



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



**June 2025**

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

## **OFFICE OF SPECIAL TRIAL COUNSEL (OSTC) AND CHANGES TO THE MANUAL FOR COURTS-MARTIAL**

### **REFERENCES:**

- (a) Executive Order 14103
- (b) Manual for Courts-Martial, 2024 Edition
- (c) Executive Order 14130

**MANUAL FOR COURTS-MARTIAL CHANGES:** On 28 July 2023, the President signed Executive Order (EO) 14103 (reference (a)) implementing significant amendments to the Manual for Courts-Martial (MCM). The EO contained three Annexes with different effective dates to account for statutory changes in the FY22 and FY23 National Defense Authorization Acts (NDAA). The amendments were extensive and reflected the updates to the MCM regarding the Office of Special Trial Counsel (OSTC), randomization of member panels, military judge alone sentencing, sentencing parameters and criteria, and modification of the appellate review process, as well as other provisions that impact military justice practice. Changes from all three Annexes were incorporated into the 2024 Edition (reference (b)). On 20 December 2024, the President signed EO 14130 implementing the 2024 amendments to the Manual for Courts Martial (reference (c)). These amendments are currently in effect and publication of a new edition of the Manual for Courts Martial reflecting these amendments is forthcoming.

**OFFICE OF SPECIAL TRIAL COUNSEL—EFFECTIVE 27 DECEMBER 2023:** The OSTC has **exclusive** authority to refer charges alleging covered offenses to special court-martial (SPCM) or general court-martial (GCM). The OSTC **may** also exercise authority over offenses “related” to a covered offense (“related offenses”) (e.g., a witness to a covered offense obstructs justice) and over other “known” offenses committed by the same accused (“known offenses”) (e.g., an accused offers a false official statement during the investigation).

The decision by the OSTC to prosecute an offense consists of two steps. First, the OSTC decides whether to exercise jurisdiction over an offense. OSTC must exercise jurisdiction over any offense it determines meets the definition of a covered offense and OSTC has discretion to exercise jurisdiction over known and related offenses. If the OSTC chooses to exercise authority over covered, related, or known offenses, the commander is precluded from taking *any* action amounting to a disposition unless the OSTC defers the offense.

Second, if the OSTC exercises jurisdiction over an offense, it may choose to defer charges (such as when there is insufficient evidence to successfully prosecute) or prefer charges. If the OSTC decides not to prosecute a case, the case will be deferred to the accused’s immediate commander. The accused’s commander or superior in the chain of command may *then* dispose of the case by taking administrative or disciplinary disposition action except that the commander may not refer a covered offense to SPCM or GCM. The commander may dispose of non-covered offenses at court-martial or through disciplinary or administrative means, as appropriate and allowed by instruction. *E.g.* even if the OSTC declines to prosecute a case for Article 132 retaliation, the Accused’s commander may still conduct NJP and/or process for administrative separation, for that offense but may not refer that offense to court-martial.

If OSTC decides to prefer and refer charges to a court-martial only the OSTC may dispose of those preferred and/or referred offenses. The OSTC may enter into a plea agreement with the accused related to a covered offense and any related or known offenses over which the OSTC has exercised authority. Special Trial Counsel (STC) of the OSTC must prosecute any case referred by OSTC. The accused’s commander and victim’s commander may provide non-binding input on case disposition to the OSTC.

When cases are referred by OSTC convening authorities still have responsibility to convene the court-martial, fund the court-martial (including witnesses and experts), select qualified members, produce witnesses, and act on the findings and sentence, including granting some forms of clemency, as authorized.

Convening authorities may continue to exercise traditional authority over non-covered offenses and for covered offenses that occurred prior to 28 December 2023, including referral decisions. In these cases, either the RLSO or local Trial Services Office (non-covered offenses) or the OSTC (covered offenses occurring prior to the statute's effective date) will provide a non-binding prosecution review and recommendation to the convening authority.

**COVERED OFFENSES:** "Covered offense" means commission, attempt, or conspiracy to commit, or solicitation of:

- Article 117a (Intimate Visual Images)
- Article 118 (Murder)
- Article 119 (Manslaughter)
- Article 119a (Death or Injury of an Unborn Child)
- Article 120 (Rape and Sexual Assault)
- Article 120a (Mail, Deposit of Obscene Matter)
- Article 120b (Sexual Assault of a Child)
- Article 120c (Miscellaneous Sex Offenses)
- Article 125 (Kidnapping)
- Article 128b (Domestic Violence)
- Article 130 (Stalking)
- Article 132 (Retaliation)
- Article 134 (Child Pornography)
- And, as of 1 January 2025, with formal, substantiated complaint: Article 134 (Sexual Harassment).

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

### **REFERENCES:**

- (a) Rule for Court-Martial (RCM) 301
- (b) RCM 303 and 303A
- (c) JAGINST 5800.7 (series) (JAGMAN), Chapter II
- (d) SECNAVINST 5430.107A
- (e) SECNAVINST 1752.4C
- (f) DoDI 6495.02
- (g) OPNAVINST 5800.7 (series)
- (h) MCO 5800.16 (series) (LSAM)
- (i) DD Form 2701

**COMMAND INQUIRY:** Suspected offenses may come to command attention in a variety of ways (e.g., shore patrol, civil law enforcement, citizen phone call). Per reference (a), any person may report. If a military authority receives a report, they shall promptly forward it to either the immediate commander of the suspect or to the OSTC for covered offenses. If there is uncertainty as to whether an offense is covered, the report should be made to the OSTC (in addition to reporting to NCIS, covered below). Per reference (b), the commanding officer (CO) must conduct or cause to be made (by NCIS in case of covered offenses) 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 and seriousness of the alleged offense. See reference (b). Appendices A and B provide diagrams further describing investigative options.

**MANDATORY REFERRAL TO NCIS:** Reference (d) mandates that certain incidents be referred to NCIS, whether occurring on- or off-base, and regardless of civilian investigation involvement. Please note that in addition to NCIS notification, the command may be required to notify OSTC if the allegations include covered offenses or there is uncertainty as to whether an offense is a covered offense (see list on page 3). Incidents requiring reports to NCIS 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 weapons, 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;
- Information which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a Foreign Intelligence Entity (FIE) or an agent of an FIE;
- Suspicious activities or anomalies, contacts, activities, indicators, and behaviors that might indicate potential FIE involvement or threats against the DoD or the DON, its personnel, information, materiel, facilities, and activities; or against United States national security;
- National security cases; and
- Suspected sex-related offenses as defined under UCMJ Articles 120, 120a, 120b, and 120c and attempts of such offenses (Article 80) [references (d) and (e)].
- Violations of UCMJ Article 134 (Sexual Harassment) occurring on or after 1 January 2025.

**WHEN NCIS DECLINES TO INVESTIGATE:** NCIS may, at its discretion, decline to conduct or continue any investigation. When NCIS declines to conduct or continue an investigation, they expeditiously inform the affected command. A command may then request assistance from the local base security department or appropriate authority, such as a Criminal Investigative Division, or pursue a command investigation into the allegation of misconduct.

**VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP):** Commanding Officers are responsible for ensuring that victims and witnesses of crimes under military jurisdiction are afforded their rights, as laid out in references (g) and (h) as applicable. In misconduct cases where law enforcement declines to investigate, the command Victim and Witness Assistance Coordinator (VWAC) should provide all victims and witnesses with the information and notices required by reference (i).

## **CRIME REPORTING REQUIREMENTS**

### **REFERENCES:**

- (a) DoDI 5505.11
- (b) 18 U.S.C. § 922(g)
- (c) NAVADMIN 076/18
- (d) NAVADMIN 131/18
- (e) MCBUL 5810
- (f) 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).

**FINGERPRINT CARDS:** References (a),(d), and (e) require criminal information/fingerprint reporting when a DoD law enforcement agency (NCIS, installation security forces, or other military criminal investigators) investigates and, after consultation with a Judge Advocate, makes a probable cause determination that:

- A uniformed service member has committed a UCMJ offense punishable by imprisonment;
- A civilian under DoD law enforcement jurisdiction has committed an offense punishable under the U.S. Code (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 UCMJ (in the case of service members) or the U.S. Code (in the case of dependents, DoD contractors, or DoD employees).

Criminal information/fingerprint reporting is also required when a command conducts an investigation that results in the preferral of court-martial charges. Criminal information/fingerprint reporting is not required when a command investigation results solely in administrative action or non-judicial punishment. DoD law enforcement agencies are responsible for collecting and submitting this information. If a command initiates an investigation without DoD law enforcement involvement, but the investigation either results in the preferral of court-martial charges or involvement of DoD law enforcement, then commands must coordinate with the responsible DoD law enforcement agency to facilitate submission of the required information.

Collection of fingerprints is not required for non-serious offenses such as drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run).

**FINAL INVESTIGATION DISPOSITION:** 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 DoD law enforcement agency of the final disposition of the case within five days.

**COMPLIANCE WITH GUN CONTROL ACT OF 1968:** Reference (b) prohibits the possession of firearms for individuals with certain disqualifying circumstances, such as being an unlawful user of any controlled substance, who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, a fugitive from justice, convicted of a crime of domestic violence, found to be mentally defective, dismissed or dishonorably discharged from the military, an illegal alien, subject to a restraining order, or having renounced their citizenship. Per reference (f), 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.

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

- OPNAV N173A is responsible for reporting information regarding unlawful substance abuse, to include command determinations of unlawful substance abuse, non-judicial punishment results for unlawful substance abuse, and administrative separation board findings of misconduct for unlawful substance abuse. This process does not require NCIS to open an investigation into the Sailor or require the command to obtain the Sailor's biometric data.
- 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 service member has been dismissed or separated under dishonorable conditions.
- 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 indicating unlawful substance abuse and you subsequently punish them at non-judicial punishment, you should ensure that your urinalysis program coordinator and legal officer correctly report that information to OPNAV N173A.

Marine Corps Commanders should speak to their staff judge advocate to ensure appropriate reports are being made to NCIS.

NCIS is ultimately responsible for submitting this information to the FBI. When required, you should provide NCIS with the following demographic data about the service member for reporting purposes: (1) full name; (2) gender; (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 reporting service member.

## **PROCESSING SEXUAL ASSAULT ALLEGATIONS**

### **REFERENCES:**

- (a) DoDI 6495.02 (series)
- (b) DoDD 6495.01
- (c) SECNAVINST 1752.4C
- (d) OPNAVINST 1752.1C
- (e) NAVADMIN 151/22
- (f) OPNAVINST F3100.6K
- (g) NAVADMIN 329/20
- (h) MCO 1752.5C
- (i) SECNAV Safe to Report Memo 29 June 2022
- (j) SECNAV No Wrong Door Memo 24 June 2022
- (k) MCO 5800.16 (series) (LSAM)
- (l) 10 U.S.C. § 1565b
- (m) JAGINST 5810.3 (series)
- (n) Manual for Courts-Martial, Appendix 2.1
- (o) Commander's 30-Day Checklist ([www.sapr.mil](http://www.sapr.mil))

### **GENERAL INFORMATION:**

- Sex-related crimes are found in Articles 120-120c of the UCMJ. The Department of Defense defines "sexual assault" as intentional sexual contact, characterized by use of force, threats, intimidation or abuse of authority, or when such sexual contact is made when the victim does not or cannot consent. It includes UCMJ offenses of rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit these offenses. References (a) through (c) detail specific policies, provide guidance, and identify command responsibilities for handling sexual assault allegations.
- The definition of "sexual assault" used for the Sexual Assault Prevention and Response (SAPR) program mirrors the legal definition under the UCMJ. Other sexual crimes may be charged under different articles of the UCMJ besides sexual assault.

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

Per reference (a), a victim is still eligible to file a restricted report even if they have disclosed their sexual assault to their commander or personnel in their chain of command. This eligibility only exists as long as they did not personally report the sexual assault incident to law enforcement and they did not previously file an unrestricted report by signing a Victim Reporting Preference Statement with a Sexual Assault Response Coordinator or SAPR Victim Advocate for the same sexual assault incident. Regardless of the victim's eligibility to file a restricted report, commanders have all reporting requirements of an unrestricted report once they become aware of the report of sexual assault. The sole exception is that when the alleged offender is non-military, no SITREP is required.

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

Additionally, reference (d) requires OPREP/SITREP reporting of all **unrestricted** reports of sexual assault as personnel incident reports in accordance with reference (f).

- All unrestricted reports of alleged sexual assault will be reported regardless of affiliation, status, or location of the victim or alleged offender.
- The naval command with cognizance over the victim is responsible for forwarding required personnel incident reports. In cases where the victim is an active-duty member of another service not assigned to a naval command, a civilian dependent, or other civilian, the naval command with cognizance over the alleged offender is responsible for forwarding required reports. If neither the victim nor alleged offender is a Navy member, the CO of the installation or activity where the sexual assault occurred is responsible for meeting the reporting requirements.
- 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 FAMILY LAW ISSUES, DOMESTIC VIOLENCE, and FAMILY ADVOCACY PROGRAM].

**USN:** Within eight (8) days of the initial SITREP for an unrestricted report of 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. Reference (g) ended the requirement for a “First Flag” report.

Upon disposition of an unrestricted sexual assault allegation, the commander of the accused must submit the Uniform Command Disposition Report (UCDR) within two (2) business days. If the accused is unknown or a civilian, the victim’s commander is responsible for UCDR submission.

**USMC:** In accordance with reference (h), immediately submit an Operations Event/Incident Report (OPREP-3) Serious Incident Report (SIR), in accordance with reference (k), for all Unrestricted Reports and allegations of sexual assault, to include prior-to-service incidents, incidents involving civilian victims and Marine offenders, and reports converted from Restricted to Unrestricted. A SAPR 8-Day Incident Report shall be provided via SAPR Gear Locker, to the first O-6 and GO in the chain of command and to MF Behavioral Programs. The SAPR 8-Day Incident Report serves as a commander checklist for all initial requirements that shall be completed within the first eight calendar days following an Unrestricted Report of adult sexual assault involving a Service member. Note: A full report shall be completed for victims of sexual assault who are Active Duty and/or Reserve members who have filed an unrestricted report. An abbreviated report shall be prepared by the subject’s immediate command in cases where the victim is an adult non-service member. Reference (h) details a commander’s responsibilities in further detail.

**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, reference (d) requires the victim’s written consent prior to releasing information to anyone other than as required by law or regulation.

**SAFE TO REPORT POLICY:** In accordance with reference (i), no member of the DON may discipline a Service Member victim of an alleged sexual assault for minor collateral misconduct. The term “collateral misconduct” refers to victim misconduct that might be in time, place, or circumstance associated with the victim’s sexual assault incident. The term “discipline” refers to any command action initiated against the victim in response to the alleged collateral misconduct, including but not limited to: letters or other record of counseling or reprimand, imposition of non-judicial punishment under Article 15, UCMJ, preferral of charges, initiation of involuntary administrative separation proceedings, administrative demotion, and remarks in fitness reports or evaluations. Under the Safe to Report policy, commanding officers are responsible for making

the threshold determinations as to whether or not the misconduct is (1) minor and (2) collateral to the sexual assault. Consult with a Staff Judge Advocate in any case involving victim misconduct to discuss whether or not the Safe to Report policy applies in determining whether the misconduct is collateral and minor.

**NO WRONG DOOR POLICY:** In accordance with reference (j), a victim who discloses sexual assault, sexual harassment, or domestic abuse to DON personnel responsible for victim care and support for sexual assault, sexual harassment, or domestic abuse shall receive care and support from that person to the fullest extent practicable and shall not be denied or inappropriately delayed in getting care and support. If the victim cannot receive care and support from that organization because of programmatic eligibility criteria or other reasons, the person the victim contacts shall, with the victim's permission, ensure the victim receives a warm hand-off with the appropriate service provider, as defined above, in accordance with applicable laws and policies regarding confidential or privileged communications.

**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 communications to the victim's command (or other stakeholders) without the victim's permission. Commanders should consider recommendations made by victim advocates on behalf of victims. Victim advocates may make recommendations, such as for a military protective order or that the victim reside in a "safe house" for a short period of time.

**VICTIMS' LEGAL COUNSEL (VLC):** The mission of the VLC program is to provide legal, support to, and advocacy on behalf of, victims of domestic violence and sexual offenses. VLC are judge advocates who form an attorney-client relationship with eligible victims and educate their clients about their reporting options, the military justice process, victim rights, privacy, privileges, and collateral misconduct. VLC also help ensure clients are connected with additional support providers, including medical, mental health, and legal assistance. References (k) through (m) provide additional guidance on a victim's eligibility as determined by victims' counsel, for VLC services, or the local VLC office. When working with VLC, commanders should be aware that:

- Victims may be referred for VLC services at any time and by any entity, or they may seek VLC services directly. A victim is not required to make a report to the SARC or FAP to be eligible for VLC services.
- The attorney-client relationship between the VLC and the victim requires personal and confidential communication. The VLC shall not disclose privileged client communications to the victim's command (or other stakeholders) without the client's permission except in extreme circumstances when necessary to prevent death or bodily injury to any person;
- VLC advocacy may begin at any point in the investigation and disciplinary process following the formation of an attorney-client relationship. VLC advocacy on behalf of the victim is not limited to courts-martial. 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; and
- VLC may provide legal consultation to the victim on a variety of matters, including VWAP; the responsibilities and support by the SARC, UVA, FAP counselor or BA, including any privilege that may exist, the difference between restricted and unrestricted reporting; the potential for civil litigation against other parties, except against the U.S. Government; the military justice system (e.g. the investigative process, judicial milestones, potential outcomes of a case, the roles and responsibilities of the convening

authority, the role of criminal investigative agencies, the potential legal implications of collateral misconduct, the roles and responsibilities of OSTC, the trial counsel, the defense counsel, and investigators, the right to confer with trial counsel, any proceedings which the client may observe, the Government's authority to compel cooperation and testimony, the client's responsibility to testify and other duties to the court); eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services; some personal civil legal matters; understanding the availability of civilian and military protective or restraining orders and obtaining such orders; understanding the eligibility and requirements for, and obtaining any available military and veteran's benefits, and other state and federal victims' compensation programs, or other relevant matters of restitution; reprisal, retaliation, or ostracism, including advice and assistance with filing formal complaints; and other legal assistance as authorized.

- VLC attend monthly Sexual Assault Case Management Group (SACMG) meetings, which serve as an opportunity for commanders and VLC to identify/address victim issues connected with the reported sexual assault.
- VLCs are separate and distinct from prosecuting attorneys and may present different views than the Trial attorneys, Defense attorneys, and/or Staff Judge Advocate.

#### **ADDITIONAL CONSIDERATIONS:**

- Reference (c) authorizes commanders in receipt of an expedited transfer request to consider a temporary reassignment to promote good order of a service member who has filed an Unrestricted Report of sexual assault. A presumption shall be established in favor of transferring a service member following a credible report of sexual assault. The CO, or the appropriate approving authority, shall make a credible report determination at the time the expedited request is made after considering the advice of the supporting judge advocate, or other legal advisor concerned, and discipline within the unit. A good order and discipline transfer is permissible the available evidence based on an MCIO's investigation's information (if available).
- Reassignment may not be used or removal of a Service Member who is alleged to have committed or attempted to commit a sexual assault offense must be taken not as a punitive measure, but solely for the purpose of good order and discipline within member's unit. Commanders may direct a good order and discipline transfer of the alleged offender without an expedited transfer request. This may be appropriate when the alleged offender and reporting victim are in the same command, but it is impractical to move the reporting victim. If considering this course of action, consult with a Staff Judge Advocate.
- When processing and determining how to dispose of any case, including sexual assault allegations, convening authorities should consult the guidance and factors included in reference (n).
- Reference (o) is available as an additional resource for commanders.
- The commander of the victim has the opportunity (but is not required) to provide non-binding input on case disposition to the OSTC for all offenses arising on or after 28 December 2023.

## **COMMANDER RESPONSIBILITIES IN SEXUAL ASSAULT CASES**

### **REFERENCES:**

- (a) DoDI 6495.02
- (b) SECDEF Memo 20 Apr 2012
- (c) SECNAVINST 1752.4C
- (d) OPNAVINST 1752.1C
- (e) MCO 1752.5
- (f) MCO 5800.16 (series) (LSAM), Vol 16
- (g) MARADMIN 372-12
- (h) RCM 201, 306
- (i) Commander's 30-Day Checklist (www.sapr.mil)
- (j) DD Form 2701
- (k) MILPERSMAN 1070-360
- (l) MILPERSMAN 1300-1205
- (m) MILPERSMAN 1300-1200
- (n) MILPERSMAN 1910-704
- (o) DoDI 1332.14
- (p) RCM 306A
- (q) NAVMC 1752.5
- (r) MCO 1300.8 CH 1
- (s) MCO 1900.16 CH 2

**SA-IDA:** The Sexual Assault Initial Disposition Authority (SA-IDA) is the first O-6 Special Court-Martial Convening Authority (or higher convening authority) in the chain of command for initial disposition of sex-related offenses, including attempt [see references (a) through (f)]. For the Navy only, a "sex-related offense" is defined as any allegation arising under Articles 120(a) or (b), or 125, UCMJ, including attempts thereof, for an act that occurred prior to 1 January 2019; or any allegation arising under Articles 120, 120b, 120c, or 130, including any attempt thereof under Article 80, UCMJ, for an act that occurred on or after 1 January 2019.

**SA-IDA Policy for OSTC Cases:** For cases arising on or after 28 December 2023, the OSTC will be responsible for making the initial disposition decision on allegations of sexual assault (among others) in accordance with reference (p) and JAGMAN 0128b(1). Additionally, until the Secretary of Defense (SECDEF) rescinds its 2012 memo, for any offense over which an STC has exercised authority and has deferred, the authority to make the initial disposition of sex-related offenses is still withheld to the SA-IDA

**SA-IDA POLICY for Non-OSTC Cases:** Per SECDEF and Navy policy, any unrestricted report of a sex-related offense occurring on or before 27 December 2023 shall be referred to the SA-IDA.

**USMC POLICY:** The USMC policy requires all crimes under Articles 120, 120b, 125 (for forcible sodomy offenses allegedly committed prior to 1 January 2019), or attempts to commit any of these offenses in violation of Article 80, to be elevated to the SA-IDA [see references (e) through (g)]. Per reference (f), **victim collateral misconduct** will be referred to the SA-IDA in the **victim's chain of command**.

**SA-IDA RESPONSIBILITIES:** The SA-IDA disposes of a deferred case pursuant to reference (h). [For the USMC, further guidance is in Volume 16, Section 0502 of reference (f)]. Prior to making any disposition decision, the SA-IDA must consult with a staff judge advocate. 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.

- **Administrative action:** The SA-IDA must decide whether to direct administrative separation proceedings, if appropriate.
- **Forward for disposition:** 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 (g). In the USMC, the SA-IDA cannot forward a case to a subordinate command for disposition [see reference (f)].

**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:** Regardless of 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 (i).

- **Military Protective Orders (MPOs):** Issuance of an MPO is the responsibility of accused's CO. COs must consult with a staff judge advocate and are encouraged to 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 their VWAP rights under Department of Defense policy and as enumerated in reference (j).
- **Investigations:** Ensure that NCIS is immediately notified upon receipt of an unrestricted report of sexual assault. **Do not** initiate a command investigation.
- Ensure that the OSTC is promptly notified upon receipt of a report of a covered offense.
- Ensure the victim's safety, as well as access to SAPR, legal, and medical resources.
- Ensure the accused's safety; ensure the accused's due process rights are not violated and 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.
- 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 and obtain training from a judge advocate on Military Rule of Evidence 514 privilege, retaliation, sexual-assault initial disposition authority, and case disposition reporting requirements [see reference (a)].
- Reference (h) requires commands to 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 references (l) or (q), as applicable, expedited transfers are available for victims of alleged violations of UCMJ articles 117a, 120, 120c, and 134 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 five calendar days to determine whether the mission can support the request. Factors to consider when making this decision can be found in references (a), (c), (l), and (p).

- **USN:** Per reference (l), 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 (q), 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.

**SAFETY TRANSFER: In the USN,** per reference (l), 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.

In the USMC, safety transfers are handled per reference (r).

**NOTE:** Upon receipt of an expedited transfer or safety transfer request, always consult with your staff judge advocate, RLSO, or Law Center as soon as possible.

**OTHER CONSIDERATIONS:**

- All court-martial convictions for rape or sexual assault in violation of Article 120, rape of a child or sexual assault of a child in violation of Article 120b, and attempt or conspiracy to commit any of these offenses will result in a mandatory dismissal for officers and a dishonorable discharge for enlisted personnel [see UCMJ, Art. 56]. Further, per reference (h), charges for these offenses may only be referred to a general court-martial and may not be disposed of at any lesser court-martial forum.
- Per references (n), (o), and (s), the involuntary separation of a service member victim within 1 year of final disposition of a reported sexual assault requires review by a flag or general officer exercising general court-martial convening authority.

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

### **REFERENCES:**

- (a) Military Rule of Evidence (MRE) 301
- (b) MRE 304-305
- (c) Uniform Code of Military Justice (UCMJ) Art. 31(b)
- (d) JAGINST 5800.7 (series) (JAGMAN), Appendix A-1-o

**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.

**ARTICLE 31(b) RIGHTS:** Reference (b) requires reading 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 questions or make statements that are likely to evoke an incriminating response. Failure to provide these rights may result in exclusion of evidence at court-martial under reference (a).

- Article 31(b) rights contained on the form in reference (d) should be read in their entirety before any questioning, however informal the questioning, including during NJP proceedings. Do not ask the service member any questions unless the service member has affirmatively waived the right to remain silent and the right to counsel in writing.
- Article 31(b) rights waivers must be made freely, knowingly, voluntarily, and intelligently. It is critical to ensure the service member understands the consequences of waiving rights.
- If the service member opts to remain silent or requests counsel, the questioning **MUST** end, **even if the service member previously waived their right to remain silent and answered questions.**

**PRIOR QUESTIONING WITHOUT RIGHTS WARNING:** Provide a “cleansing warning” if the service member was previously questioned without receiving 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) even though the service member made the earlier statement, they can still choose to remain silent and request counsel. Finally, (3) fully advise the member of their rights using reference (d). Record any waiver of those rights in writing.

**NEW OFFENSES:** If, during a conversation or questioning of a service member regarding one or more suspected offenses, the questioner suspects that the service member has committed a new or different offense from the one(s) originally suspected, the questioner must stop the questioning immediately and complete a new rights warning form inclusive of the new or different offense(s).

**NON-JUDICIAL PUNISHMENT (NJP):** At mast/office hours, service members have the right to remain silent, and the right to consult an attorney beforehand, but do not have a right to be represented by an attorney during mast. If it is reasonably foreseeable that an accused will make an admission that warrants court-martial punishment, the CO should consult with the cognizant staff judge advocate to protect the admissibility of such confessions in court.

**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 their rights. Do not 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.

**PROMISE OF LENIENCY:** Only a General Court-Martial Convening Authority or the OSTC has the authority to grant immunity or leniency in exchange for testimony. Do not promise a service member that what they says against their interests will not be used against him/her.

## **SEARCH AND SEIZURE**

### **REFERENCES:**

- (a) MRE 311-316
- (b) RCM 309, 703
- (c) MILPERSMAN 1620-010
- (d) SECNAVINST 5430.107
- (e) JAGINST 5800.7 (series) (JAGMAN), Appendix A-1
- (f) JAGINST 5800.7 (series) (JAGMAN), 0132a
- (g) MCO 5800.16 (series)

### **THE CO OR OFFICER IN CHARGE (OIC) AUTHORIZING A SEARCH MUST BE NEUTRAL:**

If the CO or OIC over the suspected service member was the victim of the alleged offense, they must refer any search authorization request up 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 using reference (e). Consent must be voluntarily obtained, meaning the owner must be informed of the right to refuse. Consent can be limited or withdrawn at any time.

**NON-DELEGABLE AUTHORITY:** Only a CO (or OIC (seek SJA advice)) can issue a search authorization, and it must be based on their own determination of probable cause. No one else in the chain of command can act for the CO or OIC unless they are officially designated as “acting” CO (or OIC). **NOTE:** Marine OICs generally do not have authority to issue search authorizations [see Volume 16, Paragraph 090801 of reference (g)].

**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 a reasonable belief 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. Commanders may not “rubber stamp” another’s probable cause determination.

**INVESTIGATIVE SUBPOENAS:** 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 their command.
- **ON-BASE PROPERTY:** With probable cause, a CO (or OIC) can authorize the search or seizure of any property under their 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. There are areas of concurrent authority (e.g. barracks). Generally, the authority who maintains physical control over the place to be searched is the clearest authority to issue an authorization. For the barracks example, it would be the installation CO even though another CO may have authority over the subordinates who inhabit the barracks.
- **OFF-BASE PROPERTY IN THE U.S.:** CO (or OIC) may not authorize a search of off-base property in the United States. CO (or OIC) must work with NCIS to obtain civilian

authority to conduct an off-base search (Note: CO or OIC may have jurisdiction to authorize a search in Public/Private Venture Housing; consult with installation staff judge advocate via your staff judge advocate).

- OFF-BASE PROPERTY OUTSIDE THE U.S.: Some Status of Forces Agreements allow and some limit or prohibit off-base search authorizations. Consult with your staff judge advocate for overseas search authorizations.

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

- The primary purpose of an inspection must be a valid military purpose, to include: (1) security; (2) military fitness; (3) good order and discipline; or (4) readiness.
- Factors the military judge will consider in evaluating whether to suppress evidence from an “inspection” that was really 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.

**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 or a space with a reasonable expectation of privacy. The CO (or OIC) must still decide whether probable cause exists and whether to issue a search authorization.

**USE OF FORMS:** Search authorization forms are found at reference (e). Anyone providing information to support the request to search should be sworn and under oath. 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:**

- Use Appendix C – Commanding Officer Search and Seizure Checklist – as a guide.
- 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 without consulting your SJA (e.g. if the safety concerns outweigh prosecution).
- 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, 705, 1003, 1107, 1301-1306
- (b) UCMJ, Articles 16, 18-20, 22-25, 29
- (c) JAGINST 5800.7 (series) (JAGMAN), Chapter I
- (d) JAGNOTE 5811

### **TYPES OF COURTS-MARTIAL**

**Courts-martial are convened by a convening authority (CA). Whether a commander (or OIC) is a convening authority depends on the rank, billet, and whether that authority has been granted. Your cognizant staff judge advocate can advise you whether your position has court-martial convening authority.**

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

- COs and USN OICs have authority to convene SCMs and are the convening authority (CA).
- Convening authorities may not serve as a summary court-martial officer in cases they convened.
- 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) and trial counsel (TC).
- The accused at a summary court-martial has the right to be represented by military defense counsel. Upon request, detailing authorities shall detail defense counsel to summary courts-martial. 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 SCM are limited. [See Manual for Courts Martial (MCM) and reference (a), R.C.M. 1301(d)].
- The CA takes final action on the findings and punishment awarded.
- The Military Rules of Evidence apply at a SCM.
- See Manual for Courts-Martial, Appendix 8 for the Guide for Summary Courts-Martial.
- A finding of guilty at SCM is not considered a federal criminal conviction.

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

- Some COs may convene SPCMs. COs may convene SPCMs (after consulting with their SJA and local trial counsel), but may not refer covered offenses to SPCMs. Only the OSTC may refer covered offenses, or known or related offenses over which they are exercising exclusive authority, to a SPCM (with the exception of certain offenses under reference (a), RCM 201).
- Full criminal trial for officers and enlisted personnel.
- Consists of a MJ, and, if elected by the accused, four members (jurors), a trial counsel (TC) (prosecutor), a defense counsel (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 include a maximum of 12 months confinement; a maximum of 2/3 forfeitures of pay for 12 months; a bad conduct discharge.
- Only the CA or STC may approve plea agreements.
- The CA takes action on the findings and sentence after the clemency period has expired.
- 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 month's confinement, forfeitures of up to two-thirds pay per month for a maximum of six months, 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 an 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). This type of court-martial offers less punishment but much swifter resolution of the charges than a regular SPCM.

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

- Uniform Code of Military Justice (UCMJ) Article 32 preliminary hearing is required before any charges are referred to GCM. A CO or STC may order an Article 32 preliminary hearing (after consulting with their SJA and local trial counsel).
  - A victim, whether civilian or military, has the right, but may not be required, to testify at the hearing.
  - The Article 32 preliminary hearing officer (PHO) must be senior in rank to the TC and DC and must be a judge advocate who meets the requirements of reference (d), except in extraordinary circumstances.
- Only flag or general officers (and specifically designated non-flag/general officers who are COs (e.g. installation commanders) may convene a GCM [see section 0120 of reference (c)], but may not refer covered offenses to GCMs. Only the OSTC may refer covered offenses, or known or related offenses over which they are exercising exclusive authority, to a GCM.
- GCMs involve a Military Judge, eight members for noncapital offenses (12 for capital offenses) (if the accused elects a members trial), TC, DC (may include detailed military counsel, individual military counsel (IMC), and/or civilian counsel; civilian counsel is at the expense of the accused). A VLC may be present, but is not a party to the court-martial.
- GCMs have the authority to issue the maximum punishment listed for any UCMJ offense.

**DUTIES OF THE CONVENING AUTHORITY:** GCMCAs may approve investigative subpoenas (for documents only) upon application by TC or a law enforcement agent prior to referral. GCMCAs may approve plea agreements in cases that do not involve covered offenses. GCMCAs take action on findings and sentences after the clemency period

**MECHANICS OF CONVENING A COURT-MARTIAL:** 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 referral authority (OSTC or CA) signs the charge sheet referring the charges to the court-martial. A convening order contains:

- 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.
- 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. The CA may **not** consider a member's race or sex when determining "best qualified" even if the CA intends the consideration to be in favor of the accused.
- 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.
- If the accused is enlisted and elects to be tried by a panel with enlisted representation, two-thirds of the panel must be enlisted personnel.

- See references (a) and (b) for the required number of members based on the type of court-martial

**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.

*[See Appendix D – Disposition of an Offense Committed on or After 28 December 2023]*

## **COMMAND INFLUENCE**

### **REFERENCES:**

- (a) UCMJ Art. 37
- (b) RCM 104, Manual for Courts-Martial (2024 Ed.), as amended by EO 14130

*See: Appendix E: Command Influence Primer*

**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 also 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. This obligation continues even for cases under the exclusive authority of the OSTC.

### **FRAMEWORK:**

- To determine whether you as a commander are not improperly 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:**

KEY: Subordinate commanders must make independent disposition decisions

- 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.

### **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" and may result in dismissal of the charges against the accused (regardless of the severity of the charged offense(s)).
- 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, disinterested, and 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 (e.g. "ALL DUIs will result in referral to court-martial"). This interferes with a court-martial's independent sentencing determination. This interferes with a subordinate commander's ability to make an independent decision on the disposition of the case.
- 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, and could constitute "substituting" their discretion with the superior convening authority's discretion.
- MAY NOT publicly comment on the character of the accused or victim. This interferes with the province of the court-martial in fairly deciding the case based on the facts in evidence.
- 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 (PTR)/ CONFINEMENT (PTC)**

### **REFERENCES:**

- (a) RCM 304, 305, 707
- (b) UCMJ, Articles 10, 13
- (c) JAGINST 5800.7 (series) (JAGMAN), Section 0127

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

- Conditions on liberty (e.g., orders to report periodically to specified officials or 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.

### **AUTHORITY TO ORDER PTR**

- Who:
  - Only the CO may order PTR of an officer.
  - 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 their 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; and
    - The restraint ordered is required by the circumstances;
  - PTC Only Requirements:
    - 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/PTC decisions must be made on a case-by-case basis. The least severe form of PTR/PTC necessary under the circumstances should be used. PTR/PTC may not be used for offenses that are intended to be handled by NJP or as a holdover during liberty periods (e.g. restriction before a 96 so the misconduct can be dealt with following the 96). PTR/PTC is appropriate only when the command intends to try the accused by general or special court-martial.

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

**PTR/PTC (EXCLUDING CONDITIONS ON LIBERTY) STARTS SPEEDY TRIAL CLOCKS: All accused have various rights guaranteeing speedy trial (Constitution, RCM, UCMJ).** When a service member is put in PTR/PTC, the constitutional and statutory speedy trial clocks begin, necessitating swift action to ensure arraignment happens as quickly as possible. Failure to arraign the service member within the limit of the speedy trial clock may result in dismissal of the case with prejudice by the military judge, thus ending the court-martial proceeding and preventing all future proceedings on the alleged offense(s). 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/PTC. Immediately notify the local OSTC/USN Region Legal Service Office/USMC Law Center when a service member is placed in PTR/PTC 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/PTC. Article 10 does not include a specific timeline like RCM 707 but instead requires the government to act with reasonable diligence in bringing the charges to trial. The Trial Counsel responsible for the case should be able to explain any gaps in the progression of the case toward trial. Prior to Trial Counsel involvement,

the command is responsible for the case and should be able to explain what steps it took to bring the charges to trial.

**SUICIDAL OR INTOXICATED PRISONERS:** PTC may not be appropriate when a service member is suicidal or intoxicated, and briggs may 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/PTC. Consult your staff judge advocate.

**DOCUMENTING CO APPROVAL OF PTC:** When PTC is imposed, the CO must be notified within 24 hours. Within 48 hours, a neutral and detached official, usually the CO, must review the adequacy of the probable cause to believe that the confinee has committed an offense which necessitates pretrial confinement. This determination need not be in writing but putting it in a written memorandum (referred to as a "48-hour letter") is a best practice (if written in a memorandum, this satisfies the 72-hour requirement (see below)). 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, unless a 48-hour letter was already written. Only the CO can keep someone in PTC after the 72 hour mark, and only the CO can issue the 48/72 hour memorandum. 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. It is important that the memo state the facts and reasons supporting continued PTC in the particular case (e.g. not a boilerplate template). If the IRO is not a military judge, the accused will have the opportunity to challenge the IRO decision with a military judge, and the military judge will scrutinize the basis of the decision by the IRO, including the memo.

**EXCEPTIONS AT SEA:** The 48 and 72-hour documents described above do not apply in the case of a person on board a vessel at sea. See RCM 305(n). In these situations, confinement on board the vessel at sea may continue only until the person can be transferred to a facility onshore as permitted by operational requirements and mission of the vessel. Upon transfer, the 72-hour memorandum shall be transmitted to the reviewing officer along with an explanation of any delay in the transfer. The commander must make the pre-trial confinement decision as soon as reasonably possible given the circumstances. ***This limited exception of RCM 305(n) has no effect on Article 10 and RCM 707 speedy trial provisions, which are independent; thus, the speedy-trial clock continues to run with a service member in PTR/PTC at sea.***

**COMMAND REPRESENTATIVE AT IRO HEARING:** Normally, within seven days of confinement, an IRO will conduct a hearing to review the reasons for continued confinement. The command shall send a representative to the hearing.

**COMMAND VISITS:** 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.

**TRANSPORT:** It is solely the command's responsibility to ensure the accused is transported to and from the brig for court appearances (in the **proper uniform**), meetings with defense counsel, and other appointments as necessary. This will generally require two members of the command (brig chasers) who have been properly trained and certified to transport confinees. Your local brig will have more information about brig chasers.

**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 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.

## **PLEA AGREEMENTS**

### **REFERENCES:**

- (a) RCM 705
- (b) JAGINST 5800.7 (series) (JAGMAN), Section 0137
- (c) Manual for Courts-Martial, 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. 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).

**APPROVAL OF PLEA AGREEMENTS:** Plea agreements are written agreements between the Convening Authority (CA) and the accused. In cases where the OSTC is exercising exclusive authority, plea agreements are made between the OSTC and the accused. Trial counsel (TC), Victim's Legal Counsel (VLC) (if applicable), and the staff judge advocate (SJA) for the CA may make recommendations when the CA approves the agreement.

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

- The accused may agree to:
  - Plead guilty to all or some charges
  - 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
  - Pay restitution
  - Testify against others
  - Conform behavior as conditions of any form of leniency
  - Waive the rights to an administrative separation board after trial
  - A particular forum for court-martial (*e.g.* special or general)
- The CA may agree to:
  - Protect the accused from a portion of the adjudged sentence
  - Dismiss or reduce certain charges
  - Protect the accused from potential automatic sentencing provisions
  - **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." Another common example include a CA who is not the separation authority agreeing to certain types of separation guarantees.

**PLEA AGREEMENT NEGOTIATION PROCEDURES:** Negotiations may originate with the defense counsel (DC), TC, STC, SJA, or the CA. If the CA is the approver of the plea agreement, 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.

- In cases where the OSTC is the approver, the OSTC will solicit non-binding input regarding disposition from the commander of both the accused and alleged victim.
- The plea agreement must contain all aspects of the agreement. Under-the-table agreements, or any understanding between the parties not explicitly contained in the agreement, may render the entire written plea agreement invalid and are nonetheless not enforceable.
- 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.
- Stipulations of fact are generally negotiated and signed by the TC.  
An accused's offer to enter into a plea agreement or statements made during plea negotiations generally may not be used against the accused pursuant to Military Rule of Evidence 410. In other words, even if an accused admitted to all misconduct as part of the plea negotiations, the admission could not be used against the accused if negotiations fell through and the case went to trial.

#### **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 or sentence are set aside by a court of appeals.
- The CA **may not** withdraw from a plea agreement negotiated and approved by the OSTC.
- The accused may generally withdraw from the plea agreement at any time with limited exceptions.

## **POST-TRIAL REVIEW**

### **REFERENCES:**

- (a) RCM 1101, 1103, 1106, 1106A, 1109, 1110-1112
- (b) UCMJ, Articles 57, 58, 58a, 58b, 60, 60a, 60b, 60c
- (c) JAGINST 5800.7 (series) (JAGMAN), Sections 0151, 0152, 0153, 0154
- (d) JAG/CNLSCINST 5814.1B
- (e) NAVADMIN 244/14
- (f) MILPERSMAN 1306-130
- (g) MCO 5800.16 - V16

**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 reference (d) (Note: Chapter 17 of reference (f) applies reference (d) to the USMC and provides additional guidance to USMC commanders)]. Please consult the Convening Authority's Action Checklist in enclosure (4) of references (d) and (e).

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

- Per references (e) and (f), PCS orders are required for service members sentenced by a court-martial which includes 30 days or more of confinement to be served, or any sentence which 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. 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 references (e) and (f) and contact CNPC for orders to confinement. Do NOT place the member in a leave status.

**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, but has not been affected by the establishment of the OSTC. Consult your 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 cases 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, they need to provide a written explanation for doing so.
- For cases in which the earliest offense occurred on or 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.

#### **CA ACTION LIMITATIONS FOR OFFENSES OCCURRING ON OR AFTER 1 JANUARY 2019:**

- 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 effect 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.
- 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 effect 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.
- For offenses occurring on or after 1 January 2019, 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.

**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 Law Center, authenticated by the trial counsel and military judge, and served on the accused and their 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. The CA must consider the official record, matters submitted by the accused/defense counsel and the victim, 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)] (Remember: the command is responsible for transport of the accused from court to the brig when the accused is sentenced to confinement.). 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 or on or after 28 July 2023), the service member will automatically be reduced to the paygrade of E-1 on the date of the CA's Action. Reduction to the lowest pay grade is not authorized when the sentence, as approved by the convening authority, is based only on convictions for offenses committed on or after 1 January 2019 and before 28 July 2023.
  - **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 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.

*[See Appendix D – Disposition of an Offense Committed on or After 28 December 2023]*

## **VICTIM/WITNESS ISSUES**

### **REFERENCES:**

- (a) DoDI 1030.02
- (b) SECNAVINST 5800.11 (series)
- (c) OPNAVINST 5800.7 (series)
- (d) SECNAVINST 1752.4 (series)
- (e) OPNAVINST 1752.1 (series)
- (f) MCO P5800.16 (series)
- (g) MCO 5300.17 (series)
- (h) MCO 1752.5 (series)
- (i) DoDI 1342.24 (series)
- (j) DoDI 6400.01
- (k) OPNAVINST 3100.6 (series)
- (l) SECDEF Memo 14 Aug 2013
- (m) MARADMIN 583/13
- (n) OPNAVINST 1750.3A
- (o) JAGINST 5810.3 (series)
- (p) NAVADMIN 102/19
- (q) MCO 5800.16 (series) (LSAM)
- (r) 10 U.S.C. § 1565b

### **DEFINITIONS:**

- Victim: Any individual 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 (VWAC):** 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. VWAC is an inspectable item.

**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)]. VWAC is required to keep a record of these rights advisements and report annually.

**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 (i)].

**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 stages 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), and (c)].

**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 (i) and FAMILY LAW ISSUES, 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 (h) and (m)]. To ensure that dependents are eligible for TCAD in all appropriate cases, commands must ensure they process service members for ALL known reasons for separation (e.g., if a service member is an alcohol treatment failure as a result of spousal abuse while intoxicated, the command must process the service member for both alcohol treatment failure AND the commission of a serious offense for the abuse itself). 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. If the service member's separation is not directly a result of the dependent abuse, but related to that abuse in some way, the dependents may still be eligible to apply for an exceptional TCAD request to the Secretary of the Navy. 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 Law Centers 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;
- Referral to resources for 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).

**VICTIMS' LEGAL COUNSEL (VLC):** The mission of the VLC is to provide legal support to, and advocacy on behalf of, victims of domestic violence and sexual offenses. VLC are judge advocates who form an attorney-client relationship with eligible victims and educate their clients about their reporting options, the military justice process, victim rights, privacy, privileges, and collateral misconduct. VLC also help ensure clients are connected with additional support providers,

including medical, mental health, and legal assistance. References (q) through (s) provide additional guidance on a victim's eligibility, as determined by victims' counsel, for VLC services. It is never wrong to provide VLC contact information.

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

### **REFERENCES:**

- (a) OPNAVINST 1752.1C
- (b) DoDI 6400.06
- (c) OPNAVINST 1752.2C
- (d) NAVADMIN 252/19
- (e) MARADMIN 216/20
- (f) MCO 1752.5C

**AUTHORITY:** Military commanders will use DD Form 2873 to issue an MPO to service members attached to his or her command when necessary to safeguard victims, quell a disturbance, or maintain good order and discipline, giving the victim time, if they chooses, to pursue a protection order through a civilian court. See references (a) - (f). An MPO may prohibit active-duty service members from having 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 (MOU) between the two entities to do so. Reference (b) provides guidance for such an MOU. While an MPO is administrative in nature, it is a direct order and violations can result in charges under the UCMJ. Commanding Officers should consult their staff judge advocate prior to issuing or terminating an MPO. It is important to understand that MPOs are not internal to the Navy or Marine Corps and that MPOs can impact an individual's background check (MPOs are reported to the National Crime Information Center (see below)). This includes background checks for employment, volunteer activities, or purchasing a weapon. While victim safety is paramount, commanders are strongly encouraged to consult with NCIS before issuing an MPO to ensure the MPO does not compromise an ongoing investigation by alerting a suspect that they are under investigation.

**ISSUING A MPO:** The commander will consult with their staff judge advocate 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. References (c) and (e), as applicable, provide 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 an 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.

**NO CONTACT ORDER:** In the alternative to an MPO, commanders may issue no contact orders to service members attached to their command when necessary to ensure good order and discipline in cases not involving serious misconduct.

- Appropriate when **safety is not a concern** but there are reasons to keep witnesses separated (e.g. protect their testimony from influence, preserve good order and discipline, etc.).
- No registration requirements.
- No particular format necessary.
- Should include logical expiration date.
- These are lawful orders, violations of which can be prosecuted under UCMJ Article 90 or 92 (orders violation).

**CIVILIAN PROTECTIVE ORDER:** Victims desiring protection off base should seek a civilian protective order (CPO), also known as a restraining order, and should be referred to their local Legal Assistance office. Per references (a)-(e), as applicable, 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 INSTALLATION COMMANDER AND NCIS:** Per reference (d), commanders shall report MPOs to the installation commander 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 (e.g., NCIS) 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 NON-JUDICIAL  
PUNISHMENT**

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

**REFERENCES:**

- (a) RCM 305, 306
- (b) JAGINST 5800.7 (series) (JAGMAN), Sections 0102-0105
- (c) BUPERSINST 1610.10G
- (d) MILPERSMAN 1611-020
- (e) UCMJ, Article 138
- (f) U.S. Navy Regulations Article 1150
- (g) MCO 1610.7B
- (h) SECNAVINST 5510.30C
- (i) BUPERSINST 1430.16G CH-1
- (j) MILPERSMAN 1616-010
- (k) MCO P1400.32D W/CH 1-2
- (l) MILPERSMAN 1450-010
- (m) SECNAVINST 1920.6 (series)
- (n) MILPERSMAN 1900
- (o) MCO 1900.16 CH 2 (MARCORSEPMAN)

**OPTIONS:** Disposition options include non-punitive measures outlined below, as well as non-judicial punishment (NJP) and court-martial.

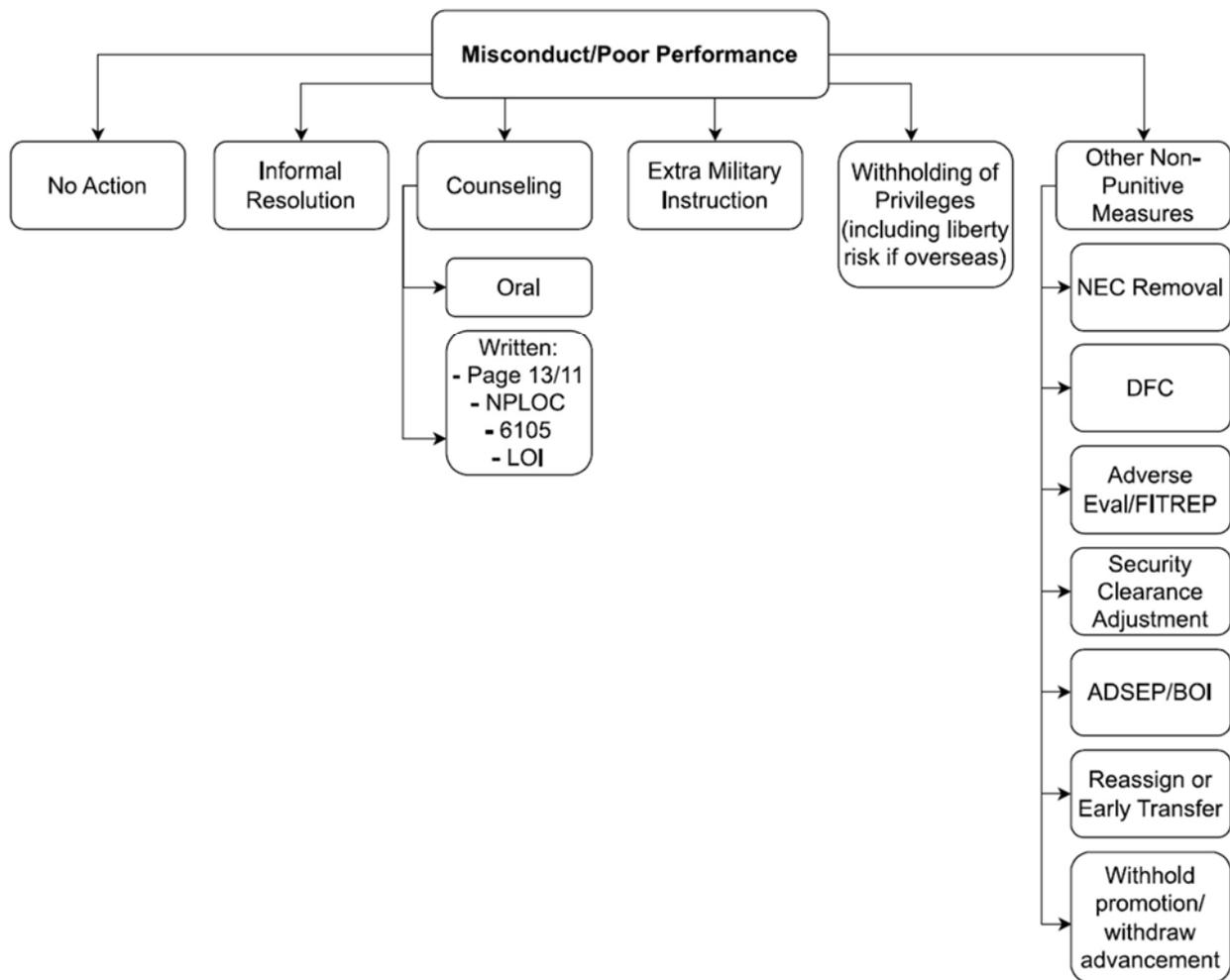


Figure 1: Non-punitive Measures to Correct or Document Misconduct or Substandard Performance

**APPROPRIATE ACTION IN EVERY CASE:** Each commander has the discretion to dispose of offenses by members of that command, unless limited by the Office of Special Trial Counsel (OSTC). OSTC maintains exclusive authority over covered offenses and while that authority is exercised, the commander is prohibited from taking actions on the case, such as NJP or administrative separation. 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 in this section, as well as non-judicial punishment and court-martial.

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

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

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

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

- Nonpunitive censure may be oral or in writing.
- A nonpunitive letter of caution (NPLOC) is not a 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 only as a rebuttal to a service member's claim he or she was inadequately counseled or otherwise unaware of his or her deficiencies.
- Disclosure of NPLOCs may be permitted in cases of senior officials when the public interest in disclosure outweighs the official's privacy interest. Such disclosure should only be made after consultation with a staff judge advocate and public affairs officer.

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

- Written guidance 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.

**LAWFUL WAYS TO DENY NORMAL LIBERTY** [reference (b), section 0104]: Deprivation of normal liberty is illegal unless it is awarded as part of non-judicial punishment, adjudged by a court-martial, or under the following circumstances that are non-punitive in nature:

- Extra Military Instruction (EMI)
- Liberty risk (only applicable in foreign nations)
- Extension of working hours for mission-essential requirements
- Limited health/safety reasons
- Pretrial restraint in anticipation of court-martial in accordance with reference RCM 304/305

**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 religious day of observance.
- While EMI during normal working hours can be issued by any superior authority, EMI outside working hours may only be authorized by commanders/COs or OICs.
- Delegation of authority to issue EMI after working hours must be in writing.
- Ensure there is a mechanism in place for commanders/COs/OICs to know which service members are receiving EMI, and for how long EMI has been assigned.

**WITHHOLDING OF PRIVILEGES** [reference (b), section 0104]: 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 withhold the privilege. Privileges that may be withheld include but are not limited to: special liberty, exchange of duty, base driving privileges, access to base clubs or package stores, and installation or ship movies.

**VOLUNTARY RESTRAINT:** Voluntary restraint, "house arrest," or "confinement to quarters" is never authorized unless part of a lawful punishment at NJP or court-martial, 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 (e)
- Complaint against any superior other than the CO pursuant to reference (f)
- Congressional inquiry
- Inspector General complaint

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

**RESERVE NOTE:** The liberty guidance provided above applies to reservists on active duty. Reservists in a drilling status do not have liberty. Accordingly, liberty may not be denied to a reservist in a drilling status. A drilling reservist cannot be lawfully required to work beyond the normal four-hour drilling period, nor can their liberty between drilling periods be restricted.

**OTHER NONPUNITIVE MEASURES:**

- Use of evaluations and fitness reports to document misconduct or deficient behavior or performance [references (c) and (g)]
- Security clearance adjustments or withdrawal [reference (h)]
- Withholding or withdrawing an advancement/promotion recommendation [reference (i)]
- Reassignment/early transfer/delay of transfer
- Relief from duties/command (consult with a judge advocate before relief of a CO, XO, or CMC as there are specific reporting procedures that must be followed prior to relief)
- Detachment for cause [references (d) and (j)]
- Competency Review Board (USMC)/reduction in rate for incompetence (USN) [references (k) and (l)]
- Administrative separation [reference (m) through (o)]

## **NON-JUDICIAL PUNISHMENT BASICS**

### **REFERENCES:**

- (a) UCMJ, Article 15
- (b) MCM, Part V
- (c) JAGINST 5800.7 (series) (JAGMAN), Sections 0106-0108
- (d) U.S. Navy Regulations, Article 0722

**AUTHORITY:** Only a CO or an OIC [references (a) - (c)] over the accused has the authority to award non-judicial punishment (NJP). NJP may be awarded to members assigned or attached to 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 (e.g., the CO of an embarked aviation squadron must give right of first refusal for NJP to CO of the aircraft carrier). As a default, the ship CO has NJP authority over all embarked personnel aboard the ship. The ship CO may delegate their authority to the COs of embarked units, but absent such a delegation, the ship CO retains NJP authority. For example, Marine Expeditionary Units and Carrier Air Wings are usually considered embarked units. However, if a unit is only aboard the ship for transportation purposes and is not attached to or officially embarked on the ship, the unit CO maintains NJP authority over their 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 officers at the command as NJP authorities for their respective service 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), as appropriate, in accordance with references (c) and (d).

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

- **GENERAL GUIDANCE:** NJP is intended for minor offenses. Determining whether an offense is minor is within 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 sentenced at a court-martial. If such a punishment is not authorized for the offense at court-martial, then the offense is generally considered minor. However, this is merely a guiding principle and not a hard rule for categorization of offenses. Staff Judge Advocates 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 non-minor offense by NJP will not bar a subsequent court-martial for the same offense, but the accused will receive credit for any NJP punishment against any ultimate court-martial sentence. In such cases, the military judge has discretion whether an offense is minor or not.
- **PRIOR CIVILIAN ACTION** [reference (c), section 0108]:

- A prior federal court trial concluded on the merits (acquittal or conviction), or a pre-trial 'diversion' action bars the awarding of NJP or convening of a court-martial for the same offense.
- A prior state, local, or foreign court trial 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, as appropriate, typically via the 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, the local staff judge advocate, and NCIS should be consulted in these instances.

**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 learned of the offense. The accused may waive this statute of limitations, e.g., in an agreement for the accused to accept NJP instead facing a potential court-martial.

**RESERVE NOTE:** Reservists are subject to UCMJ jurisdiction if they commit offenses while on active duty or in a drilling status. For misconduct occurring 1 January 2019 or later, jurisdiction now includes travel to and from drilling sites, between drilling intervals on the same day, and between drilling intervals on consecutive days. The guidance provided in this section regarding a CO's NJP authority and discretion also applies to reserve COs (as defined in reference (c)) 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 their right to be present at the NJP (the waiver should be in writing), and the CO 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. Arrest in quarters may not be awarded to reservists during IDT.
- Fines awarded to reservists permanently assigned to inactive duty shall be based upon the total amount subject to forfeiture at the time the NJP is adjudged.
- A CO can request that the GCMCA involuntarily recall the accused to active duty or IDT for the purpose of awarding NJP.

## **NON-JUDICIAL PUNISHMENT PROCEDURES AND PROCEEDINGS**

### **REFERENCES:**

- (a) UCMJ, Article 15
- (b) MCM, Part V
- (c) JAGINST 5800.7 (series) (JAGMAN), Sections 0108-0116
- (d) ALNAV 091/23
- (e) MCO 5800.16 (series) (LSAM)
- (f) MARADMIN 427/23
- (g) MILPERSMAN 1626-020
- (h) MILPERSMAN 1616-050
- (i) MILPERSMAN 1616-040
- (j) MILPERSMAN 1611-010

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

[USN ONLY]: DRB and XOI are investigative, leadership tools. They are not required and cannot determine guilt nor impose punishment. In the case of an enlisted accused, senior enlisted leadership often use DRB to determine disciplinary recommendations to the Executive Officer (XO), who then conducts XOI. The XO then dismisses the charges or forwards them to the CO with a recommendation for NJP pursuant to references (a)–(c). An accused service member maintains the right to remain silent at these proceedings, but may **not** refuse to attend.

[See *Appendix F – Executive Officer Inquiry Guide*]

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

- Service members have the right to refuse NJP unless they are attached to or embarked on an “operational vessel.” References (c) and (d) define an operational vessel as one that is:
  - not in Maintenance and Modernization Phase, per the Optimized Fleet Response Plan (OFRP);
  - not in a pre-commissioning status; and
  - not otherwise designated as not operational by a higher authority.
- It is important to note that incorrect use of the vessel exception is grounds to appeal NJP as unjust.
- The right to refuse NJP ends when the CO imposes punishment at mast proceedings. Any time before the announcement of punishment, even during the mast proceedings, 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 referral to a court-martial. The CO determines how to proceed following a service member’s refusal of NJP. While service members may voice a desire to “demand court-martial” in lieu of NJP, they do not have a right to a court-martial. The CO is under no obligation to convene a court-martial based on the service member’s demand.

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

- All accused (whether attached to or embarked on an operational vessel or not) shall be afforded the opportunity to consult with military defense counsel, or a civilian defense counsel obtained at the member’s expense, when operationally feasible, and it can occur via appropriate means of communication within a reasonable time. “Operationally feasible” means when taking reasonable steps to afford the opportunity would:
  - not preclude accomplishment of a military order or objective; and
  - not compromise safety.
- An accused has no right to have their legal counsel present at NJP proceedings.

- When the accused is not afforded the opportunity to consult with defense counsel before imposition of NJP, the record of NJP may not be used as evidence in aggravation at a later court-martial for other offenses.

**RIGHTS OF THE ACCUSED AT THE NJP PROCEEDINGS:**

- To be present unless the service member has waived this right (CO may still require attendance even if the service member has waived).
- To remain silent.
- To be accompanied by a spokesperson (not legal counsel).
- To examine all evidence used against the service member. Note: “Examine” does not afford the service member a right to retain a copy of the evidence.
- To present matters in defense, extenuation, and/or mitigation.
- To call “reasonably available” witnesses (there is no subpoena power over civilian witnesses). A witness is not “reasonably available” if the witness requires reimbursement, cannot appear without unduly delaying the proceedings, or, if a military witness, cannot be excused from other important duties. These witnesses do not have to be in-person.
- To a public hearing, unless the CO determines that the proceedings should be closed for good cause. A member may request a closed hearing but has no right to one. A public hearing is one which is open to the public to attend at will; there is no requirement that a public hearing occur in front of all hands or any other subset of the command.

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

**STANDARD OF PROOF:** The CO must be convinced by a preponderance of the evidence that an accused committed every element of each charged offense to find that a service member committed the offense. A preponderance of the evidence means that it is more likely than not that a fact is true. This standard is lower than “clear and convincing” or “beyond a reasonable doubt.”

**CO’s SCRIPT/GUIDE FOR NJP PROCEEDINGS:** 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 NOT conduct NJP proceedings without this script.

**CO’s OPTIONS AT NJP PROCEEDINGS:**

- Find the accused committed one or more of the charged offenses and impose punishment.
  - COs may award up to the statutory maximum punishment for any offense for which an accused is found to have committed an offense. [*See Appendix G – NJP Punishment Limitations Chart*] Note: An Officer in Charge’s punishment authority is limited.
- Dismissal of some or all of the charged offenses.
- 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 proceedings so it is clear those measures are not imposed punishment.
- Terminate the NJP proceedings before imposing punishment and refer the matter to court-martial or a superior authority for disposition.

**PUBLICATION OF NJP RESULTS:** See reference (c), section 0115.

- NJP results may be published no earlier than five working days and no later than 30 calendar days after the imposition of NJP (or if the NJP is appealed, no later than 30 days after the reviewing authority acts on the NJP appeal).
- Generally, if only military members have access to the publication of NJP results, then the name of the accused may be published. If non-military personnel (i.e., civilian personnel, contractors, etc.) have access to the published results, the service member's 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 regarding disclosure.

**NJP RESULTS REPORTING:**

[USMC ONLY]: In accordance with Chapter 3 of reference (e), a Unit Punishment Book (UPB) is used to record the imposition of NJP for USMC enlisted personnel. As of August 2023, in accordance with reference (f), the UPB will also be used in officer NJP cases.

[USN ONLY]: All Navy enlisted NJP results will be reported via NAVPERS Form 1626/7 (Report and Disposition of Offenses) to ensure proper recording of NJP results in the service member's OMPF. For enlisted Sailors E-5 and below, a report of NJP must be submitted to PERS-313 [reference (h)]. For enlisted Sailors E-6 and above, a report of NJP must be submitted to PERS-832 [reference (i)]. For officers, a report of NJP must be submitted to PERS-834 [reference (j)]. Templates for these reports and other documents are available on Navy Personnel Command's website via the corresponding MILPERSMAN section referenced.

For more on officer NJP, see Section V, "*OFFICER MISCONDUCT AND SEPARATIONS.*"

## **NON-JUDICIAL PUNISHMENT AND CORRECTIVE ACTION**

### **REFERENCES:**

- (a) UCMJ, Article 15(d)
- (b) MCM, Part V
- (c) MILPERSMAN 5812-010
- (d) JAGINST 5800.7 (series) (JAGMAN), Sections 0117-0118
- (e) MCO 5800.16 (series) (LSAM)

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

- **SET ASIDE:** Terminating some or all imposed punishment (whether executed or unexecuted) and restoring all property, privileges, and rights affected by that portion of the punishment that is set aside. NJP set asides should only be used to correct a clear injustice. A clear injustice is a non-waived factual or legal error which affirmatively injured the rights of the service member. A clear injustice does not include the fact that the member's performance has been exemplary after the NJP or that the NJP may have a future adverse effect on the retention or promotion potential of the service 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 they would have been in had the punishment not been imposed, including back pay for any awarded reduction in rate, forfeitures, and fines [see references (b) through (e)].
- **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 imposed. 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 punishment awarded at NJP [see reference (b)].
- **SUSPENSION:** Holding the punishment in abeyance for up to six months.
  - **CONDITIONS OF SUSPENSION:** The service member cannot commit further violations of the UCMJ. Any additional terms should be in writing and must be lawful orders capable of performance (e.g., 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 itself; therefore, the conduct that led to the vacation can also serve as a separate basis for new NJP proceedings.

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

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

## **NON-JUDICIAL PUNISHMENT APPEALS**

### **REFERENCES:**

- (a) ALNAV 091/23
- (b) UCMJ, Article 15
- (c) MCM, Part V
- (d) JAGINST 5800.7 (series) (JAGMAN), Sections 0109, 0116, and 0117
- (e) MCO 5800.16 (series) (LSAM)

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

- **USN:** The General Court-Martial Convening Authority in the chain of command of the officer who imposed NJP. The GCMCA may act on the appeal or direct that the appeal be forwarded to the Region Commander, as appropriate.
- **USMC:** Immediate superior in the operational chain of command to the officer who imposed NJP.

### **GROUND FOR APPEAL:**

- **UNJUST:** Evidence does not support the finding or a substantial procedural error.
- **DISPROPORTIONATE:** The punishment is disproportionate to the offense committed, too harsh, or unfair with respect to the specific circumstances of the case. Showing that a punishment is disproportionate generally requires showing that the same NJP authority (as an individual) has given lesser punishment to similarly situated personnel in the past.

**RIGHT TO CONSULT WITH COUNSEL POST-NJP:** All service members upon whom NJP has been imposed have a right to consult with counsel concerning available opportunities to appeal and whether to pursue such opportunities.

### **TIME LIMITATIONS:**

- A service member has five working days (excluding weekends and holidays) from the date NJP is imposed to file an appeal.
- Extensions may be requested and granted for good cause.
- Late appeals may be denied only by the reviewing/appellate authority. Therefore, all appeals, regardless of date submitted, must be forwarded to the reviewing/appellate authority.

### **PROCEDURE:**

- Appeals must be in writing from the service member via the officer who imposed NJP.
- Endorsement of the appeal by the officer who imposed NJP should include a statement of facts and copies of evidence relied upon at the NJP proceedings, to include investigative documentation and witness statements. The endorsement should not include evidence of misconduct that was not the subject of the NJP proceedings unless the service member (the appellant) is given an opportunity for comment.

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

**APPELLATE AUTHORITY SCOPE:** The reviewing/appellate authority can take any of the corrective measures available to an NJP authority (e.g., suspend, mitigate, remit, set aside). If the NJP imposed is set aside, the reviewing/appellate authority may authorize additional NJP

proceedings, but the punishment imposed at such proceedings may not be greater than the punishment originally imposed.

**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 for more than 7 days;
- Forfeiture of more than 7 days of pay;
- Reduction from the paygrade of E-4 or above;
- Extra duties for more than 14 days; or
- Restriction for more than 14 days.

**SECTION III: ADMINISTRATIVE INVESTIGATIONS**

## **INVESTIGATIONS PURSUANT TO THE JAGMAN**

### **REFERENCES:**

- (a) JAGINST 5800.7 (series) (JAGMAN), Chapters II and XI
- (b) MCO P5800.16 (series)
- (c) JAGMAN Investigations Handbook
- (d) ALNAV 001/25
- (e) MILPERSMAN 1770-060
- (f) SECNAVINST 1770.5
- (g) SECNAVINST 5800.12 (series)
- (h) NAVADMIN 121/23
- (i) MCO 5254.1G
- (j) DoDI 6055.07

### **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:** Reference (a) provides 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 (SJA) regarding investigations. Per reference (b), in the Marine Corps, the command SJA is responsible for providing advice on administrative investigations convened by cognizant commanders. Reference (c) can assist the command conducting an investigation. See Appendices A and B for Misconduct Investigative Options. Please note that sexual harassment investigations must be handled in a distinct manner; see Command Investigations paragraph below, reference (d), and *SEXUAL HARASSMENT RESPONSE*. Additionally, effective 1 January 2025, formal complaints of sexual harassment will be investigated by NCIS and, if substantiated, forwarded to OSTC for review of potential court-martial charges.

**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, they become 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 investigative action or to convene another type of JAGMAN investigation. PI convening orders may be oral or written, and the PI typically takes 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” (i.e., an incident typically involving multiple deaths, significant national or international public or press interest, significant environmental damage, etc.) unless a general court-martial convening authority (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 (if known) and to most known, relevant witnesses. The IO may be officer or enlisted. If necessary, the IO can come from another command.
- Testimony obtained through a CI can be sworn or unsworn.

- A CI must include findings of fact, and may require the opinions of the IO, and any recommendations for disciplinary, corrective, and/or other appropriate administrative actions.
- Complaints of alleged sexual harassment must be referred to the Immediate Superior in Command (ISIC) of the unit receiving the complaint. The ISIC will then refer the complaint to NCIS for investigation. See reference (d) for further information.

**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 – Investigations Branch).

- 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 “CONTROLLED UNCLASSIFIED INFORMATION: 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:** DoN admiralty incidents are covered in Chapter XI of reference (a) and are investigated by a command investigation, or either an Admiralty Letter Report or Dual-Purpose Investigations, as described below. Commands should consult a judge advocate about any potential admiralty incidents so the judge advocate can assist with required initial notification to and consultation with OJAG Code 15, Admiralty Branch.

**ADMIRALTY LETTER REPORT (ALR):** Similar to a LITREP, an ALR is used when an admiralty incident may result in a claim or possible litigation and the only purpose of the investigation is to support the DON in an admiralty claim or litigation. As attorney work-product, it is protected from discovery in litigation and exempt from release under FOIA disclosure. [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 Appendix A-11-c 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 CIs should be forwarded to the first 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/ALRs/DPIs: All LITREPs/ALRs/DPIs must be forwarded to the OJAG (Code 15 – Admiralty & Claims), 1322 Patterson Ave SE, BLDG 33, Suite 3000, Washington Navy Yard, D.C. 20374-5066.

**RETENTION:** CIs must be retained for at least two years and then forward to OJAG (Code 15 Admiralty & Claims), Investigations Branch for retention. LITREPs/ALRs/DPIs should be forwarded immediately to OJAG.

**FREEDOM OF INFORMATION ACT RELEASE AUTHORITY:** At a minimum, the lowest level release authority for CIs is the cognizant GCMCA. For LITREPs/ALRs/DPIs, 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. Any injury or disease requiring a Line of Duty/Misconduct determination (see section 0212 of reference (a)) must be the subject of a PI at a 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 (e)].

**RESERVE NOTE:** Refer to section 0224 in reference (a) for special considerations in reserve component cases. Commanders must issue "interim" line of duty determinations within seven days of being notified that a reservist, not on the active-duty list, has an incapacitating injury or illness incurred or aggravated while on active duty. This interim determination is intended to ensure that the reservist's incapacitation pay can be started without delay. If the final line of duty/misconduct determination is adverse to the member, immediate action must be taken to stop incapacitation benefits. Commanders should be aware of ability for medical hold and other options from reference (f).

**SEX-RELATED OFFENSES:** Commanders are required to immediately report sex-related offenses to their military criminal investigative organization (e.g., NCIS). 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.

**SENIOR OFFICIAL MISCONDUCT:** Commanders are required to report, in writing within one working day, all allegations of misconduct made against DON Senior Officials (e.g., military O-7 select and above, civilian SES, or equivalent) to the Office of the Naval Inspector General (NAVINGEN) or Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (DNIG/IGMC) in accordance with reference (g). A command **shall not** conduct its own PI or CI into an allegation of Senior Official misconduct.

**INDEPENDENCE OF COMMAND INSPECTORS GENERAL (IGs):** Command IGs and personnel working within the NAVIG Enterprise shall not conduct, or be involved in conducting, investigations convened under reference (a) without a written exception from NAVIG, in accordance with reference (h).

## **DEATH INVESTIGATIONS**

### **REFERENCES:**

- (a) MILPERSMAN 1770-030
- (b) JAGINST 5800.7 (series) (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 person dies aboard a naval vessel, USN/USMC aircraft, or on an installation, except when attributable to disease or natural causes; if the latter is in question, consult with NCIS.

### **JAGMAN INVESTIGATION:**

- If the death occurred CONUS, off-base, while 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.
- 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.
- No investigation is required if death was caused by enemy action or was the result of a previously known medical condition and quality of medical care is not an issue.
- A full JAGMAN investigation (i.e. command investigation) is otherwise required.

**STATUS OF INVESTIGATION REPORTS:** Status reports are required at reasonable intervals until the JAGMAN investigation is forwarded to the next reviewing authority.

**LINE OF DUTY (LOD) DETERMINATIONS:** LOD determinations are required for all active duty death cases.

**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.
- References (a) and (c) addresses casualties and survivor benefits pertaining to reservists, as well as reporting the death of non-active duty sailors.
- Reference (d) requires a LOD determination for active duty service member deaths. 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).
- 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) JAGINST 5800.7 (series) (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 SM 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 SM 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 promotion withhold or delay actions triggered during post-selection board review.

**SECTION IV: CLAIMS**

## **CLAIMS OVERVIEW**

### **REFERENCES:**

- (a) JAGINST 5800.7 (series) (JAGMAN), Chapters II, VIII, and XI
- (b) JAGINST 5890.1B

**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 support the government's position against the claim or permit the government to assert a claim. Typically, a JAGMAN investigation will be required.

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

**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 tort claim. The Tort Claims Unit is located in Norfolk, Virginia and may be contacted at (757) 350-3085 or [tortclaimsunit@us.navy.mil](mailto:tortclaimsunit@us.navy.mil). For Admiralty related matters, see contact info below.

**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:** Reportable admiralty incidents include any personal injury, death, or property/environmental damage to non-federal personnel or entities arising in whole or in part from a DoN-owned or operated vessel or the actions of DON personnel on navigable waters. This may include damage or injury resulting from ship-launched aircraft or weapons. Salvage services provided by non-federal entities to DON should also be reported. Reportable incidents also include damage to DON vessels or property caused by non-federal vessels or actions of non-federal entities on navigable waters. Notify Code 15 Admiralty of any incident which may result in an admiralty claim. Send an email notification to [admiralty@navy.mil](mailto:admiralty@navy.mil) or [admiralty@navy.smil.mil](mailto:admiralty@navy.smil.mil). Phone 202-685-5040. Additional notification can be made by adding JAG to messages (PLAD: NAVY JAG, DC).

**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 142/22
- (e) NAVADMIN 304/17
- (f) DoDI 1304.33
- (g) 10 U.S.C. § 1177
- (h) DODI 1300.28
- (i) NAVADMIN 112/21
- (j) MARADMIN 260/21

**OSTC NOTE:** Commanders are precluded from initiating administrative separation procedures while the Office of Special Trial Counsel (OSTC) is exercising exclusive authority over a case. Following the STC's deferral or determination that they are not exercising their authority, the commander may initiate separation, including separation on the basis of commission of a covered offense.

**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)]

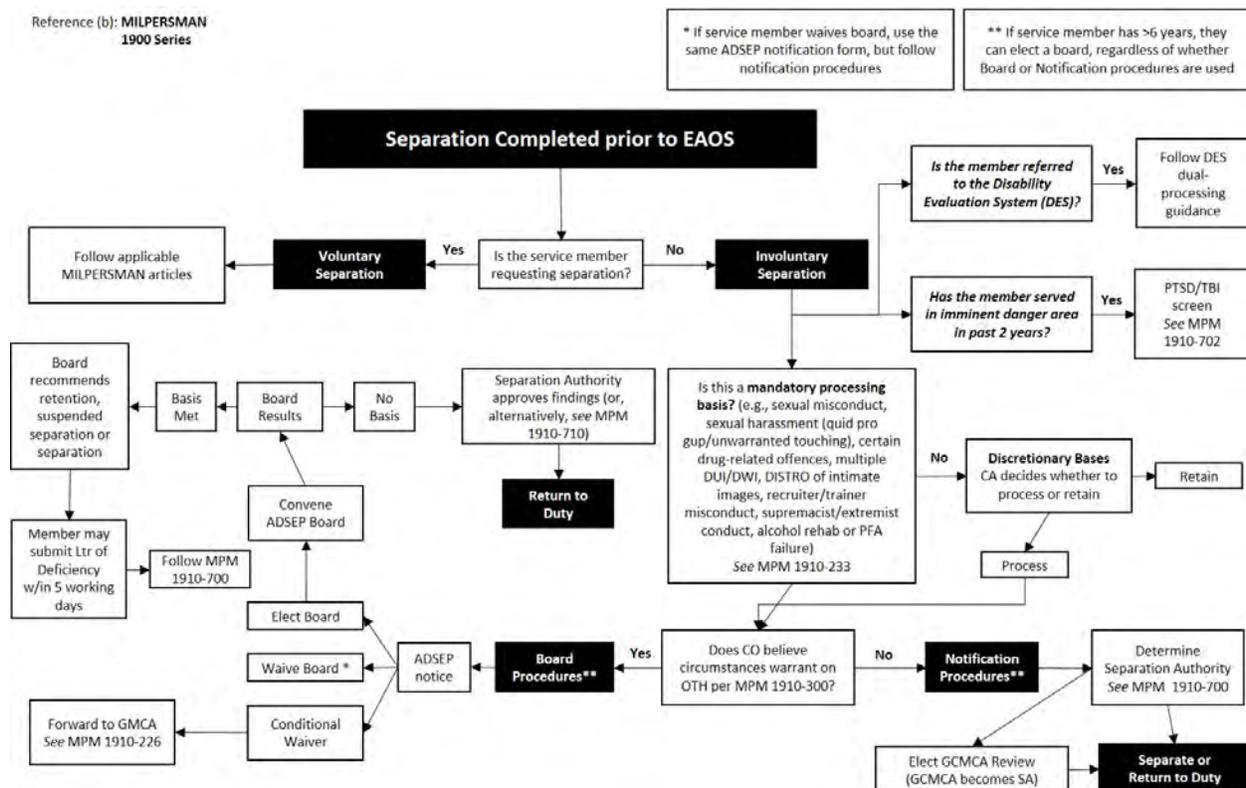


Figure 2: Enlisted Administrative Separations

**BASIS FOR SEPARATION:** The basis for separation is the reason for separating a service member. A list of all reasons for separation can be found in reference (a), section 1910-100 of

reference (b), chapter 6 of reference (c), and reference (d). All bases are divided into two broad categories:

- **VOLUNTARY:** The service member requests separation. Reference (d) cancelled all voluntary separations except for applications to transfer to the U.S. Space Force or to pursue of a commission in the U.S. Navy.
- **INVOLUNTARY:** The military service initiates the ADSEP process. This category is further divided into mandatory and discretionary bases. Mandatory bases compel ADSEP processing, but discretionary bases defer the decision of whether to initiate ADSEP processing 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** (found in MILPERSMAN 1910-233)
  - 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 (f).
  - NOTE: ADSEP for Physical Fitness Assessment (PFA) failure is suspended. See reference (e) 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
  - Dissident and Protest Activities (including supremacist activity)
  - 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
  - Domestic, intimate partner, and immediate family member abuse
  - Distribution or broadcasting of intimate image, without consent.

**MANDATORY SEPARATION PROCESSING UPDATE [USN ONLY]:** MILPERSMAN 1910-233 was updated in October 2019. The CO is directed to use administrative board procedures in circumstances that warrant an other than honorable (OTH) characterization. For all other cases where the CO must use mandatory separation processing, if an OTH characterization is not warranted, the CO may use notification procedures (where the least favorable characterization of service is General (Under Honorable Conditions)). 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, i.e. 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 entitled to elect an ADSEP board, 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.
- **GENERAL (UNDER HONORABLE CONDITIONS):** The service member provided honest and faithful service, but negative aspects of their 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 the service member risks of losing almost all DOD and VA benefits. *[Appendix H – Benefits at Separation – summarizes effects of different characterizations.]*

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

- **USN [always consult MILPERSMAN sections 1910-702 and 1910-704.] 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 their 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, Commander, Navy Personnel Command, Chief of Naval Personnel, or the Secretary of the Navy. Always refer to MILPERSMAN sections 1910-702 and 1910-704 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.

**ENDORING 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 their 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 MILPERSMAN section 1910-704].

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

Under references (a) through (c), 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 the 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
- Entry-level performance
- Physical fitness failure, including weight control (currently suspended for USN, see ref. (e))
- Unsatisfactory performance
- Refusing medical treatment
- Pattern of misconduct
- Minor disciplinary infractions
- Physical or mental conditions not amounting to a disability
- If required by reference (c), sections 1004 and 6105

**ADSEP AFTER EAOS/EAS:** A service member may not be adversely administratively discharged after the end of their enlistment except for a separation in lieu of trial by court-martial (SILT). If a service member is extended beyond their 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. [See MILPERSMAN 1910-104]. **Under no circumstances may a command extend a service member past their 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:** MILPERSMAN section 1910-702 and reference (g) 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 the service member 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 CNP. 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:** MARCORSEPMAN section 6110 provides that all Marines – except those receiving an uncharacterized entry-level separation – will undergo a health assessment before involuntary ADSEP is approved. 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.

**USN RESERVE SEPARATIONS:**

**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 MILPERSMAN section 1910-110]:** 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 MILPERSMAN sections 1910-130 and 1910-132].**

**UNSATISFACTORY PARTICIPATION IN THE READY RESERVE [see MILPERSMAN section 1910-158]:** The notification ADSEP procedure detailed above should be used for these cases. If the CO determines discharge is not warranted, they may recommend 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.

**RESERVE SEPARATION BY REASON OF PHYSICAL DISABILITY [see MILPERSMAN section 1910-168]:** 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 on active duty in the Navy Reserve in a reasonable manner due to disease or injury.

**FORWARDING ADSEP PACKAGES [see MILPERSMAN section 1910-600]:** All ADSEP packages for reservists, even for those members discharged locally, must be forwarded to NPC under a LOT signed by the CO or acting CO. 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 MILPERSMAN section 1910-408]:** A member on active duty who is not in civilian confinement must have a minimum of two working days to respond to the notice of administrative processing. 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.

## **ENLISTED ADMINISTRATIVE SEPARATION BOARDS**

### **REFERENCES:**

- (a) DoDI 1332.14
- (b) MILPERSMAN 1900 (series)
- (c) MCO 1900.16 CH 2 (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) in the same service as the respondent.
- 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, at least one member must be a reservist. For Navy ADSEPs, all members must be commissioned officers. For USMCR ADSEPs, the board shall include at least one Reserve commissioned officer as a voting member and all members must be commissioned officers when an OTH characterization is authorized.

**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 adequately accomplish 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 CA 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 their 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 (c), 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. For USMC boards, the legal advisor rules on challenges for cause, except for challenges to the legal advisor on which the CA rules.

**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.
- In the USMC, the Legal Advisor shall rule finally on all matters of procedure, admissibility of evidence, and challenges (except challenges to the legal advisor)

**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 1920.6 (series)
- (b) MILPERSMAN 1611-010 (Revised 30 Oct 19 in its entirety)
- (c) MCO 5800.16 (series) (LSAM), Vol 15
- (d) MCO 1900.16 CH 2 (MARCORSEPMAN), Chapter 4
- (e) BUPERSINST 1610.10G
- (f) MILPERSMAN 1070-020
- (g) JAGINST 5800.7 (series) (JAGMAN), Section 0105

**OSTC NOTE:** Commanders are precluded from initiating administrative separation procedures while the Office of Special Trial Counsel (OSTC) is exercising exclusive authority over a case. Following the OSTC's deferral or determination that they are not exercising their authority, the commander may initiate separation, including separation on the basis of commission of a covered offense.

**REFERENCE REVIEW:** Before taking punitive action or initiating separation for an officer, commands should review references (a) and (b) [USN] or references (a), (c), and (d) [USMC].

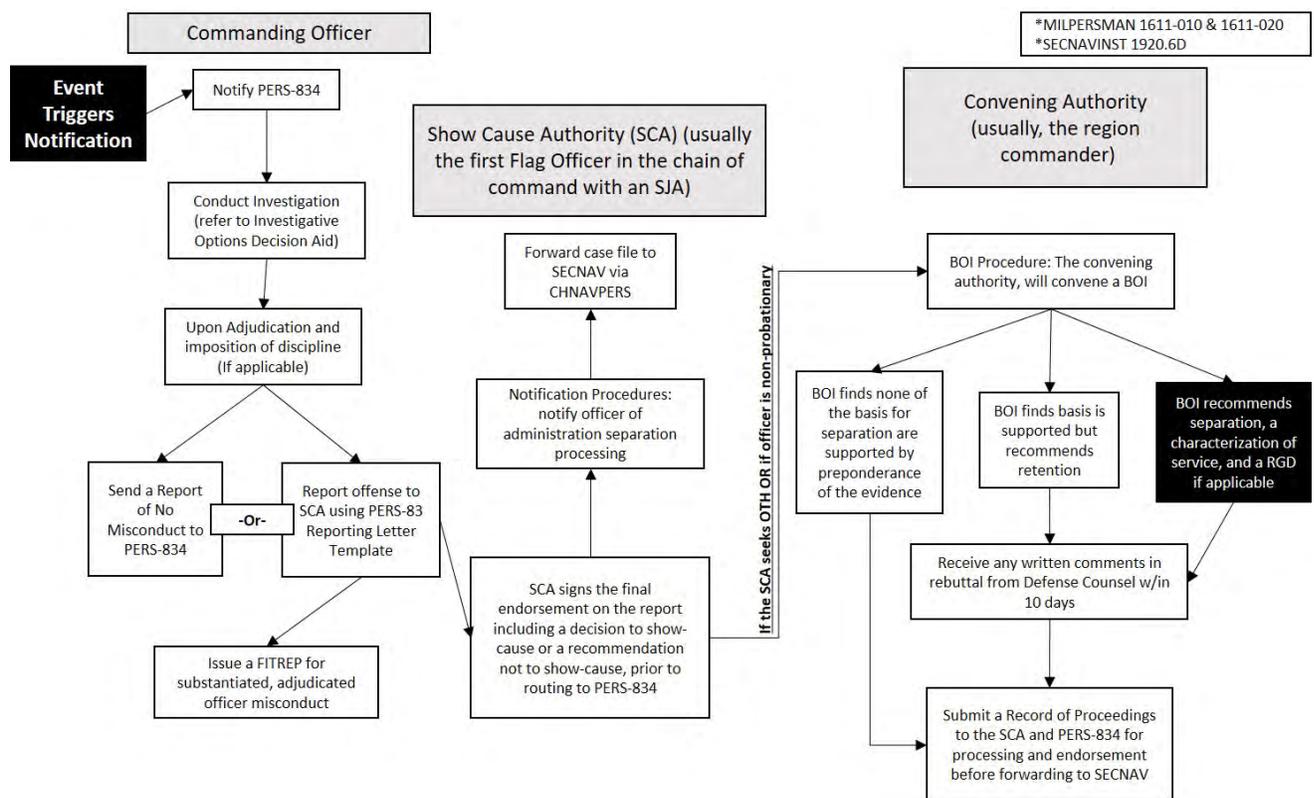


Figure 3: Officer Misconduct and Separation Processing

**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 [USN]; or Headquarters, USMC, Military Personnel Policy Branch (JPL) at (703) 614-4250, DSN 224-4250. [NOTE: USMC GMCAs will make a timely initial report to JPL, via the Officer Disciplinary Notebook (ODN), upon receipt of credible information of alleged, suspected, or reported

misconduct, for which NJP, court-martial, civilian prosecution, or administrative discharge is possible.] 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, and throughout court-martial proceedings, or an officer agrees to resignation in order to escape court-martial.
- **REPORT OF NON-JUDICIAL 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 SUBSTANDARD PERFORMANCE:** 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; and 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 (BOI) Procedure. The Separation Authority is the Secretary of the Navy, currently delegated to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)).

**SHOW CAUSE AUTHORITY (SCA):** The SCA 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 BOI 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, they 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 they was insufficiently counseled on alleged deficiencies. See references (b) and (e) through (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 of duty);
- 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;
- It is used to document 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 their 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 DFC request and that it will appear in the officer's official record. The officer must be given time (usually 10 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.

## **DISABILITY EVALUATION SYSTEM**

### **REFERENCES:**

- (a) 10 U.S.C. §§ 1201-1222
- (b) 10 U.S.C. § 1177
- (c) DoDI 1332.14
- (d) DoDI 1332.18
- (e) DoDI 1332.45
- (f) SECNAVINST 1850.4F
- (g) SECNAV M-1850.1
- (h) 38 CFR Part 4
- (i) MILPERSMAN 1900-120
- (j) DASN (MM&P) CND Policy Memo of 31 Jan 18
- (k) SECNAVINST 5420.193
- (l) SECNAVINST 1770.5

**PURPOSE:** The DoD and Department of Veterans Affairs process wounded, ill, or injured service members through Disability Evaluation Systems (DES) to determine fitness for duty and apportion pay and benefits for compensable disabilities that render a service member unfit for continued service.

**COMMAND RESPONSIBILITIES:** Commands have two central responsibilities in this process. First, upon a Service Member's (SM) referral into the DES, the SM's commanding officer (CO) must write a non-medical assessment (NMA). The purpose of the NMA is to summarize the effect of the SM's conditions on the performance of their military duties. Second, commands must allow SMs to attend appointments, meetings, and hearings that facilitate the DES process.

**REFERRALS INTO THE DES:** A Medical Evaluation Board (MEB) is the precursor to the DES. There are two general MEB referral paths: permissive and mandatory MEB referrals.

**PERMISSIVE REFERRALS:** Section 5.2 of reference (d) states that a medical provider may refer a SM to a MEB when the provider opines that the course of further recovery is relatively predictable or will be predictable within one year of diagnosis, whichever is sooner, and the SM has:

- One or more medical conditions that may prevent the SM from reasonably performing the duties of his or her office, grade, rank, or rating including those duties remaining on a Reserve obligation for more than one year after diagnosis;
- A medical condition that represents an obvious medical risk to the health of the SM or to the health or safety of other SMs; or
- A medical condition that imposes unreasonable requirements on the military to maintain or protect the SM.

Medical providers will produce (1) a NAVMED 6100 form listing the condition(s) the medical provider deems to render the SM unfit and a (2) narrative summary (NARSUM) discussing how and why the medical condition(s) render the SM unfit.

**MANDATORY REFERRALS:** Referral to a MEB is mandatory in three situations.

- Non-Deployable/Lack of Worldwide Assignability
  - SMs with deployment-precluding conditions that will last more than 30 days will be referred by their medical provider to a MEB. The MEB will recommend placement on limited duty (LIMDU) for conditions the MEB believes will resolve and allow full

- duty, referral to DES, or administrative separation (ADSEP) for conditions not amounting to a disability for non-compensable conditions.
  - SMs remaining non-deployable for 12 consecutive months due to a medical condition must undergo processing for administrative separation and must first be referred to a MEB.
- SMs who accrue two consecutive waivers for the entire Physical Fitness Assessment for the same medical condition.
- SMs with three periods of LIMDU.

**INELIGIBILITY FOR REFERRAL:** SMs pending court-martial proceedings or pending an approved, unsuspended punitive discharge or dismissal after a court-martial proceeding are normally ineligible for referral into the DES. Additionally, a SM is ineligible for referral into the DES if the SM's disability results from intentional misconduct or willful neglect or if it was incurred during a period of unauthorized absence or excess leave.

**DES STAGES:** There are four general stages of the DES, detailed in reference (d). The conclusion of each stage presents different options and rights the SM may elect.

### **POST-SERVICE APPEALS:**

If a SM is dissatisfied with the final result of their DES case, the SM may submit an appeal to the Board for Corrections of Naval Records (BCNR). To submit a BCNR petition, the SM must first exhaust all other administrative means. If no relief can be given through those means, the application is presented to the BCNR. The BCNR then bases its decision on the evidence contained in the application and applicable naval records. The BCNR presumes decisions made by prior officials were appropriate, and the burden is on the applicant to submit substantial evidence to support the existence of an error. See reference (j).

In addition, the SM could file a complaint with the Naval Inspector General, contact his or her Congressional Representative, or hire a civilian counsel to file suit in Federal Court.

Discharged SMs may petition the VA for increased ratings or request service connection for conditions that were not originally rated by the VA prior to discharge.

**DES IMPACTS ON OTHER LEGAL ISSUES:** The interaction between DES referrals and other involuntary separation actions, especially for SMs with mental health and neurocognitive conditions is constantly evolving. New policies not referenced in this edition may impact command action. As such, consultation with a DESCOP attorney is recommended prior to executing any action.

- Misconduct and ADSEP
  - SMs being processed for a misconduct-based ADSEP that could result in an other-than-honorable (OTH) discharge may be ineligible for DES referral. This determination is made by the first General or Flag Officer (GO/FO) in the SMs' chain-of-command. In the Marine Corps, the relevant Marine Corps Order designates the GO/FO as the SA for enlisted personnel. In the Navy, MILPERSMAN 1910-704 states the SA is Navy Personnel Command. SMs being processed in the DES when OTH-eligible misconduct-based ADSEP processing is initiated will continue DES processing unless the GO/FO determines DES processing should be halted. SMs being processed for involuntary ADSEP action which **cannot** result in an OTH discharge may not be involuntarily separated if the SM has already been referred into the DES or is referred into the DES during the involuntary ADSEP action. The DES process must be completed, and if found unfit, the medical discharge takes precedence

- SMs being processed for any type of involuntary separation who have a ratable condition may be referred into the DES. If the local separation authority believes the SM should not enter DES because of an involuntary ADSEP with a possible characterization of OTH, the case must be referred to the first GO/FO in the chain of command for final determination.
- Once referred into the DES, the SM will continue to be processed in the DES unless the GO/FO disapproves such continuation. The SA for enlisted dual processing cases shall be the first GO/FO in the chain of command unless a higher authority is already required. The SA for officers in dual processing is ASN (M&RA). The SA may direct separation prior to completion of the DES process if the SA determines and documents, in writing, that the SM should be separated for the misconduct despite their medical condition.
- For PTSD, TBI, and other mental health or neurocognitive conditions, an appropriate military health care provider must be consulted for a medical opinion as to whether the medical condition that caused referral into DES contributed to the basis of separation.
- Often, the command will wait upon determination of the involuntary misconduct separation processing and the DES processing to have as much relevant information as possible to provide the SA. One such fact is the degree of severity of the disability, as rated by the VA, to assist in the determination of the possible contributing impact on the misconduct.
- Conditions Not a Disability (CND). Commands may ADSEP SMs for CND. However, the VA often considers many medical conditions not listed in the VASRD to be “ratable conditions,” meaning that the VA will compensate the SM after separation. References (h) and (i) provide requirements and limitations on processing CND ADSEPs. Reference (i) requires any recommendation for separation based upon a CND must be endorsed by a MEB convening authority. Additionally, a Flag medical department officer review must occur if the:
  - CND basis is a personality disorder;
  - SM has greater than 4 years of service;
  - SM has deployed to an imminent danger pay area in the last 24 months; or
  - SM has ever completed, or was flagged to complete a post-deployment health assessment
- Analogous Ratings. Many medical conditions not listed in the VASRD can be compensated under analogous codes that are closely related by either similar functions, symptoms, or locations. SMs may also be eligible for referral into the DES if their CND conditions intertwine with ratable conditions or constitute symptoms of a ratable condition. A common example is when a SM has been diagnosed with a mental health condition as well as a personality disorder. In cases where non-compensable CND conditions exist alongside VA-ratable conditions, reference (i) states that referral to the DES, vice CND separation processing, is required.
- Retention Determinations for Non-Deployable SMs. Reference (e) directs separation of SMs who are unable to deploy. If the rationale for the inability to deploy is a medical condition the SM must either be referred into the DES or administratively separated for a CND. SMs who have already been referred into DES and were found fit, but are still unable to deploy cannot be separated unless approved by the Secretary of Defense. 10 USC § 1214a.

[See Appendix I – Integrated Disability Evaluation System Process Flowchart]

**SECTION VI: COMMAND URINALYSIS PROGRAM**

## **COMMAND URINALYSIS PROGRAM OVERVIEW**

### **REFERENCES:**

- (a) OPNAVINST 5350.4E
- (b) SECNAVINST 5300.28F
- (c) MCO 5300.17A
- (d) Navy Drug and Alcohol Deterrence Program 2022 Guide 3 Urinalysis Program Coordinator
- (e) NAVADMIN 082/12
- (f) ALNAV 074/20
- (g) ALNAV 035/23

**POLICY:** In accordance with references (a) through (g), 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 Commanding Officer (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 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 J – Use of Positive Urinalysis Results*]

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

- 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 must investigate all positive drug results to assist in determining if the positive urinalysis sample was the result of authorized or legitimate use; or wrongful or illegitimate use. If the service member makes a claim of innocent or unknowing ingestion, and following the investigation the CO makes an initial finding that the service member's claim is credible, the CO must forward the matter to OPNAV N173 for a Review Officer (RO) assessment. The RO will review the positive urinalysis along with all submitted documents and available records.
  - The N173 RO will make an administrative determination on the service member's claim of innocent or unknowing ingestion. This determination is not a legal finding of guilt or innocence; it is an administrative determination on whether further administrative processing is warranted.
  - If, after the N173 RO assessment, the RO agrees with the service member's claim and the CO's initial finding of innocent or unknowing ingestion, the drug positive will be reconciled as innocent ingestion and mandatory administrative separation processing is not required.
  - If, after the N173 RO assessment, the RO does not agree with the service member's claim and the CO's initial finding of innocent or unknowing ingestion, the command must initiate mandatory administrative separation processing.
    - If, after the RO assessment, the CO determines that drug misuse has occurred, the CO may pursue mandatory administrative separation processing through either notification procedures (if applicable) or through administrative board procedures.
    - If, however, after the RO's assessment, the CO continues to believe the service member's claim of innocent or unknowing ingestion, the service member's claim of innocent or unknowing ingestion must be reviewed at an administrative separation board or a board of inquiry, as applicable.

**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 Darrah  
Navy Drug Detection and Deterrence (OPNAV N170D)  
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**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.). Special testing can be conducted in conjunction with standard panel testing by the NDSLs or can involve shipment of specimens directly to AFMES. 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 references (a) and (f), 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. Use also includes topical application of products containing hemp. It does not include use of durable goods containing hemp, such as rope or clothing. 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 references (a) or (f) 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.

**INGESTION OF POPPY SEEDS:** Recent data indicates that certain varieties of poppy seeds may have high codeine contamination. Consumption of poppy seed products could cause a positive codeine urinalysis result and undermine the DON's ability to identify illicit codeine use. In response to this data, SECNAV issued reference (g), which is a non-punitive warning.

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**SECTION VII: PHYSICAL AND MENTAL HEALTH**

## **HIV ISSUES**

### **REFERENCES:**

- (a) SECNAVINST 5300.30F
- (b) SECNAVINST 1850.4F
- (c) NAVMC 2904
- (d) DoDI 6485.01
- (e) DoDI 6130.03
- (f) SECDEF Memo 6 Jun 2022

**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.

**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) who are fit for continued service shall be allowed to serve in a manner that ensures access to appropriate medical care, and will be assigned on a case-by-case basis in consultation with the treating medical provider, the Navy Bloodborne Infection Management Center, and the respective personnel bureau [PERS-82 for USN and the Deputy Commandant for the Marine Corps (Manpower and Reserve Affairs) for USMC]. Service members are not non-deployable solely for the reason that they are HIV-positive. Decisions on the deployability of covered personnel will be made on a case by-case basis and must be justified by the Service member's inability to perform the duties to which he or she would be assigned.

**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 will not be discharged or separated solely on the basis of their HIV-positive status. Those 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 (MTF) 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 an MHE for legitimate mental health reasons and never as reprisal. Under no circumstances may a commander or supervisor refer a service member for an 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 for referring a member for an MHE. Commands should contact their local staff judge advocate (SJA) to ensure they are following up-to-date procedures for making a referral for an MHE. Reserve commands should seek guidance from the respective SJA supporting the reserve command. Reference (b) states healthcare providers will not notify a service member's commander when mental health care is obtained unless the service member authorizes it; it was a command directed MHE; or there are exigent circumstances, 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 MTF, name of the MHP, and date and time of the MHE. If time permits, commands should consult a MHP and their SJA 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 an 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 MTF 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 AN MHE:** If involuntarily admitted to the hospital as a result of an 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 5300.26
- (b) U.S. Navy Regulations, 1990
- (c) OPNAVINST 5354.1 (series)
- (d) MCO 5354.1 (series)
- (e) UCMJ, Article 134
- (f) MILPERSMAN 1910-233
- (g) MCO 1900.16 CH 2 (MARCORSEPMAN)
- (h) ALNAV 001/25
- (i) DODI 1020.03 CH-3
- (j) NDAA for FY 2023
- (k) MARADMIN 622/24
- (l) NAVADMIN 022/24

**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 and reported as a sexual assault.

**SEXUAL HARASSMENT DEFINED (under reference (e)):** Sexual Harassment is conduct that:

- involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:
  - Submission to such conduct is, either explicitly or implicitly, made a term or condition of a person's job, pay, or career;
  - Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
  - Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- Is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.
- Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the Armed Forces or a civilian employee of the Department of Defense.
- Any deliberate or repeated unwelcome verbal comments or gesture of a sexual nature by any member of the Armed Forces or a civilian employee of the Department of Defense.

NOTE: There is no requirement for concrete psychological harm to the complainant for behavior to constitute sexual harassment. Behavior is sufficient to constitute sexual harassment if it is so severe or pervasive that a reasonable person would perceive, and the complainant does perceive, the environment as hostile or offensive. Sexual harassment can occur through electronic communications, including social media, other forms of communication, and in person.

**ANONYMOUS SEXUAL HARASSMENT REPORT:** Individuals may make complaints without divulging any personally identifiable information. Commanders determine if there is sufficient information to initiate an investigation.

- **Navy:** The command climate specialist (CCS) or command managed equal opportunity (CMEO) 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. See reference (c).

- **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 CONFIDENTIAL SEXUAL HARASSMENT REPORT:** In addition to the anonymous reporting option discussed above, Sailors now have a confidential reporting option if they experience instances of sexual harassment. Sailors can submit a confidential report ONLY to a CCS and CMEO program manager. A confidential report of sexual harassment allows Sailors to access support and referral services while maintaining the confidentiality they desire. See reference (l).

**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 informal complaint that results in punitive disciplinary action to hold the alleged offender accountable must be processed as a formal complaint under reference (c).

**NAVY FORMAL SEXUAL HARASSMENT REPORT:** An allegation of sexual harassment submitted in writing via a NAVPERS 5354/2; UCMJ article 138; reference (b), article 1150; communication to NAVINSGEN, IGMC, or elected officials; NAVPERS 1626/7; and any other communication the Commander deems appropriate. Reference (i) directs formal complaints of sexual harassment to be referred to NCIS for investigation.

**NAVY REPORTING REQUIREMENTS:** References (c) and (i) should be consulted for reporting requirements and timelines.

**USMC SEXUAL HARASSMENT COMPLAINTS:** Equal Opportunity Advisors (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). After receiving input from the complainant, the Commander shall determine an appropriate course of action for complaint investigation and resolution. Reporting requirements and timelines are in reference (d).

**PREVENT RETALIATION:** Commanders must protect complainants and witnesses from retaliation. Navy commands must follow up with complainant within 45 days of resolution of complaint to ensure no retaliation has occurred. Retaliation may be reported to a supervisor, CCS, CMEO program manager, the commander, or an IG; see chapter 6 of reference (c) for retaliation response procedures. Retaliation includes:

- Reprisal, which is adverse/threatened adverse personnel action, including withholding favorable action.
- Ostracism, which is the exclusion from social acceptance, privilege, or friendship with intent to discourage reporting.
- 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.

**LEVEL OF INVESTIGATION:**

Reference (i) requires formal sexual harassment complaints be forwarded to the next higher level commander (in the grade of O-6) in the chain of command within 72 hours. The next

higher level commander must forward the complaint to NCIS for investigation within 72 hours of receipt. NCIS will review the complaint for the elements of sexual harassment; if the allegations do not contain a minimum factual basis or sufficient details, NCIS will return the complaint to the referring commander. Once returned, the complaint will no longer be considered a formal sexual harassment complaint and the command may take appropriate action.

**SUBSTANTIATION:** Following investigation, NCIS will provide the report of investigation to the next higher level commander who referred the complaint. In consultation with a judge advocate, the commander will determine—by a preponderance of the evidence standard—whether the complaint is substantiated or unsubstantiated. If unsubstantiated, the next higher level commander will close the complaint. If substantiated, disciplinary or administrative action will depend on the date the harassment occurred.

**DISCIPLINARY AND/OR ADMINISTRATIVE ACTION:** If the substantiated harassment (or most recent incident in a series) occurred on or before 1 January 2025, the next higher-level commander who referred the complaint to NCIS will take disciplinary and/or administrative action. If the substantiated harassment (or most recent incident in a series) occurred after 1 January 2025, the next higher-level commander must forward the complaint to the Office of Special Trial Counsel as a covered offense. The next higher-level commander and CO of the alleged offender must not take disciplinary and/or administrative action unless OSTC refers the complaint back to the commander.

**MANDATORY ADMINISTRATIVE SEPARATION PROCESSING:** Per reference (h), if OSTC defers the substantiated complaint back to the Commander, the next higher-level commander must initiate involuntary separation processing for the alleged offender.

**TRANSFER:** If the complaint 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)].

**OSTC NOTE:** Per reference (i), as of 2 January 2025, a formal, substantiated complaint of sexual harassment, Article 134 (Sexual Harassment), is a covered offense. See *OFFICE OF SPECIAL TRIAL COUNSEL (OSTC) AND CHANGES TO THE MANUAL FOR COURTS-MARTIAL*.

## **FRATERNIZATION OVERVIEW**

### **REFERENCES:**

- (a) OPNAVINST 5370.2
- (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. Per reference (a), commands are expected to take administrative and disciplinary action as necessary to correct this inappropriate behavior.

**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, as in the case of officers and enlisted personnel or Chief Petty Officers and junior enlisted, 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. Being in a direct senior/subordinate supervisory relationship or in the same chain of command is not a prerequisite for fraternization.

**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.

**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 Navy's 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 as well.

**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).

*[See Appendix L – Handling Fraternization Allegations]*

## **HAZING PREVENTION**

### **REFERENCES:**

- (a) SECNAVINST 1610.3
- (b) MCO 5354.1G
- (c) OPNAVINST 5354.1H
- (d) MCO 3504.2A

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

**HAZING DEFINITION:** Hazing is a form of harassment that includes conduct through which service members of DoD employees, without a proper military or other governmental purpose but with a nexus to military service, physically or psychologically injure or create a risk of physical or psychological injury to service members for the purpose of initiation/admission into, affiliation with, change in status or position within or continued membership in any military or DoD civilian organization. Hazing can be conducted through electronic devices or communications and by other means including social media, as well as in person. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator(s). No service member may consent to acts of hazing being committed upon them. [See references (a) – (c).]

**HAZING DOES NOT INCLUDE:** Command-authorized or operational activities that serve a proper military or other governmental purpose; the requisite training to prepare for missions or operations; administrative corrective measures; extra-military instruction; or command-authorized physical training.

### **REPORTING AND INVESTIGATION REQUIREMENTS:**

- **USN:** Reference (c) includes reporting requirements and timelines. Commanders must initiate a preliminary inquiry or command investigation, as appropriate, in response to a formal complaint of hazing.
- **USMC:** References (b) and (d) outline reporting requirements and timelines.

**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 and witnesses are not subject to retaliation.

**SECTION IX: FREEDOM OF EXPRESSION**

## **FREE SPEECH AND RELIGIOUS ACCOMMODATION**

### **REFERENCES:**

- (a) U.S. Constitution, First Amendment
- (b) DoDI 1325.06 CH-2
- (c) DoDI 4105.70
- (d) SECDEF Memo 16 Jul 2020
- (e) NAVADMIN 203/20
- (f) MARADMIN 413/20
- (g) DoDI 5230.29
- (h) DoDI 1300.17
- (i) BUPERSINST 1730.11A CH-2
- (j) SECNAVINST 1730.8B CH-1
- (k) *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022)
- (l) NAVADMIN 082/16
- (m) MCO 1020.34H
- (n) ALNAV 024/25

**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 (UCMJ) prohibits officers from being disrespectful to certain senior government leaders and offices: the President; the Vice President; Congress; the Secretary of Defense; the Secretary of a military department; the Secretary of Homeland Security; or the Governor or legislature of any State, Territory, Commonwealth, or possession in which the officer is on duty or present. As applied to Congress and state legislatures, the prohibition regards those bodies as a whole, not individual members thereof. Disrespectful statements or actions towards other senior officials may constitute violations of other UCJM articles or DoD or DON regulations.

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

- 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 DoD jurisdiction, and no service member or DoD civilian officer or employee acting in their official capacity, may 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 they personally agrees or disagrees with the substance of the message.

**FLAGS:** Per references (d) through (f), in addition to the U.S. flag, service members and civilian employees are authorized to display or depict representational flags that promote unity and esprit de corps in DOD workplaces, common access areas, and public areas. Permissible flags include:

- Flags of U.S. States and Territories and the District of Columbia
- Military Service flags;
- Flag or General Officer flags;

- Presidentially-appointed, Senate-confirmed civilian flags;
- Senior Executive Service (SES) and Military Department-specific SES flags;
- The POW/MIA flag;
- Flags of other countries, for which the United States is an ally or partner, or for official protocol purposes;
- Flags of organizations in which the United States is a member ( e.g., NATO); and
- Ceremonial, command, unit, or branch flags or guidons.

**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 (g)].

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

**OFF-BASE DEMONSTRATIONS:** The attendance of a service member at an off-base gathering is prohibited if:

- the service member is on duty;
- the event takes place in a foreign country;
- the gathering is illegal;
- violence is likely to occur; or
- the service member is wearing a military uniform at the gathering in violation of DoDI 1334.01 (Wearing of the Uniform).

**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.

**OFF LIMITS WHEN 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.

**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 (h)]. For the Navy, commanders must consider a request for religious accommodation on a case-by-case basis. [See reference (i)]. Factors to consider include:

- applicable operational or regional policies;
- importance of the military policy, practice or duty in terms of mission accomplishment (military readiness, unit cohesion, good order and discipline, health, and/or safety);
- importance of the accommodation to the requester;
- cumulative impact of repeated accommodations of a similar nature; and,
- alternate means to meet the requested accommodation.

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. 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 (i) and (j)]. In addition, accommodation requests that would require a waiver of service regulations require the same level of approval authority.

**HOLIDAY DISPLAYS:** Reference (k) is a recent Supreme Court decision that ended the previous test used for determining the legality of command holiday displays. This new case held, "The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression." This means that commands can generally put up secular (non-religious) displays (i.e. snowmen, flowers) and individuals are generally allowed to decorate their own spaces using non-secular (religious) displays. Commands should talk to their SJA before putting up command sponsored religious displays in the workplace.

**TATTOO POLICY:**

- **USN:** Tattoos located anywhere on the body that are prejudicial to good order, discipline, and morale or are of a nature to bring discredit upon the naval service are prohibited. For example, tattoos that are obscene, sexually explicit, and or advocate discrimination based on sex, race, religion, ethnicity, or national origin are prohibited. In addition, tattoos that symbolize affiliation with gangs, supremacist or extremist groups, or advocate illegal drug use are prohibited [See reference (l)].
- **USMC:** Tattoos located anywhere on the body that are prejudicial to good order and discipline, or are of a nature to bring discredit upon the naval service, are prohibited. Examples include, but are not limited to, tattoos that are drug-related, gang-related, extremist, obscene or indecent, sexist, or racist [See reference (m)].

## **POLITICAL ACTIVITIES**

### **REFERENCES:**

- (a) DoDD 1344.10
- (b) 5 C.F.R. §734
- (c) SECNAVINST 5720.44C CH-1, 0103
- (d) DoDI 5400.17
- (e) DoDI 1325.06 CH-2

### **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
- Commissioned officers using contemptuous speech as prohibited by Article 88 of the UCMJ
- Holding partisan political office (reservist exception—see a Judge Advocate)
- Registering as a nominee or candidate for a civil office in the federal, state, or local government (unless approved by SECNAV)

**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 *FREE SPEECH AND RELIGIOUS ACCOMMODATION*].

**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 and command emblems, 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. Check with an ethics official before using any official DOD or Service seals or emblems.

**SOCIAL MEDIA:** Members of the Armed Forces may take actions that allow them to receive information about a political party or candidate running for partisan political office, such as “following,” “friending,” or “liking,” but may not take actions that share that information with others by posting links to, “sharing”, or “re-tweeting” social media comments of a political party or candidate running for partisan political office. Service members must not like, comment, post, or link to material that shows contempt for public officials, releases sensitive information, or is prejudicial to good order and discipline. Additionally, there shall be no political social media activity while at work or on duty (Includes teleworking) or any that mentions the service member’s official title or position.

## **ACTIVE PARTICIPATION IN EXTREMIST ACTIVITIES**

### **REFERENCES:**

- (a) 1990 Navy Regulations, Article 1167: Supremacist Activities
- (b) OPNAVINST 5354.1H
- (c) DODI 1325.06 CH-2
- (d) MILPERSMAN 1910-160
- (e) MCO 1900.16 CH-2
- (f) 2017 Executive Branch Adjudicative Guidance
- (g) MCO 5354.1G

**ACTIVE PARTICIPATION IN EXTREMIST ACTIVITIES:** Per reference (a), “No person in the Naval service shall participate in any organization that espouses supremacist causes; attempts to create illegal discrimination based on race, creed, color, sex, religion, or national origin; advocates the use of force or violence against the government of the United States or the government of any state, territory, district, or possession thereof, or the government of any subdivision therein; or otherwise engages in efforts to deprive individuals of their civil rights.” Military personnel are prohibited from actively participating in extremist activities. The change to reference (e) made this definition about the actions of the service member and the group instead of being about the name of the group. It is recommended to consult with a staff judge advocate should this issue arise.

**EXTREMIST ACTIVITIES DEFINED:** Groups that are advocating or engaging in: unlawful force, violence, or other illegal means to deprive individuals of their rights; unlawful force or violence to achieve goals that are political, religious, discriminatory, or ideological in nature; terrorism (or advocating for or support thereof); unlawful force or violence to overthrow of the government of the United States or any political subdivision thereof (or support thereof); encouragement of military personnel, DoD civilians, or contractors to violate the law or disobey lawful orders; or widespread unlawful discrimination based on race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation.

**ACTIVE PARTICIPATION DEFINED:** Active participation of an individual is defined as advocating or engaging in: use or threat of unlawful force or violence in support of extremist activities; provision of material support or resources; communicating information that compromises operational security; recruiting or training others; fundraising; demonstrating or rallying; knowingly displaying paraphernalia, words, or symbols in support of extremist activities; engaging in electronic activities (i.e. posting, liking, sharing, or re-tweeting); or knowing action taken in support of, or engaging in, extremist activities. Essentially, any activity greater than mere membership in the organization possibly constitutes active participation and commanders may take appropriate administrative and/or disciplinary action.

**MANDATORY ADMINISTRATIVE SEPARATION PROCESSING:** A service member shall be processed for administrative separation if their active participation in an extremist activity is substantiated by their CO or higher authority [See references (d) and (e).]

**SECURITY CLEARANCE:** Per reference (f), allegiance to the United States is a consideration for qualification to hold a security clearance. Conditions that may be disqualifying to holding a security clearance, include association, sympathy, or involvement in groups that are connected to sabotage, treason, terror, or sedition. As well as, persons or organizations that advocate or use other illegal means in an effort to: (1) overthrow or influence the government; (2) prevent government personnel from performing their duties; (3) Gain retribution for perceived wrongs of government; or (4) Prevent others from exercising their legal rights.

**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) JAGINST 5800.7 (series) (JAGMAN), Chapter III
- (d) MCO 1700.23 (series)
- (e) NAVMC Directive 1700.23 (series)
- (f) SECNAVINST 5800.12 (series)
- (g) 10 U.S.C. § 1034

**REQUEST MAST:** Members of the naval services have the right to communicate directly with their CO at a time and place determined by the CO. No one may force the service member to reveal the matter that they wish 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 an individual submits a request for mast, 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 they withdrew it and the reason for it should be documented and preserved.
- Requesting mast is an individual right. Reference (a) prohibits members from joining together to protest or complain. In the Navy, a Sailor may request mast with their CO. In the USMC, a Marine may request mast with any commander in the chain of command up to and including 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 filed by a service member against any superior, inside or outside the chain of command. A service member may not, however, file an Article 1150 complaint against their CO. A complaint against a service member's CO will be submitted pursuant to Article 138 of the UCMJ. See reference (c) for complaint procedures.

- **SAME COMMAND:** If the complainant files an Article 1150 complaint against a superior (the respondent) in the same command as the complainant, the 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. If, however, either the complainant or respondent is not satisfied with the outcome, they may submit an Article 138 complaint against the CO.
- **SEPARATE COMMANDS:** If the respondent is not in the same command as the complainant, the complainant shall forward the complaint to the officer exercising general court-martial convening authority (GCMCA) over the respondent via the complainant's CO, respondent, and the respondent's CO. The **GCMCA** is required to take action on the complaint and forward the matter to the Secretary of the Navy via the Office of the Judge Advocate General (OJAG) Code 13 (Administrative Law Division).

**UCMJ ARTICLE 138 COMPLAINTS:** A complaint pursuant to Article 138 of the UCMJ is a formal complaint filed by a service member against their 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. See reference (c) for complaint procedures.

- The complainant must normally submit the complaint within 90 calendar days of discovering the alleged wrong. Failure to do so may result in the complaint being returned for being untimely. However, because the CO must still forward the complaint to the GCMCA, the GCMCA can waive the timeliness defect and take action on the complaint.

- The complainant must route the complaint through the CO against whom the complaint is made (the respondent). The CO has 10 calendar days to respond to the complaint and forward it to the GCMCA.
- The GCMCA has the primary responsibility to conduct an inquiry into the complaint, take action on it, and submit a report to SECNAV.
- Once the GCMCA acts on the complaint, they will report their determination and actions to SECNAV via OJAG Code 13 or HQMC, JAD (JCA).
- A complainant may withdraw a complaint in writing at any time.
- All complaints, whether acted upon or withdrawn, must be maintained for two years.

**ALLEGED WRONGS INVOLVING SENIOR OFFICIALS.** Any commander or CO who receives a complaint of wrongs (Article 1150/138 complaint) against a subordinate who is a senior official (e.g., military O-7 select and above, civilian SES, or equivalent), as defined by reference (f), will report the alleged wrong(s) to the Naval Inspector General (NAVIG) or the Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (DNIG/IGMC) before taking further action on the complaint. The NAVIG or DNIG/IGMC will determine whether the complaint contains a credible allegation of misconduct, identify the appropriate process to investigate any such allegation, and notify the reporting commander or CO of this determination.

- The timelines in reference (c) for the processing of complaints of wrongs will be tolled until this notification is received.
- A determination that the complaint contains a credible allegation of misconduct by a senior official, or that the complaint is not credible and does not warrant investigation, will terminate further inquiry and processing under reference (c) with respect to those particular alleged wrong(s), unless otherwise directed by the NAVIG, DNIG/IGMC, or the DoD Inspector General (DoDIG).
- In such cases, the commander or CO who received the complaint will notify the complainant that the complaint, or portion of the complaint, has been referred to the cognizant IG, which will follow its normal procedures for notifying the complainant of the complaint's status and disposition. For any of the alleged wrongs returned to the commander or CO as not involving a matter under the cognizance of the IG, the complaint will be processed in accordance with reference (c) and the respondent may respond to the remaining complaint(s) in accordance with subsection 0305(f) of reference (c).

**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 (g)].

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

### **REFERENCES:**

- (a) SECNAVINST 5370.5 (series)
- (b) SECNAVINST 5370.7 (series)
- (c) DoDD 7050.06
- (d) MCO 5370.8A
- (f) JAGINST 5800.7 (series) (JAGMAN), Chapter II
- (g) UCMJ, Article 132-Retaliation

### **Contact Information:**

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

**<https://www.dodig.mil/components/administrative-investigations/DoD-hotline/>**

Website or email submissions are the preferred method of contact.

**Navy Inspector General (NAVIG): 1-800-522-3451, <https://www.secnav.navy.mil/ig>;** NAVIG serves as the SECNAV's representative to inspect, investigate, or inquire into any and all matters of importance to the DON and provides support to OPNAV for investigative and other matters.

**Inspector General of the Marine Corps (IGMC): 1-866-246-3887, <https://hotline.usmc.mil>;** NAVIG's designee for USMC matters, providing support to the Commandant of the Marine Corps for investigative and other matters

### **IG Responsibilities:**

- Echelon I and II commanders with assigned Command IGs are responsible for written internal procedures for processing hotline referrals at appropriate levels within the chain of command.
- All commanders and COs shall 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.
- Commanders with assigned Command IGs shall ensure IG investigators have successfully completed appropriate NAVINSGEN investigations courses, or equivalent DoD or other military service IG training, prior to conducting, reviewing, or determining any action on a hotline complaint. This requirement may be waived by the NAVIG in appropriate circumstances for a period not to exceed six months.
- Commanders with assigned Command IGs shall ensure IG investigators maintain certification and training requirements as prescribed by the NAVIG.

**REFERRALS FROM COMMAND IG:** If a Command IG refers a complaint to a command for action deemed appropriate, the CO should conduct a Preliminary Inquiry or Command Investigation under reference (e) as appropriate.

- When the Command IG requires a response to the referral, the CO should (1) ensure all allegations raised in the complaint are addressed in the response; (2) provide all investigative materials and documentation to the Command IG; and (3) report all corrective actions and remedial measures taken, including training, administrative actions, and disciplinary actions.
- NO REPRISAL can ever be taken or threatened against a known or suspected complainant to an IG.

**WHISTLEBLOWER PROTECTION ACT (10 U.S.C. § 1034): Protects lawful protected communications and prohibits retaliatory personnel actions.** No person may take or threaten to take, an unfavorable personnel action, or withhold or threaten to withhold a favorable

personnel action, as reprisal against a service member who 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. COs will:

- Publicize and prominently display in command spaces this act and implementing regulations [see reference (b)].
- Process all complaints of retaliation, including complaints of reprisal, ostracism, and maltreatment, under this act in accordance with reference (b), including forwarding the complaint to the next level of the chain of command or NAVINSGEN as required.
- Forward all complaints of reprisal to NAVINSGEN within three calendar days of receipt (one working day for complaints against senior officials).

5 U.S.C. § 2302(b)(8) provides similar protections for civilian employees. The Department of Defense (DoD) Office of Inspector General (OIG) Whistleblower Reprisal Investigations (WRI) Directorate and the United States Office of Special Counsel (OSC) address allegations of whistleblower reprisal made by civilian employees. DON Hotline personnel assist civilian employees to file their whistleblower complaints with either OSC or DOD OIG.

**Note: Retaliation is also punitive under reference (g).**

## **CONGRESSIONAL INQUIRIES**

### **REFERENCES:**

- (a) MILPERSMAN 5216-010
- (b) U.S. Navy Regulation 1155
- (c) SECNAVINST 5730.5 (series)
- (d) JAGINST 5800.7 (series) (JAGMAN)

**RIGHT TO COMMUNICATE:** No person may restrict any service member from communicating with Congress in the service member's personal or private capacity, unless the communication is unlawful or violates a regulation necessary to the security of the United States. 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 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)
- (c) 32 CFR Section 286.12 – fee tables
- (d) 32 CFR Part 701
- (e) 5 U.S.C. § 552

### **RESOURCES:**

USN: <https://www.secnav.navy.mil/foia/Pages/default.aspx>

USMC: <https://www.hqmc.marines.mil/Agencies/USMC-FOIA/>

DOJ FOIA Guide: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

OJAG FOIA FAQs: <https://www.jag.navy.mil/foia/foia-faq/>

OJAG Resources for FOIA Processors: [https://flankspeed.sharepoint-mil.us/sites/JAG\\_PORTAL\\_HOME/Administrative%20Law/SitePages/Branch-133.aspx](https://flankspeed.sharepoint-mil.us/sites/JAG_PORTAL_HOME/Administrative%20Law/SitePages/Branch-133.aspx)

**ACCESS TO RECORDS:** The FOIA establishes a statutory right of public access to Executive Branch information in the federal government and provides that any person (including foreign citizens) has a right, enforceable in court, to obtain access to federal agency records subject to the Act, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions.

**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 may 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. IDA authority can be delegated but not below O-4/GS-12. See reference (a) for a list of IDAs.

**FEES:** Requestors may be charged fees for production of requested records. Details as to fees and fee waivers are set out in reference (b). 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 days of the date the agency receives the request, excepting Saturdays, Sundays, and legal public holidays. Under certain circumstances, an agency can extend the 20 working day time limit for processing a FOIA request by written notice to the requester by setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.

**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.
- LITREPs, ALRs, and DPIs

**ANNUAL REPORTING AND TRACKING:** FOIA action officers must track all FOIA cases and all reimbursable fees. Use of SecureRelease is mandatory; commands should ensure their FOIA Officer has a SecureRelease account and can forward requests to the IDA for adjudication and tracking.

**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, the Office of the Judge Advocate General (Code 14 – General Litigation) at (202) 685-5450 or DSN 325-5450, and Code 15 for tort and admiralty matters.

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

### **REFERENCES:**

- (a) JAGINST 5800.7 (series) (JAGMAN)
- (b) SECNAVINST 5211.5 (series)
- (c) DoDI 1000.30
- (d) OMB Memo M-07-16 fn. 6

**RESOURCES:** USN Privacy Act online website:

<https://www.doncio.navy.mil/TagResults.aspx?ID=36>

USMC Privacy Act online website: <https://www.hqmc.marines.mil/Agencies/USMC-FOIA/USMC-Privacy-Act/>

DOJ Privacy Guide: <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition>

OJAG Resources for FOIA Processors: [https://flankspeed.sharepoint-mil.us/sites/JAG\\_PORTAL\\_HOME/Administrative%20Law/SitePages/Branch-133.aspx](https://flankspeed.sharepoint-mil.us/sites/JAG_PORTAL_HOME/Administrative%20Law/SitePages/Branch-133.aspx)

**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, personal phone numbers, home 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 <https://www.doncio.navy.mil/ContentView.aspx?ID=1876>);
- 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)]. Note: FOIA requests by first-parties should be processed under both the FOIA and the Privacy Act.

**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 (c) 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 (d) 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.

**ROLODEX PII:** Names, ranks, work addresses, work email addresses, and work phone numbers, while technically falling within the definition of PII, are often considered “rolodex PII.” For example, an office rolodex contains personally identifiable information (name, phone number, etc.). In this context the information probably would not be considered sensitive; however, the same information in a database of patients at a clinic which treats contagious disease probably would be considered sensitive information. Disclosure of such rolodex PII is unlikely to be considered a PII breach. See reference (d) for further information.

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

### **REFERENCES:**

- (a) DoDI 6025-18R
- (b) DoDI 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:

<https://www.tricare.mil/Privacy/HIPAA>

**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 their written designee with the ability to obtain medical information on service members within their command.

**SECTION XII: RELATIONS WITH CIVILIAN AUTHORITIES**

## **CIVILIAN JURY DUTY**

### **REFERENCES:**

- (a) 28 U.S.C. § 1863
- (b) SECNAVINST 5822.2 (series)
- (c) 10 U.S.C. § 982

**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 (for example: members can be reimbursed for mileage, but cannot be paid daily compensation for jury duty service).

**AUTOMATIC STATE COURT EXEMPTIONS FOR JURY DUTY:** Flag officers, general officers, COs, service members assigned to operating forces, service members in a training status, and service members stationed outside the 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 service members from state/local juries if jury duty would:

- unreasonably interfere with performance of the service member's military duties; and/or
- adversely affect the readiness of the unit, command, or activity the member is assigned to.

### **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 lacks the authority to convene a SPCM, an exemption determination request should be forwarded to the next officer in the chain of command with the ability to convene a SPCM.

## **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) JAGINST 5800.7 (series) (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 that maintains exclusive jurisdiction. 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, but COs should consult with their local staff judge advocate in such cases.

**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. If 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 staff judge advocate (SJA) should be consulted before personnel delivery 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, including 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. 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 (ISIC) 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 national authorities without ISIC and cognizant SJA consultation.**

**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 or DSN 325-5450.

**BARRING OF CIVILIANS:** Civilians who commit misconduct or who present a threat to good order and discipline on an installation/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, informing the 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 legal assistance (LA) office when they have been victimized by off-base businesses. The LA office can help ensure the business is reported to the AFDCB. 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 3440.16 (series)
- (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 armed forces to willfully execute and enforce civilian domestic laws without authorization from Congress. The PCA is not applicable to the U.S. Coast Guard. Willful violations of the PCA are criminal offenses.

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

**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; or
- Investigations, interrogations, or undercover operations.

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

- Investigations of violations under the Uniform Code of Military Justice;
- Protection of classified military 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.

**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) JAGINST 5800.7 (series) (JAGMAN), Section 0617

**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 decides 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 they are 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.

**PROPERTY OWNED BY CIVILIANS:** When the property is owned by civilians, civilian employees of the DON, civilian contractors and their employees, or dependents, the CO should direct that the disputed property be removed from the installation until the CO is satisfied that the dispute is resolved.

## **SERVICE OF PROCESS/SUBPOENAS**

### **REFERENCES:**

- (a) JAGINST 5800.7 (series) (JAGMAN), Chapter VI
- (b) SECNAVINST 5820.7C
- (c) MCO 5800.16 (series) (LSAM), Vol 8

**SERVICE OF PROCESS:** Service of process is a procedure that gives legal notice to a person that a court has jurisdiction over them and they must appear in court [See reference (a)]. Service of process may be 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 N – 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 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 they 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 immediately contact the area coordinator for foreign criminal jurisdiction matters as well as the cognizant staff judge advocate.

**RELATION TO OFFICIAL DUTIES:** When service of process upon a service member or a civilian employee arises from the performance of their official duties, COs must ensure that the service member is notified of their applicable rights in accordance with section 0615 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. 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 regarding 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-R, Part 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 TO THE U.S.:**

- 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 customs 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 TO THE U.S.:**

- 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 customs 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) JAGINST 5800.7 (series) (JAGMAN), Chapter VIII
- (b) DoD Instruction 5515.08
- (c) JAGINST 5890.1B

**PURPOSE AND SCOPE:** The purpose of the foreign claims process is to promote and maintain 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. These regulations should be broadly construed to carry out this purpose. 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, U.S. service members or their dependents, U.S. civilian government employees residing in the foreign country primarily because they are employed directly by the U.S., or sponsored by or accompanying such a person, or U.S. contractors present for the purpose of performing on a government contract or sponsored by or accompanying such a person. See reference (c) for a detailed list of proper and improper claimants.

**CLAIMS NOT COVERED:** Claims not covered under the foreign claims process include combatant claims, admiralty claims, patent infringement, claims made by insurers, purely contractual claims, and paternity claims, as well as claims by civilian employees of the United States, including local inhabitants, injured in the scope of their employment.

**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 unless such claim occurs during a foreign port visit by U.S. forces afloat and is less than \$2,500 (see reference (a), para 0808).

**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 and International Agreements Claims Act will apply. If not, the Foreign Claims Act will apply.

**ESTABLISHMENT OF CLAIMS COMMISSION:** COs have the authority to appoint a Foreign Claims Commission of one or three members 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 is filed as a result of a service member's conduct outside the scope of duty, a private settlement and voluntary restitution may be considered as a method to resolve the matter outside the claims process. Consult the cognizant staff judge advocate before proceeding with a private settlement. 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 and limits on authority to pay based on the amount of the settlement. Amounts are determined by the settlement amount in U.S. dollars according to conversion rates at the time settlement is forwarded to the claimant for signature.

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

### **REFERENCES:**

- (a) JAGINST 5800.7 (series) (JAGMAN)
- (b) DoDI 5525.01
- (c) SECNAVINST 5820.4G
- (d) 1990 U.S. Navy Regulations, Article 0828
- (e) NAVADMIN 165/21
- (f) NAVADMIN 244/14

**DELIVERY OF SERVICE MEMBERS TO FOREIGN AUTHORITIES:** COs shall not deliver service members or civilian employees of the DON, or their dependents residing at or located on USN or USMC installations, to foreign authorities unless authorized by a 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 and to their operational chain of command 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 release of the service member to U.S. custody 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 references (a) sections 0609 and 1005 and (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 Designated Commanding Officer (DCO) as defined in section 1005 of reference (a), 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 non-judicial 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, including for foreign criminal jurisdiction. If foreign authorities use force to compel submission, COs shall use all available means to resist [See references (d) and (e)].

**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 (f).

## **LIBERTY RISK**

### **REFERENCES:**

- (a) JAGINST 5800.7 (series) (JAGMAN), Section 0104
- (b) UCMJ, Article 92
- (c) 1990 U.S. Navy Regulations, Articles 0705, 0917, 0921, 1135

### **\*\*\*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:** Deprivation of normal liberty as a punishment is unlawful except as authorized by the UCMJ and implemented through NJP or court-martial proceedings [see reference (a)]. However, liberty risk programs may be implemented to restrict normal liberty while service members 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 non-judicial 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 commanders may assign liberty risk. The Commander 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).
- 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 imposition 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 non-judicial 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) JAGINST 5800.7 (series) (JAGMAN)
- (b) MCO 5800.16 (series) (LSAM), Vol 5
- (c) JAGINST 5801.2B
- (d) 10 U.S.C. § 1044
- (e) 10 U.S.C. § 1072(b)(c)(f)&(g)
- (f) 10 U.S.C. § 1408(h)
- (g) 10 U.S.C. § 1059
- (h) 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 0701].

### **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), § 0705(c)(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 generally include in-court representation, although some offices with a JA or civilian attorney licensed in the jurisdiction with CO approval or a designated Domestic Violence Subject Matter Expert are permitted to provide in-court representation to victims of crimes or domestic abuse for the limited purpose of seeking a temporary civilian restraining order or a protective order. [See reference a §§ 0707(a)(4)(a)(7) and 0710(c)] Likewise, offices with Exceptional Family Member Subject Matter Experts are permitted to represent eligible EFM families through the Individualized Education Programs (IEPs) of the local school administrations. Some offices 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, military naturalization, 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) DoDI 1350.04
- (b) JAGINST 5800.7 (series) (JAGMAN)
- (c) MCO 5800.16 (series) (LSAM), Vol 5
- (d) JAGINST 5801.2B

**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 non-springing general POA that goes into effect immediately 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. It is advisable to draft Springing General POAs that only go into effect if the service member becomes incapacitated or is declared POW/MIA. Without a Springing General POA, if the service member becomes incapacitated, the only option for the family to help maintain the service member's financial affairs (pay bills, speak with landlords or banks on their behalf, etc.) would be to petition a court for a guardianship which is cost prohibitive for many families. GENERAL POAs MUST BE DRAFTED UNDER THE SUPERVISION OF AN ATTORNEY.
  - **MY NAVY FAMILY APP:** Special POAs and other forms are now available for service members to access and create on the new My Navy Family App. The app is available on all iOS and Android devices. The Special POAs can be found under the Legal Resource section.
- **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, the Servicemember Online Enrollment System (SOES) 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, or update their own beneficiary designees in SOES. 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, SOES, or the command's personnel office. Spouses are not automatically removed from SGLI upon divorce.
  - The most frequently encountered problem with the SGLI beneficiary designations is that the service member forgot to sign the form or make any designations in SOES, which makes the intended designation(s) 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 federal law is constantly changing and some states have enacted their own versions of the SCRA that provide greater protections, 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, though any waiver must comply with the SCRA. 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 need 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.

**EVICTION 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 member's period of active service. This protection includes prohibiting towing companies and storage companies from foreclosing on a storage lien on a service member's towed vehicle or personal property without first obtaining a court order.

**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 their 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. §§ 734
- (b) MILPERSMAN 1754-030
- (c) MCO 5800.16 (series) (LSAM), Vol 9
- (d) UCMJ, Article 134
- (e) MILPERSMAN 1910-140
- (f) UCMJ, Article 92
- (g) DoD 7000.14-R, Vol 7A, Ch. 26

**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). DFAS must initiate an action to recoup BAH for periods of inadequate support under reference (g)..

**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 5800.16 (series) (LSAM), Vol 9

**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) DoDI 1344.09
- (b) DoDI 1344.12
- (c) MILPERSMAN 7000-020
- (d) MCO 5800.16 (series) (LSAM), Vol 10
- (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) DoDI 6400.1
- (c) 10 U.S.C. § 1058
- (d) OPNAVINST 1752.1 (series)
- (e) OPNAVINST 1752.2 (series)
- (f) MCO 1754.11A
- (g) 10 U.S.C. § 1567
- (h) MILPERSMAN 1910-162
- (i) 18 U.S.C. § 922(g)
- (j) 18 U.S.C. § 921
- (k) SECNAVINST 1752.4 (series)
- (l) UCMJ, Article 128b-Domestic Violence

**DOMESTIC VIOLENCE:** Domestic violence is now listed as a punitive article under the UCMJ (reference (l)) and is a covered offense that should be referred to NCIS for investigation and OSTC for disposition.

### **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]. Commands should also consider referring victims to a legal assistance office for advice on seeking a civilian protective order which can offer additional protections and remedies that are unavailable with an MPO. Legal assistance offices in San Diego, CA; Bremerton, WA; Norfolk, VA; and Jacksonville, FL, have designated domestic violence subject matter expert attorneys that may be able to provide in-court representation to victims seeking a civilian protective order in certain cases.

**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 reference (g) and 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 references (i) (also known as the "Lautenberg Amendment") and (j), 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. § 2635.101
- (b) JAGINST 5500.1
- (c) MCO 5800.16 (series) (LSAM), Vol 7
- (d) 5 CFR 2635.107
- (e) Joint Ethics Regulation

### **QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS OFFICIAL.**

**WHAT IS AN ETHICS OFFICIAL:** Ethics officials provide written and oral advice, counseling, and assistance to their organization and to the DoD Personnel within that organization, on all ethics matters covered by reference (a) and related statutes and regulations. Matters include, but are not limited to, DoD support to outside activities and non-federal entities, acceptance of gifts, conflicts of interest, post-Government service employment matters, and training and education on ethics rules and regulations. Ethics officials are also responsible for the initial review and certification of certain financial disclosure reports.

### **WHO IS AN ETHICS OFFICIAL?**

- USN: An ethics official is a judge advocate (after their initial tour), or a civilian attorney who has received specialized certification and annual refresher training and is serving in a position designated in enclosure (1) of reference (b). This list includes principle SJAs supporting Commanding Officers. The authority to advise on certain issues are withheld to ethics advisors in the grade of O-4/GS-13 or above. Judge advocates who receive the necessary training and certification, not in designated ethics official billets, may provide some limited ethics advice. However, some topics, such as OGE 278 and 450 reviews and post-government employment reviews, require designated ethics official advice.
- USMC: An ethics official is a Judge Advocate in a position designated in section 0105 of reference (c). This list includes Staff Judge Advocates and Deputy Staff Judge Advocates at all Marine Corps Bases; Staff Judge Advocates and Deputy Staff Judge Advocates for all staffs and commands having general court-martial convening authority; and Navy Office of General Counsel (OGC) attorneys under the cognizance of the Commandant of the Marine Corps.

**SAFE HARBOR:** Disciplinary action for violating part 2635 of the Code of Federal Regulations—or any supplemental agency regulations—will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an ethics official are not protected by an attorney-client privilege.

### **BASIC OBLIGATIONS OF PUBLIC SERVICE (Reference (e)):**

- 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, sex, 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) Joint Ethics Regulation, section 2-504
- (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. In the case of a junior approaching the senior and requesting a sale, while not prohibited, best practice is to document this with an ethics counselor memorandum for the record.

**EXCEPTIONS:** Absent coercion/intimidation, the sale or lease of noncommercial personal or real property and commercial sales solicited and made in a retail establishment or online market during off-duty employment are not prohibited.

**SPOUSES AND OTHER HOUSEHOLD MEMBERS:** Service members must seek an opinion from an ethics official 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) Joint Ethics Regulation, Chapter 5
- (c) Joint Ethics Regulation, Chapter 6
- (d) 5 CFR Part 2634, Subpart 1
- (e) Joint Ethics Regulation, Chapter 7

**EMPLOYEES AND SUPERVISORS SHOULD WATCH OUT FOR SITUATIONS WHERE SOMEONE'S FINANCIAL INTERESTS HAVE THE POTENTIAL TO BE IMPACTED BY THEIR OFFICIAL DUTIES.**

**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 official to discuss the following courses of action:

- Provide written notice of the conflict to your superior officer, and
- Divest yourself of the financial interest, or
- Request of a waiver, disqualification, reassignment or limitation of duties.

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

- File when promoted, annually thereafter, and upon termination.
- Ensure the filing is reviewed by a supervisor and an ethics official for potential conflicts of interest.
- Ensure any necessary remediation is made for disclosed conflicts.
- Keep in mind that this document is available to the public.
- Certain purchases, sales, or exchanges of stocks, bonds, and other securities in excess of \$1,000 must be reported promptly via an OGE-278-T.

**CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (OGE-450 or OGE-450A):** Individuals serving in "covered positions" as defined in section 6-300 of reference (c) must file and have the report reviewed by a supervisor and certified by an ethics official. "Covered position," includes, but is not limited to:

- commanding officers, heads and deputy heads, and executive officers of Navy shore installations with 500 or more military personnel and civilian DoD;
- commanding and executive officers of all Army, Marine Corps, Air Force, and Space Force installations, bases, air stations or activities; and
- DoD employees classified at O-6/GS-15 and below who participate personally and substantially, without supervision and review, in taking official action for contracting and procurement, etc., or other activities in which the final decision or action may have a direct and predictable financial impact on the interests of any NFE.

**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.

Current and former DoD Personnel may request a written opinion on the applicability of post government employment restrictions from the ethics official of the command or organization which they are leaving or have left.

**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. Commanders and supervisors of reserve personnel should be cognizant of subordinate Reservists and know what their military and civilian job and duties are.

## **FUNDRAISING**

### **REFERENCES:**

- (a) Joint Ethics Regulation (JER)
- (b) DODI 1015.10
- (c) DoDI 5035.01 (CFC Instruction)
- (d) OPNAVINST 1754.5 (series)
- (e) MCO 5760.4C
- (f) OPNAVINST 1710.11 (series)
- (g) 5 C.F.R. § 2635.808
- (h) MCO P1700.27B CH-1
- (i) SECNAVINST 5354.7 (series)

**OFFICIAL ENDORSEMENT:** Commands are not prohibited from endorsing membership or fundraising for:

- The Combined Federal Campaign (CFC);
- Emergency and disaster appeals approved by the Office of Personnel Management;
- Army Emergency Relief;
- Navy-Marine Corps Relief Society (only the Active-Duty Fund Drive may be endorsed); 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 provide support to (vice endorse) a charitable fundraising event sponsored by a non-federal entity if the criteria in reference (a) are met. This is limited to logistical support, such as the use of DoD facilities and equipment on a limited basis. If you think you have a situation that meets the requirements in reference (a), speak to an ethics official.

**WORKSPACE SOLICITATIONS:** Solicitation within the workplace is authorized only for approved organizations. Solicitations must be conducted in such a way as to ensure all contributions are voluntary. Actions that appear to be coercive and do not allow free choice are prohibited. Therefore, individual donations must be kept private and shall not be publicized. Publicity of command percentage of participation such as charts, bulletin boards, special reports, daily bulletins or other announcements, command-specific “thermometers” (thermometers showing only the goal and progress of the entire region are allowed), and any other publicity which indicates command standings or comparative achievements are considered to be coercive in nature and shall not be used.

**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.

[See *PRIVATE ORGANIZATIONS AND FAMILY READINESS GROUPS, BIRTHDAY BALL FUNDRAISING, and GAMBLING*]

**RAFFLES:** Raffles may be authorized under special circumstances for the Navy and Marine Corps Relief Society and Combined Federal Campaign. Make sure to discuss with your ethics official before organizing such an event.

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

**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.

## **BIRTHDAY BALL FUNDRAISING**

### **REFERENCES:**

- (a) MCO 7040.11A
- (b) MCO P1700.27B CH-1
- (c) Joint Ethics Regulation (JER)
- (d) MCO 5760.4 (series)
- (e) MCO 5800.16 (series) (LSAM)
- (f) NAVADMIN 196/24
- (g) MARADMIN 473/24

### **ALWAYS CONSULT AN ETHICS OFFICIAL WHEN UNDERTAKING ANY BIRTHDAY BALL FUNDRAISING ACTIVITY.**

**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 photos to support the official ceremony. 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. [See *FUNDRAISING*].
- Gifts and donations cannot be solicited except among unit members. Unsolicited donations must be accepted as provided in Volume 8 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. Additional resources are promulgated through the Naval History and Heritage Command each year.
- **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 3-200 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 an ethics official when undertaking any Birthday ball fundraising activity.*

## **GAMBLING**

### **REFERENCES:**

- (a) 5 C.F.R. § 735.201
- (b) Joint Ethics Regulation
- (c) 20 U.S.C. § 107a(5)
- (d) 32 C.F.R. Part 234
- (e) OPNAVINST 1710.11 (series)

**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 official 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);
- 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) Joint Ethics Regulation
- (b) 5 C.F.R. § Part 2635, Subpart C

**GENERAL RULE:** A junior service member may not offer, give, donate, 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. This rule applies to civilian employees as well.

### **EXCEPTIONS TO THE GENERAL RULE:**

- Token gifts (not cash) of nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior an inexpensive bag of candy when returning from vacation).
- Food and refreshments shared in the office.
- Personal hospitality at subordinate's home of a type and value customarily given by the subordinate to personal friends, or a gift in return for such hospitality (e.g., a junior may invite a superior to dinner).
- On special infrequent occasions (for either the senior or the subordinate)—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.

### **EXAMPLES OF PROHIBITED GIFTS FROM SUBORDINATES:**

- Command ball caps (these are almost always over \$10).
- Books for reading or display in exceeding \$10 (the exception for gifts of informational materials from outside sources does not apply to gifts from subordinates).
- Artistic or other personal creations that retail for over \$10. This is common when a subordinate or their spouse owns their own small business selling such items.

**GROUP GIFTS:** Authorized for special infrequent occasions (e.g., change of command or retirement); seek the advice of an ethics official. Total cost cannot exceed \$480 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 \$480 maximum shall be avoided (e.g., an organization cannot be divided into different sub-divisions and buy components of a larger gift solely to avoid the \$480 maximum).

**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) Joint Ethics Regulation Section 2505
- (b) SECNAVINST 4001.2 (series)
- (c) SECNAVINST 1650.1 (series)
- (d) U.S. Constitution, Article I, §9
- (e) OPNAVINST 4001.1 (series)
- (f) 5 C.F.R. Part 2635 subpart B
- (g) SECDEF Memo 16 May 2013

**GENERAL RULE:** Federal employees are forbidden from soliciting, coercing, or accepting gifts from a prohibited source or gifts offered because of the employee's official position. Gifts to family members or a designee are "imputed" to the employee. It is a best practice to consult with an ethics official on any gifts that are given by prohibited sources or are given because of the employee's official position.

**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 include:

- Anything paid for by the Government or secured by the Government under Government contract
- Modest refreshments that are not offered as part of a meal (the "coffee and donut" rule);
- Items of little intrinsic value intended solely for presentation (command coins fit this category but ball caps do not);
- 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;
- Items for which you pay fair market value (FMV) (if you pay for it, it's not a gift); and
- Free attendance at an event to a service member who is assigned to present information on behalf of the agency at the event.

### **COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING ACCEPTANCE OF A**

**GIFT:** The following may be permissible to accept and are exceptions to the general rule. In all cases, and especially regarding these exceptions, 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. Additionally, regardless of whether an exception applies, an employee should always consider whether acceptance of the gift would be perceived as improper under the principles of ethical conduct – "Even if I *can* accept this gift, *should* I accept this gift?" Many of the situations below should be discussed with your ethics official so you can receive an opinion before accepting the gift.

- Gifts worth less than \$20.00 per occasion. No more than \$50.00 worth of gifts from any one source per calendar year may be accepted under this exception. 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 (recommend ethics official analysis of the 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:** Personal acceptance and retention of gifts should be reviewed by a judge advocate to ensure compliance with references (b) and (d).

- Gifts with an FMV less than \$480 may be kept by the employee
- Gifts with an FMV over \$480 may be accepted on behalf of Department of the Navy and processed in accordance with reference (b).
- Note for OGE 278 Filers, gifts from the source must be aggregated and reported on the annual disclosure if the total accepted personally is more than \$480 per year.

**PROCUREMENT (CONTRACTING) OFFICIALS:** Anyone in a procurement position or who has ultimate responsibility for procurement should see their ethics official before accepting any gift.

**FINANCIAL DISCLOSURES:** Combined gifts worth more than \$480 from the same source in a calendar year must be reported by financial disclosure filers on their annual report. (OGE Form 450 and OGE Form 278e).

**GIFT ACCEPTANCE AUTHORITY:** Per reference (b), the gift acceptance authority is 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.

- The Under SECNAV is the acceptance authority for gifts of real property with a value exceeding 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, and the Director Navy Staff (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, Naval War College (NWC), President, Naval Post Graduate School (NPS), and President, Marine Corps University (MCU) for gifts to organizations reporting to NWC, NPS, 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) Joint Ethics Regulation Chapter 2, Section 3
- (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 OR PERSONNEL:** 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.

**GOVERNMENT VEHICLES:** Government vehicles can only be used for official purposes consistent with the use for which the vehicle was acquired. They may not be used to transport employees between their homes 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. Consult policy guidelines and an ethics official 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 official 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. Receptions are usually unofficial events that are sponsored by a military member in their personal capacity and 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 so long as they incur no additional cost. 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) Joint Ethics Regulation, Section 2-502
- (b) MILPERSMAN 5370-010
- (c) 5 C.F.R. § 2601.106

**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 particular 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 OFFICIAL.**

## **NON-FEDERAL ENTITIES, NON-APPROPRIATED FUND INSTRUMENTALITIES, AND FAMILY READINESS GROUPS**

### **REFERENCES:**

- (a) DoDI 1000.15
- (b) DoDI 7600.06
- (c) DoDI 1000.26 (series)
- (d) DoDD 1015.15 (series)
- (e) OPNAVINST 1700.7 (series)
- (f) OPNAVINST 1700.9 (series)
- (g) OPNAVINST 5760.5 (series)
- (h) OPNAVINST 1710.11 (series)
- (j) CNICINST 11000.1 (series)
- (k) OPNAVINST 1754.5 (series)
- (l) 32 C.F.R. Part 212

**STATUS OF NON-FEDERAL ENTITIES:** Applicable regulations must be consulted to determine what level of support is authorized for any particular group; the nature and amount of support varies depending on the organization.

**COMMON ORGANIZATIONS:** NFEs that frequently request support include: Family Readiness Groups, Spouse Clubs, Scouting America, Girl Scouts, Navy League, Sea Cadets, athletic clubs, local school organizations, command organizations, and command social organizations (often called By Our Own, For Our Own, or “BOOFOO”), such as the First Class Petty Officers’ Association, Chiefs’ Mess, and Wardroom.

**NO DISCRIMINATION:** NFEs must be denied support if they discriminate in membership practices based upon race, sex, religion, etc. Note that this includes support in the form of speaking engagements (e.g., a service member shall not agree to speak in an official capacity at an organization that discriminates in membership practices).

**CREATION OF A NON-FEDERAL ENTITY:** In order to create an NFE that will operate on the base, 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. Consult a judge advocate or Office of General Counsel attorney if there is interest in authorizing such use.

**PERIODIC REVIEW:** Installation COs must conduct periodic reviews of all private organizations operating on base, see reference (l).

**NON-APPROPRIATED FUND INSTRUMENTALITIES (NAFIS):** NAFIs receive non-appropriated funds and are established for military morale, welfare, and recreation (MWR) programs. Examples of NAFIs include the various military exchanges, lodging programs, and commissaries. NAFIs have a special status and installation NFEs are prohibited from competing with the services they provide, and may not receive funding from NAFIs, see reference (a).

**FUNDING AND SUPPORT:** NFEs 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. Consult a judge advocate prior to approving any requests for limited logistical support. Minimal logistical support is authorized, dependent on the type of private organization and the authority under which it is organized. NAFIs are prohibited from providing NAF financial assistance to

NFEs or any other entity except as specifically authorized by regulation, DoD policy, or statute (e.g. Scouting organizations overseas).

**FAMILY READINESS GROUPS (FRGs):** FRGs can receive additional command support due to their status, see reference (j). A FRG is an NFE , 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 CONSIDERATIONS**

### **REFERENCES:**

- (a) Joint Ethics Regulation, Chapter 4
- (b) FY02 National Defense Authorization Act, § 1116, 28 Dec 01
- (c) Joint Travel Regulations (JTR)
- (d) 31 U.S.C. § 1353
- (e) DoDI 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 official 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)]. However, due to the possible appearance of impropriety, service members should avoid first-class or business-class travel while in uniform.

**OVER-BOOKING:** If involuntarily bumped, service members may not keep free tickets or any other benefit received for personal use – they must contact the appropriate office to be rebooked. 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 must 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, laundry or dry-cleaning establishments, and similar establishments 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) NAVADMIN 184/14
- (c) SECNAVINST 7042.7 (series) (ORF)

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 authorized under reference (b) 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. APF coins should not be given to contractors.

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.

Except for the most senior Department of the Navy officials, COs and other service members are prohibited from personalizing coins purchased with APF. Thus, a CO may not have their name on a coin purchased with APF, but may include "Commanding Officer" in addition to the command name."

**OFFICIAL REPRESENTATION FUNDS (ORF):** Pursuant to reference (c) ORF is 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 only be used to purchase command/unit coins for presentation to 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. Check with an ethics official before making any ORF expenditures.

**PERSONAL FUNDS:** A commander may purchase coins with their own funds and is not bound by the restrictions noted above in issuing their personal coins.

**DO NOT MIX COINS FROM DIFFERENT FUNDING SOURCES.** A best practice is to have a different coin design for each source of funds, facilitating accurate inventory, coin logs, and dissemination of coins.

**SECTION XVI: LAW OF FEDERAL EMPLOYMENT**

## **CIVILIAN PERSONNEL LAW**

### **REFERENCES:**

- (a) SECNAVINST 5430.7S
- (b) 5 U.S.C. § 4303 and 5 C.F.R. Part 430
- (c) 5 U.S.C. §§ 7511-7514
- (d) SECNAVINST 12752.1A CH-1
- (e) SECNAVINST 12713.14
- (f) 29 C.F.R. Part 1614
- (g) 10 U.S.C. § 1561
- (h) ALNAV 024/22
- (i) 29 U.S.C. 791 and 29 C.F.R. Part 1630
- (j) 5 C.F.R. Part 630

### **OVERVIEW:**

- Total Force consists of active-duty military, federal civilian employees and federal contractors, but total workforce consists ONLY of active-duty military and federal civilian employees.
- **Contractors are NOT part of the federal workforce; do not treat as civilian employees.**
- Applicable type of pay system (appropriated fund [APF] vs. non-appropriated fund [NAF]) determines which personnel rules apply.
- Federal civilian employees governed under federal law, rule and regulation which provides them with more rights to appeal workplace decisions and actions to third party federal administrative agencies (e.g., Merit Systems Protection Board, Equal Employment Opportunity Commission, and Federal Labor Relations Board).
- The Department of the Navy Office of General Counsel (OGC) (civilian attorneys within the DoN) is the primary point of contact for questions regarding civilian employment and labor law (reference (a)).

### **CIVILIAN EMPLOYEE PERFORMANCE/DISCIPLINE OVERVIEW (APF):**

- Performance: unable to perform to standards; per reference (b), can result in reduction in grade/removal if:
  - Performance deemed unacceptable in one or more critical elements;
  - Employee is 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.
  - If evidence of misconduct, gather facts/evidence as quickly as possible (investigation may be formal or informal); consult with HR to determine options and what action is appropriate.
  - Per reference (d), 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.
  - Pursuant to reference (d), 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) and Appendix R.
  - Suspensions of more than 14 days
  - Reduction in grade or pay (demotion)
  - Removal
- 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) [See Appendix Q.]
  - Probationary employees may be removed immediately without due process, with very limited appeal rights (appealable only if removal based on marital status or political views)
- 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 (d))
  - 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 subject matter assistance with the disciplinary process; OGC provides legal advice.

**CIVILIAN EMPLOYEE MISCONDUCT INVESTIGATIONS:** Not a JAGMAN; legal authority for CO is US Navy Regulations, Article 0802:

- Check with HR to determine if local instruction/guidance exists
- Fact-finding only; IO should refrain from providing findings or recommendations
- Legal advisor is OGC, not JAG
- IO may be military or civilian, preferably in a rank equivalent or higher than the civilian being investigated
- CO may expand the scope of the investigation upon IO's request

**EEO/DISCRIMINATION COMPLAINTS (APF & NAF):**

Per references (e) and (f), it is DON policy to prohibit unlawful employment discrimination (including harassment) against persons or groups based on race, color, national origin, sex, religion, age or handicap, or for engaging in prior EEO activity (reprisal).

- Per reference (g), 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.
  - Reference (h) now requires that complaints be forwarded to the next higher level in the chain of command within 72 hours to appoint an IO to investigate 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. [See Appendix R.]
- Civilian EEO Office provides subject matter assistance with the EEO process; OGC provides legal advice.

### **REASONABLE ACCOMMODATION REQUESTS (APF & NAF):**

Per reference (i), 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 they let the employer know (usually first level supervisor) that they need an adjustment or change at work because of a medical condition and/or physical/mental limitation (does not have to specifically say “I need to file a reasonable accommodation request”).
- The RA Coordinator from the EEO office provides subject matter expertise and 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 their current position or a desired position with or without accommodation
  - If employee is found to be a qualified individual with a disability, must determine what accommodations are reasonable (but employee not entitled to accommodations of their choice).
  - If unable to accommodate in current position, an 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 no vacancies 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;
- DON policy to implement approved accommodations within 45 days of the date of the initial request. If offer of reassignment accepted, job search is 30 days (internal search) and a concurrent 30 day DON-wide search if elected. Undue delay may result in liability against the Navy. [See Appendix S]
- 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 they are 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 they were 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.
- HR (LER) provides subject matter assistance

## **LABOR LAW**

### **REFERENCES:**

- (a) SECNAVINST 12711.2
- (b) SECNAVINST 5430.7S
- (c) 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 (LER) – provide subject matter assistance to management regarding labor matters such as negotiations and consultations with federal labor unions.
  - Best practice: Commanders should have an LER representative present during any meetings with Union officials.
- Navy Office of General Counsel (OGC) – Per reference (b), provides legal advice and representation on labor relations matters.

### **FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE [reference (c)]:**

- Provides Navy civilian employees the right to form, join or assist any labor union certified by the Federal Labor Relations Authority (FLRA).
- Provides management with certain rights and responsibilities:
  - Right to determine the mission, budget, organization, number of employees, and internal security practices without substantively bargaining with the Union (only the impact and implementation of one of these rights).
  - Right to hire, assign and take disciplinary action against employees, and make selections for appointments
  - At the election of the Navy, can negotiate with the Union over the numbers, types, grades of employees assigned to work, and the method/means of performing work.
- Requires management to negotiate substantively with the Union in good faith over changes in conditions of employment prior to effecting the change, unless the change is small (de minimus).
  - “Conditions of Employment”: defined by reference (c) as “personnel policies, practices and matters whether established by rule, regulation or otherwise affecting working conditions.”
- Authorizes Union representatives the right to:
  - Reasonable official time for negotiations and representational duties;
  - Request information without filing a FOIA request, if legal guidelines are met;
  - Join any formal discussions between management and BUE employee(s) (such as an all hands call); and
  - At employee’s request, assist BUEs during management investigation when BUE reasonably believes disciplinary action may result (Weingarten Rights).
    - Assistance does not include objecting/answering questions for employee
    - If union representative is disruptive, then questioning should cease
- Authorizes both the Navy and the Union to file an Unfair Labor Practice charge for an alleged violation of the FSLMRS (failure to bargain, retaliation for union activities, etc.).
  - Available remedies include a return to status-quo-ante status; posting.

### **COLLECTIVE BARGAINING AGREEMENT/GRIEVANCES:**

- Contractual relationship exists between the Commanding Officer and the Union, contained in a written document known as the collective bargaining agreement (CBA)
  - Management and supervisors are not part of the bargaining unit.

- CBA covers various aspects of the employees' conditions of employment that have been negotiated/agreed to by both Navy and the Union
  - Examples: Shift hours, overtime distribution, official time, employee misconduct investigations, or union office spaces.
- Every CBA must contain an article on grievances and arbitration
  - What constitutes a "grievance" under the CBA is specified by the CBA, but generally it is an allegation of a violation of the CBA itself (such as an allegation that management failed to abide by the CBA's overtime process).
  - CBA provides timelines on when to file a grievance, and when the grievance needs to be answered/forwarded by management and the Union. Failure to abide by timelines can result in the grievance being rendered void or advanced to the next level
  - Labor & Employee Relations provides subject matter expertise to management during the grievance process
  - Typically the grievance process has 3 steps: grievance first presented to first level supervisor for approval/rejection, then second level, then third.
  - Final step approving official is the Commanding Officer
  - If the Commanding Officer denies the grievance, the Union can elect to go to binding arbitration
- Representatives from both the Navy and Union choose an arbitrator to resolve the grievance.
  - Arbitrators have the authority to return to "status-quo-ante", such as removing disciplinary actions that are found to be in violation of the CBA, and directing management to "make the grievants whole" with backpay and allowances.

## 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 Naval 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:	Extra Military Instruction
EO	Equal Opportunity
EO	Ethics Official
EVAL:	Evaluation
FAP:	Family Advocacy Program
FAR:	Family Advocacy Representative
FITREP:	Fitness Report
FJA:	Fleet Judge Advocate
FMV:	Fair Market Value
FOIA:	Freedom of Information Act
FRG:	Family Readiness Group

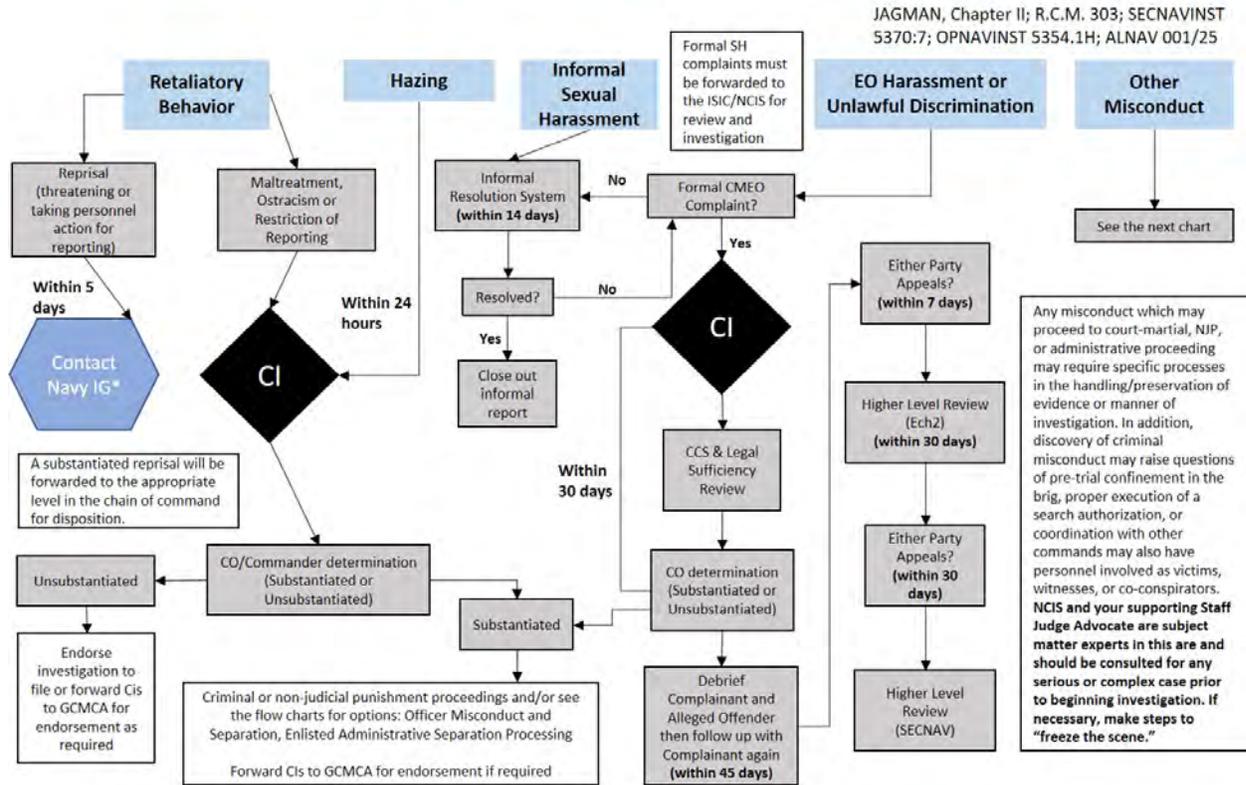
FTC:	Federal Trade Commission
GCM:	General Court-Martial
GCMCA:	General Court-Martial Convening Authority
GMT:	General Military Training
HIPAA:	Health Insurance Portability and Accountability Act
HON:	Honorable Characterization of Service
GEN:	General (Under Honorable Conditions) Characterization of 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
IRR:	Individual Ready Reserve
ISIC:	Immediate Superior in Command
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
OSTC:	Office of Special Trial Counsel
OTH:	Other Than Honorable Characterization of Service
PA:	Public Affairs
PCA:	Posse Comitatus 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
STC:	Special Trial Counsel
TAD:	Temporary Additional Duty
TBI:	Traumatic Brain Injury
TC:	Trial Counsel
TCAD:	Transitional Compensation for Abused Dependents

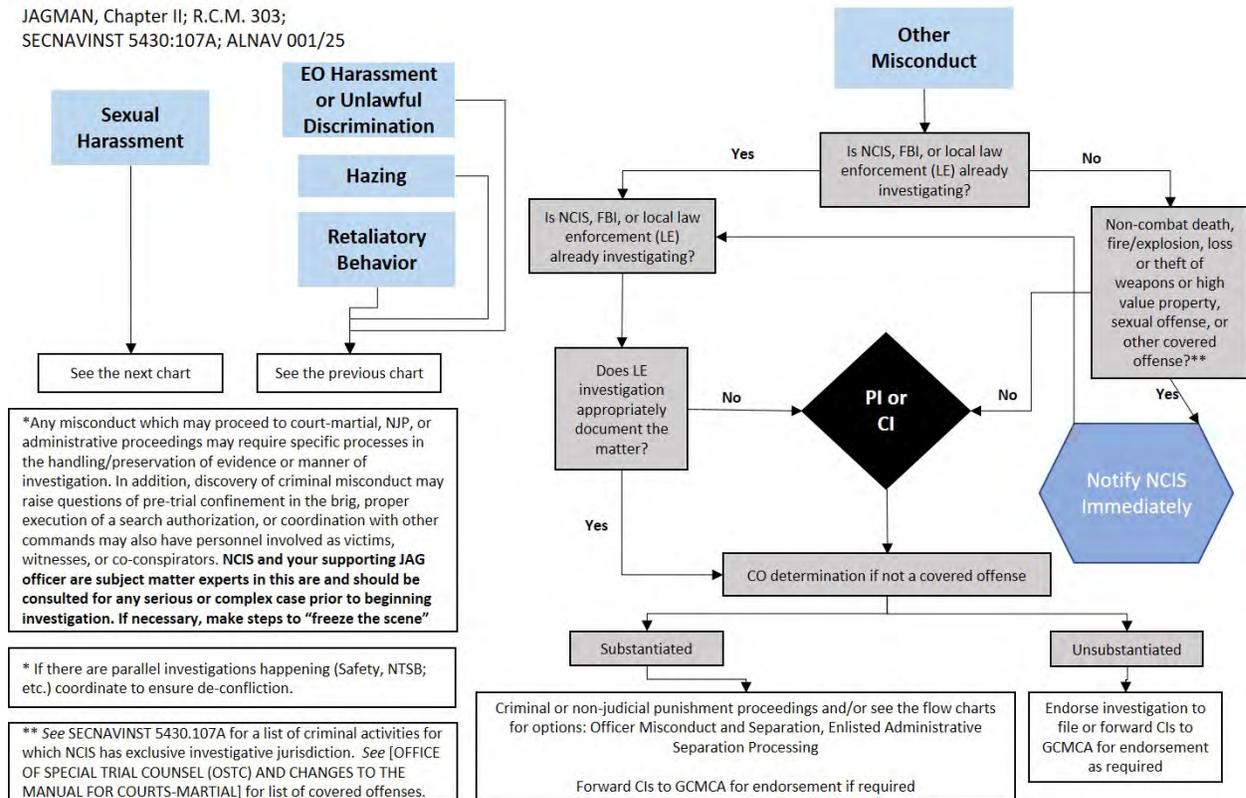
TYCOM:	Type Commander
UCMJ:	Uniform Code of Military Justice
UPC:	Urinalysis Program Coordinator
USC:	United States Code
USCG:	United States Coast Guard
USCIS:	United States Citizen and Immigration Service
USDAO:	United States Defense Attaché Officer
USERRA:	Uniformed Services Employment and Reemployment Rights Act
VLC:	Victims' Legal Counsel
XO:	Executive Officer
XOI:	Executive Officer's Inquiry

**QUICKMAN APPENDICES**

# A. MISCONDUCT INVESTIGATIVE OPTIONS



JAGMAN, Chapter II; R.C.M. 303;  
SECNAVINST 5430:107A; ALNAV 001/25



[See Appendix K – Handling Formal Sexual Harassment Complaints]

## **B. INVESTIGATIVE OPTIONS FOR COMMANDING OFFICERS**

<b>Type of Incident</b>	<b>OPREP</b>	<b>Notifications</b>	<b>Investigation</b>	<b>Reference(s)</b>
Admiralty Incident	Yes	OJAG Code 15A	Command Investigation, Admiralty Letter Report, Dual Purpose Investigation	JAGMAN
Criminal (major/covered offenses)*	Yes	NCIS, OSTC	NCIS/Civilian	UCMJ; JAGMAN
Criminal (minor offenses)*	Maybe	Maybe	PI	RCM 303; Quickman; JAGMAN
Criminal (sex-related)	Yes	SARC, NCIS, OSTC	NCIS/Civilian	DoDI 6495.02 CH 3; SECNAVINST 1752.4C; OPNAVINST 1752.1C
Damage to property/environment/injury	Yes	OJAG Code 15	CI or Litigation Report	JAGMAN; JAGINST 5890.1
Death	Yes	NCIS, Navy Casualty (PERS)	See decision tree	JAGMAN; MILPERSMAN 1770-030 to 260
Domestic Violence	Yes	FAP/NCIS, OSTC	NCIS/Civilian LE or CI	SECNAVINST 1752.3; DoD Dir 6400.1-M-1; OPNAVINST 1752.1; OPNAVINST 1752.2; MILPERSMAN 1910-162
EO/Discrimination (Formal)	Yes	Command Climate Specialist (CCS)	CI	OPNAVINST 5354.1H
EO/Discrimination (Informal)	No	CMEO	No, resolve w/in 14 days	OPNAVINST 5354.1H
Hazing	Yes	CMEO	CI	Quickman Page 83; SECNAVINST 1610.2A; NAVADMIN 034/13; OPNAVINST 3100.6G
IG Appropriate	Maybe	NAVINGEN	NAVINGEN	SECNAVINST 5800.12C
Loss/Compromised Classified Info	Yes	NCIS/Security Manager	Yes	JAGMAN; SECNAVINST M-5510-36
Oil Spills	Yes	ISIC, OJAG Code 15	PI, sometimes CI or LITREP	OPNAV M-5090.1 Appx C; OPNAVINST 5090.1
Retaliatory (Ostracism or Maltreatment)	No	None	CI	SECNAVINST 5370.7E
Retaliatory (Reprisal)	No	NAVINGEN	NAVINGEN	SECNAVINST 5370.7E
Sailor Injury/Illness (non-serious)*	No	None	Sometimes	JAGMAN; OPNAVINST 5100.23H
Sailor Injury/Illness (serious)*	Yes	NAVSAFECEN	Line of Duty Investigation	JAGMAN; OPNAVINST 5100.23H
Senior Official Misconduct	Maybe	Command IG	Command IG	SECNAVINST 5430.57H
Sexual Harassment (Formal)	Yes	NCIS and OSTC	NCIS	NAVADMIN 121/23
Sexual Harassment (Informal)	No	CMEO	No, resolve w/in 14 days	OPNAVINST 5354.1H

\*Discuss with SJA for help with determining “minor/major offense” or “serious/non-serious illness” determination

## **C. 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. Said search must be conducted as soon as practicable and in any case within the next (time limit to complete search, generally 72 hours or less)."*

### **II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM**

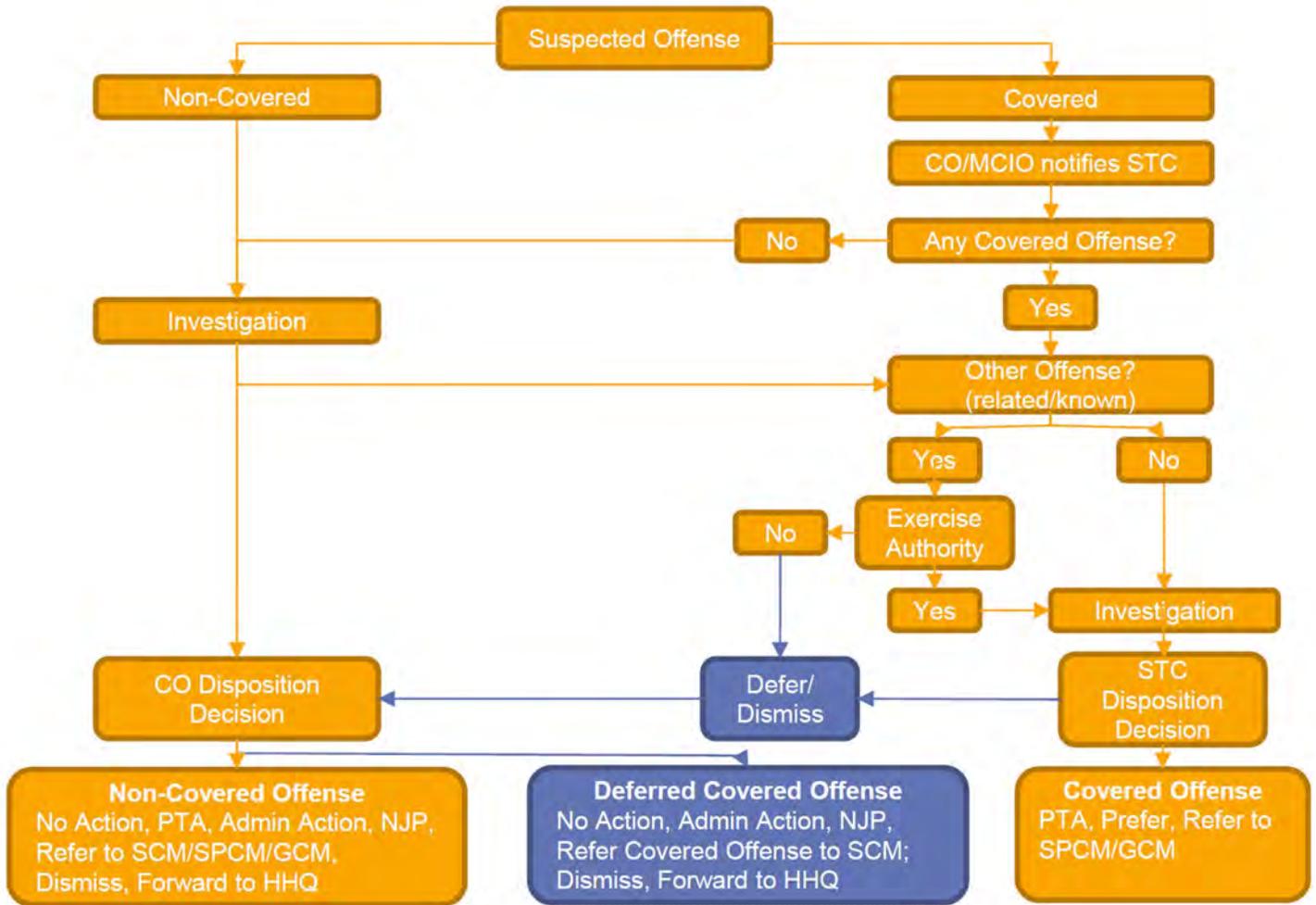
- a. When the applicant for the search authorization is not the informant who provided the facts which serve as the basis for the request, a CO must first determine what forms the basis of the informant's information. The fact provided by the informant must be specific enough to be acted upon.
- b. The 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 applicant ever identified drugs in the presence of the informant?

- 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 informant 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, DOD ID when necessary for identification 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."

**D. DISPOSITION OF AN OFFENSE COMMITTED ON OR AFTER 28 DECEMBER 2023**



## E. 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.

Permissible actions by Superior Commander	Example
✓ <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 consider 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 sex as a criterion for detailing court-martial members. In a sexual assault case, only 3 of the 10 members detailed were men (from a unit with 80% male officers and 87% male 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

<u>Before an Allegation</u>	<u>After an Allegation</u>
(Note: Depending on the context, some of these comments <u>might</u> be ruled unlawful if made <u>after</u> an allegation)	(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.)

## **F. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE**

### **EXECUTIVE OFFICER'S INQUIRY (XOI)**

1. Obtain the report chit (NAVPERS 1626/7), 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 potential 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. Advise the accused that they do 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 NJP.
6. 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 extenuating and mitigation or aggravation.
  - b. If the accused denies guilt, the accused should be asked for their version of the facts.
    - i. Ask the witness to testify about the alleged offenses(s).
    - ii. Inform the accused of any other evidence against him/her concerning the alleged offense(s).
    - iii. Allow the accused to rebut if they choose.
    - iv. Ask the witnesses to testify on any matters in extenuation and mitigation of aggravation.
7. Ask the accused if they would like to make a final statement.
8. If applicable, i.e., if the XO determines that they are going to recommend NJP and informs the accused of such, advise the accused they have the right to refuse NJP. (An accused can never refuse XOI).

**G. 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  (8)	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  (8)	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  (9 & 10)	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. Reprimand or admonition of an officer must be in-writing. (JAGMAN 0114(a))
- (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) General Court-Martial Convening Authorities in the grade of O-6 have the same punishment authority against officers as flag/general officers.
- (9) Regardless of rank, OICs have NJP authority over enlisted personnel only. (JAGMAN 0106(b)).
- (10) Reduction may only be imposed when the grade prior to imposition is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction. USMC company-grade NJP authorities may not impose reduction at NJP. (MCM, Part V, paras. 5(b)(2)(A)(iv), 5(b)(2)(A)(v)). NJP authorities serving in the grade of W-1 through CWO-5 may not reduce enlisted personnel under any circumstances. (JAGMAN 0111(e))

## **H. 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.

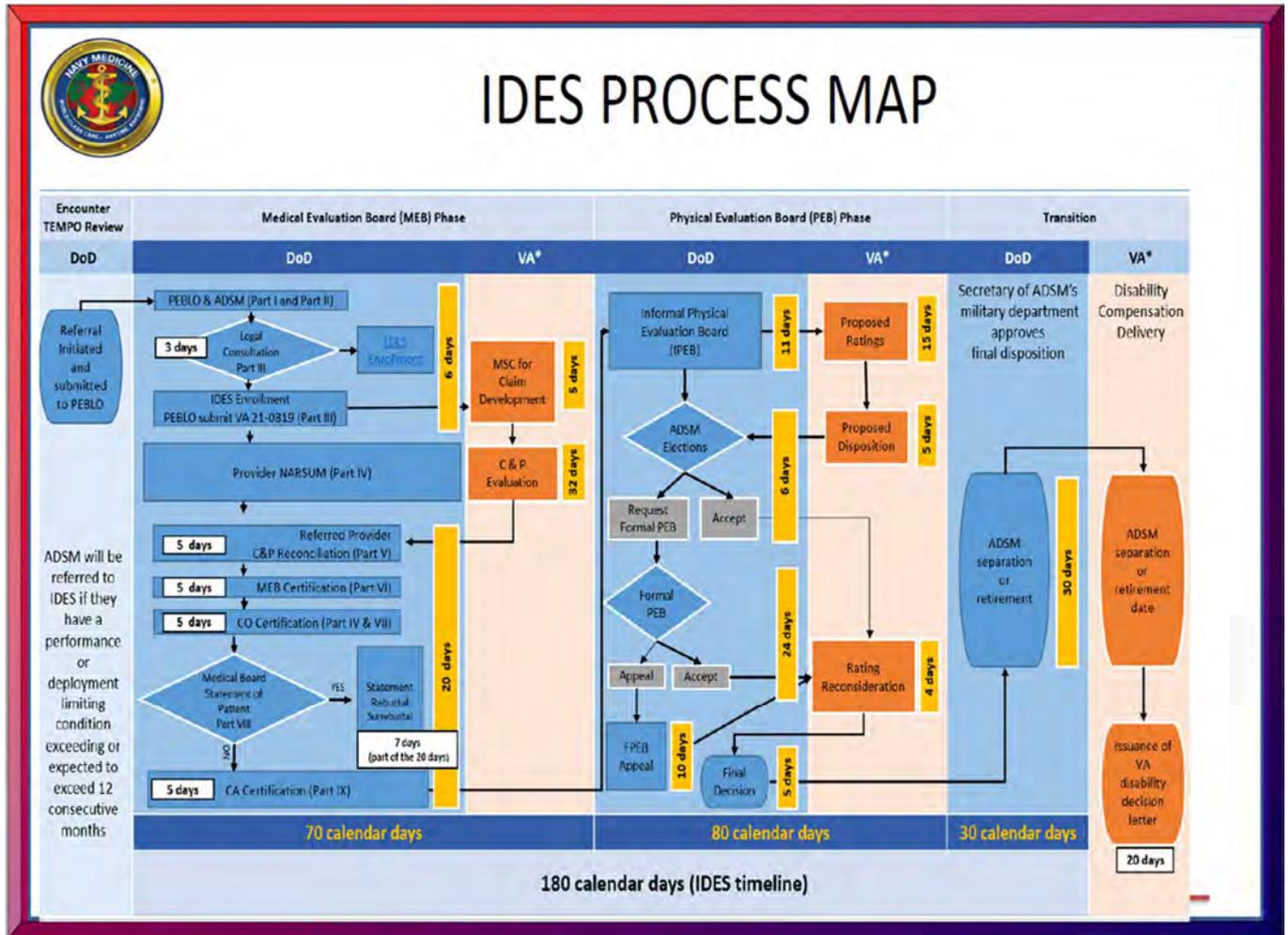
\*(11) Post-1957 service qualifies for social security benefits unless discharge was dishonorable. Pre-1957 service under conditions other than dishonorable qualifies a service member for a military wage credit for social security purposes.

\*(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, PCN, GCN, GCR, GDG, GDK, GFC, GFI, GFV, GFX, GGH, GHF, GHJ, GHK, GRB, HCR, HDG, HFC, HFI, HFV, HFX, HGH, HHF, HRB, JBB, JBC, JBK, JBM, JCC, JCP, JCR, JDF, JDG, JDK, JEA, JEB, JEC, 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 CH-2 (MARCORSEPMAN)

**I. INTEGRATED DISABILITY EVALUATION SYSTEM PROCESS FLOWCHART**



- ADSM** – Active Duty Service Member
- CA** – Convening Authority
- DoD** – Department of Defense
- IDES** – Integrated Disability Evaluation System
- MSC** – Military Services Coordinator
- PEB** – Physical Evaluation Board
- VA** – Office of Veterans Affairs
- C&P Exam** – Compensation and Pension Medical Exam
- CO** – Commanding Officer
- FPEB** – Formal Physical Evaluation Board
- MEB** – Medical Evaluation Board
- NARSUM** – Medical Narrative Summary
- PEBLO** – Physical Evaluation Board Liaison Officer

**J. USE OF POSITIVE URINALYSIS RESULT**

**FROM DOD CERTIFIED DRUG LABS (OPNAVINST 5350.4E)**

	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

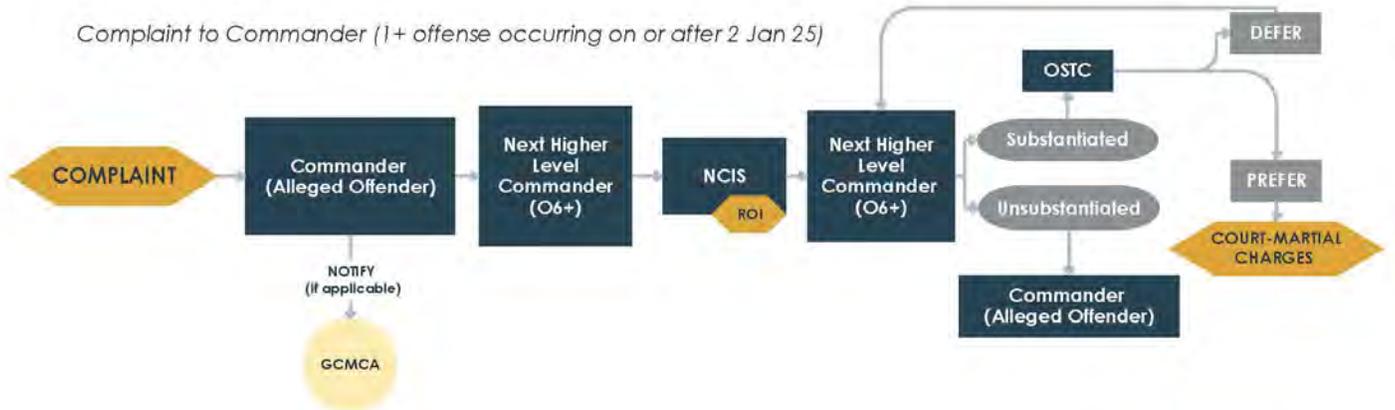
\*\*YES for reservists recalled to active duty (except DEP participants)

**K. HANDLING FORMAL SEXUAL HARASSMENT COMPLAINTS**

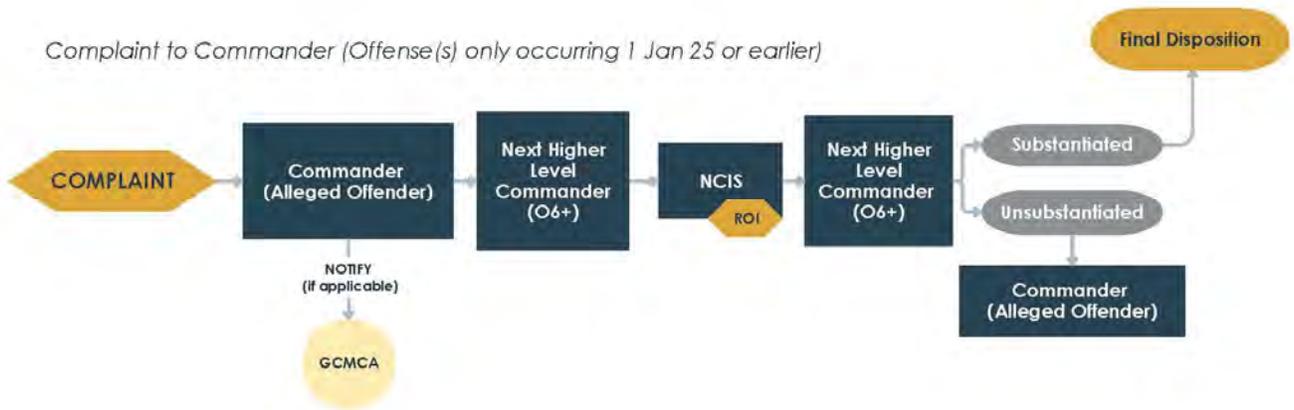
**FOR FLEET LEADERS**

**Investigation and Disposition Process for Formal Complaints of Sexual Harassment**

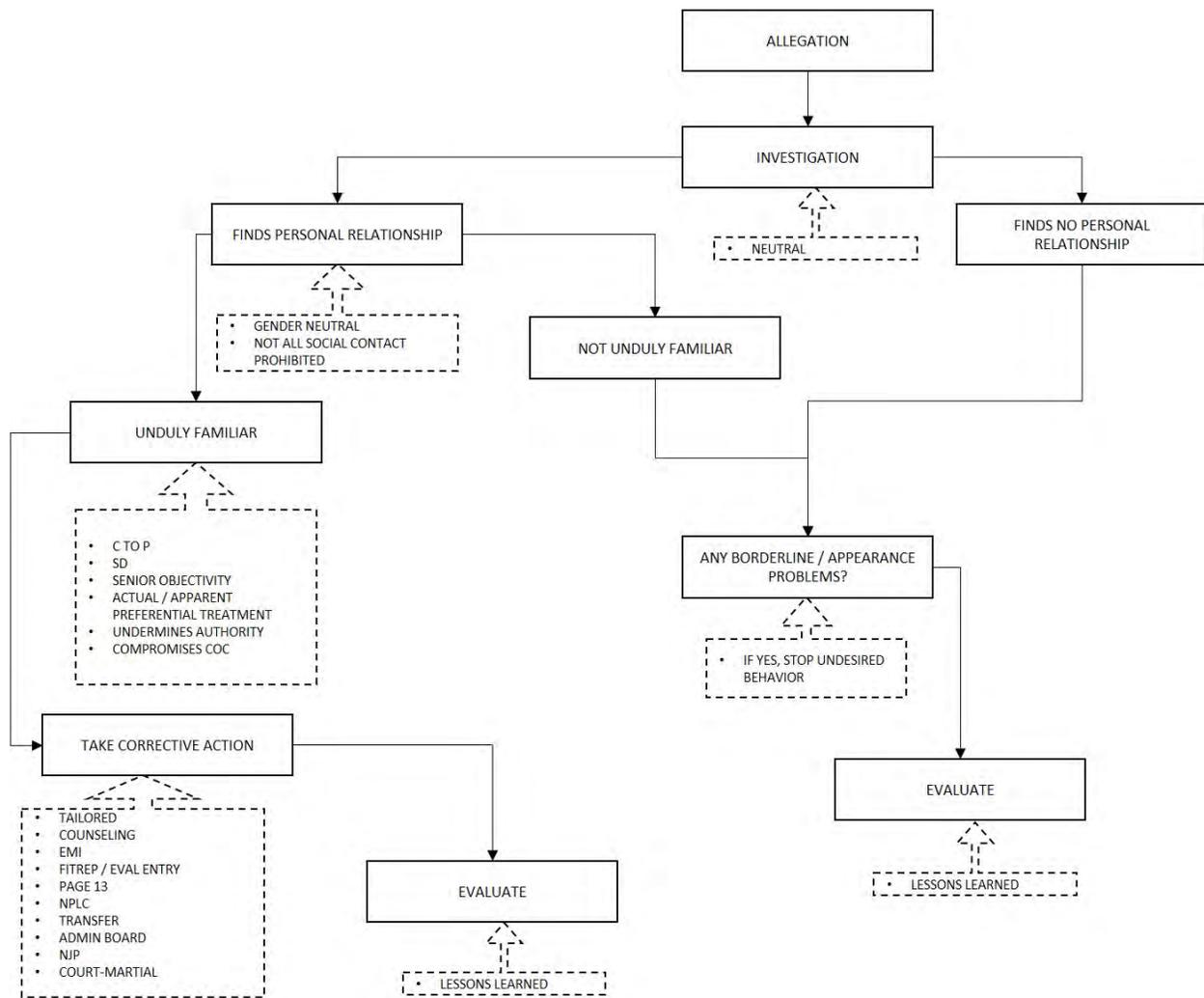
*Complaint to Commander (1+ offense occurring on or after 2 Jan 25)*



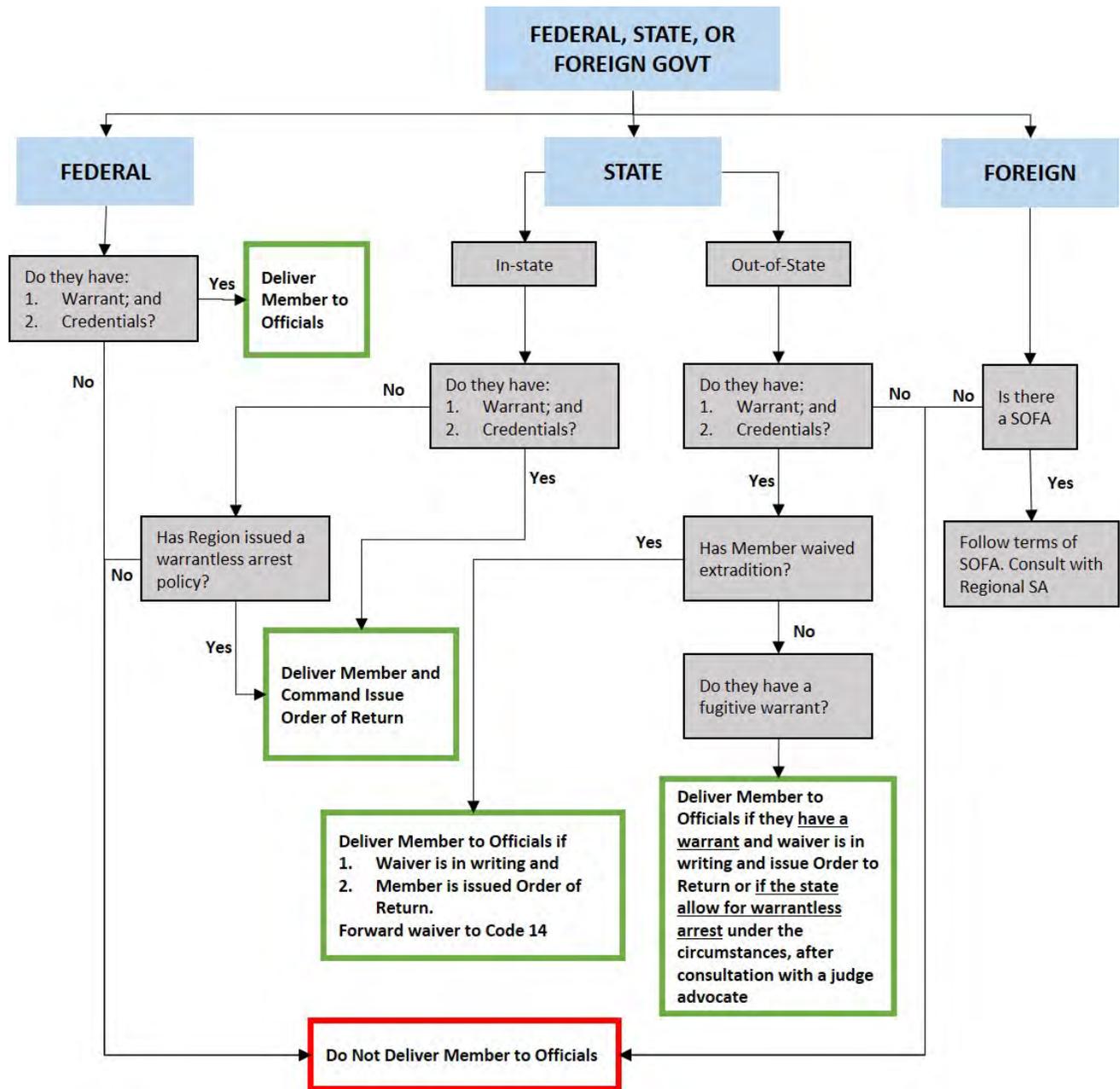
*Complaint to Commander (Offense(s) only occurring 1 Jan 25 or earlier)*



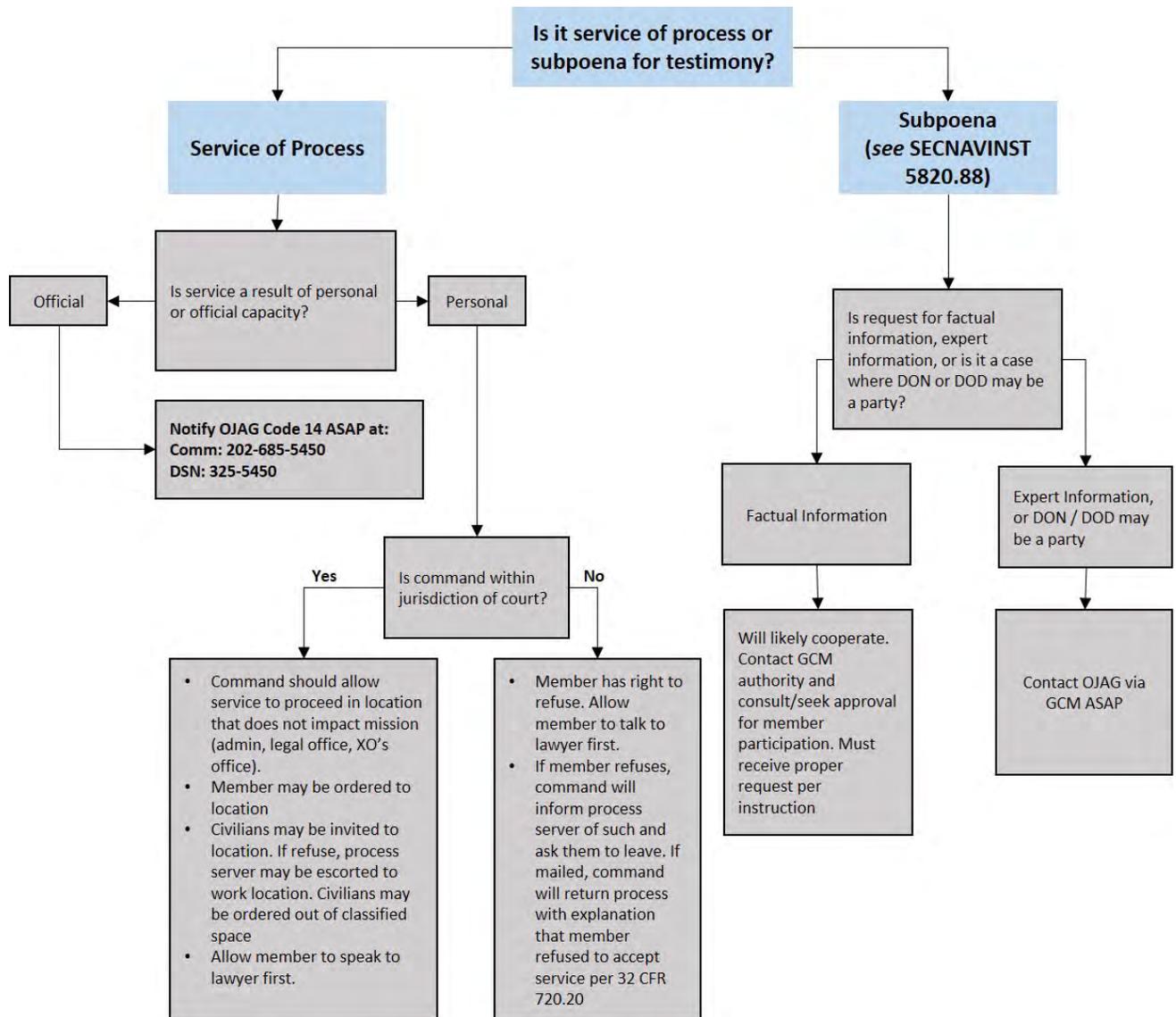
**L. HANDLING FRATERNIZATION ALLEGATIONS**



**M. DELIVERY OF PERSONNEL**



**N. SERVICE OF PROCESS**



## **O. RLSO AND LSSS 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 Midwest:**

- (847) 688-3805 x 111
- DSN 792-3805 x 111

### **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 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
- Det Hawaii:
  - (808) 473-0437
  - DSN: (312) 473-1379
- 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 Iwakuni:**

- 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:**

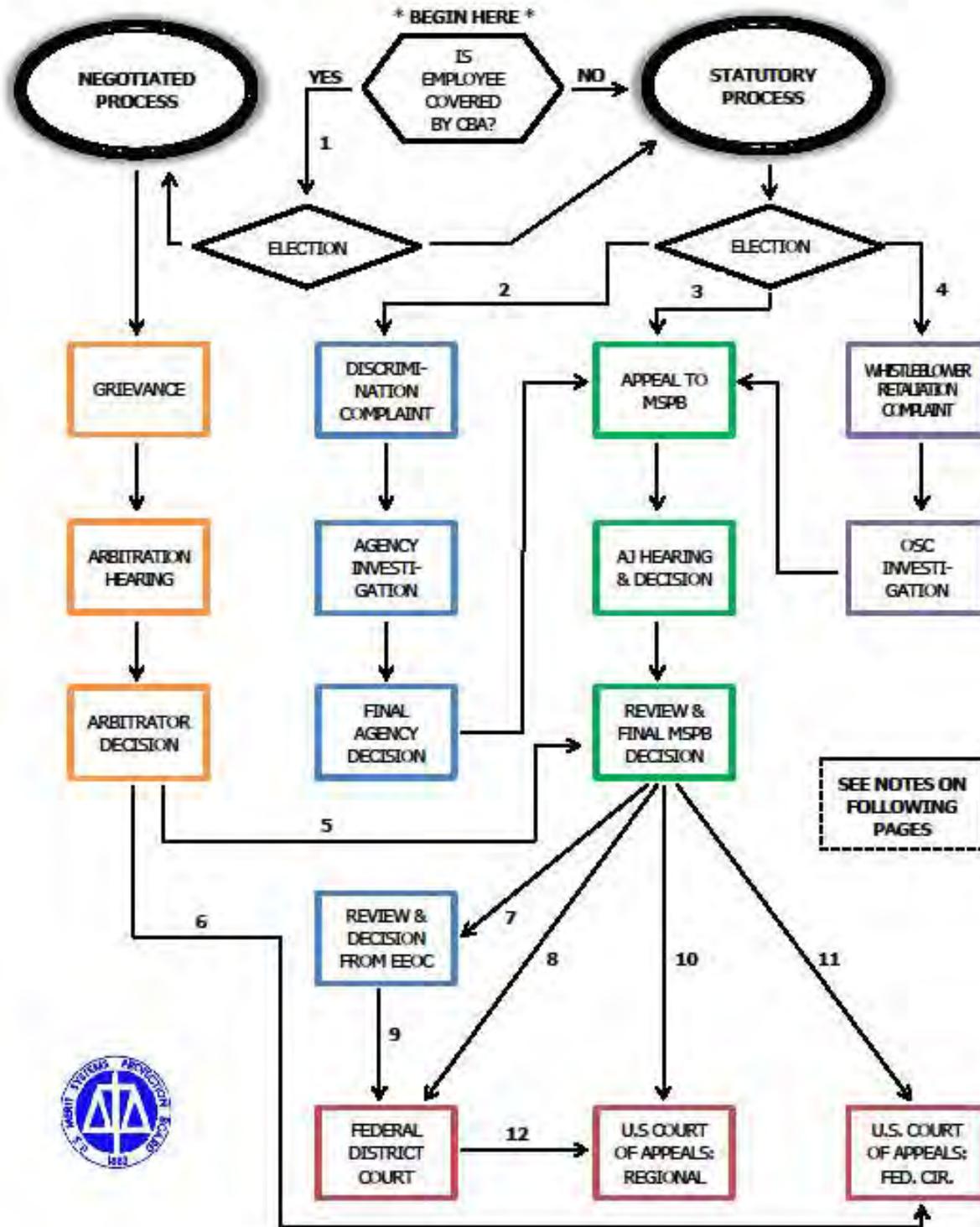
- (252) 466-2311
- DSN: 582-2311

**MCLB Albany:**

- (912) 439-5212
- DSN: 567-5

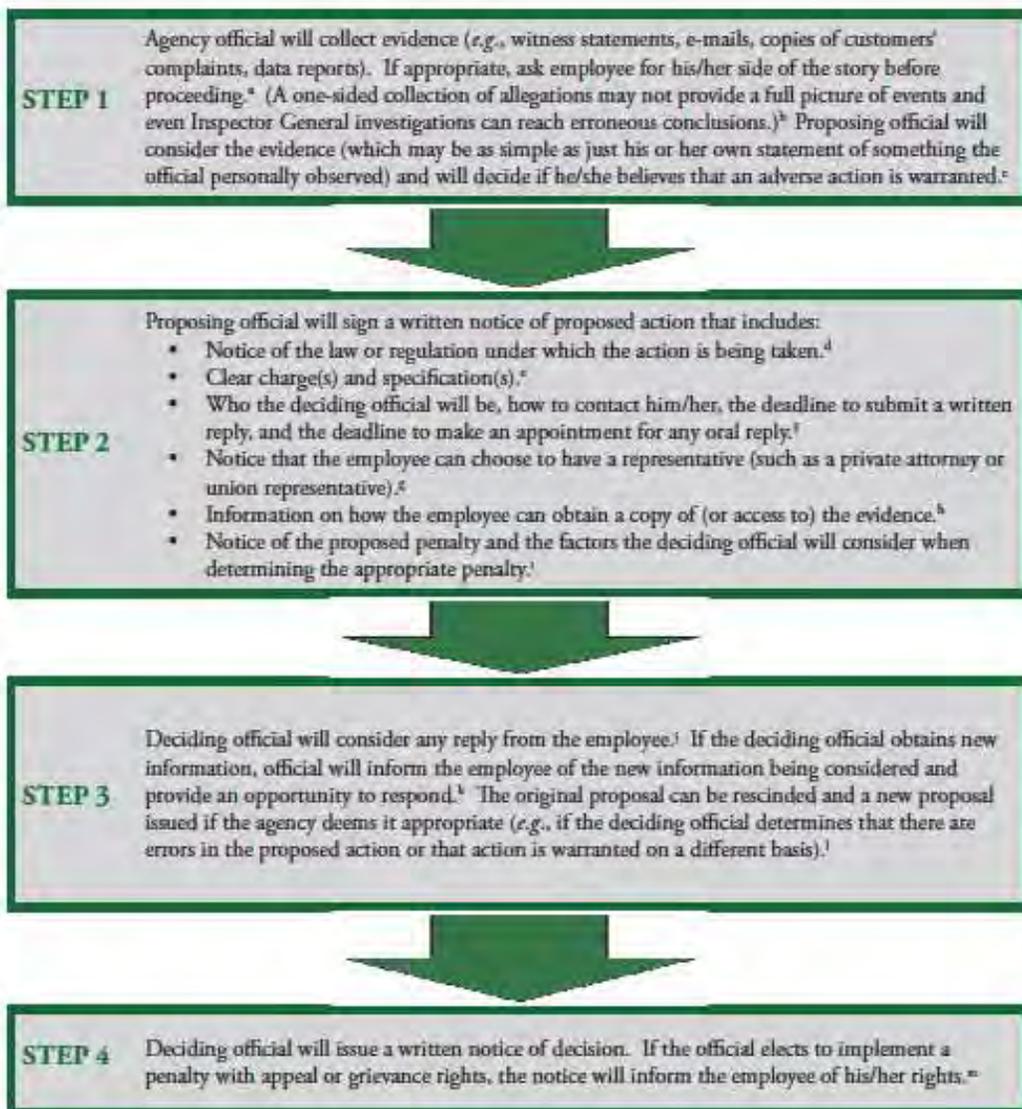
**P. MERIT SYSTEMS PROTECTION BOARD**

**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).



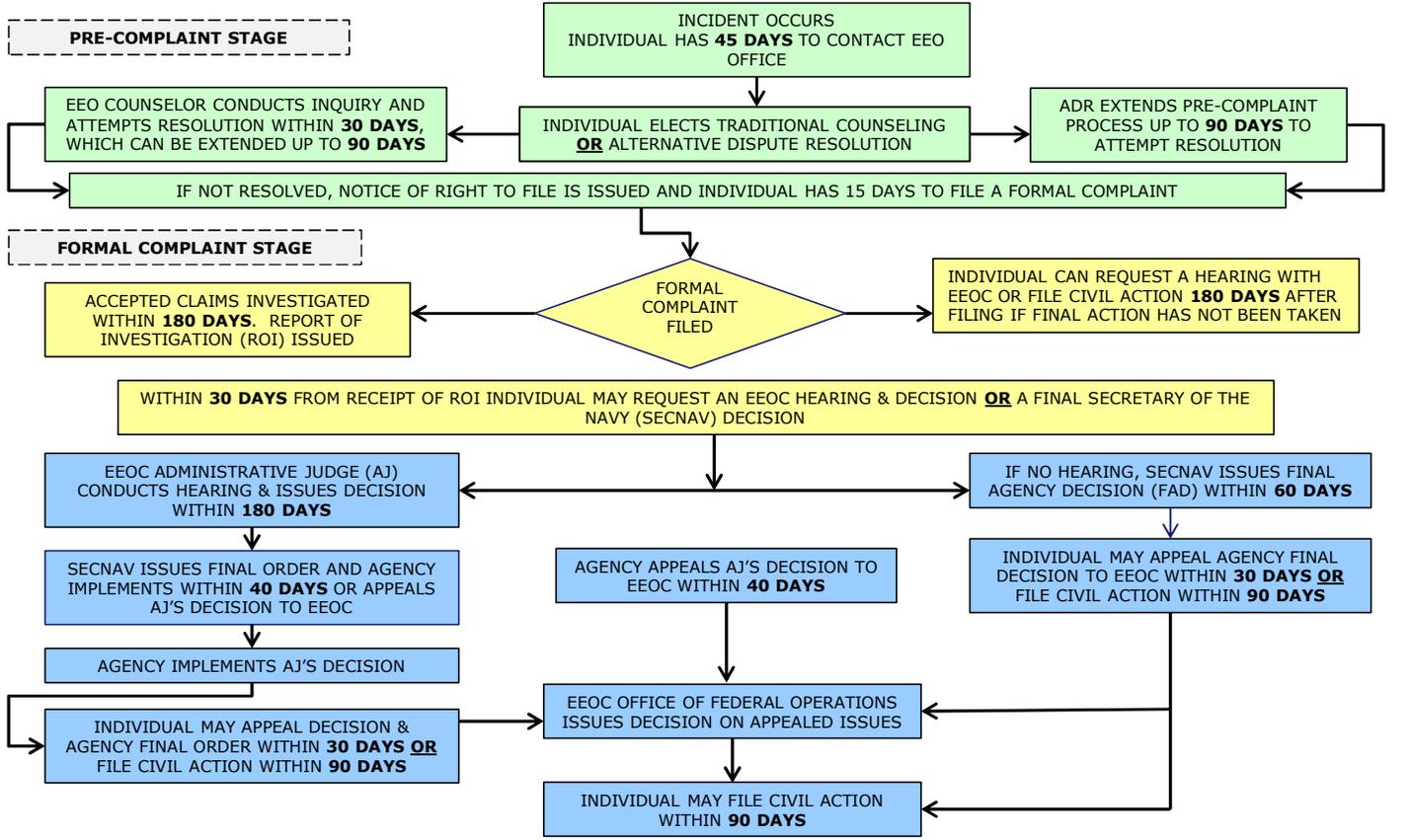
**R. DON EEO DISCRIMINATION COMPLAINT PROCESS FLOWCHART**

**DON EEO DISCRIMINATION COMPLAINT PROCESS**

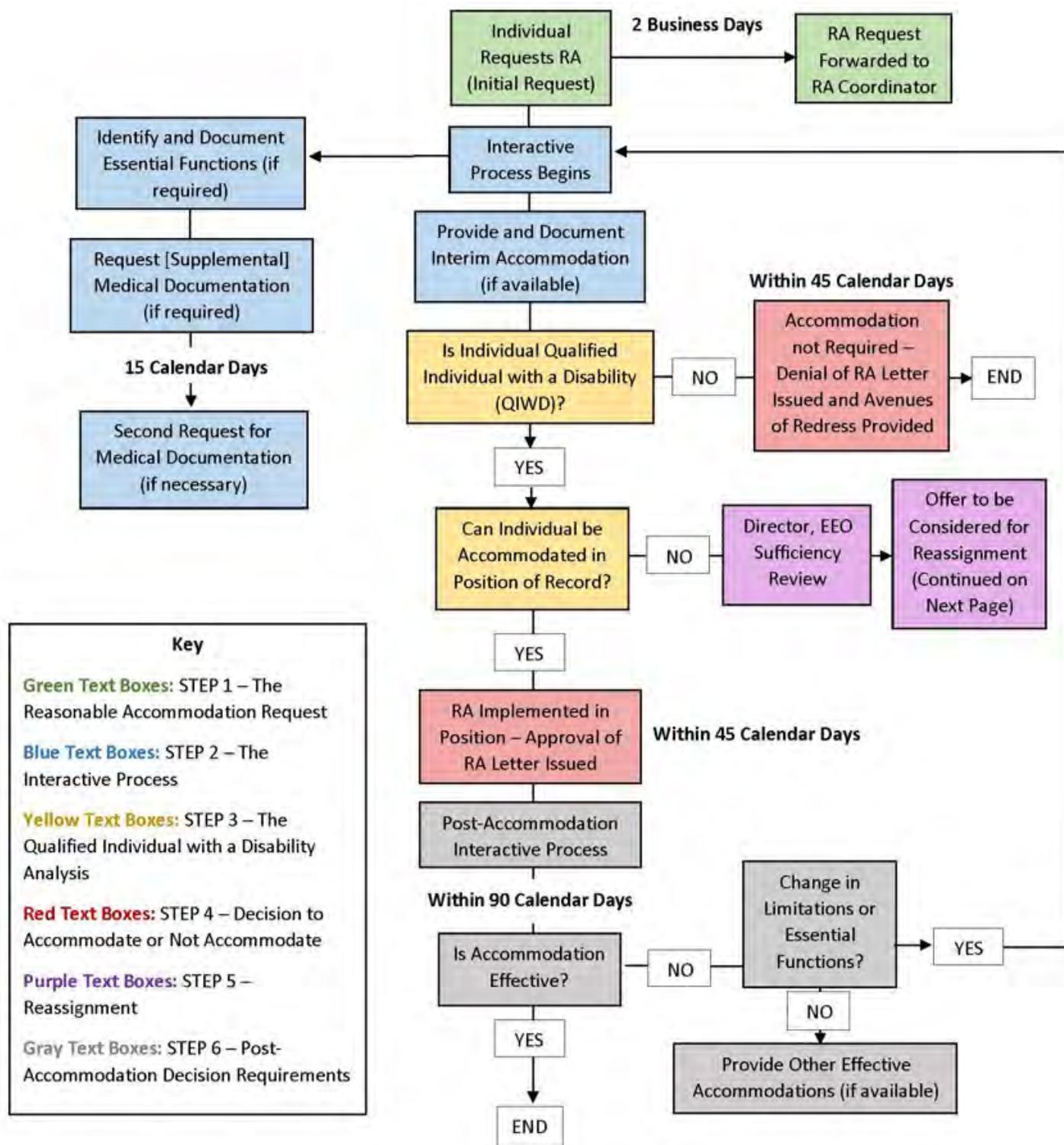


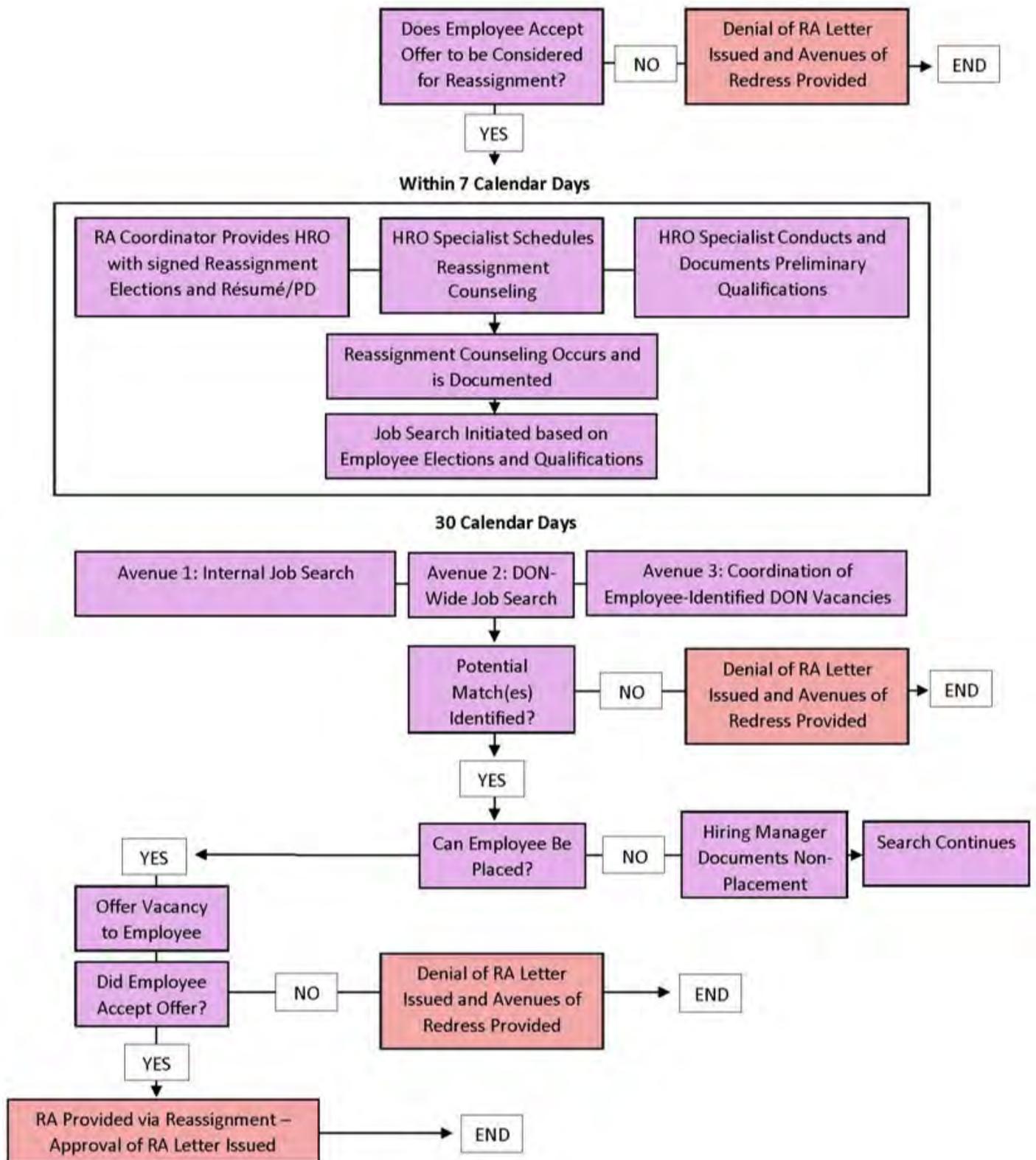
**INDIVIDUAL DISCRIMINATION COMPLAINT PROCESS**

ALTERNATIVE DISPUTE RESOLUTION (ADR) CAN BE USED AT ANY STAGE OF THIS PROCESS. ALL DAYS ARE CALENDAR DAYS, WHICH INCLUDES HOLIDAYS AND WEEKENDS



**S. DON CIVILIAN REASONABLE ACCOMMODATION PROCESS MAP**





## QUICKMAN SUMMARY OF RECENT CHANGES

Section	Significant Updates <sup>1</sup>
<b>I-Military Justice and Sexual Assault Prevention and Response</b>	<ul style="list-style-type: none"> <li>Section I was completely updated in accordance with NDAA's, new UCMJ, new JAGMAN, and OSTC establishment</li> </ul>
<b>III (Investigations Pursuant to the JAGMAN)</b>	<ul style="list-style-type: none"> <li>Added information on senior official misconduct and independence of command Inspectors General</li> <li>Added information on reserve line of duty determinations</li> </ul>
<b>V (Enlisted Administrative Separation Basics)</b>	<ul style="list-style-type: none"> <li>Updated voluntary bases for separation in accordance with NAVADMIN 144/22</li> <li>Removed Transgender Policy information</li> </ul>
<b>VI (Command Urinalysis Program Overview)</b>	<ul style="list-style-type: none"> <li>Added ingestion of poppy seeds information</li> </ul>
<b>VII (Transgender Service Members)</b>	<ul style="list-style-type: none"> <li>Added section</li> </ul>
<b>VIII (Sexual Harassment Response)</b>	<ul style="list-style-type: none"> <li>NAVADMIN 022/24 information about confidential sexual harassment reporting options added</li> <li>Added DODI 1020.03 definition</li> <li>USMC sexual harassment information resolution language removed</li> <li>Added information about sexual harassment becoming a covered offense</li> </ul>
<b>IX (Speech, Religious Accommodation, Political Activities)</b>	<ul style="list-style-type: none"> <li>Updated flag information</li> <li>Updated tattoo information</li> </ul>
<b>X (Request Mast and Complaints of Wrong)</b>	<ul style="list-style-type: none"> <li>Added information on alleged wrongs involving senior officials</li> </ul>
<b>X (Hotline Complaints (IG) and Whistleblower Protection Act)</b>	<ul style="list-style-type: none"> <li>Full section updated to provide clarity between IG Investigations and JAGMAN investigations and to ensure an understanding of CO's responsibilities related to the Whistleblower Protection Act</li> <li>Added information on UCMJ article on retaliation</li> </ul>
<b>X (Privacy Act and Personally Identifiable Information)</b>	<ul style="list-style-type: none"> <li>Added information on rolodex PII</li> </ul>
<b>XII (Repossession of Personal Property on Installations)</b>	<ul style="list-style-type: none"> <li>Added information on repossession of property owned by civilians</li> </ul>
<b>XIII (Foreign Claims)</b>	<ul style="list-style-type: none"> <li>Added information on funding foreign claims</li> </ul>
<b>XIV (Pre-Deployment Legal Readiness)</b>	<ul style="list-style-type: none"> <li>Updated power of attorney language and added My Navy Family App information</li> </ul>
<b>XIV (Servicemembers Civil Relief Act)</b>	<ul style="list-style-type: none"> <li>Added additional foreclosure protection information</li> </ul>
<b>XIV (Family Law Issues, Domestic Violence, and Family Advocacy Program)</b>	<ul style="list-style-type: none"> <li>Added information on new UCMJ article and OSTC updates</li> </ul>
<b>XV (Guidelines for Ethical Conduct)</b>	<ul style="list-style-type: none"> <li>Added information on Ethics Counselors and Safe Harbor</li> </ul>
<b>XVI (Civilian Personnel Law)</b>	<ul style="list-style-type: none"> <li>Updated overview and reasonable accommodation information</li> <li>Added information on civilian employee misconduct investigations</li> </ul>

<sup>1</sup> NOTE: This document highlights significant modifications, but is not an exhaustive list to all changes from the March 2024 publication. The document should be read in its entirety and forms replaced or modified using the current versions.

<b>XVI (Labor Law)</b>	<ul style="list-style-type: none"> <li>• Updated information on Federal Service Labor Management Relations Statute</li> <li>• Added information on Collective Bargaining Agreements and Grievances</li> </ul>
<b>Figures and Appendices</b>	<ul style="list-style-type: none"> <li>• Updated Figure 2</li> <li>• Updated appendix A charts to reflect covered offense and sexual harassment changes</li> <li>• Updated appendix B with information on senior official misconduct</li> <li>• Appendix D (Maximum Court Martial Punishments) removed and all others re-lettered accordingly</li> <li>• Appendix D (under new lettering) updated to reflect offenses committed on or after 28 December 2023</li> </ul>