



UNITED STATES MARINE CORPS

MARINE CORPS BASE

PSC BOX 20004

CAMP LEJEUNE, NC 28542-0004

BO 1640.10F

CIG

JUN 02 2010

BASE ORDER 1640.10F

From: Commanding Officer

To: Distribution List

Subj: REVIEW OF PRETRIAL CONFINEMENT BY INITIAL REVIEW OFFICER

Ref: (a) JAGINST 5800.7D, sec. 0127 (JAGMAN)

(b) R.C.M. 305, MCM (2008 Ed.)

(c) SECNAVINST 1640.9C

Encl: (1) Notice To Accused Upon Pretrial Confinement

(2) Commander's 72 Hour Memorandum

(3) Notice of Missing 72-Hour Memorandum for Continued
Pretrial Confinement

(4) Pretrial Confinement Hearing Record

1. Situation. The Initial Review Officer (IRO) plays an important role in maintaining the safety and security of Camp Lejeune and its surrounding areas while also providing for the rights of the accused. This Order sets forth the guidelines for the smooth and fair functioning of the pretrial confinement process. The importance of maintaining the credibility and viability of the procedures in this Order cannot be overemphasized.

2. Cancellation. BO 1640.10E.

3. Mission

a. To issue Marine Corps Base (MCB), Camp Lejeune policy and procedures for review of pretrial confinement as required by references (a) through (c).

b. Summary of Revision. This Order has been revised for grammatical errors. No policy has been affected.

4. Execution

a. Commander's Intent. I intend to ensure that all Marines and Sailors confined in the Camp Lejeune Brig in pretrial

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distribution is unlimited.

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confinement are there only because less severe forms of restraint are inadequate to ensure a detainee's presence at trial or other hearing or to prevent future serious criminal misconduct. This is extended to members of other branches of service who are confined in the Camp Lejeune Brig.

b. Concept of Operations

(1) Reference (a) directs the Commanding Officer, MCB Camp Lejeune, as the cognizant authority over the Base Brig, to designate one or more officers, of the pay grade O-4 or above, to act as the IRO. The IRO will be neutral and detached, should be selected for their maturity and experience, and, if practicable, should have command experience. The IRO will review the necessity for continued pretrial confinement of an accused confined in this Base's facility.

(2) Primary and alternate IROs, as designated from time to time by the Commanding Officer, MCB Camp Lejeune, may be authorized to conduct pretrial hearings on personnel from other branches of service upon approval of the request. Officer appointments will be made in accordance with regulations prescribed by the Secretary concerned.

(3) It is the policy of this Command, consistent with reference (b), that less severe forms of restraint must always be considered before pretrial confinement may be imposed. Pretrial confinement will not be imposed unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(a) An offense triable by court-martial has been committed;

(b) The detainee committed it; and

(c) Confinement is necessary because it is foreseeable that the detainee will not appear at trial, pretrial hearing, or investigation; or the detainee will engage in serious criminal misconduct; and less severe forms of restraint are inadequate.

(Note: serious criminal misconduct includes but is not limited to intimidation of witnesses or other obstruction of justice, serious injury of others, or other offenses which pose a serious threat to the safety of the community or to

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the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States.)

(4) If pretrial confinement is initially valid but later determined to be unnecessary by the commander due to a change in circumstances, the detainee will be immediately released.

(5) If the decision of the IRO is to release the detainee, the Commanding Officer of the Base Brig will be directed, in writing, to affect the release. Subsequent reconfinement shall not be directed except as authorized by reference (b).

c. Tasks

(1) Chain of Command of Accused

(a) Upon confinement, promptly notify the detainee of his rights under reference (b) by the use of enclosure (1), which will be acknowledged by the detainee and provided to the IRO.

(b) Within 72 hours (not to be interpreted as 3 working days) of the imposition of pretrial confinement under military control a neutral and detached official, (who may be the detainee's commanding officer), must review the adequacy of the probable cause to believe the detainee has committed an offense suitable for trial at a Special or General Court Martial and of the continued necessity for pretrial confinement. This preliminary probable cause review is met if:

1. The commanding officer, complying with R.C.M. 305(d), personally orders the accused into confinement;

2. The commanding officer, who did not personally order the accused into confinement, signs the 72 hour memorandum, as required by R.C.M. 305(h), within 72 hours of the imposition of confinement; or

3. The IRO conducts the 7-day review of pretrial confinement, as required by R.C.M. 305(i), within 72 hours of the imposition of confinement.

(c) If it is determined that continued pretrial confinement is required, the commanding officer will complete a 72 Hour Memorandum in accordance with R.C.M. 305(h)(2)(C)

utilizing the format depicted in enclosure (2) (original and two copies). This memorandum should be signed by the commander, or in his absence, the "acting" commander, as assigned in writing. The commander must provide this letter to the IRO. The commander should clearly describe the rationale which led to the decision requiring continued physical restraint and state the reasons for his/her conclusions that the requirements for confinement, in accordance with reference (b), have been met. Enclosure (2) will be subscribed personally by the commanding officer. It is the responsibility of the commander ordering confinement to ensure that this memorandum is delivered to the office of the IRO promptly.

(d) If the 72 Hour Memorandum is delivered by the commander at the same time he initially orders pretrial confinement, a second 72 Hour Memorandum need not be prepared, although additional information may be provided to the IRO.

(e) Failure to receive the 72 Hour Memorandum promptly may cause the IRO to forward enclosure (3) or to direct, in writing, release from confinement in accordance with the references.

(2) IRO

(a) Promptly, upon receipt of the 72 Hour Memorandum, the IRO shall hold an informal hearing to determine the necessity for continued pretrial confinement. Reference (b) provides that the IRO shall make his determination within seven days of imposition of confinement, and for good cause, this time limit may be extended to the 10th day. However, this Command's policy is that the review, by the IRO, be made as soon as practicable after receipt of the 72 Hour Memorandum. All possible notice will be given to the defense counsel, if one is assigned or requested. Results of the hearing will be reported by the IRO utilizing the Pretrial Confinement Hearing Record, enclosure (4).

(b) The IRO is responsible for the conduct of hearings/rehearing on pretrial confinement at any time prior to referral of charges. After referral of charges, the Military Judge may review the propriety of pretrial confinement in court upon motion for appropriate relief for the accused. Any action by the Military Judge relative to pretrial confinement should be immediately reported to the IRO.

(3) Commanding Officers for other Installations with Service members in the Base Brig. Submit, in writing, nominated IROs and alternate IROs to the Commanding Officer, MCB Camp Lejeune in sufficient time to ensure appointment of an IRO resident thereat.

5. Administration and Logistics. The primary IRO for MCB Camp Lejeune is located in the Command Inspector General's Office, Building 27, Post Lane.

6. Command and Signal

a. Command

(1) This Order is applicable to all commands which utilize the Base Brig.

(2) Concurrence. This Order has been coordinated with and concurred in by the Commanding Generals, II Marine Expeditionary Force; Marine Corps Installations East; 2d Marine Division; 2d Marine Aircraft Wing; U.S. Marine Corps Forces, Special Operations Command; 2d Marine Logistics Group; and the Commanding Officers, Marine Corps Air Stations Cherry Point and New River, and is applicable to hearings conducted by the IRO at Marine Corps Air Station, Cherry Point, appointed by the Commanding Officer, MCB Camp Lejeune.

b. Signal. This Order is effective the date signed.


W. A. MEIER
By direction

DISTRIBUTION: A plus CG, 2d MAW; CO, MCAS CP

NOTICE TO ACCUSED UPON PRETRIAL CONFINEMENT

1. The nature of the offense(s) for which you are being held in pretrial confinement is/are:

2. You have the right to remain silent. Any statement you make may be used against you in a trial by courts-martial.

3. You have the right to retain civilian counsel at your own expense and you have the right to request assignment of military counsel.

4. The procedures by which your pretrial confinement status will be reviewed are as follows:

a. Within 72 hours after ordering you into pretrial confinement, or after receipt of notification that you have been confined, your Commanding Officer shall decide whether pretrial confinement will continue. If he/she approved continued pretrial confinement in your case, a written memorandum containing his/her reason(s) for this conclusion must be immediately forwarded to the Initial Review Officer, a neutral and detached officer.

b. Within seven days of your being placed in pretrial confinement, the Initial Review Officer will determine the adequacy of probable cause to believe you committed an offense triable by courts-martial and the necessity for continued pretrial confinement. At this review hearing, you may be present and represented by civilian counsel at your own expense, or if you so request, you may have military counsel assigned for the limited purpose of representing you at this pretrial confinement review hearing or, if you have a detailed military counsel, he may represent you. The Initial Review Officer may, for good cause, extend the time for completion of the initial review to ten days after imposition of pretrial confinement. Upon completion of the review, the Initial Review Officer will either approve continued pretrial confinement or order your release.

c. The Initial Review Officer, upon request, based upon any significant information not previously considered and after giving notice to you and the government's counsel, will reconsider the decision to confine you.

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d. Once charges are referred to trial by court-martial, the military judge, upon motion by you, will review your pretrial confinement.

e. If you prefer, you may waive your right to be present at your Pretrial Confinement Hearing. If you invoke this right, your case will still be considered and a determination made by the Initial Review Officer as to your release from or continuation of confinement.

ACKNOWLEDGEMENT OF THE ACCUSED

1. I have read this document and I understand my rights and the process by which my pretrial confinement will be reviewed.

2. I do/do not desire to be represented by military/civilian counsel.

3. I do/do not desire to be present at my Pretrial Confinement Hearing. Note: Military/civilian counsel signature required if accused waives right to be present at hearing. Waiver of right to be present at hearing does not remove the obligation of IRO to independently review the continued confinement.

Accused signature/date

Counsel signature/date

4. I certify that the accused was given this document and acknowledged his understanding of its contents by his signature above.

Witness signature/grade/date

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COMMANDER'S 72 HOUR MEMORANDUM

From: Commanding Officer, _____
 To: Initial Review Officer, Marine Corps Base, Camp Lejeune
 Subj: PRETRIAL CONFINEMENT
 Ref: (a) BO 1640.10E
 (b) R.C.M. 305, MCM (2008 Ed.)

1. In accordance with the references, the following information is furnished in support of my decision to continue pretrial confinement of:

Name: _____ SSN: _____ Grade: _____

Unit: _____ Age: _____

Avg Pro/Con: ____/____ Education: _____ GT: _____

Time/date confined: _____/_____

Total service to date: _____ years, _____ months, _____ days

Marital status: _____ Number of children: _____

Dependents in local area: Y/N Off duty employment: _____

Additional information (as necessary):

2. The named detainee is alleged to have committed the following offense(s): Dates, places, UCMJ Articles, etc.

3. Basis upon which named detainee is suspected of having committed the above alleged offense(s): Documents, statements, other evidence, etc.

4. A review of the named detainee's past record reflects the following disciplinary actions (include punishments, if any):

5. In making my decision, I also considered the following matters in extenuation and mitigation:

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6. It is my opinion that a lesser form of pretrial restraint is inadequate and continued pretrial confinement is necessary:

a. ___ To ensure the presence of the detainee at trial because:

- ___ Absence terminated by apprehension.
- ___ Past record of absence offenses.
- ___ Present absence(s) commenced while detainee was pending former administrative/legal action.
- ___ Detainee broke restriction or lesser form of pretrial restraint.
- ___ The nature and circumstances of the offenses charged or suspected, including extenuating circumstances.
- ___ Other (describe):

and/or:

b. ___ To prevent the detainee from committing serious criminal misconduct because:

- ___ Detainee has a past record of committing violent acts.
- ___ Past record/medical/psychiatric evaluation indicates unstable character or mental condition.
- ___ Detainee has allegedly tried to obstruct justice by threatening witnesses or tampering with evidence.
- ___ It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command.
- ___ Other (describe):

7. Additional comments:

F. M. LAST

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THIS MEMORANDUM IS SUBJECT TO THE PRIVACY ACT

NOTICE OF MISSING 72-HOUR MEMORANDUM FOR CONTINUED PRETRIAL
CONFINEMENT

From: Initial Review Officer
To: Commanding Officer, _____
Subj: 72-HOUR MEMORANDUM FOR CONTINUED PRETRIAL
CONFINEMENT, CASE OF: _____
Ref: (a) R.C.M. 305, MCM (2008 Ed.)
(b) BO 1640.10E

1. Subsections (h) (2) (A-C) of reference (a) delineates actions required by the Commanding Officer upon pretrial confinement of an individual under their command.
2. In the case of (Name, SSN, Unit), confined on (Date) at (Time), records indicate that the 72-hour Memorandum has not been received as required by the references. This delay is not considered "good cause" (as defined in reference (a)) and jeopardizes the proper and expeditious process in this case.
3. You are encouraged to review the references and ensure the 72 Hour Memorandum is received by the Initial Review Officer within the next 24 hours.
4. Questions regarding this matter should be directed to the undersigned at 451-3797, or to the Prisoners' Service Officer, Base Brig, at 451-2330 or 451-7460.

F. M. LAST

Copy to:
Prisoner SvcO, Base Brig
Command SJA

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THIS FORM IS SUBJECT TO THE PRIVACY ACT

PRETRIAL CONFINEMENT HEARING RECORD

From: Initial Review Officer

To: File

Subj: HEARING RECORD IN THE CASE OF (GRADE, NAME, SSN),
(UNIT), AT (TIME) ON (DATE)1. Hearing

a. I do/do not desire to be present at my pretrial confinement hearing. Note: Counsel signature required if accused waives right to be present at hearing.

Signature of accused/date_____
Signature of counsel/date2. Procedure

a. ___ Prior to the commencement of the hearing, subject detainee was advised pertinent to Article 31, UCMJ.

b. ___ Prior to the commencement of the hearing, subject detainee was advised of the right to present evidence.

c. ___ The detainee DID/DID NOT desire to be represented by military/civilian counsel.

d. ___ The detainee DID/DID NOT have counsel present. If counsel present, name of counsel: _____.

e. ___ The following evidence was considered:

- (1) ___ Information on the 72 Hour Memorandum
- (2) ___ Detainee's SRB
- (3) ___ Statement of the detainee (substance):
- (4) ___ Other:

3. Decision

a. ___ Apparent court-martial jurisdiction DOES/DOES NOT exist.

b. ___ Probable cause to believe that offense(s) HAVE/HAS BEEN committed and that subject detainee committed same.

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c. ___ Continued pretrial confinement is not appropriate and release is directed forthwith.

OR

d. ___ A lesser form or pretrial restraint is considered inadequate and continued pretrial confinement is appropriate:

(1) ___ To ensure the presence of the detainee at trial because:

___ Absence was terminated by apprehension.

___ Past record of absence offenses.

___ Present absences commenced while detainee was pending former administrative/legal action.

___ Detainee broke restriction of lesser form of pretrial restraint.

___ The nature and circumstances of the offenses charged or suspected, including extenuating circumstances.

___ Other:

AND/OR

(2) ___ To prevent the detainee from committing serious criminal misconduct because:

___ Detainee has past record of committing violent acts.

___ Past record/medical/psychiatric evaluation indicated unstable character or mental condition.

___ Detainee has allegedly tried to obstruct justice by threatening witnesses or tampering with evidence.

___ It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command.

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___ It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the national security of the United States.

___ Other:

Initial Review Officer

4. Rehearing

___ Requested by detainee or counsel because of new evidence.

a. Rehearing granted/denied because of no new evidence/charges referred to trial (review by military judge only).

b. Information considered:

c. Detainee's counsel, if any, notified of all information considered and given opportunity to rebut.

d. Decision

Initial Review Officer/ date

Copy to:

Commanding Officer, _____

Commanding Officer, Base Brig

Detainee File (original)