

# MIDLANT Legal Compass

*Guiding Warfighters through Legal and Ethical Waters*

**INSIDE THIS ISSUE:**

<i>Synthetic Drug Urinalysis</i>	1
<i>SA Victims Request for Transfer</i>	2
<i>New Off-Limits List</i>	3
<i>NPLOCs vs. LOIs</i>	4
<i>Go Ask Chief: Page 13 Basics</i>	6
<i>Results of BOIs</i>	8
<i>Adjudged Court-Martial Sentences</i>	9

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



## *Synthetic Drug Urinalysis: What Commanders Need to Know*

- LT Andy Moore, RLSO Tenant Command Services Norfolk

NAVADMIN 082/12 and subsequent guidance announced a new Navy synthetic drug urinalysis program. This program is designed to address the problem of service members abusing synthetic drugs such as Spice and reinforces the Navy's zero tolerance policy for drug abuse.

Unlike the standard urinalysis program, commands wanting to conduct a synthetic drug type urinalysis must first obtain authorization and quotas from OPNAV 135 prior to collecting samples. Currently, there are a limited number of quotas available for synthetic drug testing. To increase the deterrent effect of the limited number of quotas, commands should not inform service members which program applies to the sample (i.e., standard urinalysis or synthetic drug urinalysis).

Much of the synthetic drug testing program mirrors the current urinalysis testing program. For instance, commands should purchase the same materials and adhere to the same established sample collection procedures as the standard urinalysis program. There are a few important differences. One difference, commands must purchase bottles, labels, seals, boxes, and custody record forms required to support the synthetic drug urinalysis program using OPTAR funds. Another difference, synthetic drug urinalysis samples will be shipped to the Navy Drug Screening Lab (NDSL) Great Lakes separate from samples for regular urinalysis testing, where they will then be logged and shipped to a civilian contract lab for analysis. Detailed procedures for the new program are available to the command UPC and ADCO on the NADAP website, located [here](#).

Remember: There are now, in effect, two separate drug urinalysis programs. Samples sent to NDSL Great Lakes with a quota from OPNAV 135 for a synthetic compound urinalysis will not be tested for other drugs. Likewise, samples sent for standard urinalysis will not be tested for synthetic drugs.

Once a quota is obtained, commands are authorized to conduct a synthetic drug urinalysis under only three bases. First, testing may be done at the unit or subunit level, such as a selected division during a normal workday or all members with the same last digit in their social security number. Second, a member may voluntarily submit a sample. Third, a command may order a command directed synthetic drug urinalysis (after a quota is obtained) when a member exhibits unusual or abnormal behavior or conduct raising a suspicion of drug abuse. However, a command directed synthetic compound urinalysis should not be confused with a probable cause search, as a probable cause search is not an authorized basis under the new program. If there is probable

cause that a member is presently impaired by a synthetic drug, NCIS should be contacted to obtain an official sample that will be submitted to the Armed Forces Medical Examiner System (AFMES) for possible disciplinary use.

If a command is notified of a positive urinalysis under this new synthetic drug testing, commanders are NOT authorized to take disciplinary or adverse administrative action based solely on that positive result. However, commands do have courses of action available if a sample tests positive. An investigation should be initiated. If NCIS declines to investigate and a command investigation is completed, commands should consult a judge advocate to determine whether evidence other than the positive result can be considered for disciplinary or administrative action. Furthermore, commands also have the option to initiate review or revocation of a member's administrative status, clearance, or access, including security clearance, flight status, and eligibility for special duty. Commands also may consider initiating formal counseling such as DAPA or medical readiness.

The testing program initiated by NAVADMIN 082/12 provides commanders an additional tool to prevent and deter synthetic drug abuse in the Navy. If your command has questions about the synthetic drug testing program, contact your SJA or a Region Legal Service Office command services attorney.

*To increase the deterrent effect of the synthetic drug testing program, Sailors should NOT be advised of whether they are submitting a sample under the standard drug testing program or the synthetic drug testing program.*

---

### *Sexual Assault Victims and Requests for Transfer*

- LT Medardo Martin, RLSO Tenant Command Services Norfolk

On April 20, 2012, CNO released NAVADMIN 132/12. This message provides guidance and procedures regarding the expedited transfer of service members who make unrestricted reports of sexual assault.

According to the NAVADMIN, members who make an unrestricted report of sexual assault must be advised of their option to request transfer from the command. The transfer request must come from the service member, be in writing, and state the reasons for the request.

Within 72 hours of receiving a request for expedited transfer, the Commanding Officer (CO) must approve it or recommend disapproval to the first Flag officer in the chain of command. There is a presumption in favor of approval.

When considering whether to grant approval or recommend disapproval, the CO must determine if the unrestricted report of sexual assault is credible. The message defines a credible unrestricted report as one "where there are reasonable grounds to believe that an offense constituting sexual assault did occur based on all available evidence and the advice of the supporting judge advocate or other legal advisor." Additionally, the NAVADMIN provides 9 other factors for COs to consider:

- The service member's written request for transfer or reassignment;
- Operational necessity, including unique requirements in deployed areas;
- The nature and circumstances of the offense;
- The location of the alleged offender;

*Victims of an alleged sexual assault may now request a change of station or unit transfer, which then requires action by the Commanding Officer within 72 hours of submission.*

- Potential transfer or reassignment of the alleged offender instead of the service member;
- The alleged offender's status (military or civilian);
- After consultation with NCIS and the supporting judge advocate, the status of the investigation and the potential impact of the service member's transfer or reassignment on the investigation and future disposition of the allegation;
- Training status of the service member requesting the transfer or reassignment; and
- Other pertinent circumstances or facts.

Upon approval of the transfer request by the CO, the approval should be forwarded to PERS-833 immediately for processing. A recommendation regarding where to transfer the requestor should accompany the approval as well.

If the CO recommends disapproval, the disapproval and written reasons for the recommendation must be forwarded to the first flag officer in the chain of command. The flag officer will review the factors listed above, the CO's recommendation, and any other "pertinent circumstances from the flag officer perspective" in making a determination regarding transfer.

Bottom line: Victims of sexual assault who make unrestricted reports are now entitled to request a transfer and COs have an obligation to act on the request within 72 hours.

---

### *New MIDLANT Off-Limits List*

- LT Joshua Lorenz, RLSO Tenant Command Services Norfolk

On March 7, 2012, Commander, Navy Region Mid-Atlantic signed the latest off-limits list for the Hampton Roads area. Under the authority granted in OPNAVINST 1620.2A, Navy regional commanders may designate certain areas to be off-limits to service members to help maintain good order and discipline, health, morale, safety, and welfare of personnel. Off-limits action is also intended to prevent service members from being exposed to or victimized by crime-conducive conditions.

The March 7, 2012 off-limits list includes the following areas:

- Blazin Herbs, 85 W Mercury Blvd., Hampton, Virginia 23669
- Hampton Pipe and Tobacco, 86 W. Mercury Blvd, Hampton, Virginia 23669
- Hampton Pipe and Tobacco, 15435-B Warwick Blvd, Newport News, Virginia 23608
- Lazy Days, 731 J Clyde Morris Boulevard, Ste B, Newport News, Virginia 23601
- Mellow Smoke Tobacco Shop, 1948 Diamond Springs Road, Virginia Beach, Virginia 23455
- Outer Edge Gifts, 760-B J. Clyde Morris Blvd, Newport News, Virginia 23601
- Planet Auto (AKA The Car Store), 5564 Virginia Beach Boulevard, Virginia Beach, Virginia 23462
- Somewhere in Time, 92 W. Mercury Blvd, Hampton, Virginia 23669
- Variety Motors, 3530 North Military Hwy, Norfolk, Virginia 23518

*Designating certain areas to be off-limits to service members helps maintain good order and discipline, health, morale, safety, and welfare of personnel.*

Of note is the addition of Variety Motors in Norfolk and Planet Auto (AKA The Car Store) in Virginia Beach. Also, the latest off-limits list removed Club Minx (formerly known as Club Atlantis) in Virginia Beach.

Additionally, service members who purchased vehicles from Variety Motors before it was added to the off-limits list may continue to take advantage of warranties on their vehicle. This is a very limited exception to the off-limits list. Service members are prohibited from purchasing additional vehicles from Variety Motors or from entering into any new contracts with the dealership. Service members may conduct business with Variety Motors ONLY to receive maintenance or repair services pursuant to warranties they received from the dealership before it was added to the off-limits list on March 7, 2012. For questions about this very limited exception, the point of contact is LT Andrea Leahy at the Commander, Navy Region Mid-Atlantic Staff Judge Advocate's Office, 757-322-2933 or [andrea.leahy@navy.mil](mailto:andrea.leahy@navy.mil).



---

### *To Caution or Instruct: NPLOCs vs. LOIs*

- LT Medardo Martin, RLSO Tenant Command Services Norfolk

**Chief Smith really fouled things up this time. But, I don't want to impose punishment on him at NJP. JAG, what other options do I have?**

A useful tool can be a Nonpunitive Letter of Caution (NPLOC) issued from the commander to the service member.

**Anything else?**

Sure. Another option is a Letter of Instruction (LOI).

**They sound similar. What's the difference?**

In a nutshell, the NPLOC is a private way for the superior to hold the member accountable for poor performance or minor misconduct, where the LOI is a means for creating a permanent record of counseling and guidance given because of a service member's substandard performance of duty.

**Care to elaborate? What does that even mean?**

According to JAGMAN, Chapter 1, § 0105, a NPLOC is a "statement of adverse opinion or criticism of an individual's conduct or performance of duty expressed by a superior in the chain of command." It is a written form of nonpunitive censure. As you may have guessed from its name, a NPLOC is not punishment but an administrative corrective measure—it is a tool to remedy a noted deficiency in a member's conduct or performance of duty.

A NPLOC cannot be used to punish a member for a military offense. The JAGMAN requires that a NPLOC be kept a personal matter between the member and superior. As such, a NPLOC cannot be forwarded to PERS for inclusion into the member's official file, and issuance of a NPLOC may not be mentioned in a FITREP or evaluation. Also, it should not be included in an administrative investigation or any other official departmental record of the recipient. With one exception (which I will get to in a minute), the NPLOC almost does not even exist officially except between the member and the superior.

**Wait... so the NPLOC means case closed? That doesn't seem right...**

No. Case not closed. While a NPLOC may not be mentioned in an evaluation or FITREP, the underlying behavior and/or facts may be included. So, if the NPLOC is issued for constant tardiness, the evaluation or FITREP could cite that the member is regularly late to work in a performance evaluation or FITREP. Again, only mention of the NPLOC issuance may not be noted.

**But you said there was an exception.**

Suppose that your Sailor continues his substandard performance or behavior that results in a detachment for cause proceeding or a negative endorsement that uses the underlying facts contained in the NPLOC. If the member submits a rebuttal to those facts alleging that the command failed him, provided inadequate counseling, or failed to warn him of his deficiencies, then and only then can a copy of the NPLOC be used to counter the Sailor's allegations. To be perfectly clear, this is the only time that the NPLOC may become part of the official record.

**I think I get it now. But how is a NPLOC different from an LOI?**

There is not much higher guidance regarding LOIs. The JAGMAN says that LOIs are not a form of nonpunitive censure and the MILPERSMAN provides guidance for the use of an LOI in detachment for cause requests. But other than that, there is no specific guidance in any Navy instructions or regulations. MILPERSMAN 1611-020 addresses procedures for effecting an officer's detachment for cause and states, "When substandard performance of duty over an extended period of time is involved, ensure the developing situation has been properly documented by the use of fitness reports, command counseling, training, and guidance. The fact that a [LOI] has been issued may be duly noted in a fitness report, and, if properly drafted, may serve to document that the requisite command guidance and counseling has been given."

**You mentioned officers just then. Does that mean that I should not give an enlisted member an LOI?**

There is no specific guidance on giving enlisted members an LOI. If issuing an LOI to an enlisted member is appropriate under the circumstances, follow the guidelines provided for issuance to officers.

**So the difference is that a NPLOC does not go in the official record while an LOI does?**

Not exactly. The difference is that a NPLOC may not go in the official record (with the one exception) and an LOI can. There is no requirement that an LOI does. If you want to put an LOI in a record, take care to comply with the adverse matter requirements found in MILPERSMAN 1611-010, MILPERSMAN 1070-100, and MILPERSMAN 1070-170 (i.e.—have the member sign the LOI acknowledging receipt and provide him an opportunity to submit a statement in response). You do not have to include it in the member's official record, of course, but if you think you might (such as a potential DFC request), the best practice is to follow the guidance regarding submission of adverse matter in the official record.

**So basically, a NPLOC is a private matter between the member and the superior intended to correct minor deficiencies in conduct or performance of duty without creating a permanent record. An LOI is a means of creating a permanent record of counseling and guidance given because of a member's substandard performance of duty. If drafted properly, it can serve as evidence that the member was counseled, and it can be placed in the service member's official record, assuming the member has been given an opportunity to submit a statement at some point in the process. Did I get that about right, JAG?**

Yes, you did. If you have additional questions, please contact your SJA or a Region Legal Service Office command services attorney.

---

***Go Ask Chief: Page 13 Basics***

- LNC Rebecca Miles, RLSO MIDLANT Command Services LCPO

**What is a NAVPERS 1070/613 and when do I need to issue one?**

The NAVPERS 1070/613 or Page 13 documents administrative remarks and serves as a chronological record of significant miscellaneous entries that are not provided for elsewhere. The relevant references are MILPERSMAN 1070-320 and MILPERSMAN 1910-204.

NAVPERS 1070/613 entries must be dated and signed by an authorized official, per MILPERSMAN 1070-190. This can be anyone that has been given by direction authority by the Commanding Officer, but it is typically a function of the Admin Officer or Legal Officer.

Entries on a NAVPERS 1070/613 must be dated and signed by the service member if required by the governing directive.

Entries which require a copy to be forwarded immediately to NAVPERSCOM must cite the authority at the end. Copies received without the proper authority will not be filed in the permanent personnel record.



Entries for the following are required, even if an appeal has been filed:

- Civil Conviction (or action taken by civil authorities which is equivalent to a conviction), whether it is a misdemeanor or felony, that comes to the command's attention. Entries must include:
  - o Date of conviction or action
  - o Final charge and specification for which member was found guilty
  - o Court in which convicted
  - o Sentence of the court
  
- Nonjudicial punishment (NJP) that does not affect pay.\* Entries must include:
  - o Date of offense
  - o Nature of offense (cite UCMJ article)
  - o Date of NJP

\* Courts-martial and NJPs that affect pay are recorded on NAVPERS 1070/607.

All NAVPERS 1070/613 entries must be dated and signed by the authorized official per MILPERSMAN 1070-190.

A copy of the entry shall be sent to NAVPERSCOM (PERS-313C1) for inclusion into the permanent personnel record.

In the event the civil conviction is overturned or the NJP appeal is granted, notify NAVPERSCOM (PERS-83) by official naval letter with copies of supporting documentation.

#### **What is a Page 13 Counseling and Warning?**

Sometimes after a service member has been punished either through nonjudicial punishment, court-martial, or the civilian court system, the command may issue a Page 13 Counseling and Warning. This is an official service record entry, which is an agreement between the command and the individual. This agreement basically notifies the recipient that he/she is being retained in the naval service; however, the member must take corrective action or risk additional punishment or administrative separation. In other words, a Page 13 Counseling and Warning gives the Sailor "another chance" to avoid being processed for administrative separation. However, if an offense requires mandatory processing, the command cannot issue such a warning. If the command does issue such a warning, it is void.

Examples of specific Page 13s related to the legal process can be provided to you by contacting the RLSO Command Service Department.

### Results of MIDLANT Boards of Inquiry

During a board held on 18-19 January 2012, a Navy O-6 was ordered to show cause for retention due to misconduct and substandard performance of duty. The board found that: the member had not committed a violation of UCMJ Article 92 (failure to obey order or regulation); the member had not committed a violation of UCMJ Article 133 (conduct unbecoming a naval officer); and the member had not failed to conform to prescribed standards of military department. The board recommended that the member be retained on active duty.

During a board held on 7 February 2012, a Navy O-3 was ordered to show cause for retention due to substandard performance of duty. The board found that: the member had not failed to demonstrate acceptable qualities of leadership required of an officer in the member's pay grade; the member had failed to achieve and maintain acceptable standards of proficiency required of an officer in the member's grade; and the member had failed to properly discharge duties expected of officers of the member's grade and experience. The board recommended that the member be retained on active duty.

During a board held on 16 February 2012, a Navy O-4 was ordered to show cause for retention due to misconduct and substandard performance of duty. The board found that: the member had committed a Violation of UCMJ Article 92 (Failure to obey order or regulation); the member had not committed a violation of UCMJ Article 93 (Cruelty and Maltreatment); the member had committed a violation of UCMJ Article 117 (Provoking speeches or gestures); the member had committed a violation of UCMJ Article 133 (Conduct unbecoming an officer and gentleman); the member had committed a violation of UCMJ Article 134 (Drunk and Disorderly); and the member had failed to conform to prescribed standards of military department. The board recommended that the member be separated with an Honorable discharge.

During a board held on 23 February 2012, a Navy O-3 was ordered to show cause for retention due to misconduct and substandard performance of duty. The board found that: the member had committed a violation of UCMJ Article 92 (Failure to obey order or regulation); the member had committed a violation of UCMJ Article 133 (Conduct unbecoming an officer and gentleman); and that the member had failed to conform to prescribed standards of military department. The board recommended that the member be separated with an Honorable discharge.

During a board held on 10 March 2012, a Navy CWO2 was ordered to show cause for retention due to misconduct and substandard performance of duty. The board found that: the member had not committed a violation of UCMJ Article 117 (Provoking speeches or gestures); the member had committed a violation of UCMJ Article 128 (Assault); the member had committed a violation of UCMJ Article 133 (Conduct unbecoming an officer and gentleman); and that the member had not failed to conform to prescribed standards of military department. The board recommended that the member be retained on active duty.

---

---

### *MIDLANT Adjudged Court-Martial Sentences*

Navy E3 with 3 years, 4 months of service sentenced to confinement for 24 months and a bad conduct discharge for using a government computer to download child pornography and possession of child pornography. This court was held on 6 January 2012.

Navy E-4 with 9 years, 5 months of service sentenced to confinement of 6 years, reduction to the pay grade of E-1, and a dishonorable discharge for conspiring with another person to distribute marijuana through the U.S. Postal Service, unauthorized absence, wrongfully distributing approximately one pound of marijuana, wrongfully possessing 1 to 8 pounds of marijuana with an intent to distribute, unlawfully carrying a concealed weapon, assaulting a civilian with a means likely to produce death or grievous bodily harm, and unlawfully shoving a child under the age of 16. This court was held on 06 January 2012.

Navy E5 with 10 years, 6 months of service sentenced to 60 days restriction and reduction in rank to E3 for knowingly receiving images of child pornography. This court was held on 12 January 2012.

Navy E6 with over 18 years of service sentenced to confinement for 30 years, reduction to E1, and dishonorable discharge for rape of a child. This court was held on 20 January 2012.

Navy E-3 with 1 year, 11 months of service sentenced to confinement for 90 days, for unauthorized absence, wrongful use of a controlled substance, and breaking restriction. This court was held on 01 February 2012.

Navy E6 with over 19 years of service sentenced to confinement for life, reduction to E1, and total forfeitures for rape of a child. This court was held on 02 February 2012.

Navy E-3 with 1 year, 9 months of service sentenced to confinement for 10 months for wrongfully and recklessly engaging in conduct likely to cause death or grievous bodily harm to another service member and failure to obey a lawful order. Servicemember unlawfully unholstered his service weapon while onboard ship, disengaged the safety, and pointed that weapon at another servicemember. This court was held on 14 February 2012.

Navy E-5 with 12 years, 10 months of service sentenced to confinement for 1 year, reduction to the pay grade E-1, and a bad conduct discharge for wrongfully using provoking words while pointing a pistol towards a military member, committing an assault by unlawfully grabbing with his hands and throwing a civilian on the hood of a car, committing an assault by unlawfully throwing to the ground with his hands a civilian, and committing an assault against a military member and civilian by pointing a pistol at them. Servicemember was assaulting his girlfriend in public, and when bystanders attempted to assist her, he pointed a gun at the crowd. This court was held on 29 February 2012.

Navy E4 with 12 years, 6 months of service sentenced to confinement for 4 months for failure to go to appointed place of duty, failure to obey a lawful general order, and larceny. This court was held on 13 March 2012.

Navy E5 with 5 years, 6 months of service sentenced to confinement for 4 months and a bad conduct discharge for hazing and assault and battery. This court was held on 15 March 2012.

Navy E4 with 3 years, 2 months of service sentenced to confinement for 2 years and a bad conduct discharge for possessing child pornography. This court was held on 27 March 2012.

Navy E5 with 11 years of service sentenced to 4 years confinement and a bad conduct discharge for rape and attempted rape. This court held on 29 March 2012.

Navy E-9 with 24 years of service sentenced to confinement for 60 days and reduced in rank to E-6 for sexual harassment and assault and battery. This court was held on 22 May 2012.

---