



UNITED STATES MARINE CORPS
MARINE FORCES RESERVE
MARINE FORCES NORTH
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ForO 5800.6B

SJA

OCT 22 2015

FORCE ORDER 5800.6B

From: Commander

To: Distribution List

Subj: MARINE FORCES RESERVE (MARFORRES) AND MARINE FORCES NORTH
(MARFORNORTH) LEGAL ADMINISTRATION MANUAL

Ref: (a) SECNAVINST 5430.25
(b) ForO P5000.6D
(c) Marine Corps Manual for Court-Martials (MCM)
(d) MCO P1900.16F Ch 2
(e) MCO 3300.4A
(f) ~~JAGINST 5800.7F~~
(g) MCO P1400.32D Ch. 2
(h) SECNAVINST 5430.107
(i) ~~MCO P5800.16A Ch 1-7~~
(j) MCO 1050.16A
(k) ~~ForO 5800.2B~~
(l) ForO 1300.8A
(m) MCO 1001R.1K
(n) SECNAVINST 1920.6C Ch 5
(o) MCO P1070.12K Ch 1
(p) MCO 6110.3
(q) SECNAV M-5210.1
(r) TITLE 10 of U.S. Code
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(t) DoDI 1215.06
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(w) SECNAVINST 5710.25B
(x) DoDD 5210.56
(y) SECNAVINST 5500.29C
(z) MCO 5500.6H Ch 1
(aà) DoD 3025.18
(ab) DoDI 6055.06
(ac) DoDI 3025.21
(ad) CJCSI 3121.01B
(ae) DoD 5240.1
(af) DoD 5240.1-R
(ag) SECNAVINST 3820.3E

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Encl: (1) Legal Administration Standard Operating Procedures
(Legal Admin SOP)

1. Situation. To promulgate legal advice, policies, and procedures with respect to legal matters to the staff, subordinate commands, organizations, and individuals for which the Commander, MARFORRES/MARFORNORTH (COMMARFORRES/MARFORNORTH) is the Force Commander, exercising General Court-Martial Convening Authority and Show Cause Authority.

2. Cancellation. ForO P5800.6A.

3. Mission. This Order supplements directives of higher authority and establishes guidelines for the administration of legal matters within MARFORRES/MARFORNORTH. If this Order should conflict with any directive of a higher authority, the directive of that higher authority will take precedence.

4. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent

(a) Promulgate a streamlined, uniform, system for administering legal support to units within MARFORRES.

(b) Provide guidance that serves as a tool for units within MARFORRES while maintaining Commander's flexibility to meet mission requirements.

(2) Concept of Operations. Establish policies, procedures, and guidance to facilitate optimal access to units within MARFORRES in support of its Commanding Officer's legal and administrative mission.

b. Subordinate Element Missions

(1) Commanding Generals, 4th Marine Division (4th MarDiv), 4th Marine Logistics Group (4th MLG), 4th Marine Aircraft Wing (4th MAW) and Force Headquarters Group (FHG). Exercise operational control and are the designated General Courts-Martial Convening Authority over the units within each Major Subordinate Command (MSC).

OCT 22 2015

(2) Commanding Officers. Exercise operational control over their designated units and act as Special Courts-Martial Convening Authority, as applicable.

(3) Inspector-Instructors. Active duty Commanding Officers who instruct and assist Selected Marine Corps Reserve (SMCR) units to maintain a continuous state of readiness for mobilization; inspect and render technical advice in command functions including administration and legal support. Act as Special Courts-Martial Convening Authority, as applicable.

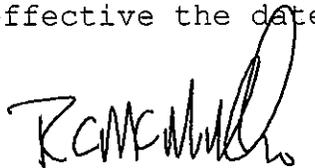
c. Coordinating Instructions. None.

5. Administration and Logistics. Recommendations concerning the contents of enclosure (1) are invited. Such recommendations will be forwarded to the MARFORRES Staff Judge Advocate (SJA) via the chain of command.

6. Command and Signal

a. Command. This Order is applicable to MARFORRES and MARFORNORTH.

b. Signal. This Order is effective the date signed.


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LOCATOR SHEET

Subj: LEGAL ADMINISTRATION STANDARD OPERATING PROCEDURE (SHORT
TITLE: LEGAL ADMIN SOP)

Location: _____
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TABLE OF CONTENTS

<u>IDENTIFICATION</u>	<u>TITLE</u>	<u>PAGE</u>
Chapter 1	ADMINISTRATION AND ORGANIZATIONAL MATTERS.....	1-1
1.	Shared Service.....	1-1
2.	Organization of the Legal Community.....	1-1
3.	Command Responsibility.....	1-4
4.	Succession of Command Guidance.....	1-4
Chapter 2	MILITARY JUSTICE.....	2-1
1.	General.....	2-1
2.	Convening Authority (CA).....	2-1
3.	Jurisdiction.....	2-2
4.	Officer Misconduct.....	2-3
5.	Investigation of Suspected Misconduct.....	2-3
6.	Sexual Assault and Hazing.....	2-4
7.	Searches and Seizure.....	2-4
8.	Confessions and Admissions.....	2-5
9.	Pretrial Restraint.....	2-6
10.	Requesting Legal Services (RLS) for Courts-Martial.....	2-6
11.	Location of a Court-Martial or Article 32...2-7	2-7
12.	Funding Courts-Martial.....	2-7
13.	Appellate Leave.....	2-7
14.	Victim and Witness Assistance Procedures....2-8	2-8
Chapter 3	OFFICER MISCONDUCT.....	3-1
1.	General.....	3-1
2.	Initial Actions on Suspected Misconduct.....	3-1
3.	Command Action in Response to Misconduct...3-2	3-2
4.	Courts-Martial Officers.....	3-3
Chapter 4	ENLISTED NON-JUDICIAL PUNISHMENT (NJP).....	4-1
1.	General.....	4-1
2.	Authority to Impose Non-Judicial Punishment.....	4-1
3.	Jurisdiction.....	4-2
4.	NJP Counseling.....	4-3
5.	The NJP Proceeding.....	4-4

TABLE OF CONTENTS

<u>IDENTIFICATION</u>	<u>TITLE</u>	<u>PAGE</u>
6.	Maximum Punishment.....	4-4
7.	Limitations on Punishment.....	4-7
8.	Effective date of Punishments.....	4-7
9.	Appeal of NJP.....	4-8
10.	Action by Superior Authority on NJP Appeal.....	4-8
Figure 4-1	Maximum Punishment Table.....	4-10
Chapter 5	Enlisted Administrative Separations.....	5-1
1.	General.....	5-1
2.	Staff Responsibility.....	5-1
3.	Judge Advocate Review.....	5-1
4.	Initiating Action.....	5-1
5.	Characterization of Service Upon Separation.....	5-2
6.	Specific Basis for Involuntary Separation.....	5-3
7.	Unsatisfactory Participation in the Ready Reserve.....	5-4
8.	Misconduct.....	5-4
9.	Commission of a Serious Offense.....	5-4
10.	A Pattern of Misconduct.....	5-5
11.	Drug Abuse.....	5-5
12.	Minor Disciplinary infractions.....	5-6
13.	Alcohol Rehabilitation Failure.....	5-6
14.	Weight Control Failure/Body Composition Program (BCP) Failure.....	5-6
15.	Unsatisfactory Performance of Duties.....	5-7
16.	Convenience of the Government, Physical Standards.....	5-8
17.	Convenience of the Government, Condition not a Disability.....	5-8
18.	Convenience of the Government, Personality Disorder.....	5-9
19.	Command Legal Action (CLA) Packages.....	5-9
20.	Respondent's Right to Consult with Judge Advocate before Executing the Acknowledgement of Rights Form.....	5-12

TABLE OF CONTENTS

<u>IDENTIFICATION</u>	<u>TITLE</u>	<u>PAGE</u>
21.	Command Letter of Recommendation for Administrative Separation (Without Board)...	5-12
22.	Rebuttal Statements by Marine.....	5-13
23.	Service and Signature.....	5-13
24.	Additional Requirement for Conduct by Reservist in the Civilian Community While Not in a Duty Status.....	5-14
25.	Administrative Separation Boards.....	5-14
26.	Detail of Administrative Separation Board Personnel.....	5-15
27.	Notice of Separation Board; Respondent's Absence.....	5-15
28.	Conditional Board Waiver.....	5-16
29.	Separation Board.....	5-16
30.	Return of Packages by MARFORRES OSJA for Correction.....	5-17
31.	Action by the Separation Authority.....	5-17
Chapter 6	ADMINISTRATIVE INVESTIGATION.....	6-1
1.	General.....	6-1
2.	Preliminary Inquiry.....	6-1
3.	Command Investigations.....	6-1
4.	Litigation-Report Investigation.....	6-1
Figure 6-1	When a Line of Duty (LOD)/Misconduct Determination is Required.....	6-3
Chapter 7	OPERATIONAL LAW.....	7-1
1.	General.....	7-1
2.	Operational Reserve.....	7-1
3.	Military Justice at Intermediate Location (ILOC), Deployment, and Return.....	7-1
4.	Separate and Detached Commands.....	7-2
5.	Status of Forces Agreements.....	7-2
6.	Law of War Training.....	7-3
7.	Use of the Reserve Personnel for Anti-Terror/Force Protection (AT/FP).....	7-3
8.	Domestic Operations - General.....	7-4
9.	Immediate Response Authority.....	7-5

TABLE OF CONTENTS

<u>IDENTIFICATION</u>	<u>TITLE</u>	<u>PAGE</u>
10.	Disaster Relief.....	7-6
11.	Mutual Aid Agreements.....	7-6
12.	Posse Comitatus Act (PCA).....	7-7
13.	Civil Disturbance Operations.....	7-8
14.	Rules for the Use of Force.....	7-9
15.	Intelligence Oversight.....	7-9
16.	Marine Forces North (MARFORNORTH).....	7-9
Figure 7-1	Marine Corps Reserve Utilization Authorities.....	7-11
Figure 7-2	Posse Comitatus Act (PCA) Applicability and Exceptions.....	7-12
Figure 7-3	MARFORNORTH Command Structure.....	7-13

Chapter 1

Administrative and Organizational Matters1. Shared Service

a. Marine Forces Reserve (MARFORRES) Office of the Staff Judge Advocate (OSJA) support is a shared service. This means that MARFORRES OSJA is the primary provider of command legal advice for Marine Forces North (MARFORNORTH), MARFORRES and all of MARFORRES's Major Subordinate Commands (MSC) and units.

b. The MARFORRES Staff Judge Advocate (SJA) is a special staff officer to Commander, MARFORRES (COMMARFORRES) and advises the Commander and MARFORRES staff sections on all legal matters.

c. Providing legal advice in a shared service environment that supports multiple commanders within the same chain of command creates unique challenges in maintaining the confidentiality promised to the supported commanders. In an effort to maintain trust and confidence with the supported commanders, it is imperative that MARFORRES units/commands do not expect or assume MARFORRES OSJA is providing legal updates and/or information up or down the respective chain of commands as this is a command function vice a legal function.

2. Organization of the Legal Community

a. Throughout the Marine Corps, all legal support is divided into two separate functional chains of command: (1) Command Advice; and (2) Legal Services. MARFORRES OSJA provides command advice for MARFORRES and MARFORNORTH whereas the Legal Services Support Section, National Capital Region, (LSSS, NCR) provides legal services for MARFORRES/MARFORNORTH units.

b. Command Advice. MARFORRES OSJA, MSC Selected Marine Corps Reserve (SMCR) SJAs and MARFORRES Counsel's office all support certain aspects of the command advice legal mission. Command advice mission covers most legal issues a commander may face, including military justice, officer misconduct, officer and enlisted involuntary separations, claims against the government, administrative and criminal investigations, military personnel issues, ethics, installation law, international and operational law, and congressional correspondence.

(1) MARFORRES OSJA. Consists of the MARFORRES SJA, the MARFORRES Deputy SJA, MARFORRES OSJA MSC Judge Advocate Representatives (hereinafter referred to as MSC Legal Advisors), and support staff.

(a) The MARFORRES SJA and Deputy SJA serve as the primary command advice attorneys for COMMARFORRES and staff.

(b) MARFORRES OSJA attorneys designated as MSC Legal Advisors will serve as the primary point of contact for their respective MSC's legal issues. Contact information for all designated MSC Legal Advisors is maintained on the MARFORRES OSJA SharePoint page; <https://sharepoint.marforres.usmc.mil/SJA/SitePages/Home.aspx> MSC Legal Advisors will work closely with their respective MSC SMCR SJA's to ensure continual legal support to the MSCs and their units.

~~(c) Although, MSC Legal Advisors and MSC SMCR SJAs will have overlapping responsibilities, MSC Legal Advisors shall be the primary point of contact for advice and coordination of criminal investigations. Commands will ensure that all criminal investigators; whether Naval Criminal Investigate Service (NCIS), Criminal Investigation Division (CID), other Department of Defense (DoD) investigators or command appointed investigating officers, be provided the contact information of the respective MSC Legal Advisor.~~

(d) MSC Legal Advisors in a coordinated effort with the MSC SMCR SJAs will also provide advice and legal sufficiency review for units processing enlisted members for separation.

(2) MSC SMCR SJAs. All MARFORRES MSCs have SMCR SJAs and Deputy SJA billets. The MSC SMCR SJAs will perform duties as special staff officers to their respective Commanding Generals (CGs). As SMCR SJAs should avoid providing legal advice while not in a duty status, they should work closely with their MSC Legal Advisor counterparts to ensure MSCs and subordinate commands have continued access to command legal advice. Although this SOP requires MSC Legal Advisors to serve as the primary point of contact on all criminal justice matters, MSC SMCR SJAs should remain actively engaged on course of action development and command advice for criminal justice matters.

(3) MARFORRES Office of Counsel. The MARFORRES Office of Counsel is composed of civilian attorneys who are members of the Office of General Counsel, Department of the Navy. Counsel provides legal advice to the COMMARFORRES/MARFORNORTH, MARFORRES staff sections, and subordinate commands on legal issues in the areas of environmental law, real property law, equal employment opportunity, civilian personnel law, government contract and fiscal law, government standards of conduct, and other areas specified by reference (a). The Office of Counsel also serves as the MARFORRES Ethics Counselor and administers the MARFORRES Freedom of Information Act Program. (See also reference (b)).

c. Legal Services. LSSS, NCR provides the following legal services to MARFORRES and MARFORNORTH:

(1) Trial and defense counsel support for courts-martial, recorder and counsel for the respondent support for officer and enlisted administrative separation boards, court-reporter support for courts-martial and post-trial review of all courts-martial.

(2) Although LSSS, NCR is primarily responsible for providing these legal services, actual services may be provided by another geographically closer LSSS on a case-by-case basis with coordination through LSSS, NCR.

(3) A unit deciding to conduct a court-martial or administrative separation board shall request legal services support from the LSSS, NCR through a Request for Legal Services (RLS) (See chapter 2 of this Order). All RLS' shall be routed through the MARFORRES OSJA, Legal Chief before going to the LSSS, NCR.

d. Interplay of LSSS and Command advice: Legal issues sometimes require commanders and units to work closely with attorneys from both the command advice and legal services functional chain simultaneously. This will most frequently occur when commands are handling military justice matters such as trial negotiations, criminal disposition course of action development and post-trial processing.

3. Command Responsibility. Commanders ultimately are responsible for maintaining good order and discipline within their commands and conducting required legal training.

Commanding Officers (CO), Site Commanders, and Inspector-Instructors (I-I) will ensure that the following instructions are carried out as required by current directives:

a. Periodic explanation of reference (c) as required by Article 137, Uniform Code of Military Justice (UCMJ);

b. Periodic explanation of the types of characterization of service upon separation, the basis for the characterization, and their possible effects upon reenlistment, civilian employment, veterans benefits and denial of certain benefits to members who fail to complete at least two years of their original enlistment, as required by reference (d); and

c. Law of War and operational law training as required by reference (e).

4. Succession of Command Guidance. Reserve CO's, Site Commanders, or I-I's may exercise command authority over members of that officer's command or upon service members that are assigned or attached to that command by written orders. An I-I or Site Commander may succeed a supported unit's CO and exercise command authority and administrative control over members of the supported reserve command in the temporary absence of the reserve CO when that reserve CO is not in a duty status or is otherwise unavailable to execute command functions. Individual command's succession of command authorities should be documented in a succession of command letter from the reserve CO to his/her successor to command (I-I or Site CO), based upon the guidance above to ensure there is no question as to the intent of the reserve CO. Individual units should contact their SJA Command Legal Advisor for guidance on drafting succession of command letters.

Chapter 2

Military Justice

1. General. Military justice is a leadership tool and a function of command. Every commander is encouraged to establish a command disciplinary program that includes utilization of non-punitive administrative measures, non-judicial punishment (NJP), and courts-martial. While courts-martial are a key part of the command disciplinary program, they should be used as a last resort and only for those cases where all lesser forms of discipline have been considered and determined to be inadequate to address the alleged misconduct. Commanders should seek guidance from their respective MSC Legal Advisor prior to deciding to refer the case to a court-martial.

a. The rules governing courts-martial apply to both the regular and reserve components of the Marine Corps. However, due to the ~~unique nature of reserve members~~ and dispersion of this command, certain differences in the application of those rules make the MARFORRES military justice system unique. This chapter addresses some of those differences to assist MARFORRES commanders in understanding what unique challenges must be overcome to apply the UCMJ to Marines and Sailors within their command.

b. As outlined in Chapter 1, the MARFORRES OSJA is responsible for command advice on all military justice matters. Each MSC and MARFORNORTH has a specific Legal Advisor within MARFORRES OSJA who serves as the primary point of contact for all of their legal matters. LSSS, NCR provides actual trial support to MARFORRES.

2. Convening Authority (CA)

a. General Court-Martial Convening Authority (GCMCA). Per references (c) and (f) designate officers authorized to convene General Courts-Martial (GCM). Within MARFORRES, COMMARFORRES and the CGs of the 4th Marine Division (4th MARDIV), 4th Marine Aircraft Wing (4th MAW), 4th Marine Logistics Group (4th MLG), and Force Headquarters Group (FHG) are authorized by references (c) and (f) to convene GCM. COMMARFORRES in his/her capacity as Commander of MARFORNORTH is also authorized to convene a GCM.

b. Special Court-Martial Convening Authority (SPCMCA). In addition to those officers authorized by reference (c) to convene Special Courts-Martial (SPCM), reference (f) authorizes the following officers, when in an active duty, active duty for training, or inactive duty training status to convene SPCM:

(1) Regular and Reserve CO of all battalions and squadrons.

(2) Any commander in the operational or administrative chain of command whose subordinates have authority to convene SPCM.

(3) All I-I and Site COs of SMCR organizations.

c. Multiple Convening Authorities. It is not uncommon for a reserve Marine to be subject to multiple CAs for an offense. When an individual is subject to punishment by more than one commander, it is incumbent on those commanders to coordinate who will exercise disciplinary authority.

d. COMMARFORRES withholding of SPCMCA

(1) Pursuant to the authority vested in COMMARFORRES by Rules for Courts-Martial (R.C.M.) 306 of reference (c) and (f) the exercise of SPCMCA for all I-Is below the battalion or equivalent level is hereby withheld. Additionally, SPCMCA is hereby withheld from all site commanders below the grade of O-4 (Major/Lieutenant Commander).

(2) The withholding of the exercise of SPCMCA does not affect summary courts-martial CA; NJP authority; promotion authority granted by reference (g); nor authority to convene an Administrative Separation Board.

3. Jurisdiction

a. Jurisdiction is the power of a court to hear a case and to render a binding judgment. In order for a court-martial to have jurisdiction over a service member, the service member must have been subject to the UCMJ at the time of the offense and also be subject to the UCMJ at the time of trial. Members of the regular component are always subject to the UCMJ. Members of the SMCR are only subject to the UCMJ while serving on active duty, inactive duty for training, or when lawfully called or

ordered to duty or training. These jurisdictional requirements also apply to NJP as discussed in Chapter 4 of this Order.

b. See R.C.M. Chapter 2 of reference (c) and (f) for specific guidance regarding criminal jurisdiction.

4. Officer Misconduct. As COMMARFORRES retains primary disposition authority over all Officer Misconduct, refer to Chapter 3 of this Order for specific guidance regarding disposition of Officer Misconduct.

5. Investigation of Suspected Criminal Misconduct

a. Poorly coordinated investigations not only lead to inefficiencies, but also may have a negative impact on the ultimate disposition of a crime. As such, it is critical that MARFORRES commanders ensure proper coordination with their respective MSC Legal Advisor and investigative agencies or command investigating officers.

b. Upon receipt of information indicating that a service member committed an offense triable by court-martial, the immediate commander should decide on how to proceed with investigating said allegations. The MSC Legal Advisor can assist the commander with deciding on investigative options.

c. Naval Criminal Investigative Service (NCIS) or other DoD Investigative Agency. A commander should always first consider the use of NCIS or other DoD investigative agency as a primary investigative option for suspected criminal misconduct. Reference (h), provides amplifying information as to what criminal offenses shall immediately be referred to NCIS. The referral to NCIS or any other DoD investigative agency should be made before any substantive investigative steps are taken by the command, unless such steps are necessary to protect life or property or to prevent the destruction of evidence.

(1) All sexual assault allegations should be immediately referred to NCIS or other DoD investigative agency.

(2) Because of the unique geographical dispersion of MARFORRES the lead investigative support agency for a command may not always be clear. MARFORRES commanders should identify and make liaison with the lead DoD investigative agency for

their area before an incident occurs. Additionally, a commander should not assume the lead investigative agency understands the reserve chain of command and who provides MARFORRES criminal justice legal support. Therefore, it is important for MARFORRES commanders to ensure proper coordination between the lead investigative agency and their respective MSC Legal Advisor is made early in any criminal investigation.

d. R.C.M. 303 Preliminary Inquiry. The focus of this type of investigation should be to provide the commander with sufficient information to assist him or her in understanding the facts and circumstances surrounding the allegations so informed decisions regarding the appropriate administrative or disciplinary action can be made. The investigation should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation. The thorough investigative requirements of an R.C.M. 303 investigation are distinguishable from the informal nature of a ~~JAGMAN Preliminary Inquiry.~~

e. Civilian Law Enforcement. Commanders should be aware that there are circumstances where civilian law enforcement may be the primary investigative agency. This often occurs with reserve Marines in a non-duty status or serious offenses that occur off an installation and involving civilian victims. In these circumstances, DoD investigative agencies may serve as a liaison for the command. A commander should consult with their respective MSC Legal Advisor if a concurrent command investigation is contemplated.

6. Sexual Assault and Hazing. Allegations of sexual assault and hazing have special reporting requirements. Commanders should be familiar with reference (i) for detailed information. As these specific types of misconduct have unique requirements, commands shall immediately contact their respective MSC Legal Advisor for investigative and dispositional guidance.

7. Searches and Seizure

a. Power to Authorize. A commander or any other person serving in a position of command, for example an officer-in-charge (OIC), who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war can authorize a

search. Commanders authorizing a search based upon probable cause should use the form located in reference (f) as a guide to record their decision authorizing the search.

b. Military Rules of Evidence (MRE) 311-316 of reference (c) provides guidance for search and seizure issues, however, it is important for commanders contemplating conducting any search for evidence to closely coordinate with their respective MSC Legal Advisor.

c. Exigencies - Probable Cause Searches without Authorization. A search authorization is not required for a search based upon probable cause where:

(1) There is a reasonable belief that the delay in obtaining a search authorization would result in removal, destruction, or concealment of the property or evidence sought.

(2) ~~There is a reasonable military operational necessity that is believed to prohibit or prevent communication with a person empowered to grant a search warrant or authorization, and there is a reasonable belief that the delay in obtaining a search authorization would result in removal, destruction, or concealment of the property or evidence sought.~~

(3) An operable vehicle is to be searched.

d. Consent Searches. Searches may be conducted of any person or property with lawful consent. However, to be valid, consent must be voluntary. A service member voluntarily consents when there is no coercion or influence or rank, and the service member understands his/her rights to refuse the search. If a free and voluntary consent is obtained there is no requirement for probable cause or a search authorization. That being the case, the person conducting the search should first seek consent even if he or she has a search authorization and probable cause exists. If more than one person has control over property or the place to be searched either can authorize the search of the whole. For example, a military spouse can authorize the search of on-base quarters even though the command is seeking evidence against the military member. Reference (f) provides a sample consent to search form for use by commanders.

8. Confessions and Admissions: As a general rule, commanders are encouraged to use NCIS agents or other available DoD investigators to question military suspects. However, when

support of military investigators is not available, investigating officers planning to interview a military suspect should refer to reference (f). To ensure the suspect's confession or admissions are admissible in a later court-martial, the form must be completed prior to questioning or requesting a statement from a military suspect. If a suspect asserts his or her right to remain silent or requests to speak to an attorney, questioning must cease immediately. If possible, it is highly recommended that the command contact their respective MSC Legal Advisor before conducting any interview of a criminal suspect.

9. Pretrial Restraint

a. Geographic, manpower, and installation limitations create unique challenges for COs and I-Is considering pretrial restraint. Not all forms of pretrial restraint are available to Commanders within MARFORRES. For instance, many MARFORRES units do not have ~~enlisted quarters to house Marines~~ they want to place on pretrial restriction, while others are not located near a confinement facility where pretrial confinement may be utilized. MARFORRES commanders should consult their respective MSC Legal Advisor when considering pretrial restraint options. An improper imposition of pretrial restraint could have a significant negative impact on criminal justice proceedings.

b. Because of the unique circumstances of the reserve system, it is recommended that commanders consider pretrial restraint options and develop how they would be implemented in advance of any situation actually requiring a form of pretrial restraint.

c. See R.C.M. 304, 305 of reference (c) and (f) for specific guidance regarding imposition of pretrial restraint.

10. Requesting Legal Services (RLS) for Courts-Martial

a. If a commander desires that an allegation of misconduct be disposed of at any level of courts-martial, a RLS must be submitted to the LSSS, NCR via their respective MSC Legal Advisor. A sample RLS can be obtained from the MARFORRES OSJA SharePoint page, <https://sharepoint.marforres.usmc.mil/SJA/SitePages/Home.aspx>. Regardless of the close proximity of any LSSS, all MARFORRES RLS' shall be routed through their respective MSC Legal Advisor.

b. The RLS will be forwarded with a copy of all available documentary evidence, a copy of the accused's service record book, and the court-martial convening order. The RLS must specifically state whether the CA desires support for a summary court-martial, a SPCM, or an Article 32 hearing for possible referral to a GCM.

c. Commanders should not draft charge sheets, prefer charges, or refer charges to a court-martial. All charge sheets and charges concerning MARFORRES Marines or sailors will originate from the LSSS, NCR.

11. Location of a Court-Martial or Article 32. The officer convening the court-martial or Article 32 establishes the location. As there are many unique factors that should be taken into consideration when determining the best location for a trial or Article 32 hearing, a commander should consult with their respective MSC Legal Advisor to assist with evaluating location options.

12. Funding Courts-Martial

a. The CA convening the court-martial or Article 32 investigation is responsible for all costs associated with the case. If, following the Article 32 pretrial investigation, charges are referred to a GCM, the GCMCA will be responsible for the remaining associated costs.

b. MARFORRES Commands shall not be required to fund courts-martial being conducted by non-MARFORRES commands. Although a witness to a court-martial may be a member of a reserve command, the reserve command should not fund the requested reserve witness's travel if the travel is in support of a non-MARFORRES court-martial.

13. Appellate Leave

a. General

(1) In all cases in which a punitive discharge is awarded and subsequently approved by the CA, the Navy-Marine Corps Appellate Review Activity (NAMARA) must review the case prior to the execution of the punitive discharge. This mandatory appellate review can take up to 24 months from the date of trial. It is not uncommon for a convicted service member to have served his/her period of confinement prior to the

CA acting on the adjudged sentence or the punitive discharge being approved by NAMARA. Reference (j) provides detailed guidance for leave while awaiting the CA's action or the decision of appellate review by NAMARA.

(2) Appellate leave is a commander's administrative responsibility and is initiated at the command level. LSSS, NCR nor the command's MSC Legal Advisor is responsible for tracking and initiating appellate leave for a convicted Marine pending discharge.

b. Voluntary Appellate Leave. Voluntary Appellate leave is utilized when the convicted Marine was awarded no confinement or has served all of the adjudged confinement before the CA's action is complete. Per reference (j), only a GCMCA may grant voluntary appellate leave. A convicted service member cannot be placed on appellate leave without his or her consent prior to the CA taking final action on the case. See reference (j) and/or visit the Navy and Marine Corps Appellate Leave Activity (NAMALA) website, <http://www.hqmc.marines.mil/Agencies/NavyMarineCorpsAppellateLeaveActivity.aspx>, for specific guidance.

c. Involuntary Appellate Leave. Involuntary Appellate Leave can be initiated by the command, upon completion of CA's action. Upon the CA approving a punitive discharge resulting from a SPCM or a GCM, the first GCMCA in the chain of command can place the convicted service member on involuntary appellate leave. If the convicted service member is already on voluntarily appellate leave, his or her leave status will be changed to involuntary appellate leave upon CA's action. When the command changes the service member's leave status it must send written notification to the Marine of the change in appellate leave status. Regardless of whether the case was a GCM or SPCM, only a GCMCA may direct a service member sentenced by a court-martial to dismissal or punitive discharge to involuntary appellate leave, and it may only be done after the respective CA has taken action on the case approving the punitive discharge. See reference (j) and/or visit the NAMALA website, <http://www.hqmc.marines.mil/Agencies/NavyMarineCorpsAppellateLeaveActivity.aspx>, for specific guidance.

14. Victim and Witness Assistance Procedures

a. The MARFORRES policy regarding victim and witness assistance is to provide the best possible protection and

assistance to victims and witnesses of crime without infringing upon the Constitutional rights of the accused. The goal is to mitigate, within the means of available resources and in accordance with applicable law, the physical, psychological, emotional, and financial hardships suffered by victims of crimes, while fostering cooperation by victims and witnesses.

b. Reference (k) provides specific guidance on implementation of the Victim and Witness Assistance Program throughout MARFORRES and MARFORNORTH.

Chapter 3

Officer Misconduct

1. General. COMMARFORRES retains primary dispositional authority over all officer misconduct cases within MARFORRES and MARFORNORTH. No disciplinary or adverse administrative actions will be taken against officers for misconduct related events without COMMARFORRES approval. Prohibited adverse actions for misconduct related events, prior to COMMARFORRES review, include, but are not limited to, relief for cause, NJP, non-punitive censure, and adverse performance evaluations. COMMARFORRES' retention of primary dispositional authority does not preclude MSC commanders from requesting dispositional authority over substantiated Officer misconduct incidents on a case-by-case basis.

a. Although COMMARFORRES is the primary dispositional authority of all officer misconduct, subordinate commanders are responsible for ensuring all suspected officer misconduct is appropriately reported up the chain of command, adequately investigated and forwarded with dispositional recommendations.

b. As primary dispositional authority over all officer misconduct cases, COMMARFORRES through OSJA will ensure compliance with Commandant of the Marine Corps (CMC) reporting requirements as directed in reference (i).

2. Initial Actions on Suspected Misconduct

a. Immediately upon receipt of information that an officer may have committed an offense punishable under the UCMJ, and prior to initiating any investigation, the immediate commander will ensure that COMMARFORRES is notified through the respective chain of command. The immediate commander will also ensure the appropriate MSC Legal Advisor is notified of the suspected offense.

b. Upon receiving notification of suspected officer misconduct, the MSC Legal Advisor, in coordination with the respective MSC SMCR SJA, is responsible for advising the MSC CG and the immediate commander on investigative actions and dispositional options.

c. The MSC Legal Advisor will provide procedural advice to appointed command investigating officers or investigative agencies and conduct legal review of command investigation before they are endorsed and forwarded up the chain of command. It is important that investigating officers work closely with the MSC Legal Advisor in the conduct of their investigation. The appropriate MSC Legal Advisor should be specifically listed on all Investigation Appointing Orders.

d. In the event the officer misconduct allegation is being investigated by a DoD Law Enforcement Agency, the immediate commander should ensure the lead investigative agency is provided the contact information of the appropriate MSC Legal Advisor.

e. All completed investigations into officer misconduct will be forwarded up the chain of command to COMMARFORRES. Forwarding endorsements will include specific recommendations regarding disposition and requests dispositional authority if desired.

3. Command Action in Response to Misconduct

a. Relief For Cause (RFC). The procedural aspects of relieving an officer for cause in a reserve command has unique challenges. Due to the often geographic dispersion of units and limited manpower, relieving an officer from his/her duties pending misconduct disposition creates leadership and administrative challenges. Procedures for relieving an officer for cause vary depending on whether the officer is an SMCR, Individual Mobilization Augmentee (IMA) mobilized reservist, regular active component or in a command screened billet. Although references (l) and (m) provide guidance on RFC and involuntary transfer of officers to the Individual Ready Reserve (IRR), it is important that the command contemplating RFC work closely with their respective MSC Legal Advisor and MARFORRES G-1 to establish the appropriate process, given the specific circumstances.

(1) In all RFC cases COMMARFORRES must be notified of and concur with a command's intent to relieve an officer for cause before the action occurs. The notification and approval from COMMARFORRES does not have to be conducted through formal correspondence. In the event that time does not allow for notification to COMMARFORRES, the command may temporarily

suspend the officer from his/her duties until notification and final approval is received from COMMARFORRES.

(2) Actual transfer of a relieved active component officer or the involuntary assignment of a reserve officer to the IRR shall not occur without completion of all pending disciplinary or adverse administrative actions. If such a transfer is desired before the completion of the pending disciplinary or adverse administrative actions, the command must seek approval from COMMARFORRES. Prior to requesting COMMARFORRES approval for transfer of a relieved officer before completion of pending adverse actions, coordination with both the anticipated gaining force command and the MSC Legal Advisor shall occur.

b. NJP of Officers. If it is determined that an officer assigned to MARFORRES will be the subject of NJP at the MSC level, the MSC Legal Advisor will assist the MSC CG with preparing the case for the proceeding. The MSC Legal Advisor will advise the MSC CG on proper NJP procedures, prepare the "NJP Package," assist in the processing of any subsequent NJP appeal, and prepare the required NJP Report for routing to Headquarters Marine Corps.

c. Show Cause and Board of Inquiry. A Board of Inquiry is an administrative proceeding utilized to involuntarily separate or retire an officer for misconduct or substandard performance of duty. Procedures for this process are primarily governed by reference (n). COMMARFORRES is the designated Show Cause Authority for all officers assigned to MARFORNORTH and MARFORRES to include officers within the IRR.

4. Courts-Martial of Officers. The court-martial of officers will be handled in accordance with Chapter 2 of this Order.

Chapter 4

Enlisted Non-Judicial Punishment (NJP)1. General

a. Commanders intending on imposing NJP on reservists must be aware of reserve specific nuances regarding its implementation. This chapter is intended only to highlight some of the reserve unique issues regarding NJP. It is important that commanders familiarize themselves with all the applicable regulations regarding NJP. Additionally, commanders are encouraged to seek guidance from their respective MSC Legal Advisor with any specific questions that may arise.

b. NJP procedures and guidance are primarily outlined in reference (c) and (f). Reference (i) and (m) also provide supplemental guidance.

2. Authority to Impose Non-Judicial Punishment

a. COs, I-Is, and Table of Organization (T/O) OIC's. The authority to impose NJP on enlisted members is restricted to COs (Regular and Reserve) and any commissioned officer (Chief Warrant Officer 2 (CWO-2) and above) designated as OIC of a unit by Departmental Orders, T/O, manpower authorizations, or orders of any general officer in command per reference (f). I-Is are COs for the purpose of imposing NJP upon the members of their command per references (f) and (m).

b. Non-T/O OIC. All OIC's whose billets are not listed on their unit T/O as OIC do not inherently possess NJP authority. Non-T/O OIC's must receive a letter from their General Officer designating them as OIC of that unit. Devolution of authority does not apply to non-T/O OIC's designated under this paragraph. A change in the OIC requires a new letter for the successor. Such letters must be obtained from the appropriate Commander/CG via the SJA, COMMARFORRES.

c. Reserve Officers Imposing NJP. Reserve officers imposing NJP must be in a duty status, subject to the UCMJ at the time they impose NJP per reference (f).

d. I-Is Imposing NJP. I-Is and T/O designated Site Commanders can impose NJP on the active duty personnel of their

staff and the SMCR personnel of the command(s) they administratively support. COs or I-Is may exercise Command authority over members of that officer's command or upon service members that are assigned or attached to their command by written orders or as directed in reference (m). An I-I or T/O designated Site Commander may succeed a supported unit's CO and exercise command authority and administrative control over members of the supported reserve command in the absence of the CO or other Reserve Officers that could act for the CO when the reserve Officers are not in a duty status, or are otherwise unavailable to execute command functions per succession of Command guidance issued by COMMARFORRES.

3. Jurisdiction

a. Jurisdiction over the Accused. At the time NJP is imposed, the command must have jurisdiction over the accused. The command has jurisdiction over the accused when the accused is on ~~active duty or inactive duty~~ for training with the organization of the officer who imposes the punishment. A person may be a member of, and under the jurisdiction of, more than one organization or unit at the same time, such as when assigned or attached to an organization or unit for the purpose of performing Temporary Additional Duty (TAD). Therefore, a person on TAD can receive NJP from either the temporary duty commander or the parent unit commander, but not from both commanders for the same offense. This situation most frequently occurs when an I-I or Site Commander desires to impose NJP upon an enlisted SMCR member from the SMCR unit they support. In these situations, coordination between the I-I/Site Commander and the SMCR Commander is important in order to determine who will impose NJP.

b. Jurisdiction over the Offense. In addition to jurisdiction over the accused, the NJP authority must have jurisdiction over the offense. Jurisdiction over the offense exists when the service member commits an offense punishable by the UCMJ while on active duty or inactive duty training. A command cannot NJP a Reserve Marine for an offense committed while not in a duty or drill status. Although a command may not be able to NJP a Marine for an offense committed while not in a duty or drill status other administrative options, such as administrative separation, may still be available. For example, absent additional evidence of wrongful use of drugs during a drill period, a command cannot NJP a drilling reservist for a positive urinalysis that was conducted during a drill weekend.

A positive urinalysis is evidence of use, however it cannot determine if the wrongful use was during a period in which there is jurisdiction over the offense. In other words, the Marine's wrongful use could have been during the work week before the Marine reported for the drill period. Absent some additional evidence to demonstrate that the actual use occurred during the drill period, the command has no criminal jurisdiction over the offense. However, the command can still initiate an administrative separation as a result of the positive urinalysis. As all cases are factually distinguishable, commanders are encouraged to consult with their respective MSC Legal Advisor with any questions regarding criminal jurisdiction over reservists.

c. A reservist who commits an offense while on active duty or inactive duty for training, but goes off duty before disciplinary action is taken, can be the subject of NJP during a subsequent active duty or inactive duty for training period.

4. NJP Counseling

a. Consultation with a Judge Advocate: In order for a record of NJP to be admissible during the sentencing phase at a later court-martial, the accused must either consult with a military defense counsel or waive consultation prior to the NJP hearing. Consultation with a military defense counsel may be done over the telephone.

b. Defense Counsel Services. NJP Counseling services can be coordinated through the LSSS, NCR Defense section phone number (703)784-4615. Said counseling will be typically conducted via telephone. Defense Counsel will need a copy of the Marine's right side of the record book and a copy of the Unit Punishment Book (UPB). In order to avoid unreasonable delay, the coordination should be made by the command on behalf of the Marine desiring the counseling. **IMPORTANT NOTE:** Due to the extensive amount of coordination required to schedule NJP counseling for a drilling Reserve Marine, the command should begin coordination efforts well in advance of the anticipated NJP. Advance coordination for NJP counseling will assist with avoiding unnecessary delays in adjudication of the misconduct. The duty defense counsel number is (703)357-5844, which can be utilized during drill weekends, if necessary. In the event the command experiences difficulties in obtaining NJP counseling services through the LSSS, NCR Defense section, the command should contact its MSC Legal Advisor to obtain assistance.

5. The NJP Proceeding

a. Specific instructions for conducting the NJP hearing are set forth in references (c) and (f). If the service member personally appears before the NJP authority, use the Office Hours Guide provided in reference (f).

b. Military Rules of Evidence (MRE). The MRE, other than with respect to privileges, do not apply at NJP. Therefore, the officer imposing NJP may consider any matter he or she deems relevant in determining the guilt or innocence of the service member or the appropriate punishment.

c. Documenting NJP. When a Commander determines that an offense should either be disposed of at NJP or referred to higher authority, a UPB form will be prepared. See reference (i) for specific guidance on completing the UPB.

d. Notification of Appeal Rights. After punishment has been announced and prior to concluding the NJP hearing, the Commander must advise the accused of the right to appeal. This advisement is included in the Office Hours Guide in reference (f). After the hearing, have the accused complete the Acknowledgment of Appeal Rights. Use the form provided in reference (f).

6. Maximum Punishments

a. References (c) and (f) set forth authorized maximum punishments. The authorized punishments are set forth in table format in Figure 4-1 of this Order.

b. The authority to impose NJP vests in the office assumed; however, the grade of the person succeeding to command may limit the amount of punishment he may impose. For example, should a company grade officer temporarily assume a command held by a field grade officer, he may only impose those punishments authorized for a company grade officer. All OICs, regardless of grade, are limited to company-grade punishments. Additionally, frocked officers may only impose those punishments authorized for their actual pay grade.

c. Reduction Authority

(1) Officers with NJP authority may adjudge a reduction to the next inferior pay grade if the grade from which demoted

is within their promotion authority. Reference (g) provides guidance on promotion authority. Per reference (g), Officers (of the grade of O-4 and above) having SPCMCA, have promotion authority. Therefore only majors and above having SPCMCA, may reduce enlisted personnel in the grade of E-2 to E-5, per reference (g). Additionally, reference (f) limits reduction at NJP to the next inferior pay grade only. Thus, a Marine can only be reduced one-pay grade at NJP.

(2) Reduction Authority over U.S. Navy/U.S. Navy Reserve (USN/USNR) Personnel. The reduction authority over USN/USNR personnel is the same as stated above except that it applies from pay grade enlisted E-2 through E-6.

d. Forfeitures

(1) General. Pay subject to forfeiture refers only to basic pay plus any sea or foreign duty pay. If punishment includes reduction and forfeiture, regardless of whether the reduction was suspended, forfeitures are calculated based on the grade to which reduced. Express the forfeiture in whole dollar amounts, rounded to the lower dollar amount (e.g., \$38.75 rounds to \$38.00). If applied to more than one month, state the amount to be forfeited per month and the number of months (e.g., \$200.00 per month for two months). Forfeitures are imposed on future entitlement of pay only and cannot be assessed against pay accrued prior to imposition of punishment.

(2) Computing Maximum Forfeiture of Reserve Pay at Company Grade Level

(a) Based on Drills Only: Single drill period basic pay multiplied by the number of drill periods scheduled within the next 30 days multiplied by .2333 (round to the lower whole dollar amount).

(b) Based on Annual Training (AT) Plus Drills: Single day AT basic pay multiplied by the number of days AT remaining during current AT period multiplied by .2333 PLUS single drill period basic pay multiplied by the number of drill periods scheduled within the next 30 days multiplied by .2333 (round to the lower whole dollar amount).

(3) Computing Maximum Forfeiture of Reserve Pay at Field Grade Level

(a) Based on Drills Only: Single drill period basic pay multiplied by the number of drill periods scheduled within the next 60 days multiplied by .5 (round to lower whole dollar amount).

(b) Based on AT Plus Drills: Single day AT basic pay multiplied by the number of days AT remaining on AT period multiplied by .5 PLUS single drill period basic pay multiplied by the number of drill periods scheduled within the next 60 days multiplied by .5 (round to the lower whole dollar amount).

e. Restriction of Members of the SMCR. Per reference (f), restriction, if imposed upon members of the SMCR during a drill weekend or AT, will end at the conclusion of that training period. However, remaining periods of restriction may be carried over to subsequent periods of drill or AT. The SMCR reservist will not be held beyond the normal training period in order to serve the imposed restriction. Restriction must be directed to specific limits, and those limits must be specified on the UPB.

f. Limitations on Combining Punishments. Reference (c) sets forth the limitations on combining punishments. These limitations are restated in Figure 4-1 of this Order.

g. Other Administrative Measures

(1) Used Together With NJP. The misconduct for which the NJP was awarded can also be the subject of Extra Military Instruction (EMI), a non-punitive letter of caution, or an adverse performance evaluation (adverse fitness report or proficiency/conduct markings); however, these measures are NOT NJP and cannot be awarded as NJP. Therefore, the use of such measures cannot be recorded on the UPB. EMI can be recorded on page 11 of the Service Record Book (SRB). The issuance of a non-punitive letter of caution cannot be documented in official records (such as a page 11 entry or fitness report), but the conduct itself leading to the issuance of the letter can be documented in such records.

(2) Counseling. Generally, a Marine who receives NJP should be counseled formally after the hearing concerning the conduct for which he received the NJP. If he is counseled, the counseling will be recorded on page 11 of the SRB in accordance with guidance provided in reference (o) and the format found in the current edition of reference (d), paragraph 6105.

7. Limitations on Punishment

a. Double Punishment Prohibited. When NJP has been imposed for an offense, further NJP may not again be imposed for the same offense.

b. Increase in Punishment Prohibited. Once NJP has been imposed, it may not be increased, upon appeal or otherwise.

c. Multiple Punishment Prohibited. When a commander determines that NJP is appropriate for a particular service member, all known offenses, including all such offenses arising from a single incident or course of conduct, will ordinarily be considered together, and not be made the basis for multiple punishments.

d. Statute of Limitations. NJP may not be imposed for offenses which were committed more than two years before the date of imposition. Periods in which the accused is absent without authority or fleeing from justice will be excluded in computing the two-year period.

e. Civilian Courts. NJP may not be imposed for an offense tried by a Federal, State or foreign court unless authorized by the GCMCA of the command imposing the NJP. Refer to reference (f).

8. Effective Date of Punishments

a. Reductions and Forfeiture. These punishments, if unsuspended, take effect on the date punishment is imposed per reference (c).

b. Restraint and Extra Duties

(1) These punishments, if unsuspended, take effect on the date punishment is imposed, except under the circumstances stated in reference (f).

(2) The restraint or extra duties may be stayed if the accused files a timely written appeal, and the accused specifically requests in the appeal that such punishment be stayed; the restraint or extra duties will be stayed if the Officer who will act on the appeal fails to act on the appeal within 5 days from submission of the appeal. The appeal is

submitted when presented or delivered via U.S. Mail to the officer who imposed NJP.

9. Appeal of NJP

a. General. Any service member punished under the UCMJ, Article 15, who considers the punishment to be unjust or disproportionate to the offense may appeal to the next superior authority.

b. Time Limit. The appeal must be submitted within 5 days of the date punishment is announced at NJP. Failure to submit an appeal within the five-day period will constitute a waiver of the right unless good cause can be shown for not submitting in a timely manner. The accused may request an extension of time to file an appeal from the officer who imposed the NJP, and that officer, if good cause is shown for the delay, may grant such a request.

c. Format. The appeal will be in writing and should include the appellant's reasons for regarding the punishment as unjust or disproportionate. It will be addressed to the officer who imposed NJP for forwarding per reference (f).

d. Action by Officer who Imposed NJP: By forwarding endorsement, the officer who imposed the NJP should address the evidence considered at the NJP hearing, the justness and appropriateness of the punishment imposed, and other matters that may assist the officer who will act on the appeal. The original UPB, copy of the preliminary inquiry (if any), evidence considered, and a copy of the accused's SRB will be included as enclosures per reference (f). The appeal shall be forwarded to the officer next superior in the operational chain of command.

10. Action by Superior Authority on NJP Appeal

a. General. In acting on an appeal, the superior authority may exercise the same power with respect to punishment imposed as the officer that imposed the punishment.

b. Judge Advocate (JA) Review. Prior to taking action on an appeal from NJP that includes one or more of the following punishments, the appeal must be reviewed by a JA:

- (1) Correctional custody for more than seven days.

- (2) Forfeiture of more than seven days' pay.
- (3) Reduction from the grade of E-4 and above.
- (4) Extra duties for more than 14 days.
- (5) Restriction for more than 14 days.

c. Qualifying NJP appeals shall be forwarded to the respective MSC Legal Advisor for review.

Article 15 Punishment Limitations

Punishment	Field Grade Commanders/I&Is	Company Grade Commanders/I&Is and OICs
Admonition or Reprimand	YES	YES
Reduction ¹	1 grade	NO
Forfeitures ²	½ pay per month for two months	7 days' pay
Restriction ³	60 days	14 days
Extra duties ⁴	45 days	14 days
Correctional Custody ⁵	30 days	7 days
Confinement on Bread and Water or diminished rations ⁶	3 days	3 days

1. Only pay grades enlisted (E-5 and below) may be reduced at NJP. Reduction of one grade only is authorized.

2. When reduction and forfeitures are awarded together, forfeitures are based on the grade to which reduced, whether the reduction was suspended or not.

3. Restriction on reservists during an Initial Active Duty Training (IADT) or Annual Training (AT) shall not extend beyond that training period, but may be carried over to a subsequent period.

4. Extra duty before or after routine duties have been completed constitutes the punishment. Normally, extra duty will not extend to more than two hours per day and should not be performed on Sunday. Extra duties will not be imposed on reserve component personnel on inactive duty training. Restriction and extra duty can run concurrently, not to exceed the maximum sentence for extra duty.

5. Correctional custody may be imposed on grades enlisted (E-3 and below). It will not be imposed with restriction, extra duty, or confinement on bread and water or diminished rations. Correctional custody will not be imposed on reserve component personnel on inactive duty training.

6. Confinement on bread and water or diminished rations may only be imposed on persons attached to or embarked on a vessel in the grades of enlisted (E-3 and below). It may not be imposed with correctional custody, extra duty, or restriction. Confinement on bread and water may not be imposed upon a reserve component service member, unless the service member was ordered to active duty with Secretarial approval.

Figure 4-1. --Maximum Punishment Table

Chapter 5

Enlisted Administrative Separations1. General

a. Administrative separations for which the COMMARFORRES/MARFORNORTH the CG's of 4th MarDiv, 4th MLG, 4th MAW and, FHG are the separation authorities will follow references (d), (m) and this Order, which may impose more detailed or restrictive requirements.

b. All MARFORRES/MARFORNORTH involuntary enlisted administrative separations are initiated, tracked, reviewed and endorsed/forwarded to the separations authority using the Command Legal Action (CLA) Program.

2. Staff Responsibility. The MARFORRES SJA has staff cognizance and responsibility for advising and assisting COs and I-Is about involuntary administrative separations. Each MSC and its subordinate units have a dedicated Judge Advocate assigned to it as a MSC Legal Advisor to assist. Additionally, MARFORRES OSJA has a civilian employee tasked with CLA management and technical issues involving CLA.

3. Judge Advocate Review. Involuntary separations are reviewed by a judge advocate for legal and factual sufficiency as required by reference (d). The OSJA conducts this review for all MARFORRES commands. Improperly prepared proceedings will be returned to the command for correction.

4. Initiating Action

a. Ascertain the Status of the Respondent. Prior to processing an enlisted Marine for involuntary administrative separation, the command must first determine the status of the Marine:

- (1) Active or Reserve;
- (2) If Reserve--Active Reserve, SMCR or IRR;
- (3) If SMCR--obligor or non-obligor;
- (4) Amount of active and inactive service; and

(5) Proximity to expiration of active service, current contract, Reserve End of Current Contract (RECC), and eligibility for transfer to the Fleet Marine Corps Reserve (FMCR) or retirement. **SEE REFERENCE (D), PARAGRAPH 6106.4, IF THE RESPONDENT IS ELIGIBLE FOR RETIREMENT OR TRANSFER TO THE FLEET MARINE CORPS RESERVE (FMCR).**

b. Holding beyond Release Date. See paragraph 1008 of reference (d). Similarly, a member of the IRR or SMCR may not be held beyond their Reserve Expiration of Current Contract (RECC) or Expiration of Obligated Service (EOS) for administrative discharge.

c. Marine eligible or within 2 years of eligibility for retirement or transfer to the FMCR. See paragraphs 6106 and 6307 of reference (d).

d. Eligibility of SMCR Marine to transfer to IRR

(1) Mandatory Participants in the SMCR. An SMCR member with a mandatory participation requirement ("obligor") will be retained in the SMCR for administrative discharge. Refer to reference (m) for further guidance. **DO NOT** transfer such a Marine to the IRR.

(2) Non-Mandatory Participants in the SMCR. An SMCR member without a mandatory participation requirement ("non-obligor") and not subject to a Separate Written Agreement to Train (SWAT) **CANNOT** be retained involuntarily in the SMCR for administrative separation. Refer to reference (m). If a non-obligor pending administrative separation requests transfer to the IRR, such transfer must be approved. The SMCR command must then transfer the package in CLA as well as contact the MARFORRES OSJA and Marine Corps Individual Reserve Support Activity (MCIRSA).

5. Characterization of Service upon Separation

a. **WARNING FOR RESERVISTS:** Restrictions on General or Other Than Honorable (OTH) characterization. Per paragraph 1004.4d of reference (d), Honorable is the standard characterization for separation based on conduct in the civilian community by a reservist not on active duty or active duty for training at the time of the conduct. Paragraph 1004.4d imposes the following thresholds for General and OTH characterization in these cases:

(1) General. The conduct must adversely affect overall effectiveness of the Marine Corps, including military morale and efficiency;

(2) Other Than Honorable (OTH). The conduct must be "service related," i.e. directly affect performance of military duties. Commands must provide evidence meeting these requirements if recommending General or OTH characterization when the "serious offense" occurs in the civilian community by a reservist not on active duty or active duty for training at the time of the incident. Paragraph 1004.4d of reference (d) is irrelevant, however, if a General characterization is appropriate based on the service record alone—that is without regard to the conduct (example: proficiency and conduct marks which are deserving of a General discharge).

b. Alternative method of processing. If a reservist has committed misconduct in the civilian community and has also missed nine drills (usually due to confinement), the command should also process the Marine under paragraph 6213 of reference (d) for unsatisfactory participation in the Ready Reserve, as a dual basis of separation. If processed under 6213, the Marine may receive a general or OTH discharge without regard to the limitations of paragraph 1004.4d of reference (d). If the Marine continues to attend drills, then the only basis is commission of a serious offense, and the package must include information satisfying paragraph 1004.4d if the command recommends a General or OTH characterization. The respective MSC Legal Advisor should be contacted for further guidance.

c. Characterization of Service. One of three characterizations of service will be recommended:

- (1) Honorable;
- (2) General (under honorable conditions); or
- (3) OTH.

d. If an OTH is authorized, use OTH as the least favorable characterization even if the command recommends honorable or general characterization or if a general or OTH is unlikely due to paragraph 1004.4d of the per reference (d).

6. Specific Basis for Involuntary Separation. Chapter 6 of the reference (d) lists all basis for involuntary administrative

separation. The following paragraphs of this Chapter will provide amplifying information as to the most common basis utilized in CLA.

7. Unsatisfactory Participation in the Ready Reserve

a. Definition. When a reservist with a mandatory participation requirement acquires at least nine unexcused absences from scheduled training within the proceeding 12 month period per reference (d).

b. Least Favorable Characterization. OTH.

c. Board Entitlement. Yes.

d. Counseling. Not Required.

e. Additional Guidance. Reference (m) imposes limitations on commuting distances for mandatory participants. A Marine initially recruited into the Reserves whose commuting distances exceed those limitations must have a waiver or file.

8. Misconduct. The most frequently used basis for misconduct are: Commission of a Serious Offense; a Pattern of Misconduct; and Drug Abuse per reference (d).

9. Commission of a Serious Offense

a. Definition. The offense can be military or civilian and it need not have been the subject of NJP or a military or civilian court conviction before the Marine can be separated for committing the offense. The offense can be the basis for separation even if military or civilian authorities do not prosecute per reference (d).

b. Least Favorable Characterization of Service. OTH.

c. Board Entitlement. Yes.

d. Counseling Required. Not required.

e. Additional Guidance. Packages processed under this paragraph must contain sufficient evidence which proves by a preponderance of the evidence that the member in fact committed

a serious offense. Examples of this may include police reports, arrests, and convictions. Additional examples of misconduct that are processed under this basis include:

- (1) Sexual harassment ***MANDATORY PROCESSING.**
- (2) Sexual misconduct.

10. A Pattern of Misconduct

a. Definition. A minimum of TWO instances of misconduct occurring within one enlistment is required. They need not have been referred to a court-martial, civilian court, or NJP per reference (d).

- b. Least Favorable Characterization of Service. OTH.
- c. Board Entitlement. Yes.
- d. Counseling Required. Yes.

11. Drug Abuse

a. Definition. The illegal, wrongful, or improper use, possession, sale, transfer, distribution or manufacture of an illegal or controlled substance per reference (d).

- b. Least Favorable Characterization of Service. OTH.
- c. Board Entitlement. Yes.

d. Counseling Required. Not required however, paragraph 4006 of reference (o) requires page 11 documentation for confirmed incidents of illegal drug abuse or possession.

e. Additional Guidance

- (1) ***Mandatory Processing Required***

(2) The Command may recommend a General or OTH characterization of service upon discharge, regardless of paragraph 1004.4d of reference (d); when a member tests positive for the presence of illegal drugs in the body while in an active or inactive duty status; the drug abuse shall be deemed to have affected directly the member's readiness and performance of military duties.

12. Minor Disciplinary Infractions

a. Definition. A minimum of three instances of misconduct, for which the offense(s) could have been referred to adjudication by NJP, in the current enlistment.

b. Least Favorable Characterization of Service: OTH.

c. Board Entitlement: Yes.

d. Counseling Required: Yes.

13. Alcohol Rehabilitation Failure

a. Definition. Any Marine who refuses, fails to participate in, or does not successfully complete a prescribed alcohol abuse or dependency treatment/aftercare program; or is deemed a treatment failure by credentialed and privileged physical or psychologist. Any Marine who incurs a subsequent alcohol-related incident after entering a prescribed alcohol abuse or dependency treatment/aftercare program precipitated by a prior alcohol-related incident per reference (d).

b. Least Favorable Characterization of Service. General, Under Honorable Conditions.

c. Board Entitlement. No, unless six years or more of service.

d. Counseling Required. Yes.

14. Weight Control Failure/Body Composition Program (BCP) Failure

a. Definition. Failure to meet weight and body composition standards. Example; when a Marine is placed on BCP, makes a reasonable effort to conform to the height and weight standards, but is unsuccessful per reference (d).

b. Least Favorable Characterization of Service. General, Under Honorable Conditions.

c. Board Entitlement. No, unless six years or more of service.

d. Counseling Required. Yes. Three counseling entries per reference (d) are required prior to separation: Initial; four month evaluation; and termination.

(1) Basic Requirement. Before initiating separation, the command must counsel the Marine according to reference (d)., paragraph 6105, giving the Marine corrective guidance and a reasonable opportunity to correct deficiencies, and document any failure to correct those deficiencies in the SRB. **PROPER 6105 COUNSELING ABOUT THE WEIGHT PROBLEM WILL BE RECORDED IN THE SERVICE RECORD BOOK ON THE SAME DAY THE MARINE IS INITIALLY ASSIGNED TO WEIGHT CONTROL/BODY COMPOSITION.**

(2) Time Periods. Follow closely the time periods and extensions in reference (p) for losing weight. Also, ensure that reevaluations are conducted in a timely manner.

e. Additional Guidance. A completed NAVMC 11621 (BCP Evaluation Form) signed by Medical Officer, Appropriately Credentialed Health Care Provider (ACHCP), CO and the Marine. Periodic/monthly weigh-in sheets are also required for documentation of weight control failure: *Use when a Marine makes a reasonable effort but does not meet the standards within the allotted time.

15. Unsatisfactory Performance of Duties

a. Definition. Performance of assigned tasks and duties in a manner that does not contribute to unit readiness and/or mission accomplishment, as documented in the service record (6105); **OR** failure to maintain required proficiency in grade, as demonstrated by below average proficiency/conduct marks or adverse fitness report **OR** for failure to conform to weight standards as a result of apathy or lack of self-discipline. *This is applicable when a Marine assigned to BCP does not make a reasonable effort to get within standards per reference (d).

b. Least Favorable Characterization of Service. General, Under Honorable Conditions.

c. Board Entitlement. No, unless six years or more of service.

d. Counseling Required. Yes.

e. Additional Guidance. If a Marine is assigned to the BCP and fails to make progress and/or GAINS weight on the Program then the Marine should be separated under paragraph 6206 of reference (d) vice paragraph 6215, weight control failure. A specific comment should be made indicating the Marine exhibits apathy or lack of self-discipline, which resulted in a failure to conform to height/weight standards.

(1) *SMCR obligors who are class II or below in dental readiness and refuse to comply with an Order to become dental class I, may be processed under this paragraph. Counseling per reference (d) and a reasonable opportunity to correct the deficiency are both necessary.

(2) Consecutive fitness test failures, physical fitness test/combat fitness test (PFT/CFT) are no longer to be processed under this paragraph but should be processed under reference (d), Convenience of the Government, physical standards.

16. Convenience of the Government, Physical Standards

a. Definition. Failure to meet or obtain minimum standards required for their Military Occupational Specialty (MOS).
Example: Consecutive PFT/CFT failures per reference (d).

b. Least Favorable Characterization of Service. General, Under Honorable Conditions.

c. Board Entitlement. No, unless six years or more of service.

d. Counseling Required. Yes, two counseling entries per reference (d). The first counseling documents the PFT/CFT failure, and the second counseling documents the second failure and subsequent processing for administrative separation.

e. Additional Guidance. Two consecutive physical fitness tests (PFT or CFT) are required to process under this paragraph.

17. Convenience of the Government, Condition Not a Disability

a. Definition. A physical or mental condition that interferes with the Marine's effective performance of duties and

referred to a competent medical authority, the medical authority confirms that the Marine is suffering from a physical or mental condition beyond the individuals control and **THE CONDITION IS NOT A DISABILITY.**

b. Least Favorable Characterization of Service. General, Under Honorable Conditions.

c. Board Entitlement. No, unless six years or more of service.

d. Counseling Required. Yes, a Page 11 entry that specifically states the basis of separation and that the condition is not a disability.

e. Additional Guidance. *All packages processed under this basis MUST contain a properly documented diagnosis from an appropriate medical authority stating that the condition suffered by the Marine is NOT a disability but the condition is not consistent with further military service. There are a host of specific conditions spelled out in reference (d), paragraph 6203.2b that qualify under this category. For any other instance that may qualify, contact the MSC Legal Advisor for additional guidance.

18. Convenience of the Government, Personality Disorder. Call respective MSC Legal Advisor for additional guidance.

19. Command Legal Action (CLA) Packages

a. Signature Requirements for Notification Letter. In all cases notification letters must be signed **personally** by I-I, Site Commander, or CO. During the CO's official absence, such correspondence will be signed "Acting" by the officer temporarily succeeding to command. Do not sign "for" or "by direction." The "Unavailable for signature . . ." language may be used only for a Reserve commander. Ensure the **SIGNED** letter of notification is scanned into the Internet File Server (IFS) folder in CLA.

b. Serving the Notification, Acknowledgment of Rights, and BCNR/NDRB. There are two types of proper service:

(1) Personal Contact and;

(2) Certified Mail, Restricted Delivery, Return Receipt Requested of Signature Verified. Any other type of service such

as a telephone call a home visit where the Marine refused to sign the personal receipt of notification are improper and will cause the Administrative separation package to be returned for proper service.

(3) Service by Personal Contact. Personally Delivering Notification and enclosure to Marine.

(a) Active duty Marines not in hands of civilian authorities (IHCA) or unauthorized absence (UA) must be personally served.

(b) Reserve Marine not on active duty, not in confinement. Reference (d), paragraph 6303.4b (5) requires that a reasonable effort should be made to furnish copies of the notice to the member through personal contact by a representative of the command. Under MARFORRES policy, a "reasonable effort" requires a command representative to make a reasonable effort to furnish copies of the Notification, Acknowledgement of Rights (AOR), and Board of Corrections of Naval Records (BCNR) and Naval Discharge Review Board (NDRB) forms through personal contact with the Marine reservist during the normally scheduled IADT, AT, or Active Duty for Operational Support (ADOS) (normally at the drill site). If service by personal contact is successful, the reservist need not be served by mail.

(4) Service by Certified Mail. Service by certified mail is required if service by personal contact is unsuccessful (i.e., the reserve Marine no longer attends drill and the command cannot accomplish personal contact). Serve notice by **CERTIFIED MAIL, RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED** or SIGNATURE VERIFIED to the most recent address furnished by the Marine for receipt and forwarding of official mail.

(a) Documenting Service

1. Affidavit of Service. The result of personal contact or mail service is documented in the affidavit of service. The affidavit of service is available in the notification tab in CLA. Ensure the Acknowledgment of Rights; BCNR/NDRB Form and the Affidavit of Service are scanned into CLA.

2. When to Document. Documentation of service is done after whichever of the following occurs first:

- a. Command receives the signed AOR; or
- b. Package is returned unclaimed or undeliverable; or
- c. Marine has not returned the AOR within the following period:

MARINE'S STATUS	METHOD OF SERVICE	NBR OF DAYS TO RETURN AOR*
Active duty	Personal	2 working days
Reservist	Personal or certified mail	20 calendar days
IHCA (AD or Res)	Personal or certified mail	30 calendar days

***NOTE:** 2, 20, or 30 days are from the date of receipt (if delivered in person) or from the date of signature on the green card (if delivered by mail). In counting days, do **not** count the date of receipt (personal service) or the date the green card was signed (service by mail).

3. Certified Mail. If service was by Certified Mail, Restricted Delivery, Return Receipt Requested, attach/scan the originals of: (1) white receipt (PS Form 3800) and; (2) green card (PS Form 3811). If the envelope was returned undelivered, scan the envelope with postal annotations. Ensure the postal annotations are visible when viewed in CLA. (NOTE: If the envelope is returned undelivered, the addressee's block of the green card will be unsigned). It is recommended that the envelope be scanned into CLA prior to sending in the event it is not returned to the unit.

4. Personal Contact. If personal service was successful, attach/scan the PERSONAL RECEIPT OF NOTIFICATION OF SEPARATION PROCEEDINGS.

5. Command Letter of Recommendation. The command letter of recommendation must state that service by personal contact was made successfully or that service by certified mail, restricted delivery, return receipt requested was used because service by personal contact was unsuccessful.

6. Annotations on Acknowledgment of Rights if Unreturned, Unsigned, or Rights not Selected. Paragraphs 6303.3c and 6304.4 of reference (d) require annotations on the command's copy of the Acknowledgment of Rights Form.

20. Respondent's Right to Consult with Judge Advocate before Executing the Acknowledgment of Rights Form. See reference (d), paragraphs 6303.3b and 6304.3a. If a respondent wants to consult a military counsel before executing the AOR, the CO/I-I will contact LSSS-NCR. If the command encounters issues in obtaining defense counsel via the LSSS-NCR, contact the applicable MSC Legal Advisor for assistance.

21. Command Letter of Recommendation for Administrative Separation (Without Board)

a. Purpose. The letter of recommendation provides the Separation Authority with additional facts and documentation to determine the Marine's potential for future service and to determine if separation is warranted. The letter must include the general, specific, and factual basis for separation and the recommended characterization of service.

b. Unsatisfactory Participation Case. In unsatisfactory participation cases, each Separation Authority requires that commands indicate efforts to determine why the Marine is missing drills. Accordingly, at a minimum, the command endorsement will summarize what efforts the command made to contact the Marine, determine why the Marines missed drills, and to assist the Marine in attending drills. In addition to the worksheet, the command shall scan the following items into the CLA supporting documents folder as enclosures to the endorsement:

(1) Statements by senior Staff Non-Commissioned Officer (SNCO) or officers in the chain of command concerning efforts to contact the Marine, and to return him/her to a satisfactory drill status.

(2) The unit should consider documenting on the front or the reverse of muster sheets any efforts to contact Marines who miss drill; the muster sheet is a convenient place to record these efforts and serves as a reminder to call Marines as soon as their absences are noted. Annotated muster sheets may be submitted with the separation package. Finally, although they are not a prerequisite for separation for unsatisfactory participation, page 11 counseling entries may be used to

document command efforts to contact or to assist Marines who miss drill.

22. Rebuttal Statements By Marine. Two problems can occur after the respondent indicates on the Acknowledgment of Rights that the Marine wants to include a statement or rebuttal. First, if the Marine subsequently **DOES NOT** provide the statement or rebuttal, the command must note in the letter of recommendation that it was never received. Second, if the Marine **DOES** include the statement or rebuttal, **THE COMMAND MUST ADDRESS ANY ALLEGATIONS THE MARINE MAKES IN THE STATEMENT OR REBUTTAL.**

23. Service and Signatures

a. The command recommendation letter must explain whether service was by mail or in person.

(1) Respondent is a Reservist. For all MARFORRES units, except MCIRSA, the CO will sign/certify the letter in CLA. If the CO is unavailable, the I-I/Site Commander may certify the letter if the CO knows about the recommendation for separation and concurs in it. For MCIRSA, only the CG for FHG will sign/certify the letter in CLA. In CLA, a certification of the letter serves as the personal signature of the CO or I-I/Site Commander.

(2) Respondent is on Active Duty. For active duty personnel, the active duty commander alone certifies.

(3) In All Cases. When a signature is required, it will be the **personal** certification of the I-I/Site Commander, or CO. During the CO's official absence, command recommendations will be signed/certified "Acting" by the officer temporarily succeeding to command. Do not sign "for" or "by direction."

b. When to Certify. Do not sign/certify the command letter until after one of the following occurs:

(1) The command receives the signed Acknowledgment of Rights;

(2) The package is returned unclaimed; or

(3) The time for responding has expired and;

(4) All supporting documents have been uploaded into CLA.

c. Enclosures. MARFORRES requires the standard Service Record book (SRB) pages (right side) and DD Form 1966; ensure all social security numbers (SSN) are redacted other than the Marine who is being processed. Enclosures do not have to be certified true copies.

24. Additional Requirement for Conduct by Reservist in the Civilian Community While Not in a Duty Status. A Marine reservist may be processed for separation based on conduct occurring while the reservist is not on active duty or active duty for training. Reference (d), paragraph 1004.4d, prohibits general or OTH characterization of service unless certain requirements are met. If the command recommends a general or OTH in such cases, the command MUST provide evidence that satisfies the requirements of paragraph 1004.4d. Such evidence should include any conduct that directly affects the performance of military duties (service related). See Chapter 5, paragraph 11e(2) of this SOP when processing for Drug Abuse.

25. Administrative Separation Boards

a. Authority to Appoint Administrative Separation Boards. Officers convening boards are called "convening authorities." Within MARFORRES, only officers who have SPCMCA may convene boards. Since Chapter 2 of this SOP withholds that authority from some officers, the following rules apply:

(1) 4th MAW

(a) Respondent is on **ACTIVE DUTY**: Only active duty commanders convene boards for active duty Marines.

(b) Respondent is a **RESERVIST**: Since SPCMCA is withheld from COs of Reserve squadrons, cases involving 4th MAW squadrons must be referred to the Group Commander unless the Site Commander is a SPCMCA (O-4 and above).

(2) MARFORRES, 4th MarDiv, 4th MLG and FHG

(a) Respondent is on **ACTIVE DUTY**: Only active duty commanders convene boards for active duty Marines. Since SPCMCA is withheld from I-Is below the battalion level, active-duty cases at the company level must be referred to the battalion.

(b) Respondent is a **RESERVIST**: Because SPCMCA is withheld from Inspector-Instructors below the battalion level, cases at the company level must be referred to the battalion.

(3) MCIRSA. CG, FHG will convene boards for active-duty and Reserve Marines assigned to MCIRSA.

26. Detail of Administrative Separation Board Personnel

a. Appointing Order Format. The appointing order must accurately reflect each member's component (USMC or USMCR). Appointing board members and signing appointing orders are the personal responsibilities of the CA; these tasks cannot be delegated. The CA's personal signature will be on all appointing orders and modifications. Only the signature of the CA is required. A copy of the signed and dated appointing order will be scanned as a supporting document in the IFS folder in CLA.

b. Members. Administrative separation boards will have the composition required by reference (d). **See paragraph 6315.1b of reference (d) for special requirements if the respondent is a reservist.**

c. Recorder and Defense Counsel. The Appointing Order must name the recorder and the detailed defense counsel. To obtain a recorder and detailed defense counsel, the CA must submit a Request for Legal Services to their respective MSC Legal Advisor. Note that the right to representation by counsel at the Board (reference (d), paragraph 6304.3b) is different from the right to consult counsel before signing the Acknowledgment of Rights (reference (d), paragraphs 6303.3b and 6304.3a).

27. Notice of a Separation Board; Respondent's Absence. The command will notify the respondent in writing of the date, time, and place of the hearing. If served in person, obtain a written receipt and attach it to the command copy of the letter. If served by mail, use certified mail (return receipt requested) and attach the green card (PS Form 3811) to the command's copy of the letter. If the respondent has received such notification, then the Board may proceed in his absence if counsel for the respondent is present. All documentation of service efforts will be included as a government exhibit if the respondent is absent from the Board.

28. Conditional Board Waiver. The respondent may offer to waive the hearing if the Separation Authority approves a general or honorable discharge. See reference (d), paragraphs 6308.1b and 6304.5. The command will explain in its endorsement the reasons for supporting or opposing such an offer and obtain the approval of the Separation's Authority in writing prior to moving forward on the separation. Once approval is granted, upload documentation into CLA. If the Separation Authority does not agree, then the respondent maintains the right to a Board.

29. Separation Board

a. The respondent will sign the Privacy Act Statement if the respondent testifies. The Board will announce its findings and recommendations by using the Findings and Recommendations Worksheet which doubles as the Board Report.

b. The Board's Report. See reference (d), paragraphs 6319 and 6320.

c. The Board's Record. See reference (d), paragraphs 6319 and 6320.

(1) When Required. A record will be prepared in every case. Whether or not a written transcription is ultimately required, at a minimum, the proceedings shall be recorded using audio tapes or, if available, a court reporter.

(2) The record has two parts: A summarized transcript of the hearing and; all exhibits. Both the summarized transcript and the exhibits will be scanned as supporting documents in the IFS folder in CLA. All exhibits must be legible and clearly marked.

(3) The record must explain any rulings on the admissibility of evidence. The record must also explain the absence of the respondent if the respondent is absent from all or part of the proceedings. The transcript will contain a summary of testimony of (a) any witness testifying at the Board under oath and (b) any unsworn oral statements made by the respondent or counsel on behalf of the respondent. In a summarized transcript, argument of counsel need not be summarized.

d. Authentication. The board president and recorder must authenticate the record of proceedings by reviewing and signing

it. See reference (d), paragraph 6320 if the president and recorder are unavailable for signature.

e. Forwarding Report

(1) The senior member of the Board forwards to the CA the original Report of the Board.

(2) CA's Letter of Recommendation and Endorsement

(a) Format. The CA will forward the report via the chain of command to the Separation Authority with a letter/endorsement. To prevent duplication, do not include—as enclosures to the command endorsements—copies of any documents which are already included with the board's record or report.

(b) Content. The CA may comment on the respondent or the proceedings.

1. Comment by defense. The CA's endorsement should include comments from the defense counsel on the board, if any, and the response by the recorder to those comments.

2. Agreement or disagreement with board decisions. The CA may agree or disagree with the board's findings and recommendations. Before doing so, the CA should review the separation authority's options (paragraph 6309 of the reference (d)), especially in those cases in which a board recommends retention (paragraph 6309.2 of reference (d)).

30. Return of Packages by MARFORRES OSJA for Correction. The policy of MARFORRES SJA is to correct defective packages by making direct contact with the originating unit. Packages may also be returned directly to the unit by use of the "return for correction" or "return for notification" option in CLA. CLA will generate a comment box allowing the SJA an opportunity to notify the unit of deficiencies.

31. Action by The Separation Authority. The Separation Authority endorses every administrative separation proceeding. If the Separation Authority approves a separation, the separation package will be forwarded electronically to Headquarters Marine Corps (M&RA-MMSB-20) for inclusion in the respondent's official records. The units will receive an email from CLA informing them that the separation has been approved by

the Separation Authority. The unit will acquire the separation letter under the "final action" tab in CLA. Once the Separation Authority has approved a separation, the package/file will be automatically stored under the "closed" tab in CLA. Copies of the completed recommendation will be maintained by the Marine's unit in accordance with reference (q).

Chapter 6

Administrative Investigation

1. General. Guidance for conducting administrative investigations is provided by Chapter II of the JAGMAN. This Chapter of the SOP is intended to provide a quick reference guide to the applicable provisions for the most common types of administrative investigations. Sample appointing orders, investigative formats, and other required forms are provided in the appendices of the reference (f).

2. Preliminary Inquiry

a. Reference (f), Chapter II, Part B, paragraph 0203.

b. Commanders are reminded that a Preliminary Inquiry is not an investigation that requires a legal review. A Preliminary Inquiry is intended to be used as a tool that can assist a commander to make a decision as to whether an administrative investigation is warranted. A Preliminary Inquiry does not have a specific written format and results can be verbally relayed to the Commander. This type of Preliminary Inquiry is distinguishable from an R.C.M. 303 Preliminary Inquiry discussed in Chapter 2 of this SOP.

3. Command Investigations

a. Reference (f), Chapter II, Part C, paragraph 0209.

b. Line of Duty (LOD)/Misconduct Determinations:

(1) Specific guidance is located in JAGMAN Chapter II, Part E.

(2) Refer to Figure 6-1 of this SOP for a quick reference guide to assist with determining when a LOD/Misconduct determination may be required. Commands should consult their respective MSC Legal Advisor for any questions regarding whether such a determination is required.

4. Litigation-Report Investigation

a. Reference (f), Chapter II, Part C, paragraph 0210.

b. Due to the nature of a Litigation-Report investigation it is critical that the Investigating Officer appointed to conduct said investigation work closely with the respective MSC Legal Advisor throughout the course of the investigation.

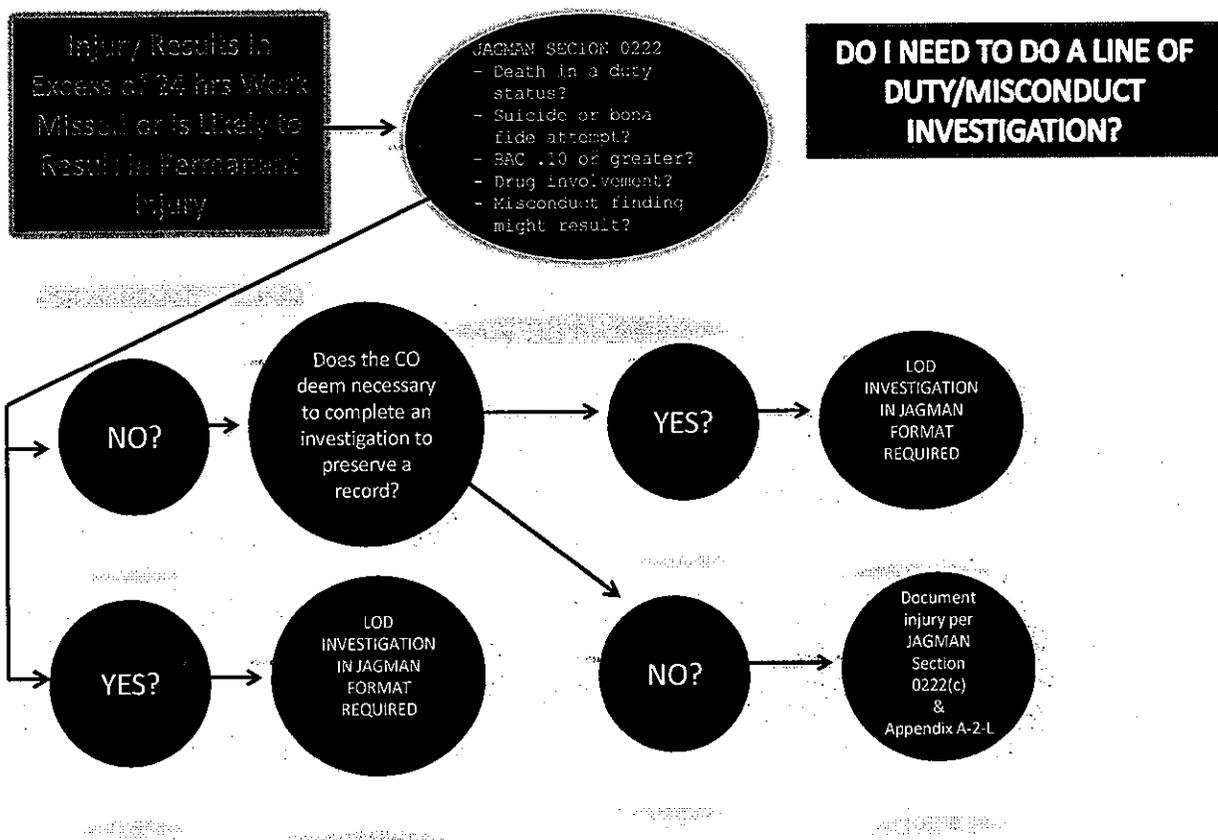


Figure 6-1. --When a LOD/Misconduct Determination is required

Chapter 7

Operational Law

1. General. Marines from MARFORRES deployed continuously since 9/11 in support of Overseas Contingency Operations. While deployments will diminish, security cooperation operations around the globe and domestic support operations in the homeland will continue. This Chapter will provide an overview of operational law topics specifically affecting MARFORRES and MARFORNORTH.

2. Operational Reserve

a. Reservists may only be ordered to active duty involuntarily under authorities found in reference (r). The authority to activate reservists involuntarily rests with Congress, the President, the Secretary of Defense and/or the Military Secretaries under specified grounds.

b. In the fiscal year 2012 National Defense Authorization Act, Congress approved and codified in reference (r), two additional activation authorities to mobilize SMCR Units and certain members of the IRR in the case of domestic disasters. Reference (r), Section 12304(a) allows activation of reserve forces in support of domestic disaster response missions and reference (r), Section 12304(b) extends activation authority to the Secretary of a military department when determined that it is necessary to augment the active forces for a preplanned mission in support of a combatant commander.

c. These new authorities do not change the authorization or mobilization process, but they offer increased authority to access the reserves and increase the flexibility of the total force.

d. See references (s), (t), and Figure 7-1 for a chart of mobilization authorities.

3. Military Justice at Intermediate Location (ILOC), Deployment and Return. Military justice matters for units that mobilize for a contingency operation will be addressed by the Gaining Force Commander (GFC) upon the GFC taking Administrative Control (ADCON) authority of the unit at ILOC.

The GFC shall retain disposition authority over all misconduct that occurs while the unit is under the control of the GFC.

4. Separate and Detached Commands

a. For units that operate or deploy not as part of their organic command, the unit may be designated as a separate and detached command and its leader, the OIC of the unit. Per the Navy Regulations, a general officer may designate a separate and detached command. Within MARFORRES, the COMMARFORRES signs the designation letters. The OIC of the detached command will only have OIC level NJP authority over enlisted personnel and will not have promotion or reduction authority. Requests for authority to convene courts-martial or promote enlisted members will need to be routed through MARFORRES OSJA to Headquarters Marine Corps and to SECNAV for court-martial CA.

b. Contact MARFORRES OSJA's office if an OIC designation letter will be requested.

5. Status of Forces Agreements

a. Status of Forces Agreements (SOFAs) address the status of U.S. forces while present in a foreign country and typically include agreements concerning criminal jurisdiction over U.S. forces for alleged violations of the host country's laws as well as issues concerning visas, identification, licensing, claims, uniforms and taxes. The U.S. has entered into more than 100 SOFAs. Some grant the U.S. exclusive criminal and civil jurisdiction over acts committed by U.S. forces and others like the NATO SOFA grant shared jurisdiction.

b. Numerous countries have also signed so-called "Article 98" agreements with the U.S. Under these agreements the host country will not allow the removal of a U.S. service person to face prosecution by the International Criminal Court without consulting the U.S. embassy.

c. Commanders, COs and other Marines may not negotiate or sign international agreements without prior approval. If commanders or staff believe an international agreement is needed for operations, training, Status of Forces, classified material security, logistical or other concerns, contact the MARFORRES OSJA's office for drafting of the agreement and routing through Service or Combatant Command chain of command before approaching

the other country. See references (u), (v), (w), and (f).

d. Before deploying to a foreign country contact the MARFORRES OSJA's office for international agreements currently in effect.

6. Law of War (LOW) Training

a. The Marine Corps LOW Program, reference (e), requires Marines at various times in their career to receive training in the law of armed conflict. Marines will receive this training at entry level schools (boot camp, officer candidate school), follow-on training (formal schools and during pre-deployment training), specialized training for certain officers such as intelligence, operations and COs and detailed training for judge advocates.

b. The respective MSC Legal Advisor can assist with obtaining an instructor for said training through the Reserve Judge Advocate Support Section at Headquarters Marine Corps. The period of instruction will cover Rules of Engagement, the 9 Principles of the LOW, the Geneva Conventions, the means and methods of warfare, targeting, detention operations, and war crimes and command responsibility. Contact the Operational Law judge advocate at MARFORRES to schedule classes.

7. Use of the Reserve Personnel for Anti-Terror/Force Protection (AT/FP)

a. MARFORRES tenant units must "coordinate AT/FP program execution" with host commands. The relationship between host and tenant commands is primarily for coordination and MARFORRES units will not fall under the operational control (OPCON) of the host unit unless assigned by higher authority. MARFORRES Marines may be armed when providing base security and will comply with DoD and Chairman of the Joint Chiefs of Staff (CJCS) instructions concerning the use of force. If employed for AT/FP purposes, SMCR Marines will report under voluntary active duty orders unless activated by Departmental or higher authority.

b. Reference (x) authorizes the arming of service members to secure Government installations. The directive authorizes the arming of service members not normally performing security or law enforcement roles. Reference (y) directs those carrying firearms for base security to receive annual firearms training and instruction on the use of deadly force. See also

references (x) and (z) for annual training requirements for armed base security personnel.

c. Upon agreement between the host and tenant commands, qualified and trained MARFORRES Marines may be armed to protect DoD property and personnel.

8. Domestic Operations - General

a. Unlike overseas operations governed by international law, the U.S. Constitution provides the legal framework for operating within the United States. A Defense Support of Civil Authorities (DSCA) operation is initiated by a request for DoD assistance from civil authorities or is authorized by the President or Secretary of Defense. DoD Forces will play a supporting - not the lead role - in a DSCA mission. Federal law and DoD directives limit the ability of Title 10 Forces to perform law enforcement or regulatory actions against civilians, while the National Guard and Coast Guard do not face the same limitations when not in a federal status.

b. Approval to perform most DSCA operations, such as disaster relief, support to a National Special Security Event like the Presidential Inauguration or conducting a civil disturbance operation must come from the Secretary of Defense or his designee.

c. All requests from civil authorities for assistance must be evaluated for:

- (1) Legality (compliance with laws)
- (2) Lethality (potential use of lethal force by or against DoD Forces)
- (3) Risk (safety of DoD Forces)
- (4) Cost (including the source of funding and the effect on the DoD budget)
- (5) Appropriateness (whether providing the requested support is in the interest of the Department); and
- (6) Readiness (impact on DoD's ability to perform its primary mission. (See reference (aa))).

9. Immediate Response Authority

a. MARFORRES COs have Immediate Response (IR) Authority to respond to an emergency. CO may provide assistance when:

(1) It is in response to a request for assistance from a civil authority;

(2) Time does not permit approval from higher authority;
and

(3) When the response is necessary to save lives, prevent human suffering, or mitigate great property damage within the United States.

b. IR is subject to "Posse Comitatus Act (PCA)" restrictions on DoD (see discussion below). IR does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory; therefore, no drug dogs, military police functions or weapons.

c. The CO directing a response under IR authority shall immediately notify the National Joint Operations and Intelligence Center (NJOIC), through the MARFORRES G-3, of the details of the response. The HQMC notification requirement is "within one hour" of the decision to engage in IR.

d. An immediate response shall end when the necessity giving rise to the response is no longer present (e.g., when there are sufficient resources available from State, local, and other Federal agencies to respond adequately and that agency or department has initiated response activities) or when a higher authority directs an end to the response.

e. If the IR activities have not ended, the CO must reassess whether there remains a necessity for DoD assistance under this authority not later than 72 hours after the request for assistance was received.

f. Support provided under IR should be provided on a cost-reimbursable basis, where appropriate or legally required, but will not be delayed or denied based on the inability or unwillingness of the requester to make a commitment to reimburse the Department of Defense. See reference (aa).

10. Disaster Relief

a. The federal government provides disaster relief to local communities under the Stafford Act. Assistance is provided after a state governor requests assistance certifying that the state lacks the resources to manage the response. The Federal Emergency Management Agency (FEMA) is the lead agency in the response and will request DoD support through the Mission Assignment process. Title 10 Forces may anticipate local needs by prepositioning service members and goods, but not employ until officially requested by civilian authority. Acting without authority risks violating the separation of authority between the federal and state government and such actions may not be reimbursed by FEMA.

b. The Stafford Act specifically provides for immunity from liability for certain actions taken by federal agencies or employees of the federal government pursuant to the Act. Section 5148 of the Stafford Act provides: "The federal government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of this chapter."

11. Mutual Aid Agreements

a. Installation commanders may enter into Mutual Aid Agreements (MAA) with local officials for the mutually supporting employment of Fire and Emergency Services (F&ES) assets and capabilities.

b. DoD has been granted a specific statutory authority to enter into MAAs for fire and ambulance services. This authority does not extend to support in other areas; therefore, MARFORRES commanders may not sign an MAA for provision of resources to support Civil Authorities that do not meet the parameters of F&ES.

c. With permission from higher, MARFORRES commanders can support an Installation Commander's execution of F&ES, with F&ES resources only, such as structural fire trucks, ambulances, emergency medical technicians and explosive ordnance disposal resources.

d. Commands will not be reimbursed for providing F&ES. In addition, F&ES is subject to "PCA" restrictions on DoD. See reference (ab).

12. Posse Comitatus Act (PCA)

a. The PCA limits direct military involvement with civilian law enforcement, absent congressional or constitutional authorization, in the enforcement of the laws of the United States. The PCA is a federal criminal statute and violators are subject to a fine and/or imprisonment. While by statute the PCA only applies to the Army and Air Force, reference (ac) applies the PCA's restrictions to all members of the armed forces wherever located. PCA restrictions must be considered even when contemplating military assistance to law enforcement overseas, unless approved by the Secretary of Defense.

b. Unless a constitutional or statutory exception applies, Title 10 Forces shall not directly assist in civilian law enforcement activities. Direct assistance includes:

- (1) Interdiction of a vehicle, vessel, aircraft;
- (2) Search or seizure;
- (3) An arrest; apprehension; stop and frisk; engaging in interviews or questioning of potential witnesses or suspects;
- (4) Using force or physical violence, brandishing a weapon, discharging or using a weapon, or threatening to discharge or use a weapon except in self-defense or defense of others when directly related to an assigned activity or mission;
- (5) Evidence collection; security functions; crowd and traffic control; and operating, manning, or staffing checkpoints;
- (6) Surveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, or investigators; and
- (7) Forensic investigations or other testing of evidence obtained from a suspect for use in a civilian law enforcement investigation in the United States unless there is a DoD nexus. See reference (ac).

c. The PCA does not apply to a member of the Army, Navy, Air Force, or Marine Corps when they are off-duty and acting in a private capacity. A service member is not in a private capacity when assistance is rendered to civilian law enforcement officials under the direction or control of DoD authorities. The PCA does not apply in numerous other DoD functions as outlined in Figure 7-2 and further in this Chapter.

d. Figure 7-2 illustrates when the PCA applies to Title 10 Forces:

e. Indirect assistance to civilian law enforcement, including such activities as training, providing expert advice, operating or maintaining DoD equipment for civilian use may be provided if properly approved. See reference (ac).

13. Civil Disturbance Operations

a. As stated above, the PCA does not apply during civil disturbance operations. Under the Insurrection Act, 10 USC 331, the President may send Title 10 Forces to restore order. The Act permits the commitment of federal forces under three circumstances: In support of a request from a state or territory; to enforce federal authority or; to protect constitutional rights.

b. The President must first issue a declaration ordering disbursement before sending troops. Recent examples of use of federal forces under this provision include: Quelling the riots in Los Angeles in 1992 involving Rodney King and; in the 1950s and 1960s to enforce public school desegregation.

c. Federal Forces may also act under Emergency Authority when circumstances do not allow for prior approval from the President. The use of military forces must be necessary to prevent the loss of life, wanton destruction of property, to restore public order or when duly appointed civilian officials cannot protect federal property.

d. The Justice Department is the lead federal agency during a civil disturbance operation. The U.S. Attorney General is the chief civilian responsible for the response and will appoint a Senior Civilian Representative to coordinate the effort of all federal agencies involved.

14. Rules for the Use of Force

a. Enclosure L of reference (ad) provides the Standing Rules for the Use of Force (SRUF) for U.S. Forces while acting within the territory of the United States. Specifically, the SRUF applies to DSCA, support to civilian law enforcement, AT/FP, homeland defense missions on land, protection of critical infrastructure, DoD support during civil disturbance operations and counterdrug support.

b. Requests to augment the SRUF for mission specific RUF should be submitted to the Chairman of the Joint Chiefs of Staff for Secretary of the Defense (SecDef) approval. Unit commanders may restrict the SRUF, but shall notify the SecDef and CJCS of the restrictions.

15. Intelligence Oversight

a. In general, DoD intelligence component capabilities, resources, and personnel may not be used for activities other than foreign intelligence or counterintelligence (CI), unless that use is specifically approved by SecDef. During a DSCA mission, SecDef must approve the use of intelligence assets for "incident awareness and assessment".

b. Intelligence components may not collect or retain information concerning United States Persons (USPER) unless it concerns foreign or counterintelligence. See references (ae), (af), and (ag).

c. These restrictions do not apply to non-intelligence components, such as military police or mission assurance personnel.

16. Marine Forces North (MARFORNORTH). COMMARFORRES also commands MARFORNORTH. Separate staffs support the commands; however, special staff and some general staff members are shared between the commands. MARFORNORTH's mission includes: Executing antiterrorism program and force protection responsibilities for the Marine Corps; planning for the use of USMC Forces and advising on the proper employment of USMC Forces within the Homeland and; coordinating with and supporting USMC Forces when attached to U.S. Northern Command (USNORTHCOM) within USNORTHCOM's Area of Responsibility (AOR) in order to conduct homeland defense operations and provide Defense Support to Civil Authorities. MARFORNORTH also plans theater security

cooperation missions within *its* AOR. Figure 7-3 depicts the MARFORNORTH Command Structure.

TRAINING	COMPONENT	PURPOSE	VOLUNTARY	LENGTH
10 USC 10147	SMCR/IMA	Annual Training/drill	Involuntary	14 days
10 USC 10148	SMCR/IMA	AT/drill if fail to participate	Involuntary	45 days
10 USC 12303	SMCR/IMA	AT/drill if fail to participate and has been two years since on AD	Involuntary	24 months
10 USC 12301(b)	Ready Reserve	Annual Training	Involuntary	15 days
10 USC 12301(d)	Reserve Component	ADOS/ other training	Voluntary	As agreed
MOBILIZATION				
10 USC 12301(a)	Reserve Component	Full mobilization (Congressional declaration)	Involuntary	Duration of war/ emergency plus 6 months (WWII)
10 USC 12302	Ready Reserve	Partial mobilization (Presidential declaration)	Involuntary	24 months (OIF, OEF)
10 USC 12304	SMCR, IMA and certain IRR	Presidential Reserve Call-up	Involuntary	365 days (Haiti)
10 USC 12304(a)	SMCR and certain IRR	Major disaster or emergency per request from a state governor	Involuntary	120 days
10 USC 12304(b)	SMCR	Pre-planned mission to support combatant commands	Involuntary	365 days
10 USC 12306	Standby Reserves	Congressionally declared emergency when not enough Ready Reserve	Involuntary	Duration plus 6 months
10 USC 12307/ 10 USC 688	Retired Reserve	Congressionally declared emergency or per SECNAV	Involuntary	Duration plus 6 for Congressional emergency or 12 months if SECNAV
MILITARY JUSTICE				
10 USC 802	Reserve and Retired Reserve	Discipline - for acts committed on AD or when retired.	Involuntary	As needed for court-martial

Other

10 USC 12503 Funeral Honors Reserve ID Voluntary
 10 USC 12319 Muster Duty Reserve ID Involuntary
 10 USC 12301(h) Medical Care Reserve AD Voluntary
 10 USC 12322 Medical Evaluation and Treatment Reserve AD Voluntary
 10 USC 12301(g) Captive Status Reserve AD Involuntary

Figure 7-1. -Marine Corps Reserve Utilization Authorities

Normal Status	PCA applies. Title 10 personnel in normal status may not engage in direct law enforcement activities to include: Interdiction of vehicles, vessels or aircraft; search or seizure of civilian personnel and effects; arrest or detention of civilians; or as undercover investigators or to conduct surveillance for law enforcement purposes.
In execution of a Military Purpose (such as protection of DoD personnel or property)	The PCA does not apply. This is a narrowly construed exception to the PCA that exempts activity conducted to further a military interest.
Detailed to another federal agency subject to receiving agencies control (for example: Special Assistant United States Attorney; Special Deputy U.S. Marshal)	PCA does not apply as these detainees are not considered part of the Army or Air Force for PCA purposes.
Protection of federal property	Constitutional exception to the PCA.
Response pursuant to the Insurrection Act	Statutory exception to PCA. President must authorize and make declaration first.
Support to other Federal, state and local entities that are engaged in direct law enforcement activities	The PCA prohibits engaging in direct law enforcement activities. Subject to DoD regulations and approvals, technical, and logistical assistance may be rendered.
Response to a Chemical, Biological, Radiological, Nuclear, and Explosive attack or threat	Subject to Presidential directives, DoD regulations and approvals, constitutional, or statutory exceptions to the PCA exist.
Transfer of information regarding potential criminal activity obtained during military operations.	PCA does not apply, but the dissemination of information must be conducted in accordance with applicable regulations.
Off-duty Title 10 personnel	PCA does not apply unless acting under the direction of DoD authorities.
Homeland Defense Operations	PCA does not apply to Homeland Defense operations.
Emergency Authority	When unable to obtain prior approval to quell a civil disturbance caused by unforeseen event like natural disaster.

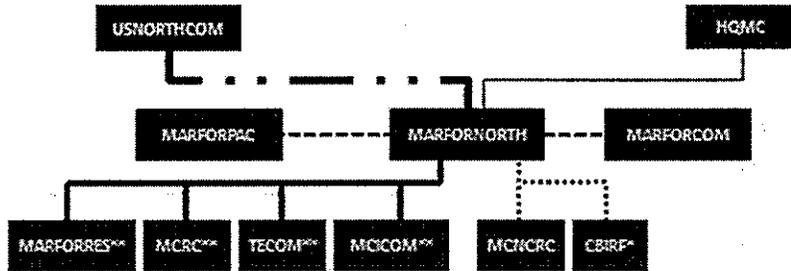
(chart taken from the Domestic Operational Law Handbook by CLAMO)

Figure 7-2. -Posse Comitatus Act (PCA) Applicability and Exceptions



UNCLASSIFIED

MARFORNORTH Command Relationships



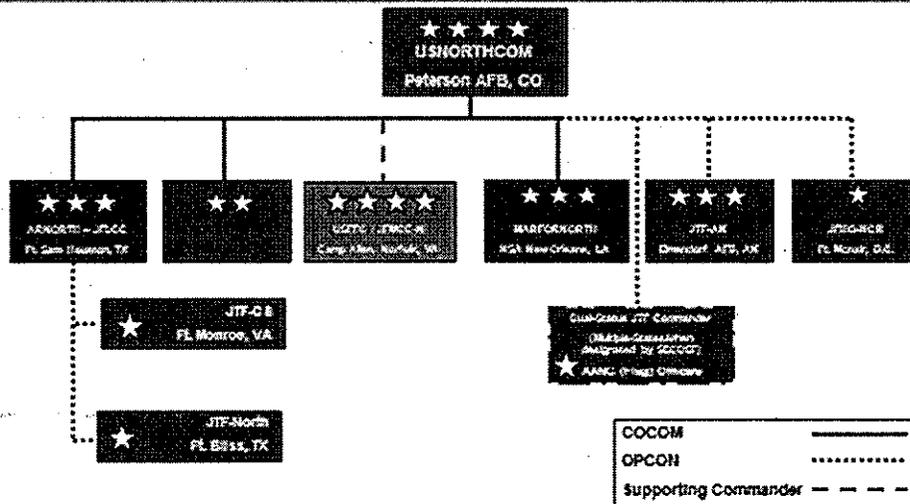
——— COCOM
 - - - Supported/Supporting
 ——— Service Chief (Title 10)
 - - - Force Provider Coordination
 OPCON
 *CBIRF is OPCON during operations and directed exercise participations.
 **Supporting/Supported for Minions Awareness responsibilities only.

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MARFORNORTH Command Relationships



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15

Figure 7-3. --MARFORNORTH Command Structure

