

JUSTICE CHRONICLES

REGION LEGAL SERVICE OFFICE SOUTHWEST

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March Madness

LT Spenser D. Solis, RLSO SW

As many of us gear up for the excitement of the NCAA basketball tournament (“March Madness”), let’s make sure we do so in good fun without running afoul of Federal ethics regulations and the UCMJ.

March Madness pools have a risk of turning into a form of gambling, which is prohibited in the Federal workplace.

Gambling has three elements:

- (1) Contribution of something of value in exchange for participation;
- (2) A game involving chance vice skill; and
- (3) The opportunity to win a prize (including, but not limited to, cash).

This is often the case with March Madness pools in which individuals pay for a chance to participate, no skill is involved, and the winner gets a cash reward. Gambling between seniors and subordinates may also violate the UCMJ as it is a form of fraternization. In order to ensure your pool is legal, make participation absolutely free and voluntary, and get rid of the prizes. The only privileges Sailors should earn from March Madness pools should be bragging rights

Even if your pool is free, make sure you are careful to avoid misusing government resources. If a Sailor spends a significant amount of time administering a pool while at work, it could still qualify as a misuse of government



resources due to the fact that the Sailor is using an official computer during working hours for a non-official purpose. As a best practice, Sailors should be doing these activities in their free time.

If you have questions about gambling or about ethics rules more generally, please contact a Staff Judge Advocate or RLSO SW Command Services.

Need to Know:
Navy Fraternalization Policy, 2016

Autkeh Moayeri, RLSO SW Legal Intern

A new Navy Fraternalization Policy, OPNAVINST 5370.2D, was released on 6 January 2016. Unduly familiar personal relationships between seniors and subordinates are contrary to good order and discipline because they undermine the respect for authority that is essential to the Navy's ability to accomplish its mission. Fraternalization is prohibited and punishable under the UCMJ.

Below is a summary of the Navy Fraternalization Policy:

PROHIBITED RELATIONSHIPS:

- Personal relationship between Chief Petty Officers (E-7 to E-9) and junior personnel (E-1 to E-6) that are assigned to the same command.
- Personal relationship between staff or instructor and student personnel with Navy training commands.
- Personal relationship between recruiting personnel and prospects, applicants, or delayed entry program personnel.
- Personal relationship between officer and enlisted member of another branch of the U.S. Armed Forces or foreign military service.

Note: Marriage or a declared relationship does not mitigate prior fraternization conduct by the offending parties.

A new Navy Fraternalization Policy, OPNAVINST 5370.2D, was released on 6 January 2016.

RELATIONSHIPS THAT MAY BE PROHIBITED IF SUCH RELATIONSHIP IS PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OR DISCREDITS THE NAVAL SERVICE

- Personal relationship between two officers of different ranks or grade.
- Personal relationship between two junior personnel (E-1 to E-6) of different ranks or grade.
- Personal relationship between two Chief Petty Officers (E-7 to E-9) of different ranks or grade.

PREJUDICE TO GOOD ORDER AND DISCIPLINE OR DISCREDIT TO THE NAVAL SERVICE MAY RESULT FROM, BUT ARE NOT LIMITED TO, CIRCUMSTANCES THAT:

- Call into question a senior's objectivity.
- Result in actual or apparent preferential treatment.
- Undermine the authority of a senior.
- Compromise the chain of command.

INTERACTIONS BETWEEN OFFICERS AND ENLISTED MEMBERS THAT ARE UNDULY FAMILIAR AND PREJUDICIAL TO GOOD ORDER AND DISCIPLINE:

- Dating
- Shared living accommodations
- Intimate or sexual relations
- Commercial solicitations
- Private business partnerships
- Gambling
- Borrowing money
- Any other conduct that is prejudicial to good order and discipline or is Service discrediting

NEW ADDITIONS TO OPNAVINST 5370.2D:**Action and Responsibility**

- Office of Chief of Naval Operations (CNO) must:
 - Track incidents or reports of fraternization.
 - Maintain a database of fraternization SITREPS to capture trend analysis.
- Commanders, COs, and OICs must:
 - Report any allegation of fraternization via a SITREP to the CNO. Upon conclusion of an investigation, provide a final SITREP indicating the disposition of the case.
 - Ensure that Service Members assigned to their command who report any fraternization allegation are not subjected to retaliation.

For further explanation and clarification of the Navy Fraternization Policy, contact a staff judge advocate or RLSO SW Command Services at 619-556-5977.

Separation for a Pattern of Misconduct

LT Ryan Healy, RLSO SW

The following is a common scenario many commands face. You have a Sailor going to captain's mast for misconduct. This particular Sailor is no stranger to this process as this is not his first time going to captain's mast. The Sailor has demonstrated a pattern of misconduct and now your command wants to have him administratively separated for his actions.

MILPERSMAN 1910-140 governs enlisted separation by reason of a pattern of misconduct. When a Sailor is awarded non-judicial punishment (NJP) more than two times during the **current enlistment**, then a pattern of misconduct could be a potential ground for separation. This particular ground is discretionary, and a command may choose to not process the Sailor for administrative separation for this reason.

In addition to two or more NJPs in the current enlistment period, the member must have violated a NAVPERS 1070/13 warning ("Page 13") or other form of counseling as explained in MILPERSMAN 1910-202 (E.G., letters of instruction, Letters of Reprimand, mid-term counseling, etc.). The usual pattern of misconduct separation involves an NJP, counseling, and then a second NJP. After the second NJP, the Sailor **should not** be issued another Page 13 if the command is looking to administratively separate the Sailor for a pattern of misconduct. By doing so, the CO is essentially telling the Sailor that he or she is getting a second chance to correct his or her deficiency. MILPERSMAN 1910-140 makes it clear that in these cases it would be inappropriate for a command to change their mind and process the Sailor for a pattern of misconduct.

Keep in mind that even if the requirements for pattern of misconduct are not met, the Sailor could potentially be administratively separated for the underlying conduct based on other grounds. Also, even if your command does not wish to separate the Sailor for a pattern of misconduct, the Sailor may still need to be processed for separation if the underlying conduct for one of the NJPs is grounds for mandatory processing. An example of this would be if the Sailor's second NJP was for drug use. A list of conduct requiring mandatory processing can be found in MILPERSMAN 1910-233.

Please do not hesitate to contact the Command Services Department at RLSO SW with any questions you may have.

When a Sailor receives two or more NJPs during the current enlistment then a pattern of misconduct could be a potential ground for separation.

Frequently Asked Questions: **Victim Witness Assistance Program**

LT Tricia Tsai, RLSO SW

OPNAVINST 5800.7A establishes guidance on the implementation of the Victim Witness Assistance Program (VWAP) to ensure victims and witnesses are afforded and provided their rights offered by law and Navy regulations. As part of VWAP, commands must comply with the OPNAV instruction and provide the necessary resources to victims and witnesses. This article seeks to address the most frequently asked questions that commands may have to ensure they meet the goals of VWAP.

Q: What is a Victim Witness Assistance Coordinator (VWAC)?

A: All commands are required to appoint a VWAC in writing. The VWAC acts as a point of contact and liaison for the command regarding VWAP questions, resource referrals, and/or comments.

Q: When does VWAP apply?

A: VWAP applies whenever there is an offense committed in violation of the Uniform Code of Military Justice (UCMJ) in which there is a victim or a witness, and when any part of the investigation is conducted by a DoD component (e.g., the military, CID, and NCIS). This means that VWAP may apply to minor UCMJ crimes that are disposed of at non-judicial punishment as long as there is a victim or a witness. However, cases investigated by civilian law enforcement agencies do not require VWAP compliance because they are not investigated by a DoD component.

Q: Who qualifies as a Witness?

A: Witnesses fall under VWAP only if they have information or evidence about a crime and provide that information to the command.

Q: What is a DD2701?

A: The DD2701 form is provided to Victims and Witnesses by the first responder. The form provides relevant agency contacts and phone numbers as well as addresses questions or concerns. Most importantly, Victims and Witnesses are informed of their rights. Commands must keep track of the number of DD2701s given throughout the year.

Please contact Command Services if you have further questions. VWAC training is offered quarterly onboard Naval Base San Diego.

Obtaining Legal Residency for Family Members Outside the U.S.

Charles S. McQueen, RLSO SW

United States citizens and permanent residents who are green card holders can file an I-130 Petition to help family members (wife, parents, or children) living outside the United States obtain an immigrant visa. An immigrant visa is the first step to a green card.

If you are a service member seeking to file an I-130 for a dependent family member, great attention to detail is required. Although the process is tedious, most cases do not require an immigration attorney. The processing time, however, will vary depending on a number of factors:

- 1) The petitioner's status – whether you, as the Service Member, are a U.S. Citizen or a lawful permanent resident; and
- 2) The location or country of your family member.

It is important to plan ahead and to have realistic expectations of the process. Various agencies are involved in the background checks and other vetting processes which could prolong the process.

Beginning the Process

The process starts with the U.S. citizen or permanent resident petitioner preparing and filing Form I-130, the Petition for Alien Relative. This form is issued by the U.S. Citizenship and Immigration Services (USCIS) and is available on their website at www.uscis.gov.

The second step involves the family member in the foreign country; the case will be forwarded to the National Visa Center (NVC). The NVC will prioritize certain family members over others, with spouses at the top, followed by children, and then parents to determine waiting times for when a visa is available.

One of the last steps in the process is to attend an interview with a consular official. The applicant must be fully prepared for this important event. He or she should bring copies of all documents previously submitted, in addition to proof of a family relationship with the petitioner.

Assuming that all is in order, the case will be approved. Upon successful conclusion of a consular interview, the Consul will issue a sealed envelope, which must be opened only by the officer at the U.S. port of entry.

For any questions please contact Mr. Charles S. McQueen, U.S. Citizenship & Immigration Program Manager at charles.mcqueen@navy.mil or 619-556-6748.

Results of Trial January 2016

The following reports the results of every General and Special Court-Martial convened by Navy Region Southwest in January 2016.

General Court-Martial

- None

Special Court-Martial

- Navy E-2 pled guilty pursuant to a pretrial agreement to two specifications of unauthorized absence, escape from custody, and wrongfully using methamphetamine. On 13 January 2016, the military judge sentenced him to be discharged with a Bad Conduct Discharge, to forfeit \$1,000 pay per month for 10 months, and confinement for 10 months. Pursuant to the pretrial agreement, the punitive discharge and confinement greater than 3 months is to be suspended and remitted. The punitive discharge may be approved and the suspended confinement may be served if the service member violates the terms of the pretrial agreement.
- Navy E-3 pled guilty pursuant to a pretrial agreement to two specifications of unauthorized absence and wrongfully using methamphetamine and marijuana. On 19 January 2016, the military judge sentenced him to be discharged with a Bad Conduct Discharge and confinement for 4 months. Pursuant to the pretrial agreement, the punitive discharge and confinement greater than time served (35 days) is to be suspended and remitted. The punitive discharge may be approved and the suspended confinement may be served if the Service Member violates the terms of the pretrial agreement.
- Navy Reserve MIDN 3/C pled guilty pursuant to a pretrial agreement to conduct unbecoming an officer and gentleman. On 25 January 2016, the military judge sentenced him to a Punitive Letter of Reprimand. The pretrial agreement had no effect on his sentence.

LEGAL ASSISTANCE

For assistance with consumer affairs, family law, wills, or powers of attorney please call (619) 556-2211 to make an appointments for these services. Emergency walk-in clients will be seen on a case by case basis. For power-of-attorney and notary services, walk-in hours are Monday, 0800-1100 and 1245 -1500, Tuesday - Thursday from 0845-1145 and 1245-1500 and Fridays from 0900-1100. All customers must present two forms of identification for services:

1. Valid military identification card
2. Valid state-issued driver's license or state-issued identification card, or valid United States Passport.

SOUTHWEST REGION STAFF JUDGE ADVOCATE DIRECTORY

Command Services: (619) 556-5977
Trial Department: (619) 556-9293
NB San Diego SJA: (619) 556-5533
NB Coronado SJA: (619) 545-8143
NB Point Loma SJA: (619) 553-7190
CNRSW SJA: (619) 532-1418
NAS Lemoore SJA: (559) 998-3889/3352
NB Ventura SJA: (805) 989-7309
NAS Fallon SJA: (775) 426-2854
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