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Legal Services

Military Justice



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History. This is the first issuance of the Headquarters, United States Army Garrison (USAG) Fort Belvoir, Fort Belvoir, Virginia (FBVA), Supplement to Army Regulation (AR) 27-10. This issuance supersedes and revokes the USAG Fort Belvoir, FBVA, Courts-Martial Withholding Policy and Senior Leader Misconduct Withholding Policy #77.

Summary. This publication sets forth and implements policies and procedures

pertaining to the administration of military justice and other select legal topics applicable for the USAG Fort Belvoir, FBVA. It supplements AR 27-10, Military Justice and clarifies local command policies meant to preserve good order and discipline.

Applicability. This Supplement applies to all Active Army, Army National Guard, and United States Army Reserve personnel on active duty or inactive duty training and in a duty status under Title 10, United States Code, who are assigned or attached to Headquarters, USAG Fort Belvoir, FBVA. This includes all tenant units, organizations, and activities

under the General Court-Martial Convening Authority (GCMCA) of Commander, Headquarters, USAG Fort Belvoir, FBVA.

Proponent. The proponent is the Headquarters, USAG Fort Belvoir, FBVA, Staff Judge Advocate (SJA). In accordance with AR 27-10, the Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Room 3D548, Washington, DC 20310-2200 approved this Supplement.

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Army Regulation 27-10, dated 1 January 2019, is supplemented as follows:

1. Responsibilities and Duties.

a. Subject to the provisions of Judge Advocate Generals Corps (JAGC) Publication 1-1, the SJA, Headquarters, USAG Fort Belvoir, FBVA, is responsible for the supervision and administration of military justice within USAG Fort Belvoir, FBVA. The SJA has the sole authority over the assignment of all Army Judge Advocate officers, military paralegals, and court reporters assigned to USAG Fort Belvoir, FBVA.

b. Army Judge Advocates, military paralegals, and court reporters will not be assigned duties that, in the opinion of the SJA, are inconsistent with their Military Occupational Specialties (MOS) or pose a conflict with their legal duties or obligations. Such duties generally include Equal Opportunity Representative, Unit Victim Advocate, Charge of Quarters (CQ), Staff Duty Officer/Non-Commissioned Officer, Emergency Response Cell, and Courtesy Patrol.

2. Designation of Courts-Martial Convening Authorities.

a. Under the provisions of Article 22(a)(8), Uniform Code of Military Justice (UCMJ), the Garrison Commander, Headquarters, USAG Fort Belvoir, FBVA (GC FBVA), has authority to convene general courts-martial and ordinarily serves as the General Courts-Martial Convening Authority (GCMCA) for all units assigned, attached or aligned under Headquarters, USAG Fort Belvoir, FBVA, for the administration of military justice, unless unit attachment or assignment orders specify otherwise.

b. The Commanders of units and organizations listed below are special courts-martial convening authorities (SPCMCA) pursuant to Article 23, UCMJ, for the exercise of administrative and punitive actions not otherwise withheld by the GC FBVA, as the GCMCA.

- (1) Headquarters Command Battalion (W4VNAA);
- (2) 1st Information Operations (IO) Command (WNERAA); and,
- (3) National Ground Intelligence Center (W6TMAA);

c. The Commanders of units and organizations listed below are summary courts-martial convening authorities (SCMCA) pursuant to Article 24, UCMJ, for the exercise of administrative and punitive actions not otherwise withheld by the GC FBVA, as the GCMCA.

- (1) USAG, Fort Ambrose Powell (AP) Hill, Virginia (W2LQAA);
- (2) 249th Engineer Battalion (WNBFAA);
- (3) 1st IO Battalion (WNF8X1 and WNF899);
- (4) 2d IO Battalion (WNF9X1 and WNF999); and,
- (5) Army Geospatial Intelligence (GEOINT) Battalion (W6TM03).

3. Personal Exercise of Discretion in Cases Involving Certain Violent Offenses.

a. Initial disposition of allegations involving any of the following offenses are withheld from commanders who are not both in the grade of O-6 or higher and a SPCMCA:

(1) Rape, sexual assault, aggravated sexual contact, and abusive sexual contact in violation of Article 120, UCMJ, and forcible sodomy in violation of Article 125, UCMJ (Prior to 1 January 2019);

(2) Domestic violence involving assault consummated by a battery and/or aggravated assault in violation of Article 128, UCMJ (Prior to 1 January 2019) and/or Article 128b, UCMJ (After 1 January 2019);

(3) Any violent crime in which the offense has as an element the use of physical force, attempted use of physical force, or threatened use of physical force against the person or property of another, or that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing an offense, in which the victim is under the age of sixteen (16) years;

(4) Any assault involving a firearm; and

(5) An attempt to commit any of the above offenses in violation of Article 80, UCMJ.

b. Initial disposition includes taking no action, taking administrative action, imposing non-judicial punishment, disposing of charges, and forwarding of charges. The withholding of authority under this section does not prohibit the preferral of charges by subordinate commanders below the grade of O-6 who are not SPCMCAs.

c. This withholding of initial disposition authority also applies to all other offenses, whether committed by the suspected offender or the reported victim, arising from or related to the original allegation or attempt.

d. The provisions in this section do not relieve subordinate commanders from taking immediate action in the event of an allegation of sexual assault or domestic violence. Actions may include, but are not limited to, ensuring the victim receives appropriate medical care; responding to victim requests for expedited transfer (in cases of alleged sexual assault); issuing protective orders; approving search authorizations; and coordinating with investigators.

4. Personal Exercise of Discretion in Cases Alleging Misconduct by Senior Leaders (GC FBVA).

a. Authority to dispose of allegations of misconduct or culpable inefficiency made against a commissioned officer, warrant officer, or noncommissioned officer in the grade of E-6 (serving as a Unit Victim Advocate, Sexual Harassment/Assault Response Prevention (SHARP) Representative, or Victim Witness Liaison), E-7 (serving in a First Sergeant position, Detachment Sergeant position, Unit Victim Advocate, SHARP Representative, or Victim Witness Liaison), E-8 or E-9, is withheld to the GC FBVA. Notwithstanding the subject matter withholding provisions elsewhere in this Supplement, authority to address all allegations involving senior leader misconduct are withheld to the GC FBVA, under this section.

b. Similarly, the GC FBVA retains the authority to take or initiate any administrative action or to administer non-judicial punishment to address allegations of misconduct or culpable inefficiency made against a commissioned officer, warrant officer, or noncommissioned officer in the grade of E-6 (serving as a Unit Victim Advocate, SHARP Representative, or Victim Witness Liaison), E-7 (serving in a First Sergeant position, Detachment Sergeant position, Unit Victim Advocate, SHARP Representative, or Victim Witness Liaison), E-8 or E-9. Administrative actions may include corrective measures such as admonition, reprimand, censure, relief for cause, extra military instruction, the withholding of privileges, or any combination of the above.

c. Any allegation of misconduct (other than minor misconduct as defined below), criminal investigation, arrest, criminal detention or incarceration involving personnel identified in paragraph 4 of this Supplement is information of special command interest and must be reported.

d. Initial reports will include the Soldier's name, rank, gender, unit, duty assignment, brief description of the incident, and any measures the command has taken in response to the incident. Commanders, directors, and supervisors will report incidents or allegations meeting the above criteria through command channels to the GC FBVA, with a copy provided to the SJA, DSJA, and Chief, Military Justice within the OSJA, USAG Fort Belvoir, FBVA, within 72-hours of receiving notification of an allegation of misconduct or culpable inefficiency regarding personnel identified in paragraph a, above.

e. The GC FBVA, will provide the required notification of misconduct for all units aligned under the GCMCA jurisdiction of the GC FBVA, to the Commanding General (CG), U.S. Army Military District of Washington (MDW), in accordance with paragraph 5, on the next page.

f. The withholding of authority in senior leader misconduct cases does not relieve a Commander of the responsibility to promptly conduct an inquiry into allegations of misconduct under Rules for Court-Marital (RCM) 303, where appropriate. The withholding of authority under this section does not prohibit the preferral of charges by subordinate commanders below the grade of O-6 who are not SPCMCAs.

g. Subordinate commanders will promptly report any allegations or suspected misconduct committed by an officer, warrant officer, or enlisted personnel in the grade of E-6 (serving as a Unit Victim Advocate, SHARP Representative, or Victim Witness Liaison), E-7 (serving in a First Sergeant position, Detachment Sergeant position, Unit Victim Advocate, SHARP Representative, or Victim Witness Liaison), E-8 or E-9, and above, through the SPCMCA to the GC FBVA, with notice to the SJA, Deputy SJA, and Chief, Military Justice, within the OSJA, USAG FBVA. When unsure whether a situation is reportable, Commanders should contact the Chief, Military Justice, OSJA, USAG Fort Belvoir, FBVA, who will resolve whether a situation should be reported. Allegations of minor misconduct such as minor traffic offenses, failure to report, and minor derelictions of duty, are excluded from this reporting requirement.

h. Upon request, the GC, USAG Fort Belvoir, FBVA may release authority to address senior leader misconduct to subordinate commanders. Requests should be in writing through the SJA. When military personnel are subject to multiple withholding policies, incidents should be reported in accordance with each policy. Commanders, with consultation from supporting legal offices, should coordinate the appropriate initial disposition authority.

i. Commanders will coordinate with the SJA, DSJA, and/or Chief, Military Justice in the OSJA, USAG Fort Belvoir, FBVA, to ensure compliance with the required notification and reporting requirements set forth in this paragraph.

5. Commanding General, MDW Policy Letter – Withholding and Notification of Misconduct – Memorandum #5 (CG, MDW).

a. Although personnel assigned to the GCMCA jurisdiction of the GC FBVA are not assigned to the GCMCA jurisdiction of the CG, MDW, however, the CG, MDW is designated the Senior Commander for USAG, FBVA. The CG, MDW issued a withholding and notification of misconduct policy that does apply to the units falling under the GCMCA of the GC FBVA.

b. Commanders, directors, and supervisors will, within 72 hours from receipt of information, report incidents or allegations meeting the below criteria through command channels to the CG, MDW, with a copy provided to the SJA, MDW. Reports will include the Soldier's name, rank, gender, unit, duty assignment, brief description of the incident, and any measures the command has taken in response to the incident.

(1) Any report or investigation of misconduct that has actual or expected media interest within the MDW GCMCA or within the Senior Commander's jurisdiction, including GC FBVA.

(2) Any report or investigation of alcohol involving a soldier within the MDW GCMCA and/or Senior Commander jurisdiction who is cited for, convicted of, or reported to have engaged in an intoxicated driving offense.

(a) Mandatory letters of reprimand will be issued by the CG, MDW.

(b) Commanders do not have the authority to exercise UCMJ action, including non-judicial punishment (Article 15, UCMJ), for driving under the influence (DUI) or driving while intoxicated (DWI) offenses committed on-post or off-post, unless the CG, MDW returns authority on a specific case.

(c) This policy does not affect the initiation or imposition of other administrative sanctions for DUI and DWO offenses, such as suspension and revocation of installation driving privileges, bars to continued service, administrative reductions, and administrative separation for misconduct. This requirement does not apply to Soldiers aligned under the GCMCA of another General Officer (i.e. Intelligence and Security Command (INSCOM) or Army Cyber Command (ARCYBER)) capable of issuing letters of reprimand.

c. Commanders will coordinate with their servicing legal offices to ensure compliance with the required notification and reporting requirements set forth in this paragraph.

6. CG, INSCOM Withholding and Notification of Misconduct Involving Senior Leaders.

a. General Policy. While the CG, INSCOM and GC FBVA exercise concurrent responsibilities for the preservation of good order and discipline, pursuant to their respective GCMCA, the GC FBVA will typically exercise, pursuant to local withholding and jurisdiction policies, primary disposition authority for all Senior Leader misconduct regarding INSCOM senior leaders, unless jurisdiction is also reserved by the CG, INSCOM. For purposes of paragraph 6, senior leaders are commissioned Officers, warrant Officers, and non-commissioned Officers in the grade of E-8 and above. The Brigade Judge Advocates (BJAs) will coordinate between the SJA, USAG Fort Belvoir, FBVA and INSCOM OSJA on the appropriate disposition for all Senior Leader misconduct, including whether the CG, INSCOM reserves jurisdiction.

b. Disposition Through GC FBVA. INSCOM Commanders may pursue, pursuant to the GC FBVA withholding and jurisdictional policies, disposition of Senior Leader misconduct under the UCMJ (including Article 15, non-judicial punishment) without a release of withholding or jurisdiction from the CG, INSCOM. This includes cases where the local GC FBVA, has delegated or released jurisdiction to a lower disposition level, even if that release is to pursue a non-UCMJ action (e.g., Brigade Letter of Concern). BJAs will keep the SJA, INSCOM, updated on procedural developments and final outcome of all Senior Leader misconduct disposed through the GC FBVA.

c. Reservation of Jurisdiction for Certain Non-UCMJ Cases. If the GC FBVA does not take UCMJ action or delegate disposition authority to a lower level, the CG, INSCOM reserves jurisdiction from INSCOM subordinate commands to decide whether to issue a General Officer Memorandum of Reprimand (GOMOR) for senior leader misconduct. BJAs will consult the SJA, INSCOM to resolve questions of whether the Commander INSCOM is reserving jurisdiction under this paragraph.

(1) Coordination Required. In instances where the CG, INSCOM has reserved jurisdiction to consider issuance of a GOMOR, BJAs will coordinate between the SJA, USAG Fort Belvoir, FBVA and SJA, INSCOM on resolving which GCMCA will handle the misconduct.

(2) Release of Jurisdiction. INSCOM Commanders may request, through memorandum routed through OSJA, INSCOM, release of jurisdiction from CG, INSCOM to act upon Senior Leader misconduct at their level. Except when prohibited by regulation, INSCOM commanders should specify what action they intend to take if they obtain jurisdiction to dispose of a case.

7. Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities.

a. Commanders will not impose punishment under Article 15, UCMJ or prefer court-martial charges for any offense that is pending trial or that has been tried by any state or federal criminal court, without prior, written approval from the GC FBVA, as the GCMCA.

b. If otherwise allowed by regulation, Soldiers who are awaiting trial or have been tried in a civilian court may be subject to appropriate administrative action to address the conduct at issue. These actions may include corrective measures such as admonition, reprimand, censure, relief for cause, extra military instruction, the withholding of privileges, or any combination of the above.

8. Procedures for Courts-Martial.

- a. The GC FBVA, as the GCMCA, withholds the authority to convene all special courts-martial.
- b. Pre-Trial Confinement. Pre-trial confinement (PTC) is not authorized without prior notification and concurrence of the SJA, USAG Fort Belvoir, FBVA. Commanders will consult with the Chief, Military Justice and/or Trial Counsel to determine if PTC is appropriate.
- c. Panel Excusals. The GC FBVA has delegated the preassembly excusal authority for no more than one-third of detailed panel members to the SJA, USAG Fort Belvoir, FBVA or the SJA's delegee.
- d. Service of Record of Trial. Qualifying victims, as defined by RCM 1103(g)(3)(A), shall be served a copy of the record of trial in the same manner as the accused.

9. Qualifying Victim and Witness Assistance.

- a. Qualifying victims of rape, sexual assault, stalking, forcible pandering, indecent exposure, forcible sodomy, or indecent viewing, visual recording, or broadcasting, and attempts to commit these crimes (i.e., sex-related offenses), whether they make a restricted or unrestricted report, are entitled to the legal assistance services of a Special Victim Counsel (SVC). Special Victim Counsel services are provided through the OSJA, USAG Fort Belvoir, FBVA.
- b. Qualifying victims of sex-related offenses shall be offered the option of receiving assistance from a SVC upon report of a sex-related offense or at the time the victim seeks assistance from a sexual assault response coordinator, a sexual assault victim advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated to assist victims after the report of sex-related offenses.
- c. A qualifying victim is an individual who reports having experienced a sex related offense as set forth in paragraph 9a, is eligible for military legal assistance under 10 U.S.C. § 1044 or AR 27-3. In situations involving Soldiers who are on active duty, and Victims of sexual assault prior to enlistment or commissioning; those who are Reserve Component Soldiers; those who are dependents and former dependents of Service Members; or DoD Civilian employees, please contact the OSJA, Military Justice Officer at 703-805-4408/4390/4407/4411, for further guidance on SVC eligibility.