

# MIDLANT Legal Compass

*Guiding Warfighters through Legal and Ethical Waters*

**INSIDE THIS ISSUE:**

Use of Command Logos	2
Command Triad MRE 514 Training	3
Powers of Attorney for Sailors Deploying or PCSing	4
To Caution or Instruct: NPLOCs v. LOIs	5
New Legal Assistance Hours	7
MIDLANT Adjudged Court-Martial Sentences	8
MIDLANT Board of Inquiry Results	9
Command Services POCs	10

*Basic Legal Information for Command TRIADs and individual Sailors.*

This edition of the Legal Compass discusses the ethical use of command logos, MRE 514 training for command TRIADs, Powers of Attorney and their uses, non-punitive letters of caution and letters of instruction, and introduces new hours for Hampton Roads area legal assistance offices.

As always, we end with our Courts-Martial and Board of Inquiry results. This gives you a snapshot of the cases that were completed this quarter and their disposition. For questions about these cases, please contact either the trial department or the SJA to Commander, Navy Region Mid-Atlantic (CNRMA).

If there are ever topics you are interested in us covering or seeking additional information about, please contact our Legal Compass Editor, the Command Services Department Head, LCDR Adam Yost.

Very Respectfully,  
 /S/  
 Lawrence D. Hill, Jr.  
 CAPT, JAGC, USN  
 Commanding Officer, RLSO MIDLANT

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.



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

Command Services 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 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 also be used for unofficial purposes. Unofficial uses include T-shirts sold by MWR for fundraising, personal iPad covers, and personal mugs. A command is required to obtain a license in order to properly use a command logo.

### **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. 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)

If you have any questions, contact your local SJA or the command services department.

*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.*

## Command Triad M.R.E. 514 Training

By LTJG Sean Danehey, JAGC, USN

In August of 2015, OPNAVINST 1752.1C was issued. Section 15(b) of this instruction requires commanding officers and command triads to receive specific training from a Judge Advocate within 30 days of assuming command. This training will cover Military Rule of Evidence 514, Retaliation, Sexual Assault Initial Disposition Authority, and Case Reporting. OJAG Code 20 has produced a Trifold, which should be provided to the Triad when they receive this training. The Trifold does not include everything that the Commanding Officer must be aware of, but it should serve as a great starting point for the training as well as a quick reference for Commanding Officers to use in the future. Further available resources that could be used during the training, as well as for a quick reference guide for CO's, include a PowerPoint which highlights the important aspects of MRE 514, a chart (found in Appendix 3A of OPNAVINST 1752.1C) covering reporting requirements and an Online NJS Course.

### **Military Rule of Evidence 514**

For attorneys, rules of privilege are nothing new; however it will be important to discuss during the training how Victim Advocate/Victim Privilege works. Judge Advocates should ensure that Commanding Officers know who can assert this privilege and during which procedures this privilege applies. As an initial matter, it is important to note that this privilege does apply during Article 32 preliminary hearings, and it covers communications with the Victim Advocate and the SARC. Also, pursuant to a 2015 change, this privilege covers information shared via the DoD SAFE-Helpline.

### **Retaliation under SECNAVINST 5370.7D vs. UCMJ**

SECNAVINST 5370.7D, which covers retaliation, slightly differs from the traditional view of maltreatment which comes from UCMJ Article 93. In the SECNAVINST, there is no requirement of a Senior-Subordinate relationship for retaliation to occur. Anyone, including peers and subordinates can violate the SECNAVINST. Furthermore, per the instruction, all *allegations* of retaliation must be investigated and as such should be referred to NCIS. Considering these factors it is important for Triads to be aware, not only of their treatment of reporting individuals, but also of the treatment that the individual receives from his/her peers.

### **Sexual Assault Initial Disposition Authority**

Not all Commanding Officers will be O-6 or above, so when receiving this training, the CO should pay close attention to who the disposition authority is for cases involving rape, sexual assault, rape/sexual assault of a child, forcible sodomy and any attempts to commit these offenses. For these cases, the disposition authority is reserved to the Sexual Assault Initial Disposition Authority, who must be an O-6/Special Court-Martial Convening Authority. Such Authority must also allow the victim to voice their opinion on the disposition decision.

### **Case Reporting**

Some of the most important things to note concerning Case Reporting for Unrestricted Reports include the requirement to immediately notify the SARC, DRC, SAPR VA, NCIS and to report via OPREP-3, within 24 hours to notify the installation CO, and within 8 calendar days to submit a Sexual Assault Incident Report Oversight. However, it is important to remember that for restricted reports Commands should not issue a SITREP, investigate the report, or notify NCIS of the report. See Appendix 3A of OPNAVINST 1752.1C for further details on reporting requirements.

*“The SAIRO (8-day) Report is a one-time report required to be submitted within eight calendar days following a command becoming aware of a sexual assault.”*

-NAVADMIN 162/15

## **Powers of Attorney for Sailors Deploying or PCSing**

Command Services Department RLSO Midlant

A Power of Attorney (POA) is a document granting someone else the authority to perform acts on your behalf. For the purposes of those authorized acts they legally 'become you.' This person is referred to as an "Agent" and you are legally bound by his or her authorized acts, so it is important to make sure this individual is trustworthy. POAs can be useful for sailors who are deploying or PCSing because they ensure there is someone who can take care of their family and belongings while they are away.

There are two kinds of power of attorney: General and Special. A General POA gives someone else the legal authority to do almost anything you could do. While this may be useful in some situations, it is generally not recommended because the potential for abuse is high. For example, with a General POA, your agent could sell your car, borrow money that you must repay, rent or purchase property in your name and with your money, or remove ALL funds from your bank account. The Legal Assistance Department will not create this document.

A Special Power of Attorney is more limited. It only grants your agent authority to perform specific tasks on your behalf such as registering your car or selling a specific piece of listed property. Powers of Attorney drafted by Navy legal assistance offices are limited in duration to no longer than one year and should only be drafted for the amount of time needed. Because you should only give away the authority necessary to accomplish your needs, a Special POA is usually recommended over a General Power of Attorney.

There are many types of Special Powers of Attorney available. The areas of authority covered include:

- Banking – (Deposit, Limited or Unlimited Withdrawal, Endorsing Checks, Obtaining Loans, Obtaining Credit Cards, and Accessing Safe Deposit Boxes)
- Childcare – (Medical Appointments, Emergency Medical Care, Appointments for Dental, Vision or Mental Health Care, Enrolling in School or Recreational Activities, Access to School or Medical Records, Providing Food/Shelter, Evacuation, and Consent to Travel)
- DEERS – (Obtaining an ID card and dealing with PSD)
- Household Goods (Shipping and Receiving, Making Claims)
- Insurance
- Mail
- Military Housing
- Automobiles (Using/Maintaining, Registering, Purchase/Selling, Making Claims)
- Pet Care
- Real Estate (Buying, Selling, or Leasing)

Additionally, if none of the listed Special POAs completely fulfill your needs, you can make a custom one instead.

In order for a Power of Attorney to be valid, your agent must have the original document and you should keep a copy for yourself. However, even if a POA is valid, no individual or business/organization is ever required to accept it.

*Because you should only give away the authority necessary to accomplish your needs, a Special POA is usually recommended over a General Power of Attorney.*

*To revoke the authority granted by a POA, you must sign and notarize a Revocation of Power of Attorney and provide a copy to anyone you believe your agent has or will deal with in the future.*

To revoke the authority granted by a POA, you must sign and notarize a Revocation of Power of Attorney. Additionally, you are required to provide a copy to anyone you believe your agent has dealt with or will possibly deal with in the future. Because it is difficult to know everyone your agent comes in contact with, it can be very difficult to revoke POAs. This is one of their inherent risks and a further reason why you should only give POAs to people you trust.

When sailors deploy or change duty stations it is important that they have a way to take care of issues that might arise while they are away. Granting a Power of Attorney is one way of ensuring there will be someone authorized to act on your behalf while you are gone. For assistance with granting a Power of Attorney, contact RLSO MIDLANT – Legal Assistance Department (757-433-2230) to make an appointment.

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

Command Services Department RLSO Midlant

**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, whereas 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. An LOI is typically used only for chiefs and officers, but may be used for Sailors E6 and below if desired.

**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 a NPLOC is issued for an alcohol related incident (ARI), the evaluation or FITREP could state that the member had an ARI. It is only the fact of a NPLOC issuance that may not be noted.

*While a NPLOC may not be mentioned in an evaluation or FITREP, the underlying behavior and/or facts may be included.*

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

Suppose that your Officer or Chief continues his substandard performance or behavior, and it results in a detachment for cause proceeding (or a negative endorsement on a member's request) which relies for justification on the underlying facts contained in the NPLOC. If the member submits a rebuttal to those facts alleging that the command 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 member's allegations. This is the only time that a NPLOC may become part of the official record.

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

The JAGMAN states that LOIs are not a form of non-punitive censure and the MILPERSMAN provides guidance for the use of an LOI in detachment for cause requests. 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."

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

Not exactly. There is no requirement that an LOI goes in a member's official record. If you want to put an LOI in a record, you must 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 RLSO command services attorney.

*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).*

## INTRODUCING NEW LEGAL ASSISTANCE HOURS AT RLSO MIDLANT, HAMPTON ROADS

**Legal Assistance:** If one of your sailors needs personal legal advice (i.e. family law, consumer law, estate planning (wills), powers of attorney, or landlord/tenant disputes), but NOT including defense counsel support, direct them to the Legal Assistance Department onboard Naval Station Norfolk, located in Building A-50, 9620 Maryland Ave., Suite 100. Below are LA Department's new hours of operation:

- Monday, Tuesday & Thursday: from 0745-1145, 1300-1530
- Wednesday: 0900-1145, 1300-1530
- Friday: 0900-1200

### WILLS/FAMILY LAW

- Walk in services for wills and family law are offered for active duty and active duty dependents at the hours listed above. We will see retirees for family law services on a walk-in basis. Retiree wills are handled by appointment only at 757-433-2230.
- All services are offered on a first come, first serve basis. Services are offered with limited availability per day, based on attorney numbers.
- PRIORITY IS GIVEN TO ACTIVE DUTY MEMBERS WHO ARE DEPLOYING WITHIN 30 DAYS.

### APPOINTMENTS

- If you would like to schedule an appointment, please call 757-433-2230. Appointment Line hours are 1000-1300 on MONDAYS ONLY. Appointments cannot be made in-person inside our office.

### BUILDING 3370, JEB LITTLE CREEK-FORT STORY

- Powers of attorney & notary services are offered Monday-Thursday from 0800-1145 and 1300-1530.
- Limited appointments are available on Tuesdays. Call 757-433-2230 for an appointment. Walk-ins for attorney services are available Monday, Wednesday, and Thursday from 0900-1530.

### BUILDING 320, NAVAL AIR STATION OCEANA

- Powers of attorney & notary services are offered Monday-Thursday from 0800-1145 and 1300-1530.
- Call 757-433-2230 if you would like to schedule an appointment. Walk-ins for family law and wills are available Monday-Thursday from 0900-1530.

For more information on locations and services offered, please visit our website at [www.jag.navy.mil](http://www.jag.navy.mil), go to the Legal Services tab, and click on Legal Assistance. Then scroll down to select RLSO MIDLANT.

*All services are offered on a first come, first serve basis. If you would like to schedule an appointment, please call 757-433-2230. Appointment Line hours are 1000-1300 on MONDAYS ONLY*

**Command Services:** Attorneys in the Command Services Department provide legal advice and support to commands and command representatives (i.e. legal officers) that do not have an assigned Staff Judge Advocate (SJA). Covered areas include investigations, NJPs and other disciplinary proceedings, administrative separation boards, and ethics. To speak with an attorney in Norfolk's Command Services Department, please call 757-444-1266.

If your command is located in the Northeast AOR, please see the complete listing of SJAs on page 10.

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### ***RLSO MIDLANT Adjudged Court-Martial Sentences January – March 2016***

#### **General Courts-Martial**

At a General Court-Martial in Norfolk, Virginia, an E-3 pled guilty pursuant to a pretrial agreement to assault consummated by a battery. On 12 January 2016, the military judge sentenced him to total forfeiture of pay and allowances and confinement for 4 months.

At a General Court-Martial in Norfolk, Virginia, an E-3 pled guilty pursuant to a pretrial agreement to assault consummated by a battery. On 28 January 2016, the military judge sentenced him to confinement for 3 months.

At a General Court-Martial in Norfolk, Virginia, an E-6 pled guilty pursuant to a pretrial agreement to sexual abuse of a child. On 29 January 2016, the military judge sentenced him to be discharged with a Bad Conduct Discharge and confinement for 48 months. Pursuant to the pretrial agreement confinement greater than 45 months will be suspended. The suspended confinement may be ordered executed if the service member violates the terms of the pretrial agreement.

At a General Court-Martial in Norfolk, Virginia, an E-2 pled guilty pursuant to a pretrial agreement to unauthorized absence, fleeing apprehension, false official statement, wrongful use of a controlled substance, and larceny. On 11 February 2016, contrary to his plea, a panel of members found him guilty. On 12 February 2016, the members sentenced him to 36 months confinement, reduction to E-1, forfeiture of \$1616 per month, and a dishonorable discharge. The pretrial agreement had no effect on the adjudged sentence.

At a General Court-Martial in Norfolk, Virginia, an E-8 was tried for sexual assault and abusive sexual contact. A panel of members returned a verdict of guilty. On 19 February 2016, the members sentenced him to 6 months confinement, reduction to E-6, and a dishonorable discharge.

At a General Court-Martial in Norfolk, Virginia, an E-4 pled guilty pursuant to a pretrial agreement to indecent video recording. On 26 February 2016, the military judge sentenced him to 42 months confinement, reduction to E-1, and a dishonorable discharge. Pursuant to the pretrial agreement, confinement greater than 24 months will be suspended. The suspended confinement may be ordered executed if the service member violates the terms of the pretrial agreement.

At a General Court-Martial in Norfolk, Virginia, an E-5 pled guilty pursuant to a pretrial agreement to aggravated sexual assault of a child, indecent liberties with a child, and sodomy of a child under the age of 16. On 29 February 2016, the military judge sentenced him to 118 months confinement, reduction to E-1, and a dishonorable discharge. Pursuant to the pretrial agreement, confinement greater than 48 months will be suspended. The suspended confinement may be ordered executed if the service member violates the terms of the pretrial agreement.

At a General Court-Martial in Norfolk, Virginia, an E-6 pled guilty pursuant to a pretrial agreement to battery upon a child under the age of 16. On 30 March 2016, the military judge sentenced him to 30 days confinement

### **Special Courts-Martial**

At a Special Court-Martial in Norfolk, Virginia, an E-3 pled guilty pursuant to a pretrial agreement to conspiracy, absence without leave, and larceny. On 19 January 2016, the military judge sentenced him to be discharged with a Bad Conduct Discharge and confinement for 12 months. Pursuant to the pretrial agreement confinement greater than 7 months will be suspended. The suspended confinement may be ordered executed if the service member violates the terms of the pretrial agreement.

At a Special Court-Martial in Norfolk, Virginia, an E-4 pled guilty pursuant to a pretrial agreement to conspiracy, attempted larceny and solicitation. On 19 February 2016, the military judge sentenced him to 30 days confinement and reduction to E-3.

At a Special Court-Martial in Norfolk, Virginia, an E-4 was tried for abusive sexual contact and assault consummated by a battery. On 24 February 2016, the military judge dismissed the charges with prejudice.

At a Special Court-Martial in Norfolk, Virginia, an E-4 pled guilty pursuant to a pretrial agreement to wrongful appropriation. On 29 February 2016, the military judge sentenced him to 30 days confinement and reduction to E-3. Pursuant to the pretrial agreement, confinement greater than 10 days will be suspended.

At a Special Court-Martial in Norfolk, Virginia, an E-5 was tried for fraternization. On 16 March 2016 a panel of members returned a verdict of not guilty.

At a Special Court-Martial in Norfolk, Virginia, an E-6 was tried for wrongful drug use. On 30 March 2016 a panel of members returned a verdict of not guilty.

### ***RLSO MIDLANT Board of Inquiry Results January – March 2016***

During a board held on 13 January 2016 an O-5, USN, was ordered to show cause for retention due to misconduct under Articles 81, 92, 112a and 133 and Substandard Performance of Duty. The board found that the member did commit misconduct. The board recommended that the member be separated with a General (Under Honorable Conditions) characterization of service. The board recommended the retirement pay grade of O-5.

During a board held on 08 March 2016 an O-3, USN, was ordered to show cause for retention due to misconduct under Articles 133, 134 and 133 and Substandard Performance of Duty. The board found that the member did commit misconduct. The board recommended that the member be separated with an Honorable characterization of service. The board recommended the retirement pay grade of O-3.

*RLSO MIDLANT*  
*COMMAND SERVICES TEAM*

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*RLSO Mid-Atlantic welcomes suggestions for articles and recommendations for improvement. For additions to the RLSO Legal Compass distribution list or to make suggestions or recommendations, please email: [adam.yost@navy.mil](mailto:adam.yost@navy.mil)*

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