

§ 720.4

A waiver must be in writing and be witnessed. It must include a statement that the member signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in § 720.3(c).

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When a member declines to waive extradition, the nearest Naval Legal Service Office or Marine Corps staff judge advocate shall be informed and shall confer with the civil authorities as appropriate. The member concerned shall not be transferred or ordered out of the State in which he is then located without the permission of the Secretary of the Navy (Judge Advocate General), unless a fugitive warrant is obtained as set forth in § 720.3(c).

(c) *Fugitive warrants.* (1) A fugitive warrant, as used in this chapter, is a warrant issued by a State court of competent jurisdiction for the arrest of a member. Normally, a State requesting delivery of a member from another State will issue a fugitive warrant to the State where the member is then located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the member is located, the latter State will normally request delivery of the member to local State authorities. Delivery to local State authorities should be arranged by Navy or Marine Corps officers designated in § 720.3(a), upon compliance with the provisions of § 720.6, and subject to the conditions of §§ 720.9 and 720.3(c) (3) and (4).

(3) Upon receipt of a request for delivery of a member under fugitive warrant to State authorities, if the member voluntarily waives extradition, the provisions of § 720.3(b) apply. If the member is delivered to local authorities but refuses to waive extradition in the courts of the State in which he is located.

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(4) No delivery of a member by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by § 720.6 and execution of such agreement either:

(i) By authorities of both the requesting State and the State in which the member is located, or

(ii) By authorities of the State in which the member is located if such authorities, on behalf of the requesting State, accept the full responsibility for returning the member to a command designated by the Department of the Navy.

(d) *Members stationed outside the United States.* When the member sought by State authorities is not located within the United States, see § 720.4.

§ 720.4 Persons stationed outside the United States.

(a) *Persons desired by local U.S. authorities.* When delivery of any member in the Navy or Marine Corps, or any civilian employee or dependent, is desired for trial by state authorities and the individual whose presence is sought is stationed outside the United States, the provisions of subpart D of this part will be followed. In all such cases, the nearest judge advocate of the Navy or Marine Corps shall be consulted before any action is taken.

(b) *Members desired by U.S. Federal authorities.* When delivery of any member of the Navy or Marine Corps is desired for trial in a Federal district court, upon appropriate representation by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the member will be returned to the United States at the expense of the Department of the Navy and held at a military facility convenient to the Department of the Navy and to the Department of Justice. Delivery may be accomplished as set forth in § 720.7, subject to the exceptions in § 720.9.

§ 720.5 Authority of the Judge Advocate General and the General Counsel.

(a) *Authority of the Judge Advocate General.* The Judge Advocate General, the Deputy Judge Advocate General, and the Assistant Judge Advocates

General are authorized to act for the Secretary of the Navy in performance of functions under this chapter.

(b) *Authority of the General Counsel.* The authority of the General Counsel of the Navy is prescribed by Navy Regulation (32 CFR 700.203 (a) and (g)) and by appropriate departmental directives and instructions (e.g., SECNAVINST 5430.25D).¹ The principal areas of responsibility of the Office of the General Counsel (OGC) are commercial law, including maritime contract matters; civilian employee law; real property law; and Freedom of Information Act and Privacy Act matters as delineated in 32 CFR part 701. The Office of the General Counsel shares responsibility with the Judge Advocate General for environmental law cases.

(c) *Points of contact.* Commanding officers are advised to contact their local area judge advocates for assistance in referring matters to the appropriate office of the Judge Advocate General or General Counsel.

(d) *Coordination with the Commandant of the Marine Corps.* Marine Corps commands shall inform the Commandant of the Marine Corps (CMC) of all matters referred to the Judge Advocate General or the Office of General Counsel. Copies of all correspondence and documents shall also be provided to CMC. The Staff Judge Advocate to the Commandant (CMC (JAR)) shall be advised of all matters referred to the Judge Advocate General. Counsel to the Commandant shall be advised of matters referred to the Office of General Counsel.

§ 720.6 Agreement required prior to delivery to State authorities.

(a) *Delivery under Article 14, UCMJ.* When delivery of any member of the Navy or Marine Corps to the civilian authorities of a State is authorized, the member's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement. The State official completing the agreement must show that he is authorized to bind the State to

the terms of the agreement. When indicating in the agreement the naval or Marine Corps activity to which the member delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which the member is attached) that possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when:

(1) The member is furnished transportation (under escort in cases of delivery in accordance with § 720.12) to a naval or Marine Corps activity as set forth in the agreement;

(2) The member is provided cash to cover incidental expenses en route thereto; and

(3) The Department of the Navy is so informed.

As soon as practicable, a copy of the delivery agreement shall be forwarded to the Judge Advocate General.

(b) *Delivery under Interstate Agreement on Detainers Act.* Special forms are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See § 720.12 for a detailed discussion of the Detainers Act.

§ 720.7 Delivery of persons to Federal authorities.

(a) *Authority to deliver.* When Federal law enforcement authorities display proper credentials and Federal warrants for the arrest of members, civilian employees, civilian contractors and their employees, or dependents residing at or located on a Department of the Navy installation, commanding officers are authorized to and should allow the arrest of the individual sought. The exceptions in § 720.9 may be applied to members. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected.

(b) *Agreement not required of Federal authorities.* The agreement described in § 720.6 is not a condition to the delivery of members to Federal law enforcement authorities. Regardless of whether the member is convicted or acquitted, after final disposition of the case, the member will be returned to the

¹Copies may be obtained if needed, from the Commanding Officer, Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.