

Legal Services

Litigation

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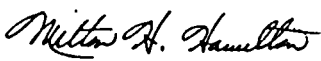
Legal Services

Litigation

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:


MILTON H. HAMILTON
Administrative Assistant to the
Secretary of the Army

History. This printing publishes a complete revision of this Army regulation. Because the publication has been revised extensively, the changed portions have not been highlighted.

Summary. This regulation prescribes policy and procedures for litigation in civilian court proceedings, including the following: providing representation of the Army and its personnel in Federal and State court proceedings; remedies for procurement fraud; environmental litigation; bankruptcy; release of information and appearance of witnesses

in criminal and civil court actions; procedures to follow when soldiers are summoned for jury duty; and, procedures for cooperation with the Office of Special Counsel.

Applicability. This regulation applies to all DA personnel (see glossary), including the Active Army, the Army National Guard, and the U.S. Army Reserve. This regulation applies during partial and full mobilization.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. Proponents may delegate the approval authority, in writing, to a division chief under their supervision within the proponent agency who holds the grade of colonel or the civilian equivalent.

Army management control process. This regulation is not subject to the requirements of AR 11-2. It does not contain internal control provisions.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior

approval from the Office of The Judge Advocate General, ATTN: Litigation Division (DAJA-LT), 901 North Stuart Street, Arlington, VA 22203-1837.

Interim changes. Interim changes to this regulation are not official unless authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested improvements. Users are invited to send comments and suggestions to Office of The Judge Advocate General, ATTN: Litigation Division (DAJA-LT), 901 North Stuart Street, Arlington, VA 22203-1837.

Distribution. Distribution of this publication is made in accordance with DA Form 12-09-E, block number 2040, intended for command levels B,C,D, and E for Active Army, Army National Guard, and U.S. Army Reserve.

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*This regulation supersedes AR 27-40, 2 December 1987, and rescinds DA Form 2135, May 1973.

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Chapter 1 General

1-1. Purpose

a. This regulation prescribes policies and procedures for the following:

(1) Defensive and affirmative litigation in Federal and State civil courts where the Army or Department of Defense (DOD) has an interest in the matter.

(2) Proceedings before Federal or State administrative bodies, such as utility rate commissions.

(3) Release of official information and testimony by Department of the Army (DA) personnel with regard to litigation.

(4) Remedies for procurement fraud and corruption.

(5) Environmental civil litigation and administrative proceedings.

(6) Proceedings before the Office of Special Counsel.

b. This regulation does not apply to Department of the Army (DA) or DOD proceedings such as courts-martial or administrative boards.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and terms used in the regulation are explained in the glossary.

1-4. Responsibilities

a. *United States Department of Justice (DOJ)*. DOJ will defend litigation in domestic and foreign courts, against the United States, its agencies and instrumentalities, and employees whose official conduct is involved. The various U.S. Attorney Offices, under the oversight of the Attorney General, will conduct much of the representation.

b. *The Judge Advocate General (TJAG)*. Subject to the ultimate control of litigation by DOJ (including the various U.S. Attorney Offices), and to the general oversight of litigation by the Army General Counsel, TJAG is responsible for litigation in which the Army has an interest. Except with respect to proceedings addressed in subparagraph *i* below, only TJAG (or a designee) will communicate to DOJ the Army's position with regard to settlement of a case.

c. *Assistant Judge Advocate General For Civil Law and Litigation (AJAG-CL)*. Responsible to TJAG for litigation issues; supervises Chief, Litigation Division.

d. *Chief, Litigation Division*. Reports to AJAG-CL and is responsible for the following:

(1) Supervising litigation in which the Army has an interest.

(2) Acting for TJAG and the Secretary of the Army on litigation issues, including the authority to settle or compromise cases, subject to the supervision of TJAG and AJAG-CL.

(3) Delegating responsibility for cases if appropriate.

(4) Serving as primary contact with DOJ on litigation.

(5) Accepting service of process for DA and for the Secretary of the Army in his or her official capacity. (See 32 CFR 257.5.)

e. *Special Assistant U.S. Attorneys (SAUSAs) and DOJ special attorneys*. Army judge advocates and civilian attorneys, when appointed as SAUSAs under 28 USC 543, will represent the Army's interests in either criminal or civil matters in Federal court under the following circumstances:

(1) *Felony and misdemeanor prosecutions in Federal court*. Army attorneys, at the installation level, after being duly appointed (see AR 27-10), will prosecute cases, in which the Army has an interest, in Federal court. Army attorneys who prosecute criminal cases will not represent the United States in civil litigation without authorization from the Chief, Litigation Division.

(2) *SAUSAs for civil litigation*. By assignment of TJAG and upon the approval of the U.S. Attorney, judge advocates will serve within a U.S. Attorney's office to represent the Government in litigation in which the Army or DOD has an interest. These judge advocates

have the same general authority and responsibility as an Assistant U.S. Attorney.

(3) *Special Attorneys assigned to DOJ*. By assignment of TJAG and with the concurrence of the appropriate DOJ official, judge advocates will work as Special Attorneys for DOJ. Special Attorneys are authorized to represent the United States in civil litigation in which the Army or DOD has an interest.

f. *Attorneys at Army activities or commands*. Staff judge advocates (SJAs) or legal advisers, or attorneys assigned to them, will represent the United States in litigation only if authorized by this regulation or delegated authority in individual cases by the Chief, Litigation Division.

g. *Commander, U.S. Army Claims Service (USARCS)*. The Commander, USARCS, and USARCS attorneys, subject to AR 27-20, chapter 4, will maintain direct liaison with DOJ in regard to administrative settlement of claims under the Federal Tort Claims Act.

h. *Chief, Contract Law Division, OTJAG*. The Chief, Contract Law Division, attorneys assigned to the Contract Law Division, and other attorneys designated by the Chief, Contract Law Division, in litigation involving taxation, will represent DA in negotiation, administrative proceedings, and litigation, and maintain liaison with DOJ and other Governmental authorities.

i. *Legal Representatives of the Chief of Engineers*. The Office of Chief Counsel, attorneys assigned thereto, and other attorneys designated by the Chief Counsel will maintain direct liaison with DOJ and represent DA in litigation and administrative proceedings arising from the navigation, civil works, Clean Water Act 404 permit authority, environmental response activities, and real property functions of the U.S. Army Corps of Engineers (COE).

j. *Chief Trial Attorney, Contract Appeals Division, USALSA*. The Chief Trial Attorney, attorneys assigned to the Contract Appeals Division, and attorneys designated by the Chief Trial Attorney, will represent the Government before the Armed Services Board of Contract Appeals (ASBCA) and the General Services Board of Contract Appeals (GSBCA). They will maintain direct liaison with DOJ concerning appeals from ASBCA and GSBCA decisions. The Chief Trial Attorney has designated COE attorneys to act as trial attorneys in connection with COE contract appeals.

k. *Chief, Regulatory Law Office, USALSA*. The Chief, Regulatory Law Office, attorneys assigned to the Regulatory Law Office, and other attorneys designated by the Chief, will represent DA consumer interests in regulatory matters before State and Federal administrative agencies and commissions, including but not limited to proceedings involving rates and conditions for the purchase of services for communications (except long-distance telephone), transportation, and utilities (gas, electric, water and sewer). They will maintain direct liaison with DOJ for communications, transportation, and utilities litigation.

l. *Chief, Intellectual Property Law Division, USALSA*. The Chief, Intellectual Property Law Division, and the attorneys assigned thereto, will represent DA in matters pertaining to patents, copyrights, and trademarks. They will maintain direct liaison with DOJ and represent the DA in intellectual property issues.

m. *Chief, Labor and Employment Law Office, OTJAG*. The Chief, Labor and Employment Law Office, attorneys assigned thereto, and attorneys identified as labor counselors will represent DA in matters pertaining to labor relations, civilian personnel, and Federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, State workmen's compensation commissions. In the event any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

n. *Chief, Procurement Fraud Division, USALSA*. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief, will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative