



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SECNAVINST 5354.1
ASN(M&RA)
02 January 1997

SECNAV INSTRUCTION 5354.1

From: Secretary of the Navy
To: All Ships and Stations

Subj: DEPARTMENT OF THE NAVY (DON) POLICY ON MILITARY EQUAL
OPPORTUNITY COMPLAINT PROCESSING

Ref: (a) DODDir 1350.2 of 18 Aug 95 (NOTAL)
(b) NAVPERS 15620
(c) OPNAVINST 5354.1D (NOTAL)
(d) MCO P5354.1C (NOTAL)

Encl: (1) N05354-1

1. Purpose. To provide a Department of the Navy (DON) policy for military equal opportunity complaint processing and to implement reference (a).

2. Applicability. This instruction applies to all active duty military personnel, Regular and Reserve; Naval Academy and Reserve Officer Training Corps midshipmen; and Reserve personnel when performing active or inactive duty for training or engaging in any activity directly related to the performance of a Department of Defense (DoD) Reserve duty or function.

3. Definition and Terms. Reference (a) provides definitions of key terms used in this instruction, and shall govern its interpretation.



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4. Background

a. Military members of the DON must have the opportunity to serve in an environment free from unlawful discrimination and harassment. Because of the unique nature of military service, members must function as a team, unified by trust, mutual respect, and loyalty. Toward that end, equal opportunity programs and the complaint resolution process must support both individual opportunity and unit effectiveness.

b. To ensure success of equal opportunity programs, commanders must have direct responsibility for managing the complaint process. They must ensure that informal and formal complaint resolution processes are clearly communicated and well understood by all personnel. The complaint and redress process must guarantee prompt, thorough and impartial investigation and quick resolution of all complaints, and must also guard against reprisals.

5. Policy. The DON is committed to ensuring that military members are afforded a fair and effective equal opportunity complaint process. In support of this commitment:

a. All reported incidents of unlawful discrimination and sexual harassment will be investigated and resolved at the lowest appropriate level. The DON Informal Resolution System (reference (b) refers), serves as the model for informal complaint handling. Complaints should be resolved informally whenever possible; however, there is no requirement to attempt informal resolution prior to filing a formal complaint.

b. A complaint should be made within 60 days of the offending incident, or in the case of a series of incidents, within 60 days of the most recent incident. Commanders may accept complaints beyond this timeframe if, in their judgment, circumstances warrant.

c. Complaints will be investigated and resolved within 60 days of filing the complaint. In the case of complaints filed by an inactive Reservist or in which an inactive Reservist is the

subject of the complaint (a "Reserve complaint"), resolution of formal complaints should be completed within 120 days of filing.

d. A written complaint form provided by each Service (references (c) and (d) refer) will be used for initiating and processing formal complaints of discrimination and sexual harassment. The form will document all steps of the investigation and resolution process, and will contain, at a minimum, the following elements:

(1) A summary of the complaint, including date submitted and remedy requested by the complainant.

(2) Referral to counseling and support services.

(3) A record of the investigative process, including commencement and completion dates, findings and recommendations, and acknowledgment of receipt of investigation findings and recommendations by complainant and subject(s) of the complaint.

(4) A record of action taken to resolve the complaint by the chain of command.

(5) A block in which the complainant can request appeal of the command decision to higher authority. Invoking the appeal option should require no further application or documentation by the complainant.

(6) A record of command follow-up with the complainant 30 to 45 days from completion of remedial action on the complaint. In the case of a Reserve complaint, follow-up should extend through a minimum period of 1 year following conflict resolution. Command follow-up will include a determination of complainant satisfaction with the effectiveness of corrective action, timeliness, present command climate, and a check to ensure reprisal did not occur.

e. While submission of a written equal opportunity complaint is the preferred method of filing a formal complaint, service members may instead file an Article 138 Complaint against their

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commanding officer or a NAVREGS 1150 against a superior (other than the commanding officer) in their chain of command. Additionally, all service members have the right to communicate with the Inspector General and members of Congress.

f. As part of the appeal process provided through the complaint form described in paragraph 5d, the first appeal of a decision on a formal complaint should be to the first commander in the chain of command with general court martial convening authority. Final resolution of an appeal on a formal complaint will rest with the Secretary of the Navy. A complainant may submit an appeal on any legal or equitable grounds, based upon his or her perception that existing DoD or DON regulations were incorrectly applied in the particular case, that facts were ignored or weighed incorrectly, that remedial action ordered by a commander was insufficient under the circumstances or on any other good faith basis. Both the initial and the final appellate authority may determine whether the initial complaint and/or the appeal was made in good faith, and if not, to take appropriate corrective measures, including punitive ones. The complainant may also submit documentation in addition to the complaint form, such as statements of witnesses, personnel record entries, etc., as may be helpful in resolving the appeal.

g. Commanders will ensure that their command climate does not tolerate acts of reprisal, intimidation or further acts of discrimination, and will take immediate action to stop, identify and prevent all forms of reprisal within their command. If a senior-subordinate relationship exists between the complainant and the subject(s) of the complaint, commanders will, when possible, relocate one or both parties, without prejudice, during the course of the investigation. If the subject of the complaint is the commander, and his or her motivation in a particular situation could be legitimately called into question (as in the case of writing the complainant's personnel evaluation), the commander should consider recusing himself or herself and requesting an appropriate reporting senior to fulfill his or her responsibilities. If the discrimination/harassment

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investigation finds the complaint is substantiated, and the subject of the complaint is the complainant's supervisor, the commander may remove the subject from his/her supervisory role as operational requirements necessitate. In such an event, the complainant will be moved only at his or her request. Transfer of the parties involved shall not be considered by the commander to be a resolution of the complaint. If the investigation finds the complaint is unsubstantiated, the commander will monitor potential reprisals by checking on workcenter climate and ensuring performance appraisals document job performance accurately (i.e., downgrades shall be supported by written counseling and not related to the complaint).

h. Administrative investigations will be conducted by the local command, as appropriate. Reprisal investigations will normally be handled at the next higher level in the chain of command.

i. Complainants and subject(s) of the complaint will be provided with feedback throughout the investigation and resolution process. Complainants and subject(s) of the complaint will receive completed copies of the complaint form and, in substantiated cases, receive either copies of investigative results or a summary of the completed investigation, consistent with the Privacy Act. Complainants and subject(s) of the complaint will be responsible for handling the complaint form and investigative report in accordance with the Privacy Act and Freedom of Information Act, per enclosure (1).

j. Upon accession, including Reserve indoctrination, all DON personnel will receive training on the subject of this instruction and will be made familiar with the informal and formal complaint process in the area of unlawful discrimination and sexual harassment. Information on the complaints process and equal opportunity will also be published in command Plans of the Day and posted in a prominent location on bulletin boards. Every command in the DON shall have a current copy of the complaint form and their respective Equal Opportunity Manual.

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k. Incidents of unlawful discrimination and sexual harassment will be reported fully and promptly, and investigated in like fashion. DON progress in this area will be tracked to include the following data:

(1) Total numbers of claims, by category (i.e., sexual/ racial harassment), by gender, race and ethnicity of claimant;

(2) Information permitting the sorting of complaint data by geography, type command, community or similar groupings, sufficient so that trends may be identified;

(3) Length of time data showing complaint dates, local resolution time, formal or informal status, time for appeals (if made), and time for final response to the complainant; and

(4) Summary data in cases of substantiated complaints, indicating administrative and/or punitive measures taken against the offender, whether under Bureau of Naval Personnel (BUPERS) or Headquarters Marine Corps regulations, Article 15 of the Uniform Code of Military Justice (UCMJ), or by action of a court-martial.

6. Action. The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) shall:

a. Implement policies consistent with this instruction and reference (a).

b. Provide education and training programs that support the complaint process, including reprisal awareness.

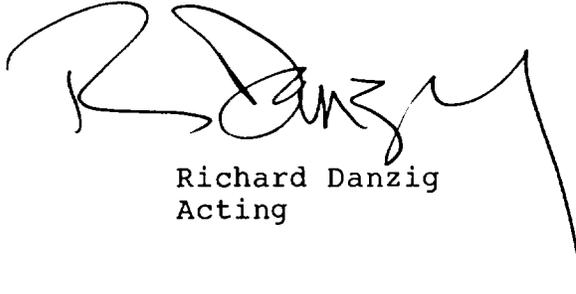
c. Establish effective systems to resolve informal and formal complaints.

d. Establish systems to monitor the complaint process.

e. Ensure that commanders conduct investigations which meet requirements of reference (a) and comply with the reporting process required to support paragraph 5k.

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7. Report. The reporting requirement contained in paragraph 5k is exempt from reports control by SECNAVINST 5214.2B.

A large, stylized handwritten signature in black ink, appearing to read 'RDanzig', is positioned above the typed name.

Richard Danzig
Acting

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System name:

Equal Opportunity Management Information System (February 22, 1993, 58 FR 10757).

System location:

Primary System-Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; and local activity to which individual is attached. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices. Secondary System-Department of the Navy activities in the chain of command between the local activity and the headquarters level. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Categories of individuals covered by the system:

Navy personnel who are involved in formal or informal complaints or investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

Categories of records in the system:

Correspondence and records concerning incident data, endorsements and recommendations, formal and informal complaints and investigations concerning aspects of equal opportunity.

Authority for maintenance of the system:

5 U.S.C. 301, Departmental Regulations.

Purpose(s):

To assist in equal opportunity measures, including but not limited to, complaints, investigations, and correspondence.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

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Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper files, microfiche, or microform.

Retrievability:

Filed alphabetically by last name of individual concerned.

Safeguards:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained and cleared. Manual records and computer printouts are available only to authorized personnel having a need to know.

Retention and disposal:

Records maintained for two years following completion of the investigation, and then destroyed. If incident is the subject of litigation, destroy two years after conclusion of litigation.

System manager(s) and address:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001.

Notification procedure:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Enclosure (1)

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Record access procedures:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; or, in accordance with the Directory of Department of the Navy Mailing Addresses (i.e., local activities).

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

Contesting record procedures:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

Record source categories:

Federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

Exemptions claimed for the system:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR Part 701, subpart G.

For additional information contact the system manager.

Enclosure (1)