



JUSTICE CHRONICLES

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GAMBLING

Ref: (a) 41 C.F.R. § 102-74.395
(b) DoD 5500.7-R (JER) § 2-302

As we approach the time of year when fundraising events seem to become more prevalent, we consider the topic of raffles as a means of entertaining the troops and raising money. A close examination of the rules regarding gambling is required to determine the legality of a raffle.

Gambling Prohibited. As a general rule, gambling on Federal property is prohibited. Per reference (a), all persons are prohibited from participating in games for money, operating gambling devices, conducting lotteries, and selling or purchasing numbered tickets on Federal property managed by the Government Services Administration (GSA). Additionally, per reference (b), gambling is prohibited on all other Federally-owned or leased property or during official duty time. Gambling with subordinates may also violate numerous UCMJ Articles and California state law.

Gambling Defined. Gambling requires three elements: (i) a game of chance; (ii) consideration for the opportunity to play the game; and (iii) an offering of a prize. Games of chance include raffles, lotteries, sports pools, the selling or purchasing of numbered slips or tickets, or any game for money or property. Consideration would include any admission fees, wagers, or something of value in return for the possibility of winning a reward or prize. Finally, prizes may include monetary awards, or tangible or intangible items, like meals, drinks, administrative leave, or gift certificates.

So, the \$64,000 question: Is there a legal way to have a raffle at a command fundraiser? Answer: Yes; just make sure your raffle does not meet the elements of gambling. Probably the easiest way to do this is to ensure there is no consideration exchanged for the opportunity to participate in the raffle. That is, don't sell raffle tickets – GIVE THEM AWAY! Just make sure you

distribute them in a manner that will not offend a reasonable person's notion of equity. For example, give one chance to each member of the unit. You may accept unsolicited donations in connection with a raffle to raise money so long as the receipt of a raffle ticket is not contingent on the member making a donation.

Note: Some creative thinkers like to try to avoid the general prohibition against gambling on Federal property by holding their holiday party/raffle off-installation. The problem with this approach is gambling is also governed by State statutes which often prohibit gambling without a license or permit.

In-State Tuition

Service Members and Families Now Eligible for In-State Tuition

Beginning July 1, 2009, members of the armed forces on active duty for a period of more than 30 days, their spouses, and dependent children, are now eligible to receive in-state tuition at public colleges and universities in the state where they reside or are permanently stationed. In addition, once a service member or their family members are enrolled and paying in-state tuition, they will continue to pay the in-state tuition rate as long as they remain continuously enrolled at the institution even if the service member is reassigned outside the state.

This new benefit was included in the Higher Education Opportunity Act (H.R. 4137) and was signed into law on August 14, 2008. It applies to all public institutions that receive funds under the program.

The Department of Education has worked with the institutions of higher education and is confident they are aware of the changes in the law and are fully implementing the policy. However, if service members or their families have any difficulties, they should contact the financial aid, registrar, or Veterans Affairs' office at the institution. In the rare case where these steps do not resolve the situation, please contact the Department of Education's Ombudsman's office toll-free at 877-557-2575.

ALCOHOL & DRUG ABUSE POLICY CHANGES

Alcohol and Drug Abuse Policy Changes

On 4 June, CNO released the .4D version of the Navy's Alcohol and Drug Abuse Prevention and Control policy (OPNAV 5350.4D). This revision contains several important updates and substantive changes to the previous version. Some FAQs on the new policy follow:

Question: Command has credible evidence that a member has smoked Spice, Salvia Divinorum, or other "legal herb." Is this considered drug abuse and a mandatory processing offense?

Answer: Yes. Drug abuse is the wrongful use, possession, manufacture or distribution of controlled substances. Drug abuse is also the wrongful use of designer drugs, anabolic steroids, abuse of prescription medication or over-the-counter drugs, and the use of substances for other than their intended use; for example, glue, air freshener, gasoline fume sniffing, or herbal products. The new version specifically includes herbal products and the use of any substance for other than its intended use. In addition, SECNAVINST 5300.28D, also a lawful general order, makes it unlawful for any member to use controlled substance analogues (i.e. designer drugs), natural substances, chemicals, propellants, prescription or over the counter medications with the intent to induce intoxication, excitement, or stupefaction of the central nervous system. Violations of either instruction are punishable under the UCMJ and may also subject the offender to adverse administrative action.

Question: A service member is found in possession of drug paraphernalia but no drugs have been found. Is this considered a violation of the OPNAV instruction?

Answer: Yes. The possession of paraphernalia and products designed to defeat a drug test are both wrongful if they are without legal justification.

Question: I observed a service member smoking marijuana, but she has a California license for the use of marijuana for medicinal purposes. Is this a violation of the Navy's drug policy?

Answer: Yes. All service members are subject to the instructions and orders of the Navy. The Navy's drug and alcohol policy is not subordinate to any foreign, state, or local law that may permit drug use.

Alcohol Abuse Policy:

Question: A service member self-referred for alcohol treatment in the past and has recently had a subsequent alcohol related incident. Does this constitute treatment failure?

Answer: Yes. The following are all examples of treatment failure:

- 1) Any member who incurs an alcohol incident any time in their career after a period of treatment at Level 1 or above that was precipitated by a prior incident. Command prevention education programs (ex. Alcohol-AWARE, ADAMS, SFL, and PREVENT) are NOT considered treatment for mandatory administrative separation purposes.
- 2) Any member who self-referred or was command referred for treatment and was screened by medical personnel and found to be in need of treatment, and who then incurs an alcohol incident or who subsequently fails to complete treatment.
- 3) Any member who fails to participate in, follow, or successfully complete any medically prescribed and command-approved aftercare plan. Conduct which amounts to a refusal, failure to complete or non-amenability shall be

determined by the medical personnel. The ultimate determination must be made by the member's CO.

- 4) Any member who returns to alcohol abuse at any time during their career following treatment, and is determined to be a treatment failure by their CO in consultation with command DAPA, local SARP, and appropriate medical personnel.

Question: A service member who has successfully completed alcohol treatment later self-refers for alcohol abuse. Is this considered a treatment failure?

Answer: No, unless the self-referral follows an alcohol incident. A member who, after successfully completing treatment, self-refers without any credible evidence of an alcohol related incident, is not considered a treatment failure and shall be referred to a SARP for appropriate aftercare plan or treatment if necessary. If the member is self-referring due to an alcohol incident, then the member is considered a treatment failure and must be processed for an administratively separation.

Question: Who determines whether an incident is an alcohol related incident?

Answer: The member's CO makes the determination after consulting with the DAPA, SARP and medical personnel. An alcohol related incident is an offense which is punishable under the UCMJ or civilian laws where, in the judgment of the member's CO, the offender's consumption of alcohol was a contributing factor. The following are examples of incidents after which a member should be screened for alcohol dependency:

- (1) DUI/DWI;
- (2) Drunkenness or drunk and disorderly conduct;
- (3) Alcohol-related civilian arrest;
- (4) Domestic violence where alcohol is a factor; or
- (5) Incompetence for duty due to alcohol intoxication or impairment.

Question: A service member recently reported to the command that he had received a DUI. This is his second DUI during his career. What are the command's responsibilities?

Answer: Under the new revision, the command is required to initiate administrative separation processing for all individuals who incur a second DUI/DWI during his or her career. Individuals identified as treatment failures are also still required to be processed for administrative separation.

Question: Can the command seek a waiver of mandatory administrative separation for alcohol rehabilitation treatment failure?

Answer: Maybe. The command may submit a request to waive mandatory processing for officers and senior enlisted (E-5 and above) IF the following conditions have been met:

- At least 3 years have elapsed since the previous alcohol-related incident;
- The CO evaluates the member as possessing “exception potential” for future service; and
- Member is evaluated by SARP, and a determination is made that another period of treatment is likely to be successful.

Question: How should I proceed to seek such a waiver?

Answer: The member’s CO must submit a letter to PERS-832. A sample letter is provided in Appendix A to Enclosure 1 in the instruction.

Question: Is a commanding officer permitted to set a drinking age lower than 21 for her command?

Answer: No, unless the installation is in a foreign country with a different legal age. In a foreign country, the minimum age to consume alcohol shall conform to the legal age set by the host country. Otherwise, the minimum age to consume alcohol is 21 for all personnel. It is the responsibility of all Navy personnel to promote a climate intolerant of alcohol abuse and to ensure that Sailors under the age of 21 shall not consume alcoholic beverages.

U.S. CITIZENSHIP AND PASSPORT INFORMATION

Citizenship & Passport Information

What is the Child Citizenship Act (CCA)?

The Child Citizenship Act states that a child who was born outside of the U.S. may qualify for U.S. citizenship if one parent is a U.S. citizen, the child resides in both the physical and legal custody of the U.S. citizen parent in the U.S., and is under the age of 18. If you are over 18 and the previous conditions apply but you were under 18 when the law went into effect on February 27, 2001, then the Child Citizenship Act applies to you. In order to apply you will need to have an original copy of the parent’s naturalization certificate and your permanent resident card (green card).

What forms are required to apply under the CCA?

You can either apply for citizenship with the:
 Certificate of Citizenship (N-600) – Filing Fee is \$460.00
 OR
 U.S. Passport – The Cost is \$100.00

What are the items needed to apply for a U.S. passport?

- Proof of U.S. Citizenship
- 2 passport photographs
- Current Government issued photo ID

- Birth certificate that shows that your parent naturalized
- Adoption papers
- Payment of passport fees

*Applicants under 16 need either both parents' signatures or both legal guardians' signatures

What is the difference between the U.S. passport book and the U.S. passport card?

The standard U.S. passport book is valid for international travel by air, land and sea.

Under the Western Hemisphere Travel Initiative (WHTI) the U.S. passport card is valid for entry into the U.S. by land and sea only from Mexico, Canada, the Caribbean and Bermuda. It is not valid for international travel by air.

How long is a passport valid?

If you were **16 or older** when the passport was issued, then your passport is valid for **10 Years**.

If you were **15 or younger** when the passport was issued, then your passport is valid for **5 Years**.

How much do the U.S. passport book and the U.S. passport card cost?

Passport book: \$100.00 for adults; \$85.00 for minors under 16; \$75.00 for renewal.

Passport card: \$45.00 for adults; \$35.00 for minors under 16; \$20.00 for renewal.

Passport book and card together: \$120.00 for adults; \$95.00 for minors under 16.

Do you need a passport to travel to Mexico?

Yes, as of June 1, 2009 you need a U.S. passport to re-enter the U.S. from Mexico by land, sea or air.

What should new American Citizens do after taking the oath?

1. Update your military records
2. Apply for a U.S. passport
 - More information at www.travel.state.gov
3. Register to vote
 - California residents may obtain more information at <http://www.sos.ca.gov/elections/>
 - Non-California residents may obtain more information at vote@fvap.ncr.gov
4. Notify in person the local Social Security Administration (SSA) of your

new citizenship status. Information and office locations are at www.ssa.gov or by phone at 800-772-1213

RESULTS OF TRIAL

Results of Trial

RLSO SW publishes the quarterly results of courts-martial for all cases tried in this region. Commands are encouraged to share these results as deemed appropriate (e.g. during quarters, in command newsletters, PODs/POWs, etc.). Below are the results of cases tried in the SW Region during last quarter in which all personally identifiable information has been redacted:

Navy E-3 with 4 years and 6 months of service sentenced to bad conduct discharge, 120 days confinement and reduction in rate to E-1 for false official statement, larceny of military property (BAH) of a value of \$16,425.60, and altering a public record. This court was held on 12 June 2009.

Navy E-3 with 1 year and 8 months of service sentenced to bad conduct discharge, 12 months confinement, forfeitures of \$900.00 pay per month for 6 months, and reduction in rate to E-1 for violation of a lawful general order, larceny of personal checks, military property, and currency, of a value of \$10,734.00, forgery, altering military property and defrauding a financial institution. This court was held on 18 June 2009.

Navy E-3 with 2 years and 9 months of service sentenced to a bad conduct discharge, 100 days of confinement and reduction in rate to E-1 for conspiracy to commit fraud, for violation of a lawful general order and regulation, larceny of a value of \$10,500.00, and defrauding a financial institution by use of a government travel card for a value of \$288,000.00. This court was held on 18 June 2009.

Navy O-3 with 12 years and 4 months of service, acquitted of false official statement indicating his dependents were not living at the address on his page two and larceny of military property of a value in excess of \$500.00. This court was held on 4 June 2009.

Navy E-2 with 1 year and 11 months of service sentenced to a bad conduct discharge, 201 days of confinement, and reduction in rate to E-1 for absence without leave and wrongful use of marijuana. The court was held on 23 June 2009.

Navy E-5 with 4 years and 5 months of service sentenced to a bad conduct discharge, confinement for 6 months, and reduction in rate to E-1 for absence without leave and wrongful use of cocaine. The court was held on 23 June 2009.

Navy E-3 with 2 years and 6 months of service sentenced to bad conduct discharge, 45 days of confinement, and reduction in rate to E-1 for a 1 year and 7 month unauthorized absence. The court was held on 25 June 2009.

Navy E-5 with 15 years and 8 months of service sentenced to 30 days of confinement and a fine of \$1,735.00 for larceny of military property of a value of \$1,735.00. The court was held on 26 June 2009.

Navy E-5 with 6 years and 10 months of service sentenced to a bad conduct discharge and 180 days of confinement for false official statement and larceny of \$54,967.94 in Basic Allowance for Housing and Cost of Living Allowance. The court was held on 29 June 2009.

Navy E-6 with 15 years and 8 months of service sentenced to a bad conduct discharge, confinement for 16 months, and reduction in rate to E-1 for larceny of military property of a value of \$13,688.71, fraud against the United States, and identity theft. The court was held on 30 June 2009.

Navy E-6 with 12 years and 6 months of service sentenced to a bad conduct discharge and 285 days confinement for larceny of \$32,813.00 in Basic Allowance for Housing and Cost of Living Allowance. The court was held on 1 July 2009.

Navy E-3 with 11 months of service sentenced to confinement for 30 days, forfeiture of \$500.00 pay per month for 1 month, 45 days restriction and reduction in rate to E-1 for absence without leave. The court was held on 10 July 2009.

OFFICER BOARD OF INQUIRY RESULTS

Officer Board Of Inquiry Results

Navy O-3 was ordered to show cause for retention due to failure to obey a military protective order, wrongful use of a cell phone underway, wrongfully providing alcohol to a person under age 21, making a false official statement, conduct unbecoming an officer, and fraternization. Board members found that the officer had committed misconduct; and further recommended that the officer be separated with an Other Than Honorable discharge. The Board was held on 18 June 2009.

TOPICS FOR FUTURE ISSUES

If you have a topic you'd like to see discussed in the next newsletter, please forward your request to: Ms. T. Warner at Thelma.Warner@navy.mil or LN1 Robbin Swilley at robbin.swilley@navy.mil.