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DEPARTMENT OF DEFENSE DIRECTIVES SYSTEM TRANSMITTAL

NUMBER 1332.30, Change 1	DATE March 4, 1994	DISTRIBUTION 1000 Series
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ATTACHMENTS 11 Pages	
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INSTRUCTIONS FOR RECIPIENTS

The following page and pen changes to DoD Directive 1332.30, "Separation of Regular Commissioned Officers," December 21, 1993, are authorized:

PAGE CHANGES

Remove: Pages 1&2, 1-1&1-2, 2-1 through 2-3, 6-1, and 8-1 through 8-3

Insert: Attached replacement pages

Changes appear on pages 1&2, 1-2, 2-1 through 2-3, 6-1, 8-1 through 8-3 and are indicated by marginal asterisks.

PEN CHANGES

Page 3,

Subsection E. 2. Change paragraph "b." to "c." and insert the following new paragraph:
"b. Ensure, through their military commanders, that the policies, standards and procedures of this Directive are applied consistently, that fact-finding inquiries are conducted properly, that no abuse of authority occurs, and that failure to follow the provisions of this Directive results in appropriate corrective action."

Subsections G.1. and 2. Change "February 5, 1994" to "February 28, 1994"

EFFECTIVE DATE

The above changes are effective February 28, 1994. Forward one copy of revised implementing documents to the Assistant Secretary of Defense for Personnel and Readiness within 120 days.

JAMES L. ELMER
Director
Correspondence and Directives

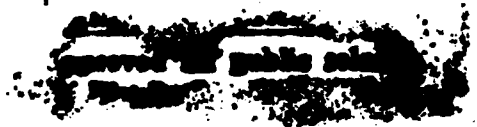
WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

SD Form 106-1, MAR 84

PREVIOUS EDITIONS ARE OBSOLETE

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DTIC QUALITY INSPECTION

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**DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
WASHINGTON, DC 20301-1155**



April 4, 1994

**Ms. Gretchen Schlag
Defense Technical Information Center (DTIC)
DTIC-OC
Building 5, Room 5A317
Cameron Stations
Alexandria, VA 22314-6145**

Dear Ms. Schlag:

The attached Change 1 to DoD Directive 1332.30, "Separation of Regular Commissioned Officers," December 21, 1993, is provided to DTIC.

The DTIC accession number for the basic Directive is ADA-275131.

For further information, please contact Ms. Patricia Toppings, telephone number (703) 697-4111 or -4112.

Patricia Toppings
**PATRICIA TOPPINGS
Staff Assistant
Directives Division**



Department of Defense DIRECTIVE

December 21, 1993 #
NUMBER 1332.30

SUBJECT: Separation of Regular Commissioned Officers

- References:
- (a) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," February 12, 1986 (hereby canceled)
 - (b) Chapter 60 and Sections 618, 630, 654, 827, and 831 of title 10, United States Code
 - (c) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
 - (d) DoD 5200.2-R, "DoD Personnel Security Program," January 1987, authorized by DoD Directive 5200.2, May 6, 1992
 - (e) Sections 801-940 of title 10, United States Code, "Uniform Code of Military Justice"
 - (f) DoD Instruction 5505.8, "Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations," February 28, 1994

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A. REISSUANCE AND PURPOSE

This Directive:

- 1. Reissues reference (a)

2. Implements Chapter 60 and Section 630 of reference (b) to update policy, responsibilities, and procedures governing the administrative separation of commissioned officers for substandard performance of duty, for an act or acts of misconduct or moral or professional dereliction, or in the interest of national security.

3. Implements Chapter 60 and Section 630 of reference (b) on the discharge of regular commissioned officers with less than 5 years active commissioned service in certain circumstances.

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD) and to the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

2. Applies to regular commissioned officers of the Military Services.

3. Does not apply to commissioned warrant officers and retired commissioned officers of the Military Services.

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C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

1. It is DoD policy to:

a. Promote the readiness of the Military Services by maintaining high standards of conduct and performance. An individual is permitted to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the nation have placed in his or her patriotism, valor, fidelity, and competence. Commissioned officers are expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times.

b. Judge the suitability of persons to serve in the Armed Forces
* on the basis of their conduct and their ability to meet required standards *
* of duty performance and discipline. *

c. Separate from Military Service those commissioned officers who will not or cannot exercise the responsibility, fidelity, integrity, or competence required of them to:

(1) Ensure that the Military Services meet rigorous and necessary standards of duty, performance, and discipline.

(2) Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable Military Service.

2. Notwithstanding any other provision of this Directive, the Secretaries of the Military Departments concerned may discharge regular commissioned officers with less than 5 years active commissioned service from a Military Service when there is a need to reduce the number of officers in
* that Service to meet budgetary or force size requirements. The provisions of *
* Enclosure 6 do not apply to the discharge of probationary officers under this *
authority.

3. The Assistant Secretary of Defense for Personnel and Readiness (ASD(P&R)), in coordination with the Secretaries of the Military Departments, shall ensure that officers separated under this Directive are fully informed of assistance available from the Department of Defense to assist them in the transition to civilian life.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness shall supplement this Directive, as needed.

2. The Secretaries of the Military Departments shall:

a. Prescribe regulations consistent with the policy and procedures contained in this Directive.

DEFINITIONS

1. Active Commissioned Service. Service on active duty as a commissioned officer in a grade above warrant officer, W-4.
2. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
3. Commissioned Officer. An officer in any of the Military Services who holds a grade and office under a commission signed by the President, other than a commissioned warrant officer or retired commissioned officer.
4. Convening Authority. The Secretary of the Military Department concerned who may delegate this responsibility as appropriate.
5. Counsel. A lawyer qualified under 10 U.S.C. 827 (b)(1) (reference (b)) or a civilian lawyer retained at the commissioned officer's expense.
6. Drug Abuse. As defined in DoD Directive 1010.4 (reference (c)).
7. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.
8. Homosexual Act
 - a. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
 - b. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in paragraph 8.a., above.
9. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
10. Legal Advisor. A judge advocate qualified under 10 U.S.C. 827 (b)(1) (reference (b)) and appointed to assist a Board of Inquiry.
11. Nonprobationary Commissioned Officer. A commissioned officer other than a probationary commissioned officer.
12. Probationary Commissioned Officer. A Commissioned officer with less than 5 years of active commissioned service; however, a regular commissioned officer serving on active duty on September 14, 1981, shall be a probationary commissioned officer for a period of 3 years from the date of his or her appointment as a regular commissioned officer.
13. Propensity. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.
14. Respondent. A commissioned officer required to show cause for retention on active duty.
15. Separation. Discharge, retirement, or resignation.

* 16. Sexual Orientation. An abstract sexual preference for persons of *
* a particular sex, as distinct from a propensity or intent to engage in *
* sexual acts. *

17. Show-Cause Authority. Any of the following as determined by the
Secretary of the Military Department concerned:

a. Commanders exercising General Court Martial authority and all
general or flag rank officers in command who have a judge advocate or
legal advisor available.

b. The Secretary of the Military Department concerned or officers
(not below the grade of major general or rear admiral) designated by the
Secretaries of the Military Departments to determine, based on a record
review, that an officer shall be required to show case for retention on
active duty.

* 18. Statement that a Member Is a Homosexual or Bisexual or Words to *
* That Effect. Language or behavior that a reasonable person would *
* believe was intended to convey the statement that a person engages in, *
* attempts to engage in, or has a propensity or intent to engage in *
* homosexual acts. *

REASONS FOR SEPARATION

A. SUBSTANDARD PERFORMANCE OF DUTY

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when, as compared to other commissioned officers of his or her grade and experience, he or she is found to be substandard in any of the following respects:

1. Performance of duty.
2. Efficiency.
3. Leadership.
4. Lack of response to training, in that performance of duties in the officer's assigned speciality is precluded or impaired to the degree of being unsatisfactory.
5. Attitude or character.

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from the Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

1. Serious or recurring wrongdoing, punishable by military or civilian authorities.
2. Intentional or discreditable mismanagement of personal affairs, including financial affairs.
3. Drug abuse.
4. Intentional neglect of, or failure to perform, assigned duties or complete required training.
5. Conduct resulting in the loss of professional status to such an extent as to impair performance of assigned military duties.
6. Intentional misrepresentation of facts in obtaining an appointment or in official statements or records.

C. HOMOSEXUAL CONDUCT

Homosexual conduct is grounds for separation from the Military Services * under the terms set forth in paragraph C.1.b., below. Homosexual conduct * includes homosexual acts, a statement by a member that demonstrates a * propensity or intent to engage in homosexual acts, or a homosexual marriage or * attempted marriage. A statement by a member that demonstrates a * propensity or intent to engage in homosexual acts is grounds for separation * not because it reflects the member's sexual orientation, but because the * statement indicates a likelihood that the member engages in or will engage in * homosexual acts. A member's sexual orientation is considered a personal * and private matter, and is not a bar to continued service under this * section unless manifested by homosexual conduct in the manner described in * section C.1. *

1. A commissioned officer shall be separated under this provision if one or more of the following approved findings is made:

a. The officer has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that the officer has demonstrated that:

- (1) Such acts are a departure from the officer's usual and customary behavior;
- (2) Such acts under all the circumstances are unlikely to recur;
- (3) Such acts were not accomplished by use of force, coercion, or intimidation;
- (4) Under the particular circumstances of the case, the officer's continued presence in the Armed Forces is consistent with the interests of the Armed Forces in proper discipline, good order, and morale of the Service; and,
- (5) The officer does not have a propensity or intent to engage in homosexual acts.

b. The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the officer has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by an officer that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the officer engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The officer shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in or intend to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether an officer has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

- (1) Whether the officer has engaged in homosexual acts;
- (2) The officer's credibility;
- (3) Testimony from others about the officer's past conduct, character, and credibility;
- (4) The nature and circumstances of the officer's statement;
- (5) Any other evidence relevant to whether the officer is likely to engage in homosexual acts.

(This list is not exhaustive; any other relevant evidence may also be considered.)

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved).

2. The commissioned officer shall bear the burden of proving
* throughout the proceedings, by a preponderance of the evidence, that *
* retention is warranted under the limited circumstances described in *
* paragraphs C.1.a. and C.1.b. of this enclosure, above. *

3. Nothing in this Directive or the Service implementing regulations requires that an officer be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

a. The officer engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding military service; and

b. Separation of the officer would not be in the best interest of the Armed Forces.

D. RETENTION IS NOT CONSISTENT WITH THE INTERESTS OF NATIONAL SECURITY

Under DoD 5200.2-R (reference (d)), a commissioned officer may be separated from a Military Service when it is determined that the commissioned officer's retention is clearly inconsistent with the interest of national security.

E. MULTIPLE REASONS

A commissioned officer may be considered for separation under all the reasons in sections A., B., C., and D. of this enclosure above; however, separate findings under each applicable section shall be required as to the reasons for separation.

* PROCEDURES FOR CERTAIN PROBATIONARY COMMISSIONED OFFICERS *

A. INITIATION OF ACTION

The SCA may initiate action for any of the reasons stated in enclosure 2 of this Directive, or for such other reasons as the Secretary of the Military Department concerned may prescribe by regulation. Prior to forwarding the record to the Secretary of the Military Department concerned, the commissioned officer shall be advised in writing of the following:

1. The reason action was initiated and the character of discharge recommended.
2. That he or she may tender a resignation.
3. That he or she may submit a rebuttal or declination statement instead of a resignation.
4. That he or she may confer with appointed or retained counsel.

The officer shall be permitted a reasonable period of time to prepare his or her response.

B. PROCESSING

1. If submitted, the resignation, with the record, shall be forwarded to the authority designated to take final action.
2. If the officer does not tender a voluntary resignation, or if voluntary resignation is not accepted by the Departmental Secretary, the case shall be returned to the SCA for action. If, under regulations of the Secretary concerned, the SCA determines the officer shall be separated with a general discharge, the SCA may refer the case to a Board of Officers or a Board of Inquiry, as determined appropriate, or submit the case to the Secretary concerned who will take a final action. If the SCA determines the officer should be separated with an Other Than Honorable Discharge, the SCA shall refer the case directly to a Board of Inquiry in accordance with Sections C, D, and E of enclosure 3.
3. If the commissioned officer does not tender a resignation statement, and an "Honorable" discharge is recommended by a Board of Inquiry, the record and any rebuttal shall be submitted to the Secretary of the Military Department concerned for final decision.
4. The Secretary of the Military Department concerned may direct referral of the record to a Board of Inquiry whenever the Secretary considers such action appropriate, and the case shall be processed in accordance with sections C., D., and E. of enclosure 3.

C. FINAL DETERMINATION

The Secretary of the Military Department concerned may direct:

1. Retention.
2. Discharge.

The action of the Secretary is final.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretaries of the Military Departments concerned.

* 5. The guidelines in this enclosure do not apply to activities of *
* Defense Criminal Investigative Organizations and other DoD law enforcement *
* organizations, which are governed by DoD Instruction 5505.8 (reference (f)). *

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."

* 3. Homosexual. A person, regardless of sex, who engages in, attempts to *
engage in, has a propensity to engage in, or intends to engage in homosexual *
acts.

* 4. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a *
statement by the member that demonstrates a propensity or intent to engage in *
homosexual acts, or a homosexual marriage or attempted marriage.

a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person *
* would believe (3) was intended to convey the statement (4) that a person *
* engages in, attempts to engage in, or has a propensity or intent to engage in *
* homosexual acts. This may include statements such as "I am a homosexual," "I *
* am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "Propensity to engage in homosexual acts" means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

* 5. Sexual Orientation. An abstract sexual preference for persons of *
* a particular sex, as distinct from a propensity or intent to engage in *
* sexual acts. *

* C. BASES FOR CONDUCTING INQUIRIES *

* 1. A commander will initiate an inquiry only if he or she has credible *
* information that there is a basis for discharge. Credible information exists *
* when the information, considering its source and the surrounding circum- *
* stances, supports a reasonable belief that there is a basis for discharge. *
* It requires a determination based on articulable facts, not just a belief or *
* suspicion. *

* 2. A basis for discharge exists if: *

* a. The member has engaged in a homosexual act. *

* b. The member has said that he or she is a homosexual or bisexual, *
or made some other statement that indicates a propensity or intent to engage
in homosexual acts; or

* c. The member has married or attempted to marry a person of the same *
sex.

* 3. Credible information does not exist, for example, when: *

* a. The individual is suspected of engaging in homosexual conduct, *
but there is no credible information, as described, to support that suspicion;
or

* b. The only information is the opinions of others that a member is *
homosexual; or

* c. The inquiry would be based on rumor, suspicion, or capricious *
claims concerning a member's sexual orientation; or

* d. The only information known is an associational activity such as *
going to a gay bar, possessing or reading homosexual publications, associating
with known homosexuals, or marching in a gay rights rally in civilian clothes.
Such activity, in and of itself, does not provide evidence of homosexual
conduct.

* 4. Credible information exists, for example, when: *

* a. A reliable person states that he or she observed or heard *
a Service member engaging in homosexual acts, or saying that he or she is a
homosexual or bisexual or is married to a member of the same sex; or

* b. A reliable person states that he or she heard, observed, or *
discovered a member make a spoken or written statement that a reasonable
person would believe was intended to convey the fact that he or she engages
in, attempts to engage in, or has a propensity or intent to engage in
homosexual acts; or

* c. A reliable person states that he or she observed behavior that *
amounts to a non-verbal statement by a member that he or she is a homosexual
or bisexual; i.e., behavior that a reasonable person would believe was
intended to convey the statement that the member engages in, attempts to
engage in, or has a propensity or intent to engage in homosexual acts. *

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, whether a member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in section C., above) commanders or appointed inquiry officials may ask members if they engaged in such conduct. But the member should first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). Should the member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding, nor does it provide the member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the member, in any proceeding.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

6. The Service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

* E. LEGAL EFFECT *

The procedures in this enclosure create no substantive or procedural rights.