

**Military Justice Branch (JAM) Practice Advisory 1-12**

17 August 2012

Subj: WITHHOLDING OF INITIAL DISPOSITION AUTHORITY IN CERTAIN SEXUAL ASSAULT CASES

Ref: (a) SecDef Memorandum dtd 20 Apr 12  
(b) MARADMIN 372/12  
(c) MCO P1900.16F w/ch 2  
(d) CMC White Letter 03-05

Encl: (1) SA-IDA Disposition Memorandum

1. Purpose. To provide guidance on implementing the SecDef and CMC withhold decisions in certain sexual assault cases.

2. Background.

a. Pursuant to his general court-martial convening authority (GCMCA) and Rules for Courts-Martial (RCM) 306, 401, and 601, the SecDef in reference (a) withheld initial disposition authority (IDA) for certain sexual assault (SA) offenses to the O-6 SPCMCA level. The O-6 SPCMCA will be referred to as the SA-IDA. This withhold, effective 28 June 2012, applies to the following alleged offenses: rape and sexual assault, in violation of Article 120, UCMJ; forcible sodomy, in violation of Article 125, UCMJ; and all attempts to commit these offenses, in violation of Article 80, UCMJ.

b. In reference (b), the CMC expanded this withholding to the SA-IDA to also include the following alleged offenses: aggravated sexual contact and abusive sexual contact in violation of Article 120, UCMJ; rape of a child, sexual assault of a child, and sexual abuse of a child in violation of Article 120b, UCMJ; and all attempts to commit these offenses, in violation of Article 80, UCMJ.

3. Discussion.

a. Scope of withhold policies.

(1) References (a) and (b) express an intent to elevate the decision making level in sexual assault cases to a higher commander. Reference (a) states the SA-IDA must decide "whether further action is warranted and, if so, whether the matter should be resolved by court-martial, non-judicial punishment, or adverse administrative action." Reference (b) further expands the scope of reference (a) by stating that SA-IDAs have a "non-delegable responsibility" to make an initial disposition decision. Therefore, within the Marine Corps, the practical effect of reference (a), as expanded by reference (b), is that the SA-IDA can take any disposition action listed in RCM 306(c), except forwarding to a subordinate commander to make a decision on what action will or will not be taken in the case. Accordingly, under

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RCM 306 and references (a) and (b), the SA-IDA may take any of the following actions for cases involving the listed withhold offenses:

(a) No action under RCM 306(c)(1).

(b) Administrative action under RCM 306(c)(2). This option includes a variety of actions from a counseling entry to the initiation of administrative separation proceedings. The withhold policy affects the application of paragraph 6302 of reference (c) by limiting the ability of immediate commanders to initiate separation processing in withhold cases. Only an SA-IDA can make the disposition decision to initiate administrative separation proceedings based on one of the listed withhold offenses. However, once the SA-IDA decides to initiate administrative separation proceedings, the SA-IDA can direct the Marine's immediate commander to notify the Marine under paragraph 6303 or 6304 of reference (c). If the immediate commander is a SPCMCA, then the SA-IDA can direct the SPCMCA to convene the administrative separation board under paragraph 6314 of reference (c).

(c) Nonjudicial punishment under RCM 306(c)(3).

(d) Disposition of charges under RCM 306(c)(4). RCM 306(c)(4) states that a commander may dispose of charges in accordance with RCM 401. RCM 401 states the commander may dismiss, forward to a superior or subordinate commander, or refer charges (the discussion to RCM 306 provides that the commander may also prefer charges). These options are modified by reference (b), which is the Marine Corps implementation of reference (a). Because the SA-IDA has the "non-delegable responsibility" under reference (b) to choose what action is appropriate, the SA-IDA may not forward the charges to a subordinate commander. However, the SA-IDA may forward the charges to a superior commander. Based on Marine Corps practice, disposition of charges normally begins with a Request for Legal Services (RLS). A RLS in a withhold case may only be submitted by an SA-IDA or a superior commander.

(e) Forwarding for disposition under RCM 306(c)(5). As stated in the previous subparagraph, an SA-IDA may not forward charges to a subordinate commander, only to a superior commander. The guidance in RCM 401(c)(2)(B) about forwarding charges to a subordinate commander therefore will not apply in withhold cases. The identification of "forwarding of charges" in paragraph 2 of reference (b) refers to forwarding to a superior commander.

(2) The withholding of IDA also applies to all other alleged offenses arising from or relating to the alleged listed sexual offenses, whether committed by the alleged offender or the alleged victim. If the alleged victim and alleged offender fall under different SA-IDAs, communication between the two SA-IDAs is encouraged to ensure appropriate and coordinated disposition for each case. In

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accordance with reference (d), commanders should be advised of the possibility of deferring disciplinary action for any collateral misconduct by the alleged victim until after final disposition of the more serious sexual assault case.

(3) RCM 306 authorizes a superior commander to withhold the authority to dispose of offenses in individual cases, types of cases, or generally. References (a) and (b) do not preclude or prevent initial disposition decisions from being further withheld by superior commanders to the GCMCA level if desired.

b. Practical Considerations

(1) Commanders who are not SA-IDAs will still play an important part in sexual offense cases. Reference (a) specifically reinforces that it is a commander's responsibility "to maintain an environment free of sexual assault, to provide support and assistance to victims, and to maintain good order and discipline within their units." Consistent with these principles, commanders still have the following responsibilities:

(a) Commanders will immediately notify NCIS and the SA-IDA after any allegation or report of a listed offense. Commanders will immediately notify the SA-IDA upon receipt of any updates from law enforcement investigations related to withhold offenses.

(b) Commanders' reporting requirements prescribed in MCO 1752.5A (SAPR Program) and the SAPR Campaign Plan (e.g., OPREP-3/SIR, 8-day brief) are not affected by the withhold policies.

(c) Commanders who are not SA-IDAs are not restricted under this policy from taking other necessary or discretionary actions related to the alleged offender or alleged victim, if otherwise authorized to do so. These actions include, but are not limited to, placing an alleged offender in pretrial restraint or pretrial confinement, issuing military protective orders, making probable cause search authorizations, providing for and/or coordinating victim support or advocacy, and promptly responding to requests for expedited transfer. If these actions are contemplated or taken, commanders shall notify the SA-IDA to ensure consistent and comprehensive coordination in all cases, particularly with respect to speedy trial considerations.

(2) Prior to making an initial disposition decision, the SA-IDA must consult with a judge advocate. Whenever practicable, the SA-IDA should also consult with the investigative agent. Once the initial disposition decision is made, the SA-IDA must document that decision using the memorandum in Enclosure (1). That signed memorandum will be maintained by the GCMCA SJA.

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(3) The withholding of IDA in references (a) and (b) also applies to analogous SA offenses committed prior to the 28 June 2012 effective date of the 2012 Amendments to the Manual for Courts-Martial.

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**Approved by:**

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Staff Judge Advocate to the  
Commandant of the Marine Corps

SSIC  
DATE

MEMORANDUM

From: Sexual Assault Initial Disposition Authority  
To: Military Justice Officer

Subj: INITIAL DISPOSITION OF SEXUAL ASSAULT ALLEGATION ICO \_\_\_\_\_

Ref: (a) SecDef Memorandum dtd 20 Apr 2012  
(b) MARADMIN 372/12

1. Pursuant to references (a) and (b), I have reviewed the [evidence, ROI, case file] pertaining to the alleged [offense(s)] by [subject] against [victim] on [date].

2. Pursuant to Rule for Courts-Martial 306, I have decided to take the following action in this case:

- a. No action.
- b. Administrative action (specify action taken).
- c. Nonjudicial punishment.
- d. Disposition of charges (specify action taken)
- e. Forwarding to \_\_\_\_\_. (specify superior commander)

3. Prior to making this initial disposition decision I consulted with \_\_\_\_\_, the staff judge advocate [*and, if applicable, the investigative agent*].

I. M. COMMANDER  
O-6 SPCMCA

Enclosure (1)