



THE ADVOCATE



The Colorado National Guard OSJA Newsletter February 2018

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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This Month in History

February 23, 1991 - In Desert Storm, the Allied ground offensive began after a devastating month-long air campaign targeting Iraqi troops in both Iraq and Kuwait.

February 27, 1991 - In Desert Storm, the 100-hour ground war ended as Allied troops entered Kuwait just four days after launching their offensive against Saddam Hussein's Iraqi forces.

Ethics Corner –

2017 ENCYCLOPEDIA OF ETHICAL FAILURE UPDATE

Abuse of Position

A Major General was demoted for an inappropriate relationship with a junior officer, which involved calling and texting her over 850 times. His wife was supposedly aware of the affair and posted messages regarding cheating on Twitter. Soldiers filed complaints about his ability to lead because of the affair. He was formally reprimanded and forced to retire.

Misuse of Government Resources

A Senior Official at a Combatant Command liked his spouse so much that he traveled with her in his official capacity to watch her run marathons. The only problem was that the Senior Official performed no official duties during these trips. He committed fraud by submitting time cards claiming he was on official duty when he was not performing official duties. After being threatened with termination, he chose to resign from his position.

Political activity violation

A Commerce Department supervisor was suspended for 50 days without pay for violating the Hatch Act. The supervisor engaged in partisan political activities while at work and solicited contributions for a political party by inviting about one hundred people to a fundraiser and asking them to mail checks to his home.

Fraud

A former senior employee of the Interior Department's Fish and Wildlife Service (FWS), pleaded guilty for making false statements in financial disclosure forms in an attempt to conceal approximately \$300,000 of income which he gained by deceptively working as treasurer of an association that received grants and cooperative agreements from FWS. He was sentenced to 3 years of probation and a \$10,000 fine for falsifying financial disclosure reports.

[Continued on page 2...]

2017 ENCYCLOPEDIA OF ETHICAL FAILURE UPDATE (*continued*)

Credit card abuse

A promising three-star general, was demoted to one star and retired following his involvement in a scandal. Allegations against him involved visiting night clubs in Seoul and Rome, a \$1,000 bar tab on his government issued credit card, and an inappropriate relationship with a female subordinate. The General will lose approximately \$10,000 in pension payments per year due to the demotion.

Abuse of Position

A supervisory agent of the Bureau of Land Management (BLM) used his law enforcement status to obtain three tickets to the sold-out Burning Man gathering in 2015 despite warnings on appearance concerns from his supervisors. Additionally, he ordered subordinates to book hotel arrangements, used on-duty BLM officers to transport his guests, and allowed his girlfriend to spend the night in an officially-assigned BLM trailer. His actions violated the ban on soliciting gifts from prohibited sources and misuse of BLM personnel and equipment. He was removed from his position.

Misuse of government resources and personnel

An Army General was stripped of his stars and forced out of the military for an eleven-year extramarital affair as well as living a swinger lifestyle, which he maintained with the help of his Department cell phone. Between June and November 2015, the General logged over 1,400 minutes of conversation with the woman who was a government contractor. Between October 2010 and November 2015, they exchanged 800 personal emails. The affair cost him \$40,000 in annual retirement pay.

Bribery

Retired Navy captain and U.S. naval attaché stationed in the Philippines pleaded guilty to conspiracy to commit bribery for working as an agent for Asian defense contractor Leonard Glenn Francis (“Fat Leonard”) in exchange for fine wines, hotel rooms, electronics, watches, and prostitutes. The Navy Captain gave Fat Leonard confidential correspondence and contracting documents. He was sentenced to 41 months in prison.

DISCLAIMER: DoD SOCO is unable to confirm the accuracy of all information reported in the cited articles. The purpose of the document is to provide leader’s ethics counselors with examples they may use when training personnel. This document should not be cited as authoritative guidance, DoD policy or law.

A NOTE RE: STANDARDS OF CONDUCT AND ETHICS

Department of the Army personnel must place loyalty to country, ethical principles, and law above private gain and other personal interests. The performance of their duties should be in keeping with the highest tradition of military and civilian service to the U.S. Government.

a. Guidance. Minimum standards of conduct required of all Soldiers and Army civilians are prescribed by DOD 5500.7–R that provides Army personnel with guidance on a multitude of ethical issues, including the avoidance of conflicts of interests between their commercial/financial interest and their official duties.

b. Annual training. Commanders at all levels will ensure that all Army personnel required to file either a public or confidential financial disclosure report, contracting officers, procurement officials, and others identified by an Army ethics counselor, receive face-to-face annual ethics training as prescribed by DOD 5500.7–R.

Guidance on Political Activity

During the election cycle all military personnel should be aware of the various limitations that exist when it comes to participation in political activity. A quick summary of the rules and links to substantive guidance are included below.

Military Members

The primary guidance concerning political activity for military members is found in DoD Directive 1344.10 [[Guidance for Military Personnel](#)]. Per longstanding DoD policy, active duty personnel may not engage in partisan political activities and all military personnel should avoid the inference that their political activities imply or appear to imply DoD sponsorship, approval, or endorsement of a political candidate, campaign, or cause. Members on active duty may not campaign for a partisan candidate, engage in partisan fundraising activities, serve as an officer of a partisan club, or speak before a partisan gathering. Active duty members may, however, express their personal opinions on political candidates and issues, make monetary contributions to a political campaign or organization, and attend political events as a spectator when not in uniform.

Social Media

Civilian and military personnel may generally express their personal views on public issues or political candidates via social media platforms, such as Facebook, Twitter, or personal blogs, much the same as they would be permitted to write a letter to the editor of a newspaper. If, when expressing a personal opinion, personnel are identified by a social media site as DoD employees, the posting must clearly and prominently state that the views expressed are those of the individual only and not of the Department of Defense.

As previously noted, military members and some restricted civilian employees are prohibited from participating in partisan political activity. Therefore, while these employees may “follow” “friend” or “like” a political party or candidate running for partisan office, they may not post links to, “share” or “re-tweet” comments or tweets from the Facebook page or Twitter account of a political party or candidate running for partisan office. Such activity is deemed to constitute participation in political activities. Social media guidance for military members and civilian employees can be found at the Standards of Conduct Office (SOCO) website.

Service members must also be careful not to comment, post, or link to material that violates the Colorado Code of Military Justice (CCMJ), the Uniform Code of Military Justice (UCMJ) or Service regulations. Examples include showing contempt for public officials, releasing sensitive information, or posting unprofessional material that is prejudicial to good order and discipline.

Use of Official DoD Seals and Emblems

Official seals of DoD and the Military Services may only be used for official purposes. Military Service marks, including those appearing on flags, “may not be licensed for use in a manner that creates a perception of DoD endorsement of any non-federal entity or its products or services.” DoDI 5535.12, Encl. 2, ¶ 2.d. DoD personnel authorized to participate in political activities in their personal capacities must not sanction use of a Military Service mark or flag or otherwise create an actual or apparent endorsement of a candidate or campaign by DoD or a Military Service.

For more information, personnel should contact their Judge Advocate office.

ASK THE JAG

Have a question? [Email us.](#)

Q: As a deployed Soldier, what financial obligations do I have to my family if I am separated from my spouse or in the process of obtaining a dissolution of my marriage?

A: Army Regulation 600-99 sets forth Army policy on financial support of family members, paternity, and child custody, while deployed, mobilized or on orders Title 10 or Title 32 orders for more than 30 days. Soldiers are required to manage their personal affairs in a manner that does not bring discredit upon themselves or the U. S. Army. This responsibility includes maintaining reasonable contact with family members so that their financial needs and welfare do not become official matters of concern for the Army; conducting themselves in an honorable manner with regard to parental commitments and responsibilities; providing adequate financial support to family members; and, complying with all court orders. In other words, regulations prohibit you from using your military status or assignment to deny financial support to family members or to evade court orders on financial support, child custody and visitation, paternity, and related matters. The bottom line: You must provide support to your family even if you are separated or in the midst of a divorce. Failure to do so can result in disciplinary action.

Finally, even if you are on IADT status and not on any type of orders, and you are not supporting your family, your commander may still take action for ignoring your moral and ethical obligation to support your spouse and children. Seek assistance from your servicing JAG if you have any questions.

COURT FORCES BMW TO PAY BACK UP FRONT MONEY ON AUTO LEASES

By John J. Gallegos, LTC(R)

For servicemembers who wish to cancel auto leases pursuant to the Servicemembers Civil Relief Act (SCRA), money paid up front can now be recovered. The protections of the SCRA now includes the refund of a portion of capitalized cost reduction (CCR) fees paid by servicemembers who lawfully terminate their automobile leases upon receipt of qualifying military orders. In a car lease, the CCR is basically a down payment. The Justice Department recently settled a case against BMW Financial Services for over \$2 million dollars on behalf of servicemembers who leased vehicles from BMWFS and paid up front money to reduce the monthly payment over the term of the lease. The servicemembers subsequently had to terminate their leases early because of deployment and were not refunded their CCR fees. The settlement highlights the purpose of the SCRA, which is to provide servicemembers with protections to enable them to devote their entire energy to the defense needs of the Nation and to protect their civil rights during military service. This settlement will affect future automobile lease practices and may have applicability to past agreements so long as they have not been barred by the Statute of Limitations. If you terminated an automobile lease within the past two years because of a deployment and have questions about whether you may be entitled to a refund, contact the Legal Office.

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From the Legal Assistance Office: Harassed by a debt collector?

The Fair Debt Collection Practices Act (FDCPA) applies to debts like mortgages, credit cards, medical debts, and other personal or family debts. Debts have certain rights and the one of those is the right to be free from debt collectors who harass, oppress, or abuse you or anyone else they contact.

Harassment by a debt collector can come in different forms. Examples include repetitious phone calls that are intended to annoy, abuse, or harass you or any person answering the phone; obscene or profane language; threats of violence or harm; publishing lists of people who refuse to pay their debts (this does not include reporting information to a credit reporting company); and calling you without telling you who they are.

If you have any problems with harassing debt collectors, contact your servicing JAG office for assistance.

New Policy on Harassment Prevention and Response

All servicemembers and commanders need to be aware that on February 8, 2018, the Office of the Under Secretary of Defense for Personnel and Readiness released a new policy to address harassment.

The new policy establishes a comprehensive, DoD-wide military harassment prevention and response program. It also updates harassment prevention and response procedures for Service members to submit harassment complaints, including anonymous complaints; procedures and requirements for responding to, processing, resolving, tracking, and reporting harassment complaints; and training and education requirements and standards.

The policy also standardizes definitions. Harassment, for instance, is defined broadly: *“Behavior that is unwelcome or offensive to a reasonable person, whether oral, written, or physical, that creates an intimidating, hostile, or offensive environment. Harassment can occur through electronic communications, including social media, other forms of communication, and in person. Harassment may include offensive jokes, epithets, ridicule or mockery, insults or put-downs, displays of offensive objects or imagery, stereotyping, intimidating acts, veiled threats of violence, threatening or provoking remarks, racial or other slurs, derogatory remarks about a person’s accent, or displays of racially offensive symbols.”*

The new policy also defines in great detail discriminatory harassment, bullying, sexual harassment, hazing, retaliation, and reprisal.

Questions should be directed at EO and JAG personnel.



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

The COARNG JAG Corps says “Farewell” to one of its own

As of February 28, the COARNG JAG Corps is losing one of its own. LTC(R) John Gallegos, who has been with the COARNG since before dirt was invented, is leaving us (but not for long, we hope). As many of you know, when he retired a few years ago, he “refused” to leave and has been “squatting” in his office ever since. He has become such a fixture (like a kitchen sink) around here that we couldn’t say goodbye. But he’s more than a fixture or an attorney, really. In fact, he’s become our mascot and it’s really hard say goodbye to your mascot. That and pressure from his wife to keep him here led us to do just that. So we asked the commander if we could keep him and he said yes. So we kept him and have been working him like a dog ever since. And like a dog, he has been a loyal and constant companion to us, our Soldiers and Airmen, and our commanders. Beloved, revered, and respected, he has proven that he is indeed indispensable. In fact, if it wasn’t for HRO telling us they were finally going to stop paying him whether we kept him here or not, we would keep him (we have no idea what we would do without him). He has to go, but he doesn’t want to leave! So what could we do? Enter the Title 5 technician conversion plan! Successful in converting his position to Title 5, we can now fill it. Yay! With encouragement from us and with some “gentle” prodding from his wife, John has applied for his old job. We shall see what happens and wish him luck, but in the meantime, John will have to return home (whether he likes it or not, and whether we like it or not) and address what we’re sure is a long “to do” list that will keep him busy for weeks. While his old office is empty, be gentle with the JAG office. We’re without our loyal servant and mascot.

THINGS TO KNOW... about Extremist Organizations

Participation in extremist organizations and activities by Army personnel is inconsistent with the responsibilities of military Service. It is the policy of the United States Army to provide EO and treatment for all Soldiers without regard to race, color, religion, gender, or national origin. Enforcement of this policy is a responsibility of command, is vitally important to unit cohesion and morale, and is essential to the Army's ability to accomplish its mission. It is the commander's responsibility to maintain good order and discipline in the unit. Every commander has the inherent authority to take appropriate actions to accomplish this goal.

Military personnel must reject participation in extremist organizations and activities. Extremist organizations and activities are ones that advocate—

- (1) Racial, gender, or ethnic hatred or intolerance.
- (2) Creating or engaging in illegal discrimination based on race, color, gender, religion, or national origin.
- (3) The use of force or violence or unlawful means to deprive individuals of their rights under the United States Constitution or the laws of the United States, or any State.
- (4) Support for terrorist organizations or objectives.
- (5) The use of unlawful violence or force to achieve goals that are political, religious, or ideological in nature.
- (6) Expressing a duty to engage in violence against DOD or the United States in support of a terrorist or extremist cause.
- (7) Support for persons or organizations that promote or threaten the unlawful use of force or violence.
- (8) Encouraging military or civilian personnel to violate laws or disobey lawful orders or regulations for the purpose of disrupting military activities (subversion).
- (9) Participating in activities advocating or teaching the overthrow of the U.S. Government by force or violence, or seeking to alter the form of government by unconstitutional means (sedition).

Source: AR 600-20, para 4-12

NEED LEGAL ASSISTANCE?

Landlord Tenant Issues?

Debtor/Creditor Problems?

Family Law Questions?

Need a Will, Powers of Attorney or Estate Planning?

Want to know more about your Servicemember Rights?

**Contact Your Servicing
Judge Advocate for Help**