

# COMMANDER'S HANDBOOK



## Processing Equal Opportunity and Equal Employment Opportunity Complaints

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## PREFACE

Equal opportunity is and will always be about leadership. The lifeblood of our Corps is Marines, and without Marines, there can be no Corps. Therefore, it is the intent of the Marine Corps Equal Opportunity Policy to remain as was outlined in a letter written in 1972 by then-Commandant Robert Cushman to all general officers and commanding officers in which he wrote: "I view our human relations efforts as major steps in helping the Corps to attain that environment of equal opportunity, understanding, and professionalism so vital to our future effectiveness. That environment, when combined with an open, two-way channel of communication among all Marines, will permit us to devote our total energies toward maintaining what our Nation needs and expects from us, a combat ready Corps of Marines."

The Marine Corps is committed to equal opportunity for all Marines, Sailors and civilian Marines without regard to their race, color, national origin, ethnicity, religion, gender, age or mental/physical disabilities as is consistent with the law and regulations. As part of their functions, our military and civilian leaders are charged with the responsibility to ensure that this policy is carried out.

Our ability to accomplish the mission boils down today, as it always has, to the individual Marine, Sailor and civilian Marine. This will not change. Marines are our most precious asset and we protect them as individuals by fair, scrupulous and unbiased treatment. It is the obligation of each member in the chain of command to ensure that this sense of fairness is constant and genuine. I expect commanders and civilian supervisors to take prompt and vigorous action where and when deviations from this obligation are discovered.

Commanders and civilian supervisors are expected to create and sustain a positive command equal opportunity climate, while ensuring that complainants have legal protection from any and all forms of reprisal. Our Marines, Sailors and civilian Marines must be confident that this process works for them and for the Marine Corps in which they serve so selflessly.

This handbook is designed to assist commanders, civilian activity heads and investigating officers when they are presented with an EO/EEEO complaint. The handbook highlights the Federal and Marine Corps policies and regulations for complaints of discrimination. It is a guide on how to investigate and resolve complaints that may occur within the command or activity. Investigations into EO/EEEO complaints have unique requirements that must be met in order for the investigations to be successful. This handbook addresses these requirements and will provide the commander, civilian activity head and the investigating officer with the necessary information to properly resolve such cases.

A handwritten signature in black ink, appearing to read "R. S. Coleman", with a horizontal line extending to the right.

R. S. COLEMAN  
LIEUTENANT GENERAL, U.S. MARINE CORPS  
DEPUTY COMMANDANT FOR MANPOWER  
AND RESERVE AFFAIRS

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Recommendations for changes/improvements to this handbook are encouraged and should be submitted to the Equal Opportunity and Diversity Management Branch (MPE), Manpower Plans and Policy Division, Manpower and Reserve Affairs Department, Headquarters, U.S. Marine Corps.

## CHAPTER 1

### EQUAL OPPORTUNITY COMPLAINTS

1. Background. Unlawful discriminatory practices within the Marine Corps are counterproductive and unacceptable. Discrimination undermines morale, reduces combat readiness, and prevents maximum utilization and development of the Marine Corps' most vital asset; its "people". The policy of the Marine Corps is to provide equality of treatment and the opportunity for all Marines to achieve their full potential based solely upon individual merit, fitness and ability. Commanders are responsible for Equal Opportunity (EO) and Equal Employment Opportunity (EEO) within their units, and should immediately act to eliminate any discriminatory behavior when they become aware of it. Commanders and supervisors must ensure that complaints of discrimination, to include sexual harassment, can be made in a command climate that does not tolerate acts of reprisal, intimidation or further acts of harassment. Individuals who believe they have been subjected to discrimination, to include sexual harassment, are afforded multiple avenues to seek resolution and redress. Also, all personnel shall be made aware of the avenues of resolution and redress available to them. Commanding Officers (COs) are required to thoroughly investigate all formal complaints of discrimination, to include sexual harassment, and to take corrective action, if warranted.

2. Chain of Command. The chain of command is the primary and preferred channel for correcting discriminatory practices and for communicating EO matters. The obligation of each member of the chain of command is to ensure that there is a sense of fairness that is constant and genuine. Allowing individuals who believe they have been subjected to discrimination or inappropriate behavior to report the incident to the chain of command if they believe they are unable to resolve the problem by themselves or the incident is criminal in nature.

3. Complaint. EO is everyone's responsibility. Anyone who witnesses an act of discrimination has a responsibility to address, correct or report the inappropriate behavior immediately.

a. Military Definition. An EO complaint is a report of conduct that is known or suspected to be discriminatory in nature based on race, color, religion, gender, age or national origin, to include sexual harassment. Any military person may initiate an EO complaint. An EO complaint may be made orally or in writing. Regardless of who initially receives the complaint, it must be forwarded to the proper authority (normally the immediate CO of the offending person). In such cases, a thorough investigation into the complaint is required. Initiating a complaint is not the same as preferring charges. Preferring charges is the separate function of signing and swearing to charges in preparation for court-martial or Non-Judicial Punishment (NJP).

b. Civilian Definition. An EEO complaint is a report of conduct or personnel action that is known or suspected to be discriminatory in nature based on race, religion, reprisal, color, national origin, sex (includes sexual harassment), age and mental/physical disability. Any civilian employee, former employee or applicant for employment may initiate an EEO complaint. An informal EEO complaint may be made orally or in writing. A formal EEO complaint is required in writing. Regardless of who initially receives the complaint, it must be forwarded to the proper authority

(normally the offending person's CO or supervisor). Commanders are encouraged to consult with the Deputy Equal Employment Opportunity Officer (DEEEO), Office of Counsel, Staff Judge Advocate (SJA) or the Director of the Human Resources Office regarding civilian EEO complaint procedures prior to taking any action(s).

4. Methods To Address Inappropriate Behavior For Military Personnel. There are two methods to address inappropriate behavior; informal and formal. The circumstances involved will determine the appropriate method to address complaints. (See paragraph 5 below for civilian complaints).

a. Informal. This method uses the Informal Resolution System (IRS), NAVPERS 15620 to resolve a conflict that is less than criminal in nature. The IRS is comprised of three sections: behavior zones (Red, Yellow, and Green), roles of those involved (Recipient, Offending Person, Other Person and Supervisor), and resolutions (Direct, Informal Third Party, and Training Information Resources). It emphasizes each person's responsibility to be a role model of appropriate behavior and to confront any form of discrimination, harassment or other inappropriate behavior when it is observed or brought to their attention. When inappropriate behavior occurs due to differing views, different personalities, lack of understanding, miscommunication or stereotypes, the IRS is one of the most effective methods to resolve the conflict. The IRS may be used if the complainant agrees to it. This is the complainant's decision; not the commander's. When using the IRS, no formal action is required by the command; however, if the commander deems it necessary, additional action may be taken. Personnel should always consider using the informal method whenever possible, as this is the most expeditious means to attempt resolution and restore the trust necessary for unit cohesion. Appendix D of this Handbook contains a detailed description of the IRS, including the commander's responsibilities under the IRS.

b. Formal. This method is used to seek a formal resolution to a complaint of inappropriate behavior. Formal allegations can only be resolved by the commander. Anyone within the chain of command who receives a formal complaint will forward the complaint immediately to the commander. All formal complaints will be reported to the CMC via the Discrimination and Sexual Harassment (DASH) report, even when IRS is utilized to resolve the issue. Command Equal Opportunity Advisors (EOA) will assist commanders in submitting DASH reports. If an EOA is not located in your geographical area, contact CMC Equal Opportunity and Diversity Management Branch (MPE) for further guidance.

(1) Avenues to File a Formal Complaint.

(a) Request Mast. This is the preferred method for an individual to make a complaint of discrimination, including sexual harassment. Each Marine and Sailor has the right to request mast with any CO in the chain of command up to his immediate Commanding General (CG). The request mast will be conducted at the earliest reasonable time, normally within 24 hours, but no later than 3 working days after the initial submission, whenever practical. MCO 1700.23\_, Request Mast provides specific guidance for the request mast program.

(b) Article 138, UCMJ Complaint. A Marine or Sailor who alleges wrong(s) committed by the CO may file a complaint under Article 138, UCMJ. Commanders should consult with the SJA when processing a complaint under Article 138.

(c) Redress of Wrong Committed by a Superior. A Marine or Sailor may also file a complaint against any other superior, in rank or command, who the service member believes committed a wrongdoing (USNAVREGS, Article 1150). Commanders should consult with the SJA when processing a complaint under Article 1150, USNAVREGS.

(d) Communications with Inspectors General. As an alternative to the normal chain of command, DON military and civilian personnel may file complaints and provide facts to the local Command Inspector or to representatives of the Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (DNIGMC), DSN 224-1348/49, commercial (703)614-1348/49 or Toll Free 1-866-243-3887, without fear of reprisals concerning violations of laws, rules, and regulations; fraud, waste or inefficiency; abuse of authority; or other misconduct.

(e) Individual Communications with Congress. Marines and Sailors may write an individual letter to members of Congress at any time concerning EO issues.

(2) Equal Opportunity Complaint Timelines. The following timelines will be adhered to for all formal complaints of discrimination or sexual harassment:

(a) All formal complaints should be filed (registered) within 60 days of the alleged incident occurring by the person making the allegation.

(b) Within 3 working days of a commander receiving a formal complaint or notification of a formal complaint, the command must initiate an investigation into the allegation(s). If the formal complaint is against one's commander, the complaint must be referred to the next higher command for resolution.

(c) Also, within 72 hours or 3 working days, a detailed description of the allegation(s) shall be forwarded in writing via the chain of command to the officer in the chain of command who has general court-martial convening authority (GCMCA). This report must include the name of the assigned investigator.

(d) The commander shall inform the complainant when the investigation has commenced and make every effort to ensure the investigation is completed within 14 days of commencement.

(e) Upon completion of the investigation, the investigating officer shall ensure a legal sufficiency review and an EO review is conducted on the findings and recommendations. The SJA will conduct the legal review. The investigating officer will then submit the investigation to the commander, and the commander will provide the investigation to the EOA. This will enable the EOA to advise the commander on the EO sufficiency of the investigation. If an EOA is not geographically located with the unit, contact CMC (MPE) for guidance.

(f) If the investigation and required reviews are not completed within 14 days, the command will submit a written request for extension from the CG with GCMCA. The request must report on the progress made to complete the investigation and the purpose for the extension. The CG can authorize only 30 days of extension. If an investigation cannot be completed after a 30-day extension, the command must contact CMC (MPE).

(g) The commander has 6 days upon completion of the investigation and review to forward a final written report containing the results of the investigation, as well as any action taken, to the next superior officer in the chain of command with GCMCA. The report will include a statement from the complainant that indicates their satisfaction or dissatisfaction with the resolution. The complainant resolution statement should be taken by the EOA or Equal Opportunity Representative (EOR) after notification of resolution.

(h) Upon completion of the commander's final written report, a final DASH report will be submitted to CMC (MPE), per MCO P5354.1D. For the purpose of a final DASH report, a complaint is considered final when the investigation is complete and the commander makes the determination as to the validity (substantiated or unsubstantiated) of the complaint.

(i) Throughout the investigation, updates and feedback will be provided to the complainant every 14 days.

(j) If the case is referred to NJP, court-martial and/or administrative separation proceeding, CMC (MPE) will be updated via DASH report of the outcome. (Note: The outcome of court-martial proceedings does not change the closure code within the DASH report).

5. Methods to Address Inappropriate Behavior for Civilian Employees. (See paragraph 4 above for military complaints). The methods described in paragraphs a-e below describe civilian processes when filing a complaint.

a. Discrimination Complaint. An employee who believes he or she has been discriminated against because of race, color, religion, gender, national origin, age, disability or reprisal for prior EEO activity, must contact an EEO counselor to file a discrimination complaint.

(1) Informal Complaint. Civilian employees who elect to file a discrimination complaint, including sexual harassment, must contact an EEO Counselor within 45 calendar days from the date the alleged act occurred, the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have known that it occurred. If both parties agree to an alternative dispute resolution, additional time is extended up to 90 days. If resolution is not reached, the complainant is advised of his/her right to file a formal complaint.

(2) Formal Complaint. If a formal complaint is filed and accepted, it will be investigated by the Department of Defense, Investigations and Resolutions Division. After the Report of Investigation (ROI) is received, the complainant can request a hearing with an EEOC Administrative Judge (AJ) or request a final agency decision with the Department of Navy (DON). Both options can be appealed to the Equal Employment Opportunity Commission (EEOC) and then further appealed to Federal District Court.

b. The following summarizes pertinent milestones (all days are calendar days):

(1) Complainant must contact an EEO counselor within 45 days of occurrence, personnel action or knowledge.

(2) EEO Counselor has 30 days to complete fact finding/informal resolution efforts (up to 90 days if the activity has an alternative dispute resolution program in place).

(3) At the conclusion of the informal complaint process the counselor will issue a Notice of Final Interview letter to the complainant who then has 15 days to file a formal complaint; the Department of Defense has 180 days to investigate.

(4) After receipt of investigative report, the complainant has 30 days to either request Secretary of the Navy's decision without a hearing, or request a hearing with the AJ, EEOC.

(5) Complainant has 30 days from receipt of the final agency decision with DON to appeal to the EEOC.

(6) Complainant then has 90 days from receipt of EEOC's decision to file civil action.

c. Administrative Grievance. The civilian administrative grievance procedure provides for a civilian employee to address concerns through their supervisory chain of command. A supervisor to whom an employee addresses a covered concern is required to make inquiry into the concern and attempt to resolve it. If an employee raises the issue of discrimination or sexual harassment at any stage of the administrative grievance procedure, the grievant will be advised of the right, if desired, to pursue the complaint under the Federal Discrimination Complaint Procedure or to continue under the administrative grievance procedure.

d. Negotiated Grievance Procedure (NGP). An employee covered by a collective bargaining agreement with an NGP which does not exclude allegations of discrimination may elect to pursue the matter under either the NGP or under the DON discrimination complaint procedure. Only one procedure may be selected.

e. Appeals to Merit Systems Protection Board (MSPB). An allegation of discrimination raised by an individual eligible to appeal to the MSPB in connection with a personnel action otherwise appealable to MSPB (e.g., suspension of more than 14 days, demotion, removal) is considered a "mixed case". Employees not in a bargaining unit must elect either to have MSPB consider the allegation of discrimination as part of a mixed case appeal and process both under MSPB procedures or have the allegation of discrimination processed under EEOC procedures; but not both. If an employee attempts to utilize both EEOC and MSPB procedures, and refuses to make an election, the first procedure initiated shall be deemed to be the procedure elected. Individual NGPs determine whether bargaining unit employees have the alternative of filing a grievance concerning the matter appealable to MSPB that includes an allegation of discrimination under the NGP. If so, such employees may request the MSPB to review the final decision with appeal to the EEOC.

## CHAPTER 2

### COMMANDING OFFICER'S RESPONSIBILITIES

1. General. Sound leadership is the key to eliminating all forms of unlawful discrimination. Commanders and those in supervisory positions are required to foster a positive command climate free from unlawful discriminatory practices and inappropriate behavior. Individuals must be treated fairly, with dignity and mutual respect, and be allowed and encouraged to resolve conflicts between themselves without fear of reprisal. MCO P5354.1\_ requires commanders to establish effective programs.

2. Prevention. Prevention of discrimination, to include sexual harassment, is just one facet of a comprehensive command Equal Opportunity/Equal Employment Opportunity (EO/EEO) program. To be effective, commanders must know and comply with relevant regulations and instructions.

a. Take Decisive Action to Implement Policies. The best way to prevent discrimination/sexual harassment is to foster a command environment in which all personnel are treated with respect and judged on merit. Appendix B contains a list of reference materials to assist the commander in implementing and sustaining an effective EO/EEO program. Further, the command EOA and the Director of Human Resources are available to provide suggestions on how you can enhance the effectiveness of your program (See Appendix C).

b. Ways to Insure Your People Get The Word

(1) Issue and periodically restate command EO, EEO and sexual harassment policy statements. Emphasize personal accountability and high standards of ethics. Commanders should consult with the EOA, SJA, DEEOO, and Office of Counsel for EEO before publishing any statement or policy regarding disciplinary or administrative corrective action.

(2) Publish and post the names of the EOA, the unit Equal Opportunity Representatives (EOR) and EEO program officials and counselors (for civilian employees) on all official bulletin boards.

(3) Prominently display the IRS standard stock posters, the procedures for processing discrimination complaints and the avenues for resolution and redress available.

(4) Conduct annual classes on filing/making formal or informal complaints/grievances. Also, post policies and guidance on unit bulletin boards in accordance with MCO P5354.1D.

c. Train/Educate. Training and education are the two most effective tools in preventing discrimination. Commanders are encouraged to regularly introduce, participate in, or take a leadership role in equal opportunity training to ensure personnel of their command are aware of the commander's commitment to a hostile-free, productive work environment. Training should be coordinated with the command's EOA or EEOPM as they will have the latest information available and will have access to a variety of educational material through the Training Information Resources (TIR) Library. The Equal Employment Opportunity Program Manager (EEOPM) can also provide the latest information available for civilian personnel.

(1) Provide discrimination/sexual harassment prevention training annually to ensure personnel know what discrimination/sexual harassment is, its harmfulness, and that it is not tolerated in your unit. In conducting sexual harassment training, ensure a distinction is made between sexual harassment and sexual assault. (Sexual assault is a criminal act and does not fall under the umbrella of sexual harassment). Training is required at least annually for Marines and Sailors. Training is also required within 90 days for new civilian employees of each duty station.

(2) Use supervisors in unit EO/EEO training as instructors, discussion leaders and as a ready resource for answering questions.

(3) Train individuals on how to use the IRS (Appendix D) and how to appropriately respond to requests for assistance/complaints. Copies of the IRS lesson plan and the "Resolving Conflict" pamphlet, which should be given to everyone, can be obtained from the commands' EOA.

(4) For civilian employees, ensure EEO officials meet X-118 Qualification Standards and the Deputy Equal Employment Opportunity Officer (DEEOO) is properly trained in processing discrimination complaints per DON Discrimination Complaints Program Management Manual. Provide on-going training opportunities; encourage participation in EEO or civilian personnel-related conferences, seminars sponsored by Office of Personnel Management (OPM), EEOC, DON, other government agencies, and national women's (and minority) organizations whose goals and objectives will advance the Marine Corps' EEO policies. EEO counselors must meet the requirements of Management Directive 110 prior to appointment.

(5) With the fusion of military and civilians working hand-in-hand, it is important to be knowledgeable on reasonable accommodations. Any civilian employee or someone acting on their behalf such as, family member, health professional or other representative, may submit a request for reasonable accommodation (RA) either orally or in writing (See Appendix H). This request will be submitted to the employee's supervisor. If submitted orally, the supervisor will complete Appendix H and obtain the employee's signature. Forward a copy to Human Resources and the EEO office. A request for reasonable accommodation requires an expedited review and decision ASAP, but no longer than 21 calendar days from the date the request is received by the employee's supervisor. The decision making is normally the supervisor's responsibility. The requestor shall be notified in writing. If denied, the written denial will include the reason(s) for the denial. The denial must also provide the requestor with information on their right to: (1) Participate in the Alternative Dispute Resolution (ADR) process; (2) File a request for reconsideration; and (3) File an informal EEO complaint to include the time frames and point of contact for filing such a claim.

(6) Commanders can access training on gangs, extremists, or hate groups through their command EOA, Naval Criminal Investigational Service (NCIS) or local civilian law enforcement.

d. Assignments/Opportunities/Advancement. Within your unit, ensure assignments to primary and collateral duties, promotions, and hiring decisions are based on Military Occupational Service (MOS), MOS related training, ability and job training for civilian personnel; not on perceived ability based on stereotypes. Coordinate with the command's EOA or Human Resources Director when acting as a selecting official for civilian jobs.

Questions posed to applicants must be in compliance with EEO statutes, regulations and policies.

(1) Evaluations. In evaluating your personnel, consider their compliance with your EO/EEO policies. Hold supervisors accountable for regularly documenting performance, maintaining personal counseling records and submitting special evaluations when required.

(2) Awards/Recognition. Monitor the awards system to ensure recognition is given without regard to race, gender, ethnicity, disability, etc.

(3) Identify, Evaluate and Correct Unacceptable Practices. Take or support prompt, decisive and appropriate corrective action when discrimination or harassment occurs. Use care and judgment in deciding upon the procedures by which a complaint can be most effectively investigated, reviewed and acted upon. Seek to resolve indications of discrimination, to include sexual harassment, at the lowest appropriate level. Attempt to find the root cause of the problem and correct it. Intervene when necessary. Encourage use of the IRS or ADR.

### 3. Reports

#### a. Discrimination and Sexual Harassment (DASH) Reporting System

(1) The CMC (MPE) has implemented the DASH complaint tracking system. The DASH report is required for all formal complaints that a Marine is involved as either the complainant or offender, or both. The purpose of the DASH system is to track all formal complaints of discrimination, to include sexual harassment, and to track all parties involved in an investigation until final action(s) is taken. It is a tool to help ensure that all EO complaints are appropriately addressed. It is not a report card for units, commanders, or installations. The information will be used to maintain statistical data and to help identify trends (both positive and negative) in the EO climate of the Marine Corps. The information gathered requires a number of personal entries, therefore, appropriate measures must be taken to ensure the security of all information entered into the database. Access to information will be restricted to a need to know basis.

(2) Whether found to be substantiated or unsubstantiated, as determined by proper investigation of the incident, immediate commanders are required to submit a DASH report within 20 days of receiving a formal complaint or any allegation of discrimination on the basis of race, color, ethnic background, religion, gender, age, or national origin, to include sexual harassment.

(a) The major command will notify the CMC (MPE) via DASH of the status of the complaint per the resolution timelines set forth in MCO P5354.1D.

(b) Multiple allegations of inappropriate behavior or wrongdoing may be presented to the commander. Therefore, when preparing the DASH report, commanders will provide only the information and action taken that is relevant to alleged behavior that is discriminatory.

(c) All DASH reports and subsequent follow up reports will be submitted by the major command to the local EOA for input into DASH.

Commands not located at or near an EOA may mail the report to the CMC (MPE), 3280 Russell Road, Quantico, VA 22134-5103 utilizing the format set forth in MCO P5354.1D. DASH reports should not be reported via message traffic due to the sensitive nature of the information and to protect the privacy of people involved.

(3) Final DASH reports will be appended to the "closed" incident case files and maintained by the Command that originated the DASH report.

(a) Significant Incident Reporting. Per MCO P5354.1\_, promptly alerting the chain of command may be warranted in particularly serious or sensitive cases. Significant incidents are defined as containing one or more of the following:

1. Death or personal injury requiring hospitalization.
2. Property damages in excess of \$1,000.
3. A security/reaction team is alerted.
4. Riotous or rebellious conduct that involves defiance or overt contemptuous acts directed by a group toward military authority.
5. Racially motivated assaults involving use of a deadly weapon.
6. Any incident in which a racist organization is identified or perceived as being involved.
7. Media coverage is anticipated.
8. An incident which, in the commander's opinion, may result in escalation or future incidents that may negatively affect the command's readiness.

#### 4. Investigations

a. Considerations. Upon receiving an EO/EEO complaint, the CO must determine the appropriate course of action and then initiate action. Actions must be based upon an investigation sufficient to result in an informed decision. While it is permissible to dismiss a complaint as unfounded after an appropriate investigation, it is not permissible to dismiss a complaint without an appropriate investigation. At a minimum, CO's must direct or conduct an appropriate investigation upon receipt of a complaint. In civilian complaints, if not satisfactorily resolved at the informal stage, the complainant has the right to file a formal complaint.

b. Requirement for Investigation. MCO P5354.1\_ requires that all reported incidents of discrimination, to include sexual harassment, be investigated by appropriately appointed personnel and resolved at the lowest possible level. In civilian complaints, Title 10 Section 1561 of the U.S. Code requires that if an employee notifies a CO or his/her designee of a sexual harassment allegation, the CO of that command will, within 72 hours of receipt of that complaint, forward the complaint to the next superior officer as well as commence, or cause the commencement of, an investigation of the complaint. The type of investigation necessary will depend upon the

particular circumstances surrounding the alleged incident so that the investigation is sufficient to discover the facts of the case. All incidents will be resolved promptly and with sensitivity. Confidentiality will be maintained to the maximum extent possible. Feedback will be provided to all affected individuals consistent with the requirements of the Privacy Act of 1974 and other pertinent laws, regulations and negotiated agreements.

c. Informal Resolution System (IRS). Depending on the severity of the behavior, unless the conduct is clearly criminal in nature, it is within the commander's purview to forego taking further formal action when a complaint has been resolved under the IRS. In this case, the CO should continue to provide support and resource materials as may be appropriate - such as granting a request to provide training through the TIR Library. It is crucial for the CO to monitor the individuals involved to ensure the conflict has been permanently resolved and to provide constructive feedback to all involved. If the recipient is not satisfied, the CO should take the appropriate steps to resolve the conflict.

d. Major Criminal Offense. The following summarizes considerations in dealing with major criminal offenses.

(1) Referral to the Criminal Investigative Division/Naval Criminal Investigative Service (CID/NCIS). Once a case is referred to the CID/NCIS, the command should stop all other action on that case. However, if it is impossible to immediately refer the matter to the CID/NCIS, steps should be taken to preserve evidence and ensure the safety of personnel involved, taking care not to compromise or impede any subsequent investigation. When coordinating with CID/NCIS or attempting to preserve potential evidence of a crime, commanders should consult with the SJA for guidance.

(2) SECNAVINST 5520.3\_ requires the offenses listed under paragraph (a) and (b) below to be immediately referred to the CID/NCIS.

(a) A major offense that is clearly criminal conduct such as assault, sexual assault, attempted rape, rape, riotous acts or other misconduct of a violent nature.

(b) Incidents of actual, suspected or alleged major criminal offenses, except those purely military in nature, which are punishable by confinement for a term of more than one year.

e. Command Investigation

(1) Normally, purely military offenses and minor misconduct are investigated by a person assigned to the local command. (This also includes cases the CID/NCIS has declined to investigate). There are no set procedures or formats for conducting command investigations; however, MCO P5354.1\_, Appendix I contains review criteria and chapter 3 of this handbook establishes guidelines for the Investigating Officer. In order to tailor the investigation to best suit the particular requirements of an individual command, the IO needs to utilize these two references. (See Rule for Courts-Martial (RCM) 303, Manual for Courts-Martial (MCM) 2005, for further guidance regarding command investigations).

(2) In some cases a civilian employee may be involved. For civilian union practices, consult with the Office of Counsel, Human Resources Office,

or Labor Relations Office for assistance. Civilian employees who are suspected of offending a military member or another civilian employee must be afforded the opportunity to be accompanied by a union representative at any interview involving a complaint which, if substantiated, could result in employee disciplinary action.

f. Actions After Command Investigation

(1) As warranted, the CO can dispose of the case, initiate a more in-depth investigation or refer the case to the CID/NCIS. A civilian employee has the right to file a formal complaint if no satisfactory resolution is reached at the informal stage.

(2) If the CO does not have sufficient authority, or the offending person is a member of another command, the report should be forwarded to higher authority or the offending person's commanding officer for disposition.

(3) It may be appropriate to consider imposing some degree of pretrial restraint or other limitations upon a military offender to ensure their presence or to prevent further misconduct. This could include imposing conditions on liberty, restriction, arrest or confinement. (See RCM 304 and 305, MCM 2005, for further guidance regarding pretrial restraint).

(4) During the investigation, it may be necessary to conduct a search of an area. If this is required, the CO should consult the Manual for Courts-Martial, the unit legal officer, and the cognizant SJA if available. (See Military Rules of Evidence (MRE) 311-316, MCM 2005 for guidance regarding searches).

g. JAGMAN Investigation. Certain types of incidents or offenses may require exhaustive scrutiny. In such cases, a JAGMAN investigation may be conducted. The primary purpose of this type of investigation is to search out, develop, assemble, analyze, and record all available information about the matter under investigation. Under some circumstances, this might be an appropriate method of investigating an alleged or suspected offense. A JAGMAN investigation is not to be used if the only purpose for conducting the investigation is to determine the need for disciplinary action. (See JAGMAN Chapter II).

h. Disposition of Allegations. Each commander has the lawful authority to dispose of offenses by members of his/her command. All allegations should be disposed of in a timely fashion and at the lowest appropriate level. Further guidance regarding the commander's options for disposing of allegations of misconduct by members of the command can be found in RCM 306, MCM 2005. In cases involving civilian complainants, commanders are reminded that the imposition of counseling alone may not be sufficient to protect against liability for future discriminatory behavior by the same Marine, Sailor, or civilian employee. (Chapter 4 contains a detailed listing of options for correcting military offenders. Chapter 5 contains a detailed listing of options for correcting civilian offenders).

i. Protect Privacy. Individual privacy, to the maximum extent possible, must be protected through all stages of the investigation and resolution of the complaint. This is not only required by the Privacy Act of 1974, but is also necessary if all personnel are to have trust in their command and the

unit's EO and EEO programs. For civilians, anonymity is lost when a formal complaint is filed.

j. Provide Feedback. Keeping the recipient, offending persons and any other persons involved informed of the final resolution of the complaint is critical to the success of the process. Feedback must be given within a reasonable time to all affected individuals consistent with the requirements of the Privacy Act of 1974, regulations, negotiated agreements (civilians) and sound common sense. When providing feedback, commanders must be careful to avoid reprimands or reprisals against personnel for their participation in the investigation or disposition of the allegations. If the commander determines the allegations warrant administrative or disciplinary action, such action should be administered to Marines and Sailors in accordance with the applicable provisions of MCM 2005 and the Marine Corps Separations and Retirement Manual (MARCORSEPMAN) or Naval Military Personnel Manual (MILPERSMAN), respectively. The commander should contact the local Director of Human Resources Office before imposing punishment on civilian employees.

k. Preclude Reprisal. Commanders at all levels must ensure that no one takes or condones any type of reprisal against a person who makes a complaint or provides information on an incident of alleged discrimination. Reprisal actions can be made by either a senior to a subordinate or among co-workers. Threatening or taking either an unfavorable action against the individual or withholding a favorable action from an individual solely in response to their equal opportunity complaint is a reprisal action. Reprisals can be overt or subtle: unjust reduction in fitness reports, evaluation marks, inequity in duty assignments, increased workload/watch standing, and not recommending personnel for advancement, retention, or special programs. Reprisals by co-workers are often more subtle, but no less damaging (e.g., ignoring the individual, not providing normal assistance, threats of physical abuse, etc).

(1) Ensure all personnel understand what reprisal is and that acts of reprisal, either overt or subtle, will not be tolerated. Both the UCMJ and civilian law forbid intimidation or harassment of witnesses or recipients, obstruction of justice, and communicating threats.

(2) Ensure the recipient knows how to report any suspected instances of reprisal.

(3) Monitor the complainant's performance/evaluation appraisals, duty assignments, etc.

(4) Hold supervisors accountable for regularly documenting performance of their subordinates.

(5) Promptly investigate all alleged acts of reprisal and ensure appropriate corrective actions are taken.

5. Support Services. The CO will ensure all recipients and offenders are aware of the available services and their applicable rights.

a. Military Personnel. Many installations have Human Resources Management personnel, Marine and Family Service counselors, an EOA, Civilian Employee Assistance Programs (CEAP), Medical Treatment Facilities, chaplains, legal assistance officers and others who can assist in reporting and resolving discrimination incidents.

b. Civilian Employees. In the DON, the Office of Civilian Personnel Management (OCPM) is responsible for developing and maintaining appropriate prevention, treatment and rehabilitation programs and services for Federal employees with alcohol and/or drug problems. Assistance may also be provided when discrimination or harassment impact adversely on job performance. (Contact your installation EEO office for more information).

## CHAPTER 3

### GUIDANCE FOR INVESTIGATING OFFICER (IO) OF DISCRIMINATION COMPLAINTS

1. General. This chapter is meant to be a guide for the Investigating Officer (IO). It is not intended to be used as a checklist. Each complaint of discrimination is unique and the IO should tailor the investigation so that it can best determine the facts concerning the incident.

2. Purpose of the Investigation. The purpose of the investigation is to develop written record of the facts surrounding the alleged incident. All statements should be sworn and documented and all pertinent evidence preserved. The product of the IO's investigation should serve as a decision-making tool and provide a reference point for justifying command action taken. The IO should foster trust in the investigative process by demonstrating command commitment and allowing affected personnel an opportunity to be heard. Establishing credibility and objectivity, providing a foundation for subsequent decision by the CO and protecting the morale and productivity of both the recipient and accused are of paramount concern. Always be neutral and impartial. Develop opinions only after completion of fact-finding. Communicate opinions only to appropriate command authority; never to witnesses or parties.

3. Prior to the Investigation. Before beginning the investigation, ensure you understand all aspects of conducting an investigation. Familiarize yourself with policies, guidance, instructions and supplemental material provided by your command. Contact the local SJA, EOA and EEO office for further guidance and assistance throughout the entire investigation.

#### 4. Know What Are Your Objectives

a. Understanding the policies and instructions will help you formulate the necessary frame of reference to pursue your primary objective of collecting all relevant facts and evidence.

b. Comply with any specific command requirements.

c. Your secondary objective is to develop logical and informed opinions and conclusions to assist the commander in making a qualified decision when disposing of the case.

5. Maintain Confidentiality To The Extent Practicable. During the investigation, do not identify the persons involved except as needed to obtain the necessary facts and evidence. Do not discuss the nature or progress of your inquiry with anyone without a "need to know."

#### 6. Rights Advisement

##### a. Military Personnel

(1) All forms of discrimination, including sexual harassment, constitute violations of the UCMJ. When a military member is suspected of having committed an offense, the offending person may only be questioned after they have been properly informed of all applicable rights and knowingly and intelligently waive them. Military suspects must be advised of their

rights even if they are not in custody. The Suspect's Rights and Acknowledgment/Statement form should be used for this purpose. (See Appendix F for a copy of the form). Other than advising the offending person of the rights as listed on the form, the IO should never give any other form of legal advice or promises to the offending person.

(2) If the offending person desires a lawyer, the IO should immediately terminate the interview and seek advice from the SJA or other legal counsel advising the command.

(3) After the offending person has properly waived all rights, the IO may begin questioning. After the offending person has made a statement, the IO may probe with pointed questions and ask the offending person about inconsistencies in the story or contradictions with other evidence. The IO should, with respect to their behavior, keep in mind that the statement must be voluntary. A confession or admission which was obtained through the use of coercion, unlawful influence, deception, or unlawful inducement is not voluntary. Having an impartial witness present may initially appear as a way to prove the statement was voluntary, but this will have to be balanced on a case-by-case basis against the likelihood that the impartial witness may inhibit the interviewee's willingness to be interviewed.

(4) If the offending person initially waives all rights, but during the interview indicates a desire to consult with counsel or to stop the interview, immediately terminate the interview. The interview may not resume unless the offending person approaches the IO and indicates a desire to once again waive all rights and submit to questioning.

b. Civilian Employees

(1) Civilian employees do not have the right to be informed of charges in an investigatory proceeding.

(2) An employee who is a member of a bargaining unit represented by a union has a right to be represented by that union if the employee reasonably believes that the interview may result in disciplinary action against him/her and the employee requests such representation. This right does not apply to a supervisor nor to a non-supervisor who is not member of the bargaining unit.

(3) Civilian employees normally do not have the right to Government-provided counsel in an investigatory proceeding. The exception occurs during custodial interrogations where the employee is in custody, not free to leave, and has no resources to provide his/her own counsel. In this case, interrogations should only be conducted by appropriate law enforcement personnel.

(4) All U.S. citizens have the right to remain silent in an investigation, but only when there is a reasonable belief that statements taken will be used in criminal proceeding. A civilian employee may be disciplined for not replying to questions raised in an agency investigation if the employee is adequately informed both that he/she is subject to discipline for not answering and that the replies will not be used against him/her in a criminal proceeding. However, many forms of discrimination and sexual harassment are also criminal violations. For example, the use of foul language may constitute "disorderly behavior" under local law. Unauthorized

touching is a common law battery which can be prosecuted in criminal courts. New laws dealing with stalking may also apply to some sexual harassment cases. Where there is potential for criminal prosecution, simply telling the employee not to leave the room or escorting him/her to a confined area will result in a custodial interrogation triggering Miranda rights. Accordingly, even though a criminal offense may seem relatively minor, the employee may still be justified in refusing to answer questions.

(5) Employees filing a grievance have no statutory right to legal counsel, but only a right to representation. It is the employee's responsibility to secure legal counsel. The complainants are responsible for the actions of their representative.

(6) Prior coordination with the command's legal and/or labor relations advisors is essential.

## 7. Gather and Preserve All Evidence

a. Interview All Persons Who Might Possess Relevant Information. (See paragraph 8 for general guidelines for conducting interviews).

(1) Interview the person initiating the allegations first in order to clarify the complaints.

(2) Interview any known witnesses followed by any other witnesses identified during these interviews.

(3) Next interview the offending person.

(4) Then interview any witnesses suggested by the offending person.

(5) Finally, re-interview as necessary.

b. Gather and Preserve Any Documentary Evidence. Documentary evidence, such as letters, notes, written or printed material, instructions or watch bills, should be obtained and attached to the report. If unable to provide originals, explain why and attach copies whenever possible.

c. Gather and Preserve Any Real Evidence. Real evidence is a physical object, such as a picture, greeting card, token of affection, or phone records. These items may be obtained from any source, including the recipient, offender(s) or witness(es). All evidence should be safeguarded until final disposition of the case. If the IO seeks to obtain evidence from an unwilling person, the IO should seek advice from the SJA or other legal counsel advising the command.

## 8. General Principles for Conducting Interviews

a. Treat everyone with dignity and respect.

b. Prepare your questions in advance. If possible, have someone take verbatim notes for you during the interview. If no one is available to take notes, consider taping each interview, but only for your future reference in the preparation of your report. If you tape the interview, you must inform the interviewee of the taping prior to the interview. Do not tape in secret. Inform the person that the tape will be used only for reference for the final report. Start the interview by stating on tape the date, time and location,

and have the interviewee acknowledge on tape that he/she understands the interview is being taped.

c. Tell each interviewee who you are, what you are doing and why you are talking to them.

d. Maintain a reasonable tone of voice. Be careful not to use threatening mannerisms or body language.

e. Listen. Keep an open mind. Do not filter. Try to understand each person's point of view.

(1) Let each witness tell their story.

(2) List points to ensure that you elicit all necessary information.

(3) Interrupt for clarification.

(4) Interrupt or return later for details.

(5) Use written questions or phone interviews for absent witnesses.

(6) Ask short concise questions. Do not ask leading questions or questions requiring more than one answer.

f. Accord any person suspected of having engaged in discriminatory behavior all applicable rights.

g. Type your notes into a statement, ensuring not to alter them. The IO may help the interviewee to express accurately and effectively in written form relevant information. The substance of the statement must always be the actual thoughts, knowledge or beliefs of the interviewee. Have the interviewee read, correct (pen and ink is preferable), initial any corrections, sign the statement and initial all pages other than the signature page. The interviewee should sign in the presence of a witness and the witness should also sign the statement.

h. Oral statements, even though not reduced to writing, are also evidence. If an interviewee does not wish to reduce an oral statement to writing, the IO should note this in the report and attach a summary of the interview. Where the interviewee has made an incomplete written statement, the IO must add a summary of the matters made orally that were omitted from the written statement.

i. All statements should be sworn. Military personnel appointed to conduct an investigation are authorized to administer oaths in connection with the investigation. This should be done both at the end of oral statements (on tape, if applicable) and when executing any subsequent written statements. (See Appendix E for a sample Sworn Statement).

j. Before closing any interview:

(1) Summarize key information.

(2) Solicit any additional information the interviewee wishes to provide.

(3) Ask the interviewee to identify other witnesses.

(4) Ask the interviewee to identify and/or provide any pertinent documents or other evidence.

(5) Schedule a follow-up meeting, if required (e.g., to obtain additional information, signature on written statement, etc).

(6) Discuss how the interviewee can tell the IO any other information he/she might later obtain (or think of).

(7) Discuss the concept of reprisal and ensure the interviewee knows how and to whom to report any suspected instances of reprisal. Reprisals are discussed in Chapter 2, paragraph 4.k.

(8) Ensure the interviewee has a telephone number to contact you.

9. When Gathering the Facts the IO Should Find Out:

a. What exactly happened?

b. What was the stated intent behind the behavior? Apparent intent? What evidence supports this?

c. Where did the behavior occur?

d. Who was involved?

e. Were there any witnesses?

f. What was the impact on the recipient? How did the behavior affect the recipient or make the recipient feel?

g. Did the conflict disrupt the work environment? How? Did it affect the recipient's work performance, or relationship with co-workers?

h. Did the recipient discuss the situation with anyone at the time?

i. Has the objectionable behavior happened before? When? How many times?

j. Was the offending person told to stop? If so, when? How? What was the reaction? Any witnesses?

k. Was any of the foregoing documented? How? Is the documentation available? If not, why not? (If so, attach documentation (or true copy) to report).

l. What type of example was set by supervisors?

m. Were supervisors aware of the offending behavior? Of the conflict? Should they have been? Why? Did they take action resolve the conflict? What action? Were the persons involved satisfied with any such action? Did the action have any effect? What effect? Did the supervisor follow-up and provide feedback?

n. Did all persons involved receive annual EO training? When? Was training documented? How? (Attach documentation to the report).

o. If reprisal appears to be an issue, are there also legitimate reasons which would justify the treatment of the person(s) who made the report of discrimination or sexual harassment? What evidence supports these reasons? Were these reasons apparent and/or substantiated prior to the report of discrimination or sexual harassment? Is there evidence that legitimate reasons were, or were not, the controlling factors for the treatment?

p. Are the persons involved prepared to try to listen, understand, and resolve the conflict? To apologize? To accept an apology? To accept responsibility?

q. What relief does the recipient desire? Will the recipient be completely satisfied with resolving the matter under the IRS? Does the recipient desire any further action? What are the recipient's feelings about the loss of confidentiality which may result in the event the command takes disciplinary action against the offender?

10. Related Issues. Sexual harassment is one type of discrimination. Just because conduct might not technically be sexual harassment doesn't necessarily mean it is OK. Other prohibited conduct may overlap with sexual harassment or surface during a sexual harassment inquiry.

a. To constitute sexual harassment:

(1) The behavior can be toward a person(s) of the same gender or opposite gender. It is generally not behavior which is addressed equally to both genders (unless the impact is unequal).

(2) The behavior must be toward the recipient, except in situations where the inappropriate behavior is severe or pervasive enough to constitute a hostile environment.

(3) The behavior can be by a supervisor, coworker, senior, subordinate or contractor.

(4) The behavior may be physical, verbal or visual.

(5) The offer in "this for that" cases can be expressed or implied.

(6) The behavior does not have to involve actual monetary loss, loss of job or benefits. The recipient does not have to suffer anxiety, debilitation or give evidence of psychological effect.

(7) The behavior must be of a sexual nature. Poor management practice or a personality conflict where there are no covert or overt sexual overtones is not sexual harassment.

(8) The behavior must be unwelcome.

(a) The unwelcome behavior may be conveyed verbally or non-verbally.

(b) There does not have to be active resistance (especially in "this for that" situations).

b. To constitute a "hostile environment", the behavior must be severe or pervasive; not trivial or merely annoying. Whether this behavior creates a

hostile environment must be viewed through the perspective of a reasonable person of the same race, gender, religion, national origin, age or disability, under similar circumstances in a similar environment, looking at:

- (1) Whether the behavior was verbal, physical or visual;
- (2) How frequently the behavior was repeated;
- (3) Whether the behavior was patently offensive;
- (4) Whether the offending person was a coworker or a supervisor;
- (5) Whether others joined in perpetrating the behavior; and
- (6) Whether the behavior was directed at more than one individual.

c. The key point to prove a "hostile environment" is whether the behavior unreasonably interferes with an employee's work performance or creates an offensive work environment.

d. It is not necessary to establish "hostile environment" in "this for that" cases.

e. Behavior that doesn't meet the definition of sexual harassment can still be inappropriate or even criminal.

11. When Reviewing the Facts and Formulating Your Opinion Evaluate:

a. What factually happened? It is your role to evaluate agendas and credibility, sort fact from fiction, and draw an objective picture of what happened.

b. Would the alleged behavior have offended a reasonable person from the recipient's perspective? Given the circumstances that occurred, would a reasonable person of the same race, gender, religion, national origin, age or disability, in a similar environment perceive the behavior in the same manner?

c. Was the alleged behavior zone Red, Yellow or Green? What zone does the behavior fall into when considering whether it is unacceptable or acceptable? (See Appendix A for a description of the behavior zones).

d. What were the responsibilities of the persons involved? Were these responsibilities met?

e. Did the supervisor condone or ignore the action(s)?

f. Should the supervisor have known or have reason to know of the specific behavior in question?

g. Did the supervisor fail to take reasonable measures to establish and maintain an equal opportunity climate and to adequately educate and train subordinates?

h. Did all subordinates receive the mandatory accession training? Annual training? If not, was it the supervisor's fault? Why or why not?

i. If it appears the allegation of discrimination or sexual harassment was false, was it made honestly and in good faith, or did the person who made it know it was false when made? What is the evidence on this issue?

j. What are the possible resolution options? Are there any options that would be acceptable to all? What option(s) do you recommend? Why? How will the recommended option(s) resolve the conflict?

## 12. Complete Your Report

a. Comply with any specific requirements of your command.

b. In general, your report should usually contain the following:

(1) List of persons interviewed.

(2) Signed written statements of persons interviewed preferably sworn using the form in Appendix E. Also include your written summaries of any oral statement. Unless otherwise directed by your command, do not include your notes or tapes, but do retain them until the matter is resolved and your command advises you that retention is no longer necessary.

(3) Completed suspect's rights acknowledgment forms (Appendix F) if applicable.

(4) Any other evidence.

(5) Your discussion including background, allegations, findings, opinions, recommendations, signature and date.

(6) Ensure your findings, opinions and recommendations are supported by the evidence and documentation.

## CHAPTER 4

### GUIDANCE FOR CORRECTING MILITARY OFFENDERS

1. General. Commanders will take appropriate action on all substantiated cases of discrimination, including sexual harassment. Action may range from non-punitive measures to General Court-Martial depending on the nature and severity of the offense.

2. Administrative Action. A commander may take or initiate administrative action in addition to or instead of other action taken. Unless the conduct is clearly criminal in nature, it is within the CO's discretion to forego taking further formal action when a complaint has been resolved under the IRS. The CO should also ensure that the circumstances surrounding such a disposition are adequately documented in local records in the event of subsequent inquiries. (Appendix D contains a detailed summary of the IRS).

a. Non-Punitive Measures. "Non-punitive measures" refers to various leadership techniques which can be used to develop acceptable behavioral standards in members of a command. Non-punitive measures include counseling, warning, non-punitive letter of caution, extra military instruction (EMI) and denial of privileges.

(1) Counseling. The supervisor should always document any counseling for possible future reference. The supervisor should have the individual who is counseled sign the statement to document the counseling session.

(2) Non-Punitive Letter of Caution. This is a written "chewing out." Appendix G contains a sample letter. Being private in nature, such letters may not be quoted in or appended to fitness reports or evaluations nor included in the official records of the individual; however, the deficient performance of duty or other facts, which led to a letter of caution being issued, should be mentioned in the individual's next performance evaluation.

(3) Extra Military Instruction (EMI). EMI is the practice of assigning extra tasks to a Marine or Sailor for the purpose of correcting deficiencies through the performance of the assigned tasks. EMI involves an order from a superior to a subordinate to do an assigned task; it is not a form of punishment. Orders imposing punishment are unlawful and need not be obeyed unless issued pursuant to non-judicial punishment or court-martial sentence. Thus, EMI must entail a valid training purpose, should always involve the identification of a particular character deficiency, and the assignment of a task rationally related to that deficiency.

(a) Hours/Duration. The overall duration of EMI should be limited to a period of time required to correct this deficiency. Limit EMI to no more than 2 hours per day and do not require EMI on the individual's Sabbath. Since EMI is training, it can lawfully interfere with normal hours of liberty, but take care not to assign EMI at unreasonable hours.

(b) Authority to Assign. The authority to assign EMI to be performed during working hours is inherent in authority vested in officers and SNCOs. The authority to assign EMI to be performed after working hours rests only with the commander.

(4) Denial of Privileges. A "privilege" is a benefit provided for the convenience or enjoyment of an individual. Examples of privileges that

may be withheld include special liberty, 72-hour liberty, exchange of duty, special command programs, hobby shops, parking privileges, and access to movies or clubs. Final authority to withhold a privilege, even temporarily, rests with the level of authority empowered to grant that privilege, usually the individual's commanding officers.

(a) Letter of Instruction (LOI). Written communication to a member identifying actions necessary to improve performance. LOIs provide evidence of the timing and focus of counseling. It should describe specific weaknesses and recommend suitable and reasonable measures for improvement. LOIs should clearly establish the desired performance standard, and if appropriate, establish a period of time for correction of the performance deficiency. The issuance of an LOI may be duly noted in a performance evaluation.

(b) Performance Evaluations. Strengths and weaknesses for performance related to equal opportunity issues should be appropriately documented in personnel records and stated in performance evaluations.

(c) Security Clearance. Security clearance may be revoked when questions are raised about a Marine's or Sailor's trustworthiness or loyalty. The Marine or Sailor retains the right to be notified prior to revocation of clearance and the right to comment prior to the proposed revocation.

(d) Early Transfer/Delay of Transfer. Early transfer may be used if it is necessary to remove an individual due to the negative impact the Marine's or Sailor's presence has on other command personnel. It need not always entail adverse records entries. Delay of transfer may be warranted when disciplinary action is pending or when executing existing orders will no longer be appropriate. In cases of discrimination, including sexual harassment, where the recipient and the offending person work with each other, the commander should force the transfer of the offender and not the recipient unless he/she requests such transfer. Forcing the transfer of the recipient has the same effect as punishing them for the incident and condoning the behavior of the offender, thereby undermining the commander's EO and EEO policies.

(e) Relief for Cause. Relief for cause is the removal of a Marine or Sailor in a command position. It requires a factual basis and entails transfer prior to normal rotation date. It is documented by adverse records entry.

(f) Separation Processing

1. SECNAVINST 5300.26C states that military personnel must be processed for administrative separation on the first substantiated incident of sexual harassment. Processing must occur if the incident involves any of the following circumstances:

a. Actions, threats or attempts to influence another's career or job in exchange for sexual favors;

b. Rewards in exchange for sexual favors; or

c. Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge.

2. An incident is substantiated if there has been a court-martial conviction, non-judicial punishment or if the CO determines, based on preponderance of the evidence, that sexual harassment has occurred.

3. In addition to this mandatory requirement, commanders have the option to initiate administrative separation proceedings for reasons set forth in the JAGMAN for individuals whose conduct warrants separation not covered above.

### 3. Disciplinary Action

a. Offenses. Discrimination and sexual harassment may constitute offenses under UCMJ Article 92(1) for violation of the lawful general order promulgated by SECNAVINST 5300.26\_ and MCO P5354.1D. Prosecuting violations of these orders is usually the most convenient and appropriate way to charge discrimination offenses. Other UCMJ articles may also apply.

#### b. Non-Judicial Punishment (NJP)

(1) General. NJP involves certain limited punishments which a commander can award to Marines or Sailors of their command for "minor" disciplinary offenses. NJP has few formal requirements and is non-adversarial in nature. NJP will be reflected in the Marine's or Sailor's service record and performance evaluations, and could form the basis for such collateral consequences as administrative separation proceedings, lowered evaluations, etc. (Part B of Chapter 1 of the JAGMAN and Appendices A-1-b through A-1-g contain detailed guidance and forms).

(2) At NJP, the commander inquires into the facts, affords the accused a hearing and may dispose of such charges via one of the following:

(a) Dismissal With or Without Warning. This action normally is taken if the commander is not convinced by the evidence that the accused is guilty of an offense. Dismissal, whether with or without a warning, is not considered NJP and will not be reflected in the accused's service record.

(b) Referral to a Summary or Special Court-Martial or Pretrial Investigation Under Article 32, UCMJ.

(c) Referral of the Case to a Superior Authority for Disposition (e.g., for general's mast or other action beyond the hearings officer's authority).

(d) Postponement of Action. Actions may be postponed pending further investigation or for other good cause such as a pending trial by civil authorities for the same offenses. In effect, the mast is adjourned to be completed at a later date.

(e) Suspension of Some or All Punishment. Suspension withholds execution of an imposed punishment for a stated period of time. Even if all punishment is suspended, the proceeding still is considered NJP and shall be reflected in the offender's service record.

## CHAPTER 5

### GUIDANCE FOR CORRECTING CIVILIAN OFFENDERS

1. General. Options for correcting civilian offenders differ from those available for correcting Marines and Sailors. In all cases, the commander should contact the nearest Human Resources Office representative before disciplining a civilian employee. (See Chapter 2, paragraph 4.h.).

2. Alternate Dispute Resolution (ADR). In many cases, it will be appropriate for civilian employees to attempt to resolve their conflict by using ADR. If the individuals involved have not attempted to resolve the issue, recommend the ADR when it is appropriate to do so.

a. This option is not appropriate for clearly criminal behavior or in cases where the recipient does not wish to confront the offender or use the system. It is crucial to follow-up to ensure the recipient is satisfied with the resolution.

b. Unless the conduct is clearly criminal in nature, it is within the CO's discretion to forego taking further formal action when a complaint has been resolved under ADR and the complainant does not desire further action. In such event, the CO should provide supplemental support and resource materials as may be appropriate. The CO should also ensure that the circumstances surrounding such a disposition are adequately documented in local records in the event of subsequent inquiries.

### 3. Administrative Action

a. Counseling. The supervisor should always document any counseling for possible future reference.

b. Civilian Employees Assistance Program (CEAP). CEAP develops and maintains appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. CEAP may also offer assistance for other emotional problems, such as those stemming from discrimination or sexual harassment, which may impact adversely on job performance.

c. Performance Appraisals. The following are examples of criterion which may be used when evaluating personnel:

#### (1) Civilian Supervisors/Managers

(a) Above Fully Successful/Outstanding: Proactive in preventing discriminatory behavior, sexual harassment and associated discrimination complaints.

(b) Fully Successful: Stops discriminatory behavior and sexual harassment in subordinate workforce, and assists in resolving discrimination complaints.

(c) Below Fully Successful/Unacceptable: Failed to act to stop known discriminatory behavior in subordinate workforce. EEO investigation supports finding of discrimination.

(2) For Non-Supervisory Employees (all SES, GM-13 to GM15 whose duties may influence EEO goals/objectives).

(a) Exceeds Expectations/Role Model: Identifies barriers to the employment and advancement of target group employees (under-represented minorities, women or disabled) and methods of eliminating those barriers. Identifies and implements innovations in own functional area which materially contribute to the achievement of EEO goals and objectives.

(b) Valued Performer: Maintains up-to-date knowledge of EEO goals/objectives and sexual harassment guidelines, and personally supports/advocates achieving them.

(c) Fair/Unacceptable: Support of EEO is limited to passive acceptance of EEO goals and attending special events or meetings when mandated by higher authority.

4. Security Clearance. Security clearance may be revoked when concerns arise regarding an employee's trustworthiness or loyalty. The employee retains the right to be notified prior to revocation of clearance and the right to comment on the proposed revocation.

5. Oral or Written Admonition. Admonition shall not be made a part of an employee's official record. The supervisor should document the oral admonition or retain a copy of written admonition for use only in subsequent disciplinary actions where prior counseling might be relevant.

6. Disciplinary or Corrective Personnel Action. CPI 1614 requires that disciplinary and/or corrective action be considered when a determination is made that prohibited discrimination has occurred.

a. Corrective Action. Corrective action includes reassignment from a position with personnel program responsibilities and/or EEO training.

b. Disciplinary Action. The recommended remedies for discrimination, including sexual harassment, range from reprimand to removal from Federal service. Similar remedies are suggested for failure to follow local or higher level policy, notoriously disgraceful conduct, making threats to other employees, committing a prohibited personnel practice or unauthorized disclosure of personal information. Lesser remedies are suggested for disrespectful conduct or use of insulting, abusive, or obscene language to or about other personnel.

(1) Unlike an admonition, a formal reprimand will be placed in the employee's official record.

(2) Employees have a right to appeal suspensions of over 14 days or termination at a Merit Systems Protection Board.

#### 7. Criminal Prosecution

a. Many forms of discrimination may also constitute criminal violations under state or Federal law. Rape and assault are crimes in all states. Bribery, graft and conspiracy are offenses in most jurisdictions. The use of foul language may constitute "disorderly conduct." Unauthorized touching is a common law battery. New laws dealing with "stalking" may also apply to some sexual harassment cases.

b. Potential criminal prosecutions should be coordinated in advance with the NCIS, the cognizant SJA or other legal counsel servicing the command.

8. Close Case as Unfounded. While it is mandatory that all reported incidents of sexual harassment be promptly investigated to sufficiently develop the facts necessary to support an informed disposition, it is permissible to take no action against an alleged offender when a complaint has been determined to be unfounded after adequate inquiry. However, it is not permissible to take no action when a complaint has been substantiated.

## Appendix A

### DEFINITIONS

The following definitions are provided to ensure uniform understanding of the terms that have special significance and/or meaning relative to the Marine Corps Equal Opportunity Program (EOP).

1. Aggrieved Person. One who believes that he or she suffered harm because of discrimination on the basis of race, color, religion, national origin, gender, age, handicap, or reprisal for participation in a prior EEO activity.
2. Alternate Dispute Resolution (ADR). Any procedure that is used in lieu of a formal administrative process or litigation to resolve issues in controversy, including, but not limited to, partnering, conciliation, facilitation, mediation, using ombudsman, fact finding, mini trials, neutral evaluation and arbitration or any combination there of.
3. Anti-Semitism. Hostility toward or discrimination against Jews as a religious or racial group.
4. Beliefs. Judgments or expectancies which one may hold.
5. Bias. A mental leaning or inclination; partiality; prejudice.
6. Category. A specifically defined division in a system of classification.
7. Chain of Command. The succession of commanding officers from a superior to a subordinate through which command is exercised.
8. Career or Employment Decisions. The decision must concern some aspect of the employment, career, pay, duty assignment, benefits or privileges of another.
9. Complaint. An allegation of unlawful discrimination based on race, color, religion, gender, national origin, age, disability or reprisal for prior EEO activity.
  - a. Informal Complaint. Allegation of unlawful discrimination or sexual harassment, made either orally or in writing, that is resolved utilizing the informal resolution system.
  - b. Formal Complaint. Allegation of unlawful discrimination or sexual harassment that is submitted via Request Mast, charge sheet, congressional inquiry, Federal Sector Complaint process, DON or IGMC complaint line, Article 138 of the UCMJ, Article 1150 of the Navy Regulations or initiation of administrative or criminal investigation.
10. Complainant. A person who submits allegations of unlawful discrimination or sexual harassment.
11. Condition. To make some aspect of another's employment, career, pay, duty assignment, benefits or privileges contingent upon fulfillment of some requirement the maker thereof has no right to impose.

12. Culture. The learned and shared behaviors and perceptions of a group which have been transmitted from generation to generation through a shared symbol system.
13. Cultural Diversity. A condition in a group of people or organization brought about by the gender, religion, racial, cultural and social differences that the individuals naturally bring to the group or organization.
14. Deputy Equal Employment Opportunity Officer (DEEOO). Serves as the primary staff advisor on EEO program initiatives and discrimination complaint matters. This EEO Official must have direct and unrestricted access to consult with the EEOO.
15. Discrimination. The act, policy, or procedure that arbitrarily denies equal opportunity because of age, color, national origin, race, ethnic group, religion or gender to an individual or group of individuals.
16. Disparaging Terms. Terms used to degrade or imply negative connotations pertaining to age, color, national origin, race, ethnic group, religion or gender. Such terms include insults, printed material, visual material, signs, symbols, posters or insignia.
17. Equal Employment Opportunity Officer (EEOO). Responsible for the activity's implementation of a continuing affirmative employment program to promote equal employment opportunity, and to identify and eliminate discriminatory practices and policies.
18. Equal Opportunity (EO). The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These programs and activities will be free from social, personal or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons will be evaluated on individual merit, fitness and capability, regardless of age, color, national origin, race, ethnic group, religion or gender.
19. Equal Opportunity Advisor (EOA). These Marines are assigned to major Marine commands and their mission is to provide information, assistance and advice on all EO matters to commanders and tenant commanders (MCO 5354.3\_).
20. Equal Opportunity Climate. An atmosphere in which all individuals are treated equitably without regard to age, color, national origin, race, ethnic group, religion or gender.
21. Equal Employment Opportunity Counselor. The EEO Counselor has primary responsibility for conducting the initial inquiry into claims of discrimination with a focus on early resolution, while preparing an accurate written record of pertinent information. It is the policy of DON to use full-time EEO counselors.
22. Equal Opportunity in Off-Base Housing. The portion of the Marine Corps EOP that supports the Department of Defense's and the Marine Corps' goal to eliminate discrimination against military and DoD civilian personnel in off-base housing.

23. Equal Employment Opportunity Program. The comprehensive program through which the Marine Corps implements its policy to provide equal opportunity in employment for all qualified civilian personnel (MCO 12713.6A).

24. Essential Functions. The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform those job duties. A function can be "essential" if there are limited number of employees who could perform if assigned to them or the function is specialized and the incumbent is hired based on his/her ability to perform it.

25. Ethnicity. That which sets off a group by race (defined as genetic), religion (preferred denomination), national origin (country of one's ancestors) or some combination of these categories.

26. Ethnic Group. A segment of the population that possesses common characteristics and cultural heritage.

27. Ethnic and Racial Categories. Basic ethnic and racial categories for DoD reporting are defined as follows:

a. American Indian or Alaska Native. A person having origins in the original peoples of North and South America (including Central America), and who maintains tribal affiliation and/or community attachment.

b. Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent. This area includes Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, Philippine Islands, Thailand and Vietnam.

c. Black or African American. A person having origins in any of the original peoples of Africa.

d. Hispanic or Latino. A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, Central or South America or of other Spanish culture or origin, regardless of race.

e. Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

f. White. A person having origins in any of the original peoples of Europe, North Africa or the Middle East.

28. Hostile Work Environment. A type of harassment that occurs when unwelcome behavior of one or more persons in a workplace produces a work atmosphere which is offensive, intimidating, or abusive to another person using the reasonable person standard.

29. Human Relations. The social relations between human beings; a course, study or program designed to develop better interpersonal and intergroup adjustments.

30. Individual with Disability(ies). One who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment or is regarded as having such an impairment.

31. Informal Resolution System (IRS). A process that uses the common sense approach for resolving conflict at the lowest possible level.

32. Institutional Discrimination. Policies, procedures and practices that, intentionally or unintentionally, lead to differential treatment of selected identifiable groups and which, through usage and custom, have attained official or semiofficial acceptance in the routine functioning of the organization/institution.

33. Legal Sufficiency Review. The review of an investigation into a formal complaint of unlawful discrimination or sexual harassment to determine whether:

a. The investigation complies with all applicable legal and administrative requirements;

b. The investigation adequately addresses the matters complained of;

c. The evidence supports the findings of the investigating officer or board;

d. The conclusions and recommendations of the investigating officer or board are consistent with the findings, and;

e. Any errors or irregularities exist, and, if so, their legal effect, if any.

34. Major Life Activities. Functions, such as caring for one's self, performing manual tasks, walking, seeing hearing, speaking, breathing, learning and working. The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

a. The nature and severity of the impairment;

b. The duration or expected duration of the impairment; and

c. Permanent or long-term impact of or resulting from the impairment.

(With respect to the major life activity of working, the term "substantially limits" means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities).

35. Minority. A group which differs from the predominant section of a larger group in one or more characteristics (e.g., ethnic background, language, culture, or religion) and as a result is often subjected to differential treatment. Race and ethnic codes of minorities are published in MCO P1080.20 (MCTFSCODESMAN).

36. Objective. Defines the basic result desired.

37. Prejudice. An attitude, judgment or opinion, without regard to pertinent fact, that is typically expressed in suspicion, fear, hostility or intolerance of certain people, customs and ideas.

38. Proposed Corrective Action. Plan of action developed to resolve identified areas of concern.
39. Protected Communication. Lawful communication to a member of Congress, an IG or to any other person or organization (including any person or organization in the chain of command) designated to receive such communications, to which a person makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation (including those covering unlawful discrimination and sexual harassment).
40. "Quid Pro Quo" or "This for That". A type of sexual harassment that occurs when submitting to or rejecting such behavior is used as a basis for decisions affecting any person's job, pay or career. This could be a promise of employment, a promotion, a threat of or an actual demotion, a duty assignment or a positive or negative performance evaluation.
41. Race. A division of human beings identified by the possession of traits that are transmissible by descent and that are sufficient to characterize persons possessing these traits as a distinctive human genotype.
42. Race/Ethnic Groups. The race/ethnic groups for Marine Corps reporting are the same as listed under ethnic and racial categories.
43. Racial/Ethnic Incident. An incident that involves members of two or more racial/ethnic groups, and racial/ethnic factors were the precipitating cause, or it became a motivating factor. If an incident involves members of only one racial/ethnic origin but is directed at another racial/ethnic group, it should be considered a racial/ethnic incident.
44. Racism. A belief or attitude that race determines an individual's traits and capabilities and those racial differences produce a natural superiority of a particular race. Behavior or conditions that foster stereotypes of social roles based on race.
45. Reasonable Accommodation. An accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation:
- a. Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job such as providing application forms in alternative formats like large print or Braille;
  - b. Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job such as providing sign language interpreters; and
  - c. Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment such as removing physical barriers in an office.
46. Reasonable Person Standard. An objective test used to determine if behavior constitutes sexual harassment. This standard considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior.

For example, a work environment in which sexual slurs, the display of sexually suggestive calendars or other offensive sexual behavior abound can constitute sexual harassment even if other people might deem it to be harmless or insignificant.

47. Recipient. Any person subjected to harassment or discrimination (may also be the complainant).

48. Reprisal. Taking or threatening to take an unfavorable personnel action, withholding or threatening to withhold a favorable personnel action or any other act of retaliation against a military member for making or preparing a protected communication.

49. Request Mast. The principal means for a Marine to formally communicate a grievance to or seek assistance from his/her commander.

50. Severe or Pervasive. These terms derive their meaning in the context of the conduct engaged in and the surrounding facts and circumstances. Obvious examples of severe conduct include indecent assaults or offensive requests for sexual favors. Pervasive conduct is that which is repeated or widespread, or evidences a pattern.

51. Sexism. Behavior, conditions or attitudes that foster stereotypes of roles, prejudice or discrimination based on the sex of an individual.

52. Sexual Harassment. (DON Definition, SECNAVINST 5300.26D)

a. Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career; or

(2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.

b. The definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive. [Note: "workplace" is an expansive term for military members and may include conduct on or off duty; 24 hours a day.]

c. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence or affect the career, pay or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

53. Sexual Nature. Conduct that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. Behavior does not need to be overtly sexual if it creates an offensive work environment. Examples include, but are not limited to, sexist remarks or slurs, sexual advances, displays of pornographic material, touching, language, gestures, and similar behavior.

54. Training and Information Resources (TIR) Library. A library of various books, videos and lesson plans on equal opportunity issues located with the command EOA.

55. Unwelcome. Conduct that is not solicited and which is considered objectionable by the person to whom it is directed and which is found to be undesirable or offensive using the reasonable person standard.

56. Values. Something that is important in an individual's existence such as processions, people and ideas.

57. Work Environment. The workplace or any other place that is work connected, as well as the conditions or atmosphere under which people are required to work.

## Appendix B

### REFERENCES

Civilian Human Resource Manual, Sub-Chapter 1614.1 Civilian Discrimination Complaints Management Program

29 C.F.R. Part 1614, EEO Management Directive 110

DoDDir 1350.2, The Department of Defense Military Equal Opportunity Program

DoDDir 5500.7, Standards of Conduct

DoDDir 5500.7-R, Joint Ethics Regulation (JER)

DoDDir 7050.6, Military Whistleblower Protection

SECNAVINST 1600.1A, Relationships with Organizations which Seek to Represent Members of the Armed Forces in Negotiation or Collective Bargaining

SECNAVINST 1920.6A, Administrative Separation of Officers

SECNAVINST 5211.5D, Department of the Navy Privacy Act (PA) Program

SECNAVINST 5300.26D, Department of the Navy (DON) Policy on Sexual Harassment

SECNAVINST 5370.7, Military Whistleblower Protection

SECNAVINST 5370.8, Military Reprisal Investigations

SECNAVINST 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy

SECNAVINST 5800.11, Victim and Witness Assistance Program

SECNAVINST 12720.5A, The Department of the Navy Civilian Equal Employment Opportunity Program (enclosing DoDDir 1440.1, The DoD Civilian Equal

Employment Opportunity (EEO) Program).

MCO 1000.9A, Sexual Harassment

MCO 1620.2 Armed Forces Disciplinary Control Board and Off-Installation Military Enforcement Services

MCO 1700.23E w/ch1, Request Mast

MCO P5354.1D, Marine Corps Equal Opportunity Manual

MCO 5354.3B, Equal Opportunity Advisors

MCO 5730.4, Dissident Protest Activity

MCO 5740.2 w/Erratum, OPREP-3 SIR: Serious Incident Reports

MCO 12713.6A, Equal Employment Opportunity Program

JAGINST 5800.7\_, Manual of the Judge Advocate General (JAGMAN)  
Manual for Courts-Martial, 2005

U. S. Navy Regulations, Articles 1150 (Complaint of Wrongdoing), 1165  
(Fraternization) and 1166 (Sexual Harassment) {OPNAVINST 3120.32}

OCPMINST 12752.1, Discipline and Adverse Actions

OCPMINST 12771, Department of the Navy Administrative Grievance System - (CPI  
771)

OCPMINST 12792.1, Department of the Navy Civilian Employee Assistance Program  
- (CPI 792)

Informal Resolution System (IRS), PCN 50100379700

NAVPERS 15620, Resolving Conflict, PCN 20606795000

User's Guide to Marine Corps Leadership Training (NAVMC 2767)

## Appendix C

### COMMAND EQUAL OPPORTUNITY MANAGERS, EQUAL OPPORTUNITY REPRESENTATIVES, EQUAL OPPORTUNITY ADVISORS AND EQUAL EMPLOYMENT OPPORTUNITY COUNSELORS

1. General. All commanders retain overall responsibility for their respective EO programs. Command Equal Opportunity Managers (CEOM), Equal Opportunity Representatives (EOR), Equal Opportunity Advisors (EOA) and Equal Employment Opportunity Counselors (EEOC) are assigned to assist the commanders in executing the commander's Equal Opportunity Program.

2. Command Equal Opportunity Manager. If an EOA is not assigned to the command, the CG or CO will designate an officer or SNCO for collateral duty as the CEOM to manage the EO objectives for their command. The CEOM functions as the EO program manager only and not as the command EOA. EOA requirements shall be directed to the nearest EOA. A letter of agreement shall be established with the base or area commander to provide EOA support. The CEOM responsibilities are identified below.

a. The CEOM shall be an officer or SNCO designated to manage the commander's EO Program. The CEOM will normally:

(1) Monitor EOR assignments and ensure all subordinate unit EORs are assigned, trained and certified in accordance with MCO P5354.1D.

(2) Ensure all subordinate commands maintain and submit all reports required by MCO P5354.1D.

(3) Provide assistance to the EOA in organizing and scheduling commander, senior enlisted, and EOR training.

(4) Be assigned to the billet for a minimum of one year.

(5) Attend quarterly EO sustainment training provided by the local EOA.

b. CEOMs will attend either the EO Program Managers Course (EOPMC) conducted at the DEOMI or local EOR Course (EORC) training. Limited seats for the DEOMI course are available through CMC (MPE) and this training is unit funded.

3. Equal Opportunity Representative. Battalion/Squadron level commanders will designate, in writing, an EOR. The EOR must be an officer or SNCO. It is not necessary or required to assign a minority or female Marine as an EOR. A volunteer would be the ideal candidate. The commander must ensure the candidate is fully capable of dealing with issues that may be sensitive in nature. Commanders will ensure the EOR assignment does not create a conflict of interest with other duty assignments, i.e., XO, SgtMaj, Legal Officer or Uniform Victim Advocate (UVA). Commands that have sub-units far removed from their major headquarters should consider designating a sub-unit EOR to help manage their EO objectives. It is highly recommended that sub-unit EORs also be assigned at the company level and in large work sections. These sub-unit EORs may be corporals and sergeants.

a. EORs are a vital part of the EO climate. These Marines are the central focus to ensuring the command's EO objectives are successful. Upon designation, EOR(s) will:

(1) Be assigned to the billet for a minimum of one year.

(2) Attend indoctrination training, 40-hour EORC training, and quarterly EO sustainment training provided by a local EOA.

b. EORs assist commanders in establishing complaint procedures, reviewing complaints, assessing the command climate, and identifying and conducting equal opportunity training. EORs may assist the commanding officer in the maintenance and submission of required reports, in addition to conducting a review of command policy and action utilizing the Inspector General checklist in MCO P5354.1D. EORs may also be designated to conduct periodic reviews of the command's discrimination/sexual harassment complaint process. EORs do not function as advocates for complainants and should not under normal circumstances conduct inquiries or investigations, but rather provide a source of information to both the complainant and the commander. EORs are also points of contact for the local commands to request materials from the TIR Library managed by the nearest EOA.

c. EORs shall provide EO training to all unit personnel and coordinate the training of additional instructors, if necessary. They will ensure that all annual EO training identified in MCO P5354.1\_ is accomplished.

4. Equal Opportunity Advisor. EOAs are assigned to commanders at major Marine Corps commands. Their mission is to provide instruction, assistance and advice on all EO matters. Details on EOA are located in MCO 5354.3\_ (Equal Opportunity Advisor).

a. EOA duties include:

(1) Provide guidance, advice or assistance in all EO matters to commanders, designated commanding generals, commanding officers and tenant commanders in their geographical areas.

(2) Provide guidance and advice on command investigations into allegations of discrimination, to include sexual harassment.

(3) Advise commanders and military personnel about the use of the Informal Resolution System (IRS) and Request Mast to resolve allegations of discrimination and sexual harassment at the lowest possible level.

(4) Provide analysis of command-specific data which will enable the commander to monitor the EO climate within their organization, identify trends and areas of concern, and develop methods for improving the EO climate.

(5) Assist EORs in cultural events or celebrations on those days set aside for the recognition of the contributions of various groups.

(6) Provide EO input into policies and programs for assigned commands, as requested.

(7) Provide briefings or training on EO issues for assigned commands, as requested.

(8) Assist EORs with EO program information on complaint reporting and other reporting requirements, command statistics and EO training requirements.

(9) Monitor the effectiveness of command EO training.

(10) Conduct the 40-hour Equal Opportunity Representative Course (EORC) on a semi-annual basis, at a minimum, for new EORs. Coordination and cooperation between EOAs in the local area is strongly encouraged.

(11) Conduct quarterly training for unit EORs to continue the awareness and learning process initiated with the 40-hour EORC.

(12) Manage the command's Training Information Resources (TIR) Library.

(13) Serve as the command's POC to report formal complaints of discrimination and sexual harassment to CMC (MPE), via the Discrimination and Sexual Harassment (DASH) reporting system.

b. EOAs do not:

(1) Serve as advocates for those who file EO complaints, or for those who believe that they have been subjected to discrimination or sexual harassment.

(2) Serve as a unit EOR.

5. Equal Employment Opportunity Counselor. The EEO Counselor has primary responsibility for conducting the initial inquiry into claims of discrimination with a focus on early resolution, while preparing an accurate written record of pertinent information. It is the policy of DON to use full-time EEO Counselors. As such the EEO Counselor will:

a. Advise employees, former employees or applicants seeking counseling of their rights and responsibilities in the discrimination complaints process.

b. Function as a facilitator between the aggrieved person and management to seek reasonable informal resolution. If resolution is achieved, it will be properly documented and approved by the authorized EEO official.

c. Conduct the informal processing of class complaints, to include developing the record. Coordinate processing of class complaints with the designated Agency Representative.

d. Gather and document sufficient information for the EEO Officer or DEEOO to determine whether to accept or dismiss issues/claims of the complaint. Include information that objectively reflects the pre-complainants allegations and management's position concerning those claims of discrimination.

e. Prepare a thorough complaint file and report of inquiry and ensure that all relevant documentation is included in the record.

f. Maintain records indicating when the aggrieved person first contacted the counselor/EEO office and the matters raised by the aggrieved person.

These records will document the inquiry methods used to reach a resolution, the results of the inquiry, and will provide specific facts to be included in the counselor's written report to the DEEOO upon completion of counseling.

g. Issue and maintain all notices and documents pertaining to the informal stage of the complaint. This includes, but is not limited to, the Notice of Rights and Responsibilities and the Notice of Extension of EEO Counseling.

h. Notify the employee, former employee or applicant of the right to file a formal complaint by issuing a Notice of Final Interview within 30 days of the date the complainant brought the claim(s) to the attention of the EEO Counselor or at the expiration of any written agreed-upon extension.

i. Forward in a timely manner, an accurate and complete Counselor's Report to the DEEOO/EEO Case Manager upon notification that a formal complaint has been filed.

j. Work closely with appropriate management officials and staff to achieve resolutions and settlements whenever feasible.

k. Coordinate settlement agreements with the DEEOO, EEO Case Manager, HRO, HRSC, activity management, Agency Representative and any other appropriate individual or staff office.

l. Do not influence the aggrieved in deciding whether to file a formal complaint, emphasizing that the decision to file rests solely with them.

## APPENDIX D

### SUMMARY OF THE INFORMAL RESOLUTION SYSTEM (IRS)

1. Background. Development of the IRS was directed by the Secretary of the Navy to facilitate resolution of interpersonal conflicts at the lowest possible level. It was developed to help resolve conflict resulting from any form of discrimination, to include sexual harassment, or other inappropriate behavior.

2. IRS Concept and Goals. Provide necessary information and skills to encourage/facilitate resolving interpersonal conflicts in the workplace at the lowest possible level.

a. Emphasizes Core Values: Honor, Courage, Commitment.

b. Emphasizes each person's responsibility to be a role model of appropriate behavior and confront inappropriate behavior when observed or brought to his/her attention.

c. It is not appropriate to use the IRS to resolve conflicts that are criminal in nature.

3. Individual Responsibilities. In general, each individual's responsibilities are:

a. Do not ignore discrimination, sexual harassment or other inappropriate behavior when it is encountered or observed;

b. Review options under the IRS; and

c. Take action to resolve the conflict.

4. The IRS is Comprised of Three Sections: Behavior Zones (3 zones), Roles (4 roles) and Resolution Options (3 options).

a. Behavior Zones (based on "reasonable person" standard)

(1) Red. Always unacceptable, e.g., seeking sexual favors in return for favorable evaluation, making supervisory decisions based on race/gender, and "hate" mail.

(a) Clearly criminal behavior must be reported through official channels.

(b) Non-criminal red zone, if resolved and recipient does not desire further action, should merely be reported for supervisor's information.

(2) Yellow. Inappropriate behavior, e.g., racial/sexual slurs, comments, jokes and sexually suggestive touching. (If repeated, especially after being told of its offensiveness, the behavior turns to red and definitely becomes unacceptable).

(3) Green. Always acceptable, e.g., counseling on performance, military appearance, normal social interaction, polite compliment and friendly conversation.

b. Roles

(1) Recipient. One who feels offended or harassed.

(2) Offending person. One who may have offended or harassed another.

(3) Other person. One approached by recipient, by offending person or who observes inappropriate behavior.

(4) Supervisor. Anyone who has subordinates, regardless of grade or rank, and who is approached by any of the above three.

c. Resolution Options Under IRS

(1) Direct. Recipient attempts to resolve conflict directly with offending person. This is the preferred method of resolving conflict.

(2) Informal Third Party. Recipient or the offending person enlists the informal assistance of some other person to help resolve the conflict.

(3) Training Information Resources (TIR). Generic, non-accusatory command training.

(a) May be requested anonymously.

(b) TIR coordinator notifies CO.

(c) CO determines if TIR appropriate to address issue.

5. Commander's Responsibilities Under the IRS

a. Set the example.

b. Establish a command climate that allows and encourages individuals to resolve conflicts between themselves without fear of reprisal.

c. Keep an open mind. Listen and do not filter.

d. Do not ignore the behavior.

e. Know when to get involved and when not to (if IRS is working, give it a chance to resolve the conflict).

(1) Determine if the IRS has been used; if not, encourage its use if appropriate.

(2) Do not get involved when conflict is being resolved by those involved.

(3) Intervene when necessary. Get involved when:

(a) You are approached by recipient, offending person or another person;

(b) You observe inappropriate behaviors; or

(c) You are otherwise made aware of a situation which can't be resolved.

(4) Take or support actions to reach resolutions. Provide resource materials as appropriate.

(5) In any case, follow up and provide feedback to the individuals involved.

f. Report/take action on all criminal red zone behavior to the appropriate authorities.

g. Avoid further traumatizing recipients. If you need to physically separate personnel, whenever feasible move the offending person, not the recipient.

h. Make referrals to support services as warranted.

6. IRS is Supported by Two Elements (available through the EOAs)

a. "Resolving Conflict" Pamphlet

(1) Stand alone "how to" guide

(2) Resource to augment IRS lesson plan.

(3) Introduce IRS elements.

(4) Empower reader to implement system to resolve conflict at lowest possible level.

b. Training Information Resources (TIR) Library

(1) Located at major installations and managed by EOAs.

(2) Consists of books and videos for use by commanders, EORs and others.

APPENDIX E

SWORN STATEMENT

United States Marine Corps  
SWORN STATEMENT

Place \_\_\_\_\_ Date \_\_\_\_\_

I, \_\_\_\_\_, make the following free and voluntary statement to, \_\_\_\_\_ whom,

I know to be (Preliminary Inquiry Officer, Investigating Officer, Representative of the Command Inspector, etc). I make this statement of my own free will and without any threats or promises extended to me. I fully understand that this statement is given concerning my knowledge of...

I swear (or affirm) that the information in the statement above (and on the \_ attached pages, each bearing my initials) is the truth to the best of my knowledge.

Signature of Interviewee \_\_\_\_\_ Date \_\_\_\_\_

Subscribed and sworn to before me at \_\_\_\_\_  
(location)

Signature of Interviewer \_\_\_\_\_ Date \_\_\_\_\_

Page 1 of \_

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SWORN STATEMENT \_\_\_\_\_ continued.

Initials of Interviewee \_\_\_\_\_ Date \_\_\_\_\_

Initials of Interviewer \_\_\_\_\_ Date \_\_\_\_\_

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APPENDIX F

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170)

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT

FULL NAME	(ACCUSED/ (SUSPECT))	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT			DATE OF BIRTH	
NAME (INTERVIEWER)		SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION			BILLET	
LOCATION OF INTERVIEW			TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s);

---

(2) I have the right to remain silent; -----

(3) Any statement I do make may be used as evidence against me in trial by court-martial; -----

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and-----

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview, -----

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, -----

(1) I expressly desire to waive my right to remain silent; -----

(2) I expressly desire to make a statement; -----

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; -----

(4) I expressly do not desire to have such a lawyer present with me during this interview; and -----

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. -----

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
_____	_____	_____
SIGNATURE (INTERVIEWER)	TIME	DATE
_____	_____	_____
SIGNATURE (WITNESS)	TIME	DATE
_____	_____	_____

The statement which appears on this page and the following \_\_\_\_ page(s), all of which are signed by me, is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

\_\_\_\_\_  
SIGNATURE (ACCUSED/SUSPECT)

APPENDIX G

SAMPLE NONPUNITIVE LETTER OF CAUTION

Date\_\_\_\_\_

From: Commanding Officer  
To: Sergeant I. M. Marine 123456789/1111

Subj: NONPUNITIVE LETTER OF CAUTION

Ref: (a) Report of investigation into Equal Opportunity Complaint, dtd  
(b) R.C.M. 306, MCM 2005  
(c) JAGMAN 0105

1. Reference (a) is the record of investigation by <rank> <full name> to inquire into an equal opportunity complaint made against you on <date>.
2. (Here insert a precise statement of the relevant events and circumstances for which the letter of caution is being issued). From the forgoing, it is apparent that your behavior was inappropriate and offensive. Such behavior is contrary to Marine Corps policy and regulation and is detrimental to the esprit de corps, pride and readiness of every Marine and/or this command. Accordingly, you are hereby administratively cautioned pursuant to references (b) and (c).
3. This letter, being non-punitive, is addressed to you as a corrective measure. It does not become a part of your official record. You are advised, however, that in the future you will be expected to exercise greater pride in your behavior in order to measure up to the high standard of conduct required by all members of the Marine Corps team. I trust the instructional benefit which you will receive from the experience will cause you to become a more professional Marine/Sailor.

APPENDIX H

REQUEST FOR REASONABLE ACCOMMODATION

REQUEST FOR REASONABLE ACCOMMODATION			
Name (Print)	Position/Series/Grade	Code	Phone No.
Supervisor (Print)		Supervisor Phone No.	
1. Describe the nature of your disability and your limitations(s). Attach continuations.			
2. Describe any impact your present limitation(s) have on performance of the essential elements of your position or on your participation in the applications process			
3. If accommodation request is time sensitive, please explain.			
<p>Privacy Act statement: The information provided by you will be used primarily to facilitate the processing of your request for accommodation. Parties with a need to know will have access to this information as necessary and appropriate to make a determination. Failure to provide accurate and complete medical reports may make it difficult to process your request.</p> <p>I certify that the statements and information provided in this document are true and complete to the best of my knowledge. I hereby give permission to release any information contained in this request to authorized agency officials with a need to know.</p>			
Requestor Signature _____		Date _____	
Supervisor / POC signature (acknowledges the receipt of this Request for Accommodation, along with medical documentation(s) as appropriate).			
Supervisor / POC Signature _____		Date _____	

APENDIX I

MILITARY FORMAL COMPLAINTS TIMETABLE

EVENT	
1. All formal complaints should be filed (registered) by the person making the allegation.	60 days
2. The command must initiate an investigation into the allegation(s) and a detailed description of the allegation(s) shall be forwarded in writing via the chain of command to the officer in the chain of command who has general court-martial convening authority (GCMCA). This report must include the name of the assigned investigator.	3 days
3. The commander shall inform the complainant when the investigation has commenced and make every effort to ensure the investigation is complete. If the investigation and required reviews are not completed, the command will submit a written request for extension from the Commanding General with GCMCA. The request must report on the progress made to complete the investigation and the purpose for the extension. The Commanding General can authorize only <b>30 days</b> of extension. If an investigation cannot be completed after a <b>30-day</b> extension the command must contact CMC (MPE).	14 days
4. After commencement of the investigation, Commanders are required to submit an Initial DASH report through the command EOA. The report will include the name of the investigator and date assigned.	20 days
5. The commander has 6 days upon completion of the investigation and review to forward a final written report containing the results of the investigation, as well as any action taken, to the next superior officer in the chain of command with GCMCA. Submit final DASH report.	6 days
6. Throughout the investigation, updates and feedback will be provided to the complainant every 14 days.	Every 14 days

APPENDIX J

CIVILAIN FORMAL COMPLAINTS TIMETABLE

EVENT	
1. Employee/applicant must contact EEO Officer/EEO counselor after the alleged discrimination occurred.	45 days
2. EEO Counselor conducts fact-finding, tries to resolve complaint informally, conducts final interview, and, if allegations are not resolved issues Notice of Final Interview. Note: Counseling may be extended an additional 60 days with permission of complainant.	30 days
3. EEO Counselor submits Counselor Report.	7 days
4. Complainant files formal complaint in writing with EEO Officer or other designated official. Must advise EEO Office if he or she obtains representation.	15 days
5. Complaint received in EEO Office, EEO Official acknowledges receipt within 5 days of receipt of formal complaint. EEO Official reviews counselor report and formal complaint and proceeds to: a. Issue dismissal letter as appropriate, or b. Issue letter acknowledging allegations for investigation to complainant, and c. Request investigator through Department of Defense Office of Complaints Investigation.	30 days
6. Investigator reviews case file; determines scope of investigation; conducts on-site visits as necessary; obtains evidence and testimony from complainant and relevant witnesses; prepares and presents the investigative file (IF) to activity; and EEO Official reviews IF.	180 days from filing date
7. If EEO Official determines IF meets requirements, forwards copy to complainant. Issues notice of right to Final Agency Decision with or without an EEOC Hearing and/or decision by an Administrative Judge. a. If complaint is resolved, a settlement agreement is prepared and maintained with the record; or b. If complainant requests a SECNAV decision without a hearing, EEO Office sends case file to NAVOECMA within <b>5 days</b> ; or c. If complainant wants a hearing, they must make their request directly to the appropriate EEOC district office with a copy to Activity EEO office. EEO Office forwards case file to EEOC. <b>This process can take 6 months to more than a year.</b>	30 days
8. Upon receipt of request for Final Agency Decision without hearing, NAVOECMA prepares the final action, OR	60 days
9. Upon receipt of AJ Decision, NAVOECMA prepares Final Order implementing, partially implementing and/or appealing AJ Decision.	40 days