is Waterford crystal. Call it what it is. When the movers arrive, compare your personal inventory with the inventory the movers prepared to make sure nothing of importance has been left out, and that cartons containing high value items are indicated as such on the mover's inventory. If you have any problem with the movers, call the Quality Control/Transportation Office at Civilian 0631-536-6036/7582.

When the movers arrive at your new residence, make every effort to supervise the unloading of your household goods. Have the movers unpack as much as possible. Any damage you discover when the movers are present should be noted on the DD Form 1840 (a.k.a. the “pink form”) that the movers provide you. Damage discovered after the movers leave should be noted on the back side of the same form (the DD Form 1840R). Don't throw away any broken items prior to talking with the Claims Office staff at your new duty station. They may want to inspect the damaged items before you throw them away or have them repaired. Keep all boxes that are damaged or have holes that may have caused damage to the contents of the box during shipment. They can be valuable “evidence.”

Make sure you turn in your DD Form 1840/1840R to a claims office at your new duty station within 70 days from the date of delivery, so the office can give the carrier timely notice of damage or loss. Failure to meet the 70-day deadline will likely result in a substantial reduction in the amount payable on your claim. While the “pink form” must be turned in within 70 days, you have two years from the date of delivery to file your actual claim. Don't miss that deadline, either. It is statutory and cannot be waived, even if you miss it by only one day.

Finally, you have two options when filing a claim. The first option is to file a claim against the Government at your local claims office. Under this option, the government pays you the depreciated value of items that were lost or damaged, in accordance with claims regulations. The second option is to file your claim directly against the carrier under the so-called “Full Replacement Value” program. Your local claims office can assist you in this process. Note, however, that if you file your claim against the carrier, the carrier has the option to either replace or repair your damaged item. **Also, under the full replacement value program, you must complete the filing of your claim within 9 months from the date of delivery** rather than within the traditional 2 years.

For more information, contact the Kaiserslautern Legal Services Claims Office at DSN 483-8414/8862 or Civilian 0631-411-8414/8862.

## **How to Apply for German "Kindergeld"** **A German attorney explains the process and the pitfalls...**

by Joerg Moddelmog

When it comes to German "*Kindergeld*" (i.e., child allowance), it is important to understand the two different ways you can file for the allowance and the potential consequences of each method of filing for it.

In Germany, a qualifying person can receive *Kindergeld* either in accordance with the German Federal Child Benefit Act ("*Bundeskindergeldgesetz*" - BKGG) or under the German Income Tax Act ("*Einkommensteuergesetz*" - EStG).

Persons employed on the German economy and subject to limited German taxation are entitled to *Kindergeld* under the BKGG, provided they contribute to the German social security system. If a dependent spouse happens to be German or is a citizen of another EU member country, she/he does not even have to work in order to qualify for *Kindergeld* under the BKGG.

*Kindergeld* is a very valuable benefit for those who qualify for it. As of January 2009, the German government increased the monthly *Kindergeld* payments to €164 per child for the first two children, €175 for the third child, and €195 for the fourth child. Due to the current economic crisis, a one-time additional payment of €100 per child is also authorized in 2009.

In order to receive *Kindergeld* under the BKGG, you must apply for it through the Family Allowance Register ("*Familienkasse*") of the Employment Office ("*Arbeitsamt*") in Nuernberg. The Family Allowance Register in Nuernberg is the central office for processing all *Kindergeld* claims under the BKGG. [Note: any such application filed with the local employment office in Kaiserslautern will be denied for lack of jurisdiction.]

The necessary application forms can be downloaded ([www.arbeitsagentur.de](http://www.arbeitsagentur.de)) or obtained from the Inprocessing Office or your local Legal Assistance Office. Generally the following documents are needed: (1) Application Form for *Kindergeld*, (2) SOFA Status Certificate, (3) Composition of Family Form, (4) copies of passports, (5) Certificate of attendance from the children's school (e.g., letter from the principal's office), (6) German Social Security Number (if applicable), (7) Certificate from the employer confirming that the working spouse is subject to limited taxation status only.

Please note that once your employment ends or you or your children leave Germany, you must notify the German agency that pays you *Kindergeld* to stop the payments. Failure to make such notification is punishable under the German Criminal Code and will give rise to claims for repayment of any amounts improperly received.

Finally, it is important to understand that if you or your spouse files a German income tax return, you will no longer qualify for *Kindergeld* under the BKGG. Instead, the German Income Tax Act ("*Einkommensteuergesetz*" - EStG) rules on *Kindergeld* will be applied. If you fall into this category, your application for *Kindergeld* should be filed with the Family Allowance Register of your local Employment Office instead of the office in Nuernberg mentioned above.

The German Income Tax Act provides for either *Kindergeld* or the German Child Tax Credit ("*Kinderfreibetrag*" - KFB). Regrettably, there is currently an issue on whether non-EU citizen spouses can qualify for *Kindergeld* under the German Income Tax Act or are limited to receiving the sometimes less-valuable German Child Tax Credit. The German IRS takes the latter position, but that issue may be revisited by the tax courts in the near future. Should they change the interpretation of the law, we will let our readers know.

For more information in *Kindergeld*, call DSN 483-8848 or Civilian 0631-411-8848 and ask for an appointment with the German Attorney-Advisor.



## A JUDGE ADVOCATE IN NORMANDY

by CPT John Kokoszka

I recently had the good fortune to participate in Task Force Normandy 65. This USAREUR task force was created to support the 65<sup>th</sup> anniversary of the D-Day invasion. Many different Army units participated in the various ceremonies and events, as well as units from our sister services, veterans organizations, re-enactors, and many others.

Our base of operations was the beautiful village of Sainte-Mère-Église, the village near the Normandy coast into which the 82<sup>nd</sup> Airborne Division parachuted during the early

hours of June 6<sup>th</sup>. We were instructed to leave our civilian clothes at home, and to proudly “show the flag.” We were free to go into the village where the residents welcomed us warmly. We tried our best to speak French while the residents tried their hand at English; no matter how many words we could actually comprehend, the deep bond of friendship between us was always understood.

Where else in Europe can you find postcards featuring individual veterans who return here year after year to commemorate D-Day? Unfortunately, as the members of “the greatest generation” age, fewer and fewer veterans are able to return for the annual celebrations. Those that do, however, are treated as heroes by the younger generations and as brothers by those who participated in the liberation of Europe.

The most fascinating part of my time on the Task Force was speaking with the local residents of Sainte-Mère-Église, especially the older ones. The stories that they recounted were truly amazing. I was privileged to speak with one gentleman who was 10 years old in 1944. His father was the mayor of Sainte-Mère-Église, as well as a *pompier*, or firefighter. It was during the night of 5-6 June, while fighting a house fire, that his father witnessed the first parachutes in the sky. The inhabitants soon realized that what was taking place was no small raid of commandos, but the beginning of the long-awaited invasion.

During and after the war, until 1948, Sainte-Mère-Église was the resting place of approximately 14,000 fallen American service members. About two-thirds of these were returned to the United States, while the rest were interred in permanent cemeteries in Europe. As soon as the mail system began working, the town hall began receiving inquiries from bereaved families about where their sons were buried. In response, the townspeople would search for the grave, take a photograph, and mail it to the family in question. In the envelope, they would add rose petals so that the families would at least have something tangible from the resting place of their fallen family members.

No tour of duty in USAREUR is complete without a pilgrimage to the hallowed beaches of Normandy. I never felt prouder to be an American or to wear the Army uniform than I did there. I will treasure the memories of my participation in Task Force 65 for the rest of my life.



***The Ethics Corner...***

by Ryan Mylrea &  
Jeannine Smith

## ***OVERVIEW OF POST GOVERNMENT EMPLOYMENT RULES...***

For some it's far away and for others it's right around the corner....either way, retirement or other departure from Federal service (military or civilian) will happen someday. What if you want to then work in the private sector? In this installment, we're going to introduce you to some of the rules that govern looking for private sector work while in Federal service, and subsequent employment in the private sector.

Let's say that one of your duties as an Army officer is to work as a Contracting Officer's Representative (COR). As COR, you work closely with a certain civilian contractor. You've always had a good working relationship with the contractor's employees. One morning, you happen to mention your upcoming retirement, and one of the contractor's employees raises the possibility of working for them after you leave the Army. Can you tell the contractor employee that you're interested? The short answer can be yes, as long as you follow some mandatory guidelines.



There are Federal laws (some with criminal penalties) and regulatory provisions that govern the activities and contacts of Soldiers and Federal civilian employees who are considering employment with a private company. Whether the rules apply to you will depend upon your duties as a Federal employee, and whether those duties involve taking official action with regard to a potential employer. These rules exist because preventing the appearance of bias is equally as important as preventing corruption itself.

So what are the rules? First and foremost, before discussing or negotiating anything with the potential employer, you need to report the contact in writing to both your supervisor and Ethics Counselor. Then what? Generally, Federal personnel are not permitted to take any official action that affects a company with which they are negotiating for employment (regardless of who made the contact) or have an arrangement concerning future employment. That means you must either reject the offer outright, or disqualify yourself from any official matters involving the company if you want to pursue employment negotiations.

Federal personnel are not considered to be "seeking employment" anymore – and may take official action regarding the company – if either: 1) employment proposals have been rejected and discussions have terminated, or 2) two months have passed since mailing a résumé and the company has not responded.

Going back to the scenario above, your duties as COR involve direct contact with the contractor (potential employer) and probably taking some type of official actions with regard to that company. Accordingly, you must immediately report the contact to your supervisor and Ethics Counselor in writing, and you must either terminate employment discussions immediately with that contractor (if you want to continue your current duties) or disqualify yourself from official matters involving that company (if you want to pursue employment discussions).

Let's assume different facts. What ethical responsibilities would you have if a company waits until you retire, *then* offers you employment? The answer depends on your official duties while in Federal service, and your duties as a new private sector employee.

For example, former Federal employees may not "attempt to influence" current Federal employees on any particular matter (*i.e.*, their current contract) in which the former employee participated personally and substantially while working for the government. This prohibition is for the life of the "particular matter" itself. That means that if you participated personally and substantially on a particular contract as a Federal employee,

*(continued on page 12...)*



*Lieutenant General Scott C. Black, The Judge Advocate General (right), presented 21st TSC Deputy Staff Judge Advocate LTC Paul J. Perrone, Jr., with the 2009 Judge Advocates Association Outstanding Career Armed Services Attorney Award in Washington, DC, this spring. The award recognizes professional accomplishments, service to community, leadership, service to the legal profession, and development of subordinates.*

## **POST GOVERNMENT EMPLOYMENT RULES** (...continued from page 11)

you cannot later show up back in the Federal workplace as an employee for that contractor under that same contract. In other words, “attempt to influence” is broadly construed, and your mere presence back in the Federal workplace can be interpreted as an attempt to influence. Think of it as “switching sides” in the office. That doesn’t mean you can’t work for the contractor, though. “Behind the scenes” assistance is acceptable, and you can work at the contractor’s facility.

Similarly, for a two-year period following departure from Federal service, former Federal employees may not “attempt to influence” current Federal employees on any particular matter (*i.e.*, their current contract) that was under the former employee’s supervision during his or her last year of active duty or Federal service. Again, “behind the scenes” assistance is acceptable.

General Officers and Senior Executive Service personnel, as well as officials participating in contract decisions involving \$10 million or more, are subject to even greater restrictions and prohibitions.

Ethical obligations in this area can be confusing. This article simply provided an overview to give you some familiarity with the rules, and to inform you of their existence. But the rules themselves are complex and fact-driven, so be sure to speak with an Ethics Counselor if you think they might apply to you.

### **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. Once you are on post, park in the Shoppette parking lot. Bldg. 3210 is directly across from the Shoppette. Enter Bldg. 3210 from the end door, closest to the Shoppette.

