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IN REPLY REFER TO

3000

CDC

17 Apr 17

CDC POLICY MEMO 2.7A

From: Chief Defense Counsel of the Marine Corps
To: Distribution List

**Subj: MARINE CORPS DEFENSE SERVICES ORGANIZATION POLICY ON
SOCIAL MEDIA**

Ref: (a) JAGINST 5803.1 (series) (Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General)
(b) 10 U.S.C. § 827
(c) MARADMIN 173/15 (Review of Online Personal Information and Habits)
(d) ALMAR 008/17 (Social Media Guidance - Unofficial Posts)
(e) MARADMIN 168/17 (Social Media Misconduct Leaders Handbook and Discussion Guide)

1. Purpose. This policy memo establishes uniform practices for all Defense Services Organization (DSO) personnel concerning acceptable uses of social media.

2. Discussion

a. While social media has been a part of the mainstream for almost a decade, the left and right lateral limits of permissible social media conduct for both attorneys and legal services specialists continue to evolve.

b. Attorneys practicing under the cognizance of the Judge Advocate General of the Navy are subject to the Judge Advocate General's ethics instruction (ref (a)), local circuit rules, and the ethics requirements of their state bars (ref (b)).

c. Given the nature of current operations, it is incumbent on every Marine to be aware of his or her digital presence and manage it in accordance with promulgated anti-terrorism/force protection (AT/FP) protocols.

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d. Some civilian jurisdictions have held contempt hearings and/or initiated ethics complaints against defense attorneys using social media in the courtroom. While most military circuit rules address the use of electronic devices in the courtroom, the use of social media has largely been ignored.

e. This policy is necessary in order to address such uncertainties, protect the legitimate privacy interests of the parties, respect AT/FP concerns and protocols, and ensure dignity and respect concomitant to the military justice process.

f. When acting as the legal representative of a client, you are compelled to do what is in your client's best interest, consistent with the law and applicable ethical cannons. This policy memo does not foreclose any options you may have in the zealous representation of a particular client. Neither is it intended to chill speech made in a private capacity. When speaking in your personal capacity you are completely unconstrained by this guidance. This guidance is intended to ensure compliance with all applicable social media guidelines, protect DSO personnel from stepping on potential ethical landmines, and enhance the professionalism of the DSO and the practice of military justice.

g. Social media policies which apply to all Marines are listed in references (c)-(e).

3. Policy on Unofficial Posts in a Professional Capacity

a. With the exception of official military ceremonies, training, and appropriate unofficial unit social activities, without the express permission of a Military Judge all photography or digital video recording inside military courtrooms is prohibited. This prohibition applies regardless of whether or not court is in session.

b. No member of the DSO shall photograph or digitally video record another party without that party's express consent. Under no circumstances will a member of the DSO photograph or digitally video record the members, a military judge, or any other member of a tribunal while acting in that capacity, transiting to or from the forum, or in the vicinity of the proceeding. This prohibition applies to all identifiable individuals in a photograph or digital video recording, including those who may be in the background of such photographs or digital video recordings.

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c. Photographs outside of the courtroom depicting members of the DSO with clients are permitted. Photos with clients in front of an acquittal "A" or other DSO sanctioned emblems or symbols are also permitted. However, social media dissemination of these types of photos is strongly discouraged.

d. To ensure privacy, compliance with Marine Corps guidance, and applicable bar rules, posting photos of clients on social media is strongly discouraged—regardless of client consent.

e. Text-based social media in which a colleague could reasonably identify the client that is the subject of the post is prohibited.

f. This policy in no way prohibits or restricts DSO organizational, moral-building ceremonies intended to recognize and memorialize acquittals and other favorable results.

4. Policy on Unofficial Posts in a Personal Capacity

a. DSO members must never engage in commentary or publish content on social networking platforms or through other forms of communication that harm good order and discipline or that bring discredit upon themselves, their unit, or the Marine Corps.

b. Marines must avoid online actions that threaten the morale, operational readiness and security, or public standing of their unit, or that compromise our core values. Such commentary and content includes that which is defamatory, threatening, harassing, or which discriminates based on a person's race, color, sex, gender, age, religion, national origin, sexual orientation or other protected criteria. This type of conduct may be punishable under Article 92 of the UCMJ.

c. Article 134 prohibits a variety of offensive conduct, including indecent language, indecent conduct, and communicating a threat, and may also prohibit other neglects or disorders that are prejudicial to good order and discipline or Service-discrediting.

d. Reference (d) provides other examples of conduct that could be punished by the UCMJ, or may violate other state or Federal laws, and expose Service members to civil liability.

e. Reference (e) provides leaders the tools to educate and address social media misconduct.

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f. All members of the DSO should regularly monitor their online social media presence to ensure conformity with this policy memo and the references.

5. Summary. Heightened security concerns, coupled with potential ethical constraints, necessitate greater consideration of our organization's social media presence. We are military justice professionals and shall conduct ourselves accordingly. Respect for the dignity of the military justice process, other parties to the process, and the courtroom is not optional in the DSO. As Marines, respect for one another is a professional requirement. When in doubt, ask.

6. Conclusion. CDC Policy Memo 2.7 is cancelled. This CDC Policy Memo is effective immediately.



J. W. HITESMAN

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