

COMPONENT CIVIL LIBERTIES COMPLAINT REPORT

SUMMARY OF CIVIL LIBERTIES COMPLAINTS

3rd QTR FY13 – APRIL THRU JUNE 2013

DEPARTMENT OF THE ARMY

TOTAL NUMBER OF COMPLAINTS: 18

Complaint #1:

Description of Complaint: A Soldier complained that his commander was preparing to conduct health and welfare inspections of the Soldiers' off-post quarters. Possible unreasonable search and seizure issue.

Findings: The IG and unit legal advisor told the commander that this inspection would violate the 4th Amendment as well as the Manual for Courts Martial. The commander cancelled the inspection.

Disposition: Closed.

Complaint #2:

Description of Complaint: A Soldier complained that his commander held a weekday 0600 formation during which the unit leadership conducted a health and welfare inspection of the barracks. The leadership then searched the cars in the barracks parking lot, going into glove compartments and bags inside the vehicles. The leadership then warned the Soldiers with quarters off-post that those quarters would be inspected in 24 hours. Preliminary inquiry indicated that the unit had not obtained any warrants or magistrate authorizations for this, nor had the unit obtained legal and garrison commander permission as required by installation policy. Possible unreasonable search and seizure issue.

Findings: The commander cancelled the off-post quarters inspection after the legal advisor informed him it would be illegal. The unit leadership adhered to constitutional and Manual for Courts Martial standards in conducting the barracks and parking lot inspection, but failed to adhere to certain installation policy mandates relating to these inspections.

Disposition: Closed.

Complaint #3:

Description of Complaint: A Soldier complained that three non-commissioned officers (NCOs) in his chain of command demanded entry to his on-post residence on a Friday evening at about 9 pm. After entering, the NCOs searched the Soldier's cabinets and closets and found some female visitors. One of the NCOs took the Soldier's motorcycle keys. Then the NCOs ordered the Soldier and another Soldier visiting at the time to the unit orderly room, where they had to spend the night. The next morning the two Soldiers' chain of command issued them counseling statements which the Soldiers signed, admitting to violations of the Uniform Code of Military Justice. Possible unreasonable search and seizure and self-incrimination issues.

Findings: Investigation has been initiated into the warrantless search and seizure. The unit had concerns about the Soldiers' adulterous activity, excessive alcohol use, and improperly registered motorcycle.

Disposition: On-going.

Complaint #4:

Description of Complaint: A Soldier complained that his commander illegally searched his barracks. Possible unreasonable search and seizure issue.

Findings: Inquiry indicated that the unit leadership had consulted with the legal advisor before the health and welfare inspection and that unit leadership had adhered to the applicable constitutional and Manual for Courts Martial provisions.

Disposition: Closed.

Complaint #5:

Description of Complaint: A Soldier complained that his commander illegally searched his off-post quarters. Possible unreasonable search and seizure issue.

Findings: Inquiry indicated that the unit commander indeed searched the Soldier's off-post barracks as directed by a "White House Dot" message from Mrs. Obama's office. The First Lady had received correspondence from the Soldier's mother. Unfortunately, the First Lady's office was not familiar with the constitutional, Manual for Courts Martial, and installation mandates regarding searches/inspections of off-post quarters. Inquiry continues.

Disposition: On-going.

Complaint #6:

Description of Complaint: A Service Member stated his company commander entered the family quarters and searched his home and vehicle without consent and proper authorization.

Findings: The Department of the Army has received and evaluated the complaint and the complaint is being investigated. The installation Inspector General received advisement notification in May.

Disposition: On-going.

Complaint #7:

Description of Complaint: While meeting with his behavioral health counselor, a Sergeant Major (SGM) told his counselor that he would shoot his company commander. The counselor believed this to be a future threat and informed the company commander. The company commander asked the battalion commander what she should do and the battalion commander told her to “do what you have to do.” The company commander asked the SGM for permission to take the weapons from his off-post house; the SGM did not consent. Over the SGM’s objection, the company commander had another SGM (who had a key to the house because he was pet-sitting while the other SGM was in treatment) open the house and seize the weapons. The SGM was released from treatment the following day and asked for the weapons and was initially told “no” by the 1SG. Later, the weapons were returned. The SGM made a complaint to Inspector General based on the command violating his 4th Amendment rights.

Findings: Under investigation. The investigation was sent to the staff judge advocate for review and the legal advisor returned the investigation for further evidence.

Disposition: Ongoing.

Complaint #8:

Description of Complaint: Soldier alleges that one of her platoon sergeants violated her right to privacy by inquiring into whether she attended various medical appointments.

Findings: AR 15-6 investigation completed. Investigating officer (IO) concluded allegations of invasion of privacy were unfounded. However, IO recommended some additional training to the chain of command.

Disposition: Closed.

Complaint #9:

Description of Complaint: Complaint alleges that Army personnel stole \$100,000 from his Thrift Savings Plan (TSP) account after his court martial. Complainant was originally AWOL when the complaint was received. Complainant was returned to duty and hospitalized. Complainant is now out of the hospital. Possible violation of 5th Amendment.

Findings: Psychiatric review has been ordered on the individual by the US Army Court of Criminal Appeals. Complainant is still not competent for trial. No further actions have been done on his complaint as he still cannot assist investigators in conducting investigation of the allegation. Due to on-going psychological issues, family is seeking a court order for declaration of incompetence and the appointment of a conservator.

Disposition: Ongoing.

Complaint #10:

Description of Complaint: A Soldier, with a history of domestic abuse and other violent behavior, got into an argument with his wife via telephone. The Soldier returned to his dwelling, kicked in the locked door and struck his wife. Soldier fled when law enforcement was called. Chain of command was immediately notified and his unit commander restricted him to post and ordered the Soldier to turn in his keys. Soldier complained about the restriction and confiscation of his keys. Possible deprivation of liberty/unreasonable seizure issues.

Findings: Upon consultation with legal advisor, it was determined that the restriction was legal and reasonable. Additionally, given the Soldier's history of violence and demonstrated willingness to disobey orders, the temporary confiscation of car keys was

determined to be legal and reasonable as well. After a cooling off period, the commander returned the Soldier's keys and has since lifted the restriction.

Disposition: Closed

Complaint #11:

Description of Complaint: A Soldier's commander counseled her regarding the content of a personal website. This was a possible freedom of speech issue.

Findings: The commander's counseling was not "negative performance counseling" and the purpose was not punitive. Upon review of the counseling statement, the contents show that it referenced the U.S. Army Social Media Handbook (2013), the Joint Ethics Regulation, and AR 360-1: Army Public Affairs. The counseling was initiated because the Soldier identified herself as a service-member and the website appeared to contain commercial endorsements. The counseling was informative and non-punitive. The purpose was to inform the Soldier of regulatory and ethical guidance. There is no further action pending.

Disposition: Closed.

Complaint #12:

Description of Complaint: On June 10, 2013, a soldier requested an NCOER Commander's Inquiry, claiming that his superior officer and rater gave him an NCOER that was not an accurate assessment of his performance. The soldier believed, based on interactions with his superior officer, that the discrepancy was based on the superior officer's animosity towards the soldier for being a Muslim. The soldier made a formal Equal Opportunity (EO) complaint where he cited instances when the superior officer used derogatory and hate filled statements against Muslims while they were deployed. Such statements included: "Muslims are haters;" "It's because of Muslims we have all these wars;" "We need to kill them all" (referring to "Muslims"); and "I don't trust them" (referring to "Muslims"). The soldier also claimed that his superior officer and rater stated directly to him "I am surprised you are still in the military, I don't know why they want to keep you." Possible First Amendment issue.

Findings: The command investigated this NCOER Commander's Inquiry, and determined that the claims were unfounded. The investigating officer cited the EO complaint made by the soldier where an impartial officer determined that the complaints

were unfounded. The superior officer referred to by the soldier was also not the person who actually served as the rater, senior rater, or reviewer on the NCOER.

Disposition: Closed.

Complaint #13 (continued from previous quarter reports):

Description of Complaint: A Soldier alleged that his supervisor reprimanded him, in part for posting a derogatory comment about medical doctors (“MDs”) on Facebook. Possible freedom of speech issue.

Findings: Investigation on-going.

Disposition: On-going.

Complaint #14 (continued from previous quarter reports):

Description of Complaint: A Soldier complained that his unit commander, with the assistance of local law enforcement, entered the Soldier’s off-post residence using a key that was provided by a coworker and confiscated the Soldier’s privately owned weapons and ammunition without his consent while the Soldier was receiving in-patient mental health treatment at a local facility. Possible right to bear arms/unreasonable seizure issue.

Findings: Investigation on-going.

Disposition: On-going.

Complaint #15 (continued from previous quarter reports):

Description of Complaint: A Soldier complained that his unit commander inappropriately assisted his estranged spouse in removing property from his privately-owned residence. The commander ordered the Soldier to work in another location so the spouse could access the residence without the Soldier’s knowledge. Possible unreasonable seizure issue.

Findings: The Soldier’s unit commander was found to have inappropriately provided the Soldier’s spouse access to the Soldier’s residence.

Disposition: The unit commander was issued a memorandum of reprimand and the case was closed.

Complaint #16 (continued from previous quarter reports):

Description of Complaint: A former Soldier complained that, while he was still in the Army and living off-post, his former commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment. The Soldier was told, when he asked for return of his weapon upon his discharge from the Army, that the commander had given his weapon to the local civilian police department. The police department will not return the weapon without a court hearing.

Findings: Investigation continues.

Disposition: Ongoing.

Complaint #17 (continued from previous quarter reports):

Description of Complaint: Soldier living off-post complained that his commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment.

Findings: Investigation continues.

Disposition: Ongoing.

Complaint #18:

Description of Complaint: Soldier living off-post complained that his commander ordered him to store his privately owned weapon in the unit arms room during his treatment for mental illness.

Findings: Soldier withdrew his complaint after the Inspector General explained that the commander possesses considerable discretion to confiscate Soldiers' privately owned weapons.

Disposition: Closed.