



JUSTICE CHRONICLES

Region Legal Service Office Southwest

Command Services Telephone Numbers

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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

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2nd Publication 2010

Volume VIII, Issue 2

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PASSPORT FAIR

On August 7, 2010, RLSO SW's Naturalization Division, in coordination with the Navy Exchange, Naval Base San Diego, and the United States Department of State (DOS), will host the DOS passport team who will provide passport services at the Navy Exchange, Naval Base San Diego. Over a hundred sailors and their families are expected to take advantage of this great opportunity, that will save them both time and effort. The success of this event will depend on RLSO SW's Naturalization Division communicating with the region's Command Citizenship Representative (CCR) and fielding numerous questions about the event. For any questions, please contact the RLSO SW Naturalization/U.S. Citizenship Division at (619) 556-6322.

PUERTO RICAN BIRTH CERTIFICATES

In December 2009, the government of Puerto Rico enacted Law 191 of 2009, which went into effect on 1 January 2010. On 1 July 2010, the law will invalidate all birth certificates issued before that date by the Puerto Rico Health Department, through its Vital Statics Record Office.

Starting on 1 July 2010, persons born in Puerto Rico may apply for a new birth certificate from the Puerto Rico Vital Statistics Record Office, which will incorporate technology to limit document forgery. More detailed information is available on the Puerto Rico Federal Affairs Administration website: <http://www.prfaa.com/birthcertificates>
You may also contact the Puerto Rico Federal Affairs Administration at 202-778-0710 or by email at info@prfaa.com.

This invalidation of Puerto Rico birth certificates could have the unintended consequences of interfering with security clearance investigations and enlistments. Service members who anticipate a specific need for a birth certificate for an official purpose, are encouraged to request a new birth certificate on or after 1 July 2010

**REVIEW OF A COURT ORDER LIMITING CAMP LEJEUNE'S
BASE TRAFFIC REGULATION AGAINST INAPPROPRIATE
DISPLAYS ON VEHICLES ON THE BASE**

***Court Order Limiting
Inappropriate Vehicle
Displays On Base***

A federal court in North Carolina recently issued a ruling prohibiting the military base at Marine Corps Base Camp Lejeune from enforcing its Base Traffic Regulation (BO 5560.2M, Chapter 2, Par. 7) . . . "in a manner that discriminates against speech based on the viewpoint expressed." *Nieto v. Flatau*, Case 7:08-cv-00185-H (EDNC Order, Document 33, March 31, 2010). The regulation in question "prohibits the display of 'extremist, indecent, sexist or racist messages on . . . motor vehicles in any format (bumper stickers, window decals, art or other adornments)' on the Base."

The plaintiff in the lawsuit, Jesse Nieto, a 25-year military veteran who served two combat tours in Vietnam, was a civilian employee at Camp Lejeune. Mr. Nieto's youngest son was killed while serving onboard the USS COLE when it was bombed by Islamic terrorists on October 12, 2000. Shortly thereafter, in 2001, Mr. Nieto began displaying various anti-Islamic decals, along with more traditional military stickers, on the vehicle he drove to and from work on base.

In 2008, approximately seven years after Mr. Nieto started displaying the decals, the base received a complaint regarding the stickers on his car. The Base Traffic Court ultimately ordered Mr. Nieto to remove some of the anti-Islamic stickers. Shortly thereafter, Mr. Nieto added another anti-Islamic decal to his car. He was again cited for violating the base regulation. At the ensuing hearing, he was ordered to remove "all remaining decals from his vehicle."

The federal court hearing the case in North Carolina conceded that the military base is a non-public forum and that "the government may restrict speech as long as the restrictions are reasonable and 'not an effort to suppress expression merely because public officials oppose the speaker's view.'" However, the Judge concluded that though the regulation was viewpoint neutral and permissible, the application of the regulation to the anti-Islamic stickers was improper in that it was not viewpoint neutral because it would not ban pro-Islamic messages and because it "discriminated against plaintiff's message based on plaintiff's point of view." The order also included a footnote that other decals and stickers which may be offensive and inappropriate are not banned from Camp Lejeune. Thus, the court concluded that the defendants in their official capacity as base representatives applied the regulation in a discriminatory manner that violated Mr. Nieto's Constitutional First Amendment right to Free Speech.

It is unclear if or how this ruling may affect military bases in the Southwest region. RLSO SW recommends that installations continue to enforce similar regulations in a rational and neutral manner with regular and even-handed application. Commanding Officers may, at their discretion, consider reviewing their base regulations regarding vehicle decals. COs should ensure they articulate that the policy is based on the CO's perception that certain offensive and incendiary language on stickers "clearly endanger[s] the loyalty, discipline, or morale of troops on the base." *Greer v. Spock*, 424 U.S. 828, 840 (1976).

**IMMINENT DANGER PAY AREA SCREENING REQUIRED FOR
INVOLUNTARY ADMINISTRATIVE SEPARATIONS**

***Imminent Danger Pay
Required For Involuntary
Adseps***

MILPERSMAN 1910-600 was updated on 2 September 2009 and contains a new requirement for commands to screen the personnel records of all members being processed for administrative separation (ADSEP) when they have served in an imminent danger pay area as defined in MILPERSMAN 1910-702.

MILPERSMAN 1910-702, updated 7 July 2009, includes specific guidance when a member is deployed in an imminent danger pay area within the 2-year period prior to initiation of ADSEP processing. Guidance includes the following:

- Did the member complete all post-deployment surveys and medical evaluations? If not, involuntary ADSEP is held in abeyance until complete.
- If the member was diagnosed with post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI), a mental health professional (MHP) must determine whether the PTSD/TBI may have been a contributing factor to the conduct forming one or more of the bases supporting the ADSEP action. If the MHP determined that PTSD/TBI may be a contributing factor, the Chief of Naval Personnel or a higher authority will act as the separation authority.
- Ensure the letter of transmittal includes the following paragraphs:
 - ✓ " h. MILPERSMAN 1910-702 Screening requirements.
 - (1) Did member serve in an imminent danger zone in the 2-year period prior to notification of separation processing (Yes or No)?
(If Yes, answer (2) and (3))
 - (2) Was member's record screened for PTSD/TBI as a contributing factor per MILPERSMAN 1910-702? (Yes or No)?
 - (3) Was PTSD/TBI determined to be a contributing factor?
(Yes or No)?
 - ✓ i. Psychiatric, medical and/or PTSD/TBI evaluation complete or not applicable (as required)."

Furthermore, MILPERSMAN 1910-010 requires processing commands, separation authorities, and separation activities to pursue adherence at every level to the established Navy ADSEP processing time goals. Specifically, a member should be separated:

***Personally Identifiable
Information Breach Action***

- Within 15 working days of notification when the member is not entitled to, or waives, an ADSEP board; and
- Within 50 working days of notification when a member elects an ADSEP board.

PERSONALLY IDENTIFIABLE INFORMATION BREACH ACTION

Ref: DON CIO MESSAGE: DTG: 291652Z Feb 08

Personally Identifiable Information (PII) refers to information that can be used to uniquely and reliably identify a person. This information includes but is **not** limited to: name, social security number, address, telephone number, e-mail address, and mother's maiden name.

What if there is a breach of personal information?

The referenced message outlines the reporting process to be used in the event of a known or suspected breach of DON PII information. For reporting purposes, excerpts of the process outlined below will be utilized when there is a known or suspected loss of PII.

Within **one** hour of the discovery or suspicion of the loss, affected command shall notify via a single email the following privacy officials and agencies of the known or suspected loss:

- address to: the United States Computer Emergency Readiness Team (US-Cert), email: SOC@US-Cert.gov, tel: 1-888-282-0870.
- Contact the Navy Privacy Act Officer (DNS-36), email: Privacy@OGC.law.navy.mil, tel: 202-685-6545, and the Chief of Information (CHINFO), email: CHINFO.Dutyoffic.fct@navy.mil, tel: 703-697-5342.
- contact the local Naval Criminal Investigative Service (NAVCRIMINVSERV) Office.
- contact the local Staff Judge Advocate (SJA) or Office of General Council (OGC).

The email notification should include the following information:

- component/organization involved;
- date of incident, the number of individuals impacted, and whether they are government or private citizens (if both, provide percentage of each);
- brief description of incident, including circumstances of the breach, information lost or compromised, and if the PII was encrypted or password protected.

For additional information read DON CIO MESSAGE: DTG: 291652Z Feb 08 in its entirety.

RESULTS OF TRIAL

Results of Trial for 2nd 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-6 with 11 years and 8 months of service, sentenced to bad conduct discharge, 9 months of confinement, reduction in rate to E-4, and a fine of \$6,700.00 for conspiracy to commit fraud, larceny of a value of approximately \$111,144.69, receiving a gift card of a value of approximately \$10,941.00, and for entering false data into the Medical Readiness Reporting System and Physical Readiness Information System. 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 of confinement, and forfeitures of all pay and allowances for committing a sexual assault and rape. This court was held on 13 January 2010.

Navy E-6 with 13 years and 5 months of service, sentenced to 30 days confinement, \$2,000.00 pay for one month, and reduction in rate to E-5 for absence without leave and missing 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 conspiracy to commit fraud, larceny, dereliction of his duties, and false official statements. This court was held on 5 February 2010.

Navy E-5 with 2 years and 10 months of service, sentenced to bad conduct discharge, 2 years of confinement, and reduction in rate to E-1 for possessing and distributing child pornography. This court was held on 18 February 2010.

Navy E-7 with 16 years of service, sentenced to 45 days confinement, reduction in rate to E-6, and 45 days of confinement for assault. This court was held on 5 March 2010.

Navy E-4 with 1 year and 1 month of service, sentenced to bad conduct discharge, confinement for one year, forfeitures of all pay and allowances, and a reduction in rate to E-1 for unlawful possession and distribution of a controlled substance. This court was held on 30 November 2009.

Navy E-5 with 4 years and 6 months of service, sentenced to bad conduct discharge, 5 months confinement, forfeitures of \$900.00 a month for 5 months, and reduction in rate to E-1 for larceny of a total value of about \$46,393.79. This court was held on 12 March 2010.

Navy E-4 with 9 years and 2 months of service, sentenced to bad conduct discharge, 18 months confinement, forfeitures of all pay and allowances, and

reduction in rate to E-1 for stalking, sodomy, and wrongful sexual intercourse. This court was held on 12 March 2010.

Navy E-5 with 14 years and 3 months of service, sentenced to 3 months confinement, fine of \$800.00, and reduction in rate to E-3 for conspiracy, wrongfully selling military property of a value greater than \$500.00, and larceny. This court was held on 5 March 2010.

Navy E-6 with 16 years and 11 months of service, sentenced to bad conduct discharge, 225 days of confinement, and reduction in rate to E-3 for failure to obey a lawful general regulation, making a false official statement, and fraud against the United States in the amount of \$20,544.37. This court was held on 26 March 2010.

Navy E-2 with 10 months of service, sentenced to bad conduct discharge, 5 months of confinement, and reduction in rate to E-1 for absence without leave, possession of a controlled substance, and for making false official statements. This court was held on 31 March 2010.

OFFICER BOARD OF INQUIRY RESULTS

Officer Board of Inquiry Results

Navy O-1E was ordered to show cause for retention due to misconduct: sexual harassment, sexual assault, fraternization, and conduct unbecoming. Board members found that the officer had committed misconduct, however the board found that the evidence submitted did not warrant separation. The Board was held on 31 March and 1 - 2 April 2010.

Navy O-2E was ordered to show cause for retention due to misconduct: sexual harassment. 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 6 April 2010.

Navy O-3 was ordered to show cause for retention due to wrongful use of cocaine. Board members found that the officer had not committed misconduct. The Board was held on 16 April 2010.

Navy O-4 was ordered to show cause for retention due to two civilian convictions for DUI and drunk and disorderly. The board further found that the evidence submitted did not warrant separation. The Board was held on 20 April 2010.

Navy O-4 was ordered to show cause for retention due to misconduct: assault, conduct unbecoming, disorderly conduct, drunkenness, and communicating a threat. Board members found the officer had not committed misconduct. The Board was held on 20 May 2010.

WATERFRONT TRAINING OUTREACH

Waterfront Training Outreach

When: Thursday, July 29, 1200-1300
Thursday, August 26, 1200-1300
Thursday, September 30, 1200-1300

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

What: The hot legal topics of the day including:

- Gov Vehicles-When can they be used and what happens when they are damaged?
- Fundraising by command members- What are the ethical guidelines?
- JAGMANs-When are they required and who do I send it when complete?
- Reporting Civilian convictions- What are the reporting requirements for both the Sailor and the command? What options does the command have if a Sailor fails to report a crime?
- Enlisted issues- What are the recent policy changes regarding enlisted performance, conduct, DFCs, and ADSEPs?

JAGS will also be available to answer your questions in any other legal areas of concern.

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 Officers RSVP if they wish to attend. Thank you for your support.

RSVP to LT Correa at mario.correa@navy.mil or CDR Flynn at kevin.flynn@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.