



UNITED STATES MARINE CORPS
MARINE CORPS INSTALLATIONS PACIFIC - MCB CAMP BUTLER
UNIT 35001
FPO AP 96373-5001

IN REPLY REFER TO:
MCIPACO 5800.2B

SJA
JUN 19 2017

MARINE CORPS INSTALLATIONS PACIFIC ORDER 5800.2B

From: Commanding General, Marine Corps Installations Pacific
To: Distribution

Subj: DEPENDENT AND CIVILIAN COMPONENT MISCONDUCT IN JAPAN

Ref: (a) DoD Instruction 5200.08
(b) MCO 5530.14A
(c) USFJ Instruction 31-203
(d) Marine Corps Installations Pacific Order 5560.1
(e) Memorandum of Agreement by USFJ, USARJ, CNFJ, USAFJ, and MARFORJ of 16 Feb 07
(f) MCO 1300.8

Encl: (1) Administrative Hearing Procedural Rights Acknowledgement

1. Situation. In accordance with references (a) and (b), Marine Corps Installations Pacific (MCIPAC) installation commanders in Japan must provide for the general welfare and safety in areas under their jurisdiction. This Order establishes administrative policies and procedures for misconduct hearings conducted by the military magistrates (Command Magistrates) aboard MCIPAC installations in Japan. There are three MCIPAC Command Magistrates and corresponding appellate authorities in Japan:

a. Marine Corps Base, Camp Smedley Butler (MCB Butler): Command Magistrate: OIC, Legal Services Support Section; Appellate authority: Deputy Commander, MCB Butler;

b. Marine Corps Air Station Iwakuni (MCAS Iwakuni): Command Magistrate: Executive Officer MCAS Iwakuni; Appellate authority: Commanding Officer, MCAS Iwakuni;

c. Combined Arms Training Center, Camp Fuji (CATC Fuji): Command Magistrate: Executive Officer CATC Fuji; Appellate authority: Commanding Officer, CATC Fuji.

2. Cancellation. MCIPACO 5800.2A.

3. Definitions.

a. Command Representative. An active duty staff non-commissioned officer or officer of the United States armed forces from a subject's or sponsor's chain of command.

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b. Civilian Component. As defined by section 3.8.2 of reference (c).

c. Dependent. As defined by section 3.8.3 of reference (c).

d. Sponsor. A person from whom a dependent, as defined in this Order, derives such status.

4. Mission. The mission of the Command Magistrate is to conduct hearings to adjudicate alleged violations, infractions, and offenses committed by dependents and members of the civilian component authorized to enter MCIPAC installations in Japan and to impose administrative sanctions as appropriate. Routine traffic violations are not adjudicated under this order but will be referred to the Traffic Court in accordance with reference (d). MCIPAC Command Magistrates will ensure that all misconduct hearings are impartially and fairly conducted either by the Command Magistrate or by a hearing officer. Nothing in this Order creates a right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or instrumentalities, its officers or employees, or any other person. Nothing in this Order detracts from a Commander's inherent authority and responsibility to provide for the physical security of installations and personnel under his or her command. See references (a) and (b).

5. Execution

a. Responsibilities of Hearing Officers, Command Magistrates, Appellate Authorities, and Sponsors

(1) Hearing officers are responsible for fairly and independently adjudicating alleged misconduct at hearings. When a preponderance of the evidence supports a finding that misconduct was committed by the subject, hearing officers shall propose appropriate administrative sanctions to the Command Magistrate.

(2) The Command Magistrate is responsible for ensuring that all aspects of the Command Magistrate program are fair, impartial and in accordance with orders and regulations. The Command Magistrate may appoint a hearing officer to conduct all aspects of a misconduct hearing and, upon completion of the hearing, to recommend the appropriate adjudication to the Command Magistrate. The Command Magistrate is responsible for all training and supervision of hearing officers.

(3) The Appellate Authority is responsible for fairly and impartially reviewing the results of all appealed decisions, recommendations made, or sanctions imposed, by the Command Magistrate.

When necessary, the Appellate Authority may suspend, remit, defer, or disapprove any of the sanctions imposed.

(4) If the subject of a hearing is a dependent, the sponsor will serve as the Command Magistrate's primary point of contact for all matters related to the dependent's misconduct hearing. Sponsors must personally supervise all conditions accepted by the subject as terms for probation. In exceptional circumstances, a legal guardian other than the sponsor may fulfill these duties.

b. Conduct of Command Magistrate Hearings

(1) The Command Magistrate shall convene misconduct hearings based upon either an official investigation report or request from a Commanding Officer.

(2) A member of the civilian component who is the subject of a misconduct hearing should be accompanied by a command representative. A dependent who is the subject of a misconduct hearing shall be accompanied by his or her sponsor and should also be accompanied by a command representative from the sponsor's command.

(3) Each party subject to a misconduct hearing shall be afforded pre-hearing and post-hearing rights, to include the right to appeal. Failure to appear at a misconduct hearing is considered a waiver of rights. Subjects have the following rights:

(a) To receive verbal and written notification of the misconduct hearing, the requirement to attend, and the subject's rights. Verbal notification will be in person or by telephone. Written notification will be delivered either via hardcopy or electronic means (i.e., e-mail);

(b) To review, to the greatest extent practicable, all evidence considered by the hearing officer. When acquisition of evidence by the party requires a Privacy Act request, a Freedom of Information Act (FOIA) request, or other administrative process that would unreasonably delay the hearing, a verbal summary of the applicable evidence will be provided to the subject by the hearing officer at the hearing or, if requested by the subject, prior to the hearing;

(c) To appear in person before a hearing officer;

(d) To be represented by a spokesperson so long as the spokesperson is available at the scheduled hearing time;

(e) To make a statement or remain silent;

(f) To present evidence. This includes the right to call witnesses and to question adverse witnesses. It is the responsibility

of the party to bear the cost, if any, and to ensure the presence of any desired witnesses. Hearings will not be rescheduled due to the unavailability of witnesses or their failure to appear;

(g) To have the case decided by a preponderance of the evidence;

(h) To receive written notification of the final adjudication of the alleged incident of misconduct;

(i) To appeal the decision or recommendation of the Command Magistrate to the appropriate appellate authority, per paragraph 1(a)-(c) of this Order.

(4) Administrative Sanctions. When alleged misconduct is substantiated by a preponderance of the evidence, the hearing officer will recommend appropriate administrative sanctions to the Command Magistrate. Cases of unsubstantiated misconduct will be dismissed.

(a) The Command Magistrate may approve one or more of the following administrative sanctions:

1. Written or verbal warning;

2. Restitution, performance of community services, curfew, completion of a work/study program, and/or appropriate counseling or therapy;

3. Assignment of a written essay regarding the substantiated misconduct;

4. Suspension or revocation of privileges aboard MCIPAC installations;

5. Suspension or revocation of driving privileges;

6. Suspended recommendation for debarment. If a subject fails to comply with the terms of other administrative sanctions imposed or commits additional misconduct, the suspension may be vacated and the recommendation for debarment made pursuant to paragraph 5b.(4)(b).

(b) The Command Magistrate may recommend to the appropriate approval authority, per references (e) and (f), the following administrative sanctions:

1. Issuance of a Command Restraining Order;

2. Debarment;

3. Early return of dependents;

4. Curtailment of overseas tour.

(5) After a misconduct hearing, the Command Magistrate will prepare a report of the results of the hearing. This report will include a summary all information presented at the hearing, both favorable and unfavorable, as well as any sanctions imposed or recommended by the Command Magistrate. The report will be provided to the subject no later than ten business days after the completion of the hearing. Recommended sanctions made by the Command Magistrate pursuant to paragraph 5b.(4)(b) of this Order will not be forwarded to the approval authority until the subject's period to appeal has expired or until the Appellate Authority affirms the recommended sanction, whichever comes first.

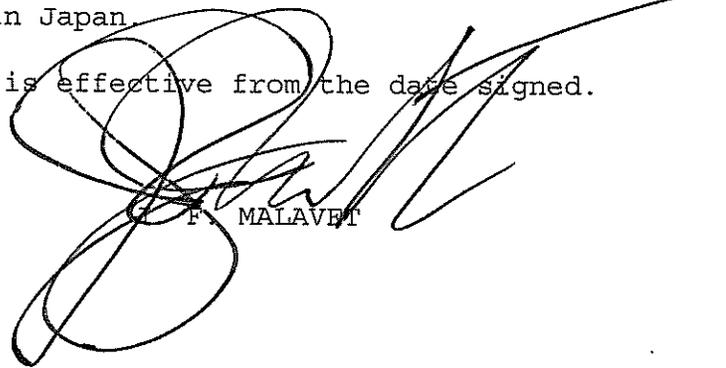
c. Appeals. Subjects of misconduct hearings may appeal the decision of the Command Magistrate to impose or recommend a sanction. The grounds for appeal must either be that the imposition of the sanction would be unwarranted or that the sanction would be disproportionate to the substantiated misconduct. Appeals must be submitted to the appropriate appellate authority within five business days of receiving the report of the results of the hearing. The Appellate Authority's decision is final and not further appealable.

6. Administration and Logistics. For questions regarding this Order, contact the MCIPAC Staff Judge Advocate at (315) 645-7177.

7. Command and Signal

a. Command. This Order is applicable to civilians authorized to enter MCIPAC installations in Japan.

b. Signal. This Order is effective from the date signed.



C. F. MALAVET

Administrative Hearing Procedural Rights Acknowledgement

1. This administrative hearing is convened by the authority of the Commander, Marine Corps Installations Pacific. _____ (*initial*)

2. This hearing is not a judicial proceeding (i.e., a court), and rules of evidence applicable to courts-martial and civilian criminal courts do not apply. _____ (*initial*)

3. The burden of proof to substantiate alleged misconduct is a preponderance of the evidence. This standard is met when a Command Magistrate determines that there is sufficient evidence to find that it is more likely than not that the subject's alleged misconduct occurred. _____ (*initial*)

4. At this hearing, the subject has the following rights:

a. To be advised of the alleged misconduct. _____ (*initial*)

b. To review, to the greatest extent practicable, all evidence considered by the hearing officer, in accordance with paragraph 5b.(3)(b) of the Order. _____ (*initial*)

c. To appear in person before a hearing officer. _____ (*initial*)

d. To be represented by a spokesperson so long as the spokesperson is available at the scheduled hearing time. _____ (*initial*)

e. To make a statement or remain silent. _____ (*initial*)

f. To present evidence. This includes the right to call witnesses and to question adverse witnesses. _____ (*initial*)

g. To receive written notification of the final adjudication of the alleged incident of misconduct. _____ (*initial*)

h. To appeal the decision or recommendation of the Command Magistrate to the appropriate Appellate Authority. _____ (*initial*)

I have read and understand the information above.

Subject's Name

Subject's Signature

Sponsor's Name (if applicable)

Sponsor's Signature