

§516.9

32 CFR Ch. V (7-1-09 Edition)

§516.9 Service of criminal process within the United States.

(a) *Surrender of personnel.* Guidance for surrender of military personnel to civilian law enforcement officials is in Chapter 7 of AR 630-10 and AR 190-9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) *Requests for witnesses or evidence in criminal proceedings.* See subpart G to this part.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

§516.10 Service of civil process within the United States.

(a) *Policy.* DA officials will not prevent or evade the service or process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) *Request for witnesses or evidence in civil proceedings.* See subpart G to this part.

(c) *Process of Federal courts.* Subject to reasonable restrictions imposed by the commander, civil officials will be permitted to serve Federal process. (See Fed. R. Civ. P. 4, 45).

(d) *Process of state courts.* (1) In areas of exclusive Federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive Federal jurisdiction precludes service by state authorities on the military installation.

(2) On Federal property where the right to serve process is reserved by or granted to the state, in areas of con-

current jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.

(e) *Process of foreign courts.* A U.S. District Court may order service upon a person who resides in the judicial district of any document issued in connection with a proceeding in a foreign or international tribunal. (28 U.S.C. 1696). In addition, the U.S. State Department has the power to receive a letter rogatory issued by a foreign or international tribunal, to transmit it to a tribunal, officer or agency in the United States, and to return it after execution. (28 U.S.C. 1781). Absent a treaty or agreement to the contrary, these provisions will govern.

(f) *Seizure of personal property.* State and Federal courts issue orders (for example, writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid state or Federal court orders commanding or authorizing the seizure of private property to the same extent that state or Federal process is served.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

§516.11 Service of criminal process outside the United States.

Army Regulation 630-10 and international treaties, such as status of forces agreements, govern the service of criminal process of foreign courts and the surrender of soldiers to foreign civilian law enforcement officials.

§516.12 Service of civil process outside the United States.

(a) *Process of foreign courts.* In foreign countries service of process issued by foreign courts will be made under the law of the place of service, as modified by status of forces agreements, treaties or other agreements. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts

Department of the Army, DoD

§ 516.15

will be made under the law specified by appropriate U.S. authority.

(b) *Process of Federal courts.* Service of process on U.S. citizens or residents may be accomplished under the following provisions: The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4; Fed. R. Civ. P. 4(i); 28 USC 1781 and 1783; and, the rules of the Federal court concerned. If a DA official receives a request to serve Federal process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned.

(c) *Process of state courts.* If a DA official receives a request to serve state court process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned. (See, for example, The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4).

(d) *Suits against the United States.* DA personnel served with foreign civil process will notify the appropriate SJA or legal adviser, who will return the document to the issuing authority explaining the lack of authority to accept service for the United States. Service on the United States must be made upon DOJ through established diplomatic channels.

§ 516.13 Assistance in serving process overseas.

(a) *Europe.* For information and assistance concerning service of process of persons assigned to or accompanying U.S. Forces in Europe, contact the Foreign Law Branch, International Law Division, Office of The Judge Advocate, Headquarters U.S. Army, Europe, and Seventh Army, Unit 29351, (Heidelberg, Germany) APO AE 09014.

(b) *Korea.* For information and assistance concerning service of process of

persons assigned to or accompanying U.S. Forces in Korea, contact Staff Judge Advocate, US Forces Korea (Seoul, Republic of Korea), APO AP 96205.

(c) *Panama, Central and South America.* For information and assistance concerning service of process of persons assigned to or accompanying forces in the U.S. Army Southern Command, contact Staff Judge Advocate, HQ, US Army South, Fort Clayton, Panama, APO AA 34004-5000.

§ 516.14 Service of process on DA or Secretary of Army.

The Chief, Litigation Division, shall accept service of process for Department of the Army or for the Secretary of the Army in his official capacity.

Subpart C—Reporting Legal Proceedings to HQDA

§ 516.15 General.

(a) *Legal proceedings requiring reporting.* Actions must be taken upon commencement of litigation or administrative proceedings in which the United States has an interest. Typically, the Secretary of the Army, DA, the United States, or DA personnel are named as defendant in a lawsuit or as respondent in an administrative proceeding. A nonexclusive listing of cases in which the United States has an interest include the following:

(1) Suits for damages, injunctive relief, or other action filed against the government or against DA personnel in their official capacity.

(2) Suits alleging individual liability arising from performance of official duties by DA personnel.

(3) Actions affecting DA operations or activities or which might require official action by DA personnel.

(4) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the government might be required to reimburse a contractor for litigation expenses.

(5) Bankruptcy proceedings in which the United States or its instrumentalities may have an interest, including bankruptcies involving government contractors.

(b) *Command and agency responsibility.* Commanders and supervisors of Army