

# Reserves and the VLC

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# The Players

- Commander, Navy Reserve Force (CNRF)
- Navy Reserve Forces Command (RESFOR)
  - Deputy CNRF
  - GCMCA
  - Active duty SJA (O6) and DSJA (O5) (although SJA has been a recalled reservist for several years)
  - May also have additional JAG assets on recall orders
- Commander Naval Air Forces Reserve (CNAFR)
  - GCMCA for Reserve Air Units
  - SJA is reservist on recall orders but CNAFR has historically gone to CNAF for legal advice.
- Regional Component Commands (RCC)
  - SPCMCA
  - Both the SJA (O6) and DSJA (O5) are reserve JAGs
  - May have additional JAG assets on recall orders

# Glossary

- Selected Reservist (SELRES): A drilling reservist.
- Full Time Support (FTS): Active duty officers and enlisted responsible for organizing, administering, recruiting, instructing, managing, and training the Navy's Reserve Component (RC) (All FTS personnel are USNR).
- Active Duty for Special Work (ADSW): Program that allows SELRES to come on active duty for a period not to exceed 365 days.
- Active Duty for Training (ADT): limited period of Active Duty with an automatic reversion to ID when the specified period is completed.
- Annual Training (AT): limited periods of Active Duty with an automatic reversion to ID when the specified period is completed (two-week period).
- Inactive Duty Training (IDT): IDT periods (drills) are conducted to provide operational support and to enhance the members' readiness for mobilization. IDT periods are performed either with or without pay.
- Inactive Duty Training Travel (IDTT): Same as IDT but travel has been authorized.

# Glossary (Con't)

- **Inactive Ready Reserve (IRR):** The Navy Individual Ready Reserve (IRR) is a force that consists of personnel who must fulfill their Military Service Obligation (MSO) under Title 10, United States Code, 651, and members fulfilling a service obligation incurred via contract. The IRR is subdivided into the Active Status Pool (ASP) and the Volunteer Training Unit (VTU). The ASP is a manpower pool consisting of individuals who have previously served in the active component or in the Selected Reserves (SELRES) and now serve in a non-pay, non-drill status. NAVPERSCOM (PERS-93) is responsible for ASP screening and management.
- **Operational Support Unit (OSU):** Used to provide training as well as individual and mobilization readiness support for cross-assigned out (CAO) personnel and those in an In Assignment Processing (IAP) status who are not able to receive required training from local units. While there may be an OIC for the unit, NOSC COs are responsible for their attached OSU.
- **Volunteer Training Unit (VTU):** The VTU consists of personnel, organized into units, who are eligible and willing to return to a pay status, or personnel not eligible for further pay assignments but who voluntarily drill for retirement points. NOSC COs are responsible for the continual screening and management of their attached VTUs.
- **Standard Navy Distribution List (SNDL):** A directory of all Navy commands which be accessed through the SECNAV/OPNAV directives web site [<http://doni.daps.dla.mil/sndl.aspx>] where it is also updated on a quarterly basis.

# **Reserve Jurisdiction and Recall Procedures**

**When are Reservists  
subject to the UCMJ?**

# UCMJ Jurisdiction

- UCMJ Art. 2(a)(1):
  - “other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.”
- UCMJ Art. 2(a)(3):
  - “Members of a reserve component while on inactive-duty training, ... [.]”

# AT/ADT Orders

- Jurisdiction for UCMJ purposes when executing AT/ADT orders:
  - when travel to AT/ADT site begins.
- US v. Phillips, 58 MJ 217 (2003)
  - Reference four-part test from UCMJ Art. 2(c)
    - Submitted voluntarily to military authority.
    - Met mental competency/minimum age qualifications.
    - Received military pay or allowances.
    - Performed military duties.

# IDT/IDTT

- Jurisdiction for UCMJ purposes when executing drills (IDT/IDTT):
  - when mustered-in for drill.
    - No jurisdiction between drill periods.
    - No jurisdiction during lunch.
    - No jurisdiction during Saturday night between drill days.

**Who has NJP authority  
over Reservists?**

# Reserve Commissioned Units

- Reserve commissioned unit COs own Reservists assigned to the unit and have NJP jurisdiction over them.
  - Commissioned unit if listed on the SNDL.
  - Mobilize as their own unit.
  - CO wears a command pin.
  - E.g., Seabees, air wings.

# Active Duty Supported Command

- Active-duty supported command COs own Reservists assigned to the active-duty augment unit and have NJP jurisdiction over them.
  - Augment units are non-commissioned units.
  - Augment units are part of the active-duty command.
- Per JAGMAN 0117(a), appeals are heard by the active-duty region GCMCA.

# NOSC COs

- Navy Operational Support Center (NOSC) COs have NJP authority over Full-Time Support (FTS) and Reservists assigned to the NOSC.
  - Operational support units (OSUs)
  - Volunteer training units (VTUs)
  - **Does not include Reservists units.**

**Can a Reservist be  
placed on legal hold?**

# LEGAL HOLD

- May be extended involuntarily beyond release date as a result of apprehension, arrest, confinement, investigation, or filing of charges that may result in trial by court-martial and execution of any sentence of a court-martial.

*JAGMAN 0134(a); RCM 202(c)*

# LEGAL HOLD

- Reservist must be currently on active duty.
  - Investigation must be conducted with view toward court-martial.
  - Considerations:
    - Nature of possible charges.
    - Potential damage to national security.
    - Potential harm to self or others.
    - Flight risk to avoid jurisdiction.
- See MILPERSMAN 1620-020.

# LEGAL HOLD FOR IDT

- Officer with court-martial authority may holdover IDT for not more than 2 days if:
  - Probable cause of crime with authorized punishment of more than 10 years or death.
  - Approval (oral or written) for holdover from GCMCA in the accused's chain of command prior to expiration of IDT.
  - Immediate action is taken to order member to active duty for trial by court-martial - No holdover for NJP.
  - Pretrial confinement authorized if approved by SECNAV within 2 days past end of IDT period.

*JAGMAN 0134(b)*

**What happens if the  
military duty has  
terminated?**

# Break in Service

“[I]f a person is subject to military jurisdiction at the time of the trial and was subject to military jurisdiction at the time of the offense, that person may be tried for offenses occurring during a prior period of military service.”

Willenbring v. Neurauter, 48 MJ 152, 158 (CAAF 1998)

# UCMJ Art. 3(a)

- “[A] person who is in a status in which the person is subject to this chapter and who commits an offense against this chapter while formerly in a status in which the person was subject to this chapter **is not relieved from ...jurisdiction . . . for that offense by reason of termination of that person’s former status.**”
  - *NOTE: This version of 3(a) applies only to offenses occurring on or after October 23, 1992. Old 3(a) provided jurisdiction for only “serious offenses” (5 years confinement) not triable in civilian courts committed when on active duty.*

# UCMJ Art. 3(d)

- “A member of a reserve component who is subject to this chapter is not . . . relieved from . . . jurisdiction . . . **for an offense against this chapter committed during such period of active duty or inactive-duty training.**”
- See also JAGMAN 0123(d).

# Recall to Active Duty

- UCMJ Art. 2(d)
  - A member may be recalled to active duty by for the purpose of:
    - Trial by court-martial
    - Article 32 Investigation
    - NJP (not likely to happen)

See also MILPERSMAN 1620-020.
- BUT...
  - Offense must have happened when reservist was on active duty or inactive duty training. *UCMJ Art. 2(d)(2)(A) & (B)*.
  - Recall order must be issued by GCMCA. *UCMJ Art. 2(d)(4)*.
- An alternate option is to impose Mast during IDT.

# GCM and SPCM

- General and Special Courts-Martial
  - Charges cannot be referred for trial without prior approval of SECNAV. *JAGMAN 0123(a)(2)*
  - Member must be on active duty prior to arraignment. *RCM 204(b)(1)*
  - SECNAV must pre-approve apprehension, arrest, or confinement, including pre-trial confinement. *JAGMAN 0123(c)*

# SCM

- Summary Courts-Martial
  - Reservist can be tried by SCM while on AT/ADT or IDT/IDTT. *RCM 204(b)(2)*
  - Summary Court-Martial Officer must be on active duty at time of the court-martial. *UCMJ Art. 25, RCM 1301(a)*
  - If given during IDT, trial and execution of punishments are limited to “normal” training periods.
    - Thus, confinement not possible during IDT.

# Involuntary Recall Procedures

- See MILPERSMAN 1620-020, JAGMAN 0123
- Who may request involuntary recall?
  - Requester must have SPCM convening authority.
  - Can be Accused's reserve command, supported command, command where accused assigned at time of offense.
  - Consultation with JAG required, if reasonably available; consultation with CNRFC SJA encouraged.

**Are there limitations on  
punishments for Reservists?**

# UCMJ Art. 2(d)(5)

- If recall not approved by SECNAV:
  - Reservist cannot be “sentenced to confinement.”
  - Reservist cannot “be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty.”

# What Does This Mean?

- Reservists are subject to the same personal jurisdiction as active duty members.
  - Intervening breaks in service are irrelevant. *UCMJ art. 3(a)*.
  - Movement of reservist on and off active duty does not terminate jurisdiction. *UCMJ art. 3(d)*.
- Getting them to court may be the hassle.
  - Recall of reservists requires GCMCA or SECNAV approval. *JAGMAN 0123(e)*
- Punishment application tied to duty period absent SECNAV recall. *JAGMAN 0112; 0134*

# **WHEN IS A RESERVIST ELIGIBLE FOR VLC SERVICES**

PER NLCSC, ALL RESERVISTS, regardless of status, ARE  
ELIGIBLE for VLC services

# **WHEN IS A RESERVIST'S DEPENDENT ELIGIBLE FOR VLC SERVICES**

A Reservist's Dependent is eligible for Legal Assistance if the Reservist is on Active Duty Orders in excess of 30 days

In emergency situations, when a Reservist is on active duty for less than 30 days the Reservist or Dependent **MAY** be eligible for Legal Assistance

For VLC services, this eligibility for **CHILD VICTIMS** also requires that the accused be a military member

# **PRACTICE POINT – ASK THE FRONT OFFICE**

Given that VLC services are designed to be inclusive, vice exclusive, if you have a potential dependent client with a reserve connection the best practice is to gather as much information as possible about the offense and the offender (preferably from the VA or SARC) and forward the information in an email to DCOS. He and COS will then review and provide guidance.

# Special Concerns with Reservists

- Access:
  - - Remember that your client may have full time employment that may impact your ability to communicate.
  - -Your client may live a long distance from the NOSC or other military installation and may not have the ability to receive/read encrypted emails or have access to office equipment outside of a drill weekend.
- Expedited Transfer:
  - - Reservists can request an expedited transfer, however, that may result in the client having to travel a significant distance to drill.
  - -Alternatives to expedited transfer include drilling on opposite weekends, weekday drills, other creative solutions – engage the JAG responsible for the reservist's unit.
- Managing expectations:
  - -Difficulties with military jurisdiction coupled with civilian prosecution standards will make an already confusing situation for the victim even more so.
  - -Make sure to discuss ADSEP of perpetrator as a potential case resolution should criminal prosecution be unavailable.

# Special Concerns with Reservists

(cont)

- Reservist in Training Pipeline:
  - - All non prior-service reserve enlisted sailors go through the traditional enlisted training: boot camp followed by A School. If you are dealing with a student, please ask your client whether or not they are a reservist – this has implications particularly if they are having difficulty in school or are requesting an expedited transfer. Unlike Active sailors who can be sent to the Fleet undesignated, Reserve Sailors must have a rating or their contract is invalidated
- Protective orders:
  - Potentially increased need for civilian protective orders. May need to assist in getting information for client regarding application process.
  - REMEMBER that we cannot represent them in the process. We can, however, assist them in getting the information they need to do it themselves or with outside assistance.