

Prearranging Funerals and Excluding Relatives

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5.5—Other Military Service and Family Obligations

The title of this article might sound unusual but, as you will see, many family situations are not the ideal often portrayed on television. Most people would agree that the deceased's wishes are what should be paramount at the time of death.

The recent tragedy involving the Schiavo and Schindler families made me think about the situation many families face when a servicemember dies on active duty. Who gets the deceased's body and who controls funeral arrangements can be a real nightmare in those situations where family members have not gotten along for many years. Also, as you will learn, the military does not recognize deceased's wishes in nontraditional family relationships, such as a live-in partner or close friend, when it comes to such matters.

In the past year, I worked briefly for a contractor in the Army's Casualty and Memorial Affairs Operations Center-Casualty Operations Division (CMAOC-COD). One of my functions was to survey casualty assistance officers (CAOs) to learn of their experiences and to get their recommendations.

On more than one occasion, a CAO has been caught in the middle of feuding family members as to who would receive the deceased soldier's remains and how they were to be disposed. This past March in Santa Cruz County, Calif., there was a court battle between a single soldier's divorced parents as to who would get the remains. Under the Army's policy, later affirmed by a state court judge, the remains were given to the elder parent. This soldier, however, could have

¹I invite the reader's attention to www.roa.org/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 very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

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*Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government.

avoided this dispute if he had specified on his DD Form 93, Record of Emergency Data, which parent should have control.

In the case that I will discuss, the servicemember could not have prevented what transpired, as DD Form 93 and DoD policies do not recognize nontraditional relationships. In this case, the soldier was divorced, had minor children, and a live-in partner to whom she was not married. The soldier was in a hospice when she died and had known she was dying for nearly a year. She made prepaid funeral arrangements, which specified in writing how she wanted to be buried and whom she wanted at her funeral. The attendee list included her mother but not her father. She also had a living will and a will. In her will, she specified that she wanted her partner to handle her remains and funeral. On her DD Form 93, she specified that these matters were to be controlled by the terms of these other documents.

Current Army or DoD regulations, policies, and federal laws do not allow a soldier to either assign a nonblood relative authority to handle the disposal of remains (DOR) or for the soldier to preplan funeral arrangements.

This particular soldier had cut off all contact with her father, but the Army put him in control of the funeral because she had not designated any other blood relative on her DD Form 93. Remember, he was not even on her list of funeral invitees. The natural father initially was planning to arrange what he wanted to do for the funeral but eventually relented and a potentially embarrassing issue was avoided. He told the CAO that he was amazed at the power the Army had granted him although he had not spoken to his daughter or grandchildren in more than 10 years.

The CAO recommended, and I concur, that servicemembers be allowed to prearrange their funeral and that the Army honor these plans as much as possible. In this case, the father even got the funeral reimbursement from the Army, even though the deceased had already prepaid. Apparently, the father did turn the check over to the funeral home but did not have to and could have just pocketed the money. If the law/regulations recognized prepaid/preplanned funeral arrangements, the check could have gone right to the funeral home and the funeral home could then reimburse the deceased's estate or other designee.

The military's forms should allow servicemembers, regardless of reason, to bar a family member from being notified of their illness, injury, or death. Currently, the military will only do this if the servicemember's family member is ill and giving them the news would not be medically prudent. There have been a number of cases at Walter Reed Army Hospital where feuding family members have shown up at the hospital after they were notified and created stressful situations for the patient and staff. In addition, military personnel should have the right to specifically deny a relative access to the deceased's personal property and deny control of DOR.

Under our current laws, military personnel can only list a blood relative or spouse for the DOR. They cannot otherwise override a spouse, adult child, or parent by listing a non-relative, e.g., a

friend or lover, or set up before they die prearranged funeral plans that the military will recognize. Prearranged funerals are nowadays very common and often are apart from any will or other legal document. Most retirement homes require such prepaid arrangements as a condition for admission.

Also, the current DD Form 93 does not provide any mechanism for a soldier to specifically request a relative not be notified of his or her death or illness unless the family member is in bad health. In this case, the deceased had listed the father's name but had listed his location as unknown. The Army, of course, found him.

I am not sure what the family history was in this case, but there are many family situations where one family member abused or killed another member and consequently some or all of the family members are estranged from each other. In this case, the CAO noted that, although the deceased's father was thrilled about what happened, the deceased's children, all minors, were very unhappy with having their

grandfather at their mother's funeral. Their mother had gone to great lengths to keep them from knowing their grandfather, and the minor children blamed the Army for creating this situation. This situation could have ended up generating bad press for the Army in the news media.

I encourage readers who think the current rules in this area are unfair and need changing to contact their congressional representatives.