



USN/USMC
Commander's Quick
Reference Handbook
for Legal Issues

2008



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- Reference (c) requires commanders to report within 24 hours via OPREP-3 SIR reports of any serious crime (i.e., felony arrest) or incident that may result in domestic or foreign criminal jurisdiction over Marine Corps personnel and their dependents or that may arouse public or congressional interest [see enclosure (3)]. Sexual assaults are reportable incidents as serious crimes. The commander of the alleged offender will submit an OPREP-3 SIR; if the alleged offender is unknown, the reporting commander will be that of the alleged victim.
- Reference (b) requires staff judge advocates to report all sexual assaults to the Headquarters Marine Corps-monitored Sexual Assault Incident Reporting Database (SAIRD) [see ¶ 6.f(2)]. As a result, close coordination with your staff judge advocate is necessary to ensure timely and accurate data is reported.

CARE FOR SEXUAL ASSAULT VICTIMS: In cases of sexual assault, the specialized concerns and issues (physical, mental, and emotional) surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. Avoiding re-victimization of the victim is crucial to the well-being of those individuals. Additionally, reference (a) expressly prohibits releasing the name of any sexual assault victim to the media without the consent of the victim [see enclosure 2, ¶ 2.b].

VICTIM ADVOCATES: The Marine Corps has victim advocates available at every installation through the Marine Corps Family Services activity, formerly the Family Support Center [see *reference (b)*, enclosure 1, ¶¶ 10-11]. Victim advocates possess specialized training in assisting victims of sexual assault. Commanders should be receptive to recommendations made by victim advocates on behalf of victims. Victim advocates may recommend that a military protective order be issued, that the victim reside in a “safehouse” for a short period of time, or that the victim requires a level of assistance beyond their capability, requiring a commander’s authorization.

COURTS-MARTIAL: TYPES & CONVENING

- REFERENCES:** (a) Manual for Courts-Martial,
RCM 501-504, 704, 1003, 1107, 1301-1306
(b) UCMJ Arts 16, 22-25
(c) JAGMAN Chapter I

TYPES OF COURT-MARTIAL:

SUMMARY COURT-MARTIAL (SCM):

- Commanding Officers and OICs have authority to convene SCMs. The CO or OIC is referred to as the convening authority (CA).
- SCMs cannot try officers.
- All enlisted (sea and shore) have absolute right to refuse trial by SCM.
- CA appoints one officer as the SCM Officer who serves as the Military Judge (MJ), Trial Counsel (TC), Defense Counsel (DC) all rolled into one.
- The accused has no right to military counsel, but he may be represented by military counsel (at no expense to the accused) if one is detailed to the case. The accused also has the right to retain civilian counsel at his own expense if civilian representation will not unreasonably delay the proceedings.
- Punishment at SCM is limited. *See APPENDIX C.*
- CA takes action on the findings & punishment awarded by the SCM Officer after 7 days.

SPECIAL COURT-MARTIAL (SPCM):

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

GENERAL COURT-MARTIAL (GCM):

- Article 32 investigation required. Any CA may order an Art 32.
- Only flag officers (and a very few specially designated COs) may convene a GCM. (*See reference (c), § 0120.*)
- GCMs involve a military judge, at least 5 members, TC, and DC (DC may include detailed counsel, IMC, and/or civilian counsel).
- GCMs have authority to issue maximum punishment listed for any UCMJ offense.
- GCMCA approves pretrial agreement.
- GCMCA takes action on findings and sentence after clemency period has expired.

COURTS-MARTIAL: BASICS

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

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

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

ACCUSER CONCEPT:

- For a special or general court-martial, the CA may not:
 - (1) Sign the accuser block on a charge sheet;
 - (2) Direct that someone else sign the accuser block on a charge sheet; or
 - (3) Have a personal interest in the case (e.g., as victim or witness).
- If such a situation exists, the CA must forward the case to a superior.

AREAS OF UNLAWFUL COMMAND INFLUENCE TO AVOID:

- **PUBLIC OPINIONS:** Do not express public opinions on innocence or guilt or appropriate punishment for crimes in general or for individual accused.
- **UNLAWFUL INFLUENCE:** Do not order a subordinate commander to dispose of a case in a particular way. Each commander must be allowed to exercise independent judgment.
- **INFLEXIBLE POLICY:** Do not have an inflexible policy on disposition or punishment. Each case and each punishment must be decided based on its particular facts.
- **INFLUENCE REGARDING RESULT:** Do not censure, reprimand, or admonish the court or any member, military judge, or counsel with respect to findings or sentence adjudged.
- **INFLUENCE ON MEMBERS:** Do not select or remove court members in order to obtain a particular result.
- **INFLUENCE ON MILITARY JUDGE:** Do not attempt or even appear to put pressure on a military judge or court members to obtain a particular result.
- **INFLUENCE ON WITNESSES:** Witnesses may not be intimidated or discouraged from testifying. If a witness testifies (truthfully) on behalf of an accused, no retribution should be taken against him.

PRETRIAL AGREEMENTS

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

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

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

SCOPE OF A PRETRIAL AGREEMENT (PTA):

Accused may agree to:

- Plead guilty.
- Waive article 32 hearing.
- Waive members (i.e., to be tried by military judge alone).
- Waive government funding of sentencing witnesses.
- Be tried no later than a specific date.
- Stipulate to facts or testimony.
- Make restitution to a victim.
- Testify against others.
- Conform behavior to conditions of probation.
- Waive right to an administrative separation hearing after trial.
- Lower forum of court-martial.

CA may agree to:

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

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

- Counteroffers are permissible.
- The final agreement must be in writing.
- The PTA must contain all aspects of agreement. Under-the-table agreements may render the written agreement invalid.

COURTS-MARTIAL: POST-TRIAL REVIEW

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

CA ACTION: Review of the court-martial by the Convening Authority after the trial is a crucial but often neglected step in the court-martial process that may cause serious consequences.

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

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

- **AUTOMATIC REDUCTION:** When an enlisted member's court-martial sentence, as approved by the CA, includes: (1) a discharge or (2) more than 90 days confinement, the member will automatically be reduced to the paygrade of E-1 upon the date of the CA's action.
 - **CA's OPTIONS:** The CA can suspend, remit (cancel), modify (approve reduction to a lower paygrade but not all the way down to E-1), or allow this automatic reduction to occur.
- **AUTOMATIC FORFEITURE:** When any member's court-martial sentence includes: (1) confinement for more than 6 months or death, or (2) a discharge plus any amount of confinement, the member will automatically forfeit 2/3 pay (in the case of a SPCM) or all pay and allowances (in the case of a GCM) starting at the earlier of CA's action or 14 days after the sentence is adjudged. The automatic forfeiture will be taken throughout the period of confinement and parole.
 - **CA's OPTIONS:** The CA can defer automatic forfeiture until CA's action. (This means the automatic forfeiture of pay will not take effect, as it normally would, 14 days after the trial. Deferment changes the effective date to the date of the CA's action.) At action, the CA can approve the automatic forfeiture; alternatively, the CA may waive the forfeiture for a maximum of 6 months in favor of the accused's dependents. Usually the accused sets up an allotment for a dependent in the amount of the automatic forfeiture.

Section II: NONJUDICIAL PUNISHMENT

ADMINISTRATIVE & DISCIPLINARY OPTIONS

REFERENCES: (a) RCM 306

(b) SECNAVINST 1920.6; 5510.30 (series)

(c) JAGMAN 0102-0105

(d) OPNAVINST 3120.32; 5510.100 (series)

(e) BUPERSINST 1430.16; 1610.10

(f) MILPERSMAN 1611-020; 1616-010; 1910

(g) MCO P1610.7 (series)

APPROPRIATE ACTION IN EVERY CASE: “The disposition decision is one of the most important and difficult decisions facing a commander.” The discussion to RCM 306 lists 10 factors that the commander should consider (e.g., character of the accused’s military service; nature of the incident; victim and witness availability, etc.). Prompt action is always essential.

NO ACTION OR DISMISSAL: Upon completion of an investigation a commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed.

ADMINISTRATIVE ACTION: May be taken in addition to or instead of disciplinary action as circumstances warrant.

- Informal resolution of minor sexual harassment incidents or very minor misconduct.
- Nonpunitive measures - leadership tool to correct unacceptable behavior. JAGMAN 0102
- Nonpunitive Censure. JAGMAN 0105
- Extra Military Instruction (EMI). JAGMAN 0103; OPNAVINST 3120.32
- Denial of Privileges. JAGMAN 0104
- Letter of Instruction (LOI). MILPERSMAN 1611-020/1616010
- FITREP and EVALS. BUPERSINST 1610.10; MCO P1610.7
- Security clearance adjustment or withdrawal. OPNAVINST 5510.100; SECNAVINST 5510.30 (series)
- Withhold or withdraw advancement/promotion recommendation. BUPERSINST 1430.16 (series)

ADMINISTRATIVE WITHHOLDING OF PRIVILEGES (JAGMAN 0104).

Those with the power to grant a privilege may also revoke that privilege. Only privileges, and not rights, may be withheld.

- Privilege: A benefit for the member's enjoyment (e.g., special liberty, driving on base, civilian clothing, exchange of duty, use of base theater/club.)

LAWFUL WAYS TO DENY NORMAL LIBERTY:

- Right: Part of compensation or required for the performance of duties (e.g., medical care, dental care, quarters, subsistence, pay, normal liberty).
- EMI
- Liberty risk
- Extension of working hours for mission requirements
- Limited health/safety reasons (i.e., drunk watch, immunization, and family advocacy 72-hour cooling-off period)
- Punishment awarded at NJP or courts-martial
- Pretrial restraint for courts-martial

Limited health/safety reasons (i.e., drunk watch, immunization, and family advocacy 72-hour cooling-off period) Punishment awarded at NJP or courts-martial Pretrial restraint for courts-martial

“VOLUNTARY RESTRAINT” (HACQ): “House Arrest, Confinement to Quarters”, or HACQ, is not authorized.

REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES:

- Request mast. Article 138 (UCMJ) complaint against CO
- Article 1150 (NAVREGS) complaint against superior.
- Congressional inquiry/Hotline complaint.

PRIOR CIVILIAN ACTION (JAGMAN 0124): Prior federal court action bars NJP or court-martial. Prior State/local/foreign court action does not bar NJP or court-martial, but the command must request permission to proceed from the GCMCA, who must report to OJAG (Code 20) or the Commandant of the Marine Corps (JAM) if permission is granted.

- Criteria – exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest.

DUAL ACTION: If both the Navy and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. Senior Officer Present Afloat and the area coordinator SJA, as well as NCIS, should be consulted if it appears that both the Navy and local authorities are contemplating prosecution.

STATUTE OF LIMITATIONS: Two years from date of offense.

Section III: JAGMAN INVESTIGATIONS

JAGMAN INVESTIGATIONS

REFERENCES: (a) JAGMAN, Chapter II
(b) MILPERSMAN 1770 -010
(c) MCO P5800.16 (LEGADMINMAN)

TYPES OF INVESTIGATIONS:

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

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

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

BOARD OF INQUIRY (BOI): [Not to be confused with officer separation BOIs] Less formal than a COI, but also used for “major incidents.” Must be convened by a GCMCA.

COMMAND INVESTIGATION (CI): Most frequently used investigation of all JAGMANs. Not used for any incident considered a “major incident” until command consults with GCMCA.

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

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

REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL

REFERENCES: (a) SECNAVINST 5510.36A (Chapter 12)
 (b) JAGMAN Chapters 1 & 2

POLICY: A loss of classified information occurs when it cannot be physically located or accounted for. A compromise is the unauthorized disclosure of classified information to a person(s) who does not have a valid clearance, authorized access or a need-to-know. A possible compromise occurs when classified information is not properly controlled.

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

PRELIMINARY INQUIRY:

- CO appoints command official (not Security Manager) to conduct PI. (Ref (a), sect.12-4.1)
- PI shall be initiated and completed within 72 hours. (sect 124.2)
- PI message report (or letter) to ISIC, CNO(N09N2), Originator and Original Classification Authority of information, local NCIS office, National Security Case Disposition Authority (NSCDA), OJAG (Code 17), and others listed in sect 12-8. (sect 12-4.2)
- PI shall completely and accurately identify the information lost or compromised. (sect 12-5)
- If PI determines no loss or compromise or “possibility of compromise is remote” message report not required. (sect 12-7.3)
- Results of PI may indicate more detailed investigation required. (sect 12-9.1)

JAGMAN INVESTIGATION:

- JAGMAN may be used to recommend any corrective or disciplinary action. (sect 12-9.1)

- CO appoints command official (not security manager) to conduct JAGMAN. (sect 12-10.1)
- Follow reference (b) guidelines; ensure appropriate classification of report and enclosures. (sect 12-12)
- Forward JAGMAN to CNO (N09N2) via administrative chain of command; info copies to NCIS,OCA and originator. (sect 12-13)

NATIONAL SECURITY CASE REPORTING (See reference (b), sect. 0126) .:

- Results of PI or NCIS investigation indicates case may meet national security case criteria.
- A national security case is one which, to any serious degree, involves the compromise of a military or defense advantage over any foreign nation or terrorist group; involves willful compromise of classified information; affects our capability to resist hostile or destructive action; or involves an act of terrorism for more detailed investigation required.
- JAGMAN designates certain senior line commanders as National Security Case Disposition Authorities (NSCDA).
- Report case within 72 hour PI period to OJAG and cognizant NSCDA.

If designated as a national security case NSCDA must make periodic message reports (every 15 days) to CNO until resolution or until the case is determined not to be a national security case.

JUDGE ADVOCATE GENERAL REPORTING: Report all cases to OJAG (Code 17) that involve classified information, whether or not designated a national security case :

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

ISIC MAJOR CASE/HIGH VISIBILITY CASE REPORTING REQUIREMENTS: Some ISICs require periodic reporting on certain types of cases considered “major” or “high visibility.” Report to JAG can be sent to ISIC as well to satisfy both requirements in cases involving classified information.

CLAIMS

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

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

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

NOTIFICATION: The servicing Code 15 Claims Unit should be notified of any incident which might result in a claim. The Personnel Claims Unit and Tort Claims Unit in Norfolk may be contacted at (757) 444-5341 or DSN 564-5341.

CLAIM RECEIPT: Should the command receive an actual claim, it must be date stamped and the original forwarded immediately to the servicing Code 15 claims unit - along with all accompanying material and original envelope with postmark.

ADVANCE COPY OF INVESTIGATION: Provide the Personnel or Tort Claims Units with an advance copy.

NOTIFICATION OF LAWSUIT: If a lawsuit has been filed against an individual within the command, the command or the DON, immediately notify the servicing NLSO and Office of the Judge Advocate General (OJAG) Code 15, at DSN 325-4600 or (202) 685-4600.

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

FOREIGN CLAIMS: See *FOREIGN CLAIMS*.

Section IV: ADMINISTRATIVE SEPARATIONS

REFERENCES: (a) DOD Dir 1332.14
(b) MILPERSMAN, sections 1900, 1910
(c) MCO P1900.16 (series)
(MARCORSEPMAN), Chapters 1 & 6

PURPOSE: Enlisted administrative separations (ADSEPS) are intended to promote readiness by maintaining standards of performance, achieve authorized force levels, and provide for separation of enlisted personnel for various circumstances.

BASIS OF SEPARATION: The reason for separating a service member. A list of bases are found in 1910-100 of reference (b), and the table of contents of reference (c). Bases are divided into two broad categories:

- Voluntary: The service member requests separation. Reasons may include hardship, pregnancy, conscientious objector, etc. All voluntary separations must be at the convenience of the Government.
- Involuntary: The Service initiates the separations process. Involuntary basis include drug abuse, pattern of misconduct, serious offenses, alcohol, rehab failures, etc.

Mandatory basis of separation. Involuntary basis of separation where the commander is required to process.

USMC:

- Fraudulent entry
- Homosexual conduct
- Drug abuse
- Supremacist / Extremist activities
- Sexual harassment
- A second substantiated domestic violence incident (CRC level 3 or above).

Navy:

- Deviant sexual behavior
- Sexual harassment
- Misconduct that could have lead to death or serious bodily injury,
- Drug abuse,
- Illicit use of over the counter medication/inhalants
- Supremacist / Extremist activity,

- Alcohol rehab failure.

CONVENING AUTHORITY: Official authorized to convene the separation process. Normally the service member's Commanding Officer.

NOTIFICATION vs. ADMINISTRATIVE BOARD PROCEDURES

- Notification: Appropriate for all Convenience of the Government cases, and for misconduct cases (except mandatory processing bases listed below) where Convening Authority feels General or Honorable discharge is warranted and individual being processed (respondent) is not entitled to a board.
- Administrative Board: all homosexual conduct cases, mandatory processing bases, and other misconduct cases where CA feels OTH is warranted.
- Right to Board: Member is entitled to an admin board when OTH is authorized and sought, when member has at least 6 years active and/or Reserve service, or when processing is mandatory.

CHARACTERIZATION OF SERVICE:

- Honorable: Met standard of acceptable conduct & performance; or is otherwise so meritorious that any other characterization is clearly inappropriate. For Navy, must have trait avg. of 2.50 or above at EAOS. For USMC, must have Pro/Con marks of 4.0/3.0 at EAS.
- General (under honorable conditions): Honest and faithful service, negative aspects outweigh positive. Member may lose significant benefits, such as GI Bill.
- Other than Honorable (OTH): One or more acts or a pattern of misconduct constituting significant departure from conduct expected from Sailors and Marines. Service member normally loses all benefits.

SEPARATION AUTHORITY (SA): The official who approves a separation.

- Navy SAs:
 - SPCMCA: When notification procedure used and General or Honorable discharge is least favorable characterization. In all cases where member is involuntarily separated by a SPCMCA, member can request review of case by GCMCA before separation is awarded. *See Appendix J.*
 - GCMCA: When administrative board procedure used if Other than Honorable (OTH) discharge awarded. If General or Honorable discharge is awarded by Admin Board, SPCMCA can act as the SA in some situations. *See Appendix J.*

- **BUPERS/SECNAV:** Active duty or reserve personnel within 2 years of retirement; best interest of the service cases; conscientious objection; homosexual conduct cases; when separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special or general court-martial that did not adjudge a punitive discharge, and the GCMCA recommends a characterization of service as under OTH.

- **USMC SAs:**
 - **GCMCA:** Most cases.

 - **DC M&RA:** When the member is being processed for involuntary separation and has 18 years or more total active military service; when separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special or general court-martial that did not adjudge a punitive discharge, and the GCMCA recommends a characterization of service as under OTH conditions.

 - **SECNAV:** Reserve personnel within 2 years of retirement; best interest of the service cases; and homosexual conduct cases.

LEGAL REVIEW: In cases where an OTH is recommended, or when a letter of deficiency is submitted, the record must be reviewed by a Judge Advocate before the SA can act.

CONDITIONAL WAIVERS: A respondent entitled to an administrative board may request a conditional waiver of his right to a board, contingent upon receiving a General or Honorable discharge. Approved by GCMCA **only** if favorably endorsed by CA.

ENDORING ADMIN BOARD CASES: If admin board recommends retention, CO may still recommend discharge to SA. As to characterization, CO can recommend a more favorable discharge than the admin board recommended, but service members may not receive a discharge worse than what is recommended by the Board.

USN PAGE 13/USMC PAGE 11 IS EXTREMELY CRITICAL DOCUMENT: May be a prerequisite to administrative separation processing. Clear guidance on who may issue a Page 13/11 should be promulgated (typically, delegated to Dept Heads and/or Legal Officer). For USMC, the Commanding Officer must sign adverse page 11 entries. See MCO P1070.12 IRAM concerning appropriate entries. Counseling normally required for following basis:

- Parenthood
- Personality disorder,
- Entry level performance,
- Weight control failure,
- Unsatisfactory performan,

ENLISTED ADMINISTRATIVE SEPARATION BOARDS

REFERENCES: (a) MILPERSMAN, section 1910-500
(b) MCO P1900.16 (series)
MARCORSEPMAN, Chapter 6

WHEN REQUIRED: Where respondent is being processed with an OTH discharge or the member has more than 6 years of service and requests a board.

ADMIN BOARD COMPOSITION:

- 3 or more commissioned, warrant, or noncommissioned officers (E-7 and above).
- Majority must be commissioned officers.
- Senior member must be O-4 or above (line or staff).
- E-7 or above member must be senior to Respondent (lineally)
- Reservist Respondent – only commissioned officers, at least one reservist.

WITNESS REQUESTS: Must be timely. No subpoena power for civilian witnesses. CO may expend funds if live testimony is both necessary and reasonably available based on operational commitments or necessity. CO should consider such things as cost, delay, and interference with mission in deciding whether to expend funds.

CONTINUANCE REQUESTS: Respondent should be given reasonable time in order to prepare for admin board.

- Senior member (Navy) rules on requests for continuances.
- Watch delay tactics with respect to upcoming EAOS.
[Refer to p. 46 -ADSEP after EAOS/EAS]
- If respondent goes UA while pending the board, may proceed in absentia.

CHALLENGES FOR CAUSE: May be made where board member cannot make a fair and impartial decision.

- Navy: CO rules on challenges.
- USMC: Senior member or Legal Advisor rules on challenges. If senior member challenged, non-challenged board members rule on challenge.

OFFICER MISCONDUCT AND SEPARATIONS

- REFERENCES:** (a) MILPERSMAN 1611
(b) BUPERS 1610.10 (series)
(c) Navy Regulations, Article 1122
(d) MILPERSMAN 1070-020
(e) SECNAVINST 1920.6 (series)
(f) MCO P5800.16 (series) (LEGADMINMAN)

NOTE: In ALL cases of officer misconduct immediately contact BUPERS (PERS-834) at (901) 874-3197/2097 or DSN 882-3197/2097 for assistance with Navy cases, or HQMC (JAM) at 703-614-4250 or DSN 224-4250

NOTIFICATION: The following cases require notification and follow on reports for instances of officer misconduct, specifically including:

- Preferral of court-martial charges.
- Imposition of NJP. Notify PERS-834 / JAM by letter as soon as results are “final.” NJP results must be sent via the first flag officer in the admin chain of command. See reference (a) or (f) for appropriate format and informational requirements. Officer imposing NJP must recommend whether officer should be removed from a promotion list and whether they should be made to “show cause” for retention (see *ADMIN SEPARATION below*).
- Arrest by civilian authorities. A “Civil Action Report” must be immediately sent to PERS-834 / JAM by message if a BCD would be authorized for the offense under the UCMJ (e.g., drunk driving). When results become “final,” a close-out letter report is required.
- UA: All facts and circumstances are to be immediately relayed to PERS-834 / JAM by message. Next of kin letters must be sent after 10 days and DD 553 notification sent after 30 days. If the officer had access to classified info, and there are any indications that the UA may be inimical to national security, notify NCIS.

NON-PUNITIVE LETTERS OF CAUTION (NPLOC's): A common administrative counseling tool in cases for officer poor performance (e.g., non-attainment of qualifications) or neglect. NPLOC's may not be referred to in fitness reports or forwarded to BUPERS. Underlying facts which caused the NPLOC may properly be mentioned in fitness reports. If adverse matter is included in a fitness report or other official record, it must be referred to the member for statement. See BUPERSINST 1610.10 and JAGMAN 0105. See *NON-PUNITIVE MEASURES*.

Section V: PERSONNEL ISSUES

ALCOHOL ABUSE PREVENTION

- REFERENCES:** (a) OPNAVINST 5350.4 (series)
(b) SECNAVINST 5300.28 (series)
(c) OPNAVINST 1700.16 (series)
(d) MCO P1700.24 (series)
(e) NAVMC 2931

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

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

GENERAL RESPONSIBILITIES OF NAVY CO:

- Alcohol abuse information should be provided by a trained DAPA during indoctrination of newly reporting personnel.
- Command DAPA must screen all alcohol/drug-related cases brought to the attention of the command and forward to Counseling and Assistance Center (CAAC) for evaluation and an appropriate determination of treatment. Medically screen every member involved in an alcohol incident.
- Document substantiated alcohol incidents with page 13 entries, evals, fitreps, and other reports [drug and alcohol abuse reports (DAARs)] as required.
- Clearance eligibility incidents shall be referred to Department of the Navy Central Adjudication Facilities (DONCAF).
- Review the status of members involved in alcohol abuse incidents and take appropriate disciplinary, remedial, educational and/or administrative action and make a final report to DONCAF. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.
- Ensure that breathalyzer and/or field sobriety tests are conducted by base security when there is reasonable suspicion of alcohol abuse. Additionally, institute a random gate inspection program. See *SEARCH AND SEIZURE*.
- Consult with medical and alcohol abuse program personnel when there is a suspected problem.
- Ensure compliance of drinking age laws under state/country law. If there is no local law regarding the drinking age, OPNAVINST 1700.16 establishes a drinking age of 18.

- Conduct screening for overseas assignment per transfer manual to ensure members with unresolved alcohol incidents are not considered for overseas duty. Monitor aftercare of members who have completed treatment programs. Members shall be processed for ADSEP by reason of alcohol rehabilitation failure for any alcohol-related misconduct at any time in their career after completing a military treatment program. Waivers may be granted by COMNAVPERSCOM. See *ADMINISTRATIVE SEPARATIONS*.
- Reference (a) requires service record documentation of all substantiated drunk driving offenses. It also requires all service members to report when they are charged, arrested, or convicted of any alcohol-related offense. Failure to do so subjects the member to punishment for violating a lawful general order.

GENERAL RESPONSIBILITIES OF MARINE CORPS CO:

- Marines at all levels will receive prevention education and training at least annually. Commanding Generals and Commanding Officers are tasked with implementation of the drug and alcohol abuse program outlined in MCO P1700.24B and NAVMC 2931.
- Conduct screening for overseas assignment per transfer manual to ensure members with unresolved alcohol incidents are not considered for overseas duty.
- Unit Substance Abuse Control Officer (SACO) / Substance Abuse Control Specialist (SACS) will maintain case files on Marines identified with drug / alcohol problems and provide aftercare services for individuals who complete a drug / alcohol treatment program.
- Commanders will direct a SRB page 11 entry be made after counseling a Marine for any alcohol-related misconduct or unsatisfactory performance. Consult the PES for "DC" fitness report submission requirements and mandatory Section C comment requirements.
- See MCO P1900.16, paragraph 6209 for further guidance on processing of Marines for ADSEP by reason of alcohol rehabilitation failure.

DRUG PREVENTION AND URINALYSIS PROGRAM

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

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

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

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

URINALYSIS PROGRAMS:

- **COORDINATORS & OBSERVERS:** Must be designated in writing. Whenever possible assign officers or staff NCOs. Coordinators and observers should be tested separately and should never provide a sample in any urinalysis in which they participate.
- **ATTENTION TO DETAIL & SECURITY:** The entire collection process will be scrutinized in any court-martial or admin separation board. Admissibility of test results is dependent on a tight chain of custody and protection of samples after collection.
- **TESTING GOAL - USN:** Mandatory annual unit sweep (minimum one) of all assigned personnel. 10 - 20 percent of the command each month. Random sampling of smaller numbers of personnel on a more frequent basis provides best results; it reduces the risk of predictability of command testing and raises the perceived risk of detection.
- **TESTING GOAL - USMC:** Every unit shall have an aggressive compulsory Urinalysis Testing Program, which ensures systematic screening of all Marines annually, regardless of rank, for the presence of drugs. Units will test at least ten percent of their population monthly under the "IR" premise. All Marines reporting in from PCS and leave will be tested within 72 hours of their arrival.

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

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

POSITIVE RESULTS: Message report from the NDSL is official notification of lab test results and constitutes authority to take administrative or disciplinary action. Use may be limited depending on the basis for testing. For example, command-directed urinalyses may not be used to punish a member nor used to give a member an OTH (although the member shall be processed for separation). The CO should attempt to determine if:

- The member is a drug abuser and discipline appropriately (administrative separation processing is mandatory) or,
- The member's positive urinalysis result was caused by administrative error (faulty local chain of custody, evidence or tampering) and take appropriate corrective action, or
- The drug use was not wrongful, in which case the member is not identified as a drug abuser because it will not be considered a drug abuse incident.

Once the CO has made a determination he/she should notify the Immediate Superior in the Chain of Command (ISIC) and PERS-6 by official correspondence with specific circumstances. See *APPENDIX I* and *ADMINISTRATIVE DISCIPLINARY OPTIONS*.

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

STEROIDS: Navy Drug Labs do not test for steroids. Commands that want to test a sample for steroids should contact Mr. Tom Callahan at (310) 825-2635 and ask for a military quote. As of April 2008, the cost per sample was \$245.00. The mailing address and fax number for the UCLA Olympic Lab are:

UCLA Olympic Lab 2122 Granville Ave Los Angeles, CA 90025
Fax (310) 206-9077

HOMOSEXUAL CONDUCT

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

POLICY: Don't Ask; Don't Tell; Don't Pursue; Don't Harass - Whether homosexual, bisexual, heterosexual.

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

SAFETY OF THE MEMBER: When a member reports incidents or threats of harassment, the CO must take immediate steps to protect safety of the victim. Determine whether member should be moved within the command, transferred TAD, or if other security measures are warranted for the member's safety pending investigation and/or administrative processing. The fact that a person reported harassment is not enough, by itself, to initiate an investigation into the acts of the member. If information is uncovered during the investigation into the harassment that the reporter is homosexual or engaged in acts, CO must carefully consider the source and circumstances of the report. Before a CO orders an investigation, the CO **must** consult with the GCMCA SJA.

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

FROCKING OF COMMISSIONED OFFICERS

REFERENCES: (a) DoD Directive 1334.2
(b) SECNAVINST 1420.2
(c) MCO P1400.31 (series) (MARCORPOMMAN, VOL. 1)

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

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

- Frocking must be essential to the officer's maximum effectiveness in the assigned billet;

- Before an officer can be frocked, the officer must have been: (1) nominated by the President; and (2) received the consent of the Senate.

- The officer being considered for frocking must be serving in a billet for which the frocked grade is designated, or must be in the process of being ordered to such a billet. Reference (a) and (b) establish priority for the following billet assignment: joint duty, international environment, command, or other staff assignments.

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

- Receive any pay allowances, or entitlements of the frocked grade;

- Accumulate time in grade, gain seniority on the active duty list or gain seniority for any other purpose;

- Assume the legal authority of the higher grade. (Frocked officers are not authorized increased disciplinary powers under Article 15, UCMJ.)

**Section VI: SEXUAL HARASSMENT, FRATERNIZATION & HAZING
SEXUAL HARASSMENT PREVENTION**

- REFERENCES:** (a) SECNAVINST 5300.26 (series)
(b) OPNAVINST 5354.1 (series)
(c) SECNAVINST 5354.1 (series)
(d) ARTICLE 1166, U.S. Navy Regulations, 1990
(e) NAVPERS 15620 Informal Resolution System
(f) MCO P5354.1 (series)
(g) MCO 1000.9 (series)
(h) USMC "Processing EO & EEO Complaints,
"A Commander's Handbook"

RESOURCES: Navy Personnel Command:
<http://www.npc.navy.mil/CommandSupport/Diversity/EqualOpportunity/>

BOTTOM LINE: Don't ignore or condone sexual harassment.

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

Publish a command policy statement outlining the command's stance on sexual harassment.

Utilize the POD/POW to promote the Navy's zero tolerance sexual harassment policy. Periodically publish and place on command bulletin boards information concerning command EO/EEO counselors, a member's right to submit a formal or informal grievance, and the availability of legal advice.

COMMAND DISPLAYS:

Navy: Prominently display the grievance poster, Equal Opportunity Information Poster (NAVPERS 15600C, NSN: 0500-LP-102-6629)

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

USMC: Ensure NAVMC 2921, "Marine Corps Procedures for Processing of Discrimination / Sexual Harassment Complaints for Military Personnel," is prominently displayed on a permanent basis within the command. Manpower Equal Opportunity, DSN 278-9371

SEXUAL HARASSMENT INCIDENT

- REFERENCES:** (a) SECNAVINST 5300.26 (series)
(b) OPNAVINST 5354.1 (series)
(c) Article 1166, U.S. Navy Regulations
(d) NAVPERS 5354/2 Formal Complaint Form
(e) NAVPERS 15620 Informal Resolution System
(f) MCO P5354.1 (series)
(g) MILPERSMAN 1910-233
(h) MCO P1900.16 (series)
(i) MARCORSEPMAN 6210

POTENTIAL REPORTING REQUIREMENTS:

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

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

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

FORMAL COMPLAINT: Use reference (d) "Formal Complaint Form".

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

- **Within 24 hours** of receipt of the complaint at the alleged offender command, the complaint must be presented to the Commandir Officer.
- **Within 72 hours:**

FRATERNIZATION PREVENTION

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

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

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

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

- Relationships between crew members/personnel in the same work center or command. May strongly discourage, but should not establish a blanket “no dating” policy between all members unless it otherwise violates Navy prohibitions against fraternization. For example, after hours dating between two E-3s in different work centers should generally be permitted.
- Intimate conduct/public displays of affection on board a ship/military installation or while in uniform.
- Appropriate civilian attire on board ships and military installations.
- Entering berthing areas/heads/personal living male/female personnel of opposite sex.
- Appropriate language on board ships and military installations.
- Private business partnerships between command members.

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

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

See also FRATERNIZATION INCIDENT

HAZING PREVENTION/INCIDENT

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

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

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

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

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

Moreover, a service member may be prohibited from wearing a uniform at the gathering.

OFF-LIMITS: A CO may declare places temporarily “off-limits” in emergencies until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for declaring places off limits: clear danger to loyalty, morale, good order and discipline; interference with mission accomplishment; adverse effect upon health, safety, welfare or morals; or engages in discriminatory practices. Overseas, a CO has much greater discretion to place areas off-limits, checking with ISIC if intent is to place permanently off-limits.

NO MILITARY UNIONS, STRIKES SLOWDOWNS, OR PICKETING. (See Reference (g)).

MEMBERSHIP IN SUPREMACIST OR EXTREMIST GROUPS:

“Active” participation in such organizations or conduct is prohibited. Active participation includes: publicly demonstrating or rallying, fundraising, recruiting and training members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by command to be detrimental to good order, discipline, or mission accomplishment. Mandatory processing for substantiated cases. See ADMINISTRATIVE SEPARATIONS.

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

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

See POLITICAL ACTIVITIES.

TATTOO POLICY: USN:

- No tattoos on face, neck, scalp, head
- Everywhere else:
 - Prejudicial to good order/disc or service discrediting – prohibited (sexually explicit, discrimination due to ethnicity, nat’l origin, gender, racial, or religious)
 - Supremacist or gang-related – prohibited

USMC:

- No tattoos on head or neck
- No “sleeve tattoos” (covers/almost covers entire arm or leg)
- No “half-sleeve” or “quarter-sleeve” tattoos (covers/almost covers above or below elbow or knee) visible to the eye when wearing standard PT gear
- No service discrediting tattoos – sexist, racist, vulgar, anti-American, anti-social, gang-related, or extremist group

Member may be “grandfathered” in if tattoo acquired prior to promulgation of policy, but ensure page 11/13 entry is made. See references (h) and (i) for more guidance.

HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT

- REFERENCES:** (a) SECNAVINST 5370.5 (series)
(b) SECNAVINST 5370.7 (series)
(c) DOD Directive 7050.06
(d) MCO 5041.1

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

Echelon II Commanders are responsible for written internal procedures for processing hotline referrals at appropriate levels within chain of command.

Mandatory requirement to post information on Navy/DoD Hotline programs on command bulletin boards, per reference (a).

Encourage and support reporting of fraud, waste and abuse throughout all levels of command; military and civilian.

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

Assign impartial investigator, outside and independent of the operation specified in the complaint.

Reports cannot raise unanswered questions.

IG due date in tasking letter must be met.

Take proportionate remedial measures in form of disciplinary/administrative/educational action if needed to correct deficiency.

Retain EVERYTHING (notes, papers, files) for 2 years.

Use Navy IG Investigations Manual or Marine Corps IG Assistance and Investigations Manual as a guide for investigation.

Confidentiality of informant is a must.

NO REPRISAL can ever be taken against a known/suspected informant.

CONGRESSIONAL INQUIRIES

REFERENCES: (a) MILPERSMAN 5216-010
(b) SECNAVINST 5216.5 (series)
(c) Navy Regulations, Article 1155
(d) SECNAVINST 5730.5 (series)

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

PROTECTION FOR "WHISTLEBLOWERS": See *HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT*.

PSYCHIATRIC EVALUATION: Do not refer a member for a mental health evaluation as reprisal for initiating a Congressional inquiry. See *MENTAL HEALTH EVALUATIONS*.

PRIVACY ACT CONCERN: Ensure that any personal information about a member included in the response is releasable information.

CORRESPONDENCE:

Each Congressional inquiry should receive a prompt, courteous, and complete reply.

The reply should be correct even though the nature of the reply may be unfavorable.

A final or interim reply must be sent within five (5) workdays of receipt.

USN: The final reply and substantive interim replies are sent to PERS-3L with copies to the Office of Legislative Affairs. USMC: All Congressional Inquiries should be immediately forwarded by fax to the Office of Legislative Affairs (OLA(C)), (703) 614-4172/4768 or DSN 224-xxxx.

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

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

EQUAL OPPORTUNITY (EO) INCIDENT. Evaluate incident as minor or serious: See Appendix D.

POTENTIAL REPORTING REQUIREMENTS:

OPREP-3 NAVY BLUE for serious incidents. OPREP-3 Unit SITREPS for minor incidents.

Major criminal offenses to NCIS. See *NCIS INCIDENT REPORTING*.

Violent crime message. See *VIOLENT CRIME REPORTING*.

Incidents involving Sexual Harassment. See *SEXUAL HARASSMENT*.

Incidents involving sexual assaults. See *VICTIM/WITNESS*.

Incidents involving officers IAW with TYCOM/Echelon II requirements. See *OFFICER MISCONDUCT*.

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

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

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

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

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged offender as reprisal. See *MENTAL HEALTH EVALUATIONS*.

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

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

PRIVACY ACT & PERSONALLY-IDENTIFIABLE INFORMATION (PII)

REFERENCES: (a) JAGMAN, Chapter V
(b) SECNAVINST 5211.5 (series)
(c) DON CIO MSG 171952Z APR 07
(d) DON CIO MSG 301540Z NOV 06

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

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

DENIAL AUTHORITIES: Only a proper “Denial Authority” may deny release of a properly requested record. “Denial Authorities” are typically Flag/General Officers or officers exercising General Courts-Martial Convening Authority.

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

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

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

Internal release within an agency (“need to know”).

“Routine use” as defined in the system’s notice (located at privacy.navy.mil).

Statistical research.

Law enforcement activity.

Congressional inquiries (where made on behalf of individual).

PRIVACY ACT REQUESTS: Privacy Act requests are to be acknowledged within 10 working days by the system manager and be acted upon within 30 working days. Requesters can appeal denials within 60 calendar days to the denial authority (*See reference (b)*).

LAW ENFORCEMENT – CIVILIAN JURISDICTION

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

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

THREE TYPES OF JURISDICTION AND CIVILIAN MISCONDUCT:
(Installations may have different types in different areas.)

EXCLUSIVE: Federal government has exclusive authority to make and enforce local laws. Civilian misconduct may be prosecuted in federal court. Local SJA or RLSO will have a Special Assistant U.S. Attorney to prosecute. Minor driving infractions may be handled in a base traffic court. See reference (b).

CONCURRENT: State and federal governments have equal authority to make and enforce local laws. DON or civilian law enforcement may respond and either may pursue prosecution. Each base or installation **MUST** have a memorandum of understanding with local civilian law enforcement agencies on these issues.

PROPRIETARY: Federal government is merely a tenant on the land and retains no power to make or enforce local laws. State law controls. State law enforcement normally makes all arrests, and prosecution will be in state courts. Active duty may also be prosecuted in state court for traffic violations and other crimes but will not necessarily preclude punishment under UCMJ for same offense.

TYPE OF JURISDICTION DOES NOT AFFECT ENFORCEMENT OF UCMJ OVER MILITARY PERSONNEL: UCMJ is applicable in all places and at all times to all active duty. On installations with concurrent or proprietary jurisdiction, however, a violation of the UCMJ might also be a violation of local law, which means military personnel could be tried in a state court.

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

PATERNITY COMPLAINTS

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

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

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

SUPPORT ORDERS: Members must comply with state court orders.

Compliance is necessary even if member disputes paternity or does not believe that an official determination of paternity has been made.

Refer member to legal assistance attorney/civilian attorney to challenge order.

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

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

If no state order, support may be made IAW service guidelines in references (b) and (c), or member must enter into a voluntary written agreement with the mother or guardian of the child.

If member is now eligible for BAH, PSD will require written acknowledgement of paternity.

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

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

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

INDEBTEDNESS COMPLAINTS

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

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

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

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

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

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

DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

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

POTENTIAL REPORTING REQUIREMENTS:

OPREP-3 for major incidents

Unit SITREPS for minor incidents

Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*)

Violent crime message. (See *VIOLENT CRIME REPORTING*)

Incidents involving sexual assaults. (See *VICTIM/WITNESS*)

Incidents involving officers IAW with TYCOM/Echelon II requirements.
(See *OFFICER MISCONDUCT*)

NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE

(FAR): Navy, notify FAR of all allegations of spouse or child abuse. FAR will notify BUPERS (Pers-48 and Pers-6), when allegations of child sexual abuse are made. USMC, notify command Family Advocacy Officer and/or Family Advocacy Program Manager at Marine and Family Services.

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

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

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

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

CONFLICTS OF INTEREST

REFERENCES: (a) 18 U.S.C. 208
(b) DoD 5500.7-R (JER), Section 5-100

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

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

WHEN A CONFLICT EXISTS OR MAY (EVEN REMOTELY) EXIST:

Seek the opinion of an Ethics Counselor (GCM SJA).

Disqualify and do not participate or take further action on the matter.

Provide written notice of the particular conflict to superior duties.

Request a waiver, disqualification, reassignment or limitation of duties.

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

When promoted, annually thereafter, and upon termination.

Ensure it is reviewed by an Ethics Counselor for potential conflicts of interest.

Ensure any necessary remediation is made for conflicts disclosed.

This document is available to the public.

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (OGE450): The following personnel are required to file:

Navy shore installations with 500 or more military and civilian personnel.

All CO's and XO's, heads, and deputy heads of

Army, Air Force, and Marine Corps installations, bases, air stations or activities.

BIRTHDAY BALL FUNDRAISING

REFERENCES: (a) MCO 5100.31, Marine Corps Ball Funding

- (b) MCO P1700.27 (series), MCCS Policy Manual
- (c) DoD 5500.7R, Joint Ethics Regulation
- (d) MCO 5760.4 (series), Private Organizations on DoD Installations
- (e) MCO P5800.16 (series), (LEGADMINMAN)

USMC BIRTHDAY BALL. Two tiered event: Birthday balls have official and unofficial “tiers,” as set forth in reference (a), with different funding sources. The order allows limited use of appropriated funds for official portion:

Transportation, printing, publication, and official ceremonial photos covered.

Guest of honor and cake expenses must not be paid from appropriated funds.

Two funding options for unofficial portion:

Nonappropriated funds (NAF) NAF fundraising must have MCCS oversight.

Gambling by DoD employees prohibited. Sections 2-302, 3-210, and 3-211 of reference (c) severely constrain gambling activity and render impractical without MCCS oversight and control.

Raffles not recommended. Reference (b) contemplates units raising funds for MCCS.

Reference (b) allows MCCS to conduct raffles.

Private small unit fund established under reference (d) and applicable local orders.

Income limits and other restrictions to comply with reference (c).

Maintain accountability and sound management.

Fundraising: For either informal unit fund or via MCCS fundraising. See *FUNDRAISING*

Gifts and donations cannot be solicited except among unit members. Unsolicited donations must be accepted as provided in chapter 12 of reference (d).

GIFTS BETWEEN EMPLOYEES

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

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

EXCEPTIONS TO THE GENERAL RULE:

Token gifts of a nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from a vacation).

Food and refreshments shared in the office.

Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g., a junior could invite a superior to dinner).

On special infrequent occasions such as child birth, marriage, retirement, etc... a gift appropriate for the occasion may be given.

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

Creative attempts to avoid the \$300 maximum should be avoided (e.g., an organization should not be divided into different components solely to avoid the \$300 maximum by buying components of a greater gift).

Where the senior-subordinate relationship is terminated (retirement, resignation, or PCS transfer) the \$300.00 limit may be exceeded if the gift is appropriate for the occasion and is uniquely linked to the departing employee's position or tour of duty. The remaining rules (voluntary, \$10 per person limit, etc...) apply.

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

GIFTS FROM OUTSIDE SOURCES

- REFERENCES:** (a) DoD 5500.7-R (JER), Section 2-100
(b) SECNAVINST 4001.2 (series)
(c) SECNAVINST 1650.1 (series)
(d) U.S. Constitution: Article I, Section 9, Clause 8
(e) OPNAVINST 4001.1 (series)

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

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

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

Modest refreshments which are not offered as part of a meal (the “coffee and donut rule”).

Greeting cards.

Widely available discounts available to all military personnel.

Prizes won in contests or events; including random drawings, which are open to the public.

Items for which you pay fair market value (if you pay for it, it’s not a gift).

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

Gifts worth less than \$20.00 per occasion. No more than \$50.00 worth of gifts from any one source/calendar year.

Gifts given because of a bona fide personal relationship.

Awards for meritorious service. Must typically be non-cash and worth less than \$200.00.

Gifts based on outside employment (i.e., approved moonlighting job or due to a spouse’s employment).

Free attendance at an event where employee is speaking on behalf of agency.

GOVERNMENT PROPERTY

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

PREVENT MISUSE OF GOVERNMENT PROPERTY:
Government property may not be utilized for private/personal purposes.

EXCEPTION: Limited personal use of Government resources may be permitted when:

No adverse effect on performance of official duties;

Use is of reasonable duration and frequency and use is during personal time;

Serves a legitimate public interest;

Does not reflect adversely on DoD or the command; and

Creates no significant additional cost to DoD or the command.

PREVENT MISUSE OF GOVERNMENT TIME: While receiving pay, unless the member is in an authorized leave or liberty status, all hours should be dedicated to government work. Superiors cannot order junior personnel to perform personal tasks which benefit the superior (e.g., order to perform non-official "taxi" services for the CO's spouse).

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

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

RENTAL VEHICLES: (See *TRAVEL BENEFITS*)

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

GIGS OR BARGES: Should avoid misuse or even the appearance thereof. May be used in support of foreign relations, community relations, and crew morale and welfare. It is highly recommended that you seek advice from an Ethics Counselor. Recreational use is not authorized.

Section XIII

APPENDIX

- A. NONJUDICIAL PUNISHMENT CHART
- B. SEARCH & SEIZURE CHECKLIST
- C. COURTS-MARTIAL PUNISHMENT CHART
- D. EO INCIDENT REPORTING
- E. SEXUAL HARASSMENT INVESTIGATION CHART
- F. FRATERNIZATION INVESTIGATION CHART
- G. ARTICLE 138 CHECKLIST
- H. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE
- I. USE OF POSITIVE URINALYSIS
- J. ADMINISTRATIVE SEPARATIONS
- K. OVERVIEW OF MILITARY JUSTICE SYSTEM
- L. RELATIONS WITH CIVIL AUTHORITIES FLOW CHART

**ARTICLE 15 PUNISHMENT LIMITATIONS
Navy and Marine Corps**

Imposed By	Imposed On	Bread & Water or DIMRATS (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4 & 5)	Reduction (4 & 6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (8)	Officers	No	No	No	No	No	No	15 Days (9)	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	3 Days	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes

- (1) May be awarded only if attached to or embarked in a vessel and may not be combined with other restraint punishment or extra duties
- (2) May not be combined with restriction or extra duties
- (3) May not be combined with restriction
- (4) May be imposed in addition to or in lieu of all other punishments
- (5) Shall be expressed in whole dollar amounts only
- (6) Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion)
- (7) Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum possible for extra duties
- (8) OICs regardless of rank have NJP authority over enlisted personnel only. OIC's and Marine CC may only reduce personnel within their promotion authority.
- (9) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)

CO SEARCH & SEIZURE CHECKLIST

I. FINDING THE EXISTENCE OF PROBABLE CAUSE TO ORDER A

SEARCH: When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you.

A. Find out the name and duty station of the applicant requesting the search authorization.

B. Administer an oath to the person requesting authorization. A recommended format for the oath is set forth below:

"Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

C. What is the location and description of the premises, object, or person to be searched?

Ask yourself:

1. Is the person or area one over which I have jurisdiction?

2. Is the person or place described with particularity?

D. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?

E. Who is the source of this information?

1. If the source is a person other than the applicant who is before you, that is, an informant, see the attached addendum on this subject.

2. If the source is the person you are questioning, proceed to question F immediately. If the source is an informant, proceed to question F after completing the procedure on the addendum.

F. What training have you had in investigating offenses of this type or in identifying this type of contraband?

G. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?

H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"**(Applicant's name)**, I find that probable cause exists for the issuance of an authorization to search **(location or person)** for the following items: **(Description of items sought)** and I authorize **(Applicant's name)** to search **(location or person)** for those items and to seize them if found."

II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM

A. **First inquiry.** What forms the basis of his or her knowledge? You must find what **facts** (not conclusions) were given by the informant to indicate that the items sought will be in the place described.

B. Then you must find that **either** the informant is reliable or his information is reliable.

1. Questions to determine the informant's reliability:

- (a) How long has the applicant known the informant?
- (b) Has this informant provided information in the past?
- (c) Has the provided information always proven correct in the past?
Almost always? Never?
- (d) Has the informant ever provided any false or misleading information?
- (e) (If drug case) Has the informant ever identified drugs in the presence of the applicant?
- (f) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?
- (g) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of interior of locker room.)?

2. Questions to determine that the information provided is reliable:

- (a) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?
- (b) Do you possess information (e.g., personal knowledge) which indicates what the informant says is true?

III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK

Requirement of specificity: No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

A. Description of the place or the person to be searched.

1. **Persons.** Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.
2. **Places.** Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

B. **What can be seized.** Types of property and sample descriptions. The **basic rule:** Go from the general to the specific description.

1. **Contraband:** Something which is illegal to possess.

Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

2. **Unlawful weapons:** Weapons made illegal by some law or regulation.

Example: "Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades, and all component parts thereof."

3. **Fruits of crimes**

Example: "Household property, including, but not limited to, one G.E. clock, light blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

4. **Tools or instrumentalities of crime.** Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

5. **Evidence which may aid in a particular crime solution:**

Example: "Papers, documents, and effects which show dominion and control of said area, including, but not limited to, canceled mail, stencilled clothing, wallets, receipts."

MAXIMUM PUNISHMENT CHART

PUNISHMENT	SCM		SPCM		GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's
1. Death	NO	NO	NO	NO	YES (*1)	YES (*1)	YES (*1)
2. Dismissal	NO	NO	NO	NO	NO	NO	YES
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	NO
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO
5. Confinement	30 days	NO	12 mos.	NO	YES	YES	YES
6. Restriction	60 days	60 days	60 days	60 days	60 days	60 days	60 days
7. Hard Labor Without Confinement	45 days	NO	90 days	NO	3 mos.	NO	NO
8. Forfeiture of All Pay and Allowances	NO	NO	NO	NO	YES	YES	YES
9. Forfeiture of two-thirds pay per month	1 mo. (*2)	1 mo. (*2)	12 mos.	12 mos.	YES	YES	YES
10. Fine	YES (*3/*4)	YES (*3/*4)	YES (*3)	YES (*3)	YES	YES	YES
11. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO
12. Reduction to lowest paygrade	YES	NO	YES	NO	YES	NO	NO
13 Reprimand	YES	YES	YES	YES	YES	YES	YES

ALL PUNISHMENTS ARE LIMITED BY THE MAXIMUM ALLOWABLE FOR THE UCMJ ARTICLES VIOLATED AS WELL AS THE TYPE OF COURTMARTIAL THE CASE IS REFERRED TO.

(*1) Where authorized or mandatory

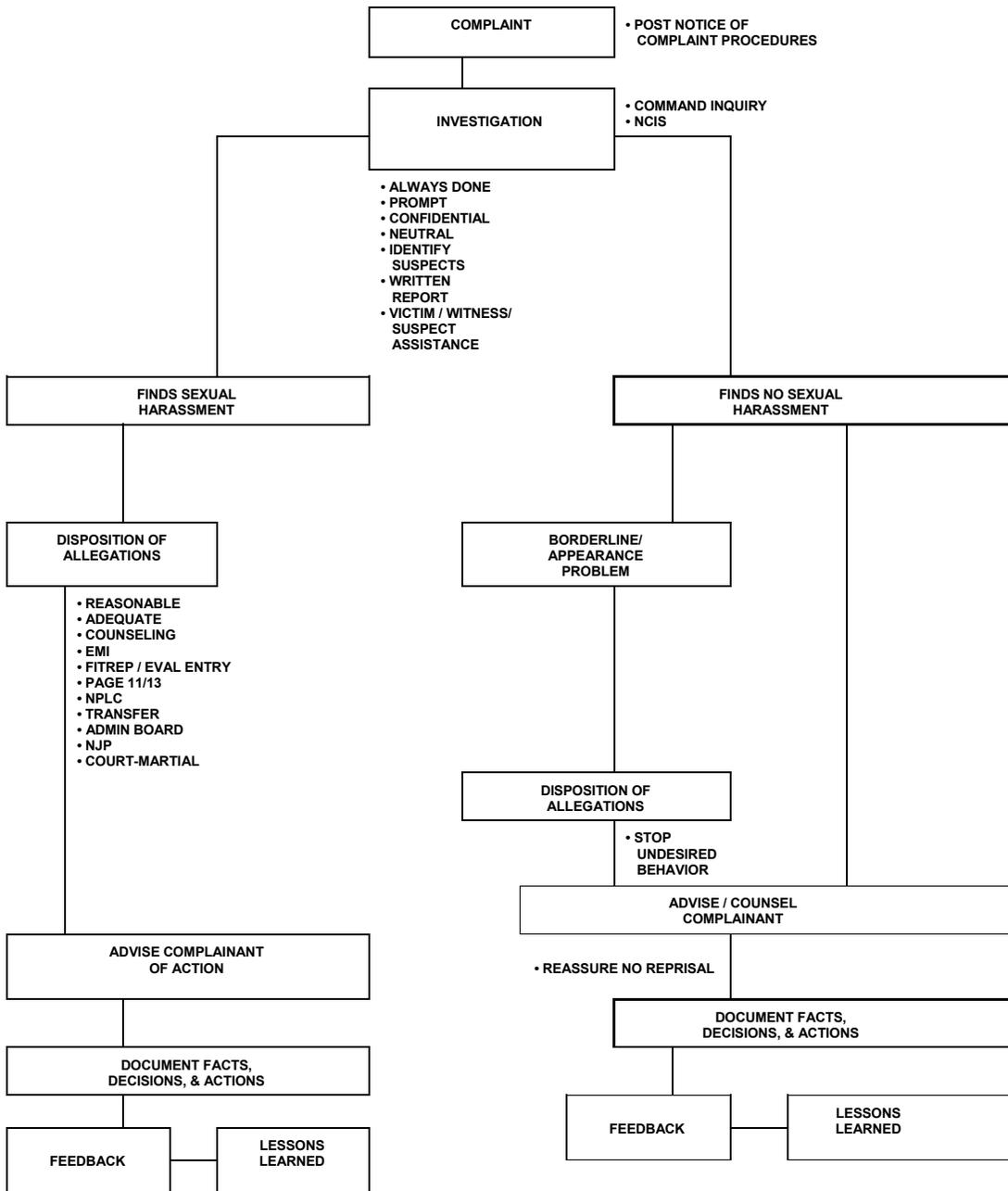
(*2) May extend payment up to two months -- MJM 10-F-2.e

(*3) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case (*4) AT SCM, a fine may not be combined with forfeitures

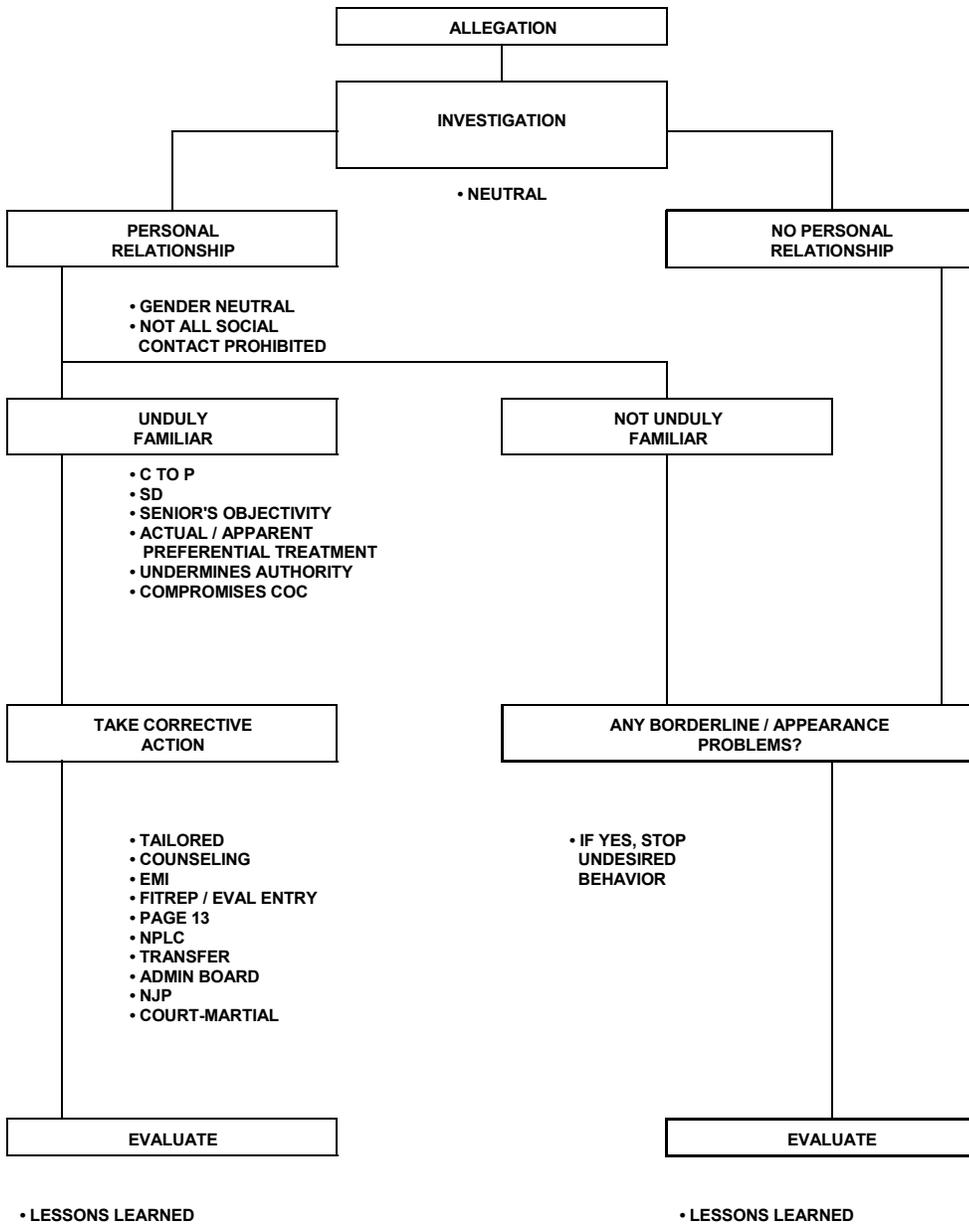
EO INCIDENT REPORTING (MINOR/SERIOUS) FROM OPNAVINST 5354.1 (series)

CRITERIA/ CLASSIFICATION	NUMBER OF PARTICIPANTS	DURATION	PROPERTY DAMAGE	PERSONAL INJURY	RELATIONSHIP TO OTHER INCIDENTS	THREAT TO AUTHORITY OR MISSION
MINOR	2-5	SHORT, LESS THAN 30 MINUTES	LITTLE OR NONE		AN ISOLATED EVENT	NO THREAT TO AUTHORITY OR MISSION
SERIOUS	6 OR MORE	MORE THAN 30 MINUTES	EXTENSIVE OR SERIOUS PROPERTY DAMAGE (i.e. ARSON)	PERSONAL INJURIES REQUIRING MEDICAL ATTENTION OR DEATH	(1) RELATED TO OTHER MINOR INCIDENTS OR (2) PRESS INTEREST ANTICIPATED OR HAS OCCURRED	(1) PRESENTATION OF DEMANDS AND / OR DEFIANCE OF AUTHORITY OR (2) DISOBEDIENCE OF LAWFUL ORDERS
						MISSION IS / MAY BE THREATENED

STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



HANDLING FRATERNIZATION ALLEGATIONS



ARTICLE 138 REVIEW CHECKLIST

Case name: _____

All references are to the JAG Manual unless otherwise noted.

COMPLAINT

Complaint is properly forwarded? (§ 0306d)*

Addressed to proper GCMA, via intermediate endorsers. If not, readdress and forward properly.

Is respondent the proper respondent? (§ 0305b/NAVREGS 1150)**

If 138, respondent was complainant's CO at the time of the complained of actions. If not, process as 1150 or return under § 0307b(1), as appropriate.

If 1150 and respondent and complainant have the same commanding officer, then it is a "true 1150" and no report to SECNAV is required. All other 1150's are processed using 138 rules.

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

Is complainant a proper complainant? (§ 0305a) If not, see § 0307b(1).**

Complainant submitted written request for redress to respondent prior to submitting Art 138 complaint? (§ 0306b) If not, complaint may be returned to complainant in accordance with 0307b(2).*

Complaint is timely, or late submission justified? (§ 0306a) If not, complaint may be returned to complainant in accordance with § 0307b(2).*

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

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

Complaint is in the proper format? (§ 0306c, Appendix A-3-a) If not, obtain information and include in GCMA's action or the complaint may be returned to complainant in accordance with § 0307b(2).*

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?
 Complaint complete with all enclosures/endorsements?
 Certified complaint to be "true and correct" and is signed, witnessed, and dated?

Complaint alleges a wrong that is a proper subject of a complaint of wrongs? (§§ 0303f, 0304a)**
 Not recommendations (unless controlling, e.g. advancement recommendations, NEC removal)?
 Not general policies of DON?
 Not wrongs that have another DON procedure that provides notice, right to rebut or hearing, and review by superior; includes adseps, BOIs, NJP, courts-martial, DFC.
 Complaint makes a proper request for relief? (§ 0305)**

* Defect may be waived by GCMA.

** Defect **may not** be waived by GCMA and requires finding that particular allegation is not cognizable.

NOTE: FOR THOSE DEFECTS THAT MAY BE WAIVED BY GCMA, FAILURE TO RETURN THE COMPLAINT TO COMPLAINANT AND/OR ADDRESSING COMPLAINT ON THE MERITS IS CONSIDERED A WAIVER OF THE DEFECTS.

GCMA ACTION

Advance copy provided to OJAG Code 13? (§ 0306d)
 Complainant provided a copy of all endorsements and enclosures? (§ 0307e)
 Complainant given opportunity to rebut adverse material using 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 GCMA? (§ 0305c)
 If area coordinator is acting as GCMA, written request from original GCMA 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)

GCMA's action completed within 60 days of receiving complaint? (§ 0307f)

Delay must be explained in letter to SECNAV.

Report to SECNAV signed personally by GCMA or official "Acting" (not "by direction")? (§ 0307g)

If GCMA cannot effect redress granted, file forwarded to SECNAV via officer who may effectuate redress (e.g., CNP)? (§ 0307h)

Report to SECNAV in proper format, including complaint and all enclosures and endorsements? (§ 0307j)

Report must discuss each allegation of wrong and conclude:

whether it is cognizable, and if it is cognizable

whether it is with merit or not, and if the allegation has merit

whether relief is appropriate.

Complainant advised in writing of action on complaint? (§ 0307k)

Note: this requirement may be satisfied by sending complainant copy of report to SECNAV.

For USMC commands, report to SECNAV sent via Commandant of the Marine Corps (JAR). (§ 0307j)

Signed by reviewing official

EXECUTIVE OFFICER'S INQUIRY (XOI)

1. Obtain the report chit, all written statements, and all physical and documentary evidence relating to the alleged offense from the legal officer. (You may want to consult with the legal officer prior to XOI).
2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or extenuating (E), mitigating (M), or aggravating (A) circumstances concerning the alleged offense.
3. Inform the accused that the CO is contemplating the imposition of NJP and that this informal hearing -- the XOI -- is part of the NJP process. The accused may not refuse XOI.
4. Describe the specific offense(s) to the accused, including the article of the UCMJ that was allegedly violated.
5. If applicable, advise the accused of the right to refuse NJP. (Accused can never refuse XOI.)
6. Advise the accused (s)he does not have to make a statement regarding the offense(s) and that any statement made by him / her can be used as evidence against him / her at XOI and NJP.

Note: If it is reasonably foreseeable that the accused's statements during the XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver—in the format of appendix A-1-m of the *JAG Manual*—will have to be obtained from the accused during the hearing, before proceeding further.

7. Ask the accused what happened.
 - a. If (s)he admits guilt, the accused should be allowed to articulate any E & M.
 - Ask the witnesses to testify on matters of E & M or A.
 - b. If (s)he denies guilt, the accused should be asked for his/her version of the facts.
 - Ask the witnesses to testify about the alleged offense.
 - Inform the accused of any other evidence against him/her concerning the alleged offense (i.e. written statements and/or physical and documentary evidence).
 - Allow for rebuttal, as appropriate.
 - Ask the witnesses to testify on matters of Extenuation, Mitigation and Aggravation.
8. Ask the accused if (s)he would like to make a final statement.

9. If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) You may also impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report chit and return all materials to the legal officer who will take appropriate action.

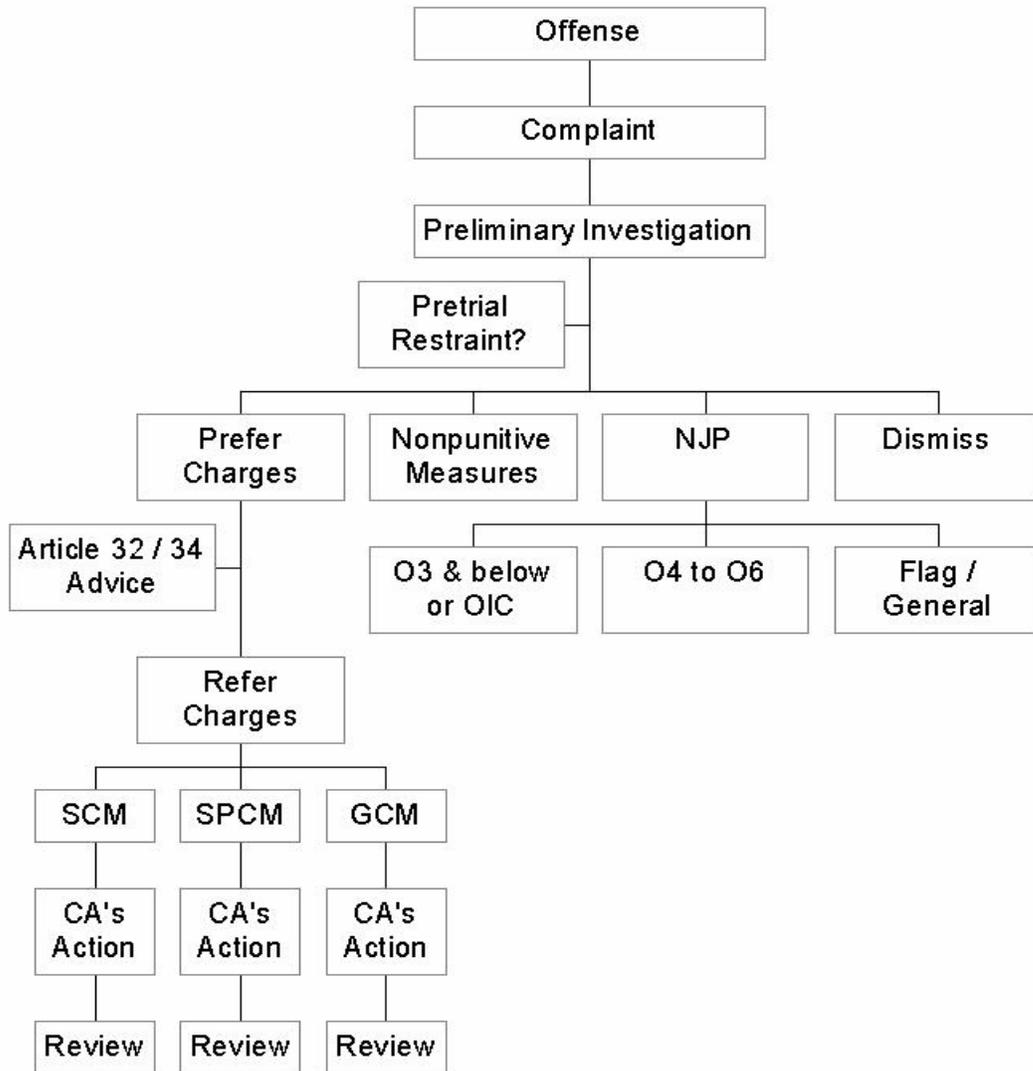
OPNAVINST 5350.4C
USE OF DRUG URINALYSIS RESULTS

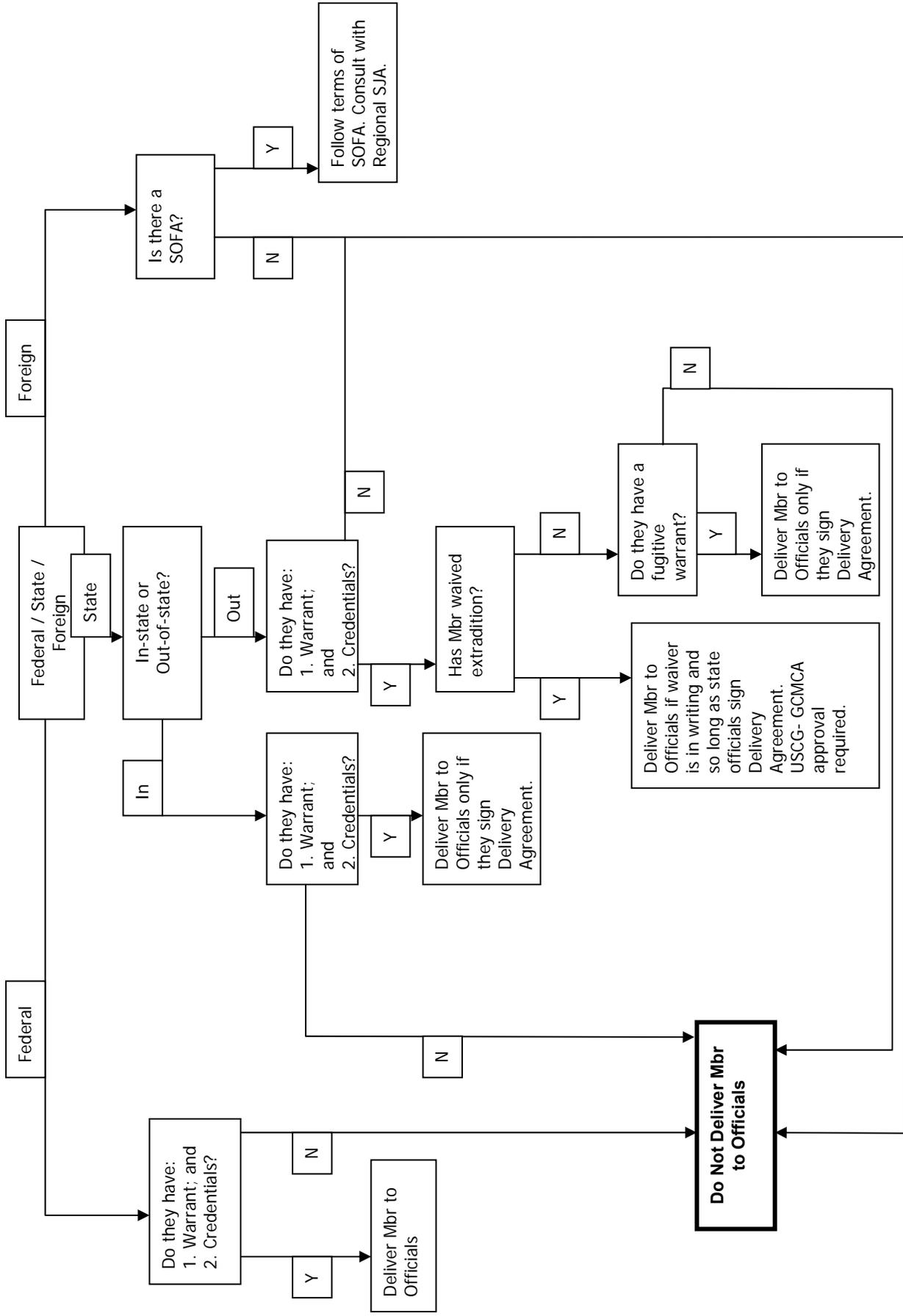
	Usable in disciplinary proceedings	* Usable as basis for separation	* Usable for characterization of service
1. Search or Seizure	YES	YES	YES
- member's consent	YES	YES	YES
- probable cause	YES	YES	YES
2. Inspection	YES	YES	YES
- random sample	YES	YES	YES
- unit sweep			
3. Medical - general diagnostic purposes	YES	YES	YES
4. Fitness for duty			
- command-directed	NO	YES	NO
- competence for duty	NO	YES	NO
- mishap / safety investigation	NO	YES	NO
5. Service-directed			
- treatment facility staff (military)	YES	YES	YES
- alcohol rehab testing	NO	YES	NO
- naval brigs	YES	YES	YES
- entrance testing	NO	YES	**NO
- accession training pipeline	YES	YES	YES
* (USN ONLY): YES, if sample is subject to strict chain of custody and tested at NAVDRUGLAB or DOD approved lab.			
** YES for reservists recalled to active duty (except Delayed Entry Program participants)			

Weight Control Failure	GCMCA or higher
Separation in lieu of trial by court-martial	GCMCA unless request is based solely on an absence without leave of more than 30 days, then SPCMCA is SA. BUPERS (Pers-483) is SA if request is based on homosexual conduct referred to court-martial
<ul style="list-style-type: none"> • Selected Changes in Service Obligation – General Demobilization or reduction in authorized strength • Selected Changes in Service Obligation – Acceptance of active duty commission or appointment • COG – Conscientious objection • COG – Being an alien • When member has Physical Evaluation Board (PEB) action completed or pending, and at the same time being administratively processed for separation. • Homosexual conduct 	Chief of Naval Personnel
<ul style="list-style-type: none"> • Disability • Best interest of the service (BIOTS) 	Secretary of the Navy

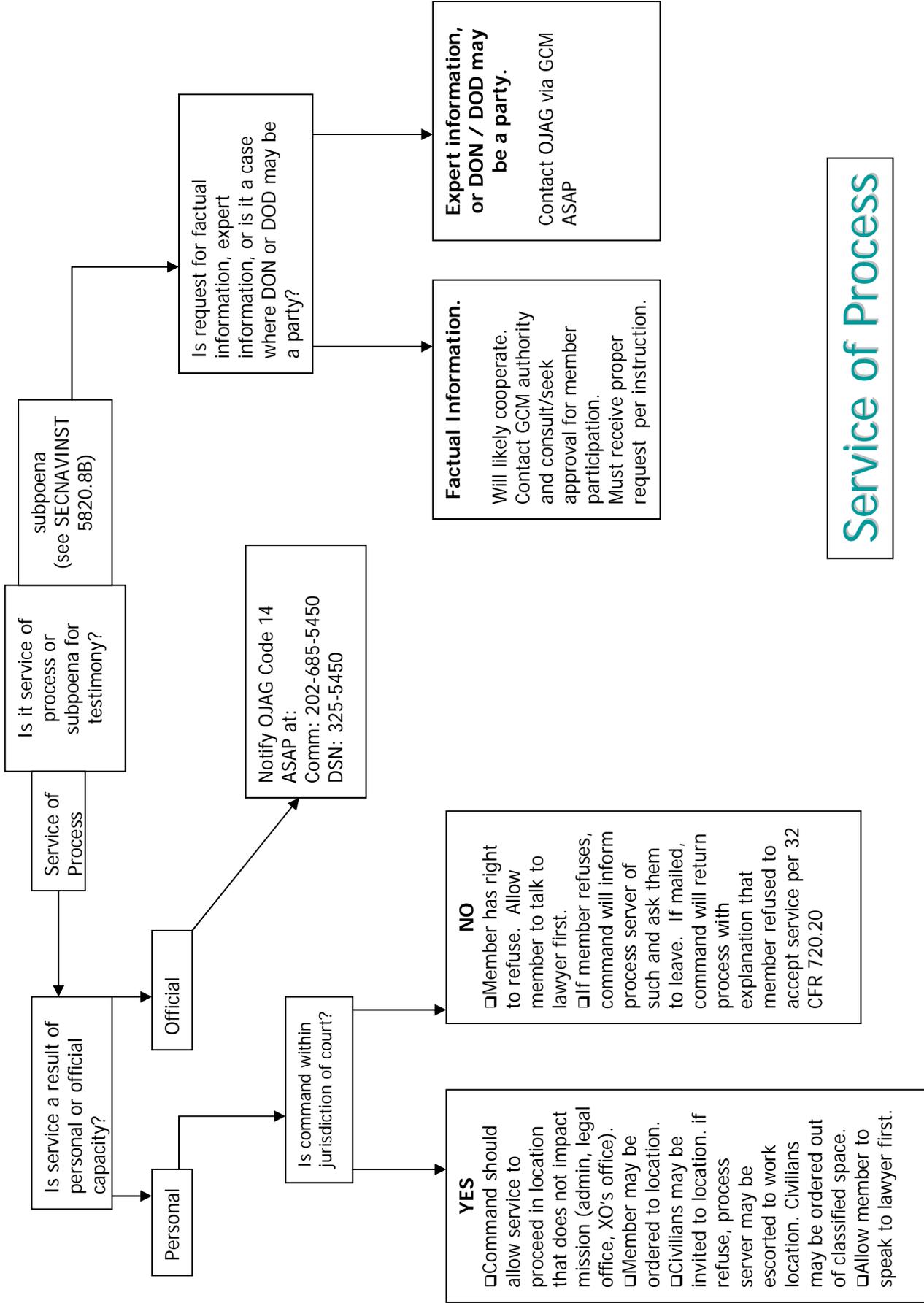
NOTE: Review individual reason processing articles to determine correct BUPERS code where ADSEP should be mailed.

OVERVIEW OF MILITARY JUSTICE SYSTEM





Delivery of Personnel



Service of Process

LOCAL DIRECTORY

(Write in name and phone number of personnel in your local area)

Naval Legal Service Office (NLSO) / Region Legal Service (RLSO):

- CO / OIC:

- Command Service Officer:

(Assist all commands without permanent Staff Judge Advocates assigned)

- Trial Counsel:

(Represents government (Prosecution) in courts-Martial)

- Defense Counsel:

(Represents members under investigation or facing disciplinary action)

- Legal Assistance Attorney:

(Assists members and dependents with personal legal matters i.e. wills)

Local Staff Judge Advocate:

(Area coordinator & Flag JAGS are ethics advisors)

ISIC JAG or first JAG in chain of command:

Others:

CAAC:

(Assist area commands with Alcohol / Drug incidents)

Equal Opportunity Officers:

(Assist with discrimination complaints / sexual harassment / fraternization)

Family Advocacy Representative (FAR):

(Assist area commands with domestic violence and child abuse incidents)

Naval Criminal Investigative Service:

- Senior Agent In Charge (SAC):

- Special Agent: