

## LAW REVIEW<sup>1</sup> 19009

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### Who is Eligible for Military Legal Assistance?

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#### 9.0—Miscellaneous

Title 10 of the United States Code provides:

**(a)** Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

- (1)** Members of the armed forces who are on active duty.
- (2)** Members and former members entitled to retired or retainer pay or equivalent pay.

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<sup>1</sup>I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

**(3)** Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

**(4)** *Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary), for a period of time (prescribed by the Secretary) that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.*

**(5)** Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

**(6)** Survivors of a deceased member or former member described in paragraphs (1), (2), (3), and (4) who were dependents of the member or former member at the time of the death of the member or former member, except that the eligibility of such survivors shall be determined pursuant to regulations prescribed by the Secretary concerned.

**(7)** Civilian employees of the Federal Government serving in locations where legal assistance from non-military legal assistance providers is not reasonably available, except that the eligibility of civilian employees shall be determined pursuant to regulations prescribed by the Secretary concerned.

**(b)** Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of legal assistance programs under this section.

**(c)** This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

**(d)**

**(1)** Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.

**(2)** Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State and, for purposes of service as a Special Victims' Counsel under section 1044e of this

title, satisfies the additional qualifications and training requirements specified in subsection (d) of such section.

**(3)** In this subsection, the term "military legal assistance" includes-- **(A)** legal assistance provided under this section; and

**(B)** legal assistance contemplated by sections 1044a, 1044b, 1044c, 1044d, 1044e, and 1565b(a)(1)(A) of this title.

**(e)** The Secretary concerned shall define "dependent" for the purposes of this section.<sup>3</sup>

Under section 1044(a)(4), a member of the Reserve or National Guard who is called to active duty involuntarily is eligible for military legal assistance for a period that starts on the date of release from active duty and extends for not less than twice the active duty period. Under section 1044(a)(1), a member of the Reserve or National Guard who is on active duty voluntarily or involuntarily is eligible for military legal assistance while on active duty, just like any other service member on active duty.

Section 1044 does not explicitly provide for military legal assistance for a member of the Reserve or National Guard who is not presently on active duty but who is expecting an imminent call to active duty. As a matter of policy and practice, the services provide military legal assistance in this situation, especially for drafting wills and powers of attorney as part of mobilization readiness.

#### **Q: How do I find a military legal assistance office?**

**A:** The Air Force maintains a website that service members and others eligible for military legal assistance can use to find the closest military legal assistance office. The website is located at <https://legalassistance.law.af.mil>. While the website is run by the Air Force, the locator includes military legal assistance offices run by all five-armed forces, including the Coast Guard. All you need to do is plug in your zip code and the locator will show the location and telephone number for a nearby military legal assistance office. You are eligible for military legal assistance at any military legal assistance office—you are not limited to an office run by your own service. You need to call and make an appointment to go in person. Military legal assistance attorneys will not give legal advice by telephone.

It is not just any judge advocate (Active Component or Reserve Component) who is authorized to provide legal assistance with respect to civilian non-criminal legal matters. Only *legal assistance attorneys* are authorized to provide this service. Legal assistance attorneys are judge advocates and civilian attorneys employed by the Judge Advocate General of a service specifically for the purpose of providing legal assistance. Most active duty judge advocates are

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<sup>3</sup>10 U.S.C. § 1044 (emphasis supplied). The term "Secretary concerned" means the Service Secretary, like the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

assigned other duties, like serving as trial counsel or defense counsel in courts martial or serving as a staff judge advocate (legal advisor) to a line commander.

I also invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 1700 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics.

Reading an article is certainly not a substitute for getting individualized legal advice and assistance from a qualified lawyer, but it is better than nothing. If you do retain a civilian lawyer, please make sure that the lawyer is aware of this "Law Review" resource.

#### **Please join or support ROA**

This article is one of 1800-plus "Law Review" articles available at [www.roa.org/page/lawcenter](http://www.roa.org/page/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Officers Association  
1 Constitution Ave. NE  
Washington, DC 20002