



# PRACTICE ADVISORY

2-16

13 May 2016

## Reporting Retaliation

### *Background*

Marines who experience retaliation after reporting a crime or making other protected communications may report this incident to various offices within the Marine Corps or the Department of Defense for assistance. Complaints of criminal offenses, violations of law or regulation, fraud, waste, abuse, and mismanagement are all considered protected communications. This Practice Advisory will provide background on the types of retaliation, avenues for reporting, and entities that provide assistance.

### *Types of Retaliation*

Retaliation includes one of the following actions (restriction, reprisal, ostracism, or acts of maltreatment) when taken against a service member because that member made or is preparing to make a protected communication, such as reporting a criminal offense. Military Whistleblower Protection, Secretary of the Navy Instruction (SECNAVINST) 5370.7D, states that Service members and Department of the Navy personnel *shall not* retaliate against a service member because the member reported a criminal offense. Retaliatory acts, listed below, that violate SECNAVINST 5370.7D may be punished under the Uniform Code of Military Justice as an orders violation under Article 92.

**Restriction:** Preventing or attempting to prevent a service member from making or preparing to make a lawful communication to a member of Congress and/or Inspector General (IG). No one should say anything to a Marine that could be construed as discouraging or limiting his/her rights to make a protected communication to an IG, even temporarily. By way of example: “Don’t go to the IG yet; let us try to fix this for you first.” This is actionable restriction and would be a substantiated violation of 10 U.S.C. §1034.

**Reprisal:** Taking or threatening to take an unfavorable personnel or adverse personnel action, or withholding or threatening to withhold a favorable personnel action for making or preparing to make a protected communication, such as reporting a criminal offense.

**Ostracism:** The exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.

**Maltreatment:** The treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose, that is done with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering.

For an action to violate the SECNAVINST, there must be a connection between the retaliatory act and the report of a criminal offense. For example, if the unfavorable personnel action, such as lower marks on a fitness report, were given because the victim reported a sexual assault or other offense, this may be a violation of the SECNAVINST.

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## *Avenues to Report*

Marines may report retaliation and seek assistance through different offices. For additional reporting and assistance options, please see the chart below on Marine's tools to report.

**Inspector General:** The Inspector General of the Marine Corps (IGMC) will assess complaints of retaliation as defined above. For complaints of ostracism or maltreatment, IGMC will normally refer these complaints, via the Command IG, to the appropriate command for action, except in those circumstances where the IGMC determines that the allegations should be handled by the IGMC. The IGMC will investigate allegations of ostracism and/or maltreatment by a flag/general officer or SES or allegations of ostracism and/or maltreatment made in conjunction with allegations of restriction or reprisal.

**Sexual Assault Response Coordinator:** For those facing retaliation for making an unrestricted report of sexual assault, Sexual Assault Response Coordinators (SARC) and SAPR Victim Advocates (VA) are available 24 hours a day, 7 days a week to offer support. The SARC, in consultation with their Staff Judge Advocate, will refer the Marine to the appropriate agency (e.g., IGMC, military criminal investigative agency, or command) to address the experienced retaliation. If the Marine chooses to file a complaint of retaliation in connection with a sexual assault, the SARC will elevate this information to the Case Management Group (CMG) for monthly updates to ensure that the complaint is tracked from initiation to resolution and supportive services are provided as needed.

Marines who select the restricted reporting option, and are experiencing retaliation, should contact the SARC who will be able to advise them on their options. Marines who experience retaliation as a result of a sexual assault but have not signed a DD Form 2910, should only talk with a SARC, SAPR VA, or Victims' Legal Counsel in order to protect their right to file a restricted report. As is standard practice during the regular monthly check-in, SAPR VA will ask Marines who files unrestricted or restricted reports if they are experiencing retaliation, but Marines may request support at any time.

**Victims' Legal Counsel Organization:** Victims' Legal Counsel (VLC) may assist Marines, dependents, DoD civilians and some others, who have experienced sexual assault, domestic violence, child abuse, and some other crimes, in reporting acts of retaliation. It is VLC practice to bring reports to the appropriate level of command that will address the retaliation or another entity such as the Naval Criminal Investigative Service when a criminal act occurs or IG. VLC may submit complaints verbally; in writing (e.g., email or letters in naval correspondence); as complaints under Article 1150, U.S. Navy Regulations, and Article 138, UCMJ; as well as submit complaints through communications with members of Congress. VLC may also represent them in their petition to the Board for Correction of Naval Records (BCNR) to remove retaliatory actions from their records in the form of page 11 administrative counseling, nonjudicial punishment, and fitness reports in the their official military personnel file (OMPF).

**Chain of Command:** Marines have the opportunity to discuss retaliation with their chain of command to pursue resolution either informally or through a formal process. Commanders may resolve retaliation complaints informally; however if a formal investigation is needed or the Marine is not satisfied with the command resolution, the case should be referred to the IG. Allegations of criminal retaliation falling under the purview of the Naval Criminal Investigation Service must be immediately reported by component commanders at all levels.

- Request Mast provides a Marine the opportunity to communicate not only with his or her immediate Commanding Officer but also with any superior Commanding Officer in the chain of command up to and including the Marine's immediate Commanding General. Request Mast includes both the right of the Marine to personally talk to the Commanding Officer, normally in person, and the requirement that the Commanding Officer consider the matter and personally respond to the Marine requesting mast. Marines requesting mast must complete a Request Mast Application Form (NAVMC 11296) and submit it through the chain of command to the Commanding Officer.

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- An Article 138, Uniform Code of Military Justice (UCMJ) complaint enables Marines who believe they have been wronged by their Commanding Officer to complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the Commanding Officer who is the subject of the Marine's complaint. Marines submit an Article 138 complaint by first writing a formal letter addressing the request for redress to the lowest ranking officer in the chain of command. If the wrong is not addressed and fixed after the deadline of the initial request, a formal letter can be submitted to any superior commissioned officer.

- An Article 1150, United States Navy Regulations, complaint enables Marines who believe they have been wronged by an act, omission, decision, or order of a person who is superior in rank or command to report the wrong to the proper authority for redress. Marines submit an Article 1150 complaint by contacting a legal officer, command Staff Judge Advocate, or Victims' Legal Counsel to receive further guidance on filing an Article 1150 complaint. Article 1150 complaints are not to be used for complaints against a Marine's Commanding Officer; an Article 138 complaint should be used for a complaint with a Commanding Officer as the subject.

**Criminal Investigation Agencies:** The Naval Criminal Investigative Service and other law enforcement agencies will investigate acts such as damage to property, physical assault, obstruction of justice and specifically listed crimes under the UCMJ if committed in retaliation for reporting an offense.

**Military Equal Opportunity:** Equal Opportunity Advisors (EOA) from the Military Equal Opportunity Office (MEO) are the liaison for Marines experiencing retaliation as a result of reporting sexual harassment. EOAs will provide general referral information on reporter options and will refer reports to the appropriate VLCs or investigative agency for a more in-depth education of options.

### ***Important Considerations When Reporting.***

For those service members who choose to report to an agency other than the IG, it is important to note limits on the IG's ability to act on the complaint if not received by the IG within set timelines. Marines have one year from the date on which the Marine becomes "aware" of the personnel action to report reprisal to the IG. If other forms of resolution are sought before contacting the IG, the one-year statutory time clock does not stop (because the Marine is "aware" and seeking some kind of redress/assistance). Trying to resolve something in another venue does not preclude a Marine from making a complaint to the IG either about retaliation or the other venue's processing of the complaint (the only limitation on that is the one-year statute of limitations for reprisal complaints). IGMC may consider accepting cases that exceed the time if compelling reasons for delay exist or the strength of evidence is overwhelming.

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**Additional Resources.** See also 10 USC §1034 and DoD Directive 7050.06 as additional references and the below chart for alternative ways to report and avenues of assistance.



**Points of Contact.** To report an offense or seek additional information please contact the following:

**IG:** [Hotline Complaint Form](#) to the Inspector General of the Marine Corps via email [orgmb.igmc.hotline@usmc](mailto:orgmb.igmc.hotline@usmc) or call 866-243-3887 for further guidance.

**JA:** JMJ Branch Head, LtCol Angela Wissman at [angela.wissman@usmc.mil](mailto:angela.wissman@usmc.mil) or (703)693-9005; JMJ Deputy Head, Maj Eldon Beck, at [eldon.beck@usmc.mil](mailto:eldon.beck@usmc.mil) or (703)693-8901; or the Trial Counsel Assistance Program OIC, Maj Jesse Schweig, at [jesse.schweig@usmc.mil](mailto:jesse.schweig@usmc.mil) or (703)693-8955.