

§ 143.8

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(2) Representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(3) Striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to:

(i) Negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) Recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) Make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(c) *Civilian officer or employee.* An employee, as defined in 5 U.S.C. 2105.

(d) *Military installations.* Includes installations, reservations, facilities, vessels, aircraft, and other property controlled by the Department of Defense.

(e) *Negotiation or bargaining.* A process whereby a commander or supervisor acting on behalf of the United States engages in discussions with a member or members of the armed forces (purporting to represent other such members), or with an individual, group, organization, or association purporting to represent such members, for the purpose of resolving bilaterally terms or conditions of military service.

(f) *Terms or conditions of military service.* Terms or conditions of military compensation or duty including but not limited to wages, rates of pay, duty hours, assignments, grievances, or disputes.

§ 143.8 Guidelines.

The guidelines for making certain factual determinations are as follows:

(a) In determining whether an organization is a military labor organization, whether a person is a member of a military labor organization, or whether such person or organization is in violation of any provision of this Directive, the history and operation of the organization (including its constitution and bylaws, if any) or person in question may be evaluated, along with evidence on the conduct constituting a prohibited act.

(b) In determining whether the commission of a prohibited act by a person can be imputed to the organization, examples of factors that may be considered include: the frequency of such act; the position in the organization of persons committing the act; whether the commission of such act was known by the leadership of the organization; whether the commission of the act was condemned or disavowed by the leadership of the organization.

(c) Any information about persons and organizations not affiliated with the Department of Defense needed to make the determinations required by this Directive shall be gathered in strict compliance with the provisions of DoD Directive 5200.27<sup>1</sup>, "Acquisition of Information Concerning Persons and Organizations not Affiliated With the Department of Defense," January 7, 1980, and shall not be acquired by counterintelligence or security investigative personnel. The Organization itself shall be considered a primary source of information.

PART 144—SERVICE BY MEMBERS OF THE ARMED FORCES ON STATE AND LOCAL JURIES

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AUTHORITY: 10 U.S.C. 982.

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

## Office of the Secretary of Defense

## § 144.6

SOURCE: 53 FR 23759, June 24, 1988, unless otherwise noted.

### § 144.1 Purpose.

This part implements 10 U.S.C. 982 to establish uniform Department of Defense policies for jury service by members of the Armed Forces on active duty.

### § 144.2 Applicability.

The provisions of this part apply to active-duty members of the Armed Forces.

### § 144.3 Definitions.

(a) *Armed Forces.* The Army, Navy, Air Force, Marine Corps, and the Coast Guard when it is operating as a Service in the Navy.

(b) *State.* Includes the fifty United States, U.S. Territories, District of Columbia, and the Commonwealth of Puerto Rico.

(c) *Active duty.* Full-time duty in the active military service of the United States. Includes full-time training duty, annual training duty, active duty for training, and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned.

(d) *Operating forces.* Those forces whose primary mission is to participate in combat and the integral supporting elements thereof.

### § 144.4 Policy.

It is DoD policy to permit members of the Armed Forces maximally to fulfill their civic responsibilities consistent with their military duties. For service members stationed in the United States, serving on a State or local jury is one such civic obligation. Service members are exempt from jury duty, when it unreasonably would interfere with performance of their military duties or adversely affect the readiness of a unit, command, or activity.

### § 144.5 Responsibilities.

The *Secretaries of the Military Departments*, or designees, in accordance with regulations prescribed by the Secretary concerned, shall determine whether Service members shall be exempt from

jury duty. This authority may be delegated no lower than to commanders authorized to convene special courts-martial.

### § 144.6 Procedures.

The Secretaries of the Military Departments shall publish procedures that provide the following:

(a) When a Service member on active duty is summoned to perform State or local jury duty, the Secretary concerned, or the official to whom such authority has been delegated, shall decide if such jury duty would:

(1) Interfere unreasonably with the performance of the service member's military duties.

(2) Affect adversely the readiness of the unit, command, or activity to which the member is assigned.

(b) If such jury service would interfere with the service member's military duties or adversely affect readiness, the service member shall be exempted from jury duty. The decision of the Secretary concerned, or the official to whom such authority has been delegated, shall be conclusive.

(c) All general and flag officers, commanders and commanding officers, officers-in-charge, and all personnel assigned to the operating forces, in a training status, or stationed outside the United States are exempt from serving on a State or local jury. Such jury service necessarily would interfere with the performance of military duties by these members and adversely affect the readiness of the unit, command, or activity to which they are assigned.

(d) Service members who serve on State or local juries shall not be charged leave or lose any pay or entitlements during the period of service. All fees accrued to the member for jury service are payable to the United States Treasury. Members are entitled to any reimbursement from the State or local jury authority for expenses incurred in the performance of jury duty, such as for transportation costs or parking fees.

(e) Written notice of each exemption determination shall be provided to the responsible State or local official who summoned an exempt member for jury duty.

**§ 144.7**

**§ 144.7 Effective date and implementation.**

This part is effective June 13, 1988.

**PART 145—COOPERATION WITH THE OFFICE OF SPECIAL COUNSEL OF THE MERIT SYSTEMS PROTECTION BOARD**

Sec.

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145.6 Procedures.

APPENDIX TO PART 145—LEGAL REPRESENTATION

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 133.

SOURCE: 51 FR 17178, May 9, 1986, unless otherwise noted.

**§ 145.1 Purpose.**

This part establishes policy, assigns responsibilities, and prescribes procedures for cooperation with the Office of Special Counsel (OSC) of the Merit Systems Protection Board (MSPB) in fulfilling the responsibilities of the Special Counsel under Pub. L. 95-454 and 5 CFR 1201 and 1250 to conduct investigations of alleged prohibited personnel practices and to ensure the investigation of other allegations of improper or illegal conduct referred to the Department of Defense by the OSC. This part provides internal guidance to DoD officials, and does not establish an independent basis for any person or organization to assert a right, benefit, or privilege.

**§ 145.2 Applicability and scope.**

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Joint Chiefs of Staff (OJCS), the Inspector General, Department of Defense (IG, DoD) and the Defense Agencies (hereafter referred to collectively "as DoD Components").

(b) The provisions of this part that relate to prohibited personnel practices do not apply to the Defense Intelligence Agency (DIA) or the National Security Agency (NSA), as prescribed by 5 U.S.C. 2302(a)(2)(C)(ii.).

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(c) This part does not restrict the IG, DoD, in coordinating investigative efforts on individual cases with the OSC where concurrent jurisdiction exists.

**§ 145.3 Definitions.**

*Improper or illegal conduct.* (a) A violation of any law, rule, or regulation in connection with Government misconduct; or

(b) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

*Office of the Secretary of Defense (OSD).* (a) The immediate offices of the Secretary, the Deputy Secretary, the Assistant Secretaries, Assistants to the Secretary, and other officials serving the Secretary of Defense directly.

(b) The field activities of the Secretary of Defense.

(c) The Organization of the Joint Chiefs of Staff.

(d) The Unified and Specified Commands.

*Personnel action.* (a) An appointment.

(b) A promotion.

(c) An adverse action under 5 U.S.C. 7501 *et seq.* or other disciplinary or corrective action.

(d) A detail, transfer, or reassignment.

(e) A reinstatement.

(f) A restoration.

(g) A reemployment.

(h) A performance evaluation under 5 U.S.C. 4301 *et seq.*

(i) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.

(j) Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

*Prohibited personnel practice.* Action taken by an employee who has authority to take, direct others to take, recommend, or approve any personnel action:

(a) That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or