



THE ADVOCATE



The Colorado National Guard OSJA Newsletter December 2017

*Happy
Holidays*

Welcome to the official newsletter of the CONG Office of the Staff Judge Advocate where you will find discussion of legal issues that affect you and your command, Soldiers, legal updates and newsworthy events, and the work of the OSJA. For more information about the articles you read here, contact the OSJA at 720-250-1030 or 720-250-1032. If you have a item to contribute, please contact SGT Conrad Ippolito at conrad.a.ippolito.mil@mail.mil or at 720-250-1032. Enjoy!

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Ethics Corner – Encyclopedia of Ethical Failures ☹

The DoD Office of General Counsel, Standards of Conduct Office publishes an Encyclopedia of Ethical Failures for use as a training tool. All cases are real examples of federal employees who have intentionally or unwittingly violated standards of conduct.

General Discovers that Military Aides Are Not Supposed to Feed Cats - Officials discovered that a General was misusing Government personnel, improperly accepting gifts of services from subordinates, and misusing his position. What did he do? The General used his enlisted aides to help host unofficial functions at his headquarters, provide driving lessons to a family member, and to feed a friend's cat. Although the aides were initially paid with \$30-\$40 Starbucks gift cards for their services, the General, taking full responsibility for his actions even though he retired, rectified the misuse and underpayment for services by retroactively paying the aides almost \$2,000.

Government Employees Double Down on Taxpayer-Funded Gambling - Two Government employees used their GTCs to fund their gambling and bowling binge, to the tune of almost \$35,000. Unfortunately, gambling was just not enough. One of the employees, a manager, racked up an additional \$13,000 in expenses to cover car rentals for personal use. In the end, approximately \$47,000 of the tax payer's money bankrolled the employees' fun and games. The manager, spending a total of \$45,000, repaid the debt to the Government and took an early retirement. The other employee, spending a total of \$2,400, repaid the debt to the Government and was fired.

A Gold-Plated Retirement - A former General commanding U.S. forces in South Korea improperly accepted over \$5,000 in gifts and cash, including gold-plated pens, from a South Korean benefactor.

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The General claimed that the gifts were accepted because the South Korean was a longtime and personal friend, despite the fact that the South Korean did not speak English and they were forced to communicate through hand signals and gestures. The General repaid the South Korean in full and was allowed to retire at a lower grade.

All Your Hotel Points Belong to Me - While working at the Air Force Legal Operating Agency, an official directed Air Force JAGs to stay at local hotels at a higher monetary rate when housing was available on Maxwell AFB at a much lower rate. This official used his Marriott reward points to reserve hotel rooms for visiting military personnel so that he could collect the mileage for himself. As a result of the scheme, the official received a total of 587,282 Marriott reward points and an additional 100,000 reward points for other room arrangements. He pled guilty and was sentenced to pay a \$5,000 fine and \$90,356 in restitution to the Government for defrauding the Air Force.

An Official U.S-Russian Party

A high-level U.S. military official in charge of nuclear weapons had a real blast on his official trip to Moscow, where he imbibed to his heart's content, mingled with "suspicious" foreign women he met at a bar, and topped it off by insulting his Russian hosts. After a series of other gaffes, higher-ups relieved the General of his command. He has since received a letter of counseling and has been reassigned.

SES Uses Title to Promote NFE

A Senior Executive Service employee served on the board of directors of a non-federal entity (NFE). While on the board, he listed his official position and DoD contact information on the NFE's Web site. Prior to this ethical violation, he had failed to request a legal opinion regarding his ties to the NFE. He was counseled and told to remove his title from NFE materials.

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United States Army Judge Advocate General's Corps - America's Oldest Law Firm

The COARNG JAG Corps bids "Farewell" to two JAs

This month, the COARNG JAG Corps bids a farewell and good luck to two of our JAGs—CPT Jesse Walstad and MAJ Matt Watson. CPT Walstad has been in the COARNG since 2013 having transferred to the COARNG from the NDARNG. Before his direct commission, CPT Walstad had 12 years of enlisted service, earning the rank of SFC. He had deployed to Kosovo and Iraq. Jesse has been assigned to the 89th TC as their Command JA and has done an amazing job. He is an extremely talented lawyer and a Soldier's Soldier. He leaves big boots to fill but we wish him, his wife Micah, and their son Eli, success and happiness as Jesse moves on to the North Dakota National Guard. Good luck, Jesse! We will miss you.

Matt Watson joined us from the Alabama National Guard when he joined the Contracting Office in the USPFO in May this year. A few months later he was offered a much higher paying civilian position with the VA and moved to Mississippi. Matt wasn't with us long, but he hit the ground running and was a big help here at JFHQ, filling the role of deputy SJA. Though his time with us was short, we thank him for his contributions and wish him success in his future endeavors with the US Army Reserves and VA. Good luck, Matt. Thanks for everything!

"Soldiers First, Lawyers Always"

Overheard in Court. Allegedly...

LAWYER: Can you tell us what was stolen from your house?
WITNESS: There was a rifle that belonged to my father that was stolen from the hall closet.
LAWYER: Can you identify the rifle?
WITNESS: Yes. There was something written on the side of it.
LAWYER: And what did the writing say?
WITNESS: 'Winchester'!

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[Ethical Failures, continued from page 2]

Men Seeking Fines, Extra Duty, and Loss of Rank - Military investigators discovered ads seeking sex that were posted by seventeen military and civilian personnel while deployed to Afghanistan. It involved enlisted, officers, and a non-American. The ads included men seeking women and men seeking men. The ads, determined to be prejudicial to good order and discipline, warranted fines, extra duty, restriction of privileges, and possible loss of rank. The non-American was ordered to leave the country.

ASK A JAG

Have a question? Email us.

Q: “I’ve been asked to join, in my personal capacity, and participate in, a private veteran organization (PO). What restrictions apply to me?”

A: “(1) You may join and participate in PO activities. You may also become an officer or director of a PO provided the positions are offered for reasons other than your federal position and you act exclusively outside of your official position. If you file an OGE 450 or OGE 278 financial disclosure report, you must report your position with the PO.

(2) You may engage in fundraising on behalf of POs (again in your personal capacity) provided that no DoD endorsement is implied, and as long as there is no personal solicitation of prohibited sources or their subordinates.

(3) You may make presentations and publish papers as part of PO activities. If the presentation or paper deals with DoD operations or policies, there must be a disclaimer that the views presented are personal and do not represent DoD.

(4) Subject to supervisory approval, you may use official time and material to prepare presentations and papers for non-profit associations and learned societies.”

You may not:

- (1) Coerce subordinates to join or participate in PO activities;
- (2) use your official position to imply endorsement of a PO;
- (3) participate in official federal action which affects the interests of a PO;
- (4) accept compensation for serving as a PO officer or director if you are a General Officer.

THINGS TO KNOW ABOUT... *Domestic Violence*

- The Lautenberg Amendment makes it unlawful for any person to transfer, issue, sell, or otherwise dispose of firearms or ammunition to any person that he or she knows, or has reasonable cause to believe, has been convicted of the crime of domestic violence.
- Commanders must notify Soldiers that they have an affirmative, continuing obligation to inform commanders or supervisors if they have, or later obtain, a qualifying conviction and that the revised DD Form 2760 (Qualification to Possess Firearms or Ammunition) will be made available to those Soldiers who come forward to report a qualifying conviction in compliance with their obligation to do so.
- If a commander knows, or has reasonable cause to believe, that a Soldier has a qualifying conviction, then the commander should take all reasonable action to investigate. A commander at any level may initiate the investigation by ordering the Soldier to complete DD Form 2760.
- If a commander knows or has reasonable cause to believe that a Soldier has a qualifying conviction, then he or she will immediately retrieve all Government-issued firearms and ammunition and advise the Soldier to consult with a legal assistance attorney for guidance on lawful disposal or sale of any privately owned firearms and ammunition.
- Accommodation: Domestic violence is incompatible with Army values and will not be tolerated or condoned. However, Soldiers will be given a reasonable time to seek expungement of, or to obtain a pardon for, a qualifying conviction and may extend up to one year for that purpose.

Source: AR 600-20, para 4-22

IMPORTANT **NEW** CHANGES TO ADMINISTRATIVE SEPARATIONS

Last month, the Dept. of the Army issued a major update to AR 135-178, Enlisted Administrative Separations, effective 7 December 2017. All commanders are encouraged to familiarize themselves with all the changes. Here's a summary of the changes:

1. Para. 1-9: Medical exams are required for Soldiers being processed under Chapter 6 (paras 6-3, 6-6, and 6-7 only and Chapter 11). Additionally, mental status evaluations are required under para 6-7 and Chapter 11.
2. Para. 11-4: Any Soldier convicted of a sex offense, but whose sentence did not include a punitive discharge, will be processed for separation. This policy applies to all Soldiers currently in the Army, regardless of when the conviction for a sex offense occurred and regardless of component of membership and current status in that component.
3. Para. 6-2: Soldiers may be separated on the basis of dependency or hardship. Dependency exists as a result of a death of a spouse or disability of Soldier's immediate family. Hardship does not involve death or disability in the Soldier's family but exists primarily due to parenthood that becomes incompatible with military service.
4. Para. 6-7: Soldiers may be separated on the basis of certain physical or mental conditions. The commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with DODI 6490.04. The evaluation will assess whether PTSD, TBI, depression, sexual assault, and other behavioral health conditions may be contributing factors to the basis for administrative separation.
5. Para. 6-7: Adds requirement to counsel Soldiers in writing to establish observed behavior of specific deficiencies that interfere with assignment to or performance of duty.
6. Para. 6-7: Requires higher level review by Office of the Surgeon General for administrative separation of Soldiers who have served or are currently serving in an imminent danger pay area.
7. Paras. 10-1, 11-1: Incorporates Army Directive 2012-17 re administrative separation of Soldiers for alcohol or other drug abuse. Commanders will process for separation all Soldiers who test positive for illegal drug use; are involved in two serious incidents of alcohol-related misconduct within a 12-month period, in accordance with AR 600-85; are involved in illegal trafficking, distribution, possession, use, or sale of illegal drugs, are convicted of driving while intoxicated or driving under the influence a second time during their career.
8. Chap 16: Moves the policy for the Qualitative Retention Program, to include use of the program as a force-shaping mechanism from AR 135-205 to AR 135-178.
9. Para. 16-5: Changes guidance for when a Qualitative Retention Board may convene.
10. Last, be aware that Chapters 10, 11, 12, and 13 have been shuffled. For example, Misconduct was formerly Chapter 12. Now it is Chapter 11. **As of 7 Dec 2017, Commanders need to ensure they are referring to the correct chapter if an administrative separation falls under chapters 10, 11, 12, or 13.**

CONSULT YOUR SERVICING JAG FOR ASSISTANCE

NJP OPTIONS CCMJ ARTICLE 114

UPON ENLISTED:

- Withholding of privileges for not more than 2 consecutive weeks;
- Restriction to certain limits, w/ or w/o suspension from duty, for not more than 2 consecutive weeks;
- Extra duties for not more than 14 days, which need not be consecutive, and for not more than 2 hours per day;
- Reduction to next inferior grade;
- Fine or forfeiture of pay of not more than \$50 for a single offense; not more than \$250 for multiple offenses;
- Non-Punitive Reprimand;
- MOS Reclassification; and/or
- Bar to Reenlistment

NEED LEGAL ASSISTANCE?

Landlord Tenant Issues?

Debtor/Creditor Problems?

Family Law Questions?

Need a Will, Power of Attorney or help with Estate Planning?

Want to know more about your Service member Rights?

**Contact Your Servicing
Judge Advocate for Help**