

MEMORANDUM

1456-2 (DJAG/L)

03 Dec 86

DG Charter

DRAFT AMENDMENT TO CFAO 19-20


1. You have requested comments on the latest draft of CFAO 19-20 - Policy and Procedure - Sexual Activity Involving Persons of Same Gender.
2. I am attaching a copy of comments provided to me on that draft by D Law/HRI. I agree with the general thrust of those comments and in particular with the comments on paragraph 2 of D Law/HRI's memo concerning the vagueness of the first paragraph of the proposed CFAO.
3. I also agree with D Law/HRI that it might be preferable to refer in the first paragraph of the CFAO to "Conduct" rather than to "Activities" and that it would be desirable to define "conduct of a sexual nature". However, I am also concerned that, as presently drafted, the procedures prescribed beginning at paragraph 4 are triggered by the words "reason to believe". In my opinion, it would be preferable if the CFAO provided that its procedures were dependant upon a test similar to that in the NDA relating to arrest, i.e., "reasonable grounds to believe that a member of the CF has been involved in conduct of the type referred to in paragraph 1". It may be that such wording could be expanded by the addition of a reference to "is likely to become involved in such conduct", although if "conduct" is defined in the manner suggested at para 2 of the memo from D Law/HRI, it may be unnecessary to do so.
4. I have not attempted to subject the draft CFAO to the type of scrutiny that will be required before it can be approved as to form and legality; rather, this memo is concerned with the basic outlines of the policy and procedure. However, I think we will have to look carefully at subparagraph 10(A) in so far as it would permit ADM(Per) to direct the release of a member "unless compelling reasons exist which, in the opinion of ADM(Per), render the member's continued service wholly unacceptable". The words "in the opinion of ADM(Per)" should be deleted so that the test will be whether or not compelling reasons exist rather than



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the opinion of ADM(Per). I would also note that paragraph 11 appears to require that a notice of intent to recommend release be delivered whenever a member is to be released in accordance with this CFAO. If that is the intent, it may be necessary to appropriately amend QR&O articles 15.21 and 15.36. Finally, I agree with the comments of D Law/HRI concerning the provisions of paragraph 12 concerning voluntary release.


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Col
DJAG/L
992-3019

Enclosure

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