

## Department of the Army, DoD

## § 516.27

obviate the requirement for preparation of a complete litigation report.

(3) Prepare an index of tabs and exhibits.

(4) Where a relevant document has been released pursuant to a FOIA request, provide a copy of the response, or otherwise identify the requestor and the records released.

(g) *Distribution and number of copies.* Unless HQDA directs otherwise, SJAs or legal advisers will mail (first class) an original and one copy of the litigation report to the responsible HQDA office (See § 516.15 of this part) and one copy to the U.S. Attorney's Office handling the case. If possible, record the litigation report onto a magnetic diskette, using either WordPerfect, Enable, or ACSII, and send it to Litigation Division.

### § 516.24 Preservation of evidence.

Because documents needed for litigation or administrative proceedings are subject to routine destruction, the SJA or legal adviser will ensure that all relevant documents are preserved.

### § 516.25 DA Form 4.

(a) *General.* The DA Form 4 (See figure C-2, appendix G, of this part) is used to authenticate Army records or documents. Documents attached to a properly prepared and sealed DA Form 4 are self-authenticating. (See Fed. R. Evid. 902).

(b) *Preparation at the installation level.* A DA Form 4 need not be prepared until the trial attorney presenting the government's case identifies documents maintained at the installation level which he will need at trial. Once documents are identified, the custodian of the documents will execute his portion of the DA Form 4. (See figure C-2, appendix G, of this part). The custodian certifies that the documents attached to the DA Form 4 are true copies of official documents. Documents attached to each form should be generally identified; each document need not be mentioned specifically. Only the upper portion of the form should be executed at the local level.

(c) *Actions at HQDA.* Upon receipt of the DA Form 4 with documents attached thereto, HQDA will affix a ribbon and seal and deliver it to the Office

of the Administrative Assistant to the Secretary of the Army. That office will place the official Army seal on the packet.

### § 516.26 Unsworn declarations under penalty of perjury.

(a) *General.* Under the provisions of 28 U.S.C. 1746, whenever any matter is required or permitted to be established or proven by a sworn statement, oath or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See figure C-3, appendix G, of this part).

(b) *When executed within the United States.* Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).  
Executed on \_\_\_\_\_

(Date) (Signature)

(c) *When executed outside the United States.* Place the following at the end of the witness statement:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746).  
Executed on \_\_\_\_\_

(Date) (Signature)

## Subpart D—Individual Liability

### § 516.27 Scope.

This subpart guidance when DA personnel, as a result of the performance of their official duties, are either sued in their personal capacity, or are charged in a criminal proceeding. Examples of civil actions alleging individual liability include the following: a medical malpractice lawsuit against health care providers; suits resulting from motor vehicle accidents; constitutional torts; or, common law torts such as assault, libel, or intentional infliction of emotional distress. Likewise, state or Federal criminal charges can arise from the performance of official duties, including environmental crimes or motor vehicle accidents.