

# THE COUNSELOR

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## *In This Issue:*

*Mental Health Concerns  
in the Workplace:  
Taking Early Action*

*Affirmative Claims*

*Results of Trial,  
1<sup>st</sup> Quarter 2015*

*Officer Board of Inquiry  
Results, 1<sup>st</sup> Quarter 2015*

*Upcoming Tax Season:  
Resources for Sailors*

*Command Services Staff  
Judge Advocate  
Directory*

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## *Mental Health Concerns in the Workplace: Taking Early Action*

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## MENTAL HEALTH CONCERNS IN THE WORKPLACE: TAKING EARLY ACTION

The last article in our mental health series discussed steps to take after a direct threat of violence. This installment examines options for dealing with an employee whose behavior is concerning, but does not rise to the level of a threat. We'll also discuss a recent NAVADMIN which encourages the voluntary storage of firearms for Sailors struggling with possible mental health issues.

The Navy Leader's Guide highlights various ways in which you can identify and address mental health concerns in your Sailors and your civilian employees. Tackling these issues as they are developing will hopefully minimize the need to use the tools we have discussed in our previous articles.

Signs that a Sailor or employee is struggling with mental health issues might include an overall decline in work habits and performance, poor attendance, increasingly negative attitude and decreasing safety practices. Leaders are not expected to act as counselors, but they are expected to assist service members and employees in getting the help they might need.

Supervisors and Commanding Officers can follow the steps outlined in the Navy Leader's Guide under the acronym CAKE. Communicate with the Sailor or employee that asking for help is a sign of strength and that, while there might be career consequences for seeking help, there will also be career consequences for avoiding treatment. Ask the Sailor or employee directly about suicidal or violent thoughts. Ask about their emotional state. Ask how you can be supportive. Know the signs and symptoms mentioned above and Educate your chain of command so they can provide you with first-hand daily feedback on further behavioral changes. Confront the issue directly and do not avoid uncomfortable topics.

In November 2014, the Navy granted commanders an additional tool for preventing the potentially lethal escalation of mental health issues. Per NAVADMIN 263/14, commanders and health professionals may now ask Sailors who are reasonably believed to be at risk for suicide, or other violent behavior, to voluntarily store their privately-owned firearms with the command.

# The Counselor

This decision must be absolutely voluntary on the Sailor's part and commanders may not offer any form of incentive or disincentive to participate in the program. If Sailors object to submitting the entire firearm for storage, the Command may also store critical pieces of the firearm or the key to a safety lock, if necessary. Of course, if there is an immediate risk to life, commanders and health professionals are still required to take immediate action to ensure appropriate care and safety protections.

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## AFFIRMATIVE CLAIMS

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### *Affirmative Claims*

"Who is going to pay for this?" This is a common question asked by commands after suffering damage to Government property. If Government property has been damaged by an outside party within the last three years, the U.S. Government may be able to assert an affirmative claim under the Federal Claims Collection Act ("FCCA"). The Navy's Office of the Judge Advocate General's Tort Claims Unit ("TCU") can assist commands in weighing their options. Only the TCU can assert a claim under the FCCA. Individual commands have no authority to assert a claim or collect any money.

Commands need to determine whether the damaged Government property is real property (land or anything permanently attached to it) or personal property. Any money recovered by the TCU for damage to real property is returned to the command that maintains and repairs it. In contrast, all money recovered by the TCU for damage to personal property, such as government vehicles, is deposited in the General Treasury.

An expedient alternative to this process is for the command to ask the tortfeasor, person who damaged the property, or the tortfeasor's insurance company to arrange for the repairs and then pay the contractor for the repairs directly. These "repairs in kind" can be done quickly and at no cost to the command. In the case of a damaged Government vehicle, the command can simply ask the tortfeasor's insurance company to recommend a local body shop and make payment directly to the shop. Similarly, if a civilian driver plows into a command's fenceline, the command may request that person's insurance company to repair the fence and pay the contractor directly.

When "repair in kind" is not feasible, the command can ask TCU to pursue an affirmative claim. The lynchpin of the affirmative claim process is the Litigation Report ("LITREP") investigation convened in accordance with Chapter II of the JAGMAN. LITREPs are completed under the supervision of a Judge Advocate and should be clearly marked that the report is being completed in preparation for a potential claim. A common issue with LITREPs is that commands fail to provide TCU with an itemized assessment of repair costs and damages. When completing LITREPs, Investigating Officers should consult with their public works department to get an estimate of the damage and repair costs.

The command's decision as to whether to utilize "repair in kind" or have TCU pursue an affirmative claim should be made as soon as possible after the incident occurs. "Whatever you are going to do, do it early," says Andrea Cassem, one of TCU's managing attorneys. TCU is standing by to assist commands in weighing their options, initiating investigations, or evaluating repairs in kind. Contact TCU, OJAG Code 15 at 757-341-4583 or Ms. Andrea Cassem, TCU Managing Attorney, at [andrea.cassem@navy.mil](mailto:andrea.cassem@navy.mil) or see Code 15's website: [http://www.jag.navy.mil/organization/code\\_15.htm](http://www.jag.navy.mil/organization/code_15.htm).

# The Counselor

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## RESULTS OF TRIAL, 1ST QUARTER 2015

Navy E-7 with 18 years of service was sentenced to be confined for 89 days, to be reduced to the pay grade of E-6, and to be reprimanded after being convicted of assault consummated by a battery. This court was held on 11 December 2014.

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### *Results of Trial, 1<sup>st</sup> Quarter 2015*

Navy E-4 with 6 years of service was sentenced to total forfeiture of all pay and allowances, to be reduced to the pay grade of E-1, to be confined for 2 years, and to be discharged with a bad conduct discharge after being convicted of disorderly conduct and abusive sexual contact. This court was held on 10 December 2014.

Navy E-4 with 7 years of service was sentenced to total forfeiture of all pay and allowances, to be reduced to the pay grade of E-1, to be confined for 78 months, and to be discharged with a dishonorable discharge after being convicted of rape, assault consummated by a battery, wrongful use of a controlled substance, abusive sexual contact, and aggravated sexual contact. This court was held on 8 October 2014.

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## OFFICER BOARD OF INQUIRY RESULTS, 1ST QUARTER 2015

Navy O-3 was ordered to show cause for retention due to misconduct and substandard performance of duty: testing positive on a random urinalysis and failure to conform to the prescribed standards of military department. The Board recommended retention. This Board of Inquiry was held on 9 December 2014.

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### *Officer Board of Inquiry Results, 1<sup>st</sup> Quarter 2015*

Navy O-4 was ordered to show cause for retention due to misconduct and substandard performance of duty: violations of UCMJ Articles 120 (abusive sexual contact), 133 (conduct unbecoming an officer and gentleman) and 134 (drunk and disorderly conduct) and failure to conform to the prescribed standards of military department. The Board recommended retention. This Board of Inquiry was held on 17 October 2014.

Navy O-3 was ordered to show cause for retention due to misconduct and substandard performance of duty: violations of UCMJ Articles 86 (unauthorized absence), 107 (false official statement) and 123 (forgery) and failure to conform to the prescribed standards of military department. The Board recommended separation. This Board of Inquiry was held on 15 October 2014.

Navy Reserve O-3 was ordered to show cause for retention due to misconduct and substandard performance of duty: violations of UCMJ Articles 92 (failure to obey order or regulation) and 133 (conduct unbecoming an officer and gentleman) and failure to conform to the prescribed standards of military department. The Board recommended retention. This Board of Inquiry was held on 14 October 2014.

Navy Reserve O-6 was ordered to show cause for retention due to misconduct and substandard performance of duty: violation of UCMJ Article 111 (drunken or reckless operation of a vehicle) and failure to conform to the prescribed standards of military department. The Board recommended separation and retirement at the pay grade of O-5. This Board of Inquiry was held on 3 October 2014.

# The Counselor

## UPCOMING TAX SEASON: RESOURCES FOR SAILORS

Tax Season is quickly approaching. The IRS has announced that filing will begin on 20 January 2015 and DFAS has announced that Navy active component W-2's will be available on 24 January 2015. Sailors and their dependents will be able to file their federal returns and up to three state tax returns each for free via Military OneSource. Go to [www.militaryonesource.mil](http://www.militaryonesource.mil) for additional information and to get started. Additionally, should Sailors or dependents have any legal questions about their tax returns, they can make an appointment to see a legal assistance attorney. See [www.jag.navy.mil/legal\\_services/rIso/rIso\\_naval\\_district\\_washington.htm](http://www.jag.navy.mil/legal_services/rIso/rIso_naval_district_washington.htm) for office locations, hours and phone numbers.

**Upcoming Tax Season:  
Resources for Sailors**

## 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)685-7184

JOINT BASE ANACOSTIA-BOLLING  
(202)767-1767  
(202)767-1767

NSA BETHESDA  
(202)685-5894

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](mailto: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*

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