MANUAL FOR
COURTS-MARTIAL
UNITED STATES

(2008 EDITION)

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(8) *Contempt or disrespect to other noncommissioned or petty officer.* Forfeiture of two-thirds pay per month for 3 months, and confinement for 3 months.

f. *Sample specifications.*

(1) *Striking or assaulting warrant, noncommissioned, or petty officer.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, (strike) (assault)_____, a _____ officer, then known to the said _____ to be a (superior)_____ officer who was then in the execution of his/her office, by _____ him/her (in) (on) (the _____) with (*a*) _____ (his/her)_____.

(2) *Willful disobedience of warrant, noncommissioned, or petty officer.*

In that _____ (personal jurisdiction data), having received a lawful order from _____, a_____ officer, then known by the said-_____ to be a _____ officer, to _____, an order which it was his/her duty to obey, did (at/on board— location), on or about _____ 20____, willfully disobey the same.

(3) *Contempt or disrespect toward warrant, noncommissioned, or petty officer.*

In that _____ (personal jurisdiction data) (at/on board—location), on or about _____ 20_____, [did treat with contempt] [was disrespectful in (language) (deportment) toward]_____, a _____ officer, then known by the said-_____ to be a (superior) -_____ officer, who was then in the execution of his/her office, by (saying to him/her, "_____," or words to that effect) (spitting at his/her feet) (_____)

16. Article 92—Failure to obey order or regulation

a. *Text of statute.* **Any person subject to this chapter who—**

(1) **violates or fails to obey any lawful general order or regulation;**

(2) **having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or**

(3) **is derelict in the performance of his duties; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it; and

(c) That the accused violated or failed to obey the order or regulation.

(2) *Failure to obey other lawful order.*

(a) That a member of the armed forces issued a certain lawful order;

(b) That the accused had knowledge of the order;

(c) That the accused had a duty to obey the order; and

(d) That the accused failed to obey the order.

(3) *Dereliction in the performance of duties.*

(a) That the accused had certain duties;

(b) That the accused knew or reasonably should have known of the duties; and

(c) That the accused was (willfully) (through neglect or culpable inefficiency) derelict in the performance of those duties.

c. *Explanation.*

(1) *Violation of or failure to obey a lawful general order or regulation.*

(a) *Authority to issue general orders and regulations.* General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or the Secretary of Defense, of Homeland Security, or of a military department, and those orders or regulations generally applicable to the command of the officer issuing them throughout the command or a particular subdivision thereof which are issued by:

(i) an officer having general court-martial jurisdiction;

(ii) a general or flag officer in command; or

(iii) a commander superior to (i) or (ii).

(b) *Effect of change of command on validity of order.* A general order or regulation issued by a commander with authority under Article 92(1) re-

tains its character as a general order or regulation when another officer takes command, until it expires by its own terms or is rescinded by separate action, even if it is issued by an officer who is a general or flag officer in command and command is assumed by another officer who is not a general or flag officer.

(c) *Lawfulness.* A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it. *See* the discussion of lawfulness in paragraph 14c(2)(a).

(d) *Knowledge.* Knowledge of a general order or regulation need not be alleged or proved, as knowledge is not an element of this offense and a lack of knowledge does not constitute a defense.

(e) *Enforceability.* Not all provisions in general orders or regulations can be enforced under Article 92(1). Regulations which only supply general guidelines or advice for conducting military functions may not be enforceable under Article 92(1).

(2) *Violation of or failure to obey other lawful order.*

(a) *Scope.* Article 92(2) includes all other lawful orders which may be issued by a member of the armed forces, violations of which are not chargeable under Article 90, 91, or 92(1). It includes the violation of written regulations which are not general regulations. *See also* subparagraph (1)(e) above as applicable.

(b) *Knowledge.* In order to be guilty of this offense, a person must have had actual knowledge of the order or regulation. Knowledge of the order may be proved by circumstantial evidence.

(c) *Duty to obey order.*

(i) *From a superior.* A member of one armed force who is senior in rank to a member of another armed force is the superior of that member with authority to issue orders which that member has a duty to obey under the same circumstances as a commissioned officer of one armed force is the superior commissioned officer of a member of another armed force for the purposes of Articles 89 and 90. *See* paragraph 13c(1).

(ii) *From one not a superior.* Failure to obey the lawful order of one not a superior is an offense under Article 92(2), provided the accused had a duty to obey the order, such as one issued by a sentinel or a member of the armed forces police. *See* paragraph 15b(2) if the order was issued by a warrant, noncommissioned, or petty officer in the execution of office.

(3) *Dereliction in the performance of duties.*

(a) *Duty.* A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service.

(b) *Knowledge.* Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.

(c) *Derelict.* A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person's duties or when that person performs them in a culpably inefficient manner. "Willfully" means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. "Negligently" means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. "Culpable inefficiency" is inefficiency for which there is no reasonable or just excuse.

(d) *Ineptitude.* A person is not derelict in the performance of duties if the failure to perform those duties is caused by ineptitude rather than by willfulness, negligence, or culpable inefficiency, and may not be charged under this article, or otherwise punished. For example, a recruit who has tried earnestly during rifle training and throughout record firing is not derelict in the performance of duties if the recruit fails to qualify with the weapon.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Violation or failure to obey lawful general order or regulation.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Violation of failure to obey other lawful order.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

[Note: For (1) and (2), above, the punishment set

forth does not apply in the following cases: if in the absence of the order or regulation which was violated or not obeyed the accused would on the same facts be subject to conviction for another specific offense for which a lesser punishment is prescribed; or if the violation or failure to obey is a breach of restraint imposed as a result of an order. In these instances, the maximum punishment is that specifically prescribed elsewhere for that particular offense.]

(3) *Dereliction in the performance of duties.*

(A) *Through neglect or culpable inefficiency.* Forfeiture of two-thirds pay per month for 3 months and confinement for 3 months.

(B) *Willful.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specifications.*

(1) *Violation or failure to obey lawful general order or regulation.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, (violate) (fail to obey) a lawful general (order) (regulation), to wit: (paragraph_____, (Army) (Air Force) Regulation _____, dated _____ 20____) (Article_____, U.S. Navy Regulations, dated _____ 20_____) (General Order No. _____, U.S. Navy, dated _____ 20____) (_____), by (wrongfully) _____.

(2) *Violation or failure to obey other lawful written order.*

In that _____ (personal jurisdiction data), having knowledge of a lawful order issued by _____, to wit: (paragraph _____, (_____ the Combat Group Regulation No. _____) (USS _____, Regulationtion _____), dated _____) (_____), an order which it was his/her duty to obey, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, fail to obey the same by (wrongfully)_____.

(3) *Failure to obey other lawful order.*

In that _____, (personal jurisdiction data) having knowledge of a lawful order issued by _____ (to submit to certain medical treatment) (to _____) (not to _____) (_____), an order which it was his/her duty to obey, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 _____, fail to obey the same (by (wrongfully)_____.)

(4) *Dereliction in the performance of duties.*

In that _____, (personal jurisdiction data), who (knew) (should have known) of his/her duties (at/on board—location) (subject-matter jurisdiction data, if required), (on or about _____ 20____) (from about _____ 20_____ to about _____ 20____), was derelict in the performance of those duties in that he/she (negligently) (willfully) (by culpable inefficiency) failed_____, as it was his/her duty to do.

17. Article 93—Cruelty and maltreatment

a. *Text of statute.*

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

b. *Elements.*

(1) That a certain person was subject to the orders of the accused; and

(2) That the accused was cruel toward, or oppressed, or maltreated that person.

c. *Explanation.*

(1) *Nature of victim.* "Any person subject to his orders" means not only those persons under the direct or immediate command of the accused but extends to all persons, subject to the code or not, who by reason of some duty are required to obey the lawful orders of the accused, regardless whether the accused is in the direct chain of command over the person.

(2) *Nature of act.* The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense. Sexual harassment includes influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. The imposition of necessary or proper duties and the exaction of their performance does not constitute this offense