



JUSTICE CHRONICLES

Region Legal Service Office Southwest Command Services Telephone Numbers

NB San Diego: (619) 556-1704/2892/1670 – DSN 526

NB Coronado: (619) 545-8144 – DSN 735

NB Point Loma: (619) 553-7190 – DSN 553

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NAS Lemoore: (559) 998-3889/3349 – DSN 949

NB Ventura: (805) 989-7309/1706/8891 – DSN 351

NAS Fallon: (775) 426-2941 – DSN 890

NAWS China Lake: (760) 939-2203 – DSN 437

NSA Monterey: (775) 656-2506 – DSN 756

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CNRSW BARMENT POLICY

Ref: (a) COMNAVREGSWINST 5512.1 (9 Dec 2009)
(b) 18 U.S.C. § 1382

Reference (a) establishes a Navy Region Southwest (NRSW) region-wide barment policy and outlines procedures for issuing barment orders. Barment orders are issued for the protection and security of persons and property on military installations within the NRSW area of responsibility (AOR).

Commander NRSW has delegated to NRSW Installation Commanding Officers (ICOs) the authority to issue Region-wide barment orders. NRSW ICOs may further delegate authority to issue *temporary* barment orders. Temporary barment orders are only effective for 96 hours and must be reviewed by the ICO to determine if a permanent barment order is warranted. ICOs retain discretion to issue local rather than Region-wide barment orders for their installation and for specific facilities within the ICO's control.

Region-wide barment orders shall be issued to any military member awarded a punitive discharge at court-martial after the discharge is approved.

Per reference (b), individuals who re-enter a military reservation after having been ordered not to re-enter are subject to prosecution, which provides for a fine of up to \$5,000, imprisonment up to six (6) months or both.

Individuals who have been issued a barment order may request reconsideration in writing to the issuing ICO. If the request is denied, the individual may appeal to CNRSW via the issuing ICO. The barment order remains in effect until a decision has been rendered by CNRSW.

Controlled Substance Analogues

CONTROLLED SUBSTANCE ANALOGUES

Ref: (a) 21 U.S.C. 801 et seq.
(b) COMNAVREGSWINST 5300.1A (25 Jan 2010)

Controlled Substance Analogues (CSAs), also referred to as "designer drugs," have a chemical structure substantially similar to that of a controlled substance listed in Schedule I or Schedule II of reference (a). They also contain a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II.

Examples of CSAs are widely available products known by such names as "Spice," "Spice Gold," "London Underground Head Candy," "Blowout Herbal Party Snuff," "Red Ball," "Cahoots," "Blowout," "Chill," "Chillin XXX," "99-0 Chillin," "Spice Diamond," "OCB Slime," "Dream," "Spike99," or other products containing similar ingredients known to be ingested for their psychoactive effects, such as Canavalia Maritima, Salvia Divinorum, Pedicularis Densiflora, etc.

Per reference (b), possession of CSAs on board, or introduction into, any military reservation, vessel, vehicle or aircraft used by, or under the control of, Navy Region Southwest (NRSW) is prohibited. Military members may be punished under the Uniform Code of Military Justice. Civilians who work or reside on military reservations under the control of NRSW may be prosecuted under federal law, and may incur administrative consequences, including termination of employment and permanent barment.

This issue is receiving a lot of attention at PERS 832 and is legally very complicated for a number of reasons. Guidance from PERS 832 on how to process military members who have wrongfully used CSAs for administrative separation, is to process each member under the Military Personnel Manual (MPM) for: (1) Misconduct - Commission of a Serious Offense (MPM 1910-142), and (2) Misconduct - Drug Abuse (MPM 1910-146).

Evidence to support each basis for processing should include: (1) Evidence to claim that the member used a substance for the sole reason of getting "high;" and (2) the substance may contain a controlled substance (i.e., an analog of THC) which amounts to an Article 112a, UCMJ, offense.

Removing Conditions of Residency

REMOVING CONDITIONS OF RESIDENCY

According to Immigration Advisory 08-11, Removing the Conditions on Residency, military members that were granted conditional resident status through marriage to a U.S. citizen or permanent resident don't have to file Form I-751, Petition to Remove Conditions on Residence, before or at the time of applying for naturalization under Immigration and Nationality Act (INA) §329.

INA §329, Naturalization Based Upon Service During Military Hostilities, is the only basis for naturalization that does not require admission as a Lawful Permanent Resident. Therefore, as long as the member, enlisted, was inducted or re-enlisted during military hostilities in the United States, the Canal Zone, America Samoa, Swain's Island or onboard a public vessel owned or operated by the United States for noncommercial service, it is not necessary for that member to file a Petition to Remove Conditions on Residence, Form I-751, before or at the time of applying for naturalization under INA §329.

This policy provides significant savings to military members since the filing fee for Form I-751 is \$465, and the biometric fee of \$80, a total of \$545.

Applicants should be advised to include a copy of the Immigration Advisory 08-11, Removing the Conditions on Residency, with their application for naturalization and bring a copy to their citizenship interview because some U.S. Citizenship and Immigration Services (USCIS) Officers are unaware of this policy.

Recently, Ms. Vicki Alba, U.S. Citizenship Program Manager for Navy Region Southwest explained this policy to a USCIS official because the officer was unaware of this policy and requested a service member file Form I-751 with \$545.00 fee. The service member filed Form I-751, costing him \$545.00. After learning of this policy, USCIS agreed to refund the filing fee and biometrics fee to the service member.

For further information regarding Immigration Advisory 08-11, Removing the Conditions on Residency, please contact Ms. Vicki Alba, at (619) 556-2788 or at vicki.alba@navy.mil.

***Volunteer Income
Tax Assistance***

VOLUNTEER INCOME TAX ASSISTANCE

The VITA program provides free tax assistance for eligible active duty service members, retirees, reservists, and dependents. VITA programs are run by the Navy's JAG Corps and are staffed exclusively by volunteers of all ratings and ranks. Each year, the volunteers are trained and certified by IRS instructors. So, what is new in tax law this year? Several sections of the American Recovery and Reinvestment Act of 2009 produced some significant changes to the tax code, which could translate to a significantly bigger return this year.

NEW VEHICLE PURCHASE

You can deduct the state and local sales and excise taxes you paid on the purchase of a vehicle (includes truck, motorcycle, and new motor home). This deduction can be taken on a Schedule A (if itemizing) or as an addition to the standard deduction.

EARNED INCOME CREDIT

The maximum amount of the credit has increased to the following:

- 3,043 if you have one qualifying child,
- \$5,028 if you have two qualifying children,

- \$5,657 if you have three or more qualifying children, or
- \$457 if you do not have a qualifying child.

The maximum amount you can earn and still received the credit also increased:

- You have three or more qualifying children and you earn less than \$43,279 (\$48,279 if married filing jointly)
- You have two qualifying children and you earn less than \$40,295 (\$45,295 if married filing jointly),
- You have one qualifying child and you earn less than \$35,463 (\$40,463 if married filing jointly), or
- You do not have a qualifying child and you earn less than \$13,440 (\$18,440 if married filing jointly).

FIRST TIME HOMEBUYER CREDIT

This credit has been extended to April 30, 2010. The credit is \$8,000. Members of the military have an extra year (until April 30, 2011) to purchase a home and qualify for this credit.

ENERGY EFFICIENCY CREDITS

You may be able to claim a non-business energy property credit of 30% of the cost of certain energy-efficient property or improvements you placed in service in 2009. This property includes solar energy, wind energy, and geothermal energy; and can include high-efficiency heat pumps, air conditioners, and water heaters. It also may include energy-efficient windows, doors, insulation materials, and certain roofs. There may be limits to the credit you can claim depending on the type of energy-efficient property.

MILITARY SPOUSES' RESIDENCY RELIEF ACT

In November 2009, the President signed the Military Spouses' Residency Relief Act. Now, the fact that a military spouse is present in or absent from a jurisdiction in the United States will not affect that spouse's residence or domicile for tax purposes, as long as that presence in (or absence from) the jurisdiction is due to the service member's compliance with military orders. In addition, any income the military spouse earns in a jurisdiction will not be treated as income from within that jurisdiction if that spouse is a resident of a different jurisdiction under the act. Spouses must claim the same residence as the active duty service member.

H1N1 Vaccine Policy

H1N1 VACCINE POLICY & HOW TO HANDLE REFUSALS

- Ref: (a) Department of Defense Pandemic Vaccine Guidance for Novel Influenza A (H1N1) (30 Sep 2009)
 (b) CNO WASHINGTON DC 091816Z NOV 09 (NOTAL)
 (c) BUMED 231757Z OCT 09
 (d) BUMED 061534Z NOV 09
 (e) MILPERSMAN

Commanding Officers may order sailors to get vaccinated against H1N1 and advise them that failing to do so may be cause for punitive disciplinary action and/or administrative measures, consistent with DoD and Navy policy. Service members who refuse to get vaccinated when such an order has been issued may

be processed for violating Article 92 of the Uniform Code of Military Justice, failure to obey a lawful order.

A few exceptions to this policy exist for service members who request a waiver of the vaccination on the basis of medical reasons and those who decline vaccination on the basis of religious accommodation. Service members raising medical reasons for declining vaccination should be reviewed by a medical officer for determination of whether a medical waiver will be issued under the circumstances. If relevant, have medical document their decision in the service record of whether a medical waiver is appropriate under the circumstances. If a medical waiver is not granted, then it should be treated as any other refusal of a lawful order to get vaccinated.

Service members who request religious accommodation should forward a request for waiver of immunization requirements to BUMED via the member's CO using the policies set out in Military Personnel Manual (MPM) Section 6320-010. However, if an imminent risk of disease later occurs, a CO can revoke the waiver.

Service members who refuse to get vaccinated without a waiver may be subject to administrative and disciplinary actions as deemed appropriate by CO's. Possible actions are:

- (1) formal counseling and warning, recorded on NAVPERS 1070/613, Administrative Remarks;
- (2) Non-Judicial Punishment;
- (3) Courts-Martial; and/or
- (4) processing for administrative separation by reason of misconduct due to commission of a serious offense (1910-142)

Commands should seek legal guidance in dealing with refusal of H1N1 vaccine from the nearest Staff Judge Advocate in their chain of command or the RLSO SW Command Services Department.

***Quirks of DUI Policies
for Command Awareness***

QUIRKS OF DUI POLICIES FOR COMMAND AWARENESS

Civil Action Report:

The Military Personnel Manual (MILPERSMAN) establishes the requirement that for all civil charges for Driving Under the Influence (DUI)/Driving While Intoxicated (DWI) for officers (1611-010, par. 4) and for enlisted personnel in pay grade E-6 and above (MPM 1616-040, par. 4), Commanding Officers are required to provide an initial report to NPC, subsequent status reports, and a Final Civil Action Report to NPC by letter. Since the Final Civil Action Report may become a part of the official record, ensure the command includes the information specified in the relevant MILPERSMAN section.

SITREP Requirement:

CNRSW, by policy announced in February 2009, requires all commands in the Southwest region to report all DUI/DWI/impaired driving incidents by OPREP-3 and to include CNRSW in the reporting as SOPA Admin for all such

incidents within the Southwest Region. CNRSW GENADMIN DTG 231547Z Feb 09.

ADSEP Processing May Be Mandatory:

MILPERSMAN section 1910-152 establishes a new requirement of mandatory processing for administrative separation (ADSEP) for second or greater DUI/DWI after 4 June 2009. Additionally, ADSEP processing is required for all alcohol rehabilitation treatment failures.

However, a written waiver could provide an exception to mandatory processing for a second or greater DUI/DWI and/or alcohol rehabilitation treatment failure. If the command does not want to process for administrative separation, they are required to use formal procedures for obtaining a written waiver contained in MILPERSMAN section 1910-152.

RESULTS OF TRIAL

*Results of Trial
for 1st Qtr 2010*

RLSO SW publishes the quarterly results of courts-martial for all cases tried in this region. Commands are encouraged to share these results as deemed appropriate (e.g. during quarters, in command newsletters, PODs/POWs, etc.). Below are the results of cases tried in the SW Region during the prior quarter:

Navy E-5 with 9 years and 5 months of service, acquitted of wrongfully using a controlled substance. This court was held on 12 November 2009.

Navy E-6 with 10 years and 6 months of service sentenced to bad conduct discharge, 18 months confinement, forfeitures of all pay and allowances, for unauthorized absence, sexual assault, assault consummated by battery, and communicating a threat. This court was held on 17 November 2009.

Navy E-4 with 1 year and 5 months of service sentenced to bad conduct discharge, 1 year confinement, forfeitures of all pay and allowances, and reduction in rate to E-1, for disobeying a lawful general order, wrongful use and possession of a controlled substance, and attempt to wrongfully distribute a controlled substance. This court was held on 30 November 2009.

Navy O-2 with 3 years and 4 months of service sentenced to a dismissal, 1 year confinement, and forfeitures of all pay and allowances, for dereliction of duty, failure to obey lawful general regulation, false official statements, larceny of currency greater than \$500 military property, and impeding an official investigation. This court was held on 2 December 2009

Navy E-5 with 10 years and 2 months of service sentenced to dishonorable discharge, 36 months confinement, and reduction in rate to E-1 for communicating indecent language to a minor, sexual contact with a minor, and possession and transportation of child pornography. This court was held on 4 December 2009.

Navy E-4 with 3 years and 2 months of service sentenced to dishonorable

discharge and 8 years confinement, for disobeying a lawful order, sexual assault, attempt to commit sodomy, and assault consummated by battery. This court was held on 11 December 2009.

Navy E-4 with 5 years and 4 months of service sentenced to dishonorable discharge, and 14 years confinement for sodomy of a minor and indecent acts committed with a minor. This court was held on 15 December 2009.

Navy E-8 with 23 years and 3 months of service sentenced to \$2000.00 fine, reprimand, and 45 days restriction for unauthorized absence, false official statements, larceny, and fraudulent claims against the government. This court was held on 17 December 2009.

Navy E-6 with 14 years and 1 month of service sentenced to bad conduct discharge, 11 months confinement, and reduction in rate to E-1 for conspiracy, violation of a lawful general order, dereliction of duty, false official statements, larceny of a value of about \$250,000.00, and made fraudulent claims against the government. This court was held on 30 December 2009.

Navy E-6 with 11 years and 8 months of service sentenced to bad conduct discharge, 9 months confinement, a \$6,700.00 fine, and reduction in rate to E-4 for conspiracy, dereliction of duty, larceny of about \$117,144.69, and bribery. This court was held on 5 January 2010.

Navy E-3 with 9 years and 2 months of service sentenced to bad conduct discharge, 11 months confinement, and forfeitures of all pay and allowances for sexual assault. This court was held on 13 January 2010.

Navy E-6 with 13 years and 5 months of service sentenced to 30 days confinement, and forfeitures of \$2,000.00 pay per month for 1 month, and reduction in rate to E-5 for unauthorized absence and missing ship's movement. This court was held on 29 January 2010.

Navy E-7 with 23 years and 10 months of service sentenced to 12 months confinement, and reduction in rate to E-5 for dereliction in the performance of duties, conspiracy, and false official statement. This court was held on 5 February 2010.

Navy E-5 with 14 years and 9 months of service sentenced to 2 years confinement, reduction to E-1 and bad conduct discharge for possession and distribution of child pornography.

OFFICER BOARD OF INQUIRY RESULTS

Navy 0-4 was ordered to show cause for retention due to civilian conviction for DUI. Board members found that the officer had committed misconduct, and further recommended that the officer be separated with an Honorable discharge. The Board was held on 12 January 2010.

Navy 0-3 was ordered to show cause for retention due to civilian conviction for DUI. Board members found that the officer had committed misconduct, and

*Officer Board of
Inquiry Results*

**Waterfront Training
Outreach**

further recommended that the officer be retained. The Board was held on 8 February 2010.

Navy 0-3 was ordered to show cause for retention due to failure to obey a lawful order, conduct unbecoming an officer, and fraternization. Board members found that the officer had committed misconduct; and further recommended that the officer be separated as an officer, reenlist at highest pay grade for transfer to Fleet Reserve, characterization of service Other Than Honorable discharge. The Board was held on 9 February 2010.

WATERFRONT TRAINING OUTREACH

When: Thursday, April 29th, 1200-1300
Thursday, May 27th, 1200-1300
Thursday, June 24th, 1200-1300

Where: 32nd street (wet side), Waterfront Rec Center (near Pier 2, across the street from the Base Theater). Blue and Gold room.

What: Among some of the topics we discussed at the most recent training on 25 March: a Search and Seizure scenario, updates to dealing with "Spice" abuse, guidance on conducting Admin boards. Future trainings will include legal areas of current relevance to the fleet. In addition, we are always looking for input on issues the fleet is seeing and on which you would like additional training.

For planning purposes, we ask that Legal O's RSVP if they wish to attend. Thank you for your support.

RSVP to LT Correa at mario.correa@navy.mil or LCDR Pohanka at mary.pohanka@navy.mil.

TOPICS FOR FUTURE ISSUES

If you have a topic you'd like to see discussed in the next newsletter, please forward your request to: Ms. T. Warner at Thelma.Warner@navy.mil or LN1 Robbin Swilley at robbin.swilley@navy.mil.