

MILPERSMAN 1920-230

SEPARATION OF OFFICERS UNDER VARIOUS STATUTORY PROVISIONS NOT INCLUDED IN OTHER ARTICLES

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References	(a) 10 U.S.C., Section 1161 (b) 10 U.S.C., Section 12684 (c) 5 U.S.C., Sections 8311-8322 (d) SECNAVINST 1920.6C (e) 10 U.S.C., Sections 1201-1222
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1. **Introduction.** Certain statutes make provisions for separation of officers under specific circumstances. Guidance concerning selected statutes and related general situations for reference are enumerated below.

2. **Limitations on Dismissal of Commissioned Officers.**

Reference (a) provides for dismissal of a commissioned officer of the Armed Forces in time of war by order of the President. It further provides that the President may at any time drop from the rolls of any Armed Forces a commissioned officer who meets one of the following criteria:

a. Has been absent without authority for at least 3 months;
or

b. Sentenced to confinement in a federal or state penitentiary or correctional institution after having been found guilty of an offense by a civil or military court, and whose sentence has become final.

3. **Reserves: Separation for Absence without Authority or Sentenced to Imprisonment.** Reference (b) provides that the President or the secretary of a military department may drop from the rolls of the Armed Force concerned any reservist who has been absent without authority for at least 3 months, or who is sentenced to confinement in a federal or state penitentiary or correctional institution after having been found guilty of an offense by a civil or military court, and whose sentence has become final.

4. **Dropping from the Rolls for Conviction by a Civil Court**

a. It is the policy of the Department of Defense that members of the Armed Forces entitled to receive retired pay may be dropped from the rolls of the Armed Force concerned only for conviction by a civil court of offenses depriving them of retired pay under reference (c) for offenses involving the national security, perjury, or subornation of perjury. Reference (c), section 8319 specifically provides that the President may drop from the rolls any member of the Armed Forces who is deprived of retired pay under the provisions of reference (c).

b. Those sections provide, in general, for loss of retired pay upon conviction of offenses involving the national security, perjury, or subornation of perjury upon refusal to testify, produce records, or absent oneself from the U.S. to avoid prosecution. Action to initiate dropping an officer from the rolls must be undertaken by Navy Personnel Command using guidelines contained in reference (d).

5. **Separation of a Member Who Incurs Disability through Misconduct or Neglect.** Reference (e), section 1207 provides that a member of the Armed Forces must be separated from the Armed Force without entitlement to any benefits under reference (e) if the member incurs disability as a result of his or her intentional misconduct, willful neglect, or during a period of unauthorized absence, and the Secretary of the military department concerned determines that the disability makes the member unfit to perform the duties of his or her office, grade, rank, or rating.