

The Advisor

Region Legal Service Office Southeast



CDR Neil Evans, CNRSE SJA and Director, Command Services

Happy December!! It is once again time for gathering around the Festivus pole to air our grievances, discuss feats of strength and proclaim Festivus miracles. See link below for a history of Festivus.

<http://www.youtube.com/watch?v=c8g4Ztf7hIM>

As a reminder during the holiday season, ensure your Festivus poles and celebrations (as well as those of the commands you support) comply with the holiday ethics guidelines set out on page 4.

I wish you all a safe and happy holiday season! Until next year...

CDR Neil Evans



Highlights:

- Holiday Ethics Guide
- Delivery of Personnel to Civil Authorities
- Victim Legal Counsel Information

I Now Pronounce You...Eligible: Extending Benefits to Same-Sex Spouses of Servicemembers

Contents:

Same-Sex Spouse Benefits	1
ADSEP Board Tips	2
Transitional Assistance for Victims of Domestic Violence	3
CNIC Holiday Ethics Guide	4-6
Delivery of Personnel to Civil Authorities	7
Victim Legal Counsel	8
Recent Courts-Martial Sentences	9
The Puzzler	8
Staff Judge Advocate Contacts	10

LT Jeffrey S. Marden, Staff Judge Advocate, Naval Air Station, Joint Reserve Base, New Orleans

The history of homosexuals serving in the military is a lengthy, albeit fascinating, discussion. But in the interest of brevity this article starts with the military's official policy of Don't Ask, Don't Tell (DADT), enacted by DoDD 1304.26 on 21 Dec 1993. DADT stated that "[a] person's sexual orientation is considered a personal and private matter[] and is not a bar to service entry or continued service unless manifested by homosexual conduct." In other words, one may be a homosexual servicemember provided that one does not engage in homosexual conduct.

This policy was repealed on 20 Sep 2011, and President Obama announced that he intended to extend to homosexual couples all military benefits that heterosexual couples enjoyed. Many of these are policy-based, such as an ID card for dependents, the ability to shop at the Commissary and Navy Exchange, and legal assistance. As a result, the DoD granted these benefits to same-sex partners immediately provided that the servicemember and partner sign a declaration of domestic partnership that attests to the fact that they are involved in a committed, monogamous relationship.



But the (arguably) two most important benefits (Tricare and Basic Allowance for Housing with Dependents) are statutorily-based. And the statute in question, the Defense of Marriage Act (DOMA), 28 U.S.C. §1738C, specifically precluded the DoD from extending those to same-sex couples. Essentially, DOMA denied federal benefits to legally married homosexual couples because section three defined 'marriage' as "only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." Therefore, so long as the statute was in place, the DoD was powerless to intervene. (continued on page 6)

Administrative Separation Boards: Notes, Tips, and Mandatory Processing Considerations

LTJG Jennifer Maguire, Trial Counsel, NAS Pensacola

As MILPERSMAN (MPM) 1910-233 lays out, certain conduct in the Navy is so detrimental to good order and discipline that mandatory processing for administrative separation is triggered and the member *must* be processed for separation. These mandatory processing bases include sexual misconduct, certain violent misconduct, drug abuse, supremacist or extremist behavior, alcohol rehabilitation failure, and physical fitness failures...to new a few. While the MPM is relatively clear in the administrative separation board procedures, it is helpful to keep in mind a few practice tips and reminders when preparing to be the Recorder for a board using a mandatory processing basis:

Preparing Notification

Remember that you must notify for all known bases (MPM 1910-210). Keep in mind that use of controlled substance analogues (“spice”) may be charged two ways: (1) as MPM 1910-142 (Commission of a Serious Offense: VUCMJ, Article 92); or (2) as MPM 1910-146 (Drug Abuse) if there is a USACIL urinalysis test confirming the use of spice. Even though spice use processed under MPM 1910-142 is not specifically listed as a mandatory basis for separation, all drug use requires mandatory processing. Therefore, under either basis, use of spice requires mandatory processing for administrative separation.

Generally, there are two ways to process a member for administrative separation (MPM 1910-400). First, a member may be processed using Notification Procedures under MPM 1910-402, where the lowest characterization is a General discharge. Here, a member may elect a board only if he or she has six or more years of service. Both alcohol rehabilitation failure and physical fitness assessment failure use Notification Procedures. However, most mandatory processing will follow Administrative Board Procedures (MPM 1910-404), where the least favorable characterization is Under Other than Honorable (OTH). Using these procedures, a member has the right to elect a board regardless of the number of years in service, because the consequence of an OTH is more serious than the potential General characterization of boards using Notification procedures. Of course, the member may waive their right to a board at any time before the board (see MPM 1910-708).



Preparing the Board

Send a request for counsel to the Defense Service Office and make sure the defense counsel meets with the member within a week, noting the date the meeting occurred. Three weeks is usually enough time for defense counsel to prepare their case. Keep in mind the processing time goals in MPM 1910-010. If a member is not entitled to, or waives his board, the member should be separated within fifteen working days of notification. If the member elects a board and the board recommends separation, the member should be separated within fifty working days of notification.

After the Board

Defense counsel will often submit a letter of deficiency within five working days after the board. If one is not submitted within five working days, it is considered waived. If the board found that the basis for separation is established, they will recommend whether the member should be separated or retained; the separation authority (SA) will make the final determination as to whether the member will be separated (see MPM 1910-704 to determine SA). If the CO is the SA, prepare a letter to PSD directing separation (see MPM 1910-712). If the CO is not the SA, forward the package to SA, remembering to include the letter of transmittal (MPM 1910-600), record of proceedings, findings worksheet, exhibits, signed Privacy Act statement, and any letters of deficiency.

Note for SJAs and Legal Officers:

When misconduct is suspected, consider briefing NCIS on the situation in order to give them the opportunity to interview the service member. Depending on the nature of the misconduct, NCIS may be interested in conducting at least a preliminary investigation. Often, NCIS interviews may provide the Recorder with an oral admission to misconduct, if other evidence is not definitive.

Transitional Assistance for Victims of Domestic Violence

BLUF: victims of domestic abuse by servicemembers are entitled to payments if the servicemember is separated because of the abuse. Although it has been around for almost 20 years, DOD's program for transitional compensation for victims of domestic violence has recently received renewed attention, and should be a major consideration in cases of domestic abuse that result in the servicemember leaving the Navy. DOD Instruction 1342.24 gives the background and qualifying information, and DD form 2698 is the application. In practice, however, a little more work is needed to ensure dependent victims are compensated.

The first wicket requires that the servicemember has to have been separated for a dependent-abuse offense, either by court-martial or administrative separation (adsep). The actual abuse must have been against a then-current spouse or dependent child. Many crimes will fit this bill – sexual assault, rape, assault, battery, murder, etc. In addition, it needs to be clear in the paperwork that there was “qualifying” abuse. For instance, adsep paperwork that lists “commission of a serious offense” is not specific enough; nor is “commission of a serious offense – assault.” Neither of these tie the assault to a dependent victim.

Once a qualifying separation occurs, there are additional requirements: if the victim was a spouse, the spouse cannot a) remarry (anyone) or b) cohabit with the abuser. Note: this does NOT require that the abuser and the victim divorce, only that they not live together. If the victim was a minor dependent, the same limitations apply, with the added limit that if the spouse of the abuser is found to have been an active participant in the abuse, there will be no payments. There are some caveats, i.e. remarriage doesn't stop payments to a dependent child, if the child does not live with the remarried spouse. These are laid out in the instruction.

If the requirements are met, the victim and the CO of the offender will fill out the DD 2698. It will then be sent to the CNIC Millington detachment that runs the program. The current department head is Karen Roksandic. However, the Navy has additional requirements for applications: 1) the victim spouse must hand-copy the paragraph from the DD 2698 regarding remarriage and cohabitation limits onto a piece of paper, sign and date, and mail it in. This is an overly cautious approach, but it is the current rule. In addition, as noted above, the paperwork needs to specify that it was a qualifying abuse crime. Most adsep and court-martial paperwork will not get to this level of detail, and in those cases, the CO of the abuser must send in a separate letter in which he or she states that the separation actually was for a qualifying offense. Finally, the victim will have to provide bank routing information separately.

Once the department has all this information, and the victim is approved, the paperwork is sent to DFAS for payments to begin. This process takes 2-3 weeks from approval. However, the first check will be made for an amount retroactive to the date of notification for adsep, or date of conviction for court-martial. After the first (large) check, the payment amount will be \$1154/month, plus \$286/month for each dependent child under 18. See 38 USC §1311. These payments last 36 months, or until the member's original EAOS, with a minimum of 12 months of payments. In addition to the payments, victims are eligible for 12 months of TRICARE, and commissary and exchange use as long as they are getting payments.

There are more ins and outs to be found – but the best course of action is to contact the CNIC department and Ms. Roksandic early. They will guide you through the various requirements and ensure the victim is compensated in accordance with DOD direction.

APPLICATION FOR TRANSITIONAL COMPENSATION					
<small>All information except item 12 is to be entered by Service representative from Service records.</small>					
SECTION I - PAYEE INFORMATION <small>(If more than one eligible dependent, use the following section on each to enter applicable information for each payee.)</small>					
1. PAYEE NAME (Last, First, Middle Initial)	2. SOCIAL SECURITY NUMBER	3. DATE OF BIRTH (YYYYMMDD)	4. SEX (X one)		
			MALE		
			FEMALE		
5. ADDRESS	6. CITY	7. STATE	8. ZIP CODE		
9. RELATIONSHIP TO MEMBER (X one)					
<input type="checkbox"/> Current spouse <input type="checkbox"/> Adopted child <input type="checkbox"/> Stepchild					
10. CUSTODY (If payee is spouse or former spouse, enter name of dependent child on form DD-23 who is under 18 months of age, if applicable.)					
YES/NO (X Yes or No for each item) <input type="checkbox"/> IS PAYEE INCAPACITATED (If Yes, complete items 8b, and c, and item 9.) <input type="checkbox"/> PERMANENT <input type="checkbox"/> TEMPORARY					
YES/NO (X Yes or No for each item) <input type="checkbox"/> IS PAYEE INCAPABLE OF HANDLING FINANCIAL AFFAIRS (If Yes, complete item 10.) <input type="checkbox"/> IS PAYEE INCAPABLE OF SELF SUPPORT?					
11. LEGAL REPRESENTATIVE (Complete only if legal representative is not the payee.)					
a. NAME (Last, First, Middle Initial)		b. STREET ADDRESS (Include apartment or suite no.)		c. CITY	d. STATE e. ZIP CODE
12. IF PAYEE IS A CHILD: (X Yes or No for each item.) (NOTE: Age of majority for a child is 18 in all states except the following: Alabama, Alaska, and Wyoming; age of majority is 19, Mississippi; West Virginia and Puerto Rico; age of majority is 21.)					
YES/NO <input type="checkbox"/> WAS INCAPACITY INCURRED BEFORE AGE 18? <input type="checkbox"/> IS INCAPACITY WAS INCURRED BETWEEN AGES 18 AND 23, WAS THE CHILD A FULL-TIME STUDENT? <input type="checkbox"/> IS CHILD UNDER THE AGE OF MAJORITY? (See NOTE: If Yes, complete item 10.)					
13. WAS CHILD DEPENDENT ON FORMER MEMBER FOR OVER ONE-HALF OF SUPPORT?					
14. PAYEE CERTIFICATION (Payee must sign and date to certify that the statements herein are correct. Lines (2)-(4) apply only to spouse or former spouse.)					
(1) I am not cohabiting with the former member. If status changes, I will notify DFAS within 30 days. (2) I have not remarried. If status changes, I will notify DFAS within 30 days. (3) I have custody of the dependent children listed in item 7. (4) I was married to the member in item 14 at the time of the dependent abuse offense resulting in his conviction/administrative separation. (5) I claim payment of transitional compensation under Section 1059, Title 10, U.S.C. (6) I understand that I may not receive payments under both Section 1059 and Section 1408(b) of Title 10, U.S.C., and that, if eligible for both, I must elect which to receive. I elect payment of transitional compensation under Section 1059.					
15. SIGNATURE (Applicant acknowledges that acceptance of payments of the offender's rights hereabout is payable under the law.)			16. DATE SIGNED (YYYYMMDD)		
SECTION II - MEMBER IDENTIFICATION					
17. BRANCH OF SERVICE (X one)	18. MEMBER NAME (Last, First, Middle Initial)	19. PAY GRADE (After conviction or separation)			
<input type="checkbox"/> AIR FORCE <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> ARMY <input type="checkbox"/> NAVY					
20. SOCIAL SECURITY NUMBER	21. DATE OF BIRTH (YYYYMMDD)	22. SEX (X one)			
		MALE FEMALE			
23. OBLIGATED SERVICE DATES (YYYYMMDD)		24. EXPIRATION OF ACTIVE OBLIGATED SERVICE (If none, so stated)		25. ESTABLISHED DATE OF SEPARATION AT TIME OF CONVICTION/ADMINISTRATIVE SEPARATION (If none, so stated)	
a. ACTIVE DUTY SERVICE ENTRY DATE		b. EXPIRATION OF ACTIVE OBLIGATED SERVICE (If none, so stated)		c. ESTABLISHED DATE OF SEPARATION AT TIME OF CONVICTION/ADMINISTRATIVE SEPARATION (If none, so stated)	
26. DATE OF APPROVAL OF THE COURT-MARTIAL SENTENCE/ ADMINISTRATIVE SEPARATION (YYYYMMDD) (If court-martial, vary only date with approving official. If administrative separation, use date of initiation of separation.)					
27. PAYMENT DATES (YYYYMMDD) (If court-martial, vary only date with approving official. If administrative separation, vary only date with approving official. If administrative separation, use date of initiation of separation.)					
a. START b. STOP					
28. APPROVING OFFICIAL CERTIFICATION: I certify that the offense resulting in court-martial conviction or involved in administrative separation is a dependent-abuse offense in accordance with DoD regulations. If married, the spouse was not a participant in the abuse offense.					
29. SIGNATURE		30. DATE SIGNED (YYYYMMDD)	31. TITLE		32. TELEPHONE (Include area code)
33. STREET ADDRESS (Include apartment or suite number)		34. CITY		35. STATE	36. ZIP CODE

DD Form 2698

DD FORM 2698 JAN 95

Aviation Professional 8.0

CNIC Holiday Ethics Guide

The holiday season is traditionally a time of parties, receptions, and exchanging of gifts. Please remember that the Standards of Conduct still apply. To ensure that you don't unwittingly violate the standards, a brief summary of the applicable rules is set forth below. If you have any questions, please contact your local Staff Judge Advocate.

I. General Rule. Federal personnel may not accept gifts offered because of their official positions or offered by a "prohibited source." A prohibited source is anyone who:

- A. Seeks official action by the employee's agency;
- B. Does business or seeks to do business with the employee's agency;
- C. Conducts activities regulated by the employee's agency;
- D. Has interests that may be substantially affected by the employee's performance or nonperformance of duty; or
- E. Is an organization composed of a majority of members described above.



II. Parties, Open-Houses, and Receptions Hosted by Non-Prohibited Sources. Federal personnel may attend social events sponsored by non-prohibited sources and accept food, refreshments, and entertainment if no one is charged admission (e.g., most holiday receptions and open-houses).

III. Parties, Open-Houses, and Receptions Hosted by Prohibited Sources Including Contractors. The general rule is that Federal personnel may **not** accept gifts from prohibited sources, including contractors and contractor personnel.

- A. Exception #1: Federal personnel may accept gifts (other than cash) not exceeding **\$20**, as long as the total amount of gifts that the personnel accepts from that source does not exceed \$50 for the year.
- B. Exception #2: Federal personnel may accept gifts, even from a contractor employee that are based on a **bona fide personal relationship**. (Such personal gifts are actually paid for by the contractor employee rather than the contractor.)
- C. Exception #3: Federal personnel may generally attend an open-house or reception, and accept any gift of refreshments if it is a **widely-attended gathering**, and the employee's supervisor, after consultation with an Ethics Counselor, determines that it is in the agency's interest that the employee attends.
- D. Exception #4: Federal personnel may accept invitations (even from contractors) that are open to the public, all Government employees, or all military personnel.
- E. Exception #5: Federal personnel may accept invitations offered to a group or class that is not related to Government employment. (For example, if the building owner where your office is located throws a reception for all of the tenants of the building.)
- F. Exception #6: Refreshments consisting of soft drinks, coffee, pastries, or similar refreshments not constituting a meal may be accepted since they are not considered to be a gift.
- G. Exception #7: Outside business or other relationship results in attendance at an event. For example, a Federal employee's spouse works at SAIC. The Federal employee may accompany the spouse to the SAIC employee's holiday party since the invitation is to the spouse as an SAIC employee, and not to the Federal employee because of his or her position.

IV. Parties, Open-Houses, and Receptions Hosted by Other Federal Personnel.

- A. Invitation from your subordinate: You may accept personal hospitality at the residence of a subordinate that is customarily provided on the occasion.
- B. Invitations from your boss or a co-worker: No restrictions. Enjoy!

V. Gifts and Gift Exchanges Between Federal Personnel. In general, supervisors may **not** accept gifts from subordinates or Federal personnel who receive less pay.

- A. Exception #1: During holidays, which occur on an occasional basis, supervisors may accept gifts (other than cash) of **\$10 or less** from a subordinate.
- B. Exception #2: Supervisors may accept food and refreshments shared in the office and may share in the expenses of an office party.
- C. Exception #3: If a subordinate is invited to a social event at the supervisor's residence, the subordinate may give the supervisor a hospitality gift of the type and value customarily given on such an occasion.

Please note, there are no legal restrictions on gifts given to peers or subordinates, however, common sense and good taste should apply.

CNIC Holiday Ethics Guide (continued)

VI. Gifts and Gift Exchanges That Include Contractor Personnel

- A. Gifts from contractors, even during the holidays, may not exceed \$20.
- B. Gifts to contractors: Check with the contractor, since many contractors have codes of ethics that are similar to the Federal rules, and therefore, may preclude the acceptance of gifts.

VII. Other Important Information

- A. You may not solicit outside sources for contributions for your party. This includes funds, food, and items.
- B. Office parties are generally unofficial events, and you may not use appropriated funds to pay for them.
- C. Beware that door prizes or drawings could involve gambling, which would require compliance with state statutes and Federal regulations. DoD regulations prohibit gambling in the Pentagon and on Federal property or while in a duty status. GSA regulations ban gambling in GSA owned or controlled buildings.
- D. You may not use appropriated funds to purchase and send greeting cards.
- E. As a general rule, participation at holiday social events is personal, not official, and therefore use of government vehicles to/from such events would not be authorized. However, there may be very limited circumstances in which a senior official or officer is invited to attend because of his official position and where he will be performing official functions at the event as opposed to being invited because he or she is an important person. In these situations, use of a government vehicle may be authorized, subject to normal "home-to-work" transportation restrictions. Note, however, that it would be difficult, if not impossible, to justify the use of a government vehicle when a function involves one's immediate staff/office or events comprised of personal friends. All requests for use of a government vehicle to attend holiday social events should be reviewed on a case-by-case basis.

VIII. Rules Applicable to Contractor Employees. Many contractors have rules of ethics or business practices that are similar to the Federal rules. Take these rules into consideration before offering contractor employees gifts or opportunities that they may not be able to accept. Examples:

A. Office Party (non-duty time): Your office is having a holiday party during the non-duty lunch hour or after work and asks each person attending to pay \$5 to cover refreshments and to bring a pot luck dish or dessert. Contractor employees may attend, pay \$5, and bring food because these contributions are not considered to be gifts, but a fair share contribution to the refreshments. Remember, contributions must be voluntary, so soliciting must be done with care to ensure there is no pressure. Also, ensure this is non-duty time for the contractor employees as well.

B. Office Party (duty time): What about a party that cuts into duty hours? The Government usually may not reimburse a contractor for its employees' morale and welfare expenses. The contractor has to decide whether to let its employees attend and forego payment for their time, or insist that they continue to work. If contractor employees are allowed to attend, the contractor must also decide whether it would pay its employees for that time, even though the Government would not reimburse for it. The contractor does not have to pay its employees for that time. Consult the contracting officer and ethics counselor before inviting contractor employees to a function during their duty hours.

C. Gift to Supervisor: Your office wants to give the office supervisor a gift. However, you can't solicit other employees for contributions to a group gift. (Group gifts are permitted only for special, infrequent events such as retirements.) As for contractor employees, you can't ask them to contribute anything, as it is considered soliciting a gift from a prohibited source. Even if contractor employees volunteer to contribute cash, it may not be accepted because the \$20 exception does not apply to cash.

D. Exchange of Gifts: Your office, including the contractor employees, wants to exchange gifts at the party. Because it is difficult to have truly **anonymous** gift exchanges, you will want to restrict the value of such "random or exchanged" gifts to the authorized \$10.00 or less if personnel receiving different pay levels are involved. Gift exchanges in which employees purchase gifts for other employees whose names they drew at random are more troublesome. Where contractor personnel are involved, a \$20 per contractor company limit applies. Where an employee may buy a gift for a superior, the \$10 limit is prudent. Some organizations consider such a gift exchange to be exchanges of items of equivalent value, and that everyone participating is paying market value for the items, so no one is receiving a gift. Only in that case would the suggested monetary limits not apply. The best practice is to limit gifts to \$10 or less when involving more than a very small group of equivalently paid co-workers.

E. Private Parties (Federal Personnel): One of your Government co-workers is having a party at his house and has invited office personnel, including the contractor employees. A gift of food and refreshments to a contractor employee does not violate Government ethics rules. The contractor employees may want to check with their contractor's rules before accepting (since many contractors have similar ethics rules). If the contractor employee brings a hospitality gift, it may not exceed \$20. If such a gift is edible, even if it exceeds \$20, the host may accept it on behalf of all the guests and share it with them.

(Continued on page 6)



F. Private Parties (Contractor Employee): If a contractor employee is having a personal party and invites Government personnel, normally Government personnel must decline, since the food, drink, and entertainment is a gift from a prohibited source. Several exceptions may permit attendance, however. Under the \$20 rule, if the average cost per guest does not exceed \$20, Government personnel may accept. (However, if the cost per guest is \$40, the "I won't eat more than \$20 worth of food" defense will not work.)

Also, Government personnel may accept if the invitation is based on a bona fide personal relationship with the contractor employee. Finally, if the party qualifies as a widely-attended gathering (involving a large number of persons representing a diversity of views) and the employee's supervisor determines that it is in the agency's interest for the employee to attend, the employee may enjoy the food, drink, and entertainment. Government personnel who desire to take a gift to show their appreciation for the hospitality should consult with the contractor employee to determine if he or she may accept such a gift in accordance with the contractor's rules of ethics.

G. Private Parties (Contractor-sponsored): If the contractor is sponsoring an employee's party or open-house, and you are invited by the contractor (or an employee of the contractor), you may not attend unless one of the exceptions in paragraph III above, apply.

HAVE A HOLLY, JOLLY, ETHICAL HOLIDAY SEASON THIS YEAR!!!



Same Sex Benefits *(continued from page 1)*

However, on 26 Jun 2013, the Supreme Court invalidated section three under the Due Process Clause of the Fifth Amendment. This permitted Secretary of Defense Hagel to announce on 13 Aug 2013 that the DoD would no longer accept the declaration of domestic partnership; instead, all legally married couples, regardless of sexual orientation, would be extended all federal benefits. But because only fourteen states (including the District of Columbia) allow gay marriage, the DoD has changed its leave policy to allow a one-time use of non-chargeable leave for up to ten days for servicemembers "who are in same-sex relationships and are assigned to duty stations located more than 100 miles from a U.S. state...that allows same-sex couples to marry, for travel to a state or jurisdiction that allows same-sex couples to be married."

So here's where we are:

- 1) In order to be eligible for military benefits, homosexual servicemembers must be legally married in one of the states that allows gay marriage;
- 2) In order to travel to one of those states to get legally married, homosexual servicemembers are permitted up to 10 days of non-chargeable leave if they are stationed at least 100 miles from one of those states;
- 3) Once homosexual servicemembers are legally married, then their dependents are eligible for the same benefits as heterosexual couples'.

These nuances are fact-based, so always remember to CYA (consult your attorney).

DELIVERY OF PERSONNEL TO CIVIL AUTHORITIES

LT Joel White, Staff Judge Advocate, NAS Pensacola

The Monday morning police blotter provides a great opportunity to forecast things to come. Because as sure as a Sailor was dutifully returned to the installation police department, the same city police or surrounding county sheriff's department will probably ask the installation's assistance to return that member to face his or her day in court. You get that phone call, now what? Answer two simple questions and you can keep up graces with the local authorities while maintaining compliance with Navy directives. The specific Navy directive which controls is this situation is JAGMAN Chapter 6 and can be found here: <http://www.jag.navy.mil/library/instructions/JAGMAN2012.pdf>.



JAGMAN Chapter 6 provides that commands should balance the Federal interest in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation, against the right of the State to exercise its jurisdiction. Let's answer those two questions:

1) What kind of arrest warrant do they have?

No Warrant: Consult a Judge Advocate and consult your Echelon II commander before handing over a member to the concerned authorities. This situation is dicey!

Federal Warrant: Arrest of the individual should happen provided the following information is at hand. And note that anyone can be arrested, not just military members. So, civil servants, civilian contractors, or dependents present on base may be arrested. No delivery agreement is necessary, more on that later. What to look for:

Federal law enforcement officer present to arrest individual.

Federal warrant signed by federal authority is presented.

State Warrant from Your State: Normally, the commanding officer will deliver the member when a proper state warrant has been issued. Follow two steps:

Consult with a Judge Advocate who will review the warrant to ensure it has been properly completed. Ensure a delivery agreement completed. Oh, and consult Judge Advocate from above for help on this one. The delivery agreement requires the state to return the member in case this charge turns out to be a big mistake; they must return the member to your command.

The delivery agreement must be in writing, signed by an authority to bind the state. See Appendix A-6-b from the JAGMAN for a model delivery agreement. The agreement is not required for civilians.

Out-of-State Warrant: Really, this should be coordinated well in advance because we have a few hoops to jump through. A commanding officer or flag level officer exercising general court martial convening authority after consulting with a Judge Advocate is authorized to deliver a member after following these steps:

If the member waives extradition (sample with requirements found in JAGMAN Appendix A-6-a), the member may be delivered.

If the member declines to waive extradition, inform the closest SJA who shall confer with civil authorities about the issue. Ultimately, the member shall not be transferred or ordered out of the State in which he or she is then located without the permission of the Judge Advocate General, unless a fugitive warrant is obtained.

2) Hand-over of personnel. Consider the following guidance depending on whether the individual is a military member to facilitate good order and discipline.

Military member: The member may be ordered to report to a specific location designated by the commanding officer which is typically the base legal office for surrender.

Civilian: A civilian is usually invited to leave his or her work space to meet law enforcement for the delivery. In the event a civilian denies this arrangement, civil authorities may be escorted to the individual's work space for the delivery. Civilians may be properly ordered to depart a classified area under these circumstances.

Feel free to consult JAGMAN Chapter 6 for additional details concerning delivery of personnel to civil authorities. Alternatively, your local Staff Judge Advocate can provide all the answers you might need to promote justice and keep up relationships with local law enforcement.

Navy Region Southeast Victim Legal Counsel

The first judge advocate assigned to the Navy's Victim Legal Counsel Program (VLC Program) in Navy Region Southeast reported to Naval Station Mayport on 21 October 2013. LCDR Patrick Korody, JAGC, USN will serve as the supervising attorney for the VLC Program in Navy Region Southeast. He and judge advocates assigned to VLC Program detachments at NAS Jacksonville, NAS Pensacola, NCBC Gulfport, and Joint Base San Antonio will provide legal services to eligible victims of sexual assault stationed in Navy Region Southeast, including assistance and advocacy in the investigative and military justice processes. To be eligible for VLC Program services, the individual must be on active duty, a reservist who was assaulted on active duty, or an adult dependent and must have made, or be contemplating, a restricted or unrestricted report of sexual assault.

The VLC Program's initial capabilities became available on 1 November 2013, with full capabilities set for January 2014. LCDR Korody can be reached at 904.270.6289 Ext. 1213 or patrick.korody@navy.mil.



Twenty of the Navy's Victims' Legal Counsel (VLC) attended the Air Force's Special Victims' Counsel Course at the Air Force Judge Advocate General's School, Oct. 15-18.

The Advisor Puzzler—From This Issue

N N C G S C V G M Y B Y Z T T
 Y O I C H T G I A J B M R S N
 J H T O L H I D C O X A M P D
 O X I I V V I F I T D L Y O E
 Y T Z F F L A P E I I B R U S
 R T E O O I A C T N A M E S J
 X Q N H Y R C I L T E L V E U
 G I S X T G O A M A U B I Y S
 L K H Y Q N L H T O R L L J F
 G K I K A N J D H I Y G E N I
 K O P L W V S K B A O B D W L
 C O M P E N S A T I O N A U M
 Y R O T A D N A M N J J J F H
 R L W A R R A N T G U O S S Q
 O F Z S X T X N V F F B Y Z B

BENEFITS
 CITIZENSHIP
 COMPENSATION
 DELIVERY
 HOLIDAY
 MANDATORY
 NOTIFICATION
 PARTY
 ROTH
 SPOUSE
 TRADITIONAL
 VICTIM
 VLC
 WARRANT

Recent Courts-Martial Sentences in Navy Region Southeast

- At a General Court-Martial in Pensacola, Florida, a Hospitalman Recruit was tried for aggravated sexual assault, abusive sexual contact, indecent acts, larceny, and breaking restriction. On 9 August 2013, the panel of members returned a verdict of not guilty to aggravated sexual assault, one specification of abusive sexual contact, and one specification of indecent acts, but guilty to the remaining charges of abusive sexual contact, indecent acts, larceny, and breaking restriction. The panel of members sentenced him to be discharged with a Dishonorable Discharge and confinement for 4 years.
- At a General Court-Martial in Jacksonville, Florida, a Hospitalman pleaded guilty to abusive sexual contact and burglary. On 3 September 2013, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-2, and confinement for 6 months.
- At a General Court-Martial in Mayport, Florida, Petty Officer Third Class was tried for sexual assault. On 20 September 2013, a panel of members returned a verdict of guilty and sentenced him to be discharged with a Dishonorable Discharge, forfeit all pay and allowances, reduction in rank to paygrade E-1, and confinement for 3 years.
- At a General Court-Martial in Jacksonville, Florida, a Petty Officer First Class pleaded guilty to possession of child pornography. On 25 September 2013, the military judge sentenced him to be discharged with a Dishonorable Discharge, reduction in rank to paygrade E-3, and confinement for 18 months.
- At a Special Court-Martial in Mayport, Florida, Petty Officer First Class pleaded guilty to disrespect toward a superior commissioned officer and false official statement. On 20 August 2013, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-3 and confinement for 75 days.
- At a Special Court-Martial in Jacksonville, Florida, Petty Officer Second Class pleaded guilty to violating a general order, use and possession of drugs, and assault with a deadly weapon. On 30 September 2013, the military judge sentenced him to be discharged with a Bad Conduct Discharge, forfeit \$500 pay per month for 4 months, reduction in rank to paygrade E-2, and confinement for 9 months.
- Courts-martial in Navy Region Southeast are tried with few exceptions at NAS Jacksonville, NS Mayport, and NAS Pensacola. Therefore, the location of where a court-martial described above was convened does not necessarily correlate to the command that convened the court-martial. Adjudged sentences may be modified by pre-trial agreement or clemency.

The results of every Special and General courts-martial convened within the United States Navy are available at <http://www.jag.navy.mil/news/ROT.htm>



Region Legal Service Office, Southeast

Building 4
P.O. Box 116
NAS Jacksonville
Jacksonville, Florida 32212-0115

Commanding Officer
CAPT Gary Sharp

Executive Officer
CDR Jennifer Roper

Navy Region Southeast
Staff Judge Advocate
CDR Nell Evans



Region Legal Service Office Southeast (RLSO SE) supports the operational readiness of Department of Navy assets in the Southeastern United States by providing responsive, timely and accurate legal guidance, support services and training in the areas of military justice and administrative law. RLSO SE headquarters is located onboard Naval Air Station Jacksonville, Florida, and has detachments throughout the Region and Guantanamo Bay, Cuba. RLSO SE geographic area of responsibility includes the states of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas as well as Cuba, Puerto Rico, South America and portions of Mexico.

Navy Region Southeast Staff Judge Advocate Offices:

Commander, Navy Region Southeast	(904) 542-2133—DSN 942
CNRSE Deputy SJA	(904) 542-3904—DSN 942
Naval Air Station Jacksonville	(904) 542-2941—DSN 942
Naval Station Mayport	(904) 270-6289 x1801—DSN 270
Naval Submarine Base Kings Bay	(912) 573-4732—DSN 573
Naval Air Station Key West	(305) 293-2833—DSN 483
Naval Station Guantanamo Bay	011-53-99-4834—DSN 660
Naval Air Station Pensacola	(850) 452-4402—DSN 459
Naval Air Station Meridian	(601) 679-2340—DSN 637
Naval Construction Battalion Center Gulfport	(228) 871-2627—DSN 868
Naval Air Station Joint Reserve Base New Orleans	(504) 678-9555—DSN 678
Naval Air Station Corpus Christi	(361) 961-3569—DSN 861
Naval Air Station Fort Worth Joint Reserve Base	(817) 782-7990—DSN 739
Naval Air Station Whiting Field	(850) 623-7231—DSN 868
Chief of Naval Air Training (CNATRA)	(361) 961-3578—DSN 861
Naval Air Technical Training Center (NATTC)	(850) 452-7200 x4632—DSN 459
CID Corry Station	(850) 452-6290—DSN 459