Downloaded from http://www.everyspec.com

USN / USMC Commander's Quick Reference Manual For Legal Issues

2006

Downloaded from http://www.everyspec.com

AVAILABILITY OF NAVAL JUSTICE SCHOOL PUBLICATIONS

Naval Justice School (NJS) publications are readily available to commands in hard copy from the Defense Technical Information Center (DTIC) and National Technical Information Service (NTIS). You may also view/print the Commander's Quick Reference Manual For Legal Issues at the JAG Web Site **http://www.jag.navy.mil** by clicking on the NJS icon and then clicking on "Publications."

Defense Technical Information Center

In order for a command to purchase publications from DTIC, the command must be a registered user. Commands not already registered with DTIC may obtain registration forms and information from DTIC's Registration team by telephone, fax, email, and mail.

Telephone: 1-800-225-3842 • (703) 767-8273 / DSN 427-8273
Fax: (703) 767-9459 / DSN 427-9459
Email: **reghelp@dtic.mil**
URL: **http://www.dtic.mil/dtic/forms/reqreq_form.html**
Mail: Defense Technical Information Center
ATTN: DTIC-BC (Registration)
8725 John J. Kingman Road Suite 0944
Ft Belvior, VA 22060-6218
Homepage: **www.dtic.mil**

The cost of all hardcopy publications starts at $7.00 for the first 100 pages with incremental charges for additional pages and $5.00 for a microfiche copy. When ordering from DTIC, publications should be identified by both title and AD number, if known. DTIC accepts major credit cards or you may establish a deposit account with the National Technical Information Service for funding purchases. Funding information is supplied when a command registers with DTIC. In addition, many recent documents submitted to the DTIC collection are available online through DTIC's Scientific and Technical Information Network (STINET) at: **http://stinet.dtic.mil**.

National Technical Information Service

NJS publications are also available to the general public through the Commerce Department's National Technical Information Service (NTIS); however, the purchase price of the publications through NTIS is substantially higher. Call 1-800-553-NTIS (6847) or (703) 605-6000 for current prices for paper and microfiche copies. Information on ordering publications from NTIS may be obtained by writing to:

National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161
Homepage: **www.ntis.gov**

Downloaded from http://www.everyspec.com

TABLE OF CONTENTS

Section 1: ETHICS 1
GUIDELINES FOR ETHICAL CONDUCT 1
BASIC OBLIGATIONS OF PUBLIC SERVICE 1
COMMERCIAL DEALINGS BETWEEN MEMBERS 3
CONFLICTS OF INTEREST 4
FUNDRAISING 6
MARINE CORPS BIRTHDAY BALL FUNDRAISING 8
GAMBLING 10
GIFTS BETWEEN EMPLOYEES 11
GIFTS FROM OUTSIDE SOURCES 12
GOVERNMENT PROPERTY 14
OUTSIDE EMPLOYMENT 16
POLITICAL ACTIVITIES – MILITARY ACTIVE DUTY 17
PRIVATE ORGANIZATIONS AND SPOUSE CLUBS 18
TRAVEL BENEFITS 20

Section II: CORRESPONDENCE ISSUES; FREEDOM OF EXPRESSION AND GRIEVANCE PROCEDURES .. 22
FREEDOM OF EXPRESSION 22
REQUEST MAST/REDRESS OF WRONGS/ART. 138 UCMJ 24
UCMJ ARTICLE 138 COMPLAINTS: 25
HOTLINE COMPLAINTS & WHISTLEBLOWER 26
PROTECTION ACT 26
CONGRESSIONAL INQUIRIES 28
EO PREVENTIVE MEASURES 29
EQUAL OPPORTUNITY (EO) INCIDENT 31
FREEDOM OF INFORMATION ACT (FOIA) 33
PRIVACY ACT 35

Section III: PERSONNEL ISSUES 36
ALCOHOL ABUSE PREVENTION 36
DRUG PREVENTION AND URINALYSIS PROGRAM 39
HIV ISSUES 42
HOMOSEXUAL CONDUCT 43
MENTAL HEALTH EVALUATIONS (MHEs) 46
PREGNANCY 48
RESERVISTS – SPECIAL CONSIDERATIONS 50
SUICIDES, ATTEMPTS & GESTURES/CACO 52
FROCKING OF USMC OFFICERS 53

Section IV: SEXUAL HARASSMENT, FRATERNIZATION & HAZING 55
SEXUAL HARASSMENT PREVENTION 55
SEXUAL HARASSMENT INCIDENT 58
FRATERNIZATION PREVENTION 61
FRATERNIZATION INCIDENT 62
HAZING PREVENTION/INCIDENT 65

Section V: FAMILY RELATIONSHIP ISSUES 67
DOMESTIC ABUSE PREVENTION 67
DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS 68

Section VI: LEGAL ASSISTANCE 71
LEGAL ASSISTANCE 71
MILITARY FAMILY TAX RELIEF 75
COMMERCIAL SOLICITATIONS ABOARD BASE 77

Downloaded from http://www.everyspec.com

PREDEPLOYMENT LEGAL READINESS 79
SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) 82
DEPENDENT SUPPORT 85
PATERNITY COMPLAINTS 87
INDEBTEDNESS COMPLAINTS 89

Section VII: INTERACTIONS WITH CIVILIANS 91
ENVIRONMENTAL COMPLIANCE 91
DSN 522-1418 DSN 694-3976 92
JURY DUTY 93
LAW ENFORCEMENT – CIVILIAN JURISDICTION 94
LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES 96
REPOSSESSION OF PERSONAL PROPERTY 98
SERVICE OF PROCESS/SUBPOENAS 99

Section VIII: OUTSIDE CONUS 101
CUSTOMS 101
FOREIGN CLAIMS 102
FOREIGN CRIMINAL JURISDICTION/SOFA 103
LIBERTY RISK 104
MARRIAGES – OVERSEAS 105

Section IX: JAGMAN INVESTIGATIONS 106
JAGMAN INVESTIGATIONS 106
DEATH INVESTIGATIONS 110
REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL 112
CLAIMS 115

Section X: MILITARY JUSTICE 116
NCIS REPORTING & MILITARY JUSTICE INVESTIGATIONS 116
HANDLING SEXUAL ASSAULT ALLEGATIONS IN THE USMC 118
SUSPECTS—QUESTIONING/INTERROGATION/ ARTICLE 31(b) 122
SEARCH & SEIZURE 124
SEARCH & SEIZURE – DRUG CASES 126
COURTS-MARTIAL: TYPES & CONVENING 129
COURTS-MARTIAL: BASICS 131
COURTS-MARTIAL: PRETRIAL RESTRAINT (PTR) 133
COURTS-MARTIAL: PRETRIAL AGREEMENTS 135
COURTS-MARTIAL: POST- TRIAL REVIEW 137
VICTIM/WITNESS ISSUES 139
VIOLENT CRIME REPORTING (VCR) 142

Section XI: NONJUDICIAL PUNISHMENT 145
ADMINISTRATIVE & DISCIPLINARY OPTIONS 145
NONPUNITIVE MEASURES 147
NJP JURISDICTION 149
NJP – PRE-MAST & MAST PROCEEDINGS 151
NJP – CLEMENCY & CORRECTIVE ACTION 153
NJP – APPEALS 155
ADMINISTRATIVE SEPARATIONS 155
USMC MANDATORY ADMINISTRATIVE SEPARATION PROCESSING (ENLISTED MEMBERS) 160
ADMINISTRATIVE SEPARATION BOARDS 164
OFFICER MISCONDUCT (USN) 166
OFFICER MISCONDUCT (USMC) 168
DETACHMENT FOR CAUSE (USN) 171
USMC OFFICER PROMOTION DELAY AND WITHHOLDS 172

Section XII: International and Operational Law 175
Law of War 178

APPENDIX 144

Downloaded from http://www.everyspec.com

Section 1: ETHICS

GUIDELINES FOR ETHICAL CONDUCT

REFERENCES: (a) DoD 5500.7-R (JER), Section 2-100
(b) MCO P5800.16A (LEGADMINMAN), Ch 11

BASIC OBLIGATIONS OF PUBLIC SERVICE

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the law, and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in 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 knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for 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.

Downloaded from http://www.everyspec.com

Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.

- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, 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.

Downloaded from http://www.everyspec.com

COMMERCIAL DEALINGS BETWEEN MEMBERS

REFERENCES: (a) DoD 5500.7-R (JER), Section 5-409

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

EXCEPTIONS:

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

- Sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion/intimidation.

SPOUSES/OTHER HOUSEHOLD MEMBER: Must seek opinion of Ethics Counselor (SJA) if spouse or household member is soliciting sales to junior personnel or their families. The member should be counseled that such sales 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.

Downloaded from http://www.everyspec.com

CONFLICTS OF INTEREST

REFERENCES: (a) 18 U.S.C. 208
(b) DoD 5500.7-R (JER), Section 2-100

OFFICIAL ACTIONS THAT HAVE A DIRECT AND PREDICTABLE EFFECT ON PRIVATE FINANCIAL INTERESTS: Officer and enlisted members are prohibited from participating personally and substantially in an official capacity in any particular matter in which he/she (or any person whose interests are imputed to him/her) has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

IMPUTED INTERESTS: The interests 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 (EVEN REMOTELY) EXIST:

- Seek the opinion of an Ethics Counselor (SJA).
- Disqualify and do not participate or take further action on the matter.
- Provide written notice of the particular conflict to superior.
- Request a waiver, disqualification, reassignment or limitation of duties.

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

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

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (SF-450): The following personnel are required to file:

- All CO's and XO's, heads, and deputy heads of
  - Navy shore installations with 500 or more military and civilian personnel.
  - Army, Air Force, and Marine Corps installations, bases, air stations or activities.

Downloaded from http://www.everyspec.com

- All personnel who participate personally and substantially in contracting or procurement, regulating or auditing any non-Federal entity, or other activities having a direct and substantial economic impact on the interests of any non-Federal entity.

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

- Upon assuming the covered position and annually thereafter.
- It is reviewed by Ethics Counselor for conflicts and remediation if necessary.
- Information is kept confidential.

JOB HUNTING: When seeking outside employment the employee must disqualify himself/herself from any official action which could possibly affect the financial interests of the prospective employer.

- Disqualification must be in writing and sent to employee's supervisor.
- Can be reinstated when either party rejects possible employment.

Downloaded from http://www.everyspec.com

FUNDRAISING

REFERENCES: (a) DoD 5500.7-R (JER), Sections 3-210 and 3-211
(b) DoD Dir 5035.1

OFFICIAL ENDORSEMENT: Commands may officially endorse fundraising efforts of the Combined Federal Campaign, the Navy-Marine Corps Relief Society, and emergency/disaster relief appeals approved by the Office of Personnel Management (OPM). Additionally, organizations composed primarily of DoD employees or their dependents may receive official endorsement.

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

WORKSPACE SOLICITATIONS: Only for approved organizations with an official endorsement. Solicitations must be conducted in such a way as to ensure all contributions are voluntary. Coercive practices are prohibited:

- Solicitation by supervisors.
- Setting 100 percent participation goals, mandatory personal goals or quotas.
- Using contributor or non-contributor lists for any purpose other than routine collection and forwarding of pledges.
- Counseling or grading of individuals based on their failure to contribute, or the size of their contribution.
- Special liberty should not be used as an incentive to contribute to any fundraising effort.

FUNDRAISING EVENTS ON NAVY INSTALLATIONS: Reference (b) authorizes CO's to allow limited fundraising for:

- Military support organizations such as the USO or Spouse club;
- Local, community-wide programs such as volunteer fire companies, or youth groups; or
- Olympic and Pan American games.

FUNDRAISING BY PRIVATE ORGANIZATIONS AND/OR SPOUSE CLUBS: Sales of merchandise or services is authorized, but should be limited to occasional sales, and not be frequent or continuous. Competition with Navy Resale activities should be minimized. Gambling and/or raffles and lotteries are prohibited. *See PRIVATE ORGANIZATIONS AND SPOUSE*

Downloaded from http://www.everyspec.com

CLUBS, USMC BIRTHDAY BALL FUNDRAISING, and *GAMBLING*.

RAFFLES: Authorized for Navy and Marine Corps Relief.

BINGO: Authorized for MWR programs. See BUPERSINST 1710.11 (series) & BUPERSINST 1710.3 (series).

SOLICITING CONTRIBUTIONS FROM OUTSIDE SOURCES: (e.g., local merchants) Prohibited for any and all fundraising activities.

USE OF RANK OFFICIAL TITLE AND POSITION: May be used when conducting fundraising in official capacity for approved organizations. Only grade and military component may be used in connection with activities performed in personal capacity.

PERSONAL FUNDRAISING ACTIVITIES: In a private capacity, charity work, to include fundraising is encouraged. The following are prohibited:

- Solicitations in the work place.
- Solicitation of subordinates.
- Solicitation of prohibited sources. *See GIFTS FROM OUTSIDE SOURCES*.

Downloaded from http://www.everyspec.com

MARINE CORPS BIRTHDAY BALL FUNDRAISING

REFERENCES:
(a) MCO 5100.31, Marine Corps Ball Funding, (also MARADMIN 430/99)
(b) MCO P1700.27 (series), MCCS Policy Manual
(c) DoD 5500.7R, Joint Ethics Regulation
(d) MCO 5760.4 (series), Private Organizations on DoD Installations
(e) MCO P5800.16 (series), (LEGADMINMAN)

- Two tiered event: Birthday balls have official and unofficial "tiers," as set forth in reference (a), with different funding sources. The order allows:
    - Limited use of appropriated funds for official portion:
        - Transportation, printing, publication, and official ceremonial photos covered.
        - Guest of honor and cake expenses must not be paid from appropriated funds (Refer to latest MARADMIN on general officer apprearance and travel, e.g., MARADMIN 380/03.)
    - Two funding options for unofficial portion:
        - Nonappropriated funds (NAF)
            - NAF fundraising must have MCCS oversight.
            - Gambling by DoD employees prohibited.
            - Raffles not recommended.
                - Reference (b) contemplates units raising funds for MCCS.
                - Reference (b) allows MCCS to conduct raffles.
                - Sections 2-302, 3-210, and 3-211 of reference (c) severely constrain gambling activity and render impracticable unit raffles

Downloaded from http://www.everyspec.com

without MCCS oversight and control.

- Private small unit fund established under reference (d) and applicable local orders.
    - Income limits and other restrictions to comply with reference (c).
    - Maintain accountability and sound management.

- Fundraising: For either informal unit fund or via MCCS fundraising.
    - Never conducted in official capacity.
    - Participation must be voluntary.
    - Only de minimis use of Government resources.
        - Includes official time – volunteers must be on leave or liberty status.
        - No raising money by charging for avoidance of official duties (field days, uniform requirements, etc.).
    - General rule is that fundraising should be “by Marines, from Marines, for Marines”.
- Gifts and donations
    - Cannot be solicited except among unit members.
    - Unsolicited donations must be accepted as provided in chapter 12 of reference (d).
- Always consult with local legal advisor, Staff Judge Advocate or Counsel, when undertaking any fundraising activity.

Downloaded from http://www.everyspec.com

GAMBLING

REFERENCES: (a) DoD 5500.7-R (JER), Section 2-302
(b) BUPERSINST 1710.11 (series)

PROHIBITION: Gambling is prohibited while on duty or on federal property.

- Includes any game of chance, lotteries, raffles, drawings or office pools (e.g., Super Bowl or Final Four).

- Use of government resources to prepare or further such activities is also prohibited.

MWR BINGO AND NAVY RELIEF RAFFLES: Are permitted when conducted IAW applicable directives. *See FUNDRAISING*.

- Gambling activities by organizations composed primarily of DoD employees or their dependents may be permitted when approved by the Secretary of the Navy.

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 such conduct or activities if it would violate Navy Regulations (Gambling with Subordinates) or the service fraternization policies. *See FRATERNIZATION*.

Downloaded from http://www.everyspec.com

GIFTS BETWEEN EMPLOYEES

REFERENCES: (a) DoD 5500.7-R(JER), Sections 2-100 and 2-203

GENERAL RULE: A junior may not offer, give, make a donation, or solicit contributions for a gift to a senior in the same chain of command and the senior may not accept such a gift.

EXCEPTIONS TO THE GENERAL RULE:

- Token gifts of a nominal value (less than $10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from a vacation).
- Food and refreshments shared in the office.
- Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g., a junior could invite a superior to dinner).
- On special infrequent occasions such as child birth, marriage, retirement, etc... a gift appropriate for the occasion may be given.

GROUP GIFTS: Authorized for special infrequent occasions (e.g., change of command or retirement). Get advice from your Ethics Counselor. Total cost cannot exceed $300/group or $10.00/person. All contributions must be voluntary. Cannot solicit more than $10.00/person; however, members can choose to contribute more.

- Creative attempts to avoid the $300 maximum should be avoided (e.g., an organization should not be divided into different components solely to avoid the $300 maximum by buying components of a greater gift.).
- Where the senior-subordinate relationship is terminated (retirement, resignation, or PCS transfer) the $300.00 limit may be exceeded if the gift is appropriate for the occasion and is uniquely linked to the departing employee's position or tour of duty. The remaining rules (voluntary, $10 per person limit, etc…) apply.

A SUPERIOR MAY NOT COERCE A SUBORDINATE TO CONTRIBUTE OR PROVIDE A GIFT (THIS TYPICALLY IS WHERE MANY IG CALLS COME FROM).

Downloaded from http://www.everyspec.com

GIFTS FROM OUTSIDE SOURCES

REFERENCES: (a) DoD 5500.7-R (JER), Section 2-100
(b) SECNAVINST 4001.2 (series)
(c) SECNAVINST 1650.1 (series)
(d) U.S. Constitution: Article I, Section 9, Clause 8

GENERAL RULE: Federal employees are forbidden from soliciting, coercing, or accepting gifts from a "prohibited source" and gifts offered because of the employee's official position. Gifts to family members or a designee are "imputed" to the employee.

"PROHIBITED SOURCES": Any entity or person who is seeking official action from a federal employee or a federal agency; is doing or seeking to do business with the agency; or is regulated or substantially affected by the agency.

DEFINITION OF "GIFT": Anything of monetary value. Items exempted from the definition, and therefore not considered gifts:

- Greeting cards.
- Modest refreshments which are not offered as part of a meal (the "coffee and donut rule").
- Widely available discounts available to 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 (if you pay for it, it's not a gift).

COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING ACCEPTANCE OF A GIFT: (In all cases, and especially with regard to the exceptions listed below, an employee is prohibited from requesting, soliciting or coercing a gift; allowing or creating the appearance of bribery or graft; or accepting gifts so frequently that it creates an appearance of impropriety.)

- Gifts worth less than $20.00 per occasion. No more than $50.00 worth of gifts from any one source/calendar year.
- Gifts given because of a bona fide personal relationship.
- Awards for meritorious service. Must typically be non cash and worth less than $200.00.
- Gifts based on outside employment (i.e., approved moonlighting job or due to a spouse's employment).
- Free attendance at an event where employee is speaking on behalf of agency.
- Free attendance at "widely attended gatherings" where attendance is deemed by a supervisor to be in the interests of the agency.

Downloaded from http://www.everyspec.com

FOREIGN GIFTS: Gifts from foreign governments may be accepted if proper diplomacy requires.

- Gifts with a fair market value (FMV) less than $285 may be kept by the employee.
- Gifts with a FMV over $285 may be accepted on behalf of DON and processed IAW reference (c).

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

NEVER ASSUME: Past practice or custom in an organization to accept certain gifts is not a defense. ASK THE ETHICS COUNSELOR (SJA).

CIVIL AND CRIMINAL PENALTIES EXIST FOR VIOLATIONS OF THESE RULES.

Downloaded from http://www.everyspec.com

GOVERNMENT PROPERTY

REFERENCES: (a) DoD 5500.7-R (JER), Sections 2-100 and 2-301
(b) DoD Dir 4500.56

PREVENT MISUSE OF GOVERNMENT PROPERTY: Government property may not be utilized for private/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 DoD or the command; and
- Creates no significant additional cost to DoD or the command.

PREVENT MISUSE OF GOVERNMENT TIME: While receiving pay, unless the 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 non-official "taxi" services for the CO's spouse).

AVOID "APPEARANCE" PROBLEMS: For both government property and time, members must not create the appearance of misuse/impropriety (e.g., using government vehicle at a "drive-thru" restaurant, even on official travel).

GOVERNMENT VEHICLES: May not be used to transport employees between their home and work. (31 USC 1344). TYCOM and local directives should be consulted for further definition of authorized and/or prohibited uses.

RENTAL VEHICLES: Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. (JFTR U3415). In all other respects, rules applicable to use of Government vehicles apply to use of rental cars. Use of rental vehicles for personal entertainment purposes is not authorized.

Downloaded from http://www.everyspec.com

GOVERNMENT AIRCRAFT: DoD guidelines on use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of MILAIR is a particularly sensitive area. Consult policy guidelines to ensure correct use. *See Ref (b) and TRAVEL BENEFITS*.

GIGS OR BARGES: Should avoid misuse or even the appearance thereof. Any use in support of foreign relations, community relations or crew morale and welfare should be approved by ISIC with advice of an Ethics Counselor. Recreational use is not authorized. Generally, unless you could say that ORF would be appropriate, the use is probably not authorized.

Downloaded from http://www.everyspec.com

OUTSIDE EMPLOYMENT

REFERENCES: (a) DoD 5500.7-R (JER), Sections 2-206 and 2-303
(b) MILPERSMAN 5370-010

CO's MAY REQUIRE MEMBERS TO REQUEST APPROVAL: Command policy should be promulgated to ensure outside employment will not interfere or conflict with military duties. Case by case determinations should be made.

POTENTIAL CONFLICTS:

- Interference with official duties or time.
- Employment by a defense contractor. *See CONFLICTS OF INTEREST*.
- Appearances of impropriety.
- Dual compensation: Second salary paid from U.S. Treasury/ appropriated funds.
- Involvement in any matter in which the United States is an interested party or has a substantial interest.
- Employment which will detract from readiness or pose a security risk.
- Employment which prejudices good order and discipline or is service discrediting. *See COMMERCIAL DEALINGS BETWEEN MEMBERS*.

QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS COUNSELOR.

Downloaded from http://www.everyspec.com

POLITICAL ACTIVITIES – MILITARY ACTIVE DUTY

REFERENCES:
(a) SECNAVINST 1600.1 (series)
(b) DoD Dir 1344.10
(c) DoD Dir 1325.6
(d) OPNAVINST 1620.1B
(e) DoD 5500.7-R (JER), Ch 6
(f) MCO 5370.7 (series)

UNIONS: Reference (a) prohibits the creation of military labor organizations, and strikes, slowdowns, or picketing.

ALLOWABLE AND PROHIBITED POLITICAL ACTIVITIES: Specifically allowed activities (e.g., voting, bumper stickers) and prohibited political activities (e.g., use of contemptuous words, performing clerical work for campaign) are listed in enclosure (3) of reference (b), and chapter 6 to reference (e).

CO's ANALYSIS: A CO may prohibit, limit, or control, the political expression of a member when there "is a clear danger to loyalty, discipline, or morale of military personnel; or there is a material interference with the accomplishment of the military mission." *See FREEDOM OF EXPRESSION*.

WEARING UNIFORMS AT POLITICAL RALLIES: Members are prohibited from wearing uniforms at any political activity, such as speeches, rallies, interviews, picket lines, marches, or assemblies, knowing that a purpose of the activity supports personal or partisan views on political, social, economic, or religious issues, except as authorized in advance by the CO.

RIGHT TO DIRECTLY CONTACT CONGRESS: No person may restrict any member from communicating with Congress in the member's personal or private capacity. See Navy Regulations, Section 1155. *See CONGRESSIONAL INQUIRIES*.

Downloaded from http://www.everyspec.com

PRIVATE ORGANIZATIONS AND SPOUSE CLUBS

REFERENCES:

(a) DoD Inst 1000.10 (CREDIT UNIONS)
(b) DoD Inst 1000.11 (FINANCIAL INSTITUTIONS)
(c) DoD Inst 1000.12 (BANKING OFFICES)
(d) DoDInst 1000.15 (PRIVATE ORGANIZATIONS)
(e) DoD Inst 7230.7 (USER CHARGES)
(f) DoD Inst 7600.6 (AUDIT OF NAFI'S)
(g) DoD Dir 1330.5 (RED CROSS)
(h) DoD Dir 1330.12 (USO)
(i) DoD Dir 1330.16 (UNITED SEAMEN'S SERVICE)
(j) DoD Dir 1426.1 (LABOR MANAGEMENT)
(k) SECNAVINST 5381.5 (FINANCIAL INSTITUTIONS)
(l) OPNAVINST 1700.7 (MWR PROGRAMS)
(m) OPNAVINST 1700.9 (CHILD DEVELOPMENT)
(n) SECNAVINST 5300.22C (NAFI ACTIVITIES)
(o) SECNAVINST 5720.44 (PUBLIC AFFAIRS)
(p) OPNAVINST 5760.2 (YOUTH ORGANIZATIONS)
(q) OPNAVINST 5760.5 (NAT'L YOUTH GROUPS)
(r) BUPERSINST 1700.21 (USO)
(s) BUPERSINST 1700.11 (RECREATION PROGRAM)
(t) JAGMAN 0629 & 0630
(u) NAVCOMPTMAN 075261
(v) MCO 1710.36 (series)
(w) MCO 1754.2 (series)

STATUS OF PRIVATE ORGANIZATIONS: Private organizations are not Federal agencies or NAFI's and are not entitled to the same level of support. The nature and amount of support varies depending on the organization. Applicable regulations must be consulted to determine what level of support is authorized for any particular group.

Downloaded from http://www.everyspec.com

PRIVATE ORGANIZATIONS INCLUDE: Spouse Clubs; Boy Scouts; Girl Scouts; Sea Cadets, athletic clubs; local school organizations; command organizations and social funds (e.g., First Class Association or Chief's Messes).

NO DISCRIMINATION: Private organizations must be denied support if they discriminate in membership practices based upon race, sex, religion, etc.

CREATION OF PRIVATE ORGANIZATION: Must have written approval from the installation CO to operate. Must have a constitution, by-laws, charter, or other authorization document approved by CO. Cannot state or imply sponsorship by DoD or DON, and should not use DoD, DON or other installation name or seal unless authorized.

PERIODIC REVIEW: Installation COs must conduct periodic reviews of all private organizations.

FUNDING AND SUPPORT: Private organizations are generally self-sustaining, primarily through dues, contributions, service charges, fees or special assessment of members. Limited fundraising activities conducted on the base may be permissible, under certain circumstances and controls. An ethics counselor (SJA) should be consulted. Minimal logistical support is authorized, dependent on the type of private organization and the authority under which it is organized. No direct financial support from a NAFI is allowed except as specifically authorized by SECNAV.

Under certain circumstances, government resources may be used by private organizations on a "not to interfere" basis.

FUNDRAISING ON GOVERNMENT PROPERTY: Sale 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 FUNDRAISING*.

Downloaded from http://www.everyspec.com

TRAVEL BENEFITS

REFERENCES:

(a) DoD 5500.7-R (JER), Chapter 4
(b) FY2002 National Defense Authorization Act, Section 1116, 28 Dec 01
(c) Joint Federal Travel Regulations (JFTR)
(d) Deputy SECDEF memo "DoD Policy on the Use of Government Aircraft & Air Travel" dtd 01 Oct 95
(e) 31 U.S. Code 1353
(f) DoD Dir 4500.56

ACCEPTING TRAVEL FROM A NON-FEDERAL SOURCE: Official travel by DoD employees should normally be funded by the Government. However, official travel benefits from non-Federal sources may be accepted for attendance in an official capacity at a meeting or similar event. Acceptance must be approved in writing and an Ethics Counselor must be consulted.

INCIDENTAL BENEFITS: The FY2002 National Defense Authorization Act (NDAA) modified the rules surrounding travel benefits. As of 31 Dec 01, 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/facilities.

FREQUENT FLYER MILES (FFM's): As described above, the 2002 NDAA now allows servicemembers to keep FFM's from official travel for personal use. FFM's can also be used on official travel for upgrades.

ON THE SPOT UP-GRADES: May now be accepted (even to first class) as long as official title and position are not basis for up-grade. Always avoid first-class travel in uniform.

OVER-BOOKING: If involuntarily bumped you <u>may not</u> keep free tickets or any other benefit received for personal use. If you voluntarily give up your seat and receive free tickets or another benefit, you may keep them for personal use. [Note: volunteering may not result in an increase of expense to the government; per diem and the additional time may not be charged or received on your travel claim].

Downloaded from http://www.everyspec.com

RENTAL VEHICLES: Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. (JFTR U3415). In all other respects, rules applicable to use of Government vehicles apply to use of rental cars. Use of rental vehicles for personal entertainment purposes is not authorized.

GOVERNMENT AIRCRAFT: DoD guidelines on use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of MILAIR is a particularly sensitive area. Consult policy guidelines to ensure correct use. *SEE REFERENCE (f)*.

TAD TRAVEL ON GOVERNMENT CREDIT CARDS: Government credit cards are critical in following three areas of TAD travel:

- **Airline Tickets**: SATO typically pays for airline tickets associated with scheduled TAD travel. In the unlikely event that you need to purchase airline tickets pending reimbursement, understand that airlines will only offer the government rate on tickets purchased with a government credit card. A TAD traveler will not be compensated for ticket costs exceeding the proscribed military rate, absent extraordinary circumstances.

- **Hotels**: In cases involving unavailability, TAD travelers may require overnight stays at civilian hotels. Some hotels will not offer the military rate absent a government credit card. Again, a TAD traveler will not be compensated for hotel costs exceeding the prescribed military rate, absent extraordinary circumstances.

- **Rental Cars**: Military rates are usually offered to only those travelers using a government credit card. Payment exceeding the military rate will not be reimbursed, absent extraordinary circumstances. Moreover, TAD travelers automatically receive insurance coverage for accidents involving liability of the other driver and in cases involving negligence of the TAD traveler. This coverage is only available to TAD travelers placing the rental fee on a government credit card, absent extraordinary circumstances.

Downloaded from http://www.everyspec.com

Section II: CORRESPONDENCE ISSUES; FREEDOM OF EXPRESSION AND GRIEVANCE PROCEDURES

FREEDOM OF EXPRESSION

REFERENCES:
(a) DoD Dir 1325.6
(b) SECNAVINST 5720.44 (series)
(c) SECNAVINST 1600.1 (series)
(d) DoD Dir 1300.17
(e) SECNAVINST 1730.8 (series)
(f) DOD Inst 4105.70
(g) OPNAVINST/MCO 1620.2 (series)
(h) ALNAV 053/97
(I) DoD Dir 5500.7R, JER, SECTION 3-211

CO'S BALANCING TEST: Constitutional rights involving freedom of expression should be preserved to maximum extent possible, consistent with mission accomplishment, security and good order and discipline. See Reference (a)

NO CONTEMPTUOUS WORDS: Article 88 UCMJ prohibits officers from being disrespectful to senior governmental leaders (i.e. President, Vice President, Congress, SECDEF, SECNAV, SECARMY, SECUSAF, etc…).

PORNOGRAPHY:
- Private possession cannot be prohibited (except child pornography).
- Display and distribution can be controlled.
- Contact SJA for questions concerning sales at NEX, MCX, or ship stores.

HANDBILLS, POSTERS, LEAFLETS, NEWSLETTERS, PAPERS, NOTICES: CO can and should require prior approval before distribution. Apply the balancing test stated above and rule of equal treatment.

MANDATORY PAO/SECURITY REVIEW: Required for any publication written by military member that "pertains to military matters." See reference (b).

ON-BASE "GATHERINGS": Shall be prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Apply the rule of equal treatment.

OFF-BASE "GATHERINGS": Attendance may be prohibited if the servicemember is on duty, in a foreign country, if the gathering or march is illegal, if the gathering is sponsored by a "supremacist" or "hate" group, or if the CO believes violence is likely. Moreover, a

Downloaded from http://www.everyspec.com

servicemember may be prohibited from wearing a uniform at the gathering.

OFF-LIMITS: A CO may declare places **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.

NO MILITARY UNIONS, STRIKES SLOWDOWNS, OR PICKETING.

MEMBERSHIP IN SUPREMACIST OR EXTREMIST GROUPS: "Active" participation in such organizations is prohibited. Active participation includes: publicly demonstrating or rallying, fundraising, recruiting and training members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by command to be detrimental to good order, discipline, or mission accomplishment.

(a) Commanders have the authority to employ the full range of administrative or disciplinary actions against members who actively participate in such organizations. See reference (a).

(b) Mandatory processing for substantiated cases. *See ADMINISTRATIVE SEPARATIONS*.

RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES: *See REQUEST MAST/ARTICLE 138 COMPLAINT and CONGRESSIONAL INQUIRIES*.

RELIGION: Policy is to accommodate practice of religion to the greatest extent possible. See reference (e).

See POLITICAL ACTIVITIES.

Downloaded from http://www.everyspec.com

REQUEST MAST/REDRESS OF WRONGS/ART. 138 UCMJ

REFERENCES: (a) Navy Regulations, Articles 1150, 1156
(b) UCMJ, Article 138
(c) JAGMAN, Chapter III
(d) MCO 1700.23 (series)

REQUEST MAST: Members of the Naval service have the right to communicate directly with the CO at a proper time and place determined by the CO. No one may force a member to reveal matter they wish to discuss privately with CO.

- CO's should encourage request mast in order to resolve matters at the lowest level. Once a chit for request mast is submitted, all levels of the Chain of Command should work to resolve the problem. Only the individual submitting the chit may withdraw the chit. If withdrawn, the reason should be documented and preserved.

- Request Mast is an individual right. Article 1153 prohibits members from joining together to protest or complain.

- Request Mast is with the CO. Requests to see higher authority should be handled at Request Mast and if the matter is not resolved the CO should forward the request up the chain of command with a recommendation. USN: There is no "right" to a "personal audience" with a superior above the CO (it is a matter within the sole discretion of that superior). USMC: A Marine may request mast with any officer in his chain of command up to the Commanding General.

NAVY REGULATIONS ARTICLE 1150 – REDRESS OF WRONGS:

- Formal complaint that may be filed against any superior. (Complaints against the CO are filed under Article 138 after the complainant has requested redress from the CO).

- If the superior is in the same chain of command, the CO should handle through Request Mast procedures. If the matter is resolved no report to higher authority is required. If the complainant considers the resolution unjust the complainant may file an Article 138 complaint against the CO.

- If the superior is not in the same chain of command, the complaint shall be forwarded via the complainant's CO, the respondent, the respondent's CO, to the officer exercising GCMCA over the respondent. The GCMCA is required to inquire into the matter.

Downloaded from http://www.everyspec.com

UCMJ ARTICLE 138 COMPLAINTS:

- See JAGMAN, Chapter III.
- Made against a CO after a request for redress has been denied.
- Must be endorsed and forwarded within 10 days to the officer exercising GCMCA over the CO and after investigation (regardless of resolution), must be forwarded to SECNAV.
- A complainant may withdraw a complaint at any time but it must be in writing and forwarded up the chain of command if the complaint has already been forwarded. If the complaint has not been endorsed or forwarded the CO should document and preserve the withdrawal.

CHECKLIST FOR GCMCA REVIEW OF ARTICLE 138 COMPLAINTS: *See Appendix G*.

Downloaded from http://www.everyspec.com

HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT

REFERENCES: (a) SECNAVINST 5370.5 (series)
(b) SECNAVINST 5370.7 (series)
(c) DOD Directive 7050.6
(d) MCO 5041.1

DOD FRAUD, WASTE, AND ABUSE HOTLINE (1-800-424-9098). Navy IG (1-800-522-3451) is the "eyes and ears" of SECNAV, CNO and CMC.

- Echelon II Commanders are responsible for written internal procedures for processing hotline referrals at appropriate levels within chain of command.
- Mandatory requirement to post information on Navy/DoD Hotline programs on command bulletin boards, per reference (a).
- Encourage and support reporting of fraud, waste and abuse throughout all levels of command; military and civilian.

INVESTIGATION PROCEDURES: If command is tasked with conducting an investigation, CO must ensure standards of independence, completeness, timeliness and accountability are met.

- Assign impartial investigator, outside and independent of the operation specified in the complaint.
- Reports cannot raise unanswered questions.
- IG due date in tasking letter must be met.
- Take proportionate remedial measures in form of disciplinary/ administrative/educational action if needed to correct deficiency.
- Retain EVERYTHING (notes, papers, files) for 2 years.
- Use Navy IG Investigations Manual or Marine Corps IG Assistance and Investigations Manual as a guide for investigation.
- Confidentiality of informant is a must.
- NO REPRISAL can ever be taken against a known/suspected informant.

WHISTLEBLOWER PROTECTION ACT: Prohibits reprisal or taking or threatening to take any unfavorable personnel action, or

Downloaded from http://www.everyspec.com

withholding or threatening to withhold any favorable personnel action, because a member 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. 10 U.S.C. 1034.

- Contents of reference (b) MUST be published on command bulletin boards.
- Violation of the Act is a crime punishable under the UCMJ and a basis for disciplinary action against civilian employees.

See MENTAL HEALTH EVALUATIONS.

Downloaded from http://www.everyspec.com

CONGRESSIONAL INQUIRIES

REFERENCES:
(a) MILPERSMAN 5216-010
(b) SECNAVINST 5216.5 (series)
(c) Navy Regulations, Article 1155
(d) MARADMIN 606/02

RIGHT TO COMMUNICATE: No person may restrict any member from communicating with Congress in the member's personal or private capacity.

PROTECTION FOR "WHISTLEBLOWERS": No reprisal may be taken against a member who reports a perceived wrong to a member of Congress. *See HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT*.

PSYCHIATRIC EVALUATION: Do not refer a member for a mental health evaluation as reprisal for initiating a Congressional inquiry. Must comply with requirements of mental health evaluation instruction. *See MENTAL HEALTH EVALUATIONS*.

PRIVACY ACT CONCERN: Ensure that any personal information about a member included in the response is releasable information. Obtain the member's written consent before disclosing personal information unless the Congressperson is making the request on behalf of the member as a constituent.

CORRESPONDENCE:

- Each Congressional inquiry should receive a prompt, courteous, and complete reply.
- The reply should be correct even though the nature of the reply may be unfavorable.
- A final or interim reply must be sent within five (5) workdays of receipt.
- USN: The final reply and substantive interim replies are sent to Pers-3C with blind copies to the Office of Legislative Affairs. USMC: All Congressional Inquiries should be immediately forwarded by fax to the Office of Legislative Affairs (OLA(C)), (703) 614-4172/4768 or DSN 224-xxxx.

INFORMING CHAIN OF COMMAND: Check TYCOM, Senior Command and local instructions for reporting requirements and requirements for providing copies of responses.

Downloaded from http://www.everyspec.com

EO PREVENTIVE MEASURES

REFERENCES: (a) SECNAVINST 5350.16
(b) OPNAVINST 5354.1 (series)
(c) OPNAVINST 3100.6
(d) GENADMIN/CINCLANTFLT/081600ZAUG95
(e) GENADMIN/CINCPACFLT/021721ZAPR 5
(f) USMC "*Processing EO & EEO Complaints, A Commander's Handbook*"
(g) GENADMIN/CNO/19203Z APR 99
(h) MCO P5354.1 (series)
(i) MCO P5354.3 (series)

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss the DON EO policies. Set the tone for the command environment on Equal Opportunity:

- Publish a command policy statement on EO.
- Utilize the POD/POW to promote the Navy's EO program.
- Periodically publish and place on command bulletin boards information concerning command EO/EEO counselors, a member's right to submit a formal or informal grievance and the availability of legal advice.
- Prominently display the grievance poster, "Navy Procedures for Processing Discrimination Complaints/Grievances for Military Personnel" (DD Form 1348). Encourage the use of the Equal Opportunity and Sexual Harassment Advice Line, 1-800-253-0931, DSN 882-2507, Comm (901) 874-2507; eo/sh.advice.line@persnet.navy.mil.
- Ensure Navy Rights and Responsibilities Workshops or Marine Corps Annual Equal Opportunity Training Sessions are conducted and attended.

EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION.

PROACTIVE TEAM: Executive Officer, Command Senior Enlisted Advisor, Equal Opportunity Specialist (EOPS), Command Managed Equal Opportunity Officer (CMEO), Command Assessment Team Members and Legal Advisor are all key players. Empower them and discuss the issues with them frequently.

COMMAND ASSESSMENT: Determine need to have the command assessment team (CAT) conducted. Not required to conduct annually [*see reference (g)*]. Recommended upon assuming command or as situations require.

FITREP/EVALS: Establish meaningful, measurable EO/EEO performance objectives for fitness reports and evaluations.

Downloaded from http://www.everyspec.com

RECOGNITION: Provide special recognition or awards for units/personnel demonstrating superior accomplishments in EO/EEO.

Downloaded from http://www.everyspec.com

EQUAL OPPORTUNITY (EO) INCIDENT

REFERENCES: (a) OPNAVINST 5354.1 (series)
(b) MCO P5354.1 (series)

EVALUATE INCIDENT AS MINOR OR SERIOUS: *See Appendix D*.

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for serious incidents. Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. *See NCIS INCIDENT REPORTING*.
- Violent crime message. *See VIOLENT CRIME REPORTING*.
- Incidents involving Sexual Harassment. *See SEXUAL HARASSMENT*.
- Incidents involving sexual assaults. *See VICTIM/WITNESS*.
- Incidents involving officers IAW with TYCOM/Second Echelon requirements. *See OFFICER MISCONDUCT*.

INVOLVE THE EOPS/CMEO or EDR/EDA OFFICER/COMMAND LEGAL ADVISOR IMMEDIATELY.

PREVENT REPRISALS: Remove the alleged perpetrator from the workspace if reprisal or recurrence is likely.

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of all parties involved.

COMPLAINANT/VICTIM ASSISTANCE: Provide complainant with victim counseling support or referral services at the outset. Monitor and provide follow-up services as required. *See VICTIM/WITNESS ISSUES*. Provide feedback to complainant within a reasonable time. Consider appointing a personal advocate to assist the complainant IAW reference (a).

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged offender as reprisal. Must comply with requirements of the mental health instruction. *See MENTAL HEALTH EVALUATIONS*.

INFORMAL RESOLUTION: Encourage use of the Informal Resolution System prior to the filing of a formal complaint.

Downloaded from http://www.everyspec.com

INVESTIGATION: Ensure investigating officer is neutral and qualified. Consider outside investigator if investigation would have appearance of being partial to either complainant or alleged offender. Coordinate all efforts with the command legal advisor. See reference (a).

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. *See ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

EXTREMIST/HATE GROUPS: *See ADMINISTRATIVE SEPARATIONS and FREEDOM OF EXPRESSION*.

Downloaded from http://www.everyspec.com

FREEDOM OF INFORMATION ACT (FOIA)

REFERENCES: (a) JAGMAN, Chapter V
(b) SECNAVINST 5720.42 (series)
(c) SECNAVINST 5820.8 (series)
(d) USC 552
(e) 32 CFR part 701

RESOURCES: Navy FOIA online **www.foia.navy.mil**
USMC FOIA Online
http://hqinet001.hqmc.usmc.mil/ar/ars/foia

ACCESS TO RECORDS: FOIA gives all persons (including foreign citizens and governments) a right to access Government "agency records" unless such records are specifically exempted from disclosure.

(a) Records includes information maintained in an electronic format.

(b) Commands shall make records available in any form requested by the person, including electronic formats.

INITIAL DENIAL AUTHORITIES (IDA'S): Generally, only an IDA may deny release of a properly requested record.

- IDA's are typically Flag/General Officers or officers exercising General Court-Martial Convening Authority.

FEES: Requestors may be charged fees for production of materials. Details as to fees and fee waivers are set out in SECNAVINST 5720.42F, Enclosure (3). Note that typically a total of less than $15.00 is waived, and typically two hours of search time and 100 pages of copies are free. Consult your cognizant judge advocate on fee determinations.

TIME LIMITS: Must respond to FOIA requests within 20 working days. While there are means to obtain formal or informal extensions, this usually requires permission of the IDA. The 20-day clock begins when the request is "perfected" and reaches the appropriate releasing command or agency. [*See* reference (b)].

SPECIAL RECORDS: Certain FOIA requests require special handling. Requests for the following must be forwarded to the appropriate release authority:

- NCIS reports.
- IG reports.
- Court-martial records.

Downloaded from http://www.everyspec.com

- Mishap and safety reports.
- Nuclear information.
- Medical quality assurance reports.

EXEMPTIONS: If you have any question over whether a record must be released, forward the FOIA request and the documents in issue to the IDA. Some of the specific exemptions under FOIA include:

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

TRACKING: FOIA action officers must track all FOIA cases and all reimbursable fees (record search and review time and duplication costs). Use DD Form 2086 (contained in reference (b)) for all FOIA requests. Such records will also help in submitting annual FOIA reports.

REQUESTS FOR INFO 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 your servicing TSO, SJA and OJAG (Code 15) at DSN 325-5450 or (202) 685-5450. [*See* reference (c)].

Downloaded from http://www.everyspec.com

PRIVACY ACT

REFERENCES: (a) JAGMAN, Chapter V
(b) SECNAVINST 5211.5 (series)
(c) OPNAVNOTE/MCBUL 5211

RESOURCES: Navy Privacy Act on-line site: http://privacy.navy.mil

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 a "system of records" that contains 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 Courts-Martial Convening Authority.

PRIVACY ACT WARNINGS: Required when someone from the command is requesting "personal information" (e.g., SSN) which will then be stored in a "system of records" (e.g., medical or personnel files, training records, JAGMAN investigations, etc…). Sample warning forms are provided in Chapter II to reference (a).

INDIVIDUAL ACCESS TO FILES: In most cases, an individual may access any record that contains personal information about them (e.g., medical and personnel files, unit punishment book, etc…). There are some exceptions to this rule.

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:

- Internal release within DoD ("need to know").
- Statistical research.
- Law enforcement activity.
- Congressional inquiries (where made on behalf of individual).

TIME LIMITS: Privacy Act requests are to be acted upon within 10 working days.

TRACKING: For each record disclosed to a party outside DoD in response to a Privacy Act request, document such release with a "Disclosure Accounting Form" – OPNAV 5211/9, which is contained in reference (b).

Downloaded from http://www.everyspec.com

Section III: PERSONNEL ISSUES

ALCOHOL ABUSE PREVENTION

REFERENCES:
(a) OPNAVINST 5350.4 (series)
(b) SECNAV 5300.29 (series)
(c) MCO P1700.24 (series)
(d) NAVMAC 2931
(e) MCO 1700.12 (series)
(f) ALMAR 291/97

ALCOHOL INCIDENT: An offense, punishable under the UCMJ or civilian laws, committed by a member, to which, in the judgment of the member's CO, the offender's consumption of alcohol was a contributing factor. Alcohol abuse / dependency screening is mandatory for members who are involved in an alcohol incident regardless of rank or status.

DEGLAMORIZATION: Alcohol abuse is inconsistent with Navy and Marine Corps initiatives to promote personal excellence among members. Alcohol abuse should not be promoted by the chain of command.

GENERAL RESPONSIBILITIES OF NAVY CO:

- Alcohol abuse information should be provided by a trained DAPA during indoctrination of newly reporting personnel.

- Command DAPA must screen all alcohol/drug-related cases brought to the attention of the command and forward to CAAC for evaluation and an appropriate determination of treatment. Medically screen <u>every</u> member involved in an alcohol incident.

- Document substantiated alcohol incidents with page 13 entries; evals; fitreps and other reports [drug and alcohol abuse reports (DAARs)] as required.

- Clearance eligibility incidents shall be referred to DONCAF.

- Review the status of members involved in alcohol abuse incidents and take appropriate disciplinary, remedial, educational and/or administrative action and make a final report to DONCAF. *See ADMINISTRATIVE & DISCIPLINARY OPTIONS.*

- Ensure that breathalyzer and/or field sobriety tests are conducted by base security when there is reasonable suspicion of alcohol abuse. Additionally, institute a random gate inspection program. *See SEARCH AND SEIZURE*.

Downloaded from http://www.everyspec.com

- Consult with medical and alcohol abuse program personnel when there is a suspected problem.

- Conduct screening for overseas assignment per transfers manual to ensure members with unresolved alcohol incidents are not considered for overseas duty. Monitor aftercare of members who have completed treatment programs. Members may be processed for ADSEP by reason of alcohol rehabilitation failure for <u>any</u> alcohol related misconduct at <u>any time</u> in their career after completing any treatment program. *See ADMINISTRATIVE SEPARATIONS*.

❖ Reference (d) requires service record documentation of all substantiated drunk driving offenses.

GENERAL RESPONSIBILITIES OF MARINE CORPS CO:

- Marines at all levels will receive prevention education and training at least annually. Commanding Generals and Commanding Officers are tasked with implementation of the drug and alcohol abuse program outlined in MCO P1700.24B and NAVMC 2931.

- Conduct screening for overseas assignment per transfer manual to ensure members with unresolved alcohol incidents are not considered for overseas duty.

- Unit Substance Abuse Control Officer (SACO) / Substance Abuse Control Specialist (SACS) will maintain case files on Marines identified with drug / alcohol problems and provide aftercare services for individuals who complete a drug / alcohol treatment program.

- Commanders will direct a SRB page 11 entry be made after counseling a Marine for any alcohol-related misconduct or unsatisfactory performance. Consult the PES for “DC” fitness report submission requirements and mandatory Section C comment requirements.

- See MCO P1900.16_ paragraph 6209 for further guidance on processing of Marines for ADSEP by reason of alcohol rehabilitation failure.

Downloaded from http://www.everyspec.com

PREVENTION:

- Deglamorize alcohol use; emphasize responsibility and moderation.
- Conduct regular command training on alcohol abuse.
- Ensure club personnel are trained not to serve underage or intoxicated individuals.
- Institute and promote a designated driver/MWR taxi program at base clubs.
- Suspend base driving privileges for alcohol related driving incidents.
- Promote firm and equal treatment of alcohol abusers through NJP, Court-Martial or administrative means
- Publish DAPA notes in POW (USN).

Downloaded from http://www.everyspec.com

DRUG PREVENTION AND URINALYSIS PROGRAM

REFERENCES: (a) OPNAVINST 5350.4 (series)
(b) SECNAVINST 5300.28 (series)
(c) MCO P1700.24
(d) NAVMC 2931

TRAINING: Include and emphasize drug education in the command indoctrination program. Conduct periodic drug abuse awareness education in GMT programs. Ensure all personnel understand the zero-tolerance policy and are aware of voluntary self-referral provisions of reference (a).

USMC: In accordance with reference (c), Officers and SNCOs will receive annual supervisor training in drug and alcohol abuse prevention. In addition to the Officer and SNCO annual training objectives, NCOs will receive drug and alcohol abuse prevention training through an approved course provided by the Installation SACC. NCOs will provide this prevention training to their subordinates annually.

DETERRENCE AND DETECTION PROGRAMS:

- Gate/quarterdeck inspections of personnel and/or vehicles. CO should structure the inspection to leave no discretion to security personnel and to reasonably balance inconvenience to members and/or others attempting to enter or exit.

- Health and welfare inspections of messing and berthing areas, barracks, and work spaces.

- Use drug detection dogs (when available), in conjunction with inspections, searches, and personnel inspections throughout all command areas. If a dog alerts, a probable cause authorization should be sought. *See SEARCH & SEIZURE.*

URINALYSIS PROGRAMS:

- **COORDINATORS & OBSERVERS:** Must be designated in writing. Whenever possible assign officers or staff noncommissioned officers. Coordinators and observers should be tested separately and should never provide a sample in any urinalysis in which they participate.

- **ATTENTION TO DETAIL & SECURITY:** The entire collection process will be scrutinized in any court-martial. Admissibility of test results is dependent on a tight chain of custody and protection of samples after collection.

Downloaded from http://www.everyspec.com

- **TESTING GOAL - USN:** Mandatory annual unit sweep (minimum one) of all assigned personnel. 10 - 20 percent of the command each month. Random sampling of smaller numbers of personnel on a more frequent basis provides best results. It reduces the risk of predictability of command testing and raises the perceived risk of detection.

- **TESTING GOAL - 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" premise. All Marines reporting in from PCS and leave will be tested within 72 hours of their arrival.

24-HOUR UA & SUB-UNIT TESTING: Commands may establish policies to test all 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 members returning from 24 + hour UAs.

"FAILURE TO GO": If a member cannot provide a sample or produce a sufficient amount, require the member to remain in a controlled area and drink fluids.

REFUSAL TO PROVIDE: A commissioned officer (but not CO, XO or LEGO) should give a direct order.

POSITIVE RESULTS: Message report from the NDSL is official notification of lab test results and constitutes authority to take administrative or disciplinary action. Use may be limited depending on the basis for testing. The CO should attempt to determine if:

- The member is a drug abuser and discipline appropriately (administrative separation processing is mandatory) or,

- The member's positive urinalysis result was caused by administrative error (faulty local chain of custody, evidence or tampering) and take appropriate corrective action, or

- The drug use was not wrongful (In which case member is not identified as a drug abuser and not a drug abuse incident);

Once the CO has made a determinatin he/she should notify ISIC and PERS-6 by official correspondence with specific circumstances. *See APPENDIX I* and *ADMINISTRATIVE DISCIPLINARY OPTIONS.*

NOTE: Only samples tested at a DOD certified lab or one of the three Navy Drug Labs can be used as evidence for punitive action or administrative discharge. See reference (a).

Downloaded from http://www.everyspec.com

OBTAINING EVIDENCE OF DRUG USE: *See SEARCH & SEIZURE -- DRUG CASES*.

STEROIDS: Navy Drug Labs do not test for Steroids. Commands that want to test a sample for Steroids should contact Mr. Tom Callahan at (310) 825-2635 and ask for a military quote. As of 1 June 2005, the cost per sample was $245.00. The mailing address and fax number for the UCLA Olympic Lab are:

UCLA Olympic Lab
2122 Granville Ave
Los Angeles, CA 90025

Fax (310) 206-9077

Downloaded from http://www.everyspec.com

HIV ISSUES

REFERENCES: (a) SECNAVINST 5300.30 (series)
(b) SECNAVINST 1850.4 (series)
(c) NAVMC 2904

NOTIFICATION OF POSITIVE SCREENING: Results must be provided to all medical/dental record holders.

ASSESSMENT INTERVIEW: Must be completed by cognizant medical health authority, and include counseling on risk factors, transmission factors, and blood donation.

LIMITATIONS ON USE OF HIV INFORMATION: Information gained during initial medical interviews cannot be used against the member in court-martial, NJP, administrative separation proceedings, as a bar to enlistment, or a basis for adverse eval or fitrep marks.

CONFIDENTIALITY IS THE RULE: Handle HIV information with the highest degree of confidentiality. Information shall not be released to anyone unless there is a demonstrated need to know. Privacy Act considerations strictly applicable.

WRITTEN PROTECTIVE ORDERS: Ensure that “safe sex” order has been issued by the appropriate medical authority.

ASSIGNMENT OF MEMBER: HIV+ member is not deployable and is normally assigned within 300 miles of certain Naval Medical Treatment Facilities.

VOLUNTARY SEPARATION: If member requests within 90 days after initial classification is completed (i.e., when member signs medical board report). Characterization is type warranted by service record (honorable or general). Separation may be delayed up to 180 days after initial evaluation to minimize manning shortfalls.

INVOLUNTARY SEPARATION: Authorized for HIV+ members who develop AIDS. Use the Disability Retirement System IAW reference (b).

Downloaded from http://www.everyspec.com

HOMOSEXUAL CONDUCT

REFERENCES:
(a) 10 U.S.C. 654
(b) DoD Dir 1332.14
(c) SECNAVINST 1910.4B
(d) OSD MEMO 12 AUG 99
(e) ASN (M&RA) MEMO 21 SEP 99, 16 DEC 99, 16 FEB 2000
(f) DoD OGC ltr of 18 Aug 95
(g) MILPERSMAN 1910-148
(h) MARCORPSEPMAN, Chapter 6
(i) MCO 1900.16 (series)
(j) NAVADMIN, 291/99 and 094/00
(k) MARADMIN 014/00 AND 025/00

POLICY: Don't ask; Don't tell; Don't Pursue; Don't Harass - Whether homosexual, bisexual, heterosexual.

FOCUS: Homosexual conduct NOT sexual orientation. Homosexual conduct includes both homosexual acts and statements by a member that he/she is homosexual or bisexual or words to that effect, and a homosexual marriage or an attempted homosexual marriage.

SAFETY OF THE MEMBER: Determine whether member should be moved within the command, transferred TAD, or if other security measures are warranted for the member's safety pending investigation and/or administrative processing.

When a member reports incidents or threats of harassment, the CO must take immediate steps to protect safety of victim. The fact that a person reported harassment is not enough, by itself, to initiate an investigation into the acts of the member. If information is uncovered during the investigation into the harassment that the reporter is homosexual or engaged in acts, CO must carefully consider the source and circumstances of the report. Before a CO orders an investigation, the CO must consult with the GCMCA SJA.

INVESTIGATIONS: NCIS will only investigate incidents that involve force, coercion, minor children, or where other serious criminal activity is involved. NCIS is precluded from investigating a consensual activity case. In these cases the command may initiate a "fact-finding inquiry" and assign the matter to a commissioned officer who should conduct the investigation with utmost discretion. However, If the CO suspects a member made a statement to avoid an obligation, deployment, obligated service, or payback for education, the CO may test the sincerity of the statement by questioning the member, others who heard the statement, the member's immediate chain of command, and persons suggested by

Downloaded from http://www.everyspec.com

the member. Investigations beyond these limits require SecNav authorization.

REASONS FOR INITIATING AN INVESTIGATION: Only the CO may initiate an investigation. Must have "credible information" that a reason for administrative processing exists (homosexual conduct). Rumors, suspicions, or mere associational activity such as patronizing a "gay bar," or attending a homosexual rights rally, is not credible information. The decision to investigate must be based on factual information from a "reliable person."

Once "credible info" inquiry is complete, the CO must determine whether inquiry establishes probable cause (reasonable belief) that one of the 3 things listed above (homosexual act / statement / or marriage) occurred. If the CO determines probable cause does exist, the CO *shall* initiate administrative separation.

INTERVIEWING THE MEMBER, EXPLANATION OF POLICY: The investigating officer must advise and explain to the member the DoD Policy on homosexual conduct set forth in reference (b), including the mandatory processing consequences. Article 31(b), UCMJ rights should be afforded to anyone suspected of an offense (e.g., sodomy, conduct unbecoming, indecent acts, fraternization.) *See SUSPECTS – QUESTIONING*.

INTERVIEWING THE MEMBER FOR ALLEGED CONDUCT: The member should not be asked, nor is the member required to reveal, whether he/she is a heterosexual, homosexual, or bisexual. The focus of the interview must be on their CONDUCT and NOT their "status" or sexual orientation. The investigating officer may ask if the member engaged in the homosexual CONDUCT at issue. The investigating officer "must be able to clearly and specifically explain which grounds for separation he/she is attempting to verify and how the information sought relates to the specific basis (es) at issue." *See SUSPECTS – QUESTIONING*.

INTERVIEWING THE MEMBER IN A "STATEMENTS CASE": Reference (b) provided clarifying guidance confirming that the mere statement of homosexual orientation raises the rebuttable presumption that the member has the propensity to engage in homosexual acts. Reference (c) permits the IO to ask the member whether he/she has engaged in, attempts to engage in, or has the propensity to engage in homosexual acts. The member may also be asked why he/she made the statement and what he/she meant by the statement. *See SUSPECTS – QUESTIONING*.

MANDATORY ADSEP PROCESSING FOR HOMOSEXUAL CONDUCT: Must initiate if CO determines that member engaged in or will engage in homosexual conduct. Mandatory processing does not equal mandatory separation. Member can rebut presumption of

Downloaded from http://www.everyspec.com

homosexual conduct or admin board may vote to retain. BUPERS and CMC or GCMCA (USMC) retain separation authority for enlisted, SecNav for Officers. Request a JAG to act as the command representative at any homosexual conduct admin board. *See ADMINISTRATIVE SEPARATION*.

CHARACTERIZATION OF SERVICE: Honorable, general, or entry level separation, unless there is a finding that member attempted, committed, or solicited a homosexual act involving force or coercion; with a subordinate; in public view; with someone under the age of 16; on a naval aircraft or vessel; or on board military property.

COMMAND CLIMATE: CO's must not condone jokes, epithets or derogatory comments in their command. When a member reports incidents or threats of harassment, the CO must take immediate steps to protect safety of victim. The fact that a person reported harassment is not enough, by itself, to initiate an investigation into the acts of the member. If information is uncovered during the investigation into the harassment that the reporter is homosexual or engaged in acts, CO must carefully consider the source and circumstances of the report.

Before a CO orders an investigation, the CO must consult with GCMCA or higher SJA. If CO suspects individual made a statement to avoid an obligation, deployment, obligated service, or payback for education, the CO must contact PERS 83 and seek permission to investigate.

Downloaded from http://www.everyspec.com

MENTAL HEALTH EVALUATIONS (MHEs)

REFERENCES: (a) DoD Dir 6490.1
(b) SECNAVINST 6320.24 (series)
(c) MILPERSMAN 1910-122
(d) MARCORSEPMAN 6203.3
(e) MCO P1900.16 (series)

POLICY: Prevent improper command referral (e.g., as reprisal) and ensure members are provided rights in connection with MHEs.

RULES: References (a) and (b) provide guidance in referring a member for mental health evaluation (MHE). If appropriate, administratively process for separation IAW reference (c).

REFERRALS EXEMPTED FROM MHE REQUIREMENTS INCLUDE:

- Patient self-referrals.
- Referral to CAAC/DAPA, Family Advocacy.
- Referral to non-MHP for competence for duty exam.

FUNDAMENTAL PRINCIPLES: Do not refer a member for a MHE as a reprisal for making or preparing a lawful communication to a member of Congress, the chain of command, IG, or other appropriate person. Do not restrict a member from lawfully communicating with an IG, attorney, member of Congress, or other person about appropriateness of MHE referral. Violation of either of these principles may be punished under Art. 92, UCMJ.

CO RESPONSIBILITIES PRIOR TO REFERRAL:

- Consult with Navy psychiatrist/psychologist (MHP)
- Provide member with a written notice of the referral. Sample notice provided in reference (b).

MEMBER'S RIGHTS UPON REFERRAL:

- May not refuse MHE.
- May consult with a JAG for advice about redress.
- May submit allegation of improper referral to IG.
- May be evaluated by MHP of own choosing, if reasonably available.
- No person may restrict member's right to seek redress for referral.
- In situations other than emergencies, member shall have 2 business days before MHE to meet with an attorney, IG, chaplain or other appropriate party.

EMERGENCY CIRCUMSTANCES: If member is a "danger to self or others" referral may be made without prior consultation with MHP or written notice to the member.

Downloaded from http://www.everyspec.com

- Prepare written memo documenting reasons for not complying and provide copies to member and MHP for inclusion in health record.

MEMBER'S RIGHTS IF INVOLUNTARILY ADMITTED:

- Must be advised of nature, purpose and consequences of treatment.
- Right to contact friend, attorney, IG, or relative ASAP.
- Right to submit allegations to IG that MHE made as a reprisal.
- Right to evaluation within 24 hours to determine if continued hospitalization is justified.
- Right to notification of reasons for continued hospitalization.
- Right to have review within 72 hours by independent MHP appointed to determine appropriateness of continued hospitalization (right to attorney at the 72 hour review).

MENTAL HEALTH PROFESSIONAL DUTIES:

- Advise member of purpose, nature and likely consequences of MHE.
- Report improper MHE referrals to medical chain of command who will report same to offending officer's superiors and the local IG.

ALL ALLEGATIONS OF IMPROPER REFERRAL ARE INVESTIGATED BY NAVY IG AND REPORTED TO DOD IG.

Downloaded from http://www.everyspec.com

PREGNANCY

REFERENCES:
(a) SECNAVINST 1000.10
(b) OPNAVINST 6000.1 (series)
(c) MILPERSMAN 1740-020
(d) MILPERSMAN 1740-030
(e) MILPERSMAN 1910-112
(f) MCO 5000.12 (series)
(g) ALMAR 67/95

INITIAL COUNSELING RESPONSIBILITIES: Once pregnancy is medically confirmed, the service member must be counseled regarding the Department of the Navy's pregnancy and parenthood policies, including dependent care plans, administrative separation options, and possible conflicts between parent role and the Service's "posture of readiness and mobility." References (a) and (b) and OPNAV 1740/1 for dependent care plans. Legal Assistance offices can provide counseling to members regarding paternity, blood testing, child support and other parenting issues. Pregnant members should be referred to a legal assistance office for this counseling if appropriate.

ADMINISTRATIVE SEPARATION OPTIONS: Members may voluntarily request ADSEP based on pregnancy. Member should request discharge prior to the 20th week of pregnancy. Generally requests will be denied unless in the best interests of the Service, or if member demonstrates overriding and compelling factors of personal need which warrant separation. After birth of the child, other bases for administrative separation may apply (e.g., hardship or parenthood).

REQUIRED COUNSELING PRIOR TO SEPARATION: Prior to separation the member must be counseled concerning limited maternity care benefits. Document the counseling on a Page 13 (USN) or Page 11 (USMC).

WORK LIMITATIONS: Detailed guidance is provided on management of pregnant servicewomen, including general duty limitations (i.e., exemptions from regular PT and the PRT, swim quals; parade rest or attention longer than 15 minutes; reduced exposure to unsafe chemical, toxic agents; after 28 weeks of pregnancy ensure member is allowed to rest 20 minutes every 4 hours (including in a chair with feet up); and limited 40 hour work week).

CONVALESCENT LEAVE: Six weeks authorized; extensions may be authorized by CO.

Downloaded from http://www.everyspec.com

SHIPBOARD CONSIDERATIONS: Pregnant servicewomen MUST be transferred from the ship before the 20th week of pregnancy or date of deployment whichever is first. Pregnant on deployment: send member TAD to nearest military facility with OB/GYN care. "6 Hour Rule": Even when not deployed pregnant member cannot get underway if time required for medevac to emergency OB/GYN care exceeds 6 hours.

EVACUATION OF PREGNANT MEMBERS: If a non-combatant evacuation is ordered, all pregnant servicewomen who have reached the 20th week of pregnancy will be evacuated as "noncombatants." The area commander has authorization to direct evacuation of members who have not reached the 20th week upon the analysis set forth in reference (b).

BREASTFEEDING: Servicewomen may breastfeed infants during times allotted for meals and breaks. Alternatives, (e.g., breast pumping) are advised.

PRIORITY OB/GYN MEDICAL CARE: Active duty servicewomen will be given priority for OB/GYN care in DON medical facilities. Active duty servicewomen assigned to deploying units or positions (within 3 months), will be given priority over all other active duty servicewomen. See reference (d).

FOLLOW ON TOURS: A service member who was transferred from her unit due to pregnancy will be returned to the same ship or unit or to an equivalent billet in a command of the same duty type (e.g., shall complete sea tour).

See ADMINISTRATIVE SEPARATIONS and PATERNITY.

Downloaded from http://www.everyspec.com

RESERVISTS – SPECIAL CONSIDERATIONS

REFERENCES: (a) COMNAVRESFOR P1600.2A
(b) MILPERSMAN 1001-010 through 1001-090
(c) MILPERSMAN 1620-020, 1811-010, 1820-010
(d) MILPERSMAN 1830-010 through 1830-070
(e) MILPERSMAN 1916-010 through 1916-020
(f) SECNAVINST 1770.3 (series)
(g) DoD 5500.7-R (JER)

COURT-MARTIAL AND NJP JURISDICTION: The UCMJ was amended in 1986, expanding jurisdiction over reservists. Reference (a) summarizes the governing rules, as well as the procedures, to recall inactive reservists for disciplinary action. The basic test for establishing jurisdiction is compensation. If the member is receiving compensation then the reserve member is subject to the jurisdiction of the UCMJ.

COURT-MARTIAL AND NJP PUNISHMENTS: Sections 0202 and 0304 of reference (a) detail how court-martial and NJP punishments apply to inactive reservists. Commanders of selected reserve/volunteer training units have NJP authority, but may not convene a special court-martial. See JAGMAN, Section 0106 and 0120.

ADMINISTRATIVE SEPARATIONS: Generally, procedures are the same as for active duty personnel. Notable exceptions include: inactive reservists have 30 days to respond to notification of processing; admin boards for all reservists must have at least one reserve commissioned officer as a member and all members must be commissioned officers if an OTH discharge is possible; and SECNAV is the separation authority for any reservist within 2 years of eligibility for retired or retainer pay. Commanders of selected reserve/volunteer training units may not convene admin boards.

URINALYSIS: Per section 0504 of reference (a), reservists who test positive shortly after beginning IDT, IDTT, ADT, or AT are not subject to disciplinary action (without other evidence of drug use in an active status), but are subject to administrative processing.

INJURIES, ILLNESSES & DISEASES: Upon learning that a reservist (on duty for less than 31 days) has incurred or aggravated an injury, illness, or disease on AT, ADT, IDT, IDTT, or traveling to or from such duty, commanders must immediately notify COMNAVRESFOR OO3 and forward an interim LOD/Misconduct determination within 7 days. See reference (c). See JAGMAN, Section 0253 regarding investigations into death and/or injury of reservists.

Downloaded from http://www.everyspec.com

ETHICS: Inactive reservists may use their military titles in commercial enterprises if their retired or inactive status is clearly indicated and such use does not discredit DoD or give the appearance of DoD approval. See section 2-304 of reference (d). As for political activities, inactive reservists are generally subject to the same restrictions as DoD civilian employees under the amended Hatch Act, not those governing active duty personnel. See sections 6-200 and 6-300 of reference (d) and SECNAVINST 6370.6.

REDCOM SJAs: Each of the Naval Reserve Readiness Commands has a Staff Judge Advocate, who is the initial contact for legal inquiries about reservists within the geographical region.

Downloaded from http://www.everyspec.com

SUICIDES, ATTEMPTS & GESTURES/CACO

REFERENCES: (a) MILPERSMAN 1770-010
(b) JAGMAN, Section 0226
(c) SECNAVINST 6320.24 (series)

PERSONNEL CASUALTY REPORTS: Required for any suicide, and also for any case where a member attempts suicide or makes other suicide gestures.

NCIS NOTIFICATION: If member had access to classified information.

ACTUAL SUICIDE: Line of Duty/Misconduct determinations are now required in all death cases, however mental responsibility will be a consideration and may result in a finding of no misconduct. *See DEATH INVESTIGATIONS*.

LINE OF DUTY/MISCONDUCT DETERMINATIONS: In suicide attempt or gesture cases, where there is a permanent disability or physical inability to perform duties in excess of 24 hours, a determination is required. Convene a JAGMAN investigation (normally Command Investigation).

- In the case of a true suicide attempt, there is a strong inference that the member lacked mental responsibility. Therefore, the likely outcome will be that the member was "in the line of duty" and "the injury was not due to own misconduct."

- In the case of suicide gestures (an intentional infliction of injury without serious suicidal intent), the likely outcome will be that the member was "not in the line of duty" and "the injury was due to own misconduct."

MENTAL HEALTH EVALUATIONS: Members who express suicidal ideations should be immediately referred to DoD mental health professionals. This may be considered an emergency situation under appropriate circumstances for purposes of reference (d). *See MENTAL HEALTH EVALUATIONS*.

CASUALTY ASSISTANCE CALLS OFFICER: Be sure to contact your CACO regional coordinator (Navy Regional Commander, etc.), with regard to any question involving the death of any active duty servicemember.

Downloaded from http://www.everyspec.com

FROCKING OF USMC OFFICERS

REFERECES: (a) DoD Directive 1334.2
(b) MCO P1400.31B
(MARCORPOMMAN, VOL. 1)

GENERAL: Promotions to the grades of major and above require: nomination by the President, consent of the Senate, and appointment by the President. Frocking is intended to ameliorate the effects of delay between Senate confirmation and appointment by the President. An officer is not legally promoted until all three steps have occurred. However, frocking is authorized under the limitations and requirements of references (a) and (b). Since specific requirements exist based on the "frocked grade," careful consideration is necessary to ensure the frocking is authorized.

DOD POLICY: Reference (a) establishes policy, standards, and procedures governing the frocking of commissioned officers to the grades 0-4 through 0-10. Generally:

- Before an officer can be frocked, the officer must have cleared the first two hurdles for promotion: (1) nomination by the President; and (2) consent of the Senate.
- Frocking must be essential to the officer's maximum effectiveness in the assigned billet;
- The officer being considered for frocking must be serving in a billet for which the frocked grade is designated, or must be in the process of being ordered to such a billet. Reference (b) establishes priority for the following billet assignment: joint duty, international environment, command, or other staff assignments.

MARINE CORP POLICY: Reference (b) establishes requirements for all frocking requests. A frocked officer is entitled to "wear the insignia" and to "assume the title" of the next higher grade. However, the frocking is not a promotion, and until the actual promotions, the officer does NOT:

- Receive any pay allowances, or entitlements of the frocked grade;
- Accumulate time in grade, gain seniority on the active duty list or gain seniority for any other purpose;
- Assume the legal authority of the higher grade. (Frocked officers are not authorized increased disciplinary powers under Article 15, UCMJ.)

Downloaded from http://www.everyspec.com

FROCKING AUTHORITY:

- **Above the grade of Colonel:** The Secretary of Defense.
- **Major through Colonel:** The Director, Personnel Management Division
- **1stLt to Captain:** Commanding Generals are authorized to frock first lieutenants to captains based on criteria specified in paragraph 6007 of reference (b).
- **2ndLt to 1stLt:** Frocking a second lieutenant to first lieutenant is not authorized.

FITNESS REPORTS: A grade change (GC) fitness report must be completed on frocked officers.

DEFROCKING: Paragraph 6007.6 of reference (b), provides that an officer's frocking may be rescinded prior to the time of actual promotion is effected if it is determined that potential adverse information exists. In such instances, the Manpower Management Division, Promotions Section (MMPR) and the Judge Advocate Division (CMC (JAM)) must be notified for further guidance.

Downloaded from http://www.everyspec.com

Section IV: SEXUAL HARASSMENT, FRATERNIZATION & HAZING

SEXUAL HARASSMENT PREVENTION

REFERENCES: (a) SECNAVINST 5300.26 (series)
(b) OPNAVINST 5354.1 (series)
(c) OPNAVINST 5354.5 (series)
(d) ARTICLE 1166, U.S. Navy Regulations, 1990
(e) NAVPERS 15620 Informal Resolution System
(f) MCO P5354.1 (series)
(g) MCO 1000.9 (series)
(h) USMC "*Processing EO & EEO Complaints, A Commander's Handbook*"
(i) ALNAV 042/00
(j) CMC White Letter No. 06-03

RESOURCES: Navy Personnel Command:
www.persnet.navy.mil/pers00h/

Marine Corps Equal Opportunity:
www.usmc.mil/eo

POSITIVE ENVIRONMENT: Create a command environment where sexual harassment is neither ignored nor condoned.

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss DON Sexual Harassment policies. Set the tone for the command environment:

- Publish a command policy statement outlining the command's stance on sexual harassment.
- Utilize the POD/POW to promote the Navy's zero tolerance sexual harassment policy.
- Periodically publish and place on command bulletin boards information concerning command EO/EEO counselors, a member's right to submit a formal or informal grievance, and the availability of legal advice.
- Prominently display the grievance poster, "Navy Procedures for Processing Discrimination Complaints/Grievances for Military Personnel" (DD Form 1348). USMC: Ensure NAVMC 2921, "Marine Corps Procedures for Processing of Discrimination / Sexual Harassment Complaints for Military Personnel," is prominently displayed on a permanent basis within the command. Publish a command policy statement on

Downloaded from http://www.everyspec.com

EO (which includes sexual harassment) to support the EO objectives. Encourage the use of the Equal Opportunity and Sexual Harassment Advice Line, 1-800-253-0931, DSN 882-2507, Comm (901) 874-2507; **eo/sh.advice.line@persnet.navy.mil**.

USMC: Manpower Equal Opportunity, DSN 278-9371 or commercial (703) 784-9371 or the Equal Opportunity Sexual Harassment Advice Line, 1-800-253-0931, DSN 882-2507. As an alternative to the normal chain of command, military and civilian personnel may lodge complaints and provide facts to the local Command Inspector. Complaints may be lodged with representatives of the Deputy Naval Inspector General or Inspector General of the Marine Corps, DSN 224-1348/49 or commercial (703) 614-1348/49.

- Ensure all hands receive annual GMT and Navy Rights and Responsibilities training (within 90 days of reporting to command, where practicable and annually thereafter).

USMC: All Marines and civilian personnel will receive training at least annually per reference (f).

PROMULGATE AN "INTERPERSONAL RELATIONSHIP" and/or "DATING POLICY": Although the following list contains leadership challenges frequently found independent of sexual harassment issues, well thought-out command policies covering these items may assist in setting the tone for a command environment with significantly fewer sexual harassment incidents. A Judge Advocate should review prior to issuance. Examples of items that may be covered:

- Intimate conduct/public displays of affection on board a ship/military installation or while in uniform.
- Male/Female counseling situations.
- Uniform inspection requirements when members of the opposite sex are involved.
- Appropriate civilian attire on board ships and military installations.
- Entering berthing areas/heads/personal living areas by male/female personnel of opposite sex.
- Searches/Health and Welfare Inspections when members of the opposite sex are involved.
- Appropriate language on board ships and military installations.
- *See FRATERNIZATION PREVENTION*.

EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION: Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. [*See reference (e)*]. Process formal complaints in

Downloaded from http://www.everyspec.com

accordance with the new timelines in references (b) (USN) and (f) (USMC).

PROACTIVE TEAM: Executive Officer, Command Master Chief, Equal Opportunity Specialist (EOPS), Command Managed Equal Opportunity Officer (CMEO), Command Assessment Team Members and Legal advisor are all key players. Empower them and discuss the issues with them frequently.

COMMAND ASSESSMENT: Ensure the command assessment team conducts the annual assessment to include sexual harassment issues. [*See references* (c) (USN) and (f) (USMC)].

FITREP/EVALS: Establish meaningful, measurable EO performance objectives for fitness reports and evaluations.

RECOGNITION: Provide special recognition or awards for units/personnel demonstrating superior accomplishments in EO.

See also SEXUAL HARASSMENT INCIDENT

Downloaded from http://www.everyspec.com

SEXUAL HARASSMENT INCIDENT

REFERENCES:
(a) SECNAVINST 5300.26 (series)
(b) OPNAVINST 5354.1 (series)
(c) Article 1166, U.S. Navy Regulations
(d) NAVPERS 5354/2 (3-00)
Formal Complaint Form
(e) NAVPERS 15620
Informal Resolution System
(f) MCO P5354.1 (series)
(g) NAVADMIN 244/94
(h) DoD Auth. Act of 1997, Section 591
(i) ALMAR 130/98
(j) MILPERSMAN 1910-233
(k) MCO P1900.16 (series)
(l) MARCORSEPMAN 6210

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for major incidents. Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. *See NCIS INCIDENT REPORTING*.
- Violent crime message. *See VIOLENT CRIME REPORTING*.
- Incidents involving sexual assaults. *See VICTIM/WITNESS*.
- Incidents involving officers IAW TYCOM/Second Echelon requirements. *See OFFICER MISCONDUCT*.

BACKGROUND: Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when (1) made a term or condition of a person's job, pay, or career; (2) used as a basis for a job decision affecting that person; or, (3) interferes with an individual's work performance or creates a hostile or offensive working environment. Sexual harassment is a gender neutral concept.

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

Within 24 hours of receipt of the complaint at the alleged offender's command, the complaint must be presented to the Commanding Officer.

Initiate an investigation **within 72 hours** after receipt of the complaint and advise the complainant and the GCMCA via SITREP (OPREP for major incidents) with an info copy to NAVPERSCOM (Pers 6/61) and your Echelon II command. (Marine personnel shall notify the GCMCA that a complaint has

Downloaded from http://www.everyspec.com

been received and make every effort to initiate investigation within 72 hours.)

Personal advocates must be offered to the complainant, alleged offender, and all primary witnesses within 72 hours of the Commanding Officer receiving the complaint.

Complete investigation of the complaint within 14 days, or file a progress report within 20 days of commencement and every 14 days thereafter. File a final report with the GCMCA, including the results of the investigation and whether or not any administrative or disciplinary action was taken (if disciplinary action was taken, the actual punishment awarded should not be placed in the message). See refs. (b), (d), (g), and (h).

PREVENT REPRISALS: Remove the alleged perpetrator from the work space if there is reasonable possibility of further sexual harassment or reprisal.

COMPLAINANT/VICTIM ASSISTANCE: Appoint a personal advocate to assist the complainant. Provide the complainant with victim counseling support or referral services at the outset. Monitor and provide follow-up services as required. *See VICTIM/WITNESS*.

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of all parties involved. *See PRIVACY ACT*.

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged perpetrator unless the requirements of the DoD mental health instruction have been met. *See MENTAL HEALTH EVALUATION*.

INFORMAL RESOLUTION: Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. See reference (e).

FORMAL COMPLAINT: Use reference (d) “Formal Complaint Form”. **USN:** start investigation within 72 hours and attempt to complete within 14 days. *See Appendix E: Steps for Investigating SH Complaints* and reference (b). **USMC:** make every effort to investigate within 72 hours and attempt to complete within 14 days. See reference (i).

LEVEL OF INVESTIGATION: CO's determination based on seriousness and magnitude of incident. Ensure investigating officer is neutral and qualified. Consider outside investigator if command investigation would have appearance of being partial to either complainant or alleged perpetrator. Coordinate all efforts with the command legal advisor. If complainant and alleged

Downloaded from http://www.everyspec.com

offender are from different commands, the CO of the alleged offender has the responsibility to conduct the investigation.

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. *See ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

MANDATORY ADMINISTRATIVE DISCHARGE PROCESSING: Required for substantiated incidents which involve:

- Actions, threats or attempts to influence another's career or job in exchange for sexual favors; or
- Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge. *See ADMINISTRATIVE SEPARATIONS*.

Downloaded from http://www.everyspec.com

FRATERNIZATION PREVENTION

REFERENCES: (a) OPNAVINST 5370.2 (series)
(b) OPNAVINST 5354.5
(c) Marine Corps Manual 1100.4
(d) Article 1165, U.S. Navy Regulations
(e) UCMJ, Article 134

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss the DON fraternization policy:

- Ensure personnel are attending the Navy Rights & Responsibility workshops upon reporting to the command.
- Ensure all hands are receiving annual GMT.

USMC: Ensure Fraternization policy is explained to every Marine in formal education process and informal leadership sessions. Commanders are to integrate and discuss fraternization issues in their annual training plans.

PROMULGATE A COMMAND "INTERPERSONAL RELATIONSHIPS" POLICY: A Judge Advocate should review prior to issuance. Examples of items that may be covered:

- Relationships between crew members/personnel in the same work center or command. May strongly discourage, but should not prohibit off duty relationships that are not otherwise prohibited as fraternization or sexual harassment (e.g. after hours dating between two E-3s in different work centers).
- Intimate conduct/public displays of affection on board a ship/military installation or while in uniform.
- Appropriate civilian attire on board ships and military installations.
- Entering berthing areas/heads/personal living areas by male/female personnel of opposite sex.
- Appropriate language on board ships and military installations.
- Private business partnerships between command members.

COMMAND ASSESSMENT: Ensure the command assessment team (CAT) conducts an annual assessment that includes fraternization. [*See* OPNAVINST 5354.1 (series)]

MULTI-SERVICE COMMAND: Must develop a policy consistent with the different service regulations and ensure all personnel within the command understand the policy.

See also FRATERNIZATION INCIDENT

Downloaded from http://www.everyspec.com

FRATERNIZATION INCIDENT

REFERENCES: (a) OPNAVINST 5370.2 (series)
(b) Marine Corps Manual 1100.4
(c) Article 1165, U.S. Navy Regulations
(d) UCMJ, Article 134
(e) TECOM Gen Order 01-03 (Prohibited Activities)
(f) USMC LORR Depot Order 1100.4A
(g) USMC ERR Depot Order 1100.5

BACKGROUND: Unduly familiar personal relationships between seniors and subordinates are contrary to naval custom because they undermine the respect for authority that is essential to the Navy's ability to accomplish its mission. Fraternization is prohibited and punishable under the UCMJ.

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

- **Officer/Enlisted:** Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service. (USN and USMC)

- **Chief Petty Officer/Junior Enlisted:** Personal relationships between chief petty officers and junior personnel (E-1 to E-6), who are assigned to the same command, that are unduly familiar and that do not respect the differences between grade or rank. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service. (USN)

- **Noncommissioned Officers/Junior Enlisted:** The provisions of Officer/Enlisted prohibited relationships above apply to the relationship of noncommissioned officers with their subordinates and apply specifically to noncommissioned officers who may be exercising supervisory authority of leadership roles over junior Marines.

- **Staff and Instructor/Student Personnel:** Personal relationships between staff or instructor members and student personnel within Navy training commands that do not respect differences in grade, rank, or the staff/student relationship. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service. (USN)

- **Recruiter/Recruit and Applicant:** Personal relationships between recruiters and recruits or applicants that do not

Downloaded from http://www.everyspec.com

respect differences in grade or rank. Such relationships are prejudicial to good order and discipline and violate long-standing traditions of the naval service (USN) and are strictly prohibited in the USMC by references (f) and (g).

PREJUDICE TO GOOD ORDER AND DISCIPLINE: All other relationships may be prejudicial to good order and discipline. Examples include:

- Dating, shared living accommodations, intimate or sexual relations, commercial solicitations, private business partnerships, gambling, and borrowing money when they are prejudicial to good order and discipline, or of a nature to bring discredit on the naval service.

- Personal relationships between officer members (officer/officer), or between enlisted members (enlisted/enlisted) that are unduly familiar and that do not respect differences in grade or rank when they are prejudicial to good order and discipline, or of a nature to bring discredit on the naval service.

Fraternization exists when the relationship results from, but are not limited to, circumstances which:

- call into question the senior member's objectivity;
- result in actual or apparent preferential treatment;
- undermine the authority of a senior member; or
- compromise the chain of command.

RELATIONSHIPS WITH MEMBERS OF OTHER SERVICES: The policy applies to all prohibited relationships between Navy members and other members, regardless of service.

DIRECT SENIOR-SUBORDINATE SUPERVISORY RELATIONSHIP: Not a prerequisite for fraternization.

SAME CHAIN-OF-COMMAND: Not a prerequisite for fraternization.

GENDER-NEUTRAL: The focus is on the detriment to good order and discipline, not the sex of the parties.

SUBSEQUENT MARRIAGE: Does not excuse or mitigate.

MARRIED MEMBERS: Will not be assigned to the same chain of command (compatible with needs of the Navy/Marine Corps).

Downloaded from http://www.everyspec.com

RESPONSIBILITY FOR PREVENTION: Rests primarily on the senior. However, both members are accountable for their own conduct.

MULTI-SERVICE COMMANDS: Must create clear policies because of differences in service regulations.

ADMINISTRATIVE OR DISCIPLINARY OPTIONS: Investigate allegations and take appropriate administrative or disciplinary action. *See Appendix F*: *Fraternization Investigation Chart and ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

Downloaded from http://www.everyspec.com

HAZING PREVENTION/INCIDENT

REFERENCES: (a) SECNAVINST 1610.2
(b) OPNAVINST 3100.6G
(c) MCO 1700.28 (series)
(d) OPNAVINST 3120.32, para. 510.36
(e) SECDEF MEMO of 28 Aug 1997
(f) ALMAR 045/03

COMMAND POLICY: Must be regularly emphasized to all hands.

PREVENTION: Requires continuous education and awareness from command leadership. Use the definition and specific examples below. The listing is not all inclusive and other known examples should be added to the list.

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

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

HAZING DOES NOT INCLUDE: Command-authorized or operational activities; the requisite training to prepare for such missions or operations; administrative corrective measures; extra military instruction; athletics events, command-authorized physical

Downloaded from http://www.everyspec.com

training, contests or competitions; and other similar activities that are authorized by the chain of command.

INITIATIONS AND SPECIAL CEREMONIES: Must be approved by the chain of command. Specific guidance is contained in reference (d):

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

INVESTIGATION: Must investigate within 24 hours of incident. Sitrep every 30 days.

REPORTING REQUIREMENTS: Substantiated incidents of hazing must be reported via OPREP to CNO or CMC. See references (a), (b), and (c).

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action as appropriate.

Downloaded from http://www.everyspec.com

Section V: FAMILY RELATIONSHIP ISSUES

DOMESTIC ABUSE PREVENTION

REFERENCES: (a) SECNAVINST 1752.3 (series)
(b) OPNAVINST 1752.1 (series)
(c) OPNAVINST 1752.2 (series)
(d) MCO P1700.24 (series)
(e) MARADMIN 567/03

EDUCATION AND TRAINING FOR ALL HANDS: Regularly emphasize and discuss DON family violence policies that emphasize prevention; recognition; prompt notification and reporting; and the availability of responsive services.

- Publish and place on command bulletin boards information concerning victim services and family violence rehabilitative education and counseling.

- EDUCATION AND TRAINING FOR SUPERVISORS: Ensure that military and civilian supervisors are trained in identifying signs of abuse and FAP referral procedures.

PROACTIVE TEAM: Executive Officer, Command Master Chief/ Sergeant Major, Installation Family Advocacy Officer (FAO), Senior Medical Officer, Chaplain, and Legal Advisor are all key players.

FAMILY PROGRAMS: Conduct activities that contribute to a healthy family life (e.g. family picnics, family career day, etc.).

DEGLAMORIZATION OF ALCOHOL.

CIVILIAN LIAISON: Installation COs must establish a cooperative relationship with appropriate civilian authorities to provide for reciprocal reporting of information and development of a community based approach to family violence. Memoranda of Understanding (MOU's) are recommended.

Issue Military Protective Orders when appropriate. *See* DOMESTIC VIOLENCE/FAMILY ADVOCACY Incidents.

Downloaded from http://www.everyspec.com

DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

REFERENCES: (a) SECNAVINST 1752.3 (series)
(b) DOD Directive 6400.1
(c) 10 U.S.C. Sec. 1058
(d) OPNAVINST 1752.1 (series)
(e) OPNAVINST 1752.2 (series)
(f) MCO P1700.24 (series)
(g) 18 U.S.C Sec 921 (series)
(h) MILPERSMAN 1910-162
(i) MARADMIN 567/03

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 for major incidents
- Unit SITREPS for minor incidents
- Major criminal offenses to NCIS. (*See NCIS INCIDENT REPORTING*)
- Violent crime message. (*See VIOLENT CRIME REPORTING*)
- Incidents involving sexual assaults. (*See VICTIM/WITNESS*)
- Incidents involving officers IAW with TYCOM/Second Echelon requirements. (*See OFFICER MISCONDUCT*)

NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE (FAR): All allegations of spouse or child abuse. Notify a Family Advocacy Program Representative who will notify BUPERS (Pers-8 and Pers-6), when allegations of child sexual abuse are made.

USMC: Notify command Family Advocacy Officer and/or Family Advocacy Program Manager at Marine and Family Services.

TRACK THE CASE: Appoint the XO or a responsible command representative to work with Family Advocacy and provide command input on disposition.

DISPOSITION: The Family Advocacy Case Review Committee (CRC) will make a determination of either “substantiated” or “unsubstantiated – did not occur” or “unsubstantiated – unresolved” within 90 days. This determination, along with any treatment recommendations, will be forwarded to the commands of the offender and victim, if a different command, in a written report.

(a) Command must debrief the alleged offender, victim, or victim’s sponsor on the report and their rights and obtain a signed statement of rights form.

Downloaded from http://www.everyspec.com

(b) **CO maintains sole discretion over disciplinary action. Family Advocacy review does not preclude or limit command disciplinary action.** (See ADMINISTRATION & DISCIPLINARY OPTIONS)

APPEAL OF CRC DETERMINATIONS: (Navy only) CRC determinations can be appealed to the CRC, 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 CRC determination. Appeals can be filed by the alleged offender, victim, or command of either, on the following grounds:

(a) Newly discovered evidence
(b) Fraud upon the CRC
(c) Voting member of the CRC absent
(d) Not Guilty/Guilty finding after a full trial on the merits that is contrary to CRC findings
(e) Plain legal or factual error.

(Marine Corps only) CRC determinations can be appealed to the installation CRC. Appeals must be in writing, and normally filed within 10 days of the advisement of the CRC determination. Appeals can be filed by a substantiated offender or victim, or person legally responsible for the victim, or either spouse where the incident was unsubstantiated – did not occur on the following grounds:

(a) Newly discovered information
(b) Failure to substantially follow correct procedures
(c) Not Guilty/Guilty finding after a full trial on the merits that is contrary to CRC findings.

TREATMENT OF VICTIMS: Coordinate under the Victim/Witness Assistance Program. (*See VICTIM/WITNESSES*).

Downloaded from http://www.everyspec.com

INTERVENTION: Ensure that appropriate actions are taken to provide for the protection of victims during the investigation and processing of a FAP case [e.g. issuance of a military protective order (MPO) to remove the military member from the family home (whether on or off base); coordination with local child protective services to have the child removed from the home; or issuance of an order barring alleged perpetrators from Navy installations]. (*See LAW ENFORCEMENT CIVILIAN JURISDICTION*).

MILITARY PROTECTIVE ORDERS (MPO): Written order requiring member to move out of home or to "stay away" from complainant. Should be issued whenever it is likely or foreseeable that further incidents will arise. Should be issued in writing. Must be temporary in nature but may be renewed and should be in force until Family Advocacy counselors have intervened. Will also protect members from false allegations. Consult with a legal advisor.

USMC: Commanding officers shall issue MPOs when necessary to safeguard victims, quell disturbances, and maintain good order and discipline. DD Form 2873 shall be used to issue MPOs. MPOs may be issued even though a civilian protection order is in place.

INTERVIEWING OR QUESTIONING SUSPECTED OFFENDERS: Should not be done if a law enforcement agency (NCIS, CID, or civilian) is investigating. (*See* NCIS *INCIDENT REPORTING* & *SUSPECT—QUESTIONING*).

ALCOHOL RELATED INCIDENTS: DAPA/CAAC/SACO screening should be conducted.

MANDATORY PROCESSING: ADSEP processing must be initiated for sexual perversion, or in any case involving conduct which caused or could have caused death or serious bodily injury. Rehabilitation failure cases are separated under reference (h) (*See ADMINISTRATIVE SEPARATIONS*).

ADMINISTRATIVE BOARDS: Request assignment of a Judge Advocate to act as the command representative.

FIREARMS AND AMMUNITION POSSESSION: If convicted at SPCM/GCM or any civilian court of crime of domestic violence, then service member is no longer permitted to possess a firearm or handle ammunition, even in the line of duty. Consult with your SJA for further information on Lautenberg Amendment restrictors.

Downloaded from http://www.everyspec.com

Section VI: LEGAL ASSISTANCE

LEGAL ASSISTANCE

REFERENCES:
(a) JAGMAN Chapter 7
(b) MCO P5800.16 (series)
(c) LEGADMINMAN Chapter 14
(d) JAGINST 5801.2
(e) 8 U.S.C. §§ 1439 and 1440
(f) MCO P5800.16,
(h) Military Family Tax Relief Act (MFTRA) of 2003, Pub. L. No. 108-121, 117 Stat. 1335 (2003)
(i) Working Families Tax Relief Act (WFTRA) of 2004, Pub. L. No. 108-311, 118 Stat. 1116 (2004)
(j) DoD Directive 1344.7, Personal Commercial Solicitation on DoD Installation SECNAVINST 1740.2D, Solicitation and the Conduct of Personal Commercial Affairs on DON Installations

(Legal Assistance Manual)

LEGAL ASSISTANCE PROGRAM: The Department of the Navy legal assistance program provides free attorney assistance to members, their dependents, and other eligible clients regarding personal legal matters not involving military disciplinary proceedings. Legal assistance (LA) is provided at all Naval Legal Service Offices and Marine Law Centers and may also be available at other military legal offices and from Navy and Marine Corps Reserve personnel and units.

ELIGIBILITY: All active duty military members, retirees, and their dependents are eligible to receive services. Reservists activated for more than 30 days and their dependents are entitled to LA services during their period of activation and continuing after de-mobilization for a period of time equal to twice the amount of time for which they were activated. Reservists (but not their dependents) are also entitled to premobilization readiness services – such as wills and powers of attorney – at any time.

CONFIDENTIALITY: Information disclosed to an LA attorney is confidential and may not be disclosed to third parties without the client's consent. **LA offices are prohibited from disclosing information concerning a client – including whether the client received services at all – to the client's command or other persons**.

Downloaded from http://www.everyspec.com

SERVICES: Although the availability of types of services may vary from office to office, services provided generally include assistance with *divorce, child and spousal support, adoptions, custody, estate planning, landlord/tenant disputes, contracts, consumer fraud, identity theft, and immigration issues and the preparation of legal documents such as wills, living wills and powers of attorney*. The assistance provided generally does not include in-court representation although some offices are permitted to prepare court documents.

LA PROVIDERS: Eligible recipients may seek legal assistance at any LA office, regardless of the branch of service. Navy and Marine Corps legal offices provide assistance to Soldiers, Airmen, and Coast Guardsmen, and Army, Air Force, and Coast Guard legal offices should similarly provide services to Sailors and Marines and their dependents. A helpful tool for locating the LA provider nearest you can be found at https://afls.jag.af.mil/public/distance.

CONFLICTS: Occasionally, a LA office will be prohibited from providing services to an otherwise eligible person due to an ethical conflict of interest. This usually arises when an attorney in the legal office has already provided assistance to the opposing party or to a party that previously listed the person seeking services as an opposing party. Members conflicted from receiving assistance at the office will normally be referred to an alternate service provider if one is reasonably available. Due to client confidentiality, the LA office is prohibited from telling the conflicted client why he or she cannot be seen.

PREVENTATIVE LAW: Most LA offices have a preventative law program through which attorneys and other legal professionals provide informational briefings on a variety of topics including deployment readiness, consumer law, identity theft, automobile purchases, wills and powers of attorney, and family support. Contact your local NLSO or Marine Law Center for more information or to schedule a briefing.

PREDEPLOYMENT/PREMOBILIZATION 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 will visits and predeployment legal readiness check-ups. *See PREDEPLOYMENT LEGAL READINESS.*

Downloaded from http://www.everyspec.com

USMC CITIZENSHIP PROGRAM

RESOURCES: U.S. Marine Corps legal assistance offices located aboard Marine Corps installations worldwide. Reference (b) describes the program.

PURPOSE: To provide direct assistance and legal support to the approximately 7000 active duty Marines who are not United States citizens, but wish to apply for U.S. citizenship. This lack of citizenship can impact security clearances, MOS eligibility, and other personal and professional interests.

GENERAL CITIZENSHIP REQUIREMENTS FOR MARINES:

- Serve honorably for one year in an active or reserve status of the U.S. Armed Forces, or serve honorably for one (1) day during a time of hostilities

  Executive Order of 3 July 2002 provided active duty military members with immediate eligibility for citizenship with 1 day's service during time of hostilities. Time of hostilities defined as beginning 11 September 2001 with no end date established (as of March 2006)

- Submit application (through the local USMC legal assistance office) to a dedicated office within the Bureau of Citizenship and Immigration Services (CIS), Department of Homeland Security

- Pay application fee of $390 (WAIVED EFFECTIVE October 2004)

- Pass US civics test and interview with CIS representative

- Take Oath of Allegiance to United States.

PROGRAM STATISTICS:

- Average processing time is about 6 months

- USMC averages 900 applications per year

- Overseas interview, oath and application support from CIS is available in limited areas.

CONCLUSION: Local USMC legal assistance offices have the information, forms, and support necessary for Marines to submit

Downloaded from http://www.everyspec.com

an application for citizenship. The legal assistance office will even mail and track the package for the Marine.

Downloaded from http://www.everyspec.com

MILITARY FAMILY TAX RELIEF

RESOURCES: U.S. Marine Corps legal assistance program, and tax centers located aboard Marine Corps installations worldwide.

PURPOSE: The MFTRA and WFTRA are complex legislative packages that provide our military community with significant tax and financial protections.

APPLICATIONS:

- Military Death Benefits. The MFTRA increased the military death benefit from $6,000 to $12,000, and made the entire amount of the benefit tax-free.

- DoD child-care. DoD-provided dependent care assistance is non-taxable under the provisions of the new law.

- Home sale gains exclusion. The MFTRA makes it easier for military members to exclude capital gains (up to $250,000 for individuals or $500,000 for married couples who file jointly) on the sale of their principal residence. Normally, taxpayers must have resided in the home for two years or more during the five-year period that ends on the date of the sale of the property. Under the new law, active duty members that are ordered away from home may elect to suspend the five-year period. Also, this election is retroactive for sales made after May 6, 1997. More information is available on the HQMC legal assistance website: http://sja.hqmc.usmc.mil/jal/JAL.htm.

- Combat zone filing rules. Normally, a member has 180 days from the date on which he or she returned from a combat zone (as defined by Executive Order) in which to file a return, pay taxes, and claim a refund. MFTRA extends this rule to members who are deployed in "contingency operations" as defined by SECDEF, which normally includes "an operation in which members of the Armed Forces are, or may become, involved in military actions or hostilities against an enemy of the United States." Contingency operations also include calls to service of Reservists during national emergencies as declared by Congress or the President.

Downloaded from http://www.everyspec.com

- Earned Income Tax Credit (EITC). The WFTRA gives members the option of treating excludable combat pay (but not BAH or BAS) as earned income for purposes of figuring the EITC. This helps members avoid a situation in which the military pay exclusion left them with no earned income and thus no credit. Under this option, members include either all or none of their combat pay when figuring the EITC – they cannot choose to count only a part of it.

- Child Tax Credit. For tax years 2004 through 2010, the WFTRA provides that excludable combat pay (but not BAH or BAS) is treated as taxable earned income when figuring the refundable child credit. This enables many members to qualify for the refundable portion of the child credit. Treatment of combat pay as earned income when figuring this credit or the EITC does not change its exclusion from taxable income.

- **CONCLUSION:** The MFTRA and WFTRA provide substantial benefits to members that were previously unavailable. Refer all of your tax questions to your local Marine Corps legal assistance office.

Downloaded from http://www.everyspec.com

COMMERCIAL SOLICITATIONS ABOARD BASE

REFERENCES: (a) DoD Directive 1344.7, Personal Commercial Solicitation on DoD Installations
(b) SECNAVINST 1740.2D, Solicitation and the Conduct of Personal Commercial Affairs on DON Installations

RESOURCES: U.S. Marine Corps legal assistance program and SJAs located aboard Marine Corps installations worldwide.

PURPOSE: To inform commanders of the standards governing the conduct of personal commercial solicitations aboard DON installations.

EXAMPLES OF PRACTICES PROHIBITED BY REFERENCES (non-exhaustive list):

- Solicitation to a mass or captive audience.
- Contacting members who are in an “on duty” status.
- Soliciting without an appointment in housing areas, or door to door.
- Use of military identification cards or passes to gain access to installations for solicitation purposes.
- Using rosters of DoD personnel.
- Offering unfair, improper, or deceptive inducements to purchase or trade.
- Using rebates to facilitate transactions or to eliminate competition.
- Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature.
- Suggesting that the DoD sponsors or endorses any particular company or product.
- The sale of products by full-time DoD personnel to those who are junior in rank or grade.

Downloaded from http://www.everyspec.com

- Using any portion of installation facilities, including quarters, as a showroom or store.
- Advertising addresses or telephone numbers of commercial sales activities conducted on the installation, except authorized activities conducted by members of military families residing in family housing.
- Failure to meet state and Federal licensing and other regulatory requirements.
- Substantiated complaints or adverse reports regarding the quality of goods, services, and commodities and the manner in which they are offered.
- Personal misconduct by a company's agent or representative while on the installation.
- The possession or any attempt to obtain supplies of allotment forms used by the Military Departments, or possession or use of facsimiles thereof.

CONCLUSION: Installation commanders are responsible for the enforcement of these regulations, and have authority to ban agents who violate these standards. However, commanders must be judicious in restricting access to their bases. Command questions should be directed to the SJA.

Downloaded from http://www.everyspec.com

PREDEPLOYMENT LEGAL READINESS

REFERENCES: (a) DoD Dir 1350.4
(b) OPNAVINST 5801.1A
(c) 15 U.S. Code 1681 *et seq*

READINESS: Poor legal readiness can significantly impair the member's ability to focus on mission accomplishment. Unfortunately, members often fail to address their legal problems in a timely fashion, creating larger legal problems for themselves and their families. 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:

- **Powers of Attorney**: Allows an agent to act on the member's behalf. Special POAs authorize the agent to act in a narrow capacity (registering a vehicle, filing taxes, accepting or turning over gov't housing, etc.) while general POAs authorize the agent to act on the member's behalf in virtually any capacity. Due to the potential for abuse of a general POA, members are encouraged to carefully consider whether a general POA is necessary and whether they can fully trust their agent.

- **Last Will and Testament**: Ensures that the member's wishes are carried out upon the member's death. Members should have a current and up to date will, and family members should know where to locate the will. Members should update their wills every time they PCS or experience a significant change in financial or dependency status.

- **Living Wills and Health Care Powers of Attorney**: A Living Will (also known as an Advance Medical Directive) is a document that expresses the member's desires regarding the withdrawal of artificial life sustaining measures when the member is terminally ill or in a persistently vegetative state. A Health Care Power of Attorney is a document in which the member designates a person or persons to make health care decisions for the member in the event that the member becomes incapacitated.

- **SGLI Designations**: Members should ensure that their SGLI designation forms are up to date. SGLI distributions are

Downloaded from http://www.everyspec.com

controlled exclusively by the SGLI designation form. Also, members wishing to designate children under 18 as beneficiaries should seek the assistance of a legal assistance attorney to establish a trust or custodianship to avoid significant delay and expense when it comes time for distribution.

- **Page 2 (record of dependency data):** An out of date Page 2 can cause problems and confusion in contacting dependents and can result in dependents being denied military benefits.

- **Family Matters**: Family care plans, and issues regarding divorce, support, custody, visitation and military ID cards should all be resolved or addressed prior to deployment. Poor planning in this regard can result in significant impairment of member readiness.

- **Pending Court Cases**: Members should take action to address or postpone pending court actions prior to deployment. Failing to appear may result in a default judgement against the member (in civil cases) or the issuing of a bench warrant (in criminal cases).

- **Preventing Identity Theft – Active Duty Alerts and Free Credit Reports**: Deployed and TAD members are highly susceptible to identity theft. To minimize the potential for identity theft, members should consider filing an Active Duty Alert with one of the three consumer reporting agencies (CRAs), Trans Union (1-800-680-7289), Equifax (1-888-766-0008), or Experian (1-888-397-3742). Once an Active Duty Alert is placed on a member's credit report, potential creditors are required to contact the member at a phone number provided by the member or otherwise positively identify the member before extending new credit, issuing additional cards on existing credit accounts, or extending credit limits on existing accounts. Filing an Active Duty Alert also takes the member's name off of prescreening lists provided by CRAs to creditors and insurance companies seeking to solicit new business. Members may file an Active Duty Alert on the credit report by contacting one of the three CRAs, which must then notify the other two CRAs of the alert. Members should also be encouraged to regularly monitor their credit report by taking advantage of their right to receive a free annual credit report from the major CRAs. Visit **www.annualcreditreport.com** (a website sponsored by the major three CRAs) for more information.

ASSISTANCE: Legal readiness assistance is available at all Naval Legal Service Offices and Marine Law Centers and may

Downloaded from http://www.everyspec.com

also be available at other legal offices and from Naval and Marine Corps Reserve personnel and units. Many legal offices will send attorneys to commands to conduct will and power of attorney visits, provide predeployment briefs, and conduct legal readiness assessments.

Downloaded from http://www.everyspec.com

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

REFERENCES: (a) 50 United States Code §§501-596

The SCRA is a federal law that provides servicemembers – and in some cases, their dependents – with a variety of important federal protections in civil matters. These laws were passed in an effort to address some of the disadvantages faced by military personnel in dealing with their personal civil affairs due to the transient and unpredictable nature of military life. Several of the more important provisions are discussed below. Servicemembers facing legal problems should be referred to a legal assistance attorney.

LEASE TERMINATION: The SCRA provides a servicemember the right to terminate a lease for real property that is occupied or intended to be occupied by the servicemember or his dependents if, after signing the lease:

- The servicemember enters military service (an activated reservist, for example);
- The servicemember receives orders to deploy with a military unit for 90 days or more; or
- The servicemember receives PCS orders.

To terminate a lease under the SCRA, the tenant must deliver written notice of his intent to terminate the lease under the SCRA and provide a copy of the deployment/PCS orders. For sailors deploying with a ship, the sailor should obtain a letter from the command verifying the approximate dates and duration of the deployment (since the sailor himself will not receive a deployment order). Once the servicemember provides the required notice and documents, the lease is terminated effective 30 days from the date on which the next rent payment would be due. For example, if the rent is normally due on the 1st day of the month and the member provides notice on 15 March, the lease would be terminated effective 1 May (30 days from 1 April). Although landlords are prohibited from charging an early termination fee under the act, the landlord can still assess fees for late payments (if the tenant is behind on rent) and damage to the property.

STAY OF LEGAL PROCEEDINGS: The SCRA provides the member a right to "stay" -- or delay -- civil and administrative proceedings if the member's ability to appear is *materially affected by the member's military service*. This protection applies only to civil and administrative proceedings – not criminal proceedings. If the member qualifies for the stay, the court MUST grant the stay for a minimum of 90 days. To request the stay, the member must submit to the court:

Downloaded from http://www.everyspec.com

- A letter stating how the member's military service materially affects his ability to appear and when the member will be able to appear; and
- A letter from the member's commanding officer stating that the member's current duty prevents appearance and that leave is not authorized.

The member may request a delay longer than 90 days, but the court has the option of denying the request and proceeding without the member. The SCRA stay provisions do not make the matter go away – the member will eventually have to take action to resolve the matter

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

6% INTEREST RATE CAP: Members are entitled to have the interest rate capped at 6% for all preservice/preactivation installment contracts. Creditors are required to forgive all interest in excess of 6% and recalculate payments to reflect the interest rate change. The interest rate cap does not apply to federally backed loans such as student loans.

DOMICILE PROTECTION: The SCRA permits members to maintain their legal domicile in a state even though they relocate out of that state. A member establishes domicile in a state by being physically present in that state at some point and having the intent to return to that state. Contrary to popular belief, members do NOT establish domicile by simply completing paperwork at their servicing personnel office. Once a member has established domicile in a state, the member should refrain from taking action contrary to that (i.e. registering to vote or obtaining a driver's license in another state).

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

Downloaded from http://www.everyspec.com

- **Income Taxation**: Military pay is deemed to have been earned in the 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 by the jurisdiction in which the pay was earned, in which the taxpayer is currently living, and the taxpayer's state of domicile.

- **Personal Property Taxation**: A jurisdiction is prohibited from charging a personal property tax on a member's property if that property is located within that jurisdiction only because of the member's presence in that state due to military assignment (orders). This protection does not apply to sales or use taxes, and the member's state of domicile always remains able to charge a personal property tax.

EVICTION PROTECTION: Landlords are prohibited from evicting members and their dependents without first obtaining court order. If the member can demonstrate that his military service materially affects his ability to pay rent, the court can fashion an equitable remedy, including reducing the amount of rent. This protection applies for leases with a rent of $2465 per month or less.

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

Downloaded from http://www.everyspec.com

DEPENDENT SUPPORT

REFERENCES: (a) 32 C.F.R. Part 733, 734
(b) MILPERSMAN 1754-030
(c) MCO P5800.16 (series) (LEGADMINMAN) Chapter 15
(d) MILPERSMAN 1910-140

POLICY: Military members are expected to provide continuous and adequate support for all lawful dependents. Each branch of the armed forces has issued has issued support guidelines. References (b) and (c) provide the guidelines for the Navy and Marine Corps, respectively. Members who are the subject of non-support complaints should be encouraged to consult with a Legal Assistance attorney.

COURT ORDERS AND WRITTEN AGREEMENTS: Members are obligated to comply with written agreements and valid court orders that establish support obligations. Members failing to comply with such agreements and orders may be disciplined under Article 134, UCMJ, for failure to pay a just debt. Members contesting such orders must do so in the jurisdiction issuing the order.

MILITARY SUPPORT REGULATIONS: In the absence of a court order or written agreement, Navy and Marine Corps support regulations apply.

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

- **NAVY**: Reference (b) provides guidelines and recommended levels of support. Commands must counsel the member concerning his/her support obligation but may NOT order a member to provide support in accordance with the guidelines.

  - **Waiver of Spousal Support**: Members may seek a waiver of the spousal support obligation when the spouse seeking support abused or abandoned the member, or the spouse engaged in an adulterous affair. Waivers are processed through DFAS IAW reference (b).
  - **Action Upon Complaint**: Counsel member concerning his/her obligation to support lawful dependents IAW reference (b) and advise of the possible consequences of failure to do so.
  - **Failure to Support**. Members failing to provide continuous and adequate support may lose their

Downloaded from http://www.everyspec.com

entitlement to BAH with dependents, receive adverse evaluation/FITREP marks, receive written counseling, and be administratively separated IAW reference (d).

- **MARINES**: Reference (c) provides a formula for calculating support amounts and empowers commanders to issue a lawful order to provide support IAW the regulation.

  - **Waiver of Spousal Support**: Commanders may waive the spousal support obligation only when the spouse seeking the support abused the Marine, the spouse's income exceeds that of the Marine, the spouse and the Marine are both military members, or the Marine has been providing continuous support for the spouse for 12 months IAW reference (b). Commanders may also reduce the amount of support otherwise owed if the Marine is paying regular and recurring obligations of the spouse.

  - **Action Upon Complaint**: Counsel the member concerning his/her obligations and, if necessary, issue a written order to provide support in a specific amount using the forms in reference (c).

  - **Failure to Support**: Marines failing to provide continuous and adequate support may lose their entitlement to BAH with dependents and be subject to adverse administrative and disciplinary action, including punishment under the UCMJ for violation of a lawful order.

PATERNITY: In the case of out of wedlock children where paternity has not been established by affidavit, judicial decree, or DNA test, the member cannot be required to provide support. *See PATERNITY COMPLAINTS.*

Downloaded from http://www.everyspec.com

PATERNITY COMPLAINTS

REFERENCES: (a) MILPERSMAN 5800-010
(b) MILPERSMAN 1754-030
(c) MCO P5800.16 (series)
(LEGADMINMAN) CH 15

POLICY: Members owe the same duty of support to illegitimate children as they would to children born in wedlock.

DETERMINATION OF PATERNITY: DON does not determine disputed paternity actions, this is a matter for states.

SUPPORT ORDERS: Members must comply with state court orders.

- Compliance is necessary even if member disputes paternity or does not believe that an official determination of paternity has been made.
- Refer member to legal assistance attorney/civilian attorney to challenge order.

UPON RECEIPT OF A WRITTEN COMPLAINT: Member must be interviewed and counseled IAW reference (a).

ADMISSION OF PATERNITY: If member admits paternity, he should be counseled on obligation to provide support.

- If no state order, support may be made IAW service guidelines in references (b) and (c), or member must enter into a voluntary written agreement with the mother or guardian of the child.
- If member is now eligible for BAH, PSD will require written acknowledgement of paternity.

DENIAL OF PATERNITY: Refer member to a legal assistance attorney/civilian counsel to challenge paternity action. Use the sample letter to respond to complainant in reference (a).

ADMINISTRATIVE OR DISCIPLINARY ACTION: After counseling, if the member continues to fail to provide child support IAW a state order, mutual agreement, or service guidelines, administrative or disciplinary action may be warranted. *See ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

Downloaded from http://www.everyspec.com

LEGAL ASSISTANCE: Members may be referred to a legal assistance provider for counseling on parenting issues such as paternity, blood testing and child support.

Downloaded from http://www.everyspec.com

INDEBTEDNESS COMPLAINTS

REFERENCES:
(a) DoD Dir 1344.9
(b) MILPERSMAN 7000-020
(c) MILPERSMAN 7000-010
(d) MCO P5800.16 (series) (LEGADMINMAN) Chapter 16
(e) MILPERSMAN 1910-140
(f) MCO P1900.16 (series) MARCORPSEPMAN 6210

POLICY: Members are expected to pay their just financial obligations in a proper and timely manner. However, no internal DoD authority exists to adjudicate disputed claims or enforce settlement of private claims made against members.

COMPLAINTS: Process IAW reference (b), (c) or (d), counsel the member, and refer the member to a Legal Assistance attorney and the Command Financial Specialist. Commands will not arbitrate disputed claims and may NEVER indicate to a complainant what, if any, command action was taken against a member. Command action will depend upon whether the complainant is a debt collector, creditor or non-creditor as explained below.

- **DEBT COLLECTORS**: A debt collector is a person or entity regularly engaged in the collection of debts (e.g. collection agencies, law firms, etc.). Debt collectors are **prohibited** by the Fair Debt Collection Practices Act from contacting third parties (including the member's command) to collect a debt that has not been reduced to judgment unless the member consents to such contact after the delinquency occurred. Most indebtedness complaints from debt collectors should be returned without action using the sample letter in reference (b) or (d).

- **CREDITORS**: A creditor is a person or entity that extends credit (e.g. car loans, bank loans, credit cards, etc.). Creditors must certify compliance with the DoD Standards of Fairness and, if subject to Federal Trade Commission (FTC) regulations, must certify compliance with the Truth in Lending Act and other FTC regulations before the command acts on a complaint from the creditor. Command assistance to creditors should be limited to administrative referral of correspondence to the member and counseling of the member concerning his obligations. Commands should respond to creditors using the sample letter in reference (b) or (d).

Downloaded from http://www.everyspec.com

- **NON-CREDITORS**: A non-creditor is an entity that did not extend credit but to whom money is owed (e.g. the member bounced a check to a supermarket or landlord). Commands should respond to non-creditors using a letter substantially similar to the letters in reference (b) or (d). See reference (c).

DOCUMENTING A MEMBER'S FAILURE: Use page 13/11 administrative remarks for members with serious or recurring problems.

DISCIPLINARY ACTION: May be initiated when there has been a dishonorable failure to pay just debts or dishonorable failure to maintain checking funds under Article 134, UCMJ.

ADMINISTRATIVE SEPARATION: May be used when there is a pattern of failure to pay just debts and the member has violated written counseling to that effect. See references (e) and (f).

INVOLUNTARY ALLOTMENT APPLICATIONS (DFAS Form 2393): Process IAW reference (a).

Downloaded from http://www.everyspec.com

Section VII: INTERACTIONS WITH CIVILIANS

ENVIRONMENTAL COMPLIANCE

REFERENCES: (a) Navy Regulations, 0832
(b) OPNAVINST 5090.1 (series)
(c) MCO P5090.2 (series)
(d) JAGMAN, Chapter XIII

PERSONAL INVOLVEMENT: The CO's personal attention and involvement in environmental compliance is essential in establishing the necessary environmental ethic.

TRAINING: Annual training should be given to all hands regarding the Navy's environmental compliance program. Specialized training may be required depending on duties assigned.

SUPPORT NETWORK: Numerous sources of information and support networks exist to assist Navy and Marine activities. These include "Regional Environmental Coordinators" (REC's), the Naval Facilities Engineering Command, and installation environmental program managers. Determine where support assets are located before environmental compliance issues arise.

ENVIRONMENTAL COMPLIANCE EVALUATIONS (ECE'S): Both shore and afloat units are required to conduct annual ECE's. *See references (b)* and (c) for areas to be audited and for applicable checklists.

- For any deficiencies identified in the ECE, a POA&M must be developed in order to get into compliance.
- All ECE's and corrective measures taken should be documented and retained.

REPORTING: If the requirements of any environmental law cannot be achieved because of operational considerations, insufficient resources or other reason, the CO "shall report" to the ISIC. *See reference (a)*.

- Many environmental regulations require that federal and/or state authorities be notified in situations involving spills or other unauthorized releases of pollutants to the environment. If there are any questions over whether to report, or who to report to, contact the REC staff.
-

Downloaded from http://www.everyspec.com

NAVAL VESSELS: Strict control of vessel-generated waste discharges is required. OOD's and Department Heads should be familiar with Chapter 19 of reference (b) and the rules for what may be placed over the side.

CONTACT WITH REGULATORS: Report any and all contact with federal or state environmental regulators to the REC staff. This is particularly important with respect to requests to access ships. If you receive any "Notice of Violation/Non-Compliance," process in accordance with Appendix B to reference (b), or Appendix D to reference (c).

Points of Contact:

Marines

Eastern Area Counsel Office:
(910) 451-9517

Western Area Counsel Office:
(760) 725-5610

Navy

COMNAVREG MIDLANT
(757) 445-9984
DSN 564-9984

COMNAVREG SOUTHEAST
(904) 542-5216
DSN 942-5216

COMNAVREG SOUTHWEST
(619) 532-1418
DSN 522-1418

COMNAVREG NORTHEAST
(860) 694 3976
DSN 694-3976

Report any and all spills of oil or other hazardous substances to the National Response Center at 1-800-424-8802, to your ISIC and to your REC. Failure to report may lead to personal liability.

Downloaded from http://www.everyspec.com

JURY DUTY

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

AUTOMATIC FEDERAL COURT EXEMPTIONS: Reference (b) exempts all active duty members from serving on federal juries.

AUTOMATIC STATE COURT EXEMPTIONS: Flag officers, commanding officers, members assigned to operating forces; those in a training status; and those outside the continental United States are exempt from serving on state juries under reference (a).

DISCRETIONARY STATE COURT EXEMPTIONS: Officers with authority to convene special courts-martial may exempt members from state/local juries if jury duty would:

- unreasonably interfere with performance of their duties; or
- adversely affect readiness of command as a whole.

HOW TO EXEMPT: CO should sign written letter to appropriate state official (normally clerk of courts) exempting member.

OIC OR CO WITHOUT AUTHORITY TO CONVENE SPECIAL COURTS-MARTIAL: Should forward request with a recommendation and justification as soon as possible.

FOR MEMBERS AVAILABLE FOR JURY DUTY: Should not be charged leave or lose any entitlement.

- Fees received by member for jury duty must be turned over to the U.S. TREASURY. Members may retain any reimbursement from state or local authorities for actual expenses incurred in performance of jury duty.

Downloaded from http://www.everyspec.com

LAW ENFORCEMENT – CIVILIAN JURISDICTION

REFERENCES:
(a) 40 U.S.C. 255
(b) OPNAVINST 5100.12 (series)
(c) 18 U.S.C. 1382
(d) Navy Regulations, Article 0822

BASE INTEGRITY AND SECURITY PARAMOUNT: The installation commander, under the Internal Security Act of 1950, retains ultimate authority to protect his/her installation from any threat, no matter what type of jurisdiction is present.

THREE TYPES OF JURISDICTION (some installations will have different types in different areas):

- EXCLUSIVE: Federal government has exclusive authority to make and enforce local laws.
- CONCURRENT: State has equal authority to make and enforce local laws.
- PROPRIETARY: Federal government is merely a tenant on the land and retains no power to make or enforce local laws.

JURISDICTION <u>DOES NOT</u> AFFECT ENFORCEMENT OF UCMJ OVER MILITARY PERSONNEL: UCMJ is applicable in all places and at all times to all active duty.

CIVILIAN MISCONDUCT:

- EXCLUSIVE AREAS: Civilian misconduct may be prosecuted in Federal Magistrate's Court. Local SJA, NLSO or TSO will have a Special Assistant U.S. Attorney to prosecute. Minor driving infractions may be handled in a base traffic court. See reference (b).
- CONCURRENT AREAS: State law applies with equal force as federal law. DON or civilian law enforcement may respond and either may pursue prosecution. MUST have a memorandum of understanding with civilian law enforcement on these issues.
- PROPRIETARY AREAS: State law controls. State law enforcement normally make all arrests and prosecution will be in state courts. Active duty may also be prosecuted in state court for traffic violations and other crimes but will not necessarily preclude punishment under UCMJ for same offense.

Downloaded from http://www.everyspec.com

DETENTION OF CIVILIAN FOR DELIVERY TO CIVILIAN AUTHORITIES: Regardless of the type of jurisdiction may not confine civilians, but may "detain" for a reasonable time until civilian law enforcement assumes physical custody of the individual. Notify NCIS immediately. *See SERVICE OF PROCESS/SUBPOENAS*.

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

Downloaded from http://www.everyspec.com

LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES

REFERENCES: (a) 18 U.S.C. 1385
(b) SECNAVINST 5820.7 (series)
(c) JAGMAN, Chapter VI

REPORTING REQUIREMENT: If DON assets are requested, permission must come from SECNAV or SECNAV designee. If approved, cost recovery for DON is required.

POSSE COMITATUS ACT: Willful use of Army, Navy or Air Force to execute civilian laws, without authorization from Constitution or Congress is a criminal offense.

- **DOD/DON POLICY:** Act is adopted as applicable to USN and USMC.

- **EXAMPLES OF PROHIBITED ACTIVITIES:**

  - Search and seizure.
  - Arrest (stop and frisk).
  - Surveillance; pursuit; undercover operations.

- **EXAMPLES OF PERMITTED ACTIVITIES:**

  - Use of equipment/facilities with appropriate approval.
  - When primary purpose is to enforce UCMJ; good order and discipline or protection of classified equipment/info.
  - Suppression of insurrection/domestic violence.
  - Protection of President; Vice President; dignitaries.
  - Maintenance of loaned equipment.
  - Training and expert advice on operation of equipment.
  - Provide support necessary during chemical/biological emergencies.

- **APPLICATION:** Posse Comitatus only applies to active duty in a duty status or when acting in an official capacity.

CONFINEMENT OF MILITARY MEMBER FOR DELIVERY TO CIVILIAN AUTHORITIES: Service member may be held in confinement if necessary under circumstances but only for a reasonable period to facilitate delivery to the civilians. Civilians MUST have a warrant or reasonable belief that the offense was committed by a member.

ARREST WARRANTS FOR ACTIVE DUTY MEMBERS: See reference (c) for detailed guidance.

Downloaded from http://www.everyspec.com

- Federal warrant: Upon display of credentials and warrant, must turn over member.
- Local State warrant: Upon display of credentials and warrant, turn over member. Ensure execution of delivery agreement.
- Out-of-state warrant: Turn over member only if member waives extradition. Ensure execution of delivery agreement.
- Foreign arrest warrant: Notify SOPA SJA immediately. DO NOT release until directed by higher authority.

CO REFUSAL TO ALLOW ARREST: Report to OJAG (Code14) DSN 325-5450 or (202) 685-5450 immediately.

Downloaded from http://www.everyspec.com

REPOSSESSION OF PERSONAL PROPERTY

REFERENCES: (a) JAGMAN, Section 0622

DISCRETION OF THE INSTALLATION CO: Repossession of personal property belonging to military personnel located on a naval installation may be permitted at the discretion of the installation CO. The "repo-man" must obtain permission from the CO in advance.

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

DOCUMENTS AUTHORIZING REPOSSESSION MUST COMPLY WITH LOCAL STATE LAW: The installation SJA should review the documents.

INFORMAL INQUIRY BEFORE REPOSSESSION IS ALLOWED: Contact the member to determine if he/she is aware of the problem, and rule out administrative error (i.e., an allotment problem).

IF REPOSSESSION IS TO BE ALLOWED: The owner of the property should be afforded the opportunity to voluntarily relinquish the property. The member should be referred to a Legal Assistance attorney.

NO BREACH OF THE PEACE: Ensure that the repossession is carried out in the manner prescribed by the CO. Contact base security and have them on the scene to avoid any problems or altercations.

Downloaded from http://www.everyspec.com

SERVICE OF PROCESS/SUBPOENAS

REFERENCES: (a) JAGMAN, Chapter VI
(b) SECNAVINST 5820.8 (series)
(c) MCO P5800.16 (series)
(LEGADMINMAN) Chapter 9

CO's CONSENT/CO's PRESENCE: Service of process (a summons to appear in court as a party) will not be permitted without the CO's consent. Where practicable, the member should be served within the CO's presence or that of another designated officer.

IMMEDIATELY REFER MEMBER TO A LEGAL ASSISTANCE ATTORNEY.

LOCAL STATE COURT OR FEDERAL COURT SERVICE OF PROCESS: CO should permit service upon members, civilian employees or dependents except in unusual cases when compliance would prejudice the public interest.

- 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 he/she need not accept service.

SERVICE BY OUT-OF-STATE MAIL: If member refuses to accept, the refusal should be noted and the documents returned to sender.

FOREIGN COURT/OVERSEAS SERVICE OF PROCESS: Normally addressed by the applicable SOFA. Contact overseas area coordinator SJA.

RELATION TO OFFICIAL DUTIES: When service of process upon a member or civilian employee arises from performance of official duties, ensure that the member is notified of his/her applicable rights IAW section 0616 of reference (a), and that copies of the process and pleadings along with a description of the pertinent facts are provided to the SJA for the GCMCA for immediate notification to JAG (Code 14) at DSN 325-5450 or (202) 685-5450.

NORMALLY GRANT LEAVE OR LIBERTY: Personnel who are served with or accept process should normally be granted leave or liberty unless prejudicial to naval service. See MILPERSMAN 1050-270.

Downloaded from http://www.everyspec.com

SERVICE OF SUBPOENAS: (Court orders requiring a person to testify as a witness) shall be handled in the same manner as service of process with the following exceptions:

- If service member is subpoenaed as a witness on behalf of the Federal Government, the member will be issued TAD orders.
- If service member is subpoenaed as a witness on behalf of accused in federal court, no-cost permissive orders should be issued unless the member's absence would prejudice the command.
- If 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 command. (No-cost permissive orders shall be issued if witness is subpoenaed because of performance of official duties).

REQUESTS FOR STATEMENTS AND/OR INTERVIEWS WITH SERVICE MEMBERS BY PARTIES TO PRIVATE LITIGATION: Notify the cognizant SJA for the GCMCA. See reference (b).

ARREST WARRANTS: *See LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES*.

Downloaded from http://www.everyspec.com

Section VIII: OUTSIDE CONUS

CUSTOMS

REFERENCES: (a) JAGMAN, Chapter XI
(b) OPNAVINST 5840.2 (series)
(c) Navy Regulations, Article 0860
(d) OPNAVINST 3120.3 (series)

PRIOR TO DEPLOYMENT: Ensure adequate number of personnel are trained to act as military custom inspectors and adequate supply of forms are onboard.

CO RESPONSIBILITIES FOR SHIP ARRIVAL:

- Must notify Customs District Director upon return to U.S. customs territory at port of first entry.
- Must facilitate customs and immigration inspection and ensure proper immigration clearance for any military or civilian passenger.
- Must distribute customs declarations to all passengers and crew.
- Must file a cargo declaration within 48 hours if carrying anything other than U.S. property and passengers on official business.

AIRCRAFT COMMANDER RESPONSIBILITIES FOR ARRIVAL:

- Upon entering U.S. customs territory provide advance notice to Customs District Director at place of first landing.
- Notification may be made by radio, telephone, or other direct means; or through FAA flight notification procedures.
- Must distribute declarations to all passengers and crew and facilitate inspection.

Downloaded from http://www.everyspec.com

FOREIGN CLAIMS

REFERENCES: (a) JAGMAN, Chapter VIII

PURPOSE & SCOPE: Promote friendly relations with foreign countries by promptly paying meritorious claims for death, injury, property damage or other loss caused by U.S. military members. The claim must arise outside the U.S. and its territories, possessions or commonwealths.

VALID CLAIMANT: Inhabitants of foreign countries including persons, corporations or other government or business entities and U.S citizens living abroad. Does not include tourist, travelers, U.S. service members or their dependents.

EXAMPLES OF CLAIMS NOT COVERED: Combatant claims, admiralty incident, patent infringement, claims of insurers, purely contractual claims of individuals or claims for paternity.

ESTABLISHMENT OF CLAIMS COMMISSIONS: COs should appoint responsible officers to adjudicate foreign claims. TYCOM directives may limit the authority to settle claims or require Judge Advocate approval. Foreign claims officers must diligently follow the requirement of reference (a) when investigating, documenting, adjudicating and reporting incidents.

PRIVATE SETTLEMENT: When a wrongdoer or group of individuals are identified as having committed a negligent act or an act outside the scope of duty, private settlement and voluntary restitution is an option that should be considered. Private settlement must be voluntary on the part of the member(s). 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 the member and the claimant to prevent additional or supplementary claims for the same damage.

FUNDING FOREIGN CLAIMS: Payment is not made from command OPTAR. Funding source information is contained in reference (a).

Downloaded from http://www.everyspec.com

FOREIGN CRIMINAL JURISDICTION/SOFA

REFERENCES: (a) JAGMAN, Sections 0609 and 1010
(b) Fleet Deployment/Legal Manuals
(c) Status of Forces Agreements (SOFA's)

APPREHENSION OF U.S. MILITARY PERSONNEL BY FOREIGN AUTHORITIES: Report via OPREP/SITREP. All efforts should be made at the local level to secure the member's release pending final resolution of judicial proceedings. Members not released should be encouraged to notify parents and/or spouse or allow command to notify. Upon release members should be given complete medical examination and should provide sworn statement concerning conditions of confinement.

IMPORTANT CONTACTS: The following individuals may be able to assist: Consulate/Embassy/USDAO country representatives, NCIS regional offices, husbanding agents and Staff Judge Advocates for the GCMCA.

SOFA COMPLIANCE: In countries where the U.S. has a SOFA, the terms of that agreement will determine whether the member may be removed from the jurisdiction and whether the U.S. or host country will prosecute the case. In many countries, disciplinary action under the UCMJ (including NJP) may not be conducted until the issue of jurisdiction has been resolved with the host country. Consult with the cognizant SJA.

NO SOFA: If there is no SOFA, CO's <u>are not</u> authorized to deliver members or civilian employees of DON or their dependents to foreign authorities. Contact the cognizant SJA.

WARSHIP SOVEREIGNTY: U.S. warships are immune from any other nation's jurisdiction. COs <u>shall not</u> permit his/her ship to be searched or allow personnel to be removed by foreign authorities. If foreign authorities use force to compel submission, the CO should resist to the utmost of his/her power. See Navy Regulations, Article 0828.

PERSONNEL RETAINED IN FOREIGN CUSTODY: Must be visited on a regular basis and may not be separated from the service until they complete sentence and return to U.S. See MCO P1900.16.

Downloaded from http://www.everyspec.com

LIBERTY RISK

REFERENCES: (a) JAGMAN 0104

(Primary instructions governing liberty risk are issued by major overseas and fleet commanders)

APPLICABILITY: Liberty risk only applies in foreign countries and foreign territorial seas. The underlying purpose for liberty risk is to protect U.S. foreign relations with host countries.

DISTINGUISH FROM DISCIPLINARY ACTION: Liberty risk may not be used as punishment and cannot be awarded at NJP or courts-martial. Liberty risk should not be used as a subterfuge for pretrial restraint. Do not use this administrative measure to satisfy the need for discipline. *See ADMINISTRATIVE & DISCIPLINARY OPTIONS and PRETRIAL RESTRAINT*.

GENERAL GUIDANCE:

- Only the CO or acting CO may assign a member to liberty risk (generally after a recommendation from a liberty risk board)
- Placement on liberty risk cannot be automatic;
- Lesser forms or limitations on liberty should be considered (e.g. limited hours ashore);
- Each individual's status must be regularly reviewed;
- Liberty risk cannot be indefinite.

RIGHTS OF MEMBERS PLACED IN LIBERTY RISK STATUS:

- Opportunity for request mast with the CO;
- Specific notification in writing of the reason(s) for being placed on liberty risk; and
- May not be required to muster or participate on special working parties with members serving punishment issued at NJP or courts-martial.

ALCOHOL RELATED INCIDENTS: DAPA/CAAC screening also should be conducted.

Downloaded from http://www.everyspec.com

MARRIAGES – OVERSEAS

REFERENCES:
(a) MILPERSMAN 5352-030
(b) BUPERSINST 1722.1 (series)
(c) Local 1752 (series)
(d) MCO 1752.1 (series)

REQUEST/APPLICATION: Any member planning to marry a foreign national overseas must submit an application to the area coordinator. Applications should be sent to the nearest area coordinator. Contact PERS 66 for areas not listed in reference (a).

COUNSELING: Member must be counseled regarding the legal responsibilities incurred by marriage, including financial obligations. Member should also be advised that approval process is often lengthy.

VALIDITY OF FOREIGN MARRIAGE: The marriage must be valid under the law of the jurisdiction where it was performed.

INTENDED SPOUSES: Must receive medical screening and background investigations. Local United States Embassy or Consulate will conduct background investigation, including a criminal and subversive record check.

VISAS: There is no automatic right for foreign spouses to be granted visas to enter the United States. Foreign spouses must apply for an immigrant visa with local embassy or Immigration and Naturalization Service office

Downloaded from http://www.everyspec.com

Section IX: JAGMAN INVESTIGATIONS

JAGMAN INVESTIGATIONS

REFERENCES:
(a) JAGMAN, Chapter II
(b) MILPERSMAN 1770-010
(c) MCO P5800.16
(d) NAVADMIN 065/03
(e) MARADMIN 294/02
(f) MARADMIN 135/03

TYPES OF INVESTIGATIONS:

- Courts of Inquiry (COI).
- Boards of Inquiry (BOI).
- Command Investigations (CI).
- Litigation-Report Investigations (LR).

PRELIMINARY INQUIRY (PI): The JAGMAN now provides CA's the option to conduct a 3-day PI to determine whether further investigation is required. Based upon the result of the PI, the CA may decide to take no action or to convene some form of JAGMAN Investigation. Results of PI's may need to be reported to ISIC through normal reporting methods.

COURT OF INQUIRY (COI): The most formal of all JAGMANs. Used for the most serious cases, "major incidents," involving multiple deaths, significant national or international press interest, significant environmental damage, etc. (see reference (a), appendix A-2-a paragraph 9).

- Must be convened by a GCMCA.
- 3 or more commissioned officers on the panel.
- Testimony taken under oath.
- Civilian witnesses can be subpoenaed.
- Parties must be named in the investigation.

BOARD OF INQUIRY (BOI): Less formal than a COI, but also used for "major incidents."

- Must be convened by a GCMCA.
- 1 or more commissioned officers as voting member(s).
- Testimony under oath.
- Limited subpoena power over civilians.
- Parties may be named in the investigation.

Downloaded from http://www.everyspec.com

COMMAND INVESTIGATION (CI): Most frequently used investigation of all JAGMANs. Not used for any incident considered a "major incident" or if litigation is primary purpose.

- One commissioned officer appointed as Investigating Officer (IO).
- Testimony may be sworn or unsworn.
- Report should include Findings of Fact, Opinions, and Recommendations.
- No subpoena power over civilians.

LITIGATION-REPORT INVESTIGATIONS (LR): This form of JAGMAN Investigation is utilized when the primary purpose of the investigation is to defend the legal interests of the Government. The LR is designed to be "Attorney Work- Product," and thus protected from release during litigation. There are special rules for convening and conducting:

- The CA <u>must</u> consult with the "cognizant judge advocate" <u>before</u> convening.
- Special Convening Order.
- The investigation is conducted under direction and supervision of a JAG.
- Special rules for witness statements.
- Opinions & recommendations only ordered under the authority of the JAG.

ENDORSEMENTS: CO's should address any & all deficiencies identified in the investigation, and detail corrective action taken. Special rules apply in referencing certain admin and disciplinary actions (e.g., nonpunitive letters shall not be mentioned).

- Command Investigations: If the CA determines the investigation is of no interest to anyone outside the command, the CA may retain the investigation report locally. If the report is forwarded, it must be forwarded to GCMCA. It is no longer appropriate to make OJAG the ultimate addressee.
- LRs: Forward to OJAG Code 15, via SJA of GCMCA. Special markings are required.

Downloaded from http://www.everyspec.com

RETENTION:

- Command Investigations: retain copy for 2 years.
- LRs: Call OJAG Code 15 (DSN 325-4600 or (202) 685-4600) before destroying.

FOIA RELEASE AUTHORITIES:

- Command Investigations: GCMCA (Flag) is the final reviewer.
- LRs: OJAG.

LOD/MISCONDUCT DETERMINATIONS:

- A line of duty determination is required whenever an active duty service member of the naval service dies, in order to make decisions concerning eligibility and annuity calculations for the Survivor Benefit Program, disability retirement pay, and severance pay. See references (a) and (f).

- Each injury or disease requiring line of duty/misconduct determinations must be the subject of a preliminary inquiry. If the command completing the preliminary inquiry is not a GCMCA, the command will report the circumstances surrounding the injury and results of the preliminary inquiry to its GCMCA using the Personnel Casualty Report system.

- An injury, disease, or death suffered by a member of the naval service is presumed to have been incurred in the line of duty and not to be the result of misconduct. Clear and convincing evidence is required to overcome this presumption.

- A finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty."

- A member may not be held responsible for particular actions and their foreseeable consequences if, as the result of mental defect, disease, or derangement, the member was unable to comprehend the nature of such acts or to control his or her actions.

- In order for intoxication alone to be the basis for a misconduct determination, clear and convincing evidence must show that the member was intoxicated sufficiently to

Downloaded from http://www.everyspec.com

impair the rational and full exercise of his or her mental or physical faculties at the time of the injury and that the impairment was the proximate cause of the injury.

DOCUMENTING LOD/MISCONDUCT:

- Health/medical record entries: Where CO and medical agree injury was "in the LOD, not due to misconduct."
- Command Investigations: Where possibility that determination will be "not in the LOD" or due to misconduct.
- "Limited Investigation": Authorized where member's death occurs in CONUS, off-base, while on liberty, and there is no discernable nexus between circumstances of death and the naval service.
- JAGMAN Investigations: Required in all cases not meeting above test.
- See CACO: Pg 52

See DEATH INVESTIGATIONS.

Downloaded from http://www.everyspec.com

DEATH INVESTIGATIONS

REFERENCES:
(a) JAGMAN, Sections 0234-0241
(b) MILPERSMAN 1770-010 to 1770-240
(c) SECNAVINST 5520.3 (series)
(d) MCO P5800.16 (series) (LEGADMINMAN)

PERSONNEL CASUALTY REPORT: Required in the event of the death of a member. See reference (b).

NCIS NOTIFICATION: Must be made if there is a death occurring on a naval vessel or Navy/Marine Corps aircraft or installation except when the cause of death is medically attributable to disease or natural causes.

JAGMAN INVESTIGATION:

- A preliminary inquiry shall be conducted into the death of a service member or into the death of a civilian aboard a place under naval control.

- A command investigation will normally not be conducted if the preliminary inquiry shows that the death: (1) was the result of a previously known medical condition and the adequacy of military medical care is not reasonably in issue; or (2) was the result of enemy action.

- A command investigation must be conducted if the preliminary inquiry shows: (1) the case involves civilian or other non-naval personnel found dead aboard an activity under military control, where the death was apparently caused by suicide or other unusual circumstances; (2) the circumstances surrounding the death place the adequacy of military medical care reasonably at issue; (3) the case involves the death of a military member and a probable nexus exists to naval service, except where the death is as a result of enemy action; or (4) it is unclear if enemy action caused the death, such as in possible "friendly-fire" incidents.
- If death occurred in CONUS, off-base, while the member was off-duty, and there is no connection between the naval service and the circumstances of death, the command may simply obtain the investigation (police report and/or autopsy) completed by civilian authorities and maintain the record as an internal report.

STATUS OF INVESTIGATION REPORTS (SIRs): Required every 14 days until the JAGMAN investigation is forwarded to the next reviewing authority. See reference (b).

Downloaded from http://www.everyspec.com

LINE OF DUTY DETERMINATIONS: In many death cases, a preliminary inquiry consisting of a basic letter report attached to a medical record entry or accident report will be sufficient to base a line of duty determination. Opinions on the member's line of duty status and/or opinions on the member's misconduct, shall be made in any death case where a finding of misconduct is possible. SBP benefits are no longer paid to members found to have died not in the line of duty due to their own misconduct. SBP benefits are still payable to the next of kin even with a finding of misconduct, so long as the member was retirement eligible at the time of death.

INDEPENDENT REVIEWS: If the deceased's conduct is called into question, the CO may appoint an individual not associated with the case (outside the chain of command) to review the investigation from the perspective of the deceased, to ensure thoroughness and accuracy of the findings.

FORWARDING: Do not delay while awaiting final autopsy reports, death certificates, etc… Such documents can be forwarded under separate cover.

See also JAGMAN INVESTIGATION and SUICIDES, ATTEMPTS & GESTURES.

Downloaded from http://www.everyspec.com

REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL

REFERENCES: (a) SECNAVINST 5510.36 (Chapter 12)
(b) JAGMAN Chapter 2
(c) JAGMAN Section 0126
(d) NAVADMIN 398/02

POLICY: The loss or compromise of classified information presents a threat to the national security. Reports of loss or compromise ensure that such incidents are properly investigated and the necessary actions are taken to negate or minimize the adverse effects of the loss or compromise and to preclude recurrence. A loss of classified information occurs when it cannot be physically located or accounted for. A compromise is the unauthorized disclosure of classified information to a person(s) who does not have a valid clearance, authorized access or a need-to-know. A possible compromise occurs when classified information is not properly controlled. (Ref (a), §12-1)

REPORTING REQUIREMENTS: Per reference (a), an individual who becomes aware of a loss or compromise must notify their commanding officer or security manager. The commanding officer must immediately notify local NCIS office and initiate a Preliminary Inquiry (PI) whether or not NCIS initiates an investigation (unless NCIS requests that no PI be conducted.) The JAGMAN and CNO directive establish additional reporting requirements. The format for appointing orders and PI/JAGMAN should comply with reference (a), Exhibits 12A-D.

Preliminary Inquiry:

- CO appoints command official (not security manager) to conduct PI.
  (Ref (a), §12-4.1)
- PI shall be initiated and completed within 72 hours. (§12-4.2)
- PI message report (or letter) to ISIC, CNO(N09N2), Originator and OCA of information, local NCIS office, National Security Case Disposition Authority (NSCDA), OJAG (Code 17), and others listed in § 12-8. (§12-4.2)
- PI shall completely and accurately identify the information lost or compromised. (§12-5)
- If PI determines no loss or compromise or "possibility of compromise is remote" message report <u>not</u> required. (§12-7.3)
- Results of PI may indicate more detailed investigation required. (§12-9.1)

Downloaded from http://www.everyspec.com

JAGMAN Investigation:

- JAGMAN may be used to recommend any corrective or disciplinary action. (§12-9.2)
- CO appoints command official (not security manager) to conduct JAGMAN. (§12-10.1)
- Follow reference (b) guidelines; ensure appropriate classification of report and enclosures. (§12-12)
- Forward JAGMAN to CNO (N09N2) via administrative chain of command; info copies to NCIS, OCA and originator. (§12-13)

National Security Case Reporting:

- Results of PI or NCIS investigation indicates case may meet national security case criteria. Refs (c) and (d).
- A national security case is one which, to any serious degree, involves the compromise of a military or defense advantage over any foreign nation or terrorist group; involves willful compromise of classified information; affects our capability to resist hostile or destructive action; or involves an act of terrorism for more detailed investigation required. (JAGMAN §0126a)
- JAGMAN designates certain senior line commanders as National Security Case Disposition Authorities (NSCDA). (§0126f)
- Report case within 72 hour PI period to OJAG and cognizant NSCDA. (§0126e)
- If designated as a national security case NSCDA must make periodic message reports (every 15 days) to CNO until resolution or determined to be not a national security case. Ref (d), para 5.

Judge Advocate General Reporting:

- Report all cases to OJAG (Code 17) that involve classified information, whether or not designated a national security case (§0126h):
  - When criminal prosecution contemplated;
  - Whenever a major development in the case or investigation occurs; or
  - At least every 30 days.

ISIC Major Case/High Visibility Case Reporting Requirements:

- Some ISICs require periodic reporting on certain types of cases considered “major” or “high visibility.”

Downloaded from http://www.everyspec.com

- Report to JAG can be sent to ISIC as well to satisfy both requirements in cases involving classified information.

SUMMARY OF REPORTING RULES: In all cases involving loss or compromise of classified information, the command must report the incident to NCIS and conduct a Preliminary Investigation. NCIS may request that command not conduct a PI or JAGMAN while they conduct criminal investigation.

Some cases will require full JAGMAN investigation. Results of JAGMAN or NCIS investigations may result in the requirement to notify the designated NSCDA. All cases referred to NSCDA require periodic update reports to CNO and OJAG. Cases involving classified information that are not considered national security cases still require periodic reports to OJAG. Some ISICS may require periodic reports on matters considered “major cases” or “high visibility cases.” These reports can be combined with OJAG reporting requirements.

Downloaded from http://www.everyspec.com

CLAIMS

REFERENCES: (a) JAGMAN, Chapters II, VIII, and XII
(b) JAGINST 5890.1 (series)

INVESTIGATION: 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 admin investigation will be required in order to adjudicate or defend the claim. Typically, a JAGMAN investigation will be required.

- A "Litigation-Report Investigation" is appropriate whenever the "primary purpose" of the investigation is to defend the legal interests of the Navy.
- Consult the "cognizant judge advocate" before convening a "Litigation-Report Investigation" or if you have questions.

NLSO NOTIFICATION: The servicing Naval Legal Service Office (NLSO) should be notified of any incident which might result in a claim.

CLAIM RECEIPT: Should the command receive an actual claim, it must be date stamped and the original forwarded immediately to the servicing NLSO - along with all accompanying material and original envelope with postmark.

ADVANCE COPY OF INVESTIGATION: Provide NLSO with an advance copy.

NOTIFICATION OF LAWSUIT: If a lawsuit has been filed against an individual within the command, the command or the DON, immediately notify the servicing NLSO and Office of the Judge Advocate General (OJAG), at DSN 325-4600 or (202) 685-4600.

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

FOREIGN CLAIMS: Before foreign port calls, an officer should be appointed as the Foreign Claims Officer (unless already provided for by the Battle Group). The Foreign Claims Officer must familiarize himself/herself with the references and ensure proper procedures are followed. *See FOREIGN CLAIMS*.

Downloaded from http://www.everyspec.com

Section X: MILITARY JUSTICE

NCIS REPORTING & MILITARY JUSTICE INVESTIGATIONS

REFERENCES: (a) Manual for Courts-Martial (RCM 303)
(b)SECNAVINST 5520.3 (series)

REPORT OF OFFENSES (COMPLAINTS): May come to command attention in variety of ways (e.g. shore patrol, MAA, Incident Complaint Report (ICR), civilian law enforcement, individual (military or civilian), in person, by phone, or by mail). CO must investigate all complaints [*see reference (a)*]. Degree of investigation will depend on nature and seriousness of complaint.

MANDATORY REFERRAL TO NCIS PRIOR TO COMMAND INVESTIGATION: Reference (b) mandates that certain incidents immediately be referred to NCIS whether occurring **on or off** base and **regardless of civilian investigative involvement**. These incidents are:

- Actual, suspected, or alleged major criminal offenses, including any sexual assault. "Major offenses" are defined as offenses punishable under the UCMJ by more than one year confinement;
- Deaths occurring on a Navy vessel or Navy/'Marine Corps aircraft or installation, except when attributable to disease or natural causes;
- Fires or explosions of unknown origin affecting military property;
- Thefts/loss of ordnance, narcotics, dangerous drugs or controlled substances;
- Aberrant sexual behavior involving force/coercion or children:
- Disappearance of a command member which suggests foul play;
- All instances of suspected fraud within the Navy/Marine Corps (including theft from the government; bribery; receipt or giving of gratuities; conflict of interest; violation of anti-trust laws, and false statements/claims for pay and allowances, procurement, property disposal, subsistence, unauthorized services, non-appropriated funds, foreign military sales and personnel matters.)
- Actual, potential, or suspected terrorism, sabotage, espionage, subversive activities, or defections;

Downloaded from http://www.everyspec.com

- National security cases (*see also* JAGMAN 0126);

- Actual or suspected loss or compromise of classified information; suicide or attempted suicide of member with access to classified information; member with access to classified information goes UA and there are indications that the absence is related to national security interests;
- Incidents involving narcotics, dangerous drugs or controlled substances (Note: NCIS may decline to investigate user amounts or positive urinalysis but MUST still be notified of the incident).

WHEN NCIS DECLINES AN INVESTIGATION: NCIS may decline any investigation when, in their judgment, the inquiry would be fruitless or unproductive; the suspected offense is purely military in nature (e.g. UA); or NCIS priorities or resource limitations preclude investigation. A command may then pursue a command investigation (e.g. one officer/CPO/Petty Officer; disciplinary review board; XOI) or request assistance from the Security Department.

Downloaded from http://www.everyspec.com

HANDLING SEXUAL ASSAULT ALLEGATIONS IN THE USMC

REFERENCES: (a) DoD Directive 6495.1
(b) MCO 1752.5
(c) SecNavInst 1752.4

GENERAL:

- Sexual assault is a criminal act and is not tolerated. The references provide specific guidance and responsibilities for sexual assault prevention and response.

- Reference (a) established a DoD-wide definition for sexual assault for training purposes. For criminal processing purposes, the term "sexual assault" includes rape, forcible sodomy, assault with the intent to commit rape or sodomy, indecent assault, and any attempt to commit such offenses.

- Commanders must report all suspected, actual or alleged sexual assaults to the Provost Marshall's Office (PMO). PMO will notify the Naval Criminal Investigative Service for investigation. Under DoD policy, commanders do not have the ability to initiate command investigations into suspected, actual, or alleged sexual assaults.

COMMANDER'S RESPONSIBILITY: Commander's must have a thorough knowledge of reference (b) to fully understand the scope of their responsibilities, and those of the Marines under their command, in preventing or responding to sexual assault allegations. Responsibility highlights include:

- Leadership is the key to sexual assault prevention and response;

- The commander's role in prevention is to establish a climate that confronts the beliefs and values that cause and reinforce sexual assault, to establish clear standards for personal behavior, and hold offenders accountable;

- As leaders, commanders must be keenly aware of and sensitive to the climate of their units;

- Commanders must continuously educate their Marines on how to prevent incidents of sexual assault, while also

Downloaded from http://www.everyspec.com

encouraging victims and witnesses to report these incidents when they occur.

- Commanders must take all necessary and appropriate steps to limit or avoid re-victimization of victims, and

- General Courts-Martial Convening Authorities, installation commanders, and MAGTF commanders must appoint a Sexual Assault Response Coordinator (SARC). The SARC is the central point of contact for sexual assault awareness, prevention and response training; and ensures appropriate care and services are provided from initial report to disposition of an allegation.

Downloaded from http://www.everyspec.com

REPORTING REQUIREMENTS: DoD policy established two reporting options available for victims of sexual assault.

- **Unrestricted report**. The process used by a Service member to disclose, without requesting confidentiality, that he or she is a victim of sexual assault. An unrestricted report triggers the official investigative process. Commanders shall immediately report all actual, suspected, or alleged sexual assaults to PMO whether provided by the victim or another.

- **Restricted reporting**. A process used by a Service member to report or disclose, to specified individuals in a confidential manner, that he or she is a victim of sexual assault without triggering the official investigative process. Specified individuals include: healthcare providers, sexual assault response coordinators (SARC), and victim advocates. Disclosure by the victim to any other persons is considered an unrestricted report and triggers an official investigation. DoD policy provides five exceptions to restricted reporting to permit disclosing information obtained through this confidential reporting method. Absent the consent of the victim or an established exception provided under this policy, information identifying the victim or offender will not be provided to the command or law enforcement.

- **24-Hour Notice**. Within 24 hours of a restricted report, the SARC will provide the victim's commander limited, non-identifying information that a sexual assault was committed upon a command member. Commanders may not use this limited information to initiate an independent investigation. However, if a command obtains information of sexual assault from sources independent of the restricted report 24-hour notice, they must notify PMO.

- **Sexual Assault Database**. Reference (a) and (b) requires all sexual assaults be entered into a tracking database. The current Marine Corps database is the Sexual Assault Incident Reporting Database (SAIRD). SAIRD does not contain identifying information. Victim Advocates and SARCs have access to all cases, restricted and unrestricted, within the command. The SJA has access only to unrestricted cases within the command.

CARE FOR SEXUAL ASSAULT VICTIMS: In cases of sexual assault, the specialized concerns and issues (physical, mental,

Downloaded from http://www.everyspec.com

and emotional) surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. Avoiding re-victimization of the victim is crucial to the well being of those individuals. Additionally, reference (c) expressly prohibits releasing the name of any sexual assault victim to the media without the consent of the victim.

VICTIM ADVOCATES: The Marine Corps has both civilian victim advocates (VA's) and uniformed victim advocates (UVA's). Victim advocacy is provided in both unrestricted and restricted cases, whether in garrison or deployed. VA's are available at every installation through the Marine Corps Family Services activity, formerly the Family Support Center. Victim advocates possess specialized training in assisting victims of sexual assault. Every deployable battalion and squadron-level, or equivalent, command, and Marine Corps school activities, are required to have 2 UVAs. Commanders should be receptive to recommendations made by VA's or UVA's on behalf of victims.

Commander's Checklist for Responding to Allegations of Sexual Assault. References (a) and (b) provide a useful commander's protocol for responding to sexual assaults. The checklist provides information for appropriate actions toward the victim, offender, and command.

Downloaded from http://www.everyspec.com

SUSPECTS—QUESTIONING/INTERROGATION/ ARTICLE 31(b)

References: (a) Manual for Courts-Martial, MRE 301-305
(b) UCMJ, Article 31(b)
(c) MILPERSMAN 1620-010
(d) JAGMAN Appendix A-1-e
(e) JAGMAN Appendix A-1-m

MAJOR CRIMINAL OFFENSES: DO NOT allow anyone from your command to interrogate the member before referring the case to NCIS.

ALWAYS READ RIGHTS when (1) you suspect a member of committing an offense and (2) you are going to ask the member a question relating to the offense (e.g. interrogate/likely to get an incriminating response).

WHAT RIGHTS EXACTLY?

- All military members are entitled to Article 31(b) and Miranda rights when you suspect the member has violated the UCMJ and are going to question that member about the offense.

- Use the rights warning form at JAGMAN A-1-m. Article 31(b) and Miranda are reflected on the rights warning form and should always be read before any interrogation. Rights 1-3 listed on the Rights Warning form are Article 31(b) rights [what suspected of and right to remain silent]; rights 2-6 on the form are Miranda rights [right to remain silent and right to a lawyer]. Do not ask the suspect any questions unless *both* the right to remain silent and the right to a lawyer are waived.

- Waiver of rights must be knowing, voluntary, and intelligent. Make sure suspect understands his/her rights and consequences of his/her waiver.

- If the suspect wants to remain silent or asks for a lawyer, you MUST NOT ask any more questions.

PRIOR QUESTIONING WITHOUT RIGHTS WARNING: Provide "Cleansing Warning"--If someone has previously questioned the member and did not provide rights warnings, (1) advise the member that the prior statement cannot be used against him/her and (2) that even though he/she made the earlier statement, he/she can still choose to remain silent or request a lawyer. Then (3) fully advise the member of his/her rights using JAGMAN A-1-m and determine whether the member will waive his/her rights.

Downloaded from http://www.everyspec.com

NEW OFFENSES: If during any conversation or questioning, you begin to suspect the member of a new or different offense, you must stop the questioning immediately and complete a new rights warning form (JAGMAN A-1-m) with the new or different offense listed.

ARTICLE 31(b) & NJP: At mast/office hours, only Article 31(b) is read--sailors always have the right to remain silent, but do not have a right to an attorney at NJP. However, if it is reasonably foreseeable that an accused will make an admission or actually does make an admission that warrants court-martial punishment, the CO should provide a full reading of rights and waiver (Art. 31(b) and Miranda; see JAGMAN, Appendix A-1-m) to protect the admissibility of such confessions in court. That said, full rights warnings must be given at all other stages in the process (e.g., prior to any questioning by a supervisor, investigating officer, law enforcement officer, Chief's Discipline Review Board, or XOI).

DRUNKEN SAILOR: A member must be in a condition to knowingly, intelligently, and voluntarily waive his/her rights. Don't try to interrogate a drunken sailor!

FALSE PROMISES OR THREATS: A confession must be voluntary. Don't use threats or false promises.

PROMISE OF LENIENCY: Only General Court-Martial Convening Authorities (Flag officers) have the authority to grant immunity or leniency for testifying. Do not promise a member that you won't use what he/she says against them or that he/she won't be prosecuted.

Downloaded from http://www.everyspec.com

SEARCH & SEIZURE

REFERENCES:
(a) Manual for Courts-Martial, Military Rules of Evidence 311-316
(b) MILPERSMAN 1620-010
(c) SECNAVINST 5520.3 (series)
(d) JAGMAN Appendix A-l-n
(e) JAGMAN Appendix A-l-o

CO/OIC AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED: If CO/OIC was the victim of an offense or has become involved in the investigation, refer any search authorization request to a superior in the chain of command.

NON-DELEGABLE AUTHORITY: Only the CO/OIC can issue a search authorization. CO/OIC must personally make the probable cause determination (CDO must wake CO/OIC).

MAJOR CRIMINAL OFFENSES: Per reference (c), 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.

SEARCH AUTHORIZATIONS MUST BE BASED ON PROBABLE CAUSE:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched.
- The reasonable belief must be supported by a factual basis and information must be reliable and credible.

JURISDICTION:

- **PERSON (ON/OFF BASE):** With probable cause, a CO/OIC can authorize the search of persons under his/her command. Per reference (b), searches shall be, whenever possible, conducted by or in the presence of a servicemember of the same sex.
- **ON BASE PROPERTY:** With probable cause, a CO/OIC can authorize the search or seizure of property under his/her immediate control.

Downloaded from http://www.everyspec.com

- **OFF BASE PROPERTY IN U.S.:** CO/OIC may not authorize a search of off-base property in the United States. Must work through NCIS to obtain civilian authority to conduct an off-base search.

- **OFF BASE PROPERTY OUTSIDE U.S.:** CO/OIC with probable cause may authorize a search of military members' property. Note that some Status of Forces Agreements (SOFA's) limit or prohibit such off-base searches.

QUEST FOR EVIDENCE: If looking (searching) for evidence, DO NOT order or conduct a "health and readiness inspection" in the area where the evidence may be located.

- Courts may throw out the evidence seized in a search disguised as an inspection. Factors the courts will consider to evaluate whether an inspection is 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; or (3) if it subjected specific individuals to a greater degree of scrutiny than others.

COMMON AREAS: May be searched anytime without a search authorization. Drug dogs may be used in passageways, workspaces, or common areas at any time. Drug dog alert from within a common area may establish probable cause to order a search of private property (but CO/OIC must still make the decision whether probable cause exists and whether to issue the authorization).

USE OF FORMS: Search authorization forms are found at JAGMAN A-1-n. Anyone providing information to support the request to search should be sworn and under oath. *See APPENDIX B: CO Search Authorization Checklist*.

SPECIFICITY ON THE FORM: When authorizing a search, the CO/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 any parts/pieces/components thereof.

ALWAYS ASK FOR CONSENT: Before actually conducting a search, the owner of the property should be asked for consent to search. Document consent in writing (*see* JAGMAN A-1-o). Consent must be voluntarily obtained to be valid. Consent can be limited or withdrawn at any time. Limitation or with drawal of consent cannot serve as a basis for probable cause.

Downloaded from http://www.everyspec.com

SEARCH & SEIZURE – DRUG CASES

REFERENCES:
(a) OPNAVINST 5350.4 (series)
(b) MCO P1700.24 (series)
(c) SECNAVINST 5300.28 (series)
(d) Manual for Courts-Martial, Military Rule of Evidence 313-316
(e) MCO 1000.10 (series)
(f) MILPERSMAN 1910-146
(g) MILPERSMAN 1620-010
(h) MCO P1900.16 (series) (MARCORSEPMAN) 6210

INSPECTIONS: Commanders may order urinalysis inspections to determine and ensure the security, military fitness, safety, and good order and discipline of the command. Members may be selected randomly or commanders may conduct unit or sub-unit sweeps. Results of inspections that follow reports of drug use by individuals within the command (which were not previously scheduled) and/or inspections that target specific individuals may be suppressed at a court-martial. Per reference (a), NCIS should be consulted upon reports of drug use by members in the command.

- **24 HOUR UA & SUB-UNIT TESTING:** Commands may establish policies to test all members returning from UA periods longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from 24 + hour UAs.

REPORT OF DRUG USAGE POSSESSION or SUSPICION OF DRUG USE & PROBABLE CAUSE SEARCHES: Evidence obtained through probable cause searches will be admissible in disciplinary actions and may be used to characterize discharge. Must have reliable and credible information to establish probable cause. *See SEARCH & SEIZURE* and *APPENDIX B: CO PROBABLE CAUSE CHECKLIST*.

- **ALWAYS ASK FOR CONSENT SEARCH:** Prior to conducting any search or ordering a member to provide a urine sample, the member should be asked to consent and the consent should be obtained in writing. Member should be advised that he/she may refuse and why a sample is being requested. There is no need to provide 31(b) warnings. Consent will negate subsequent challenge that the sample was seized illegally. *See* JAGMAN Appendix A-1-o.

Downloaded from http://www.everyspec.com

- **OBSERVATION:** If you suspect a member is under the influence of a drug or alcohol, have medical or trained observers evaluate the member and opine whether the behavior indicates intoxication. Observation alone may establish probable cause. If probable cause does not exist, a commander may still order a "Fitness for Duty", but results will be inadmissible for disciplinary action and cannot be used to characterize an administrative discharge. **Navy only**: positive drug results from a Fitness for Duty/Command Directed urinalysis can only be used for administrative discharge if results were determined from one of the three NAVDRULAB or any DoD approved lab. *See* Fitness for Duty Tests below & *APPENDIX I: Use of Positive Urinalysis*.

- **STALE COMPLAINTS:** If alleged use occurred several days before report, the information may be stale and therefore would not support a probable cause determination. Consent urinalysis may still be requested. However, keep in mind the windows for detection:

▪ Marijuana	3-5 days (5+ days, if frequent user)
▪ Cocaine	72 hours
▪ Amphetamines	72 hours
▪ Methamphetamine	72 hours
▪ Morphine/Codeine	48 hours
▪ Heroine	24 hours
▪ LSD	12-24 hours
▪ Ecstasy	24-72 hours

- **FITNESS FOR DUTY TESTS:** May not be used for disciplinary purposes or to characterize a member's discharge. Includes command directed tests or competency for duty tests (ordered whenever a member's behavior, conduct, or involvement in an accident gives rise to suspicion of drug abuse and a urinalysis test has not been conducted on a consensual or probable cause basis), and safety/mishap investigation tests. *See APPENDIX I.*

- **DISCIPLINE & ADMINISTRATIVE DISCHARGE:**

  - **Limits:** As mentioned above, fitness for duty/command directed tests cannot be used to characterize a member's discharge. In addition, no disciplinary action may be taken against a member who was command directed (fitness for duty/competency for duty test) to submit to a urinalysis.

Downloaded from http://www.everyspec.com

- **Prohibits discharge:** USN only: Samples tested at facilities other than DOD certified labs or one of the three Navy Drug Labs cannot be used as evidence at an administrative discharge board. See references (a), (f).

- **Best Course:** In order to preserve the CO's full range of disciplinary and administrative options, commands should seek consent or obtain search authorization and then use the command urinalysis coordinator and observer to collect, record, and ensure chain of custody of the sample to a Navy Drug Screening Lab.

DRUG PARAPHERNALIA: References (a) and (f) prohibits the wrongful possession of drug abuse paraphernalia which is defined as "all equipment, products, and materials of any kind that are used, intended for use or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the body drugs, chemicals or other controlled substances in violation of the law." Enclosure (1) to reference (b) has a non-exclusive list. Paraphernalia discovered during authorized searches, inspections, or discovered in plain view may be seized.

Downloaded from http://www.everyspec.com

COURTS-MARTIAL: TYPES & CONVENING

REFERENCES: (a) Manual for Courts-Martial, RCM 501-504, 1003, 1107, 1301-1306
(b) UCMJ Arts 16, 22-25
(c) JAGMAN Chapter I

TYPES OF COURT-MARTIAL:

SUMMARY COURT-MARTIAL (SCM):

- Commanding Officers/OICs may convene. Cannot try officers.
- All enlisted (sea and shore) have absolute right to refuse.
- CA appoints one officer, 0-3 or above, as SCM Officer (MJ, TC, DC all rolled into one).
- No right to military counsel. Right to civilian counsel at own expense if it will not unreasonably delay the proceedings.
- Punishment is limited. See *APPENDIX* C.
- CA takes action on findings & punishment after 7 days.

SPECIAL COURT-MARTIAL (SPCM):

- Commanding Officers may convene.
- Full criminal trial for officer and enlisted. MJ, at least 3 Members, TC, DC (DC may include detailed counsel, IMC, and/or civilian counsel).
- *See APPENDIX* C for punishments.
- CA approves any pre-trial agreement.
- CA takes action on findings & sentence after clemency period has expired.

GENERAL COURT-MARTIAL (GCM):

- Article 32 investigation required. Any Convening Authority may convene an Art. 32.
- Only flag officer (and a very few specially designated COs) may convene. (*See* JAGMAN 0120).
- MJ, at least 5 members, TC, DC (DC may include detailed counsel, IMC, and/or civilian counsel).
- Most serious type of court with authority to issue maximum punishments listed for each offense.
- General Court-Martial Convening Authority approves pretrial agreement.
- General Court-Martial Convening Authority takes action on findings and sentence after clemency period has expired.

MECHANICS OF CONVENING COURTS: Court created by Convening Order. Convening Order must be created prior to CA signing the charge sheet referring the charges to court- martial.

- Contents of Convening Order
  - Date
  - Convening Order number
  - Authority to Convene (on letterhead)

Downloaded from http://www.everyspec.com

- Type of court
- Names of members
- Personal signature of 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.
  - Members must be senior to the accused, unless unavoidable.
  - The accused is entitled to a fair and impartial panel. Members with personal knowledge of the charges will likely be disqualified. Do not attempt to "stack" the jury.
  - Enlisted members are detailed only if an enlisted accused requests enlisted members. In such a case, absent military exigency, 1/3 of the final panel must be enlisted and the members must come from a unit other than the accused's unit.

- CO's Signature: Required on:
  - Convening Order
  - Charge sheet referral block.

NOTE: Be absolutely sure both a Convening Order and the Preferral block of the charge sheet (block 11) have been signed and dated **prior** to referring charges to Court-Martial.

Downloaded from http://www.everyspec.com

COURTS-MARTIAL: BASICS

REFERENCES: (a) Manual for Courts-Martial, RCM 104, 504
(b) UCMJ Arts 13, 22(b), 23(b), 37
(c) JAGMAN 0129

JUDICIOUS AND FAIR: Congress has entrusted Commanding Officers with responsibility to administer discipline. COs should be vigilant to ensure all actions are consistent with the UCMJ.

INFORMED DECISIONS: Ensure that independent investigations are convened to disclose reliable facts.

ACCUSER CONCEPT:

- In the case of a special or general court-martial, the CA may not

  (1) Sign the accuser block on a charge sheet;
  (2) Direct that someone else sign the accuser block on a charge sheet; or (3) Have a personal interest in the case (e.g. victim or witness)

- If such a problem exists, the CA must forward the case to a superior to handle.

AREAS OF UNLAWFUL COMMAND INFLUENCE TO AVOID:

- **PUBLIC OPINIONS:** Do not express public opinions on innocence/guilt or appropriate punishment.
- **UNLAWFUL INFLUENCE:** Do not order a subordinate commander to dispose of a case in a particular way. Each commander must exercise independent judgment.
- **INFLEXIBLE POLICY:** Do not have an inflexible policy on disposition or punishment. Each case and each punishment must be decided based on its particular facts.
- **INFLUENCE REGARDING RESULT:** Do not censure, reprimand, or admonish the court or any member, military, judge, or counsel with respect to findings or sentence adjudged.
- **INFLUENCE ON MEMBERS:** Do not select or remove court members in order to obtain a particular result.
- **INFLUENCE ON MILITARY JUDGE:** Do not attempt or even create the appearance of putting pressure on a military judge or court members to obtain a particular result.
- **INFLUENCE ON WITNESSES:** Witnesses may not be discouraged or intimidated from testifying.
- **PRETRIAL PUNISHMENTS:** Courts decide the punishment. An accused may not be punished before trial. Do not use pre-trial restraint as a method to punish before conviction.

Downloaded from http://www.everyspec.com

- **THE STANDARD:** "Would the average American citizen lose faith in the military justice system or consider it unfair?" Ensure that an accused member receives all the protection provided under the UCMJ.

Downloaded from http://www.everyspec.com

COURTS-MARTIAL: PRETRIAL RESTRAINT (PTR)

REFERENCES: (a) Manual for Courts-Martial, RCM 304, 305
(b) UCMJ Arts 10, 13
(c) JAGMAN 0127

4 TYPES OF PRE-TRIAL RESTRAINTS (PTR) (FROM LEAST SEVERE TO MOST SEVERE):

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

AUTHORITY TO ORDER PTR:

- WHO:
  - Only the CO may order **PTR** of an officer.
  - Any commissioned officer may order **PTR** of an enlisted person. CO may delegate to warrant, petty, and noncommissioned officers the authority to order pretrial restraint of CO's own enlisted persons.
- WHEN:
  - PTR is appropriate when there is a reasonable belief that
    - A court-martial level offense has been committed;
    - The person to be restrained committed it; and
    - The restraint ordered is required by the circumstances.
  - Additionally, pre-trial confinement (PTC), requires probable cause to believe:
    - The prisoner will not appear at trial; <u>or</u>
    - The prisoner will engage in future serious misconduct; <u>and</u>
    - Less severe forms of restraint are deemed inadequate.
  - PTR decisions must be made on a case-by-case basis. The least severe form of PTR that is necessary under the circumstances should be used. PTR may not be used for offenses that will be handled at NJP. PTR is appropriate only when the command is contemplating a court-martial. PTC is reserved for offenses going to a SPCM or GCM.
- **PUNISHMENT BEFORE TRIAL IS PROHIBITED:** PTR may only be used to ensure presence at trial and/or to prevent future serious misconduct.

Downloaded from http://www.everyspec.com

- **PTR (EXCLUDING CONDITIONS ON LIBERTY) STARTS SPEEDY TRIAL PROVISIONS:** Immediately notify the local TSO when a member is placed in PTR.

- **SUICIDAL OR INTOXICATED PRISONERS:** PTC is not appropriate and brigs will not accept such prisoners.

DOCUMENTING CO APPROVAL OF PTC: When PTC is imposed the CO must be notified and approve the PTC within 24 hours. A written memorandum (48 Hour Letter) justifying the PTC must be prepared and signed by the CO within 48 hours and forwarded to the brig, unless the CO is not "neutral and detached", in which case, an officer who is neutral and detached must make a probable cause decision to continue PTC within 48 hours.

COMMAND REPRESENTATIVE AT PTC HEARING: Within 7 days of confinement, an independent review officer (IRO) appointed by the area coordinator will conduct a hearing to review the reasons for continued confinement. The command needs to send a command representative to the hearing at the brig.

COMMAND VISITS: Prisoners in PTC should receive a weekly Command visit.

Downloaded from http://www.everyspec.com

COURTS-MARTIAL: PRETRIAL AGREEMENTS

REFERENCES: (a) Manual for Courts-Martial, RCM 705
(b) JAGMAN 0137

NEED FOR PRETRIAL AGREEMENTS (PTA): PTAs serve both the government and the accused. In exchange for a plea of guilty and a limit on the authorized punishment, the government is often spared the expense (both monetary and man hours) of conducting lengthy trials (commands must fund the cost of a trial with OPTAR and witnesses and members are often unavailable to the command for days).

CAs APPROVE ALL PTAs: PTAs are not entered into without the express consent of the CA. Trial counsel (prosecutors) may recommend but only CAs may approve.

SCOPE OF A PRETRIAL AGREEMENT (PTA):

Accused may agree to:

- Plead guilty.
- Waive article 32 hearing. Waive members.
- Waive government funding of sentencing witnesses.
- A specific trial date.
- Stipulate to facts or testimony.
- Testify against others.
- Make restitution to a victim.
- Conform behavior to conditions of probation.
- Waive an ADMIN Board after trial.

CA may agree to:

- Lower forum of court-martial.
- Drop, reduce, or not proceed with certain charges.
- Protect accused on adjudged sentence provisions.
- Protect accused from potential automatic sentence provisions.

NEGOTIATION PROCEDURES: Negotiations may originate with accused, DC, TC, SJA, CA. Proposals must be forwarded to the CA.

- Counter offers permissible.
- Agreement must be in writing.
- Must contain all aspects of agreement.
- Authority to sign may be delegated by CA.

WITHDRAWAL FROM THE PTA:

By the CA:

- Anytime before performance by the accused begins.
- If accused fails to fulfill a material condition.
- If MJ finds disagreement as to a material term.
- If findings are set aside.

Downloaded from http://www.everyspec.com

- By the accused: Anytime; but, after findings are announced, the accused can withdraw only with permission of the MJ.

Downloaded from http://www.everyspec.com

COURTS-MARTIAL: POST- TRIAL REVIEW

REFERENCES: (a) RCM 1101, 1103, 1104, 1105, 1106, 1107, 1113
(b) UCMJ, Arts 57, 58, 58a, 58b, 60
(c) JAGMAN 0151, 0152

CA ACTION: Review of the court-martial by the Convening Authority after the trial. A crucial step in the court-martial process that is often neglected and causes serious consequences.

EFFECTIVE DATE OF ADJUDGED PUNISHMENTS: Most punishments do not take effect until the CA takes his/her action. Exceptions are confinement which starts immediately and forfeiture of pay and reduction in pay grade which start 14 days after trial. [See *reference* (c)]. Other punishments (e.g. restriction, hard labor without confinement) will not go into effect until CA acts. Dismissal, DD and BCD will not take effect until appellate review is complete.

AUTOMATIC PUNISHMENTS: In addition to adjudged punishments, there are 2 types of automatic, statutory punishments which go into effect for certain types of cases:

- AUTOMATIC REDUCTION: Where an enlisted member's court- martial sentence as approved by the CA includes (1) a discharge or (2) more than 90 days confinement, the member will automatically be reduced to the paygrade of E-1 at CA's Action.
  - CA's OPTIONS: The CA can suspend, remit (cancel), modify (reduce to a lower paygrade but not all the way back to E-1), or allow this automatic reduction to occur.
- AUTOMATIC FORFEITURE: Where any member's court-martial sentence includes (1) confinement for more than 6 months or death or (2) a discharge plus any amount of confinement, the member will automatically forfeit 2/3 pay (in the case of a SPCM) or all pay and allowances (in the case of a GCM) starting at the earlier of CA's Action or 14 days after the sentence is adjudged. The automatic forfeiture will be taken throughout the period of confinement and parole.
  - CA's OPTIONS: The CA can defer automatic forfeitures until CA's Action. At Action, the CA can approve or waive for a maximum of 6 months in favor of the accused's dependents.

WHEN CA MAY TAKE ACTION: Before the CA's Action, the record of trial must be prepared by the TSO, authenticated by the MJ, and served on the accused and his/her DC. For all GCMs that result in a finding of guilty and any cases involving a punitive discharge, a Staff Judge Advocate or Legal Officer Review must be prepared by the command and served on the accused and his or her defense counsel. Finally, the accused must be given the opportunity to submit matters for the CA's consideration.

Downloaded from http://www.everyspec.com

ATTENTION TO DETAIL: CA 's Actions must include specific information about the accused and must accurately reflect information about the trial. Use of the standard language and forms in the MCM and JAGMAN is crucial.

FINDINGS OF THE COURT:

- CA not required to take any action on findings.
  - Options:
    - Approve finding
    - Approve for a lesser included offense
    - Disapprove finding

SENTENCE OF THE COURT:

- CA must take action on the sentence.
  - Options:
    - Approve all punishment as adjudged
    - Approve as adjudged, but suspend all or part of punishment
    - Disapprove all or part of punishment
    - Mitigate (reduce) a punishment

Downloaded from http://www.everyspec.com

VICTIM/WITNESS ISSUES

REFERENCES:
(a) DoD Dir 1030.1
(b) SECNAVINST 5800.11 (series)
(c) OPNAVINST 5800.7 (series)
(d) NAVADMIN 061/95
(e) CNO 202000Z Mar 95
(f) SECNAVINST 1752.4 (series)
(g) MCO P5800.16 (series) (LEGADMINMAN), Chapter 6
(h) DoD INST 1342.24
(i) MCO P1700.24 (series)
(j) MCO 1752.5 (series)

APPOINT A COMMAND VICTIM & WITNESS ASSISTANCE COORDINATOR: Responsible individual should be appointed in writing to coordinate victims/witnesses issues and to act as a Data Collection Coordinator per the references.

BASIC REQUIREMENTS: Upon notification of incident wherein a victim or witness of a crime is identified, ensure that rights advisements are made utilizing form DD2701 IAW reference (b).

- Victim: A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.

- Witness: A person who has information or evidence concerning a crime, and provides that knowledge to a DON a representative about an offense in the investigative jurisdiction of the DON .

PREVENT REPRISAL: Protect victims and witness. Remove alleged perpetrator from workspace if necessary. For alleged military perpetrator consider necessity of issuing a Military Protective Order (MPO). See *FAMILY ADVOCACY / DOMESTIC VIOLENCE and PRETRIAL RESTRAINT.* An MPO may be issued in situations other than family violence (e.g., boyfriend/girlfriend disputes). Consider TAD transfer of alleged perpetrator or victim. If victim is military or military dependent refer to Legal Assistance attorney for advice on civilian protective order. If alleged perpetrator is civilian consider debarment from the base.

COUNSELING AND TREATMENT: Victims of sexual assault and rape should receive immediate treatment and counseling. See reference (a) and (c).

PSYCHIATRIC EVALUATION: Do not refer a victim (complainant) 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. Victims and witnesses should be informed regarding: apprehension of accused (or changes in confinee status); investigative status; decisions not to prosecute; preferral/referral of charges;

Downloaded from http://www.everyspec.com

conviction, sentencing and/or final resolution. See reference (a), (b), (c), and (g).

POTENTIAL INCIDENT REPORTING REQUIREMENTS:

- OPREP-3 for major incidents. Unit SITREPS for minor incidents.
- Major criminal offenses to NCIS. *See NCIS INCIDENT REPORTING.*
- Violent crime message. *See VIOLENT CRIME REPORTING.*
- Incidents involving Sexual Assaults immediately notify your SAVI representative, NCIS and your SJA.
- Incidents involving Sexual Harassment. *See SEXUAL HARASSMENT.*
- Incidents involving officers IAW with TYCOM/Second Echelon requirements. See OFFICER MISCONDUCT.

ADDITIONAL REPORTING REQUIREMENT FOR SEXUAL ASSAULT INCIDENTS (SAVI): In addition to requirements listed above, commands must report to Echelon II Commanders within 10 days of receiving a report of incident and submit follow-up reports monthly until resolution. See references (d) and (f).

- Sexual assault includes rape, forcible sodomy, assault with intent to commit rape or sodomy, and indecent assault.

- Must report assaults occurring in areas of Navy control regardless of victims or perpetrator's duty status, military affiliation, or nationality.

- Must report incidents involving victims who are family members and victims and alleged perpetrators who are active duty naval service members or another service assigned to a naval command regardless of location of incident.

- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program. *See DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS.*

USMC: ADDITIONAL REQUIREMENTS FOR RESPONDING TO SEXUAL ASSAULT INCIDENTS: Reference (g) details a commander's responsibilities. Generally, commanders must ensure sexual assault victims are treated fairly, with sensitivity, that information related to the victim is handled in a confidential manner, that the victim has access to necessary services, and that the victim is provided monthly updates on the status of their case. Consult with your SJA and victim advocate.

SUPPORT AND PUBLICIZE THE SEXUAL ASSAULT VICTIM INTERVENTION (SAVI) PROGRAM: Establish an atmosphere of zero tolerance of sexual assault and rape. See reference (f).

TRANSITIONAL COMPENSATION. Family members who were abused by a servicemember subsequently separated for that abuse, either by court-martial or administrative separation, are entitled to transitional compensation. See references (h) and (i). Transitional compensation is not based on the financial needs of the family. The program provides monthly payments of

Downloaded from http://www.everyspec.com

transitional compensation and other benefits (medical / dental, etc.) to the family members providing that the members do not cohabitate with the abusive member. Your local Family Service Center/Marine and Family Services personnel can assist in the application process.

Downloaded from http://www.everyspec.com

VIOLENT CRIME REPORTING (VCR)

REFERENCES: (a) GENADMIN/CINCLANTFL *T/081600Z* AUG 95
(b) GENADMIN/CINCPACFL *T/021721Z* APR 95
(c) OPNAVINST 3100.6

MANDATORY MESSAGE REPORT: Whenever a command's military or civilian personnel (on or off base) are involved as either the suspect or victim of violent crime.

DEFINITION OF "VIOLENT CRIME": Murders, rapes, robberies, aggravated assaults, simple assaults, sexual assaults, child abuse, spouse abuse. ANY VIOLENCE THAT COMES TO THE ATTENTION OF THE COMMAND OR BASE POLICE.

DISTINGUISH FROM OPREP/SITREP: Requirement to report violent crimes is separate from the requirement to submit OPREP/SITREP pursuant to reference (c). However, if a OPREP/SITREP will be submitted, the information necessary to meet the Violent Crime reporting requirement may be included in the remarks section of the OPREP/SITREP.

WHEN OPREP/SITREP IS NOT SUBMITTED: The report should be submitted via message to the fleet commander with info addressees including TYCOM, regional commanders and others in the chain of command as necessary.

MESSAGE SUBMISSION RESPONSIBILITIES: The parent command of the victim/suspect is responsible for sending the report.

MESSAGE FORMAT: See reference (a) and (b).

REPORTING SEXUAL ASSAULTS (SAVI): *See VICTIM/WITNESS ISSUES.*

Downloaded from http://www.everyspec.com

UNLAWFUL COMMAND INFLUENCE

REFERENCES: (a) Article 37, UCMJ
(b) Rule 104, Rules for Courts-Martial, MCM (2005 Edition)

GENERAL:

- Actions, words, or attempts by commanders and/or senior leaders to influence the outcome of any military justice proceeding may be considered unlawful command influence (UCI).

- The courts have characterized UCI as “the mortal enemy of military justice.” UCI is prohibited because it undermines public confidence that dispositions are fair, just and equitable, and not based on predetermined edicts by interested commanders. UCI includes saying or doing anything that gives the appearance of trying to influence the outcome of a particular case or class of cases.

COMMANDER’S ROLE:

- Commanders play an expansive, appropriate, and lawful role in the military justice system to include determining initial disposition of alleged offenses; selecting court-martial members; negotiating appropriate pretrial agreements; acting on the findings and sentence of courts-martial; and reviewing initial allegations of legal errors and requests for clemency.

- Commanders may not, however, seek to influence decisions of subordinate commanders with respect to actions regarding military justice proceedings; inhibit testimony or appearance of witnesses; punish or reward court members on the basis of their votes on court-martial findings or sentences; or punish or reward witnesses, counsel, or military judges for their conduct in military justice proceedings. Commanders should also avoid making detailed policy statements to subordinates about specific offenses -- "every drug user in my battalion is going to get a BCD" -- or commenting on the outcome of judicial proceedings -- "I can't believe members from my command only gave Bnotz seven months."

CONSEQUENCES:

Downloaded from http://www.everyspec.com

- Unlawful command influence in military justice proceedings can result in dismissal of charges against an accused, appellate reversal of otherwise properly determined findings and sentences, relief for cause of the offending commander, and adverse media coverage.

SUMMARY:

- Unlawful command influence is unnecessary and easy to avoid. Commanders are advised to seek out the advice of your staff judge advocate before publicly commenting upon any military justice matters.

Downloaded from http://www.everyspec.com

Section XI: NONJUDICIAL PUNISHMENT

ADMINISTRATIVE & DISCIPLINARY OPTIONS

REFERENCES: (a) RCM 306
(b) SECNAVINST 1910; 1920.6; 5510.35
(c) JAGMAN 0102-0105
(d) OPNAVINST 3120.32; 5510.1
(e) BUPERSINST 1430.16; 1610.10
(f) MILPERSMAN 1611-020; 1616-010; 1910
(g) MCO P1610.7 (series)

APPROPRIATE ACTION IN EVERY CASE: "The disposition decision is one of the most important and difficult decisions facing a commander." The discussion to RCM 306 lists 10 factors that the commander should consider (e.g., character of the accused's military service; nature of the incident; victim and witness availability, etc.). Prompt action is always essential.

NO ACTION OR DISMISSAL: Pertinent facts and decisions should be appropriately documented and preserved for future reference.

ADMINISTRATIVE ACTION: May be taken in addition to or instead of disciplinary action as circumstances warrant.

- Informal resolution of minor sexual harassment incidents or very minor misconduct.
- Nonpunitive measures - leadership tool to correct unacceptable behavior. JAGMAN 0102.
    - Nonpunitive Censure. JAGMAN 0105
    - Extra Military Instruction. JAGMAN 0103; OPNAVINST 3120.32
    - Denial of Privileges. JAGMAN 0104
- Letter of Instruction (LOI). MILPERSMAN 1611-020/1616-010
- FITREP and EVALS. BUPERSINST 1610.10; MCO P1610.7
- Security clearance/Personal Reliability Program (PRP) adjustment or withdrawal. OPNAVINST 5510.1; SECNAVINST 5510.35 (series)
- Withhold or withdraw advancement/promotion recommendation. BUPERSINST 1430.16 (series)

Downloaded from http://www.everyspec.com

- Reassignment/Early transfer/Delay of transfer.
- Detachment for Cause (DFC). (MILPERSMAN 1611-020, 1616-010)
- Administrative Separation/Board of Inquiry. MILPERSMAN 1910/SECNAVINST 1920.6(series)

DISCIPLINARY ACTION:

- Nonjudicial Punishment (NJP)
- Summary Court-Martial (SCM)
- Special Court-Martial (SPCM)
- General Court-Martial (GCM)

Downloaded from http://www.everyspec.com

NONPUNITIVE MEASURES

REFERENCES: (a) JAGMAN 0102, 0103, 0104, 0105
(b) OPNAVINST 3120.32, Section 142

PURPOSE: Correct minor infractions and deficiencies without any permanent record.

FUNCTION: A leadership tool for teaching and training instead of punishment.

NONPUNITIVE CENSURE (JAGMAN 0105): Two types:

- Oral: Chewing out
- Written: "Nonpunitive Letter of Caution" or counseling chit. Limitations: Private (one copy). Not mentioned in evals/fitreps. (Underlying misconduct may be mentioned)

EXTRA MILITARY INSTRUCTION (EMI) (JAGMAN 0103). Command obligation to have policy and ensure EMI not abused.

EMI ANALYSIS:
- Identify the deficiency.
- Assign corrective instruction logically related to deficiency.
- Recommend order be given in writing.

WHO MAY ASSIGN EMI?
- EMI completed during working hours - - Officers/Petty Officers.
- EMI completed after working hours - - COs only, but CO may delegate to officers and petty officers.

LIMITATIONS ON EMI:
- Two hours maximum per day
- Not on Sabbath
- Reasonable number of days
- Normal liberty upon completion
- No entry in service record

Downloaded from http://www.everyspec.com

ADMINISTRATIVE WITHHOLDING OF PRIVILEGES (JAGMAN 0104). Those who have the power to grant a privilege also have the power to revoke that privilege. Only privileges, and not rights, may be withheld.

- Privilege: A benefit for the member's enjoyment (e.g., special liberty, driving on base, civilian clothing, exchange of duty, use of base theater/club.)

- Right: Part of compensation or required for the performance of duties (e.g., medical care, dental care, quarters, subsistence, pay, normal liberty).

LAWFUL WAYS TO DENY NORMAL LIBERTY:

- EMI
- Liberty Risk
- Extension of working hours for mission requirements
- Limited health/safety reasons (i.e., drunk watch, immunization, and family advocacy 72-hour cooling-off period)
- Punishment awarded at NJP or courts-martial
- Pretrial restraint for courts-martial

"VOLUNTARY RESTRAINT" (HACQ): "House Arrest, Confinement to Quarters", or HACQ, is not authorized.

REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES:

- Request mast.
- Article 138 (UCMJ) complaint against CO.
- Article 1150 (NAVREGS) complaint against superior.
- Congressional inquiry/Hotline complaint.

Downloaded from http://www.everyspec.com

NJP JURISDICTION

REFERENCES: (a) UCMJ, Article 15
(b) MCM, Part V
(c) JAGMAN 0106, 0107, 0108

CO's AUTHORITY NON-DELEGABLE: Authority to impose NJP is normally ***not*** delegable (exception for Flag Officers who may designate a principal assistant (JAGMAN 0106)). CO has authority over all Navy/Marine members of his/her command.

Jurisdiction determined by:

- Member of command at the time NJP is imposed, ***not*** at the time of the offense.
- *TAD Personnel*: Either PCS or TAD CO can impose NJP but not both.
- *Embarked units*: Unit commanders defer to the CO of the ship, except, generally unit commander retains NJP authority over units embarked for transportation only.
- *Multi-service command*: Navy/Marine personnel are subject to NJP from multi-service commander.

OFFENSES PUNISHABLE: CO has broad discretion to decide what offenses should be handled at NJP.

- GENERAL GUIDANCE: NJP is for "minor" offenses. An offense is "minor" if a dishonorable discharge (DD) or over one-year's confinement is ***not*** authorized.

- "DOUBLE PUNISHMENT": Punishment of a minor offense at NJP will bar a subsequent court-martial for the same offense. Punishment of a major offense at NJP will not bar a subsequent court-martial for the same offense, but the accused will receive credit for the NJP against any ultimate court-martial sentence. The military judge (MJ) will decide if the offense is major or minor.

Downloaded from http://www.everyspec.com

PRIOR CIVILIAN ACTION (JAGMAN 0124): Prior federal court action bars NJP or court-martial**Error! Bookmark not defined.**. Prior State/local/foreign court action does not bar NJP or court-martial, but command must request permission to proceed.

- For GCM/SPCM – OJAG permission.
- For NJP/SCM – GCMCA permission.
- Criteria – exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest.

DUAL ACTION: If both the Navy and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. SOPA and the area coordinator SJA, as well as NCIS, should be consulted if it appears that both the Navy and local authorities are contemplating prosecution.

STATUTE OF LIMITATIONS: Two years from date of offense.

Downloaded from http://www.everyspec.com

NJP – PRE-MAST & MAST PROCEEDINGS

REFERENCES:
(a) UCMJ, Article 15
(b) MCM, Part V
(c) JAGMAN 0109-0115
(d) MCO P5800.16 (series) (LEGADMINMAN)

DRB/XOI: Investigative tool that is not required, but may be utilized in order to screen cases for the CO. Member cannot refuse DRB/XOI. DRB/XO may not impose punishment but may take administrative measures. *See APPENDIX H: XOI PROCEEDINGS* and *ADMINISTRATIVE & DISCIPLINARY OPTIONS*. (USN ONLY)

RIGHT TO REFUSE NJP

- ALL MEMBERS CAN REFUSE NJP, UNLESS ATTACHED TO OR EMBARKED ON A VESSEL.
- Right to refuse ends when punishment is imposed/announced.
- If member refuses NJP, CO retains all administrative and disciplinary options, except NJP, open to him/her prior to the refusal.

RIGHT TO CONSULT WITH COUNSEL:

- There is no right to counsel at NJP. The only counsel right related to NJP is the right to consult with counsel about whether or not to accept NJP. This right applies only to members who have the right to refuse NJP (those not attached to or embarked on a vessel) - - - *Booker* rights.

- If a member has the right to refuse NJP; asks to consult with counsel; and is denied this opportunity, the command may still hold NJP (presuming the servicemember does not actually assert their right to refuse NJP). The only consequence to the command is that this NJP will not be admissible in aggravation at any later court-martial that might occur.

RIGHTS AT NJP HEARING:

- To be present. CO may not hold NJP in member's absence; however, member may waive right to personal appearance.
- To remain silent.
- To have a personal representative.
- To examine evidence.
- To present matters in defense or extenuation & mitigation.
- To call "reasonably available" witnesses. (No subpoena power over civilian witnesses.)

Downloaded from http://www.everyspec.com

- To a public hearing. Member may request "closed mast" but no right to one.

MILITARY RULES OF EVIDENCE: Except privileges and self-incrimination, do not apply.

STANDARD OF PROOF: Preponderance of the evidence, but still must prove every element of the offense.

CO SCRIPT OR GUIDE FOR NJP: JAGMAN, Appendix A-1-(E)(1).

CO's OPTIONS:

- Dismissal – with or without warning;
- Dismissal and imposition of administrative/nonpunitive measures. *See ADMINISTRATIVE & DISCIPLINARY OPTIONS*;
- Imposition of authorized punishment. (*See APPENDIX A*: *NJP Punishment Chart*);
- Refer to a higher forum or superior CA;
- Postpone action.

PUBLICATION OF NJP RESULTS:

- Publication allowed within one month of NJP.
- If only military members have access to information, full publication, including name, is allowed. If there is civilian access to the information, the member's name must be removed.
- Best course of action: Publish **only** date of NJP, offense, paygrade of member, and punishment.

Downloaded from http://www.everyspec.com

NJP – CLEMENCY & CORRECTIVE ACTION

REFERENCES:
(a) UCMJ, Article 15
(b) MCM, Part V
(c) JAGMAN 0118
(d) MCO P5800.16 (series) (LEGADMINMAN)

AUTHORITY TO GRANT CLEMENCY OR TAKE CORRECTIVE ACTION

- Imposing officer;
- Successor in command (temporary or permanent);
- Subsequent CO after transfer of member; or
- Appellate authority (GCMCA)

TYPE OF CORRECTIVE ACTION:

SET ASIDE: Set aside any or all of the punishment (executed or unexecuted) and restore all property, privileges, and rights affected by that portion of the punishment. Used to correct a clear injustice. Absent unusual circumstances, set aside should occur within 4 months of the execution of punishment. NJP authority may only set aside punishments that he/she has the power to impose.

Commendable service following an NJP is not an appropriate basis for setting aside an NJP that was fair at the time it was imposed.

Setting aside an NJP has the effect of voiding the punishment and restoring the service member to the position he would have been in had the NJP not been imposed.

REMISSION: Cancel unexecuted portions of a punishment. End of current enlistment or discharge automatically remits unexecuted punishment. Member may not be retained beyond EAOS to serve NJP punishment.

MITIGATION: A reduction in the quantity or quality of an unexecuted punishment. The new mitigated punishment may not be for a period greater than the original punishment.

Downloaded from http://www.everyspec.com

SUSPENSION: Punishment held in abeyance/member on probation for up to 6 months.

- Conditions of suspension – Member cannot commit further violations of the UCMJ. Additional terms should be in writing. Must be lawful order capable of performance. (Examples: make restitution to a victim; to ***not*** enter certain establishments; to submit to searches; to conduct GMT; to successfully complete course of rehabilitation, etc.)

- Vacating suspension - If member violates terms of suspension or UCMJ, suspension may be vacated by any authority competent to impose punishment. Member should be notified and although a hearing is not required, unless impracticable, the member should be given an opportunity to be heard. The decision to vacate is not appealable.

TIME LIMITS

- The power to set aside an NJP should ordinarily be exercised within a reasonable time after the punishment has been executed. Absent unusual circumstances, 4 months is considered a reasonable time.

- Whether "unusual circumstances" justify setting aside punishment later than 4 months after execution is a matter of command discretion.

- Paragraph 3005.3c of reference (c) allows suspension--as opposed to setting aside--of an executed punishment of reduction or forfeiture only within 4 months of the date it is executed.

Downloaded from http://www.everyspec.com

NJP – APPEALS

REFERENCES: (a) UCMJ, Article 15
(b) MCM, Part V
(c) JAGMAN 0116, 0117
(d) MCO P5800.16 (series) (LEGADMINMAN)

REVIEWING AUTHORITY: Navy – area coordinator or GCMCA in imposing officer's chain of command. Marine Corps - immediate superior in the operational chain of command to imposing officer.

GROUNDS FOR APPEAL:
- Unjust: Not guilty of offense
- Disproportionate: Guilty but punishment too harsh or unfair

TIME LIMIT:
- 5 working days (excluding weekends and holidays) from date of imposition of punishment;
- Extensions may be requested for good cause;
- Late appeals may be denied only by the appellate authority.

PROCEDURE:
- Appeal must be in writing;
- Via the officer who imposed NJP;
- Endorsement should include:
  - Statement of facts
  - Copies of documents/witness statements
  - Copy of report chit/unit punishment book
  - Copy of member's SRB performance.

REQUEST FOR STAY OF RESTRAINT: Applies only to restraint and extra duties. May be made in writing or verbally. If request is made and appellate authority fails to act within 5 days after appeal submitted, restraint/extra duty punishments must be stayed until the appellate authority acts.

APPELLATE AUTHORITY'S ACTION: Standard of review is "abuse of discretion."

REFERRAL TO JUDGE ADVOCATE: Required if punishment was greater than what O-3 or below CO could impose.

REHEARING: At any rehearing, the maximum punishment is limited to the punishment imposed at the original NJP.

ADMINISTRATIVE SEPARATIONS

REFERENCES: (a) DODDIR 1332.14
(b) MILPERSMAN, sections 1900, 1910

Downloaded from http://www.everyspec.com

(c) MCO P1900.16 (series)
(MARCORSEPMAN), Chapter 6

CNO CONCERN: Ensure expedited processing of ADSEP cases.

NAVY SEPARATION AUTHORITIES (SA):

- NOTIFICATION PROCEDURE USED: Normally the Special Court-Martial Convening Authority (SPCMCA) when General or Honorable discharge awarded. *See Appendix J*.

- ADMINISTRATIVE BOARD PROCEDURE USED: Will normally be the General Court-Martial Convening Authority (GCMCA) if Other than Honorable (OTH) discharge awarded. If General or Honorable discharge is awarded by Admin Board, SPCMCA can act as the SA in some situations. *See Appendix J*.

USMC: An administrative separation board as required by this chapter shall be convened in writing by any commander having special court-martial convening authority, or by any other commanding officer or officer in charge when specifically authorized to do so by a superior authority who is a Marine commander having general court-martial jurisdiction. When a board is convened under delegated authority, the order appointing the board will contain specific reference to the source of such delegated authority. Additionally, authority to convene administrative separation boards is specifically delegated to those units delineated in figure 6-1 provided they exercise special court-martial convening authority. Not all convening authorities are separation authorities. See paragraph 6307 for the definition of a separation authority. (Ref (c) par 6314)

- GCMCA REVIEW: In all cases where member is involuntarily separated by a SPCMCA, member can request review of case by GCMCA before separation is awarded.

- BUPERS/SECNAV SA: Active duty or reserve personnel within 2 years of retirement; best interest of the service cases; conscientious objection; and homosexual conduct cases.

USMC: When the member is being processed for involuntary separation and has 18 years or more total active military service, the separation authority is DC M&RA. The involuntary separation of Reservists on active duty (other than for training) who are within 2 years of becoming eligible for retired pay or retainer pay under a purely military retirement system must be approved by the Secretary of the Navy.

Downloaded from http://www.everyspec.com

When separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special or general court-martial that did not adjudge a punitive discharge, and the GCMCA recommends a characterization of service as under other than honorable conditions, separation and characterization must be approved by DC M&RA.

Downloaded from http://www.everyspec.com

NOTIFICATION vs. ADMINISTRATIVE BOARD PROCEDURES

- Notification: all Convenience of the Government cases, and for misconduct cases (except mandatory processing bases listed below) where convening authority feels General or Honorable discharge is warranted and individual being processed (respondent) is not entitled to a board.

- Administrative Board: all homosexual conduct cases, mandatory processing bases, and other misconduct cases where CA feels OTH is warranted.

- Right to Board: Member is entitled to an admin board when OTH is authorized and sought, when member has at least 6 years active and/or Reserve service, **or** when processing is mandatory.

MANDATORY PROCESSING INCLUDES:

- Drug abuse, offenses involving potential death or serious bodily injury, sexual perversion, aggravated sexual harassment, homosexual conduct, supremacist or extremist conduct. Mandatory processing is required for second level III or above substantiated CRC cases of domestic violence.

LEGAL REVIEW

- In cases where an OTH is recommended, or when a letter of deficiency is submitted, the record must be reviewed by a Judge Advocate before the SA can act.

CONDITIONAL WAIVERS

- A respondent entitled to an administrative board may request a conditional waiver of his right to a board, contingent upon receiving a General or Honorable discharge.

- Approved by GCMCA **only** if favorably endorsed by CA.

ENDORSING ADMIN BOARD CASES: If admin board recommends retention, CO may still recommend discharge to SA. As to characterization, CO can recommend a more favorable discharge than the admin board recommended, but servicemembers may not receive a discharge worse than what is recommended by the Board.

USN PAGE 13/USMC PAGE 11 IS EXTREMELY CRITICAL DOCUMENT: May be a prerequisite to administrative separation processing. Clear guidance on who may issue a Page 13/11

Downloaded from http://www.everyspec.com

should be promulgated (typically, delegated to Dept Heads and/or Legal Officer).

USMC: In cases involving unsatisfactory performance, pattern of misconduct, minor disciplinary infractions, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriated counseling and personnel records. No certain amount of time can be used to define "reasonable opportunity." This must be determined by the commanding officer on a case-by-case basis. The commanding officer must sign adverse page 11 entries. (See MCO P1070.12 IRAM concerning appropriate entries).

DEPLOYING UNITS: Prior to deployment pending ADSEP cases may be transferred to shore commands with ISIC approval. Fleet legal manuals provide the format for requesting JAG services at sea.

OVERSEAS ADSEPS: Procedures should be in place to "escort" members to CONUS for discharge. Requires coordination with major overseas transient stations to ensure members are in appropriate liberty risk category and under appropriate supervision while in transit.

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

USMC: Members awaiting completion of administrative processing for separation for cause may, when in the best interests of the Marine Corps, be granted leave upon submission of a written request to the officer exercising general court-martial convening authority. (See MCO P1050.3H, par 2026.2 for complete policy)

FAMILY ADVOCACY CASES: Request the local Trial Service Office (TSO) provide a recorder for admin boards.

AVOID UNLAWFUL COMMAND INFLUENCE: *See COURTS-MARTIAL BASICS*.

See also *PREGNANCY; HIV ISSUES; HOMOSEXUAL CONDUCT; FREEDOM OF EXPRESSION;* and *DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS*.

Downloaded from http://www.everyspec.com

USMC MANDATORY ADMINISTRATIVE SEPARATION PROCESSING (ENLISTED MEMBERS)

REFERENCES: (a) MCO P1900.16 (series) (MARCORSEPMAN), Chapter 6
(b) MARADMIN 014/00
(c) MCO P1700.24B (series)

GENERAL: Reference (a), is the controlling authority for enlisted administrative separations. Normally, commanders have discretion on whether to process an enlisted Marine for administrative separation. However, by policy, discretion on whether Marines should be *processed* has been withheld in the following categories of conduct:

- Fraudulent Entry
- Homosexual conduct
- Drug Abuse
- Participation in Supremacist or Extremist Organizations or Activities
- Sexual Harassment
- A second Substantiated Domestic Violence Incident (CRC level 3 or above).

Mandatory *processing* for the above categories of conduct does not mean that a Marine will ultimately be *separated* from the Marine Corps. In other words, "mandatory processing" does not mean "mandatory separation." Specifics on each category are discussed in further detail below.

FRAUDULENT ENTRY: Per paragraph 6204.3 of reference (a), a Marine who procures a fraudulent enlistment, reenlistment, induction, or period of active service will be processed for separation unless the fraud is waived or the fraud no longer exists. An enlistment is fraudulent when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise effect the Marine's eligibility for induction or enlistment.

HOMOSEXUAL CONDUCT: Per paragraph 6207 of reference (a), a Marine shall be processed for separation for homosexual conduct, vice homosexual status. Homosexual status (i.e. sexual orientation) is considered a personal and private matter and is not a bar to continued service unless manifested by homosexual conduct. Generally, a Marine shall be separated if one or more of the following approved findings is made:

Downloaded from http://www.everyspec.com

- The Marine has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts.

- The Marine has made a statement that he or she is a homosexual or bisexual, or words to that effect.

- The Marine has married or attempted to marry a person known to be or the same sex.

INVESTIGATIONS INTO HOMOSEXUAL CONDUCT: Only a commander may initiate fact-finding inquiries involving homosexual conduct and only if he or she has credible information that a basis for discharge exists. Per reference (b), a commander, or the trial counsel or SJA that supports that commander, must consult with the SJA for the cognizant general court-martial convening authority (GCMCA) before an investigation is commenced.

- For enlisted Marines with less than 18 years of service, the officer exercising GCMCA over the Marine is the separation authority. For enlisted active duty Marines with 18 years or more of service, CMC (DC M&RA) is the separation authority. For enlisted Marines in the USMCR with 18 years or more of service, the separation authority is the Secretary of the Navy.

DRUG ABUSE: Per paragraph 6210.5 of reference (a), separation *processing* is mandatory for the actual or attempted illegal, wrongful, or improper use, possession, sale, transfer, distribution or introduction on a military installation of any controlled substance. Separation, however, is not mandatory. Despite a finding substantiating involvement with illegal drugs, a separation board may vote to retain an enlisted Marine. Even if the board votes to separate the Marine, the Commanding General may nevertheless elect to retain the Marine by disapproving or suspending the separation.

PARTICIPATION IN SUPREMACIST OR EXTREMIST ORGANIZATIONS OR ACTIVITIES: Per paragraph 6210.9 of reference (a), processing for separation is mandatory following the first incident of misconduct resulting from the member's participation in extremist or supremacist activities, which, in the independent judgment of an administrative separation board convening authority, is more likely than not to undermine unit cohesion or be detrimental to the good order, discipline, or mission development accomplish of the command. The misconduct must relate to:

Downloaded from http://www.everyspec.com

- Illegal discrimination based on race, creed, color, sex, religion, or national origin; or

- Advocating the use of force or violence against any Federal, State, or local government, or any unit or agency thereof, in contravention of Federal, State, or local law.

An incident is considered substantiated when there has been a court-martial conviction or nonjudicial punishment, or when the commander determines, based on a preponderance of the evidence, that the member has engaged in supremacist or extremist conduct.

SEXUAL HARASSMENT: Per paragraph 6210.8 of reference (a) processing for separation is mandatory following the first substantiated incident of sexual harassment involving any of the following:

- Threats or attempts to influence another's career or job for sexual favors;

- Rewards in exchange for sexual favors; or,

- Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge.

Sexual harassment may be considered substantiated when there has been a court-martial conviction or nonjudicial punishment, or when the commander determines, based on a preponderance of the evidence, that sexual harassment has occurred.

SECOND SUBSTANTIATED DOMESTIC VIOLENCE INCIDENT: Per paragraph 5003.9 of reference (c), processing for separation is mandatory for a substantiated second domestic violence offense which is determined by a Case Review Committee at level III or above when:

- Rehabilitation, education, or counseling services were previously afforded for the first offense; or

- The Marine has refused or failed to cooperate with previously recommended treatment; or

- The Marine has failed to meet the conditions of court orders or terms of probation.

Notwithstanding the above, a single incident of domestic violence may be sufficient to warrant separation under another provision of

Downloaded from http://www.everyspec.com

reference (a) (e.g., commission of a serious offense) if the command believes that the service member has no potential for further service.

Downloaded from http://www.everyspec.com

ADMINISTRATIVE SEPARATION BOARDS

REFERENCES: (a) MILPERSMAN, section 1910-500
(b) MCO P1900.16 (series)
MARCORSEPMAN, Chapter 6

WITNESS REQUESTS: Must be timely. No subpoena power for civilian witnesses. CO may expend funds if live testimony is both necessary and reasonably available based on operational commitments or necessity. CO should consider such things as cost, delay, and interference with mission in deciding whether to expend funds.

CONTINUANCE REQUESTS: Respondent should be given reasonable time in order to prepare for admin board.

- Senior member (Navy) rules on requests for continuances.
- Watch delay tactics with respect to upcoming EAOS.
- BUPERS Guidelines – for admin board case, members should be separated within 50 days after notification.
- If respondent goes UA while pending the board, may proceed in absentia.

CHALLENGES FOR CAUSE: May be made where board member cannot make a fair and impartial decision.

- Navy: CO rules on challenges.
- USMC: the legal advisor shall rule finally on all matters of procedure, evidence and challenges, except challenges to the legal advisor. The convening authority shall rule finally on all challenges for cause of legal advisors, when appointed, and of board members when a legal advisor has not been appointed. (Ref (b), par 6315.4 and 6316.7)

ISSUES FOR THE ADMIN BOARD:

- Is the basis for separation supported by a preponderance of evidence?
- If the basis is supported, should respondent be separated or retained?
- If separated, what should the characterization of discharge be (Honorable, General (Under Honorable Conditions), or Other Than Honorable (OTH))?

ADMIN BOARD EVIDENCE:

- Pre-service/prior enlistment adverse matters – may **never** be considered on the issue of characterization. May only be considered on the issue of retention or separation if the evidence is not remote or isolated.

Downloaded from http://www.everyspec.com

- Findings of Court-Martial or civilian courts are binding upon subsequent administrative boards (USN only).

MILITARY RULES OF EVIDENCE (MRE): Do not apply, except self-incrimination and privileges.

ADMIN BOARD COMPOSITION:

- 3 or more commissioned, warrant, or noncommissioned officers (E-7 and above).
- Majority must be commissioned officers.
- Senior member must be O-4 or above (line or staff).
- E-7 or above member must be senior to Respondent (lineally)
- Reservist Respondent – only commissioned officers, at least one reservist.

AVOID UNLAWFUL COMMAND INFLUENCE: *See COURTS-MARTIAL BASICS*.

Downloaded from http://www.everyspec.com

OFFICER MISCONDUCT (USN)

REFERENCES:
(a) MILPERSMAN 1611
(b) BUPERS 1610.10 (series)
(c) Navy Regulations, Article 1122
(d) MILPERSMAN 1070-020
(e) SECNAVINST 1920.6 (series)

NOTE: In ALL cases of officer misconduct immediately contact BUPERS (PERS-4834) at (901) 874-3197/2097 or DSN 882-3197/2097 for assistance with Navy cases. This is a complicated area that requires significant instruction.

NOTIFICATION: BUPERS requires notification and follow on reports for instances of officer misconduct, specifically including:

- Preferral of court-martial charges. A copy of the charge sheet with explanatory information must be sent to PERS-4834, with periodic status reports provided.

- Imposition of NJP. Notify PERS-4834 by letter as soon as results are "final." NJP results must be sent via the first flag officer in the admin chain of command. See reference (a) for appropriate format and informational requirements.

- Arrest by civilian authorities. A "Civil Action Report" must be immediately sent to PERS-4834 by message if a BCD would be authorized for the offense under the UCMJ (e.g., drunk driving). When results become "final," a close-out letter report is required.

- UA: All facts and circumstances are to be immediately relayed to PERS-4834 by message. Next of kin letters must be sent after 10 days and DD 553 notification sent after 30 days. If the officer had access to classified info, and there are any indications that the UA may be inimical to national security, notify NCIS.

FLEET AND TYCOM REPORTING REQUIREMENTS: Additional reporting requirements may exist pursuant to ISIC directives.

RETENTION: If military disciplinary or civil criminal action may be taken against an officer, they should not be transferred until the action is resolved.

Downloaded from http://www.everyspec.com

NON-PUNITIVE LETTERS OF CAUTION (NPLOC'S): A common administrative counseling tool in cases for officer malfeasance or neglect. NPLOC's may not be referred to in fitness reports or forwarded to BUPERS. Underlying facts which caused the NPLOC may properly be mentioned in fitness reports. If adverse matter is included in a fitness report or other official record, it must be referred to the member for statement. See BUPERSINST 1610.10 and JAGMAN 0105. *See NON-PUNITIVE MEASURES*.

ADMIN SEPARATION: Inform BUPERS of any incidents or situations involving an officer whose performance or conduct is such that processing for separation may be appropriate. See reference (e) and consult your local SJA or NLSO.

See DETACHMENT FOR CAUSE.

Downloaded from http://www.everyspec.com

OFFICER MISCONDUCT (USMC)

REFERENCES: **(a) SECNAVINST 1920.6 (series)**
(b) MCO P5800.16 (series) (LEGADMINMAN)

BASIC ADMINISTRATION:

- Processing officers for administrative separation based on misconduct or substandard performance is uniquely different from that of enlisted Marines. The Secretary of the Navy (SecNav) has retained for himself the authority to separate officers for misconduct or substandard performance. As a result, all officer cases are carefully considered by senior flag officers prior to reaching SecNav. Timely and close coordination with your staff judge advocate is therefore essential.

- Reference (a), is the controlling regulation for separation/retirement of USN/USMC officers for misconduct or substandard performance. This instruction contains nine enclosures, each of which addresses a different aspect of the separation or retirement of USN/USMC officers (including an extensive definition section). Additional guidance on officer misconduct processing, including mandatory reporting requirements, is contained in reference (b).

COMMANDER'S ROLE: Commanders play a central role in the disciplinary and administrative processing of officers. Commanders make critical decisions at every stage, to include determining the initial disposition of alleged offenses, negotiating appropriate pretrial agreements, acting on the findings and sentence of courts-martial, and reviewing initial allegations of legal errors and requests for clemency. Commanders also make critical recommendations in administrative separation decisions. Although SecNav and/or the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) make the ultimate decisions in such cases, the opinions of the commanders closer to the ground are critical to the overall understanding of higher headquarters.

SHOW CAUSE AUTHORITY OVERVIEW: Paragraph 13d of reference (a) delegates show cause authority to CMC for all Marine Corps officer cases. The term "show cause" means that the officer is required to show cause why he or she should be retained in the Marine Corps. CMC has further delegated this authority to DC M&RA to act as the show cause authority for the Marine Corps. Specifically, DC M&RA has been granted the authority to deny resignation requests, direct Boards of Inquiry, and terminate administrative proceedings. By the same

Downloaded from http://www.everyspec.com

reference, SecNav has authorized generals and lieutenant generals in command to be designated as alternate show cause authorities. Accordingly, these general officers have been granted the ability to direct officers to show cause for retention at Boards of Inquiry. However, these general officers have not been granted the authority to deny resignation requests or terminate administrative proceedings. That authority remains with DC M&RA. In cases Involving Naval officers assigned to Marine Corps commands, the Marine commander retains the authority to discipline the member, however, the Chief of Naval Personnel (CHNAVPERS) is the show cause authority for these cases.

REPORTABLE MISCONDUCT: Paragraph 4002 (1) of reference (b) requires that "Upon receipt of information which indicates an officer may have committed an act proscribed by a military or civilian criminal statute, a report thereof will be made to CMC (JAM)." Specific categories of misconduct are included under paragraph 4002(1); However, the list is not all-inclusive. A good rule of thumb is to report to your commander and staff judge advocate all misconduct, no matter how insignificant. Your staff judge advocate is required to forward all such substantiated reports to CMC(JAM). This reporting requirement fulfills a threefold purpose:

- ensure prompt disposal of allegations of officer misconduct;
- to provide the documentation necessary to facilitate the promotion process; and,
- to provide CMC with visibility on all cases involving officer misconduct. There is no discretion permitted at the command level regarding an initial report of officer misconduct.

CMC (JAM) contact number is (703) 614-4250 (DSN 224).

RELEVANT OFFICER CLASSIFICATIONS: All officers are either probationary or non-probationary, the determination of which provides different options for involuntary separation for misconduct or substandard performance.

- Probationary: Commissioned officers, Reserve warrant officers with less than five years of service as an officer, and regular warrant officers with less than three years of service as an officer are probationary. As such, these officers may be subject to involuntary separation via the notification procedure (i.e. without a board). Officers separated via the notification procedure will receive

Downloaded from http://www.everyspec.com

either an honorable or general under honorable conditions characterization of service.

- Non-probationary: Commissioned officers and Reserve warrant officers with more than five years of service as an officer, and regular warrant officers with more than three years of service as an officer are non-probationary. As such, they may only be involuntarily separated with a recommendation of a board of inquiry.

OTHER RESOURCES: For additional information on officer misconduct cases see the SJA to CMC website: http://sja.hqmc.mil/jam/adverseadministrativeactions/adverseadminactions.htm

Downloaded from http://www.everyspec.com

DETACHMENT FOR CAUSE (USN)

REFERENCES: (a) MILPERSMAN 1611-020

ENLISTED DFC: Detachment for cause of chief petty officers and selected petty officers are conducted IAW MILPERSMAN 1616-010. Detachment for cause of officers must be conducted IAW reference (a). BUPERS is the approval authority.

GROUNDS: Four reasons for requesting an officer DFC:

- Misconduct;
- Unsatisfactory performance involving one or more significant events (gross negligence or complete disregard);
- Unsatisfactory performance over an extended period of time after counseling or LOI; or
- Loss of confidence of officer in command.

DETACHMENT FOR CAUSE IS GENERALLY NOT AN OPTION WHEN:

- Reassignment within the command is possible;
- Officer is at PRD, in receipt of orders or has relief on board; or
- Other available alternatives exist within the command to resolve the situation.

DOCUMENTATION: Unsatisfactory performance over an extended period of time must be properly documented (e.g., Letter of Instruction). All allegations must be adequately supported by appropriate inquiry or documentation.

DISCIPLINARY ACTION: Must be taken before requesting a detachment for cause based on misconduct or an explanation must be provided to BUPERS.

DETACHMENT PAPERWORK: Notification to the member must advise the officer that an approved detachment for cause request will be filed in the officer's official record.

OPPORTUNITY TO RESPOND: The officer must be given 10 calendar days to provide a written response to the detachment for cause request.

Downloaded from http://www.everyspec.com

USMC OFFICER PROMOTION DELAY AND WITHHOLDS

REFERENCE: (a) MCO P1400.31B (MARCORPROMMAN) VOL 1

GENERAL:

- The names of all officers selected or scheduled for promotion to the next higher grade are screened for adverse information from a variety of databases. Potential adverse information may result in an officer's name being "withheld" from a promotion selection list or, if his name is on an approved promotion list, his promotion may be "delayed."

- An officers name will always be withheld from a promotion list, or his promotion delayed, when there is a pending misconduct case. A decision on the officer's promotion will not be made until the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) closes the misconduct case.

- Promotions of officers with adverse information in their record, or with pending misconduct, will occur only after consideration of the officer's comments, if any, and recommendations of the chain of command.

PROMOTION "WITHHOLD": A promotion "withhold" occurs when potentially adverse information is found during the post-board screening process and prior to the Secretary of the Navy (SECNAV) approving the Promotion Board Report. When an officer's promotion is "withheld", SECNAV removes that officer's name from the scroll prior to forwarding to the Senate for confirmation.

- **Screen of Selection Board Report:** All promotion board reports are screened against the Marine Corps Officer Disciplinary Notebook (ODN) that is maintained by the Judge Advocate Division, Headquarters Marine Corps (CMC(JAM)), and also against HQMC Inspector General files. Additionally, for promotions to O-4 and above, promotion board reports are also screened against the Defense Clearance Investigations Index (DCII). CMC(JAM) reviews and consolidates all information and the Staff Judge Advocate to the Commandant (SJA to CMC) makes a promotion recommendation to CMC on those officers with potentially adverse information. This recommendation is based on the nature of the adverse information. The

Downloaded from http://www.everyspec.com

SJA to CMC's recommendation is then forwarded to the Adverse Material Advisory Board (AMAB)

- **Adverse Material Advisory Board:** The AMAB members consist of the SJA to CMC, Director, Personnel Management Division (Dir PMD), Deputy Commandant, Manpower and Reserve Affairs (DC M&RA), and the Assistant Commandant of the Marine Corps (ACMC). Each member of the AMAB will review the SJA to CMC promotion recommendation and will provide their recommendation prior to consideration of that case by CMC.

- **AMAB Recommendations:** When potentially adverse information is disclosed prior to SECNAV approving a selection board report, the AMAB may recommend one of the following: (1) that an officer's name be withheld from the promotion list and that the officer be given a chance to comment before a promotion decision is made; (2) that CMC report the information to SECNAV and recommend that the officer be promoted (support and report); or (3) that CMC classify the information as "not adverse." If CMC classifies the information as "not adverse," the officer's name will remain on the promotion board report and the information is not forwarded to SECNAV following review by CMC.

PROMOTION "DELAY": a "delay" occurs when potentially adverse information is found after the officer's name has been confirmed by the Senate, but before the officer's promotion.

- **HQMC-level Delay:** When potentially adverse material is identified, the SJA to CMC may recommend to Dir PMD that the officer's promotion be delayed. If approved, the affected officer's chief of staff will be notified of the delay.

- **Command Delay:** Commanding Officers may delay an officer's promotion by providing written notice to the officer outlining the grounds for the delay <u>before</u> the effective date of the appointment. Reference (a) provides guidance on initiating command delay. *Command delay is especially important when the misconduct that provides the basis for promotion delay happens close to the date of promotion.* In all command delay cases, commanders must notify Manpower Management Division, Promotions Section (MMPR) as soon as practicable.

NOTICE AND COMMENT: Once an officer's promotion is withheld or delayed, the officer will be provided an opportunity to

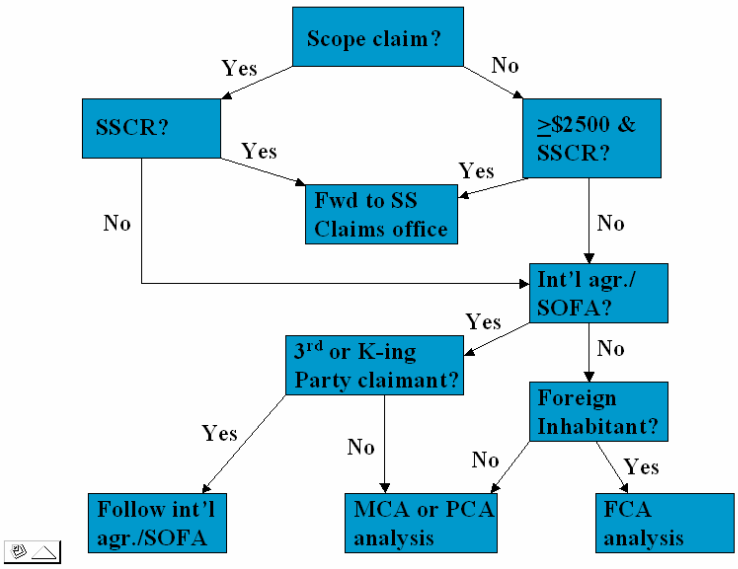
Downloaded from http://www.everyspec.com

submit matters, via the chain of command, for consideration by the promotion approval authority. The officer's command and commanding general must endorse the officer's promotion package. The chain of command recommendations are an important factor in further HQMC deliberation.

Downloaded from http://www.everyspec.com

Section XII: International and Operational Law

Claims in a Deployed Environment. The prompt settlement of meritorious claims is important to friendly foreign relations, force protection, and mission accomplishment in a deployed environment. The payment for damages to property or person resulting from a deployment depends on statutes and regulations, the claimant's status, and the location and type of incident. DoD Directive 5515.8, Single-Service Assignment of Responsibility for Processing of Claims, assigns each Service exclusive geographical single source claim responsibility (SSCR) to resolve claims (e.g., Army for Iraq, Afghanistan and Djibouti, and Navy worldwide for non-scope of duty claims during port calls under $2,500). During deployment, the most applicable types of claims in order of precedence are scope of duty claim, Status of Forces (SOFA) or other international agreement, Foreign Claims Act (FCA), Personal Claims Act (PCA), and Military Claims Act (MCA) (see flow chart below). Refer to JAGINST 5890.1, Administrative Processing and Consideration of Claims on Behalf of and Against the United States, and JAGINST 5800.7D, Manual of the Judge Advocate General (JAGMAN). The FCA "combat exemption" prohibits paying claims under the FCA that arise from combat, except for damage caused by malfunction of U.S. aircraft and its ordinance. Solatia, an expression of sympathy, is not a claim but a nominal payment of condolence to a victim or family in accordance with local custom (e.g., Japan, Korea, Thailand, and Iraq), as determined by the Service.



Domestic Operational Law. Conducting operations in the United States can raise unique issues related to Defense Support to Civil Authorities (DSCA), Posse Comitatus Act restrictions, and the

Downloaded from http://www.everyspec.com

requirement for Secretary of Defense approval for deployment orders to transfer assigned forces from one combatant command to another (e.g., USJFCOM to USNORTHCOM). For instance, cooperative efforts with local law enforcement, such as ride-along programs, may raise Posse Comitatus issues, and must be brought to the attention of the Command's SJA. In addition, Realistic Urban Training (RUT) in civilian urban settings must comply with the DoD Policy for Realistic Training Off Federal Facilities contained in Secretary of Defense Memorandum of 26 April 2000, posted on the Staff Judge Advocate to the Commandant of the Marine Corps, International and Operational Law Branch (hereinafter, SJA to CMC (JAO)) website (http://sja.hqmc.usmc.mil/). Refer also to DoD Directive 3025.1, Military Support to Civil Authorities, DoD Directive 3025.12, Military Assistance for Civil Disturbances, DoD Directive 3025.15, Military Assistance to Civil Authorities, DoD Directive 5525.5, Military Cooperation with Civilian Law Enforcement Officials, and SECNAVINST 5820.7B, Cooperation with Civilian Law Enforcement Officials.

Fiscal Law in a Deployed Environment.

a. The fundamental principle of fiscal law for commanders to remember is that appropriated funds (e.g., operation and maintenance (O&M), construction, procurement) must be used only for the purpose, time, and amount that was specified by Congress when it made the appropriation. Violations of purpose, time, or amount may constitute an Anti-Deficiency Act (ADA) (31 U.S.C. 1341), violation that is subject to disciplinary action, and can trigger required reporting to Congress (as detailed in DoD Financial Management Regulation, 7000.14-R, Vol. 14, Chs. 3, 4, and 5).

b. During a deployment, a common fiscal law issue is the authorized use of O&M (appropriations for day-to-day expenses). Units must use O&M, within its designated fiscal year, for all "necessary and incident" operational expenses, subject to statutory limitations. However, O&M cannot be used for every activity just because the activity supports the military mission. For example, during military operations, units may desire to procure additional weapons and ammunition, including non-lethal weapons, to assist in mission accomplishment. Weapons, weapon systems, and ammunition, however, are generally funded and procured with Procurement Marine Corps (PMC) funds, and cannot be purchased with O&M funds. Other issues, such as safety, legal, and arms control treaty reviews also must be addressed whenever weapons, weapon systems, and ammunition are going to be purchased. (See discussion under WEAPONS section, infra). Another area where O&M funds are sometimes used inappropriately is foreign assistance activities. "Security

Downloaded from http://www.everyspec.com

assistance" (providing supplies, training, and equipment to friendly foreign militaries) and "development assistance" (providing education, nutrition, agriculture, health care, or other programs to resolve political unrest or poverty) are Department of State missions under Title 22, and generally must be funded with Title 22 money. The Department of Defense may assist such missions with Title 10 funds subject to statutory authority and appropriation or reimbursement (e.g., humanitarian and civic assistance (HCA) funded by unit O&M must be de minimis – few dollars, few hours, few Marines). It is recommended commanders seek legal advice before using O&M funds for these types of missions.

International Agreements. Prior to deployment to a foreign country, U.S. forces should be aware of and understand the meaning of any applicable international agreements, particularly those governing their status and jurisdiction while in the host nation. The cognizant SJA can advise the commander on this issue. Negotiation and conclusion of international agreements is completed above the operational command level with State Department coordination.

a. Status of Forces Agreement. A Status of Forces Agreement (SOFA) is an international agreement between the United States and host nation, which governs issues such as criminal and civil jurisdiction, claims, taxes, entry and exit, licenses, registration, customs, etc. Jurisdiction can vary – in many instances, U.S. forces can be subject to host nation criminal law – which is why a SOFA should be understood before deployment. If U.S. forces are subject to local jurisdiction, the commander should appoint a Foreign Claims Commission that can promptly settle meritorious claims, e.g., property damage or personal injury under the Foreign Claims Act, if appropriate. In many countries, claims settlement and the victim's desire will be considered by local authorities when deciding whether to pursue legal action against a service member.

b. International Criminal Court – Article 98 Agreements. SOFA's do not provide protection from prosecution in the International Criminal Court (ICC). The ICC purports to exercise jurisdiction over U.S. persons who commit ICC offenses in an ICC party state, or in a non-party State that consents to ICC jurisdiction. Moreover, ICC parties are obligated to abide by an ICC request to surrender anyone suspected of an ICC crime. Thus, service members suspected of a war crime who deploy to an ICC state are at risk of surrender to the ICC. To help overcome this problem, the United States is aggressively pursuing Article 98 Agreements, in which the host nation agrees not to turn over a service member to the ICC without USG consent.

Downloaded from http://www.everyspec.com

Law of War

a. Law of War Training. The Marine Corps Law of War Program (MCO 3300.4) establishes training requirements mandated by the Law of War and DoD policy. As a matter of DoD policy, U.S. Armed Forces are to comply with the Law of War during all armed conflicts, however such conflicts are characterized, and to comply with the principles and spirit of the Law of War during all other operations. [Note: This requirement will be changed once the re-write of 5100.77 is promulgated. The new standard will be U.S. Armed Forces will comply with the LOW during all military operations.] Commanders should ensure that deploying units receive Law of War training prior to deployment, that key personnel receive specialized training, and that judge advocates receive detailed training in accordance with the Program. Refer to DoD Directive 5100.77, DoD Law of War Program, MCO 3300.4, and MARADMIN 182/04.

b. Law of War Violation Reporting and Investigation. The Law of War and DoD policy have a low threshold for mandatory reporting and investigation of alleged Law of War violations. Under DoD Directive 5100.77, DOD Law of War Program, a Reportable Incident is "A possible, suspected, or alleged violation of the law of war." [Note: This standard is to change with the re-write of 5100.77, to require the possible, suspected, or alleged violation be supported by credible evidence.] Any such incidents should be reported and investigated, incorporating guidance provided by the operational chain of command. In particular, detainee deaths and serious injuries must be investigated, no matter how they occurred. Refer to the Geneva Conventions, DoD Directive 5100.77, DoD Law of War Program, MCO 3300.4, Marine Corps Law of War Program, FM 27-10, The Law of Land Warfare, and MCO 3461.1, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees.

c. Detainee Operations. U.S. Armed Forces are to comply with the laws and policies of the United States, the Law of War, including the Geneva Conventions of 1949, and all applicable directives or other issuances during all detainee operations, including interrogations. Detainees are any person captured, detained, held, or otherwise under the control of DoD personnel (military, civilian, or contractor employee). It does not include persons being held primarily for law enforcement purposes, except where the United States is the occupying power. All detainees shall be treated humanely without violence, cruelty, or torture, and in accordance with applicable law and policy. Humiliating and degrading treatment is prohibited. All persons taken into the control of DoD personnel will be provided with the protections of the Geneva Convention Relative to the Treatment of Prisoners of War of 1949, until competent authority determines

Downloaded from http://www.everyspec.com

some other legal status. Refer to the Geneva Conventions; FM 27-10, The Law of Land Warfare; DoD Dir 2310.1E, The Department of Defense Detainee Program; [Note: Still pending.] DoD Dir 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning; and MCO 3461.1, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees.

d. War Trophies. War trophies generally can be divided into two broad categories, based on who is requesting to return them: 1) unit items (which include unit war trophies, unit historical artifacts or items, and unit training items) and, 2)

Individual war souvenirs. Approved unit items become the property of the U.S. government. Approved individual war souvenirs become the property of the individual. Generally, the importation of unit items requires SECDEF and Service Secretary approval pursuant to DoD Dir 4500.9R, Defense Transportation Regulations, Chapter 503. With respect to Operation Enduring Freedom (OEF) (Afghanistan), and Operation Iraqi Freedom, SECDEF delegated authority to approve importation of war trophies to CDRUSCENTCOM (SECDEF MSG dtg 210145Z FEB 04). The current USCENTCOM policy prohibits the importation of any unit item captured in the Iraqi Theater of Operations after 28 June 2004 (CDRUSCENTCOM MSG dtg 291917Z SEP 05). Requests to import unit items captured before 28 June 2004, must comply with the requirements set forth in this message. This same message contains guidance for requests to import unit items captured during OEF operations. This message does not apply to individual war souvenirs. The guidance regarding individual war souvenirs is contained in USCENTCOM CFC FRAGO 09-528, dtg 181630Z MAR 04. Individuals who want to retain any item, including enemy material, as an individual war souvenir are required to turn over that item to a receiving official, regardless of whether it is captured, found, abandoned, or otherwise acquired. A reviewing officer will review all requests to retain the item as an individual war souvenir.

e. Child Soldiers. MARADMIN 030/03, 17 Year Old Marines in Combat, sets forth Marine Corps policy that implements international law obligations under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldier Protocol). The United States is required to take all feasible measures to ensure that members of the U.S. Armed Forces under the age of 18 do not take a direct part in hostilities. The commander's responsibility is to weigh the mission requirements against the practicability of diverting 17-year-old Marines from combat. Factors to consider may include, but are not limited to: the tactical situation; manpower needs of the unit; danger to the service member;

Downloaded from http://www.everyspec.com

impact on unit cohesion if the service member were to be removed from the unit; the reasonable ability of the unit to exclude the 17 year old Marine from taking direct part in hostilities; and any other relevant criterion. Taking all feasible measures to ensure Marines under 18 years of age do not take a direct part in hostilities should not unduly interfere with the commander's primary responsibility of mission accomplishment. Nothing in the MARADMIN or the Child Soldier Protocol shall be construed to limit the commander's inherent authority and obligation to use all necessary means available, and to take all appropriate actions in self-defense of the commander's unit and other U.S. forces in the vicinity. Regarding enemy child soldiers, age does NOT render them unlawful targets – they can be engaged in accordance with the rules of engagement and law of war.

Operational Chain of Command. Upon deployment, commanders must be cognizant of the operational chain of command. With few exceptions, deployed Marine units fall under the operational command of the Marine component of the combatant command in whose theater they are deployed. For example, Marine units in the U.S. Central Command (USCENTCOM) Area of Responsibility fall under Marine Forces Central Command (MARCENT). Most combatant commands have their own regulations, policies, and guidance on numerous issues, such as release authority on Freedom of Information Act (FOIA) requests, Law of War violation reporting and investigations, and media inquiries. In addition, requests for Supplemental Rules of Engagement must be routed through the operational chain of command to the appropriate approval authority. Guidance on a variety of issues is available in the combatant command's operation orders and websites. Combatant commands, their Marine components, Staff Judge Advocates, and websites are listed in Table IV-1, below.

Combatant Command	Marine Component	Cognizant SJA	Combatant Command Website Unclassified / Classified
Regional Commands			
CENTCOM	MARCENT	MARCENT SJA	**www.centcom.mil** / **www.centcom.smil.mil**
EUCOM	MARFOREUR	MARFOREUR SJA	**www.eucom.mil** / **www.eucom.smil.mil**
NORTHCOM	MARFORNORTH	MARFORRES SJA (dual-hatted)	**www.northcom.mil** / www.northcom.smil.mil
PACOM	MARFORPAC	MARFORPAC SJA	**www.pacom.mil** / www.pacom.smil.mil
SOUTHCOM	MARFORSOUTH	MARFORSOUTH SJA	**www.southcom.mil** / **www.southcom.smil.mil**
Functional Commands			
JFCOM	MARFORCOM	MARFORCOM SJA	**www.jfcom.mil** / www.jfcom.smil.mil
SOCOM	MARSOC	MARSOC SJA	**www.socom.mil** / www.socom.smil.mil
STRATCOM	MARFORSTRAT	MCCDC SJA	**www.stratcom.mil** /

Downloaded from http://www.everyspec.com

			www.stratcom.smil.mil
TRANSCOM	Not applicable		**www.transcom.mil** / www.transcom.smil.mil

Table IV-1

a. Friendly Fire Investigations. Under DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping, the combatant commander convenes a legal investigation on friendly fire incidents. Service or other commanders may still convene a safety investigation into friendly fire incidents, in consultation with the combatant commander. However, the combatant commander is the release authority for information in the legal investigation for media queries, Freedom of Information Act requests, and next of kin notifications. Line of Duty Determinations should not be delayed because of the combatant commander's friendly fire investigation.

Rules of Engagement and Rules for the Use of Force.

a. Rules of Engagement. Prior to deployment, commanders should ensure that their units are trained in the Rules of Engagement (ROE), including the Standing ROE, which authorize self-defense against a hostile act or hostile intent, and potential Supplemental ROE for likely missions. During operations, the commander must quickly determine whether Supplemental ROE are needed to accomplish the mission. Supplemental ROE requests must be routed through the operational chain of command, which can be a time consuming process, especially if Secretary of Defense or Presidential approval is needed. Usually the judge advocate, in coordination with the operations and intelligence officers, serves as the primary action officer for developing Supplemental ROE requests and for briefing the commander, staff, and Marines on ROE. Refer to Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces. In its entirety, the document is classified SECRET and available at the SJA to CMC (JAO) classified homepage: **www.hqmc.usmc.smil.mil/JA/JAO/JA_ROE_RUF.htm** (linked from HQMC's homepage: http://www.hqmc.usmc.cmil.mil/HQMC_Home.htm).

b. Rules for the Use of Force. Rules for the Use of Force (RUF) apply in most domestic operations and in some security and law enforcement functions outside the United States. They ordinarily authorize the use of force, up to and including deadly force, in several situations beyond self-defense. Commanders should ensure their units are trained in accordance with CJCSI 3121.01B, which governs the use of deadly force. Moreover, commanders must ensure their units are trained in accordance with DoD Dir 5210.56, SECNAVINST 5500.29C, and MCO 5500.6F, which govern the carrying of firearms by DoD/DON

Downloaded from http://www.everyspec.com

personnel performing law enforcement, security duties, or personal protection.

Women in Combat. The National Defense Authorization Act for Fiscal Year 1994 repealed the "combat exclusion law" and authorized the Secretary of Defense to change policy to assign women to any combat unit, vessel or platform. The Secretary established DoD policy, the Direct Ground Combat Rule, on 13 January 1994, by memorandum. The Rule is that "Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground...Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel." Navy and Marine Corps policy is set forth in SECNAVINST 1300.12C, Assignment of Women in the Department of the Navy, and MCO P1300.8R, Chapter 5, Women Marines Classification, Assignment, and Deployment Policy.

Weapons.

Legal Review. Weapons, weapon systems, and ammunition must undergo a legal review before they can be used in operations pursuant to DoD Directive 5000.1, The Defense Acquisition System, and SECNAVINST 5000.2C. Weapons, weapon systems, and ammunition generally may only be procured through Marine Corps Systems Command (MCSC). Program Managers are aware of the requirement for a legal review, as well as the requirement for an arms control treaty compliance review, required by DoD Directive 2060.1, Implementation of, and Compliance With, Arms Control Agreements, and SECNAVINST 5710.23C Implementation of, and Compliance With, Arms Control Agreements. The Judge Advocate General of the Navy (Code 10) is responsible to conduct the legal reviews on behalf of the Navy and the Marine Corps. The legal review determines whether the intended use of a weapon, weapon system, and/or ammunition is consistent with the international legal obligations of the United States, including the law of war, customary international law, domestic law, and U.S. policy. MCSC Program Managers submit requests for legal reviews to Code 10 via SJA to CMC (JAO).

Treaty Compliance Review. Treaty Compliance reviews are conducted by the Naval Treaty Implementation Program (NTIP), Strategic Systems Programs, for both the Navy and Marine Corps. The review determines whether the DON activity reasonably raises an issue under an arms control treaty to which the United States is a party. If it does, NTIP will raise the issue to an OSD Compliance Review Group for a formal determination.

Downloaded from http://www.everyspec.com

Procurement Issues. Another issue that has arisen in the context of requests for legal reviews is the improper procurement of weapons, weapon systems, and/or ammunition. During OIF, certain forward deployed units sought to procure weapons, weapon systems, and/or ammunition using Operational and Maintenance (O&M) funds. Commanders should be advised that the rules for procuring such items do not change simply because a unit is engaged in combat operations. Certainly, more expedited procedures may assist in processing such procurements, but the bottom line is that MCCDC must still validate the requirement for the item, and if it does, pass it off to a program manager at MCSC. The program manager will then determine whether the item is a Centrally Managed Item. If it is, then it must be procured with Procurement Marine Corps (PMC) funds, not O&M. Purchasing such an item with O&M funds could result in an Anti-Deficiency Act (31 U.S.C. 1341) violation. Generally, all weapons, weapon systems, and ammunition are Centrally Managed Items, and must be purchased with PMC funds.

d. Landmine Policy and Law. On 27 February 2004, the USG issued a new landmine policy. As of 27 February 2004, U.S. landmine policy is to eliminate all dumb/persistent landmines from the U.S. arsenal. This includes both anti-personnel landmines (APM), as well as anti-vehicle landmines (AVM). Dumb/persistent landmines are those that do not self-destruct or self-deactivate. The policy allows for the continued development and employment of “smart” (self-destructing/self-deactivating) APM and AVM. Until 2010, dumb/persistent APM will be stockpiled for use only in the Republic of Korea, and dumb/persistent AVM may be used outside of Korea only when authorized by the President. After 2010, the United States will not employ any dumb/persistent landmines. The policy also called for the elimination from our arsenal of all non-detectable landmines. This has been accomplished. Moreover, the policy stated that within 2 years of its promulgation, the United States would begin the destruction of dumb/persistent landmines in Korea. The policy will not impact the M692/731 Area Denial Anti-personnel Mine (ADAM, smart APL); M718/741 Remote Anti-armor Munition (RAAM, smart anti-vehicle); and CBU-78 “Gator” (air delivered, smart mixed). The policy will impact the M15/19/21 anti-vehicle mines and M16/18 anti-personnel landmines (neither self-destructing nor self-deactivating). The M18 claymore is still authorized when employed in a manner consistent with a self-destructing, self-deactivating (smart) mine (i.e., command detonated or trip wire not exceeding 72 hours while monitored and in proximity of emplacing unit).ADMINISTATIVE SEPARATIONS

Downloaded from http://www.everyspec.com

SECTION XIV

APPENDIX

A. NONJUDCIAL PUNISHMENT CHART

B. SEARCH & SEIZURE CHECKLIST

C. COURTS-MARTIAL PUNISHMENT CHART

D. EO INCIDENT REPORTING

E. SEXUAL HARASSMENT INVESTIGATION CHART

F. FRATERNIZATION INVESTIGATION CHART

G. ARTICLE 138 CHECKLIST

H. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE

I. USE OF POSITIVE URINALYSIS

J. ADMINISTRATIVE SEPARATIONS

K. OVERVIEW OF MILITARY JUSTICE SYSTEM

Downloaded from http://www.everyspec.com

ARTICLE 15 PUNISHMENT LIMITATIONS
Navy and Marine Corps

Imposed By	Imposed On	Bread & Water or DIMRATS (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4 & 5)	Reduction (4 & 6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (8)	Officers	No	No	No	No	No	No	15 Days (9)	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	3 Days	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 combined with other restraint punishment or extra duties

(2) May not be combined with restriction or extra duties

(3) May not be combined with restriction

(4) May be imposed in addition to or in lieu of all other punishments

(5) Shall be expressed in whole dollar amounts only

(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)

(7) Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum possible for extra duties

(8) OICs regardless of rank have NJP authority over enlisted personnel only. OIC's and Marine CC may only reduce personnel within their promotion authority.

(9) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)

Downloaded from http://www.everyspec.com

CO SEARCH & SEIZURE CHECKLIST

I. **FINDING THE EXISTENCE OF PROBABLE CAUSE TO ORDER A SEARCH:** When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you.

A. Find out the name and duty station of the applicant requesting the search authorization.

B. Administer an oath to the person requesting 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 yourself***:

1. Is the person or area one over which I have jurisdiction?

2. Is the person or place described with particularity?

D. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?

E. Who is the source of this information?

1. If the source is a person other than the applicant who is before you, that is, an informant, *see* the attached addendum on this subject.

2. If the source is the person you are questioning, proceed to question F immediately. If the source is an informant, proceed to question F after completing the procedure on the addendum.

F. What training have you had in investigating offenses of this type or in identifying this type of contraband?

G. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?

H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(***Applicant's name***), I find that probable cause exists for the issuance of an authorization to search (***location or person***) for the following items: (***Description of items sought***) and I authorize (***Applicant's name***) to search (***location or person***) for those items and to seize them if found."

Downloaded from http://www.everyspec.com

II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM

A. ***First inquiry***. What forms the basis of his or her knowledge? You must find what ***facts*** (not conclusions) were given by the informant to indicate that the items sought will be in the place described.

B. Then you must find that ***either*** the informant is reliable or his information is reliable.

1. Questions to determine the informant's reliability:

   (a) How long has the applicant known the informant?

   (b) Has this informant provided information in the past?

   (c) Has the provided information always proven correct in the past? Almost always? Never?

   (d) Has the informant ever provided any false or misleading information?

   (e) (If drug case) Has the informant ever identified drugs in the presence of the applicant?

   (f) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?

   (g) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of interior of locker room.)?

2. Questions to determine that the information provided is reliable:

   (a) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?

   (b) Do you possess information (e.g., personal knowledge) which indicates what the informant says is true?

III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK

Requirement of specificity: No valid search authorization will exist unless the place to be searched and the items sought are <u>particularly</u> described.

A. Description of the place or the person to be searched.

1. ***Persons***. Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.

2. ***Places***. Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

Downloaded from http://www.everyspec.com

B. ***What can be seized***. Types of property and sample descriptions. The ***basic rule***: Go from the general to the specific description.

1. ***Contraband*:** Something which is illegal to possess.

   Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

2. ***Unlawful weapons***: Weapons made illegal by some law or regulation.

   Example: “Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades, and all component parts thereof.”

3. ***Fruits of crimes***

   Example: "Household property, including, but not limited to, one G.E. clock, light blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

4. ***Tools or instrumentalities of crime***. Property used to commit crimes.

   Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

5. ***Evidence which may aid in a particular crime solution***:

   Example: "Papers, documents, and effects which show dominion and control of said area, including, but not limited to, canceled mail, stencilled clothing, wallets, receipts."

Downloaded from http://www.everyspec.com

MAXIMUM PUNISHMENT CHART

PUNISHMENT	SCM		SPCM		GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's
1. Death	NO	NO	NO	NO	YES (*1)	YES (*1)	YES (*1)
2. Dismissal	NO	NO	NO	NO	NO	NO	YES
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	NO
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO
5. Confinement	30 days	NO	12 mos.	NO	YES	YES	YES
6. Restriction	60 days	60 days	60 days	60 days	60 days	60 days	60 days
7. Hard Labor Without Confinement	45 days	NO	90 days	NO	3 mos.	NO	NO
8. Forfeiture of All Pay and Allowances	NO	NO	NO	NO	YES	YES	YES
9. Forfeiture of two-thirds pay per month	1 mo. (*2)	1 mo. (*2)	12 mos.	12 mos.	YES	YES	YES
10. Fine	YES (*3/*4)	YES (*3/*4)	YES (*3)	YES (*3)	YES	YES	YES
11. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO
12. Reduction to lowest paygrade	YES	NO	YES	NO	YES	NO	NO
13 Reprimand	YES	YES	YES	YES	YES	YES	YES

ALL PUNISHMENTS ARE LIMITED BY THE MAXIMUM ALLOWABLE FOR THE UCMJ ARTICLES VIOLATED AS WELL AS THE TYPE OF COURT-MARTIAL THE CASE IS REFERRED TO.

(*1) Where authorized or mandatory
(*2) May extend payment up to two months -- MJM 10-F-2.e
(*3) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case
(*4) AT SCM, a fine may not be combined with forfeitures

Appendix C

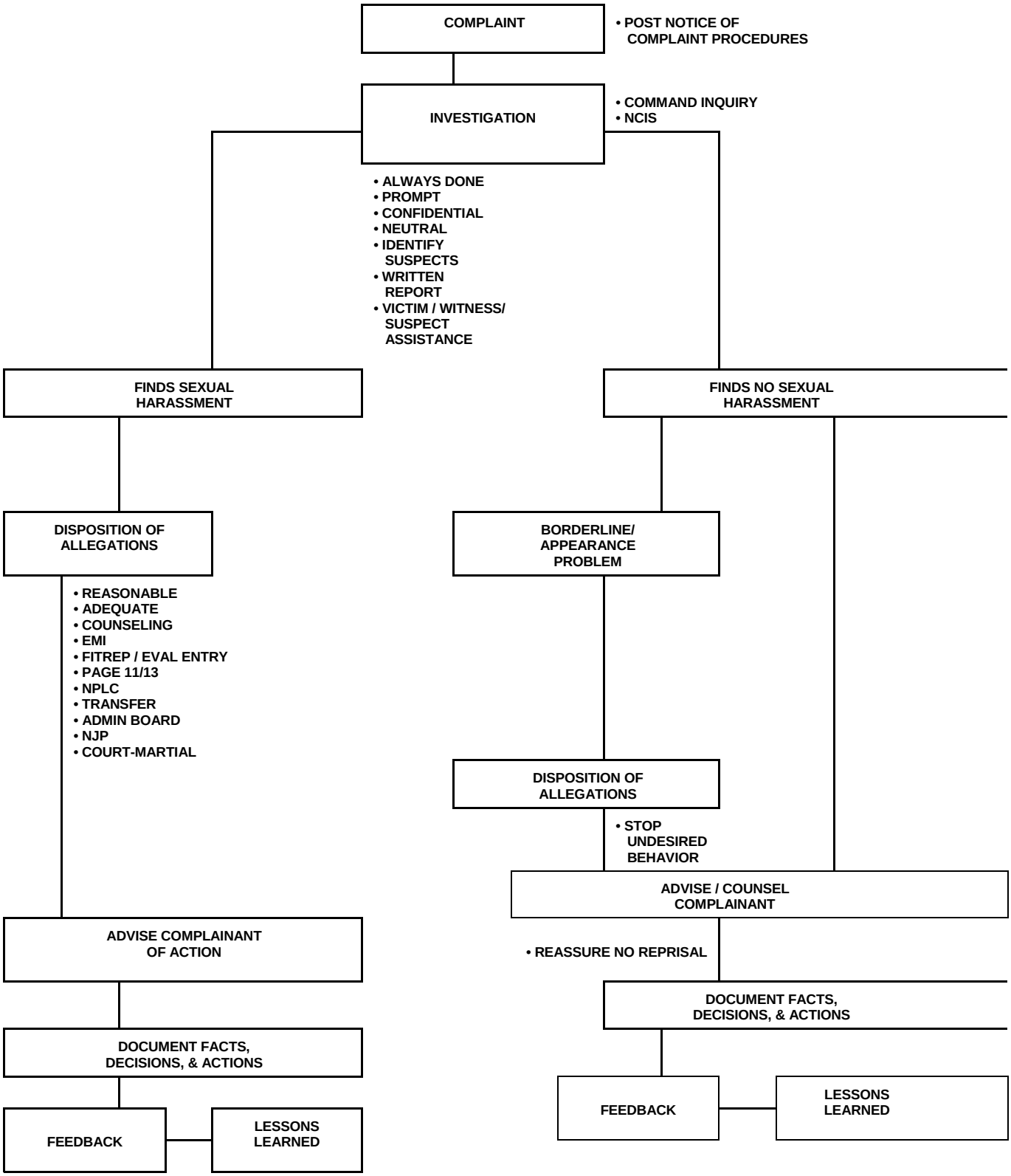
EO INCIDENT REPORTING (MINOR/SERIOUS) FROM OPNAVINST 5354.1 (series)

CRITERIA/ CLASSIFICATION	NUMBER OF PARTICIPANTS	DURATION	PROPERTY DAMAGE	PERSONAL INJURY	RELATIONSHIP TO OTHER INCIDENTS	THREAT TO AUTHORITY OR MISSION
MINOR	2-5	SHORT, LESS THAN 30 MINUTES	LITTLE OR NONE		AN ISOLATED EVENT	NO THREAT TO AUTHORITY OR MISSION
SERIOUS	6 OR MORE	MORE THAN 30 MINUTES	EXTENSIVE OR SERIOUS PROPERTY DAMAGE (i.e. ARSON)	PERSONAL INJURIES REQUIRING MEDICAL ATTENTION OR DEATH	(1) RELATED TO OTHER MINOR INCIDENTS OR (2) PRESS INTEREST ANTICIPATED OR HAS OCCURRED	(1) PRESENTATION OF DEMANDS AND / OR DEFIANCE OF AUTHORITY *OR* (2) DISOBEDIENCE OF LAWFUL ORDERS MISSION IS / MAY BE THREATENED

Appendix D

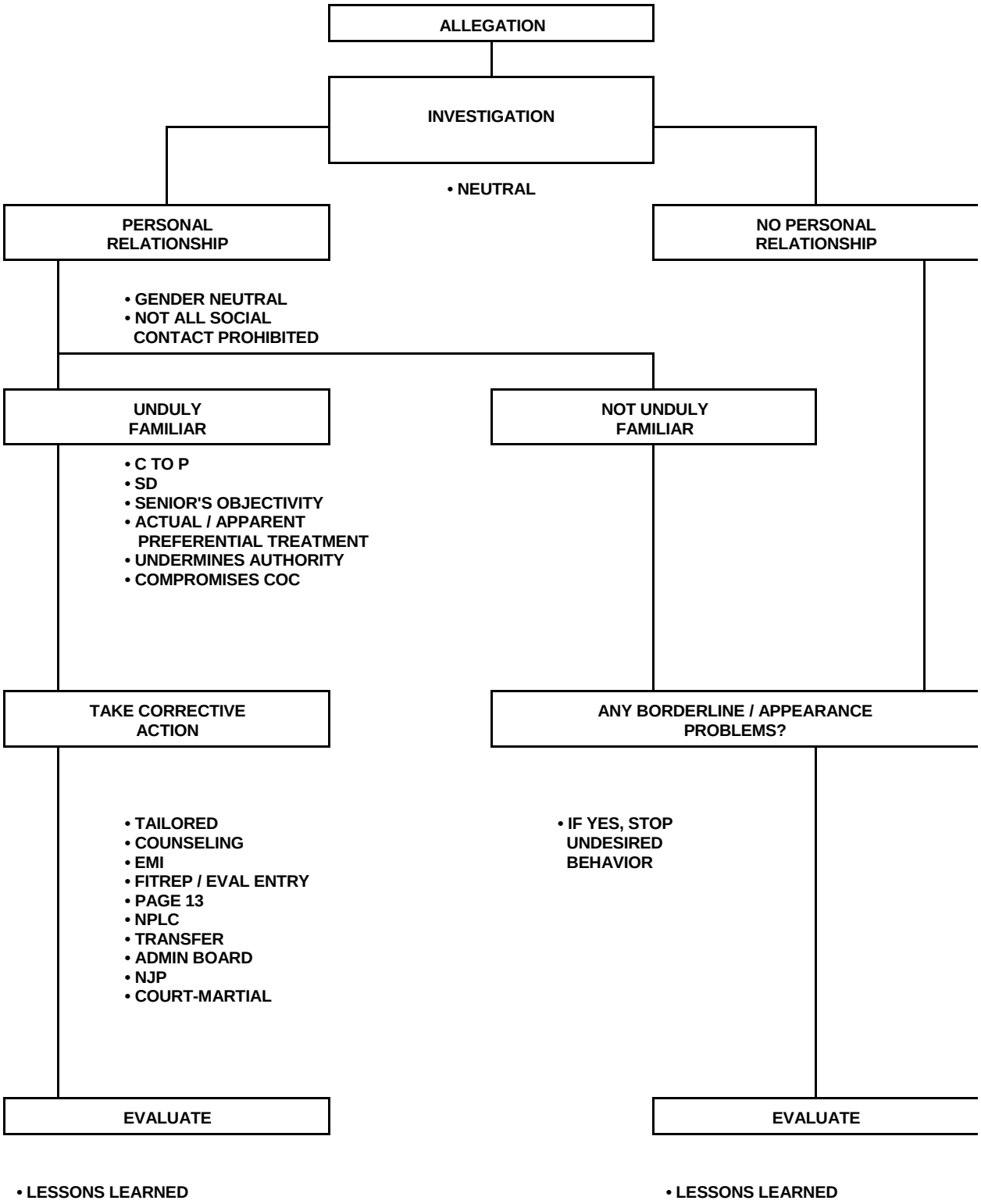
Downloaded from http://www.everyspec.com

STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



Downloaded from http://www.everyspec.com

HANDLING FRATERNIZATION ALLEGATIONS



Downloaded from http://www.everyspec.com

CHECKLIST FOR GCM REVIEW OF ARTICLE 138 COMPLAINTS

YES	NO	
___	___	Is this command the proper GCMCA? §§ 0303e and 0305c.
___	___	Has an advance copy of the complaint, without enclosures, been sent to the SECNAV, via JAG, upon receipt? § 0306d.
___	___	Is Complainant a proper complainant? § 0305a.
___	___	Is Respondent a proper respondent? § 0305b.
___	___	Does the complaint allege a wrong which is the proper subject of a complaint of wrongs?
___	___	Was the wrong initiated, taken or ratified by the Respondent, and otherwise meet the definition of a wrong? §§ 0303f and 0304a (1) – (2). (If he or she did not, the complaint is not cognizable.)
___	___	Was the Respondent's action final? § 0304a (3). (Non-final actions, including most recommendations by respondent are not cognizable unless the recommendation itself, such as a recommendation for advancement, is controlling.)
___	___	Does the Complaint challenge general policies of the Department of Defense or the Department of the Navy or provisions of instruction or other documents promulgating such policies? § 0304a (4). (If it does, the complaint is not cognizable.)
___	___	Does the complaint challenge decisions or procedures of the GCMCA involving an article 138 complaint, except for failure to forward the complaint? § 0304a (5). (If it does, the complaint is not cognizable.)
___	___	Does the complaint challenge findings or final actions of boards covered under 10 U.S.C. § 1181 (Board to Consider Separation of Regular Officers for Substandard Performance), 1182 (Board of Inquiry), and 1183 (Board of Review)? § 0304a (6) (a). (If it does, the complaint is not cognizable.)
___	___	Does the complaint make a collateral attack on NJP, court-martial, or administrative discharge procedures? § 0304a (6) (b). (If it does, the complaint is not cognizable.) NOTE: A complaint concerning vacation proceedings involving suspended nonjudicial punishment is cognizable.
___	___	Does the complaint seek disciplinary action against another? § 0304b (1). (If it does, the complaint is not cognizable.)
___	___	Does the complaint seek to change records which have become final? § 0304b (2). (If it does, the complaint is not cognizable.) NOTE: Records are final 90 days after member knows of the record's submission for entry into the appropriate record or one year after submission for entry into the appropriate record, whichever is earlier.
___	___	Is the complaint timely? § 0306a.

Downloaded from http://www.everyspec.com

YES	NO	
___	___	Did Complainant request redress from Respondent before filing the complaint? § 0306b.
___	___	Is the complaint in the form specified at Appendix A-3-a of JAGMAN Chapter III? § 0306c.
___	___	Has the complaint been properly forwarded? § 0306d.
___	___	Is the complaint complete and does it contain all enclosures and endorsements? § 0306e.
___	___	Does the complaint improperly join more than one complaint or respondent? § 0306g.
___	___	Has Complainant received a copy of all endorsements and enclosures? § 0306e.
___	___	Has complainant been given an opportunity to rebut adverse matter included in the endorsements and enclosures or developed by GCMCA inquiry? § 0307e.
___	___	Did GCMCA personally sign report to Secretary describing action taken? § 0307g. (By direction signatures are not permitted).
___	___	Did GCMCA advise Complainant of determination (s) indicating the merit of each allegation and the relief granted, if any? § 0307j.

_____ _____

DATE SIGNATURE OF OFFICIAL REVIEWING THE COMPLAINT

Downloaded from http://www.everyspec.com

EXECUTIVE OFFICER'S INQUIRY (XOI)

1. Obtain the report chit, all written statements, and all physical and documentary evidence relating to the alleged offense from the legal officer. (You may want to consult with the legal officer prior to XOI).

2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or extenuating (E), mitigating (M), or aggravating (A) circumstances concerning the alleged offense.

3. Inform the accused that the CO is contemplating the imposition of NJP and that this informal hearing -- the XOI -- is part of the NJP process. The accused may not refuse XOI.

4. Describe the specific offense(s) to the accused, including the article of the UCMJ that was allegedly violated.

5. If applicable, advise the accused of the right to refuse NJP. (Accused can never refuse XOI.)

6. Advise the accused (s)he does not have to make a statement regarding the offense(s) and that any statement made by him / her can be used as evidence against him / her at XOI and NJP.

Note: If it is reasonably foreseeable that the accused's statements during the XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver—in the format of appendix A-1-m of the *JAG Manual*—will have to be obtained from the accused during the hearing, before proceeding further.

7. Ask the accused what happened.

   a. If (s)he admits guilt, the accused should be allowed to articulate any E & M.

      -- Ask the witnesses to testify on matters of E & M or A.

   b. If (s)he denies guilt, the accused should be asked for his/her version of the facts.

      -- Ask the witnesses to testify about the alleged offense.

      -- Inform the accused of any other evidence against him/her concerning the alleged offense (i.e. written statements and/or physical and documentary evidence).

      -- Allow for rebuttal, as appropriate.

Downloaded from http://www.everyspec.com

-- Ask the witnesses to testify on matters of Extenuation, Mitigation and Aggravation.

8. Ask the accused if (s)he would like to make a final statement.

9. If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) You may also impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report chit and return all materials to the legal officer who will take appropriate action.

Downloaded from http://www.everyspec.com

USE OF DRUG URINALYSIS RESULTS

	Usable in disciplinary proceedings	* Usable as basis for separation	* Usable for characterization of service
1. Search or Seizure	YES	YES	YES
- member's consent	YES	YES	YES
- probable cause	YES	YES	YES
2. Inspection			
- random sample	YES	YES	YES
- unit sweep	YES	YES	YES
3. Medical - general diagnostic purposes	YES	YES	YES
4. Fitness for duty			
- command-directed	NO	YES	NO
- competence for duty	NO	YES	NO
- mishap / safety investigation	NO	YES	NO
5. Service-directed			
- treatment facility staff (military)	YES	YES	YES
- alcohol rehab testing	NO	YES	NO
- naval brigs	YES	YES	YES
- entrance testing	NO	YES	**NO
- accession training pipeline	YES	YES	YES

* (USN ONLY): YES, if sample is subject to strict chain of custody and tested at NAVDRUGLAB or DOD approved lab.

** YES for reservists recalled to active duty (except Delayed Entry Program participants)

Downloaded from http://www.everyspec.com

MILPERSMAN 1910-704

Determining Separation Authority (SA)

Responsible Office	BUPERS (Pers-83)	Phone:	DSN	882-4432
			COM	(901) 874-4432
			FAX	882-2624

Separation Authority Use this table with MILPERSMAN 1910-706 to determine Separation Authority. (NOTE: COG refers to Convenience of the Government.)

If the member is being separated by reason of . . .	**THEN the separation authority is . . .**
• Selected Changes in Service Obligation - Inactive Reserves • Selected Changes in Service Obligation -Immediate reenlistment • Selected Changes in Service Obligation - Within 90 days of EAOS • Expiration of Service Obligation	Commanding Officer
• COG – dependency or hardship • COG – pregnancy or childbirth • COG – surviving family member • GOC – Reservist becomes a minister • COG – other designated physical or mental conditions • COG – personality disorder • COG – parenthood (if less than 1 year obligated service and not in critical rating) • COG – review action • COG – early release to further education • Entry level performance and conduct • Unsatisfactory performance • Drug abuse rehabilitation failure • Alcohol abuse rehabilitation failure • Family Advocacy Program Rehabilitation Failure (best interest of the service cases to SECNAV) • Defective Enlistments and Inductions – erroneous • Defective Enlistments and Inductions – minority • Defective Enlistments and Inductions – defective enlistment agreements • Defective Enlistments and Inductions – separation from the delayed entry program	Special Court-Martial Convening Authority (SPCMCA) or higher
• Misconduct – a pattern of misconduct • Misconduct – commission of a serious offense • Misconduct – civilian conviction • Misconduct – drug abuse • Defective Enlistments and Inductions – fraudulent entry into the naval service • Unsatisfactory participation in the ready reserve	GCMCA or higher when the Administrative Board procedure was used and: • Board recommended OTH • Board recommended retention • Member waived a Board • Member requested a conditional waiver SPCMCA or higher when: • The notification procedure was used • The Administrative Board procedures were used and Board recommended separation with Honorable, General or Entry Level Separation.

Downloaded from http://www.everyspec.com

Weight Control Failure	GCMCA or higher (Marine Corps and CG only)
Separation in lieu of trial by court-martial	GCMCA unless request is based solely on an absence without leave of more than 30 days, then SPCMCA is SA. BUPERS (Pers-83) is SA if request is based on homosexual conduct referred to court-martial
• Selected Changes in Service Obligation – General Demobilization or reduction in authorized strength • Selected Changes in Service Obligation – Acceptance of active duty commission or appointment • COG – Conscientious objection • COG – Being an alien • When member has Physical Evaluation Board (PEB) action completed or pending, and at the same time being administratively processed for separation. • Homosexual conduct	Chief of Naval Personnel
• Disability • Best interest of the service (BIOTS)	Secretary of the Navy

NOTE: **Review individual reason processing articles to determine correct BUPERS code where ADSEP should be mailed.**

Downloaded from http://www.everyspec.com

MILPERSMAN 1910-704

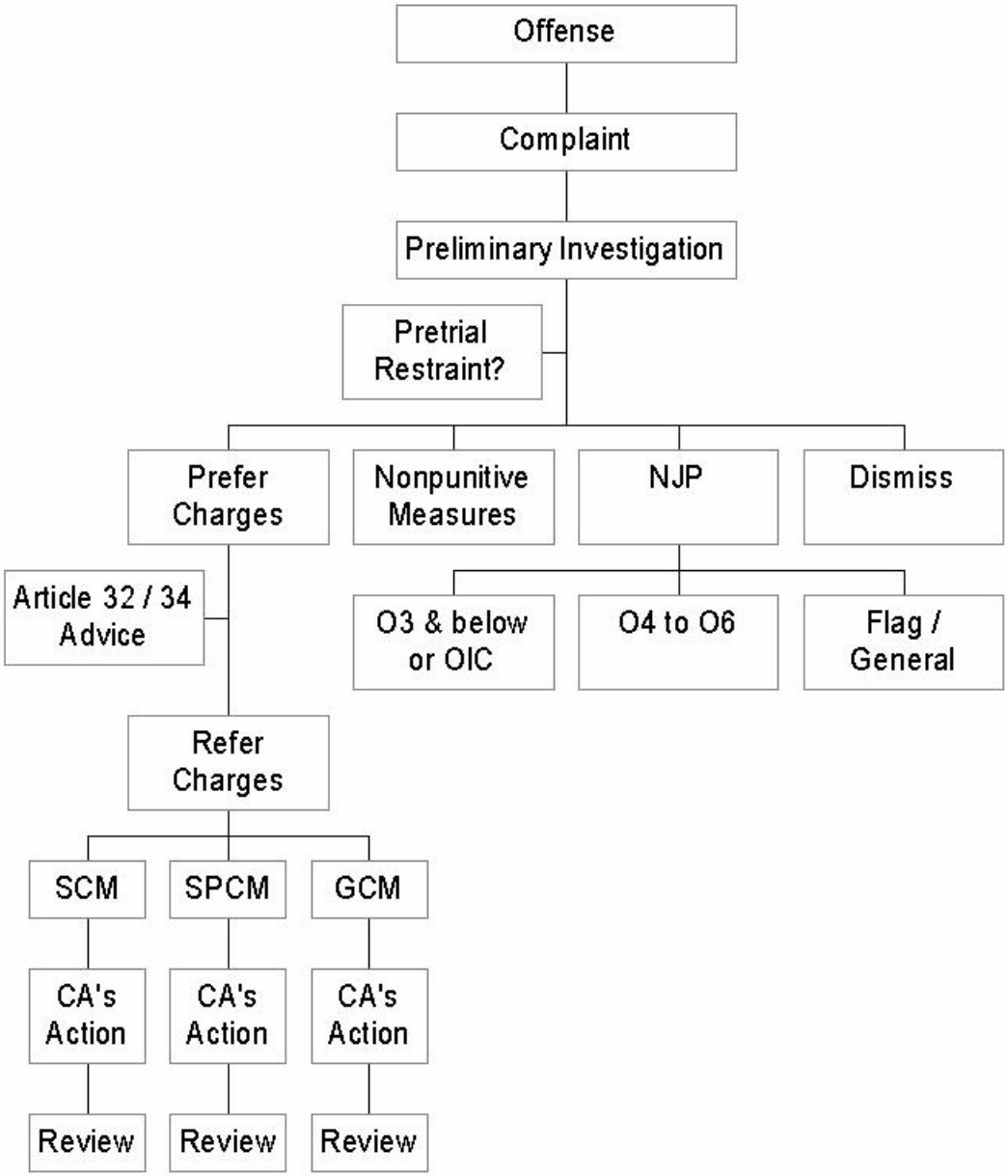
Exceptions in Determining Separation Authority

Responsible Office	BUPERS (Pers-83)	Phone:	DSN	882-4432
			COM	(901) 874-4432
			FAX	882-2624
Reference	Title 10, U.S.C., Section 12686			
Exceptions	The following exceptions apply when determining Separation Authority.			

The Separation Authority is . .	**WHEN . . .**
Secretary of the Navy via (Pers-83 or Pers-254 as appropriate)	Inactive duty (selected) reservists are being involuntarily separated within 2 years of Retired Reserve eligibility
	Active duty reservists are being involuntarily separated within 2 years of retired or retainer pay (10 U.S.C. 12686)
	An Administrative Board (Admin Board) finds that member committed one or more of the reasons for separation and recommends retention, but the SPCMCA or GCMCA recommends separation. Only the Secretary of the Navy can overturn a board that recommends retention.
	Sole basis for separation is a serious offense that resulted in SPCM/GCM conviction with no punitive discharge imposed and an Under Other Than Honorable Discharge is recommended by an Admin Board (or CO when no board was held).
	The convening authority determines that an Honorable Discharge is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty for a member in an entry level status who is being separated by reason of Selected Changes in Service Obligations, Convenience of the Government, Disability, or Best Interest of the Service.
	Member is processed for misconduct – civilian conviction and final action on the appeal has not been taken, and the member does not request separation before final action on the appeal is taken.
Chief of Naval Personnel (via Pers-83 or Pers-254 as appropriate)	Active duty members being involuntarily separated with 18 or more years total active military service.
	Admin Board recommends separation, but the Convening Authority recommends retention. Only CHNAVPERS may retain when a board recommends separation.

Downloaded from http://www.everyspec.com

OVERVIEW OF MILITARY JUSTICE SYSTEM



Downloaded from http://www.everyspec.com

Index

ADMINISTRATIVE SEPARATIONS, 21, 35
Alcohol, 34, B, C
Article 31(b), 42, 112, 113
Article 32 investigation, 120
Boards of Inquiry, 157
Boards of Inquiry (BOI), 99
CAAC, 34, 44, 68, 97, C
CACO, 50, 101
Congress, 15, 20, 25, 26, 44, 88, 122
Congressional inquiries, 33
Court-martial, 32
DAPA, 34, 35, 44, 68, 97
Discrimination, 27, 53
DONCAF, 34
Embassy, 96, 98
Ethics, 2, 3, 7, 10, 13, 18
Ethics Counselor, 13
Evidence, 114, 117, D
FAMILY ADVOCACY, 65
Federal property, 1
Fitness for duty, B
Fraternization, 59, 60, 61, 62
Fundraising, 8
Gambling, 5, 7, 9
Grievances, 27, 53
Hazing, 63
HIV, 40, 147
Homosexual, 41, 148, B
Incident Complaint Report (ICR), 108
JAGMAN investigation, 33, 50, 102, 106, 107
Jurisdiction, 138
Legal assistance, 69
Liberty risk, 97
Military support organizations, 5
Mitigation, C
Navy-Marine Corps Relief Society, 5
OPREP, 29, 56, 64, 66, 96, 111, 131, 133
Pretrial restraint, 137
Prisoners, 125
Private organization, 16, 17
Raffles, 7
Repossession, 91
Request mast, 137
Reservist, 153, B
Restriction, 124, B
Search, 88, 115, B

Downloaded from http://www.everyspec.com

Set aside, 142
Sexual harassment, 56, 150
SITREPS, 29, 56, 66, 131
Special liberty, 5
Supremacist, 148
USO, 5, 16

Downloaded from http://www.everyspec.com

LOCAL DIRECTORY

(Write in name and phone number of personnel in your local area)

Naval Legal Service Office (NLSO) / Trial Service Office (TSO):

- CO / OIC:

- Command Service Officer:

(Assist all commands without permanent Staff Judge Advocates assigned)

- Trial Counsel:

(Represents government (Prosecution) in courts-Martial)

- Defense Counsel:

(Represents members under investigation or facing disciplinary action)

- Legal Assistance Attorney:

(Assists members and dependents with personal legal matters i.e. wills)

Local Staff Judge Advocate:
(Area coordinator & Flag JAGS are ethics advisors)

ISIC JAG or first JAG in chain of command:

Others:

CAAC:
(Assist area commands with Alcohol / Drug incidents)

Equal Opportunity Officers:
(Assist with discrimination complaints / sexual harassment / fraternization)

Family Advocacy Representative (FAR):
(Assist area commands with domestic violence and child abuse incidents)

Naval Criminal Investigative Service:

- Senior Agent In Charge (SAC):
- Special Agent: