

Improper Superior Subordinate Relationships and Fraternization: Marriage and Change in Status

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*"Ninety percent of the game is half mental."*¹

Introduction

It is 12 June 2006, and you are assigned as a brigade combat team (BCT) judge advocate (JA). As you begin to settle into your office after an exhausting physical training session, the phone rings. It is the brigade commander's secretary. The secretary requests that you report to the brigade commander's office as soon as possible. You ask the secretary if there is anything specific the brigade commander wants to discuss. The secretary states, "I am quite sure it deals with a couple of inappropriate relationships that came to the command's attention over the weekend." You thank the secretary for the information and head out the door to see the brigade commander.

You arrive at the brigade commander's office and take a seat with your notebook and beret in hand. The brigade commander steps out of his office a few minutes later and asks you to come in and close the door behind you. As you begin to take your seat, he states "over the weekend two relationships have come to my attention that might violate Army policy. I need your advice on how to deal with these relationships as soon as possible."

The brigade commander then begins to give you the details of the two relationships. In the first situation, a lieutenant in alpha company announced that he will be marrying a specialist from a different BCT located on the installation. The wedding is planned for 17 June 2006, less than a week away. Until the announcement of the marriage, no one had any idea the two were romantically involved.

In the second situation, a warrant officer in the brigade is dating a staff sergeant (SSG) in a separate brigade. The evidence makes it clear that the relationship began more than two months ago when both parties were SSGs at different battalions within the brigade. The SSG is now assigned to a different brigade on the same installation. The couple has been seen together off the installation holding hands and kissing. There is no evidence that the two engaged in any public displays of affection while on-post or in uniform.

After receiving the information, you tell the brigade commander you want time to research the issues and you will get him an answer by close of business. The brigade commander asks that you return at 1800 to discuss what action, if any, should be taken in reference to these relationships. You agree and move out smartly to begin your research.

A. The Current Army Policy

The current Army policy that addresses improper superior subordinate relationships and fraternization became effective on 2 March 1999² and was further clarified on 1 February 2006.³ The clarifications have a direct impact on the above scenarios and are the subject of this article.⁴

¹ YOGI-isms & Casey Stengel, Yogi Berra, <http://www.dennisweb.com/steve/quotyogi.htm> (last visited July 21, 2006).

² U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY (15 July 1999) [hereinafter AR 600-20, 15 July 1999].

³ U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY (1 Feb. 2006) [hereinafter AR 600-20, 1 Feb. 2006].

⁴ *Id.*

The current policy is punitive in nature.⁵ When a JA is confronted with an issue involving an improper superior subordinate relationship it is important to follow a specific methodology. First, the JA must determine if the relationship involves a Soldier and another servicemember of a different rank. The policy does not apply to relationships between Soldiers and civilians. Second, the JA must determine if the relationship is strictly prohibited by the current regulation—*Army Regulation 600-20 (AR 600-20)*. *Army Regulation 600-20* strictly prohibits officers, including warrant and commissioned officers, from engaging in certain relationships with enlisted members.⁶ Finally, if the relationship is not strictly prohibited, for example a relationship between two enlisted members of different ranks, the JA must determine if there are any adverse effects from the relationship.⁷

Even if the relationship is strictly prohibited or prohibited by its effect, there are several exceptions that may apply.⁸ For example, ongoing business relationships between officer and enlisted personnel are strictly prohibited.⁹ Exceptions, however, exist for certain business relationships between officer and enlisted personnel, including one-time business transactions (e.g., the sale of a car) and landlord-tenant relationships.¹⁰ Certain personal relationships are also prohibited between officer and enlisted personnel.¹¹ One exception to the prohibition against certain personal relationships is marriage.¹²

B. Marriage

When the current Army policy prohibiting certain personal relationships between officer and enlisted personnel went into effect on 2 March 1999, it included an exception for marriage.¹³ The regulation did not, however, include an explanation on how to deal with the officer-enlisted relationship that occurred prior to the marriage. Many commanders and JAs were left to guess as to how to deal with a scenario where the officer and enlisted member were suddenly married, and no one in the command knew that a relationship existed. The 1 February 2006 changes to *AR 600-20* attempt to address this scenario.¹⁴

The current marriage exception to improper superior-subordinate relationships allows commanders to take “appropriate command action based on the prior fraternization.”¹⁵ The exception requires the command to have evidence of the prior fraternization before taking action.¹⁶ The regulation gives additional guidance to commanders and insists commanders “carefully consider all the facts and circumstances in reaching a disposition that is appropriate.”¹⁷ The regulation goes on to advise commanders that they “should take the minimum action necessary to ensure that the needs of good order and discipline are satisfied.”¹⁸

⁵ AR 600-20, 1 Feb. 2006, *supra* note 3, para. 4-16 (“violations of paragraph 4-14b, 4-14c, and 4-15 may be punished under Article 92, Uniform Code of Military Justice, as a violation of a lawful general regulation.”).

⁶ *Id.* The regulation states in pertinent part: “Certain types of personal relationships between officers and enlisted personnel are prohibited. Prohibited relationships include—(1) Ongoing Business relationships . . . (2) Dating, shared living accommodations . . . and intimate or sexual relationships . . . (3) Gambling.” *Id.* para. 4-14c.

⁷ Relationships between servicemembers of different rank are prohibited if they (1) compromise, or appear to compromise, the integrity of supervisory authority or the chain of command; (2) cause actual or perceived partiality or unfairness; (3) involve, or appear to involve, the improper use of rank or position for personal gain; (4) are, or are perceived to be, exploitative or coercive in nature; or (5) create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission. *Id.* para. 4-14b.

⁸ *Id.* para. 4-14.

⁹ *Id.* para. 4-14c(1).

¹⁰ *Id.*

¹¹ See *supra* note 6 and accompanying text.

¹² AR 600-20, 1 Feb. 2006, *supra* note 3, para. 4-14c(2)a.

¹³ AR 600-20, 15 July 1999, *supra* note 2, para. 4-14c(2)a (stating that the prohibitions against dating, shared living accommodations, and intimate or sexual relationships between officers and enlisted personnel do not apply to “[m]arriages that predate the effective date of this policy or are entered into prior to March 1, 2000”).

¹⁴ AR 600-20, 1 Feb. 2006, *supra* note 3, para. 4-14c(2)a.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

In the first scenario that the brigade commander presented to you as the BCT JA, there are several options available. First, the command can choose to do nothing and allow the marriage between the officer and enlisted member to proceed without command interference. If the commander chooses this course of action, he should still counsel the officer and enlisted member that after the marriage both Soldiers are expected to conduct themselves appropriately while on-duty and to observe military customs and courtesies. As a second option, the command could initiate an inquiry to determine if evidence exists of the prior inappropriate relationship. If the inquiry reveals evidence of the relationship, the commander may take appropriate disciplinary action, which, based on the evidence uncovered, can include a variety of options ranging from counseling to disciplinary action.

C. Change in Status.

Prior to 1 February 2006, AR 600-20 also included an exception for inappropriate superior-subordinate personal relationships between officer and enlisted members when there was a change in status.¹⁹ Change in status meant that the officer in the relationship was previously enlisted and became an officer through warrant officer school or a commissioning program.²⁰ The original exception for change in status was interpreted to apply to relationships when the servicemembers were already married. Therefore, this exception had little, if any, effect because of the preexisting exception for marriage.²¹

The revised version of AR 600-20 attempts to clarify the change in status exception to only include strictly prohibited relationships between officer and enlisted personnel.²² The change in status exception now applies when a relationship between two enlisted members changes to a relationship between an enlisted member and an officer after one of the enlisted members becomes an officer through warrant officer school or a commissioning program.²³ The exception allows such relationships to continue, but “the couple must terminate the relationship permanently or marry within either one year of the actual start date of the program, before the change in status occurs, or within one year of the publication date of this regulation, whichever occurs first.”²⁴

Because of this change, commanders are now required to determine if the relationship existed when both members were enlisted. If the relationship did not exist prior to the change in status of one of the servicemembers, the exception does not apply.²⁵ Judge advocates should assist commanders in making this determination by gathering all the necessary facts about the relationship and making an appropriate recommendation to the command.

In the second hypothetical relationship, the change in status exception clearly applies. First, the relationship began after 1 February 2006, when the current change in status exception came into force.²⁶ Second, the warrant officer and staff sergeant began dating prior to the warrant officer’s change in status. Since the relationship falls under the change in status exception, the servicemembers must terminate their relationship or marry on or before 1 June 2007.²⁷

¹⁹ AR 600-20, 15 July 1999, *supra* note 2, para. 4-14c(2)b.

²⁰ *Id.*

²¹ See Major Charles H. Rose III, *Rank Relationships: Charging Offenses Arising From Improper Superior Subordinate Relationships and Fraternization*, ARMY LAW., Apr. 2001, at 86.

²² *Army Regulation 600-20*, 1 Feb. 2006, para. 4-14c(2)b provides the following:

Situations in which a relationship that complies with this policy would move into non-compliance due to a change in status of one of the members (for instance, a case where two enlisted members are dating and one is subsequently commissioned or selected as a warrant officer). In relationships where one of the enlisted members has entered into a program intended to result in a change in their status from enlisted to officer, the couple must terminate the relationship permanently or marry within either one year of the actual start date of the program, before the change in status occurs, or within one year of the publication date of this regulation, whichever occurs later.

AR 600-20, 1 Feb. 2006, *supra* note 3, para. 4-14c (2)b

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

D. Conclusion

Based on recent changes to *AR 600-20*, it is clear that the area of improper superior subordinate relationships continues to evolve. Judge advocates should continue to monitor changes to regulations and caselaw in this area.