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Law

AIR NATIONAL GUARD LEGAL ASSISTANCE PROGRAM

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction describes Pre-Mobilization Legal Assistance (Pre-MLA) and Post-Mobilization Legal Assistance (Post-MLA), which must be provided by Air National Guard (ANG) base legal offices. Pre-MLA is a matter within the inherent authority of the commander to ensure unit readiness. Post-MLA implements 10 U.S.C. 1044(a)(4) as added by Section 524 of the FY 2001 National Defense Authorization Act (NDAA). Eligibility of ANG members for legal assistance from Active Air Force Legal Assistance Offices is governed by AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*.

1. Requirements and Purpose.

1.1. Required Services. ANG judge advocates (ANG JA) must provide Pre-MLA and Post-MLA only when performing inactive duty for training (IDT) or full-time National Guard duty (FTNGD) under Title 32, U.S.C. When providing Pre-MLA and Post-MLA to eligible beneficiaries as required by this instruction, ANG JAs are protected from liability for professional negligence in accordance with 10 U.S.C. 1054 and the Federal Tort Claims Act. Individual states may also have statutes which provide additional protections.

1.2. Purpose. In order to ensure mission readiness, it is essential that Pre-MLA be available to eligible beneficiaries. Post-MLA is a statutorily authorized legal assistance program designed to assist members of the reserve components who have been mobilized by authorizing them to receive legal assistance for a period of time after their release from active duty.

2. Scope.

2.1. Pre-MLA and Post-MLA. ANG legal offices must provide Pre-MLA and Post-MLA with respect to the following legal matters to eligible beneficiaries.

2.1.1. Wills.

2.1.2. Powers of Attorney.

- 2.1.3. Living wills (directives to physicians).
 - 2.1.4. Notary services.
 - 2.1.5. Dependent care plans.
 - 2.1.6. Casualty affairs (death incident to the performance of military duty).
 - 2.1.7. Employment problems arising from the performance of military duty and subject to the Uniformed Services Employment and Reemployment Rights Act (USERRA) or a similar state statute.
 - 2.1.8. Landlord-tenant problems specifically related to deployment.
 - 2.1.9. Tax problems specifically related to deployment.
 - 2.1.10. Matters arising from the performance of military duty and subject to the Soldiers' and Sailors' Civil Relief Act (SSCRA) or a similar state statute. **NOTE:** The SSCRA applies only to duty performed in a Title 10 status.
- 2.2. Other Pre-MLA and Post-MLA. ANG legal offices are authorized to provide other categories of mission-related Pre-MLA and Post-MLA as approved by the State Headquarters (HQ) Staff Judge Advocate (SJA), the Wing Commander (CC) or other appropriate commander (CC), and the unit SJA.
- 2.3. Post-MLA. For purposes of this instruction, mobilization includes (1) an order to active duty (Title 10) other than for training for more than 30 days pursuant to full mobilization [10 U.S.C. 12301(a)], partial mobilization (10 U.S.C. 12302), Presidential Reserve Call-Up (10 U.S.C. 12304), or volunteerism [10 U.S.C. 12301(d)] involving deployment when one of the above authorities is in effect, or (2) a call into Federal service for more than 30 days under 10 U.S.C. 12406 or Chapter 15 of Title 10, U.S.C. Post-MLA will be provided to eligible beneficiaries during the period of mobilization and after the member's release from active duty for a period twice the length of time served on active duty under that order to active duty or call into Federal service. Post-MLA is also available from Active Air Force legal assistance offices.
- 2.4. Beneficiaries. Members of the ANG, their spouses, and family members entitled to an identification card are eligible for Pre-MLA and Post-MLA. The ANG member must be in a duty status performing IDT, FTNGD, or AD (active duty) in order for the spouse and family members to receive Pre-MLA or Post-MLA. As resources and expertise permit, Pre-MLA and Post-MLA may also be provided to Active Component members, other Reserve Component members, and retirees, of any military service.
- 2.5. Limits. Do not enter into any attorney-client relationship on these issues:
- 2.5.1. Issues involving personal commercial enterprises, unless related to the SSCRA or similar state law.
 - 2.5.2. Criminal matters under the Uniform Code of Military Justice (UCMJ), the local state military code, or any other Federal or State criminal law.
 - 2.5.3. Standards of conduct issues.
 - 2.5.4. Law of armed conflict issues.

2.5.5. Official matters in which the Air Force (AF) or ANG has an interest or is involved in the final resolution.

2.5.6. Legal issues raised on behalf of another individual, even if that other individual is eligible for Pre-MLA or Post-MLA.

2.5.7. Representation of the client in a court or administrative proceeding.

3. Supervisory Responsibilities.

3.1. The ANG State Headquarters SJA is responsible for monitoring the Pre-MLA and Post-MLA programs at all ANG legal offices in the State.

3.2. The unit SJA is responsible for ensuring that, at a minimum, the Pre-MLA and Post-MLA programs at the unit legal office provide the level of services specified by this instruction.

4. Ethical Responsibilities and Rules.

4.1. SJAs must administer the Pre-MLA and Post-MLA programs in strict compliance with the Rules of Professional Responsibility for ANG JAs, local state rules of professional conduct, and to the extent that they apply, the Rules of Professional Conduct for AF lawyers, and other ethics or professional responsibility rules that may apply to the provider of legal assistance.

4.2. Only attorneys give legal advice.

4.3. Information received from a client pursuant to providing Pre-MLA or Post-MLA, attorney work products, and documents relating to the client are protected confidential communications. Release them only with the client's express permission, pursuant to a court order, or as otherwise permitted by the Rules of Professional Responsibility for ANG JAs, local state rules of professional conduct, and to the extent they apply, the Rules for Professional Conduct for AF lawyers, and other ethics or professional responsibility rules that may apply to the provider of legal assistance.

4.4. Attorneys providing legal assistance pursuant to this instruction must have private office space available.

4.5. Attorneys providing legal assistance pursuant to this instruction must avoid creating the impression that they represent the ANG's interests in resolving the client's concerns or that the ANG has an interest in the outcome of the matter. When writing letters on a client's behalf, do not use official letterhead. Include a statement in the letter clarifying that the ANG does not represent the client in resolving the matter.

4.6. Attorneys providing legal assistance pursuant to this instruction may not interfere with an existing attorney-client relationship.

5. Referrals. For legal assistance which exceeds the scope of this instruction, refer the member to qualified civilian counsel, or if available in the local area, to a bar referral service.

6. Office Administration

6.1. Records. Legal assistance records may be kept using AF Form 1175, **Legal Assistance Record**, or any other system of record which captures the same information.

6.2. Forms. Offices may use the AF Form 165, **General Power of Attorney**, and AF Form 831, **Special Power of Attorney**, in providing legal assistance.

7. Notarial Services.

7.1. ANG JAs and enlisted paralegals may provide notary services pursuant to the provisions of 10 U.S.C. 1044a or if qualified under state law. Commanders may name civilian employees to serve as notaries as part of their official duties, provided they qualify under the laws of the state where they will serve.

7.2. Members of the ANG and beneficiaries entitled to Pre-MLA and Post-MLA may receive notary services.

7.3. The cost of a state notary public commission for a technician employee may be reimbursed with Federal funds under 5 USC 5945 in accordance with the procedures in AFI 51-504.

PAUL A. WEAVER, JR., Major General, USAF
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OFFICIAL

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Attachment

References

AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*