



DEPARTMENT OF THE ARMY
HEADQUARTERS, 10TH MOUNTAIN DIVISION (LIGHT INFANTRY) AND FORT DRUM
FORT DRUM NEW YORK 13602-5000

AFDR-CG

1 May 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy Memorandum 4, Senior Leader Misconduct Notification Requirements and Withholding of Authority to Dispose of Certain Misconduct

1. References.

- a. Manual for Courts-Martial, 2019, *as amended*.
- b. AR 27-10, Legal Services: Military Justice, 11 Jun 16, *as amended*.
- c. AR 600-85, The Army Substance Abuse Program, 28 Nov 16.
- d. Army Directive 2012-07, Administrative Processing for Separation of Soldiers for Alcohol or Other Drug Abuse, 13 Mar 12.
- e. New York State Vehicle and Traffic Law, §§1192-1199 (2015), *as amended*.
- f. Policy Memorandum 6, Administrative Actions for Impaired Operation of Motor Vehicle Incidents, 12 Dec 18.
- g. Secretary of Defense Policy Memorandum, "Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases," dated 20 Apr 12.

2. Supersession. This memorandum supersedes and replaces Policy Memorandum 4, Withholding of Authority to Dispose of Certain Misconduct and to Approve Certain Suspended Administrative Separations, 3 January 2019.

3. Scope. This policy applies to all Soldiers assigned or attached to Fort Drum or under the jurisdiction of the Fort Drum or 10th Mountain Division General Court-Martial Convening Authority.

4. Notification Requirements.

- a. Special Court-Martial Convening Authorities (SPCMCAs) will report any allegation of misconduct committed by a commissioned officer, warrant officer, or Soldier in the grade of E-8 or E-9 to me as soon as practicable, but no later than 24 hours of learning of the allegation.

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b. SPCMCAs must notify me before temporarily suspending, and/or permanently relieving from duties, any commissioned officer, warrant officer, or Soldier in the grade of E8 or E9.

c. Commanders will notify me in accordance with 4a and/or 4b above via e-mail, copying the Deputy Commanding Generals, Chief of Staff, and Staff Judge Advocate.

5. Withholdings.

a. Senior Leader Misconduct. I withhold authority to dispose of all allegations of misconduct committed by commissioned officers, warrant officers, or Soldiers in the grade of E-8 or E-9. This includes the authority to dispose of such cases under Article 15, Uniform Code of Military Justice (UCMJ), initiate administrative separations, issue letters of concern or reprimand, approve or disapprove findings and recommendations for any formal or informal investigations under the provisions of AR 15-6, and approve final reliefs-for-cause. Subordinate commanders retain authority to conduct performance-based counseling, initiate and conduct (but not finally approve) an investigation into senior leader misconduct under provisions of AR 15-6, temporarily suspend Soldiers from duty positions, and prefer charges in accordance with RCM 307.

b. Withholdings held to SPCMCAs. Subject to paragraphs 4a & 4b above, only SPCMCAs may dispose of allegations of misconduct committed by a Soldier in the grade of E-7 and all allegations of a second or subsequent incident of domestic violence. This authority cannot be further delegated. SPCMCAs in the grade of O-6 are reminded that in accordance with (IAW) reference g, they are the initial disposition authority for rape, sexual assault, and attempts to commit any of these offenses.


c. Withholdings held to Summary Court-Martial Convening Authorities (SCMCA). Subject to paragraphs 5a-5c above, only SCMCA's may dispose of allegations of drug and alcohol related misconduct and first-time domestic violence incidents. This authority cannot be further delegated. Additionally, SCMCA's in the grade of O-5 are the initial disposition authority for all other UCMJ Article 120 offenses not explicitly covered by reference g.

d. DUI and DWI. I withhold jurisdiction over all suspected on- or off-post DUI, DWI, or related misconduct. I direct all cases involving Soldiers suspected of DUI, or DWI occurring on the Fort Drum Military Reservation to be referred to prosecution in United States Magistrate Court. Commanders will refrain from taking any Article 15 or other UCMJ action against these Soldiers. Commanders are reminded that in accordance with AR 27-10, paragraph 4-2, a person subject to the UCMJ who has been tried in a civilian court will not be punished for the same offense under the UCMJ without my authorization. See Policy Memorandum 6 for administrative requirements for cases involving impaired operation of a motor vehicle.

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6. Requests for Remand of Jurisdiction. Subordinate commanders may request retention of jurisdiction to dispose of the misconduct described in this policy. All such requests will be in writing and sent through the Staff Judge Advocate to the Commander, Fort Drum.
7. Commanders at all levels are reminded that under the provisions of RCM 306(a), no superior authority, including the undersigned, can direct or influence them to choose a particular disposition or recommendation for offenses of which jurisdiction has not been withheld.
8. The point of contact for this memorandum is the Staff Judge Advocate at 772-6370.



BRIAN J. MENNES
Major General, USA
Commanding

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