

Discipline and General Legal Issues

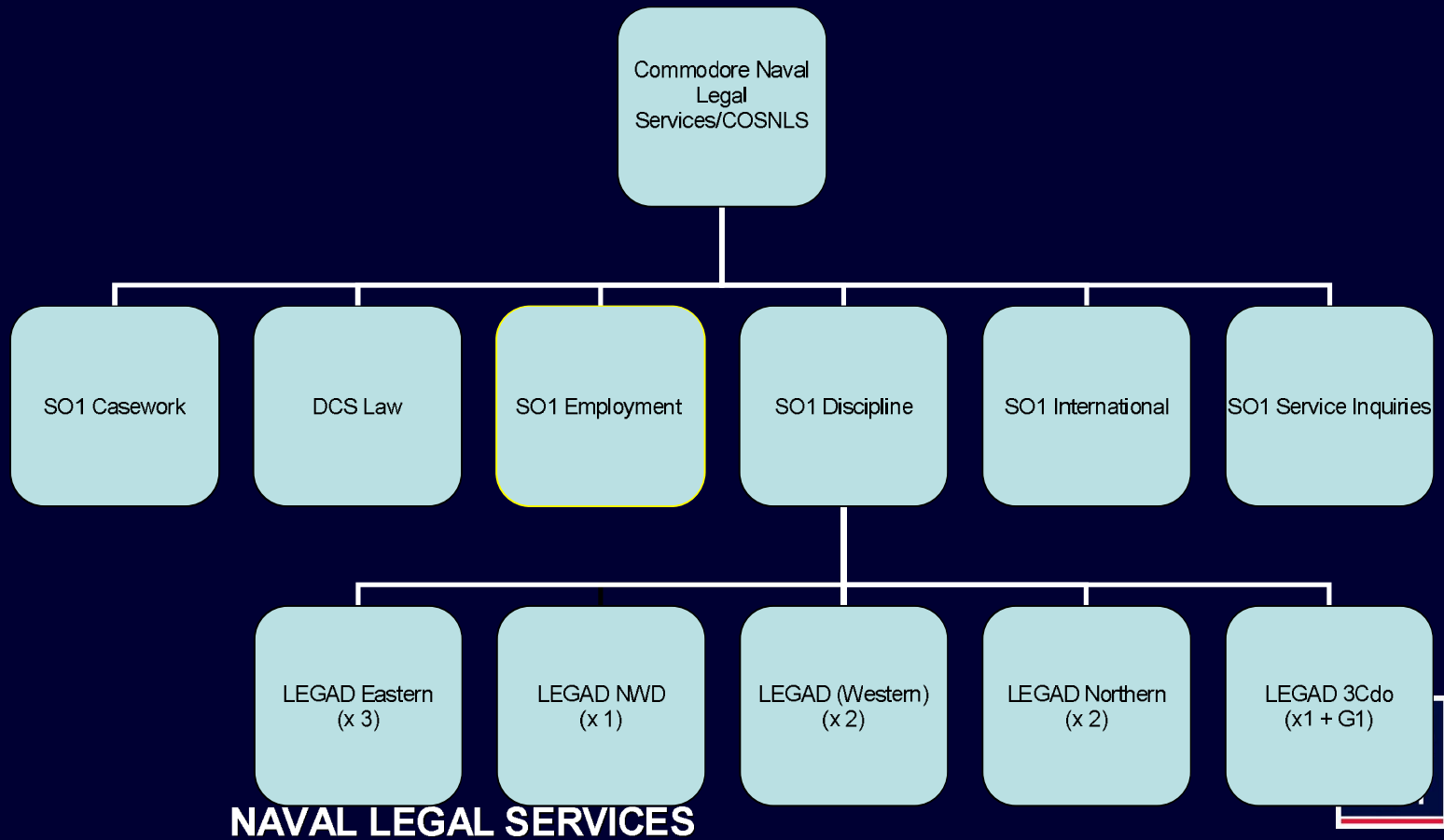
Cdr [REDACTED] RN

CNLS SO1 Discipline Policy

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Legal Support



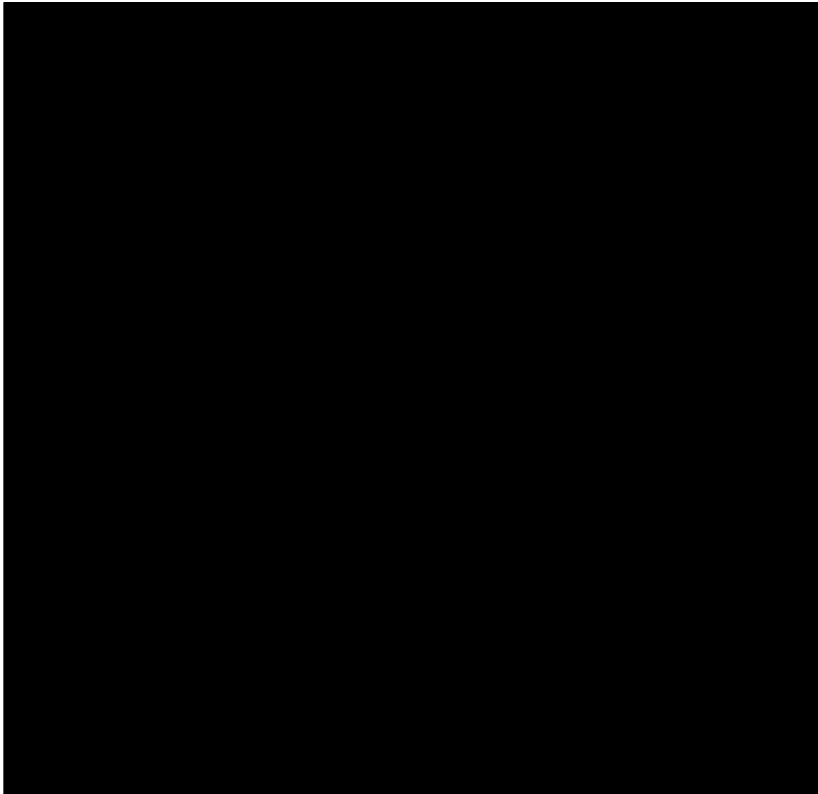
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Today

- Discipline – current trends & hot topics
- Minor Admin Action/Censure
- Consequential Penalties
- Victim/witness/defendant support
- Ships Investigations/Service Inquiries
- Your role inc summary hearings

Current Trends (Jan – May 12)

Summary Hearing Offences



- Absence without leave
- Misconduct Towards a Superior Officer
- Disobedience to Lawful Commands
- Contravention of standing orders
- Failing to attend, leave, perform or neglect of a duty
- Making a false record
- Conduct Prejudicial to Good Order
- Unfitness or Misconduct Through Alcohol or Drugs



Current Trends (Jan – May 12)

Summary Hearing by Units

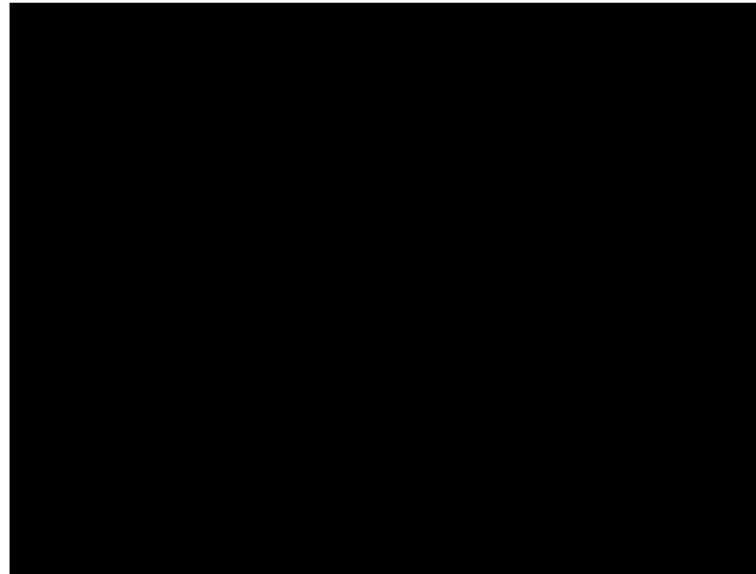


- MCMV's
- SM
- GS
- Shore
- Army
- RM
- RFA



Current Trends (Jan – May 12)

Summary Hearing Punishments



- Reduction in Rank
- SCO
- Fine
- Detention
- SSPO
- Suspended Detention
- ROP/SOL
- Admonition
- Not Proved



Consequential Penalties

- Sanctions: Career Check /Reversion/Discharge SNLR (Flag Officer)
- [REDACTED] sex offenders register/ [REDACTED] under investigation (a management issue – Br 3 Ch 20 Sn 22 – CO completes Employment Assessment – assignment restrictions)
- ROA 1974 Problem with cautions

Minor Admin Action

- Guidance in BR 3/JSP 833
- Choice between MAA and Discipline for the CO (BR3 limits)
- Sanctions:
 - Muster up to 3 times
 - Extra duties
 - Extra work – 3 x 4 hrs
 - RTU
 - Informal interview
 - Formal interview
- Must be a review procedure
- Moderation left to units

Ship's Investigations/Service Inquiries

- Massive variety in quality
- Take a personal interest
- Consider composition of the team
- Cf with RM learning account in op theatre
- SI mandatory for all deaths in service – but can be dispensed with – if Ship's Investigation gets it right
- Expect these to be published under Fol

Other Issues

- AFA 11
 - Alcohol testing
 - Detention/Disrating
 - Police independence of investigations

Break

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Summary Hearings

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Key reading

- Manual of Service Law
 - Chp 9 – Summary Hearing & Activation of suspended sentences of Service detention
 - Chp 11 – Summary Hearing – Evidence
 - Ch 14 – Sentencing ('The Green Guide')
 - BR 3 Ch 20

Your Role

- CO
 - Brings charges – inquisitorial
 - Refers to CM
 - Decides facts
 - Finds charge(s) ‘proven’/’not proven’
 - Awards punishment

Service Police Independence and Investigations

In the beginning...

- A person commits a crime...
- A CO has been told about it...
- The CO must investigate by...
 - Own investigation
 - Calling in the SP
- But what influences him?

CO's legal duties

- CO must investigate in all cases
- CO must inform Service Police if:-
 - Offence is a Schedule 2 offence
 - Offence is prescribed circumstances
- CO may request SP to investigate any other cases, SP may investigate
- CO may not interfere while SP are investigating

Who Investigates?

The CO's decision depends upon...

- The nature of the allegation:-
 - Schedule 1
 - Schedule 2
 - Prescribed Circumstances
 - Complexity of alleged conduct
 - Availability of SP
 - Preliminary enquiries
 - CO's legal duty
 - Final disposal

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Other Functions

- Authorise search/seizure (in extremis)
- Authorise detention
- Apply for post-charge detention
 - Conditional release
 - Duty to review
- *Drug/alcohol testing*

Things to remember

- Schedule 1, Part 1 – CO can deal
 - Sect 53 AFA 06, Annex B Chap 6 MSL
- Schedule 1, Part 2 – CO needs authority to deal
 - Sect 54 AFA 06, Annex C Chap 6 MSL
- Schedule 2 – CO cannot deal
 - Sect 113 & 116, Annex D Chap 6 MSL
 - Unless DSP says he can
- Prescribed Circumstances
 - Death/injury in custody
 - Bullying
 - Abuse of position

Things to remember

- The right of a person to elect for trial by Court Martial
- Civilians subject to Service Discipline (Court Martial or Service Civilian Court)

CO's Summary Hearing

- CO may deal with case
 - Apply to hear case with extended powers
- CO may delegate case
- CO may refer to DSP
 - DSP may refer back to CO
- CO may discontinue
- Normally he will seek staff legal advice

Sentencing etc

- **Admin consequences**
 - Table at BR 3
 - Remember Forfeiture of Pay for Improper Absence and Deprivation of GCBs not puns
 - Check table for obligatory, optional and non-available consequences
 - Watch for combination of effects (globality)
 - General Rule > punishments = > consequences

Sentencing etc

- **Admin consequences (continued)**
 - Medals and badges – need to inform NavSec (Hons and Awards)
 - Detention and readvancement
 - NB need for CO to consider post sentence by CM or SAC – those courts have no powers to impose ‘admin. consequences’ ...

Written Legal Advice

- Suspected Schedule 2 and Proscribed Circs
- Where CO needs HA permission to hear the case
- Where CO needs EPs
- CO is considering;
 - detention (incl suspended)
 - financial penalty of over 14 days' pay
 - SSPO (2nd class)

Written Legal Advice

- If accused is under a suspended sentence of detention
- If CO intends to refer a case/charge to DSP
- If CO wants to discontinue
- If accused is an officer

Post Summary Hearing Action (1)

- Record of Summary Hearing (RSH)/ Record of Activation Hearing (RAH)
 - Within 24 hours
- Copy of RSH/RAH to offender
- RSH/RAH retained for min 2 yrs
- RSH/RAH follows offender if awarded a suspended sentence of detention

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PROTECT - PERSONAL DATA (WHEN COMPLETED)

THE SUMMARY HEARING

Introduction

1. Introduce the Summary Hearing:

**"As your Commanding Officer/.....(insert capacity or role)
I will be hearing the charge(s) against you."**

2. **Mandatory question** - identify accused - read from Charge Sheet.

"Are you....."(Service number, Rank/Rate, Full name of accused)

Yes

No

If NO establish correct details. If necessary defer the hearing.

Accused's Assisting Officer

3. Statement to the accused where an AAO is present:

**"....."(Rank/Rate & Name of AAO)
is acting as your Assisting Officer to help you during this hearing. If at any time you
want to talk to him about any matter indicate to me that you want to do so."**

"Do you understand"

Yes

No

Statement to the AAO

"Do you understand your role?"

Yes

No

Statement to the accused where an AO is not present:

You do not have an Assisting Officer. Do you wish to have an Assisting Officer?"

Yes

No

If the accused requires an AAO delay the hearing to make the necessary arrangements



Post Summary Hearing Action (2)

- Each hearing subject to review
- JPA record assigned to Reviewing Officer
- Summary Hearing Review form = backup

Summary Hearing Reviews (1)

- Reviewing Officer (RO) – Can only refer matters
 - Prelim screening within 48 hours
 - (Detention within 24 hours)
 - May detect irregularity

Summary Hearing Reviews (2)

- RO may make further enquires:
 - Full Case Papers and RSH needed
- RO may refer to Summary Appeal Court (SAC)
- Judge Advocate will determine application for appeal

Summary Hearing Appeals (1)

- Offender's automatic right to appeal
- Appeal must be brought through the CO
- Appeal - Time limits
 - Offender 14 days to lodge an appeal
 - application to extend appeal period
 - ...or to appeal out of time
 - Director of Service Prosecutions (DSP) has 20 days to respond

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Summary Hearing Appeals (2)

- Most punishments take immediate effect
 - 14 Day appeal period for detention
- Legal representation/Legal Aid
- Assisting Officer
- Appeal against finding, punishment, or both

Summary Hearing

- Common Pit Falls:
 - not seeking legal advice
 - rushing – no time for appeal
 - sentences not awarded
 - no/thin reasons for sentence
 - not explaining impact

Victims Code

- JSP 839
- 'Victims' entitled to support:
 - Deprived of property (theft, robbery, criminal damage)
 - Death, physical or mental harm
 - Ill treated subordinates (s.22)
 - Sexual offences
 - + any other crime CO so decides

Victims Code

- What support:
 - Victims Liaison Officer (can be DO)
 - CO must inform VLO on: staying proceedings, dismissal, hearing a charge, appeals, referrals to DSP
 - SP and DSP also have duty to inform on case progress
 - Vulnerable victims = enhanced support