

**MARINE CORPS PROHIBITED ACTIVITIES AND CONDUCT
PREVENTION AND RESPONSE**

Volume 2

MCO 5354.1E – V2

26 MAR 2018

VOLUME 2

“PROHIBITED ACTIVITIES AND CONDUCT”

SUMMARY OF VOLUME 2 CHANGES

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REFERENCES

- (a) Uniform Code of Military Justice (UCMJ)
- (b) MCO 1900.10 CH-1
- (c) Manual for Courts-Martial (2016 Ed.)
- (d) DoD Instruction 1020.03, “Harassment Prevention and Response in the Armed Forces,” 8 February 2018
- (e) DoD Directive 1020.02E, “Diversity Management and Equal Opportunity in the DoD,” 8 June 2015
- (f) DoD Directive 1350.2, “DoD Military Equal Opportunity (MEO) Program,” 18 August 1995
- (g) SECNAVINST 5350.16A
- (h) SECNAVINST 5300.26D
- (i) 10 U.S.C. § 1034
- (j) DoD Directive 7050.06, “Military Whistleblower Protection,” 17 April 2015
- (k) SECNAVINST 5370.7D
- (l) DoD Directive 5505.06, “Investigations of Allegations Against Senior DoD Officials,” 6 June 2013
- (m) SECNAVINST 5800.12B
- (n) SECNAVINST 1000.11
- (o) SECNAVINST 1610.2A
- (p) ALMAR 008/17
- (q) U.S. Navy Regulations, 1990
- (r) CMC Leaders Handbook and Discussion Guide, 4 April 2017
- (s) SECNAVINST 1000.10A
- (t) DoD Instruction 1325.06, “Handling Dissident and Protest Activities Among Members of the Armed Forces,” 22 February 2012

“REFERENCES”

As changes are made within this MCO, Volume References list will also be updated.
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VOLUME 2: CHAPTER 1

“PUNITIVE PROVISIONS”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 1

PUNITIVE PROVISIONS

0101 PUNITIVE PROVISIONS

This Order is a punitive lawful general order. Any violation, attempted violation, or solicitation of another to violate Volume 2 of this Order, pertaining to harassment (to include sexual harassment), unlawful discrimination, and abuse (specifically, hazing, bullying, ostracism, retaliation); wrongful distribution or broadcasting of intimate images; and, certain dissident and protest activity (to include supremacist activity)), may subject involved members to adverse administrative or disciplinary action under Article 92 of the UCMJ (reference (a)) or such other Articles of the UCMJ, as applicable.

0102 ADVERSE ADMINISTRATIVE ACTION

Substantiated misconduct involving prohibited activities and conduct, as defined in this Volume, may subject involved members to adverse administrative action to include but not limited to processing for administrative separation in accordance with reference (b).

0103 GENERAL

Consistent with the references, and supplemented, as necessary, this Order prohibits specific conduct as defined in this Volume. The definitions used in this Volume for specific conduct are not contingent on or connected to definitions of the specific conduct in any other Order, unless otherwise indicated.

0104 ABUSE

For purposes of this Order, abuse includes hazing, bullying, ostracism, and retaliation.

010401. Hazing

A. Any conduct whereby a Service member or DOD employee knowingly, recklessly, or intentionally and without proper authority but with a nexus to military service causes a Service member or members, regardless of Service or rank, to suffer physically or psychologically or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, harmful, or creates a risk of physical or psychological injury. Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature, and may occur in person or through other forms of communication, including online and through social media. Because no person can consent to hazing, actual or implied consent to acts of hazing is not relevant, and may not be considered in determining whether hazing occurred. Hazing is evaluated by a reasonable person standard.

B. While hazing can occur during unauthorized initiations, “congratulatory acts,” or “rites of passage,” those types of events are not prerequisites for hazing. Hazing can include, but is not limited to: physically striking another to inflict pain; piercing another’s skin in any manner (such as “pinning” or “tacking on” of rank insignia or “blood winging”); verbally berating another; encouraging another to excessively consume alcohol or encouraging another to engage in illegal, harmful, demeaning, or dangerous acts; threatening or offering violence or bodily harm to another; branding; taping; tattooing; shaving; greasing; painting; requiring excessive physical exercise beyond what is required to meet standards; or, the forced consumption of food, alcohol, drugs, or any other substance.

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C. Hazing does not include: properly directed command and organizational activities, or the training required to prepare for such activities (e.g., administrative corrective measures; Extra Military Instruction; command-authorized physical training); proper verbal and written counseling addressing performance or

D. conduct deficiencies; authorized incentive training permitted exclusively at the Marine Corps Recruit Depots; or similar activities properly authorized by the chain of command.

010402. Bullying

A. Any conduct whereby a Service member or DOD employee intentionally and without proper authority but with a nexus to military service excludes or rejects a Service member or members, regardless of Service or rank, through cruel, abusive, humiliating, oppressive, demeaning, or harmful behavior, which results in diminishing the member's dignity, position, or status. Bullying is evaluated by a reasonable person standard.

B. Bullying is typically a course of conduct which, without intervention, continues without a specific end point or event. Bullying may include an abuse of authority. Bullying tactics include, but are not limited to, making threats, spreading rumors, social isolation, and attacking someone physically, verbally, or through the use of electronic media. Bullying includes, but is not limited to, teasing; taunting; oral or written berating of another for the purpose of belittling or humiliating; and, degrading or damaging a person or his or her property or reputation. Bullying can be conducted through the use of electronic devices or communications, and by other means, as well as in person.

C. Bullying does not include: properly directed command and organizational activities, or the training required to prepare for such activities (e.g., administrative corrective measures; Extra Military Instruction; command-authorized physical training); proper verbal and written counseling addressing performance or conduct deficiencies; authorized incentive training permitted exclusively at the Marine Corps Recruit Depots; or similar activities properly authorized by the chain of command.

010403. Ostracism

Any conduct whereby a Service member or DOD employee intentionally and without proper authority but with a nexus to military service excludes a Service member or members, regardless of Service or rank, from social acceptance, privilege, or friendship with the intent to inflict emotional distress, discourage the reporting of a criminal offense, or otherwise discourage the due administration of justice.

010404. Retaliation

~~For purposes of this Order, a~~Any conduct whereby a Service member or DOD employee intentionally and without proper authority but with a nexus to military service takes or threatens to take any unfavorable action or withholds or threatens to withhold a favorable action against an individual because that individual: made or was preparing to make or was perceived as making or preparing to make a protected communication; reported or was planning to report a criminal offense; engaged or was preparing to engage in activity in furtherance of EEO or MEO laws and regulations; or, opposed direction to engage in an action that violates law, rule, or regulation or this Order. Retaliation is a category of prohibited behavior that involves animus and results in action being taken against an individual because of that individual's otherwise protected communication or activity or for the intent to discourage any

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person from engaging in otherwise protected communication or activity. Anti-retaliation provisions protect individuals to ensure freedom to engage in protected communications and to participate in activity alleging prohibited activities and conduct and potential EO violations and to oppose activity prohibited by EEO or MEO laws and regulations without superiors taking unfavorable actions in response. Retaliation can manifest itself, though not exclusively, in the form of reprisal or restriction, as well as bullying, discrimination, hazing, or ostracism, among other ways.

0105 HARASSMENT (TO INCLUDE SEXUAL HARASSMENT)

010501. Harassment

Any conduct whereby a Service member or DOD employee knowingly, recklessly or intentionally and without proper authority but with a nexus to military service engage in conduct that is unwelcome or offensive to a reasonable person or that is unwelcome and based on race, color, religion, sex (to include gender identity), national origin, or sexual orientation, and where (1) enduring the unwelcome or offensive conduct becomes a condition of continued employment or service, or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, abusive or as otherwise having an adverse impact on the unit.

A. Offensive conduct may include, but is not limited to, offensive jokes; slurs; epithets or name calling; physical assaults or threats; intimidation; ridicule or mockery; insults or put-downs; display or transmission of derogatory, demeaning or offensive objects or pictures; and interference with work performance (to include unwillingness to train, evaluate, assist, or work with an individual).

B. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

1. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or a contractor.

2. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.

C. Harassment does not include: properly directed command and organizational activities, or the training required to prepare for such activities (e.g., administrative corrective measures; Extra Military Instruction; command-authorized physical training); proper verbal and written counseling addressing performance or conduct deficiencies; authorized incentive training permitted exclusively at the Marine Corps Recruit Depots; or similar activities properly authorized by the chain of command.

010502. Sexual Harassment

A. Knowing, reckless, or intentional conduct with a nexus to military service that:

1. Involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:

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

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

c. 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; or,

2. Is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

B. Any knowing, reckless, or intentional use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a Service member or DOD employee.

C. Any conduct whereby a Service member or DOD employee knowingly, recklessly, or intentionally and without proper authority but with a nexus to military service makes deliberate or repeated unwelcome verbal comments or gestures of a sexual nature.

(There is no requirement for concrete psychological harm to the complainant for behavior to constitute sexual harassment.)

0106 WRONGFUL DISTRIBUTION OR BROADCASTING OF AN INTIMATE IMAGE

010601. The wrongful distribution or broadcasting of an intimate image. The distribution or broadcasting is wrongful if the person making the distribution or broadcast does so without legal justification or excuse, knows or reasonably should know that the depicted person did not consent to the disclosure, and the intimate image is distributed or broadcast:

A. With the intent to realize personal gain;

B. With the intent to humiliate, harm, harass, intimidate, threaten, or coerce the depicted person; or

C. With reckless disregard as to whether the depicted person would be humiliated, harmed, intimidated, threatened, or coerced.

010602. Distribution means the act of delivering to the actual or constructive possession of another, including transmission by electronic means. Broadcasting means the act of electronically transmitting a visual image with the intent that it be viewed by a person or persons. An intimate image is any visual depiction, including by electronic means, that:

A. Includes another person who is identifiable from the depiction itself or from information conveyed in connection with the depiction;

B. Depicts that person engaging in sexually explicit conduct or depicts the private area of that person; and

C. Taken under the circumstances in which the person depicted has a reasonable expectation of privacy.

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010603. “Sexually explicit conduct” and “private area” have the meaning assigned to them in part IV of the Manual for Courts Martial (reference (c)).

0107. DISSIDENT AND PROTEST ACTIVITY (INCLUDING SUPREMACIST ACTIVITY)

010701. Knowing and wrongful conduct that involves actively advocating supremacist, extremist, or criminal gang doctrine, ideology, or causes, including those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex (including gender identity), religion, ethnicity, national origin, or sexual orientation or those that advance, encourage, or advocate the use of force, violence, or criminal activity, or otherwise advance efforts to deprive individuals of their civil rights.

010702. Knowing and wrongful conduct that involves actively participating in criminal gangs, or in other organizations that advocate supremacist, extremist, or criminal gang doctrine, ideology, or causes; including those that attempt to create illegal discrimination based on race, creed, color, sex (including gender identity), religion, ethnicity, national origin, or sexual orientation; advocate the use of force, violence, or criminal activity; or otherwise engage in efforts to unlawfully deprive individuals of their civil rights. Active participation in such gangs or organizations is prohibited. Active participation includes, but is not limited to, fundraising; demonstrating or rallying; recruiting, training, organizing, or leading members; distributing material (including posting on-line); knowingly wearing gang colors or clothing; having tattoos or body markings associated with such gangs or organizations; or otherwise engaging in activities in furtherance of the objective of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service. The prohibition extends to acts committed through electronic communications and social media, as well as in-person and other means.

0108 UNLAWFUL DISCRIMINATION

Any conduct whereby a Service member or DOD employee knowingly and wrongfully and without proper authority but with a nexus to military service treats another Service member or DOD employee adversely or differently based on race, color, national origin, religion, sex (including ~~sexual orientation~~ ~~or gender identity~~gender identity), or sexual orientation. Unlawful discrimination includes actions or efforts that detract from equal opportunity, with respect to the terms, conditions, or privileges of military service including, but not limited to, acquiring, assigning, promoting, disciplining, scheduling, training, compensating, discharging, or separating. This definition excludes justifiable conduct that discriminates on the basis of characteristics (including, but not limited to, age, height, and weight) that serve a proper military or other governmental purpose as set forth in other military policies.