

# MIDLANT Legal Compass

*Guiding Warfighters through Legal and Ethical Waters*

**THIS EDITION FOCUSES ON  
NEW LEGAL DEVELOPMENTS**

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The primary mission of Region Legal Service Office Mid-Atlantic (RLSO MIDLANT) is to provide prosecution, command services, and legal assistance support to eligible commands and persons in support of Fleet operational readiness.

The *MIDLANT Legal Compass* is a periodic newsletter published by the RLSO MIDLANT Command Services Department.



*New Developments on the MIDLANT Legal Front*

*New Developments on the MIDLANT Legal Front* is the theme for this edition of the Region Legal Service Office Mid-Atlantic (RLSO MIDLANT) Legal Compass. The JAG Corps' ability to add value to the Navy's mission is dependent, at least in part, on its ability to stay ahead of the curve and provide information regarding the Navy's newest initiatives. New initiatives from the Secretary of Defense and Chief of Naval Operations have added emphasis on combating substance abuse and maintaining the privacy of our service members. This edition covers these new developments among others and publicizes changes to how the Legal Assistance mission is accomplished under the new command structure. We hope that this newsletter improves your understanding of these developments and enhances your ability to adapt to a constantly changing legal environment.

Very Respectfully,  
/s/  
D.E. Stich  
CAPT, JAGC, USN  
Commanding Officer, RLSO MIDLANT

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*There is Still Time to Take Advantage of Tax Assistance Services*

LT Genevieve Loutinsky, Legal Assistance Department, RLSO MIDLANT

The Tax Assistance Center (TAC) provides tax preparation assistance to active duty service members and their dependents, retired service members and their dependents, and any reservists on active duty for more than 29 days during the 2013 tax filing season.

This year, in accordance with guidance from the Chief of Naval Operations, RLSO MIDLANT-operated Tax Assistance Centers (TACs) will continue to offer self-service tax assistance preparation for all eligible customers with limited exceptions. Self-service allows individuals to file returns electronically using an online-based filing program, while receiving assistance as needed, from IRS trained TAC personnel.

The TAC will continue to provide one-on-one tax preparation services to active duty, retired, their dependents and eligible reservists as defined above in limited circumstances. One circumstance where one-on-one tax preparation will be available is to assist customers unable to use self-service due to a disability. This service allows eligible customers to come in with necessary documents and have their taxes prepared for them by TAC personnel.

Customers using the TAC can receive help on both Federal and State tax returns if they are being filed together. Most customers that use the TAC and file an electronic tax return can expect to receive their tax refund in as little as two weeks from the date of filing.

The main TAC is located at Naval Station Norfolk, Building B-30, 1176 Gilbert Street, Norfolk, First Deck. In the Hampton Roads area there is a branch office at Joint Expeditionary Base Little Creek-Fort Story, Building 3129, 1450 D Street (Fleet and Family Support Center Building), Virginia Beach, and another branch office at Naval Air Station Oceana, Building 320, 799 Hornet Drive, Suite 100, Virginia Beach.

All TAC customers, self-service and one-on-one, need to bring their military identification card, W-2 forms, documentation of any interest income or mortgage interest paid and any other tax related documents. Customers receiving one-on-one assistance also need to bring their Social Security card and the Social Security cards for any individuals whom they claim on their taxes.

This year, the tax deadline is April 15. To avoid wait times that often occur right before the deadline, customers are encouraged to come in as soon as they have received all of their necessary tax forms.

While the TACs IRS trained personnel will assist eligible customers in processing their taxes correctly, the IRS does impose some restrictions. The TAC cannot process business taxes, or returns that involve the sale of stocks, capital gains, or rental properties. Service members that are deployed during the regular tax season, which runs from January through April, receive an automatic extension to the filing deadline.

To expedite the process upon your arrival at the TAC, be sure you come prepared with the following documentation:

- Military ID.
- Social Security cards for you, your spouse and dependents and/or a Social Security number verification letter issued by the Social Security Administration if using one-on-one tax preparation services.
- Birth dates for you, your spouse and dependents listed on your tax return.
- Current year's tax package if you received one.
- Wage and earning statement(s) Form W-2, W-2G, 1099-R, from all employers.
- Interest and dividend statements (Forms 1099).
- A copy of last year's Federal and State tax returns, if available.
- Bank routing numbers and account numbers for direct deposit.
- Total paid for daycare provider and the daycare provider's tax identifying number (the provider's Social Security number or the provider's business Employer Identification Number).
- To file a married-filing-jointly tax return electronically, both spouses must be present to sign the required forms.

*All TAC customers, self-service and one-on-one, need to bring their military identification card, W-2 forms, documentation of any interest income or mortgage interest paid and any other tax related documents. Customers receiving one-on-one assistance also need to bring their Social Security card and the Social Security cards for any individuals whom they claim on their taxes.*

### *Using the Navy's New ADDition to Combating Alcohol Abuse*

LT Victor Marquez, Trial Department, RLSO MIDLANT

The Navy recently introduced OPNAV Instruction 5350.8, Use of Hand-Held Alcohol Detection Devices ("ADD"). This new substance abuse program initiative is specifically intended to promote safety, provide education and awareness of the unit's alcohol use culture and to complement other unit efforts to promote responsible use of alcohol and deter alcohol abuse. The results of the ADD shall not be used for disciplinary or administrative separation procedures.

The ADD program is supplementary to the command's existing alcohol initiatives. The ADD program does not limit or diminish existing tools that a CO may use, such as a probable cause search or a competence for duty examination, to deter or punish irresponsible use of alcohol or alcohol abuse. For example, if a CO suspects a Sailor of being drunk on duty and the preferred outcome is discipline, then the proper course of action is not a random ADD inspection, but rather a probable cause search of the Sailor supported by signs of alcohol intoxication. Pursuant to the probable cause search, the Sailor may be required to undergo a breathalyzer. The BAC result in this instance may be used to support charges for violation of UCMJ Articles 112 (Drunk on Duty), or 134 (Drunkenness- Incapacitation for Performance of Duties through Prior Wrongful Indulgence in intoxicating Liquor or any Drug).

Because the purpose behind the use of the ADD is safety, education and awareness, commands should not target individuals suspected of misconduct. They should perform sweeps of the entire command to help those that may have an alcohol problem identify the issue. Thus ADD program inspections are "random", which means testing should be unpredictable. Generally, an unpredictable testing pattern will produce a more accurate indicator of the command's alcohol use and culture. Random inspections may also include unit or sub-unit sweeps, duty section sweeps, or random sampling of service members in a duty status and during the work day. A CO's order to undergo a random ADD inspection is a lawful order, the violation of which, may serve as the basis for disciplinary or administrative actions.

A BAC result of 0.02 or greater is a positive result. If a Sailor has a positive result, the command must give that Sailor a 20-minute waiting period to allow any other elements that may produce a detectable indicator of alcohol to clear before giving that Sailor a retest.

When a Sailor's breathalyzer produces a BAC of 0.04 or above, either initially or after retest, the Sailor shall be relieved of duty and retained on board the command in a safe and secure environment until the ADD-indicated reading is not detectable. Sailors that test positive and are under the minimum legal drinking age, or those that test positive and have previously completed alcohol rehab treatment, shall, at a minimum, be referred to the Drug and Alcohol Program Advisor (DAPA). Be mindful that a random ADD inspection positive result is not an "alcohol related incident" under OPNAV Instruction 5350.4D. An important note is that a command referral to the DAPA is a lawful order, and a service member that either fails or refuses to meet with the DAPA may be charged with violation of UCMJ Art. 92 – Orders Violation.

*If a CO suspects a Sailor of being drunk on duty and the preferred outcome is discipline, then the proper course of action is not a random ADD inspection, but rather a probable cause search of the Sailor supported by signs of alcohol intoxication*

Service members with positive ADD results should be referred to the DAPA, and additional non-punitive action focused on safety, training, counseling, and education may be implemented at the CO's discretion. Extra Military Instruction (EMI) or a Non-Punitive Letter of Caution (NPLOC) held within the service member's department folder may be appropriate but, per the ADD instruction, the command cannot document counseling of positive ADD results in the service member's official military personnel records (i.e., via a NAVPERS 1070/613). Other potential command responses include ordering the service member to undergo a competence for duty examination, removal from duty section status or assigned tasks, and education/counseling by designated leaders.

OPNAV Instruction 5350.8, and the ADD Operating Guide, available at <http://www.nadap.navy.mil>, contains specific instructions and guidance on what actions the CO should take with respect to a positive BAC result under the program. Please refer to these resources and consult a RLSO MIDLANT command services attorney if you have any questions.



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### *Coming Soon: New Benefits For Same-Sex Military Couples*

LT Kevin Loughman, Command Services Department, RLSO MIDLANT

The Secretary of Defense recently put out a memorandum directing the Secretaries of all the military departments to work together to extend new benefits to same-sex domestic partners of military members. The memorandum requires that these policies be in place by 31 August 2013 but no later than 1 October 2013. This serves as notification for local commands that they should stand by for additional implementing guidance. Implementing instructions will be issued by each military department on the same day later this year.

What benefits will be extended to same-sex domestic partners later this year? Same-sex partners will receive all of the major military benefits except Basic Allowance for Housing (BAH) and medical benefits, which are prohibited by the Defense of Marriage Act. These new benefits will include commissary and exchange privileges, joint duty assignments, and most importantly from RLSO MIDLANT's perspective, legal assistance services. The memorandum also notes that, while awaiting implementing guidance, there are some benefits such as hospital visitation and being a SGLI beneficiary that are already available to same-sex partners.

Though the Secretary of Defense's memorandum lays out a template for how issuing these new benefits should be implemented, nothing is set in stone. The Secretary of Defense directed that these benefits must be provided, but there is a lot of flexibility in how this will be accomplished. If your Sailors have any questions about this new policy provide them with the assurance that the updates to the rules are in the works and will be finalized in the near future and contact the RLSO MIDLANT command services team for additional guidance.

## *Command Logos: When and How to (Legally) Use Them*

LT Emily Jones, Trial Department, RLSO MIDLANT

Per SECNAVINST 5720.44C, the Department of the Navy (DON) Seal and naval “indicators” may be used for official purposes. Under the instruction, an “indicator,” is “any DON word; symbol; ship, aircraft, or other platform name; designator, logo, unit or squadron patch; sound; slogan, phrase; official seal; emblem; domain name; name of any historical battle; or other official adopted visual or auditory identifier in use, or intended to be used by the DON.” In fact, according to SECNAVINST 5030.4A, “the DON Seal is for official use only and is for the exclusive use of the DON and the Department of Defense (DOD).” Official purposes include a command’s official website, official letterhead, and official Facebook page. Whereas the DON Seal can only be used for official uses, with proper authorization; a command logo may be used in unofficial uses. Unofficial uses include T-shirts sold by MWR for fundraising, personal iPad covers, and personal mugs. Proper authorization to use a command logo requires commands to get a license for that logo.

*Because of how specific a license is, we recommend that a command think about all the ways that it might like to use a logo, so that it obtains the most comprehensive license possible.*

### **What is a license? And why would I need it?**

A license in the realm of copyright law is much like a driver’s license. States give citizens permission to drive a car on their roads so long as they follow the rules of the road. Similarly, a copyright license is the Navy’s permission to the command or the command’s MWR to use the command’s logo as long as the command or associated group uses the logo for pre-approved uses. For example, a command must ask in advance to use the logo on T-shirts. Moreover, the license for using a logo on T-shirts does not also permit the command to use the logo on iPad covers. Because of how specific a license is, we recommend that a command think about all the ways that it might like to use a logo, so that it obtains the most comprehensive license possible.

### **Alright, so I need a license. I know I don’t go down to the DMV. So how exactly do I do this?**

The Navy has a process for licensing all its intellectual property across the spectrum, from its technology to its logos which is run by the Office of Naval Research (ONR) per SECNAVINST 5430.7Q. In order to obtain a license, a written request must be sent to ONR. The request should include (1) a copy of the logo and (2) a thorough description of the requested uses (e.g., T-shirts, coffee mugs, etc for sale by command MWR). License approval times vary from a few weeks to a few months, so plan in advance. Requests can be sent to:

Department of the Navy  
Office of Naval Research  
Office of Counsel, Code 00CC  
ATTN: Trademark Licensing Office  
875 N. Randolph Street  
Arlington, VA 22203-1995  
Fax: 703.696.6909  
E-mail: [tmlicense@onr.navy.mil](mailto:tmlicense@onr.navy.mil)

## *FOIA and the Privacy Act: The Right Way to Obtain Government Records*

LT Betsy Roche, Civil Law Department, RLSO MIDLANT

### **FOIA**

The Freedom of Information Act (FOIA), [5 U.S.C. §552](#), is a federal law that provides that any person has the right to request access to federal agency records or information. Federal agencies are required to disclose records or information upon receipt of a written FOIA request, except such records or information that is exempt from disclosure. The 1996 FOIA amendments require federal agencies to implement a publicly accessible Electronic Reading Room to store commonly requested documents. The Office of the Judge Advocate General (OJAG) retains an Electronic Reading Room for Navy-Marine Corps Court of Criminal Appeals opinions, JAGMAN Investigations, JAG References, and Annual OJAG FOIA Reports. These are accessible at [http://www.jag.navy.mil/library/reading\\_room.htm](http://www.jag.navy.mil/library/reading_room.htm).

A command may be the initial recipient of a FOIA request and it may fall to the Legal Officer or Executive Officer to determine how to properly respond. A FOIA request is a written request for agency records by any person, including a member of the public, an organization or a business (but NOT a Federal agency or a fugitive from the law) that explicitly or implicitly invokes the FOIA, or any implementing directive. FOIA requests come by mail, email, or phone calls. When receiving a phone call, we ask the caller to send us a written request, identifying themselves and identifying the records they would like. A FOIA request must be in writing.

**“Perfectured” FOIA requests are required:** The requester must, in writing, identify him/herself with contact information, and describe the records with enough specificity to enable persons familiar with the file to locate the requested records with reasonable effort. If the request is not perfected, we notify the requester and offer an opportunity to perfect (usually to narrow or to correct) the request. The requester should also specify how much money they are willing to pay toward processing fees—either they will pay all fees, or those up to a specified amount, or request a waiver or reduction of fees.

**Response timelines:** FOIA requests must be answered within 20 working days (not Saturdays/Sundays/federal holidays) of receipt of a “perfectured” request. If not possible to give the requester the records within 20 days, an initial reply must tell the requester, within 10 days of receipt of the perfected request, that the response will be delayed (a “queue” letter). The 10 day letter may also notify the requester (after negotiating with the requester) of the expected date for reply based upon a mutually acceptable extension of time.

**What to do if you receive a FOIA request?:** Forward it to your FOIA Initial Denial Authority (IDA). This is often the Region Staff Judge Advocate. Any Command Services Attorney can help you identify your IDA and forward it to the proper legal office for review and processing or forwarding to the cognizant office with control of the requested records.

### ***What to do if you receive a FOIA request?:***

*Forward it to your FOIA Initial Denial Authority (IDA). This is often the Region Staff Judge Advocate. Any Command Services Attorney can help you identify your IDA and forward it to the proper legal office for review and processing or forwarding to the cognizant office with control of the requested records.*

*The purpose of the Privacy Act is to balance the government's need to maintain information with the obligation to protect individuals against unwarranted invasion of their privacy stemming from the government's (or the Navy's) collection, maintenance, use, and disclosure of their Protected Personal Information (PPI).*

**What does the IDA do with the FOIA Request?:** We figure out what the requester wants and who owns such records (or if they even exist). If an IDA's command does not own the records, we forward to the cognizant authority (CIA, or BUMED for example) for their response. If a Region command owns the records, we request the records from that command. Once we have the records in hand, we determine if any FOIA exemption allows us to withhold any part of the record. If so, we redact that part of the record and label the record with the appropriate FOIA exemption. Then, we release the redacted record to the requester and notify them of their opportunity to appeal to OJAG Code 14.

References: <http://www.jag.navy.mil/library/foia.htm>

SECNAVINST 5720.42F DON FOIA Program

SECNAVINST 5211.5D DON Privacy Act Program

5 U.S.C. § 552a Freedom of Information Act

JAGINST 5720.3A OJAG FOIA Policy/Procedure

Guide to the Freedom of Information Act, 2009 Edition

### **Privacy Act**

The Privacy Act, 5 U.S.C. §552a, is a federal law that provides U.S. citizens or permanent resident aliens (PRAs) with a right to access to information about themselves that is maintained by any federal Executive Agency. The Act also controls what kind of personal information the federal government collects and how it uses or discloses that information. "The Privacy Act provides three specific rights: (1) the right to see records about yourself; (2) the right to amend that record if it is inaccurate, irrelevant, untimely, or incomplete; and (3) the right to sue the federal government if it violates the statute, for example, allowing unauthorized individuals' access to your records." The purpose of the Privacy Act is to balance the government's need to maintain information with the obligation to protect individuals against unwarranted invasion of their privacy stemming from the government's (or the Navy's) collection, maintenance, use, and disclosure of their Protected Personal Information (PPI). Sources: CIA Freedom of Information Act page: <http://www.foia.cia.gov/privacy-act-1974-5-usc-%C2%A7552a-amended>; SECNAVINST 5211.5E DON Privacy Program.

A command or a member of a command may want to make a request under the Privacy Act to obtain DON or other Executive branch records, such as Fleet & Family Support Center records, Incident Complaint Records, or criminal records.

A proper Privacy Act (PA) request is a written request for records from an individual for notification as to the existence of, or access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records (a group of records under the control of a DON activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual).

Every system of records must have a System of Records Notice (SORN) published in the Federal Register and available for viewing at

<http://dpclo.defense.gov/privacy/SORNs/SORNs.html#exemp>

If a group of records is not covered by a SORN, and does not have a Privacy Act Statement (PAS) on it, it is in violation of the FOIA, the Privacy Act, and SECNAVINST 5211.5D, which could subject the violating individual to civil and criminal penalties. Commands should scrub their files, both electronic and hard copy for records, instructions, notices, questionnaires, etc... kept in an index by an individual's name, social security number, or another identifier. If a command finds such records, the command should contact a Command Services attorney or their local Staff Judge Advocate to determine if the records fall under a System of Records Notice and to add a Privacy Act Statement (PAS) to these records.

If a command or an individual wants to make a PA request, the request must either be from a "first party requester," that is, the records must be about the person who is requesting them, or must be from a representative of the command who needs the Privacy Act covered records in the course of their official duties. A PA request must contain the requester's name, requester's address, proof of legal guardianship or custody if subject is a minor, or first party requester's authorization and signature if requester is representative or attorney of subject; must be addressed to the PA systems manager or the office designated in the paragraph entitled "Record Access Procedures" in the System of Records Notice (SORN). If the requester is a command or a federal government agency, the request must generally describe that the records are needed for the completion of official duties. The records must be able to be retrieved by searching for the requester's name, social security number, or another index number. The requester is NOT required to state a reason or justify the need to gain access to the records beyond generally identifying oneself. The request MUST be signed by the requester and provide enough specificity that the records can be searched for and located. Otherwise, the PA request can be returned unanswered for failure to perfect it.

**Response timelines:** PA requests must be acknowledged within 10 working days and a determination rendered/answer given within 30 working days (not Saturdays/Sundays/federal holidays) of receipt of a "perfected" request.

A PA request should be forwarded to the command Staff Judge Advocate or a Command Services attorney. The attorney should forward the request to the local IDA, which is usually the CNIC Region Staff Judge Advocate. If the PA request is submitted via the organization or agency who owns the records (FFSC for example), the FFSC should forward the request and the responsive documents to the Region Staff Judge Advocate. The Region will answer all PA requests and notify the requester of an opportunity to appeal if they disagree with the decision to release or redact or deny records.

References:                    SECNAVINST 5211.5D DON Privacy Act Program  
                                      JAGINST 5720.3A OJAG FOIA Policy/Procedure

*The requester is NOT required to state a reason or justify the need to gain access to the records beyond generally identifying oneself. The request MUST be signed by the requester and provide enough specificity that the records can be searched for and located. Otherwise, the PA request can be returned unanswered for failure to perfect it.*

*A common “Routine Use” request is a request for an incident complaint report (ICR) or traffic accident report on any installation for the purpose of filing an insurance claim. If it is a request for anything else, contact your local Staff Judge Advocate or Command Services attorney.*

### Routine Use

A “Routine Use” request is actually a Privacy Act request, covered by the same instruction, SECNAVINST 5211.5E, and to be processed using the same procedures. Routine Use (RU) is a special exemption to the Privacy Act that allows a record to be disclosed outside DOD for a purpose that is compatible with the purpose for which the record was collected and maintained by DOD. The “routine use” must have been included in the notice for the system of records (SORN) published in the Federal Register. The list of SORNs is found here: <http://dpclo.defense.gov/privacy/SORNs/SORNs.html#exemp>. A list of blanket routine uses is found here: [http://dpclo.defense.gov/privacy/SORNs/blanket\\_routine\\_uses.html](http://dpclo.defense.gov/privacy/SORNs/blanket_routine_uses.html).

A common “Routine Use” request is a request for an incident complaint report (ICR) or traffic accident report on any installation for the purpose of filing an insurance claim. If it is a request for anything else, contact your local Staff Judge Advocate or Command Services attorney. The SJA or Command Services Attorney should consult with the Privacy Act Coordinator, who is usually the Region Staff Judge Advocate regarding processing of the request.

A RU request must be in writing with the requester’s name, address, signed authorization from first party requester if requester is parent/guardian/custodian or attorney, and have enough specificity for the record to be located, and the purpose for which the record is requested (which must be listed in the Routine Uses in the applicable SORN or is one of the Blanket Routine Uses). Most base Security Offices have a standard “Incident Report Request” form that meets these requirements.

**Response timelines:** RU requests must be acknowledged within 10 working days and answered within 30 working days (not Saturdays/Sundays/federal holidays) of receipt of a “perfected” RU request.

References: SECNAVINST 5211.5D DON Privacy Act Program

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### *MPOs: Am I Doing This Right?*

LT Sharlena Williams, Command Services Department, RLSO MIDLANT

A Military Protective Order (MPO) is similar to a civil restraining order. MPOs are usually issued when there has been domestic violence or a sexual assault committed by a service member. A MPO may order a service member to refrain from activities such as having face-to-face, telephonic, or written contact with the victim, including contact conducted through third parties, or being present at designated areas or places, such as military family housing, the family home off the installation, schools, place of employment, child development centers, and youth programs.

#### Who do MPOs apply to?

MPOs only apply to service members. A civilian abuser cannot be subject to MPOs. They may only be subject to a civil protective or restraining order issued by a state or tribal court. However, a command may request that the installation bar a civilian offender from the installation.

#### Who can issue a MPO?

A Commanding Officer has the authority to issue a MPO to those service members attached to his or her command. If the service member is transferred and circumstances warrant the continuation of the MPO, the CO who issued the MPO should contact the new Commanding Officer to advise him or her of the MPO. It will ultimately be within the new Commanding Officer's discretion whether to issue a new MPO.

#### How does my command issue a MPO?

A MPO can be issued verbally or in writing, although in writing is preferred using DD Form 2873. The Commanding Officer must provide copies of the signed MPO to the service member who is the subject of the order and to the protected person.

A MPO can be indefinite but that is usually not recommended. The Commanding Officer should specify a time period and when the time period expires re-evaluate the situation to determine if further protection is needed. Two to four weeks is a good starting point for the timeframe that an MPO should remain in effect. A few days prior to the expiration of the MPO, the Commanding Officer, after consultation with a JAG, should decide if an extension of the MPO is necessary or if it should expire at the termination date.

When a MPO is issued, it is important that the Commanding Officer notifies the installation JAG so proper notification is sent to local law enforcement. 10 U.S.C. 1576A requires notification to civilian authorities of the issuance of protective orders and the individuals involved if any individual involved does not reside on a military installation at any time during the effective period of the MPO. Notification to local law enforcement is also required if there are changes to the MPO and when the MPO is terminated.

#### What happens if a service member violates a MPO?

Violations of a MPO may be charged under UCMJ Article 90 - Willfully Disobeying a Superior Commissioned Officer or under Article 92 - Failure to Obey Order or Regulation.

If you have any questions about the proper use or reporting of MPOs please contact a RLSO MIDLANT command services attorney.

*When a MPO is issued, it is important that the Commanding Officer notifies the installation JAG so proper notification is sent to local law enforcement.*

*Notification to local law enforcement is also required if there are changes to the MPO and when the MPO is terminated.*

*While the CO cannot take a civilian employee to Captain's Mast, the civilian employee will still be subject to administrative measures that follow a DUI/DWI citation.*

## *Driving Under the Influence and Base Driving Privileges: What Commanders Need to Know*

LT Jennifer Pollio, Naval Station Norfolk Station Judge Advocate, RLSO MIDLANT

Beyond possible NJP, fines, and civilian court proceedings, there are administrative measures that apply to any person who works on a Navy base that receives a DUI or DWI citation. The loss of base driving privileges- an administrative requirement- is often the consequence that impacts both the person and the Command the most noticeably. Even if a service member self-reports his DUI (which may prevent NJP) the loss of base driving privileges will still be enforceable.

### ***Where is this in writing?***

OPNAVINST 11200.5D, Motor Vehicle Traffic Supervision. This is the principle source for many of the policies in place at our installations throughout the region.

COMNAVREGMIDLANTINST 5560.10A. The Region instruction provides further guidance on the consequences of a DUI/DWI and ensures that administrative actions taken at one base in the Region will be reciprocated and enforced at other bases within the Region.

Finally, each base may have its own instruction that gives further guidance that tenant commands should review. In many cases, the base may have stricter policies depending on the safety concerns of that particular base. Both the OPNAVINST and COMNAVREGMIDLANTINST allow base commanders to take necessary measures to ensure safety onboard the military installation.

### ***Who does this apply to?***

Almost everyone. The administrative regulations of OPNAVINST 11200.5D apply to everyone driving on base; service members, dependants, retirees, and civilians - everyone is subject to these same rules and regulations. While the CO cannot take a civilian employee to Captain's Mast, the civilian employee will still be subject to administrative measures that follow a DUI/DWI citation.

### ***Does this only apply to DUIs on base?***

No. Regardless of where the DUI/DWI occurred - on base, off base, in Virginia, or even in another state - the driver will be subject to the administrative requirements of the OPNAVINST 11200.5D.

**What does “intoxicated” include?**

- .08 or higher BAC;
- Refusal to submit to a breathalyzer or BAC test;
- If any arrest report, or other official report, indicates intoxicated driving (i.e. received a citation for DWI or DUI, this can include other drugs and medication);
- In some cases, a .05 BAC (for example: per COMNAVREGMIDLANTINST 5560.10A, a .05 BAC while on base is “impaired” driving and will result in a loss of privileges)
- In some cases, a .02 or higher BAC (for example: per COMNAVREGMIDLANTINST 5560.10A, a .02 BAC or higher while on base and under the age of 21 will result in a loss of privileges)

**When does this suspension begin and how long will it last?**

Immediately. OPNAVINST 11200.5D 2-4 (3) makes it clear that a final conviction is not required, and in most cases, the installation commander does not have discretion to deviate from this requirement.

In most cases, the suspension will be for a mandatory one-year period. The one-year period doesn’t begin on the date of the DUI; it begins from the date the privileges are suspended. What does that mean? This means trying to hide a DUI from the base legal will only delay this consequence. Repeat offenders may have driving privileges revoked for two years.

Remember, under the CNRMA instruction, if someone is suspended by one base Commanding Officer, that person has effectively been suspended from driving on all bases in the Region. Each MIDLANT base Commanding Officer will reciprocate and enforce the suspension Region wide.

If a member wants to appeal this suspension, they should provide a written request for reinstatement to base the Commanding Officer via the base SJA (or point of contact provided in the suspension letter). The member will need to provide documentation to support the reinstatement request. In most cases, only when DUI charges are fully dismissed or the member was found not guilty based on the facts of the offense, will the request be successful. For example, if a member pleads guilty to a reckless driving charge instead of a DUI charge (pleads down), this will typically not result in a reinstatement.

**What is the Tenant Command’s responsibility?**

Command should send out unit SITREPS as needed for all DUIs that involve service members. Normally, this SITREP will trigger the suspension process. However, if your command has not received a copy of this suspension letter or is not sure if the suspension took place, please contact your base SJA (or RLSO Command Services if your base does not have a specific SJA). In cases involving civilian employees or contractors, if the command becomes aware of a DUI, please contact the base SJA or RLSO Command Services.

*In most cases, the suspension will be for a mandatory one-year period. The one-year period doesn’t begin on the date of the DUI; it begins from the date the privileges are suspended. What does that mean? This means trying to hide a DUI from the base legal will only delay this consequence. Repeat offenders may have driving privileges revoked for two years.*

### *Changes to Legal Assistance Services*

Mrs. Debra P. Parker, Legal Assistance Department Office Manager, RLSO MIDLANT

The number one goal of Region Legal Service Office, Mid-Atlantic (RLSO MIDLANT), Hampton Roads Legal Assistance Office is to meet the needs of commands and personnel deploying in support of military operations around the world.

There have been some recent changes in how business is conducted that should be taken into consideration during your work-ups and sending service members over for services:

Legal Readiness for deploying units:

- Six months prior to deployment, please call the command visit coordinator at 341-4491 or 341-4489 to set up a command pre-deployment brief and will visit. We will do up to two will visits if you have 20 or more participants. The first will visit should be 5 months before deployment, the second should be 2 months before deployment. After the will visit, we will return to the command to execute the wills. We cannot guarantee a will visit one month or less prior to deployment due to other operational commitments.
- Family Readiness Group pre-deployment briefs: Please call the command visit coordinator to coordinate a pre-deployment legal brief.

Legal Assistance Headquarters Office – Naval Station Norfolk, Bldg A-50 (inside Gate 2, down Maryland Avenue) offers the following services at the following times:

- Powers of Attorney: Walk-in services provided Monday-Thursday 0740-1530.
- Wills: Walk-in services are provided every Monday from 0740 to 1100 and from 1300 to 1500, for active duty and dependents, as resources permit. A will worksheet must be filled out prior to seeing an attorney. This form can be obtained by printing it off our website at [www.jag.navy.mil/Legal\\_Services.htm](http://www.jag.navy.mil/Legal_Services.htm), select Legal Assistance/Virginia/Forms/Standardized Will Worksheet, or by stopping by one of our offices. Will executions are typically 2-3 weeks after meeting with the attorney and are on Wednesdays at 1300 at the Tax Assistance Center.
- Wills for active duty/activated reservists deploying within 14 days on IA's, TAD's to hazardous areas with no local legal services, and other emergency deployments not scheduled in advance are provided for on Wednesday mornings only from 0740-1100 with a Friday will execution unless other arrangements are made with the attorney and as resources permit.
- Family Law: Walk-in services are provided every Tuesday and Thursday from 0740 to 1100, for all eligible beneficiaries, as resources permit. Family law issues include MILPERS guidelines and advice on state laws for separation and divorce, spousal support, paternity, child custody, and child support. Legal Assistance attorneys cannot prepare separation agreements, custody agreements, court documents, or review your civilian attorney's work product.
- Appointments: All other legal issues such as wills for retirees, landlord/tenant, adoptions, name changes, and consumer law are by appointment only. If you would like to schedule an appointment, please call (757) 341-4491. Appointments are not available for walk-in services.

*Six months prior to deployment, please call the command visit coordinator at 341-4491 or 341-4489 to set up a command pre-deployment brief and will visit. We will do up to two will visits if you have 20 or more participants.*