

MILPERSMAN 3060-090

MANAGEMENT OF MISCONDUCT ALLEGATIONS INVOLVING ACTIVE COMPONENT (AC) AND RESERVE COMPONENT (RC) SAILORS WHILE ON AUGMENTATION ORDERS

Responsible Office	OPNAV (N13R)	Phone:	COM FAX	(703) 604-5102 (703) 604-5943
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MyNavy Career Center	Phone: Toll Free E-mail: MyNavy Portal:	1-833-330-MNCC (6622) askmncc@navy.mil https://my.navy.mil/
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References	(a) 10 U.S.C. (b) DoD Instruction 1235.12 of 7 June 2016 (c) BUPERSINST 1610.10F (d) JAGINST 5800.7G (e) SECNAVINST 1920.6D
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1. **Purpose.** This article provides policies and procedures for addressing allegations of misconduct involving Active Component (AC) and Training and Administration of the Reserve (TAR) Sailors serving on global support assignment, overseas support assignment, or individual augmentee manning management orders, and Reserve Component (RC) Sailors involuntarily activated or voluntarily performing active duty per references (a) and (b) access authorities. For the purposes of this article, guidance for AC and TAR Sailors is the same as both are on full-time active duty. RC guidance is intended for Reserve Forces that are ordered to serve on active duty per reference (b).

2. **Policy.** RC Sailors, not already performing duties under reference (a) authorities, are subject to jurisdiction under the Uniform Code of Military Justice (UCMJ) effective on the date they are scheduled to begin movement to report for active duty as specified in his or her orders and remain subject to UCMJ jurisdiction for misconduct committed while on active duty per reference (a). AC and TAR Sailors are subject to jurisdiction under the UCMJ throughout his or her service. Sailors who fail to report for duty on the date specified in their orders, including RC Sailors who fail to report for active duty in accordance with his or her orders and Sailors accused of

misconduct while on activation orders for a deployment or mobilization, may be subject to disciplinary proceedings and or adverse administrative action for violation of the UCMJ. Per reference (a), section 802, [MILPERSMAN 1600-040](#) and [MILPERSMAN 1620-020](#).

3. Procedure

a. **Notifications When Misconduct is Alleged.** The supported command to which an AC, TAR, or RC Sailor is attached is responsible for handling and disposition of misconduct allegations prior to the Sailor detaching, except in unusual circumstances or as otherwise detailed in this instruction. The supported command must consult with an appropriate staff judge advocate (SJA) in the chain of command and Office of Special Trial Counsel (OSTC) when required by the nature of the offense to determine the proper courts-martial convening authority and or the non-judicial punishment (NJP) under Article 15, UCMJ authority with jurisdiction and or the cognizant authority for administrative actions.

(1) For AC and TAR Sailors, supported commands will notify Navy Personnel Command (NAVPERSCOM) Training Distribution Augmentation Division (PERS-46), the appropriate SJA, and U.S. Fleet Forces (USFF) Global Force Management (N1 GFM) of any pending legal action related to accusations of misconduct against the Sailor.

(2) For RC Sailors, supported commands will notify all entities in subparagraph 3a(1) and additionally will notify Commander, Navy Reserve Force (COMNAVRESFOR) Force Mobilization (N35), and the Sailor's Navy Reserve activity (NRA).

b. **Tactical Control (TACON) Release.** TACON release is the mechanism by which a supported command can release a Sailor, earlier than the Sailor's orders indicate, from the forward supported command to a rear command better equipped to deal with the logistical needs of a Sailor facing long-term disciplinary or administrative consequences, or when the supported command believes good order and discipline is undermined by the Sailor's continued presence at the supported command. In the event of an allegation of misconduct against a Sailor serving under any of the orders listed in paragraph 1 the supported command believes warrants TACON release for any of the reasons identified above, the supported command may initiate TACON release. TACON release

is not a release from active duty and should not be construed or used as such.

(1) TACON release, detachment, and or redeployment of a Sailor from his or her assigned requirement greater than 30 days prior to the ordered end of mission does not relieve supported commands from proper handling of the misconduct allegations, including fully disposing of NJP cases. Supported commands must consult with the appropriate SJA and OSTC, if applicable, prior to any decision or action to initiate a TACON release or deactivate RC Sailors.

(2) In the event of a TACON release request, supported commands must also contact USFF (N1 GFM). USFF (N1 GFM) will coordinate the TACON release of the Sailor from the supported command, and depending on input from the cognizant SJA, will coordinate transfer of the Sailor within the supported command's chain of command, such as to the Navy Component of the supported combatant commander as applicable, or eventually the termination of the Sailor's specific mobilization or augmentation orders early. This is to facilitate the opportunity for the supported command to properly handle misconduct allegations, complete any necessary investigations, and completely dispose of all NJP cases.

(3) An RC Sailor who is TACON released from his or her mobilization or activation orders will be released from active duty back to his or her previous Reserve status unless the RC Sailor is accused of misconduct for which there is a reasonable view toward trial by court-martial, in which case he or she should be retained on active duty, pending resolution of the misconduct.

c. **NJP**. Minor disciplinary action should be handled and fully disposed of by the supported command to which the Sailor is attached at the time of the misconduct and should occur prior to TACON release of the Sailor.

(1) Appropriate administrative documentation (e.g., supporting investigative action, evaluation or fitness report documenting the reason for TACON release, per reference (c), report of misconduct, etc.,) should be completed by the supported command prior to TACON release.

(2) While it is best practice to conduct NJP at the command the Sailor was attached to when the misconduct occurred,

there are situations where this is logistically challenging or not feasible. Per references (a) and (d), NJP may be imposed anytime within 2 years of the date of misconduct, or after, if the statute of limitations is waived by the Sailor.

(3) Per [MILPERSMAN 1620-020](#), an RC Sailor may not be retained or extended on active duty beyond the term of service during which he or she committed the misconduct solely to impose, administer, or process NJP.

(4) If the supported command does not conduct NJP proceedings prior to TACON release or detachment of the Sailor, and the subsequent Navy command or NRA intends to impose NJP against an RC Sailor for misconduct that occurred during the period of mobilization and or augmentation, the subsequent Navy command should coordinate with the cognizant SJA to coordinate NJP proceedings.

d. **Courts-Martial**. Unlike NJP, courts-martial typically entail timelines and logistical requirements that forward-deployed supported commands are not equipped to handle. The following applies when a Sailor subject to this regulation is accused of or suspected of a crime in which court-martial is reasonably anticipated:

(1) Per [MILPERSMAN 1160-050](#), a Sailor may be involuntarily retained or extended on active duty, or on legal hold at a particular command, as a result of accusation, apprehension, arrest, confinement, or investigation with a view toward trial by court-martial. Per [MILPERSMAN 1620-020](#), an RC Sailor may be held on active duty beyond the release date identified in applicable orders through the conclusion of court-martial proceedings and execution of any sentence, provided the alleged misconduct occurred while the RC Sailor was subject to jurisdiction per reference (a).

(2) The supported command must notify the OSTC and the appropriate military criminal investigative organization (e.g., Naval Criminal Investigative Service) when a Sailor is subject to this article and accused or suspected of a covered offense per reference (a) (i.e., those offenses identified in section 801(17), included, but not limited to, murder, sexual assault, domestic violence, etc.). Covered offenses per reference (a), while under consideration by the OSTC, must be considered as pending with a view toward trial by court-martial. Should the OSTC determine it will not prefer or refer charges and the OSTC

defers the matter back to the Sailor's local commander, the Sailor's commander with appropriate authority must coordinate disposition of the misconduct allegations, including potential engagement and collaboration with AC and or TAR parent command or RC organizations, as appropriate.

(3) Per reference (a), section 801(17) an RC Sailor accused of any covered offense, should be extended in an active duty status unless the OSTC and the supported command's cognizant SJA concur upon the Sailor's release from active duty prior to final disposition. A supported command may execute a TACON release of a Sailor accused of a covered offense, provided the above listed SJAs have been consulted, and the Sailor is kept in an active duty status throughout and after the TACON release (unless and until release from active duty is authorized).

(4) An RC Sailor accused of any non-covered offense (i.e., those crimes not specifically listed per reference (a), section 801(17)), where there is a view toward trial by court-martial, should be extended in an active duty status unless the trial counsel and the supported command's cognizant SJA concur upon the Sailor's release from active duty prior to final disposition. A supported command may execute a TACON release of a Sailor accused of a non-covered offense, provided the above listed SJAs have been consulted, and the Sailor is kept in an active duty status throughout and after the TACON release (unless and until release from active duty is authorized).

(5) When an RC Sailor is being extended on active duty with a view toward trial by court-martial, the supported command must send a written request for the RC Sailor to remain on active duty to PERS-46. The request must include the statement that "the RC Sailor is under investigation for alleged misconduct with a view toward trial by court-martial".

(a) Per reference (a), section 802, and Rules for Courts-Martial, Rule 202(c)(1) and (2). PERS-46 will modify the RC Sailor's orders to reflect the proper authority for retention due to legal proceedings per reference (a), section 801(17), and will transition the RC Sailor to involuntary orders if required.

(b) Per reference (d), section 0145(b), RC legal hold orders will be funded using the same appropriation used for the initial orders. New involuntary orders issued to RC Sailors serving on augmentation orders per reference (a), section

12301(d) authority will be funded consistent with Navy augmentation order funding practices. The authority orders funded through the executive committee (EXCOM) pillar process will be funded using EXCOM pillar funding. Funding sources for orders exceeding 90 days will be coordinated with the Office of the Chief of Naval Operations (OPNAV) Resource Management (N10).

e. **Administrative Separation Processing.** Administrative separation processing for alleged misconduct that occurs while a Sailor is mobilized or deployed must be handled pursuant to the Enlisted [MILPERSMAN 1910](#) series for enlisted Sailors and per reference (e) for officers. If feasible, administrative separation should take place during the period of mobilization or deployment. An RC Sailor may not have his or her active duty orders involuntarily extended solely for the purpose of completing administrative separation. If administrative separation processing is not feasible prior to the expiration of the Sailor's active duty orders, then the subsequent Navy command will have responsibility for processing the RC Sailor's administrative separation for misconduct that happened during his or her mobilization or deployment. The subsequent command should coordinate with his or her cognizant SJA prior to the initiation of administrative separation proceedings against an RC Sailor following his or her TACON release or termination of orders for misconduct.

f. **Release of Sailors who have been Accused of Misconduct.** When an AC, TAR, or RC Sailor is released from mobilization or deployment due to misconduct or substandard performance, in order to facilitate proper case resolution, including potential administrative separation processing, the supported command to which the Sailor is attached will provide written notification to the next command with administrative control over the Sailor, with a copy to the SJA with cognizance over that command of the alleged misconduct and the status of the case. At a minimum, this notification should include:

- (1) The Report of Investigation;
- (2) Any adverse evaluation or fitness report;
- (3) If the alleged misconduct stemmed from an equal opportunity (EO) complaint, the appropriate EO forms (e.g., [NAVPERS 5354/2](#) Navy Equal Opportunity (EO) and Harassment Complaint);

(4) Defense Information System for security entry, if one was made;

(5) In cases involving alleged victims or witnesses, provide unit, names, and contact information for any alleged victim and or witnesses; and

(6) If the command was adversely affected by the alleged misconduct and desires to provide information about impact, an optional impact statement on the effect of the misconduct on the supported command.

g. **Involuntary Activation for Disciplinary Proceedings.** An RC Sailor who is deactivated or released from active duty remains subject to jurisdiction under the UCMJ for misconduct committed during the period of active duty, and the RC Sailor may be involuntarily ordered to active duty for disciplinary action subject to specific processes and procedures set forth in applicable law and regulation per references (a), and (d), section 0123(e), and [MILPERSMAN 1620-020](#). Prior to taking any substantive action, commands considering activation of an RC Sailor for disciplinary proceedings must consult with the supporting SJA and the OSTC or trial counsel (as applicable) regarding activation protocols and potential limitations resulting from execution of activation orders and the type of disciplinary proceedings contemplated.

4. **Unique Circumstances.** While every effort will be made to execute the procedures as listed in this MILPERSMAN article, there will be circumstances which cannot be anticipated. The Navy is committed to finding the best balance between the mission, needs and or desires of the Sailor, and command readiness. Commands and Sailors are encouraged to consult an appropriate SJA to address any questions or concerns.