Military, Power of Attorney Act

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Subject:
Military, Power of Attorney Act

Colonel Paul E. Kantwill, U.S. Army
Office of the Under Secretary of Defense
Office of Legal Policy
4000 Defense Pentagon
Washington, D.C. 20301-4000

RE: POWERS OF ATTORNEY – MILITARY – effect of changes to Florida's Power of Attorney Act on validity of military springing powers of attorney. s. 709.2108, Fla. Stat.; 10 U.S.C. s. 1044b.

Dear Col. Kantwill:

The Office of Legal Policy, Under Secretary of Defense, Personnel and Readiness, has asked for this office's opinion on substantially the following question:

Does the second sentence of section 709.2108(3), Florida Statutes, limit the first sentence or will all "springing" powers of attorney prepared pursuant to 10 U.S.C. section 1044b[1] continue to be accepted in Florida?

In sum:

The second sentence of section 709.2108(4), Florida Statutes, does not limit the first sentence of that statute and all "springing" powers of attorney prepared pursuant to 10 U.S.C. section 1044b will continue to be accepted in Florida.

Florida's Power of Attorney Act, Part II, Chapter 709, Florida Statutes, was substantially amended during the 2011 Legislative Session.[2] As described in the final bill analysis for Chapter 2011-210, Laws of Florida,

"A power of attorney is a legal document in which a principal authorizes a person or entity (the agent or attorney-in-fact) to act on his or her behalf. There are three basic types of power of attorney: general power of attorney, which ceases when the principal becomes incapacitated; durable power of attorney, which continues once the person becomes incapacitated; and springing or contingent power of attorney, which power of attorney becomes effective upon the occurrence of a specified event."[3]

The bill was a comprehensive revision of the statutes that regulate powers of attorney in the State of Florida.[4]

Among the provisions of Part II, Chapter 709, Florida Statutes, as rewritten, is section 709.2108, Florida Statutes, providing that all powers of attorney become effective upon execution, with the exception of powers of attorney based on military deployment. Subsection (3) of this statute provides that a power of attorney that is to become effective at a future date or upon the occurrence of a future event or contingency is ineffective with limited exceptions. The exceptions to this provision include those expressed in section 709.2106(4), Florida Statutes, which states that:

"A military power of attorney[5] is valid if it is executed in accordance with 10 U.S.C. s. 1044b, as amended.[6] A deployment-contingent power of attorney may be signed in advance, is effective upon the deployment of the principal, and shall be afforded full force and effect by the courts of this state."

The first sentence of this statute is a legislative acknowledgment of the broad language of the federal provisions relating to military powers of attorney and the second sentence reiterates that deployment-contingent powers of attorney continue to be valid in Florida.

The language contained in the second sentence of section 709.2106(4), Florida Statutes, to the effect that a deployment-contingent power of attorney shall be afforded full force and effect in Florida courts was previously contained in section 709.11, Florida Statutes (2010), as an independent, stand-alone statute. The amendment of Part II, Chapter 709, by CS/SB 670, Florida 2011 Legislative Session, appears to have taken the language previously existing in section 709.11, Florida Statutes (2010), and added the language existing in the Uniform Power of Attorney Act which provides that a power of attorney executed other than in Florida is valid in this state if the execution of the power of attorney complied with the requirements for a military power of attorney pursuant to 10 U.S.C. section 1044b.[7] Nothing contained in the legislative history of CS/SB 670, Florida 2011 Legislative Session, suggests that the Legislature intended that the second sentence of section 709.2106(4), Florida Statutes, would in any way limit application or construction of the first sentence.[8]

Based upon a review of the legislative history for Chapter 2011-210, Laws of Florida, it appears that the inclusion of the second sentence of this statute merely represents a consolidation of references to military powers of attorney into one statutory subsection and not a limitation on the provision expressed in the first sentence. Not all military powers of attorney may be deployment-contingent and the Florida Legislature intended to affirm the continued validity in this state's courts of deployment-contingent powers of attorney as well as other military powers of attorney executed in accordance with 10 U.S.C. section 1044b.

In sum, it is my opinion that the second sentence of section 709.2108(3), Florida Statutes, does not limit the first sentence of that statute and all "springing" powers of attorney prepared pursuant to 10 U.S.C. section 1044b will continue to be accepted in Florida.

Sincerely,

Pam Bondi
Attorney General

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[1] 10 U.S.C. s. 1044b provides that military powers of attorney are exempt from any requirements of form, substance, formality, or recording that is provided for powers of attorney under the laws of any State and must be given the same legal effect as a power of attorney prepared and executed as required by the laws of that State.

[2] *See* Ch. 2011-210, Laws of Fla.

[3] *See* Final Bill Analysis, CS/SB 670, Florida 2011 Legislative Session, May 4, 2011.

[4] *Id.*

[5] A "military power of attorney" is defined in 10 U.S.C.A. s. 1044b as "any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law."

[6] *See* n.1 *supra*.

[7] *See* s. 106(c)(2), Uniform Power of Attorney Act, drafted by the National Conference of Commissioners on Uniform State Laws (2006).

[8] *See* Final Bill Analysis, CS/SB 670, Florida 2011 Legislative Session, and Bill Analysis and Fiscal Impact Statement on CS/SB 670, dated April 1, 2011, The Florida Senate 2011 Session; audio podcasts of committee hearings of Florida Senate considering CS/SB 670: Judiciary Committee hearing of 03/14/11; Banking and Insurance Committee hearing of 03/29/11, and Rules Committee hearing of 04/05/11.