
In This Issue:

*FY16 National Defense
Authorization Act
Military Justice Updates*

*Navy Anti-Retaliation
Policy*

*Ashley Madison
Reporting and Classified
Information*

*Results of Trial,
1st Quarter 2016*

*Political Activities in an
Election Year*

*Command Services Staff
Judge Advocate
Directory*

***FY16 National
Defense
Authorization Act
Military Justice
Updates***

FY16 NATIONAL DEFENSE AUTHORIZATION ACT MILITARY JUSTICE UPDATES

President Obama signed the National Defense Authorization Act (NDAA) for Fiscal Year 2016 on 25 November 2015. This statute made numerous changes to the Uniform Code of Military Justice as well as other policies with respect to military justice.

Major provisions include:

- Victim's Legal Counsel (VLC) are authorized to assist victims in preparing complaints against the government (e.g. Art. 138, IG, EO complaints, etc.), requesting government records, and communicating with Congress.
- Military criminal investigators are required to inform victims of sexual assault and other qualifying offenses of their right to be represented by a VLC prior to interviewing the victim. The Secretary of Defense (SECDEF) may authorize an exception to this requirement for exigent circumstances.
- Subject to policies established by the Secretary of the Navy, civilian Department of Defense (DoD) employees may now be eligible for representation by a VLC.
- SECDEF has been tasked with developing a plan to improve DoD prevention of and response to sexual assaults against male servicemembers.
- SECDEF has been tasked with developing a strategy to prevent retaliation by servicemembers against other servicemembers who report a sexual assault or intervene on behalf of a victim of sexual assault. More information on retaliation can be found on page 2 of this newsletter.
- SECDEF must update all DoD policies to ensure that records of investigations into alleged sex-related crimes are retained for at least 50 years.
- Military rules regarding restricted reporting preempt any state law reporting requirements except when reporting is necessary due to a serious and imminent threat to the health and safety of an individual.

Further updates will be provided as the DoD and Department of the Navy issue regulations to implement these provisions.

The Counselor

NAVY ANTI-RETALIATION POLICY

As discussed above, the FY16 National Defense Authorization Act mandated that the Secretary of Defense develop a comprehensive strategy to prevent retaliation by servicemembers against other servicemembers who report a sexual assault or intervene on behalf of a victim of sexual assault. Several overlapping laws and regulations establish the current legal rules regarding retaliation in the Navy:

Navy Anti-Retaliation Policy

Section 1034 of Title 10 of the U.S. Code prohibits any person from restricting a servicemember in communicating with a Member of Congress or an Inspector General. That section also prohibits any adverse personnel actions that are taken in retaliation for certain communications to a Member of Congress or Inspector General. This includes any communication of information that constitutes evidence of a violation of law or regulation, gross mismanagement, gross waste of funds, abuse of authority, a substantial danger to public health or safety, or a threat by another servicemember or government employee.

SECNAVINST 5370.7D of 4 December 2014 prohibits official reprisal against servicemembers who report a criminal offense. In addition, that instruction prohibits any servicemember from ostracizing or maltreating an individual who has reported a crime when that ostracism or maltreatment is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice. Ostracism includes the exclusion from social acceptance, privilege or friendship. Maltreatment is treatment by peers or other persons that, under the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose and that results in physical or mental harm or suffering. Individuals who violate this regulation may be punished under Article 92 of the Uniform Code of Military Justice.

ASHLEY MADISON REPORTING AND CLASSIFIED INFORMATION

On 5 October 2015, following the publicized security breach of the Ashley Madison website, the Department of the Navy's Senior Director for Security issued guidance to commands for individuals who self-report accessing the Ashley Madison website.

Any person receiving such a report must ensure that the reporting individual's Commanding Officer or civilian supervisor, Security Manager (SM), and Special Security Officer (SSO) is aware of the information. The command must conduct an evaluation of whether the individual's access should be suspended. If necessary in accordance with SECNAV M-5510.30, the SM or SSO must report the information via the Joint Personnel Adjudication System for adjudication. In addition, if the individual has access to Sensitive Compartmented Information, the SSO must submit a report via the Case Adjudication Tracking System.

For additional information, please contact Ms. Shirley Maddox-Stubbs at (703) 601-0609.

RESULTS OF TRIAL, 1ST QUARTER 2016

Navy O-3 was sentenced to be confined for 90 days and dismissed from the Naval Service after pleading guilty to theft of government property. In accordance with a pre-trial agreement, the confinement will be suspended for 12 months. This court was held on 2 December 2015.

Ashley Madison Reporting and Classified Information

Results of Trial, 1st Quarter 2016

POLITICAL ACTIVITIES IN AN ELECTION YEAR

Political Activities in an Election Year

The 2016 Election Year is in full swing. You've probably seen bumper stickers, Facebook posts from family and friends, and countless commercials supporting political candidates or causes. While all citizens are encouraged to carry out their obligations of citizenship, as a servicemember, some restrictions apply while engaging in political activity. This article will outline permitted and prohibited political activity, with a focus on social media activity.

Permitted Political Activity

Political activity of active duty servicemembers, retirees, and reservists is covered by DoD Directive 1344.10. Political activity is defined as an activity directed toward the success or failure of a political party or candidate. When engaging in permitted political activity, there are two key principles: (1) servicemembers are prohibited from acting in any manner that reasonably gives rise to the inference of DoD approval or endorsement of a partisan political candidate or party; and (2) Political activity must be kept out of the Federal workplace.

Servicemembers are permitted to vote, express personal opinions, join political clubs and attend political meetings, sign petitions, make monetary contributions, display a bumper sticker (but not large political signs on the car), write a letter to the editor with a disclaimer, and attend fundraisers as a spectator. Nonpartisan political activity is permitted as long as the servicemember is not in uniform, not using government property, not interfering with the performance of duty, and does not imply DoD endorsement of the political position or issue.

Prohibited Political Activity

Servicemembers are prohibited from using their official authority to interfere with an election or solicit votes, distributing political literature, speaking at partisan political gatherings, working for a campaign, selling tickets for partisan dinners or fundraisers, or serving in an official capacity with a partisan political club. Servicemembers cannot engage in fundraising or campaigning on a military installation. This includes the display of buttons, posters, coffee mugs, or screen savers that support a candidate or party in the workplace. Servicemembers also cannot display partisan political signs that are visible to the public on base housing.

Social Media

Servicemembers may express personal opinions on public issues or political candidates via social media platforms such as Facebook, Twitter, or personal blogs. However, if a servicemember's online profile prominently identifies him as a servicemember, he must post a disclaimer that the views expressed are his own and not those of the DoD. Merely listing a job in a biographical section would not necessarily require a disclaimer. No online political activity can be done while on-duty, even if from a personal device or email account. Government computers may never be used for political activity.

Servicemembers may become a "friend" of, or "like," a Facebook page, or "follow" a Twitter account of a political party or partisan candidate, campaign, group, or cause, but cannot engage in further political activity. Further political activity includes suggesting that other friends "like," "friend," or "follow" partisan accounts, forwarding invitations to partisan events, soliciting, and fundraising. For example, servicemembers should not share or retweet posts seeking political contributions.

(Continued on page 4)

The Counselor

POLITICAL ACTIVITIES IN AN ELECTION YEAR (Continued from page 3)

Civilian DoD Employees

Political activity of DoD employees is governed by the Hatch Act. DoD civilian employees are permitted to place a campaign sign in the yard of their off-base residence, place a campaign bumper sticker on their car, make financial contributions, express personal opinions, attend political events, work for a campaign, and work as a poll worker. All of this activity must be off-duty and outside of a Federal installation.

Civilian DoD employees are prohibited from using their official authority to influence an election, soliciting or receiving political contributions, displaying political or campaign literature or materials in the Federal workplace, and engaging in political activity while wearing a uniform or official insignia. The following categories of civilian employees are subject to additional restrictions: civilian employees who are appointed by the president and confirmed by the Senate, career and non-career Special Executive Service (SES) employees, Contract Appeals Board employees, and employees of the National Security Agency, Defense Intelligence Agency, and National Geospatial-Intelligence Agency. These employees should consult their agency's legal office for additional guidance.

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:

NSA WASHINGTON/WASHINGTON NAVY YARD
(202) 685-7046
(202) 685-5597
(202) 685-5894
(202) 685-5888

JOINT BASE ANACOSTIA-BOLLING
(202) 767-1767

NSA BETHESDA
(410) 293-9203

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*

Political Activities in an Election Year

Command Services Staff Judge Advocate Directory

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