



## KAISERSLAUTERN LEGAL INFORMER

### ***FIRE DESTROYS KLEBER SHOPPETTE***



***One of the most heavily-utilized facilities on Kleber Kaserne went up in flames the night of 21-22 August. Those who suffered loss do not have far to go for help. The Kaiserslautern Claims Office is right across the street in Bldg. 3210.***

by Steve Smith

For those who work on the US Army posts on the eastern edge of Kaiserslautern, the AAFES Shoppette on Kleber Kaserne is the place to go to shop when you don't have time to run to the Exchange or the Commissaries in the west end of K-town.

At least, it *was* the place to go until the night of 21-22 August, when a fire broke out shortly before midnight and consumed not only the Shoppette, but much of the adjacent building which housed offices and training facilities of the Civilian Human Resources Agency-Europe and various contractors' offices.

Fortunately, the official personnel files for all civilian employees in USAREUR which CHRA-E stored in the adjacent building were unharmed.

Army, Air Force, and German firefighters battled the flames for more than seven hours. While the total cost of the fire has yet to be determined, estimates of the damage to the facilities exceed \$11 million. The cause of the fire was still under investigation when this newsletter went to print.

Claims officials from the Kaiserslautern Legal Services Center were on the scene shortly after the flames were extinguished, taking photographs to preserve evidence of the damage and informing those affected by the fire where to go for help.

The Kaiserslautern Claims Office is located directly across from the Shoppette, in Room 110 of Bldg. 3210. Anyone who suffered loss from the fire (*e.g.*, damaged personal effects) should stop by to see one of our claims examiners, who can provide them with further information on how the claims process works.

### ***IN THIS ISSUE...***

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

## ***Exploring "The Adoption Option"***

by Mark Christensen

Families in the Kaiserslautern Military Community frequently consider going through an adoption process to build or stabilize their families, and at the Kaiserslautern Legal Services Center we frequently are asked about various adoption options. Americans overseas face some challenges to starting and completing an adoption, but the process can be extremely rewarding for the families and children involved.

First, let's look at step-parent adoptions. It is a fact that blended families are very common, and many step-parents discover they are the "real" parent of a child, even if not the biological parent. All states in the U.S. have procedures for completing step-parent adoptions; these adoptions cannot be completed overseas. The main requirements for a step-parent adoption are that the child must live in the state for the six months prior to filing for the adoption, and the child's biological parents must be notified and provide consent. When an absent parent cannot be located there are procedures for providing notification to that parent by publication. If a biological parent has not provided financial support for six months, or has not communicated meaningfully with the child for six months, in most cases the court will waive that parent's consent.

A domestic adoption is one conducted completely inside the U.S., and may result from a state or private social services agency foster parent program or private arrangement, or involve the adoption of a relative such as a cousin or niece.

An international adoption involves a child from outside the United States, and requires compliance with adoption laws from the native country of the child. Upon completion of the adoption in the source country, compliance with the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, as well as U.S. immigration law, is necessary to insure the child will be permitted to travel internationally and into the U.S. For U.S. persons, this means pre-adoption coordination with the U.S. Department of State. Most Americans who go through an international adoption utilize the services of U.S.-based agencies that specialize in these processes and have contacts or representatives in countries where international adoptions are permitted.

Both domestic and international adoptions require extensive background investigations and a home study to validate the placement of a child. Compliance with source country and U.S. law, and the Hague Convention, can be complicated. Most international adoptions include a re-adoption in the U.S. once the child travels there. Adopting parents incur many costs for applications, agencies, and the home study, as well as immigration and legal expenses. The goal of the process is an adoption decree terminating the legal relationship between the child and absent biological parents, naming the adopting parents, and changing the name of the child. This decree is then used to obtain the child's new birth certificate.

Families interested in adopting a child should determine the type of adoption (step-parent, domestic, or international) and use the Internet to get forms or find a social services or private agency for guidance. Military legal assistance offices can assist during the process with notarization and certification services, and provide advice or suggestions along the way.

***If you have questions about adoption, call the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 to make an appointment to see a Legal Assistance Attorney. Note: notarization and certification services are provided on a walk-in basis and do not require an appointment.***



## The Adoption Tax Credit

by Steve Smith

I have good news for those who have been contemplating adopting a child, but were hesitating because of the often-high “transaction” costs involved. Uncle Sam is willing to help defray those costs by giving those who adopt a tax credit.

The adoption tax credit is nothing new. It has been around since the late 1990s, and the amount of the credit has increased steadily since it was introduced. What is new is that, thanks to the Affordable Care Act, the credit transformed in 2010 from a nonrefundable credit (which was no help at all if you did not owe any tax) to a refundable credit (which means the IRS will add the credit to your refund, so you are sure to benefit from it even if you do not owe any tax). That’s a **huge** improvement!

Taxpayers may claim the credit for qualified adoption expenses of up to \$13,170 for each eligible child they adopt. Qualified adoption expenses include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of an eligible child. An eligible child is an individual who has not attained the age of 18 as of the time of the adoption or who is physically or mentally incapable of caring for himself. If you adopt a special needs child, you may qualify for the full amount of the credit even if you paid few or no adoption-related expenses.

The adoption tax credit is not available for the adoption of stepchildren. Since a lot of military taxpayers adopt their stepchildren, that’s worth noting. Nor does it apply to surrogate arrangements.

Those claiming the credit cannot electronically file, because they must attach a copy of the adoption order or decree for finalized US adoptions to a paper return. More forms are required for finalized foreign adoptions. See IRS Notice 2010-66 for details.

You can claim the adoption tax credit by completing Form 8839 and attaching it to Form 1040. When you can claim the credit depends on when the adoption was finalized and whether the child is a U.S. citizen/resident alien or a foreign national. This is where the rules get complicated, and you should consult with a Legal Assistance Attorney.

For more information on the adoption tax credit, check out the Frequently Asked Questions posted on the IRS web site at:

<http://www.irs.gov/individuals/article/0,,id=231663,00.html>

You can also e-mail tax questions to us at: [tax@eur.army.mil](mailto:tax@eur.army.mil)



### KAISERSLAUTERN LEGAL SERVICES CENTER

**Building 3210  
Kleber Kaserne**

Legal Assistance 483-8848

Tax Assistance 483-8848

Claims 483-8414/8862

International Affairs 483-8854

Trial Defense Service 483-8397

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

Administrative Law 484-7450

Criminal Law 484-8311

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

### **NEED TAX HELP?**

*Free tax services are available all year long at the Kaiserslautern Legal Services Center. If you need help preparing or amending a federal or state income tax return or have tax questions, call DSN 483-8848 or Civilian 0631-411-8848, and ask to speak to Mr. Donald Davis.*



## **"Semper Gumby" — Lessons Learned While Navigating the International Adoption Process**

by MAJ Brian Owens

Adopting a child is a wonderful thing. By contrast, the steps you must take to accomplish an adoption can be very challenging and stressful. This is to be expected, since you are adding a child to your family, completing paperwork, monitoring your budget, waiting for bad news, and unsure about almost every step. The adoption process can take several months to several years, depending on the country of adoption, the gender of the child, and whether you are willing to adopt a healthy or special needs child.

People ask how much it costs. The easy answer is, cost doesn't matter. The child is what matters. So from the outset, if money is the focal point, international adoption is probably not a wise decision. This doesn't mean you can't be frugal and spend within your means, but if you are worried about the costs and expenses you might want to consider the domestic adoption alternative discussed below. Some things you may want to consider are: do you want a boy or a girl, how long are you willing to wait in order to complete an adoption, and do you want a child who has special needs?

It is possible to determine, with some certainty, the total cost of an international adoption. The following are some thoughts to keep in mind when budgeting for an adoption. To assist you in the adoption you should use an adoption agency; for certain countries it is required. Agency fees are fixed and vary according to the agency you choose. You should research potential agencies to ensure they are reputable and have a proven track record. Additionally, adoption expenses can vary significantly by country. Major expenses include: fees imposed by the country to complete the adoption, travel, lodging and meals for the duration of your stay in the country, and immigration application costs. Most adoption fees are relatively straightforward; my wife and I were able to get a good idea of what an adoption would cost in each country we were considering. There are also numerous organizations and foundations that provide money for families to complete an adoption. The money provided by these agencies is similar to a grant or scholarship for college. Applying for a grant or scholarship will require more paperwork, but the information you provide will be similar to what is required to complete the adoption. Additionally, DoD provides a \$2,000 reimbursement and up to 21 days uncharged leave to service members who adopt, and the IRS offers an adoption tax credit worth up to \$13,170 (for more information on the tax credit, see page 2). Lastly, you will almost certainly face some unanticipated expenses, so be prepared and have a cushion. Adoption may cost but there are ways to accomplish an adoption that can minimize out-of-pocket expenses. Creating your budget and expense plan will seem easy once you enter the next phase of paperwork, paperwork, and more paperwork.

Once the paperwork begins, expect it to last for at least one year after the adoption is complete. It has been over two years since we picked up our adopted daughter in China and we still have pending paperwork. To complete an adoption you must be very organized and have a good system in place. This becomes particularly important if you PCS every few years. The paperwork should be viewed and treated like any other important documents (e.g., birth certificates, marriage licenses, etc.). These are the documents that are used to legally establish the relationship between you and your child. We had three adoption home studies over a four-year period and each home study built on the previous one. If one home study were lost it could mean paying additional expenses to fill in the gaps, or starting over. Additionally, there are numerous documents that must be mailed and delivered between U.S. and foreign consulates, and other state and federal offices. Once your paperwork for adoption is approved, you get to travel to exotic locations to complete even more paperwork to finalize the adoption.



***[continued on page 5...]***

## ***The International Adoption Process (continued)***

Another important factor to consider is where you will be living when you finalize the adoption. When you are booking your airline tickets, I strongly recommend buying refundable/changeable tickets. This may seem expensive, and it will definitely be tempting to buy less expensive tickets from a discount ticket agency. However, I learned the hard way (at the cost of a few thousand dollars) that you should buy refundable tickets so when something comes up, you can change them. If you are living in the U.S. and returning directly to the U.S., your child may acquire citizenship automatically. You may only need to complete one more packet to receive your child's naturalization certificate. If you are living outside the U.S. you will need to decide whether to first fly to the U.S. to acquire citizenship and obtain a U.S. passport for the child, or fly directly to your home outside the U.S. If you return from the adoption directly to your home outside the U.S., without acquiring U.S. citizenship and a U.S. passport, your child may need a visa from the country you are living in. This will require additional paperwork and a visit to the consulate of the country you are living in, while you are in the country of adoption. In other words, if I lived in Germany and planned on returning directly to Germany after completing an adoption in China, I would need to go to the German Consulate in China to obtain a German visa for our daughter. Also, if you are flying through a third country on your return to the U.S. you may need a visa for your child. For example, my daughter would need a Canadian visa if our return flight from China had included a layover in Vancouver, Canada, and our final destination was the U.S.

Finally, just when you think all of the paperwork is complete, I recommend re-adopting your child in a U.S. state. My daughter's adoption was finalized in China, so all of our original adoption records are located at the China Center for Adoption Affairs (CCAA). My wife and I re-adopted our daughter in the Commonwealth of Virginia, two years after the Chinese adoption was finalized. This entails additional expense, but you can complete it at your leisure as your budget allows. This will benefit you when your child needs a U.S. birth certificate (*e.g.*, when applying for schools, college, grants, scholarships, etc.). Instead of submitting Chinese documents to a U.S. or state agency, we can submit a document issued by the Commonwealth of Virginia. It is also much easier to write the Virginia Department of Vital Statistics than it is to contact the CCAA.

Eventually, there will be no more adoption paperwork to deal with, and you will only have to worry about spilled juice on the couch, broken bones, and the not-too-distant threat of boys calling your daughter!



## ***The Domestic Adoption Alternative***

by Teresa Robison

Couples who want to adopt a child should not overlook the domestic alternative. There are large numbers of children in the United States living in foster homes who long for the security that comes with being adopted. Many come from very difficult, often dire, circumstances. Domestic adoptions can usually be accomplished at a fraction of the cost of an international adoption (typically, only court costs), and without all the immigration issues and consular paperwork discussed above. Procedures vary from state to state, but generally involve social services investigations to ensure safe adoption for the child, and often include training in the issues surrounding adoption.

From a personal perspective, my husband and I adopted two siblings in California, ages one and two. The training we received was very helpful, we paid no costs at all, and our children are amazing. Adoption from foster care is not for the faint of heart; some of these children have faced horrific circumstances and will need great patience and care to overcome the trauma they experienced in their short lives. However, success in turning their lives around is surely one of the most rewarding things you can do with your own life. The love the children provide in return makes it all worthwhile.

### **Under New Management:**

As announced in our Spring edition, the 21st TSC Office of the Staff Judge Advocate underwent a lot of personnel turnover this summer. Meet the newest members of our management team....



**COL Ralph Tremaglio (center) is the new 21st TSC SJA. MAJ Sean McMahon (left) is our new Deputy SJA., and CW2 Jah'love Shakur (right) is our new Legal Administrator.**



*MG Patricia E. McQuiston presented the Legion of Merit to departing 21st TSC Staff Judge Advocate COL Claes Lewenhaupt in the COIC on August 11th.*



*The Lewenhaupt children, Jade, Carl, and Ian, received "Military B.R.A.T." certificates. B.R.A.T. stands for "Boldness, Responsibility, Adaptability, & Tolerance."*



***JAG Baby:** OSJA Administrative Division NCO SGT Jerry Gant and his wife, Heather, are the proud parents of James Alexander Gant, born August 13th. Great initials!*



***JAG Retiree:** Stuttgart Labor Law Attorney Jim Baugh (center) retired this summer after 32 years of service to the Army in Panama, CONUS, Belgium, & Germany.*

*Editor's note: we also congratulate SPC Maya Bates on the birth of her son on August 25th.*

## **New!! VAT-Free (Landline) TKS Phone Services On a Month-to-Month Basis**

by Joerg Modellmog



In August, a landmark breakthrough for US NATO SOFA personnel and their dependents stationed in Germany was finally achieved, after years of frustration and countless customer complaints. USAREUR reached an agreement with Telepost Kabel-Services (TKS), a phone carrier providing phone and internet services to NATO personnel and their dependents on and off post. Under the terms of that agreement, you may be able to have the 19% value-added tax (VAT) taken off your monthly bill for landline telephone and internet services. There are, however, some limitations to the agreement that you should know about. Those limitations are addressed in the Frequently-Asked Questions below.

### **(1) Why is the agreement only with TKS?**

So far, TKS is the only carrier willing to accept a month-to-month contract as opposed to the standard one-year or two-year contracts. TKS also accepted a €500 cap, meaning that notice must be given to the customer once their monthly phone bill has reached that figure.

### **(2) What about cell phones? Are cell phone contracts covered under the agreement?**

Sorry, the agreement does **not** apply to cell phone services. TKS will continue to charge you VAT on your cell phone bills. For more information on how to control costs on cell phone contracts, see page 10 of the Winter 2010 edition of this newsletter: <http://www.21tsc.army.mil/aerja/LegalAssist/Legal%20Assistance-New2.htm>

### **(3) Can I switch my current phone carrier and become a TKS customer?**

Yes, but only after giving your current phone carrier a proper termination notice. Moreover, you will have to serve out the remaining contractual period under your existing contract. There is no extraordinary termination allowed for the purpose of switching to TKS VAT-free phone contracts. Also remember that, at this point, the agreement is exclusively with TKS. If TKS is not available in your area, you cannot participate in the program. Therefore, don't forget to inquire up front whether TKS services are technically feasible in your area.

### **(4) Will TKS continue to charge VAT in some cases?**

Yes. TKS will continue to offer certain contracts for phone and internet services **WITH** VAT. These contracts will have different terms and conditions than the VAT-free contracts. Make sure you sign up for the kind of contract you want. Additionally, even the VAT-free contracts will trigger VAT **unless** a tax relief form (AE Form 215-6B) is provided to TKS on or before the 1<sup>st</sup> of the month to which the bill pertains. Forms submitted late will automatically be applied towards the following month's bill. Since there is no umbrella coverage and a single VAT form is used per month, you may want to submit more than one VAT form at a time (e.g., three VAT forms = VAT relief on your next three monthly TKS bills).

### **(5) Are there other situations in which VAT will still be billed?**

Yes. Calls to special services (directory assistance, voting surveys, donation calls, certain "customer friendly" numbers, etc.) will always be billed with VAT – even under landline VAT-free contracts that run month-to-month. VAT-free billing only applies to the basic monthly fee from TKS and the charges resulting from regular phone calls to friends, family, etc.

***For more information about this new agreement, contact your local Tax Relief Office.***

## Officer and NCO Evaluation Redress Options

by CPT D. Austin Ribelin

It's an unfortunate reality: sometimes we just aren't quite as good as we think we are. However, when it comes to Officer Evaluation Reports (OERs) and Noncommissioned Officer Evaluation Reports (NCOERs), there are protections in place that help make sure your evaluation doesn't say you are worse than you actually are. The difficult question is deciding whether you're right or the evaluation report is right. Once you are certain you are better than your evaluation says, you have two options: a Commander's or Commandant's Inquiry and an Evaluation Appeal. The Evaluation Redress Program addressing these options is found in Army Regulation (AR) 623-3.



*The author, pictured here with his wife, Hallie, was promoted to Captain this summer. He serves as a Legal Assistance Attorney at the Kaiserslautern Legal Services Center.*

### Commander's or Commandant's Inquiry

The Commander's Inquiry applies to evaluations where there are alleged injustices, errors, or illegalities. The purpose of the Commander's Inquiry is "to provide a greater degree of command involvement in preventing obvious injustices to the rated Soldier and correcting errors before they become a matter of permanent record." A secondary purpose is "to obtain command involvement in clarifying errors or injustices after the evaluation is accepted at HQDA." Keep in mind that while the Commander's Inquiry is available for evaluations that have already become part of a Soldier's OMPF, the appeals process is the primary means to address the errors and injustices once they become a matter of permanent record.

As the rated Soldier, if you determine there are errors, injustices, or illegalities, it is your job to bring the problematic report to the commander's attention. This is usually accomplished through the use of a memorandum discussing the matters that require redress. Your memorandum should be addressed to the commander in the chain of command above the rating official involved in the allegations. Generally, much deference is given to the rating official's statements, so it is extremely important to ensure your request for an inquiry clearly and concisely states the basis of your complaints. The commander will focus his inquiry into serious irregularities or errors; examples of such errors are: 1) Improperly designated or unqualified rating officials; 2) Inaccurate or untrue statements; or 3) Lack of objectivity or fairness by the rating official.

Once the request for a Commander's Inquiry is made, the commander must look into the allegations. If an inquiry results in a finding of no irregularities with the evaluation: (1) the Commander's Inquiry is filed locally, (2) a copy is sent to the rated Soldier, and (3) the evaluation will be filed as is. If the inquiry results in a finding of an irregularity after the evaluation has been filed at HQDA, the findings, conclusions, and recommendations will be sent to HQDA in a format that can be filed in the Soldier's Official Military Personnel File (OMPF). Otherwise, the inquiry is forwarded to the rating chain for review and the opportunity to address the irregularities before the report is sent to HQDA. A finding of serious irregularity or error does not necessarily mean your OER or NCOER goes away, but the commander's findings, recommendations, and supporting documentation will be placed in your OMPF along with the evaluation.

### Evaluation Appeals

An evaluation appeal may be filed based on administrative error or on substantive error. Because there is a presumption that all evaluations are accurate, appeals must be supported by clear and convincing evidence establishing the alleged error, or the appeal will not be considered.

Appeals of an administrative error include, but are not limited to, deviation from the established rating chain, insufficient observation period by the rater, report period errors, and height/weight errors. Because most errors of an administrative nature are authenticated by the rated Soldier, be particularly aware of any errors related to height/weight, rating chain, and APFT performance. If an error is realized after authentication by the rated Soldier, the appeal will be accepted only under the most unusual and compelling circumstances. While there is no deadline for filing an appeal based on administrative error, the likelihood of success diminishes significantly with the passage of time. These appeals will be adjudicated by the U.S. Army

## Evaluation Redress Options (continued...)

Human Resources Command.

Appeals of a substantive error include bias, prejudice, inaccurate or unjust ratings, or any other matter that is not an administrative error. Generally these claims are made up of unjust evaluations of performance and claims of bias by the rating official. Substantive appeals must be filed within three years of the OER or NCOER "THRU" date. Only under exceptional circumstances will an appeal be reviewed after the deadline. Substantive appeals will be adjudicated by the Deputy Chief of Staff, G-1 Special Review Board.

The review board may approve an appeal in whole or in part, or it may deny the appeal. If the appeal is approved in whole, the evaluation will be removed from your OMPF and you will have unrated time for the period of the evaluation. The review board may also remove portions of the evaluation, such as removing the rater's evaluation but leaving the senior rater's evaluation. Generally, the board will not take action that could worsen your OER or NCOER.

For further information see AR 623-3, paragraph 6-10, for processing priority of appeals, and paragraph 6-11, for burden of proof and evidentiary information. Lastly, if you are having trouble deciding whether to appeal an NCOER or OER, take a look at AR 623-3, paragraph 6-13, and Department of the Army Pamphlet 623-3, Chapter 6.

*If you have any concerns about the issues addressed above, make an appointment to see a Legal Assistance Attorney at the Kaiserslautern Legal Services Center by calling DSN 483-8848 or Civilian 0631-411-8848. We can help you determine which avenue of redress is appropriate and help draft evaluation appeals.*

## "Viktoria" Moving Company Goes Bankrupt

by CPT Yolanda Williams

Viktoria Speditionsgesellschaft GmbH & Co. KG, a German moving company that has served the U.S. military community for many years, has filed for bankruptcy. Don't panic! The U.S. Army Claims Service, Europe, has issued guidance on how to handle claims involving Viktoria.

If your personal property was shipped by Viktoria and you suffered loss or damage, the Kaiserslautern Claims Office can assist you in giving the requisite notice as long as you bring in your DD Form 1840/1840R or other notice document within 75 calendar days of delivery. They will dispatch the notice document for you.

Claimants whose property was delivered by Viktoria will not file their claim directly with Viktoria or the bankruptcy attorney. Instead, they will file and settle their claim with their local military claims office under the provisions of Army Regulation 27-20.

Beginning on September 1, 2011, Gosselin Logistics, another German carrier, began delivering shipments that were originally picked up, but were not delivered, by Viktoria. The procedures for giving notice of damage and filing claims are different for these shipments. The Kaiserslautern Claims Office's claims examiners stand ready to assist claimants in dispatching their DD Form 1840/1840R or other notice document to the appropriate recipients, and in filing their claims directly against Gosselin.

*For more information, contact the Kaiserslautern Legal Services Center Claims Office at DSN 483-8414/8862 or Civilian 0631-411-8414/8862, or e-mail your claims questions to [legal@eur.army.mil](mailto:legal@eur.army.mil).*



## **German Auto Repairs — A Rocky Road**

### **How to keep your car running without running up a ruinous repair bill...**

by Joerg Modellmog

Do you ever get the feeling you've been overcharged by an auto mechanic, or that the repair shop did not do their job right? Take heart! You don't have to be an automotive expert to keep repair costs under control or obtain the desired result, but you do need to know how car repairs are handled under German law. Read on.

If you take your car to a German repair shop and tell them "my car broke down; fix it," you practically give the repair shop a blank check. Instead, you should always place a written work order with the repair shop, stipulating precisely what you want repaired.

What if you don't know what's wrong with the car? In such a case you may want to ask the mechanic for an assessment of the situation and an estimate of the likely costs to fix the diagnosed problem.

However, beware of oral price quotations. Oral cost estimates are NOT enforceable the way written estimates are. They generally serve only to advise you of the approximate price range but impose no limit or cap on repair costs. Therefore, you should always ask for a written cost estimate, known in German as a *Kostenvoranschlag*. Generally, the repair shop charges a fair sum for such a written cost estimate (e.g., €70) but will normally deduct this sum from the subsequent repair bill if you have the repair done by that same repair shop.

Under German law, even written cost estimates can be (and often are) exceeded by 15%. While the repair shop is supposed to try to keep repair costs within those quoted in the estimate, the law allows the costs to be exceeded without your consent as long as the deviation in price is not "substantial." Case law does not consider a 15% price increase as a substantial alteration of the estimate terms. Only higher deviations require your express consent.

What is the mechanic, who is responsible for the safety of a car, to do when he also discovers defective brakes, a worn-out clutch, loose steering, or a leaking transmission while performing your ordered repair on some other defect? In order to seek guidance, the mechanic must be able to reach you during the repair or else will be left to guess what's best in a given situation. So you should always provide a phone number where you can be contacted on the work order.

In the event that the mechanic does not complete the repair on time, you can give him - preferably in writing - a reasonable "last and final period" for fulfillment of the contract with the express warning that you will cancel the contract upon expiration of this adequate period of time (e.g., four weeks) if the promised result is not achieved. If, thereafter, the mechanic still fails to deliver the promised result, you can demand the car back and do not need to pay the agreed price but must compensate the repair shop in the amount of the actual value of the rendered services (e.g., labor costs, parts). Similar rules apply in case you decide to terminate the contract because the final bill exceeds the estimate of repair by more than 15%.

Beware that in the absence of a clearly expressed/documented reservation to the contrary, picking up the car generally constitutes acceptance of the repair. Furthermore, payment becomes due upon pick up, and the repair shop may legally refuse to release your car until the repair bill is paid in full. Finally, to avoid lengthy court proceedings, some repair shops agree to submit disputed repair bills to a settlement office for mediation.

***If you are looking for more information on "Car Repair Rules in Germany," feel free to pick up our client handout by that title. If you have questions concerning your specific case, schedule an appointment with our German attorney by calling DSN 483-8848 or Civilian 0631-411-8848.***



## ***The Uniform Interstate Family Support Act — “Getting Your Support in Order”***

by CPT Yolanda Williams

The Uniform Interstate Family Support Act (UIFSA) allows child and family support orders to be limited to a single state, eliminating jurisdictional disputes. Currently, all states, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted UIFSA. Although an order may be enforced in multiple states, it may only be modified in one state.

Whenever more than one state is involved in establishing, enforcing, or modifying a child or spousal support order, UIFSA is implemented to determine the jurisdiction and authority of the courts in the different states. UIFSA also establishes which state's law will be applied in proceedings under the Act, an important factor as support laws vary greatly among the states. The Act establishes rules requiring every state to defer to child support orders entered by the state courts of the child's home state. The place where the order was originally entered holds continuing exclusive jurisdiction (CEJ), and only the law of that state can be applied to requests to modify the order of child support, unless the original tribunal loses CEJ under the Act.

Before UIFSA, if parties moved to different states, a court in a party's new state often would issue a new support order. Differing orders for the same payer and children led to confusion and disagreements between states and between parties. Now, all state courts follow UIFSA's rules to determine the order that has priority and the state courts that have the authority to change the order.

Under UIFSA, several factors are used to help decide which state may change a support order. If either of the parties or any of their children still lives in the state that issued the controlling order, only that state's courts may change the support amount. If neither party nor any of their children still live in the state that issued the controlling order, that state cannot modify the support order. UIFSA allows both parties to agree in writing that a state where one of them lives may take control of the case and change the support amount. Otherwise the party that wants to change the order must register the order for modification in the state where the other party lives. Once a new state modifies an order, the original state loses its CEJ and the new state then acquires CEJ. This has become an important issue for service members who are required to move often due to the very nature of military life.

***For more information about UIFSA or interstate enforcement of support orders, make an appointment to see a Legal Assistance Attorney at the Kaiserslautern Legal Services Center by calling DSN 483-8848 or Civilian 0631-411-8848. We're here to help!***



## ***IMPROPER TDY VEHICLE RENTAL CAN DEVASTATE UNIT TDY FUNDS***

by Mark Christensen

Members of the 21<sup>st</sup> TSC authorized to rent vehicles while on Government orders are reminded to be aware of proper rental procedures to prevent personal or unit liability for loss or damage to a rental car. While there may be no protection for misuse of a rental vehicle while TDY (such as off-road driving, travel not in the scope of official duties, putting the wrong kind of fuel in the vehicle, or driving while intoxicated), travelers should be sure to take advantage of coverage contracted for by the U.S. Government. Travelers or unit representatives who receive claims or payment demands for lost or damaged rental vehicles, or anyone with questions about rental car coverage should contact the 21<sup>st</sup> TSC Claims Office, located in Building 3210 on Kleber Kaserne.

Full use of the Government Travel Card (GTC) contract with Visa is the first line of coverage protection. The agreement with Visa covers rental contracts reserved and paid for with the GTC, where the traveler declines the collision damage waiver option offered by the rental company. If the Government traveler pays for the rental car with another credit card, or purchases rental car insurance or damage waiver provisions on the contract, the Visa protection is invalidated.

The second line of protection is use of the Defense Travel Management Office (DTMO) rental agreement (DTMO Agreement). Formerly called the "MTMC Agreement," the DTMO Agreement covers Government travelers in official travel status who present official travel orders to the rental agency at vehicle pick-up. Travelers pay the Government administrative rate supplement (GARS), \$5 per day, and use of the Government travel office or DTS to reserve vehicles for use while on official travel status ensures that the vehicle is covered under the DTMO Agreement.

Travelers can minimize risk by using the GTC to reserve and pay for a vehicle reserved through a Government travel office or DTS, thereby invoking the coverage of the GTC contract and the DTMO Agreement.

If a traveler does not use the GTC or DTMO Agreement while on official travel status, and a rental vehicle is lost or damaged, the traveler is normally contractually liable. The traveler's GTC or other credit card may be billed for the damage or loss, and the traveler may submit a claim for reimbursement on a travel voucher. However, there is no guarantee the unit will pay for these expenses submitted on a travel voucher, and the traveler might end up being personally responsible for the lost or damaged rental car.

Travelers who lose or experience damage to a rental vehicle while on official travel status should immediately take photographs and report the incident to local police. Both GTC and the rental agency should be notified at once. There are variations in coverage for large passenger vehicles, fleet rentals, and third party victims, but all coverage is based on prompt reporting and processing of claims. For assistance, also immediately contact your servicing Army Claims Office.

It is a unit responsibility to insure individual travelers are aware of the responsibility to use the GTC and DTMO Agreement when renting vehicles while on official duty. Failure to do so, coupled with a serious accident, can result in personal financial liability or the depletion of unit operating funds. Proper use of the GTC and DTMO Agreement will prevent surprise expenses.

***For more information, contact the Kaiserslautern Legal Services Center Claims Office at DSN 483-8414/8862 or Civilian 0631-411-8414/8862, or e-mail your claims questions to [legal@eur.army.mil](mailto:legal@eur.army.mil).***



## Social Networking — A Legal Minefield

by Teresa Robison

The use of social networking tools, such as blogs, Facebook, Twitter, and so on has expanded exponentially. In the face of such a rapid increase, the law continues to struggle to keep pace, a situation which calls for cautious use to avoid unintended consequences. Sites such as Facebook and MySpace imply some level of privacy for the user, enticing them to imprudent communications. Similarly, sites accessible by anyone with a computer, such as blogs or Twitter, invite authors to share whatever thoughts might be running through their heads at the time. These communications are being utilized more and more by employers, law enforcement, litigants in legal actions, and others to gather information which would formerly have been difficult to come by. The Attorney General of New York recently wrote an article on this phenomenon, in which he characterized these uses as “electronic exhibitionism” and “electronic voyeurism.” Here are a few of the issues you should be aware of when using these sites.



Employers are using social networking sites for the entire range of employment actions; a recent poll indicated that 43% of private employers are looking at these sites to gauge prospective employees. (Parents beware--some colleges are also looking at these sites). Tales of negative hiring decisions because of partying, alcohol consumption, drug use, or other undesirable behavior reported on social network sites abound. Employers are accessing these sites to collect “dirt” on problem employees, gather evidence in legal proceedings such as discrimination actions and workman’s compensation complaints, or make internal decisions regarding promotions, transfers, and so on. The practice is a double-edged sword: employees are also accessing these sites to gather evidence on employers believed to be discriminatory or otherwise engaging in wrongful conduct, with some success.

Some legal protections exist, such as the Stored Communications Act, 18 USC §§ 2701 to 2712 (SCA). While the question of a reasonable expectation of privacy in these sites is still evolving, it is clear that using false pretenses to access a site which requires tacit permission for entry, such as Facebook, will prevent use of gathered information in legal proceedings, and may result in criminal penalties for such violations under the SCA. Use of these sites in the workplace, and whether there is an expectation of privacy in the workplace, are also on-going legal issues. Legal scholars strongly advise employers to publish a policy on such use, and ensure that all employees are familiar with the terms of that policy.



Federal employees face many of the issues outlined above, plus other issues specific to federal employment. In August 2010, the Office of Special Counsel (OSC) issued an advisory opinion on how the Hatch Act affects social network use by federal employees. The Hatch Act sets forth rules on political activity by federal employees. The opinion specifies that the following are inadvisable for federal employees on social networking sites: engaging in political activity in the workplace or using workplace resources, even if they are working through a private social network site; using official titles or authority in supporting candidates or causes on social networking sites (or elsewhere); or soliciting contributions for political causes on their sites, to include simply providing a link to a contribution site. OSC indicates that, if employees discover violations of these rules, there is no affirmative obligation to report a violation. Finally, there are “Further Restricted Employees,” such as those who work for law enforcement agencies, who are bound by even more stringent rules.



For the lawyers in the audience, social networking offers an abundance of ethical landmines. A Florida attorney, frustrated with perceived unfairness by a judge, blogged that the judge was “unfit for her position and knows not what it means to be a neutral arbiter.” The lawyer was sanctioned for violation of five ethics rules. A public defender in Illinois was terminated for blogging about her cases, and revealing confidential information in the process. Accessing the site of an opponent represented by counsel may constitute an ethical violation **IF** the attorney must interact with that party to access the site (for example, if the attorney requests to be “friended” by the represented party). However, if the site is accessible to anyone, such as a blog, then accessing the site is not considered a violation. The situation is greatly complicated by the fact that state bar associations have issued varying opinions on these questions, such as whether a judge can friend an attorney who practices in front of the judge, which may lead to accusations of conflict of interest or *ex parte* communications, and whether an attorney can “mislead” an unrepresented person to access their Facebook page. The ABA is currently working on draft revisions for the Model Rules of Ethics to address these issues, but attorneys should research their state bar opinions before utilizing social networking in a legal capacity, friending members of their profession, or discussing any aspect of their cases. When it comes to social networking, watch where you step!

## *Continuing to Foster a “Culture of Fiscal Restraint” in Conference Planning*

by MAJ Chris Beese

The Secretary of the Army, in an effort to encourage “a culture of fiscal restraint in all that we do, to include assessing longstanding spending practices for savings opportunities and justifying credibly the actual benefits of expenditures,” signed Army Directive 2011-05 on April 20, 2011. In it, he charged “every Army leader to consider how he or she can contribute to cost savings and the elimination of waste in conference planning,” and directed the implementation of procedures, including recent updates, that could impact your conference-planning process.

Army Directive 2011-05 made the requirements of DA Memo 1-17 applicable to “all conferences, symposia, seminars and similar meetings” sponsored or co-sponsored by any Army official, command or organization. It reserved to the Secretary of the Army authority to approve all such events that began after June 1, 2011.

Accordingly, commanders throughout the 21st TSC have had to submit requests for such events up to the 21st TSC Headquarters for a determination of whether secretarial approval was required in order to hold the events. The original threshold criteria to require secretarial approval potentially involved local events such as staff rides and training meetings. Accordingly, after several months of reviews, the Administrative Assistant to the Secretary of the Army has released new threshold criteria that will become effective on 1 October 2011. In general, secretarial approval will be required if any of the following criteria are met: (1) the costs of event will exceed \$500,000, (2) Army attendees and

Army-funded attendees will exceed 250 individuals, (3) the event is held in cooperation or in conjunction with a non-Federal entity, or (4) the conference will have government-funded spouse travel or attendance. Based on past practice, the practical impact for the 21st TSC is likely to be getting secretarial approval for any sponsored conference that includes funded spouse travel or attendance. The approval process will require completed requests to be submitted three to four months in advance of the event.

All requests require the endorsement of a general officer or member of the Senior Executive Service who has certified that the proposed conference is (1) necessary for Army operations and programs, (2) to be attended only by the minimum number of conferees necessary to accomplish the mission, and (3) planned to be conducted in the most cost-effective format possible. In addition, it must include a detailed cost-benefit analysis and comprehensive legal review.

If you are planning an event that the Directive might apply to, you should contact your local fiscal law attorney to obtain detailed advice.



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

by Rick Schwartz

***ORFs: A FISCAL ASPECT OF GOVERNMENT ETHICS***

The basic obligation of each of us, as a public servant, is codified at 5 CFR § 2635.101: “Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.” That section goes on to prohibit us from using our public office for private gain and to require that we protect and conserve Federal property. We are obliged to do this in order to “ensure that every citizen can have complete confidence in the integrity of the Federal Government.”

Serving overseas, this ethical obligation often intersects with the Government’s purpose of carrying out effective relations with the communities and individuals who are our local hosts through the planning and attending of Official Representation Fund (ORF) events. These social events are governed by Army Regulation (AR) 37-47 and held for the sole purpose of extending official courtesies to certain individuals, primarily host-nation dignitaries, who are specified in the regulation. While it should be an honor and is hopefully a pleasure for DoD employees to attend these events, the regulation specifically prohibits their being held primarily for the benefit of DoD civilian or military personnel, their families, contractors, or personal guests. This is in keeping with the ethical obligation described above, and is also reflected in the regulation’s statement that “under no circumstances may gifts or mementos for DoD personnel be purchased with ORFs.”

In carrying out the stated goals of ORFs while still conserving Government funds, it is important to keep a few things in mind. Even where an individual may qualify to attend one of these events (either as a DoD employee or a local guest), their attendance should still be a necessary expense of carrying out the unique purpose of the event. If that is not the case, then entertaining them reverts back to the general rule that social and entertainment expenses are personal in nature and not an obligation of the Government or an appropriate use of Government funds. Also, expenses in general are required to be modest in keeping with the propriety of the occasion and those authorized to host these events are encouraged to do so in their quarters. It makes sense that the best way to reflect American values abroad is to offer the type of hospitality that a typical American host would provide to a special guest. Lastly, keep in mind that expenses that occur outside the official portion of the dignitaries’ visit or the social event itself are to be borne by the visiting guests.

The full text of AR 37-47 may be found at: [http://www.apd.army.mil/pdffiles/r37\\_47.pdf](http://www.apd.army.mil/pdffiles/r37_47.pdf) If you are planning an ORF-funded event, you should contact your local fiscal law attorney or ethics counselor early in the process to obtain further guidance.

*ORF events include the annual New Year’s Reception at Armstrong’s, where the 21st TSC and USAG Kaiserslautern command teams greet host nation officials (with the help of two chimney sweeps!). The annual Law Day luncheon sponsored by the Office of the SJA is another example of an ORF event. Events like these foster good relations with the host nation, and pay rich dividends when we need a friend in court or at city hall.*





Artist Brooke Haarer, daughter of 21st TSC Chief Paralegal NCO MSG Scott Haarer, depicted the 21<sup>st</sup> TSC's enormous geographical footprint in this original oil painting which hangs in the OSJA hallway. The painting was commissioned this spring by the OSJA's "Foundation of Five." It contains scenes from Kaiserslautern, Mannheim, Stuttgart, Belgium, and the Netherlands.

**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 ruins of the Kleber Shoppette. Enter Bldg. 3210 from the end door, closest to the Shoppette.

