

CANCEL PRINT PREVIEW PRINT | FEEDS

HOMOSEXUAL CONDUCT DISCHARGE PROCESSING UPDATE

Date Signed: 10/22/2010
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UNCLASSIFIED//

MARADMIN 607/10

MSGID/GENADMIN,USMTF,2007/CMC WASHINGTON DC MRA MP//

SUBJ/HOMOSEXUAL CONDUCT DISCHARGE PROCESSING UPDATE//

REF/A/MEMO/USD P AND R WASHINGTON DC/15OCT2010//

REF/B/MSG/CMC WASHINGTON DC MRA MP/202024Z0CT10//

REF/C/MEMO/SECDEF WASHINGTON DC/21OCT2010//

REF/D/MEMO/USD P AND R WASHINGTON DC/21OCT2010//

REF/E/10USC654/30NOV93//

REF/F/MSGID/DC MRA/YMD: 20020823//

REF/G/MSGID:DOC/SECDEF WASHINGTON DC/28AUG2008//

REF/H/MSGID:DOC/SECDEF WASHINGTON DC/11DEC2008//

REF/I/MSGID:DOC/SECDEF WASHINGTON DC/25MAR2010//

REF/J/MSGID/HQMC JAM/YMD: 20100330//

REF/K/MSGID/DC MRA MM/YMD: 20100423//

NARR/REF A IS MEMO USD (P AND R), HOMOSEXUAL CONDUCT DISCHARGE PROCESSING. REF B IS MARADMIN 598-10, HOMOSEXUAL CONDUCT DISCHARGE PROCESSING. REF C IS MEMO SECDEF, TITLE 10, U.S.C., 654. REF D IS MEMO USD (P AND R), DON'T ASK, DON'T TELL LEGAL DEVELOPMENTS. REF E IS THE FEDERAL STATUTE GOVERNING DOD POLICY ON HOMOSEXUALITY IN THE ARMED FORCES. REF F IS MARADMIN 451-02, HOMOSEXUAL CONDUCT POLICY TASKS AND RESPONSIBILITIES. REF G IS DOD INSTRUCTION 1332.14 W/ CHANGE 1, ENLISTED ADMINISTRATION SEPARATIONS. REF H IS DOD INSTRUCTION 1332.30 W/ CHANGE 1, SEPARATION OF REGULAR AND RESERVE COMMISSIONED OFFICERS. REF I IS SECDEF MEMO, REVISIONS TO REGULATIONS IMPLEMENTING 10 U.S.C 654. REF J IS MARADMIN 184-10, DEPARTMENT OF DEFENSE (DOD) AMENDMENTS TO POLICY ON SEPARATION FOR HOMOSEXUAL CONDUCT. REF K IS MARADMIN 242-10, DOD REVISIONS TO POLICY ON SEPARATION FOR HOMOSEXUAL CONDUCT.//

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GENTEXT/REMARKS/1. PURPOSE. THIS MARADMIN NOTIFIES ALL MARINE CORPS PERSONNEL OF A SIGNIFICANT CHANGE TO THE INTERIM POLICY FOR SEPARATION OF SERVICE MEMBERS FOR HOMOSEXUAL CONDUCT THAT WAS IMPLEMENTED BY REFS A AND B AND HAS BEEN CHANGED BY REFS C AND D. THE GUIDANCE IN THIS MSG SUPERSEDES THAT IN REF B AND CANCELS REF B. THESE CHANGES ARE EFFECTIVE AS OF 21 OCTOBER 2010 AND UNTIL FURTHER NOTICE. COMMANDERS AT ALL LEVELS ARE TO ENSURE THIS CHANGE IS WIDELY DISSEMINATED AND UNDERSTOOD BY ALL MARINES.

2. BACKGROUND. ON 12 OCTOBER 2010, A FEDERAL DISTRICT COURT IN CALIFORNIA ISSUED AN INJUNCTION ORDERING THE DEPARTMENT OF DEFENSE TO CEASE ENFORCEMENT OF THE "DON'T ASK, DON'T TELL" LAW (10 U.S.C. 654) AND IMPLEMENTING REGULATIONS. THE COURT ORDERED THE GOVERNMENT IMMEDIATELY TO SUSPEND AND DISCONTINUE ANY INVESTIGATION, OR DISCHARGE, SEPARATION, OR OTHER PROCEEDING COMMENCED UNDER THE "DON'T ASK, DON'T TELL" ACT OR ITS IMPLEMENTING REGULATIONS. THE DEPARTMENT OF JUSTICE FILED AN APPEAL FROM THIS INJUNCTION AND THE COURT'S EARLIER DECISION THAT SUPPORTS IT, AND SOUGHT A STAY OF THE INJUNCTION WHILE THE APPEAL WAS PENDING. INTERIM GUIDANCE DIRECTING THE DEPARTMENT OF DEFENSE TO ABIDE BY THE TERMS OF THE INJUNCTION WAS IMPLEMENTED BY REFS A AND B. ON 20 OCTOBER 2010, 9TH CIRCUIT COURT OF APPEALS ISSUED A TEMPORARY STAY OF THE INJUNCTION, FOR AT LEAST THE NEXT FOUR DAYS, WHILE THE APPELLATE COURT CONSIDERS WHETHER TO GRANT A STAY OF THE INJUNCTION FOR THE ENTIRE TIME THE CASE IS ON APPEAL OR TO SUSPEND THE STAY OF THE DISTRICT COURT'S INJUNCTION. THIS MEANS THAT DURING THE PERIOD OF ANY STAY OF THE DISTRICT COURT'S INJUNCTION, THE "DON'T ASK, DON'T TELL" LAW AND POLICY IN REFS E-K ARE AGAIN IN FORCE AND EFFECT. THIS LATEST CHANGE HIGHLIGHTS THE LEGALLY UNCERTAIN PERIOD IN WHICH WE FIND OURSELVES WITH RESPECT TO "DON'T ASK, DON'T TELL", AND THE NEED TO ENSURE UNIFORMITY AND CARE IN THE ENFORCEMENT OF THIS LAW.

3. AS OF 21 OCTOBER 2010, THE IMMEDIATE GUIDANCE IS:

- A. EFFECTIVE IMMEDIATELY AND UNTIL FURTHER NOTICE, NO MILITARY SERVICE MEMBER SHALL BE SEPARATED PURSUANT TO REF E WITHOUT THE PERSONAL APPROVAL OF THE SECRETARY OF THE NAVY, AND ONLY IN COORDINATION WITH USD (P AND R) AND THE DEPARTMENT OF DEFENSE GENERAL COUNSEL. THIS SEPARATION AUTHORITY MAY NOT BE DELEGATED. MARINE CORPS COMMANDS SHALL SUBMIT SEPARATION REQUESTS VIA CMC (JAD) TO SECNAV.
- B. COMMANDERS WILL OTHERWISE ENFORCE THE PROVISIONS REGARDING HOMOSEXUAL CONDUCT INVESTIGATION, DISCHARGE, SEPARATION, OR OTHER PROCEEDINGS ACCORDING TO REFS E-K.
- C. THE PROVISIONS OF REFS E-K ARE AGAIN IN FORCE FOR ALL RECRUITING AND ACCESSIONS ACTIVITIES. RECRUITERS WILL NOT ASK APPLICANTS ABOUT THE APPLICANT'S SEXUAL ORIENTATION. IF AN APPLICANT REVEALS THEIR HOMO-SEXUAL ORIENTATION TO THE RECRUITER, HOWEVER, THE APPLICANT SHALL NOT BE PERMITTED TO ENLIST OR CONTINUE THE ENLISTMENT PROCESS. FURTHER, IF AN APPLICANT HAD REVEALED THAT THEY ARE GAY OR LESBIAN TO THE RECRUITER DURING ANY TIME THE INJUNCTION WAS IN EFFECT (I.E., NOT STAYED); THE APPLICANT WILL NOT NOW BE PERMITTED TO ENLIST OR CONTINUE THE ENLISTMENT PROCESS.
- D. THE DEPARTMENT OF DEFENSE POLICY REMAINS TO NOT ASK ABOUT A SERVICEMEMBER'S OR APPLICANT'S SEXUAL

ORIENTATION, TO TREAT ALL SERVICE-MEMBERS AND APPLICANTS WITH DIGNITY AND RESPECT, AND TO MAINTAIN GOOD ORDER AND DISCIPLINE.

E. THIS LATEST CHANGE UNDERSCORES THE HIGH LEVEL OF UNCERTAINTY THAT EXISTS REGARDING HOMOSEXUAL CONDUCT LAW AND POLICY. ALL SERVICEMEMBERS MUST BE AWARE THAT THIS UNCERTAINTY RAISES THE RISK OF ADVERSE LEGAL CONSEQUENCES FOR ANY ACTIONS TAKEN IN RELIANCE ON THE CURRENT LAW, DISTRICT COURT RULING, AND APPELLATE COURT STAY. WE ENCOURAGE COMMANDERS AND SERVICE-MEMBERS ALIKE TO SEEK LEGAL ADVICE BEFORE TAKING ANY ACTION IN RELIANCE ON WHAT THEY PERCEIVE IS THE CURRENT STATE OF THE LAW.

4. COMMANDERS ARE STRONGLY ENCOURAGED TO CONSULT THEIR SJA OR COMMAND COUNSEL IN EVERY CASE IMPLICATING HOMOSEXUAL CONDUCT LAW AND POLICY. REFER ALL QUESTIONS REGARDING APPLICABILITY OF THIS MARADMIN TO THE MPO POC LISTED ABOVE.

5. THIS MARADMIN IS EFFECTIVE IMMEDIATELY AND WILL REMAIN IN EFFECT UNTIL FURTHER NOTICE.

6. THIS APPLIES TO THE TOTAL MARINE CORPS FORCE.

7. RELEASE AUTHORITY BY (SES) MS. S. E. MURRAY, ASSISTANT DEPUTY COMMANDANT, MANPOWER RESERVE AND AFFAIRS.//