



Requirement for Appointment of Independent Investigating Officers for Sexual Harassment Investigations

Effective 22 April 2022, the first O-5 or higher commander who receives a **formal** complaint of sexual harassment shall, within 72 hours, forward it to the next higher level commander in the grade of O-6 or above. If the next higher level commander accepts the complaint and directs **formal** Complaint Resolution in accordance with Chapter 5 of MCO 5354.1F (PAC Order), the next higher level commander must convene a command investigation and appoint an investigating officer from outside the command of the subject and complainant. Amplifying details are provided below, and a flowchart depicting the process for handling a **formal** sexual harassment complaint under ALNAV 024/22 is provided as Enclosure (1). ALNAV 024/22 does not impact or change the informal Conflict Management process addressed in the PAC Order.

Background

At the direction of the President, on 26 February 2021, the Secretary of Defense (SECDEF) established the 90-Day Independent Review Commission on Sexual Assault in the Military (IRC). The SECDEF charged the IRC with conducting an independent assessment of the military's treatment of sexual assault and sexual harassment. In June 2021, the IRC presented SECDEF with its report and recommendations addressing four broad areas: accountability, prevention, climate and culture, and support and care of victims. In its report, the IRC made 82 recommendations for SECDEF's consideration across these four broad areas. On 2 July 2021, SECDEF indicated his strong bias towards accepting the recommendations of the IRC wherever possible with adjustments made to ensure effective implementation. Since 2 July 2021, SECDEF has made several revisions to the approved IRC recommendations. Through Recommendation 1.2, the IRC recommended that "[t]he investigation of all sexual harassment should be performed by an independent, well-trained body that is outside the chain of command." At the SECDEF's direction, on 15 December 2021, the Undersecretary of Defense for Personnel and Readiness (USD (P&R)) issued implementation guidance that "[t]he Secretaries of the Military Departments . . . will issue policy as soon as possible to require that Commanding Officers or Officers in Charge of a unit, vessel, or facility in receipt of a **formal** sexual harassment complaint will appoint an investigating officer from outside the chain of command of the subject and the victim." On 22 April 2022, the Secretary of the Navy (SECNAV) issued such policy through ALNAV 024/22.

Intersection of ALNAV 024/22 and the PAC Order

Pursuant to ALNAV 024/22, commanders shall "adhere to existing Service requirements for the processing of **formal** sexual harassment complaints" until relevant "DON policy and procedure" are revised. Accordingly, practitioners should interpret ALNAV 024/22 consistent with the requirements outlined in the PAC Order to the extent practicable. This Practice Directive does not address all action required upon receipt of a **formal** complaint of sexual harassment as directed within the PAC Order, but only those affected by ALNAV 024/22. Accordingly, practitioners must review the PAC Order in its entirety.

Paragraph 4 of ALNAV 024/22 requires that "a *Commander, Commanding Officer, or Officer-in-Charge* who receives a **formal** complaint of sexual harassment shall, within 72 hours, forward such complaint to the next higher level commander in the chain of command to appoint an investigating officer to investigate the complaint. The next higher level commander shall appoint an investigating officer from outside the *command* of the subject and complainant." ALNAV 024/22 does not define the minimum grade of the *commanders, commanding officers, or officers-in-charge* who must forward formal complaints of sexual harassment to the next higher level commander. However, in the context of discussing the responsibilities of commanders in processing **formal** complaints, the PAC Order defines "commander"

as “Marine Force Commanders, Commanding Generals, Officers in Charge in the grade of O-5/O-6, and slated O-5/O-6 Commanding Officers.”

ALNAV 024/22 also does not define a **formal** complaint of sexual harassment. However, in the context of the PAC Order, a **formal** complaint of sexual harassment is made when a Service member submits a signed NAVMC Form 11512 requesting Commander-Directed Complaint Resolution.¹ Accordingly, when read in conjunction with the PAC Order, ALNAV 024/22 requires that upon receipt of a **formal** complaint of sexual harassment in a signed NAVMC Form 11512, the first O-5 or higher commander, commanding officer, or officer-in-charge in the subject’s chain of command who may normally accept a PAC complaint, must forward the sexual harassment complaint to the next higher level commander in the grade of O-6 or above. This next higher level commander in the grade of O-6 or above is referred to as “the next higher level commander” throughout the remainder of this Practice Directive, consistent with ALNAV 024/22.

The next higher level commander must determine whether to accept or dismiss the complaint and whether to direct **formal** Complaint Resolution or informal Conflict Management in accordance with the PAC Order. Complaints of severe and pervasive behaviors that are contrary to good order and discipline, such as *quid pro quo* sexual harassment, must be processed through **formal** Complaint Resolution even if the complainant requests informal Conflict Management. If, after accepting the complaint, the next higher level commander determines that **formal** resolution is appropriate, the next higher level commander must convene a command investigation and appoint an investigating officer from outside the command of both the subject and complainant. The appointed investigating officer must not be familiar with the subject or complainant. Although ALNAV 024/22 does not define the lowest level of *command* from which the investigating officer must be sourced, the intent of this policy change is to achieve greater independence in sexual harassment investigations by requiring the investigating officer to be sourced from a command outside the authority of the commander who forwarded the complaint to the next higher level commander. This means that the investigating officer must be sourced from outside the command authority of the O-5 or higher commander who forwarded the complaint to the next higher level commander. This authority to accept a **formal** complaint of sexual harassment and convene an investigation may not be delegated below the O-6 level.

Exception

There is no exception to the requirement that the first O-5 or higher commander forward **formal** complaints of sexual harassment to the next higher level commander. However, as prescribed within ALNAV 024/22, if the next higher level commander determines that appointing an investigating officer from outside the O-5 command of the subject and complainant “would unreasonably interfere with the command’s ability to complete its mission, the next higher level commander shall include the reason(s) and require an endorsement from the first Flag or General Officer on the letter assigning an investigating officer from within the same command as the subject or complainant.” As an example, within the discretion of the next higher level commander and the endorsing Flag or General Officer, such an exception may apply in a deployed or shipboard setting.

Action Upon Completion of Command Investigation

Pursuant to Chapter 5 of the PAC Order, upon receipt of the completed command investigation, the next higher level commander who convened the investigation has six duty days to decide to either substantiate or not substantiate the complaint. The next higher level commander may also direct additional investigation prior to making that decision, cognizant of the processing timeline established in the PAC Order for sexual harassment complaints.

If the next higher level commander substantiates the complaint, the next higher level commander may take any appropriate administrative or disciplinary action. While ALNAV 024/22 directs the manner in which **formal** complaints of sexual harassment are investigated, it does not withhold disposition authority in any manner following completion of an investigation conducted in compliance with it. Accordingly, within the next higher level commander’s discretion, the next higher level commander may return the matter to the subordinate commander in the

¹ Even if a complainant requests informal Conflict Management, the commander may direct formal Complaint Resolution, thus triggering the requirements of ALNAV 024/22.

grade of O-5 or above for appropriate disposition in a manner that does not infringe upon the subordinate commander's independent discretion. Disposition of complaints involving officers shall be handled in accordance with MCO 5800.16 – V15 (Officer Misconduct and Substandard Performance).

Reporting Requirements

For all **formal** complaints of sexual harassment, the next higher level commander is responsible for completing Part II of the NAVMC Form 11512. The next higher level commander is also responsible for producing an initial report, and any required updates, for entry into the Discrimination and Sexual Harassment (DASH) system in accordance with the PAC Order.

Multiple PAC Complaints

Unless such authority is otherwise withheld by superior competent authority, in the event a Service member is the subject of a **formal** complaint of sexual harassment and at least one non-sexual harassment PAC complaint, the commander who may normally accept a PAC complaint may decide whether to forward the non-sexual harassment complaint to the next higher level commander along with the **formal** complaint of sexual harassment. When advising commanders, practitioners should consider the efficiency of consolidating the complaints into a single investigation, particularly when they involve the same witnesses and course of conduct.

Effective Date

These requirements became effective upon publication of ALNAV 024/22 on 22 April 2022. Accordingly, any **formal** complaint of sexual harassment received on or after 22 April 2022, regardless of when the underlying conduct is alleged to have occurred, shall be handled in accordance with ALNAV 024/22 and the guidance provided in this Practice Directive.

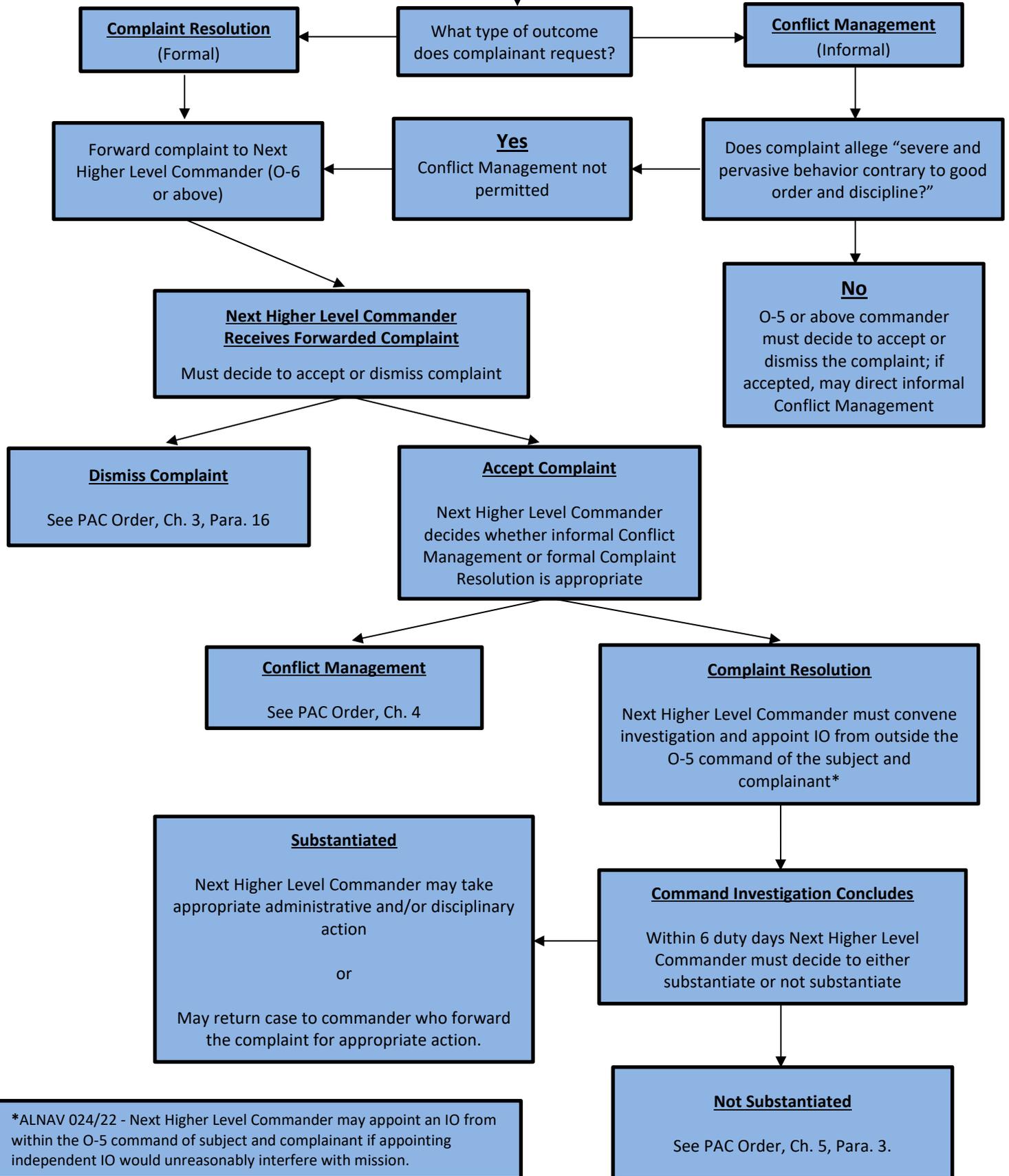
Forthcoming Updates to the PAC Order

ALNAV 024/22 established an interim policy in the effort to achieve greater independence in sexual harassment investigations. Pursuant to USD (P&R) implementation guidance, by 30 September 2024, a separate body of independent, trained investigators will be responsible for investigating sexual harassment complaints. Following updates to relevant DON policies, the PAC Order will be updated appropriately.

Direct any questions about this Practice Directive to the JMJ Branch Head at (703) 693-9005 or the JCA Deputy Branch Head at (703) 693-8164.

ALNAV 024/22 Sexual Harassment Formal Complaint Process

O-5 or above Commander, Commanding Officer, or Officer-in-Charge receives complaint of sexual harassment in signed NAVMC 11512



*ALNAV 024/22 - Next Higher Level Commander may appoint an IO from within the O-5 command of subject and complainant if appointing independent IO would unreasonably interfere with mission.