

THE COUNSELOR

In This Issue:

DoDI 6490.04: New Rules for Mental Health Evaluations

Security for Military Justice Proceedings

How to Handle Litigation Information Requests in the Form of Subpoenas

Results of Trial 2nd Quarter 2014

Officer Board of Inquiry Results 2nd Quarter 2014

New Officer Misconduct Checklists

Command Services Staff Judge Advocate Directory

DODI 6490.04: NEW RULES FOR MENTAL HEALTH EVALUATIONS

ALNAV 040/13 was released on 19 June 2013 and canceled SECNAVINST 6320.24A, Mental Health Examinations of Members of the Armed Forces. Until SECNAVINST 6320.24A is revised, commands must follow the guidance in DoDI 6490.04 when referring Sailors/Marines for a mental health evaluation.

DoDI 6490.04 reduced the requirements commands need to follow in order to require a service member to receive a mental health evaluation. Additionally, DoDI 6490.04 focuses on the removal of any stigma associated with receiving mental health services.

DoDI 6490.04 includes the following significant changes from the past policy for both non-emergency and emergency mental health evaluations:

- (1) Authority to issue non-emergency evaluation referrals has been expanded to include supervisors, not just commanders. Supervisors include commissioned officers and civilian employees, in a grade level comparable to a commissioned officer, who are working in a supervisory role for the service member. This power should be delegated only when it is impracticable to involve the actual commanding officer.
- (2) Eliminates the requirement in non-emergency situations for service members to receive two-day advance written notice and the requirement to notify service members of their right to speak with an attorney.
- (3) Requires that a service member be informed that there is no stigma associated with obtaining mental health service when a commander or supervisor, in good faith, believes that a service member may require a non-emergency mental health evaluation.

DoDI 6490.04: New Rules for Mental Health Evaluations

The Counselor

(4) Allows for the delegation of authority to issue emergency command directed evaluations to (a) senior enlisted service members for enlisted service members being referred and (b) to officers senior in rank to an officer being referred.

(5) Allows a privileged healthcare provider to admit a service member for an inpatient evaluation when a psychiatrist or clinical psychologist is unavailable.

If a commanding officer or supervisor is considering requiring a service member to receive a mental health evaluation, it is important that the SJA be consulted, if practicable, to ensure that the proper steps are taken to protect the command and the rights of the individual Sailor/Marine.

SECURITY FOR MILITARY JUSTICE PROCEEDINGS

Commands are responsible for providing the necessary personnel for security of military justice proceedings involving members of their command, as well as for “brig runs.” “Brig runs” involve taking suspects in pre-trial confinement and individuals sentenced to brig time to and from the Navy Consolidated Brig in Chesapeake, Virginia. This has been longstanding policy. However, in the past, Naval District Washington (NDW)’s own corrections unit/security team has been able to provide spot security and brig run coverage for military justice proceedings for members of installation and tenant commands within the NDW region. NDW’s corrections unit/security team has transitioned from N3 to N1’s Transient Personnel Detachment, and is no longer able to provide this service. Their ability to assist with cases not convened by NDW or TPD will be limited to cases that are determined to pose a high security threat level, provided sufficient notice is given.

For military justice proceedings, commands will need to provide a standard security team of at least four members, with potential additional requirements, depending on the nature of the proceeding. Please coordinate with trial counsel well in advance of any scheduled military justice proceedings for security requirements.

As noted above, commands will continue to be responsible for providing “brig chasers” for brig runs to and from the brig in Chesapeake (approximately four hours away) for any pre-trial confinement, as well for any adjudged confinement following a military justice proceeding. To be qualified as a “Brig chasers,” personnel must attend a course at the brig. For additional information on this requirement, please go to: <http://www.public.navy.mil/bupers-npc/support/correctionprograms/brigs/chesapeake/Pages/HelpLinks.aspx>. RLSO NDW is standing by to assist with any questions related to military justice proceedings and security requirements.

The Counselor

Lastly, we want to extend a hearty “thank you” to the NDW corrections unit/security team for all of their hard work and willingness to fill in, often last-minute, including on overnight brig runs and afterhours and weekend work.

HOW TO HANDLE LITIGATION INFORMATION REQUESTS IN THE FORM OF SUBPOENAS

A subpoena is a document that requires its recipient to appear in court as a witness or to produce physical evidence, such as documents. If you or another member of your command receives a request for DON information in the form of a subpoena, you should not panic. Instead, contact your base or command SJA. Your SJA will assist you in ensuring the subpoena is properly handled.

DoD policy is to provide as much information as we can reasonably find and legally release. Your command, however, will not be responsible for determining whether or not information for litigation will be released. Instead, the Navy Litigation Office (NLO) vets and manages litigation information requests, including subpoenas. Accordingly, when a subpoena is received, the requestor (the counsel seeking the records) should be directed to serve the subpoena (and other forms of legal process) on the NLO. Subpoenas served on any other establishment, other than the NLO, will not be accepted.

The NLO may contact your command after it has reviewed the subpoena. Depending on the nature of the request, the NLO may require your assistance in providing the information/documents requested.

The NLO’s address for purposes of proper service and receipt of a subpoena is the following:

DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
NAVY LITIGATION OFFICE
720 KENNON STREET SE RM 233
WASHINGTON NAVY YARD, DC 20374-5013

*How to Handle
Litigation
Information
Requests in the
Form of Subpoenas*

The Counselor

RESULTS OF TRIAL 2ND QUARTER 2014

A Navy E-5 with over 9 years of service was sentenced to be reprimanded, to receive hard labor without confinement for 90 days and to be reduced to the pay grade of E-4 after being convicted of wrongful appropriation. This court was held on 11 March 2014.

*Results of Trial 2nd
Quarter 2014*

A Navy E-6 with over 6 years of service was sentenced to be reduced to the pay grade of E1, to be confined for 45 days and to receive a bad conduct discharge after being convicted of making a false official statement and wrongful use of a controlled substance. This court was held on 4 March 2014.

A Navy E-3 with over 2 years of service was sentenced to be confined for 7 years, to be reduced to the pay grade of E1 and to be dishonorably discharged after being convicted of rape and forcible sodomy. This court was held on 21 February 2014.

A Navy E-4 with over 6 years of service was sentenced to be reduced to the pay grade of E1, to be confined for 3 months, to receive a bad conduct discharge and to pay a fine of \$12,250.00 (and if such fine is not paid before the convening authority takes action, to be confined for an additional five months) after being convicted of unauthorized absence and stealing from the U.S. Government. This court was held on 12 February 2014.

A Navy E-5 with over 4 years of service was sentenced to be reduced to the pay grade of E1, to forfeiture of ½ month's pay for 6 months and confinement for 45 days after being convicted of unauthorized absence and failure to obey a lawful general order. This court was held on 16 January 2014.

OFFICER BOARD OF INQUIRY RESULTS 2ND QUARTER 2014

*Officer Board of
Inquiry Results 2nd
Quarter 2014*

Navy O-6 was ordered to show cause for retention due to misconduct and substandard performance of duty: failure to conform to prescribed standards of military deportment. Board members recommended retention. This Board of Inquiry was held on 8 January 2014.

The Counselor

OFFICER MISCONDUCT CHECKLISTS

Officer misconduct cases are complicated and often have additional reporting requirements not seen in enlisted cases. To help navigate this specialized area, RLSO NDW has developed checklists on the following topics: Officer Non-Judicial Punishment (NJP), Detachment for Cause (DFC), Board of Inquiry (BOI), and the issuing of Non-Punitive Letters of Caution (NPLOC) and Letters of Instruction (LOI).

These checklists have been reviewed and approved by OJAG and PERS-834. For copies of one or more checklists, please contact the RLSO NDW Command Services Department Head, LCDR Zimmerman at delicia.zimmerman@navy.mil.

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

JOINT BASE ANACOSTIA-BOLLING
(202)767-1767 or (202)685-5597

NSA BETHESDA
(202)685-5525

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*

ARTICLE CONTRIBUTORS:

LCDR Delicia Zimmerman, LT Brian John, LT Andrew Giddings and LTJG Sharai Elko

EDITOR:

LT Joey Ann Lonjers

*New Officer
Misconduct Checklists*

*Command Services
Staff Judge Advocate
Directory*