



DCMA Manual 4202-03

Military Justice

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| Approved by: | David H. Lewis, VADM, USN, Director |

Purpose: In accordance with the authority in DoD Directive 5105.64, this issuance establishes procedures and assigns responsibility for:

- Implementing DCMA Instruction 4202, "Military Personnel"
- Establishing procedures and assigning responsibility for disposition of allegations of misconduct committed by military members assigned to DCMA
- Adopting Army Regulation 15-6, Procedures for Administrative Investigations and Boards of Officers, April 1, 2016, as the Agency standard for informal command-directed investigations

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to all Defense Contract Management Agency (DCMA) activities unless higher-level regulations, policy, guidance, or agreements take precedence.

a. This Manual outlines procedures for the investigation and disposition of allegations of misconduct committed by military members assigned to DCMA. DCMA will investigate all allegations of misconduct committed by military members assigned to DCMA. Because DCMA does not exercise Uniform Code of Military Justice (UCMJ) pursuant to chapter 47, Section 801 of Title 10, United States Code, authority over assigned military members, the list of actions and dispositions available to DCMA Commanders and Directors is relatively short. In general, 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, Component Heads and Contract Management Office (CMO) Commanders/Directors cannot determine the seriousness of an offense until a thorough and impartial investigation into the matter has been completed.

b. 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.

c. The DCMA Director, Component Heads, and CMO 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 UCMJ.

d. DCMA Component Heads and CMO Commanders/Directors have inherent authority to conduct investigations, appoint investigators, and question witnesses and suspects. Additionally, military Component Heads and Commanders can initiate court-martial charges; civilian directors cannot.

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

f. Component Heads will promptly report allegations of military member misconduct to the Director.

g. Prior to initiating an investigation of military member misconduct, Component Heads and CMO Commanders/Directors will coordinate with local counsel, DCMA Headquarters Office of General Counsel (DCMA-GC), DCMA Military Personnel Office (DCMA-TFM), and the Executive Director, Office of Internal Audit and Inspector General (DCMA-DM). All personnel who initiate an investigation will promptly notify their chain of command.

h. Component Heads, 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, which violates UCMJ Article 37.

1.2. POLICY. It is DCMA policy to:

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

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

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

d. 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 such as imposition of non-judicial punishment or trial by court-martial.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY. The Director, DCMA will:

- a. Receive all reports of military member misconduct from Component Heads.
- b. Forward all reports of military member misconduct to the Deputy Director.
- c. Serve as final approval authority in all cases where a DCMA military commander is suspended or relieved from command.
- d. Serve as the final approval authority for requests for return to service.
- e. 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:

a. The Office of General Counsel (GC) will provide legal advice to the Director, DCMA Component Heads, and CMO Commanders/Directors on the investigation and disposition of allegations of DCMA military member misconduct.

b. 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.

c. The GC headquarters (HQ) staff attorneys will:

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

(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.

(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.

d. Directorate, region, and CMO counsel will, in consultation with GC HQ staff attorneys:

(1) Provide legal advice to DCMA Commanders and staff on initiation of investigations into allegations of DCMA military member misconduct.

(2) Provide legal advice to DCMA personnel appointed to conduct an investigation.

(3) Conduct legal reviews of investigations of DCMA military member misconduct.

(4) Conduct legal reviews of all proposed adverse administrative actions against DCMA military personnel.

2.3. DEPUTY DIRECTOR. The Deputy Director, when notified by the Director of a report of military member misconduct, will:

a. Provide notification of alleged misconduct committed by subordinate military members to the GC, the Executive Director of the Office Audit and Inspector General (DCMA-DM), and the Director of the Military Personnel Division (DCMA-TFM). 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.

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

c. Serve as the appointing authority for investigations on behalf of the Director.

d. Consult with the Strategic Communication Director and DCMA Public Affairs Officer to determine the likelihood of media interest and potential damage to agency standing and reputation.

2.4. COMPONENT HEADS. Component Heads will:

a. Receive reports from subordinate CMO Commanders/Directors of alleged military member misconduct for military members assigned to their component.

b. Provide notification of alleged military member misconduct to the 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.

c. Consult with their assigned legal counsel regarding disposition of alleged offenses committed by military personnel assigned to their component.

d. Consult with the Strategic Communication Director and DCMA Public Affairs Officer to determine the likelihood of media interest and potential damage to agency standing and reputation.

2.5. CONTRACT MANAGEMENT OFFICE COMMANDERS/DIRECTORS. CMO Commanders/Directors will:

a. Provide notification of allegations of military member misconduct to their Component Head within 24 hours. Such notification will include a summary of the allegation(s), the status of any

ongoing investigation or inquiry, the status of the service member, or any other relevant information.

b. Promptly investigate allegations of misconduct committed by DCMA military members assigned to their CMO. Before initiating an investigation, CMO Commanders/Directors will consult with the local legal counsel, who will coordinate with the region and HQ GC on any legal advice provided to the CMO commander/director.

c. In consultation with local legal counsel, and in coordination with the Director or DCMA-TFM and HQ GC, take appropriate administrative actions against the military member under investigation (e.g., suspend from duties, assign alternate duties, assign service member to alternate duty location, place service member on full time telework, place an administrative hold (“flag”) on personnel records, issue “no contact” orders, or other appropriate administrative action). Note that no contact orders or other military orders may only be issued by a senior ranking service member and may not be issued by a civilian CMO director.

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

e. 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. Temporary duty travel 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.

f. Consult with the Strategic Communication Director and DCMA Public Affairs Officer to determine the likelihood of media interest and potential damage to agency standing and reputation.

2.6. DIRECTOR, MILITARY PERSONNEL DIVISION. The Director, DCMA-TFM will:

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

b. Provide assistance to Component Heads and CMO Commanders/Directors 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.”

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

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

e. Assist Component Heads and CMO Commanders/Directors with the preparation and filing of adverse administrative actions.

2.7. EXECUTIVE DIRECTOR, OFFICE OF INTERNAL AUDIT AND INSPECTOR GENERAL. The Executive Director, Office of Internal Audit and Inspector General (DCMA-DM) will:

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

b. Coordinate with Military Criminal Investigative Organizations such as the Air Force Office of Special Investigations, Army Criminal Investigation Command, or Naval Criminal Investigative Service, for investigative support as required.

SECTION 3: PROCEDURES

3.1. GENERAL CONSIDERATIONS. Component Heads and CMO Commanders/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 Manual or as needed. In addition, Component Heads and CMO Commanders/Directors will engage with legal counsel and the Director of DCMA-TFM in accordance with this Manual.

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

a. Review the allegations.

b. 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(s) (if any), coordination within the Agency, and other actions related to resolution of the allegations.

c. Consult with local legal counsel. Legal counsel will coordinate with CMO, region, and HQ counsel, as appropriate.

d. Initiate an investigation appropriate for the allegation. The following types of investigations may be used:

(1) A commander's inquiry under Rule for Court-Martial 303.

(2) An administrative command-directed informal investigation under Army Regulation 15-6, "Procedures for Investigating Officers and Boards," the DCMA standard for command directed investigations. Investigations will be conducted by a senior DCMA military member or an appropriate senior civilian employee. See Sample Appointment Memorandum for an Investigation on the Resource Page.

(3) An investigation conducted by DCMA investigators from DCMA-DM.

(4) An investigation conducted by local, state, or federal authorities or military investigators.

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

e. Military personnel assigned as investigators 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.

f. In coordination with the DCMA Military Personnel Division, 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.

g. 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.

h. 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.

i. While the investigation is pending, Component Heads and 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.

a. Article 31, Uniform Code of Military Justice, prescribes that military personnel suspected of an offense must be informed of their rights before any questioning by military or civilian superiors, military law enforcement officers, or investigators. "Article 31 Rights" are similar, but not identical, to the "Miranda Rights" used by civilian law enforcement. A Commander must give a rights advisement before questioning a person subject to the UCMJ for any law enforcement or disciplinary purpose. Commanders and investigators 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 or investigator. Rights advisements should be documented on a Rights/Waiver document.

b. DCMA Commanders and investigators may use the DA Form 3881, "Rights Warning Procedure/Waiver Certificate," or similar form to notify a military member of their Article 31 Rights. Consult with your assigned legal advisor before presenting this form to the military member. The DA Form 3881 is available on the resource page of this Manual.

3.4. ACTIONS BY COMPONENT HEADS AND CMO COMMANDERS/DIRECTORS UPON RECEIPT OF A COMPLETED INVESTIGATION.

a. Review the Report of Investigation. If the report is factually or procedurally insufficient or fails to meet the commander's or appointing authority'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.

b. Legal Review. Typically, local counsel will review the report of investigation and in coordination with HQ 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:

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

(2) Whether additional evidence or supporting documentation is required.

(3) Whether the conclusions and findings are supported by the evidence contained within the investigative report.

(4) Whether the recommendations are supported by the evidence and the conclusions and findings of the investigating officer.

c. Action by Component Heads and CMO Commanders/Directors. After a finding of legal sufficiency, Component Heads, CMO Commanders/Directors, in coordination with counsel and the DCMA Military Personnel Division, 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:

(1) No action.

(2) Verbal counseling or reprimand.

(3) Written counseling.

(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 non-punitive letter of reprimand; Air Force personnel may be issued a Letter of Admonishment in accordance with Air Force Instruction 36-2907, "Unfavorable Information File (UIF) Program," and Army personnel may be issued a reprimand in accordance with Army Regulation 600-37, "Unfavorable Information." See Sample Memorandum of Reprimand, Army Version, on the Resource Page of this Manual.

(5) Request a return to service for the service member. A Sample Request for Return to Service is on the Resource Page.

(6) Require the service member to receive or perform corrective training.

(7) Reflect the misconduct in the service member's current efficiency report or evaluation. The action may include issuance of a relief for cause report, issued in accordance with the appropriate service regulations, rules, or instructions.

(8) Downgrade end of tour award or recommend no end of tour award.

(9) Relief from command.

3.5. REFERRAL TO A COMMANDER WHO EXERCISES UCMJ AUTHORITY.

a. DCMA Component Heads and CMO Commanders/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.c. of this Manual, the Component Head or CMO Commander/Director must transfer the action to the appropriate UCMJ authority for action. These actions may include a General Officer Memorandum of Reprimand permanently filed in the service member's personnel file, administrative separation from the military, nonjudicial punishment imposed under Article 15, UCMJ, or trial by court-martial.

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

(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.

(2) Navy/Marines. 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 HQ GC on individual Navy cases.

(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.

GLOSSARY

G. ACRONYMS.

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| CMO | Contract Management Office |
| DA Form 3881 | Department of the Army Form 3881, “Rights Warning Procedure/Waiver Certificate” |
| DCMA-DM | DCMA Office of Internal Audit and Inspector General |
| DCMA-TFM | Total Force Directorate, Military Personnel Division |
| GC | General Counsel |
| HQ | Headquarters |
| UCMJ | Uniform Code of Military Justice |
| UIF | Unfavorable Information File (Air Force) |

REFERENCES

Air Force Instruction 36-2907, “Unfavorable Information File (UIF) Program,”
November 26, 2014
Army Regulation 15-6, “Procedures for Investigating Boards of Officers,” April 1, 2016
Army Regulation 600-37, “Unfavorable Information,” April 10, 2018
Department of the Navy JAG Instruction 5800.7E, June 26, 2012
DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
Manual for Courts-Martial, United States, 2019
United States Code, Title 10, Section 801, et. seq.