

REGION LEGAL SERVICE OFFICE
NAVAL DISTRICT WASHINGTON
THE COUNSELOR

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SEXUAL ASSAULT RETALIATION PROHIBITED

The 2014 RAND Sexual Assault and Sexual Harassment in the US Military Report found that 62% of service members who made official reports of sexual assault in 2013-2014 experienced professional or social retaliation.

***Sexual Assault
Retaliation
Prohibited***

The National Defense Authorization Act of 2014 distinguished official forms of retaliation from social retaliation or ostracism committed by peers. Under SECNAVINST 5370.7D, both official retaliation and social retaliation are prohibited. Sailors who violate that prohibition can be prosecuted under Article 92 of the Uniform Code of Military Justice.

The first category – official retaliation or reprisal – includes actions such as withholding promotions, giving poor evaluations, or assigning tasks not appropriate to the Sailor’s grade because the Sailor made a report of sexual assault.

The second category includes ostracism or maltreatment when done to discourage the reporting of a crime or because the victim reported a crime. SECNAVINST 5370.7D defines ostracism as “exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.” As documented in the RAND survey, this can include attaching the stigma of “troublemaker” to a Sailor who reports a sexual assault, defriending on Facebook, or sitting at a different table at lunch.

When a command receives a report of official retaliation or reprisal, the commanding officer must offer to forward the complaint to the Navy or DoD Inspector General. Reports of social retaliation, ostracism, or maltreatment must be investigated promptly by the command and appropriate corrective action taken. Such investigations and corrective action should be carried out in close coordination with a judge advocate to ensure that the reporting member’s rights are protected and that the reports are reviewed for legal sufficiency.

MILITARY EQUAL OPPORTUNITY POLICY UPDATE

Last month, Secretary of Defense Ash Carter added sexual orientation to the Defense Department's equal opportunity policy. As a result, sexual orientation cannot be considered in military recruitment, hiring, firing, or promotions.

Military Equal Opportunity Policy Update

The addition of sexual orientation to the Military Equal Opportunity (MEO) program alters the way commands respond to allegations of discrimination based on sexual orientation. Previously, complaints regarding sexual orientation discrimination were handled through the chain of command or the Inspector General (IG) system. Effective June 8, 2015, responses to allegations of sexual orientation discrimination may be handled through the MEO process; this is the same process that currently handles allegations of discrimination based on race, color, religion, sex, or national origin.

Service members may still choose command channels and the IG system to address allegations of sexual orientation discrimination. DOD policy encourages resolution of workplace disputes and allegations of discrimination at the lowest level. If civilians and service members are unable to find a resolution within their command, they have the right to pursue their claims through established MEO and civilian equal employment opportunity (EEO) complaint processes. The MEO and EEO processes offer remedies through alternate dispute resolution and mediation, which may not be available through the chain of command or Inspector General.

LITIGATION-REPORT INVESTIGATIONS: WHAT, WHY, AND HOW?

In many situations, a judge advocate will advise a command to convene a Litigation-Report Investigation (LITREP). LITREPs are distinct from the other types of investigations in both their purpose and preparation. They are utilized to investigate an incident or event that may result in a claim or lawsuit against the Department of the Navy (DON). The most common reasons for a claim are damage to property, personal injury or death caused by Navy personnel acting within the scope of their employment.

Litigation-Report Investigations: What, Why, and How?

LITREPs are also utilized when the DON may have an affirmative claim for damage caused to DON property by an individual. This often-overlooked aspect of LITREPs is essential to collecting evidence to enable the DON to recover money spent on repairs of damage to DON property caused by incidents such as vehicle accidents, contractor mishaps, and individual misconduct.

Unlike other command investigations, LITREPs must follow specific protocol from the outset. These procedures are designed to ensure that LITREPs are protected from disclosure if a lawsuit is later filed. LITREPs – including any preliminary inquiries that may lead to a LITREP – must be conducted under the supervision of the judge advocate identified in the convening order. In addition, the progress and results of the investigation must be discussed only with personnel having an official need to know.

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FILLABLE FORM FOR SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT REPORT (SAIRO)

Fillable Form for Sexual Assault Incident Response Oversight Report (SAIRO)

Our last issue reviewed reporting requirements for sexual assault incidents. Since that issue, NAVADMIN 162/15 has modified the method of submitting the Sexual Assault Incident Response Oversight Report (SAIRO). That report must now be submitted using the fillable OPNAV 1752/2 Form which is available at https://navalforms.documentservices.dla.mil/formsDir/_OPNAV_1752_2_13941.pdf. The previous situation report (SITREP) format for this report is no longer authorized. The only exception to this rule is for submarines at-sea if limited bandwidth prevents use of the fillable form.

The NAVADMIN does not change the circumstances that require the submission of a SAIRO. A command must still submit this report within 8 days of becoming aware of a sexual assault.

RESULTS OF TRIAL, 3RD QUARTER 2015

Results of Trial, 3rd Quarter 2015

Navy E-6 was sentenced to be confined for 6 years, to forfeit all pay and allowances, and to be reduced to the paygrade of E-1 after being convicted of 3 specifications of assault consummated by a battery and indecent acts with a child. This court was held on 24 June 2015.

Navy E-5 was sentenced to be confined for 20 months, to be reduced to the paygrade of E-1, and to be discharged with a bad conduct discharge after pleading guilty to receiving and distributing child pornography. This court was held on 19 June 2015.

OFFICER BOARD OF INQUIRY RESULTS, 3RD QUARTER 2015

Officer Board of Inquiry Results, 3rd Quarter 2015

Navy O-6 was ordered to show cause for retention due to misconduct: violations of UCMJ Articles 120 (sexual assault), 133 (conduct unbecoming an officer and gentleman), and 134 (adultery); and substandard performance of duty: failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade and failure to conform to prescribed standards of military deportment. On 19 May 2015, the Board recommended retention.

Navy O-5 was ordered to show cause for retention due to misconduct: violations of the UCMJ Article 92 (violation of a lawful general order) and 134 (fraternization); and substandard performance of duty: failure to conform to prescribed standards of military deportment. On 16 April 2015, the Board recommended separation with a general characterization of service.

Navy O-4 was ordered to show cause for retention due to misconduct: violations of the UCMJ Articles 121 (larceny) and 133 (conduct unbecoming an officer and gentleman); and substandard performance of duty: failure to conform to prescribed standards of military deportment. On 9 April 2015, the Board recommended separation with an honorable characterization of service.

Navy O-4 was ordered to show cause for retention due to substandard performance of duty: failure to conform to prescribed standards of dress, weight, personal appearance, or military deportment. On 1 April 2015, the Board recommended retention.

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RELEASE OF POLICE REPORTS

Individuals involved in an on-base incident often request a copy of the Naval Security Force police report concerning that incident. Any person has the right to make such a request under the Freedom of Information Act (FOIA), but must do so through the proper channels. FOIA gives the public the right to access Navy records unless the law protects those records from disclosure.

Release of Police Reports

All FOIA requests for installations in Naval District Washington (NDW) must be submitted to the NDW FOIA officer. The NDW FOIA officer will review the records, redact any information that cannot be released, and provide the records to the requestor. You can reach the NDW FOIA officer at (202) 433-4133.

One type of information that will not be released under FOIA is any personally identifiable information (PII) for the individuals involved. This policy can create problems for individuals involved in car accidents who are seeking the contact information of the other driver; that contact information is PII and cannot be released. Installation security forces can prevent this problem by encouraging drivers to exchange information voluntarily while still at the scene of the accident.

COMMAND SERVICES STAFF JUDGE ADVOCATE DIRECTORY

The mission of command services department is to provide prompt and effective legal services to commands throughout the Naval District Washington area of responsibility. The following is a list of contacts for each installation:

Command Services Staff Judge Advocate Directory

NSA WASHINGTON/WASHINGTON NAVY YARD
(202) 685-7046
(202) 685-5592
(202) 685-5525

JOINT BASE ANACOSTIA-BOLLING
(202) 767-1767

NSA BETHESDA
(202) 767-1767

NSA ANNAPOLIS
(410) 293-9203

NAS PATUXENT RIVER
(301) 342-1934

NSA SOUTH POTOMAC
(301) 342-1934

COMMAND DUTY OFFICER: (202) 329-0249
E-MAIL: RLSO.NDW@NAVY.MIL

For NDW related issues, please contact:

*NAVAL DISTRICT WASHINGTON
Staff Judge Advocate
(202) 433-2424*

*Deputy Staff Judge Advocate
(202) 433-2423*

*FOIA/Privacy Act Officer
(202) 433-4133*

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