



Inspector General Newsletter

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Military Whistleblower Protection

The Military Whistleblower Protection Act prohibits interference with a military member's right to make protected communications to members of Congress; Inspectors General; members of DoD audit, inspection, investigation or law enforcement organizations; and other persons or organizations (including the chain of command) designated by regulation or administrative procedures. This law is prescribed within the Department of Defense with Department of Defense Directive (DoDD) 7050.06. A protected communication is any lawful communication to a Member of Congress or an IG, as well as any communication made to a person or organization designated under competent regulations to receive such communications. That is a whole lot of legal speak but it boils down to this. A soldier has the right to communicate and prepare to communicate a protected communication to Congress, Inspectors General, any DoD investigators or law enforcement organizations and just as importantly, their chain of command.

What is a protected communication? There are two categories of protected communications.

1. Any lawful communication to a member of congress or an IG. This means that a soldier may write a member of congress as any other person may. They

can complain to the member of congress or simply write them a note and tell them what a great job they are doing. A soldier can speak to any Inspector General at any level whether it is the Tennessee State IG, any DoD IG or any other Inspector General. They can speak to someone in these categories for any reason they desire.

2. A communication in which a member of the Armed Services reasonably believes reports a violation of law or regulation (including sexual harassment), unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, abuse of authority, or a substantial or specific danger to public health or safety, when such communication is made to any of the following:

- A Member of Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.
- Any person or organization in the chain of command; or any other person designated pursuant to regulations or other established administrative procedures to receive such communications.

What is interfering with a protected communication? No person shall prevent or attempt to prevent a soldier from making a protected communication.



What is reprisal? No person shall take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, for making or preparing to make a protected communication.

The bottom line to all of this is that soldiers have the right to communicate outside the normal reporting chain of command to prevent criminal and other inappropriate activities. Leaders should give soldiers the benefit of the doubt when they communicate with any of the above mentioned persons. We are sometimes asked; "what if a soldier lies to those individuals?" My answer is that will only cause the soldier problems and they could be prosecuted for making false statements. As leaders, we need to always do the right thing and these issues will take care of themselves.

COL Chuck Harrison

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Non-Support



“TN NG members are responsible for adhering to AR 608-99 when on Title 10 or Title 32 orders for more than 30 days.”

AR 608-99 Family Support, Child Custody and Paternity is applicable to Tennessee Army National Guard soldiers when they are mobilized for active duty on Title 10 orders. Additionally, the regulation (minus the punitive provisions) applies to National Guard soldiers when they are on Title 32 Active Duty orders for more than 30 days. The regulation prescribes army policy on financial support of family members, child custody and visitation, paternity and related matters.

By far the most common infractions of this regulation by Tennessee Army National Guard members are one of three violations and sometimes combinations of the three. Those are not paying child support, not paying alimony to a former spouse or not meeting financial obligations to a current spouse. Not meeting financial obligations to a current spouse generally comes in three varieties; 1) court ordered support, 2) verbal agreement or 3) written agreement. This article attempts to address those most common forms of inquiries and to make soldiers and commanders aware that AR 608-99 applies once a National Guard soldier is mobilized. Commanders should become familiar with the provisions of AR 608-99, and refer to it in detail each time that you have an accusation against a soldier involving non-support of family members.

What is the soldier’s responsibility? The individual soldier is responsible for paying support on time and in accordance with instructions by a court order or written agreement. Additionally, a soldier is responsible for paying support as orally agreed to between parties. However, the Army does not arbitrate oral agreements. In the absence of a court order or written agreement, and the soldier and the family member cannot reach an oral agreement that the soldier will execute, a soldier is responsible at a minimum to pay to their family members the amount as computed using paragraph 2-6, AR 608-99. This formula ensures that soldiers are paying a minimum amount to their family members.



This formula precludes a soldier from merely “cutting off” all funds to their family once they are mobilized or geographically separated from their family members. The best way for a soldier to execute any of their financial responsibilities to family is to do an allotment that comes out of their pay. Allotments also help commanders monitor the soldiers’ execution of their responsibilities. Allotments are not currently available to National Guard soldiers but will become available when Defense Integrated Human Resources System (DIMHRS) comes on line in October, 2008. Meanwhile, soldiers can execute a voluntary garnishment through Defense Finance and Accounting Service, (DFAS). The information for executing a garnishment is at <http://www.dfas.mil/garnishment/military/factsheet.html>. The toll free phone number is 1-888-332-7411.

What is the commander’s responsibility? A commander can punish a soldier for not meeting their financial obligations IAW AR 608-99. IAW AR 608-99. Commanders, from Company Commander through General Court Martial Convening Authority are responsible for soldiers understanding their requirements to abide by AR 608-99. The best way to accomplish this is to include an AR 608-99 briefing for units designated for mobilization. Commanders should ensure this briefing is available prior to the mobilization so soldiers can make arrangements to ensure the money will get to the designated individual. A commander is likely to become aware of an accusation against a soldier for not complying with AR 608-99 by written or verbal correspondence from an Inspector General, the family member of the soldier or some other government official. Regardless of how the commander is notified of an accusation, the commander must take immediate action. The commander must follow Chapter 3, AR 608-99 but the following is a general guideline upon becoming aware of an accusation against the soldier.

provisions of AR 608-99. Since failure to comply with these provisions is punitive when on Title 10 orders, the commander should inform the soldier of their rights. Determine whether the soldier is legally required to pay the family member and how much. The commander should use legal court documents, written agreements, soldier’s statements and AR 608-99 to determine how much the soldier owes.

2. If the commander determines that a soldier has violated AR 608-99, the commander should take action to ensure that the soldier complies in the future to include monitoring that the soldier is making payments as required by law or regulation. Commanders should also encourage soldiers to pay arrearages but commanders may not order soldiers to do so. However, soldiers can be punished for failing to pay the support payment when it was due.

3. The Commander must respond to the inquiring party within 14 days of being notified of the accusation. Paragraph 3-6, AR 608-99 outlines what the commander must include in the reply. The commander may determine that the soldier does not have a financial obligation but the commander must still respond with that information explaining why that is true.

What if the soldier claims that they are not responsible for payments, due to conduct of their spouse? If the soldier believes that they should not be legally bound by AR 608-99 due to marital infidelity or other conduct by their spouse, the commander should forward their request for release of responsibility to the battalion commander or Special Courts Martial Convening Authority. The commander must use paragraphs 2-14 and/or 2-15 to determine if the soldier’s case warrants relief of the regulation. The commander should consult with their military legal counsel on making a determination that a soldier is not responsible for payments.

1. Counsel the soldier as to their obligations to comply with the

COL Chuck Harrison

Promotions for E1-E4

IAW AR 600-8-19, Chapter 2, soldiers must be in a promotable status on the effective date of promotion. The promotion authority or a higher headquarters may determine a soldier's eligibility to be promoted with a retroactive DOR when the soldier's promotion was delayed due to administrative error.

Commanders may promote soldiers with a waiver. There are no waiver limitations in determining waiver allocations for the Army National Guard.

Waivers for TIS and TIMIG:

- a. Promotion to PV2 may be waived at 4 months TIS.
- b. Promotion to PFC may be waived at 6 months TIS and 2 months TIMIG
- c. Promotion to SPC may be waived at 18 months TIS and 3 months TIMIG.

Soldiers must be a primary holder of a position. A vacancy waiver is authorized and may be done on a DA Form 4187.

BASD will be used to determine TIS. Use BASD or date of original entry on initial entry training (IET) to determine TIS for advancement to PV2 and higher grades for NPS soldier. PS soldiers, compute from date of original enlistment into military service other than the delayed entry program (DEP) of an active component of the U.S. Armed Forces provided there was no break in military service.

Soldiers advanced after enlistment (Stripes for Buddies), but prior to IET, will use the BASD to compute the TIS requirements for the next advancement.

IAW NGB-ARH Policy Memo 06-080, effective 9 Nov 06, promotions to the grade of E4 no longer require duty MOS qualification for Army National Guard personnel.

ARNGUS soldiers who must be re-trained in a new MOS as a result of unit reorganization, relocation, or inactivation may be considered eligible for promotion.

This exception is based on qualification in the former PMOS and provided the soldier enrolls within 12 months following assignment in the duty position and satisfactorily participates in an approved formal course of instruction leading to the award of the MOS within 24 months of assignment to the duty position.

A soldier will be reduced if not qualified in new MOS within 24 months of assignment to the duty position. The Standard Installation/Division Personnel System (SIDPERS) automated Enlisted Advancement Reports are the official instruments used by Commanders to recommend soldiers for promotion to SPC and below. These reports are sent to each MACOM the first of each month.

Eligibility criteria for **automatic** promotion to PV2, PFC and SPC will be as follows:

- a. The promotion to PV2 requirement is 6 months TIS
- b. The promotion to PFC requirements are 12 months TIS and 4 months TIMIG
- c. The promotion to SPC requirements are 24 months TIS and 6 months TIMIG

DA Form 4187 will be used for all soldiers awaiting IET (special advancements and Split Training option-Phase II). DA Form 4187 will not be used for automatic advancements. Soldiers promoted prior to and after the automatic promotion date require a DA Form 4187 to be promoted. A human resources specialist or the unit commander signs each DA Form 4187 executing promotions to PV2, PFC and SPC.

Soldiers must not be flagged or barred from reenlistment.

If a unit Commander elects not to recommend a soldier for promotion on the automatic promotion date, then a DA Form 4187 denying the promotion will be submitted not later than the 20th day of the month proceeding the month of automatic promotion.

Soldier flagged or barred from reenlistment at the required time for automatic promotion but later recommended require a DA Form 4187 to be promoted.



DA Form 4187 will be prepared prior to the soldier's eligibility date to ensure entitlements are received on time.

Effective date and DOR are the same unless states otherwise stated in AR 600-8-19.



MSG Barbara Sanders

Procedures for Requesting a Conditional Release



Recently, the Office of the Inspector General has provided assistance to Soldiers who are attempting to submit a Request for Conditional Release, DD Form 368, to their chain of command. This article focuses on what the Soldier's chain of command is responsible for once a Soldier submits a DD Form 368.

IAW DOD Instruction 1205.19 paragraph 5.4, the member's service or component shall respond to the requesting service within 30 days of receipt of the DD 368. The requesting service or component shall not enlist or appoint the service member without approval of the losing service or component. The Office of the Inspector General has seen cases over the past few months where soldiers submitted the DD 368 to their unit over 90-120 days previous and have still not received a response.

Tennessee's policy is addressed in a Memorandum for Record, Tennessee ARNG Conditional Release for Enlisted Soldiers Policy, dated 20 February 2008, that provides additional guidance in processing a Request

for Conditional Release. The memorandum states that we should make every effort to retain Soldiers in the ARNG and direct Soldiers to active duty for operational support missions (ADOS). Soldiers requesting a conditional release should meet with the retention NCO and local commander to discuss these options. Soldiers should not be released until they have served for 9 months following the completion of basic training.

Units should ensure that the soldier's DD Form 368 is being processed within 30 days, that the soldier is being counseled, and that they are attempting to assist the soldier by other means (ADSW, ADOS, etc.) Units should also be aware that any commander in the chain of command may recommend approval or disapproval of the conditional release by endorsing the Memorandum for Record that is required in the soldier's conditional release packet, but the final approval or disapproval authority is Assistant Adjutant—Army (AAG-Army). AAG-Army will complete Section II of the DD Form 368.

Section III, blocks 7 and 8 of the DD form 368 will be completed by the enlisting/ appointing official representative of the enlisting service. The official, usually the recruiter that initiated the request, should send the completed DD Form 368 along with the new DD Form 4 series to the soldier's unit within 10 days of enlistment/ appointment.

References:

DD Form 368
NGR 600-200, para 4-25
NGB Memorandum, dated 30 October 2007
TN National Guard MFR, dated 20 February 2008

“All requests for Conditional Release must be forwarded to AAG—Army for approval or disapproval.”



MSG Brian Stacy

Command Inspections

Over the last several years the Office of the Inspector General has conducted what we termed "site visits" to every level of organization in the TNARNG. This training year and in years to come we are changing our approach partly because the regulatory guidance has changed. An update to AR 1-201 Army Inspection Policy is being published and it incorporates some new information required for deploying units.

In the most recent versions of our site visits we have seen a trend that there has been a decline in the percentage of company level organizations that have had initial command inspections (ICI) or any type of command evaluation. You may ask, "What is an ICI and who is responsible?"

Inspections are a Command responsibility. The Organizational Inspection Program (OIP) or Consolidated Evaluation Program (CEP) provides the commander with an organized management tool to identify, prevent, or eliminate problem areas. IAW AR 1-201 paragraph 3-2 f. "OIPs will exist at all levels from battalion through state area command." In addition paragraph 3-2 h. states "The OIP is not merely a garrison-oriented program but a program that applies equally to the deployed environment." This applies directly to the National Guard because paragraph 3-3 c. (4) states

"ICI results will be included as part of the unit's deployment records." In short these inspections should continue to take place throughout the AR-FORGEN cycle.

Command inspections ensure units comply with regulations and policies and allow commanders to hold leaders at all levels accountable for this compliance. IAW AR 1-201 paragraph 3-2 b. "The commander of the inspecting headquarters must participate for an inspection to be a command inspection...At a minimum, the (inspecting) commander must attend the in-briefings and out-briefings, actively conduct part of the inspection, and provide the inspected commander with an assessment of strengths and weaknesses upon completion."

Initial Command Inspections are required by regulation within 180 days of assuming Command at the Company level for the National Guard and Reserves but within 90 days for the Active component (paragraph 3-3 c. (1)). This paragraph also states "Units of the Army National Guard of the United States and the U.S. Army Reserve serving on active duty will adhere to the 90-day standard as applicable."

Subsequent Command Inspections (SCIs) are also required after ICIs. Paragraph 3-3 d. states "Commanders will conduct

SCIs following all initial command inspections and not later than one year after completion of the new commander's ICI. In the Army National Guard of the United States and the U.S. Army Reserve, subsequent command inspections will take place, but the timing will be at the discretion of the inspecting commander."

When your unit deploys in a Title 10 status command inspections are part of their deployment records. Additionally your unit will be given SCIs by active and reserve Commanders, while deployed, to identify, prevent, or eliminate problem areas of the overall unit they have assigned to them.

***"Initial
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The Inspector General is responsible for advising the Adjutant General of Tennessee on the state of the Tennessee National Guard. Our role is to be the eyes, ears and conscience of the command. Our four functions include—teaching and training, inspections, assistance, and investigations. This newsletter is one of the myriad ways we teach and train soldiers and leaders in the Tennessee National Guard. Your comments and questions on this newsletter are welcome and you may address them to COL Chuck Harrison, Tennessee National Guard State IG at john.harrison@us.army.mil or (615) 313-3068.



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