



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON, DC 20350-1000

SECNAVINST 5820.9A
JAG 20
4 Jan 2006

SECNAV INSTRUCTION 5820.9A

From: Secretary of the Navy

Subj: COMPLIANCE WITH COURT ORDERS BY DEPARTMENT OF THE NAVY
MEMBERS, EMPLOYEES, AND FAMILY MEMBERS OUTSIDE THE UNITED
STATES

Ref: (a) DOD Directive 5525.9 of 27 Dec 88
(b) JAGINST 5800.7D, chap. VI of 15 Mar 04
(c) DON Civilian Human Resources Manual, SubChapter 752

1. Purpose. To establish policy and procedures under references (a) through (c) for the return to the United States of, or other action affecting, Department of the Navy (DON) personnel and employees serving outside the United States, and family members accompanying them, in compliance with court orders.

2. Cancellation. SECNAV Instruction 5820.9 is hereby cancelled.

3. Definitions

a. Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a DON member, employee, or family member.

b. Employee. A civilian employed by the DON or a component service, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

c. Family Member. A spouse, natural or adopted child, or other lawful dependent of a DON member or employee accompanying the DoN member or employee assigned to duty outside the United States.

d. Felony. A criminal offense that is punishable by incarceration for more than one year, regardless of the sentence that is imposed for commission of that offense.

e. Member. An individual on active duty in the Navy, Naval Reserve, Marine Corps, or Marine Corps Reserve.

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f. Request for Return. Any request or order received from a court, or from federal, state or local authorities concerning a court order, for the return to the United States of members, employees, or family members, for any reason listed in paragraph 4.

g. Respondent. A member, employee, or family member whose return to the United States has been requested, or with respect to whom other assistance has been requested under this instruction.

h. Responsible Official. Officials designated in this instruction to act on a request to return, or take other action affecting, members, employees or family members to the United States under this instruction.

i. United States. The 50 states, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

4. Policy

a. DON policy is to cooperate, as prescribed in this instruction, with courts and Federal, state, and local officials in enforcing court orders. The DON will cooperate with requests when such action is consistent with mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing Department of Defense (DOD) investigations and courts-martial.

b. Every reasonable effort will be made to resolve the matter without the respondent returning to the United States or other action being taken against the respondent under this instruction.

c. Requests to return members for felonies or for contempt involving unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or other person awarded custody by a court order will normally be granted, but only if the member cannot resolve the issue with the court without return to the United States. When the member's return is inconsistent with mission requirements, applicable international agreements, or ongoing DOD investigations or courts-martial, DOD approval of denial will be requested.

d. For all other requests involving members, return will be based on the circumstances of the individual case as provided in this instruction.

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e. Members will normally be returned on a temporary additional duty (TAD) basis unless there are compelling reasons the return should be a permanent change of duty station (PCS).

f. The involuntary return of employees or family members in response to a request for return is not authorized. However, the following action will be taken:

(1) Employees will be strongly urged to comply with court orders. Failure to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally require processing for adverse action, up to and including removal from Federal service. Failure to comply with other court orders may require adverse action, depending on the circumstances of the individual case.

(2) Family members will be strongly encouraged to comply with court orders. Family members who fail to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally have their command sponsorship removed. Failure to comply with other court orders may also result in removal of command sponsorship, depending on the circumstances of the individual case.

g. To facilitate prompt resolution of requests for return of members, minimize the burden on operating units, and to provide consistency during initial implementation of this new program, a limited number of responsible officials, designated in paragraph 6, will respond to requesting officials.

5. Points of Contact. Authorities issuing requests for return or for other action under this instruction may contact the following activities:

- a. Chief of Naval Personnel (Pers-00J)
5720 Integrity Drive
Millington, TN 38055-0000
(For Navy members and their family members)
- b. Commandant of the Marine Corps
Headquarters, U.S. Marine Corps (Code JAR)
3000 Marine Corps Pentagon Rm# 5A1077

Washington, DC 20350-3000
(For Marine Corps members and their family members)

- c. Office of Civilian Human Resources
614 Sicard St. SE, Suite 100
Washington Navy Yard, DC 20374-5072
(For civilian personnel, including non-appropriated fund employees, and their family members)

Upon receipt of a request for action under this instruction, the Office of Civilian Human Resources will forward the request to the appropriate responsible official for action in accordance with paragraph 6.

6. Responsible Officials. The following officials are designated responsible officials for acting on requests to return or to take other action affecting members, employees, or family members to the United States:

- a. The Chief of Naval Personnel (CHNAVPERS) for requests involving Navy members and their family members who are not employees. The CHNAVPERS may delegate this authority within his headquarters, not below the O-6 level for routine matters and no lower than the flag officer level for decisions to deny the request for return.

- b. The Commandant of the Marine Corps (CMC) for requests involving Marine Corps members and their family members who are not employees. The CMC may delegate this authority within his headquarters, not below the O-6 level for routine matters and no lower than the general officer level for decisions to deny the request for return.

- c. The local commanding officer or officer in charge for requests involving employees and their family members who are not active duty military members.

- d. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) for requests not covered by paragraphs 6a through 6c.

7. Procedures

- a. If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be

resolved with the court without the respondent returning to the United States:

(1) For members. The responsible official shall direct the commanding officer or officer in charge to order the member to return to the United States. Failure to comply will normally be the basis for disciplinary action against the member.

(2) For employees, military and civilian family members. The responsible official shall strongly encourage the respondent to comply. Failure to comply may subject employees to adverse action, to include removal from the Federal service, and subject military and civilian family members to withdrawal of command sponsorship.

b. For all other requests when the matter cannot be resolved with the court without returning the respondent to the United States, the responsible official shall take the action described in this instruction when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

c. When a member's return is inconsistent with mission requirements, the provisions of applicable international agreements, or ongoing DOD investigations and courts-martial, the DON will ask the DOD to approve denial of the request for the military member's return. To initiate this action, there must be an affirmative showing of articulable harm to the unit's mission or violation of an international agreement.

d. When a responsible official has determined a request for return is apparently based on an order issued by a court of competent jurisdiction, the responsible official shall complete action on the request for return within 30 days of receipt of the request for return by the responsible official, unless a delay is authorized by the ASN(M&RA).

e. When a delay to complete the action is warranted, the ASN(M&RA) will grant a 45-day delay, and provide a copy of that approval to the Assistant Secretary of Defense (Force Management & Personnel (ASD(FM&P))) and the General Counsel, DOD. The 45-day period begins upon receipt by the responsible official of the request for return. Conditions which, when accompanied by full supporting justification, will warrant the granting of the 45-day delay are:

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(1) Efforts are in progress to resolve the matter to the satisfaction of the court without the respondent's return to the United States.

(2) To provide sufficient time for the respondent to provide evidence to show legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) To provide commanding officers an opportunity to detail the specific effect on command mission and operational readiness anticipated from the loss of the member or DON employee, and to present facts relating to any international agreement, or ongoing DOD investigations or courts-martial.

f. A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee not of his command will forward the request to the appropriate commanding officer or officer in charge, copy to the responsible official, and advise both of them by message that a request for return or other action has been forwarded.

g. A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee of his command will:

(1) Notify the respondent of the right to provide evidence to show legal efforts to resist the request, or to show legitimate cause for noncompliance for inclusion in the submission to the responsible official.

(2) For members and their family members who are not employees, forward the request immediately to the appropriate responsible official, together with:

(a) Any information the individual desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(b) Facts detailing the specific impacts on command missions and readiness anticipated from loss of the member.

(c) Facts relating to any international agreements or ongoing DoD investigations or courts-martial involving the respondent.

(d) Information regarding conditions expected to

interfere with a member's return to the command after completion of proceedings. If, in the opinion of the commanding officer, there are compelling reasons for the member to be returned to the United States PCS, provide full justification to support that recommendation to the cognizant officer.

(3) If a delay in processing is warranted under paragraphs 4 or 7e, make a recommendation with supporting justification to the responsible official.

(4) Monitor, and update as necessary, information provided to the responsible official.

h. The responsible official shall:

(1) Determine whether the request is based on an order issued by a court of apparent competent jurisdiction and if so, complete action on the request no later than 30 days after its receipt by the responsible official. If a conflicts of law issue is presented between competing state interests, or between a state and a foreign host-nation, or between two different foreign nations, the matter shall be referred to the ASN(M&RA) on the first issue and to the Office of the Judge Advocate General (International and Operational Law) on the second and third issues.

(2) Encourage the respondent to attempt to resolve the matter to the satisfaction of the court or other requesting authority without return of or other action affecting the member, employee, or family member.

(3) When a delay to complete action under this section is warranted, request the delay from the ASN(M&RA) with full supporting justification.

(4) Examine all information the respondent desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(5) Requests for exception from the requirements of this instruction shall be submitted, with supporting justification, to the ASN(M&RA) for submission to the ASD(FM&P).

(6) If a member will be ordered to return to the United States, determine if the member will be ordered TAD or PCS and advise the member's commanding officer of the determination.

Ensure the commanding officer is notified of the requirements of section 0607 of reference (b) concerning delivery agreements.

(7) If a member will be ordered to return to an appropriate port of entry to comply with a request, ensure:

(a) The requesting official has given official notification to the responsible official that the requesting official or other appropriate party will initiate action with the receiving jurisdiction to secure the member's delivery/extradition, as appropriate, per chapter VI of reference (b), and provide for all costs incident thereto, including any escort if desired.

(b) If applicable, the necessary accounting data are provided to the commanding officer of the member or orders are issued.

(c) The member has arranged satisfactory foster care for any lawful minor dependents who will be left unaccompanied overseas upon the member's return to the United States.

(8) Notify the requesting official at least 10 days before the member's return to the selected port of entry.

(9) In the case of an employee or of a family member, the commanding officer or officer in charge of the activity to which the family member's sponsor is attached, or by which the employee is employed, will carry out the following steps:

(a) An employee shall be strongly encouraged to comply with the court order or other request for return. Failure to comply may be the basis for adverse action to include removal from Federal service. Adverse action should only be taken after coordination with the cognizant civilian personnel office and legal counsel and in compliance with reference (c).

(b) If a family member of either a member or an employee is the subject of a request for return, the family member shall be strongly encouraged to comply with the court order. Failure to respond may be the basis for withdrawal of command sponsorship of the family member.

(10) Report promptly to the ASN(M&RA) any actions taken under paragraphs 7a or 7b.

i. ASN(M&RA):

(1) May grant delays of up to 45 days from the date of a request for delay in accordance with paragraph 7e.

(2) Will report promptly all delays of requests for the return of members to the ASD(FM&P) and to the DOD General Counsel.

(3) Will request from the ASD(FM&P), when warranted, exception to the policies and procedures of reference (a).

(4) Consolidate and forward reports of action taken under paragraphs 7a or 7b to the ASD(FM&P) and the DOD General Counsel, as required by reference (a).

8. Overseas Screening Programs. The Chief of Naval Operations and the CMC shall incorporate procedures requiring members and employees to certify they have legal custody of all minor dependents accompanying them outside the United States into service overseas screening programs.

9. Report. The reporting requirement in this instruction is exempt from reports control by SECNAVINST 5214.2B.

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(Manpower and Reserve Affairs)

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