



DEPARTMENT OF THE NAVY  
COMMANDER  
NAVAL EDUCATION AND TRAINING COMMAND  
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PENSACOLA, FLORIDA 32508-5220

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19 JAN 2018

NETC INSTRUCTION 5800.2B

From: Commander, Naval Education and Training Command

Subj: NETC DOMAIN FORCE JUDGE ADVOCATE LEGAL AFFAIRS MANUAL

Encl: (1) NETC Domain Force Judge Advocate Legal Affairs Manual

1. Purpose. This instruction sets forth the basic policies, procedures, and regulations for effective and efficient administration of legal affairs within the Naval Education and Training Command (NETC) domain falling within the cognizance of the NETC Force Judge Advocate.

2. Cancellation. NETCINST 5800.2A.

3. Discussion. Enclosure (1) is provided to assist Commanders, Commanding Officers (COs), Officers-in-Charge (OICs), and their support personnel in discharging their duties more effectively and efficiently with respect to legal affairs management within their respective organizations and to ensure compliance with the requirements of higher authority. Enclosure (1) reflects a complete revision and should be read in its entirety.

4. Action. Activity Commanders, COs, and OICs are directed to familiarize themselves with the contents of this manual and to be guided accordingly.

5. Records Management. Records created as a result of this instruction, regardless of media and format, must be managed per SECNAV Manual 5210.1 of January 2012.

6. Review and Effective Date. Per OPNAVINST 5215.17A, NETC will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, DoD, SECNAV, and Navy policy and statutory authority using OPNAV 5215/40. The instruction may be subject to cancellation unless reissued or canceled prior to the 5-year anniversary date.

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7. The following forms are available for download at Naval Forms Online (<https://navalforms.documentservices.dla.mil/>):

- a. NAVPERS 1070/613 (Administrative Remarks)
- b. NAVPERS 1626/7 (Report and Disposition of Offense(s))
- c. NAVPERS 1910/31 (Administrative Separation Processing Notice)
- d. NAVPERS 5354/2 (Navy Equal Opportunity (EO) and Sexual Harassment Report)



K. J. COZAD

Releasability and distribution:

This instruction is cleared for public release and is available electronically via the NETC public web site, <https://www.netc.navy.mil/directives.htm>, or via Total Records Information Management (TRIM).

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**NETC**  
**DOMAIN**  
**FORCE JUDGE ADVOCATE**  
**LEGAL AFFAIRS MANUAL**

Enclosure (1)

NETC Domain Force Judge Advocate Legal Affairs Manual

Purpose:

This manual is intended to provide Naval Education and Training Command (NETC) domain-specific guidance and procedures and to supplement other existing and pertinent federal statutes, Executive Orders, service regulations, departmental policies, and their relevant implementing reference materials and guidance as they pertain to the assigned NETC Force Judge Advocate tasks and functions.

Disclaimer:

This manual, like all reference material, is meant as a guide and is not, by itself, authoritative legal or regulatory information. Federal statutes, Executive Orders, service regulations, and departmental policies always supersede contradictory guidance that may be contained in this manual. Given the volume of information and references encompassed by this manual and nature of this information to change, often with little notice, the authors advises the user that some of the information, although current as of the date of distribution, may become out of date or superseded by more recent law, order, regulation, guidance, or policy.

Role of the Judge Advocate:

Under all circumstances, commanders - whether utilizing this manual or other guidance or not - are urged and encouraged to contact a judge advocate to seek personal guidance in handling legal issues that may arise in execution of command responsibilities. While this manual

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along with other references may serve as a useful tool in processing command legal and related administrative issues, it is not a substitute for the informed advice of a judge advocate.

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**CHAPTER 1**  
**GENERAL PROVISIONS**

Ref: (a) OPNAVINST 3120.32D  
(b) UCMJ  
(c) MCM  
(d) JAGINST 5800.7F  
(e) JAGMAN

**1.1. Personnel and Resources**

**1.1.1. Organizational Policies**

a. Access to Officer in Command. Article 6, Uniform Code of Military Justice (UCMJ), requires that Convening Authorities (CAs), at all times, communicate directly with their Staff Judge Advocates (SJAs) or non-lawyer legal officers in matters relating to the administration of military justice. To avoid reversible error, it is imperative that the SJA or legal officer communicate directly with the officer in command and not through his chief staff officer, executive officer (XO), or other deputy. This provision reflects the longstanding principle that the SJA or legal officer is the personal advisor to the officer in command for all legal matters, especially those dealing with military justice.

b. Designation of Legal Officers. Reference (a) prescribes the standard organization applicable to Navy units and organizations. Chapter 3 of reference (a) provides for a "legal officer", and this position's functions, duties, responsibilities, and authority are prescribed as follows: All Naval Education and Training Command (NETC) units will designate and appoint a commissioned officer as the Command Legal Officer per Article 1, reference (b).

c. Required Training for Non-Lawyer Legal Officers. Non-lawyer command-designated legal officers shall be graduates of the Naval Justice School Legal Officer course. The basic function of a legal officer is an advisor and staff assistant to the Commanding Officer (CO) and the XO concerning the interpretation and application of reference (b), the Manual for Courts-Martial (MCM), and other military laws and regulations in the maintenance of discipline and the administration of justice

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within the command. For units without judge advocates assigned, the legal officer, who shall be a commissioned officer, is an advisor and staff assistant to the CO and XO concerning the interpretation and application of references (b) through (d) and other military laws and regulations.

d. Legal Officer Duties, Responsibilities, and Authority

(1) Draft the orders convening courts-martial and the appointing orders of officers assigned to conduct Manual of the Judge Advocate General (JAGMAN) investigations. When circumstances permit, consult a judge advocate when preparing such documents and others related to the administration of military justice, JAGMAN investigations, and so forth. Consult a judge advocate, when circumstances permit, when preparing documents or other related activities associated with the administration of Military Justice and JAGMAN investigations.

(2) Ensure that officers and enlisted personnel assigned to courts-martial, investigations, and other legal duties are familiar with those duties.

(3) Collaborate with the training officer to ensure that all officers and enlisted personnel are fully acquainted with their rights and obligations under reference (b).

(4) Supervise the technical and clerical preparation of charges. Supervise the technical and clerical preparation of all court-martial documents and administrative documents related to legal matters.

(5) Participate, as required, in processing cases involving non-judicial punishment; and recommend that appropriate cases be referred to trial by courts-martial.

(6) Review court-martial records, and prepare a recommendation per the reference (c) to assist the CA in deciding what action to take on the findings and sentence. Consult a judge advocate when circumstances permit.

(7) Review for accuracy, clarity, consistency, completeness, and compliance with applicable directives, JAGMAN investigative reports, and prepare recommended command endorsement.

(8) Refer personnel needing assistance with personal legal problems to the nearest Armed Forces Legal Assistance Officer, attending Region Legal Service Office (RLSO), Defense Service Office (DSO), or nearest Armed Forces legal office, as appropriate. (See reference (e), Chapter VII.)

(9) Draft orders convening formal pretrial investigations pursuant to Article 32, reference (e); and

(10) Draft the CA's action on the record of trial and the court-martial issuing order, when required, with the assistance of the servicing RLSO.

e. Organizational Relationships. The organizational relationships set forth in reference (a), Section 303.10, shall be followed by all NETC units without a judge advocate assigned. The legal officer reports to the XO. When a judge advocate is assigned, the judge advocate shall lead a legal department. Officers and enlisted personnel assigned to the legal office report to the legal officer. All NETC units will designate and appoint a commissioned officer as the Command Legal Officer per Article 1 of reference (b).

#### 1.1.2. Convening Courts-Martial

a. General. Except for convening general courts-martial, and as specified below, Officer Exercising General Court Martial Jurisdiction (OEGCMJ) functions will be performed as follows:

(1) NETC will act as OEGCMJ for NETC units and organizations with the exception of those units and organizations reporting directly to Naval Service Training Command (NSTC) and those units and organizations expressly directed by NETC.

(2) NSTC will act as OEGCMJ for NSTC units and organizations.

b. Convening General Courts-Martial. Region Commanders will act as area General Court Martial (GCM) CAs for all NETC/NSTC commands and organizations stationed in or deployed within the Region. When a GCM is considered appropriate, COs shall, pursuant to Article 33 of reference (b) and reference (e), Section 0128, and unless circumstances dictate otherwise,

forward the charges, Article 32 proceedings of reference (b), preliminary hearing officer's report, if any, and allied papers recommending trial by GCM to the appropriate Region Commander.

c. NETC activities shall coordinate with the appropriate Region Commander and copy their Immediate Superior in Command and NETC Force Judge Advocate (FJA) or NSTC SJA, as appropriate.

### 1.1.3. Definitions

a. OEGCMJ. OEGCMJ refers to Commander, NETC, NSTC, and applicable Commander, Naval Installations Command Regional Commander.

b. Regional or Area Coordinator. For purposes of legal affairs, the term "regional coordinator" or "area coordinator" refers to the cognizant Navy Region Commander.

c. CA. For purposes of legal affairs, the term "convening authority" includes commissioned officers in command and successors in command, as set forth in reference (e) (Section 0120) and pertinent regulations.

## 1.2. Lawyer Services

1.2.1. SJAs. Lawyer advice and services are available from cognizant RLSO, command-assigned SJAs assigned within the domain, and from the office of either the NETC FJA or NSTC SJA.

1.2.2. Office of the General Counsel (OGC). Within the NETC domain there are OGC command counsel located offices at NETC Headquarters, NSTC, and Center for SeaBees and Facilities Engineering (CSFE)/Civil Engineer Corps Officers School (CECOS). The CSFE/CECOS office's primary focus is preparing and delivering environmental law curricula to Navy and Department of Defense (DoD) activities, but can address other issues subject to availability. The NETC and NSTC offices provide advice and assistance in the full range of OGC practice, to include Civilian Personnel law, Procurement, Fiscal law, Ethics, and related litigation.

1.2.3. RLSO/DSO. Many and varied lawyer services are available from the RLSOs and DSOs.

a. Among the services which RLSOs provide are:

(1) Advice and assistance in conducting prosecutorial review screenings, the drafting of charges and specifications, conducting preliminary investigations, Article 32 proceedings of reference (b), pretrial investigations, preliminary hearings, prosecuting trials by courts-martial, and providing post-trial assistance.

(2) Assistance in the preparation of JAGMAN investigations.

(3) Advice and assistance in administrative separation matters.

(4) Standards of conduct/ethics advice.

b. Among the services which Regional DSOs provide are defense counsel services to individual service members in administrative and disciplinary proceedings.

1.2.4. Legal Assistance Program. The primary source of legal assistance for Navy personnel and their dependents is the nearest RLSO or detachment.

### 1.3. Required Legal Reports/Action Items

The following reports/action items shall be timely and accurately submitted, via the chain of command, to the NETC FJA (N00J): Annual/Monthly/Quarterly Reports. All NETC Echelon III units are directed to submit consolidated reports to NETC (N00J) via the chain of command, in the format provided in the most current directive. Negative reports are required.

#### 1<sup>ST</sup> QUARTER

DATE DUE	ITEM	COLLECT FROM:	REPORT TO:	AUTHORITY (if applicable)
OCT				
1	Quarterly FOIA Report for 1 Jul - 30 Sep	NETC Commands	NETC	DONCIO/DON FOIA DNS-36
1	Annual FOIA Report due	NETC Commands	NETC	SECNAVINST 5720.42F

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1	Semi-annual Privacy Program Report for 1 Apr - 30 Sep	NETC Commands	NETC	Defense Civil Liberties Division (DPCLD), DNS-36
7	Navy General Gift Fund Report for all monetary gifts regardless of value and only personnel property of \$5,000 or more for 1 Jul - 30 Sep	NETC Commands	NETC	10 U.S.C. 2601
15	Quarterly Criminal Activity Report for 1 Jul - 30 Sep	NETC Commands	NETC	JAGINST 5800.9D
22	Gifts of more than \$350 given to foreign individuals	NETC Commands	NETC	Section 515(b) of P.L. 95-105 91 Stat. 866 22 U.S.C. 2694
30	PII Semi-annual Spot checks	NETC Commands	NETC	DONCIO GENADMIN MSG 032009Z OCT 08, DoDD 5400.11, SECNAVINST 5211.5E, DONCIO MSG 291652Z FEB 08
30	Semiannual Gifts of Travel for period covering 1 Apr - 30 Sep due.	NETC Commands	NETC	31 U.S.C. 1353(d) 41 C.F.R. 304-1.9 (GSA regulation)
<b>NOV</b>				

DEC				
15	Gifts to Foreign individuals in excess of \$350 purchased with appropriated funds and any other gifts of more than minimal value (\$350) given by the U.S. Government to foreign individuals that were not obtained using appropriated funds	NETC Commands	NETC	5 U.S.C. 7342, DoDD 1005.13, SECNAVINST 1650.1H
31	Annual Ethics Training	NETC Staff and Commands	NETC	E.O. 12674 201(d), 5 U.S.C. 107(a), 5 C.F.R. 2634.601(a), 2634.903(a) and 2634.905(d)

2<sup>ND</sup> QUARTER

DATE DUE	ITEM	COLLECT FROM:	REPORT TO:	AUTHORITY (if applicable)
JAN				
1	Quarterly FOIA Report for 1 Oct - 31 Dec	NETC Commands	NETC	DONCIO/DON FOIA DNS-36
7	General Gift Fund Report for all monetary gifts regardless of value and only personnel property of \$5,000 or more for 1 Oct - 31 Dec	NETC Commands	NETC	10 U.S.C. 2601

15	Quarterly Criminal Activity Report for 1 Oct - 31 Dec	NETC Commands	NETC	JAGINST 5800.9D
15	Receipt of foreign gifts in excess of \$350 for previous calendar year	NETC Commands	NETC	5 U.S.C. 7342
31	FOIA/Privacy Act (PA) Designation letters (Annually)	NETC Commands	NETC	SECNAVINST 5720.42G
31	Legal Officer Designation Letters (Annually)	NETC Commands	NETC	NETC
<b>FEB</b>				
1	Agency Ethics Program Questionnaire for previous calendar year.	NETC Commands	NETC	5 U.S.C. 492(b)(10) and (e)(1) 5 C.F.R. 2638.602(a)
<b>MAR</b>				
1	Annual FOIA/PA Designation Letters	NETC Commands	NETC	SECNAVINST 5720.42G

**3<sup>RD</sup> QUARTER**

<b>DATE DUE</b>	<b>ITEM</b>	<b>COLLECT FROM:</b>	<b>REPORT TO:</b>	<b>AUTHORITY (if applicable)</b>
<b>APR</b>				
1	Semi-annual Privacy Program Report for 1 Oct - 31 Mar	NETC Commands	NETC	Defense Civil Liberties Division (DPCLD), DNS-36
1	Navy General Gift Fund Report for all monetary gifts regardless of value and only personnel property of \$5,000 or more for 1 Jan - 31 Mar	NETC Commands	NETC	10 U.S.C. 2601



1	Quarterly FOIA report for 1 Jan - 31 Mar	NETC Commands	NETC	DONCIO/DON FOIA, DNS-36
15	Quarterly Criminal Activity Report for period covering 1 Jan - 31 Mar	NETC Commands	NETC	JAGAINST 5800.9D
15	Semi-annual Gifts of Travel for period covering 1 Oct -31 Mar due.	NETC Commands	NETC	31 U.S.C. 1353(d) 41 C.F.R. 304-1.9 (GSA regulation)
<b>MAY</b>				
31	PII Semi-Annual Spot Check	NETC Commands	NETC	DONCIO GENADMIN MSG 032009Z OCT 08, DoDD 5400.11, SECNAVINST 5211.5E, DONCIO MSG 291652Z FEB 08
<b>JUN</b>				
30	Annual VWAP Designation Letters	NETC Commands	NETC	OPNAVINST 5800.7A

**4<sup>TH</sup> QUARTER**

<b>DATE DUE</b>	<b>ITEM</b>	<b>COLLECT FROM:</b>	<b>REPORT TO:</b>	<b>AUTHORITY (if applicable)</b>
<b>JUL</b>				
1	Quarterly FOIA report for 1 Apr - 30 Jun	NETC Commands	NETC	DONCIO/DON FOIA, DNS-36

7	Navy General Gift Fund Report for Gifts received for all monetary gifts regardless of value and only personal property of \$5,000 or more 1 Apr - 30 Jun	NETC Commands	NETC	10 U.S.C. 2601
15	Quarterly Criminal Activity Report for 1 Apr - 30 Jun	NETC Commands	NETC	JAGINST 5800.9D
<b>AUG</b>				
31	PII Training	NETC Commands	NETC	Must be completed in the FY NAVADMIN 213/15
<b>SEP</b>				

#### 1.4. Other Reports

1.4.1. Standards of Conduct Reports. Financial Disclosure Report: The Joint Ethics Regulation requires submission of Confidential Financial Disclosure Report forms (OGE 450) by certain military and civilian DoD employees. The Ethics in Government Act of 1978 requires submission of the Financial Disclosure Report (SF 278) by executive personnel. Further guidance concerning these reports is provided in 5 U.S.C. 504.

1.4.2. Status Reports (SIRs). In all JAGMAN death investigations, MILPERSMAN 1770-060 requires each command in the investigative chain to submit a SIR message every 20 days until the related death investigation has been forwarded to the next endorser. Commanders, COs, and Officers-in-Charge (OICs) will ensure timely submission of these reports. NETC FJA (N00J) or NSTC OGC will be an info addressee on all reports.

1.4.3. Admiralty Claim Reports. Reference (e), Chapter XII, requires submission of an immediate preliminary report of damage involving a possible admiralty claim, as well as a subsequent letter report. COs and OICs will ensure timely submission of

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these reports, prepared per reference (e), Chapter XII  
requirements or other directives (OPREP 3, oil spillage, etc.).

**CHAPTER 2**  
**ADMINISTRATIVE INVESTIGATIONS UNDER**  
**THE MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN)**

Ref: (a) JAGMAN, Chapter II  
(b) MILPERSMAN 1770-010  
(c) JAGINST 5830.1A  
(d) JAGMAN Investigations Handbook  
(e) SECNAV M-5510.36

TYPES OF JAGMAN INVESTIGATIONS:

- Preliminary Inquiry
- Command Investigation
- Litigation-Report Investigation
- Board of Inquiry
- Courts of Inquiry
- Dual-purpose investigations

For Basic Quick Guide: U.S. Navy (USN)/U.S. Marine Corps (USMC) Commander's Quick Reference Legal Handbook 2016 (pages 38, 39)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (e), the following additional guidance is provided:

**2.1. Checklists.** Commands are directed to use applicable command investigation checklists located in the appendices to reference (a) (Overview, Drug Abuse, Pattern of Misconduct, etc.) and to forward the Investigating Officer's completed, signed, and dated checklist(s) along with all forwarding endorsements to either Naval Service Training Command or NETC.

**2.2. Death Investigations**

Ref: (a) JAGMAN, Sections 0209, 0215, 0225-0232  
(b) MILPERSMAN 1770-010 to 260

For Basic Quick Guide: USN/USMC Commander's Quick Reference Legal Handbook 2016 (pages 38, 39)

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NETC-specific guidance. In addition to complying with references (a) and (b), the following additional guidance is provided: None.

### **2.3. Loss or Compromise of Classified Material**

Ref: (a) SECNAVINST M-5510-36 (Chapter 12)  
(b) JAGMAN, Chapters I and II

For Basic Quick Guide: USN/USMC Commander's Quick Reference Legal Handbook 2016 (pages 38, 39)

NETC-specific guidance. In addition to complying with references (a) and (b), the following additional guidance is provided: None.

## CHAPTER 3

### ADMINISTRATIVE CORRECTIVE MEASURES AND NON-JUDICIAL PUNISHMENT

#### 3.1. Non-Punitive Measures to Correct Misconduct or Poor Performance

Ref: (a) R.C.M. 306  
(b) JAGMAN 0102 through 0105  
(c) OPNAVINST 3120.32D  
(d) MILPERSMAN  
(e) BUPERSINST 1610.10D  
(f) SECNAV M-5510.30  
(g) BUPERSINST 1430.16F  
(h) SECNAVINST 1920.6C

For Basic Quick Guide: U.S. Navy(USN)/U.S. Marine Corps (USMC) Commander's Quick Reference Legal Handbook 2016 (pages 28-29)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (h), the following additional guidance is provided: None.

References (b) and (c) provide Navy policy concerning administrative corrective measures.

#### 3.2. Command Administrative Options

- a. Informal resolution at the lowest level
- b. Non-punitive administrative measures, to include:
  - Non-punitive censure (reference (b), 0105)
  - Extra Military Instruction (reference (b), 0103)
  - Denial of Privileges (reference (b), 0103)
  - Letter of Instruction (reference (d), 1611-1620)
  - Use of Evaluations and Fitness Reports
  - Security clearance adjustments or withdrawal
  - Reassignment/early transfer/delay of transfer
  - Detachment for Cause (reference (d), 1611 through 1620)
  - Administrative Separation

### 3.3. Non-Judicial Punishment (NJP)

Ref: (a) UCMJ, Article 15  
(b) MCM, Part V  
(c) JAGMAN, Sections 0106-0108, 012

For quick guide basics: USN/USMC Commander's Quick Reference Legal Handbook 2016 (pages 30-37)

NETC-specific guidance. In addition to complying with references (a) through (c), the following additional guidance is provided:

3.3.1. Prompt Resolution. Prompt resolution of disciplinary action is paramount to good order and discipline. In general, NJP cases should be resolved within seven days from the date of discovery of the last offense or from the accused's return to the command following unauthorized absence. A preliminary inquiry or other investigation should be completed prior to administering NJP to ensure all the facts are discovered; however, it is not required.

3.3.2. Disciplinary Review Board (DRB) and Executive Officer's Inquiry (XOI). Although standard practice calls for either utilizing a DRB or XOI to generate recommendations concerning whether a case should be referred to the Commanding Officer (CO) for the possible imposition of NJP, neither is required but are left to the CO's discretionary authority.

3.3.3. NJP Procedures. A Captain's Mast guide is available in the JAGMAN (A-1-f) and shall be used by the officer imposing NJP.

3.3.4. Maximum Punishments. Reference (a), found in Appendix 2, page A2-4, of the MCM, establishes the maximum punishments that can be awarded at NJP. These punishments are further limited by the JAGMAN. Maximum punishments are limited by the rank of the service member imposing the punishment and the rank of the service member receiving the punishment. COs imposing NJP punishment may NOT exceed the limitations imposed by reference (a) nor impose punishments not specifically enumerated in the MCM or JAGMAN. COs shall refrain from taking administrative action at an NJP proceeding, such as disqualifying someone from wearing their warfare qualification

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pin. COs shall refrain from ordering the removal of uniform items, such as uniform rockers, belt buckles with warfare qualification designs, or ball caps as an NJP punishment. Lastly, NJP is not intended to be used to entertain or publicly humiliate, demean, embarrass, or denounce the service member. Under all circumstances, NJP proceedings shall be conducted with the utmost professionalism and decorum and per the rules and limitations of reference (a) and Chapter 1, Part B of the JAGMAN.

3.3.5. Officer NJP. In the case of NJP imposed on officers, the provisions of MILPERSMAN 1611-010 and JAGMAN 0119(b) apply. The report of NJP in such cases is to be forwarded to Navy Personnel Command (NAVPERSCOM) (PERS-834) via the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ) (NETC or Naval Service Training Command (NSTC) as appropriate). Per MCM, Part V, admonitions and reprimands imposed in officer cases must be in writing. A sample NJP report is provided at JAGMAN, Appendix A-1-i.

3.3.6. NJP Appeals. Reference (b), paragraph 7, and JAGMAN 0116-0117, set forth the policies and procedures concerning NJP appeals. These provisions are mandatory. After NJP proceedings are completed, the accused will be informed of the applicable appeal rights. The form prescribed at JAGMAN, Appendix A-1-g will be used to record the accused's acknowledgment of appeal rights and attached to the NAVPERS 1626/7 for inclusion in the command Unit Punishment Book. All appeals must be submitted to NETC, NSTC, or the Area General Court Martial Convening Authority as appropriate within five days after imposition of punishment or the right of appeal is waived unless good cause is shown to extend the period.

a. Action. The provisions of reference (b), paragraph 7(d), concerning the stay of punishment must be carefully noted and observed. Final action must be taken upon the appeal by the OEGCMJ (NETC or NSTC) within five days or any unexecuted punishment involving restraint or extra duty shall be stayed if the accused requests the stay.

b. Routing NJP Appeals. NJP appeals shall be timely forwarded for review via the officer imposing the punishment to the applicable OEGCMJ (NETC or NSTC) as required. Appeals will be forwarded as follows:

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(1) All NETC Flag Mast appeals are forwarded to Commander, NAVPERSCOM.

(2) All NSTC Flag Mast appeals are forwarded to NETC.

(3) All Non-Flag Mast appeals are forwarded to NETC or NSTC, as applicable.

c. NJP Appeal Endorsements. NJP appeals shall be expeditiously endorsed and forwarded by the officer who imposed the punishment. Normally, the appeal will be forwarded within five days of receipt. However, if no action is taken in five days and the accused requested a stay of punishment per reference (b), paragraph 7(d), the endorser shall fax or scan and e-mail a copy of the appeal with their endorsement to the appropriate authority. Absent compelling reasons, reasonable first stay requests should normally be granted.

d. Additional Information. In addition to the contents of the forwarding endorsement prescribed by JAGMAN 0116, the endorser shall include the date on which the appeal was received, comments on all issues raised in the appeal, as well as all documentation considered in determining that the accused did commit the offense(s) and a statement as to whether a stay of punishment was requested. Adverse factual information set forth in the endorsement that was not brought out at NJP or is not included in official service record entries should be referred to the accused, if practicable, for comment. The accused should be given the opportunity to make a statement in rebuttal to the adverse matter. Delays in forwarding NJP appeals that exceed five days shall be explained.

3.3.7. Unit Punishment Book. Commands will maintain a Unit Punishment Book per paragraph 8 of reference (b) and JAGMAN 0119(a) using the format provided in MCM Appendix C, 2-C-1.

3.3.8. NJP Set Aside Procedures. The provisions of reference (b), paragraph 7, JAGMAN 0118(b), MILPERSMAN 5812-010 must be strictly followed. The Letter of Notification (LON) must be personally signed (not "by direction") by the NJP authority. Forward the LON, via the first flag officer in the chain of command, to NAVPERSCOM (PERS-00J). If applicable, provide a copy to the command that initially imposed the punishment.

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## CHAPTER 4

### INVOLUNTARY SEPARATIONS: ENLISTED PERSONNEL

Ref: (a) DoDD 1332.41  
(b) MILPERSMAN 1910-600

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (pages 49-56)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) and (b), the following additional guidance is provided:

**4.1. Notification.** Prescribed procedures concerning notification of the individual must be scrupulously followed. Members must be processed for all reasons in which the criteria for separation have been met.

4.1.1. Letter of Transmittal (LOT). When routing administrative separations (ADSEPs), ensure that the following is included with the LOT per reference (b):

a. All supporting documentation including copies of the positive urinalysis message and the urinalysis ledger showing the basis for the urinalysis for cases involving drug abuse where the separation is based on a positive urinalysis.

b. If an administrative board was held and the counsel for the respondent stated that the respondent intended to submit a letter of deficiency, the issues raised in the letter of deficiency must be addressed. It must be noted if the counsel for the respondent failed to submit a letter of deficiency.

**4.2. Routing.** For those ADSEPs where the General Court Martial Convening Authority (GCMCA) is the separation authority or when the member requests review by the GCMCA, route as follows:

- a. NETC subordinate commands and units: Forward to NETC
- b. Naval Service Training Command (NSTC) subordinate commands and units: Forward to NSTC

NETCINST 5800.2B  
19 Jan 2018

**4.3. Checklists.** Commands are directed to use applicable checklists in Appendix A and to forward completed, signed, and dated checklist(s) along with all forwarding endorsements to either NSTC or NETC.

## CHAPTER 5

### OFFICER MISCONDUCT AND SEPARATIONS

Ref: (a) MILPERSMAN 1611  
(b) BUPERSINST 1610.10D  
(c) U.S. Navy Regulations  
(d) MILPERSMAN 1070-020(c)  
(e) SECNAVINST 1920.6C

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (pages 57, 58)

Naval Education and Training Command-specific guidance. In addition to complying with references (a) through (e), the following additional guidance is provided:

**5.1. General.** In all cases of officer misconduct, whether or not required, it is best practice to contact Bureau of Naval Personnel (PERS-834) at (901) 874-2090/4424 or DSN 882-2090/4424 for assistance.

**5.2. Procedure.** Reference (e) provides detailed guidance for the revocation of commissions, discharge, termination of appointments, release from active duty, retirement for length of service, and dropping from the rolls of Navy and Marine Corps officers. Generally, involuntary administrative separation of an officer is initiated by means of a letter of report to Chief of Naval Personnel (PERS-83) and shall be forwarded through the administrative chain of command. The request will also be forwarded via the officer concerned for comment or a statement indicating the officer does not wish to comment. An acknowledgement of the officer's rights pursuant to reference (c), (Articles 1108 and 1122) and that the correspondence will be filed in the officer's service record shall be obtained.

## CHAPTER 6

### MILITARY JUSTICE

#### 6.1. Military Justice Investigations: Naval Criminal Investigative Service (NCIS) Reporting and Investigations

Ref: (a) MCM (R.C.M. 303)  
(b) JAGMAN (Chapter II)  
(c) SECNAVINST 5430.107  
(d) SECNAVINST 1752.4B  
(e) DoDI 6495.02

For Basic Quick Guide: U.S. Navy (USN)/U.S. Marine Corps (USMC) Commander's Quick Reference Legal Handbook 2016 (page 2)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (e), the following additional guidance is provided:

6.1.1. Policy. Direct liaison with NCIS field components is authorized in the investigation of crimes. Reference (c) sets forth the services provided by NCIS offices. Commanding Officers (COs) who order other types of investigations, such as Manual of the Judge Advocate General (JAGMAN) investigations or preliminary inquiries into incidents involving criminal activity, should coordinate with NCIS to avoid interference with ongoing NCIS investigative efforts (JAGMAN 0201).

6.1.2. Mandatory Referral to NCIS. Per reference (c) the following incidents shall be referred to NCIS whether occurring on or off base and regardless of civilian investigation involvement:

a. Actual, suspected, or alleged major criminal offenses (punishable under the Uniform Code of Military Justice (UCMJ) by more than one year of confinement);

b. Non-combat deaths when the cause of death is not medically attributable to disease or natural causes;

c. Fires or explosions of unknown origin affecting Department of the Navy (DON) property or property under DON control;

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- d. Theft or loss of ordnance or controlled substances;
- e. Disappearance of a command member;
- f. All instances of suspected fraud against the government within DON (e.g., theft of government property, bribery, false claims for pay, etc.), actual or suspected acts of espionage, terrorism, sabotage, assassination, and actual, suspected, or attempted defection of DON personnel;
- g. Internal security incidents, such as loss, compromise, or suspected compromise of classified information and national security cases; and
- h. Suspected sex-related offenses as defined under Articles 120 and 125 of the UCMJ.

## **6.2. Types of Courts-Martial**

Ref: (a) MCM, R.C.M. 501-504, 704, 1003, 1107, 1301-1306  
(b) UCMJ Articles 16, 22-25  
(c) JAGMAN Section 0120

### Overview

- Summary Court-Martial (SCM)
- Special Court-Martial (SPCM)
- General Court-Martial (GCM)

For Basic Quick Guide: USN/USMC Commander's Quick Reference  
Legal Handbook 2016 (pages 13-14)

NETC-specific guidance. In addition to complying with references (a) through (c), the following additional guidance is provided:

#### 6.2.1. SCM

- a. Authority to Convene. Every CO has authority to convene SCM pursuant to Article 24, UCMJ; Rules for Court-Martial (R.C.M.) 1302, Manual for Courts-Martial (MCM); and JAGMAN 0120(c).

- b. Duty as a SCM. Duty as a SCM takes precedence over all other assigned duties. An officer of the domain designated as a

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SCM to which charges have been referred will not be assigned duties as a member of a SPCM or GCM until the SCM proceedings have concluded. A SCM is composed of one commissioned officer on active duty. Whenever practicable, a SCM shall be an officer of the grade of Navy lieutenant or Marine Corps captain, or higher. When only one commissioned officer is present within a command or detachment, that officer shall be the SCM of that command. See R.C.M. 1301(a). When more than one commissioned officer is present, the Convening Authority (CA) may not be the SCM.

c. Trial Guide. Appendix 9, MCM, provides guidance for the proper way to conduct a SCM. Use of this trial guide is mandatory. Additionally, special care must be taken to ensure compliance with R.C.M. 1301 through 1306, MCM, and the Military Rules of Evidence, Part III, MCM.

d. Records of Trial (ROTs). DD Form 2329, ROT by SCM shall be used to record the matters required by R.C.M. 1305, MCM. In addition, a summary of the testimony considered by the SCM on any specification of which an accused has been convicted contrary to a plea of not guilty shall be appended to the ROT. Testimony considered in extenuation and mitigation must be summarized and attached to the record. If no matters are presented in extenuation and mitigation, a statement to that effect should be attached. All documentary evidence considered must also be attached to the record. The CA will ensure a copy of the record is provided to the accused and obtain a receipt as required by R.C.M. 1305, MCM.

e. Matters Submitted by the Accused. After a sentence is adjudged, the accused may submit written matters to the CA per R.C.M. 1105, MCM.

f. CA. The CA shall take timely action per R.C.M. 1107 and 1306, MCM. The action of the CA shall be shown on all copies of the ROT except that provided to the accused if the accused has retained a copy. An order promulgating the result of a SCM need not be issued.

g. Post-Trial Review. After the CA takes action on the case, the ROT will be forwarded for further review pursuant to Article 64(a), UCMJ, and R.C.M. 1306, MCM. ROTs will be forwarded as follows:

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(1) NETC subordinate commands and units: Forward to NETC (N00J).

(2) Naval Service Training Command (NSTC) subordinate commands and units: Forward to NSTC.

#### 6.2.2. SPCM

a. Authority to Convene. All COs have the authority to convene SPCM pursuant to Article 23, UCMJ, and JAGMAN 0120.

b. Initial disposition. The SPCM CA shall be responsible for determining what initial disposition action is appropriate, to include whether further action is warranted and, if so, whether the matter should be resolved by court-martial, non-judicial punishment, or adverse administrative action.

NOTE: Initial disposition authority from all commanders within the Department of Defense (DoD) is withheld for all who do not possess at least SPCM CA and COs who are not in the grade of O-6 or higher who do not have initial disposition authority, with respect to the following alleged offenses under the UCMJ:

- Violation UCMJ, Article 120 (rape) and (sexual assault);
- Violation UCMJ, Article 125 (forcible sodomy);
- Violation UCMJ, Article 80 (all attempts to commit above offenses; and, in violation of Article 80); and
- Any other alleged offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or attempts thereof.

6.2.2.1. Lawyer Services. The CA will require the services of trial and Defense Counsel (DC) to conduct SPCM. Such services will be requested from the nearest Region Legal Service Office (RLSO) and Defense Service Office (DSO), their detachments, or their branch offices. Any command requesting court-martial services will assign an officer command representative (usually the Staff Judge Advocate (SJA) or legal officer) to the case. Commands must include as addressees on requests for legal services all commands that will be involved in the case. All

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NETC/NSTC commands and units should maintain and follow cognizant RLSO/DSO instructions that set forth guidance and procedures for such requests. The command representative will conduct liaison with appropriate RLSO/DSO personnel as soon after submission of the request as possible and ensure the continuing availability of all necessary personnel and logistical support until the court-martial is concluded.

6.2.2.2. RLSO Command Services. Each RLSO provides command services which includes legal advice to those commands without an assigned judge advocate. COs are encouraged to make liberal use of these assets. It is especially prudent to consult with legal counsel in making decisions as to whether the alleged misconduct warrants trial by SPCM. Prior to preferring charges against an accused, the command representative should consult with the RLSO command services representative to ensure the charges are accurate and are supported by the evidence. In all cases involving sexual assault offenses, the command must consult with a judge advocate prior to determining appropriate disposition of the case.

6.2.2.3. ROTs. R.C.M. 1103, MCM, and JAGMAN 0150 prescribe the regulations concerning preparation of ROTs. After authentication by the military judge and service on the accused or counsel, the ROT is forwarded to the CA for action.

6.2.2.4. JAGINST 5813.1B requires the mandatory use of the post-trial checklists enclosed therein. If a ROT is received without the appropriate checklists attached, inform the trial department at the appropriate RLSO, detachment, or branch office which forwarded the ROT, so one can be provided.

6.2.2.5. Clemency Matters. After the ROT is authenticated, the accused or accused's DC may submit to the CA any matters that may reasonably tend to affect the decision whether to disapprove any findings of guilty or to approve the sentence. The CA is only required to consider written submissions. See R.C.M. 1105, MCM.

6.2.2.6. Recommendation of the SJA or Legal Officer

a. Bad Conduct Discharge (BCD) or Confinement in Excess of One Year Cases. The legal officer or SJA of the CA shall prepare a concise written SJA recommendation to assist the CA in

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deciding what action to take on the record in each case where the sentence includes a BCD or confinement of more than one year. The matters to be included shall be as prescribed in R.C.M. 1106, MCM, and may be submitted in a form similar to JAGMAN Appendix A-1-q. Commands without an assigned judge advocate shall contact the appropriate RLSO Command Services Department to request assistance before forwarding the recommendation.

b. Non-BCD Cases. In cases where the sentence does not include a BCD, the ROT may be forwarded directly to the CA for action, without a SJA or legal officer recommendation.

6.2.2.7. CA's Action and Promulgating Order/Court-Martial Order. The CA may take action on the case only after the applicable time period of R.C.M. 1105, MCM, has expired (10 days after a copy of ROT is served on accused/counsel for non-BCD SPCM and 10 days after SJA recommendation is served on accused/counsel for BCD SPCM). A copy of the action must be served on the accused or the accused's DC. Once action is taken, the results of the SPCM and the CA's action should be published via a promulgating order, as prescribed in R.C.M. 1114, MCM. In addition to the distribution of all initial and supplemental promulgating orders listed in JAGMAN 0155, one plain copy of each should be forwarded to the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ) (NETC or NSTC).

6.2.2.8. Substitute CA's Action. Article 60, UCMJ; R.C.M. 1107; and JAGMAN 0151(b) provide that in situations where it is impracticable for the person who would normally take action as CA, that person shall cause the ROT to be forwarded to an OEGCMJ to take initial action.

6.2.2.9. Post-Trial Review. Close coordination and liaison with the cognizant RLSO is required.

a. BCD Cases. Per JAGMAN 0153(b), after taking the CA's action on the ROT, the CA or substitute CA will forward the original and two copies of the ROT to the following addresses via the most expeditious means possible:

OJAG  
CODE 40  
1254 CHARLES MORRIS ST SE SUITE B01  
WASHINGTON NAVY YARD DC 20374-5124

and

NAVY-MARINE CORPS APPELLATE REVIEW ACTIVITY  
OJAG DOCUMENTS EXAMINATION BRANCH CODE 40.31  
716 SICARD ST SE SUITE 1000  
WASHINGTON NAVY YARD DC 20374-5047

If the sentence, as approved by the CA, includes an unsuspended punitive discharge, dismissal, or confinement for one year or more, one complete copy of the ROT prepared per R.C.M. 1103(g)(1), MCM, shall be forwarded to:

DIRECTOR NAVAL COUNCIL OF PERSONNEL BOARDS  
ATTN NAVAL CLEMENCY AND PAROLE BOARD  
720 KENNON ST SE RM 309  
WASHINGTON NAVY YARD DC 20374-5023

b. Non-BCD Cases. After taking action on the ROT, the CA will forward the original ROT for SJA review under Article 64, UCMJ, as follows:

(1) NETC subordinate commands and units: Forward to the Area GCMCA, generally the Regional Commander per JAGMAN 0153(2)(a). Provide a copy of the CA's action and Article 64, UCMJ, review to NETC (N00J).

(2) NSTC subordinate commands and units: Forward to NSTC. Acquittals: ROTs resulting in acquittals or disapproval of all findings of guilty must be filed per JAGMAN 0154. The CA shall forward copies to NETC or NSTC.

c. Mailing. All ROTs shall be mailed by certified or registered mail, return receipt requested, per applicable Personally Identifiable Information protection requirements. Ensure that the post-trial checklists discussed in section 203.3 of the MCM are attached to the ROT and completed prior to forwarding.

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d. Time Periods. Delay in completing review of a ROT may result in the granting of some form of clemency from a military appellate court, including, but not limited to, the court setting aside the conviction. In all cases, the CA will make every effort to ensure that action is taken and the record forwarded within 60 days of the date the sentence was adjudged. Direct liaison and close coordination with the responsible RLSO is necessary to ensure timely preparation and authentication of the ROT.

### 6.2.3. UCMJ, Article 32 Preliminary Hearings

6.2.3.1. Background. Article 32 hearings have been restricted in scope by the FY14 National Defense Authorization Act changes. Previously, Article 32, UCMJ, and R.C.M. 405 required a thorough and impartial investigation to be conducted prior to the referral of any charge or specification for trial by GCM. Now, the purpose of an Article 32 hearing is:

a. Determining whether there is probable cause to believe an offense has been committed and the accused committed the offense;

b. Determining whether the CA has court-martial jurisdiction over the offense and the accused;

c. Considering the form of charges;

d. Recommending the disposition that should be made of the case. Article 32, UCMJ, and R.C.M. 405 require a thorough and impartial investigation to be conducted prior to the referral of any charge or specification for trial by GCM.

6.2.3.2. CA. All COs, as SPCM CA, are empowered to convene preliminary hearings pursuant to Article 32, UCMJ.

6.2.3.3. Preliminary Hearing Officer. The preliminary hearing officer is expected to be a judge advocate wherever practicable. The hearing officer may conduct an investigation into uncharged offenses, but investigations are no longer required before an Article 32 hearing is held. Although there is no requirement for use of a judge advocate to conduct a pretrial investigation, generally the nearest RLSO will coordinate with local judge

advocates to provide a judge advocate for this purpose upon request. Use of a judge advocate is encouraged.

#### 6.2.4. GCMs

6.2.4.1. Procedures. When a GCM is considered appropriate, COs shall, pursuant to Article 33, UCMJ, and JAGMAN 0128, forward the charges, Article 32, UCMJ, preliminary hearing report, or waiver of Article 32, UCMJ, preliminary hearing, and allied papers recommending trial by GCM to the cognizant Area GCMCA, generally the Commander, Naval Installations Command Region Commander.

6.2.4.2. Exceptions. When an Area GCMCA/Region Commander is disqualified or otherwise unable to convene a GCM, forward the case to the next most accessible OEGCMJ pursuant to JAGMAN 0129. Such determinations are left to the sound discretion of the commander concerned.

6.2.4.3. Trial and Post-Trial Process. Once an Area GCMCA/Region Commander takes cognizance of a case, and after Article 34, UCMJ, SJA advice is provided, the Region Commander becomes the CA and refers the charges and specification, if appropriate. For post-trial processing purposes, all GCMs will be treated the same as a SPCM in which a BCD was awarded pursuant to Article 54, UCMJ.

#### 6.2.5. Court-Martial Related Matters

6.2.5.1. Speedy Trial. Under R.C.M. 707, MCM, an accused must be brought to trial within 120 days of preferral of charges or imposition of pretrial restraint. Failure to comply with this rule will result in dismissal of charges upon timely motion by the accused. Even though this rule allows the government 120 days to get an accused to trial, Article 10, UCMJ, states that when an accused is placed in confinement, immediate steps will be taken to try the case. It is imperative for commands to ensure that all cases are brought to trial promptly, especially when the accused is in pretrial confinement. Due diligence with respect to the handling of the case is expected. Court-martial cases should not be lost due to a lack of due diligence by the government.

6.2.5.2. Processing Standards. JAG/COMNAVLEGSVCCOMINST 5814.1A prescribes certain processing time goals for Navy courts-martial. While these goals are not regulatory (failure to comply would not constitute denial of an accused's right to a speedy trial or speedy review), the CA shall make all reasonable efforts to comply with them.

6.2.5.3. Tracking Procedures. The following procedures for court-martial tracking will be observed. CAs will initiate and include courts-martial data collection sheets (JAG/COMNAVLEGSVCCOMINST 5814.1A, enclosures (4), (5), and (6)) in the records of all courts-martial. The sheets will be filled in at each step of the process and will remain with the original ROT. A copy will be retained with the command's copy of the ROT. An explanation will be provided for delays or excess time involved in meeting the goals.

6.2.5.4. Court Members. The CA shall detail as court-martial members those personnel considered "best qualified" for such duty by reason of age, education, training, experience, length of service, and judicial temperament. Except as provided in Article 25(d)(1), UCMJ, rank shall not be used as a basis for selection. Selection of members must be done personally by the CA and cannot be delegated.

a. Officer Members. Generally, officer members are selected from the CA's command. In those cases where sufficient officer personnel are not available, the CA shall seek assistance within the administrative chain of command. Duty as a court-martial member takes precedence over all other duties assigned, without exception.

b. Enlisted Members. Upon request, an enlisted accused is entitled to be tried by a court composed of at least one-third enlisted members. Article 25(c), UCMJ, provides that an enlisted member must not be from the same command unit as the accused. When such a request is received, the CA shall obtain the necessary members through direct liaison with other units in the area or by referring the matter to the Immediate Superior In Command.

6.2.5.5. Court-Martial Costs. The costs of travel and per diem of military personnel and civilian employees of the DON, and all court personnel, with the exception of the military judge, will

be charged to the operation and maintenance allotment that supports temporary assigned duty (TAD) travel for the CA. The costs of fees and mileage of civilians other than employees of the DON will be charged to the operating budget that supports the TAD travel funds of the CA. See JAGMAN 0145.

6.2.5.6. Deoxyribonucleic Acid (DNA) Analysis for Qualifying Military Offenses (QMO). Pursuant to 10 U.S.C. 1565, members convicted by GCM or SCM of a QMO will be required to submit a DNA sample for inclusion in the Federal Bureau of Investigation's Combined DNA Index System. SJAs and legal officers shall ensure that the CA action for QMOs have "DNA processing required. 10 U.S.C. 1565" annotated in bold on the top of the first page of the initial promulgating order and that such orders are provided to the U.S. Army Criminal Investigation Laboratory and the applicable correctional facility to which the convicted member is assigned. A list of QMOs can be found at enclosure (3) of DoD Instruction 5505.14.

6.2.5.7. Automatic Reduction to Pay Grade E-1. Article 58a, UCMJ, provides that an enlisted member is subject to automatic reduction to pay grade E-1 if the member's adjudged court-martial sentence includes a punitive discharge or confinement in excess of 90 days (or three months), whether or not such punishment is suspended. Implementation of this provision is the responsibility of the CA when taking the initial action. The CA may remit or suspend the automatic reduction, direct a reduction to an intermediate grade, or direct reduction only during the period of confinement. Failure of the CA to address the automatic reduction will result in the reduction being effective the date of the action. In implementing this provision, the CA should refer to JAGMAN 0152(c) for guidance and assistance.

6.2.5.8. Automatic Forfeiture of Pay and Allowances During Confinement. Article 58b, UCMJ, provides that a court-martial sentence that includes either (a) confinement for more than six months or death, or (b) confinement for six months or less and a punitive discharge or dismissal, shall result in the forfeiture of pay and allowances due to that member during any period of confinement. The pay and allowances forfeited in the case of a GCM shall be all pay and allowances, and in the case of a SPCM, shall be two-thirds of base pay. In a case involving an accused who has dependents, a CA may waive any or all of the forfeitures

of pay for a period not to exceed six months. Such amounts will instead be paid to the dependents of the accused. Automatic forfeitures may be deferred from the time the sentence is adjudged until the CA acts on the case.

6.2.5.9. Vacation of Suspended Court-Martial Sentences. The CA may suspend execution of punishments in appropriate cases. Where it appears that the accused has violated the terms of probation, action must be initiated in a timely fashion to vacate the suspension. R.C.M. 1109, MCM, and JAGMAN 0160 provide guidance on conducting vacation proceedings. The hearing record and recommendation of the CO in cases involving vacation of suspended BCDs shall be forwarded in the same manner as records of trial by SCM and non-BCD SPCM.

6.2.5.10. Appellate Leave. Officer or enlisted members who have been tried by court-martial and sentenced to an unsuspended dismissal or punitive discharge and whose sentence does not include confinement, or whose sentence to confinement has been completed, may be placed on appellate leave. Military Personnel Manual (MILPERSMAN) 1050-310 through 380 provides the governing regulations and policy guidance. Prior to the CA's action on the case, appellate leave is voluntary. Once the CA takes action, appellate leave becomes mandatory. Personnel will be placed on appellate leave only in the Continental U.S.

6.2.5.11. Separation in Lieu of Trial (SILT). MILPERSMAN 1910-106 sets forth procedures and guidance whereby enlisted personnel with charges preferred against them may request an administrative SILT by court-martial. This procedure can only be requested when the offense charged is punishable by a punitive discharge.

a. Procedure. Requests for administrative SILT by court-martial will be forwarded for review and action to the GCMCA who has cognizance over the case.

b. Exception. MILPERSMAN 1910-106 provides an exception that allows COs authorized to convene a SPCM (SPCM CA), to approve a SILT for an enlisted member who has been absent without leave for more than 30 days. In order to separate the member under the provisions of MILPERSMAN 1910-106, all of the following criteria and conditions must be met:



(1) Member was unauthorized absence (UA) for more than 30 days.

(2) Member has been dropped from the unit rolls as a deserter.

(3) Member has been returned to military control.

(4) Member is assigned to a "Separation Processing Activity" (i.e., Transient Personnel Unit).\*\*

(5) Member is only charged with Article 86, UCMJ, UA of more than 30 days.

**NOTE:** NETC SPCM CA commands are not "Separation Processing Activities" and may not use this exception.

## CHAPTER 7

### DETACHMENTS FOR CAUSE (DFC)

Ref: (a) MILPERSMAN 1611-020  
(b) MILPERSMAN 1616-010

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (page 59)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) and (b), the following additional guidance is provided:

**7.1. Authorities.** DFC for officers must be conducted per reference (a). DFC for chief petty officers and selected petty officers are conducted per reference (b). In all cases, Commander, Navy Personnel Command (NAVPERSCOM) is the approval authority.

**7.2. DFC of an Officer.** Reference (a) sets forth the policies and procedures which govern DFC of officers. The DFC request must be forwarded via the officer concerned, for comment or a statement indicating the officer does not wish to comment, and acknowledgement of the officer's rights pursuant to U.S. Navy Regulations, 1990, Articles 1108 and 1122. A statement that the correspondence will be filed in the officer's electronic service record will also be included. DFC is not a form of punishment, and is normally considered appropriate when the officer can no longer perform in the billet occupied and reassignment within the command is not a viable option. When either a relief or DFC is contemplated for an officer, provide advance notice to the NETC Force Judge Advocate (FJA) or Naval Service Training Command (NSTC) Staff Judge Advocate (SJA).

a. Procedures. When the decision has been made to request the DFC of an officer, notify NAVPERSCOM (PERS-83/PERS-4) by message. Ensure the administrative chain of command is listed as info addressees. If the officer being detached is an officer in command, there are additional steps to take as outlined in reference (a). The originator of the notification message will use the special handling designator "Personal For Navy Personnel Command". Preliminary action will commence, but in most cases

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the command must submit a detailed request as outlined in reference (a). Note that when the DFC is based on misconduct for which Non-Judicial Punishment (NJP) has been awarded, MILPERSMAN 1610-010 requires that any request for DFC be submitted as part of the Report of Officer NJP provided to NAVPERSCOM (PERS-83). Final action will be taken by NAVPERSCOM only after receipt of the letter request with the officer's statement.

b. All letter requests will be sent to Chief of Naval Personnel via the administrative chain of command. Expeditious processing and forwarding of a DFC request is mandatory since the officer concerned is usually in a nonproductive status. In the absence of unusual circumstances, the request should be forwarded within five working days of receipt by each command in the routing chain.

**7.3. DFC of Enlisted Personnel.** Only certain categories of enlisted personnel may be detached for cause. These include chief petty officers (E-7 to E-9) and selected petty officers serving in a billet in which the member is the only one of the member's rating specialty (Personnel Specialist, Independent Duty Corpsman, etc.). Reference (b) sets forth the policies and procedures which govern DFC of such personnel. A request for DFC will be forwarded to NAVPERSCOM (PERS-832). When either a relief or DFC is contemplated for a Command Master Chief or Senior Enlisted Advisor provide advance notice to the NETC FJA or NSTC SJA.

## CHAPTER 8

### PRETRIAL RESTRAINT (PTR)

Ref: (a) MCM, R.C.M. 304, 305  
(b) UCMJ Articles 10, 13  
(c) JAGMAN Section 0127

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (pages 17, 18)

Naval Education and Training Command-specific guidance. In addition to complying with references (a) and (c), the following additional guidance is provided:

**8.1. Purpose.** PTR is a means of ensuring an accused's presence at trial, or of preventing further serious misconduct while awaiting court-martial, and it should not be more rigorous than necessary to accomplish one or both of these goals. PTR is appropriate when the command intends to try the accused by General Court Martial or Special Court Martial. PTR may also not be imposed prior to Non-Judicial Punishment (NJP) or administrative separation proceedings.

**8.2. Types of PTR** (from least to most severe):

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

**8.3. Conditions on Liberty.** Reference (a), provides the authority for conditions on liberty as a form of PTR. In general, this form of PTR may be used to prohibit a member from using certain facilities (i.e., clubs; to prohibit a member from drinking alcoholic beverages; or, to impose other similar prohibitions). However, any such prohibition must be reasonable under the circumstances. Generally, conditions on liberty must

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be reasonably calculated to dissuade the member from a continued course of misconduct similar to that for which the person is already charged. Such conditions may not constitute punishment or any type of punitive sanction. When such conditions are imposed, they must be sufficiently flexible to permit pretrial preparation.

**8.4. Restriction in Lieu of Arrest.** Reference (a), provides the authority for restriction in lieu of arrest as a form of PTR. In general, the limits of restriction shall be the ship or station where the member's unit or organization is located. The conditions of restriction shall not include punitive limitations, such as prohibiting the use of recreational facilities, exchanges, etc., unless there is a reasonable relationship between such conditions and the alleged misconduct. The individual will be berthed with his shipmates without special segregation. A restricted person shall, unless otherwise directed, perform full military duties while restricted.

**8.5. Arrest.** Reference (a) provides the authority for arrest as a form of PTR. In general, a member placed in arrest must remain within specified limits and may not be required to perform full military duties or bear arms. The status of arrest ends when that person is placed by the authority who ordered the arrest, or higher authority, on duty which is inconsistent with the status of arrest. An arrested person may do ordinary cleaning or policing, or take part in routine training and duties.

**8.6. PTC.** In order to place an individual in PTC, the commander must believe, based upon probable cause, that the service member committed a crime punishable under the Uniform Code of Military Justice, the command intends to dispose of the case by trial by courts-martial, and confinement is necessary because it is foreseeable that:

a. the member will not appear at trial, pretrial hearing, or investigation; or

b. the member will engage in serious criminal misconduct;  
and

c. less severe forms of restraint are inadequate.

Note: Reference (a) provides guidance and procedures.  
Persons awaiting NJP or Summary Court Martial will  
not be placed in PTC.

**8.7. Procedures for Imposing PTC.** An accused placed into PTC must be promptly advised of the offense(s) charged, the right to remain silent, the right to counsel, and PTC review procedures. If confinement is ordered by anyone other than the accused's Commanding Officer (CO), the Officer in Charge of the confinement facility will notify that CO within 24 hours.

a. The 48-Hour Probable Cause Determination. A neutral and detached officer shall, within 48 hours of confinement under military control, review the adequacy of probable cause to continue PTC.

b. The 72-Hour Review. Within 72 hours of confinement, the accused's CO shall personally decide whether confinement will be continued. The criteria in reference (a), 305(h), shall be utilized. If confinement is continued, a written memorandum shall be prepared for the CO's signature. This memorandum shall state the reasons for the conclusion that PTC will continue. This memorandum shall be forwarded without delay to the seven-day reviewing officer. A commander's compliance with this requirement may also satisfy the 48-hour probable cause determination of reference (a), 305(i)(1), provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under military control.

c. The Seven-Day Review. Further review of the decision to confine a member will be conducted by a reviewing officer within seven days of confinement. Ordinarily, the member's command will ensure that a command representative attends the hearing to present the command's viewpoint. Defense counsel will normally be assigned to represent the member for the limited purpose of the hearing. The accused and the accused's counsel will usually appear at the hearing. If the reviewing officer continues PTC, the accused may, after referral of charges, request that the military judge review the continued confinement.

d. Release and Re-Confinement. No person released from PTC by the reviewing officer may be confined again except upon the

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discovery, after release, of additional evidence or misconduct which, either by itself or in conjunction with other available evidence, justifies confinement.

e. Sanctions. Failure to adhere to the PTC review procedures could result in credit against any court-martial sentence. Reference (a), 305(k).

## CHAPTER 9

### PUNISHMENTS

Ref: (a) OPNAVINST 1620.3

**9.1. Naval Education and Training Command (NETC)-specific guidance.** The punishments available to a Commanding Officer (CO) are designed to ensure good order and discipline, but more importantly, to rehabilitate and return to duty those members who have had a momentary lapse in judgment and behavior.

**9.2. Confinement.** The punishment of confinement will be served only at approved brigs. Commands responsible for the operation of a brig shall provide detailed procedures for the use of such facilities. Unit and organization commanders will ensure familiarity with the applicable directives.

**9.3. Restriction.** Restriction is the least severe form of deprivation of liberty and involves moral rather than physical restraint. The severity of this type of restraint depends on its duration and the geographical limits specified when punishment is imposed. Restricted persons may be required to muster at designated times and places if reasonably necessary to ensure that the punishment is being properly executed. Privileges including, but are not limited to, civilian clothing, use of recreational facilities, access to libraries, use of clubs, e-mail and internet access, and facial hair may be withheld. Restricted members will, unless otherwise directed, perform full military duties. Commands that do not use Regional Restricted Barracks shall establish their own restriction program per reference (a).

a. Authorized Restriction. Imposition of restriction on naval personnel is authorized for only two reasons:

(1) The member is awaiting trial by court-martial and has been placed in pretrial restraint to ensure their presence at trial and/or to prevent further misconduct, or

(2) The member's case has been adjudicated by Non-Judicial Punishment (NJP) or court-martial and restriction was awarded as punishment.

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b. Additional Measures Prohibited. Commands are not authorized to impose additional punitive measures on restricted personnel which are not specifically authorized. Restricttees will only wear authorized military uniforms including rank, rate, warfare devices, and other earned or authorized insignia while restricted. Special restricted personnel uniforms such as orange coveralls or specific colored shirts are not authorized. Uniforms will not be stenciled or marked in any manner to indicate the status of the restricted member. Restricted identification (ID) cards (standard military ID card size) may be issued and restricted members may be required to display the ID card at all times.

c. Restricttee Status. Restricted members will be accorded the respect due all military members, taking into account their paygrade and restricted status. Derogative and demeaning comments or language will not be used in reference to or in conversation with restricted members.

d. Post-Trial and Post-NJP Restricttees. All post-trial or post-NJP restricted personnel will be treated the same regardless of the nature of the offenses punished or the number of times the member has received restriction as punishment. Varying degrees or levels of restriction are not authorized.

e. Restriction Instruction Required. NETC commands operating restriction programs or barracks are required to issue a local implementing instruction. The instruction must address rules, regulations, and operating procedures of the restriction program or barracks.

**9.4. Extra Duties and Hard Labor without Confinement.** The punishment of extra duties or hard labor without confinement will be administered by the member's CO, unless imposed in conjunction with restriction. In such cases, the punishment will be administered by the unit or organization providing administration of the restriction. These punishments may be adjudged only in the cases of enlisted members.

a. A period of extra duties imposed as NJP commences on the date the punishment is imposed, unless stayed as the result of an appeal. Extra duties will not be assigned for more than two hours per day. A period of hard labor without confinement adjudged by a court-martial commences on the date the sentence

is ordered executed, usually the date of the convening authority's action.

b. The punishments of extra duties and hard labor without confinement run on consecutive days and may not be postponed. If the member becomes an unauthorized absentee during the period of the punishment, then the remaining punishment may be served upon the member's return. Except in the case of reserve personnel performing inactive training or annual training for a period of less than seven days, extra duty shall not be performed on the member's Sabbath.

## CHAPTER 10

### REQUEST MAST AND MILITARY GRIEVANCE PROCEDURES

Ref: (a) U.S. Navy Regulations  
(b) OPNAVINST 3120.32D  
(c) UCMJ, Article 138  
(d) JAGMAN, Chapter III

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (pages 81-84)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (d), the following additional guidance is provided:

**10.1. Request Mast.** Accessibility and rapid communication up and down the chain of command is an invaluable leadership tool. References (a) (Articles 0820, 1151, 1152, and 1156) and (b) set forth the basic regulations which govern submission and processing of grievances by military personnel. The regulations provide that the right of any person in the naval service to communicate with the Commanding Officer (CO) or commander at a proper place and time shall not be denied or restricted. Each NETC activity shall issue written instructions describing the procedures to request mast. These instructions will be published to all hands at least semi-annually by means of the unit or organization plan of the day or other similar means.

#### **10.2. Military Grievance Procedures**

10.2.1. Reference (a), (Article 1150) sets forth the policies and procedures which govern submission, investigation, and resolution of any grievance of a member of the naval service. An Article 1150 complaint of wrongs can only be filed against a superior who is not the complainant's CO.

10.2.2. Reference (c) complaint of wrongs may only be filed against the complainant's CO or subsequent commanders in the chain of command. Reference (d) provides the statutory provisions and secretarial regulations governing submission, investigation, and resolution of both types of complaints of wrong.

10.2.3. Military grievances should be resolved at the lowest echelon of command with sufficient authority to do so. With regard to reference (a), Article 1150 complaints, when the complainant and respondent have the same CO, that CO shall take final action on the complaint. With regard to reference (c) complaints and those reference (a), Article 1150 complaints when the respondent and complainant do not have the same CO, the Official Exercising General Court Martial Jurisdiction over the person complained against ordinarily is the first flag officer in the complainant's administrative chain of command.

10.2.4. Expeditious and thorough processing of all reports of wrongs, requests for redress, and complaint of wrongs are essential to ensure timely consideration and prompt action. Generally, all echelons of the chain of command will ensure such matters are forwarded within 130 days of receipt.

10.2.5. In no case may an officer-in-charge, CO, or commander refuse or fail to forward a complaint of wrongs regardless of the reason. Although a complaint of wrongs may be returned to the complainant for further information or compliance with the provisions of reference (d), in all such cases the complainant must be advised of the right to resubmit.

10.2.6. Once the complaint of wrongs is reviewed and acted upon by the first flag officer in the complainant's administrative chain of command it shall be forwarded to the Secretary of the Navy with a copy forwarded to the member.

10.2.7. Command Investigation. Commands will normally conduct a command investigation into complaints received per reference (c) or reference (a), Article 1150.

10.2.8. Checklist. For command investigations into reference (c) complaints, commands are directed to use the checklist in Appendix A and to forward the completed, signed, and dated checklist along with all forwarding endorsements to either Naval Service Training Command or NETC.

**CHAPTER 11**

**INSPECTOR GENERAL HOTLINE COMPLAINTS  
AND WHISTLEBLOWER PROTECTION ACT**

Ref: (a) SECNAVINST 5370.5B  
(b) SECNAVINST 5370.7D  
(c) DoD Directive 7050.06

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's  
Quick Reference Legal Handbook 2016 (page 83)

Naval Education and Training Command-specific guidance. In  
addition to complying with references (a) through (c), the  
following additional guidance is provided: None

**CHAPTER 12**  
**CONGRESSIONAL INQUIRIES**

Ref: (a) MILPERSMAN 5216-010  
(b) SECNAV M-5216.5  
(c) U.S. Navy Regulation 1155  
(d) SECNAVINST 5730.5J

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (page 84)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (d), the following additional guidance is provided:

**12.1. Right To Communicate.** No person may restrict any service member from communicating with Congress in the service member's personal or private capacity. Absolutely no reprisal actions may be taken for such a communication.

**12.2. Privacy Act (PA) Concerns.** In responding to a Member of Congress, the responder must ensure that any personal information about the service member included in the response is releasable information. PA waivers may need to be obtained by the command prior to sending a response.

**12.3. Congressional Inquiry Processing.** Congressional correspondence shall be answered within five working days following receipt. If a substantive reply cannot be made in that time, an interim reply shall be made which informs the addressee of the reasons for the delay and the expected date that a final reply is anticipated. SECNAVINST 5216.7 provides general guidance regarding the handling of Congressional correspondence. References (a) and (d) provide further guidance. In responding to Congressional inquiries, compliance with the PA is required, as discussed in SECNAVINST 5211.5E. When responding to a Congressional inquiry made on behalf of a service member, there is no need to verify the individual has authorized the disclosure. The oral or written statement of a Congressional staff member is sufficient to establish that a request was received from the service member. If the constituent inquiry is made on behalf of an individual other

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than the service member, PA information may not be released without the service member's consent.

a. When a member of Congress forwards a constituent's letter as an enclosure, the reply should avoid direct reference to the constituent's letter. The reply may state that the letter has raised the issues being addressed. Also, the reply should return any correspondence forwarded with the Congressional inquiry to the member of Congress.

b. Responses to Congressional inquiries shall be made directly to the member of Congress making the inquiry. An original and one copy should be furnished to the member of Congress. A copy of the inquiry and reply shall be forwarded to Chief of Navy Personnel (PERS-00ZC), Chief of Legislative Affairs (CLALA-23), and NETC or Naval Service Training Command (N00J).

## CHAPTER 13

### PHYSICAL AND MENTAL HEALTH ISSUES

#### 13.1. Human Immunodeficiency Virus

Ref: (a) SECNAVINST 5300.30E  
(b) SECNAVINST 1850.4E  
(c) DoD Instruction 6485.01

For Basic Quick Guide: U.S. Navy (USN)/U.S. Marine Corps (USMC) Commander's Quick Reference Legal Handbook 2016 (pages 66, 67)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (c), the following additional guidance is provided: None.

#### 13.2. Mental Health Evaluations

Ref: (a) DoD Instruction 6490.04  
(b) DoD Instruction 6490.08

For Basic Quick Guide: USN/USMC Commander's Quick Reference Legal Handbook 2016 (page 68)

NETC-specific guidance. In addition to complying with references (a) and (b), the following additional guidance is provided: None.



## CHAPTER 14

### SEXUAL HARASSMENT, FRATERNIZATION, AND HAZING

#### 14.1. Sexual Harassment

Ref: (a) SECNAVINST 5300.26D  
(b) OPNAVINST 5354.1F  
(c) U.S. Navy Regulations  
(d) NAVPERS 5354/2 (Formal Complaint)  
(e) NAVPERS 15620 (Informal Resolution Documentation)

For Basic Quick Guide: U.S. Navy (USN)/U.S. Marine Corps (USMC) Commander's Quick Reference Legal Handbook 2016 (pages 70, 71)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (e), the following additional guidance is provided: None.

#### 14.2. Fraternalization

Ref: (a) OPNAVINST 5370.2D  
(b) U.S. Navy Regulations  
(c) UCMJ, Article 134

For Basic Quick Guide: USN/USMC Commander's Quick Reference Legal Handbook 2016 (pages 72, 73)

NETC-specific guidance. In addition to complying with references (a) through (c), the following additional guidance is provided: None.

#### 14.3. Hazing

Ref: (a) SECNAVINST 1610.2A  
(b) OPNAVINST 3100.6J  
(c) OPNAVINST 3120.32D  
(d) SECNAVINST 5800.11B  
(e) NAVADMIN 034/13

For Basic Quick Guide: USN/USMC Commander's Quick Reference Legal Handbook 2016 (pages 74, 75)

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NETC-specific guidance. In addition to complying with references (a) through (e), the following additional guidance is provided: None.

**CHAPTER 15**  
**DELIVERY OF PERSONNEL TO CIVILIAN AUTHORITIES**  
**AND SERVICE OF PROCESS**

Ref: (a) JAGMAN, Chapter VI  
(b) SECNAVINST 5820.7C  
(c) SECNAVINST 5820.8A  
(d) 32 CFR 725.2  
(e) JAGMAN 06216(b)1

**15.1. Regulations.** References (a) and (b) sets forth the basic regulations, policies, and procedures which govern delivery of personnel to civilian authorities and service of process. If possible, seek the advice of the cognizant Staff Judge Advocate or Force Judge Advocate, or the nearest Region Legal Service Office, before delivering personnel to civil authorities.

**15.2. Witnesses in Civilian Proceedings.** Cooperation with civil authorities, particularly concerning the attendance of military personnel as witnesses in civilian proceedings, is essential. Failure to cooperate with civil authorities has resulted in the refusal of civil authorities to prosecute civilians accused of committing criminal acts, including assault, against military members. Generally, requests for the attendance of military personnel as witnesses in connection with civilian criminal proceedings will receive favorable action. Such a request should not be denied without prior approval of Naval Education and Training Command (NETC) or Naval Service Training Command (NSTC). Generally, domain personnel properly subpoenaed to appear before a civilian court or other tribunal will be authorized to appear in response to such subpoena and shall be granted leave or liberty to do so. See references (c) and (d) for procedural guidance.

**15.3. Civil Suits.** Civil suits against military and civilian personnel assigned to NETC/NSTC commands that result from the performance of their duties shall be promptly reported by message to the Judge Advocate General of the Navy per reference (e), with a copy to NETC or NSTC (N00J/N00D).

**CHAPTER 16**  
**JURY DUTY**

Ref: (a) SECNAVINST 5822.2

**16.1. Policy.** It is Department of Defense policy to permit members of the armed forces to perform their civic responsibilities consistent with their military duties. For service members stationed in the U.S., serving on a state or local jury is one such civic obligation. Service members are exempt from jury duty when it would unreasonably interfere with performance of their military duties. See reference (a).

**16.2. Action.** Pursuant to reference (a), all general and flag officers, commanders, Commanding Officers (COs), officers-in-charge, and all personnel assigned to the operating forces, in a training status, or stationed outside the U.S. are exempt from serving on a state or local jury. When a member on active duty is summoned to perform state or local jury duty, the member's CO shall determine if such jury duty would interfere unreasonably with the performance of military duties or adversely affect the readiness of the command. The decision of the CO shall be conclusive. However, written notice on official letterhead of each exemption determination shall be provided to the responsible state or local official who summoned the member to jury duty.

**16.3. The Military Extraterritorial Jurisdiction Act (MEJA),** 18 U.S.C. 3261-3267. MEJA jurisdiction applies to members of the civilian component, civilian contractors and subcontractors, dependent family members, and former service members accompanying or associated with armed forces overseas. MEJA protocols address felony misconduct within the target group of civilians. MEJA extends the extraterritorial jurisdiction of federal criminal laws; provides a mechanism for turnover of criminal cases to a U.S. attorney for prosecution; allows an installation commander to investigate, apprehend, impose pretrial restraint when necessary, and arrange for escorted travel to the continental U.S. with law enforcement agents upon commission of a felony-level offense within the target civilian population. MEJA also provides for federal magistrate review of decisions to impose pretrial restraint by installation commanders. Detained civilian personnel will be represented at pretrial restraint review hearings by local qualified non-

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military U.S. counsel, or, under limited representation agreements, by uniformed judge advocates. Naval Education Training Command/Naval Service Training Command civilian personnel traveling to overseas locations will be informed they may be subject to MEJA jurisdiction.

**CHAPTER 17**

**LETTERS OF INDEBTEDNESS**

Ref: (a) MILPERSMAN 7000-020  
(b) MILPERSMAN 1754-030

**17.1. General Obligation.** Members of the naval service are expected to pay their just debts and financial obligations in a proper and timely manner. A "just debt" is normally defined as one in which there is no dispute as to the facts or the law, or one reduced to judgment which conforms to the Service Member Civil Relief Act of 2004, if applicable. Punitive and/or administrative actions may be taken against members who wrongfully and dishonorably fail to pay just debts. The Navy has no legal authority, except in the case of court-ordered alimony, child support, or final civil judgment to require members to pay a private debt or to divert any part of their pay for its satisfaction. Upon receipt of a letter of indebtedness, Commanding Officers (COs) and Officers-In-Charge (OICs) will ensure that such correspondence is handled per reference (a).

**17.2. Nonsupport Complaints.** Members of the naval service must provide adequate and continuous support to legal dependents, and comply with support terms in valid court orders. All nonsupport complaints will be expeditiously processed. COs and OICs will ensure that all complaints are handled per reference (b).

Note: In cases where paternity is disputed, the issue must be resolved by a civilian court.

**CHAPTER 18**

**FREEDOM OF EXPRESSION:  
SPEECH, RELIGIOUS ACCOMMODATION, POLITICAL**

Ref: (a) First Amendment, U.S. Constitution  
(b) DoD Instruction 1325.06  
(c) DoD Instruction 1300.17  
(d) SECNAVINST 1730.7D  
(e) DoD Instruction 4105.70  
(f) OPNAVINST 1620.2A  
(g) DoD Directive 1344.10

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (pages 77-79)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) through (g), the following additional guidance is provided:

**18.1. Commander's Balancing Test.** Constitutional rights involving freedom of expression should be preserved to the maximum extent possible, consistent with mission accomplishment, security, and good order and discipline. (See reference (b)). For assistance consult the Naval Service Training Command Staff Judge Advocate or NETC Force Judge Advocate.

**CHAPTER 19**  
**CLAIMS**

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

For Basic Quick Guide: U.S. Navy/U.S. Marine Corps Commander's Quick Reference Legal Handbook 2016 (page 47)

Naval Education and Training Command (NETC)-specific guidance. In addition to complying with references (a) and (b), the following additional guidance is provided:

**19.1. General.** Any reasonable possibility of a claim for or against the U.S. must be properly investigated. It is the responsibility of the commanding officer or officer-in-charge of the unit or organization most directly concerned to order the investigation. Refer to reference (a). Procedures for the processing of claims are contained in reference (b). This instruction should be consulted whenever a claim is presented.

**19.2. Admiralty Incidents.** Casualties and other incidents which may give rise to an admiralty claim for or against the government must be reported immediately to the Office of the Judge Advocate General (OJAG) (Code 11) by the most expeditious means available, preferably telephone. Reference (a), 1104 lists what must be reported in the initial report. The local Region Legal Service Office should also be informed expeditiously.

a. Reportable Incidents. In addition to collisions between vessels and collisions between vessels and piers, the following are examples of events that should be reported as admiralty incidents per reference (a), 1103:

(1) Any injury or death of contractor employees. Some organizations have not reported incidents involving injuries to contractor employees under the mistaken belief that payment of Worker's Compensation benefits precludes tort liability on the part of the U.S. As a matter of law, the injured employee may file suit against third parties, including the U.S., for damages as a result of the third party's liability for the injuries.

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(2) Wake damage or swell wash.

(3) Damage to fish nets or traps, lobster pots, oyster beds, or clam flats.

(4) Damage to commercial cargo carried in Navy bottoms.

(5) Damage resulting from oil spills, paint spray, or blowing tubes.

(6) Damage to third parties resulting from fires or explosions on naval vessels.

b. Command Statements. All commands are cautioned against giving statements to opposing interests or to the press that may constitute admissions of liability. Inquiries on behalf of claimants should be referred to the cognizant admiralty officer in the field, OJAG (Code 11), or the Naval Service Training Command Staff Judge Advocate or NETC Force Judge Advocate.

**Appendix A - Checklists**

- A.1. Administrative Separations (ADSEPs) - Overview Checklist
- A.2. ADSEPS - Drug Abuse Checklist
- A.3. ADSEPS - Pattern Of Misconduct Checklist
- A.4. Uniform Code Of Military Justice, Article 138 Complaints Review Checklist

### A.1. Administrative Separations (ADSEPs) - Overview Checklist

#### 1. Prepare separation paperwork.

- Determine all bases of separation and least favorable characterization.
- Determine if any conduct is a Mandatory Separation Processing basis (MILPERSMAN 1910-233).
- Ensure that all requirements to support separation are present.
- Determine whether to use Notification Procedure or Administrative Board Procedure.

Note: If least favorable characterization is an Honorable or a General and respondent has less than six years of service, use Notification Procedure (NAVPERS 1910/31) (MILPERSMAN 1910-402).

Note: If least favorable characterization is Other Than Honorable, use Administrative Board Procedure (NAVPERS 1910/31).

- Fill out Notification or Administrative Board processing paperwork (NAVPERS 1910/31) listing all bases with short descriptions per MILPERSMAN 1910-402.
- Ensure second page of processing paperwork is signed and dated by commanding officer (CO) or by direction.
- Go over processing paperwork with respondent (i.e., notify the respondent).

Note: If respondent elects to consult with counsel, you may assist as follows:

- Advise respondent separation processing will be on hold for two days to allow consultation with counsel. (Redact Personally Identifiable Information prior to turning over to Defense Counsel (DC).)

Not required, but best practice:

- Copy evidence for counsel.
- If necessary, make Personnel Report appointment with Defense Service Office (DSO).
- If necessary, have chain of command escort respondent to DSO with processing paperwork and a copy of the evidence.
- Verify processing paperwork is complete and signed by DSO counsel if respondent has elected to consult with counsel (DC signature not required).

2. If respondent elects board:

- Draft request for counsel letter addressed to DSO.
- Provide initial discovery to respondent's counsel (usually command investigation/non-judicial punishment paperwork/notification paperwork).
- Coordinate with respondent's counsel to set time and date for board.
- Determine board members and draft appointing order for signature by Convening Authority (CA), CO, Acting CO, or By Direction per MILPERSMAN 1910-502.

Note: A member may be challenged on the grounds that the member cannot render a fair and impartial decision. The CA, upon being informed of the circumstances of the challenge and the recommendation of the other members, may appoint a substitute for the challenged member (MILPERSMAN 1910-516). Accordingly, it is advisable to have substitute members available.

- Provide all evidence and names of witnesses to respondent's counsel.
- Request list of respondent's witnesses from respondent's counsel.
- Reserve room for board (with phone if necessary).
- Reserve room/meeting area for respondent and counsel.

- Verify witnesses are available for board.
- Verify audio recorder is on hand (and functioning) for recording the board.
- Prepare board member questions, opening statement, witness questions, and closing argument for recorder's use.
- Prepare script, exhibit binders, and findings worksheet for members, recorder, and respondent.
  - Include appointing order and respondent notice (NAVPERS 1910/31) as command exhibits.

Note: Typically, appointing order and respondent notice (NAVPERS 1910/31) appear as command exhibits 1 and 2.

- Prepare Privacy Act (PA) Statement for respondent.

### 3. Board Date

- Verify audio recorder is on hand (and functioning) for recording the board.
- Ensure Respondent signs PA Statement.

### 4. Prepare the Record of Proceedings

- Using the script in the MILPERSMAN 1910-516, prepare a summarized transcript of the record of proceedings unless a verbatim record is required.

Note: The record of proceedings shall be kept in verbatim form if the CA or separation authority so directs OR the case involves child sexual abuse.

- Include all witness statements, including respondent's.
- Record all challenges and legal objections that occurred during the board.

### 5. Post-Board

- Prepare Senior Member Letter for signature with enclosures, including:
  - Record of Proceedings/Transcript;

- Appointing order;
  - Processing paperwork (NAVPERS 1910/31);
  - Command and respondent exhibits;
  - Findings/recommendations worksheet; and
  - PA Statement.
  - Have Senior Member sign letter.
6. Prepare Letter of Transmittal (LOT) enclosures (MILPERSMAN 1910-600)
- If no board was held, enclosures to LOT should include:
    - Processing paperwork (NAVPERS 1910/31);
    - Evidence showing that basis was met; and
    - Matters submitted by respondent.
  - If board was held, enclosures to LOT should include:
    - Senior Member Letter with enclosures including;
      - Record of Proceedings/Transcript;
      - Appointing order;
      - Processing paperwork (NAVPERS 1910/31);
      - Command and respondent exhibits;
      - Board findings and recommendations sheet; and
      - Respondent's PA Statement.
    - Letter of Deficiency (if applicable);
    - Response to Letter of Deficiency by recorder or staff judge advocate (if applicable); and
    - Matters submitted by respondent.
7. Determine Separation Authority (SA)
- Use MILPERSMAN 1910-704, 1910-708, and 1910-710 determine SA

Note: If Notification Procedure (NAVPERS 1910/31) is used, respondent may elect General Court Martial (GCM) CA review. Then, the GCMCA becomes the SA.

- Verify that the requirements of 1910-702 are met: Post Traumatic Stress Disorder/Traumatic Brain Injury screening.

8. If Command is NOT SA:

- Prepare LOT with enclosures for signature to send to SA (MILPERSMAN 1910-600)
- Receive Separation Order from SA. Order should include directions for DD-214.

9. If Your Command is SA:

- Prepare Separation Order from the CO to your Administrative Officer/servicing Personnel Support Detachment (PSD). Order should include directions for completing DD-214.

10. Separation Processing

- Have the respondent complete pre-separation counseling (DD-2648).
- Have the respondent complete separation physical (SF 600).
- Have Admin/respondent's chain of command complete close-out evaluation.
- Have Admin/servicing PSD complete DD-214.
- Prepare LOT for signature to send to NAVPERS for filing with the following enclosures:
  - LOT with all enclosures (Note: See paragraph 6 of this appendix for guidance on relevant enclosures):
    - Separation Order;
    - Pre-separation counseling (DD-2648);
    - Separation physical (SF 600); and
    - DD-214.

11. Record Keeping

- Keep complete copy for command files per the Navy Records Management Program (SECNAVINST 5210.8E)



**A.2. ADSEPS - Drug Abuse Checklist**

SEPARATION BY REASON OF MISCONDUCT - DRUG ABUSE

Ref: MILPERSMAN 1910-146

Note: Process member who wrongfully used inhalants (huffing), over-the-counter drugs, or controlled substance analogues (designer drugs) under MILPERSMAN 1910-142, NOT under MILPERSMAN 1910-146.

1. Processing is mandatory if:

- Positive urinalysis that was tested and confirmed positive at a Navy Drug Screening Lab or other Department of Defense-approved lab;
  - Date:
  - Documentation of urinalysis:
- Admission of drug use:
  - Date:
  - Documentation:
- One or more military drug-related offense(s)\*:
  - Date:
  - Documentation:
- Nolo contendere (no contest) plea in civilian court for drug-related offense(s)\*:
  - Date:
  - Documentation:
- Civil conviction for drug-related offense(s):
  - Date:
  - Documentation:

OR

- Actions tantamount to findings of guilt in civil courts (e.g., deferred prosecution, entry in pretrial intervention program).
- Date:
- Documentation:

\*Drug-related offenses include:

1. Drug Abuse - illegal or wrongful use, possession of controlled substances or attempts to commit drug offenses.
2. Drug Trafficking - the sale, transfer, or possession with the intent to sell or transfer controlled substances.
  - a. Refer to SECNAVINST 5300.28E for a definition of "Drug Abuse".
  - b. Exceptions to Mandatory Processing: When commanding officer determines that:
    - (1) The urinalysis result was caused by administrative errors (e.g., faulty local chain of custody, evidence of tampering) or
    - (2) The drug use was not wrongful (e.g., prescribed medication, unknowing ingestion).

Note: If (1) or (2) applies: The member shall not be identified as a drug abuser and the positive urinalysis is not a drug abuse incident.

- Documentation of the above determination should be sent to OPNAV (N17).
- Date documentation of determination sent to OPNAV (N17) and immediate superior in command.
- 3. Use notification procedures if any of the following apply (unless the member has more than six years of service and elects an ADSEP board):
  - Member self-refers to a qualified self-referral representative with intent to get treatment and is found to be drug dependent by proper medical authority.

- Member's processing is based on fitness for duty or certain service-directed urinalysis per OPNAVINST 5350.4D.
- Member voluntarily discloses evidence of prior personal drug abuse during course of professional treatment or rehabilitation.
- Navy reservist tests positive on accession test into the Reserve program.
- Prior service applicants for Selected Reserve (SELRES) enlistments/reenlistments whose break in service from a SELRES of Regular component is more than 6 months.

**A.3. ADSEPS - Pattern Of Misconduct Checklist**

PATTERN OF MISCONDUCT (MILPERSMAN 1910-140)

Ref: MILPERSMAN 1910-202

1. Check all that apply and list the date and documentation of each:

- Two or more non-judicial punishments, courts-martial, or civil convictions (or any combination thereof).  
 Incident Type: \_\_\_\_\_  
Date(s): \_\_\_\_\_
- Incident Type: \_\_\_\_\_  
Date(s): \_\_\_\_\_
- Incident Type: \_\_\_\_\_  
Date(s): \_\_\_\_\_

Note: Civil convictions include, and often are evidenced by alternatives to a conviction, such as an "adjudication withheld" or pretrial diversion programs. Also see MILPERSMAN 1910-144.

- Three or more Unauthorized Absences (UA) (each UA is greater than 3 days, but less than 30 days duration);  
Date(s): \_\_\_\_\_  
Date(s): \_\_\_\_\_  
Date(s): \_\_\_\_\_
- A set pattern of failure to pay just debts;  
Date(s) and documentation: \_\_\_\_\_

OR

- A set pattern of failure to contribute adequate support to dependents, or failure to comply with civil court orders, decrees, or judgments concerning dependent support.

Date(s) and documentation: \_\_\_\_\_

2. At least two or more incidents above must have occurred during the CURRENT enlistment:

Enlistment Start Date: \_\_\_\_\_

Enlistment End Date: \_\_\_\_\_

Note: If separation is initiated while a member is within the first 180 days of continuous active duty service, process under MILPERSMAN 1910-308 (entry level separation).

3. Service member has been formally counseled concerning deficiencies and has been afforded an opportunity to overcome those deficiencies, as reflected in appropriate counseling or personnel records. Many forms of counseling are available, including, but not limited to, the following:

- NAVPERS 1070/613 ("Page 13") warning (Date of Page 13);
- Letter of Instruction (Date of letter: );
- Letter of Reprimand (Date of letter: );
- Letter of Caution (punitive or non-punitive) (Date of letter);
- Evaluation or documented mid-term counseling (Date of eval/counseling);
- Letter of Intent to Revoke Security Clearance (Date of letter);

OR

- Any other written form of counseling (Date of counseling).

Note: Prior to processing, member must have violated a NAVPERS 1070/613 warning or other form of counseling per MILPERSMAN 1910-202.

- Caveat 1: A NAVPERS 1070/613 that simply documents a non-judicial punishment is insufficient for the purposes of MILPERSMAN 1910-140. The NAVPERS 1070/613 must counsel the member on their shortcomings/deficiencies.
- Caveat 2: Processing for pattern of misconduct is NOT appropriate when the member has not violated a NAVPERS 1070/613 or other counseling prior to the last incident of misconduct.
- Caveat 3: A counseling listed above may be considered violated based on further misconduct or deficiencies in performance/behavior and does not require disciplinary or civil court action, though the violation must be substantiated. However, you must still meet the requirements in Section 1 above in order to process under MILPERSMAN 1910-140.

4. Type of Processing:

- Use Notification Procedure (NAVPERS 1910/31\*) if the least favorable characterization is a GENERAL Discharge per MILPERSMAN 1910-300;

OR

- Use Administrative Board Procedure (NAVPERS 1910/31\*) if the least favorable characterization is OTHER THAN HONORABLE per MILPERSMAN 1910-300.

\*The NAVPERS 1910/32 ADSEP PROCESSING NOTIFICATION PROCEDURE has been cancelled. The newly revised NAVPERS 1910/31 (Rev. 10-2014) ADSEP PROCESSING NOTICE has been edited to allow for both the Notification and Administrative Board procedures to appear in one form.

#### A.4. Uniform Code of Military Justice, Article 138

##### Complaints Review Checklist

All references are to the Manual of the Judge Advocate General unless otherwise noted.

##### Complaint

- Is complaint properly forwarded? (0306d)
  - Addressed to proper General Court Martial Convening Authority (GCMCA), via intermediate endorsers. If not, re-address and forward properly.
- Is respondent the proper respondent? (0305)
  - Respondent was complainant's Commanding Officer (CO) at the time of the complained of actions.
  - If respondent and complainant have the same CO, then it is a "true 1150" and no report to the Secretary of the Navy (SECNAV) is required. All other 1150's are processed using Article 138 rules.

Note: See 0305c if one of the parties has transferred since the alleged wrong.

- Is complainant a proper complainant? (0305a) If not, follow procedures for a complaint that does not fall within the scope of Chapter 3 (0307b(1)).
- Is complaint complete with all enclosures/endorsements? (0306c) If not, request missing documents from complainant/endorsers.
- Complainant submitted written request for redress to respondent prior to submitting Article 138 complaint? (0306b) If not, complaint may be returned to complainant in accordance with 0307b(2).

Note: This defect may be waived by GCMCA.

- Complaint is timely? (0306a) If not, complaint may be returned to complainant in accordance with 0307b(2).

Note: This defect may be waived by GCMCA.

- Complainant does not join more than one respondent? (0306g) If it does, complaint may be returned to complainant in accordance with 0307b(2) for resubmission of separate complaints for each respondent.

Note: This defect may be waived by GCMCA, but not recommended.

- Complaint does not join more than one complainant? (0306g) If it does, complaint may be returned to complainant in accordance with 0307b(2).

Note: This defect may be waived by GCMCA, but not recommended.

- Complaint is in the proper format? (0306c, Appendix A-3-a)

- Includes complainant's and respondent's personal information?

- Includes date wrong discovered and number of days between discovery of wrong and complaint submission?

- Explains delay, if applicable?

- Certified complaint to be "true and correct" and is signed, witnessed, and dated? If not, obtain information and include in GCMCA's action or the complaint may be returned to complainant in accordance with 0307b(2).

Note: These defects may be waived by GCMCA.

- Complaint alleges a wrong that is a proper subject of a complaint of wrongs? (0303f, 0304a)

- Not recommendations (unless controlling, i.e., advancement recommendations)?

- Not general policies of Department of the Navy (DON)?



- Not wrongs that have another DON procedure that provides notice, right to rebut or hearing, and review by superior; includes ADSEPSs, Boards Of Inquiry, non-judicial punishment, courts-martial, and detachments for cause.

Note: The above defects may not be waived by GCMCA and require finding that particular allegation not cognizable. (0307b)

- Complaint requests proper redress? (0305)

Note: Defect may not be waived by GCMCA and requires finding that particular allegation is not cognizable. (0307b)

NOTE: FOR THOSE DEFECTS THAT MAY BE WAIVED BY GCMCA, FAILURE TO RETURN THE COMPLAINT TO COMPLAINANT AND ADDRESSING IT ON THE MERITS IN LETTER TO SECNAV IS CONSIDERED A WAIVER OF THE DEFECT(S).

#### GCMCA ACTION

- Advance copy provided to the Office of the Judge Advocate General (OJAG) Code 13? (0306d)
- Complainant provided a copy of all endorsements and enclosures? (0307e)
- Complainant given opportunity to rebut adverse material using Appendix A-3-c? (0307e)
- If endorsements to complainant's rebuttal submissions contain new adverse matter(s), complainant must be given an opportunity to rebut that also.
- Is this command the proper GCMCA? (0305c(3)(b))
  - If area coordinator is acting as GCMCA, written request from operational GCMCA must be included.
- Has complaint been withdrawn by complainant? (0306f)
- Signed withdrawal letter forwarded to OJAG Code 13 with notice of withdrawal to SECNAV.

- If complaint returned to complainant because it is incomplete or otherwise procedurally deficient, has complainant been provided with an explanation for return and copies forwarded to SECNAV via OJAG Code 13? (0307b)
- GCMCA's action completed within 60 days of receiving complaint? (0307f)
  - Delay must be explained in letter to SECNAV.
- Report to SECNAV signed personally by GCMCA or official "Acting" (not "by direction")? (0307g)
- If GCMCA cannot effect redress granted, file forwarded to SECNAV via officer who may effectuate redress (i.e., Chief of Navy Personnel)? (0307h)
- Complainant advised in writing of action on complaint? (0307j)
- Report to SECNAV in proper format, including complaint and all enclosures and endorsements? (0307k)
  - Report must discuss each allegation of wrong and conclude 1) whether it is cognizable, and if it is cognizable; 2) whether it is with merit or not, and if the allegation has merit; and 3) whether relief is appropriate.
- For U.S. Marine Corps commands, report to SECNAV sent via Commandant of the Marine Corps. (0307k)