

# “THE LEGAL BRIEF”

*Advice to the Guardians of the Great Lakes*



Ninth District Legal Office  
1240 East Ninth Street  
Cleveland, Ohio 44199-2060  
Phone: (216) 902-6010  
Fax: (216) 902-6055



## May 2010: Don't Ask, Don't Tell, Don't Pursue, Don't Harass

Reference (a): Personnel Manual, COMDTINST M1000.6, Ch. 12.E.

The Coast Guard's policy on homosexual conduct as set forth in reference (a) has recently been amended. For D9 units, the most significant change is that a fact finding inquiry into suspected homosexual conduct can only be initiated by the District Commander or a more senior commander.

**POLICY:** Sexual orientation is considered a personal, private matter and is not a bar to Service entry or continued service unless manifested by homosexual conduct. Homosexual conduct, as defined in Article 12.E.1.b of reference (a), is grounds for separation from the Coast Guard. The policy commonly known as "Don't Ask, Don't Tell," has been amended and is now better described as "***Don't Ask, Don't Tell, Don't Pursue, Don't Harass.***"

- **DON'T ASK** - Commanders, commanding officers and officers-in-charge or appointed inquiry officials shall not ask, and members shall not be required to reveal, a service member's sexual orientation. All service members must adhere to this requirement.
- **DON'T TELL** - Members shall not be required to reveal their sexual orientation. However, if a member states that he or she is a homosexual or bisexual, or makes some other statement to that effect, he or she may be subject to discharge.
- **DON'T PURSUE** - Inquiries regarding sexual orientation may not be initiated unless ***credible information*** is discovered. Even then, only certain individuals are authorized to initiate inquiries and must stay within expressed guidelines.
- **DON'T HARASS** - The Coast Guard does not tolerate harassment or mistreatment of anyone, whether they are service members, civilian employees, Auxiliarists, or members of the public, for alleged or perceived sexual orientation, or any other reason. Harassment can take different forms, ranging from "innocent" comments and jokes causing a hostile climate, to direct verbal or physical abuse.

### COMMAND INQUIRIES:

- Inquiries into alleged homosexual conduct can only be initiated by ***O-7 commanders or higher*** that are senior to a member and in that member's chain of command.
- Such inquiries can only be conducted ***after receiving credible information*** that a basis for discharge exists.
- The person appointed to conduct the inquiry must be in the grade of ***O-5 or higher***, or civilian equivalent.

### CREDIBLE INFORMATION:

- Information that supports a ***reasonable belief*** that there is a basis for discharge.
- The ***source of information*** as well as the ***surrounding circumstances*** must be considered.
- A determination that credible information exists must be based on ***articulated facts, not mere suspicion.***
- Examples:
  - A reliable person states, ***under oath***, that a service member has made a statement that he/she is a homosexual, has married or attempted to marry a person of the same biological sex, or has engaged in homosexual acts.
  - A service member states to a person of senior grade and authority within his/her chain of command that he/she is a homosexual or bisexual, or words to that effect.

### EXCEPTIONS:

- Privileged information shall not be used for fact-finding inquiries or separation proceedings. Examples include conversations between an attorney and client, communications to clergy, and conversations between a psychotherapist and patient.
- The following information is also prohibited from consideration:
  - Information provided by a service member to a medical professional or public health official,
  - Information provided in the course of seeking professional assistance for domestic or physical abuse, and
  - Information obtained in the course of a personal security investigation.

**PLEASE CONTACT D9 LEGAL AT 216-902-6010 WITH ANY QUESTIONS**