



DEPARTMENT OF THE ARMY
HEADQUARTERS, 2D INFANTRY DIVISION
ROK-US COMBINED DIVISION
BLDG P6500 UNIT #15041
APO AP 96271-5041

EAID-CG

6 December 2024

MEMORANDUM FOR All 2ID/RUCD Personnel

SUBJECT: Command Policy Letter #8—Misconduct Allegations Withholding Policy

1. This policy letter supersedes all previous versions of Misconduct Allegations Withholding. It remains in effect until rescinded or superseded.

2. Scope. This policy applies to all Soldiers assigned or attached to 2ID or under the jurisdiction of the 2ID General Courts-Martial Convening Authority (GCMCA).

3. Senior Leader Withholding and Notification Policy.

a. In accordance with Rule for Courts-Martial (RCM) 306(a), the authority to dispose of substantiated misconduct committed by officers, warrant officers, and enlisted Soldiers in the grades of E-8 and E-9 (hereinafter "senior leaders") is withheld to the Commander, 2ID, subject to paragraph 3-3(a)(1) below. Misconduct is defined as an act or omission which violates a punitive article of the UCMJ. Misconduct does not include minor traffic violations.

(1) Relationship between covered offenses and senior leader withholding. The Commander, 2ID, may not exercise jurisdiction over alleged senior leader misconduct until deferral by a Special Trial Counsel (STC) for offenses over which a STC has exercised authority. For "known offenses" as defined by RCM 303A(d), the Commander, 2ID may not exercise jurisdiction over alleged senior leader misconduct until a STC declines to exercise authority.

(2) Administrative investigations involving officers as potential respondents / subjects (O-1 and above) may be appointed by a subordinate commander, but the investigation approval authority is the Commander, 2ID, due to potential Army Adverse Information Program (AAIP) entry requirements. This does not prohibit subordinate commanders from appointing and approving investigations regarding misconduct for E-8, E-9, and warrant officers; however, subordinate commanders may not dispose of substantiated misconduct (to include executing a relief for cause or closing an allegation with no action) without a release of authority.

(3) Special court-martial convening authorities (SPCMCA) will notify the Commander, 2ID, through electronic mail, of any credible allegation of misconduct committed by senior leaders within 24 hours of discovery. SPCMCAs will courtesy copy the SJA, 2ID, on all such notifications.

(4) In situations where an allegation of misconduct by a senior leader has been substantiated, and the STC has either deferred or declined to exercise jurisdiction, SPCMCA's will forward the case to the Commander, 2ID, through their servicing legal office with a recommendation on disposition. Recommendation on disposition will include input from the Company and Battalion commanders whenever possible. The Commander, 2ID, will make the final decision on whether to take action or release jurisdiction to a subordinate level to take action as appropriate.

b. This policy does not withhold authority of any level of commander to prefer charges over which the STC does not have jurisdiction pursuant to RCM 307.

5. Withhold of Disposition Authority for Certain Offenses.

a. Offenses withheld to SPCMCA. Initial disposition authority for the following offenses is withheld to the SPCMCA, subject to paragraph 5c. These cases may be delegated to subordinate commanders on a case-by-case basis upon written request without a recommendation as to disposition.

(1) Rape, sexual assault, forcible sodomy, or attempts to commit such offenses Arts 120, 120b, and 120c, UCMJ).

(2) Assault upon a person in the execution of law enforcement duties (Article 128, UCMJ);

(3) Domestic violence (Article 128b, UCMJ);

(4) Sexual harassment (Articles 92, 134, UCMJ);

(5) Any allegation of racial discrimination, bigotry, sexism, or acts of violence committed on the basis of the victim's perceived or actual race, color, religion, national origin, sexual orientation, gender, gender identity, or disability;

(6) Any crime committed against Korean local nationals.

b. Collateral Misconduct. Consistent with Army Directive 2022-10 and AR 27-10, para. 17-17, the initial disposition authority for collateral misconduct is withheld to commanders in the grade of O-6 or above who possess SPCMCA. Collateral misconduct refers to any misconduct committed by the victim of an alleged sexual assault that might be in time, place, or circumstance, associated with the victim's sexual assault. Commanders must make a determination as to whether the misconduct is defined as minor or non-minor and may, but are not required to, defer taking action on collateral misconduct. Commanders must consult with their servicing legal advisor prior

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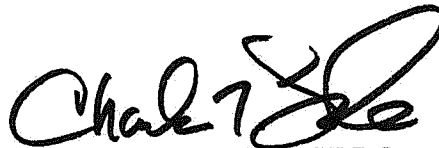
to taking action on collateral misconduct. Commanders may not take action on collateral misconduct unless the STC has deferred jurisdiction.

c. Relationship between covered offenses and withhold of disposition authority for certain offenses. The Commander, 2ID, or any SPCMCA may not exercise jurisdiction over alleged senior leader misconduct until after deferral by a STC for offenses over which a STC has exercised authority. For “known offenses” as defined by RCM 303A(d), the Commander, 2ID, may not exercise jurisdiction over alleged senior leader misconduct until a STC declines to exercise authority.

6. Mandatory Initiation of Separation for Certain Offenses. Commanders will initiate involuntary administrative separation proceedings for all Soldiers against whom there is a founded investigation related to any offense under Articles 120 (rape and sexual assault), 120b (rape and sexual assault of a child), 120c (other sexual misconduct), domestic violence (to include 128b, UCMJ), and a substantiated complaint of sexual harassment. Involuntary administrative separation will only be initiated after the STC has either deferred or declined to exercise jurisdiction for these offenses. Retention authority for administrative separation for these offenses is withheld to the GCMCA. This policy does not apply to Soldiers who were acquitted at trial by court-martial for all applicable offenses or who are found not guilty at non-judicial punishment proceedings. SPCMCA that determine sexual harassment is “minor” under Army Directive 2022-13, paragraph 5(d)(2) do not have to initiate involuntary administrative separation.

7. Subordinate commanders have the authority and discretion to dispose of offenses that are not withheld. No commander may direct or influence any subordinate commander to choose a particular disposition or recommendation for offenses.

8. The proponent for this policy is the Office of the Staff Judge Advocate, 2ID. The point of contact for this memorandum is 2ID Chief of Military Justice, OSJA at DSN 757-2547.


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Major General, USA
Commanding