



Office of Command Counsel Newsletter

December 2000, Volume 2000-6

The AMC Command Legal Program for 2001-2002 CLE 2001

The Command Legal Program (CLP) is a two-year plan initiated by the AMC Command Counsel with active participation and substantive contributions from the MSC Chief Counsel.

The CLP for 2001-2002 was designed during the AMC Chief Counsel CLP Workshop, held October 25-27, 2000 in Gettysburg, PA.

The Command Counsel and MSC Chief Counsels determine the categories that will comprise the CLP. The Chief Counsels identify those initiatives that are common to every AMC MSC legal organization.

Each AMC MSC legal organization then develops initiatives under each CLP category that are unique to its legal organization. The CLP is a "living" document that envisions changes during the two years as new subject areas and legal issues arise.

The CLP 2001-2002 theme is **"AMC Attorneys: Providing Solutions to Support the Army's Transformation."**

The CLP for 2001-2002 is comprised of the following five categories:

- **Comprehensive Client Service & Support**
- **Preventive Law**
- **Professional Development**
- **Information Technology & Knowledge Management**
- **Quality of Life**

During the AMC Chief Counsel CLP Workshop, we developed a list of draft CLP initiatives for each category that we believe is applicable across the AMC legal community. We believe it essential that each employee actively participate in the development of CLP initiatives.

Active participation in the development and implementation of the CLP for this two-year period is considered to be an important component of the job of each member of the AMC legal community.

Check inside for details on the annual AMC Continuing Legal Education Program, to be held 21-25 May 2001 at the Grosvenor Hotel, Lake Buena Vista, Florida.

See what you can do to help design and actively participate in our program.

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CLE 2001: The Basics & What You Can Do

Dates:

The annual Command Counsel Continuing Legal Education Program will be held at the Grosvenor Hotel, Lake Buena Vista, Florida **Monday 21 May through Friday 25 May 2001.**

You will be receiving a great deal of information to plan attendance and participation in our important annual CLE.

Planning:

The HQ AMC CLE Planning Committee will meet for the first time in December to map out our general approach. We will then begin substantive planning in early January. **Steve Klatsky**, DSN 767-2304, will again chair the CLE Planning Committee.

What you can do:

We need and value your contributions to building the substance of the CLE Program.

Especially important is the identification of relevant and important topics and speakers.

Ed Korte has asked the Chief Counsels to take the time to work with their staff to identify topics and speakers for discussion.

Steve sent an e-mail to each AMC legal office providing the information contained in this note, soliciting support from the field with respect to CLE substance.

Submit potential topics and a proposed speaker to make the presentation if one is known. These should be submitted to Steve **NLT Friday 5 January**—earlier submissions are encouraged.

Theme:

During the Chief Counsel Workshop in October a CLE 2001 theme was chosen:

AMC Attorneys: Providing Solutions to Support the Army's Transformation

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Check out the Newsletter on the Web at http://www.amc.army.mil/amc/command_counsel/

Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

Acquisition Law Focus

President Clinton's Statement re DOD Auth Act

On October 30 **President Clinton** signed the DOD Authorization Act for Fiscal Year 2001. In a statement accompanying the signing the President highlighted the following components of the legislation:

O 3.7% across the board raise in base pay for the military.

O The Act reaffirms support for key efforts to modernize the military forces and reaffirms the \$60 billion in overall procurement funding requested.

O Support for modernization of the Armed Forces by supporting Navy's LPD-17 Amphibious Ship, DD-21 (the next-generation destroyer), the F/A-18 E/F, the Air Force's F-22 tactical fighter aircraft, the Joint Strike Fighter, and support for the Army's transformation effort.

O Expressed disappointment for that Congress did not support 2 further rounds of BRAC

O Stated strong concerns about the provision authorizing the Secretary of Defense to adopt a pilot program for the resolution of equal employment opportunity complaints of civilian employees of the Department of Defense that waives procedural requirements of the Equal Employment Opportunity Commission (EEOC).

The President highlighted that eliminating these procedural safeguards could leave civilian employees without important means to ensure the protection of their civil rights. Therefore, he directed the Secretary of Defense to personally approve any pilot program, and that the Secretary approve no more than 3 pilot programs, 1 in a military department and 2 in Defense agencies. In order to assure that participation by civilian employees is truly voluntary, he also directed that the pilots provide that complaining parties may opt out of participation in the pilot at any time.

The entire statement is provided (Encl 1).

List of Enclosures

1. President Clinton's Statement on DOD Authorization Act
2. Role of Leadership in Partnering
3. Competitive Negotiations WLMP Style
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14. ELD Bulletin Nov 2000
15. AEC Compliance Newsletter
16. ELD: People & Practice

Acquisition Law Focus

Role of Leadership in Partnering

Kathryn L. Hall, an OSC acquisition directorate employee, was a student at the Army Management Staff College.

Ms. Hall wrote an interesting paper entitled "The Role of Leadership in Partnering". The focus of the paper is on the experience gained in using Partnering for the 2.75" Rocket Systems program.

She conducted a survey on this acquisition program that has a mature partnering history. The 2.75" Rocket Systems/General Dynamics Ordnance Systems Partnering program is starting its fourth year.

Based on the results of the survey, she found that leadership by both the government and industry managers is the critical element necessary to maintain the energy and focus of the Partnering with Industry Program.

The paper can be used as an educational tool when you are introducing Partnering to a program. It can be especially useful in describing both the Partnering philosophy and the Partnering experience.

Ms. Hall highlights Partnering training, top leadership commitment and reinforcement of that commitment and--"Communicate, Communicate, Communicate (Encl 2).

WLMP Articles: A Historical View

The CECOM experiences regarding the unique Wholesale Logistics Modernization Program have been memorialized in an excellent series of articles, some published in prior Nesletters, and one in this issue,

The series includes the following:

Innovations in Logistics Modernization WLMP Will Overhaul

WLMP--The Cutting Edge
WLMP Partnering for Success

Due Diligence
Paper Free Contracting
Evaluating Process Risk in Competitive Acquisitions
Innovative Contracting Approaches: A Contractor's Perspective

Small Business Participation--A Factor in Source Selection with Unprecedented Results

For copies of these articles please contact **Tom Carroll**, DSN 992-9805.

Competitive Negotiations WLMP Style

This WLMP article contains an excellent narrative divided into several sections, including Exchanges with Industry Before Receipt of Proposals and with Offerors After Receipt of Proposals.

It also contains an inter-

esting basic introduction to the WLMP Program to include the vital role that innovation and flexibility called for in FAR 15 rewrite had on program success (Encl 3).

POC is CECOM's **Tom Carroll**, DSN 992-9805.

The Anti-Deficiency Act--A Primer for Clients

Pat Sheldon, SBCCOM Chief Counsel, DSN 584-3724, has written an excellent paper on the Anti-Deficiency Act, written from a perspective that the reader will be a client (Encl 4).

The introduction describes the scope of the paper:

“Its all about money – your tax dollars – the appropriation that authorizes the expenditures you make to accomplish your mission and what happens if you don’t learn from history.

In this paper you will discover:

Those valid contracts can create Antideficiency Act violations.

That the word “voluntary” may not mean what you think it does.

That the fiscal mistakes we make today could saddle future generations.

And a lot more about the Antideficiency Act.”

The paper refers back in time to the origins of the Act: As early as 1819, Congressmen complained on the record about Executive Agencies disregarding the constitutional appropriation process. Funds were obligated without or in advance of appropriations.

Funds were co-mingled and used for purposes other than those for which they were appropriated.

The Executive Agencies would spend all their funds early in the year and then seek a deficiency appropriation to continue operations. These practices led directly to what we commonly refer to as the Antideficiency Act.

There is an excellent basic definition of the Act--actually, three acts: It is not one, but three separate statutes that are addressed in the article.

The basic principle of the Acts is that we must

pay as we go. Normally Governmental officials may not obligate, commit, or expend funds to make payments unless sufficient funds are available through the normal appropriation process to cover the cost.

The key provision of the Antideficiency Act is 31 USC 1341 (a)(1).

An officer or employee of the United States Government ...may not –

a. Make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

b. Involve the government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

Voluntary Services

CECOM's **Lea Duerinck**, DSN 992-3188, has written an outstanding article on voluntart services, and its relationship to the Anti-Deficiency Act (Encl 5).

The Anti-Deficiency Act ("ADA") greatly limits the Government's ability to accept voluntary services. Specifically, the ADA provides:

"An officer or employee of the United States Government or the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. See also, Army Regulation 37-1, para. 7-6, which incorporates the statutory prohibitions. 31 U.S.C. § 1342 (1999)".

Generally, voluntary services may only be accepted in emergencies. The ADA provides that "emergencies" do "not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or protection of property." 31 U.S.C. §

1342 (1999). Accordingly, the Comptroller General has held that such an emergency must represent an immediate danger. See Decision by Comptroller General McCarl, A-34142, 10 Comp. Gen. 248 (1930) (Agreement to voluntarily tow Navy airplane after being forced down was not an emergency because it did not involve sudden emergency involving loss of human life or destruction of Government property).

However, Voluntary Services also may be accepted if authorized by law. See In Re: Student Volunteers -Traveling and Living Expenses, B-201528, 60 Comp. Gen. 456 (1981); In Re: Senior Community Service Employment Program, B-222248, 1987 U.S. Comp. Gen LEXIS 1458 (1987) (holding that "in the absence of specific statutory authority, Federal agencies are generally prohibited from accepting voluntary services offered by individuals").

The paper addresses many circumstances under which voluntary services are authorized under law, with many case citations.

New Accessibility Requirements for Information Technology Purchases

Lisa Simon, HQ AMC, DSN 767-2552, recently addressed the Chief COUnsel VTC on the topic of the new accessibility requirements for information technology purchases.

There were several inquiries after the presentation, so we include a previously published point paper oin the issue (Encl 6).

The law that is applicable is the amended section 508 of the Rehabilitation Act , 29 USC Sec 794d.

Under the statute all federal electronic and information technology developed or procured must be comparably accessible todisabled employees and disabled members of the public as to their able-bodied counterparts.

The definition of "federal electronic and information technology" is quite broad, including not just hardware and software, but websites and information kiosks.

Employment Law Focus

The FLRA's Collaboration and Alternative Dispute Resolution Program

Federal sector labor-management relations has changed significantly in recent years. Greater emphasis is now placed on the use of alternative dispute resolution (ADR) and consensus decision-making in resolving workplace disputes and in improving labor-management relationships in the Federal sector.

The FLRA's Collaboration and Alternative Dispute Resolution (CADR) program enhances these efforts by integrating ADR into all of the case processes used by the various FLRA components.

Frequently Asked Questions

What types of services does the CADR program provide?

The services focus on alternatives to traditional case processing and formal dispute resolution.

The CADR program assists the parties both in preventing disputes before they become cases and in coming up with ways to informally

resolve disputes in pending cases. This includes interest-based conflict resolution and intervention services in pending unfair labor practice cases, representation cases, negotiability appeals, and impasse bargaining disputes.

The CADR program also provides facilitation, training and education to help labor and management develop collaborative relationships.

The ultimate goal is to provide parties with the skills they need to do ADR on their own.

Is the CADR program voluntary?

Yes.

Where does the CADR program fit in the normal case processing?

The FLRA's Regulations for negotiability, unfair labor practice, and representation cases ensure that parties have the opportunity to use ADR to resolve their cases. For example, in negotiability cases, during the post-petition conference, if the parties express interest in using ADR services, the case will be put on hold to give the parties time to get help from the

CADR Office. In unfair labor practice cases, an ADR process is available that allows the parties to resolve the underlying dispute by facilitating a problem-solving approach, rather than having the Regional Office investigate the facts and determine the merits of the charge. For cases on their way to hearing, the Administrative Law Judge (ALJ) settlement program is available for one more attempt at informal resolution.

ADR services are also available in some circumstances for parties who do not have a case filed, but would like assistance with disputes or relationship issues.

Who provides CADR program services?

All of the FLRA components provide CADR program services.

The Office of the General Counsel (OGC) offers ADR services in unfair labor practice and representation cases, both before cases are filed and while they are pending.

For further information see Enclosure 7.

Employment Law Focus

DOD Authorized to Waive EEOC Rules in Order to Test ADR

House and Senate lawmakers have approved legislation authorizing the Defense Department to waive Equal Opportunity Employment Commission regulations in order to test the use of alternative dispute resolution mechanisms to expedite settlement of job complaints.

The bill provides for the pilot project to commence on Jan. 1, 2001, and says the Defense Department should establish procedures "to reduce processing time and eliminate redundancy with respect to processes for the resolution of equal employment opportunity complaints, reinforce local management and chain-of-command accountability, and provide the parties involved with early opportunity for resolution."

Participation in the pilot program would be voluntary on the part of the complainant, and complainants who participate in the pilot program shall retain the right to appeal a final agency decision to the EEOC to file suit in district court.

However, the "Equal Employment Opportunity Commission shall not reverse a final agency decision on the grounds that the agency did not comply with the regulatory requirements promulgated by the Commission," the conference report says.

The bill also provides that the program may be run outside of EEOC requirements and regulations. According to the conference report, "Complaints processed under the pilot program shall be subject to the procedural requirements established for the pilot program and shall not be subject to the procedural requirements of part 1614 of title 29 of the Code of Federal Regulations or other regulations, directives, or regulatory restrictions prescribed by the Equal Employment Opportunity Commission."

The legislation also would require the department's comptroller general to report to Congress on the implementation of the pilot program.

The complete report is provided (Encl 8)

Revised FLRA Guide to the Federal Labor-Management Relations

The Federal Labor Relations Authority is publishing a new edition of its publication, Guide to the Federal Service Labor-Management Relations Program. The Guide, which is a major revision of the previous edition, is designed to assist readers, in a non-technical way, in understanding the rights and obligations of Federal agencies, employees, and labor organizations under the Federal Service Labor-Management Relations Statute.

This guide should be helpful to civilian personnel generalists as well as supervisors new to the labor relations program.

This publication may be obtained on a pro-rated cost basis with the Authority by "riding" the FLRA Requisition Number :

Document No. 1213
Requisition No. 0-00048
Jacket No. 471-103

Employment Law Focus

Policy Guidance On Executive Order 13164: Procedures To Facilitate Reasonable Accommodation

On July 26, 2000, President Clinton signed Executive Order 13164 (Order),⁽¹⁾ which requires each federal agency to establish effective written procedures for processing requests for reasonable accommodation.

The Order helps to implement the requirement of the Rehabilitation Act of 1973⁽²⁾ that agencies provide reasonable accommodation to qualified employees and applicants with disabilities. It is an important part of the government's national policy to create additional employment opportunities for people with disabilities.

Where workplace barriers exist, such as physical obstacles or rules about how a job is to be performed, reasonable accommodation serves two fundamental purposes. First, reasonable accommodations remove barriers that prevent people with disabilities from applying for, or performing, jobs for which they are qualified. Second, reasonable accommodations enable agencies to expand the pool of qualified workers, thus allowing the agencies to benefit from the talents of people who might otherwise be arbitrarily barred from employment.

On October 20, the EEOC issued an explanatory policy guidance letter that explains the requirements of the Executive Order. This Guidance first sets forth some background information on the obligation to provide reasonable accommodation and the standards of the Rehabilitation Act. It then addresses each of the requirements of the Order. This Guidance is to be read in conjunction with relevant EEOC regulations, see 29 C.F.R. part 1630, and the EEOC's "[Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#)," available on the web at www.eeoc.gov.www.eeoc.gov

See Enclosure 9.

Being Sued-- Some useful basics for your clients

Pamela McArthur, of the CECOM SJA Division, DSN 992-4760, has written an interesting paper that we provide to you outlining some real basic concerns real people have when they are sued (Encl 10).

There are sections entitled How A Lawsuit Begins, Deciding Whether to Hire a Lawyer and How Lawyer's Charge, and the Stages of A Lawsuit.

The paper is written in a very to easy style that should be useful to all legal offices in communication with clients.

Holidays

eBay auctions of military items--

AMC Ethics Counsel **Mike Wentink**, DSN 767-8003 has prepared an outstanding paper addressing various issues arising during the holiday season (Encl 11),

Among the several issues addressed:

Fundraising

Another issue is fundraising. Let's look at a fictional organization called the Technical Directorate (TD). The TD employees want to have this wonderful celebration of their working relationship and teamwork during this holiday season at an upscale restaurant. The cost will be \$50 a piece! A lot of money, but the employees decide that they will try to raise money to pare down the cost. Can they?

The general rule is no fundraising. But, there are exceptions and, in this type of situation, the TD employees may do so. But, there are limits. A couple of common mistakes are as follows:

It is wrong to solicit outside sources (local restau-

rants, car dealerships, department stores, professional associations, contractors, and other businesses) for donations, to include door prizes, for the function. Even in a situation where the "gift" might fit one of the gift exceptions, that exception cannot be used if the gift was solicited in the first place.

Gifts

May we exchange gifts among ourselves during the holiday season? Yes! But again, there are limits.

The highest value of any gift that we can give to a superior in this type of situation is \$10. And, we may not solicit contributions from other employees.

We may not accept a gift from anyone who makes less money than we do as a Federal employee, unless there is no superior-subordinate relationship, and there is a personal relationship that would justify the gift. Again, the exception would be for a gift where the value does not exceed \$10, with no soliciting of contributions from other employees.

"Picture a Government Attorney sitting at her desk, surfing eBay.com during work hours and later describing the great bargain she found there to her Supervisor! My Supervisor demanded that I attend ethics training immediately before I interjected to explain the situation.

A few weeks ago, I surfed the web regularly because an anonymous seller was auctioning a military item, the Interceptor Body Armor (IBA), to the highest bidder on eBay, an online auction operator. The manufacturer of the item informed this office about the auction in progress which continued for another few days.

Time was of the essence. E-mails deluged the Legal Office's computer systems, including one from our Commanding General, inquiring about what actions this Office would employ to rectify this situation. "

So begins the interesting saga of Natick counsel **Srikanti Dixit**, DSN 256-5971.

For the details see Enclosure 12.

Environmental Law Focus

Connect to: JAGCNET Environmental Forum

The Army OTJAG Environmental Law Division is making a major effort to revitalize the JAGCNET Environmental Law Forum and distribute environmental information on the Forum.

EVERY AMC attorney who practices or has an interest in Environmental Law should be registered to access this forum.

Use the link to request access: <http://www.jagcnet.army.mil/Forums>

Environmental Law Division People & Practice

The Environmental Law Division has a number of new attorneys.

Enclosed is a list of their attorneys and areas of responsibility (Encl 16).

EPA Is There To Help Us Comply

The U.S. Environmental Protection Agency (EPA) recently initiated the Federal Facilities Compliance Assistance Center, or FedSite, and Internet-based resource aimed at helping federal agencies comply with environmental laws and regulations. FedSite is a centralized site linking individuals to information regarding compliance with environmental regulation. The new center can be reached on the Web at: www.epa.gov/oeca/hdtomick@aec.apgea.army.mil/fedfac/cfa.

AEC Compliance Newsletter

The Army Environmental Center publishes a very good monthly AEC Compliance Newsletter. The October letter is included. Encl 15. Anyone who would like to be added to the mailing list should contact AEC POC at hdtomick@aec.apgea.army.mil.

Send your name, installation name, mailing address, position, e-mail address, phone and fax number.

Are You Listed as a DA ELS?

The Environmental Law Division has compiled an army-wide roster of Environmental Law Specialists (ELS). The roster is organized by MACOM and it includes the name, rank or civilian pay grade, location, phone number and e-mail address for each Army ELS.

The POC for this roster is MAJ Elizabeth Arnold, Elizabeth.Arnold@hqda.army.mil, DSN 426-1593 or COML (703) 696-1593. AMC attorneys should check the roster and contact the POC for changes or corrections.

ELD Bulletins- -Oct & Nov

Environmental Law Division Bulletins for October (Encl 13) and November 2000 (Encl 14) are provided. The November issue has significant articles about a new Executive Order on Tribal Consultation and NEPA Cumulative Impacts Analysis, among other articles.

These Bulletins are now available electronically on the JAGCNet Environmental Forum, and will no longer be provided in the Newsletter.

Faces In The Firm

HELLO & GOODBYE

Arrivals

CECOM

Raymond Ross has recently joined the Intellectual Property Law Division. Ray is both an attorney and an engineer, although he has not yet taken the Patent Bar Examination. He is familiar with the operations and personnel here at CECOM since he was formerly employed by that portion of the Army Research Laboratory previously resident here. Ray returns to the Fort Monmouth community after several years in private practice and is already a productive member of the staff.

Farewell

OSC

Bridget Stengel left federal service in September 2000. Bridget was an attorney in the acquisition law area for 15 years. She and her family decided she would devote her time to them – giving up her glamorous federal job for her glamorous domestic job! She'll be missed here in the office.

Retirement

TACOM-Warren

Peter A Taucher retires January 2001. In his 35 years of federal service Mr. Taucher has been involved with all aspects of Intellectual Property law. He is best known for his work in obtaining license right to foreign patents and data for various items used on Army vehicles. This has included the 120 mm cannon for the M-1 tank, armor work with the United Kingdom, and the chain gun used on the Bradley.

In recognition of his work he has been nominated for several AMC awards with the highlight being when he was named attorney of the year for AMC in 1990. His counsel and experience will be sorely missed.

OSC

FINALLY! **Mike Patramanis** and his wife, Vicki, are grandparents!!!! Their son, George, and his wife, Alexa, celebrated the birth of their first child, Madeline Rose. Congratulations to Grandpa and the entire family.

Awards

CECOM

Walter (Jay) Harbort and **Theodore Chupein** received the Department of the Army Achievement Medal for Civilian Service for guidance and technical expertise provided on the acquisition of AN/PSC-5 Spitfire satellite radios.

Thomas Carroll, Lea Duerinck, CPT Robert Paschall and **Vincent Buonocore** were honored as members of the CECOM "Quality Team of the Quarter" for the 4th Quarter of Fiscal Year 2000 for their work in support of the Wholesale Logistics Modernization Transition Team. The team was also selected as the "Quality Team of the Year" for FY 2000.

HQAMC

MAJ Sandra Fortson received the Meritorious Service Medal for her exceptional service as a member of the Contract Appeals Division

Births

CECOM

Maureen Osborn, of the Competition Management Division, and her husband, Dave, proudly announce the birth of their son, Patrick, born 13 October 2000, weighing in at 5 pounds 14 ounces.