



CHAIRMAN OF THE JOINT CHIEFS OF STAFF NOTICE

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CJCS Notice 5777.01A
14 March 2014

SUPPLEMENTAL REQUEST FOR PRESERVATION OF DOCUMENTS
OR INFORMATION RELATED TO MARY JENNINGS HEGAR, ET AL.
V. LEON PANETTA, NO 3:12-CV-6005 (N.D. CAL.)

References: See Enclosure A.

1. Purpose. This notice provides additional guidance for preserving and maintaining evidence relating to the case of Major Mary Jennings Hegar, Staff Sergeant Jennifer Hunt, Captain Alexandra Zoe Bedell, First Lieutenant Colleen Farrell, and the Service Women's Action Network filed in the U.S. District Court in the Northern District of California pursuant to the Secretary of Defense directive rescinding the former policy.
2. Superseded/Cancellation. CJCSN 5777, dated 8 February 2013, is hereby superseded.
3. Applicability. This notice is applicable to the Joint Staff, Services, Combatant Commands, DoD Agencies, and joint activities.
4. Background. CJCSN 5777 is being updated to reflect changes in the search requirements of the 23 May 2012 lawsuit. By memorandum dated 3 January 2013, the Department of Defense (DoD) Office of General Counsel requested that the DoD and its components search, locate, and preserve information relevant to the claims made by four Service women and the Service Women's Action Network in the subject lawsuit, which challenged the constitutionality of the then-existing policy excluding women from assignment to certain ground combat units and other positions. On 24 January 2013, the Secretary of Defense (SecDef) and Chairman of the Joint Chiefs of Staff (CJCS) directed the rescission of the former policy. As a result, the plaintiffs have filed an amended complaint, which focuses primarily on the implementation of the 24 January 2013 directive from the SecDef and CJCS.

5. Action or Procedure

a. The Department of Justice (DoJ) has requested DoD to conduct a supplemental search of its paper and electronic files for documents and other records that may be relevant to subject litigation. DoD shall preserve **all** evidence pertaining to the complaint from any routine data destruction practices. This supplemental litigation hold supersedes normal record retention and disposition policies that otherwise would pertain to responsive information and records. All responsive information must be preserved until DoJ notifies otherwise.

b. The supplemental search and preservation requirements apply to any and all information identified in 22 specific categories; categories 1-10 are **new** to this preservation notice and relate to claims made in the amended complaint that were not included in the original complaint. Categories 11-22 are essentially identical to the previous search request; therefore search and preservation efforts should focus on material that post-dates the original search.

(1) (NEW) Any and all information addressing the rescission of the 1994 Direct Ground Combat Definition and Assignment Rule (“DCGCAR”), as articulated in the 24 January 2013 memorandum from the SecDef and CJCS.

(2) (NEW) Any and all information addressing or relating to the proposal of the CJCS to the SecDef that the DGCDAR be rescinded, as articulated in CM 0017-13, 9 January 2013.

(3) (NEW) Any and all information addressing or relating to the “guiding principles” set forth in CM 0017-13, 9 January, 2013 addressed to the SecDef.

(4) (NEW) Any and all information relating to implementation of the rescission of the DGCDAR, including but not limited to information relating to the Service and component implementation plans publicly released on 18 June 2013, information relating to Service and component quarterly reports mandated by the 24 January 2013 memorandum, and the review and validation of physical standards for occupations and units closed to women as a result of the DGCDAR.

(5) (NEW) Any and all information considered in the decision to open the military occupational specialties (MOSs) or positions that previously were closed to women pursuant to the DGCDAR.

(6) (NEW) Any and all information considered in the opening of military schools and training programs to women.

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(7) (NEW) Any and all information addressing or relating to consideration of whether to request that the CJCS approve continued closure of any MOSs or positions that were closed to women pursuant to the DGCDAR.

(8) (NEW) Any and all information addressing or relating to CJCS's consideration of whether to approve continued closure of any MOSs or positions that were closed to women pursuant to the DGCDAR.

(9) (NEW) Any and all information relating to whether to request that the SecDef approve continued closure of any MOSs or positions that were closed to women under the DGCDAR.

(10) (NEW) Any and all information considered by the SecDef on whether to approve continued closure of any MOSs or positions that were closed to women under the DGCDAR.

c. Search criteria 11-22 remain the same and can be found in Reference e.

d. This preservation requirement applies to all types of documents, electronic or paper/hard copy, regardless of length, form, perceived importance, location, or whether they reside on a server or have been reduced to paper related to this case.

e. Failure to preserve and retain any pertinent materials, electronic or otherwise, may result in sanctions against the United States.

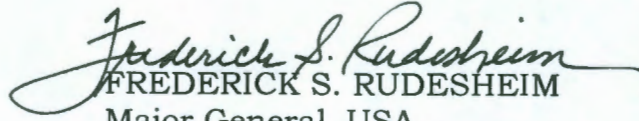
f. Custodians of such documents shall be prepared to explain, upon request, what steps were taken to preserve and protect materials, if they exist.

6. Summary of Changes. The search and preservation criteria have changed as reflected above due to the SecDef directive dated 24 January 2013 and CJCS memorandum dated 9 January 2013 rescinding the policy excluding women from assignment to certain ground combat units and other positions.

7. Releasability. This notice is approved for public release; distribution is unlimited. DoD components (to include the Combatant Commands), other Federal Agencies, and the public may obtain copies of this notice from the CJCS Directives Home Page at http://www.dtic.mil/cjcs_directives on the Internet.

8. Effective Date. This notice is effective upon receipt and will remain in effect until formally canceled.

For the Chairman of the Joint Chiefs of Staff:


FREDERICK S. RUDESHEIM
Major General, USA
Vice Director, Joint Staff

Enclosure:
A -- References

ENCLOSURE A

REFERENCES

- a. DoD memorandum, 14 February 2014, “Supplemental Request for Preservation of Documents or Information Related to Mary Jennings Hegar, et al. v. Leon Panetta, No. 3:12-cv-6005 (N.D. Cal)”
- b. DoD memorandum, 3 January 2013, “Preservation of Documents or Information Related to Mary Jennings Hegar, et al. v. Leon Panetta, No. 3:12-cv-6005 (N.D. Cal.)”
- c. CM 0017-13, dated 9 January 2013, “Women in the Service Implementation Plan”
- d. SecDef and CJCS memorandum, 24 January 2013, “Elimination of the 1994 Direct Ground Combat Definition and Assignment Rule”
- e. DoJ Litigation Hold Reminder and Supplement, 16 January 2014, “Hegar v. Panetta, Civil Action No., 12-6005 (N.D. Cal.)”
- f. U.S. District Court Northern District of California Case Document, Filed 27 November 2012, “Case Number, Complaint for Declaratory and Injunctive Relief”
- g. Litigation Hold Notice, Re: Hegar v. Panetta, Civil Action No. 12-6005 (N.D. Cal.), 18 December 2012

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