



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

IMMEDIATE POLICY CHANGE

Military Justice

Office of General Counsel
OPR: DCMA-GC

DCMA-INST 901 (IPC-1)
March 3, 2015

- 1. POLICY.** This Immediate Policy Change (IPC) implements changes to DCMA-INST 901, "Military Justice," April 7, 2014.
- 2. PURPOSE.** This IPC clarifies who may be appointed as an investigator into allegations of military member misconduct.
- 3. APPLICABILITY.** This IPC applies to all military personnel assigned to DCMA and DCMA military and civilian supervisors of military personnel assigned to DCMA.
- 4. NEW GUIDANCE.** Change the following paragraph:

3.2.5. Military personnel assigned as investigators ~~will~~*should* be of higher rank than the military member being investigated. *In cases where a higher ranking member is not available, an investigator of the same rank (with an earlier date of rank than the member being investigated) may be appointed. In no case shall a lower ranked member be appointed to investigate a higher ranked member.*
- 5. RELEASABILITY – UNLIMITED.** This IPC is approved for public release and is located on DCMA's Internet Web site, www.dcma.mil.
- 6. EFFECTIVE DATE.** By order of the Director, DCMA, this IPC is effective immediately and shall remain in effect for 180 days from the date of signature or until rescinded, superseded, or incorporated in a DMCA policy, whichever is sooner.


Keisha Dawn Bell
Acting General Counsel
Headquarters, DCMA



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Military Justice

Office of General Counsel
OPR: DCMA-GC

DCMA-INST 901
April 7, 2014

1. PURPOSE. This Instruction:

- a. Reissues and updates DCMA Instruction (DCMA-INST) 901, "Military Justice" (Reference (a)).
- b. Is established in compliance with DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)" (Reference (b)).
- c. Establishes policies and assigns responsibility for disposition of allegations of misconduct committed by military service members assigned to DCMA.

2. APPLICABILITY. This Instruction applies to all military personnel assigned to DCMA and DCMA military and civilian supervisors of military personnel assigned to DCMA.

3. MANAGERS' INTERNAL CONTROL PROGRAM. In accordance with DCMA-INST 710, "Managers' Internal Control Program" (Reference (c)), this Instruction is subject to evaluation and testing. The process flow is located on the resource page for this Instruction.

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. PLAS CODE. 192, Criminal Investigations and Hotline Complaints

6. POLICY RESOURCE WEB PAGE. The policy resource page for this Instruction is located at: <https://home.dcma.mil/POLICY/901r/>.

7. EFFECTIVE DATE. By order of the Director, DCMA, this Instruction is effective April 7, 2014, and all applicable activities shall be fully compliant within 60 days from this date.

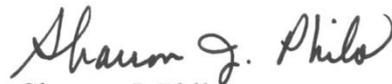

Sharron J. Philo
General Counsel
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REFERENCES

- (a) DCMA Instruction 901, "Military Justice," March 2002 (hereby rescinded)
- (b) DoD Directive 5105.64, "Defense Contract Management Agency," January 10, 2013
- (c) DCMA Instruction 710, "Managers' Internal Control Program," September 12, 2011
- (d) Uniform Code of Military Justice, Title 10, United States Code, Section 801, *et. seq.*
- (e) Manual for Courts-Martial, United States, 2012
- (f) Army Regulation 15-6, "Procedures for Investigating Boards of Officers," October 2, 2006
- (g) Department of the Navy JAG Instruction 5800.7E, June 26, 2012
- (h) Secretary of the Air Force Office of the Inspector General Commander-Directed Investigation Guide, April 26, 2010
- (i) Air Force Instruction 36-2907, "Unfavorable Information File (UIF) Program," June 17, 2005
- (j) Army Regulation 600-37, "Unfavorable Information," December 19, 1986

CHAPTER 1

POLICY

1.1. POLICY.

1.1.1. This Instruction outlines procedures for the investigation and disposition of cases of misconduct committed by or alleged against military members assigned to DCMA. Because DCMA does not exercise Uniform Code of Military Justice (UCMJ) (Reference (d)) authority over assigned military members, the list of actions and dispositions available to DCMA commanders and directors is relatively short. As a general policy, if a military member commits a serious offense, the member will be returned to his or her parent service for processing. If a military member commits a minor offense, the matter may be disposed of within DCMA command channels. However, commanders and directors cannot determine the seriousness of an offense until a thorough and impartial investigation into the matter has been completed.

1.1.2. Each case will be disposed of based on its unique set of facts. Generally, if the misconduct is minor and can be disposed of with a locally filed letter of reprimand or other lower level means, the matter can be resolved within DCMA channels. On the other hand, if the conduct is more serious the matter should be referred to the appropriate service component for disposition.

1.1.3. It is DCMA policy to:

1.1.3.1. Promptly inform the chain of command as specified of alleged military member misconduct.

1.1.3.2. Thoroughly and impartially investigate allegations of misconduct committed by military members assigned to DCMA.

1.1.3.3. Process all criminal and adverse administrative matters in a prompt and efficient manner, protecting the interests of the Agency and the rights of the military member concerned.

1.1.3.4. When required by the facts, engage with appropriate service judge advocates to take responsibility for the disposition of criminal offenses committed by military members assigned to DCMA. "Disposition" refers to administrative measures beyond the authority of DCMA leadership or imposition of non-judicial punishment, or trial by court-martial.

1.1.4. The DCMA Director and commanders/directors have no authority to exercise UCMJ jurisdiction over military members assigned to DCMA for disposition of offenses. Military personnel assigned to DCMA remain subject to the Uniform Code of Military Justice.

1.1.5. DCMA commanders/directors have inherent authority to conduct investigations, appoint investigators, and question witnesses and suspects. Additionally, military commanders can initiate court-martial charges; civilian directors cannot.

1.1.6. This Instruction outlines DCMA specific command authority over military members and describes procedures for transferring cases to the appropriate military command for administration of military justice.

1.1.7. Executive Directors and the Commander, DCMA International (DCMAI) will promptly report allegations of military member misconduct to the Director, the General Counsel, the Executive Director of the Office of Independent Assessment, and the Director of Military Personnel.

1.1.7.1. Region commanders will promptly report allegations of misconduct to the chief operating officer (COO).

1.1.8. Prior to initiating an investigation of military member misconduct, contract management office (CMO) commanders/directors will coordinate with local counsel, DCMA Headquarters Office of General Counsel (GC), DCMA Headquarters Military Personnel Office (DCMA-DCM), and will notify the appropriate region commander.

1.1.9. Commanders, supervisors, and directors at all levels will avoid engaging in or creating the appearance of unlawful command influence in the disposition of military offenses, in violation of UCMJ Article 37 (Reference (d) and Glossary).

CHAPTER 2

ROLES AND RESPONSIBILITIES

2.1. DCMA DIRECTOR. The DCMA Director (“Director”) will:

2.1.1. Serve as final approval authority in all cases where a DCMA military commander is suspended or relieved from command.

2.1.2. Serve as the final approval authority for requests for return to service.

2.1.3. Take action in all cases regarding military member misconduct based upon a thorough investigation, the advice of counsel, the Director of Military Personnel, and the concerned service member’s leadership team.

2.2. OFFICE OF GENERAL COUNSEL (GC).

2.2.1. The GC will provide legal advice to the Director and DCMA commanders and directors on the investigation and disposition of allegations of DCMA military member misconduct.

2.2.2. Attorneys within the DCMA GC represent the Agency and cannot provide personal legal advice to or establish an attorney-client relationship with DCMA military personnel. Similarly, DCMA attorneys cannot represent DCMA military personnel undergoing an investigation or adverse proceeding. Accordingly, DCMA attorneys will not provide personal legal advice to DCMA military members, including commanders, who are the subject of an investigation or pending adverse administrative, non-judicial, or judicial action.

2.2.3. The GC headquarters staff attorneys will:

2.2.3.1. Coordinate with directorate, region, and CMO counsel on matters related to investigations and disposition of misconduct.

2.2.3.2. Conduct a legal review of all correspondence (e.g., letters of reprimand, return to service packets) related to military member misconduct requiring the Director’s action.

2.2.3.3. Serve as liaison between DCMA and service judge advocates and commanders for the transfer of cases outside of DCMA to the appropriate court-martial convening authority.

2.2.4. Directorate, region, and CMO counsel will, in consultation with GC headquarters staff attorneys:

2.2.4.1. Provide legal advice to DCMA commanders and staff on initiation of investigations into allegations of DCMA military member misconduct.

2.2.4.2. Provide legal advice to DCMA personnel appointed to conduct an investigation.

2.2.4.3. Conduct legal reviews of investigations of DCMA military member misconduct.

2.2.4.4. Conduct legal reviews of all DCMA commander and director proposed adverse administrative actions against DCMA military personnel.

2.3. CHIEF OPERATING OFFICER (COO). The COO will:

2.3.1. Receive notifications of alleged DCMA military member misconduct from subordinate region commanders and directors.

2.3.2. Provide notification of alleged misconduct committed by subordinate military members to the Director, the General Counsel, the Executive Director of the Office of Independent Assessment, and the Director of Military Personnel. Such notification will include a summary of the allegation(s), the status of any ongoing investigation or inquiry, the status of the service member, and any other relevant information.

2.3.3. Consult with the GC regarding disposition of alleged offenses committed by subordinate military members.

2.3.4. Notify the Office of Reserve Affairs if a member of the Reserve Component assigned to a region is alleged to have committed an offense.

2.4. COMMANDER, DCMA INTERNATIONAL (DCMAI). The Commander, DCMAI will:

2.4.1. Receive notifications of alleged military member misconduct for military members assigned to DCMAI.

2.4.2. Provide notification of alleged DCMAI military member misconduct to the Director, the General Counsel, the Executive Director of the Office of Independent Assessment, and Director of Military Personnel. Such notification will include a summary of the allegation(s), the status of any ongoing investigation or inquiry, the status of the service member, and any other relevant information.

2.4.3. Consult with counsel for DCMAI regarding disposition of alleged offenses committed by military personnel assigned to DCMAI.

2.4.4. Coordinate with forward-deployed commanders regarding UCMJ authority over deployed DCMAI military personnel.

2.4.5. Notify the Office of Reserve Affairs if a member of the Reserve Component assigned to DCMAI is alleged to have committed an offense.

2.5. COMPONENT HEADS. Component heads will:

2.5.1. Receive notifications of alleged military member misconduct for military members assigned to their Components.

2.5.2. Provide notification of alleged military member misconduct assigned to their directorate to the Director, the General Counsel, the Executive Director of the Office of Independent Assessment, and the Director of Military Personnel. Such notification will include a summary of the allegation(s), the status of any ongoing investigation or inquiry, the status of the service member, and any other relevant information.

2.5.3. Consult with the GC regarding disposition of alleged offenses committed by military personnel assigned to their directorate.

2.5.4. When a member of the Reserve Component is alleged to have committed an offense, notify the Office of Reserve Affairs at DCMA Headquarters.

2.6. REGION COMMANDERS. Region commanders will:

2.6.1. Receive notifications of alleged DCMA military member misconduct from CMO commanders and directors regarding military personnel assigned to their region.

2.6.2. Notify the COO of reports of alleged misconduct committed by military members assigned to their region. Such notification will include a summary of the allegation(s), the status of any ongoing investigation or inquiry, the status of the service member, and any other relevant information. Initial reports regarding allegations of misconduct will be reported to the COO within 24 hours.

2.6.3. Consult with region counsel regarding the disposition of alleged offense committed by military personnel assigned to their region.

2.6.4. Notify the Office of Reserve Affairs if a member of the Reserve Component assigned to their region is alleged to have committed an offense.

2.7. CMO COMMANDERS AND DIRECTORS. CMO commanders and directors will:

2.7.1. Provide notification of allegations of military member misconduct to their Region Commander/Director. Such notification will include a summary of the allegation(s), the status of any ongoing investigation or inquiry, the status of the service member, and any other relevant information. Initial reports regarding allegations of misconduct will be reported to the region commander within 24 hours.

2.7.2. Promptly investigate allegations of misconduct committed by DCMA military members assigned to their CMO. Before initiating an investigation, CMO commanders and directors will consult with the local legal counsel, who will coordinate with the region and headquarters GC on any legal advice provided to the CMO commander or director.

2.7.3. In consultation with local legal counsel, and in coordination with DCMA-DCM and headquarters GC, take appropriate administrative actions against the military member under investigation (e.g., suspend from duties, place an administrative hold (“flag”) on personnel records, place the military member on administrative leave, issue “no contact” orders, or other appropriate administrative action).

2.7.4. If the military member is pending deployment, re-assignment from DCMA, promotion, receipt of an award, or other favorable personnel action, notify DCMA-DCM immediately to suspend the favorable action.

2.7.5. If requested or warranted by the facts, refer the military member to the nearest military defense counsel. If outside the local commuting area, the military member may be placed in a temporary duty travel status to consult with defense counsel. TDY funding for travel to consult with military defense counsel is the responsibility of the local CMO. Consultation with, and representation by, a civilian defense counsel will be at no cost to the government.

2.8. DIRECTOR, MILITARY PERSONNEL. The Director of Military Personnel will:

2.8.1. Coordinate administrative holds and flagging actions on military personnel under investigation.

2.8.2. Provide assistance to commanders seeking to return a military member to his or her service. This action is commonly referred to as “return to service” or “interim member transfer.”

2.8.3. Coordinate with service personnel offices to request, monitor, and manage the transfer of DCMA military personnel to their parent service.

2.8.4. Prepare “return to service” packets for final review and action by the Director.

2.8.5. Assist CMO commanders and directors with the preparation and filing of adverse administrative actions.

2.9 EXECUTIVE DIRECTOR, OFFICE OF INDEPENDENT ASSESSMENT. The Executive Director, Office of Independent Assessment will:

2.9.1. Provide an investigator, when requested and as appropriate, to investigate allegations of military member misconduct.

2.9.2. Coordinate with Military Criminal Investigative Organizations (MCIO) such as the Air Force Office of Special Investigations, Army Criminal Investigation Command, and Naval Criminal Investigative Service, for investigative support as required.

CHAPTER 3

PROCEDURES

3.1. GENERAL CONSIDERATIONS. Commanders and directors will take the following actions after receiving a credible report or allegation of DCMA military member misconduct. In disposing of these allegations, DCMA personnel will provide information up through their chain of command in accordance with this Instruction or as needed. In addition, commanders and directors will engage with legal counsel and DCMA-DCM in accordance with this Instruction.

3.2. ACTIONS BY COMPONENT HEADS, COMMANDERS, AND DIRECTORS UPON RECEIPT OF ALLEGATIONS OF MISCONDUCT.

3.2.1. Review the allegations.

3.2.2. Notify the next higher level of command within DCMA, prepare a short factual synopsis of the allegations, and prepare a short plan outlining proposed action. Such a plan should address investigatory efforts, any actions taken against the military member, a status report on the victim (if any), coordination within the Agency, and other actions related to resolution of the allegations.

3.2.3. Consult with local legal counsel. Legal counsel will coordinate with directorate, region, and headquarters counsel, as appropriate.

3.2.4. Initiate an investigation. The investigation should be in the form appropriate for the allegation. The following types of investigations may be used:

3.2.4.1 A commander's inquiry under Rule of Court-Martial 303 (Reference (e)).

3.2.4.2. An administrative investigation under service specific regulations such as Army Regulation 15-6, "Procedures for Investigating Officers and Boards" (Reference (f)); the U.S. Navy JAGINST 5800.7F Manual of the Judge Advocate General (JAGMAN), (Reference (g)), or the Air Force Commander-Directed Investigation (CDI) Guide (Reference (h)). See Sample Appointment Memorandum for an Investigation at Appendix A.

3.2.4.3. An investigation conducted by DCMA investigators from the Office of Independent Assessment or an Inspector General.

3.2.4.4. An investigation conducted by local, state, or federal authorities or military investigators.

3.2.4.5. DCMA personnel assigned as investigators will consult with counsel prior to initiation of the investigation.

3.2.5. Military personnel assigned as investigators will be of higher rank than the military member being investigated.

3.2.6. In coordination with the DCMA-DCM, place an administrative hold on the military member to preclude reassignment, promotion, release from active duty, receipt of an award, or other favorable personnel action.

3.2.7. If requested by the military member or warranted by the facts, refer the military member to the nearest military defense counsel office. Funding responsibility for travel to consult with defense counsel lies with the concerned service member's CMO. If necessary, contact GC for assistance identifying the appropriate military defense counsel office. Not every investigation or act of misconduct requires the assistance of military defense counsel. The right to the assistance of military defense counsel depends on many factors, such as the severity or the nature of the alleged misconduct. The final determination of who is entitled to military defense counsel is up to the service providing the counsel.

3.2.8. If warranted by the known facts, propose the military member for suspension from his or her DCMA duties. Suspensions from duty or command must be approved by the Director, through the chain of command. While suspended from duties, the military member may be assigned other military duties commensurate with his or her rank, training, and years of service. It is unlikely a replacement will be provided to backfill the suspended military member.

3.2.9. While the investigation is pending, CMO commanders/directors will endeavor to ensure the military member's medical, mental health, and counseling needs are met and family members are safe and receive the medical, financial, housing, and other benefits to which they are entitled.

3.3 RIGHTS WARNINGS.

3.3.1 Article 31, UCMJ (Reference (d)), prescribes that military personnel suspected of an offense must be informed of their rights before any questioning by military and civilian superiors or military law enforcement officers. "Article 31 Rights" are similar, but not identical, to the "Miranda Rights" used by civilian law enforcement. A commander giving a rights advisement should make sure that a **military** rights advisement is given to military personnel before questioning. Commanders are cautioned to make a proper rights advisement to any military member who is suspected of a crime before speaking with the member, even if the member has initiated a request to speak to the commander. Rights advisements should be documented on a Rights/Waiver document.

3.3.2. DCMA commanders and investigators may use the DCMA Form 12.15.7-1, DCMA Rights Warning Procedure and Waiver Certificate, available on the resource page for this Instruction.

3.4 ACTIONS BY COMPONENT HEADS, COMMANDERS, AND DIRECTORS UPON RECEIPT OF A COMPLETED INVESTIGATION BASED UPON AN ALLEGATION OF MISCONDUCT.

3.4.1. Review the Report of Investigation. If the report is factually or procedurally insufficient or fails to meet the commander's intent, return the investigation to the investigating officer for additional work. If the report appears to be factually and procedurally sufficient, refer the report to local legal counsel for a legal sufficiency review.

3.4.2. Legal Review. Typically, local counsel will review the report of investigation and in coordination with headquarters GC, render a written opinion of legal sufficiency. However, counsel conducting the post-investigation legal sufficiency review should be an attorney other than the legal advisor to the investigating officer. Counsel shall make the following determinations and findings:

3.4.2.1. Whether the investigation is legally sufficient and was conducted in accordance with appropriate command direction and applicable regulatory guidance.

3.4.2.2. Whether additional evidence or supporting documentation is required.

3.4.2.3. Whether the conclusions and findings are supported by the evidence contained within the report.

3.4.2.4. Whether the recommendations are supported by the evidence and the conclusions and findings of the investigating officer.

3.4.3 Action by Component Heads, Commanders, and Directors. After a finding of legal sufficiency, component heads, commanders, and directors, in coordination with counsel and the DCMA DCM, may take any appropriate action against the DCMA military member within their legal authority and based upon the findings and recommendations of the report of investigation. Possible actions include:

3.4.3.1. No action.

3.4.3.2. Verbal counseling or reprimand.

3.4.3.3. Written counseling.

3.4.3.4. Written Reprimand. Service specific rules of the military member being reprimanded must be followed for the administration and filing of written reprimands. For example, Naval personnel may be issued a locally filed a non-punitive letter of reprimand; Air Force personnel may be issued a Letter of Admonishment in accordance with Air Force Instruction 36-2907 (Reference (i)), and Army personnel may be issued a reprimand issued in accordance with Army Regulation 600-37 (Reference (j)). See Sample Memorandum of Reprimand Army Version at Appendix B.

3.4.3.5. Request a return to service. See Sample Request for Return to Service at Appendix C.

3.4.3.6. Require the service member to receive or perform corrective training.

3.4.3.7. Reflect the misconduct in the service member's current efficiency report or evaluation. This action may include the issuance of a relief for cause report, issued in accordance with appropriate service regulations.

3.4.3.8. Downgrade end of tour award or recommend no end of tour award.

3.4.3.9. Relief from command.

3.5 REFERRAL TO A COMMANDER WHO EXERCISES UCMJ AUTHORITY.

3.5.1. DCMA component heads, commanders, and directors do not have UCMJ authority over military personnel assigned to DCMA. If substantiated misconduct warrants punishment or adverse administrative action more severe than the options referenced in paragraph 3.4.3, the component head, commander, or director must transfer the action to the appropriate UCMJ authority for action and possible punishment. These potential punishments would include General Officer Memoranda of Reprimand (GOMOR) permanently filed in the service member's personnel file, administrative separation from the military, punishment imposed under Article 15, UCMJ, or trial by court-martial.

3.5.2. UCMJ General Court-Martial jurisdiction for DCMA military personnel resides with the service component commands in the National Capital region.

3.5.2.1. Army. UCMJ authority resides with the Commander, Military District of Washington, Joint Base Myer-Henderson Hall, who serves as the General Court-Martial Convening Authority. The Special Court-Martial Convening Authority is the Commander, Joint Base Myer-Henderson Hall. The servicing military justice office is the Office of the Staff Judge Advocate, U.S. Army Military District of Washington, Fort Lesley McNair, (202) 685-4903.

3.5.2.2. Navy. Primary UCMJ authority resides with the Commandant, Naval District of Washington, Washington Navy Yard. The Servicing Naval Legal Office may be reached at (202) 433-2424. In some cases, however, based upon the geographic location of the offending DCMA military member, UCMJ jurisdiction may rest with a Naval regional command outside of Washington, DC. Regional Naval Commands are Mid-Atlantic, Southeast, Midwest, Northwest, Southwest, and Hawaii. Coordinate with the headquarters GC on individual Navy cases.

3.5.2.3. Air Force. UCMJ authority resides with the Commander, Air Force District of Washington, who serves as the General Court-martial Convening Authority. The Special Court-Martial Convening Authority is the Commander, 11th Wing. Both are located at Joint Base Andrews, Maryland. The servicing military justice office is the 11th Wing Legal Office, (240)-612-5791.

APPENDIX A

SAMPLE APPOINTMENT MEMORANDUM FOR AN INVESTIGATION*

DCMA LETTERHEAD

MEMORANDUM FOR Lieutenant Colonel John Doe, DCMA – Dallas

SUBJECT: Appointment as Investigating Officer

You are hereby appointed an investigating officer to investigate the circumstances surrounding the alleged theft of money from the DCMA-Dallas informal coffee fund on or about 1 April 2013. A preliminary inquiry into this matter has been conducted and is provided as an attachment.

In your investigation you will gather evidence, take statements, and collect any other facts relative to the loss of this money. You will make findings as to what happened to the money, who was responsible for the funds, and the security measures in place at the time of the loss. All witness statements will be sworn.*

MAJ Dave Smith has been identified as a suspect. Before interviewing MAJ Smith, you will advise him of his rights under Article 31, UCMJ. Mr. Abel Baker with the DCMA Office of General Counsel can provide legal advice to you as you conduct this investigation. Meet with Mr. Baker before beginning your investigation. He may be reached at 123-456-7890.

Submit your written findings to me in memorandum format with indexed and tabbed attachments no later than 30 April 2013. If you require an extension, submit your request for an extension to me in writing and explain the basis for your request.

Jerry Jones
CMO Commander
DCMA-Dallas

*In cases that involve the collection of PII or Privacy Act protected data, a separate Privacy Act Statement may be required from each witness. Consult your servicing legal advisor for further information.

APPENDIX B

**SAMPLE MEMORANDUM OF REPRIMAND
Army Version**

DCMA Letterhead

DCMA-XXX

Date

MEMORANDUM FOR Rank, Name, Unit, Address

SUBJECT: Memorandum of Reprimand/Counseling/Admonition

[Factual synopsis] On April 15, 2012, you were found in possession of an alcoholic beverage at your place of duty. A breathalyzer test administered by Military Police indicated that you had a .04 Blood Alcohol Content. Other personnel in your CMO reported you appeared to be drunk, had a disheveled appearance, could smell an alcoholic beverage on your breath, and you were belligerent with co-workers.

You are hereby reprimanded. Your conduct demonstrates exceptionally poor judgment and falls far short of the standards of conduct I expect of military officers within this command. You have blemished yourself, your uniform, and your stature within this organization. I cannot have a leader in this organization drinking alcohol on the job.

This letter is an administrative measure imposed under the provisions of Army Regulation 600-37 and not as punishment under UCMJ Article 15.

[This paragraph should address where the letter will be filed. It may be filed locally with the CMO commander and destroyed when the officer departs the command. If the commander wants a permanent record, permanent filing for Army members can only be accomplished by a General Officer; other services have different rules. Contact your legal counsel]. I am considering filing a copy of this letter in your Official Military Personnel File. You have five days from receipt of this letter to submit, in writing and through your chain of command, any statement or other document on your behalf for my consideration. Anything you submit will be made part of this correspondence. I will withhold my decision on imposing and filing this letter of reprimand until I consider any response you may make. You will be provided a copy of the documentation reflecting my final filing decision. A copy of the investigation is enclosed.

I direct you to acknowledge receipt of this letter.

Enclosure
as

John A. Smith
CMO Commander

I hereby acknowledge receipt of this memorandum and a copy of the investigation file. I understand I have five days to provide a response.

Name: _____ Date: _____

The affected military member should provide a return memorandum that states one or the other:

_____ I have read and understand the unfavorable information presented against me and I elect to submit a statement on my behalf.

_____ I have read and understand the unfavorable information against me and I do not elect to submit a statement on my behalf.

APPENDIX C

SAMPLE REQUEST FOR RETURN TO SERVICE

DCMA Letterhead

DCMA-XXX

Date

MEMORANDUM THRU REGION COMMANDER

EXECUTIVE DIRECTOR, OPERATIONS DIRECTORATE

MEMORANDUM FOR DIRECTOR

SUBJECT: Request for Return to Service, Lt Col Abel B. Smith, 123-45-6789, Defense Contract Management Agency, CMO Address

Request Lt Col Abel B. Smith be permanently released from DCMA (provide organization's address) and transferred to his service component. Lt Col Smith no longer meets the criteria to serve in his current position as (provide duty position) for DCMA (organization name).

The reasons for this request are set forth below: Provide a short factual synopsis of the misconduct engaged in by the military member in either bullet format or a narrative statement. Supporting documentation may be attached to the request for return to service.

In cases where the member will be returned to service to stand trial by court-martial, provide a short factual synopsis, such as: Lt Col Smith is currently under investigation by Air Force OSI for allegations of larceny (Article 121, UCMJ), Assault (Article 128, UCMJ) and Conduct Unbecoming an Officer (Article 133, UCMJ). I have been briefed on this investigation, reviewed available evidence, and intend to prefer court-martial charges against Lt Col Smith for these offenses. As DCMA does not have a Court-Martial Convening Authority, transferring Lt Col Smith to a chain of command that can exercise UCMJ authority will facilitate the disposition of these allegations.

Include a statement about the member's current security clearance and any actions pertaining to that clearance. For example: Lt Col Smith's security clearance of SECRET was suspended on (date).

Requested effective date for the return to parent service.

POC for this matter is CMO Commander Name, email@dcma.mil, and telephone number.

DCMA Commander

GLOSSARY

Adverse Administrative Action. Any adverse action taken by a commander against a subordinate that is not judicial or non-judicial punishment. These actions could include a reprimand, counseling, corrective training, removal from a command selection, return to service, adverse efficiency report, or other administrative action. It does *not* include loss of pay, loss of rank, confinement, loss of liberty, punitive separation from the service, or other punishments that can only be dispensed through the court-martial or Article 15/non-judicial punishment process.

Commander's Inquiry. An inquiry into allegations of misconduct conducted under the authority of Rule for Courts-Martial 303. The preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report or other summary of expected evidence. In other cases a more extensive investigation may be necessary. Although the commander may conduct the investigation personally or with members of the command, in serious or complex cases the commander should consider whether to seek the assistance of law enforcement personnel in conducting any inquiry or further investigation. The inquiry should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation.

Convening Authority. A military officer who, by virtue of rank and position, is legally authorized to convene a court-martial. No commander or director within DCMA is a convening authority.

Court-martial. A military trial. Punishment imposed at a court-martial may include reduction in rank, loss of pay, confinement, or a bad conduct or dishonorable discharge from the military.

Flag. Suspension of favorable personnel action. Before the advent of computerized record keeping, military paper records would have a red cover sheet placed on them to alert personnel clerks the service member's record were 'flagged'.

Non-judicial punishment. Punishment imposed under the provisions of Article 15 of the Uniform Code of Military Justice. Punishment may include loss of pay, reduction in rank, restriction, or the performance of extra duties. No one within DCMA has the authority to impose non-judicial punishment.

Offenses. The instruction makes reference to 'serious' offenses and 'minor' offenses. A 'serious' offense is one in which a punitive discharge or confinement in excess of one year are authorized punishments under the UCMJ. A 'minor' offense is one in which no punitive discharge or confinement up to one year is authorized under the UCMJ. As applied under this instruction, a 'minor' offense is one which may be disposed of through local administrative means. A 'serious' offense is any offense which would require a return to service for disposition.

Return to Service. A request by a commander that a service member assigned to DCMA be reassigned back to his or her parent service. The Air Force refers to these actions as an Interim Member Transfer.

Unlawful Command Influence. The exercise of illegal influence on the military justice system. Unlawful command influence is prohibited by Article 37 of the Uniform Code of Military Justice. This principle allows commanders to dispose of allegations of misconduct in a manner they deem fit, free from the influence of higher level commanders, unless such authority has been properly withheld by a higher level authority. It also prohibits any interference with the judicial process, witnesses, investigators, or the outcome of a particular case or investigation.

ACRONYMS

AFOSI	Air Force Office of Special Investigations
CMO	contract management office
COO	chief operating officer
DCMA-DCM	DCMA headquarters Military Personnel Office
DCMA-INST	DCMA instruction
DCMAI	DCMA International
GC	DCMA headquarters Office of General Counsel
MCIO	military criminal investigative organizations
PLAS	Performance Labor Accounting System
SPCMCA	Special Court Martial Convening Authority
UCMJ	Uniform Code of Military Justice