

Department of the Army, DoD

§ 516.32

(5) Prepare a report with, at a minimum, the following information: facts surrounding the incident for which defendant is being sued and those relating to scope of employment; the SJA's or legal adviser's conclusions concerning scope of employment; and, a recommendation whether certification by the Attorney General or representation by a DOJ attorney should be granted.

(6) In cases involving National Guard personnel, address also the following: whether defendant was acting in a state (Title 32 U.S.C.) or Federal (Title 10 U.S.C.) capacity during relevant periods (include orders); if defendant was acting under state authority, is it nevertheless in the interest of the United States to represent the individual; any impact on policies or practices of DA, the National Guard Bureau, or DOD; whether the relief requested can be granted only by a Federal officer or agency; and, whether Federal law or regulation required actions by state officials.

(7) Send the report, request for representation, and scope of employment statements to Chief, Litigation Division.

(b) *Chief, Litigation Division, procedures.* The Chief, Litigation Division, will review the report and evidence regarding representation and scope of employment and will determine whether certification and representation are appropriate. He will send his recommendation to the appropriate U.S. Attorney or office within DOJ. The Chief, Litigation Division, will notify the defendant of DOJ's decision.

§ 516.31 Private counsel at government expense.

(a) *General.* DA personnel, sued in their individual capacity or facing criminal charges as a result of performance of official duties, have no right to employ a private sector counsel at government expense or to expect reimbursement for the same. For proceedings in the United States, a request for employment of counsel at government expense may be approved by DOJ, contingent among other things upon availability of funds and a determination that employment of private counsel at government expense is

in the best interests of the United States. (See 28 CFR 50.16). Special rules apply in overseas areas. (See paragraph (e) of this section).

(b) *Individual request procedures.* The individual will prepare a request that private counsel be employed for him at government expense. The request must also contain the following statement: "I understand that the United States is not required to employ private counsel on my behalf, and that I may be responsible for expenses incurred prior to proper authorization by the Department of the Army or the Department of Justice."

(c) *Supervisory and legal adviser procedures.* The request will be submitted through the individual's supervisors, who will make a recommendation and forward the packet to the local SJA or legal adviser. The SJA or legal adviser will prepare his own recommendation and forward the matter to Litigation Division.

(d) *Chief, Litigation Division, procedures.* If the Chief, Litigation Division, determines that the request for private counsel is meritorious, he will prepare an appropriate recommendation and forward the packet to Civil Division, DOJ, for final approval.

(e) *Special actions in foreign countries.* Employment of private counsel in foreign proceedings is governed by AR 27-50 (Status of Forces Policies, Procedures, and Information). Under the authority of 10 U.S.C. 1037, soldiers, as well as employees or those accompanying the armed forces overseas, may be granted individual counsel in civil and criminal proceedings, under the criteria of AR 27-50.

§ 516.32 Requests for indemnification.

(a) *Policy.* An individual liable for a judgment rendered against him in his individual capacity has no right to reimbursement from DA. DA will consider, however, a request for indemnification from DA personnel where conduct within the scope of official duties has resulted in personal liability and indemnification is in the best interests of the United States. Indemnification is strictly contingent upon an appropriation to pay the judgment, as well as availability of such funds.

(b) *Individual request procedures.* An individual against whom an adverse judgment has been rendered may request indemnification. The request must include, at a minimum, the following: how the employee was acting within the scope of his employment; whether the requestor has insurance or any other source of indemnification; and, how reimbursement is in the best interests of the United States. The request must also contain the following statements: “I understand that acceptance of this request for indemnification for processing by DA does not constitute an acceptance of any obligation to make such a payment. I also understand that payment is contingent on availability of funds and that it will only be made if such is determined to be in the best interests of the United States.” The individual should attach a copy of relevant documents, for example, court’s opinion, judgment, and other allied papers.

(c) *Supervisory and SJA procedures.* The request for indemnification will be submitted through supervisory channels to the local SJA or legal adviser. Each supervisor will make a recommendation on the propriety of reimbursement.

(d) *Chief, Litigation Division, procedures.* Requests for indemnification will be forwarded to Chief, Litigation Division. The Chief, Litigation Division, will examine the submission and, after consultation with DOJ or other agencies, forward the packet with his recommendation to the Army General Counsel. The General Counsel will obtain a final decision by the Secretary of the Army or his designee on the matter. There is no administrative appeal of the Secretary’s (or his designee’s) decision.

Subpart E—Legal Proceedings Initiated by the United States Medical Care and Property Claims

§516.33 General.

(a) *Authorities.* (1) Federal Medical Care Recovery Act (42 U.S.C. 2651). The act provides for the recovery of medical care expenses incurred because of a tortfeasor’s actions.

(2) Federal Claims Collection Act (31 U.S.C. 3711). The act provides for the collection of claims for money or property arising from the activities of Federal agencies.

(3) Third-party Collection Program (10 U.S.C. 1095). The statute provides for collection of reasonable costs of health-care services, provided in facilities of the uniformed services to covered beneficiaries, from private insurers or third-party payers. In accordance with DOD Instruction 6010.15, “Third Party Collection (TPC) Program,” 7 March 1991, the authority to settle or waive a DOD claim under the act is delegated to TJAG or to his designee.

(4) Executive Order No. 12778, (56 FR 55195; 3 CFR, 1991 Comp. p. 359), Civil Justice Reform. This order establishes several requirements on Federal agencies involved in litigation or contemplating filing an action on behalf of the United States.

(5) AR 27-20, Claims. Chapter 14 (Affirmative Claims) contains comprehensive guidance for Recovery Judge Advocates (RJAs) in the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the U.S. for property damage and for medical care claims.

(b) *Duties and procedures.* In accordance with Chapter 14, AR 27-20, Commander, USARCS, has supervisory responsibility over the administrative processing of property and medical care claims by RJAs. The Commander, U.S. Army Health Services Command (HSC), has supervisory responsibility over the Third Party Collection Program (TPCP). The HSC TPCP Implementation Plan effects DOD Instruction 6010.15 and establishes procedures for processing TPC claims. Litigation Division, in conjunction with DOJ and U.S. Attorneys, is responsible for pursuing, through litigation, claims not resolved administratively. DOJ is ultimately responsible for initiating litigation for the United States. (28 U.S.C. 515).

(c) *Assertion of claims on behalf of the United States by private attorneys.* The Army incurs potentially recoverable expenses when it provides medical care to soldiers or dependents injured by tortfeasors (for example, a soldier is