



# **USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)**



**June 2020**

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**SECTION I: MILITARY JUSTICE AND SEXUAL ASSAULT PREVENTION AND RESPONSE**

## **NCIS REPORTING AND MILITARY JUSTICE INVESTIGATIONS**

### **REFERENCES:**

- (a) Rule for Court-Martial (RCM) 303
- (b) JAGMAN, Chapter II
- (c) SECNAVINST 5430.107A
- (d) SECNAVINST 1752.4C
- (e) DoDI 6495.02

**COMMAND INQUIRY:** Suspected offenses may come to command attention in a variety of ways (e.g., shore patrol, civil law enforcement, or phone call, etc.). Per reference (a), the commanding officer (CO) must conduct some form of inquiry into reported offenses that may be tried by court-martial. This inquiry may be conducted by or in conjunction with law enforcement. The degree of inquiry will depend on the nature, validity, and seriousness of the complaint. See reference (b).

**MANDATORY REFERRAL TO NCIS:** Reference (c) mandates that certain incidents be referred to NCIS, whether occurring on- or off-base, and regardless of civilian investigation involvement. These incidents include:

- Actual, suspected, or alleged major criminal offenses punishable under the Uniform Code of Military Justice (UCMJ) by more than 1 year of confinement;
- Non-combat deaths when the cause of death is not medically attributable to disease or natural causes;
- Fires or explosions of unknown origin affecting Department of the Navy (DON) property or property under DON control;
- Theft or loss of ordnance or controlled substances;
- Disappearance of a command member when foul play cannot be excluded;
- All instances of suspected fraud against the government within DON (e.g., theft of government property, bribery, false claims for pay, etc.);
- Actual, suspected, or attempted defection of DON personnel;
- Internal security incidents, such as loss, compromise, or suspected compromise of classified information;
- National security cases; and
- Suspected sex-related offenses as defined under Articles 120, 120a, 120b, and 120c and attempts of such offenses (Article 80) [references (d) and (e)].

**WHEN NCIS DECLINES TO INVESTIGATE:** NCIS may, at its discretion, decline to conduct or continue any investigation but shall expeditiously inform the affected command. A command may then request assistance from the local base security department or appropriate authority, or pursue a command investigation pursuant to references (a) and (b).

## **CRIME REPORTING REQUIREMENTS**

### **REFERENCES:**

- (a) DoDI 5505.11
- (b) 18 U.S.C. § 922(g)
- (c) NAVADMIN 076/18
- (d) NAVADMIN 131/18
- (e) DoDI 6400.06

**NOTIFICATION REQUIREMENT:** The Navy has two separate crime reporting requirements, one for compliance with investigations per reference (a) and one for compliance with Gun Control Act of 1968 per reference (b).

**COMPLIANCE WITH INVESTIGATIONS:** References (a) and (c) require criminal information/fingerprint reporting when a DoD law enforcement agency (NCIS, CNIC Police, etc.) investigates and makes a probable cause determination that:

- A uniformed service member has committed an offense punishable under the U.C.M.J. by imprisonment;
- A civilian under DoD law enforcement jurisdiction has committed an offense punishable under the U.S.C. by imprisonment; or
- Service members, dependents, DoD contractors, or DoD employees are investigated by a foreign law enforcement agency for offenses punishable by confinement under either the U.C.M.J. (service members) or the U.S.C. (dependents, DoD contractors, or DoD employees). Note that this determination is made after consultation with a Judge Advocate.

Criminal information/fingerprint reporting is also required when a command conducts an investigation that results in the preferral of court martial charges. It is not required when a command investigation results solely in administrative action or non-judicial punishment.

DoD law enforcement are responsible for collecting and submitting this information and will do so when they arrest or interview a suspect. If a command initiates an investigation without DoD law enforcement involvement, but that investigation either results in the preferral of court martial charges or involvement of DoD law enforcement, then commands are responsible for escorting the suspect to the responsible DoD law enforcement agency for submission of the required information. Note that any command report or discovery of actual or suspected domestic abuse or violence must be referred to DoD law enforcement for investigation.

When a command takes final action on a case (non-judicial punishment, court martial, administrative action, etc.) that was investigated by DoD law enforcement, the command will notify the responsible DoD law enforcement agency of the final disposition of the case within five days so that agency may make the appropriate disposition entries using an R-84.

**Compliance with reference (b), Gun Control Act of 1968:** Reference (b) prohibits the possession of firearms for individuals with certain disqualifying circumstances, such as being an unlawful substance abuser, under indictment for a crime punishable by one year or more of confinement, being a fugitive from justice, being convicted of a crime of domestic violence, being found to be mentally defective, being dismissed or dishonorably discharged from the military, having renounced their citizenship, being an illegal alien, or being subject to a restraining order.



Different Navy components are responsible for reporting information for different parts of reference (b) to NCIS for forwarding to the FBI:

- OPNAV N17 is responsible for reporting information regarding unlawful substance abuse to include command determinations of unlawful substance abuse, nonjudicial punishment results for unlawful substance abuse, and administrative separation board findings of misconduct for bases involving unlawful substance abuse.
- Commander Naval Legal Service Command is responsible for reporting referral/conviction of court martial charges for crimes punishable by more than one year confinement, findings of mental incompetency to stand trial, and convictions of domestic abuse charges.
- The Office of the Judge Advocate General is responsible for reporting the changes in status for cases through the appellate process.
- Navy Personnel Command is responsible for reporting when a servicemember has been separated under dishonorable conditions or dismissed.
- Commanding officers are responsible for reporting, after consultation with a judge advocate, when a member of their unit is a fugitive from justice.

As a commanding officer, your responsibilities for reporting crimes that affect firearm possession eligibility are primarily to ensure that the entities listed above are properly notified and kept apprised of information as cases progress. For example if you receive a positive urinalysis result for a member indicating unlawful substance abuse and you subsequently punish them at nonjudicial punishment, you should ensure that your urinalysis program coordinator and legal officer correctly report that information to OPNAV N17.

NCIS is ultimately responsible for submitting this information to the FBI. When required, you should provide NCIS with the following demographic data for reporting: Service member (1) Full name, (2) Sex, (3) Race, (4) Height, (5) Weight, (6) Eye color, (7) Hair color, (8) Place of birth, (9) Date of Birth, (10) Social security number; and (11) Incident number, (12) Submitter contact information, (13) Reason for service member entry into NICS. NCIS will then fill out a spreadsheet and submit it by email to NCIS at [nicssubmission@ncis.navy.mil](mailto:nicssubmission@ncis.navy.mil). Per reference (e), the Department of Defense does not construe the restrictions of reference (b) to apply to major military weapons systems or “crew served” military weapons and ammunition (e.g. tanks, missiles, aircraft).

## **PROCESSING SEXUAL ASSAULT ALLEGATIONS**

### **REFERENCES:**

- (a) DoDI 6495.02
- (b) DoDD 6495.01
- (c) SECNAVINST 1752.4C
- (d) OPNAVINST 1752.1C
- (e) MCO 1752.5C
- (f) MCO 3504.2A
- (g) OPNAVINST 1752.1C
- (h) Commander's 30-Day Checklist ([www.sapr.mil](http://www.sapr.mil))
- (i) MCO 5800.16 (LSAM)
- (j) SECDEF Memo of 14 Aug 13
- (k) 10 U.S.C. § 1565b
- (l) MARADMIN 583/13
- (m) NAVADMIN 014/15
- (n) MARADMIN 545/16
- (o) Manual for Courts-Martial 2019, Appendix 2.1

### **GENERAL INFORMATION:**

- The Department of Defense defines “sexual assault” as intentional sexual contact, characterized by use of force, physical threat, abuse of authority, or when such sexual contact is made when the victim does not or cannot consent. It includes rape, non-consensual sodomy, and indecent assault, regardless of gender or spousal relationship [see reference (a)]. References (a) through (c) detail specific policies, provide guidance, and identify command responsibilities for handling sexual assault allegations.
- Sex-related crimes are found in Articles 120-120c of the UCMJ. The definition of “sexual assault” used for the Sexual Assault Prevention and Response (SAPR) program is not identical to the legal definition of sexual offenses punishable as crimes under the UCMJ.

**COMMANDER'S RESPONSIBILITIES:** Commanders must possess a thorough knowledge of references (a) and (d) to fully understand the scope of their responsibilities, and the responsibilities of personnel under their command, in handling sexual assault allegations.

- Leadership is the key to sexual assault prevention and response.
- The commander's role in prevention is to establish a climate that confronts the beliefs and values that contribute to behaviors that facilitate sexual assault, to establish clear standards for personal behavior, and to hold offenders accountable.
- As leaders, commanders must be keenly aware of and sensitive to the climate of their units.
- Commanders must continuously educate their personnel on how to prevent incidents of sexual assault, while also encouraging victims and witnesses to report these incidents when they occur.
- Commanders must be sensitive to the physical, mental, and emotional state of victims and alleged offenders.
- Commanders should follow the guidance in the Sexual Assault Initial Disposition Authority section below, which outlines additional command responsibilities.

**REPORTING REQUIREMENTS FOR SEXUAL ASSAULT INCIDENTS:** Commanders shall immediately report **all** suspected or alleged sexual assaults to NCIS. To avoid compromising the NCIS investigation Commanders **must not** conduct independent command investigations into allegations of sexual assault.

In addition to OPREP/SITREP requirements, commands must report to Echelon II commanders within 24 hours of receiving a report of sexual assault, in accordance with reference (d). The following incidents must be reported:

- Sexual assaults, to include rape, forcible sodomy, assault with intent to commit rape or sodomy;
- Sexual assaults occurring in areas of Navy control, regardless of the victim's or perpetrator's military status, military affiliation, or nationality;
- Incidents involving sexual assault victims who are dependents, and alleged perpetrators who are active-duty Service members assigned to a naval command, regardless of the location of the incident; and
- In addition to the above-listed reports, incidents involving sexual assault victims who are under the age of 18 or married to the perpetrator should also be reported to the Family Advocacy Program [See *Section XIV: Domestic Violence/Family Advocacy*].

Upon disposition of a sexual assault allegation, the commander of the accused must submit the Sexual Assault Disposition Report (SADR) within two (2) business days. If the accused is unknown or a civilian, the victim's commander is responsible for submitting the SADR. The USMC requires the use of the following form, available on the Judge Advocate Division Forms link on the SJA to the CMC website:

[https://hqmc.usmc.afpims.mil/Portals/135/JAM/\\_NAVMC\\_1752\\_14998.pdf](https://hqmc.usmc.afpims.mil/Portals/135/JAM/_NAVMC_1752_14998.pdf)

**ADDITIONAL REQUIREMENT FOR REPORTING SEXUAL ASSAULT INCIDENTS:**

- **USN:** Within eight (8) days of the initial SITREP for an alleged sexual assault, the commander of the alleged victim must complete and submit a Sexual Assault Initial Response Oversight (SAIRO) report. If the alleged victim is a civilian, the commander of the accused is responsible for the SAIRO report. Per reference (g), within 30 days of a report of a sexual offense, the commander must make contact with the first flag in the chain of command in person, via video teleconference, or via telephone to give the flag officer a command assessment.
- **USMC:** A Sexual Assault Prevention and Response 8-day brief must be submitted electronically to the victim's CO for unrestricted reports. Note: This brief need only be submitted if the victim is an active-duty adult. Reference (e) details a commander's responsibilities in further detail. Generally, commanders must ensure that sexual assault victims are treated fairly and with sensitivity, that information related to the victim is handled in a confidential manner, that the victim has access to necessary services, and that the victim receives monthly updates on the status of his/her case. Commanders should consult with their staff judge advocates and victim advocates for further guidance.

**CARE FOR SEXUAL ASSAULT VICTIMS:** In cases of sexual assault, the specialized concerns and issues (physical, mental, and emotional) surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of victims. Avoiding actions or treatment that could result in re-victimization is crucial to the well-being of the individual concerned. Additionally, references (c) and (e) expressly prohibit releasing the name of any sexual assault victim to the media without the victim's consent.

**VICTIM ADVOCATES:** Victim advocates possess specialized training in assisting victims of sexual assault. Communications between a victim and a victim advocate made for the purpose of facilitating advice or assistance to the victim are confidential and privileged. The victim advocate may

not disclose privileged client communications to the victim's command (or other stakeholders) without the client's permission. Commanders should be receptive to recommendations made by victim advocates on behalf of victims. Victim advocates may recommend that the CO issue a military protective order or that the victim reside in a "safe house" for a short period of time. In addition, a victim advocate may request a level of assistance for the victim that requires a commander's authorization.

**VICTIM'S LEGAL COUNSEL (VLC):** Per reference (j), on 14 August 2013, the Secretary of Defense directed that each service immediately implement a victim legal advocacy program to provide legal representation to victims of sexual assault. On 1 January 2014, the Navy and Marine Corps established VLC programs. The mission of the VLC program is to provide legal advice and representation to victims of certain crimes. A VLC is a judge advocate who will be detailed to advocate on the victim's behalf by providing legal counsel throughout the investigation and court-martial process. References (i) through (m) provide additional guidance on a victim's eligibility for VLC services. Contact a staff judge advocate in order to determine whether a victim must be offered VLC services. When working with VLC, commanders should be aware that:

- a) VLCs form attorney-client relationships with their clients. Therefore, communications between the VLC and the victim are privileged. The VLC may not disclose privileged client communications to the victim's command (or other stakeholders) without the client's permission;
- b) Once a victim has elected to work with a VLC, the VLC represents the client from the initiation of the investigation through conclusion of the military justice process, to include the following critical decision points: (1) the victim's decision whether or not to participate in the investigation, (2) the victim's exercise of rights throughout the investigative process (e.g., search and seizure issues), (3) the victim's input into case disposition, (4) preparation for trial, and (5) input as to sentence after a finding of guilt.
- c) In addition to representation in the military justice process, VLC represent their clients for the purposes of requesting expedited transfers, alleviating retaliation and ostracism concerns, addressing collateral misconduct, and liaising with civilian criminal and family courts. VLCs attend monthly Sexual Assault Case Management Group (SACMG) meetings, which serve as an opportunity for commanders and VLCs to identify and correct any issues that have arisen with the victim in connection with the report of sexual assault.

#### **ADDITIONAL CONSIDERATIONS:**

- The Secretary of the Navy will provide guidance to commanders regarding their ability to take appropriate action to remove or temporarily reassign a Service member from a position of authority or from a particular assignment if the Service member is accused of committing a sex-related offense. This may not be used as a form of punishment, but is intended to promote good order and discipline within the unit and protect the victim if the victim is in the same unit as the accused. Reference (c) directs commanders to consider a temporary or permanent reassignment of the alleged offender instead of the victim pursuant to a determination that reasonable grounds exist to believe that an offense constituting sexual assault has occurred based on the advice of the supporting judge advocate and available evidence.
- A defense counsel must request from the VLC, via the trial counsel, to interview the alleged victim of a sex-related offense. The victim has the right to refuse to be interviewed, or may request that the trial counsel or VLC be present for the interview.
- When processing and determining how to dispose of any case, including sexual assault allegations, convening authorities should consult reference (o), which provides additional guidance and factors to consider during all stages of a military justice case.

## **SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY (SA-IDA)**

### **REFERENCES:**

- (a) DoDI 6495.02
- (b) SECDEF Memo 20 Apr 12
- (c) SECNAVINST 1752.4C
- (d) OPNAVINST 1752.1C
- (e) MCO 1752.5B
- (f) RCM 306
- (g) NAVADMIN 102/19
- (h) MILPERSMAN 1300-1200
- (i) MILPERSMAN 1300-1205
- (j) Commander's 30-Day Checklist ([www.sapr.mil](http://www.sapr.mil))
- (k) DD Form 2701
- (l) MILPERSMAN 1910-704
- (m) DoDI 1332.14

**POLICY:** Per Secretary of Defense (SECDEF) policy, any reported offenses under Article 120 (rape, forcible sodomy, and sexual assault of an adult), or Article 80 (attempts of rape, sexual assaults, or forcible sodomy) of the UCMJ shall be referred to the O-6 Special Court-Martial Convening Authority (SPCMCA) or higher court-martial convening authority in the chain of command for initial disposition of the allegation(s). This person is referred to as the SA-IDA [see references (a) through (e)].

**USMC POLICY:** While the USN follows the SECDEF policy, the USMC policy is broader and requires all crimes under Article 120, to include sexual-contact crimes as well as all crimes under Article 120b (all sexual crimes against children), to be elevated to the higher convening authority [see reference (e)].

**SA-IDA RESPONSIBILITIES:** The SA-IDA directs or disposes of a case pursuant to reference (f). [For the USMC, see below and reference (e)]. Prior to making any disposition decision, the SA-IDA must consult with a staff judge advocate, trial counsel, or both. The following options are available to the SA-IDA:

- **Take no action:** The case will be dismissed, and the SA-IDA will work with the local Sexual Assault Response Coordinator to complete reporting requirements.
- **Court-martial:** If the SA-IDA believes that the case may warrant a court-martial, the SA-IDA may convene an Article 32 investigation. Following the Article 32 investigation, the SA-IDA may forward the matter to a General Court-Martial Convening Authority (GCMCA), who will determine whether to refer charges to a court-martial. A SA-IDA may convene a special court-martial for charges other than the following: rape or sexual assault of an adult, rape or sexual assault of a child, forcible sodomy, or attempts thereof.
- **Administrative action:** In the USMC, the SA-IDA must decide whether to initiate administrative separation proceedings, if appropriate. The SA-IDA in the USMC can also direct the accused's immediate superior to initiate administrative separation processing. If the accused's immediate superior is also a SPCMCA, the SA-IDA can direct the SPCMCA to convene the administrative separation board [see reference (e)]. In the USN, the SA-IDA will return the matter to the immediate CO of the accused to initiate administrative separation proceedings.
- **Forward for disposition:** In the USN, the SA-IDA may determine that the matter should be forwarded to a senior or subordinate authority for disposition, to include any disposition action available to that authority under reference (f). In the USMC, the SA-IDA cannot forward a case to a subordinate command for disposition [see reference (e)].

## **SUPPORT TO THE SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM:**

Commands must be prepared to prevent and respond to allegations of sexual assault, and to establish an atmosphere of zero tolerance for sexual assault and rape [see reference (a)].

**RESPONSIBILITIES OF THE CO:** No matter whether the CO is the SA-IDA, if the CO is the immediate commander of the accused or victim, the CO must be familiar with and follow the requirements of reference (j).

- Military Protective Orders (MPOs): Issuance of an MPO is the responsibility of accused's CO. COs are encouraged to consult with a staff judge advocate and must consult with NCIS prior to issuing an MPO. [See MILITARY PROTECTIVE ORDER].
- Victim/Witness Assistance Program (VWAP): Ensure that the victim has been advised of his/her VWAP rights under Department of Defense policy and as enumerated in reference (k).
- Investigations: Ensure that NCIS is immediately notified upon receipt of an unrestricted report of sexual assault. The command should **not** initiate a command investigation.
- Responsibility to the victim: Ensure the victim's safety, as well as access to SAPR, legal, and medical resources.
- Responsibility to the accused: Ensure the accused's safety; as well as that the accused's due process rights are not violated, and that the accused has access to appropriate legal and medical resources.
- Participate in the monthly Sexual Assault Case Management Group (SACMG) meeting chaired by the installation CO. This responsibility may not be delegated [see references (a), and (c) through (e)]. Within 72 hours of the last SACMG, provide victims monthly updates regarding the current status of any ongoing investigative, medical, legal, or expedited transfer request, or any other request made by the victim until the final disposition. This duty is non-delegable [see reference (a)].
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain a customized brief and CO's toolkit from the local SARC.
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain training from a judge advocate on the Military Rules of Evidence 514 privilege, retaliation, sexual-assault initial disposition authority, and case disposition reporting requirements.
- Review official military personnel files with the designated field code (i.e., 91) or NAVPERS 1070/887 Sex Offense Accountability Record within 30 days of permanent assignment of a Service member.

**EXPEDITED TRANSFER:** Per reference (g), expedited transfers for victims has expanded to include victims of crimes covered under Articles 117a, 120, 120a, 120c, and 130, who have filed a report with a law enforcement agency such as NCIS. If a victim who has made an unrestricted report of sexual assault requests an expedited transfer, the victim's CO has 72 hours to determine whether the mission can support the request. For the USN, factors to consider when making this decision can be found in reference (h).

- **USN:** Per reference (i), if the CO denies a request for expedited transfer, there will be an automatic review by the GCMCA in the chain of command.
- **USMC:** Per reference (e), if the CO denies a request for expedited transfer, the victim may appeal the decision to the first general or flag officer in the chain of command, or a Senior Executive Service (SES) equivalent, if applicable. There is no automatic review of the denial.

**SAFETY TRANSFER:** Per references (g) and (h), safety transfers may be requested when concerns for the safety and well-being of a Service member and/or their dependents dictate a transfer prior to their normal projected rotation date. Safety transfers can be requested, but are not limited to, situations involving (1) victims and witnesses of offenses under

SECNAVINST 5800.11B (VWAP Program), (2) family advocacy program cases covered under OPNAVINST 1752.2B, (3) victims of violent crimes, or (4) instances in which threats have been made against a Service member, military spouse or dependents of that Service member.

**NOTE:** Upon receipt of an expedited transfer or safety transfer request, always consult with a staff judge advocate, USN Region Legal Service Office, or a USMC Legal Services Support Section as soon as possible.

**OTHER CONSIDERATIONS:**

- All convictions for sex-related offenses will result in a mandatory dismissal for officers and a dishonorable discharge for enlisted personnel. Further, if an eligible sex-related offense goes to court-martial, it must be tried in a general court-martial and may not be disposed of at any lesser court-martial forum. An eligible sex-related offense is defined as rape, sexual assault, rape of a child, sexual assault of a child, forcible sodomy, or an attempt to commit one of these offenses.
- Per references (l) and (m), the involuntary separation of a Service member victim within 1 year of final disposition of a reported sexual assault requires flag or general officer review of the circumstances and grounds of the proposed separation, and concurrence to separate.
- The law prohibits a commander and the SA-IDA from considering the character and military service record of the accused when making an initial disposition decision for a sex-related offense. NAVPERS 1070/887 will be used to annotate the official military personnel file of any Service member who is convicted at court-martial or awarded NJP for sex-related offense(s), regardless of recommendation for retention or separation from the naval service. NAVPERS 1070/887 will remain in the official military personnel file of Service members for the duration of the applicable member's career [see reference (d)].

**CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE FY14 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) AND THE MILITARY JUSTICE ACT OF 2016:**

- Action on court-martial findings (guilty/not guilty):
  - The convening authority (CA) CANNOT modify court-martial findings if:
    - The offense involves rape, sexual assault, or a sexual offense against a child;
    - The offense's maximum allowable punishment exceeds two years; or
    - The adjudged sentence includes a punitive discharge or confinement exceeding six months.
  - In all other cases, the CA must provide a written explanation for modifying a court-martial finding.
- Action on a court-martial sentence:
  - The CA can modify a sentence for an offense unless the adjudged sentence includes a punitive discharge or confinement exceeding six months. If the adjudged sentence includes a punitive discharge or confinement exceeding six months, the CA can only modify the sentence pursuant to a written recommendation from the trial counsel indicating that the accused provided substantial assistance in another trial, or if the sentence modification is pursuant to a pretrial agreement. As of 1 January 2019, the CA may not retain the latter authority to modify a sentence, concerning a punitive discharge or confinement exceeding six months, pursuant to a plea agreement. Consult a judge advocate prior to taking action on the sentence of a court-martial that includes offenses committed on or after 1 January 2019.
  - As of 1 January 2019, the CA may suspend portions of a sentence pursuant to a recommendation from the military judge who presided over the court-martial.

Consult a judge advocate prior to taking action on the sentence of a court-martial that includes offenses committed on or after 1 January 2019.

- The above-listed mandatory minimum sentence of dishonorable discharge may be commuted to a bad conduct discharge pursuant to a guilty plea agreement.



## **QUESTIONING/INTERROGATING SUSPECTS AND ARTICLE 31(B) RIGHTS**

### **REFERENCES:**

- (a) Military Rule of Evidence (MRE) 301-305
- (b) Uniform Code of Military Justice (UCMJ) Art. 31(b)
- (c) MILPERSMAN 1620-010
- (d) JAGMAN Appendix A-1-(b-d)
- (e) JAGMAN Appendix A-1-n
- (f) JAGMAN Appendix A-1-(k-l)

**MAJOR CRIMINAL OFFENSES:** Do not allow any command member to question or interrogate a Service member before discussing the case with a staff judge advocate and/or NCIS.

**ALWAYS READ ARTICLE 31(b) RIGHTS:** When (1) you suspect a Service member of committing an offense punishable under the UCMJ, and (2) you are going to ask the Service member a question relating to the offense (e.g., asking questions or making statements that are likely to evoke an incriminating response).

### **ARTICLE 31(b) RIGHTS:**

- Service members are entitled to be informed of their Article 31(b) rights when suspected of violating any punitive article of the Uniform Code of Military Justice, prior to being questioned regarding the violation.
- Use the rights warning form [see reference (e)]. Article 31(b) rights contained on the warning form should always be read in their entirety before any interrogation, however informal the questioning. Do not ask the Service member any questions unless the Service member has affirmatively waived the right to remain silent and the right to a lawyer. This waiver should be in writing.
- Article 31(b) rights waivers must be made freely, knowingly, voluntarily, and intelligently. It is critical to ensure the Service member understands his/her rights and understands the consequences of waiving those rights.
- Once the Service member wants to remain silent or asks for a lawyer, the command **MUST NOT** ask any additional questions, **even if the Service member had previously waived his/her right to remain silent and had answered questions.**

**PRIOR QUESTIONING WITHOUT RIGHTS WARNING:** Provide a “cleansing warning” if the Service member was previously questioned and did not receive an Article 31(b) rights warning. To do this, (1) advise the Service member that the prior statement cannot be used against him/her, and (2) that even though the Service member made the earlier statement, he/she can still choose to remain silent and request a lawyer. Finally, (3) fully advise the member of his/her rights using reference (e), and record any waiver of those rights in writing.

**NEW OFFENSES:** If, during a conversation or questioning of a Service member, the command suspects that the Service member has committed a new or different offense from the one originally suspected, the questioner must stop the questioning immediately and complete a new rights warning form inclusive of the new or different offense(s) [see reference (e)].

**ARTICLE 31(b) AND NONJUDICIAL PUNISHMENT (NJP):** At mast/office hours, only part of Article 31(b) is read. Sailors always have the right to remain silent but do not have a right to an attorney during mast. However, if it is reasonably foreseeable that an accused will make an admission or actually does make an admission that warrants court-martial punishment, the CO should provide a full reading of all Article 31(b) rights and execute a waiver [see reference (e)]. Only this waiver at mast/office hours will protect the admissibility of such confessions in court. That said, full rights warnings must be given at all other stages in the process (e.g., prior to any

questioning by a supervisor, investigating officer, law enforcement officer, disciplinary review board, or executive officer inquiry).

**SERVICE MEMBER UNDER THE INFLUENCE OF DRUGS OR ALCOHOL:** A Service member must be in a physical and mental condition to knowingly, intelligently, and voluntarily waive his/her rights. Do not try to interrogate a Service member who is under the influence of drugs or alcohol.

**FALSE PROMISES OR THREATS:** A confession must be voluntary. DO NOT use threats or make false promises to elicit an incriminating statement, because a military judge may later determine that the statement is not admissible.

**PROMISE OF LENIENCY:** Only a General Court-Martial Convening Authority (flag or general officer) has the authority to grant immunity or leniency in exchange for testimony. Do not promise a Service member that what he/she says against his/her interests will not be used against him/her [See reference (f)].

## **SEARCH AND SEIZURE**

### **REFERENCES:**

- (a) MRE 311-316
- (b) RCM 309, 703
- (b) MILPERSMAN 1620-010
- (c) SECNAVINST 5430.107A
- (d) JAGMAN Appendix A-1-o
- (e) JAGMAN Appendix A-1-p
- (f) JAGMAN Section 0132a

**THE CO OR OFFICER IN CHARGE (OIC) AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED:** If the CO or OIC over the suspected Service member was the victim of the alleged offense, he/she must refer any search authorization request to a superior in the chain of command.

**ALWAYS ASK FOR CONSENT:** Before conducting or authorizing a search, the owner of the property should be asked for consent to search. If the owner consents to the search, document the consent in writing [see reference (e)]. Consent **must be voluntarily obtained to be valid**, meaning the owner must be informed of the right to refuse. Consent can be limited or withdrawn at any time, and cannot then serve as a basis for probable cause.

**NON-DELEGABLE AUTHORITY:** Only the CO or OIC can issue a search authorization, unless prohibited as detailed above. The CO or OIC must personally make the probable cause determination. No one else in the chain of command can act for the CO or OIC unless they are officially “acting” as the CO or OIC.

**MAJOR CRIMINAL OFFENSES:** DO NOT conduct a search before referring the case to NCIS, unless the search is necessary to protect life or property, or to prevent the destruction of evidence prior to NCIS involvement.

**SEARCH AUTHORIZATIONS MUST BE BASED UPON PROBABLE CAUSE:** Probable cause is defined as [See *Appendix A – Commanding Officer Search and Seizure Checklist*]:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched or in the documents requested via investigative subpoena. The reasonable belief must be supported by facts and information must be reliable and credible.

**INVESTIGATIVE SUBPOENAS:** With the Military Justice Act of 2016, General Court-Martial Convening Authorities are permitted to issue, upon application by the trial counsel or law enforcement agency, pre-referral investigative subpoenas for documents only [see references (b) and (f)].

### **JURISDICTION:**

- **PERSON (ON/OFF BASE):** With probable cause, a CO or OIC can authorize the search of persons under his/her command. Per reference (b), searches shall be, whenever possible, conducted by or in the presence of a Service member of the same gender.
- **ON-BASE PROPERTY:** With probable cause, a CO or OIC can authorize the search or seizure of any property under his/her immediate control. For areas not under the immediate control of the CO or OIC, contact the installation staff judge advocate as the installation commander may have jurisdiction.
- **OFF-BASE PROPERTY IN THE U.S.:** The CO or OIC **may not** authorize a search of off-base property in the United States. The CO or OIC must work with NCIS to obtain

civilian authority to conduct an off-base search (Note: a CO or OIC may or may not have jurisdiction to authorize a search in Public/Private Venture Housing; consult with the installation or region staff judge advocate).

- **OFF-BASE PROPERTY OUTSIDE THE U.S.:** The CO or OIC may authorize searches of a Service member's property outside of the United States (Note: some Status of Forces Agreements limit or prohibit such off-base search authorizations. Consult with a staff judge advocate for overseas search authorization issues.).

**QUEST FOR EVIDENCE:** If searching for evidence, DO NOT order or conduct an inspection (e.g., health and comfort, wellness, readiness, etc.) in the area where the evidence may be located.

- The primary purpose of the inspection must be a valid military purpose, to include: (1) security; (2) military fitness; (3) good order and discipline; or (4) readiness.
- Courts may suppress evidence seized in a search disguised as an inspection during a court-martial proceeding. Factors the military judge will consider in evaluating whether an inspection is an illegal search are: (1) if the inspection was not previously scheduled and it followed the report of an offense; (2) if it targeted specific individuals; and (3) if it subjected specific individuals to a greater degree of scrutiny than others.

**COMMON AREAS:** Common areas may be searched at any time without a search authorization. Drug dogs may be used in passageways, workspaces, or common areas at any time. A drug dog alert from within a common area may establish the probable cause required to search private property (but the CO/OIC must still decide whether probable cause exists and whether to issue an authorization).

**USE OF FORMS:** Search authorization forms are found at JAGMAN A-1-o [see reference (d)]. Anyone providing information to support the request to search should be sworn and under oath.

**SPECIFICITY ON THE FORMS:** When authorizing a search, the CO or OIC must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found and should include "any parts, pieces, or components thereof."

#### **SEARCH AND SEIZURE BEST PRACTICES:**

- Have a command instruction in place for random inspections. Consult your SJA before drafting this instruction.
- Do not order a surprise inspection following the report of a specific offense.
- Always ask for consent to search first.
- Consult your SJA prior to authorizing a search.
- Create a written record of the evidence you relied upon when forming your probable cause determination.

## **COURTS-MARTIAL: TYPES AND CONVENING AUTHORITY**

### **REFERENCES:**

- (a) RCM 201-504, 704, 1003, 1107, 1301-1306
- (b) UCMJ, Articles 16, 19, 22-25
- (c) JAGMAN, Chapter I

## **TYPES OF COURTS-MARTIAL**

### **SUMMARY COURT-MARTIAL (SCM):**

- COs and OICs have authority to convene SCMs. The CO or OIC is referred to as the convening authority (CA).
- SCMs cannot try officers, only enlisted personnel.
- All enlisted personnel (sea and shore duty) have an absolute right to refuse SCM.
- The CA appoints one officer to be the SCM officer. The SCM officer functions as the military judge (MJ), trial counsel (TC), and the defense counsel (DC).
- The accused has no right to military counsel at a SCM. The accused may be represented by military counsel (at no expense to the accused) if one is detailed to the case. The accused also has the right to retain civilian counsel at the accused's expense, if civilian representation will not unreasonably delay the proceedings.
- Punishments at a SCM are limited. [See Appendix 12 of the Manual for Courts Martial (MCM) and reference (a), R.C.M. 1301(d)]; see also Appendix C].
- The CA takes final action on the findings and punishment awarded within seven days.
- The Military Rules of Evidence apply at a SCM.
- [See Manual for Courts-Martial, Appendix 8, Guide for Summary Courts-Martial].

### **SPECIAL COURT-MARTIAL (SPCM):**

- COs may convene SPCMs.
- Full criminal trial for officers and enlisted personnel.
- Consists of a MJ, four members (jurors), a TC, a DC (DC may include detailed military counsel, individual military counsel (IMC), and/or civilian counsel. Civilian counsel is at the expense of the accused).
- Maximum punishments available at a SPCM are listed in Appendix 12 of the MCM and limited by reference (a).
- The CA may approve plea agreements.
- The CA takes action on the findings and sentence after the clemency period has expired.

### **GENERAL COURT-MARTIAL (GCM):**

- A Uniform Code of Military Justice (UCMJ) Article 32 preliminary hearing is required before any charges are referred to a GCM. A CA may order an Article 32 preliminary hearing.
- A victim, whether civilian or military, may not be required to testify at the hearing. The Article 32 preliminary hearing officer must be senior in rank to the TC and DC and must be a judge advocate, except in extraordinary circumstances.
- Only flag or general officers (and a very few specifically designated non-flag/general officers who are COs) may convene a GCM [see section 0120 of reference (c)].
- GCMs involve a MJ, eight members for noncapital offenses (12 for capital offenses), TC, and DC (military and/or civilian).
- GCMs have the authority to issue the maximum punishment listed for any UCMJ offense.
- GCMCAs may approve investigative subpoenas (for documents only) upon application by TC or a law enforcement agent.
- GCMCAs may approve plea agreements.
- GCMCAs take action on findings and sentences after the clemency period has expired.

- If the GCMCA's staff judge advocate recommends referring a case to a GCM after the Article 32 preliminary hearing and the GCMCA does not concur, this decision must be reviewed by SECNAV. However, if the SJA recommends not referring the case to a GCM and the GCMCA concurs, this decision must be reviewed by the next GCMCA in the chain of command.

**MECHANICS OF CONVENING A COURT-MARTIAL:** A court-martial is created anew for each individual case. A CA creates a court-martial by signing a court-martial convening order. The convening order creating the court-martial must be signed and dated before the CA signs the charge sheet referring the charges to the court-martial. The court-martial must exist before any charges can be referred to it. A convening order contains the following content:

- Convening order number and the date it is signed, which then creates the court-martial and allows the CA to refer a particular case or charges to it.
- The type of court convened (SCM, SPCM, GCM) and the names of the members (jurors) assigned to that court-martial, and whether alternate members are authorized to be impaneled.
- The personal signature of the CA.

#### **SELECTION OF MEMBERS:**

- Members shall be persons who, in the opinion of the CA, are the best qualified by reason of their age, education, training, experience, length of service, and judicial temperament, per UCMJ, Article 25.
- Members must be senior to the accused, unless unavoidable.
- The accused is entitled to a fair and impartial panel. Members with personal knowledge of the charges will likely be disqualified.
- Do not attempt to "stack" or influence the members directly or indirectly.
- Enlisted members are detailed on the convening order, or can be detailed on the convening order (as an amendment) upon the request of an enlisted accused to have 1/3 enlisted representation on the court-martial panel (jury).

**NOTE:** Ensure both the convening order and the preferral block on the charge sheet (block 11) have been signed and dated prior to referring charges to the court-martial.

#### **CHANGES TO COURTS-MARTIAL AS A RESULT OF THE MILITARY JUSTICE ACT OF 2016:**

- For cases referred to SCM 1 January 2019 or later, a finding of guilty at SCM is no longer considered a federal criminal conviction regardless of whether the accused is represented by counsel at the SCM.
- For offenses committed on 1 January 2019 or later, the CA may convene a judge-alone SPCM with additional offense and punishment limitations noted in RCM 201(f)(2)(B)(ii) and RCM 201(f)(2)(E). The punishment limitations are 6 months confinement, 6 months forfeitures (of two-thirds pay), and no punitive discharge. All other SPCM punishment limitations as listed in Appendix 12 of the MCM and reference (a) apply. To refer a case to this new MJ-alone SPCM, the CA should note that the offenses are referred to this new type of court-martial on the convening order (in block V of the charge sheet).
- For cases referred on 1 January 2019 or later, the number of members in a SPCM or GCM will be fixed. A SPCM requires that 4 members are impaneled from the convening order. In a GCM with members, there must be 8 members (for non-capital offenses) or 12 members (for capital offenses).
- For cases referred on 1 January 2019 or later, the CA can list enlisted Service members on the convening order. Typically, a CA must wait until an enlisted accused requests enlisted Service members serve on the court-martial panel to modify the convening order and detail those additional enlisted members. However, for cases being referred in 2019, the CA can detail enlisted Service members on the convening order without the

request from the accused. While the enlisted members may be on the convening order, they will not serve on the court-martial panel unless and until an enlisted accused makes the election to have enlisted Service members serve on the panel. Additionally, the CA may detail Service members on the convening order who serve in the same unit as the accused.

[See *Appendix B – Overview of the Military Justice System*]

## **COURT-MARTIAL BASICS**

### **REFERENCES:**

- (a) RCM 104, 504
- (b) UCMJ, Articles 13, 22(b), 37
- (c) JAGMAN, Section 0129
- (d) Manual for Courts-Martial 2019, Appendix 2.1

**JUDICIOUS AND FAIR:** Congress entrusts COs with the responsibility to administer discipline and justice in the Armed Forces. COs should be vigilant to ensure all actions are consistent with the Uniform Code of Military Justice (UCMJ). Behavior contrary to the UCMJ should be handled in accordance with law and regulation.

**INFORMED DECISIONS:** COs should ensure that independent investigations are convened to discover all relevant evidence, and information that bears upon the reliability and credibility of that evidence, to make an informed decision regarding disposition. Ensure that all decisions are fair, impartial, and based upon known facts. COs are encouraged to review reference (d) when making case disposition decisions.

### **ACCUSER CONCEPT:**

- For a Special Court-Martial (SPCM) or a General Court-Martial (GCM), the convening authority (CA) may not:
  - Sign the accuser block on a charge sheet;
  - Direct that someone else sign the accuser block on a charge sheet; or
  - Have a personal interest in the case (e.g., as a victim or witness to the underlying alleged offenses reflected in the charges).
- If such a situation exists, the CA must forward the case to a superior for disposition.



## **COMMAND INFLUENCE**

### **REFERENCES:**

- (a) 10 U.S.C. §837
- (b) UCMJ Art. 37

**ROLE OF THE COMMANDER:** Commanders are charged with maintaining good order and discipline, and must do so in a manner that ensures justice. The authority of a commander to convene courts-martial includes the duty of ensuring the constitutional due process rights of an accused. In carrying out this duty, commanders must remain impartial, and be cognizant of the impact their comments and actions (and the actions of their staff) may have on participants in the court-martial process. Best practice is to apply these same principles to administrative proceedings (e.g., NJP, administrative separation, and counseling).

### **FRAMEWORK:**

- To determine whether you as a commander are properly exercising command influence, ask three key questions:
  - Am I fair and impartial?
  - Will others find my actions and statements fair and impartial?
  - Could my actions and statements prevent someone else's ability to be fair and impartial? (e.g., court-martial members, witnesses, subordinates.)

### **PERMISSIBLE CHAIN OF COMMAND ACTIONS:**

- MAY obtain information from a subordinate commander about ongoing cases, investigations, or incidents.
- MAY generally discuss with a subordinate commander that commander's role in the military justice process.
- MAY generally discuss matters for a subordinate commander to consider when disposing of a case.
- MAY pull the disposition decision up to the superior commander's level in a particular case or for certain types of offenses.

### **PERMISSIBLE CHAIN OF COMMAND COMMENTS:**

- MAY issue broad policy statements on misconduct before becoming aware of a specific allegation.
- MAY address the command after an allegation by focusing on process, not the alleged offender or an outcome.
- MAY address the media or public after an allegation by ensuring comments are process-focused.

### **UNLAWFUL COMMAND INFLUENCE (UCI)**

- A finding of UCI is a judicial determination that a commander (or the commander's staff) has failed to ensure a fair and impartial process. UCI is either "actual" or "apparent."
- Actual UCI: A commander manipulates the court-martial process, either intentionally or unintentionally, to drive a certain result. For example, a commander:
  - MAY NOT direct a subordinate to make a particular disposition decision or limit the discretion of the subordinate convening authority.
  - MAY NOT censure, discipline, or otherwise express disapproval (either directly or indirectly) with any personnel participating in the court-martial process.
  - MAY NOT deter or attempt to deter a potential witness from participating in the investigatory process or testifying at court-martial.
  - MAY NOT coerce or influence the action of a court-martial or member to reach a particular finding or result.

- Apparent UCI: A commander's actions, either intentional or unintentional, cause an objective, fully informed observer to have significant doubt about the fairness of the military justice process. The focus is on public perception of the military justice system.

**UNACCEPTABLE CHAIN OF COMMAND ACTIONS:**

- MAY NOT establish an inflexible policy on disposition or punishment of offenses. This interferes with a court-martial panel's independent sentencing determination.
- MAY NOT provide directive advice to a subordinate convening authority on a specific type of case. This interferes with a subordinate commander's ability to make an independent decision on the disposition of the case.
- MAY NOT comment on the character of the accused or victim.
- MAY NOT consider external factors (e.g., superiors, elected officials, or the media) when making decision on cases.
- MAY NOT discourage witnesses from testifying on behalf of the accused.
- MAY NOT select members with the intent of achieving a particular result as to the findings or sentence.

## **PRETRIAL RESTRAINT/CONFINEMENT**

### **REFERENCES:**

- (a) RCM 304, 305, 707
- (b) UCMJ, Articles 10, 13
- (c) JAGMAN, Section 0127
- (d) NAVADMIN 244/14

### **FOUR TYPES OF PRETRIAL RESTRAINT (PTR) (from least to most severe):**

- Conditions on liberty (e.g., orders to report periodically to specified officials; orders not to go to certain places, or to associate with certain people such as the victim)
- Restriction in Lieu of Arrest; Arrest; and Pretrial confinement (PTC)

### **AUTHORITY TO ORDER PTR:**

- Who:
  - Only the CO may order PTR of an officer or of a civilian
  - Any commissioned officer may order PTR of an enlisted Service member. A CO may delegate the authority to order pretrial restraint of enlisted personnel under his/her command to warrant, petty, and noncommissioned officers.
- When:
  - PTR is appropriate when there is a reasonable belief that:
    - An offense triable by court-martial was committed;
    - The person to be restrained committed the offense;
    - The restraint ordered is required by the circumstances;
    - There is concern that the Service member will not appear at trial and/or will engage in serious misconduct; and
    - Less severe forms of restraint are inadequate.
  - PTR decisions must be made on a case-by-case basis. The least severe form of PTR necessary under the circumstances should be used. PTR may not be used for offenses that are intended to be handled by NJP. PTR is appropriate only when the command intends to try the accused by general or special court-martial.

**PUNISHMENT BEFORE TRIAL IS PROHIBITED:** PTR may be used only to ensure the presence of the accused at trial and/or to prevent future serious misconduct.

### **PTR (EXCLUDING CONDITIONS ON LIBERTY) STARTS SPEEDY TRIAL PROVISIONS:**

When a Service member is put in PTR, the constitutional and statutory speedy trial clocks begin, necessitating swift action to ensure arraignment happens as quickly as possible. The speedy trial obligation under RCM 707 ends when the accused is arraigned, which must occur within 120 days of placing the Service member in PTR. Immediately notify the local USN Region Legal Service Office or USMC Legal Services Support Section when a Service member is placed in PTR to ensure speedy trial violations do not occur. The constitutional speedy trial provision captured under UCMJ Article 10 [see reference (b)] continues throughout the trial and does not end at arraignment, but also starts upon placing the Service member in PTR.

**SUICIDAL OR INTOXICATED PRISONERS:** PTC is not appropriate when a Service member is suicidal or intoxicated, and brigs will not accept such Service members. Service members requiring PTR who are suicidal or under the influence of drugs/alcohol should be referred to medical before commencing any type of PTR.

**DOCUMENTING CO APPROVAL OF PTC:** When PTC is imposed, the CO must be notified and must approve the PTC within 24 hours. A written memorandum (referred to as a “48-hour letter”) explaining why PTC is warranted must be prepared and signed by the CO within 48 hours and forwarded to the brig. If the CO is not “neutral and detached” (e.g., a victim of the

Service member in PTC), an officer who is neutral and detached must make a probable cause decision to continue PTC within 48 hours. If continued PTC is approved, the commander shall prepare a written memorandum that states the reasoning for continued restraint is warranted within 72 hours. This memo will then be forwarded to the seven-day independent reviewing officer (IRO), who will decide at a PTC hearing whether continued PTC is appropriate.

**COMMAND REPRESENTATIVE AT PTC HEARING AND COMMAND VISITS:** Within seven days of confinement, an Initial Review Officer (IRO) appointed by the area coordinator will conduct a hearing to review the reasons for continued confinement. The command shall send a representative to the hearing at the brig. The command is responsible for weekly visits to the brig to address the confined Service member's personal and professional matters to be handled while the Service member is in PTC.

**RESERVE NOTE:** The guidance above applies to reservists on active duty (AT or ADT). A reservist in a drilling status [inactive duty for training (IDT)] should not be subjected to PTR until the reservist is recalled to active duty to be tried by a court-martial. A reservist who has been involuntarily recalled to active duty to be tried by a court-martial cannot be confined without the permission of the Secretary of the Navy (SECNAV).

Reservists on AT or ADT may be extended involuntarily beyond their normal release date as a result of apprehension, arrest, confinement, investigation, or filing of charges that may result in trial by court-martial and execution of any sentence adjudged by a court-martial.

Reservists on IDT (a normal reserve drilling period) may be retained in that status by an officer empowered to convene a court-martial for not more than two full working days past the end of the IDT period if: (a) there is probable cause to believe the member committed an offense for which the maximum punishment authorized is confinement for more than 10 years or death; (b) approval, either oral or written, for a holdover period is obtained prior to the expiration of IDT from a GCMCA; and (c) immediate action is taken to order the member to active duty for trial by court-martial.

An accused reservist held over may be placed in PTC as circumstances warrant. The order to active duty in such a case, however, must be approved by SECNAV, the Under Secretary of the Navy, or the Assistant Secretary of the Navy, no later than two full working days past the end of the IDT period and must state the reasons why PTC is necessary. If necessary, the request to order an accused to active duty may be made directly by message or telephone.

#### **USN MILITARY AND CIVILIAN POST-TRIAL CONFINEMENT:**

- Per reference (d), PCS orders are required for enlisted Service members and Officers adjudged by a court-martial that includes a sentence where 30 days or more of confinement will be served, or any sentence that includes a punitive discharge/dismissal. The Service member's command must contact CNPC (PERS-00D) to obtain a designated place of confinement and provide the Results of Trial/Statement of Trial Results (for cases referred from 1 January 2019). If the Service member receives a sentence of less than 30 days confinement and no punitive discharge, the Service member should be issued TDY orders.
- For civilian trials, notify PERS-832/834 of confinement and await the conclusion of trial. Once the Service member has been tried by civilian authorities and sentenced to confinement, follow the instructions in reference (d) and contact CNPC for orders to confinement. Do NOT place the member in a leave status.

## **PLEA AGREEMENTS**

### **REFERENCES:**

- (a) RCM 705
- (b) JAGMAN, Section 0137
- (c) Manual for Courts-Martial 2019, Appendix 2.1

**NEED FOR PLEA AGREEMENTS:** Plea agreements, when appropriate, serve the interests of both the government and the accused. In exchange for a guilty plea and a limit on the authorized punishment that may be imposed upon the accused, the government is often spared the time and expense of lengthy trials, which commands must pay for with Operation and Management funds. In addition, guilty pleas accompanied by a plea agreement often eliminate the need for victims and witnesses to participate in a trial, reducing the mental and emotional toll of a court-martial. A guilty plea supported by an agreement may also assist a command with maintaining normal operations, mission readiness, and/or accomplishment. Additional considerations are listed in reference (c).

**CONVENING AUTHORITIES MUST APPROVE ALL PLEA AGREEMENTS:** Plea agreements are written agreements between the CA and the accused. Trial counsel (TC) and staff judge advocates (SJA) for the CA may make recommendations, but only the CA may approve the agreement.

### **SCOPE OF A PLEA AGREEMENT:**

- The accused may agree to:
  - Plead guilty
  - Waive an Article 32 investigation/hearing
  - Waive members [e.g., agree to be tried by military judge (MJ) alone]
  - Waive government funding of sentencing witnesses
  - Be tried no later than a specific date
  - Stipulate to facts or testimony that establish guilt
  - Make restitution to the victim
  - Testify against others
  - Conform behavior as conditions of probation or any form of leniency
  - Waive the rights to an administrative separation board after trial
  - A particular forum for court-martial
- The CA may agree to:
  - Protect the accused from part or all of any portion of the adjudged sentence
  - Dismiss or reduce certain charges
  - Protect the accused from potential automatic sentencing provisions

**PLEA AGREEMENT NEGOTIATION PROCEDURES:** Negotiations may originate with the accused, the defense counsel (DC), TC, SJA, or the CA. Any proposals that do not originate with the CA must be forwarded to the CA for consideration. As part of the negotiation:

- Counteroffers are permissible.
- The final agreement must be in writing.
- Any victim must be provided an opportunity to express views concerning the plea agreement terms and conditions. If the victim is represented by victims' legal counsel (VLC), the VLC may provide input on behalf of the client. If the victim elects to provide input, that input must be considered by the CA prior to signing the agreement. The victim's input is not controlling upon the CA's actions.
- The plea agreement must contain all aspects of the agreement. Under-the-table agreements, or any side agreements not contained in the agreement, may render the entire written plea agreement invalid.

- Authority to sign the agreement may be delegated by the CA to the TC. Any such delegation should be in writing to satisfy a court-martial that the TC has the authority to sign on behalf of the CA.

#### **WITHDRAWAL FROM THE PLEA AGREEMENT:**

- The CA may withdraw:
  - At any time before performance by the accused begins;
  - If the accused fails to fulfill a material term of the agreement;
  - If the MJ finds disagreement as to a material term; and/or
  - If the court-martial's findings are set aside by a court of appeals.
- The accused may withdraw from the plea agreement at any time, however:
  - MJ permission may be required to withdraw a plea of guilty or a confessional stipulation of fact.

#### **CHANGES TO PLEA AGREEMENTS AS A RESULT OF THE MILITARY JUSTICE ACT OF 2016:**

- For offenses occurring on or after 1 January 2019 and for which the parties have agreed to use the new sentencing procedures, then there will only be one part of a guilty plea agreement. In that agreement, the parties will detail the sentence limitations, if any, and those limitations will be binding upon the court-martial whether the military judge or members sentence the accused.
- In such cases, the members will still provide a "global" or "unitary" sentence for all offenses to which the accused has plead guilty.
- Under this new sentencing scheme, the military judge must articulate the sentence with more specificity. If the agreement includes a term of confinement and/or fines, then the agreement must note for the military judge which offense and which specification carries that particular confinement and/or fine term. Additionally, if confinement is considered for more than one offense or specification, then the agreement must detail for the military judge whether the terms of confinement would run simultaneously ("concurrently") or one after the other ("consecutively"). Consult with the SJA prior to signing a plea agreement.
- Lastly, the CA's ability to suspend punishments in the plea agreement have been restricted. The only punishments that a CA can suspend are (a) confinement of 6 months or less, (b) fines, (c) forfeitures, (d) reduction in rank, and (e) other lawful punishments, such as restriction and hard labor without confinement. The CA is no longer permitted to suspend any type of punitive discharge or any confinement that is greater than 6 months, unless the military judge makes such a recommendation at the end of the court-martial proceedings or the trial counsel makes such a recommendation because the accused is providing assistance in another case/investigation.

**NOTE:** The CA can only agree to take actions that are within the CA's scope of authority. For example, a CA can agree to favorably endorse a retirement request, but cannot agree to "allow the Service member to retire."

## **POST-TRIAL REVIEW**

### **REFERENCES:**

- (a) RCM 1101, 1103, 1106, 1106A, 1109, 1110-1112 (2019 ed.)
- (b) UCMJ, Articles 57, 58, 58a, 58b, 60, 60a, 60b, 60c
- (c) JAGMAN, Sections 0151, 0152, 0153
- (d) JAG/CNLSCINST 5814.1B (for cases referred before Jan 1, 2019)
- (e) JAG/CNLSCINST 5814.1D (for cases referred on or after Jan 1, 2019)

**POST-TRIAL PROCEDURES:** The government has the duty to ensure timely post-trial processing of military justice cases. The government must meet strict guidelines in disposing of a case after a sentence is adjudged at trial. This is important to convening authorities (CA) because a failure to adhere to proper processing of the Statement of Trial Results and the Record of Trial could result in an overturned conviction [see references (d) and (e)]. Please consult the Convening Authority's Action Checklist in enclosure (4) of references (d) and (e).

**CA ACTION:** Review of the court-martial by the CA after the trial is a crucial step in the court-martial process. The CA Action must be done promptly and properly in order to avoid serious legal consequences and accountability action against the CA. CA action must include specific information regarding the accused and must accurately reflect the trial. Use of the standard language and forms from the MCM and JAGMAN is crucial. **NOTE:** The CA's discretion to approve or disapprove findings and/or sentence has been severely limited as a result of congressional action in 2014 and 2016. The breakdown of the changes from 2016 is summarized directly below. The changes taking effect 1 January 2019 are addressed at the end of this section. Consult a staff judge advocate prior to signing a CA action letter to ensure all requirements are met.

- For cases in which the earliest offense occurred prior to 24 June 2014, the CA is not required to take any action on findings. However, the CA has the following options:
  - The CA may approve or disapprove the court's findings.
  - The CA may disapprove a finding of guilty on an original, more serious charge but approve a finding of guilty for a lesser included offense.
  - The CA may not change a finding of not guilty to a finding of guilty; however, a finding of guilty may be changed to a finding of not guilty.
  - If the CA says nothing about the findings, it is presumed that the CA approves the findings of the court-martial.
- For cases in which the earliest offense occurred prior to 24 June 2014, the CA must take action on the sentence and has the following options:
  - The CA may approve any punishment as adjudged by the court-martial.
  - The CA may disapprove any punishment in whole or in part.
- For in which the earliest offense occurred on or after 24 June 2014, the CA CANNOT modify court-martial findings if:
  - The offense involves rape, sexual assault, a sexual offense against a child, or forcible sodomy; or
  - The offense's maximum allowable punishment exceeds two years OR the sentence actually adjudged includes a punitive discharge or confinement exceeding six months.
  - If a CA modifies a court-martial finding in any other case, he/she needs to provide a written explanation for doing so.
- For cases in which the earliest offense occurred on after 24 June 2014, the CA can modify a sentence for an offense UNLESS the actual adjudged sentence includes:
  - A punitive discharge; or
  - Confinement exceeding six months.
  - If there is a pretrial agreement, a mandatory minimum sentence of dishonorable discharge may only be commuted to a bad conduct discharge.

- The exceptions to this rule to allow are if (1) pursuant to a written recommendation from the trial counsel, the accused provides substantial assistance in another trial or (2) the sentence modification is pursuant to a pretrial agreement. This second exception will no longer be available for cases referred to court-martial on or after 1 January 2019.

#### **CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE MILITARY JUSTICE ACT OF 2016:**

- On court-martial findings (guilty/not guilty) and any adjudged sentence, the same restrictions as noted above remain in effect. The effective date for adjudged reduction in rank and both adjudged and automatic forfeitures will be the earlier of either (1) 14 days after the sentence is adjudged by the court-martial or (2) the date of the CA's Action, if the case is a summary court-martial.
- For automatic reduction in rank, the triggering events that cause the automatic reduction are a DD, BCD, or 90 days of confinement (or any confinement for offenses committed on or after 1 January 2019) as finally included in the Entry of Judgment. For those sentences including a DD or BCD, the CA cannot affect or protect against the automatic reduction in rank because Congress restricted the scope of CA's discretion post-trial and disallowed a CA from reducing or modifying a DD or BCD. If the sole triggering event for the automatic reduction in rank is 6 months of confinement or less, the CA is permitted to protect the accused from the automatic reduction. With offenses occurring 1 January 2019 or later, as noted above, enlisted Service members will not be automatically reduced in rank until the President specifically authorizes such punishment under Article 58a, UCMJ.
- For automatic forfeitures, the CA may still defer any automatic forfeitures, but the date of deferral will be extended out to the date of the Entry of Judgment. Separately, in terms of the triggering events that cause automatic forfeitures (confinement greater than 6 months, death, or DD/BCD), the CA cannot affect those punishments at CA's action and, thus, cannot provide protection against automatic forfeitures other than deferral. The only other mechanism by which the CA could protect the accused against automatic forfeitures is if, in a plea agreement, the CA agrees to place a cap on confinement at 6 months or less and disallows death, DD, and a BCD.

**WHEN THE CA MAY TAKE ACTION:** Before the CA's action, the official record of trial must be prepared by the USN Region Legal Service Office or the USMC Legal Services Support Section, authenticated by the trial counsel and military judge, and served on the accused and his/her defense counsel (DC). The accused must be given the opportunity to seek clemency from the CA. An accused seeks clemency by submitting matters (such as letters from family members, friends, command members, or even the victim and members of the court-martial) that explain to the CA why the CA should approve a lesser sentence than the sentence adjudged at trial. For all GCMs, SPCMs that include a sentence to a bad-conduct discharge or confinement for one year, or SPCMs in which a victim is entitled to submit a statement pursuant to RCM 1105A, a staff judge advocate or legal officer must also review the record and prepare a memorandum to be served on the accused and his/her DC. The CA must consider the official record, matters submitted by the accused/defense counsel and the victim, the SJA's recommendation, and any victim input with respect to clemency.

**EFFECTIVE DATE OF ADJUDGED PUNISHMENTS:** Some punishments do not take effect until the CA takes action on the sentence adjudged at a court-martial. For cases with convictions occurring on or after 1 January 2019, those same punishments will take effect at the Entry of Judgment, which occurs after the CA's action, and is the responsibility of the military judge assigned to that court-martial. These particular punishments are restriction, hard labor without confinement, reprimand, and other lawful punishment. Confinement, however, starts



immediately, and both forfeiture of pay and reduction in rank start 14 days after trial [see reference (c)]. Dismissal, dishonorable discharge (DD), and bad conduct discharge (BCD) will not take effect until appellate review is complete.

**AUTOMATIC PUNISHMENTS:** In addition to adjudged punishments, there are two types of automatic punishments:

- **AUTOMATIC REDUCTION:** When an enlisted Service member's court-martial sentence includes, after CA Action, (1) a DD or BCD, or (2) more than 90 days of confinement (for offenses committed before 1 January 2019), the Service member will automatically be reduced to the paygrade of E-1 on the date of the CA's Action. **However**, according to reference (c), specifically JAGMAN Section 0153(e), automatic reductions in pay grade pursuant to Article 58a, UCMJ, for offenses committed on or after 1 January 2019, will **not** occur until the President specifically authorizes such an administrative consequence. Until such time, enlisted Service members will not be automatically reduced in pay grade.
  - **CA's OPTIONS:** In a plea agreement, the CA can suspend, remit (cancel), modify (approve reduction to a lower paygrade but not all the way down to E-1), or allow automatic reduction all the way down to E-1 to occur.
- **AUTOMATIC FORFEITURE:** When any member's court-martial sentence includes (1) confinement for more than 6 months, (2) death, or (3) a BCD or DD plus any amount of confinement, the member will automatically forfeit two-thirds pay and allowances in the case of a special court-martial or all pay and allowances in the case of a general court-martial starting on the date of the CA's action or 14 days after the sentence is adjudged, whichever is earlier. The automatic forfeiture will be taken throughout the period of confinement and parole.
  - **CA's OPTIONS:** The CA can defer automatic forfeiture until the date the CA acts. This means the automatic forfeiture of pay will not take effect, as it normally would, 14 days after trial. Deferment changes the effective date to the date of the CA's action. At CA's action, the CA can approve the automatic forfeiture, or waive the forfeiture for a maximum of six months and direct the amount of money to be forfeited to the accused's dependents instead. Usually, the accused sets up an allotment for a dependent in the amount of the automatic forfeiture. Please note restrictions listed below pursuant to the Military Justice Act of 2016.

*[See Appendix D – Convening Authority Limitations on Findings Modifications and Appendix E – Convening Authority Limitations on Sentencing Modifications]*

## **VICTIM/WITNESS ISSUES**

### **REFERENCES:**

- (a) DoDD 1030.01
- (b) SECNAVINST 5800.11 (series)
- (c) OPNAVINST 5800.7 (series)
- (d) SECNAVINST 1752.4 (series)
- (e) OPNAVINST 1752.1 (series)
- (f) NAVADMIN 128/05
- (g) MCO-P5800.16 (series)
- (h) MCO 5300.17 (series)
- (i) MCO 17525 (series)
- (j) DoDI 1342.24 (series)
- (k) DoDI 6400.01
- (l) OPNAVINST 31006 (series)
- (m) SECDEF Memo of 14 Aug 2013
- (n) MARADMIN 583/13
- (o) OPNAVINST 1750.3A
- (p) JAGINST 5810.3A
- (q) NAVADMIN 102/19

### **DEFINITIONS:**

- Victim: A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.
- Witness: A person who has information or evidence about a crime within the investigative jurisdiction of the Department of the Navy (DON), and who provides that knowledge to an appropriate DON representative.

### **APPOINT A COMMAND VICTIM AND WITNESS ASSISTANCE COORDINATOR:**

A responsible individual should be appointed in writing to coordinate victim and witness issues and to act as a Data Collection Officer for victim and witness issues in the command.

**BASIC REQUIREMENTS:** Upon notification of an incident where a victim or a witness of a crime is identified, ensure the victim and/or witness advisement of rights is made using DD Form 2701 [see reference (d), enclosure (1)].

**COUNSELING AND TREATMENT:** Victims of sexual assault should immediately be advised of their resources for medical treatment and counseling and given the opportunity to utilize those resources [see reference (c)]. In addition to medical treatment and counseling, refer victims of domestic or child abuse to the Family Advocacy Program for support services [see reference (k)].

**PREVENT REPRISAL:** Protect victims and witnesses. Remove the alleged offender from the workspace as necessary. For an alleged military offender, consider the necessity of issuing a military protective order (MPO). [See FAMILY ADVOCACY/DOMESTIC VIOLENCE and MILITARY PROTECTIVE ORDER]. An MPO may also be issued in situations other than family violence (e.g., dating disputes). Consider TAD transfer of an alleged offender or safety transfer for a victim to ensure safety, if necessary. If the victim is military or a military dependent, also refer them to a legal assistance attorney for specific victim's legal counseling, which is detailed below. If the alleged offender is a civilian, consider seeking a debarment order preventing him/her from accessing the base. In addition, it may be advisable for the victim of a civilian offender to seek a civilian no-contact order from local authorities.

**PSYCHIATRIC EVALUATION:** Do not refer a victim or witness for a mental health evaluation unless it is done in compliance with the Mental Health Evaluation Instruction [see Mental Health Evaluations].

**FOLLOW-UP INFORMATION:** Provide information and assistance to victims and witnesses at all states of investigation, trial, and post-trial. Victims and witnesses should be informed regarding apprehension of the accused, changes in confinement status, investigation status, decisions not to prosecute, preferral and referral of charges, plea agreements, convictions, sentencing, final resolution of the charges against the accused at trial, and after any appellate processing [see references (a), (b), (c), and (g)].

**FAMILY ADVOCACY PROGRAM (FAP):** Provides clinical assessment, treatment, and services for military members and their families involved in allegations of domestic abuse or child abuse. FAP's goals are to ensure the victim's safety and well-being as well as offender accountability. These principles form the basis of the FAP clinical provider's work in responding to allegations of domestic abuse and child abuse [see reference (k) and Domestic Violence and Family Advocacy Program].

**TRANSITIONAL COMPENSATION:** If a Service member is separated from military service as a result of a dependent-abuse offense, either by court-martial sentence or administrative separation, that Service member's dependents are eligible for Transitional Compensation for Abused Dependents (TCAD) benefits [see references (j) and (o)]. Transitional compensation is not based upon the financial needs of the family. The program provides monthly payments of transitional compensation and other benefits (e.g., medical, dental, etc.) to the family members as long as the family members do not reside with the former Service member. The local USN and USMC family services centers can assist with the TCAD application process.

**LEGAL ASSISTANCE:** Legal assistance attorneys at USN Region Legal Service offices and USMC Legal Services Support Sections will provide the following services to victims:

- Information on the Victim/Witness assistance programs in the Fleet, including:
  - The rights and benefits of victims
  - The role of a victim advocates, legal assistance attorneys, and victim privileges
- Information on the difference between restricted and unrestricted reporting
- General information concerning military justice and the roles and responsibilities of the trial counsel, defense counsel, and investigators.
- Emotional, mental health, and medical counseling services
- The availability of protections provided by civilian and military protective orders
- TCAD and other state/federal program benefits for victims of crime
- Traditional legal assistance services (e.g., estate planning, tax advice, powers of attorney, consumer affairs, family law advice, etc.)

**VICTIM'S LEGAL COUNSEL (VLC):** Per reference (j), on 14 August 2013, the Secretary of Defense directed that each service immediately implement a victim legal advocacy program to provide legal representation to victims of sexual assault. On 1 January 2014, the Navy and Marine Corps established a VLC Program (VLCP). The mission of the VLCP is to provide legal advice and representation to victims of certain crimes. A VLC is a judge advocate who will be detailed to advocate on the victim's behalf by providing legal counsel throughout the investigation and court-martial process. References (j) through (m) provide additional guidance on a victim's eligibility for VLC services. Contact a staff judge advocate in order to determine whether a victim must be offered VLC.

## **MILITARY PROTECTIVE ORDER (MPO)**

### **REFERENCES:**

- (a) OPNAVINST 1752.1C
- (b) DoDI 6400.06
- (c) OPNAVINST 1752.2B
- (d) NAVADMIN 252/19
- (e) MARADMIN 130/20
- (f) DoD Policy Memorandum of Mar 30, 2020, "Policy Clarification on Release of Revised DD Form 2873, Military Protective Order, and Issued DD Form 2873-1, Cancellation of Military Protective Order"

**AUTHORITY:** Military commanders will use DD Form 2873 to issue a MPO to service members attached to his or her command when necessary to safeguard victims of domestic abuse or child abuse, quell a disturbance, or maintain good order and discipline, giving the victim time, if he/she chooses, to pursue a protection order through a civilian court, or to support an existing civilian protection order. See references (a) - (f). A MPO ensures active-duty service members do not have contact with individuals against whom they are alleged, or are confirmed, to have committed an offense. MPOs are only enforced by the military. Civilian law enforcement will not enforce MPOs. Civilian law enforcement may notify military law enforcement of a violation of an MPO if there is a current Memorandum of Understanding between the two entities to do so. Reference (b) provides a standard form letter for an MOU. While a MPO is administrative in nature, a MPO is a direct order and violations can result in charges under the UCMJ. Commanding Officers should consult a judge advocate prior to issuing or terminating an MPO. It is important to understand that MPOs are not internal to the Navy and that MPOs can impact an individual's background check. This includes background checks for employment, volunteer activities, or purchasing a weapon, for example. While victim safety is paramount, prior to issuing a MPO in accordance with reference (e), commanders must consult with Naval Criminal Investigative Service (NCIS) to ensure the MPO does not compromise an ongoing investigation; for example, issuing a MPO may alert a suspect that they are under investigation before NCIS has the opportunity to do a controlled call.

**ISSUING A MPO:** The commander will consult with the appropriate servicing legal office, as needed, concerning issuing the MPO; will use DD Form 2873, "Military Protective Order," to issue or modify the MPO; and will use DD Form 2873-1, "Cancellation of Military Protective Order Form," to cancel the MPO when deemed appropriate to do so. Reference (c) provides that a MPO may be issued upon request of the alleged victim or victim's command, confirmation of an offense, or upon satisfactory evidence of a potential offense. Verbal orders can be issued in an immediate situation, but per references (a) and (c), will be immediately reduced to writing using DD Form 2873 as soon as possible thereafter. Information in a MPO should succinctly address the specific needs of the protected person. MPOs should not have overly harsh provisions which could be construed as punitive or as a form of pre-trial restriction. Avoid disclosing facts from a NCIS investigation and avoid re-traumatizing the victim. For example, "protected person alleges that service member sexually assaulted her" is enough information. Consideration should be made to include language ordering the service member not to communicate with the protected person via social media or other electronic means. Copies of the signed MPO shall be provided to the subject Service member, the adult protected person, and/or to the custodial parent of the protected child(ren), with such redaction, as appropriate. Notify the servicing Family Advocacy Program point of contact of the issuance of the MPO. Contact the Service member's gaining command within 7 days of notification of the pending transfer, and recommend the gaining command issue a new MPO when the Service member is transferred to the gaining command, if an MPO is still appropriate.

**CIVILIAN PROTECTIVE ORDER:** Victims desiring protection off base should seek a civilian protective order (CPO), also known as a restraining order. Under references (a) - (c), commanders should issue a MPO to allow time for a local court to act. Once issued by a civilian court, commanders should reissue the MPO avoiding terms that contradict the CPO and explicitly state that the MPO expires automatically upon expiration of the CPO. Commanders may draft MPO terms that are more restrictive than the CPO and apply the MPO to locations beyond the local court's jurisdiction, including locations outside of the United States. Commanders shall inform victims of the limits of the MPO in terms of both civilian law enforcement's inability to enforce the MPO and the Service member's ability to pass a Federal firearms background check and purchase a firearm despite the existence of the MPO.

**MANDATORY REFERRAL TO NCIS:** Per references (d) and (e), commanders shall report MPOs when a service member subject to an MPO is present in the U.S. or U.S. territories before the MPO expires. The MPO shall be forwarded to the servicing military law enforcement agency to ensure the MPO has been entered into the National Crime Information Center Protective Order File (NCIC-POF) immediately after issuance. The NCIC database creates a record that is available to law enforcement agencies nationwide and is used by police officers and other entities conducting background checks into a person's criminal history. MPOs issued by units underway or overseas that expire before a service member returns to the U.S. or U.S. territories are not required to be reported. MPOs shall be removed by NCIS no later than the end of the month in which they expire. The issuing commander has a continuing obligation to report any issuance, modification, or termination of the MPO to the applicable installation commander and NCIS.

**SECTION II: ADMINISTRATIVE CORRECTIVE MEASURES AND NONJUDICIAL  
PUNISHMENT**

## **NON-PUNITIVE MEASURES TO CORRECT MISCONDUCT OR POOR PERFORMANCE**

### **REFERENCES:**

- (a) RCM 306
- (b) JAGMAN, Sections 0102-0105
- (c) MILPERSMAN 1611-020
- (d) BUPERSINST 1610.10E
- (e) MCO P1610.7C
- (f) SECNAV M 5510.30
- (g) BUPERSINST 1430.16F CH-1
- (h) SECNAVINST 1920.6 (series)
- (i) MILPERSMAN 1616-010
- (j) MILPERSMAN 1616-040
- (k) MILPERSMAN 1910
- (l) UCMJ, Article 138
- (m) U.S. Navy Regulations Article 1150
- (n) MCO P1400.32D

**APPROPRIATE ACTION IN EVERY CASE:** Each commander has the discretion to dispose of offenses by members of that command. These offenses should be disposed of in a timely manner at the lowest appropriate level of disposition. Disposition options are described in reference (a) and include non-punitive measures outlined below, as well as nonjudicial punishment and court-martial.

**NO ACTION OR DISMISSAL:** Upon completion of an investigation, a commander may decide to take no action on an offense, if appropriate under the totality of the circumstances. If charges have been preferred, they may still be dismissed and administrative action taken.

**ADMINISTRATIVE ACTION POLICY:** Administrative action may be taken in addition to or instead of disciplinary action, as circumstances warrant. However, administrative action should not be used as a form of punishment nor as a substitute for appropriate disciplinary action.

**NONPUNITIVE MEASURES:** Administrative action designed to correct unacceptable behavior or performance. These measures will be described below.

**LAWFUL WAYS TO DENY NORMAL LIBERTY:** As described in reference (b), deprivation of normal liberty is illegal unless it is awarded as part of nonjudicial punishment or adjudged by a court-martial, or under the following circumstances that are non-punitive in nature:

- Extra Military Instruction (EMI)
- Liberty risk (only applicable overseas)
- Extension of working hours for mission-essential requirements
- Limited health/safety reasons
- Pretrial restraint in anticipation of court-martial

**INFORMAL RESOLUTION:** Informal resolution takes place at the lowest level of the chain of command. These include, but are not limited to, informal counseling and providing an apology.

**NONPUNITIVE CENSURE** [reference (b), section 0105]:

- Nonpunitive censure may be oral or in writing.
- A nonpunitive letter of caution (NPLOC) is not punishment, and is kept as a personal matter between the Service member and the superior issuing the NPLOC.
- NPLOCs may not be entered into the Service member's official service record or referenced in any official service documentation (including FITREPs). However, the facts underlying the NPLOC may be referenced.

- NPLOCs may be included in misconduct packages in the event the Service member rebuts the misconduct package alleging he or she was inadequately counseled or otherwise unaware of his or her deficiencies.
- In cases involving senior DON officials, the public interest to disclose NPLOCs may outweigh the official's privacy interest. If considering disclosing a NPLOC, please contact your staff judge advocate and public affairs officer.

#### **EXTRA MILITARY INSTRUCTION (EMI)** [reference (b), section 0103]

- EMI is a training tool designed to identify and correct a deficiency.
- EMI must be logically related to the deficiency and assigned for no longer than necessary to correct the deficiency (normally not more than two hours per day).
- EMI should not be assigned on a Service member's Sabbath.
- While EMI during normal working hours can be issued by any superior authority, EMI outside working hours may only be authorized by commanders or officers in charge.
- Delegation of issuing EMI after working hours to subordinates requires the permission of the Chief of Naval Operations or the Commandant of the Marine Corps.
- Ensure there is a mechanism in place for commanders to know which Service members are receiving EMI, and for how long EMI has been assigned.

**WITHHOLDING OF PRIVILEGES:** Unlike normal liberty, which is a right, a privilege is a benefit, advantage, or favor provided for convenience or enjoyment. Privileges may be withheld, but only those with the power to grant the privilege may revoke the privilege. Privileges that may be withheld include special liberty, exchange of duty, base driving privileges, access to base clubs or package stores, and installation or ship movies.

#### **LETTERS OF INSTRUCTION (LOI)** [references (b), (c), and (d)]

- Written guidance used to correct a deficiency. Unlike a NPLOC, an LOI may be referenced in any official service documentation, and the underlying conduct may also be mentioned in appropriate official documentation.

#### **COMPETENCY REVIEW BOARD (CRB)** [USMC ONLY, reference (n)]

- A formal administrative body convened to consider the suitability and ability of a Marine to continue to serve in the grade currently held.
  - Sgt and below—SPCMCA
  - SSgts and above—GCMCA
- Bases:
  - Technical Incompetence: Not proficient in performing duties and tasks as specified in MCO 1200.16 (MOS Manual) – Fails to complete qualifications for intended MOS
  - Professional Incompetence: Fails to exhibit military attributes for current grade
- Cannot be used in addition to awarding NJP or in lieu of disciplinary proceedings.

**VOLUNTARY RESTRAINT:** Voluntary restraint, "house arrest," or "confinement to quarters" is never authorized unless part of a lawful punishment which requires certain procedures and provision of due process rights to the accused. Consult a staff judge advocate for the proper enactment of this punishment.

#### **REMEDIES FOR ILLEGAL NON-PUNITIVE MEASURES:**

- Request mast with the CO
- Complaint against the CO pursuant to reference (l)
- Complaint against any superior other than the CO pursuant to reference (m)
- Congressional inquiry
- IG complaint



**RESERVE NOTE:** The guidance provided above applies to reservists on active duty. Reservists in a drilling status do not have liberty. Accordingly, a CO may not deny liberty to a reservist in a drilling status. A CO cannot lawfully require a drilling reservist to work beyond the normal four-hour drilling period. Additionally, a CO cannot restrict a drilling reservist's liberty between drilling periods.

**OTHER NONPUNITIVE MEASURES:**

- Use of evaluations and fitness reports to document unacceptable behavior [references (d) and (e)]
- Security clearance adjustments or withdrawal [reference (f)]
- Withholding or withdrawing an advancement/promotion recommendation [reference (g)]
- Reassignment/early transfer/delay of transfer
- Detachment for Cause [reference (c) and (i)]
- Administrative separation [reference (h), (j), and (k)]

## **NONJUDICIAL PUNISHMENT BASICS**

### **REFERENCES:**

- (a) UCMJ, Article 15
- (b) MCM, Part V
- (c) JAGMAN, Sections 0106-0108

**AUTHORITY:** Only a CO or an OIC [references (a) and (c)] over the accused has the authority to award nonjudicial punishment (NJP). NJP may be awarded to USN and USMC members of the command. Some flag officers may delegate their authority to award NJP to a principal assistant. Generally, COs cannot delegate their authority to award NJP. If the executive officer (XO) is acting CO, then the XO as acting CO can award NJP, as the authority to award NJP rests with the position of CO and not with the individual.

### **OTHER CONSIDERATIONS REGARDING AUTHORITY TO AWARD NJP:**

- **TIMING OF NJP:** The authority to award NJP rests with the CO in whose command the accused now serves, not the CO of the accused at the time of the offense.
- **TAD PERSONNEL:** The accused can be awarded NJP by either the CO of the TAD command or the accused's permanent command, but not by both for the same offense.
- **EMBARKED UNITS:** Unit commanders must defer to the ship CO to decide whether to award NJP to embarked personnel. As a default, the ship CO has NJP authority over all embarked personnel aboard the ship. The ship CO may delegate his/her authority to the COs of embarked units, but absent such a delegation the ship CO retains NJP authority. However, if a unit is only aboard for transportation purposes and is not attached to the ship, the unit CO maintains NJP authority over his/her personnel.
- **MULTI-SERVICE COMMANDS:** Personnel are subject to NJP from the multi-service commander. Often, multi-service commanders will designate the senior USN and USMC officer at the command to award NJP to their respective members. Any such designation must be done in writing and a copy of the designation must be provided to the Office of the Judge Advocate General (OJAG), Criminal Law Division (Code 20) and to the Commandant of the Marine Corps (CMC).

**OFFENSES PUNISHABLE:** A CO has broad discretion over which offenses should be handled under the provisions of reference (a).

- **GENERAL GUIDANCE:** The awarding of NJP is intended for minor offenses. Determining whether an offense is minor is up to the CO's discretion. Among the factors to be considered is whether the offense could receive a punitive discharge or more than one year of confinement if at court-martial. If such a punishment is not authorized, then the offense is generally considered minor. However, this is a guiding principle and not a hard rule for categorization of offenses. A unit's Staff Judge Advocate can assist in this determination.
- **DOUBLE PUNISHMENT:** Punishment of a minor offense by awarding NJP will bar a subsequent court-martial for the same offense. Punishment of a serious offense by awarding NJP will not bar a subsequent court-martial for the same offense, but the accused will receive credit for any punishment performed as a result of the NJP against any ultimate court-martial sentence. In such cases, the military judge will decide whether an offense is minor or major.
- **PRIOR CIVILIAN ACTION** [reference (c)]:
  - Prior federal court action bars the awarding of NJP or convening of a court-martial for the same offense.
  - Prior state, local, or foreign court action does not necessarily bar the awarding of NJP or convening of a court-martial for the same offense, but the command must request permission to proceed from the General Court-Martial Convening

Authority (GCMCA) over the accused. If permission is granted, the GCMCA must report this to OJAG/CMC, typically via his/her Staff Judge Advocate.

- Criteria the GCMCA may consider when deciding whether to grant permission to award subsequent NJP or convene a court-martial include: An exceptionally lenient civilian sentence, impracticable probation terms, court conclusion without a conviction or with an acquittal after a trial on the merits, and/or a unique military interest such as lack of civilian prosecution for military-specific crimes.

**DUAL ACTION:** If both the USN/USMC and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. The Senior Officer Present Afloat and the area Staff Judge Advocate, as well as NCIS, should be consulted if it appears that both the USN/USMC and local authorities are contemplating prosecution.

**STATUTE OF LIMITATIONS:** For the awarding of NJP, there is a two-year statute of limitations from the date of the offense; not two years from the date the command found out about the offense. This statute of limitations is waivable by the accused.

**RESERVE NOTE:** Reservists are subject to UCMJ jurisdiction if they commit offenses defined by the UCMJ while on active duty or in a drilling status. For misconduct occurring 1 January 2019 or later, jurisdiction now covers travelling to and from drilling sites, between drilling intervals on the same day and between drilling intervals on consecutive days. The guidance provided above relating to a CO's authority and discretion applies to reserve COs and reservists.

- NJP can be awarded during active duty or inactive duty training (IDT) when the misconduct occurred, or at a subsequent period of active duty or inactive duty training, so long as it is within two years of the date of the offense. The accused can waive his/her right to be present at the NJP, and the CO or OIC may award NJP and require any punishment to take effect during a subsequent period of active duty or IDT.
- Reservists can be awarded restriction and extra duty at NJP. However, the restriction or extra duty may not extend beyond the normal termination of the duty period. Awarded but unserved restriction or extra duty can be carried over to a later period of active duty or IDT. Extra duties and arrest in quarters may not be awarded to reservists if they are IDT.
- Fines awarded to reservists permanently assigned to inactive duty shall be based upon the total amount subject to forfeiture at the time adjudged.
- A CO can request that the GCMCA involuntarily recall the accused to active duty or IDT for the purpose of awarding NJP.

## **NONJUDICIAL PUNISHMENT PROCEDURES AND PROCEEDINGS**

### **REFERENCES:**

- (a) UCMJ, Article 15
- (b) MCM, Part V
- (c) JAGMAN, Sections 0108-0111, 0115
- (d) MCO P5800.16 (series)
- (e) NAVADMIN 188/19
- (f) MILPERSMAN 1616-050 – Enlisted Performance (E-5 and Below)
- (g) MILPERSMAN 1616-040 – Enlisted Performance (E-6/7/8/9)

### **NAVY DISCIPLINARY REVIEW BOARD (DRB) AND EXECUTIVE OFFICER INQUIRY (XOI):**

[USN ONLY]: DRB and XOI are investigative tools utilized by the leadership of an enlisted accused. Senior enlisted leadership makes disciplinary recommendations to the Executive Officer (XO), who then conducts XOI. The XO will then either dismiss the charges or forward them to the CO recommending whether to proceed with mast pursuant to reference (a). An accused Service member cannot refuse to attend DRB or XOI, but maintains the right to remain silent at these proceedings. Neither mechanism is authorized to make guilty findings or impose punishments. Neither process is required to take place before NJP can be awarded.

[See Appendix K – Executive Officer Inquiry Guide]

### **RIGHT TO REFUSE NJP:**

- Service members can refuse the awarding of NJP unless they are attached to or embarked on a vessel. The operational status of the vessel is irrelevant to whether a member can refuse NJP, but members of a pre-commissioning unit (PCU) may still be able to refuse NJP. This determination depends on a number of factors such as whether members are receiving sea pay, whether sea trials have occurred, etc. Reach out to your staff judge advocate regarding PCU NJP policies.
- The right to refuse NJP ends when the CO actually imposes the punishment at mast. Any time before, even during mast before the punishment is announced, the Service member can refuse NJP and terminate the mast proceedings.
- If a member refuses NJP, the CO retains all administrative and other disciplinary options, including taking the charges to a court-martial. The CO determines how to proceed following a Service member's refusal of NJP. Service members cannot "demand court-martial" in lieu of NJP. The CO is under no obligation to convene a court-martial.

### **RIGHT TO CONSULT WITH COUNSEL:**

- There is no right to legal counsel at NJP proceedings. The only right to legal counsel related to NJP is the right to consult with a lawyer about whether to accept NJP. This right applies only to members who have the right to refuse NJP (e.g., those not attached to or embarked on a vessel).
- If a member with the right to refuse NJP is denied his/her request to consult legal counsel, the command may still hold NJP proceedings (presuming the Service member did not actually assert his/her right to refuse NJP). The only consequence to the command is that this NJP will not be admissible in aggravation at any later court-martial that might occur for the same or unrelated conduct (*Booker* rights).

### **RIGHTS AT THE NJP HEARING:**

- To be present. The CO may not award NJP without the Service member present unless the Service member has waived his/her right to a personal appearance.
- To remain silent.

- To have a personal representative assist with preparation and be present (this is not a right to counsel).
- To examine all evidence used against him/her. NOTE: “Examine” does not mean the Service member has the right to a copy of the evidence.
- To present matters in defense or extenuation/mitigation.
- To call “reasonably available” witnesses (there is no subpoena power over civilian witnesses). These witnesses do not have to be in-person.
- To request a public hearing. A member may request a closed hearing but he/she has no right to one.

**MILITARY RULES OF EVIDENCE (MRE):** Except for privileges and the right against self-incrimination, the MREs do not apply at NJP.

**STANDARD OF PROOF:** The CO must be convinced by a preponderance of the evidence that an accused committed every element of each charged offense in order to be found guilty. A preponderance of the evidence means that it is more likely than not a fact is true. It requires less certainty than clear and convincing evidence and substantially less than belief beyond a reasonable doubt.

**CO’s SCRIPT/GUIDE FOR AWARDING NJP:** See Appendix A-1-f of reference (c). This guide helps the CO conduct a legally sufficient hearing and ensures that required due process is afforded to the accused. It is recommended that COs DO NOT award NJP without this script.

**CO’s OPTIONS AT NJP HEARING:**

- Find the accused guilty of one or more of the charges and award NJP.
  - The CO may award up to the statutory maximum punishment for any offense for which an accused is found guilty. [See *Appendix F – NJP Punishment Limitations Chart*] Note: An Officer in Charge is limited in the punishment that can be awarded at OIC Mast.
- Dismissal of one or all of the charges.
- Dismissal with imposition of administrative/non-punitive measures.
  - Note: Any discussion and imposition of administrative/non-punitive measures should take place after the conclusion of the NJP hearing.
- Terminate the hearing before imposing punishment and refer the matter to court-martial or a superior authority for disposition.

**PUBLICATION OF NJP HEARING RESULTS:** See Reference (c), section 115.

- The results of an NJP hearing may be published no earlier than five working days and no later than 30 calendar days after the imposition of NJP (or 30 days after the reviewing authority acts on the NJP appeal).
- Generally, if only military members have access to the publication of NJP hearing results, then full publication, including the name of the accused, is allowed. If there is the potential for civilian access to the information, the Service member’s full name must be removed. There are exceptions to restricting full publication based on the rank and/or position of the disciplined Service member and/or the nature of the misconduct or if there is compelling public and/or media interest. See reference (c) for factors to consider with regard to disclosure.

**NJP REPORTING:**

[USN ONLY]: In accordance with reference (e), all Navy enlisted NJP results will be reported via the NAVPERS Form 1626/7 (report chit) to ensure consistency and of reporting and proper recording of NJP results in the member’s OMPF. For enlisted Sailors E5 and below, a report of NJP must be submitted to PERS-313 [reference (f)]. For enlisted Sailors E6 and above, a report of NJP must be submitted to PERS-832 [reference (g)]. Templates for these

reports and other documents are available on Navy Personnel Command's website via the corresponding MILPERSMAN section referenced. For officer NJP, see "OFFICER MISCONDUCT AND SEPARATIONS" below.

[USMC ONLY]: In accordance with Chapter 3 of reference (d), a Unit Punishment Book (UPB) is used to record the imposition of NJP for USMC enlisted personnel. In accordance with Chapter 4 of reference (d), the UPB will not be used in officer NJP cases. As a result, if forfeitures or fines are awarded at an officer NJP, a copy of the Report of NJP must be provided to the local administrative center to serve as the source document to run the appropriate Unit Diary entry for the forfeitures and/or fine. For more on officer NJP, see "OFFICER MISCONDUCT AND SEPARATIONS" below.

## **NONJUDICIAL PUNISHMENT AND CORRECTIVE ACTION**

### **REFERENCES:**

- (a) UCMJ, Article 15(d)
- (b) MCM, Part V
- (c) MILPERSMAN 5812-010
- (d) JAGMAN, Sections 0111-0118
- (e) MCO P5800.16 (series)

### **THOSE WITH AUTHORITY TO TAKE CORRECTIVE ACTION:**

- The officer awarding NJP;
- The successor in command to the officer awarding NJP; or
- The appellate authority [General Court-Martial Convening Authority (GCMCA) over the officer awarding NJP.

### **TYPES OF CORRECTIVE ACTION:**

- **SET ASIDE:** Terminating any or all of the punishment (whether executed or unexecuted) and restoring all property, privileges, and rights affected by that portion of punishment set aside. Set asides should only be used to correct clear injustice. A clear injustice is an unwaived factual or legal error which affirmatively injured the rights of the member. Clear injustice does not include the fact that the member's performance has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the member. NJP set asides must be executed in accordance with reference (c). Absent unusual circumstances, the power to set aside NJP will be exercised within four months of the imposition of NJP. Setting aside an NJP has the effect of voiding the punishment and restoring the Service member to the position he/she would have been in had the NJP not been awarded, including back pay for any awarded reduction in rate, forfeitures, and fines [see references (b) through (d)].
- **MITIGATION:** A reduction in the quantity or type of an unexecuted punishment. The new punishment may not be for a period greater than the original punishment. For example, a reduction in grade may be mitigated to forfeiture of pay [see reference (b)].
- **REMISSION:** Canceling unexecuted punishment. The end of a current enlistment or discharge automatically remits any remaining unexecuted punishment. Service members may not be retained beyond their End of Active Obligated Service to serve NJP that was awarded [see reference (b)].
- **SUSPENSION:** Holding the punishment in abeyance for up to six months.
  - **CONDITIONS OF SUSPENSION:** The member cannot commit further violations of the UCMJ. Any additional terms should be in writing and must be lawful orders capable of performance (Examples of conditions include making restitution to the victim, agreeing not to enter certain establishments, submitting to searches, conducting training, successfully completing a course of treatment or rehabilitation, etc.).
  - **VACATION OF SUSPENSION:** If a Service member violates the terms of a suspended NJP, the suspension may be vacated by any authority authorized to impose the punishment that was suspended. The Service member should be notified and, although a hearing is not required, a hearing should be held unless impracticable. Vacation of suspended NJP is not NJP, so the conduct that led to the vacation can serve as separate basis for a new NJP.

## **NONJUDICIAL PUNISHMENT APPEALS**

### **REFERENCES:**

- (a) UCMJ, Article 15
- (b) MCM, Part V
- (c) JAGMAN, Sections 0116 and 0117
- (d) MCO P5800.16 (series)

### **REVIEWING/APPELLATE AUTHORITY:**

- **USN:** The Region Commander or the General Court-Martial Convening Authority in the chain of command of the officer awarding NJP.
- **USMC:** The immediate superior in the operational chain of command to the officer awarding NJP.

### **GROUND FORS FOR APPEAL:**

- **UNJUST:** The evidence does not support the finding or there was a substantial procedural error/illegal aspect of the hearing.
- **DISPROPORTIONATE:** the punishment is disproportionate to the offense, too harsh, or unfair with respect to the specific circumstances of the case.

### **TIME LIMITATIONS:**

- The Service member has five working days from the date the NJP is awarded to file an appeal.
- Extensions may be requested for good cause.
- Late appeals may be denied only by the appellate review authority. Therefore, all appeals, no matter how late, must be forwarded to the appellate authority regardless of the date submitted.

### **PROCEDURE:**

- Appeals must be in writing.
- They must be routed from the Service member via the officer who awarded NJP.
- Any endorsement by the chain of command should include a statement of facts and copies of evidence relied upon at the hearing, to include any investigative documentation, witness statements, etc. The endorsement should not include evidence of misconduct that was not the subject of the hearing unless the accused is given an opportunity to comment.

**REQUEST FOR STAY OF RESTRAINT:** Applies only to punishments of restraint and extra duties. A Service member awarded NJP may request in writing that any unexecuted restraint and extra duties be stayed if the appellate authority fails to act on the appeal within five calendar days. If requested, and the appellate authority fails to act on the appeal within five days, the unexecuted restraint and extra duties are stayed until the appellate authority acts.

**REVIEWING/APPELLATE AUTHORITIES SCOPE:** The review/appellate authority can only review the appeal to determine if the officer awarding NJP abused his/her discretion. The review authority cannot make guilty findings, impose greater or different punishments, or substitute charges. The appellate authority can only take the corrective actions detailed above or approve the punishment awarded.



**REFERRAL TO A JUDGE ADVOCATE:** NJP appeals must be referred to a judge advocate for review if the punishment awarded includes:

- Arrest in quarters for more than 7 days;
- Correctional custody of more than 7 days;
- Forfeiture of more than 7 days of pay;
- Reduction in paygrade of an E-4 or higher;
- Extra duties for more than 14 days; and/or
- Restriction for more than 14 days.

### **SECTION III: ADMINISTRATIVE INVESTIGATIONS**

## **INVESTIGATIONS PURSUANT TO THE JAGMAN**

### **REFERENCES:**

- (a) JAGMAN, Chapters II and XI
- (b) MCO P5800.16 (series)
- (c) JAGMAN Investigations Handbook
- (d) MILPERSMAN 1770-060

### **TYPES OF JAGMAN INVESTIGATIONS:**

- Preliminary Inquiry
- Command Investigation
- Litigation-Report Investigation
- Admiralty Letter Report
- Dual-Purpose Investigation
- Boards of Inquiry / Courts of Inquiry

**JAGMAN INVESTIGATIONS:** Chapters II and XI of reference (a) provide types of investigations that commanders can use to provide themselves with information regarding a specific incident. Commanders and investigating officers are encouraged to seek guidance from their staff judge advocates regarding investigations. Per reference (b), in the Marine Corps, the command Staff Judge Advocate is responsible for providing advice on administrative investigations convened by cognizant commanders. Reference (c) can assist the command conducting an investigation.

**PRELIMINARY INQUIRY (PI):** The basic and most frequently-utilized type of investigation. The JAGMAN provides the CO with the authority to convene an appropriate investigation. When the CO does this, he/she becomes the convening authority (CA) for that investigation. The JAGMAN allows CAs to initiate a PI to determine whether further investigation is required. Based upon the result of the PI, the CA may decide to take no further action or to convene another type of JAGMAN investigation. PI convening orders may be oral or written, and the PI typically take no more than three days to complete.

**COMMAND INVESTIGATION (CI):** A common type of investigation, colloquially known as a “JAGMAN” investigation. A CI should not be used for any incident considered a “major incident” unless a GCMCA determines otherwise. Unless of no interest outside the unit, all CIs are reviewed by the first GCMCA in the chain of command.

- The investigating officer (IO) is typically senior to the accused and to most known, relevant witnesses. The IO may be officer or enlisted. If necessary, the IO can come from another command.
- Testimony obtained for a CI can be sworn or unsworn.
- A CI must include the findings of fact, the opinions of the IO, and recommendations for disciplinary, corrective, or other appropriate administrative actions.

**LITIGATION-REPORT INVESTIGATION (LITREP):** This form of JAGMAN investigation is utilized when the primary purpose of the investigation is to defend or protect the legal interests of the Department of the Navy and the United States. The LITREP is designated as “attorney work product” and protected from disclosure. Due to the high sensitivity of a LITREP, it should not be conducted without the supervision of a judge advocate and may only be released by the Office of the Judge Advocate General (OJAG) (Code 15 – Tort Claims Unit).

- The CA must consult with a cognizant judge advocate before convening a LITREP. The investigation will be conducted under the direction and supervision of that judge advocate.
- LITREPs require a special type of convening order [see reference (a) Appendix A-2-f].
- LITREPs will not include signed witness statements or recordings of witness statements.

- Typically, LITREPs only record facts and not opinions/recommendations.
- Every page of the report will be labeled “FOR OFFICIAL USE ONLY: LITIGATION/ ATTORNEY WORK PRODUCT” [See reference (a), section 0210e].
- LITREPs may not be used to investigate major incidents or incidents where an active duty death has occurred.

**ADMIRALTY INCIDENTS:** Admiralty incidents include any personal injury, loss of life, property damage, salvage, oil spill, or rescue, arising in whole or in part from a DoN-owned or operated vessel. An admiralty incident may also result from ship-launched aircraft or weapons. Admiralty incidents are covered in Chapter XI of reference (a) and typically result in Admiralty Letter Reports or Dual-Purpose Investigations, described below.

**ADMIRALTY LETTER REPORT (ALR):** Similar to a LITREP, an ALR is used when an admiralty incident results in possible litigation and protection of internal information/decisions from discovery is required [see Chapter XI of reference (a)].

**DUAL-PURPOSE INVESTIGATIONS:** A Dual-Purpose Investigation is used when convening authorities must balance concerns of safety, operational requirements, and accountability with litigation concerns. Chapter XI of reference (a) provides a sample format.

**BOARD OF INQUIRY / COURT OF INQUIRY:** These are the most formal types of investigations and are reserved for “major incidents,” typically involving multiple deaths, significant national or international public or press interest, significant environmental damage, etc.

**ENDORSEMENTS:** CAs should address any and all deficiencies identified in the investigation, and detail corrective actions taken or planned. Special rules apply that may limit any reference to certain administrative and disciplinary actions taken in response to an investigated incident

- CIs: Per reference (a), all command investigations should be forwarded to the GCMCA in the chain of command. However, the GCMCA may set local policy on which types of CIs should be forwarded. Refer to reference (a) for proper routing of a JAGMAN investigation.
- LITREPs: All LITREPs must be forwarded to the OJAG (Code 15), Tort Claims Unit, 9620 Maryland Avenue, Suite 100, Norfolk, Virginia 23511-2989.

**RETENTION:** CIs must be retained for at least two years and then forward to OJAG (Code 15), Investigations Branch for retention. Any contemplated disposal of a LITREP shall be coordinated with OJAG Code 15 (DSN 325-4600 or (202) 685-4609) before destruction.

**FREEDOM OF INFORMATION ACT RELEASE AUTHORITY:** At a minimum, the lowest level release authority for CIs is the cognizant GCMCA. For LITREPs, only OJAG (Code 15) is authorized to release a report.

**LINE OF DUTY INVESTIGATION (LODI)/MISCONDUCT DETERMINATIONS:** Whenever a Service member is injured or ill and such injury or illness may result in permanent disability or if it may result in the Service member missing duty for a period of more than 24 hours, the Service member's command must make a Line of Duty determination, with a PI at minimum. If an investigation is done (for example, if misconduct is suspected), the results of the LODI must be forwarded for final action to the GCMCA. Usually a LODI will be a component of a CI and not a separately documented investigation [see reference (d)].

**RESERVE NOTE:** Refer to section 0224 in reference (a) for special considerations in reserve component cases.

**SEX-RELATED OFFENSES:** Commanders are required to immediately report sex-related offenses to their military criminal investigative organization (e.g., NCIS, etc.). A command **shall not** conduct its own PI or CI into an allegation of a sex-related offense until after the cognizant military criminal investigative organization decides not to pursue the matter. If an existing investigation uncovers an allegation of a sex-related offense, NCIS should be contacted and the investigation should not continue unless approved by NCIS.

## **DEATH INVESTIGATIONS**

### **REFERENCES:**

- (a) MILPERSMAN 1770-010, 1770-030
- (b) JAGMAN
- (c) MILPERSMAN 1770-040
- (d) MCO P5800.16 (series)
- (e) MCO P3040.4 (series)

**PERSONNEL CASUALTY REPORT:** This report is required in the event of a death of a Service member [see reference (a)].

**NCIS NOTIFICATION:** NCIS must be notified if a Service member or civilian dies aboard a naval vessel or USN/USMC aircraft, or on board an installation, except when the cause of death is attributable to disease or natural causes.

### **JAGMAN INVESTIGATION:**

- If a death occurred CONUS, off-base, while the Service member was off duty, and there is no connection between the naval service and the circumstances of the death, the command may conduct a limited investigation, obtain the investigation completed by civilian authorities, and maintain the record as an internal report. The command shall document, in writing, the reasons a limited investigation was conducted, and attach the enumerated reasons to the internal report.
- At a minimum, a PI shall be conducted into the death of a member of the naval service or into the death of a civilian aboard a place under naval control.
- If a death is the result of a previously known medical condition and the quality of medical care is not an issue, or if the death was caused by enemy action, no investigation is required.
- Under all other circumstances, a full JAGMAN investigation (typically a command investigation) is required.

**STATUS OF INVESTIGATION REPORTS:** Status reports are required at reasonable intervals until the JAGMAN investigation is forwarded to the next reviewing authority, typically the immediate superior over the CA who ordered the investigation into the death in question.

**LINE OF DUTY (LOD) DETERMINATIONS:** LOD determinations are required for all active duty death cases. If the deceased's conduct is called into question as a contributing factor to his/her death, the CO may appoint an individual not associated with the case (outside the chain of command) to review the investigation to ensure thoroughness and accuracy of the findings [see section 0231 of reference (b)].

**FORWARDING:** Do not delay in forwarding the investigation or finalized documents that are part of the investigation up the chain of command while awaiting final autopsy reports, death certificates, etc. Such documentation can be forwarded under separate cover and added to the investigation [see section 0228b of reference (b)].

### **RESERVE NOTE:**

- Section 0224 of reference (b) pertains specifically to procedures for LOD determinations that involve reservists.
- Reference (c) addresses casualties and survivor benefits pertaining to reservists, as well as reporting the death of non-active duty sailors.
- Reference (d) states that a LOD determination should be conducted whenever an active-duty Service member of the naval service dies. Reference (d), however, does not specifically address the need for a LOD determination in the case of a reservist who

dies while performing military duty. References (a) and (e) state that the term “active duty” for purposes of LOD determinations in death cases includes reserve components serving on active duty, active duty for training (ADT), and inactive duty for training (IDT) (drilling status).

- The USMC Casualty Assistance Program [reference (e)] states that the term “active duty” includes applicants of the Reserve Officers’ Training Corps and members of the Reserve Component serving on active duty, ADT, and IDT.

## **REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL**

### **REFERENCES:**

- (a) DoDM 5200.01
- (b) SECNAVINST 5510.36B
- (c) JAGMAN, Chapters I and II
- (d) MILPERSMAN 1611-010
- (e) MILPERSMAN 1616-040

**POLICY:** Per reference (a), protection of classified information is essential to maintaining security and achieving mission success in DoD operational and warfighting environments. Per reference (b), all DON personnel who work with classified information are personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to classified information and the information they know, possess, or control is properly safeguarded.

**REPORTING REQUIREMENTS:** Per reference (b), an individual who becomes aware of a loss or compromise of classified materials must immediately notify their CO or security manager (SM). The CO or SM shall immediately initiate a preliminary inquiry (PI). If, during the course of the PI, it is determined that a loss or compromise of classified information occurred, the local NCIS office must be notified. The references listed above establish additional reporting requirements.

### **PRELIMINARY INQUIRY FOR SECURITY INCIDENT [see reference (b)]:**

- The CO or security manager will appoint a PI official (not the SM or any person involved in the incident) to conduct the PI for addressing security incidents involving classified information.
- The PI shall be initiated and completed as soon as possible, not to exceed 10 duty days. Extensions may be granted by the appointing official.
- PI should not recommend punitive action against the individual(s) responsible. This is the responsibility of the CO.
- PI Official will utilize volume 3 of reference (a) for completion of PI.
- Results of the PI may indicate that a more detailed JAGMAN command or higher-level investigation is required.

### **COMMAND INVESTIGATION:**

- A Command Investigation may be required if the circumstances of a security incident require a more detailed inquiry, additional information is needed, or where the head of the activity is contemplating punitive actions.
- The CO will appoint a command official with an appropriate security clearance commensurate with the classification level of the lost compromised information. See volume 3 of reference (a)
- The Security Manager will not be appointed to conduct the CI.
- Reference (c) provides guidance on conducting a CI into lost or compromised classified information, including how to properly mark and classify the report and enclosures to the CI.

### **NATIONAL SECURITY CASE REPORTING [see reference (c)]:**

- Results of the PI or NCIS investigation must be assessed to determine if the loss or compromise of classified information meet the criteria for a national security case.
- A national security case is one which, to any serious degree, involves the compromise of a military or defense advantage over any foreign national or terrorist group; involves the willful compromise of classified information; affects our capability to resist hostile or destructive action; or involves any act of terrorism.



- If any of these categories come into play, a more detailed JAGMAN investigation is required.
- A JAGMAN investigation for a national security case must be overseen by a senior line commander who is designated as a National Security Case Disposition Authority (NSCDA).
- The NSCDA must make periodic message reports (every 15 days) to the CNO until resolution or until the case is determined not to be a national security case.

**JUDGE ADVOCATE GENERAL REPORTING:** Report the following to OJAG Code 30 for cases that involve classified information, even if not designated a national security case:

- When criminal prosecution is contemplated;
- Whenever a major development in the case or investigation occurs; or
- At least every 30 days.

**REPORTING OF SECURITY INCIDENTS TO NAVY PERSONNEL COMMAND [USN ONLY]:**

Per references (d) and (e), when submitting a security incident report involving a naval officer or Sailor in pay grades E6 and above, Naval Personnel Command (NPC) must be notified. In cases in which there is no substantiated misconduct, this report, coupled with the Report of No Misconduct, may prevent the need for unnecessary withhold or delay actions triggered during post-selection board review.

#### **SECTION IV: CLAIMS**

## **CLAIMS OVERVIEW**

### **REFERENCES:**

- (a) JAGMAN, Chapters II, VIII, and XI
- (b) JAGINST 5890.1A

**INVESTIGATION REQUIREMENT:** If an incident occurs which gives rise to the possibility that a claim may be submitted either for or against the government, some form of administrative investigation will be required in order to defend the government against the claim. Typically, a JAGMAN investigation will be required.

- A litigation-report investigation or admiralty letter report is appropriate whenever an incident may potentially result in a claim or litigation against the Navy. Consult the cognizant staff judge advocate before convening a litigation-report investigation.

**NOTIFICATION:** The Office of the Judge Advocate General (OJAG), Tort Claims Unit (Code 15) should be notified of any incident which might result in a claim. The Tort Claims Unit is located in Norfolk, Virginia and may be contacted at (757) 341-5483 or DSN 341-4583.

**CLAIM RECEIPT:** Should the command receive an actual claim, it must be date-stamped and the original claim submission must be immediately forwarded to Code 15, along with any accompanying material. You must also include the original envelope with postmark sent by the claimant.

**ADVANCE COPY OF INVESTIGATION:** Provide Code 15 with an advance copy of any type of investigation conducted by the command with respect to the claim.

**NOTIFICATION OF LAWSUIT:** If a lawsuit has been filed against an individual within the command, immediately notify OJAG Code 15 at (202) 685-4600 or DSN 325-4600.

**ADMIRALTY INCIDENTS:** Any claim that may arise from the operation of a vessel upon navigable waters is considered an admiralty incident. Every admiralty incident must be reported immediately to the OJAG Admiralty Division (Code 11) at (202) 685-5040 or DSN 325-5040.

**FOREIGN CLAIMS:** [see *FOREIGN CLAIMS, Section XIII*]

**SECTION V: ADMINISTRATIVE SEPARATIONS AND OFFICER MISCONDUCT**

## **ENLISTED ADMINISTRATIVE SEPARATION BASICS**

### **REFERENCES:**

- (a) DoDI 1332.14
- (b) MILPERSMAN (1900 series)
- (c) MCO 1900.16 CH 2 (MARCORSEPMAN)
- (d) NAVADMIN 304/17
- (e) DoDI 1304.33
- (f) 10 U.S.C. § 1177
- (g) MARCORSEPMAN 6110.3
- (h) DTM 19-004

**PURPOSE:** Enlisted administrative separations (ADSEPs) are intended to promote readiness by maintaining high standards of performance, conduct, and discipline; achieve and maintain authorized force levels; and provide for the separation of enlisted personnel under various circumstances. [Reference (a)]

**BASIS FOR SEPARATION:** The basis for separation is the reason for separating a Service member. A list of all bases can be found in reference (a), section 1910-100 of reference (b), and chapter 6 of reference (c). All bases are divided into two broad categories:

- **VOLUNTARY:** The Service member requests separation. Reasons may include Expiration of Active Obligated Service (EAOS), personal family hardship, pregnancy, conscientious objection, etc.
- **INVOLUNTARY:** The military service initiates the ADSEP process. This category is further divided into mandatory and discretionary bases. Mandatory bases compel administrative processing, but discretionary bases defer the decision of whether to administratively process to the convening authority.

**MANDATORY BASES FOR SEPARATION PROCESSING:** A commander is required to initiate the ADSEP process when a Service member has engaged in the following:

- **USN**
  - Sexual misconduct
  - Sexual harassment (under certain circumstances)
  - Violent misconduct that resulted in, or could have resulted in, death or serious bodily injury
  - Possession of drug paraphernalia
  - Drug abuse, including the misuse of steroids
  - Unlawful use of controlled substance analogues, natural substances, chemicals, propellants, or over the counter drugs/pharmaceutical compounds. This now includes cannabidiol (CBD) products, regardless of tetrahydrocannabinol (THC) concentration.
  - Supremacist or extremist conduct
  - Alcohol rehabilitation failure
  - Family Advocacy Program failure
  - Second substantiated DUI (after 4 June 2009)
  - Nonconsensual distribution of an intimate image
  - Substantiated violations by military recruiters or military trainers providing entry-level training. See reference (e).
  - NOTE: ADSEP for Physical Fitness Assessment (PFA) failure is suspended. See reference (d) for other administrative measures for PFA failure.
- **USMC**
  - Sexual misconduct (with administrative board procedures)
  - Sexual harassment
  - Drug abuse

- Illicit use of prescription/over the counter medications
- Supremacist or extremist conduct
- Failure to pass the combat fitness test or the physical fitness test
- Failure to meet certain performance standards
- Second substantiated DUI
- Nonconsensual distribution of an intimate image

**MANDATORY SEPARATION PROCESSING UPDATE [USN ONLY]:** In October 2019, MILPERSMAN 1910-233 was updated. The CO is directed to use administrative board procedures in circumstances that warrant an other than honorable (OTH) characterization. If an OTH characterization is not desired, the CO may now utilize notification procedures (where the least favorable characterization of service is General (Under Honorable Conditions)) for all other cases where the CO must use mandatory separation processing. This includes separation for drug abuse in accordance with MILPERSMAN 1910-146, for example.

**CONVENING AUTHORITY (CA):** The CA is the official authorized to initiate the ADSEP process. Normally, the Service member's CO is the CA for enlisted ADSEP processing.

- **ADSEP NOTIFICATION AND BOARD PROCEDURES:** There are two methods for initiating and processing a Service member for ADSEP. The decision regarding which method to use depends on the seniority of the Service member and the least favorable characterization of service to which they may be subject [e.g., honorable, general (under honorable conditions), or other than honorable (OTH)].
- **NOTIFICATION PROCEDURE:** Appropriate in cases where the CA believes that either an honorable or a general discharge is warranted. If the Service member has six years of service or more, the member is still entitled to board procedures, even if the least favorable characterization is an honorable or general (under honorable conditions).
- **BOARD PROCEDURE:** Must be used if the Service member could receive an OTH characterization of service. If this is the case, the Service member is entitled to an ADSEP board regardless of the number of years of military service. Service members can always waive the right to an ADSEP board.

#### **CHARACTERIZATION OF SERVICE:**

- **HONORABLE:** Met the standard of acceptable conduct and performance; or is otherwise so meritorious that any other characterization is clearly inappropriate. For USMC, the Service member will normally have Pro/Con marks of 3.0/4.0 at his/her end of active service (EAS).
- **GENERAL (UNDER HONORABLE CONDITIONS):** The Service member provided honest and faithful service, but negative aspects of his/her service outweighed the Service member's positive service. This characterization of service may result in loss of significant Department of Defense (DOD) and Veterans Administration (VA) benefits, to include the GI Bill.
- **OTHER THAN HONORABLE:** The Service member demonstrated one or more acts or omissions that constituted a significant departure from the conduct expected from members of the Navy or Marine Corps. A collateral consequence to this characterization is that the Service member is at risk of losing almost all DOD and VA benefits.

#### **SEPARATION AUTHORITIES (SA):**

- **USN [always consult sections 1910-702 and 1910-704 of reference (b)]. Generally:**
  - **SPECIAL COURT-MARTIAL CONVENING AUTHORITY (SPCMCA):** Generally, a SPCMCA generally may act as SA when notification procedures are used or when the board recommends an honorable or general (under honorable conditions) characterization of service. In many cases where a SPCMCA initiates ADSEP processing, the SPCMCA will also be the SA. However, the Service

member can request review of his/her case by the General Court-Martial Convening Authority (GCMCA) and in these cases the GCMCA will act as the SA rather than the SPCMCA.

- **GENERAL COURT-MARTIAL CONVENING AUTHORITY (GCMCA):** A GCMCA will act as the SA when board procedures are used and the board recommends that the Service member receive an OTH.
- **ELEVATED SA:** For some cases, the SA will be elevated to the First Flag Officer in the member's chain of command, CNPC, CNP, or SECNAV. Always refer to sections 1910-702 and 1910-704 of reference (b) to determine the appropriate SA prior to routing or taking action on an Enlisted ADSEP.
- **USMC**
  - **GCMCA:** The cognizant GCMCA will act as the SA in most cases.
  - **DEPUTY COMMANDANT FOR THE MARINE CORPS (MANPOWER AND RESERVE AFFAIRS) [DC/M&RA]:** DC/M&RA will serve as the SA when a Service member is being processed for involuntary separation and has 18 or more years of total active military service.
  - **SECNAV:** SECNAV will serve as the SA for all reserve cases where the Service member is within two years of retirement and for all cases where the basis of separation is BIOTS.

**LEGAL REVIEW:** In cases where an OTH is recommended, or when a letter of deficiency is submitted by the Service member/counsel for the respondent, the record of the ADSEP proceeding must be reviewed by a judge advocate before the SA can take final action.

**CONDITIONAL WAIVERS:** A conditional waiver is a request initiated by a Service member waiving the right to an administrative separation board contingent on receiving a General or OTH characterization of service. As of October 2019, a Service member may request a conditional waiver even if the separation is based on mandatory processing.

**ENDORISING ADSEP BOARD CASES:** If an ADSEP board finds that the basis has been met but recommends retention, the CO may still recommend discharge to the SA in his/her endorsement of the board's recommendation. With respect to characterization of service, a CO cannot recommend a less favorable characterization than the one recommended by the ADSEP board. The CO can always recommend a more favorable characterization of service, but the SA will make the final decision regarding characterization of service. If an ADSEP board finds that a basis has been met but recommends retention, only SECNAV can separate the member. If an ADSEP board votes to separate the member but recommends that the separation be suspended, the SA can disregard the suspension recommendation and separate [see section 1910-704 of reference (b)].

**DOCUMENTING CONDUCT AS A PREREQUISITE TO INITIATING ADSEP PROCESSING:**

Under references (a) and (b), a counseling or warning memorializing a Service member's previous misconduct or performance problems may be required to initiate ADSEP processing. Clear guidance on who may issue a Page 13 or Page 11 should be issued by the CO, and documentation of Service member's conduct should always adhere to the ADSEP documentation requirements. For the USMC, the CO must sign any adverse Page 11 entries. Formal counseling memorialized in writing is normally required as a prerequisite for initiating ADSEP for the following bases:

- Parenthood
- Personality disorder
- Entry-level performance
- Physical fitness failure (including weight control)
- Unsatisfactory performance

- Refusing medical treatment
- Pattern of misconduct
- Minor disciplinary infractions
- Physical or mental conditions not amounting to a disability
- If required by reference (b), sections 1004 and 6105

**ADSEP AFTER EAOS/EAS:** A Service member may not be adversely administratively discharged after the end of his/her enlistment except for a separation in lieu of trial by court-martial (SILT). If a Service member is extended beyond his/her EAOS/EAS for purposes of court-martial and the command elects not to convene a court-martial, the member must be separated with a characterization of service warranted by the service record, unless the command's action is in response to the member-submitted SILT request. Commands should consult with their staff judge advocate before taking action on a SILT. **Under no circumstances may a command extend a Service member past his/her EAOS/EAS solely for ADSEP processing.**

**ADMINISTRATIVE LEAVE:** Separation leave shall not be granted for members who are being administratively discharged.

**POST-TRAUMATIC STRESS DISORDER (PTSD)/TRAUMATIC BRAIN INJURY (TBI):**

Screenings or medical evaluations for PTSD/TBI are required in some cases before a command can initiate ADSEP processing against a Service member. This may be required to determine whether either or both conditions exist and whether one or both contributed to the conduct subjecting the Service member to ADSEP.

- **USN:** Section 1910-702 of reference (b) and reference (f) provide that if a Service member, in the two-year period prior to ADSEP processing, served in an imminent danger-pay area, then an evaluation must be made to determine whether he/she has been diagnosed with PTSD or a TBI. If diagnosed with either condition, then an additional medical evaluation will be required to determine whether PTSD or a TBI was a contributing factor to one or more of the bases for ADSEP processing. If the member has been diagnosed with PTSD or a TBI, the SA is elevated to the Chief of Naval Personnel. If the Service member has any diagnosis of PTSD or a TBI, even if the medical evaluation deems it unrelated to the basis for separation, it should be noted in the package when forwarding to the SA.
- **USMC:** References (c) and (g) provide that all Marines with over 180 days of active-duty service will undergo a medical evaluation before involuntary ADSEP processing is initiated. If PTSD or a TBI is present, then a medical evaluation by a clinical psychologist or psychiatrist will be required to determine whether PTSD or a TBI was a contributing factor to one or more of the bases of separation. If so, and the Marine is recommended for separation with either a general (under honorable conditions) or OTH, then the GCMCA (as the SA) final action endorsement shall explain the reasons for the Marine's separation and characterization of service, taking into account the diagnosis as a contributing factor.

**RESERVE NOTE:** A reservist who is not on active duty, or who is serving under a call or order to active duty for 180 days or fewer, begins entry-level status upon enlistment. Entry-level status for such a reservist terminates as follows:

- 180 days after beginning training if the member is ordered to active duty for training for one continuous period of 180 days or more; or
- 90 days after the beginning of the second period of active duty training under a program that splits the training into two or more separate periods of active duty.

**HARDSHIP SEPARATIONS [see section 1910-110 of reference (b)]:** A USN reservist, serving on inactive duty, may be transferred to the Individual Ready Reserve (IRR) or Standby



Reserve when the hardship prevents participation in the Selected Reserve (SELRES) but not mobilization of the reservist, or may be discharged when the hardship would prevent the reservist's mobilization. ADSEP cases for reservists on inactive duty shall be approved by the appropriate SPCMCA and forwarded to Navy Personnel Command (NPC).

**ERRONEOUS OR DEFECTIVE ENLISTMENT [see 1910-130 and 1910-132 of reference (b)].**

**UNSATISFACTORY PARTICIPATION IN THE READY RESERVE [see 1910-158 of reference (b)]:** The notification ADSEP procedure detailed above should be used for these cases. If the CO determines that discharge is not warranted, he/she may recommend that the Service member be transferred to the IRR or the Standby Reserve (Inactive). This recommendation should be included in the CO's letter of transmittal (LOT) of the ADSEP package and recommendation to NPC. The characterization of service should be honorable or general.

**SEPARATION BY REASON OF PHYSICAL DISABILITY [see 1910-168 of reference (b)]:** Reservists on inactive duty may be separated by reason of physical disability upon a determination that they are not physically qualified to perform the duties of their rating.

**FORWARDING ADSEP PACKAGES [see 1910-600 of reference (b)]:** All ADSEP packages for reservists, even for those members discharged locally, must be forwarded to NPC under a LOT. The CO or acting CO must sign the LOT. If discharged locally, the LOT must include the effective date of discharge and a copy of the service record entry.

**TRANSFER TO NON-PAY BILLETS:** Naval Operational Support Center (NOSC) COs have the authority to assign unsatisfactory participants to non-pay billets if the member is being processed for ADSEP. COs should consider if the reservist is a mobilization asset prior to transferring personnel to a non-pay billet. Assignment to a non-pay billet may be made as soon as a NAVPERS Form 1910/31 or a NAVPERS 1910/32 is signed by the NOSC CO. NOSC COs, at their discretion, may retain all reservists being processed for ADSEP in their unit until processing is complete.

**MINIMUM NOTICE OF PROCESSING [see 1910-408 of reference (b)]:** Drilling reservists (inactive duty reservists) must have a minimum of 30 days from the date of notice of ADSEP processing is delivered personally or received by mail at the reservists designated mailing address to respond to the notice. If mailed, the notice of processing should be mailed in such a way that the command receives notice of delivery of the correspondence.

**TRANSGENDER ADSEP POLICY:** Per reference (h), administrative separation is authorized for Service members with gender dysphoria. **Exemption:** Service members who signed an enlistment contract or selected for commission before 12 April 2019 and: (1) were medically qualified for service in preferred gender; or (2) received a diagnosis of gender dysphoria from a military medical provider, may not be separated solely on the basis of gender identity.

Before any commander takes action pursuant to DTM 19-004, it is imperative to contact your SJA, as well as your service's central coordination cell for transgender policy.

USN Service Central Coordination Cell: (703) 604-5084; usn\_navy\_sccc@navy.mil  
USMC Service Central Coordination Cell: (703) 784-9386; usmc.sccc@usmc.mil

## **ENLISTED ADMINISTRATIVE SEPARATION BOARDS**

### **REFERENCES:**

- (a) MILPERSMAN 1900 (series)
- (b) MCO P1900.16 (MARCORSEPMAN)

### **WHEN ADMINISTRATIVE SEPARATION (ADSEP) BOARDS MUST BE OFFERED:**

- If the Service member has six or more years of military service; and/or
- If the Service member is being processed for ADSEP and the least favorable characterization of service is other than honorable (OTH).

### **ADSEP BOARD COMPOSITION:**

- Three or more commissioned, warrant, or staff noncommissioned officers (E-7 and above).
- A majority of the board members must be commissioned officers and/or warrant officers.
- The senior member (called presiding officer for USMC) must be an O-4 or above (line or staff corps).
- The E-7 or above member must be senior to the Service member subject to ADSEP processing.
- If the Service member subject to ADSEP is a reservist, all members must be commissioned officers and at least one member must be a reservist.

**WITNESS REQUESTS:** The Service member being processed for ADSEP may request that witnesses be present, but those requests must be timely. Boards do not have subpoena power over civilian witnesses. The CO or other official acting as the convening authority (CA) may expend funds to bring a witness (military or civilian) to the board if live testimony is necessary and the witness is reasonably available based upon operational commitments, etc. The CA should consider factors such as cost, delay, and interference with mission accomplishment when deciding whether to expend funds to bring a witness to a board. Testimony via telephone and video-teleconference is encouraged.

**FUNDING FOR THE PRODUCTION OF WITNESSES:** The CA may authorize funding for the production of witnesses only if the senior member of the board (after consultation with a judge advocate appointed as the board's legal advisor) determines that:

- The testimony of the witness is not redundant with that of another witness or other forms of evidence;
- The personal appearance of the witness is essential to a fair determination on the issues;
- Written or recorded testimony will not accomplish adequately the same objective as live testimony;
- The need for live testimony is substantial, material, and necessary for proper disposition of the case; and
- The significance of the personal appearance of the witness, when balanced against the practical difficulties of producing the witness, favors production of the witness.
- Factors to be considered in relation to the balancing test include, but are not limited to:
  - The cost of producing the witness
  - The timing of the request for production of the witness
  - The potential delay to the board that may be caused by waiting to produce the witness
  - The likelihood of significant interference with military operations by either delaying the board and/or producing the witness

**CONTINUANCE REQUESTS:** The Service member being processed for ADSEP should be given reasonable time to prepare for the board.

- The convening authority rules on all continuance requests until the commencement of the board. Once the board commences the Senior Member rules on all continuance requests. Ensure that a request for continuance does not place the Service member subject to separation past his/her end of active obligated service (EAOS)/end of active service (EAS), in which case the member cannot be administratively separated [see above: ADSEP after EAOS/EAS].
- If the Service member goes on unauthorized absence after signing the ADSEP notification paperwork, the ADSEP board may proceed without the presence of the member.
  - For the USMC, the ADSEP board cannot proceed without permission from the Commandant of the Marine Corps unless the Marine subject to separation meets the requirements of reference (b), paragraph 6312.

**CHALLENGES FOR CAUSE:** Either the recorder (government representative), the counsel for the respondent (counsel for member being processed for ADSEP), or the Service member him/herself can challenge a member of the board and request the member be excused if there is evidence that the member cannot make a fair or impartial decision. The CA rules on all challenges for cause, unless the CA has authorized the legal advisor for the board to do so.

**ISSUES TO BE DECIDED AND RECOMMENDED BY THE ADSEP BOARD:**

- Whether the basis for separation (e.g., misconduct, poor performance, etc.) is supported by a preponderance of the evidence (“more likely than not” standard);
- If the basis is supported, whether the Service member should be separated or retained; and
- If separated, determine the appropriate characterization of service (honorable, general, or other than honorable).

**ADSEP BOARD EVIDENCE:** The Military Rules of Evidence do not apply, except for privileges and the right against self-incrimination.

- Pre-service/prior enlistment adverse matters may only be considered on the issue of retention or separation if the evidence is not too remote, isolated, or irrelevant. Such information cannot be used on the issue of characterization of service. Only current enlistment matters may be considered for the characterization of the current enlistment.
- Findings of a court-martial or civilian courts are binding upon ADSEP boards on the question of whether the basis for separation is supported by the evidence.
- The Senior Member shall rule on all matters of procedure and evidence.

**RESERVE NOTE:** Letters of transmittal for cases involving reservists processed for ADSEP for unsatisfactory performance in the Ready Reserve must include a copy of the reservist’s drill muster record, NAVPERS Form 1570/2, Satisfactory Participation Requirements/Record of Unexcused Absences, notices to report for physical examinations, and letters trying to locate the reservist.

## **OFFICER MISCONDUCT AND SEPARATIONS**

### **REFERENCES:**

- (a) SECNAVINST 1920.6D (Revised 24 Jul 19 in its entirety)
- (b) MILPERSMAN 1611-010 (Revised 30 Oct 19 in its entirety)
- (c) MCO 5800.16 Ch. 1, Volume 15
- (d) MARCORSEPMAN, Chapter 4
- (e) BUPERSINST 1610.10E
- (f) MILPERSMAN 1070-020(c)
- (g) JAGMAN Section 0105

**REFERENCE REVIEW:** Before taking punitive action on an officer or initiating officer separation, it is highly recommended that commands review reference (a), and either reference (b) [USN] or references (c) and (d) [USMC].

**COMMAND RESPONSIBILITY TO NOTIFY:** In all cases of officer misconduct or substandard performance contact either PERS-834 via encrypted email at [PERS-834@navy.mil](mailto:PERS-834@navy.mil) [USN]; or Headquarters, USMC, Military Personnel Policy Branch (JPL) at (703) 614-4250, DSN 224-4250. References (b) and (c) list events requiring notification, to include:

- NJP
- court-martial or resignation in lieu of court-martial
- any arrests (civil or military)
- positive urinalysis
- drug or alcohol rehabilitation failure
- any security incident reports, in parallel with JPAS or DISS report
- family advocacy program failure
- loss of required professional licensures
- security clearance revocation or denial
- substandard performance leading to detachment for cause or ADSEP

**REQUIRED REPORTS:** References (b) and (c) describe types of reports required for USN and USMC officer misconduct or substandard performance. Required reports include:

- **REPORT OF COURT-MARTIAL/RESIGNATION IN LIEU OF TRIAL:** Used when charges are preferred against an officer, or an officer agrees to resignation in order to escape court-martial.
- **REPORT OF NONJUDICIAL PUNISHMENT:** NJP authority must keep PERS-834/JPL notified of the status and disposition of any NJP charges being considered.
- **FINAL CIVIL ACTION REPORT/REPORT OF CIVILIAN CONVICTION:** Commander must keep PERS-834/JPL informed of the status and disposition of all misconduct cases where an officer has been arrested in connection with or charged with a civil offense.
- **REPORT OF OTHER MISCONDUCT/REPORT OF MISCONDUCT:** Used where an officer has allegedly committed misconduct or performed poorly, but there is no NJP, court-martial, or civilian conviction to adjudicate the allegations.
- **REPORT OF NO MISCONDUCT:** Used in all cases where PERS-834/JPL were notified of potential misconduct and the allegations were eventually determined to be unsubstantiated or nonpunitive, and further administrative processing is neither required nor desired.

**PROBATIONARY AND NON-PROBATIONARY OFFICERS:** Per reference (a), probationary officers include active-duty commissioned officers with less than six years of active commissioned service; Reserve commissioned officers with less than five years of service as a commissioned officer; Warrant Officers with within three years after the date of appointment, or Marine Corps Reserve Warrant Officers (W-1) with less than five years of service as a warrant

officer. All other officers are non-probationary officers. See below for separation requirements for probationary and non-probationary officers.

**OFFICER SEPARATION PROCESS:** Officer administrative separation is governed primarily by reference (a). Separation may be voluntary or involuntary. If involuntarily separating a probationary officer while seeking an Honorable or a General (Under Honorable Conditions) characterization of service, the officer may be separated via notification procedures. For non-probationary officers, and for all officers potentially receiving an Other Than Honorable characterization of service, involuntary separation is via the Board of Inquiry Procedure. The Separation Authority is the Secretary of the Navy, delegated to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)).

**SHOW CAUSE AUTHORITY (SCA):** The Show Cause Authority is delegated the authority to determine whether an officer should be required to show cause for retention in the naval service and to convene a Board of Inquiry per reference (a).

- USMC: The Commandant of the Marine Corps (CMC) has delegated SCA down to the Deputy CMC (Manpower and Reserve Affairs), who further delegated this authority to three-star or above generals in command.
- USN: The Chief of Naval Personnel has delegated SCA to the first flag GCMCA with a staff judge advocate on staff in the officer's chain of command. [NOTE: this SCA may only approve an officer for show-cause; if recommending no show-cause, Commander, Naval Personnel Command (CNPC) is the SCA]. CNPC is the alternate SCA.

**NONPUNITIVE LETTER OF CAUTION (NPLOC):** An administrative counseling tool used to address an officer's poor performance and/or minor disciplinary issues. NPLOCs may not be noted in fitness reports (FITREPS) or included in an officer's Official Military Personnel File (OMPF). A NPLOC cannot be used to justify a Detachment for Cause (DFC) request. The underlying facts necessitating the NPLOC may be referred to in FITREPS or another official record. However, if any adverse matters are going to be included in a FITREP or in the officer's service record, he/she must be given the opportunity to make a statement in connection with the adverse entry. When detaching an officer for cause, NPLOCs may be attached in the instance the officer argues that he/she was insufficiently counseled on alleged deficiencies. See references (b), (e) - (g).

**LETTER OF INSTRUCTION (LOI) [USN only]:** While similar to NPLOCs, LOIs are used as a means for creating a permanent record of counseling and guidance given because of a member's substandard performance of duty. LOIs can be noted in FITREPS and in other official documents in the officer's service record. Whether they are referred to or included in service record documents is at the discretion of the officer's CO. As an adverse matter for entry into the record, the officer who received the LOI has a right to comment on the matters addressed in the letter. COs should be aware that the inclusion of an LOI in a service record, or referring to an LOI in a FITREP, may have a significant adverse impact on the officer's opportunity for promotion, assignment, and overall career progression.

## **DETACHMENT FOR CAUSE (USN ONLY)**

### **REFERENCES:**

- (a) MILPERSMAN 1611-020
- (b) MILPERSMAN 1616-010
- (c) MILPERSMAN 1611-010

**AUTHORITIES FOR OFFICER AND ENLISTED DETACHMENT FOR CAUSE (DFC):** DFC requests for officers must be conducted in accordance with reference (a). DFC requests for chief petty officers and selected petty officers in specialized billets are conducted in accordance with reference (b). In all cases, Commander, Navy Personnel Command (CNPC) is the approval authority.

**GROUNDINGS:** There are four reasons for requesting an officer DFC:

- Misconduct;
- Substandard performance involving one or more significant events (gross negligence or complete disregard);
- Substandard performance over an extended period of time; or
- Loss of confidence of an officer in command (may only be used to DFC a CO).

**TIMING:** Normally, DFC should be the option of last resort unless alternative measures are inadequate due to the nature of the circumstances. DFC will generally not be an option when:

- Reassignment of the officer within the command is possible;
- For substandard performance over time, when the officer has not been given a reasonable period of time to improve the officer's performance;
- It is used in lieu of appropriate disciplinary action;
- The officer is in receipt of PCS orders and his/her relief is already on board; or
- Other available and reasonably effective alternatives exist within the command to resolve the situation.

**DOCUMENTATION:** Unsatisfactory performance over an extended period of time must be properly documented (e.g., LOIs) and must demonstrate measures taken to correct the problem. All allegations must be adequately supported by appropriate inquiry and documentation, to include required reports discussed in reference (c) for instances of misconduct. A NPLOC cannot be used in a request for DFC, though it may potentially be used to rebut the allegation that a command has not taken steps to correct a member's unsatisfactory performance.

**DISCIPLINARY ACTION:** If disciplinary action and a DFC request are contemplated by the CO, disciplinary action must occur first and then the CO may request a DFC of the officer in question. The CO may still request a DFC without disciplinary action if the CO believes that disciplinary action is not warranted or feasible at the time and it is imperative to remove the officer from the command. In cases where disciplinary action is not or cannot be taken first, the CO must provide an explanation of the circumstances in the DFC request sent to CNPC.

**DETACHMENT PAPERWORK:** The officer subject to DFC must be notified in writing that the CO is initiating a request and that it will appear in the officer's official record. The officer must be given time (usually 15 days) to provide a written response to be included in the DFC request routed to CNPC. The officer may waive a response, but that waiver should be documented in writing.

## **SECTION VI: COMMAND URINALYSIS PROGRAM**

## **COMMAND URINALYSIS PROGRAM OVERVIEW**

### **REFERENCES:**

- (a) OPNAVINST 5350.4 (series)
- (b) SECNAVINST 5300.28 (series)
- (c) MCO 5300.17
- (d) Navy Alcohol and Drug Abuse Prevention Program Synthetic Drug Urinalysis Operating Guide (Apr 2012)
- (e) MARADMIN 681/12
- (f) NAVADMIN 082/12
- (g) ALNAV 057/19

**POLICY:** In accordance with references (a) through (f), wrongful use of controlled substances is inconsistent with USN and USMC policy. Commanders must be vigilant in ensuring a properly administered urinalysis program prevents and screens for the wrongful use of drugs.

**COORDINATORS AND OBSERVERS:** The command urinalysis program coordinator (UPC) must be designated in writing by the CO. Whenever possible, COs should assign officers or noncommissioned officers to be UPCs; it is strongly recommended that commands maintain a Khaki presence and involvement in observed collections. Observers must also be used to ensure that tested Service members provide actual specimens from their own body (i.e., observers must watch the urine leave the body and enter the bottle).

**ATTENTION TO DETAIL AND SECURITY:** The entire specimen collection process will be scrutinized in any court-martial or administrative separation board. For test results to be admissible there must have been a tight chain of custody and diligent protection of specimens after collection.

**TESTING GOAL FOR USN:** All USN personnel shall be tested at least once per fiscal year. The most effective deterrence measure and means of accomplishing the testing goal is by random urinalysis (IR premise code). Random urinalysis is executed in frequent, unpredictable collections of small groups throughout the fiscal year to achieve 100 percent coverage.

Commands are also authorized five unit sweeps (IU premise code) per fiscal year, which include:

- **UNIT SWEEP:** A unit sweep is the testing of an entire command or unit at once. Although no longer mandated, unit sweeps are an effective detection and deterrence tool, and are recommended for use by all commands.
- **SUB-UNIT SWEEP:** A sub-unit sweep is the testing, random or otherwise, of an entire sub-unit or identifiable segment of a command. Examples of a sub-unit include an entire department, division, or watch section; all newly reported personnel; pay grade, or all personnel who surrender or are apprehended after an unauthorized absence. As a matter of policy, all newly-reporting personnel shall be tested within 72 hours.
- **END OF FISCAL YEAR TESTING:** To ensure all USN personnel are tested annually, commands shall review all personnel onboard who were not tested during the course of the year and conduct an end of fiscal year unit sweep for all untested personnel.

**TESTING GOAL FOR USMC:** Every unit shall have an aggressive compulsory Urinalysis Testing Program, which ensures systematic screening of all Marines annually, regardless of rank, for the presence of drugs. Units will test at least ten percent of their population monthly under the "IR" (random-selection) premise. All Marines reporting in from PCS and leave will be tested within 72 hours of their arrival or return.



**24-HOUR UNAUTHORIZED ABSENCE (UA) AND SUB-UNIT TESTING:** Commands may establish policies to test all Service members returning from UAs longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all Service members returning from UAs in excess of 24 hours.

**“FAILURE TO GO”:**

- **USN:** If a Service member claims to be unable to provide a specimen during the command’s prescribed collection period, the Service member shall be turned over to the Master-at-Arms and remain under observation at all times until a specimen is provided. If, after a period of 24 hours, the Service member still cannot provide a urine sample, the Service member shall be examined by a military medical authority to investigate the possibility of physiological or psychological problems. The examination should be completed the same day of the collection and documented in the Service member’s medical record. If a failure to provide a specimen is a chronic problem, the Service member shall be sent to a Branch Medical Clinic or Medical Treatment Facility for further observation.
- **USMC:** Should a Marine be unable to provide a specimen during the prescribed collection period or arrive after the collection period ends, the specimen collection process will not be postponed. The coordinator will inform the Marine’s CO, who will determine a collection time for that individual. If a Marine submits less than 30 millimeters (one-third full), it is permissible to require the Marine to remain in a controlled area under observation, and to drink fluids normally consumed in the course of daily activity until such time as the Marine is able to provide a specimen or the balance of an incomplete specimen. In the case of an incomplete specimen, the unit coordinator will maintain custody of the incomplete specimen and designate an observer to witness that the bottle remains on the collection table until the given collection time has ended. If the Marine cannot provide the balance of the specimen in the same bottle at the end of the collection period, the bottle will be labeled, sealed by the individual and sent to the Department of Defense (DoD) certified laboratory with the collection. The urinalysis ledger will be annotated in the remarks that the specimen had, “minimum volume.” No Marine Corps specimens will be discarded from a collection due to insufficient volume.

**REFUSAL TO PROVIDE:** A commissioned officer [but not the CO, Executive Officer (XO), or legal officer] should give a direct order to provide a specimen. If the Service member continues to refuse to provide a specimen, then appropriate administrative and/or disciplinary action may be taken.

**POSITIVE RESULTS:** A Navy Drug Screening Laboratory (NDSL) result in the Internet Forensic Toxicology Drug Testing Laboratory (iFTDTL) portal is official notification of lab test results and constitutes authority to take administrative and/or disciplinary action. Use of the results may be limited depending on the basis for testing (e.g. premise code). For example, command-directed fitness-for-duty urinalyses may not be used to punish a member nor used to give a Service member an other than honorable characterization of service (although the Service member may be processed for administrative separation).

[See *Appendix G – Use of Positive Urinalysis Results*]

Using all information available (including confession, urinalysis results, Substance Abuse Rehabilitation Program screening results, service records, and chain of command recommendations), the CO must make one of the following determinations:

- **DETERMINE WHETHER THE SERVICE MEMBER IS A DRUG ABUSER.**

- The CO may determine that the Service member's positive urinalysis was the result of knowing drug use (e.g., the Service member was not prescribed medication that led to the positive urinalysis) and initiate mandatory administrative separation processing (for enlisted) or notify the Show Cause Authority (for officers). Service members diagnosed as drug dependent will be offered treatment prior to separation.
- The CO may determine that the Service member's positive urinalysis was not the result of knowing drug use or was as a result of a break in the chain of custody of the urine specimen. In such cases, the positive urinalysis should not be considered a drug-abuse incident. If the positive urinalysis is determined not to be a drug abuse incident, the command shall notify OPNAV (N135 and the command's immediate superior in command, echelon 2 or 3 via official correspondence of the circumstances that warranted such a determination).

**NOTE:** Only samples tested at a DoD-certified lab or one of the two NDSLs can be used as evidence for punitive action or administrative discharge [see reference (a)].

**STEROIDS:** All USN and USMC units should forward specimens for steroid testing to the NDSL Great Lakes: Navy Drug Screening Laboratory, 2500 Rodgers Street Building 5501, Great Lakes, Illinois 60088-2952

Commands must request an authorization for steroid testing from their respective Service component (see POCs). Requests must be on command letterhead and should be included with the submitted specimen(s). Specimens submitted for steroid testing analysis will not be tested for the standard DoD drug test panel unless standard panel testing is specifically requested by the submitting unit. The Service POC will transmit the steroid test results to the submitting unit.

**USN POC:** Ms. Shelle Butler  
Navy Drug Detection and Deterrence (OPNAV N170D)  
Email: MILL\_N170D\_DDR@navy.mil  
Phone: (901) 874-4398, DSN 882  
Fax: (901) 874-4228, DSN 882

**USMC POC:** Mr. Eric Hollins  
Headquarters, Marine Corps  
Email: eric.c.hollins@usmc.mil  
Phone: (703) 784-9526, DSN 278  
Fax: (703) 784-9825, DSN 278

**SPECIAL TESTING REQUEST:** The Armed Forces Medical Examiner System (AFMES) Division of Forensic Toxicology (DFT), and its subordinate Special Forensic Toxicology Drug Testing Laboratory (SFTDTL), can provide USN and USMC commands with testing services for drugs and chemicals that are not part of the standard DoD drug testing panel (examples of drugs, not on the DoD panel, that AFMES can test for include LSD, psilocin/psilocybin [magic mushrooms], synthetic cathinones, etc.). Such special testing can be conducted in conjunction with standard panel testing by the NDSLs or can involve shipment of specimens directly to AFMES. Such special testing shall be requested on command letterhead and should be coordinated with the command's servicing NDSL as well as the USN / USMC POCs listed above).

**PROHIBITION ON THE USE OF HEMP PRODUCTS:** Per reference (g), Sailors and Marines are prohibited from knowingly using products made or derived from hemp, including cannabidiol

(CBD), regardless of the product's THC concentration and regardless of whether such product may be lawfully bought, sold, or used under the law applicable to civilians. Use means to inject, ingest, inhale, or otherwise introduce into the human body. This prohibition DOES NOT apply to drugs approved by the Food and Drug Administration for which the Service member has a valid prescription from a DoD-approved medical service provider. Failure to comply with this ALNAV message is a violation of the UCMJ, Article 92, Failure to Obey a Lawful General Order, as well as any other UCMJ article that may apply and may result in administrative and/or disciplinary action.

## **SECTION VII: PHYSICAL AND MENTAL HEALTH ISSUES**

## **HIV ISSUES**

### **REFERENCES:**

- (a) SECNAVINST 5300.30E
- (b) SECNAVINST 1850.4E
- (c) NAVMC 2904
- (d) DoDI 6485.01

**NOTIFICATION OF POSITIVE SCREENING:** Results of a positive HIV screening must be provided to the Service member as well as all medical/dental record holders.

**ASSESSMENT INTERVIEW:** This health assessment of a Service member testing positive for HIV must be completed by a cognizant medical health authority, and include counseling on risk factors, transmission factors, and blood donation.

**LIMITATIONS ON THE USE OF HIV INFORMATION:** Information gained during initial medical assessments and interviews cannot be used against the Service member in a disciplinary proceeding, involuntary administrative separation proceedings (for other than medical reasons), as a bar to re-enlistment, or as a basis for an adverse evaluation or fitness report.

**CONFIDENTIALITY:** Any official with knowledge of a Service member's HIV status must treat this information confidentially, only releasable upon a demonstrated need to know.

**TRANSMISSION CONTROL:** A Service member with laboratory evidence of HIV infection will receive training on the prevention of further transmission of HIV infection to others and the legal consequences of knowingly exposing others to HIV infection. Failure to comply with a "safe-sex" order may result in a violation of Articles 90 or 92 under the Uniform Code of Military Justice. Additionally, some courts-martial have upheld violations of UCMJ Article 134 for conduct "to the prejudice of good order and discipline in the Armed Forces," or UCMJ Article 128 for knowingly exposing or infecting others.

**ASSIGNMENT OF MEMBER:** Military personnel who are HIV positive and retained under reference (a) shall be assigned on a case-by-case basis in consultation with the treating medical provider and the respective personnel bureau [PERS-82 for USN and the Deputy Commandant for the Marine Corps (Manpower and Reserve Affairs) for USMC].

**VOLUNTARY SEPARATION:** Service members may request voluntary administrative separation within 90 days after official documentation of a diagnosis of HIV infection. The characterization of service for voluntary separation for this purpose will be either honorable or general (under honorable conditions) depending on the quality of the Service member's overall service. Administrative separations under this provision may be delayed for up to 180 days after the initial medical evaluation of HIV positive status to minimize manning shortfalls.

**INVOLUNTARY SEPARATION:** Service members who are HIV positive and who demonstrate medical conditions of immunologic deficiency, neurologic deficiency, progressive clinical or laboratory abnormalities associated with HIV, and/or AIDS-defining condition will be assessed and potentially administratively processed involuntarily through the Disability Evaluation System in accordance with reference (b).

**RESERVE NOTE:** Reservists with HIV are not eligible for periods of active duty beyond 30 days except under the conditions of mobilization and pursuant to a service decision by the Secretary of the Navy. Reservists who are HIV positive and not on extended active duty are not eligible for medical evaluation in military treatment facilities.

## **MENTAL HEALTH EVALUATIONS**

### **REFERENCES:**

- (a) DoDI 6490.04
- (b) DoDI 6490.08

**POLICY:** The Department of Defense (DoD) fosters a culture of support in the provision of mental health care and requires commands to do anything they can to dispel the stigma often associated with seeking mental health care.

**MENTAL HEALTH REFERRALS:** Commanders and appropriate supervisors who in good faith believe that a subordinate Service member may require a mental health evaluation (MHE) are authorized to direct the Service member to a medical treatment facility for a MHE. A command-directed MHE has the same status as any other lawful military order and failure to comply with the order can result in administrative or disciplinary action. Service members may only be referred to a mental health provider (MHP) for a MHE for legitimate mental health reasons and never as reprisal. Under no circumstances may a commander or supervisor refer a Service member for a MHE as reprisal for making or preparing a lawful communication to the chain of command, any inspector general, a member of Congress, or other appropriate person.

**RULES:** Reference (a) provides guidance about referring a member for a MHE. Commands should contact their local staff judge advocate (SJA) to ensure they are following up-to-date procedures for making a referral for a MHE. Reserve commands should seek guidance from the respective SJA supporting the reserve command. Reference (b) states that healthcare providers will not notify a Service member's commander when mental health care is obtained unless, under specific circumstances, that presumption is overcome, normally due to concern the Service member may harm him/herself, others, or the mission.

### **COMMANDER'S RESPONSIBILITIES PRIOR TO REFERRAL FOR A MHE:**

- **NON-EMERGENCY SITUATIONS:** Advise the Service member that there is no stigma associated with obtaining mental health care. Direct the Service member to the MHP, providing the Service member with correct contact and location information for the medical treatment facility, and the date, time, and name of the MHP. If time permits, commands should consult a MHP before directing the referral to ensure that a referral is appropriate under the known circumstances. The order and logistical information directing a member to get a MHE evaluation should be put in writing.
- **EMERGENCY SITUATIONS:** Focus on the immediate safety of the Service member and any others who may be at risk. Immediately direct and/or transport the Service member to a medical treatment facility. If time permits, alert the medical treatment facility that a Service member requires an emergency MHE. Document in writing any actions associated with an emergency MHE referral to memorialize why the command directed a Service member for an emergency MHE.

### **SERVICE MEMBER'S RIGHTS IF ADMITTED TO THE HOSPITAL AS A RESULT OF A MHE:**

If involuntarily admitted to the hospital as a result of a MHE, the Service member has a right – under appropriate hospital supervision – to contact a relative, friend, chaplain, attorney, an inspector general, or anyone else the member chooses.

**WRONGFUL REFERRALS:** All allegations of improper MHE referrals are investigated by the Navy Inspector General and reported to the DoD Inspector General.

**SECTION VIII:SEXUAL HARASSMENT, FRATERNIZATION, AND HAZING**

## **SEXUAL HARASSMENT RESPONSE**

### **REFERENCES:**

- (a) SECNAVINST 5300.26D
- (b) U.S. Navy Regulations, 1990
- (c) OPNAVINST 5300.13
- (d) MCO 5354.1E w/ ADMIN CH
- (e) NAVPERS 5454/2
- (f) NAVPERS 5354/3
- (g) MILPERSMAN 1910-233
- (h) MCO 1900.16 CH 1

**GENERAL INFORMATION:** If an allegation of sexual harassment could reasonably be considered a sexual contact offense, the Commander should consult a staff judge advocate to determine whether the allegation should instead be treated as a sexual assault for command responsibilities and reporting purposes.

**SEXUAL HARASSMENT DEFINED:** Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) made a term or condition of a person's employment status, pay, or career; (2) used as a basis for any job decision affecting that person; or (3) it interferes with an individual's work performance or creates a hostile or offensive work environment. Sexual harassment is a gender-neutral and sexual-orientation neutral concept [references (a) through (d)].

**ANONYMOUS SEXUAL HARASSMENT REPORT:** An anonymous report is described as information received by the Commander, regardless of the means of transmission, from an unknown or unidentified source, that includes allegations of sexual harassment. The individual reporting the information is not required to divulge any personally identifiable information. Anonymous reports may be communicated by several means, including but not limited to, the Sexual Harassment and Equal Opportunity Advice Lines, e-mail, or official telephone lines.

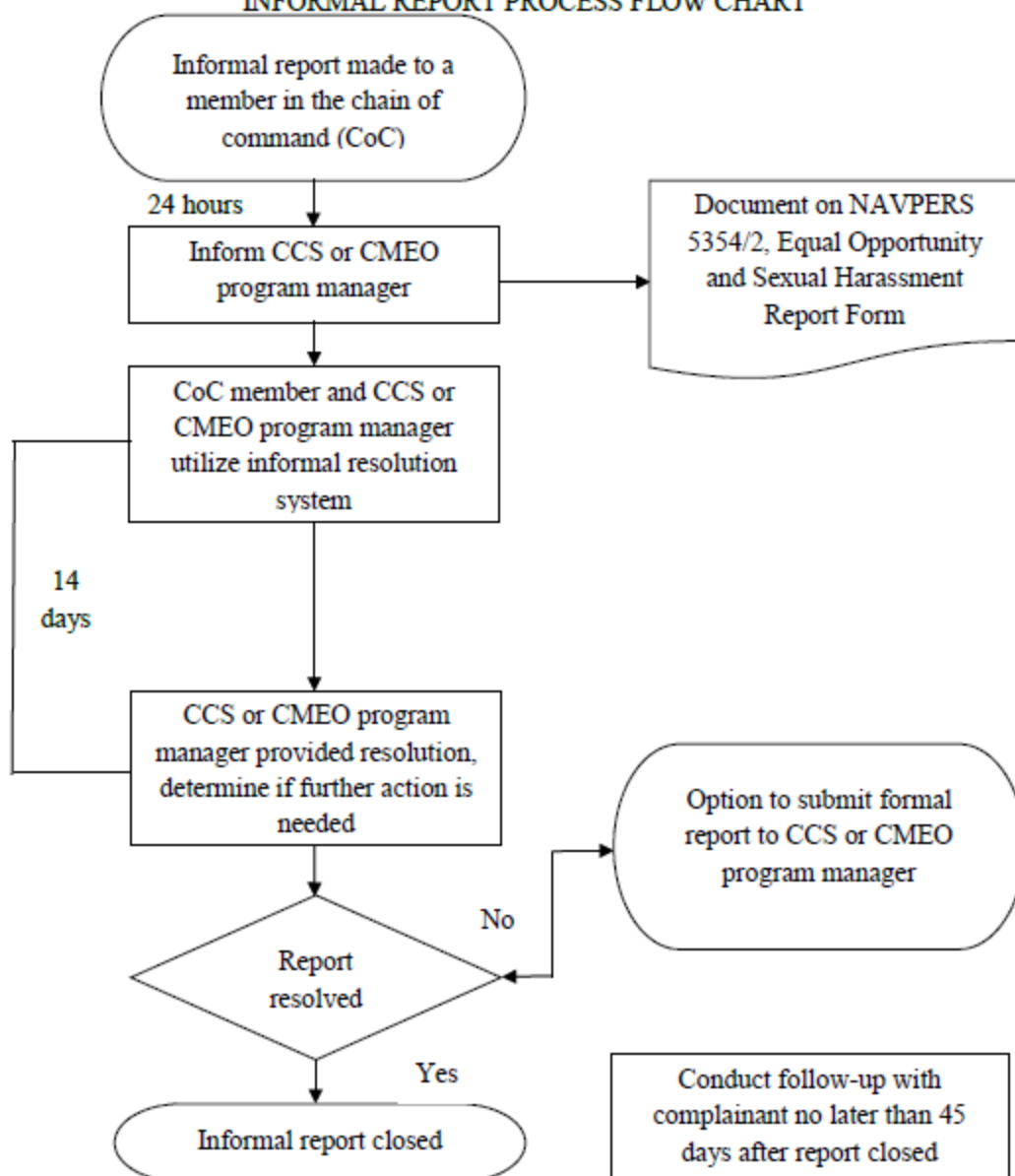
- **Navy:** The command equal opportunity program manager must be notified of anonymous reports within 24 hours of receipt and must consult with the Commander to determine further actions regarding the allegations. If the anonymous report contains sufficient information (e.g., who, what, when, where, desired outcome, unit of assignment for the alleged offender and the complainant) to permit the initiation of an investigation, the investigation must be initiated by the Commander in the same manner as investigation requirements for formal reports.
- **USMC:** Information alleging prohibited activities and conduct received by the commanding officer or other persons in charge of an organization, regardless of the means of transmission, from an unknown/unidentified source will be processed in accordance with reference (d).

**NAVY INFORMAL SEXUAL HARASSMENT REPORT:** An allegation of sexual harassment submitted orally or in writing to a member in a position of authority in the chain of command for resolution (i.e., the leading petty officer, chief petty officer, division officer, department head, etc.). Any report submitted to the Commander directly by the complainant for resolution must be processed in line with the established formal report procedures.

**NAVY INFORMAL RESOLUTION:** All informal reports must be documented using reference (e). It is critical that once the chain of command is informed of an informal report that action is taken quickly to resolve the report. Per reference (c), the informal report must be resolved within 14 days.



### INFORMAL REPORT PROCESS FLOW CHART



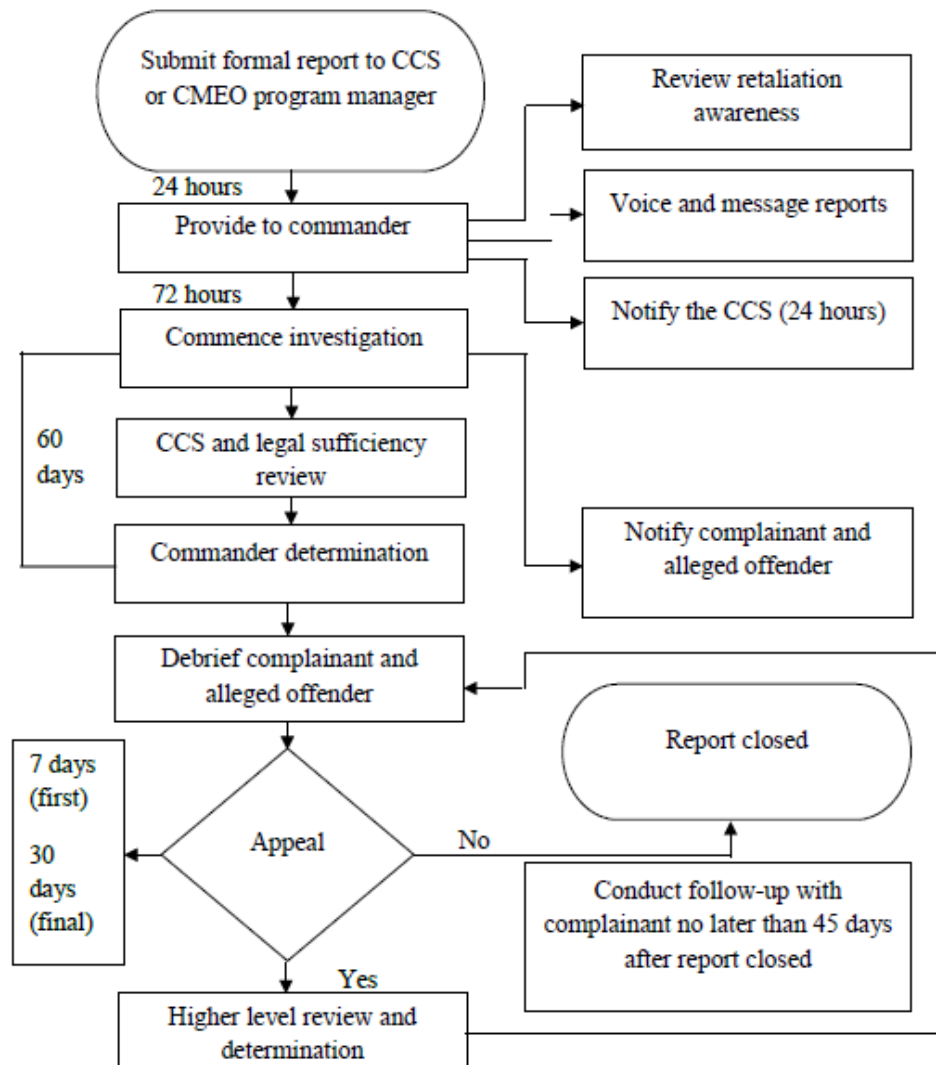
Note: At any time the complainant can stop this process and submit a sexual harassment formal report to the CCS or CMEO program manager.

**USMC INFORMAL RESOLUTION:** Informal Resolution (IR) enables the parties to any alleged unprofessional conduct to resolve interpersonal conflicts at the lowest appropriate level. Conflict can be defined as a disagreement between two or more people that raises serious concerns and needs to be resolved. The aggrieved uniformed Service member may pursue informal resolution of their interpersonal conflict. Commanders will determine the appropriate means to handle a complaint. However, Commanders shall not obstruct any individual from initiating a complaint through any avenue alleging prohibited activities and conduct. Methods for IR include: 1) approaching the alleged offender(s) involved in person to discuss the behavior and its impact; 2) requesting assistance from another person, normally a friend, coworker, or the

EOA; and 3) requesting training or resource materials for presentation to the work place of prohibited activities and conduct.

**NAVY FORMAL SEXUAL HARASSMENT REPORT:** An allegation of sexual harassment that is submitted in writing via a NAVPERS 5354/2; article 138; article 1150; communication to NAVINSGEN, IGMC, or elected officials; NAVPERS 1626/7; and any other communication the Commander deems appropriate. Individuals who believe they have been the victim of sexual harassment should use reference (e).

**FORMAL REPORT PROCESS FLOW CHART**



**Note:** There are two levels of review. The first will be to the echelon 2 commander of the command where the report was submitted. The final will be to SECNAV.

**NAVY INVESTIGATION REQUIREMENTS:** All formal complaints of sexual harassment will be processed according to the following procedures:

- **WITHIN 24 HOURS:** Personnel receiving a formal sexual harassment report must notify the Commander or other designated authority within 24 hours of receipt. Personnel

receiving a formal sexual harassment report must notify the servicing Command Climate Specialist (CCS) within 24 hours after notifying the Commander.

- **WITHIN 72 HOURS:** To the extent practicable the investigation must commence within 72 hours of report submission. The investigating officer must be senior to the complainant and the alleged offender. A CCS must serve as a resource to the investigator in a sexual harassment report and conduct a CCS sufficiency review utilizing reference (f) prior to final determination. Prior to making a final determination on a formal allegation of sexual harassment, the Commander who convenes the investigation will submit the investigating officer's report to a staff judge advocate in the chain of command. The staff judge advocate will provide the Commander with a written legal sufficiency review and recommendations, if any, within 5 days. The investigating officer will notify the complainant and alleged offender that the investigation has begun and will acknowledge this notification on reference (e).
- **WITHIN 96 HOURS:** Upon receipt of a formal report, ensure a copy of reference (e), with parts I through III completed, is forwarded to OPNAV N173 via the echelon 3 and echelon 2 CCS or CMEOP program manager within 96 hours. This may be accomplished via email: MILL\_NavyEOAdvice@navy.mil [reference (c)].
- **WITHIN 14 DAYS:** To the extent practicable, the investigation of the report must be completed no later than 14 days from the date the investigation commenced. A Commander receiving a sexual harassment complaint must submit a final report of the results of the investigation, including any action taken as a result of the investigation, to the ISIC within 20 days after the date the investigation commenced. When a report is not resolved within 20 days, submit a report on the progress made to the ISIC within 20 days after the date the investigation commenced and every 14 days thereafter until the investigation is completed. Upon completion of the investigation, submit the final report on the results of the investigation including any action taken to the ISIC. Formal sexual harassment complaints must be investigated and resolved within 60 days of the filing of the report [reference (c)].
  - **\*\*In the case of reports filed by a SELRES or in which a SELRES is the subject of the report (a "Reserve report"), resolution of formal reports should be completed within 120 days of filing the report.\*\***
- Commanders must conduct a follow-up debrief with the complainant no later than 45 days following the determination of the report. Command follow-up will include a determination of level of satisfaction with the resolution of the report, a determination of complainant satisfaction with the effectiveness of corrective action, timeliness, present command climate, and a review to ensure retaliation did not occur. This debrief must be documented using reference (e) or an MFR, and must be forwarded to OPNAV N173 via the echelon 3 and echelon 2 CCS or CMEOP program manager within 96 hours of debrief completion [reference (b)].
  - **\*\*For reports involving SELRES personnel, follow-up debriefs must continue for a period of 1 year following resolution. \*\***

**USMC SEXUAL HARASSMENT COMPLAINTS:** EOAs will conduct intake interviews to determine if a complaint alleging prohibited activities and conduct meets the prima facie elements of sexual harassment. EOAs will advise the Commander on the appropriate resolution of the allegation(s). A complainant may request a means of resolution during their intake interview. However, the Commander shall determine an appropriate course of action for complaint investigation and resolution.

- **INITIAL ASSESSMENT:** Within three duty days of receipt of the complaint:
  - The Commander must make an initial assessment of the complaint and shall consult with their EOA and SJA to determine the proper handling of a complaint;

- Commanders will forward the complaint, with a detailed description of the facts and circumstances, to the next superior officer in the chain of command who is authorized to convene a general court-martial;
- Commanders will submit all reportable information to the EOA/MEO office and direct the supporting EOA to open an initial discrimination and sexual harassment (DASH) report.
- If the Commander determines to accept the complaint, then an OPREP-3 SIR is required. A voice report to the Marine Corps Operations Center is required upon the Commander's determination to accept the complaint. No OPREP-3 SIR is required if, within three duty days of receiving a complaint, the Commander dismisses the complaint.
- **UPON ACCEPTANCE:** Acceptance is documented with a Notification of Acceptance memorandum. Within three duty days of receipt of the complaint, the Commander will commence, or cause the commencement of, an investigation of a complaint meeting the prima facie elements of an offense.
  - Commanders will cause individuals who are named by a complainant to be notified of the basis and matter identified in the complaint in writing within three duty days of convening the investigation.
  - A Commander will make every effort, to the extent practicable, to investigate and resolve accepted sexual harassment complaints within 14 calendar days after the date on which the investigation commences.
  - In addition, a final report on the results of the investigation, including any action taken, will be submitted to the first GCMCA in the chain of command within 20 calendar days after the date on which the investigation is commenced. If the investigation cannot be completed within the delineated timeline, a report on the progress made in completing the investigation will be submitted every 14 calendar days thereafter until the investigation is completed.
  - Commanders will notify complainants and subjects of complaints in writing of the determination following an investigation into a complaint within three duty days.
  - All reports of investigation of prohibited activities and conduct, to include complaints alleging sexual harassment, must be reviewed for EO compliance and legal sufficiency in accordance with this Order.
  - **\*\* In the case of a complaint involving Reserve Marines, the command investigation and any directed resolution must be completed within 120 calendar days.\*\***

**PREVENT REPRISAL AND RETALIATION:** Commanders are reminded to protect complainants, and others providing information in support of investigating and resolving allegations, from reprisal or retaliation. Commanders shall continuously monitor for any potential reprisal against a complainant by checking on work area climate and ensuring performance assessments document job performance accurately. A Commander is also responsible for establishing a command climate that allows and encourages individuals to resolve conflicts between themselves without fear of retaliation. Retaliation includes:

- Taking or threatening to take an unfavorable or adverse personnel action, or withholding or threatening to withhold a favorable personnel action.
- Ostracism, which is the exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.
- Maltreatment, which is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose, that is done with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that

results in physical or mental harm or suffering, or reasonably could have caused physical or mental harm or suffering.

**PRIVACY ACT CONSIDERATIONS:** Commanders shall maintain the confidentiality of the personal information of all parties involved.

**MENTAL HEALTH EVALUATION:** Commands shall not order the alleged offender, the alleged victim, or any other related party for a Mental Health Evaluation unless the requirements of the Department of Defense mental health instruction have been met [See Mental Health Evaluations.].

**LEVEL OF INVESTIGATION:** The CO determines the level of investigation required to adequately address a sexual harassment complaint based on the seriousness of the harassment alleged, the credibility of the parties involved, and the magnitude of the incident on the parties involved and/or the command in general. COs shall ensure that the investigating officer appointed to inquire into the allegation is neutral and qualified. The investigating officer should be senior to the complainant and the alleged offender. It is advisable to consider an outside investigator if the command investigation would have the appearance of being partial to either the complainant or the alleged offender. All efforts should be coordinated by the command legal advisor. If the complainant and the alleged offender are from different commands, the CO of the alleged offender has the responsibility to conduct the investigation [See Appendix H – Handling Sexual Harassment Allegations].

**DISCIPLINARY OR ADMINISTRATIVE ACTION:** COs should take timely and tailored action when appropriate.

**MANDATORY ADMINISTRATIVE SEPARATION PROCESSING:** Per references (g) and (h), COs must process a Service member for administrative separation (or report to the Show Cause Authority for officers) if the substantiated sexual harassment involves:

- Actions, threats, or attempts to influence another's career or job in exchange for sexual favors; or physical contact of a sexual nature which, if charged as a violation of the Uniform Code of Military Justice, could result in a punitive discharge.

**TRANSFER:** If the report alleges or results in a hostile work environment determination, commanders will, when possible, temporarily relocate party(s), without prejudice, during the course of the investigation. However, commanders should give consideration to the complainant's preference, when possible. Transfer of the party(s) involved must not be considered by the Commander to be a resolution of the report [reference (c)].

## **FRATERNIZATION OVERVIEW**

### **REFERENCES:**

- (a) OPNAVINST 5370.2D
- (b) Marine Corps Manual w/ CH 1-3, 1100
- (c) U.S. Navy Regulations
- (d) UCMJ, Article 134

**BACKGROUND:** "Fraternization" is a gender-neutral concept used to identify personal relationships that do not respect the bounds of acceptable senior-subordinate relationships. Fraternization is prohibited and punishable under the Uniform Code of Military Justice. Per reference (a), commands are expected to take administrative and disciplinary action as necessary to correct this inappropriate behavior. Being in a direct senior/subordinate supervisory relationship or in the same chain of command is not a prerequisite for fraternization.

**UNDULY FAMILIAR RELATIONSHIP DEFINED:** There is no single definition of what constitutes an unduly familiar relationship. Except for cases where a relationship is per se prohibited, such as in the case of officers and enlisted personnel, each relationship must be evaluated on a case-by-case basis. Examples of unduly familiar relationships include, but are not limited to: dating, shared living accommodations, intimate or sexual relations, commercial solicitations, private business partnerships, gambling, and borrowing money when such activities are prejudicial to good order and discipline or are of a nature to bring discredit upon the naval service.

**PREJUDICIAL TO GOOD ORDER AND DISCIPLINE:** A relationship is prejudicial to good order and discipline when it results in circumstances which call into question the senior Service member's objectivity, result in actual or apparent preferential treatment, undermine the authority of the senior member, or compromise the chain of command and/or mission.

### **PROHIBITED RELATIONSHIPS (presumed to be prejudicial to good order and discipline):**

- **OFFICER/ENLISTED:** Unduly familiar relationships between officers and enlisted Service members that do not respect differences in grade or rank.
- **CHIEF PETTY OFFICER/JUNIOR ENLISTED:** Personal relationships between chief petty officers and junior personnel (E-1 to E-6) assigned to the same command, that are unduly familiar and that do not respect differences in grade or rank.

**E-1 to E-6 ENLISTED SERVICE MEMBERS OF DIFFERENT PAYGRADES:** Personal relationships between two enlisted Service members, both of which are in paygrade E-1 to E-6, are prohibited if:

- They do not respect differences in paygrade; and
- Are prejudicial to good order and discipline.

**OFFICER RELATIONSHIPS:** The same rule that applies to E-1 to E-6 enlisted Service members of different paygrades applies to all officer paygrades.

**STAFF/INSTRUCTOR AND STUDENT RELATIONSHIPS:** Personal relationships between staff or Instructor Service Members and student personnel within training commands that do not respect differences in grade, rank, and/or the staff/student professional relationship are prohibited. A staff member/instructor who engages in a "prohibited sexual activity" with a student may also be charged under article 93a of the UCMJ. Consent is not a defense to this offense.

**RECRUITER AND RECRUIT/APPLICANT:** Personal relationships between recruiters and recruits or applicants that do not respect the special professional relationship between them are prohibited. Such relationships by their very nature are prejudicial to good order and discipline. A recruiter who engages in a “prohibited sexual activity” with a recruit may also be charged under UCMJ, Article 93a. Consent is not a defense to this offense.

**RELATIONSHIPS WITH SERVICE MEMBERS OF OTHER ARMED SERVICES:** The fraternization policy applies to all prohibited relationships between Navy members and other members, regardless of service. Multi-service commands must create clear policies because of differences in service regulations and customs. This prohibition also applies to relationships between U.S. Service members and foreign military members (e.g. a U.S. officer and a foreign national enlisted member).

**GENDER-NEUTRAL:** The focus of the fraternization policy is on the detriment to good order and discipline and not on the gender of the parties involved.

**SUBSEQUENT MARRIAGE:** Parties that were in a relationship that constituted fraternization cannot cure the fraternization by marrying. Marriage does not excuse Service members who were in a prohibited relationship before they married, and they can still be held fully accountable via disciplinary or administrative action.

**MARRIED MEMBERS:** Will not be assigned to the same chain of command (consistent with the needs of the USN/USMC).

**RESPONSIBILITY FOR PREVENTING FRATERNIZATION:** The responsibility for avoiding fraternization rests primarily with the senior Service member in the relationship. However, both Service members are accountable for their own conduct and both may be held accountable via disciplinary or administrative action.

**ALLEGATIONS:** All allegations of fraternization must be promptly investigated, and commanders should take appropriate administrative and disciplinary action.

*[See Appendix I – Handling Fraternization Allegations]*

## **HAZING PREVENTION**

### **REFERENCES:**

- (a) SECNAVINST 1610.2A
- (b) MCO 5354.1E V-1
- (c) OPNAVINST 3120.32D
- (d) ALMAR 045/03
- (e) SECNAVINST 5800.11B
- (f) MCO 3504.2A
- (g) NAVADMIN 034/13

**POLICY:** Commands must regularly emphasize the wrongfulness of hazing, take steps to proactively train Service members to avoid hazing incidents, and immediately investigate allegations of hazing.

**PREVENTION:** Requires continuous education and awareness from command leadership. Use the definition and examples below in that regard. The listing below is not all-inclusive and other known examples should be included and discussed within commands as a preventative measure. Hazing may be indicative of larger command climate concerns and, therefore, must be taken seriously and dealt with promptly. At the command level all hazing incidents shall be tracked by the assigned Command Managed Equal Opportunity program manager(s), Equal Opportunity Advisors, and Equal Opportunity Program Managers.

**HAZING DEFINITION:** Hazing is defined as any conduct whereby a military member or members, regardless of service or rank, without proper authority, causes another military member or members, regardless of service or rank, to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator(s). Whether an individual consents or volunteers is totally immaterial; no Service member may consent to acts of hazing being committed upon them.

**SPECIFIC EXAMPLES THAT ARE CLEARLY PROHIBITED:** “Tacking On” promotions of warfare insignia; initiations that have not been approved and are unsupervised by the chain of command; handcuffing or physically securing Service members to fixed or movable objects; taping or tying a Service member’s arms or legs; forced/non-consensual cutting or shaving of hair; forced or non-consensual removal of clothing; “red bellies”; placing or pouring liquid or foreign substances on a person or their property; requiring a person to consume substances or food, especially food not normally prepared or suitable for consumption; sabotaging personal property of another to cause even minor injury or damage; any horseplay or minor assault upon the person of another; or any other act that could even remotely subject a person to injury, ridicule, or degradation.

**HAZING DOES NOT INCLUDE:** Command-authorized or operational activities; the requisite training to prepare for missions or operations; administrative corrective measures employed lawfully; extra-military instruction employed lawfully; athletic events; command-authorized physical training; lawful contests or competitions; and other similar activities that are lawful and authorized by the chain of command.



**INITIATIONS AND SPECIAL CEREMONIES:** Must be approved by the chain of command. Specific guidance is contained in reference (d). At a minimum, such events must contain the following:

- The CO or his/her direct representative shall be personally involved in the planning and execution of the event;
- Glamorization of alcohol or alcohol abuse by event participants and guests shall not be tolerated;
- Sexually suggestive activities, props, costumes, skits, gags, or gifts are prohibited;
- Personal, ethnic, and religious beliefs of those in attendance shall be respected;
- There will be no coercion of Service members to participate. Any participation by principals or guests shall be strictly voluntary; and
- Proper medical screening of participants (when appropriate to the activity or individual involved) and compliance with health, safety, and environmental regulations shall be a part of the event planning.

**INVESTIGATIONS:** When an allegation of hazing is made, commanders must initiate an investigation within 24 hours. It is highly recommended that commanders document the investigation as well as any remedial actions taken, including a command climate survey.

**SUPPORTING THE ALLEGED VICTIM:** Alleged hazing victims and witnesses shall immediately be advised of their rights and offered legal assistance, medical assistance, and counseling, as necessary. Commanders shall ensure that alleged victims/witnesses are advised and given access to victim/witness advocacy services in accordance with reference (f).

**SUPPORTING THE ALLEGED VICTIM:** Alleged hazing victims and witnesses shall immediately be advised of their rights and offered legal assistance, medical assistance, and counseling, as necessary. Commanders shall ensure that alleged victims/witnesses are advised and given access to victim/witness advocacy services in accordance with reference (f).

**REPORTING REQUIREMENTS:** Substantiated incidents of hazing must be reported via OPREP-3 NAVY BLUE to CNO or CMC. An update via SITREP must be sent every 30 days until final command administrative and/or disciplinary action is taken [See references (a) through (c)]. USMC ONLY – All allegations of hazing must be reported.

## **SECTION IX: FREEDOM OF EXPRESSION**

## **SPEECH. RELIGIOUS ACCOMMODATION. POLITICAL ACTIVITIES**

### **REFERENCES:**

- (a) U.S. Constitution, First Amendment
- (b) DoDI 1325.06
- (c) DoDI 4105.70
- (d) DoDI 5230.29
- (e) DoDI 1300.17
- (f) BUPERSINST 1730.11 CH
- (g) SECNAVINST 1730.8B
- (h) DoDD 1344.10
- (i) NAVADMIN 082/16
- (j) MCBUL 1020

**COMMANDER'S BALANCING TEST:** Constitutional rights involving freedom of expression should be preserved to the maximum extent possible, consistent with mission accomplishment, national security, and good order and discipline. [See references (a) and (b)].

**NO CONTEMPTUOUS WORDS OR PHRASES:** Article 88 of the Uniform Code of Military Justice prohibits officers from being disrespectful to senior government leaders (e.g., the President of the United States, the Vice President, members of Congress, the Secretary of Defense, the Secretary of the Army, etc.).

**PORNOGRAPHY:** The presence of pornography on a military installation can be strictly limited.

- Private possession can be prohibited overseas on a military installation.
- Private possession in CONUS is generally permissible (except for child pornography).
- No sexually explicit material may be offered for sale or rental on property under Department of Defense control, and no member of the Armed Forces or DoD civilian officer or employee acting in his/her official capacity, shall offer for sale or rental any sexually explicit material [See reference (c)].

**HANDBILLS, POSTERS, LEAFLETS, NEWSLETTERS, PAPERS, NOTICES, ETC.:** The CO of a unit can and should require prior approval before distribution. The balancing test detailed above should be applied in a content- and viewpoint-neutral manner, which means assessing whether the content of the communication is inconsistent with mission accomplishment, security, and good order and discipline, and taking consistent action with respect to other similar communications. A commander cannot allow or prohibit certain content or communications based solely on whether he/she personally agrees or disagrees with the substance of the message.

**MANDATORY PUBLIC AFFAIRS OFFICER/SECURITY REVIEW:** A review is required for any publication written by a military Service member that pertains to military matters. A commander should coordinate such a review with the local public affairs officer and security personnel if necessary [See reference (d)].

**ON-BASE GATHERINGS:** A commander shall prohibit on-base gatherings if the gathering presents a clear danger to loyalty, morale, good order and discipline, or interference with mission accomplishment. This requirement shall be applied evenly and fairly with respect to any gathering that presents such a threat.

**OFF-BASE GATHERINGS:** The attendance of a Service member at an off-base gathering may be prohibited if:

- The Service member is on duty;
- The event takes place in a foreign country;

- The gathering is illegal; or
- Violence is likely to occur.
- Additionally, the Service member may be prohibited from wearing a military uniform at the gathering if he/she is allowed to attend.

**OFF-LIMITS:** A CO may place areas temporarily off-limits to Service members in emergencies until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for placing areas off limits include, but are not limited to: when there is a clear danger to loyalty, morale, good order and discipline, interference with mission accomplishment, adverse effect upon the health, safety, welfare, and morale of Service members or their family members, or when the location put off limits has engaged in discriminatory practices.

- **OVERSEAS:** An overseas CO has much greater discretion and authority to place areas off-limits on a longer-term basis. Overseas COs are advised to consult with their immediate superiors in command regarding the existence of an area off-limits policy or if the CO intends to place an area off limits on a long-term basis.

**UNIONS AND UNION-LIKE ACTIVITY:** Military Service members are not permitted to form unions, engage in strikes or slowdowns, or picket military authorities.

**MEMBERSHIP IN SUPREMACIST OR EXTREMIST GROUPS:** Active participation in such organizations or conduct in furtherance of their stated goals is prohibited. Active participation includes, but is not limited to: publicly demonstrating or rallying with the group or on its behalf, fundraising, recruiting and training new members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by the Service member's command to be detrimental to good order, discipline, morale, or mission accomplishment. Essentially, any activity greater than mere membership in the organization possibly constitutes active participation and commanders may take appropriate administrative and/or disciplinary action. It is recommended to consult with a staff judge advocate should this issue arise.

- **ADMINISTRATIVE SEPARATION:** A Service member shall be processed for administrative separation if his/her active participation in a supremacist or extremist organization is substantiated by his/her CO or higher authority.

**RELIGIOUS ACCOMMODATION:** It is DoD policy to accommodate religious practices to the greatest extent possible consistent with mission accomplishment, security, and good order and discipline [See reference (e)]. For the Navy, commanders must consider a request for religious accommodation on a case-by-case basis. Factors to consider include applicable operational or regional policies, importance of the military policy, practice or duty in terms of mission accomplishment (including military readiness and good order and discipline), importance of the accommodation to the requester, cumulative impact of repeated accommodations of a similar nature, and, alternate means to meet the requested accommodation [See reference (f)].

A request for religious accommodation may only be denied if there is a compelling governmental reason, such as security, health, good order and discipline, or mission accomplishment, and there are no lesser means of restricting the practice in question. When the requestor changes assignments or duty stations he/she must re-request the accommodation if so desired. Likewise, if any circumstances change during a current assignment for which a request for religious accommodation has been granted, then the CO may recommend terminating the accommodation or re-considering its appropriateness under the circumstances. Recommendations to deny requests for religious accommodation will be elevated to the Deputy Commandant for the Marine Corps (Manpower and Reserve Affairs) for USMC and typically the O-6 CO/ISIC for USN [See references (f) and (g)]. In addition, accommodation requests that would require a waiver of service regulations require the same level of approval authority.

**POLITICAL ACTIVITIES:** While we are encouraged to carry out the obligations of citizenship, to include voting, Service members on active duty are prohibited from engaging in partisan political activity. Allowable activities include voting, registering to vote, and encouraging others to vote, as well as contributing to political campaigns, displaying a political bumper sticker on his or her car, signing petitions for specific legislative actions, and attending a political rally in civilian attire. Prohibited activities include campaigning for another candidate, distributing partisan political literature, displaying large political signs on vehicles, attending a political rally in uniform, and encouraging others to vote a certain way [See reference (i)].

**TATTOO POLICY:**

- **USN: [see reference (j)]**
  - No tattoos on the face, scalp, or anywhere on the head.
  - On the neck, Service members may have one tattoo, no longer than one inch in any direction.
  - Tattoos on the body shall not be visible through white uniform clothing.
  - Any tattoo otherwise permitted must not be prejudicial to good order and discipline or service discrediting. Impermissible content: obscene, sexually explicit, advocates discrimination based upon sex, race, religion, ethnicity, or national origin, gang-related, supremacist or extremist views, and/or drug related.
  - On arms, wrists, hands, and legs, there is no size limitation. Sleeve tattoos are permitted.
  - Use Administrative Remarks (NAVPERS 1070/613) to document waivable and non-waivable tattoos for inclusion in the service record. Attach a colored diagram.
- **USMC: [see reference (k)]**
  - No tattoos on the head, neck, elbows, wrists, knees, and ankles.
  - On the chest or back, tattoo cannot be seen when wearing undershirt and below the 7th vertebrae.
  - On arms and legs, location and size are specified in reference (m).
  - Band of tattoos (single or cluster) wrapping around a single area can be 3 inches.
  - Single tattoo on one finger is permitted.
  - No full sleeve tattoos.
  - Content: cannot be prejudicial to good order and discipline or service discrediting. Impermissible content: drug-related, gang-related, extremist, obscene, indecent, sexist, and/or racist.
  - Any Marine previously grandfathered in under prior tattoo policy guidance will remain so for the purpose of promotion and worldwide assignment. However, Marines in certain billets (recruiting, security, instructing, etc.) may be affected in their future assignments. Questionable tattoos require an official determination of compliance.

**SECTION X: GRIEVANCE PROCEDURES**

## **REQUEST MAST AND COMPLAINTS OF WRONG**

### **REFERENCES:**

- (a) U.S. Navy Regulations, Articles 1150 and 1156
- (b) UCMJ, Article 138
- (c) JAGMAN, Chapter III
- (d) MCO 1700.23 (series)
- (e) NAVMC Directive 1700.23 (series)
- (f) 10 U.S.C. § 1034

**REQUEST MAST:** Members of the naval services have the right to communicate directly with their CO at a proper time and place as determined by the CO. No one may force the Service member to reveal the matter that he/she wishes to discuss with the CO.

- COs should encourage individuals to request mast in order to resolve matters at the lowest level in the chain of command. Once a request for mast is submitted, all levels of the chain of command should work to resolve the issue. Only the individual who requested mast may withdraw the request. If the Service member withdraws the request, the fact he/she withdrew it and the reason for it should be documented and preserved.
- Requesting mast is an individual right; however, reference (a) prohibits members from joining together to protest or complain. In the Navy, the Sailor may request mast up to his/her CO. In the USMC, a Marine may request mast with any officer in the chain up to the commanding general.

**U.S. NAVY REGULATIONS, ARTICLE 1150 COMPLAINTS:** A complaint pursuant to Article 1150 of the U.S. Navy Regulations is a formal complaint that may be submitted against any superior, inside or outside the chain of command. However, a Service member may not file an Article 1150 complaint against his/her CO. Complaints against a Service member's CO will be submitted pursuant to Article 138 of the Uniform Code of Military Justice.

- **PROCEDURE [see reference (c)]:**
  - **SAME CHAIN OF COMMAND:** If the superior against whom the complaint is filed is in the same chain of command as the complainant, their common CO will handle the complaint. If the matter is satisfactorily resolved, there is no need for the CO to report the matter to higher authority. However, if the complainant is not satisfied with the outcome, he/she may submit an Article 138 complaint against the CO.
  - **SEPARATE CHAINS OF COMMAND:** If the superior is not in the same chain of command as the complainant, the complaint shall be forwarded via the complainant's CO, the respondent, and the respondent's CO, to the officer exercising general court-martial convening authority (GCMCA) over the respondent. The GCMCA is required to take action on the complaint. That action is then forwarded to the Secretary of the Navy via Office of the Judge Advocate General (OJAG) Code 13 (Administrative Law Division).

**UCMJ, ARTICLE 138 COMPLAINTS:** These complaints can be submitted only by a complainant against his/her current CO. Before submitting an Article 138 complaint, the complainant must first seek redress from the CO to resolve the matter. If the CO fails to take action on the request for redress or does not redress the matter to the satisfaction of the complainant, the complainant may then submit an Article 138 complaint against the CO.

- **PROCEDURE [see reference (c), section 0306]:**
  - The complainant must submit the complaint within 90 days of discovering the alleged wrong. Failure to do so may result in the complaint being returned for being untimely. However, because the complaint must still be forwarded to the GCMCA, the GCMCA can waive the timeliness defect and take action on the complaint.

- The complaint must be routed through the CO against whom the complaint is made (the respondent). The CO has 10 working days to respond to the complaint and forward it to his/her GCMCA.
- The GCMCA may conduct any further investigation required to determine whether some or all of the complaint has merit and whether to grant some or all of the requested relief. Immediately upon receipt of the complaint, the GCMCA must notify OJAG Code 13 for tracking purposes.
- Once the GCMCA acts on the complaint, the determination and actions of the GCMCA will be reviewed by OJAG Code 13. If some or all of the complaint is found lacking merit or some or all of the requested redress is denied, the complaint will be forwarded to SECNAV for final determination. SECNAV has delegated authority for acting on Article 138 complaints to the Assistant SECNAV (Manpower and Reserve Affairs).
- A complaint may be withdrawn in writing by the complainant at any time.
- All complaints, whether acted upon or withdrawn, must be maintained for two years.

*[See Appendix J – Complaints of Wrong Commanding Officer Checklist]*

**RETALIATION PROHIBITED:** Federal law prohibits anyone from taking any retaliatory action against a Service member for communicating to a court-martial, participating in an investigation (including those associated with Article 1150 and Article 138 complaints), or for any communication regarding sexual assault in any context [see reference (f)].



## **HOTLINE COMPLAINTS (IG) AND WHISTLEBLOWER PROTECTION ACT**

### **REFERENCES:**

- (a) SECNAVINST 5370.5 (series)
- (b) SECNAVINST 5370.7 (series)
- (c) DoDD 7050.06
- (d) MCO 5370.8

**DoD Fraud, Waste, and Abuse Hotline: 1-800-424-9098**

**Navy Inspector General (NAVIG): 1-800-522-3451; NAVIG is the “eyes and ears” of the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps.**

- Echelon II commanders are responsible for written internal procedures for processing hotline referrals at appropriate levels within the chain of command.
- There is a mandatory requirement to post information on DoD/USN/USMC Hotline programs on command bulletin boards and other public spaces viewable to command members.
- Commanders are directed to encourage and support reporting of fraud, waste, and abuse throughout all levels of command, for both military and civilian personnel.

**INVESTIGATION PROCEDURES:** If a command is tasked with conducting an investigation into a complaint, the CO must ensure standards of independence, completeness, timeliness, and accountability are met. At a minimum, the CO must implement the following procedures:

- Assign an impartial investigator, outside and independent of the operation or individual specified in the complaint.
- Ensure all questions or issues raised in the complaint are satisfactorily answered.
- Adhere to any due dates from the IG for completing the report and routing it through the chain of command.
- Take appropriate remedial measures in the form of disciplinary and/or administrative action and training if needed to correct the issue(s) raised in the complaint.
- Retain the investigative materials and documentation of remedial action for two years.
- Use the NAVIG Investigations Manual or the USMC IG Assistance and Investigation Manual as a guide for the investigation. The confidentiality of the informant is a must.
- NO REPRISAL can ever be taken against a known or suspected informant.

**WHISTLEBLOWER PROTECTION ACT (10 U.S.C. § 1034):** This act prohibits reprisal or taking or threatening to take any unfavorable personnel action or withholding or threatening to withhold any favorable personnel action, because an employee makes or prepares to make a lawful communication to a Member of Congress, an IG, or any other person designated by regulations or established administrative procedures for such communications. Violations of this act are punishable under the Uniform Code of Military Justice and a basis for disciplinary action against civilian employees. The contents of this act and implementing regulations [see reference (b)] must be published on the command bulletin board.

## **CONGRESSIONAL INQUIRIES**

### **REFERENCES:**

- (a) MILPERSMAN 5216-010
- (b) SECNAVINST 5215.5 (series)
- (c) U.S. Navy Regulation 1155
- (d) SECNAVINST 5730.5 (series)
- (e) JAGMAN

**RIGHT TO COMMUNICATE:** No person may restrict any Service member from communicating with Congress in the Service member's personal or private capacity. Absolutely no reprisal actions may be taken for such a communication.

**PRIVACY ACT CONCERNS:** In responding to a Member of Congress, the respondent must ensure that any personal information about the Service member included in the response is releasable information. Privacy Act waivers may need to be obtained by the command prior to sending a response.

**CORRESPONDENCE:** Each Congressional Inquiry should receive a prompt, courteous, and complete reply. The reply should be accurate, even though the nature of the reply may be unfavorable to the command or service. A final or interim reply **MUST** be sent to the Congressional office initiating the inquiry within five working days of receipt, which may also include routing the response through the chain of command and through the Office of Legislative Affairs. Time must be allocated to account for desired internal Department of the Navy (DON) review of the inquiry and any response sent in reply.

**USN:** DON activities contacted directly by Members of Congress are responsible for replying directly on routine and non-policy matters. Copies of both incoming and outgoing correspondence resulting from direct contact with Members of Congress shall be provided to the Chief of Legislative Affairs or Navy Appropriations Matters Office as appropriate.

**USMC:** All Congressional inquiries should be immediately forwarded by fax to the Office of Legislative Affairs at (703) 614-4172/4768 or DSN 224-4172.

**INFORMING CHAIN OF COMMAND:** Check local instructions from senior commanders for reporting requirements and processing of Congressional inquiries.

## **SECTION XI: INFORMATION ACCESS**

## **FREEDOM OF INFORMATION ACT (FOIA)**

### **REFERENCES:**

- (a) SECNAVINST 5720.42 (series)
- (b) SECNAVINST 58/20.8 (series)
- (c) 32 CFR Part 701
- (d) 5 U.S.C. § 552

### **RESOURCES:**

USN: [www.foia.navy.mil](http://www.foia.navy.mil)

USMC: <http://hqinet001.hqmc.usmc.mil/FOIA/index.htm>

**ACCESS TO RECORDS:** FOIA gives all persons (including foreign citizens and governments) a right to access government “agency records” unless such records are specifically exempted from disclosure. Records include information maintained in an electronic format. Requestors of information must indicate that they are seeking information pursuant to FOIA.

**EXEMPTIONS:** If there is any question about whether a record must be released, the record must be forwarded with the FOIA request seeking it to the Initial Denial Authority (IDA). The IDA will determine whether the record must be released or whether it should/must be withheld from the requestor. Some of the specific exemptions under FOIA include:

- Classified information;
- Purely internal rules and procedures;
- Memos containing internal advice and recommendations (pre-decisional);
- Records which contain personal and private information (e.g., personal medical and service records; mailing lists containing names and/or addresses of military personnel or civilian employees, regardless of their duties, of the Department of Defense, etc.); or
- Law enforcement records or records of ongoing investigations.

**IDAs:** Generally, only an IDA may deny release of a properly-requested record. IDAs are typically Flag/General Officers or officers exercising general court-martial convening authority.

**FEES:** Requestors may be charged fees for production of requested records. Details as to fees and fee waivers are set out in reference (b), enclosure (3). Note that typically a total fee of \$15.00 or less is waived.

**TIME LIMITS:** The proper recipient of a FOIA request must respond within 20 working days. A command may obtain an informal extension from the requestor or a formal request for an extension from the IDA.

**SPECIAL RECORDS:** Certain FOIA requests require special handling. Requests for the following must be forwarded to the appropriate custodian of the record:

- Naval Criminal Investigative Service reports;
- Inspector General reports;
- Court-martial records;
- Mishap or safety reports;
- Nuclear information; and
- Medical quality assurance reports.

**ANNUAL REPORTING AND TRACKING:** FOIA action officers must track all FOIA cases and all reimbursable fees. Use DD Form 2086 for all FOIA requests [see reference (b)]. Such records will also help in submitting annual FOIA reports. Echelon II IDAs are required to collect annual FOIA reports no later than 25 October of each year.

**REQUESTS FOR INFORMATION RELATED TO LITIGATION:** If the FOIA request (or any other request for information) is believed to be related to litigation in which the government is or might become a party, notify the local USN Region Legal Service Office, USMC Legal Services Support Section, and the Office of the Judge Advocate General (Code 14 – General Litigation) at (202) 685-5450 or DSN 325-5450.

## **PRIVACY ACT AND PERSONALLY IDENTIFIABLE INFORMATION (PII)**

### **REFERENCES:**

- (a) JAGMAN
- (b) SECNAVINST 52.11.5 (series)
- (c) DONCIO MSG 171952Z APR 07
- (d) DONCIO MSG 30154Z NOV 06
- (e) MARADMIN 162/10
- (f) DoDI 1000.30

**RESOURCES:** USN Privacy Act online website: <http://privacy.navy.mil>; USMC guidance is contained in reference (e).

**PURPOSE:** The Privacy Act limits the government in collecting personal information that will be stored in a “system of records,” and permits individuals access to information in such systems that contain personal information about them, unless specifically exempted from disclosure.

**DENIAL AUTHORITIES:** Only a proper “denial authority” may deny release of a properly requested record. Denial authorities are typically Flag/General Officers or officers exercising general court-martial convening authority.

**PRIVACY ACT WARNINGS:** These warnings are required when someone from the command is requesting personal information (e.g., social security numbers, phone numbers, addresses, etc.), which will then be stored in a system of records (e.g., personal or medical files, training records, JAGMAN investigations, etc.) [See reference (a) for sample Privacy Act warning forms].

**INDIVIDUAL ACCESS TO FILES:** In most cases, an individual may access any record that contains their own personal information. However, there are exceptions to this rule and the personal information about others that may be contained in the same record will need to be protected.

**THIRD PARTY ACCESS TO FILES:** In most cases, a third party may not access any record that contains personal information about someone else. There are some exceptions, including, but not limited to:

- Internal release within an agency (“need to know”);
- Routine uses as defined in the system of records notice (located at <http://privacy.navy.mil>);
- Statistical research;
- Law enforcement activity; and
- Congressional inquiries (where made on behalf of the individual about whom the information is sought).

**PRIVACY ACT REQUESTS:** Privacy Act requests are to be acknowledged within 10 working days by the system manager and acted upon within 30 working days. Requestors can appeal denials of release of information within 60 calendar days to the appropriate denial authority [see reference (b)].

**TRACKING:** For each record disclosed to a party outside the Department of Defense (DoD) in response to a Privacy Act request, document such release with a “Disclosure Accounting Form” – OPNAV Form 5211/9, which is contained in reference (b) and available on the Navy Privacy Act website.

**REDUCTION OF SOCIAL SECURITY NUMBER (SSN) USE:** Reference (f) mandates that DoD personnel shall reduce or eliminate use of SSNs wherever possible. The use of partial SSNs

(e.g., “last four”) is included in this mandate [See enclosure (2) of reference (f) for acceptable uses of the SSN.].

**PII BREACHES:** Actual or possible loss of control, unauthorized disclosure, unauthorized access, and wrongful release of PII must be reported within one hour to the Department of the Navy Chief Information Officer (DONCIO) or to the USMC Public Affairs Officer. Within 24 hours, DONCIO will instruct on whether to notify the affected individuals. If DONCIO directs notification, the affected individuals must be notified within 10 days.

See <http://www.doncio.navy.mil> for additional guidance.

## **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

### **REFERENCES:**

- (a) DoD 6025-18R
- (b) DoD 8580.02R
- (c) 45 CFR, Part 160

**RESOURCES:** The Department of Defense (DoD) provides information regarding HIPAA and implementing regulations within the department on the following website:

<http://www.tricare.mil/tma/privacy/hipaa.aspx>.

**PURPOSE:** HIPAA, among other things, is intended to strictly protect personal health information and to prohibit its release unless specifically authorized by the Service member or pursuant to law or regulation. Unlike with the Freedom of Information Act (where the presumption is that information is freely accessible), under HIPAA the presumption is that medical information is NOT accessible. A specific authorization must exist for medical information to be released to anyone but the Service member in question.

**APPLICABILITY:** HIPAA applies to health care providers who generate protected health information about patients. Health care providers cannot release protected health information unless authorized. Even when there is an exception which authorizes release, only the minimum necessary information may be released for the specific, appropriate purpose for which it is sought.

**NOTE:** Even if HIPAA is not applicable to specific health information or other personal information about a Service member, the Privacy Act may still apply and prohibit release absent a compelling reason and an authorized exception permitting limited release. Once protected health information has been released to a command, HIPAA no longer applies; however, the Privacy Act may apply and act to prohibit commands from further releasing protected health information without consent or a legal authorization. Never release protected health or other personal information without consulting with a judge advocate.

**APPROPRIATE RELEASES OF PROTECTED HEALTH INFORMATION:** Protected health information may be released to the following persons and for the following reasons:

- To the individual Service member;
- For routine uses within an agency; for example, to facilitate medical treatment, payment, record keeping, and other necessary health care purposes pursuant to law and regulation; or
- To the CO of a Service member only to the extent necessary to determine fitness for duty or to carry out any other activity necessary to the proper execution of the mission.
  - HIPAA and service regulations provide the CO or his/her written designee with the ability to obtain medical information on Service members within his/her command.



## **SECTION XII: RELATIONS WITH CIVILIAN AUTHORITIES**

## **CIVILIAN JURY DUTY**

### **REFERENCES:**

- (a) 28 U.S.C. § 1863
- (b) SECNAVINST 5822.2 (series)

**AUTOMATIC FEDERAL COURT EXEMPTIONS FOR JURY DUTY:** Reference (a) bars all active-duty Service members from serving on federal juries.

**NAVY POLICY ON JURY DUTY:** Per reference (b), the Navy's policy is for Service members to fulfill, to the maximum extent practicable, their civic responsibilities consistent with military duties. This includes serving on state/local jury duty when possible.

**MEMBERS WHO ARE AVAILABLE FOR JURY DUTY:** Members may fulfill their jury duty obligations and shall not be charged leave (or lose any other entitlements) during their period of jury duty service. All fees paid to Service members for jury duty are payable to the U.S. Treasury and may not be retained by the Service member. However, Service members are entitled to, and may retain, any reimbursement from the state or local jury authority for actual expenses incurred in the performance of jury duty (meaning: members can be reimbursed for mileage, but cannot be paid a daily fee for jury duty service).

**AUTOMATIC STATE COURT EXEMPTIONS FOR JURY DUTY:** Flag officers, general officers, COs, Service members assigned to operating forces, those in a training status, and those outside the continental United States are exempt from serving on state/local juries [see reference (b)].

**DISCRETIONARY EXEMPTIONS FOR STATE/LOCAL JURY DUTY:** Officers with authority to convene special courts-martial (SPCM) may exempt members from state/local juries if jury duty would:

- Unreasonably interfere with performance of their duties, and/or
- Adversely impact readiness of the command as a whole.

### **PROCESS FOR OBTAINING A DISCRETIONARY STATE/LOCAL JURY DUTY EXEMPTION:**

The CO should sign a written letter to the appropriate state official (e.g., the clerk of the court) notifying the official that the CO is exempting the Service member from jury duty for one of the aforementioned reasons. If the CO or OIC lacks the ability to convene a SPCM, he or she should forward a request for exemption with justification as soon as possible to an officer in the chain of command with the ability to convene a SPCM for processing.

## **COOPERATION WITH CIVILIAN LAW ENFORCEMENT AUTHORITIES**

### **REFERENCES:**

- (a) OPNAVINST 5100.12 (series)
- (b) 10 U.S.C. § 814
- (c) U.S. Navy Regulations, Article 0822
- (d) JAGMAN, Chapter VI
- (e) 18 U.S.C. §1382

### **TYPES OF JURISDICTION OVER CRIMES BETWEEN FEDERAL AND STATE AUTHORITIES:**

- **EXCLUSIVE:** The federal government has exclusive authority to make and enforce laws on board an installation. Civilian misconduct may be prosecuted in federal court. The local USN or USMC legal service office will likely have a Special Assistant U.S. Attorney (SAUSA) to prosecute civilian offenses on federal installations. Minor driving infractions are usually handled in an installation traffic court [see reference (a)].
- **CONCURRENT:** State and federal governments have equal authority to make and enforce local civilian laws. The Department of the Navy or local law enforcement may respond to an incident, and either may pursue prosecution over the alleged military or civilian offender. Each base or installation must have a memorandum of understanding with local civilian law enforcement agencies regarding issues pertaining to roles, responsibilities, jurisdiction, and criminal prosecution.
- **PROPRIETARY:** The federal government is merely a tenant on the land and retains no power to make or enforce local laws. State law controls, and state law enforcement normally makes all arrests. Prosecutions will occur in state courts. Active duty Service members may also be prosecuted in state court for traffic violations and other crimes. State court prosecution will not necessarily preclude disciplinary action and punishment under the UCMJ for the same offense.

**ENFORCEMENT OF THE UCMJ OVER MILITARY PERSONNEL:** The UCMJ applies in all places and at all times to all active duty Service members. On installations with concurrent or proprietary jurisdiction, a violation of the UCMJ might also be a violation of state law, which could lead to prosecution in state court. As noted above, state court prosecution is not necessarily a bar against military punishment under the UCMJ.

### **MILITARY DETENTION OF CIVILIANS FOR DELIVERY TO CIVILIAN AUTHORITIES:**

Regardless of the type of jurisdiction, COs may not confine civilians but may detain them for a reasonable time until civilian law enforcement assumes physical custody of the individual. In the event that you are asked to detain a civilian, immediately notify NCIS.

**DELIVERY OF MILITARY PERSONNEL TO CIVILIAN AUTHORITIES:** Pursuant to references (b) and (c), and in accordance with reference (d), a Service member accused of an offense against civilian authority may be physically detained and delivered, upon request, to civil authorities for trial. A Navy or Marine Corps judge advocate should be consulted before delivery is delivered to civilian authorities [See *Appendix M – Delivery of Personnel*].

### **DETENTION OF A SERVICE MEMBER FOR DELIVERY TO CIVILIAN AUTHORITIES:**

Military authorities may detain a Service member, in confinement if necessary, only for a reasonable time to facilitate the prompt turnover of the Service member to civilian authorities. Civilian authorities must have a warrant or reasonable belief that the Service member committed a civilian offense.

**ARREST WARRANTS FOR ACTIVE DUTY SERVICE MEMBERS:** See reference (d) for detailed guidance and samples of necessary documentation.

- **FEDERAL WARRANT FOR ARREST:** Federal law enforcement authorities may arrest a Service member upon display of law enforcement credentials and a warrant.
- **IN-STATE WARRANT FOR ARREST:** Law enforcement authorities exercising jurisdiction within the same state as a military installation or command may arrest a Service member upon display of official law enforcement credentials and arrest warrant. The command turning over the Service member must have the local law enforcement agency complete a written execution of delivery agreement.
- **OUT-OF-STATE WARRANT FOR ARREST:** Law enforcement authorities from a jurisdiction outside the state of the military installation or command may arrest a Service member upon display of official law enforcement credentials and a fugitive arrest warrant. The Service member may refuse to be delivered to the out-of-state law enforcement agency. If the Service member waives extradition and voluntarily submits to arrest, the command must ensure the local law enforcement agency completes a written execution of delivery agreement. Service members have the right to consult with an attorney before agreeing to waive extradition to another state.
- **FOREIGN ARREST WARRANT:** Immediately notify the immediate superior in the chain of command and the cognizant staff judge advocate to determine requirements in accordance with the local status of forces agreement and any other agreements on delivery of personnel in foreign countries. **Under no circumstances shall COs deliver personnel to foreign nationals without consultation with the immediate superior in the chain of command and the cognizant staff judge advocate.**

**NOTE:** In any circumstance where a CO refuses delivery of a Service member, inform your staff judge advocate and the Office of the Judge Advocate General (Code 14 –General Litigation) immediately at (202) 685-5450 of DSN 325-5450.

**BARRING OF CIVILIANS:** Civilians who commit misconduct or who present a threat to good order and discipline on the base may be barred by the installation CO from entering the installation. The installation CO must issue a written order barring the individual from entering the installation. Those who violate the order may be tried in federal court, fined, and imprisoned [See reference (e)].

**OFF-LIMITS:** A CO may declare places or businesses temporarily “off-limits” in emergencies until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for declaring places off limits: clear danger to loyalty, morale, good order and discipline; interference with mission accomplishment; adverse effect upon health, safety, welfare, or morals; or engages in discriminatory practices. An overseas CO has much greater discretion to place areas off limits, checking with the immediate superior in command (ISIC) if their intent is to place something or someplace permanently off limits. The command and ISIC staff judge advocate should report problematic off-base locations and businesses to the AFDCB for consideration in placement in longer-term off limits status, which would apply to all Service members in the area of operations. COs should also encourage Service members to report to a LA office when they have been victimized by off-base businesses. The LA office can help ensure the business is reported to the AFDCB. In order to avoid being placed permanently off limits, the offending business can change business practices to the benefit of Service members.

## **SUPPORTING CIVILIAN AUTHORITIES**

### **REFERENCES:**

- (a) OPNAVINST 3440.16E
- (b) 18 U.S.C. § 1385
- (c) SECNAVINST 5820.7C

**DEFENSE SUPPORT OF CIVILIAN AUTHORITIES:** Reference (a) governs the use of the Navy for defense support of civil authorities. Navy commanders are authorized to provide immediate response to requests from the civil sector in order to save lives, prevent human suffering, and to mitigate great property damage. This action is not to supersede the mission or the survival of the commander's personnel or facilities.

**POSSE COMITATUS ACT (PCA):** Reference (b), the PCA, is a federal law that makes it unlawful for the Army or Air Force to willfully execute and enforce civilian domestic laws without authorization from Congress. DOD/DON policy applies the PCA to the USN and USMC. The PCA is not applicable to the Coast Guard. Willful violations of the PCA are criminal offenses.

**EXAMPLES OF PROHIBITED ACTIVITIES:** DON personnel may not assist civilian law enforcement agencies or personnel by participating in:

- The interdiction of a vehicle, vessel, or aircraft;
- A search and seizure;
- An arrest, apprehension, stop and frisk, or similar activity;
- Surveillance or pursuit of individuals; and
- Investigations, interrogations, or undercover operations.

### **EXAMPLES OF PERMITTED ACTIVITIES:**

- Investigations of violations under the Uniform Code of Military Justice;
- Protection of classified information or equipment;
- Use of equipment/facilities with appropriate approval;
- Suppression of insurrection and U.S. domestic violence/disturbances;
- Protection of the President, Vice President, and other dignitaries;
- Maintenance of loaned equipment;
- Training and expert advice on operation of equipment; and
- Support necessary during chemical/biological emergencies.

**APPLICATION:** The PCA only applies to active-duty personnel while in a duty status or when acting in an official capacity.

**REPORTING AND REIMBURSEMENT REQUIREMENT:** Per reference (c), if USN assets are requested by civilian law enforcement agencies, permission to use those assets must come from the Secretary of the Navy (SECNAV) or SECNAV's designee. If approved, the DON will recover the cost of the DON assets used by civilian law enforcement.

## **REPOSSESSION OF PERSONAL PROPERTY ON INSTALLATIONS**

### **REFERENCES:**

(a) JAGMAN, Chapter VI, Section 0618

**DISCRETION OF THE INSTALLATION COMMANDING OFFICER (ICO):** Repossession of personal property belonging to military personnel or their dependents located on a naval installation may be permitted at the discretion of the installation CO. The repossession agent must obtain permission from the installation CO in advance. In the event a repossession agent attempts to execute repossession, the installation's cognizant staff judge advocate should review the repossession documentation before the CO makes a decision to allow the repossession.

**LOCAL INSTRUCTION OR DIRECTIVES:** Should be implemented to ensure standard procedures are followed.

**INFORMAL INQUIRY BEFORE REPOSSESSION IS ALLOWED:** The Service member whose property is subject to an attempted repossession should be contacted to determine if he/she is aware of the problem and whether there is a way to resolve it.

**IF REPOSSESSION IS PERMITTED:** The owner of the property should be afforded the opportunity to voluntarily relinquish the property. The Service member should be referred to a legal assistance office as soon as possible to explore legal options to address the repossession.

**NO BREACH OF THE PEACE:** COs must ensure that repossessions are carried out in a peaceful manner and prohibit or stop repossession agents and Service members from engaging in any type of altercation at the scene of an attempted repossession.

## **SERVICE OF PROCESS/SUBPOENAS**

### **REFERENCES:**

- (a) JAGMAN, Chapter VI
- (b) SECNAVINST 5820.7C
- (c) MCO 5800.16 V-8

**SERVICE OF PROCESS:** Service of process is a procedure that gives legal notice to a person that a court has jurisdiction over the party and that the party must appear in court [See reference (a)]. Service of process may be either in the Service member's personal capacity or arising from the Service member's official duties. The procedures and notifications are different for each.

**CO's CONSENT/PRESENCE:** Service of process will not be permitted within a command without the CO's consent. Where practicable, the member should be served within the CO's presence or that of another designated officer. **IMMEDIATELY ADVISE THE MEMBER TO SEEK LEGAL COUNSEL** [See *Appendix L – Service of Process*].

**LOCAL, STATE, OR FEDERAL COURT SERVICE OF PROCESS:** COs should permit service upon Service members, civilian employees, or dependents except in unusual cases when compliance would be prejudicial to the public interest, good order and discipline, or mission accomplishment. Vessels in territorial waters of a state should be considered to be within the jurisdiction of that state for purposes of service of process.

**COURTS LOCATED OUT-OF-STATE:** Service of process shall normally be permitted under the same conditions as in-state service, but the CO shall ensure that the member is advised that he/she need not accept service.

**SERVICE BY OUT-OF-STATE MAIL:** If a Service member refuses to accept service of process by out-of-state mail, the refusal should be noted and the documents returned to the sender.

**FOREIGN COURT/OVERSEAS SERVICE OF PROCESS:** This type of service of process is normally addressed by the applicable status of forces agreement between the United States and the host nation. Before effecting service, COs should contact the area coordinator for foreign criminal jurisdiction matters as well as the cognizant staff judge advocate immediately.

**RELATION TO OFFICIAL DUTIES:** When service of process upon a Service member or a civilian employee arises from the performance of his/her official duties, COs must ensure that the Service member is notified of his/her applicable rights in accordance with section 0616 of reference (a) and that copies of the process and pleadings along with a description of the pertinent facts are provided to the staff judge advocate for the general court-martial convening authority. In addition, the Office of the Judge Advocate General (OJAG) Code 14 (General Litigation) must also be immediately notified at (202) 685-5450 or DSN 325-5450.

**NORMALLY GRANT LEAVE OR LIBERTY:** Personnel who accept or are served with process should normally be granted leave or liberty to appear in court unless their absence would be prejudicial to the naval service [See reference (d)]. Service members may delay civil court proceedings under the Servicemembers Civil Relief Act (SCRA) if their military duties materially affect their ability to appear in a civil court action pursuant to a summons. Service members should seek counsel from a legal assistance attorney about exercising their rights under the SCRA.

**SERVICE OF SUBPOENAS:** Subpoenas are court orders requiring a person to testify as a witness or to submit evidence before the court. Subpoenas shall be handled in the same manner as service of process with the following exceptions:

- If a Service member is subpoenaed as a witness representing the federal government, the member will be issued orders for temporary additional duty. This must be approved by OJAG Code 14.
- If the Service member is subpoenaed as a witness on behalf of the accused in federal court, no-cost permissive orders should be issued unless the member's absence would be prejudicial to the command.
- If the Service member is subpoenaed as a witness on behalf of a party to a civil or state criminal action with no federal government interest, leave or liberty should be granted if not prejudicial to the command (No-cost permissive orders shall be issued if the witness is subpoenaed because of performance of official duties.).
- Subpoenas requesting release of official information for litigation purposes should be directed to the OJAG Code 14 at (202) 685-5450 or DSN 325-5450. References (b) and (c) cover release of official information in the USN and USMC.

**REQUESTS FOR STATEMENTS AND/OR INTERVIEWS WITH SERVICE MEMBERS BY PARTIES TO PRIVATE LITIGATION:** If such a request or an attempt is made, immediately notify the cognizant staff judge advocate for the general court-martial convening authority in the chain of command.



## **CUSTOMS RESPONSIBILITIES**

### **REFERENCES:**

- (a) DoD Directive 4500.09 (series)
- (b) DTR 4500.9-RPart V
- (c) Navy Regulations, Article 0860

**PRIOR TO DEPLOYMENT:** Commands must ensure that an adequate number of personnel are trained to act as military customs inspectors and that an adequate supply of customs forms are available.

### **CO's RESPONSIBILITIES FOR SHIP ARRIVAL:**

- CO must notify the Customs District Director before the ship's return from a port outside U.S. customs territory to a port within U.S. customs territory.
- The CO must facilitate customs and immigration inspections and ensure proper immigration clearances for military and civilian passengers.
- The CO must ensure that custom declaration forms are distributed to all passengers and crew.
- The CO must file a cargo declaration within 48 hours, if the ship is carrying anything other than U.S. property and passengers on official business.

### **AIRCRAFT COMMANDER'S RESPONSIBILITIES FOR AIRCRAFT ARRIVAL:**

- The Aircraft Commander must notify the Customs District Director before landing within U.S. customs territory.
- The Aircraft Commander may notify the Customs District Director by radio, telephone, or other direct means or, indirectly, through the Federal Aviation Administration's flight notification procedures.
- The Aircraft Commander must distribute custom declaration forms to the passengers and crew and facilitate the customs inspection.

**SECTION XIII: FOREIGN RELATIONS AND MARRIAGES TO FOREIGN NATIONALS**

## **FOREIGN CLAIMS**

### **REFERENCES:**

- (a) JAGMAN, Chapter VIII
- (b) DoD Instruction 5515.08

**PURPOSE AND SCOPE:** The purpose of the foreign claims process is to promote friendly relations with foreign countries by promptly paying meritorious claims for death, injury, property damage, and other losses caused by Service members or military operations. The claim must arise outside the U.S., its territories, possessions, or commonwealths.

**VALID CLAIMANT:** Valid claimants include citizens and inhabitants of foreign countries, corporations, and other government and business entities as well as U.S. citizens living abroad. Valid claimants do not include U.S. tourists or U.S. Service members or their dependents.

**CLAIMS NOT COVERED:** Combatant claims, admiralty incidents, patent infringement, claims made by insurers, purely contractual claims, and paternity claims are not covered under the foreign claims process.

**SINGLE SERVICE CLAIMS RESPONSIBILITY:** Reference (b) lists the military service responsible for all claims processing in a specified foreign area. Claims arising in countries assigned to the Army or Air Force must be forwarded to the assigned military department as soon as possible.

**SOFA CLAIMS:** If a Status of Forces Agreement (SOFA) exists between the United States and the country where the claim arose, and the SOFA contains specific tort claim cost-sharing provisions, the SOFA will apply. If not, the Foreign Claims Act will apply.

**ESTABLISHMENT OF CLAIMS COMMISSION:** COs have the authority to appoint a Foreign Claims Commission to settle meritorious claims fairly and promptly. Foreign Claims Commissions must diligently follow the requirements of reference (a) when investigating, documenting, adjudicating, and reporting claims. Type commanders frequently limit the authority of commands to settle claims or require the approval of a judge advocate. Understanding the specific foreign claims processing procedure within a command and its area of operations is essential before processing any foreign claims.

**PRIVATE SETTLEMENT:** When a claim results because of conduct outside the scope of a Service member's duty, a private settlement and voluntary restitution should be considered. Private settlements and restitution must be entirely voluntary on behalf of the Service member. The foreign claims officer should thoroughly document the incident in the same manner as a foreign claim and ensure that a final settlement agreement and release is signed by both the Service member and the claimant to prevent additional supplementary claims for the same incident against the United States.

**FUNDING FOREIGN CLAIMS:** See reference (a) for appropriate sources for funding foreign claims.

## **FOREIGN CRIMINAL JURISDICTION AND STATUS OF FORCES AGREEMENTS**

### **REFERENCES:**

- (a) JAGMAN, Section 0609
- (b) JAGMAN, Sections 1007 and 1008
- (c) Navy Regulations, Article 0828
- (d) MCO 1900.16 CH-1
- (e) NAVADMIN 244/14

**DELIVERY OF SERVICE MEMBERS TO FOREIGN AUTHORITIES:** COs shall not deliver Service members, or civilian employees, or their dependents on USN or USMC installations, unless authorized by Status of Forces Agreement (SOFA) with the foreign country involved [See reference (a)]. COs should contact the cognizant judge advocate immediately if requests are made by foreign authorities to deliver Service members into their custody.

**APPREHENSION OF SERVICE MEMBERS BY FOREIGN AUTHORITIES:** COs shall report via naval message when foreign authorities apprehend a Service member under their command. It is the policy of the United States that all efforts should be made by the command to secure the foreign release of the Service member pending the final resolution of judicial process. Service members that remain in the custody of foreign authorities should be encouraged to contact their family members or authorize the command to contact their family members on their behalf. When a Service member is released from the custody of foreign authorities, the Service member should be given a complete medical examination and provide a sworn statement pertaining to the conditions of the confinement. [See reference (b)].

**IMPORTANT CONTACTS:** The following entities should be contacted and may be able to assist in obtaining the release of or information about the foreign confinement of the Service member: the local installation or region staff judge advocate, Naval Criminal Investigative Service, U.S. consulate or embassy, U.S. Defense Attaché Office, and husbanding agents. As a matter of best practice, commanders should also immediately notify their immediate superiors in command.

**STATUS OF FORCES AGREEMENT COMPLIANCE:** In countries where the U.S. has a SOFA, the terms of that agreement will determine whether the Service member may be removed from the jurisdiction and whether the United States or the host nation will prosecute the case. In many countries, disciplinary action, including nonjudicial punishment, may not be conducted until the issue of jurisdiction has been resolved with the host country. Commands should consult with the cognizant staff judge advocate immediately.

**WARSHIP SOVEREIGNTY:** Warships are immune from any other nation's jurisdiction. COs will not permit their ships to be searched or allow Service members to be removed from their ship by foreign authorities. If foreign authorities use force to compel submission, COs shall use all available means to resist [See reference (c)].

**SERVICE MEMBERS RETAINED IN FOREIGN CUSTODY:** COs must ensure that Service members who are retained in foreign custody are visited by a command representative on a regular basis and may not be separated from the service until they complete their sentence and are returned to the United States [See reference (c)]. If a Service member is sentenced to post-trial confinement in a foreign country, notify PERS in accordance with reference (e).

## **LIBERTY RISK**

### **REFERENCES:**

- (a) JAGMAN, Section 0104
- (b) UCMJ, Article 92

### **\*\*\*MAY ONLY BE USED IN FOREIGN COUNTRIES\*\*\***

*(Major overseas commands and numbered fleets frequently have their own liberty risk instructions with more specific guidance. Commanders must be aware of additional liberty risk policies beyond the basic departmental policies governing limiting liberty pursuant to regulations.)*

**APPLICABILITY:** Normally, deprivation of liberty is a punishment and liberty can only be deprived per reference (a). However, liberty risk policies may be implemented to limit Service members' personal liberty while they are in foreign countries, whether permanently stationed in a foreign country or temporarily present pursuant to a port visit or temporary additional duty assignment. The sole purpose of liberty risk is the protection of U.S. foreign relations with host nations and, therefore, is not authorized within the United States or any of its overseas territories (Guam, for example).

**LIBERTY RISK IS SEPARATE FROM DISCIPLINARY ACTION:** Liberty risk may not be used as punishment and cannot be awarded at nonjudicial punishment or court-martial. Liberty risk shall not be used as a subterfuge for pretrial restraint. A Service member may be assigned liberty risk based on past behavior that indicates likely future conduct in a foreign country that could embarrass, discredit, or harm relations with the host nation. Past behavior that could indicate likely future conduct that could harm the foreign relations of the U.S. includes, but is not limited to: alcohol-related incidents, chronic intoxication, fights, theft, failure to pay bar or restaurant bills or taxi fares, lewd personal behavior or inflammatory, racist, or extremist behavior or statements.

### **GENERAL GUIDANCE:**

- Only the CO may assign liberty risk. The CO may consider the recommendations of a liberty risk review board.
- Lesser limitation on liberty or lower-level liberty risk restrictions should be considered. (e.g., limited hours on shore, alcohol use prohibitions, use of liberty buddies, checking-in, etc.).
- Each individual's status must be regularly reviewed; liberty risk cannot be imposed for an indefinite period of time without justification based on specific evidence.
- Commands shall not confiscate a Service member's Armed Forces Identification Card (CAC) as a means of limiting liberty or freedom of movement.
- Violation of a liberty risk order is punishable under reference (b).

### **RIGHTS OF SERVICE MEMBERS PLACED ON LIBERTY RISK:**

- Service members placed on liberty risk may request mast with the CO about whether the impositions or terms of liberty risk are appropriate;
- If placed on liberty risk, the Service member is entitled to specific notification in writing of the reason(s) for being placed on liberty risk; and
- Service members on liberty risk may not be required to muster or participate in special working parties with Service members serving punishment awarded at nonjudicial punishment or court-martial.

## **MARRIAGES OVERSEAS AND MARRIAGES TO FOREIGN NATIONALS**

### **REFERENCES:**

(a) MILPERSMAN 5352-030

**REQUEST AND APPLICATION:** Any Navy Service member planning to marry a foreign national overseas must submit an application to the area coordinator before the marriage takes place. Applications should be sent to the nearest area coordinator. Contact Commander, Naval Installations Command (N911A) for areas not listed in reference (a).

**COUNSELING:** Service members and prospective spouses must be counseled regarding the legal and financial responsibilities incurred by marriage. Service members should also be advised that approval is often a lengthy process and that their marriage to a foreign national may potentially impact their eligibility for a security clearance.

**VALIDITY OF FOREIGN MARRIAGES:** Generally, a marriage lawfully performed in a foreign country is considered a valid marriage under United States domestic laws.

### **BEFORE MARRIAGE, THE PROSPECTIVE SPOUSE MUST:**

- Receive a medical screening; and
- A background check, conducted by the local U.S. embassy or consulate, which includes a criminal and subversive history investigation.

**VISAS:** Foreign spouses do not automatically receive visas to enter the U.S. A foreign spouse must apply for an immigrant visa with the local U.S. embassy, consulate, or the U.S. Citizenship and Immigration Service. As a result, Service members who transfer back to the United States or to another country may not be able to immediately move their spouses or foreign-born children.

**USMC:** Marines contemplating marriage to a foreign national should immediately notify the S-1 and security manager in the Marine's chain of command.

#### **SECTION XIV: LEGAL READINESS**

## **LEGAL ASSISTANCE PROGRAM**

### **REFERENCES:**

- (a) JAGMAN
- (b) MCO 5800.16 CH-1 V-4
- (c) JAGINST 5801.2B
- (d) 10 U.S.C. § 1044
- (e) 10 U.S.C. § 1072
- (f) 10 U.S.C. § 1408(h)
- (g) 10 U.S.C. § 1059
- (e) Marine Corps Legal Assistance Program (MCLAP) Policy and Practice Manual, March 2017

**\*\*For a list of USN/USMC Legal Assistance Offices, see Appendix O\*\***

**LEGAL ASSISTANCE PROGRAM:** The Department of the Navy's Legal Assistance (LA) program provides free attorney assistance to Service members, their dependents and other eligible clients regarding personal legal matters (not involving military disciplinary proceedings). LA is provided at all USN Region Legal Service Offices (RLSO) and USMC Legal Support Services Sections (LSSS) and in military legal offices of other services [See reference (a), Section 0710].

### **ELIGIBILITY FOR LEGAL ASSISTANCE:**

- Service members on active duty for 30 days or more. LA is intended primarily for active-duty personnel, including reservists and members of the National Guard who receive orders for active duty for 30 days or more. For reservists on active duty for less than 30 days [See reference (a), § 0706(b)(4) and (5)].
- Dependents of Service members on active duty for 30 days or more and dependents of Service members who died while on active duty.
- Retired Service members and the dependents of retired Service members.
- For the purpose of enhancing the readiness of reserve Service members for mobilization, pre-mobilization legal counseling and assistance may be provided to active or inactive reserve personnel consistent with mobilization readiness needs. Pre-mobilization assistance normally will consist of unit briefs and drafting or updating wills, advance medical directives, and powers of attorney. Other assistance may be provided if it relates to recall or mobilizations such as: rights under the Servicemember's Civil Relief Act (SCRA) or the Uniformed Services Employment and Reemployment Rights Act (USERRA). Pre-mobilization LA is not authorized for dependents of reserve Service members.
- Reserve Service members and the dependents of reserve Service members following release from active duty, under a call to active duty for more than 30 days, issued under a mobilization authority as determined by the Secretary of Defense, for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty.
- Civilian employees who are U.S. citizens, other than foreign local hire employees, employed by, serving with, or accompanying U.S. Armed Forces, when they are assigned to a foreign country or to a vessel or unit deployed in excess of 30 days. Their dependents are also eligible for LA services.
- Foreign Service members and their dependents serving in the U.S. with U.S. Armed Forces.
- Certain former spouses of military Service members, as defined in reference (e).
- Spouses, former spouses, and children who are victims of abuse by Service members who lose their right to retired pay under reference (f).



- Dependents of Service members separated for dependent abuse consistent with the transitional compensation provisions of reference (g).

**CONFIDENTIALITY:** Information disclosed to a LA attorney is confidential and may not be disclosed to third parties without the client's informed, voluntary, and written consent (subject to the ethical duty to report confidential information to avoid harm to the Service member or others). LA offices are prohibited from disclosing information concerning a client to the client's command, including whether the Service member is even a client or received services.

**SERVICES:** Although the availability of services may vary from office to office, services that are generally provided include: advice concerning divorce, child and spousal support, adoptions and name changes, custody, estate planning, landlord/tenant disputes, contracts, consumer fraud, identity theft, immigration issues, and the preparation of legal documents such as wills, living wills, powers of attorney, and notarizations. The assistance provided does not include in-court representation, although some offices are permitted to prepare court documents for pro se litigants. Eligible persons seeking assistance should be advised to contact the nearest legal assistance office to determine whether a particular service is provided and, if not, where the nearest legal assistance provider who can provide that service is located.

**LEGAL ASSISTANCE PROVIDERS:** A helpful tool for locating the closest LA provider can be found at: <https://legalassistance.law.af.mil/>

**CONFLICTS:** Occasionally, a LA office will be prohibited from providing service to an otherwise eligible person due to an ethical conflict of interest. This usually arises when an attorney has previously provided assistance to an opposing party. Service members conflicted from receiving assistance at the office will normally be referred to an alternate LA service provider. Due to regulations and professional responsibility rules governing client confidentiality, the LA office is **prohibited** from telling the conflicted client why he or she cannot be seen.

**PREVENTIVE LAW:** Most LA offices have a preventive law program through which attorneys and other legal professionals provide informational briefings on a variety of topics including deployment readiness, consumer law, identity theft, automobile purchases, wills, powers of attorney, and family support. Contact your local RLSO or LSSS for more information or to schedule a briefing for your command. The more notice that a requesting command can give to the local LA office the more time and services the local LA office can provide to members of that command before deployment.

**PRE-DEPLOYMENT AND PRE-MOBILIZATION SERVICES:** The main focus of the LA program is fleet readiness. LA offices have been charged with maintaining legal readiness programs designed to ensure legal awareness and mission readiness. Such programs often include command visits and pre-deployment legal readiness check-ups. Contact your local LA provider to arrange pre-deployment or pre-mobilization LA services as soon as possible.

**ROLE OF LEGAL OFFICERS (LOs):** For LA matters, Navy LOs may draft OJAG Code 16-designed special powers of attorney, notarize documents, request and organize LA briefs, and to assist command members with getting appointments with LA providers. Especially as the law is constantly changing, LOs (as well as other command members) are prohibited from advising command members on how to handle LA issues and from representing the command member in front of civilian entities (e.g., going to a car dealership with the command member to try to persuade the dealership to cancel a car purchase contract). Command leadership should periodically inspect LOs to ensure that notary logbooks are maintained, LA briefs are organized, and information protected by the Privacy Act is properly secured.

## **PRE-DEPLOYMENT LEGAL READINESS**

### **REFERENCES:**

- (a) DoDD 1350.4 CH-1

**READINESS:** Poor legal readiness can significantly impair a Service member's ability to focus on mission accomplishment. Unfortunately, Service members often fail to address their legal issues in a timely fashion, creating larger legal problems for themselves and their families. Service members should be encouraged and provided an opportunity to have their individual legal readiness assessed by a legal assistance attorney at least annually, and well in advance of deployment.

**LEGAL ISSUES:** At a minimum, the following legal readiness issues should be addressed before deployment:

- **POWERS OF ATTORNEY (POA):** A POA allows another person to act as an agent on behalf of the Service member. Special POAs authorize an agent to act in a specifically-authorized capacity, such as: registering a vehicle, filing taxes, accepting or releasing government quarters, purchasing a home, executing a PCS move, etc. General POAs authorize an agent to act on the Service member's behalf in virtually any legal or financial capacity. Due to the risk of abuse, Service members are encouraged to carefully consider the importance of choosing a trustworthy, capable agent and the actions that the Service member will need the agent to take on their behalf. Special POAs are the most appropriate means of authorizing an agent to act on behalf of the Service member. As a matter of policy within USN, LA providers will only draft a general POA in limited circumstances when absolutely warranted. Over time, third parties have become much more reluctant to honor general POAs, and often third parties have their own pre- authorization procedures. General POAs can be unreliable and result in an agent unable to perform critical tasks on behalf of the Service member. ONLY ATTORNEYS CAN DRAFT GENERAL POAs.
- **LAST WILL AND TESTAMENT:** Wills ensure that a Service member's wishes regarding the disposition of property are carried out in the event of the Service member's death. A testamentary trust may also be created for the protection of financial assets for minors and name guardians to raise minors upon the Service member's death. Service members should have a current will. Service members should put the location of their will on their page 2 and should notify named executors and other authorized agents should know where to locate the original will. Service members should update their wills whenever they experience a significant change in financial or dependency status. As a matter of best practice, Service members should review their wills at least once a year. The only way to change a will in LA is to draft and execute an entirely new will. Any attempt to alter or amend an existing will may render it invalid. Service members cannot be ordered to get a will or any other legal document from an LA office.
- **LIVING WILLS AND HEALTH CARE POAs:** A Living Will (also known as an Advance Medical Directive) is a document that expresses the Service member's wishes regarding the withdrawal of artificial life-sustaining measures when the member is terminally ill or in a persistent vegetative state. The living will provides legal directions to family members and attending physicians to withhold or withdraw artificial life support and relieves family members from having to make such a difficult decision. A Health Care POA is a legal document that designates and authorizes a person to make health care decisions for the Service member if the Service member becomes incapacitated. Such decisions may include whether to perform a medical procedure or whether to withhold or withdraw artificial life support in the event the Service member has not already directed such action through a valid living will/advanced medical directive. Service members should put copies of these documents in their medical record and provide them to treating physician(s).

- **SERVICE MEMBER GROUP LIFE INSURANCE (SGLI):** Service members should ensure that their SGLI designation forms are up to date. SGLI distributions are controlled exclusively by the SGLI designation form, which can be updated through service-specific personnel units or the command's personnel office. Service members wishing to designate children under 21 years of age as beneficiaries of SGLI should seek assistance from a LA attorney concerning whether it is in the best interest of the children to establish a testamentary trust or custodianship in order to avoid significant delay and expense in event of the Service member's death. The **only** way to change the beneficiary of SGLI is to execute a new SGLI designation form. Wills and other legal instruments will NOT alter SGLI beneficiary designations. In order to avoid SGLI payouts to unintended beneficiaries, Service members must complete and file new SGLI designations with service personnel units or the command's personnel office. Spouses are not automatically removed from SGLI upon divorce.
  - The most frequently encountered problem with the SGLI beneficiary forms is that the Service member forgot to sign the form, which makes the form unenforceable.
- **DD-93, RECORD OF DEPENDENCY:** In the event of a Service member's death or incapacity, the Department of Defense and the Department of the Navy will review the Service member's DD-93 to determine next of kin and beneficiaries for unpaid pay, allowances, and death benefits (other than SGLI), as well as who is authorized to receive and dispose of the Service member's remains. If a Service member's DD-93 does not accurately reflect the Service member's intent, it can cause problems and confusion in contacting dependents and could result in intended dependents being denied military benefits, including a sizeable death gratuity. Service members wishing to designate children under 21 years of age as beneficiaries on their DD-93 should also seek assistance from a LA attorney concerning whether it is in the children's best interest to establish a testamentary trust or custodianship in order to avoid significant delay and expense in the event of the Service member's death. Like SGLI, the only way to ensure proper dispensation of unpaid pay and allowances and death benefits is to ensure the DD-93 is up to date and designates the Service member's intended beneficiaries. Wills and other legal documents have no bearing on DD-93 authorizations and benefits.
- **FAMILY MATTERS:** Family care plans and issues regarding divorce, support, custody, visitation, and military ID cards should all be resolved prior to deployment. Family care plans are not binding on state courts. Service members should see a LA provider to get proper legal documentation to cover children during deployment. Poor planning in this area can result in significant distraction for the Service member, especially for single-parent Service members, while on deployment and prevent eligible dependents from accessing military installations, medical facilities, commissaries, exchanges, and other support services. Service members who are remarried and have primary custody of their children also need to complete a family care plan.
- **PENDING COURT CASES:** Service members should take prompt action to address or postpone pending court actions before deployment. Failing to appear in court or request a delay of proceedings due to military necessity may result in a default judgment against the Service member in civil or administrative cases or issuance of a bench warrant. Federal law permits stays of proceedings in civil cases (not criminal cases) when required by military necessity; however, Service members and their COs must take affirmative action to contact the cognizant court to request the delay. When a CO assesses that their command member cannot attend a court hearing due to mission requirements, staff judge advocates and LA attorneys can provide COs with a form letter to submit to courts on behalf of the command member. The Service member will generally also need to submit a request to the court asking for a stay, which can be written by the LA provider.

- **CREDIT REPORTS AND PREVENTING IDENTITY THEFT:** Deployed and TAD Service members are highly susceptible to identity theft. In order to minimize the potential for identity theft, Service members who fear that their credit may be abused while on deployment should consider filing an Active Duty Alert with ALL of the three Consumer Reporting Agencies (CRAs): Trans Union (1-800-680-7289), Equifax (1-888-766-0008), and Experian (1-888-397-3742).
  - Once an Active Duty Alert is placed on a Service member's credit report, potential creditors are required to contact the Service member at the phone number provided by the Service member or otherwise affirmatively confirm the Service member's consent before extending new credit, issuing new or additional credit cards, or extending credit limits. Filing an Active Duty Alert also takes the Service member's name off of "prescreened" lists provided by CRAs to creditors and insurance companies that are seeking to solicit new business. Service members should also be encouraged to monitor their credit reports from the major CRAs.
  - Visit [www.annualcreditreport.com](http://www.annualcreditreport.com) for more information on obtaining a free credit report from each of the three CRAs once a year. As a matter of best practice, Service members should review all three of their credit reports at least once per year or whenever they have reason to suspect questionable financial activity which they did not authorize.

## **SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

### **REFERENCES:**

- (a) 50 U.S.C. §§ 3901-4043

**BACKGROUND:** The SCRA is a federal law that provides Service members—and in some cases their dependents—with a variety of protections in civil matters. This law was passed in an effort to address some of the disadvantages faced by Service members in dealing with their personal civil affairs due to the transient and unpredictable nature of military life. As the law is constantly changing, commands should encourage Service members to get an appointment with a legal assistance (LA) attorney in lieu of the command attempting to assist the Service member. For purposes of identifying potential SCRA violations, several of the more important provisions of the SCRA are discussed below.

**LEASE TERMINATION (“MILITARY CLAUSE”):** The SCRA provides Service members the right to terminate a lease for real property that is occupied or is intended to be occupied by the Service member or his dependents if after signing the lease:

- The Service member enters into the military, either as an original enlistment/commission or as an activated reservist;
- The Service member receives orders to deploy with a military unit for 90 days or more; or
- The Service member receives PCS orders.

To terminate a lease under the SCRA, the tenant must deliver written notice of the intent to terminate the lease under the SCRA and provide a copy of the orders. When deploying with a ship, the command should issue a letter verifying the approximate dates and duration that the Service member will be deployed. Once the Service member provides the required notice and documents, the lease is terminated effective 30 days from the date on which the next payment would be due. For example, if the rent is due on the 1st day of the month and the Service member provides notice on the 15th of March, the lease would be terminated effective the 1st of May (30 days from the 1st of April). Although landlords are prohibited by the SCRA from charging an early termination fee, the landlord can still assess fees for late payments if the tenant is behind on rent and for damage to the property.

**WAIVERS:** In some states, the right to terminate a lease without penalty could be waived by the Service member in the lease. Service members are strongly encouraged to have prospective leases reviewed by a LA provider prior to signing the lease.

**OTHER LEASE TERMINATION PROTECTIONS:** The SCRA also provides Service members the right to terminate some leases for motor vehicles if after signing the lease:

- The Service member receives orders to PCS from CONUS to OCONUS or OCONUS to CONUS; or in the case of Alaska or Hawaii, a PCS move to any location outside that state.
- The Service member receives orders to deploy for at least 180 days.

The same notification procedures for terminating a residential lease should be used to terminate a vehicle lease; however, the person leasing the vehicle (or their attorney-in-fact) must return the vehicle within 15 days of notifying the company in writing.

**STAY OF LEGAL PROCEEDINGS:** The SCRA provides Service members the right to stay (delay) civil and administrative proceedings if the Service member’s ability to appear is materially affected by the Service member’s military service. This protection applies only to civil and administrative proceedings, not criminal proceedings (including misdemeanor traffic citations). To request a stay, the Service member must submit to the court:

- A letter stating how the Service member's military service materially affects the Service member's ability to appear and when the Service member will be able to appear; and
- A letter from the Service member's CO stating that the Service member's current duties prevent their appearance and that leave is not authorized.

Every effort should be made to allow the Service member to attend court proceedings. As such, COs should only issue the aforementioned letter if the operational mission requires the Service member to be with the command on the designated court hearing dates. If the Service member qualifies for the stay, the court **MUST** grant the stay for at least 90 days, but may grant it for much longer. The court also has the option of denying the request for a stay longer than 90 days and proceeding without the Service member. The SCRA does not make any legal issue "go away." The Service member will eventually have to resolve the matter.

**DEFAULT JUDGMENTS:** Service members have a right under the SCRA to reopen default judgments issued in civil cases in which the Service member's military service materially affected his ability to appear in the case and the Service member has a meritorious defense. Default judgments are issued by a court when a party fails to appear in court and contest the matter. Additionally, before a court issues a default judgment, the SCRA requires that the opposing party file an affidavit with the court stating either that the person is in the military, is not in the military or that the opposing party does not know if the person is in the military. The SCRA provides penalties for filing a false affidavit but does not provide a penalty for failing to file an affidavit.

**6% INTEREST CAP:** An obligation or liability bearing interest that is incurred by a Service member, or the Service member and the Service member's spouse jointly, **BEFORE** the Service member enters the military service may not bear interest in excess of 6% per year:

- During the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed or any other security in the nature of a mortgage; or
- During the period of military service in the case of any other obligation or liability.

**DOMICILE PROTECTION:** The SCRA permits Service members to maintain their legal domicile and residency in a state even though they relocate out of state. A Service member establishes domicile in a state by being physically present in that state and having the intent to permanently return to that state. Contrary to popular belief, Service members do not establish domicile by simply updating their home of record at the personnel office. Once a Service member has established domicile in an intended state, the Service member should refrain from taking action contrary to that intent, such as registering to vote or obtaining a driver's license in another state.

**TAXATION:** The SCRA has numerous provisions designed to prevent Service members from being taxed in multiple jurisdictions:

- **INCOME TAX:** Military pay is deemed to have been earned in the Service member's state of domicile and only that jurisdiction may tax military pay. This does not apply to non-military pay, which may be taxed in the jurisdiction in which the pay was earned, in the state which the Service member is currently living and the Service member's state of domicile. Military pay of Native American Service members who maintain residency on a Federally-recognized tribal reservation is not subject to state income tax. Such Native American Service members should be advised immediately to file a DD-2058-2 with DFAS to claim this exemption.
- **PERSONAL PROPERTY TAX:** A jurisdiction is prohibited from charging a personal property tax on a Service member's property if that property is located within the jurisdiction only because of the Service member's presence in the state due to military assignment. This protection does not apply to sales or use taxes, and the Service member's state of domicile always remains able to charge a personal property tax.

**EVICTIION PROTECTION:** Landlords are prohibited from evicting Service members and their dependents without first obtaining a court order. If the Service member can demonstrate that the military service materially affects his ability to pay the rent, the court may fashion an equitable remedy, including reducing the amount of rent. This protection applies for leases with a rent of \$3,851.03 (2019 value) per month or less.

**FORECLOSURE PROTECTION:** No company or individual can foreclose on a Service member on active duty without a valid court order if that property was obtained before entering active service. The court issuing the order has the discretion to stay the foreclosure proceedings up to one year after the end of the Service members period of active service.

**REPOSSESSION PROTECTION:** Lenders may not repossess personal property owned by a Service member without first obtaining a court order. This protection applies only to obligations incurred before the Service member was ordered to active duty.

**MILITARY SPOUSES:** The domicile of the spouse of a Service member may also be protected by the Military Spouses Residency Relief Act (MSRRA). Under MSRRA, a Service member's spouse may retain his/her domicile as long as the spouse's absence from the state of domicile is a result of the Service member's orders. The spouse will also be able to pay state taxes in the state of domicile, even for work performed in the state of residence. Service members and their spouses should contact a legal assistance attorney to determine how the MSRRA may apply to them. Such spouses should be advised to consult with a LA attorney to obtain guidance on the forms required by each respective state to obtain the protections of this provision.

## **DEPENDENT SUPPORT**

### **REFERENCES:**

- (a) 32 C.F.R. §§ 733, 734
- (b) MILPERSMAN 1754-030
- (c) MCO 5800.16 V-9
- (d) UCMJ, Article 134
- (e) MILPERSMAN 1910-140
- (f) UCMJ, Article 92
- (g) DoD 7000.14-R (7A, Ch. 41)

**POLICY:** Service members are expected to provide continuous and adequate support for all lawful dependents. Each of the armed services has issued support guidelines. References (b) and (c) are the guidelines for the Navy and Marine Corps, respectively. Service members who are the subject of nonsupport complaints should be encouraged to consult with a legal assistance (LA) attorney.

**COURT ORDERS AND WRITTEN AGREEMENTS:** Service members are obligated to comply with valid court orders and written agreements that established support requirements. Service members who fail to comply with such orders and agreements may be disciplined under reference (d) for failure to pay just debts. Service members desiring to contest such orders must do so in the jurisdiction issuing the order.

**MILITARY SUPPORT OBLIGATIONS:** In the absence of a court order or written agreement, the service specific support obligation applies.

**PERSONS ENTITLED TO SUPPORT:** In the absence of a court order or written agreement, Service members are obligated to support their lawful dependents including spouses, natural and adopted children, but NOT stepchildren.

**NAVY GUIDELINES:** Reference (b) provides the guidelines and recommended levels of support for Sailors. Commands must counsel Sailors concerning their support obligation, but may not order the Sailor to provide support.

- **WAIVER OF SPOUSAL SUPPORT:** Sailors may seek a waiver of the spousal support obligation when the spouse seeking support abused or abandoned the Sailor or the spouse engaged in infidelity. Waivers are processed through the Defense Finance Accounting Service (DFAS) in accordance with reference (b).
- **COMMAND ACTION UNDER COMPLAINT:** Commands shall counsel Sailors concerning their obligations to support their lawful dependents in accordance with reference (b) and advise Sailors of the possible consequences of failure to comply with reference (b). Commands should also encourage Sailors to seek advice from a legal assistance attorney.
- **FAILURE TO PROVIDE SUPPORT:** Sailors failing to provide continuous and adequate support may lose their entitlement to Basic Allowance for Housing (BAH) at the "with dependents" rate, receive adverse evaluations or fitness reports, receive written counseling and ultimately be administratively separated in accordance with reference (e). Commands are required under reference (g) to recoup BAH for periods of inadequate support.

**MARINE CORPS GUIDELINES:** Reference (c) provides the formula for calculating support amounts and empowers commanders to issue a lawful order to provide support in accordance with the formula. Reference (c) is punitive in nature.

- **WAIVER OF SPOUSAL SUPPORT:** Commanders may waive the spousal support obligation only when the spouse seeking support abused the Marine, the spouse's



income exceeds that of the Marine, the spouse and the Marine are both Service members or the Marine has been providing continuous support for 12 months. Commanders may also reduce the amount of support otherwise owed if the Marine is paying regular and recurring obligations for the spouse.

- **COMMAND ACTION UNDER COMPLAINT:** Commands shall counsel Marines concerning their obligations to support their lawful dependents in accordance with reference (c) and if necessary issue a written order to provide support. Commands should also encourage Marines to seek advice from a legal assistance attorney.
- **FAILURE TO PROVIDE SUPPORT:** Marines failing to provide continuous and adequate support may lose their entitlement to a housing allowance at the “with dependents” rate and be subject to administrative and disciplinary action, including punishment under reference (f).

**PATERNITY:** In the case of a child born to parents who are not married, where paternity has not been established by affidavit, judicial decree, or DNA testing, the member cannot be required to provide support. Any such member should be immediately referred to a LA attorney [See PATERNITY COMPLAINTS].

**RESERVE NOTE:** Reserve Service members who are activated for an extended active-duty period and who have their pay garnished directly from their civilian employer to satisfy a support obligation must provide a certified copy of the order directing their employer to withhold support payments to the Navy or Marine Corps. This is typically done for the Navy by providing a certified copy at the Navy Mobilization Processing Site (NMPS) during the activation process. The Service member must follow-up with their finance office at their mobilization site or directly with DFAS to ensure that there is not an interruption in their support. Failure to ensure that there is not an interruption could result in the Service member facing penalties for arrears after mobilization.

## **PATERNITY COMPLAINTS**

### **REFERENCES:**

- (a) MILPERSMAN 5800-010
- (b) MILPERSMAN 1754-030
- (c) MCO P5800.16 (LEGADMINMAN)

**POLICY:** Service members owe the same duty of support to their minor children regardless of whether the child was born during the marriage or out of marriage.

**DETERMINATION OF PATERNITY:** The Department of the Navy does not determine paternity disputes; determining paternity is a matter solely for state courts. If a Service member questions paternity, they should seek legal advice from a legal assistance (LA) attorney BEFORE signing their name on the child's birth certificate.

**SUPPORT ORDERS:** Service members must comply with state court orders. Compliance with state court orders is required even if the Service member disputes paternity or believes that an official paternity determination has not been made. Service members who desire to challenge a court order directing support should be referred to a legal assistance attorney.

**WRITTEN PATERNITY COMPLAINTS:** Upon the receipt of a written complaint of paternity, the command must interview and counsel the Service member in accordance with reference (a). Service members receiving a paternity complaint should be referred to a legal assistance attorney.

- **ADMISSION OF PATERNITY:** If a Service member admits to being the natural father of the child he should be counseled on the obligation to provide support. If there is not a court order, the support should be made in accordance with service specific support guidelines found in references (b) and (c), or enter into a voluntary written agreement with the mother of the child. If the Service member now becomes eligible for a housing allowance or one at the "with dependents" rate, then the personnel office will require written acknowledgement of paternity.
- **DENIAL OF PATERNITY:** If the Service member denies paternity, the Service member should be counseled on the obligations under references (b) and (c), and the implication of making a false official statement under the Uniform Code of Military Justice, but no further action should be taken. The Service member cannot be compelled to take a DNA test by the military. The Service member should be referred to a LA attorney.

**ADMINISTRATIVE OR DISCIPLINARY ACTION:** After a state court order determining paternity or an admission of paternity, and the Service member continues to fail to provide support in accordance with references (b) and (c), a court order or a mutual agreement, administrative or disciplinary action may be warranted.

## **INDEBTEDNESS COMPLAINTS**

### **REFERENCES:**

- (a) DoDD 1344.09
- (b) DoDI 1344.12
- (c) MILPERSMAN 7000-020
- (d) MCO P5800.16A (LEGADMINMAN, Chapter 16)
- (f) MILPERSMAN 1910-140

**POLICY:** Service members are expected to pay their just financial obligations in a proper and timely manner. However, there is no internal Department of Defense (DoD) authority to adjudicate disputed claims or enforce settlements of private claims against Service members.

**COMPLAINTS:** In accordance with references (a) through (d), upon receipt of a complaint of a Service member failing to pay their debt, the command should counsel the Service member on his or her obligations. Service members who receive debt complaints against them should be referred to a legal assistance attorney and the Command Financial Specialist. Commands cannot arbitrate disputed claims and shall not indicate to a complainant what, if any, action was taken against the Service member. The command response will depend upon whether the complainant is a debt collector, creditor, or non-creditor:

- **DEBT COLLECTOR:** A debt collector is a person or entity regularly engaged in the collection of debts, such as collection agencies and law firms. Debt collectors are prohibited by the Fair Debt Collection Practices Act (FDCPA) from contacting third parties, including the Service member's command, to collect a debt that has not been reduced to a judgment, unless the Service member has consented to such contact after the delinquency has occurred. Most indebtedness complaints from debt collectors should be returned without action using the sample letter in references (c) or (d). Commands should report all FDCPA call violations to their base staff judge advocate or the local legal assistance office.
- **CREDITORS:** A creditor is a person or entity that extends credit, such as car loans, bank loans and credit cards. Creditors must certify compliance with the DoD Standards of Fairness and if subject to the Federal Trade Commission (FTC) regulations, must certify compliance with the Truth in Lending Act and other FTC regulations before the command can act on a complaint from a creditor. Command assistance to creditors should be limited to administrative referral of correspondence to the Service member and counseling the Service member regarding financial obligations. Commands should respond to creditors using the sample letter in references (c) or (d).
- **NON-CREDITORS:** A non-creditor is an entity that did not extend credit but to whom the money is owed, such as a supermarket or a landlord to whom the Service member wrote a now bounced check. Commands should respond to non-creditors using a letter substantially similar to the letters in reference (a) or (c).

**DOCUMENTING THE MEMBER'S FAILURE TO PAY:** Commands should use a page 13 for Sailors or a page 11 for Marines with recurring unpaid debt problems.

**DISCIPLINARY AND ADMINISTRATIVE ACTION:** Disciplinary action may be initiated when there has been a dishonorable failure to pay just debts or maintain checking funds under reference (e). A Service member may be administratively separated when there is a pattern of failing to pay just debts and the Service member has violated a written counseling to that effect [See reference (f)].

**INVOLUNTARY ALLOTMENT APPLICATIONS:** Involuntary allotment applications should be processed with the Defense Finance Accounting Services (DFAS) Form 2653 in accordance with reference (b).

## **FAMILY LAW ISSUES, DOMESTIC VIOLENCE, AND FAMILY ADVOCACY PROGRAM**

### **REFERENCES:**

- (a) SECNAVINST 1752.3 (series)
- (b) DoDD 6400.1-M-1
- (c) 10 U.S.C. § 1058
- (d) OPNAVINST 1752.1 (series)
- (e) OPNAVINST 1752.2 (series)
- (f) MCO 5300.17 (series)
- (g) 18 U.S.C. § 921
- (h) MILPERSMAN 1910-162
- (i) 18 U.S.C. § 922(g)
- (j) 10 U.S.C. § 1567
- (k) SECNAVINST 1752.4 (series)

### **POTENTIAL REPORTING REQUIREMENTS:**

- Commands must comply with all reporting requirements in enclosure (2) of reference (a).
- Commands must report all major criminal offenses to the Naval Criminal Investigative Service.
- In accordance with Type Commander and Echelon II requirements, commands must report all incidents involving officers. [See OFFICER MISCONDUCT].

### **NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE:**

- Navy commands shall notify the Family Advocacy Representative (FAR) of all allegations of spousal or child abuse. The FAR will notify Navy Personnel Command (PERS) when allegations of child sexual abuse are made.
- Marine Commands shall notify the command Family Advocacy Officer and/or the Family Advocacy Program Manager, as well as Marine and Family Services.

**TRACK THE CASE:** Appoint the XO or a responsible command representative to work with the Family Advocacy Program (FAP) and provide command input on the case disposition.

**CASE DISPOSITION:** The Family Advocacy Incident Determination Committee (IDC) replaced the Case Review Committee (CRC). The IDC will make a determination of whether an incident meets the Department of Defense criteria for abuse. If an incident is determined to be abuse, the case will be sent to the Clinical Case Staff Meeting to generate treatment recommendations, which will then be forwarded to the command. COs have sole discretion over disciplinary action, and Family Advocacy review does not preclude or limit command disciplinary action.

### **FORMAL REVIEW OF IDC DETERMINATIONS:**

- **USN:** IDC determinations can be appealed to the IDC and then to a Headquarters Review Team at BUPERS. Appeals must be in writing and normally filed within 30 days of the advisement of the IDC's determination. Appeals can be filed by the alleged offender, victim or the command of either. In cases involving children, the non-offending parent may appeal because of: 1) newly discovered evidence, 2) fraud upon the IDC, 3) a voting member of the IDC was absent, 4) a Guilty or Not Guilty finding after a full trial on the merits that is contrary to IDC's determination, or 5) plain legal or factual error.
- **USMC:** IDC determinations can be appealed to the installation IDC. Appeals must be in writing and normally filed within 10 days of the advisement of the IDC's determination. Appeals can be filed by a substantiated offender, victim, a person legally responsible for the victim, or either spouse where the incident was unsubstantiated, for the following grounds: 1) newly discovered information, 2) failure to substantially follow correct procedures or 3) not guilty/guilty findings after a full trial on the merits that is contrary to IDC's findings.

**TREATMENT OF VICTIMS:** Commands should coordinate the treatment of victims with the Victim/Witness Assistance Program.

**INTERVENTION:** Commands should ensure the appropriate actions are taken to provide for the protection for victims during the investigation and processing of FAP cases, such as: the issuance of military protective orders (MPOs), coordination with local child protective services, or issuance of an order barring alleged perpetrators from Navy installations [See Cooperation with Civilian Law Enforcement Authorities].

**MILITARY PROTECTIVE ORDERS:** An MPO ensures active-duty service members do not have contact with individuals against whom they are alleged, or are confirmed, to have committed an offense. [See MILITARY PROTECTIVE ORDER].

**INTERVIEWING OR QUESTIONING SUSPECTED OFFENDERS:** Commands should not interview or question suspected offenders until the appropriate law enforcement agency (NCIS, CID, or civilian) has completed their investigation.

**ALCOHOL-RELATED INCIDENTS:** For alcohol related incidents, after the law enforcement investigation is complete, the Drug and Alcohol Programs Advisor should conduct an alcohol abuse screening.

**MANDATORY PROCESSING:** FAP rehabilitation failure cases must be processed for administrative separation under reference (h). Administrative separation processing is also mandatory for sexual misconduct and violent misconduct involving conduct which caused or could have caused death or serious bodily injury [See Enlisted Administrative Separations].

**FIREARMS AND AMMUNITION POSSESSION:** In accordance with reference (i), also known as the "Lautenberg Amendment," if a Service member is convicted at Special or General Courts-Martial, or in any civilian court, of a crime of domestic violence, the Service member is not permitted to possess firearms or handle ammunition, even in the line of duty. COs should consult a Judge Advocate for further information.

**SECTION XV: ETHICS AND STANDARDS OF CONDUCT**

## **GUIDELINES FOR ETHICAL CONDUCT**

### **REFERENCES:**

- (a) 5 C.F.R. § 2635
- (b) DoD 5500.07-R (JER)

### **BASIC OBLIGATIONS OF PUBLIC SERVICE:**

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the law, and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not conduct financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall not make unauthorized commitments or promises (knowingly) of any kind purporting to bind the Government.
- Employees shall not use the public office for private gain.
- Employees shall act impartially and shall not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for anything other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by the law.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, gender, sexual orientation, national origin, age, or handicap.
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

## **COMMERCIAL DEALINGS BETWEEN SERVICE MEMBERS**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Section 5-409
- (b) US Navy Regulations, Article 1111

**SENIOR TO JUNIOR:** On or off duty, a Service member or civilian employee cannot solicit or sell to personnel who are junior in rank, grade or position, or to the family members of such personnel. Included in this prohibition are sales of insurance, stocks, mutual funds, cosmetics, household supplies, vitamins, real estate, or any other goods or services.

**EXCEPTIONS:** Absent coercion/intimidation, the sale or lease of noncommercial personal or real property and commercial sales solicited and made in a retail establishment during off-duty employment are not prohibited. Sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion/intimidation by the senior.

**SPOUSES AND OTHER HOUSEHOLD MEMBERS:** Service members must seek an opinion from an ethics counselor (typically the Staff Judge Advocate for a General Court-Martial Convening Authority) if a spouse or household member is soliciting sales to junior personnel or other families. The Service member should be counseled that such commercial activities are to be avoided where it may cause actual or perceived partiality or unfairness, involve the actual or apparent use of rank/position for personal gain or otherwise undermine discipline, morale, or authority.



## **CONFLICTS OF INTEREST**

### **REFERENCES:**

- (a) 18 U.S.C. § 208
- (b) DoD 5500.07-R (JER), Section 5-100

**OFFICIAL ACTIONS THAT HAVE A DIRECT AND PREDICTABLE EFFECT ON PRIVATE FINANCIAL INTERESTS:** Officers, enlisted Service members, and civilian employees are prohibited from participating personally and substantially in an official capacity in any particular matter in which they or any person whose interests are imputed to them have a financial interest, if the particular matter will have a direct and predictable effect on that interest.

**IMPUTED INTERESTS:** The interest of a spouse, child, general partner, organization in which the employee serves (i.e., as a director or trustee), or anyone with whom the employee is seeking or negotiating future employment, are imputed to the employee.

### **WHEN A CONFLICT EXISTS OR MAY EXIST:**

- Seek the opinion of an Ethics Counselor, who is usually the Staff Judge Advocate for a General Court-Martial Convening Authority.
- Disqualify yourself and do not participate or take further action on the matter.
- Provide written notice of the particular conflict to your superior officer.
- Request a waiver, disqualification, reassignment or limitation of duties.

**PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278):** All flag/general officers must file.

- File when promoted, annually thereafter, and upon termination.
- Ensure the filing is reviewed by an Ethics Counselor for potential conflicts of interest.
- Ensure any necessary remediation is made for disclosed conflicts.
- This document is available to the public.

**CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (OGE-450 or OGE-450A):** The following personnel are required to file:

- Commanders of Navy shore installations with 500 or more military and civilian personnel.
- All Commanding and Executive Officers, heads and deputy heads of Army, Air Force, and Marine Corps installations, bases, air stations or activities.
- All personnel who participate personally and substantially in contracting or procurement, regulating or auditing any non-Federal entity or other activities having a direct and substantial economic impact on the interests of any non-Federal entity.

Any person whose official responsibilities require personal and substantial participation in contracting or procurement must:

- File the OGE-450 or OGE-450A upon assuming the covered position and annually thereafter; and
- Ensure it is reviewed by an Ethics Counselor for conflicts and remediation if necessary. The information contained in the OGE-450 will be kept confidential.

**JOB HUNTING:** When seeking outside employment the employee must disqualify himself/herself from any official action that could possibly affect the financial interests of the prospective employer. This disqualification must be in writing and sent to the employee's supervisor. The disqualification can be revoked if either party rejects possible employment.

**RESERVE NOTE:** Reserve personnel must also be mindful of the conflicts of interest unique to reserve component personnel. Reserve personnel are prohibited from performing their reserve component duties in the same location in which they are also employed in the Government Civil Service. Additionally, reserve component personnel who in their civilian lives are employed by a

Government contractor must ensure that their service in a particular reserve billet would not present a conflict of interest in which the reserve Service member could be placed in a situation in which the reserve Service member makes decisions that can affect the reserve Service member's civilian employer.

## **FUNDRAISING**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Chapter 3
- (b) DoDI 5035.01 (CFC Instruction)
- (c) OPNAVINST 1754.5C
- (d) MCO 5760.4C
- (e) OPNAVINST 1710.11
- (f) 5 C.F.R. § 2635.808

**OFFICIAL ENDORSEMENT:** Commands may officially endorse fundraising efforts of:

- The Combined Federal Campaign (CFC);
- Emergency and disaster appeals approved by the Office of Personnel Management;
- Army Emergency Relief;
- Navy-Marine Corps Relief Society; and
- Air Force Assistance Fund, including:
  - Air Force Enlisted Foundation, Inc., Air Force Village, and Air Force Aid Society;
  - General and Mrs. Curtis E. LeMay Foundation.
- Other organizations composed primarily of DoD employees or their dependents, when fundraising among their own members for the benefit of welfare funds for their own members or their dependents, when approved by the head of the DoD Component command or organization after consultation with the Designated Agency Ethics Office or designee. This includes most morale, welfare, and recreation programs, regardless of funding sources.

**OFFICIAL SUPPORT:** Commands may officially support (vice endorse) a charitable fundraising event sponsored by a non-Federal entity if certain criteria of reference (a) are met. This is limited to logistical support, such as the use of DoD facilities and equipment on a limited basis.

**WORKSPACE SOLICITATIONS:** Solicitation within the workplace is authorized only for approved organizations with official endorsement. Solicitations must be conducted in such a way as to ensure all contributions are voluntary.

The following coercive practices are prohibited:

- Solicitations by supervisors;
- Setting 100 percent participation goals, mandatory personal goals, or quotas;
- Using contributor or non-contributor lists for any purpose other than routine collection and forwarding of pledges;
- Desk-to-desk sales; and
- Counseling or grading of individuals based on their failure to contribute to any fundraising effort.

### **FUNDRAISING BY MILITARY-AFFILIATED PRIVATE ORGANIZATIONS AND/OR SPOUSE**

**CLUBS:** Sales of merchandise or services is authorized, but should be limited to occasional sales and not be frequent or continuous. Competition with Navy Resale activities should be minimized. Gambling and/or raffles and lotteries for charity are permitted when the activities are held by CFC, service relief organizations or official MWR.

[See *PRIVATE ORGANIZATIONS AND SPOUSE CLUBS, BIRTHDAY BALL FUNDRAISING, and GAMBLING*]

**RAFFLES:** Raffles are only authorized for the Navy and Marine Corps Relief Society and Combined Federal Campaign.

**BINGO:** Bingo games are only authorized for Morale Welfare and Recreation (MWR) programs [See reference (f)].

**SOLICITING CONTRIBUTIONS FROM OUTSIDE SOURCES:** Soliciting contributions from outside sources, such as non-DoD employees and local merchants, is prohibited for any and all fundraising activities. Fundraising by offering tours of installations or rides in military vehicles, ships, or aircraft is prohibited.

**USE OF RANK, OFFICIAL TITLE, AND POSITION:** Rank, official title, and position may be used when conducting fundraising in your official capacity for approved organizations. Only grade and military service may be used in connection with activities performed in your personal capacity.

**PERSONAL FUNDRAISING ACTIVITIES:** In a private capacity, the following fundraising activities are prohibited:

- Solicitations in the work place;
- Solicitations of subordinates; and
- Solicitations from prohibited sources.

**MARINE CORPS FUNDRAISING RESTRICTIONS:**

- Fundraising events are authorized for Marine Corps Community Services (MCCS) MWR activities per reference (a). These events shall be limited to authorized users of these activities and the funds raised must be for the benefit of the activities and their authorized users. Fundraising activities shall be conducted entirely on Marine Corps installations. Any gambling, including lottery, pool, or game of chance for money or property, is strictly prohibited.
- Individual Marine units on DoD installations may hold fundraising events to augment their own unit funds subject to local regulations. They should first receive permission from the local MCCS and comply with the above requirements.

## **BIRTHDAY BALL FUNDRAISING**

### **REFERENCES:**

- (a) MCO 7040.11A
- (b) MCO P1700.27B CH-1
- (c) DoD 5500.07-R (JER)
- (d) MCO 5760.4C
- (e) MCO P5800.16 (series) (LEGADMINMAN)
- (f) NAVADMIN 095/15

**USMC BIRTHDAY BALLS:** The USMC Birthday Ball is a two-tiered event, which has an official and unofficial function with separate sources of funding, as set forth in reference (a). A limited use of appropriated funds for the official portion is authorized for expenses such as: transportation, printing, publication and official ceremonial photos. However, guest of honor and cake expenses must not be paid for with appropriated funds.

**FUNDING FOR UNOFFICIAL PORTIONS OF USMC BIRTHDAY BALLS:** Non-appropriated funds (NAF) fundraising must have Marine Corps Community Services (MCCS) oversight, and:

- Gambling, including lotteries, pools or games of chance for money or property, is strictly prohibited as per reference (b).
- Monte Carlo games and activities are authorized if they award nonmonetary prizes. No reimbursement shall be made to patrons for unused or accumulated tickets, chips, etc.
- Further, these events must be conducted entirely on the sponsoring installation and international agreements apply overseas.
- Units may not conduct raffles for fundraising. However, reference (b) contemplates units using raffles for raising funds for MCCS, fundraising for either informal unit funds, or via MCCS fundraising [See *FUNDRAISING*].
- Gifts and donations cannot be solicited except among unit members. Unsolicited donations must be accepted as provided in chapter 12 of reference (e).

### **USN BIRTHDAY BALLS (A TWO-TIERED APPROACH):**

- **POLICY:** While Navy birthday balls involve celebrations of the Navy's birthday, history, and heritage, they are not official events. However, reference (f) contains an authorization for official Navy Birthday Commemoration Ceremonies to be held in conjunction with unofficial Navy birthday balls and similar social events where feasible, and to the extent consistent with law and regulation. According to reference (f), a "two-tiered" approach may be employed to better leverage official engagement opportunities associated with certain unofficial Navy birthday-related events and allow for more flexibility in unit-level planning of desired official birthday evolutions.
- **THE "TWO-TIERED" APPROACH:** Official Navy Birthday Commemoration Ceremonies (tier one) directly support the mission of the U.S. Navy. They often include a Navy color guard, a performance by the Navy band (for ceremonial music only), a presentation or pageant commemorating the Navy's birthday and mission, and appropriate guest of honor remarks. The social event portion (tier two), or the Navy birthday ball, is traditionally organized by groups of Sailors acting in an unofficial capacity or other non-federal entity (NFE) chartered to give support to the military and/or its Service members. Navy birthday ball celebrations often include an invited Navy speaker or guest of honor, dinner, dancing, refreshments, favors, entertainment, and other social activities. The cost of the event is normally supported through NFE-organized ticket sales to attendees, though they may also be supported by appropriate NFE fundraising activities and non-appropriated funds.
- This approach allows for the connection of the official event, or the Navy Birthday Commemoration Ceremony, with the unofficial event, the Navy birthday ball and, for the

most part, the rules that apply to all military balls remain the same. Although appropriated funds (APF) can be used to support the official Navy Birthday Commemoration Ceremony to include security and transportation of ceremonial participants, APF are general unavailable for unofficial events and cannot be used for the feeding and entertainment of Navy members and guests at the birthday ball. However, certain logistical support may overlap and may be used for the birthday ball and the Navy Birthday Commemoration Ceremony, such as staging, a dais, and audio-visual support for the Commemoration portion (tier one) of the birthday ball (tier two). In addition, official time and resources may be used to set up seating to remain in place for both the tier one AND tier two events.

Because of restrictions that apply to official functions, units should conduct Navy Balls as unofficial events that are coordinated by a private volunteer committee. If an unofficial committee is used, such a committee is a non-Federal entity (NFE), with attendant Joint Ethics Regulations consequences. Section 3-301 of reference (c), allows DoD employees to become members of and participate in the management of NFEs in their personal capacity, *provided they act exclusively outside the scope of their official position*. Always consult a judge advocate when undertaking any Birthday ball fundraising activity.

## **GAMBLING**

### **REFERENCES:**

- (a) 5 C.F.R. § 735.201
- (b) DoD 5500.07-R (JER)
- (c) 20 U.S.C. § 107a(5)
- (d) 32 C.F.R. Part 4
- (e) OPNAVINST 1710.11

**PROHIBITION:** DoD employees shall not participate in any gambling activity prohibited by reference (a) on federally-owned or leased property or while on duty for the federal government, except:

- Activities necessitated by a DoD employee's law enforcement duties;
- Activities by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit other DoD employees or their dependents, when approved by the Head of the DoD Component or designee, subject to the limitations of local law and subsections 3-210 and 3-211 of reference (b);
- Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned federal government living quarters and within the limitation of local laws; or
- Purchase of lottery tickets authorized by any state from blind vendors licensed to operate vending facilities in accordance with reference (c).

**ENFORCEMENT:** Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice. Gambling may be prohibited by Federal Government building and grounds regulations, such as reference (d), which prohibits gambling in the Pentagon. Use of government resources to prepare for or further such activities is prohibited.

**MWR BINGO AND NAVY RELIEF RAFFLES:** Are permitted when conducted in accordance with applicable directives [See above section on *FUNDRAISING*].

**GAMBLING IN GOVERNMENT QUARTERS:** Small wagers (e.g., card games, pools on sporting events), based on a personal relationship, transacted entirely within assigned government quarters (but not onboard ships) and not in violation of local law are permissible. Participants may not engage in gambling if it would violate Navy Regulations (i.e., Gambling with Subordinates), when contrary to local law, or the service fraternization policies.

## **GIFTS BETWEEN EMPLOYEES**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Section 2-203
- (b) 5 C.F.R. § 2635.304(c)(1)

**GENERAL RULE:** A junior Service member may not offer, give, make a donation, or solicit contributions for a gift to a senior in the same chain of command. A senior Service member may not accept such a gift.

### **EXCEPTIONS TO THE GENERAL RULE:**

- Token gifts of a nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from vacation).
- Food and refreshments shared in the office.
- Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g., a junior may invite a superior to dinner).
- On special infrequent occasions—such as childbirth, marriage, retirement, change of command, etc.—a gift appropriate for the occasion may be given. Birthdays are not considered to be infrequent.

**GROUP GIFTS:** Authorized for special infrequent occasions (e.g., change of command or retirement). The advice of an Ethics Counselor should be sought. Total cost cannot exceed \$300 for the entire gift. All contributions must be voluntary. No more than \$10.00 may be solicited from a single person; however, individuals can choose to contribute more.

Creative attempts to avoid the \$300 maximum should be avoided (e.g., an organization should not be divided into different components solely to avoid the \$300 maximum by buying components of a larger gift).

**A SUPERIOR MAY NOT COERCE A SUBORDINATE TO CONTRIBUTE OR PROVIDE A GIFT (THIS TYPICALLY IS WHERE INSPECTOR GENERAL CALLS COME FROM).**



## **GIFTS FROM OUTSIDE SOURCES**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Section 2-100
- (b) SECNAVINST 4001.2K
- (c) SECNAVINST 1650.1H
- (d) U.S. Constitution, Article I, §9
- (e) OPNAVINST 4001.1G
- (f) 5 C.F.R. § 2635.201-205
- (g) SECDEF Memo of 16 May 13

**GENERAL RULE:** Federal employees are forbidden from soliciting, coercing, or accepting gifts from a prohibited source and gifts offered because of the employee's official position. Gifts to family members or a designee are "imputed" to the employee.

**PROHIBITED SOURCES:** A prohibited source is any entity or person who is seeking official action with a federal employee or a federal agent, is doing or seeking to do business with the agency, or is regulated or substantially affected by the agency.

**GIFT:** A gift is anything of monetary value. Items exempted from the definition, and therefore not considered gifts:

- Modest refreshments that are not offered as part of a meal (the "coffee and donut" rule);
- Greeting cards;
- Widely available discounts available to the public, all government employees, or all military personnel;
- Prizes won in contests or events, including random drawings, which are open to the public; and
- Items for which you pay fair market value (FMV) (if you pay for it, it's not a gift).

### **COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING ACCEPTANCE OF A**

**GIFT:** In all cases, and especially with regard to the exceptions listed below, an employee is prohibited from requesting, soliciting, or coercing a gift, or allowing the appearance of bribery or graft or accepting gifts so frequently that it creates an appearance of impropriety.

- Gifts worth less than \$20.00 per occasion. No more than \$50.00 worth of gifts from any one source per calendar year. Reference (g) allows enlisted members, E-6 and below, to receive gifts in excess of \$20 in value when received from charitable, tax-exempt organizations;
- Gifts given because of a bona fide personal relationship;
- Awards for meritorious service. Must typically be non-cash and worth less than \$200.00;
- Gifts based on outside employment, such as approved moonlighting job or due to a spouse's employment;
- Free attendance at an event when employee is speaking on behalf of the federal agency;
- Free attendance at "widely attended gatherings" where attendance is deemed by a supervisor to be in the interests of the agency; and
- Check reference (f) for other exceptions.

**FOREIGN GIFTS:** Gifts from foreign governments may be accepted if proper diplomacy dictates acceptance.

- Gifts with an FMV less than \$415 may be kept by the employee
- Gifts with an FMV over \$415 may be accepted on behalf of Department of the Navy and processed in accordance with reference (b).

**PROCUREMENT (CONTRACTING) OFFICIALS:** Anyone in a procurement position or who has ultimate responsibility for procurement should see their Ethics Counselor (Staff Judge Advocate for the General Court-Martial Convening Authority) before accepting any gift.

**FINANCIAL DISCLOSURES:** Combined gifts worth more than \$390 from the same source in a calendar year must be reported by financial disclosure filers on their annual report.

**GIFT ACCEPTANCE AUTHORITY:** Per reference (b), the official or officer in the DoN who may accept gifts on behalf of the SECNAV. Authority to accept a gift depends upon the value and kind of property offered.

- Under SECNAV is the acceptance authority for gifts of real property with a value in excess of \$2,000,000. [reference (b), encl. 3]
- Assistant SECNAV (Energy, Installations, & Environment) is the acceptance authority for gifts of real property valued at \$2,000,000 or less. [reference (b), encl. 3]
- For gifts (other than real property) valued at \$200,000 or less [reference (b), encl. 3]:
  - CNO, VCNO, DNS for gifts to activities under CNO's command
  - CMC, ACMC, DMCS, or SDMC for gifts to activities under CMC's command
  - DON/AA for gifts to any institution or organization not under the jurisdiction of CNO or CMC but under the jurisdiction of SECNAV
  - CNR for gifts to any institution or organization under CNR
  - Superintendent, USNA, for gifts to any organization reporting to Superintendent, USNA
  - President, NWC, President, NPC, and President, MCU for gifts to organizations reporting to NWC, NPC, and MCU
- CNO, VCNO, DNS, CMC, ACMC, DMCS/SDMC, DON/AA, and CNR may delegate their authority for gifts of a value of \$25,000 or less. In reference (e), CNO delegates as follows:
  - Gifts of a value of \$25,000 or less—the following officials who have a judge advocate or general counsel assigned to their immediate staffs:
    - All flag officers in command, who ultimately report to the CNO, and their deputies who are flag officers or Senior Executive Service officials
    - All Deputy Chiefs of Naval Operations
    - The Surgeon General of the Navy
    - The Chief of Chaplains
    - The Chief of the Navy Reserve
  - Gifts of a value of \$12,000 or less
    - The following officials who have a judge advocate or general counsel assigned on their immediate staffs: Commanders, commanding officers, and officers in charge of field activities of Naval Sea Systems Command; Naval Air Systems Command; Naval Facilities Engineering Command; Naval Supply Systems Command; and Space and Naval Warfare Systems Command
    - Commander, Strategic Communications Wing ONE
    - Director, Navy Safe Harbor Program
- Gifts to Vessels of the Navy under Section 7221 of Title 10, U.S.C.: the following officials are delegated gift acceptance authority for gifts of silver, colors, books, or other articles of equipment or furniture in accordance with custom, that are made to vessels of the Navy, with a value of \$12,000 or less [reference (e)]:
  - Commander, Naval Sea Systems Command for vessels that are still under the cognizance of Naval Sea Systems Command and have not been transferred to the fleet commander
  - Naval Supply Systems Command
  - Type Commanders

## **USE OF GOVERNMENT RESOURCES**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Sections 2-100 and 2-301
- (b) DoDD 4500.56
- (c) 31 U.S.C. § 1344

**PREVENT MISUSE OF GOVERNMENT PROPERTY:** Government property may not be utilized for private or personal purposes.

**EXCEPTION:** Limited personal use of Government resources may be permitted when:

- No adverse effect on performance of official duties;
- Use is of reasonable duration and frequency and use is during personal time;
- Serves a legitimate public interest;
- Does not reflect adversely on the Department of Defense (DoD) or the command; and
- Creates no significant additional cost to DoD or the command.

**PREVENT MISUSE OF GOVERNMENT TIME:** While receiving pay, unless the Service member is in an authorized leave or liberty status, all hours should be dedicated to government work. Superiors cannot order junior personnel to perform personal tasks which benefit the superior (e.g., order to perform unofficial “taxi” services for the CO’s spouse).

**AVOID APPEARANCE PROBLEMS:** For both government property and time, Service members must not create the appearance of misuse or impropriety (e.g., using government vehicle at a “drive-thru” restaurant, even on official travel).

**GOVERNMENT VEHICLES:** Government vehicles may not be used to transport employees between their home and work [see reference (c)]. Local directives should be consulted for further definition of authorized and prohibited uses.

**GOVERNMENT AIRCRAFT:** DoD guidelines concerning the use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of Military Air is a particularly sensitive area. It is highly recommended to consult policy guidelines to ensure correct use. [See reference (b) and *TRAVEL BENEFITS*].

**GIGS OR BARGES:** Commanders should avoid misuse of, or even the appearance of misuse of, gigs and barges, as recreational use is not authorized. Gigs and barges may be used in support of foreign relations, community relations and crew morale and welfare. It is highly recommended that you seek advice from an Ethics Counselor (normally the Staff Judge Advocate for a General Court- Martial Convening Authority) concerning gig and barge issues.

**CHANGE OF COMMAND AND RETIREMENT CEREMONIES:** Change of command and coinciding retirement ceremonies generally accomplish a valid military purpose and are official functions for which appropriated funds may be expended and military personnel may be required to support. Retirement ceremonies that do not coincide with a change of command ceremony are official functions only if the commanding officer approves the retiring member’s request for a command-sponsored ceremony. Unofficial receptions are sponsored by a military member in his/her personal capacity use of appropriated funds is not authorized. Resources already in place to support official functions (bleachers, tents, etc.), may be used for a related unofficial reception following the ceremony. Military personnel in an off-duty status (their official duties cannot be scheduled or adjusted to accommodate) may be employed, at market wage, for unofficial events on a voluntary basis so long as they do not wear organizational clothing that displays command insignia to avoid the inference of official sponsorship.

## **OUTSIDE EMPLOYMENT**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Sections 2-206 and 2-303
- (b) MILPERSMAN 5370-010

**COs MAY REQUIRE MEMBERS TO REPORT OUTSIDE EMPLOYMENT AND PROHIBIT IT WHEN THERE IS A CONFLICT:** Command policy should be promulgated to ensure outside employment will not interfere or conflict with military duties. Case by case determination should be made (Note: Financial disclosure filers must have advance approval for outside employment with a prohibited source.).

### **POTENTIAL CONFLICTS:**

- Interference with official duties or time;
- Employment by a defense contractor/prohibited source [See *CONFLICTS OF INTEREST*];
- Appearances of impropriety;
- Dual compensation: Second salary paid from U.S. Treasury or appropriated funds;
- Involvement in any matter in which the United States is an interested party or has a substantial interest;
- Employment that will detract from readiness or pose a security risk; and
- Employment that prejudices good order and discipline or is service discrediting. [See *COMMERCIAL DEALINGS BETWEEN SERVICE MEMBERS*]

**QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS COUNSELOR.**

## **POLITICAL ACTIVITIES**

### **REFERENCES:**

- (a) DoDD 1344.10
- (b) 5 C.F.R. §734
- (c) SECNAVINST 5720.44C CH-1, 0103

### **ALLOWABLE POLITICAL ACTIVITIES:**

- Voting
- Making personal monetary donations to candidates/parties
- Expressing purely personal opinions (so long as they do not violate the UCMJ)
- Encouraging others to vote
- Serving as a non-partisan election official
- Joining a partisan political club (only as a member, not as an officer)
- Signing a petition
- Displaying one bumper sticker per candidate on personal vehicle
- Attending rallies/political events (only as a spectator, and not in uniform)

### **PROHIBITED POLITICAL ACTIVITIES:**

- Campaigning
- Fundraising for political parties or candidates
- Serving in any official capacity in a partisan political club
- Participating in a radio, television, or other program or group discussion as an advocate for or against a partisan political party, candidate, or cause
- Marching/riding in a partisan political parade
- Displaying a large political sign, banner, or poster on a personal vehicle
- Selling tickets or otherwise promoting partisan political dinners and fundraising activities
- Using contemptuous speech as prohibited by Article 88 of the UCMJ
- Holding partisan political office (reservist exception—see a Judge Advocate)

**CO'S ANALYSIS:** A CO may prohibit, limit, or control, the political expression of a member when there "is a clear danger to loyalty, discipline or morale of military personnel or there is a material interference with the accomplishment of the military mission" [See *FREEDOM OF EXPRESSION*].

**RIGHT TO DIRECTLY CONTACT CONGRESS:** No person may restrict any Service member from communicating with Congress in the Service member's personal or private capacity [See *CONGRESSIONAL INQUIRIES*].

**RESERVE NOTE:** Reserve Service members who decide to run for political office as a civilian must be careful about how they advertise their military career as a campaign qualification or about using pictures of themselves in their military uniform in their campaign pamphlets, publications, advertising, or communications. The reserve Service member must avoid implicitly or explicitly giving the impression that his or her candidacy is endorsed by the United States Navy, United States Marine Corps, or the United States Government. Additionally, reserve component Service members must also review and follow the restrictions that apply when it is appropriate or not appropriate for reserve personnel to wear their uniform.

**CANDIDATE VISITS TO INSTALLATION OR FACILITY:** A candidate for political office may not be permitted to engage in campaign or election related activities while on a DoD installation, which includes overseas installations and areas under the control of combat or peacekeeping forces of the United States military. A candidate who holds political office may visit a DoD installation or facility for the purpose of conducting official business or access to entitlements or

benefits the candidate is authorized to use; however, no candidate running for office is permitted access for campaign or election purposes.

**USE OF DOD SEALS AND EMBLEMS:** Official seals of the DoD and the Military Services may only be used for official purposes. Military Service marks, including those appearing on flags, “may not be licensed for use in a manner that creates a perception of DoD endorsement of any non-federal entity or its products or services.” DoD Seals and emblems should not appear on campaign materials.

**SOCIAL MEDIA:** Members of the Armed Forces may “follow,” “friend,” or “like” a political party or candidate running for partisan political office, but may not post links to, “share”, or “re-tweet” comments or tweets from the Facebook page or Twitter account of a political party or candidate running for partisan political office. Service members must not comment, post, or link to material that shows contempt for public officials, releases sensitive information, or is prejudicial to good order and discipline.

## **PRIVATE ORGANIZATIONS AND SPOUSE CLUBS**

### **REFERENCES:**

- (a) DoDI 1000.11
- (b) DoDI 1000.15
- (c) DoDI 7600.06
- (d) DoDD 1000.26E
- (e) OPNAVINST 1700.7E
- (f) OPNAVINST 1700.9E CH-1
- (g) OPNAVINST 5760.5D
- (h) OPNAVINST 1710.11
- (j) CNICINST 11000.1
- (k) OPNAVINST 1754.5C

**STATUS OF PRIVATE ORGANIZATIONS:** Private organizations are non-federal entities (NFEs) or Non-Appropriated Fund Activities (NAFIs) and are not entitled to the same level of support as official entities. The nature and amount of support varies depending on the organization. Applicable regulations must be consulted to determine what level of support is authorized for any particular group.

**PRIVATE ORGANIZATIONS:** Private organizations that are NFEs include: Spouse Clubs, Boy Scouts, Girl Scouts, Navy League, Sea Cadets, athletic clubs, local school organizations, command organizations, and social funds, such as the First Class Petty Officers' Association, Chiefs' Mess, and Wardroom.

**NO DISCRIMINATION:** Private organizations must be denied support if they discriminate in membership practices based upon race, sex, religion, etc.

**CREATION OF PRIVATE ORGANIZATION:** In order to create a private organization, founders must obtain written approval from the Installation CO to operate on an installation; organizations must have a constitution, by-laws, charter or other authorization document approved by the CO. Organizations cannot state or imply sponsorship of the Department of Defense (DoD) or Department of the Navy (DoN), and should not use the DoD, DoN, or other installation name or seal unless authorized.

**PERIODIC REVIEW:** Installation COs must conduct periodic reviews of all private organizations operating on base.

**FUNDING AND SUPPORT:** Private organizations are generally self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. Limited fundraising activities conducted on the base may be permissible, under certain circumstances and controls. An Ethics Counselor (normally the Staff Judge Advocate for the General Court-Martial Convening Authority) should be consulted. Minimal logistical support is authorized, dependent on the type of private organization and the authority under which it is organized. No direct financial support for a NAFI is allowed except as specifically authorized by the Secretary of the Navy.

Under certain circumstances, government resources may be used by private organizations on a "not to interfere" basis. Before approving "not to interfere" support for a NFE, a Staff Judge Advocate should be consulted.

**SPOUSE CLUBS:** Known as “Family Support Groups” (FSGs), Spouse Clubs enjoy the ability to receive official command support. FSGs may use the command’s name in their name (e.g., Family Support Group of USS MCFAUL). Spouse Clubs may NOT discriminate against members based upon race, national origin, gender, or sexual orientation.

**FAMILY READINESS GROUPS (FRGS):** FRGs can receive additional command support due to their status, see reference (j). A FRG is a private organization, closely affiliated with the command, comprised of family members, Service members and civilians associated with the command and its personnel, who support the flow of information, provide practical tools for adjusting to Navy deployments and separation and serve as a link between the command and Sailors’ families. FRGs can help plan, coordinate, and conduct informational, care-taking, morale-building and social activities to enhance preparedness, command mission readiness and increase the resiliency and well-being of Service members and their families. Installation COs may permit properly approved FRGs, which meet the requirements of reference (j), to operate on Navy installations. Individual commands may provide limited logistical support, such as access to command spaces, use of equipment and command representatives for FRG events, based on the criteria listed in reference (k). Expenditure of Navy appropriated and non-appropriated funds is generally not authorized for FRG social activities, including provision of food and beverages. Questions regarding specific events should be referred to a Judge Advocate or Office of General Counsel attorney in the chain of command. It is important to review reference (j), as well as the FRG handbook to ensure full compliance.



## **TRAVEL BENEFITS**

### **REFERENCES:**

- (a) DoD 5500.07-R (JER), Chapter 4
- (b) FY02 National Defense Authorization Act, § 1116, 28 Dec 01
- (c) Joint Travel Regulations (JTR)
- (d) 31 U.S.C. § 1353
- (e) DoDD 4500.56

**ACCEPTING TRAVEL FROM A NON-FEDERAL SOURCE:** Official travel by DoD employees should normally be funded by the Government. Unsolicited official travel benefits from non-Federal sources may be accepted for attendance in an official capacity at a meeting or similar event. Acceptance must be approved in writing and an Ethics Counselor (normally the Staff Judge Advocate for a General Court-Martial Convening Authority) must be consulted.

**INCIDENTAL BENEFITS:** Federal employees are allowed to retain promotional items, earned while on official travel, for personal use. These promotional items include frequent flier miles, upgrades, and access to carrier clubs and facilities, in accordance with reference (b).

**FREQUENT FLYER MILES:** As described above, reference (b) allows Service members to keep frequent flyer miles from official travel for personal use. Frequent flyer miles can also be used on official travel for upgrades.

**ON-THE-SPOT UPGRADES:** Service members may accept free upgrades (even to first class) as long as official title and position are not the basis for upgrade [see reference (a)]. Due to the possible appearance of impropriety, Service members should avoid first-class travel in uniform.

**OVER-BOOKING:** If involuntarily bumped, Service members may not keep free tickets or any other benefit received for personal use. If a Service member voluntarily gives up their seat and receives free tickets or another benefit, they may keep them for personal use. However, the volunteering may not result in an increase of expense to the government or additional per diem and the extra time may not be charged or received on travel claims.

**RENTAL VEHICLES:** Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments, and similar places required for sustenance, comfort, or health [see reference (c)]. In all other respects, rules applicable to the use of Government vehicles apply to the use of rental cars. Use of rental vehicles for personal entertainment purposes is not authorized.

**GOVERNMENT AIRCRAFT:** [See *USE OF GOVERNMENT RESOURCES*].

## **COMMAND COINS. RECOGNITION. AND RETENTION ITEMS**

### **REFERENCES:**

- (a) 10 U.S.C. § 2261
- (b) SECNAVINST 7042.7K (ORF)
- (c) NAVADMIN 184/14

Presentation items, to include command coins, can be purchased using three different sources of funds:

**APPROPRIATED FUNDS (APF):** APF may be used to purchase items intended for retention and/or recruitment. The item must cost \$50 or less and the command must document the justification for each item issued. APF may also be used to purchase items for the recognition of Service members for: (1) specific achievement, (2) outstanding accomplishment, or (3) unique achievement that contributes to command effectiveness. These items are considered awards.

**COINS:** APF-funded command coins are now authorized under reference (c) to be presented by a unit CO. APF coins may not be presented solely as mementos, to improve morale, as tokens of appreciation, or to recognize expected service. An APF coin may be presented as an award pursuant to a command's established, written awards program. The awards program must set out specific criteria for eligibility for a coin, consistent with other awards presented based on special achievements or sustained superior performance. An APF coin record or log must be kept in accordance with reference (c), to include the name of the recipient, date presented, and specific achievement warranting the award.

**OFFICIAL REPRESENTATION FUNDS (ORF):** Reference (b) provides that ORF may be used to purchase gifts and mementos having a command/unit, Navy, or uniquely American or geographic theme, to be presented to specific classes of individuals such as foreign dignitaries, foreign essential support staff, prominent visiting DoD officials, or prominent U.S. citizens. ORF may therefore be used to purchase command/unit coins for presentation to only those groups of individuals listed in reference (b). Cost limitations are associated with the various types of recipients. Check reference (b) before purchasing/gifting the coin(s). An ORF coin log should be kept, to include the recipient and the reason for the presentation.

**PERSONAL FUNDS:** A commander may purchase coins with their own funds and are not bound by the restrictions noted above. Issuances of these coins are considered gifts and are subject to the gift rules.

**DO NOT MIX COINS FROM DIFFERENT FUNDING SOURCES.**

**SECTION XVI:      LAW OF FEDERAL EMPLOYMENT**

## **CIVILIAN PERSONNEL LAW**

### **REFERENCES:**

- (f) 5 U.S.C. § 4303 and 5 C.F.R. Part 430
- (g) SECNAVINST 12752.1A
- (h) 5 U.S.C. §§ 7511-7514
- (i) SECNAVINST 12713.14
- (j) 29 C.F.R. Part 1614
- (k) 10 U.S.C. § 1561
- (l) 29 U.S.C. § 701 et seq.
- (m) 29 C.F.R. Part 1630
- (n) 5 C.F.R. Part 630

### **OVERVIEW: COMPOSITION OF TOTAL FORCE**

- Military
- Civilians:
  - o Type of pay system (appropriated fund [APF] vs. non-appropriated fund [NAF]) determines which personnel rules apply
  - o Bargaining unit (represented by a union and covered under a collective bargaining agreement) vs. non-bargaining unit (usually supervisory or management)
- Contractors: NOT part of the workforce; do not treat as civilian employees

### **CIVILIAN EMPLOYEE PERFORMANCE/DISCIPLINE OVERVIEW (APF):**

- Performance: unable to perform to standards; per reference (a), can result in reduction in grade/removal if
  - o Performance deemed unacceptable in one or more critical elements
  - o Employee warned of performance inadequacies and given a reasonable opportunity to perform
- Misconduct: unwillingness to perform/abide by standards can also result in disciplinary actions up to and including removal.
  - o If evidence of misconduct, gather facts/evidence as quickly as possible (investigation may be formal or informal); consult with HR determine options and what action is appropriate
  - o Per reference (b), disciplinary or adverse actions should only be taken to promote the efficiency of the service, and should be taken as quickly as possible. Discipline should not be punitive; it should serve as a deterrent to unacceptable conduct or performance and for correction of other situations that interfere with effective and efficient operations.
  - o Pursuant to reference (b), discipline is normally expected to be progressive
    - Types of Informal disciplinary actions (usually not grievable):
      - Oral admonishment
      - Letter of caution
    - Types of Formal disciplinary actions:
      - Letter of reprimand
      - Suspension without pay for 14 days or less
    - Types of Adverse disciplinary actions (appealable to Merit Systems Protection Board pursuant to reference(c))
      - Suspensions of more than 14 days
      - Reduction in grade or pay (demotion)
      - Removal (Note: Probationary employees have limited appeal rights)
  - o All adverse actions require that the employee be given due process rights (at least 30 days' advance written notice; reasonable time to answer orally and in

writing; the right to be represented, and a written decision at the earliest practicable date)

- If you are designated the deciding official in an adverse action, you are responsible for determining the following:
  - Whether there is a preponderance of evidence to support the charges;
  - Whether there is a nexus between the conduct and its effect upon the efficiency of the service;
  - Whether the penalty that is proposed is reasonable
    - Requires a “Douglas Factors” analysis (reference (b))
  - Deciding officials are authorized to sustain the proposed penalty, mitigate it, or determine that penalty is not warranted
  - Employee has the right to appeal the deciding official's decision to the Merit Systems Protection Board (MSPB) within 30 days of receipt.
- An MSPB Administrative Judge has authority to mitigate or completely reverse adverse actions, and order back pay and attorney fees
- HR (LER) provides assistance with the disciplinary process; OGC provides legal advice

### **EEO/DISCRIMINATION COMPLAINTS (APF & NAF):**

Per references (d) and (e), it is DON policy to prohibit unlawful discrimination against persons or groups based on race, color, national origin, sex, religion, age or handicap.

- Per reference (f), a CO/OIC who receives a complaint from a civilian under the direct supervision of that CO/OIC alleging sexual harassment shall carry out an investigation of the matter, commencing within 72 hours after receipt of the complaint.
- All complaints of harassment should be investigated as quickly as possible, and immediate and appropriate corrective action taken, including:
  - Separating the alleged victim and harasser during the investigation;
  - Taking appropriate disciplinary action if warranted;
  - Ensuring that the objectionable conduct ceases.
- EEO process for civilians includes the following:
  - Filing an Informal Complaint with a Navy EEO counselor (45-day requirement);
  - Alternative dispute resolution at informal stage (possibly);
  - Option to file a formal EEO complaint;
  - Formal EEO complaint investigation (if formal complaint filed);
  - Copy of Record of Investigation (ROI) to complainant, who has the option of
    - Withdrawing the EEO complaint;
    - Requesting a Final Agency (Navy) Decision without a hearing;
    - Requesting a hearing before an EEO Administrative Judge (AJ).
- If an EEO finds illegal discrimination, may order back pay, retroactive personnel actions, correction of records, reinstatement, promotion, payment of attorney fees, and compensatory damages up to \$300K.

### **REASONABLE ACCOMMODATION REQUESTS (APF & NAF):**

Per references (g) and (h), under the Rehabilitation Act, federal employers are required to provide reasonable accommodation to qualified employees with physical or mental disabilities, unless doing so would impose an undue hardship.

- An employee requests RA when he/she lets the employer know (usually first level supervisor) that he/she needs an adjustment or change at work because of a medical condition and/or physical/mental limitation.
- The RA Coordinator from the EEO office will assist the first-level supervisor with determining whether the employee is a qualified individual with a disability, who can perform the essential functions of his/her current position or a desired position with or without accommodation by:

- Requesting medical documentation from employee if medical condition not obvious;
- An advisory team (to include OGC & HR) will meet with the supervisor to recommend a determination on whether the employee is a qualified individual with a disability:
  - If unable to accommodate in current position, offer of reassignment is made and if accepted EEO-HR will look at reassignment into an funded, vacant position for which the employee is qualified;
  - If none exists, then RA request is denied and, after a reconsideration/ADR period, the employee should be considered for separation for medical inability to perform essential job functions;
  - If employee is found to be a qualified individual with a disability, must determine what accommodations are reasonable.
  - Employees are not entitled to accommodation of their choice.
- DON policy to act upon employee RA requests within 30 days. If offer of reassignment accepted, job search is 30 days. Undue delay may result in liability against the Navy
- Avoid granting "informal" accommodations to employees without following the formal RA process to avoid liability.
- Best practice: have EEO-HR provide a temporary light duty letter during RA process.

#### **LEAVE AND ATTENDANCE (APF):**

Per reference (i), all leave requests are in advance of the workday to be absent and are by means of a SLDCADA request, SF-72, verbal, email, or telephone to the supervisor:

- When an employee makes a leave request and the supervisor does not affirmatively deny the request, the request is deemed to be approved.
- Supervisors must notify employees in advance that leave requests should not be made to a non-designated person, or by voice mail or cellphone text; silence equals approval.
  - Collective bargaining agreement may provide procedures for bargaining unit employees; also departments may develop their own specific procedures for requesting leave
- For sick leave, an employee may request leave and self-certify that he/she is incapacitated to work.
- Where the absence involves 3-days or more of sick leave, the supervisor may request the employee provide a signed medical certificate to establish that he/she was incapacitated, which is due within 15-days.
- Where an employee has requested Family Medical Leave Act (FMLA) leave, the approved FMLA leave cannot be retroactive from the date approved by the supervisor, and the employee must provide a signed medical certificate establishing the medical emergency for him/her or family member.
- For FMLA leave requests, please call HR for advice on the use of sick, annual, or Leave Without Pay (LWOP) for such FMLA leave period (Maximum of 480 hours of LWOP for 1-year from approval).
- Where an employee fails to follow leave procedures, or fails to provide a medical certificate for an absence when requested, the supervisor should record their absence as AWOL in SLDCADA, and consult with HR for possible administrative discipline or action.
- Employees are entitled to sick leave if incapacitated, but a supervisor has discretion to approve or deny annual leave or LWOP due to mission.

## **LABOR LAW**

### **REFERENCES:**

- (o) SECNAVINST 12711.2
- (p) 5 USC §§ 7101-7135

### **OVERVIEW:**

Per reference (a), Commanders are responsible for establishing and maintaining effective labor management relationships focused on supporting and enhancing the national security mission consistent with the DON Labor Management Relations program.

- Navy HR/Labor & Employee Relations – provide assistance to management regarding labor matters such as negotiations and consultations with federal labor unions.
  - o Best practice: Commanders should have an HR- LER representative present during any meetings with Union officials.
- Navy Office of General Counsel – provides legal advice on labor relations matters.
- Navy civilian employees may be part of a collective bargaining unit represented by a federal labor union when certified by the Federal Labor Relations Authority (FLRA).
  - o Contractual relationship exists between the Command and the Union contained in a written document known as the collective bargaining agreement (CBA).
  - o Management and supervisors are not part of the bargaining unit.
  - o All levels of supervisors of employees in a unit covered by a CBA should read and be familiar with the terms of the CBA.
    - Failure to follow the CBA could result in a grievance (see below)
- Commanders may be required to engage in bargaining, through his/her designated representatives, with the Union prior to taking certain actions, as noted below.

### **FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS):**

- Grants Navy civilian employees the right to form, join or assist any labor union certified by the FLRA.
  - o Certain employees excluded (supervisors, confidential employees).
  - o Employees do not have to join a labor union to be covered under the terms of a collective bargaining agreement.
    - HR-LER can advise management on whether the employee is a bargaining unit employee (BUE).
  - o The FLRA determines the appropriateness of any collective bargaining unit.
- Provides management with certain rights, which it can exercise without the requirement to substantively bargain with a federal labor union.
  - o Includes the right to determine the mission, budget, organization, number of employees, and internal security practices.
  - o Although no requirement to substantively bargain, the FSLMRS requires management to bargain in good faith with the union over legitimate proposals concerning the impact and implementation of a management right.
  - o Commander will designate individuals (usually HR-LER) to bargain on his/her behalf or to engage in formal discussions (meetings) with BUE representatives.
- Requires that Management bargain with the BUE union representative in good faith over changes to conditions of employment prior to effecting the change, unless the change is small (de minimus).
  - o “Conditions of Employment” defined as “personnel policies, practices and matters whether established by rule, regulation, or otherwise affecting working conditions.”
    - Example: vending machines in a break room; work area relocations.

- Conditions of employment can also be established through past practice (a practice that has been consistently exercised over a significant time period), and followed by both parties, or followed by one party and not challenged by other.
  - LER can assist with identifying what are conditions of employment.
  - Failure to bargain could result in an Unfair Labor Practice (ULP) complaint:
    - The FLRA has the statutory authority to rule on all ULP complaints.
    - Grounds for ULPs include retaliation against an employee for union activities or matters covered under the FSLMRS.
    - FLRA can order management to return to status-quo-ante status and resume bargaining with the Union.
- Authorizes Union representatives the right to:
- Reasonable official time for negotiations, representational duties, which usually must be requested in advance;
  - To request information from the Navy without filing a FOIA request, but only if statutory/legal guidelines are met;
  - To be part of any formal discussions between management and BUE employee(s) (such as a commander's call)
    - LER can assist with determination of "formal discussion"; and
  - To assist BUEs during any management investigation into issues in which a BUE reasonably believes he/she could result in disciplinary action, and the employee requests union attendance (Weingarten Rights).
    - No affirmative requirement to "read" a bargaining unit member his/her Weingarten Rights unless specifically required under the CBA
    - Union role does not include answering questions for employee or objecting to questions
    - If union rep. is disruptive, then questioning should cease
- Provides that all CBAs have provisions for the settlement of grievances, which include violations of CBA provisions/articles.
- Usually a multi-step grievance process that starts with the supervisor in which the CO is the last step (note, if a ULP was decided on same issue, then no grievance).
    - LER will provide assistance
    - Last step decision should always include any timeliness or substantive arbitrability arguments (or else they may be waived).
      - Best practice: request OGC review
  - Matters that are not resolved may be taken to arbitration by the union, but not by the employee, unless union invokes arbitration on their behalf.
  - Federal arbitrators will hold a hearing and issue decisions binding the Navy, to include back pay, promotions, payment of attorney fees.
  - Limited appeal rights for Navy to file an exception (appeal) with the FLRA.



## **GLOSSARY OF COMMON ACRONYMS USED IN THIS PUBLICATION**

ADSEP:	Administrative Separation
ADT:	Active Duty for Training
AFDCB:	Armed Forces Disciplinary Control Board
BAH:	Basic Allowance for Housing
BCA:	Body Composition Assessment
BCD:	Bad Conduct Discharge
BMC:	Branch Medical Clinic
BOI:	Board of Inquiry
BUPERS:	Bureau of Personnel (Navy Personnel Command)
CA:	Convening Authority
CAAC:	Counseling and Assistance Center
CCS:	Command Climate Specialist
CCSM:	Clinical Case Staff Meeting
CFC:	Combined Federal Campaign
CFR:	Code of Federal Regulations
CNP:	Chief of Navy Personnel
CI:	Command Investigation
CMC:	Command Master Chief
CNIC:	Commander, Naval Installations Command
CNO:	Chief of Naval Operations
CO:	Commanding Officer
COI:	Courts of Inquiry
CONUS:	Continental United States
CRC:	Case Review Committee
DAEO:	Designated Agency Ethics Official
DAPA:	Drug and Alcohol Program Advisor
DCM&RA:	Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs
DC:	Defense Counsel
DD:	Dishonorable Discharge
DFAS:	Defense Finance and Accounting Service
DFC:	Detachment for Cause
DoD:	Department of Defense
DoDD:	Department of Defense Directive
DoDI:	Department of Defense Instruction
DON:	Department of the Navy
DONCIO:	Department of the Navy Chief Information Officer
DRB:	Disciplinary Review Board
EAOS:	End of Active Obligated Service
EAS:	End of Active Service
EMI: EO:	Extra Military Instruction / Equal Opportunity
EVAL:	Evaluation
FAA:	Family Advocacy Program
FAP:	Family Advocacy Representative
FFM:	Fitness Report
FJA:	Fleet Judge Advocate
FMBE:	Navy Appropriations Matters Office
FMV:	Fair Market Value
FOIA:	Freedom of Information Act
FRG:	Family Readiness Group
FTC:	Federal Trade Commission

GCM:	General Court-Martial
GCM CA:	General Court-Martial Convening Authority
GMT:	General Military Training
HIPAA:	Health Insurance Portability and Accountability Act
HON:	Honorable Characterization of Service
GEN:	General (Under Honorable Conditions) Characterization of Service
IAW:	In Accordance With
ICO:	Installation Commanding Officer
IDA:	Initial Denial Authority
IDC:	Initial Determination Committee
IDT:	Inactive Duty for Training
IG:	Inspector General
IO:	Investigating Officer Individual
IRR:	Ready Reserve Immediate
ISIC:	Superior in Command Judge
JAGMAN:	Judge Advocate General's Manual
JAD:	Office of the Staff Judge Advocate for the Commandant of the Marine Corps
JER:	Joint Ethics Regulation
LA:	Legal Assistance
LITREP:	Litigation Report
LOD:	Line of Duty
LODI:	Line of Duty Investigation
LOT:	Letter of Transmittal
LSSS:	Legal Services Support Section (USMC)
MARADMIN:	Marine Corps message
MARCORSEPMAN:	Marine Corps Separation Manual
MCCS:	Marine Corps Community Service
MCIO:	Military Criminal Investigative Office
MCM:	Manual for Courts-Martial
MEP:	Military Entrance Processing
MHP:	Mental Health Provider
MILPERSMAN:	Military Personnel Manual
MJ:	Military Judge
MPO:	Military Protective Order
MSRRA:	Military Spouses Residency Relief Act
MTF:	Medical Treatment Facility
MWR:	Morale, Welfare, and Recreation
NAF:	Non Appropriated Funds
NAFI:	Non Appropriated Federal Activity
NAVADMIN:	Naval message
NAVPERSCOM:	Navy Personnel Command
NCIS:	Naval Criminal Investigative Service
NDAA:	National Defense Authorization Act
NDSL:	Navy Drug Screening Laboratory
NJP:	Non Judicial Punishment
NLT:	Not Later Than
NMPS:	Navy Mobilization Processing Site
NOSC:	Navy Operational Support Center
NSCDA:	National Security Case Disposition Authority
OCA:	Original Classification Authority
OCONUS:	Outside the Continental United States

OGC:	Office of the General Counsel
OIC:	Officer in Charge
OJAG:	Office of the Judge Advocate General
OLA:	Office of Legislative Affairs
OPM:	Office of Personnel Management
OPNAVINST:	OPNAV Instruction
OPREP:	Operational Report
ORF:	Official Representation Funds
OSD:	Office of the Secretary of Defense
OTH:	Other than Honorable Characterization of Service
PA:	Public Affairs
PCA:	Posse Commitatus Act
PCS:	Permanent Change of Station
PFA:	Physical Fitness Assessment
PI:	Preliminary Inquiry
PMO:	Priority Material Officer
MCO:	Marine Corps Order
POA:	Power of Attorney
PRD:	Projected Rotation Date
PSD:	Personnel Support Detachment
PA:	Plea Agreement
PTC:	Pretrial Confinement
PTR:	Pretrial Restraint
PTSD:	Post-Traumatic Stress Syndrome
RCM:	Rule for Court-Martial
RLSO:	Region Legal Service Office
SA:	Separation Authority
SACO:	Substance Abuse Control Officer
SAPR:	Sexual Assault Prevention and Response
SARP:	Substance Abuse Rehabilitation Program
SCM:	Summary Court-Martial
SCRA:	Service members Civil Relief Act
SECDEF:	Secretary of Defense
SECNAV:	Secretary of the Navy
SECNAVINST:	Secretary of the Navy Instruction
SELRES:	Selected Reserve
SGLI:	Service members Group Life Insurance
SILT:	Separation In Lieu of Trial
SITREP:	Situational Report
SJA:	Staff Judge Advocate
SOFA:	Status of Forces Agreement
SOP	Standard Operation Procedure
SOPA:	Senior Officer Present Afloat
SPCM:	Special Court-Martial
SPCMCA:	Special Court-Martial Convening Authority
SSN:	Social Security Number
TAD:	Temporary Additional Duty
TBI:	Traumatic Brain Injury
TC:	Trial Counsel
TCAD:	Transitional Compensation for Abused Dependents
TYCOM:	Type Commander
UCMJ:	Uniform Cord of Military Justice
UPC:	Urinalysis Program Coordinator

USC:	United States Code
USCG:	United States Coast Guard
USCIS:	United States Citizen and Immigration Service
USDAO:	United States Defense Attaché Officer
USERRA:	Uniformed Services Employment and Reemployment Rights Act
VLC:	Victim's Legal Counsel
XO:	Executive Officer
XOI:	Executive Officer's Inquiry

## **QUICKMAN APPENDICES**

## **A. COMMANDING OFFICER SEARCH AND SEIZURE CHECKLIST**

### **I. PROBABLE CAUSE**

Finding the existence of probable cause to order a search, what should the CO know before making the authorization? The following considerations are provided to aid in the determination?

- a. Find out the name and duty station of the applicant requesting a search authorization.
- b. Administer an oath to the person requesting the search authorization. A recommended format for the oath is set forth below:  
*Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you god?"*
- c. What is the location and description of the premises, object, or person to be searched? Ask the following:
  - i. Is the person or area one over which the CO has jurisdiction?
  - ii. Is the person or place described with particularity?
- d. What facts indicate that the place to be searched and property to be seized is actually located on the person or in the place indicated?
- e. Who is the source of the information?
  - i. If the source is a person other than the applicant for the search authorization who is before the CO, see Part II.
  - ii. If the source is the person before the CO asking for the search authorization, the following should be asked:
    1. What training has the person had in investigating offenses of the type in question or in identifying the particular type of evidence?
    2. Is there any further information that will provide grounds for the search for, and seizure of, the property in question?
    3. Is the person withholding any information that may affect the CO's decision on the request to grant a search authorization?
- f. Once the CO is satisfied as to the reliability of the information and that of the person from whom it is received, the CO may entertain reasonable belief that the items are where they are said to be and a search may be authorized.
- g. The search authorization should reflect something similar to the following:  
*"I (CO's name, rank, position) find that probable cause exists for the issuance of an authorization to search (name specific location or person) for the following items: (specific description of the items sought); and I authorize (name of person to conduct the search) to search (name specific location of person) for those items and to seize them if found."*

### **II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM**

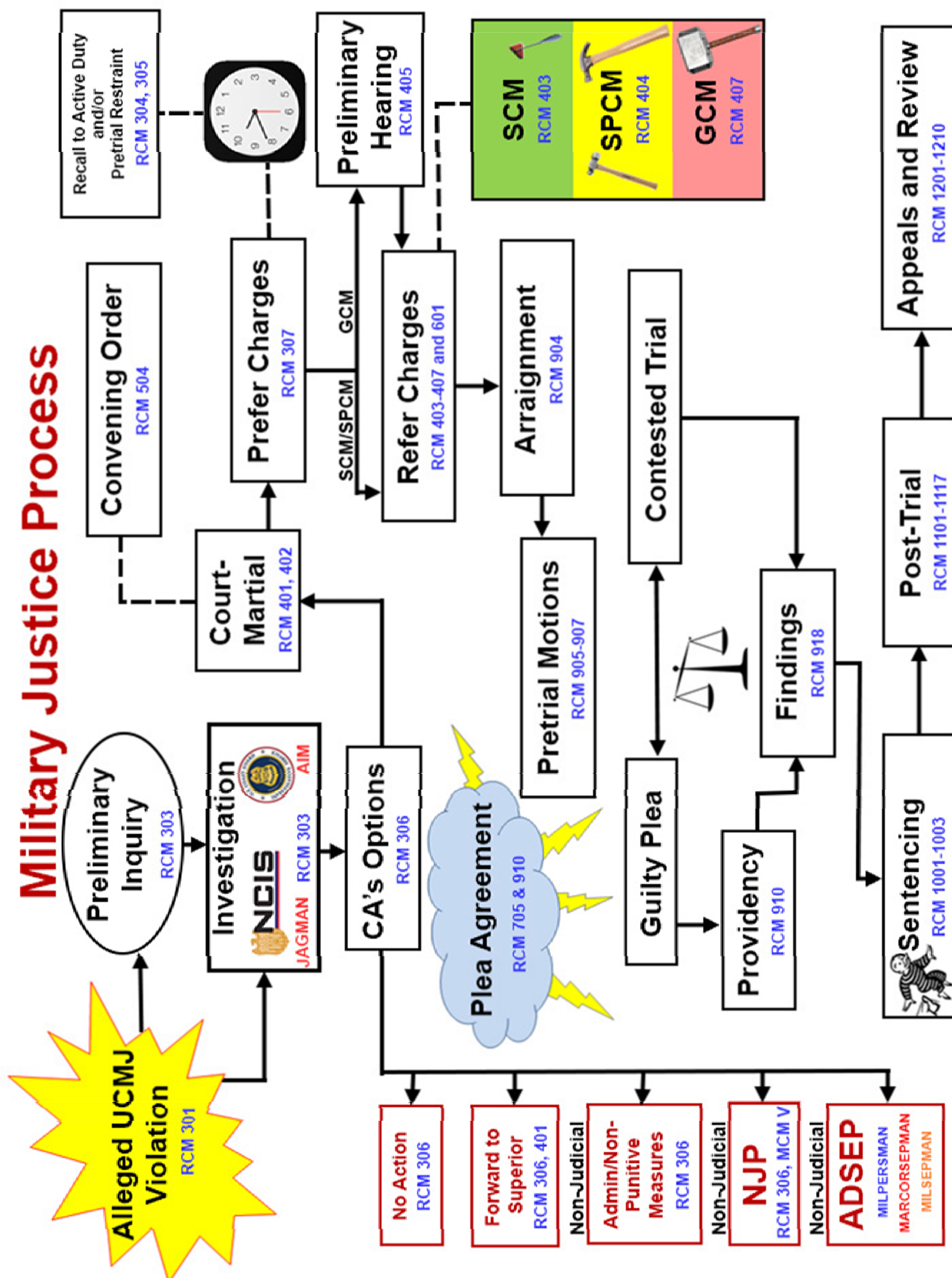
- a. When the applicant for the search authorization is not the informant who provided the facts which serve as the basis for the request, a CO must first determine what forms the basis of the informant's information. The fact provided by the informant must be specific enough to be acted upon.
- b. The CO must then determine the informant's reliability. The following questions may help a CO ascertain the reliability of the informant:
  - i. How long has the applicant for the search authorization known the informant?
  - ii. Has the informant provided information in the past?
  - iii. Has the provided information always proven correct in the past? Almost always? Never?
  - iv. Has the informant ever provided any false or misleading information?
  - v. (If a drug case) Has the informant ever identified drugs in the presence of the applicant?
  - vi. Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?

- vii. What other situational background information was provided by the informant that substantiates reliability of the information provided (e.g., knowledge/observation, etc.)?
- c. The following questions may help a CO ascertain the reliability of the information:
  - i. Does the applicant for the search authorization possess other information from known reliable sources, which indicates what the informant says is true?
  - ii. Does the CO possess information which indicates what the information says is true?

### **III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK**

- a. Requirement of specificity: No valid search authorization will exist unless the place to be search and the items to be sought are particularly described.
- b. Description the place of the person to be searched:
  - i. Persons: Always include all known facts about the individual, such as names, rank, social security number when necessary for indentation purposes, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make/model of auto, usual attire, etc.
  - ii. Places: be as specific as possible, with great effort to prevent the area which is being authorized for search from being too broad, giving rise to the possible claim that the search is just an illegal "fishing expedition."

## B. OVERVIEW OF THE MILITARY JUSTICE SYSTEM





### **C. COURT-MARTIAL MAXIMUM PUNISHMENT CHART**

**MAXIMUM PUNISHMENT CHART**

Punishment	SCM		SPCM		GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's
1. Death	NO	NO	NO	NO	YES (*1)	YES (1*)	YES (*1)
2. Dismissal	NO	NO	NO	NO	NO	NO	YES
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	NO
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO
5. Confinement	30 days	NO	12 mos.	NO	YES	YES	YES
6. Restriction	60 days	60 days	60 days	60 days	60 days	60 days	60 days
7. Hard Labor Without Confinement	45 days	NO	90 days	NO	3 mos.	NO	NO
8. Forfeiture of all Pay and Allowances	NO	NO	NO	NO	YES	YES	YES
9. Forfeiture of two-thirds pay per month	1 mo. (*2)	1 mo. (*2)	12 mos.	12 mos.	YES	YES	YES
10. Fine	YES (*3/*4)	YES (*3/*4)	YES (*3)	YES (*3)	YES	YES	YES
11. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO
12 Reduction to lowest paygrade	YES	NO	YES	NO	YES	NO	NO
13. Reprimand	YES	YES	YES	YES	YES	YES	YES

**ALL PUNISHMENTS ARE LIMITED BY THE MAXIMUM ALLOWABLE FOR THE UCMJ ARTICLES VIOLATED AS WELL AS THE TYPE OF COURTMARTIAL THE CASE IS REFERRED TO.**

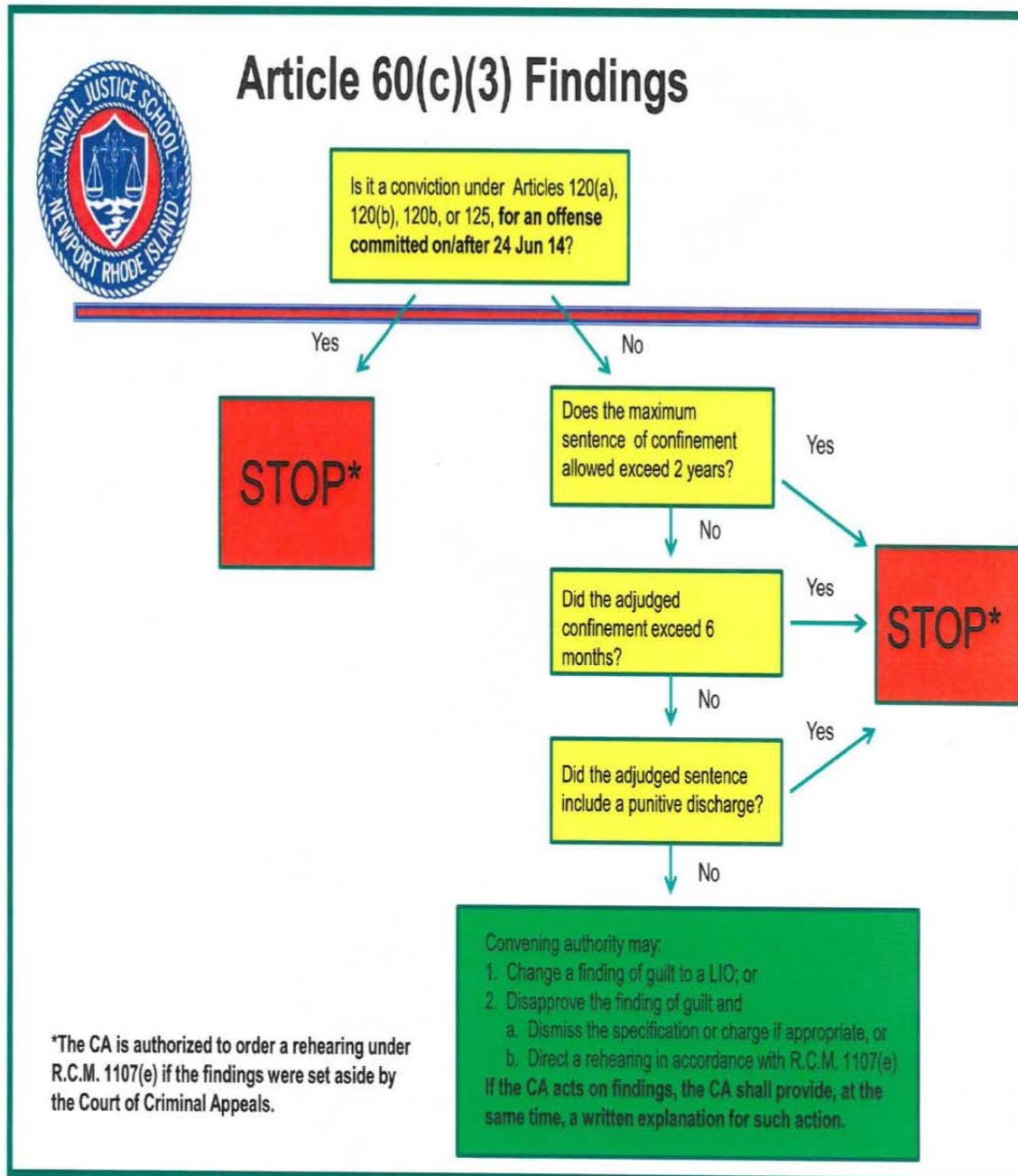
(\*1) Where authorized or mandatory

(\*2) May extend payment up to two months – MJM 10-F-2.e

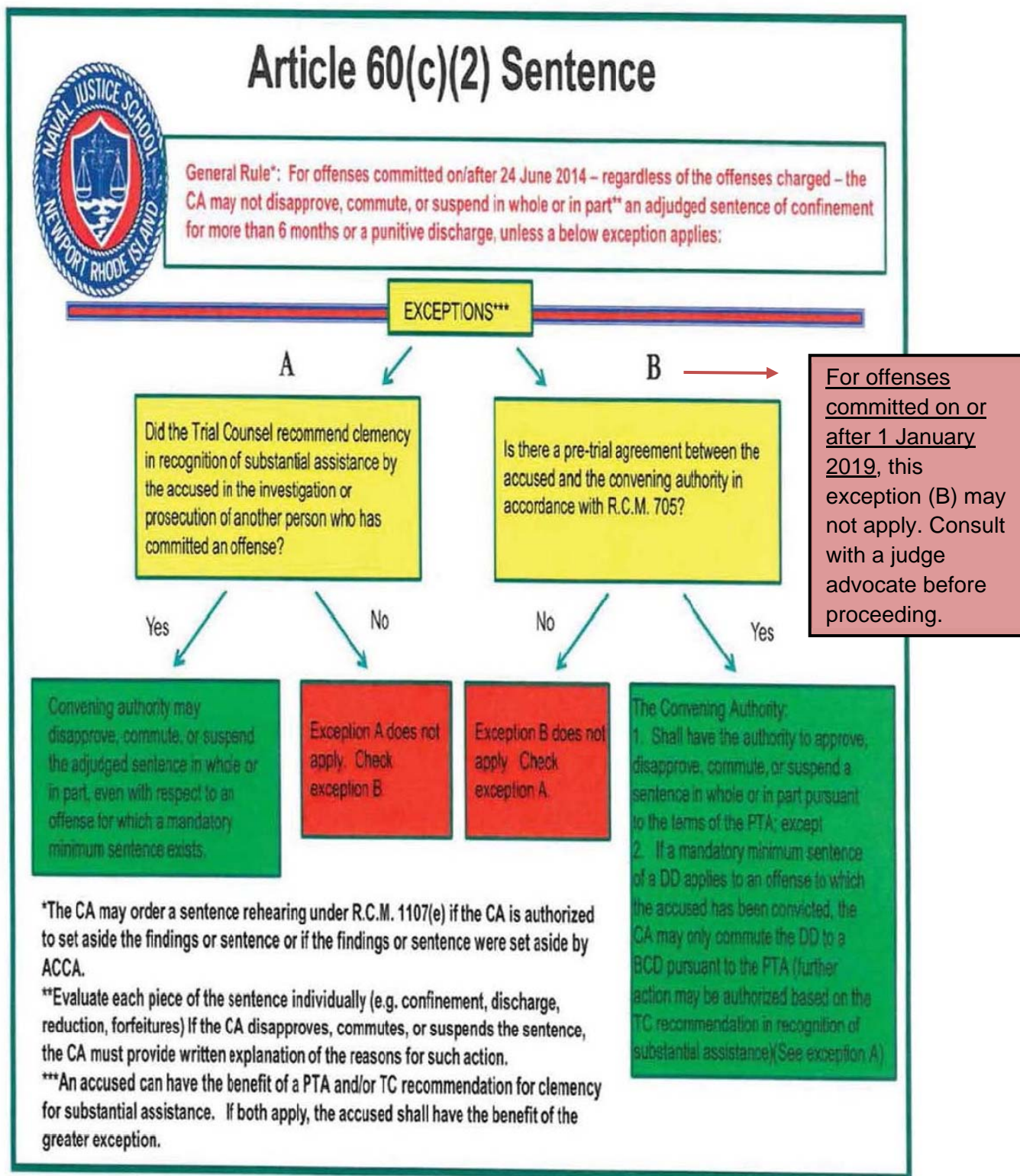
(\*3) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case.

(\*4) AT SCM, a fine may not be combined with forfeitures

## D. CONVENING AUTHORITY LIMITATIONS ON FINDINGS MODIFICATIONS



## E. CONVENING AUTHORITY LIMITATIONS ON SENTENCING MODIFICATIONS



## **E. NJP PUNISHMENT LIMITATIONS CHART**

### **ARTICLE 15 PUNISHMENT LIMITATIONS Navy and Marine Corps**

Imposed By	Imposed On	Confinement 3 days (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4 & 5)	Reduction (4 & 6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	Yes	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	Yes	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (8)	Officers	No	No	No	No	No	No	15 Days	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	Yes	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes

- (1) May be awarded only if attached to or embarked in a vessel and may not be imposed with correctional custody, restriction, or extra duties (JAGMAN 0111(c), MCM, Part V, para. 5(d)(2))
- (2) May not be combined with restriction or extra duties (MCM, Part V, para. 5(d)(3))
- (3) May not be combined with restriction (MCM, Part V, para. 5(d)(1))
- (4) May be imposed in addition to or in lieu of all other punishments
- (5) Shall be expressed in whole dollar amounts only (MCM, Part V, para. 5(c)(8))
- (6) Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion) (JAGMAN 0111(e))
- (7) Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum possible for extra duties (MCM, Part V, para. 5(d)(4))
- (8) Regardless of rank, OICs have NJP authority over enlisted personnel only. (JAGMAN 0106(b)) A nonjudicial punishment authority serving in the grade of W-1 through CWO-5 may not reduce enlisted personnel under any circumstances. (JAGMAN 0111(e))

**G. USE OF POSITIVE URINALYSIS RESULT****FROM DOD CERTIFIED DRUG LABS (OPNAVINST 5350.4D)**

	Usable in disciplinary proceedings	Usable as basis for separation	Usable for characterization of service
1. Search or Seizure - member's consent - probable cause	YES YES	YES YES	YES YES
2. Inspection - random sample - unit sweep	YES YES	YES YES	YES YES
3. Medical – general diagnostic purposes	YES*	YES	YES*
4. Fitness for duty - command directed - competence for duty - mishap/safety Investigation	NO NO NO	YES YES YES	NO NO NO
5. Service directed - treatment facility staff (military) - alcohol rehab testing - Naval brigs - entrance testing - accession training pipeline	YES NO YES NO YES	YES YES YES YES YES	YES NO YES NO** YES

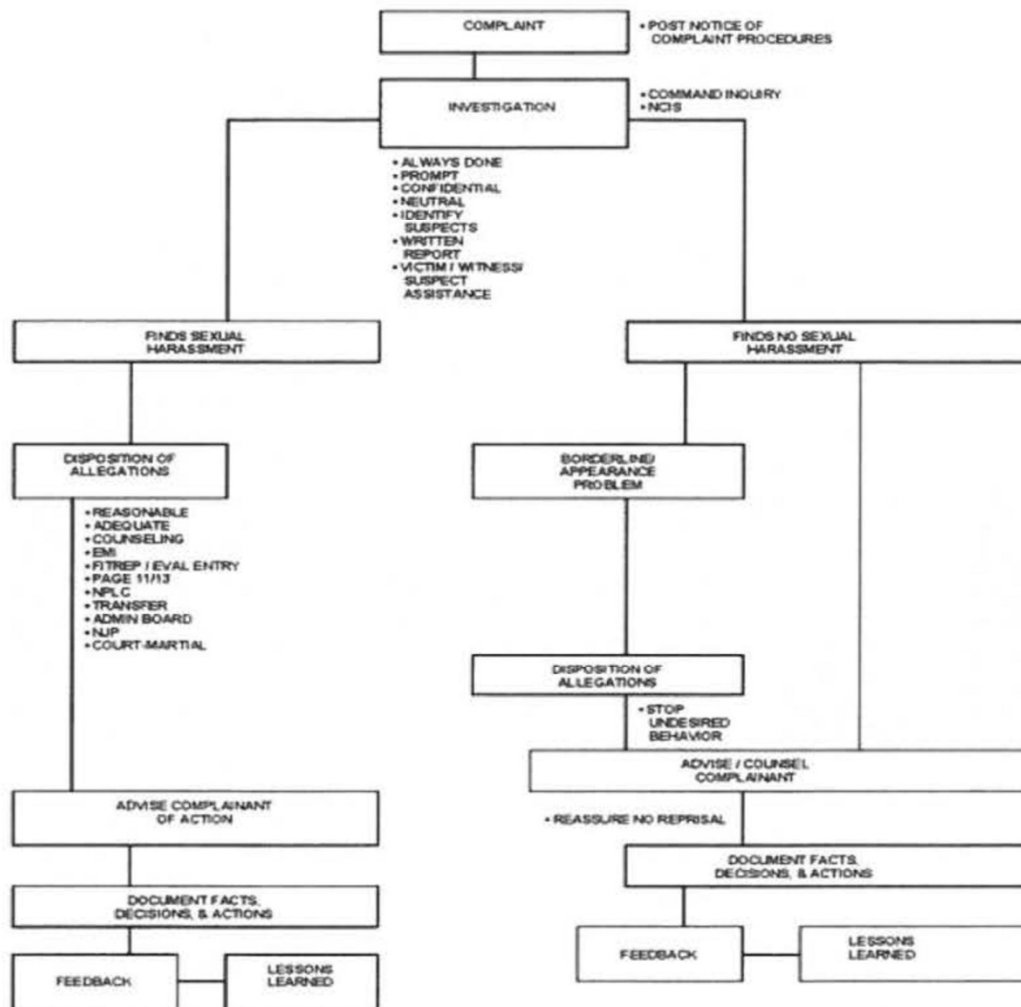
\*All urine samples must be confirmed positive at a DoD certified lab by GC/MS

\*\*YES for reservists recalled to active duty (except DEP participants)

## H. HANDLING SEXUAL HARASSMENT ALLEGATIONS

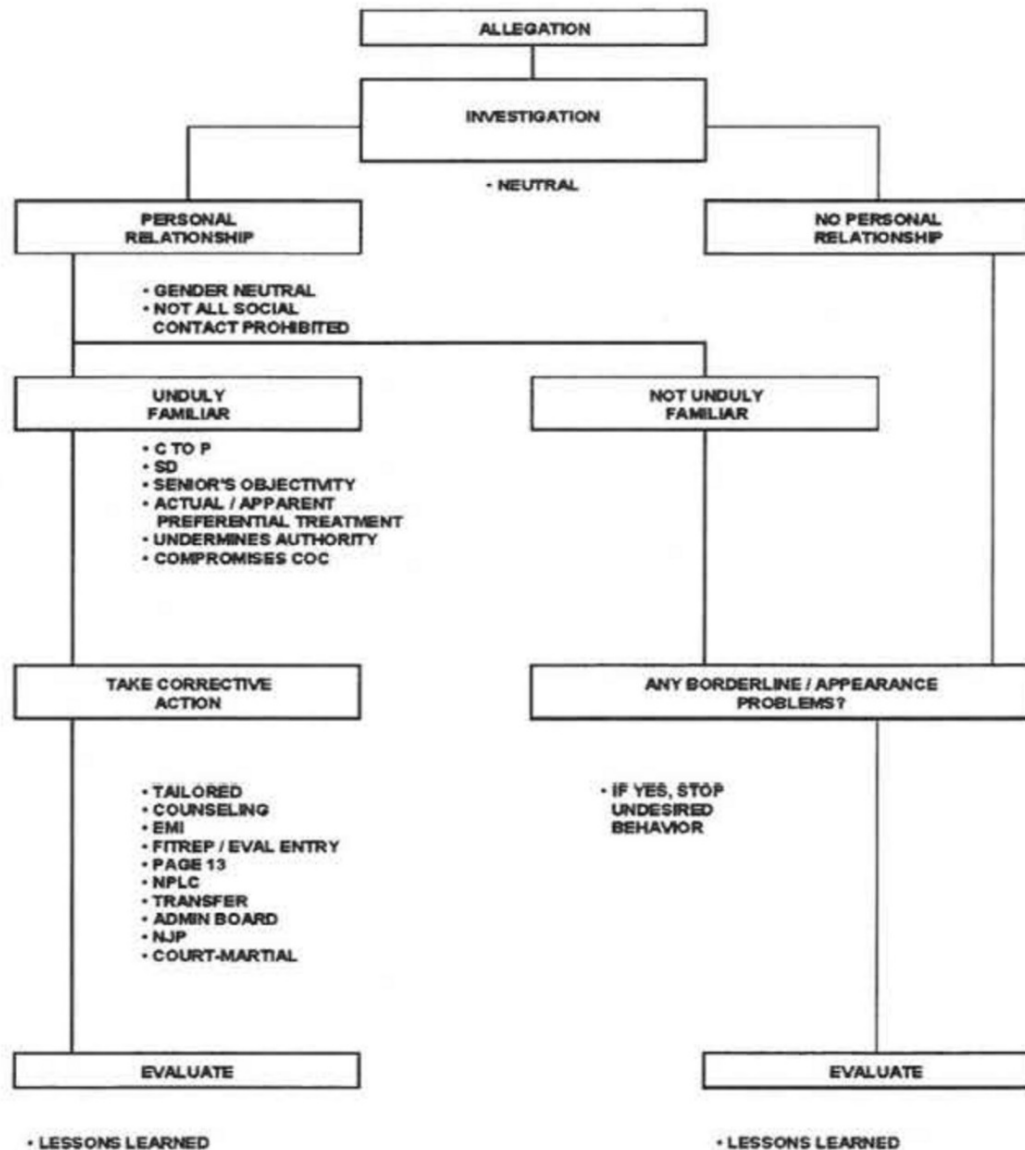
### STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS

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## I. HANDLING FRATERNIZATION ALLEGATIONS

### HANDLING FRATERNIZATION ALLEGATIONS





## **J. COMPLAINTS OF WRONG COMMANDING OFFICER CHECKLIST**

### **COMPLAINTS OF WRONG – COMMANDING OFFICER CHECKLIST**

\*All references are to the Judge Advocate General Manual (JAGMAN) unless otherwise noted.

Complainant Name: \_\_\_\_\_; Date Received: \_\_\_\_\_

1. Complaint is properly forwarded? (§ 0306d; NAVREG 1150)
  - a. Addressed to proper commanding officer (for Article 1150 complaints) or to proper general court-martial convening authority (for Article 138 complaints) via intermediate endorsers. If not, readdress and forward back to the complainant or to the proper intermediate endorser, including the respondent.
  - b. Is the respondent named in the complaint the proper respondent? (§ 0305b; NAVREG 1150)
  - c. Have intermediate endorsers added additional information adverse to the information provided by the complainant? If so, has the complainant had an opportunity to review and rebut the new information?
2. Complaint timely, or is it submitted late? Is the late submission justified? (§ 0306a). If not, complaint may still be processed or it may be returned to complainant. (§ 0307b(2)) without action.
3. Complainant does not join more than one respondent? (§ 0306g). If it does, the complaint may still be processed as two complaints of wrong, one against each proper respondent, or it may be returned to the complainant as defective. (§ 0306g) The same concept applies to a single complaint from two or more complainants.
4. Complaint is in the proper format? (§ 0306c, Appendix A-3-a). If not, obtain missing information and forward to the proper disposition authority or return the complaint to the complainant as defective. (§ 0307b(2))
  - a. Complaint includes:
    - i. Complainant and respondent's name and identifying information?
    - ii. Includes the date wrong discovered and number of days between discovery and complaint submission?
    - iii. If there is a submission delay, is it explained?
    - iv. Complaint complete with all enclosures and endorsements?
    - v. Complaint certified as "true and accurate" and signed, witnessed, and dated?
5. Complaint alleges a wrong that is a proper subject of a complaint of wrongs? (§0303f, 0304a)
  - a. Not regarding recommendations only?
  - b. Not regarding general service policies?
  - c. Not wrongs that have another procedure for disposition that provides notice, right to rebut/hearing, and review by a superior? (e.g., NJP, ADSEP boards, courts-martial, etc.)
  - d. Complaint makes a proper request for relief? (§ 0305)

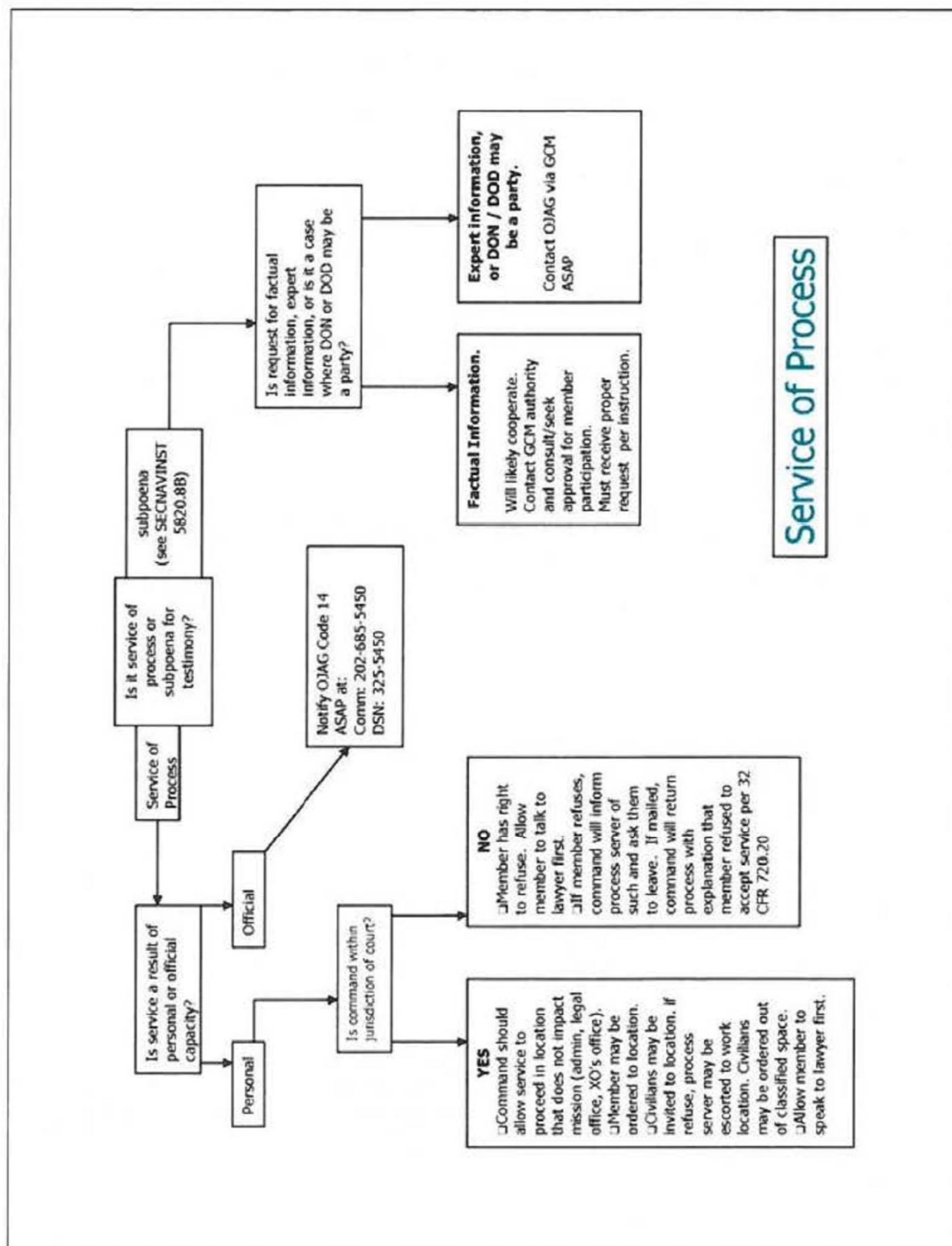


## **K. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE**

### **EXECUTIVE OFFICER'S INQUIRY (XOI)**

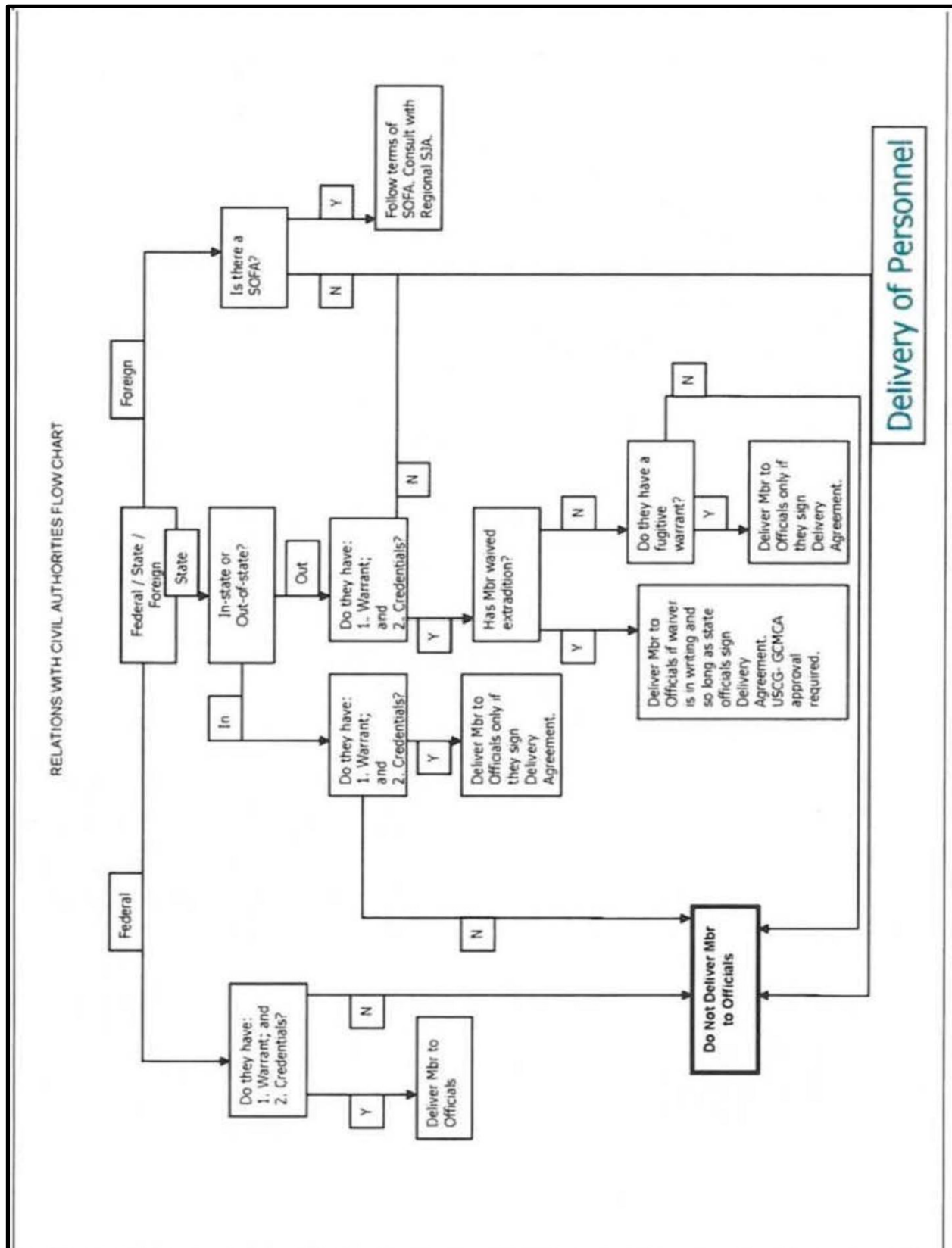
1. Obtain the report chit, all written statements and other documentary and physical evidence relating to the alleged offenses from the legal officer.
2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or evidence in extenuation, mitigation, or aggravation concerning the alleged offense.
3. Inform the accused that the commanding officer (CO) is contemplating the imposition of non-judicial punishment (NJP) and that this (XOI) is an informal hearing before possible NJP.
4. Describe the specific offense(s) to the accused, including the specific article(s) of the Uniform Code of Military Justice that the accused allegedly violated.
5. If applicable, advise the accused he/she has the right to refuse NJP. (An accused can never refuse XOI).
6. Advise the accused that he/she does not have to make a statement regarding the offense(s) and that any statement made by him/her can be used as evidence against him/her at XOI and NJP.
  - a. NOTE: If it is reasonably foreseeable that the accused's statements during XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver – in the format of Appendix A-1-M of the JAGMAN – will have to be obtained from the accused during the hearing, before proceeding further.
7. Ask the accused what happened.
  - a. If the accused admits guilt, the accused should be allowed to offer evidence in extenuation and mitigation.
    - i. Then ask any witnesses to testify about any related matters in extenuation and mitigation or aggravation.
  - b. If the accused denies guilt, the accused should be asked for his/her version of the facts.
    - i. Ask the witnesses to testify about the alleged offense(s).
    - ii. Inform the accused of any other evidence against him/her concerning the alleged offense(s).
    - iii. Allow the accused to rebut if he/she chooses.
    - iv. Ask the witnesses to testify on any matters in extenuation and mitigation or aggravation.
8. Ask the accused if he/she would like to make a final statement.

## L. SERVICE OF PROCESS



Service of Process

## M. DELIVERY OF PERSONNEL



## **N. BENEFITS AT SEPARATION**

### **BENEFITS AT SEPARATION**

E = Eligible  
NE = Not Eligible  
TBD = To Be Determined by  
Administering Agency.  
VA benefits depend upon specific  
disabilities of the veteran

#### **Legend**

A = Honorable (DD Form 256 MC)  
B = General Under Honorable Conditions  
C = Other Than Honorable  
D = Bad Conduct Discharge  
E = Dishonorable (General Court-Martial, (1))

Service Administered	A	B	C	D	E	Authority and References
1. Payment for Accrued Leave	E	E	NE	NE	NE	37 USC 501; DODFMR par. 3501
2. Death Gratuity	E	E	E	E	NE	10 USC 1480; DODFMR par. 3601
3. Wearing of Military Uniform	E	E	NE	NE	NE	10 USC 771a, 772, MCO 1020.34G
4. Admission to Naval Home (2)	TBD	TBD	NE	NE	NE	24 USC 412
5. Burial in National Cemeteries	E	E	NE	NE	NE	38 USC 2402
6. Burial in Army Post Cemeteries (3)	E	NE	NE	NE	NE	AR 210-190 Chap II, Sect 2-5
7. Navy Board for Correction of Military Records	E	E	E	E	E	10 USC 1552, SECNAVINST 5420.193
8. Navy Discharge Review Board	E	E	E	E (8)	E (8)	10 USC 1553, SECNAVINST 5420.174D
9. Transportation to Home (4)	E	E	E	E	E	37 USC 474, JFTR Chap 5

10. Transportation of Dependents and Household Goods to Home	E	E	TBD (7)	TBD (7)	TBD (7)	37 USC 476; JFTR Chap 5
<b>Transitional Benefits and Services (13)</b>						
1. Pre-separation Counseling	E	E	E	E	E	10 USC 1142
2. Employment Assistance	E	E	E	E	E	10 USC 1143, 1144
3. Health Benefits	E	E	NE	NE	NE	10 USC Section 1145
4. Commissary/Exchange	E	E	NE	NE	NE	10 USC Section 1146
5. Military Family Housing	E	E	NE	NE	NE	10 USC Section 1147
6. Overseas Relocation Assistance	TBD	TBD	TBD	TBD	TBD	10 USC Section 1148
7. Excess Leave	E	E	E	E	E	MCO 1030.50J
8. Permissive TAD	E	E	NE	NE	NE	MCO 1030.50J
9. Preference for USMCR	E	E	NE	NE	NE	10 USC Section 1150
10. Montgomery G.I. Bill	E	NE	NE	NE	NE	38 USC Section 3011
11. Post 9-11 G.I. Bill	E	NE	NE	NE	NE	38 USC Section 3311
<b>Department of Veterans Affairs (5,6,9)</b>						
1. Dependency and Indemnity Compensation	E	E	E	E	NE	38 USC 1310
2. Pension for Non-Service Connected Disability or Death	E	E	TBD	TBD	NE	38 USC 521, 38 USC 3103, 1501-1508
3. Medal of Honor Pension	E	E	TBD	TBD	NE	38 USC 1560-1562
4. Insurance (10)	E	E	TBD	TBD	TBD	38 USC 1922
5. Vocational Rehabilitation(Disabled Veteran DV)	E	E	TBD	TBD	NE	38 USC 1502,1503, 1307, 3103
6. Educational Assistance	E	NE	NE	NE	NE	38 USC 3013

7. Survivors & Dependents Educational Assistance	E	E	E	E	NE	38 USC Ch 35
8. Home and other Loans	E	E	TBD	TBD	NE	38 USC Ch 37
9. Hospitalization & Domiciliary Care	E	E	TBD	TBD	NE	38 USC Ch 17
10. Medical and Dental Services	E	E	TBD	TBD	NE	38 USC 1712, 2062
11. Prosthetic Appliances (DV)	E	E	TBD	TBD	NE	38 USC 8123
12. Guide Dogs & Equipment for Blindness (DV)	E	E	TBD	TBD	NE	38 USC 1714
13. Special Housing	E	E	TBD	TBD	NE	38 USC 2101
14. Automobiles (DV)	E	E	TBD	TBD	NE	38 USC 3902
15. Funeral and Burial Expenses	E	E	TBD	TBD	NE	38 USC 2302
16. Burial Flag	E	E	TBD	TBD	NE	38 USC 2301
17. Burial in National Cemeteries	E	E	TBD	TBD	NE	38 USC 2402
18. Headstone Marker	E	E	TBD	TBD	NE	38 USC 2306
<b>Administered by Other Federal Agencies</b>						
1. Preference for Farm Loan (Dept. of Agriculture)	E	E	TBD	TBD	NE	7 USC 1983(5)
2. Preference for Farm & other Rural Housing Loans (Dept. of Agriculture)	E	E	E	E	NE	42 USC 1477
3. Civil Service Preference (12)	E	E	NE	NE	NE	5 USC 2108, 3309-3316, 3502, 3504
4. Civil Service Retirement Credit	E	NE	NE	NE	NE	5 USC 8331, 8332
5. Reemployment Rights (Dept. of Labor)	E	E	NE	NE	NE	38 USC 4335
6. Job Counseling & Employment Placement (Dept. of Labor)	E	E	E	E	NE	38 USC 4102

7. Unemployment Compensation for Ex-Service Members (Dept. of Labor) (5)	E	E	NE	NE	NE	5 USC 8521
8. Naturalization Benefits (Dept. of Justice, Immigration & Naturalization Service)	E	E	NE	NE	NE	8 USC 1439, 1440
9. Old Age, Survivors & Disability Insurance (Social Security Administration) (11)	E	E	TBD	TBD	NE	42 USC Ch 7
10. Job Preference, Public works Projects (Dept. of Commerce) (12)	E	E	TBD	TBD	NE	42 USC 6706

General Eligibility. The eligibility for benefits set forth are not the sole determining factors, but only list the effect of the various types of discharges. The states also provide various benefits that will be influenced by the type of discharge, but information on state benefits should be obtained from state agencies.

**\*FOOTNOTES:**

(1) Including commissioned and warrant officers who have been convicted and sentenced to dismissal as a result of general court martial.

(2) The veteran must have served "honestly and faithfully" for 20 years or been disabled and excludes convicted felons, deserters, mutineers, or habitual drunkards, unless rehabilitated. The Marine may become ineligible if that person, following discharge is convicted of a felony, or is not free from drugs, alcohol, or psychiatric problems.

(3) Only if an immediate relative is buried in the cemetery.

\*(4) If confined after parole or release from a U.S. military confinement facility or a confinement facility located outside the U.S.

(5) An officer who resigns for the good of the service (usually to avoid court martial charges) will be ineligible for benefits administered by the Department of Veterans Affairs (VA). 38 USC 5303.

\*(6) See the annually published: Federal Benefits for Veterans, Dependents and Survivors and the VA website: <http://www.va.gov>

(7) To be determined by the Secretary of the Navy on a case-by-case basis.

\*(8) Only if the punitive discharge was NOT the result of conviction by general court martial.

\*(9) Benefits from the VA are not payable to: (1) a person discharged as a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise comply with lawful orders of competent military authority, (2) by reason of a sentence of a general court martial, (3) resignation by an officer for the good of the service, (4) as a deserter, (5) as an alien during a period of hostilities, (6) by acceptance of an other than honorable discharge to avoid court martial, (7) for mutiny or spying, (8) for a felony offense involving moral turpitude, or (9) for willful and persistent misconduct. 10 USC 5303. A discharge under dishonorable conditions from one period of service does not bar payment if there is another period of eligible service on which the claim may be predicated (Administrator's Decision, Veterans Admin. No. 655, 20 June 1945).

\*(10) Veterans unable to obtain commercial life insurance may be eligible for insurance through the VA.

\*(11) Post-1957 service qualifies for social security benefits unless discharge was dishonorable. Pre-1957 service under conditions other than dishonorable qualifies a service member for a military wage credit for social security purposes.

\*(12) Various government agencies hiring preference for veterans and disable veterans. Contact that agency or view their website for those service requirements.

\*(13) Transitional benefits and services are available to certain Marines separated involuntarily, with characterization of honorable or general under honorable conditions and the basis (reason) for separation is not adverse. These DoD benefits, based on separation program designator (SPD) code and requiring an appropriate DEERS Identification Card, include six months of military or TRICARE medical care and commissary and PX privileges. The benefits are constrained by law and DoD regulations for designated periods of time. As the laws and regulations change, DEERS is updated to reflect these SPD Code changes for ID Card eligibility. 10 USC 1145 and 1146. SPD codes with honorable or general characterization of service currently eligible are: BCR, BDG, BDK, BFT, BFV, BFX, BHF, BRB, FCN, GCN, GCR, GDG, GDK, GFC, GFT, GFV, GFX, GGH, GHF, GHJ, GHK, GRB, HCR, HDG, HFC, HFT, HFV, HFX, HGH, HHF, HRB, JBB, JBC, JBK, JBM, JCC, JCP, JCR, JDF, JDG, JDK, JEA, JEB, JFC, JFF, JFG, JFH, JFI, JFL, JFM, JFN, JFO, JFQ, JFR, JFT, JFV, JFW, JFX, JGB, JGH, JHF, JND, JRB, KCN, LBB, LBC, LBD, LBK, LBM, LCC, LCN, LCR, LDG, LFC, LFF, LFG, LFH, LFT, LFW, LFX, LGB, LGC, LGH, LGJ, LND, and MCN.

Reference: MCO 1900.16 (MARCORSEPMAN)

## **O. RLSO LEGAL ASSISTANCE OFFICE POINTS OF CONTACT**

To find a Legal Assistance Office near you:

### **RLSO Europe, Africa, and Southwest Asia:**

- HQ Naples:
  - +39-081-568-4576
  - DSN: (314) 626-4576
  - CDO: 011-39-337-100-1775
- Det Sigonella:
  - +39-095-86-2953/5258
  - DSN: (314) 624-6326
- Det Rota—Legal Assistance Bldg 3293:
  - 011-34-956-2531/3104
  - DSN: (314) 727-2531/3104
- Det Bahrain—Legal Assistance Bldg P-908T:
  - 011-973-1785-4237
  - DSN: (318) 439-4237
- BROFF Souda Bay:
  - 30-282-102-1203
  - DSN: (314) 266-1203
- BROFF London:
  - +44-189-561-6193
  - DSN: (314) 235-6193

### **RLSO Naval District Washington:**

- HQ Washington Navy Yard:
  - (202) 685-5569
- Joint Base Anacostia-Bolling:
  - (202) 767-5297
  - DSN: 297-7588
- Walter Reed National Military Medical Center:
  - (301) 295-6052
  - DSN-295-6052

### **RLSO Hawaii:**

- 808-473-4717
- CDO: (808) 722-7544

### **RLSO Mid-Atlantic:**

- HQ Norfolk:
  - 757-341-4489
  - DSN: 341-4489
- BROFF JEBLCFS:
  - 757-462-4759
  - DSN: 253-4759
- BROFF Oceana:
  - 757-433-2230
  - DSN: 433-2230
- BROFF NWS Earle:
  - 732-866-2066
  - DSN: 449-2066
- Det Groton:
  - 860-694-3741
  - DSN: 694-3741
- BROFF Newport:
  - 401-841-3766
  - DSN: 841-3766

### **RLSO Southwest:**

- HQ San Diego:
  - (619) 556-2211
  - DSN: 526-2211
- BROFF NAS North Island:
  - (619) 545-6437
  - DSN: 735-6437
- Det Ventura:
  - (805) 982-3124
  - DSN: (501) 551-3124
- BROFF Lemoore:
  - (559) 998-2800
  - DSN: 949-2800
- BROFF Fallon:
  - (775) 426-2711
  - DSN: 890-2711

### **RLSO Midwest:**

- (847) 688-3805 x 111
- DSN 792-3805 x 111

### **RLSO Western Pacific:**

- HQ Yokosuka—Legal Assistance Bldg 1555:
  - 011-81-468-16-8901
  - DSN: (315) 243-8901
- BROFF Guam:
  - (671)-333-2061
  - DSN: (315) 333-2061
- BROFF Sasebo:
  - 011-81-956-50-3347
  - DSN: (315) 252-3347
- BROFF Atsugi:
  - 011-81-46-763-4582
  - DSN: 315) 264-4582
- BROFF Misawa:
  - 011-81-3117-66-4095
  - DSN: (315) 226-4095
- BROFF Okinawa:
  - 011-81-611-962-3974
  - DSN: (315) 632-3974
- BROFF Diego Garcia:
  - 011-246-370-2922
  - DSN: (315) 370-2922
- BROFF Singapore:
  - 011-65-6750-2305
  - DSN: (315) 421-2305

### **RLSO Northwest:**

- HQ Bremerton:
  - (360) 476-4275
  - DSN 627-4275
- BROFF Everett:
  - (425) 304-4551
  - DSN: 727-4551
- BROFF Whidbey Island:
  - (360) 257-2126/27
  - DSN: 820-2126/27
- BROFF Bangor:
  - (360) 396-6003
  - DSN: (360) 396-6003



**RLSO Southeast:**

- HQ Jacksonville:
  - (904) 542-2565 x 3006
  - DSN: 942-2565 x 3006
- Det Mayport:
  - (904) 270-5445 x 100
  - DSN: 270-5445 x 100
- Det Pensacola:
  - (850) 452-3733
  - DSN: 459-3733
- BROFF Kings Bay:
  - (912) 573-3935
  - DSN: 573-3935
- BROFF New Orleans:
  - (504) 678-4692
  - DSN: 678-4692
- BROFF Gulfport:
  - (228) 871-2620
  - DSN: 868-2620
- BROFF Millington:
  - (901) 874-7379
  - DSN: 882-7379
- BROFF Fort Worth:
  - (817) 782-6007
  - DSN: 739-6007
- BROFF Corpus Christi:
  - (361) 961-3765
  - DSN: 861-3765
- BROFF Kingsville:
  - (361) 516-6426
  - DSN: 876-6426
- Det Guantanamo Bay:
  - 011-53-99-4692
  - DSN: 660-4692

**MCRD Parris Island:**

- (843) 228-2559
- DSN: 335-2559

**MCAS Beaufort:**

- (843) 228-7330
- DSN: 335-2925

**Marine Reserve Forces, New Orleans:**

- (504) 678-8370
- DSN: 678-8370

**MCB Quantico:**

- (703) 784-3122/26
- DSN: 278-3122/26

**MCAS Miramar:**

- (858) 577-1656
- DSN: 267-1656

**MCAS Yuma:**

- (928) 269-2481
- DSN: 269-2481

**MCAGCC Twentynine Palms:**

- (760) 830-6111
- DSN: 957-6111

**MCRD San Diego:**

- (619) 524-4111
- DSN: 524-4111

**MCB Kaneohe Bay:**

- (808) 257-6738
- DSN: 457-6738

**MCAS Iwakuna:**

- 011-81-0827-79-5591
- DSN: 253-5591

**Camp Lejeune:**

- (910) 451-1903
- DSN: 751-1903

**MCLB Barstow:**

- (760) 577-6874
- DSN: 282-6874

**Henderson Hall:**

- (703) 614-1266
- DSN: 224-1266

**Camp Pendleton:**

- (760) 725-6558
- 365-6558

**MCAS New River:**

- (910) 449-6169
- DSN: 750-6169

**MCAS Cherry Point:**

- (252) 466-2311
- DSN: 582-2311

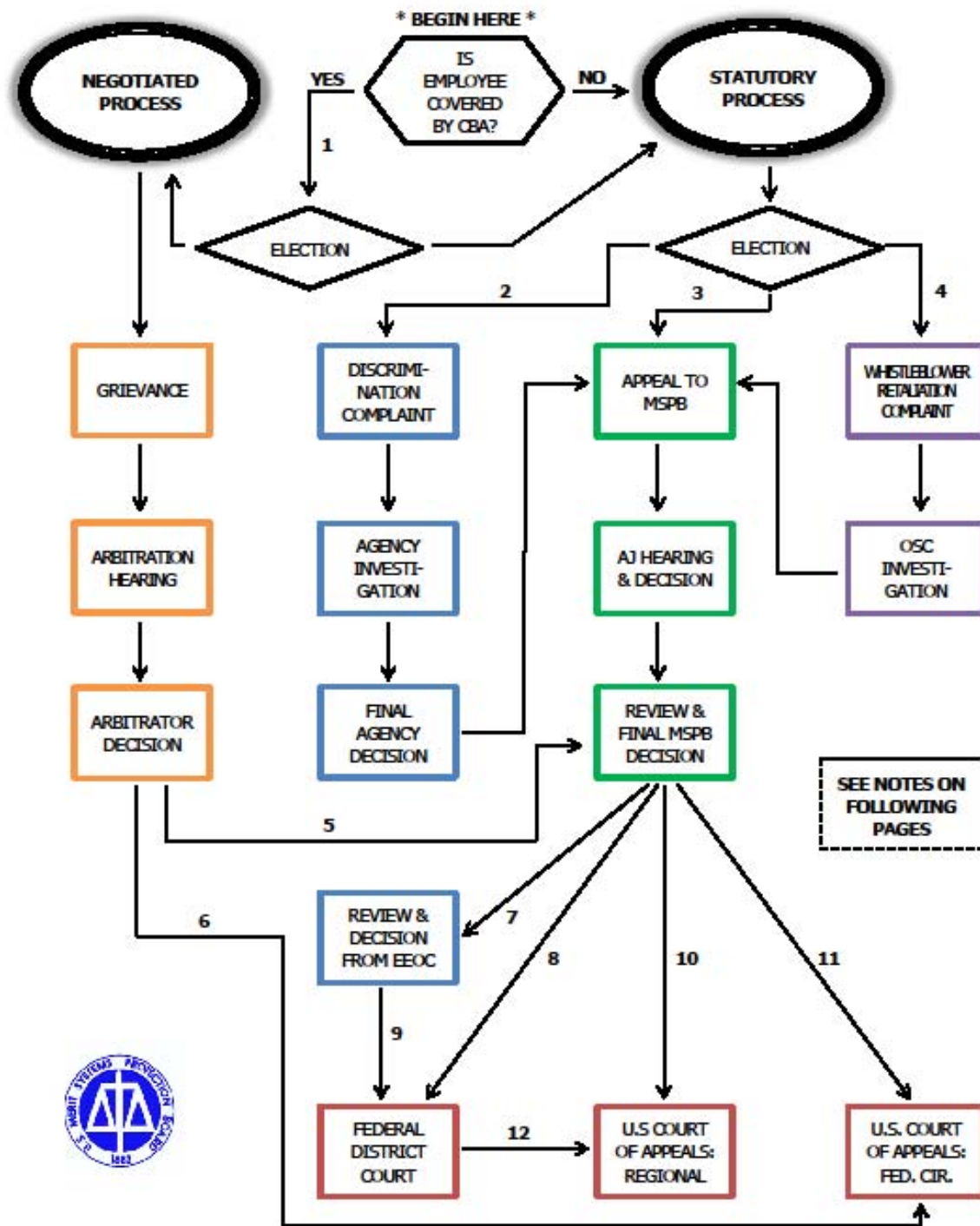
**MCLB Albany:**

- (912) 439-5212
- DSN: 567-5212



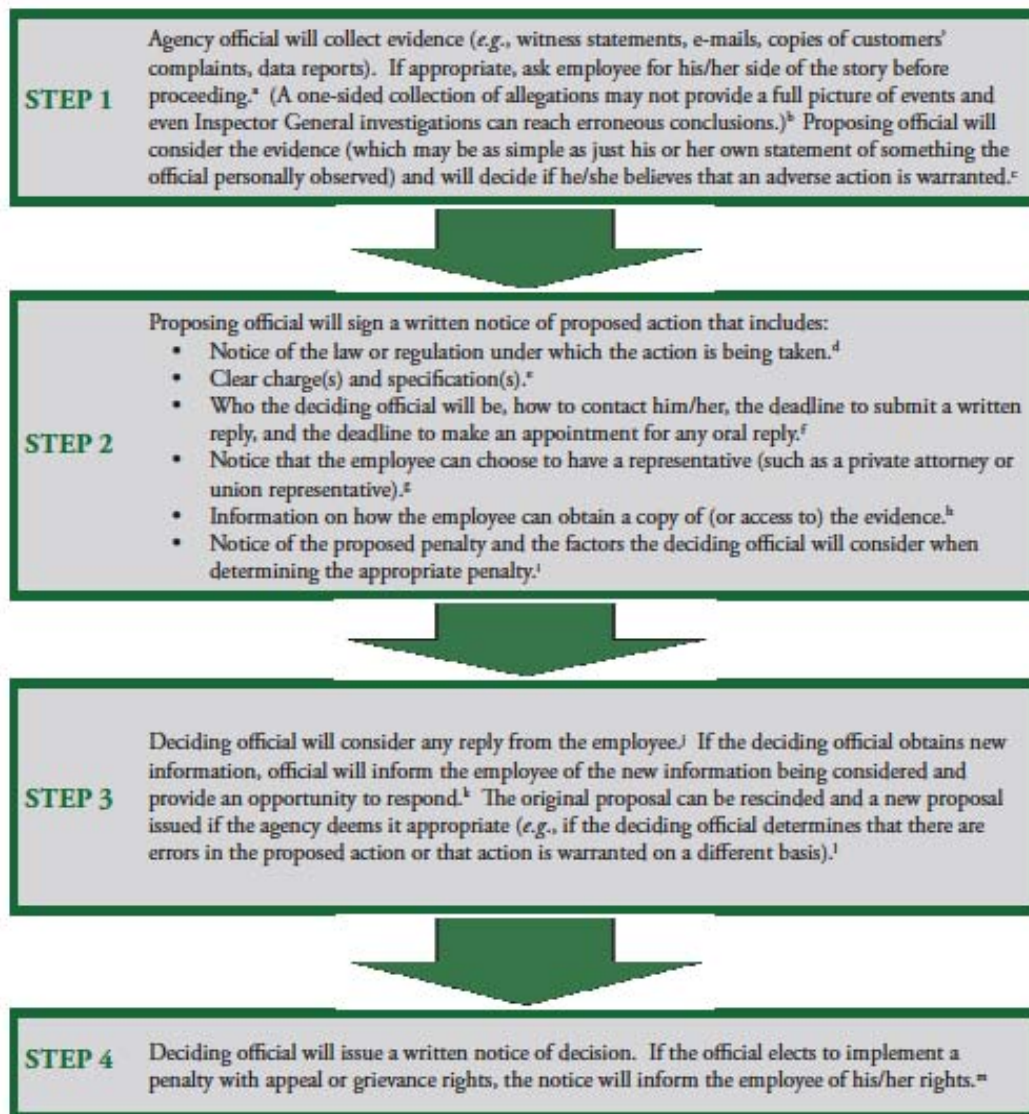
**P. MERIT SYSTEMS PROTECTION BOARD PROCESS FLOWCHART**

**FEDERAL EMPLOYEE REVIEW PROCESSES FOR MAJOR DISCIPLINARY ACTIONS  
[REMOVAL; SUSPENSION > 14 DAYS; REDUCTION IN GRADE OR PAY]**

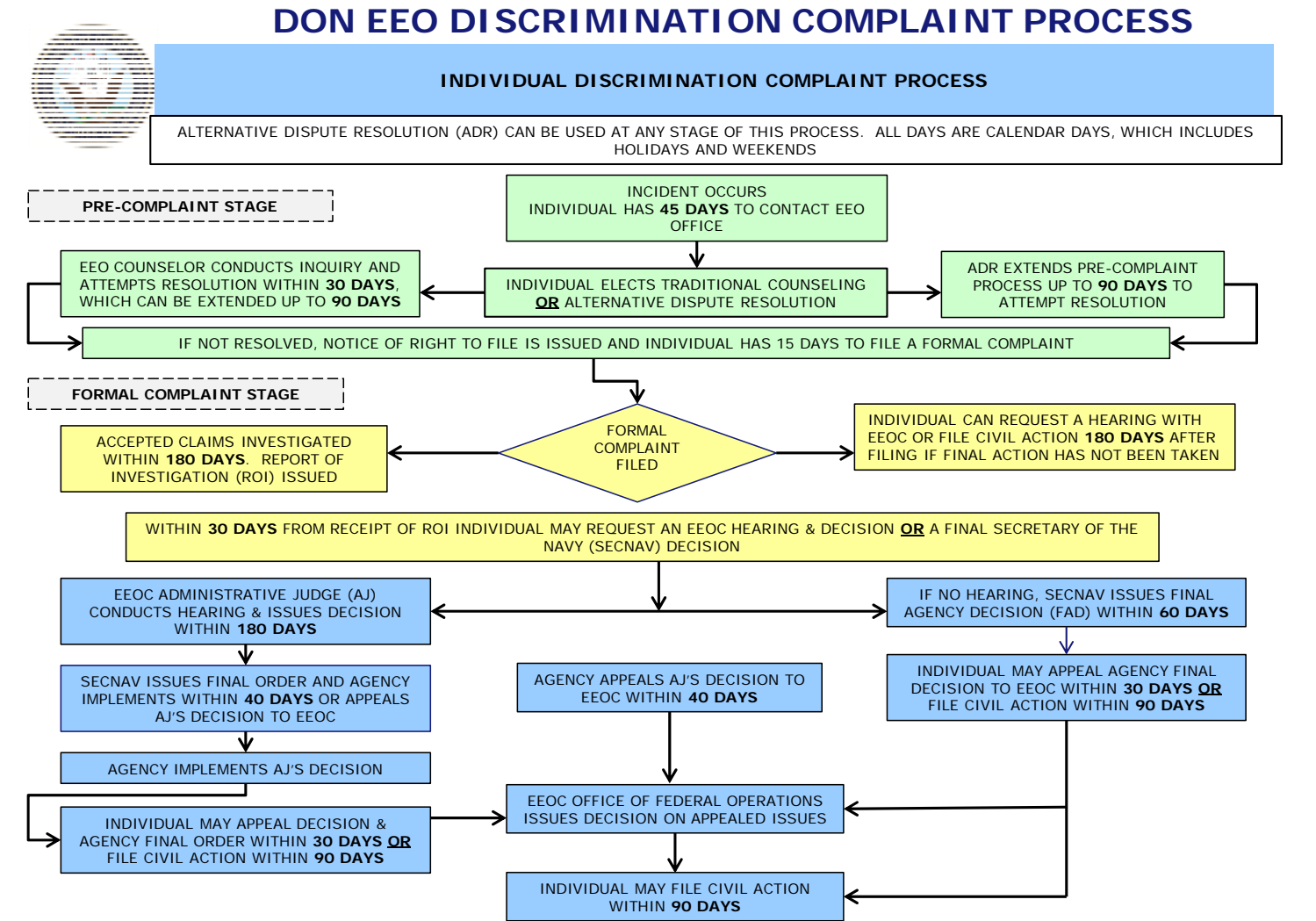


## *The Adverse Action Process – A Flowchart*

When reading about various steps of the adverse action process, it may be helpful to have a picture of where each step falls in relation to the others. Therefore, the flowchart below provides the major steps in the process to take an adverse action under chapter 75 of title 5 (the statute that authorizes an agency to take an action to advance the efficiency of the service).



## **R. DON EEO DISCRIMINATION COMPLAINT PROCESS FLOWCHART**



# IDES PROCESS MAP

The IDES Process Map is a flowchart detailing the timeline for a service member's transition from military to VA disability benefits. It is organized into three main phases: Medical Evaluation Board (MEB) Phase, Physical Evaluation Board (PEB) Phase, and Transition. The process starts with a referral initiated and submitted to the PEBLO, followed by legal consultation, enrollment, and provider NARSUM. The MEB Phase includes a medical board statement and CA certification. The PEB Phase involves an informal physical evaluation board, ADSM elections, formal PEB, and final decision. The Transition phase includes ADSM separation or retirement, VA disability decision letter, and final compensation delivery. The total timeline is 180 calendar days.

**Encounter TEMPO Review**

**Medical Evaluation Board (MEB) Phase**

**Physical Evaluation Board (PEB) Phase**

**Transition**

**DoD** **VA\*** **DoD** **VA\*** **DoD** **VA\***

Referral Initiated and submitted to PEBLO

PEBLO & ADSM (Part I and Part II)

3 days

Legal Consultation Part III

IDES Enrollment

PEBLO submit VA 21-0819 (Part III)

6 days

MSC for Claim Development

5 days

C & P Evaluation

32 days

Provider NARSUM (Part IV)

5 days

Referred Provider C&P Reconciliation (Part V)

5 days

MEB Certification (Part VI)

5 days

CO Certification (Part IV & VII)

Medical Board Statement of Patient Part VIII

YES

Statement Rebuttal

7 days (part of the 20 days)

NO

CA Certification (Part IX)

5 days

70 calendar days

Informal Physical Evaluation Board (IPEB)

11 days

Proposed Ratings

13 days

Proposed Disposition

5 days

ADSM Elections

6 days

Request Formal PEB

Accept

Formal PEB

24 days

Appeal

Accept

Rating Reconsideration

4 days

ADSM separation or retirement

30 days

ADSM separation or retirement date

Issuance of VA disability decision letter

20 days

Final Decision

5 days

80 calendar days

30 calendar days

180 calendar days (IDES timeline)

## Appendix S



## **T. COMMAND INFLUENCE PRIMER**

### **COMMAND INFLUENCE<sup>1</sup>**

**ROLE OF THE COMMANDER:** Commanders are charged with maintaining good order and discipline, and must do so in a manner that ensures justice. The authority of a commander to convene courts-martial includes the duty of ensuring the constitutional due process rights of an accused. In carrying out this duty, commanders must remain impartial, and be cognizant of the impact their comments and actions (and the actions of their staff) may have on participants in the court-martial process.<sup>2</sup>

#### **FRAMEWORK: THREE KEY QUESTIONS**

- ☐ Am I fair and impartial?
- ☐ Will others find my actions and statements fair and impartial?
- ☐ Could my actions and statements prevent someone else's ability to be fair and impartial? (e.g. court-martial members, witnesses, subordinates.)

#### **PERMISSIBLE CHAIN OF COMMAND ACTIONS**

**KEY:** Subordinate commanders must make independent disposition decisions.

<b>Permissible actions by Superior Commander</b>	<b>Example</b>
✓ <b>MAY</b> obtain information from a subordinate commander about ongoing cases, investigations, or incidents.	<i>Requesting a briefing on ongoing matters.</i>
✓ <b>MAY</b> generally discuss with a subordinate commander that commander's role in the military justice process.	<i>"As a convening authority, you have the duty to ensure good order and discipline. You also have the duty to ensure that the rights of the accused and victim are protected. This role requires that you remain fair and impartial."</i>
✓ <b>MAY</b> generally discuss matters for a subordinate commander to consider when disposing of a case.	<i>"As a convening authority, you have many options at your disposal, to include [X,Y,Z]. I'm available to discuss with you my experiences, generally, with any of those options. However, only you may make the disposition decision in your cases."</i>
✓ <b>MAY</b> pull the disposition decision up to the superior commander's level in a particular case or for certain types of offenses.	<i>Retain at the superior commander's level authority to dispose of a case involving members of different units, or particular types of offenses, e.g. law of armed conflict or officer misconduct cases.</i>  <i>Withhold from a subordinate commander the authority to dispose of a specific case, because the superior commander wants to make the decision.</i>

<sup>1</sup> Prepared by: Navy OJAG (Code 20-Criminal Law), Marine Corps Judge Advocate Division, and Coast Guard Office of Military Justice - April 2020

<sup>2</sup> It is best practice to apply these same principles to administrative proceedings (e.g. NJP, administrative separation, counseling).

## PERMISSIBLE CHAIN OF COMMAND COMMENTS

**KEY:** Talk process, not outcome; talk offense, not offender

Permissible comments	Example
✓ <b>MAY</b> issue broad policy statements on misconduct <u>before</u> becoming aware of a specific allegation.	<i>"This conduct is contrary to our core values."</i>
✓ <b>MAY</b> address the command <u>after an allegation</u> by focusing on process, not the alleged offender or an outcome.	<i>"I have directed an investigation into the alleged misconduct. I will take appropriate action based on the results of that investigation. In the meantime, I expect all personnel to continue to uphold our unit's high standards."</i>
✓ <b>MAY</b> address the media or public <u>after an allegation</u> by ensuring comments are process-focused.	<i>"The allegation of misconduct will be thoroughly investigated and appropriate action will be taken based on that investigation."</i>

## UNLAWFUL COMMAND INFLUENCE (UCI)

A finding of UCI is a judicial determination that a commander (or the commander's staff) has failed to ensure a fair and impartial process. UCI is either "actual" or "apparent."

Actual UCI
<p><b>A commander manipulates the court-martial process, either intentionally or unintentionally, to drive a certain result. For example, a commander:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>MAY NOT</b> direct a subordinate commander to make a particular disposition decision or limit the discretion of the subordinate convening authority.</li> <li><input type="checkbox"/> <b>MAY NOT</b> censure, discipline, or otherwise express disapproval (either directly or indirectly) with any personnel participating in the court-martial process.</li> <li><input type="checkbox"/> <b>MAY NOT</b> deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial.</li> <li><input type="checkbox"/> <b>MAY NOT</b> coerce or influence the action of a court-martial or member to reach a particular finding or sentence.</li> </ul>
Apparent UCI
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>A commander's actions, either intentional or unintentional, cause an objective, fully informed observer to have significant doubt about the fairness of the military justice process. The focus is on public perception of the military justice system.</b></li> </ul>

## CASE STUDIES<sup>3</sup>

### Cases in which actions were found to be ACTUAL UCI.

- A convening authority used gender as a criterion for detailing court-martial members. In a sexual assault case, 7 of the 10 members detailed were women (from a unit with 20% female officers and 13% female enlisted). The convening authority selected these members with the intent of achieving a particular result. The case was *dismissed with prejudice* (i.e. the charges could not be sent to another court-martial or prosecuted in federal court).
- A high-ranking judge advocate said to a high-ranking convening authority, “don’t put a target on your back” in response to a question on whether to grant post-trial clemency in a sexual assault case. The convening authority interpreted the comment to mean that the Navy would be adversely affected if clemency was granted. The case was *dismissed with prejudice*.

### Cases in which actions were found to be APPARENT UCI.

- A superior convening authority made public statements reflecting his belief that subordinate commanding officers were “negligent” and “responsible” for an incident. The trial judge determined that the statements placed an intolerable strain on the public’s perception of the military justice system. Examples of the statements:
  - ◆ At a press conference, when asked whether he believed negligence was involved, the superior commander stated, “Yes...I mean we found the [COs] were at fault, the Executive Officers were at fault.”
  - ◆ The superior convening authority told an audience that included potential court-martial members, “I have seen the entire investigation. Trust me; if you had seen what I have seen, it was negligent.” The military judge ruled that, at trial, the defense would have additional leeway to remove potential court-martial members. Later, when the superior convening authority became the convening authority for the case, the charges were *withdrawn and dismissed*.
- After a convening authority dismissed a sexual assault case and granted clemency in another, superior convening authorities “lost confidence” and pressured the subordinate convening authority to submit a retirement request. Subsequently, the convening authority referred another case. Due to the superiors’ actions, the subsequent case was *dismissed without prejudice* (i.e. the charges could be sent to another court-martial).
- Several prospective court-martial panel members attended a briefing where a superior convening authority stated “80 percent” of sexual assault allegations “are legitimate.” That same superior convening authority also said, “If you have a Marine that is not acting right, you’ve got a Marine that deserves to leave the Corps, then get rid of them; it is as simple as that” and “I see this stuff in courts-martial, I see it in the behavior and just for the life of me I can’t figure out why we have become so ecumenical, why we have become so soft? Where are we going [to] keep a sergeant that absolutely does not belong in the United States Marine Corps? Why would we need to do that? And the answer is we don’t.” Because the Government did not prove that the court-martial members who attended the brief were free from the effects of UCI, and therefore the public would question the fairness of the trial, the case was *dismissed without prejudice* and had to be retried.
- A superior convening authority told a subordinate commander that personnel suspected of committing a specific instance of misconduct should be “crushed.” The superior convening authority later presented a brief containing a picture of the accused committing the misconduct that was the subject of the accused’s pending court-martial, and asked “What does America think of her Marines today?” The case was *dismissed with prejudice*.

<sup>3</sup> See US v Riesbeck; US v Barry; US v Benson; US v Boyce; US v Howell; US v Chamblin, respectively.

# COMMAND INFLUENCE

## ACCEPTABLE WAYS TO EXERCISE LAWFUL INFLUENCE ON SUBORDINATES

<b>Before an Allegation</b> (Note: Depending on the context, some of these comments <u>might</u> be ruled unlawful if made <u>after</u> an allegation)	<b>After an Allegation</b> (Note: Talk process, not outcome; talk offense, not offender.)
<i>“[Misconduct] is a blight on the service, and we must not tolerate [type of misconduct] in our ranks. Let’s hold ourselves to the high standards of the [Service].”</i>	<i>“The accused has been charged based on the evidence, but is presumed innocent until proven guilty. I expect every one of you to uphold the high standards of the [Service].”</i>
<i>“Allegations of misconduct will be thoroughly investigated, and when the evidence supports, offenders will be held appropriately accountable.”</i>	<i>“Allegations of misconduct will be thoroughly investigated, and when the evidence supports, offenders will be held appropriately accountable.”</i>
<i>“If you commit a [type of misconduct], you will be investigated and may face trial by court-martial. If convicted, you could face punishments such as confinement, punitive discharge, sex offender registration, loss of rank, or administrative separation.”</i>	<i>“The allegations are serious. An investigation is underway and should the [convening authority] determine the evidence warrants action, appropriate steps will be initiated.”</i>
<b>Superior to subordinate commander:</b> <i>“You should develop a command climate that is intolerant of sexual assault and sexual harassment.”</i>	<b>Superior to subordinate commander:</b> <i>“In making your disposition decision, you should consult your SJA, and not be concerned with external or political pressures.”</i>
<b>Superior to subordinate commander:</b> <i>“It is the responsibility of commanders, at every level, to maintain an environment free of [misconduct], provide support to those who need it, and to maintain good order and discipline within their units.”</i>	<b>Superior to subordinate commander:</b> <i>“I am available to discuss with you my experiences as a convening authority. However, I will not attempt to influence your decision. It is your duty to make an independent decision in all cases.”</i>

## UNACCEPTABLE (Before & After an Allegation)

Establishing an inflexible policy on disposition or punishment of offenses. <i>“Anyone who commits [type of misconduct] must be stripped of their rank and dishonorably discharged.”</i>  This interferes with a court-martial panel’s independent sentencing determination.
Providing directive advice to a subordinate convening authority on a specific case or type of case. <i>“If you catch anyone using drugs in this unit, you must send them to court-martial.”</i>  This interferes with a subordinate commander’s ability to make an independent decision on the disposition of the case.
Commenting on the character of the accused or victim. <i>“The accused is a scumbag.”</i>
Considering external factors when making decision on cases. <i>“Make sure you consider the reaction of [superior, elected officials, or media] when you make your decision.”</i>
Discouraging witnesses from testifying on behalf of the accused. <i>“How could anyone support someone accused of X?”</i> <i>“Be aware of the message you are sending if you testify for [accused] at his trial.”</i>
Selecting members with the intent of achieving a particular result as to the findings or sentence. [Stacking the panel]



## **10 U.S. Code § 837. Art. 37. Command influence**

(a) (1) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding.

(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President.

(4) Conduct that does not constitute a violation of paragraphs (1) through (3) may include, for example—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing persons on the substantive and procedural aspects of courts-martial;

(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding or sentence, or do not relate to a particular accused; or

(C) statements and instructions given in open court by the military judge or counsel.

(5) (A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any person in a court-martial proceeding.

(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.

(d) (1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as provided in paragraph (1) or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, § 2(13), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 116–92, div. A, title V, § 532(a), Dec. 20, 2019, 133 Stat. 1359.)

## QUICKMAN SUMMARY OF RECENT CHANGES

Commander's Quick Reference Legal Handbook (QUICKMAN) <sup>1</sup>	
Section	Significant Updates
<b>I (Crime Reporting Requirements) (June 20)</b>	<ul style="list-style-type: none"> <li>• Updates guidance on new reporting requirements</li> </ul>
<b>I (Command Influence) (June 20)</b>	<ul style="list-style-type: none"> <li>• Updates guidance and examples</li> </ul>
<b>I (Military Protective Order) (June 20)</b>	<ul style="list-style-type: none"> <li>• Updates commander's responsibilities</li> <li>• Provides guidance on new required forms</li> </ul>
<b>VI (Command Urinalysis Program) (June 20)</b>	<ul style="list-style-type: none"> <li>• Updates guidance and contact information</li> </ul>
<b>XV (Gifts from Outside Sources) (June 20)</b>	<ul style="list-style-type: none"> <li>• Updates "minimal value" of foreign gifts to \$415</li> </ul>
<b>XV (Use of Government Resources) (June20)</b>	<ul style="list-style-type: none"> <li>• Provides additional guidance on retirement ceremonies</li> </ul>
<b>Appendix S **NEW** (June20)</b>	<ul style="list-style-type: none"> <li>• Added Integrated Disability Evaluation System Process Flowchart</li> </ul>
<b>Appendix T **NEW** (June20)</b>	<ul style="list-style-type: none"> <li>• Added Command Influence Primer</li> </ul>

<sup>1</sup> NOTE: This document highlights significant modifications, but is not an exhaustive list to all changes in the May 2020 publication. The document should be read in its entirety and forms replaced or modified using the current versions.