

Limitations on the Wearing of the Uniform by Members of the Armed Services at Non-Military Events

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The appropriateness of wearing a military uniform at non-military events is a frequent topic of discussion, especially during a time of war.¹ Whether attending an event that is political, religious, partisan, nonpartisan or somewhere in between, servicemembers who wear the military uniform at non-military events may unwittingly place themselves in the crosshairs of Department of Defense (DOD) and service regulations regarding authorized wear of the uniform. Consider, for example, recent incidents involving servicemembers and the wear of military uniforms which will be discussed further in this article:

- An Army garrison commander (colonel) appeared in Class A uniform on stage near President Bush during a 2004 presidential campaign rally held off-post in a nearby town.
- A Navy chaplain appeared in uniform at a political protest and news conference held outside the gates of the White House. The event was held to protest a Navy policy requiring that prayers at official, nonreligious events be nonsectarian and nondenominational.
- An Air Force reserve major running as a candidate for civil office decided to prominently display his Class A military photograph on the front page of his campaign's website and on the front page of campaign literature.
- A Marine corporal, wearing part of his utility uniform, protested the Iraq war by conducting a mock patrol with other protesters at an anti-war event in Washington D.C.
- An Army three-star general gave numerous speeches in uniform at religious-oriented events such as church services, men's fellowship groups, and nondenominational prayer breakfasts. The speeches were made in a personal capacity without prior authorization from superiors.
- Two Army and two Air Force general officers, an Air Force colonel, an Army chaplain (colonel) and an Army lieutenant colonel appeared in a promotional video endorsing a religious organization while in uniform.
- An Army chief warrant officer attempted to wear his uniform in court while jurors heard testimony in a wrongful death lawsuit filed by his father's estate. Lawyers for the other side filed a motion to prevent the Soldier from wearing the uniform in court.
- An Army reserve captain wore her uniform while testifying before a state legislative committee hearing in favor of a hotly debated state education bill. Her intent in wearing the uniform was to enhance her credibility before the committee.

These and similar incidents throughout the country spur interest and concern from commanders, servicemembers, and legal advisors alike. Under what circumstances may a servicemember wear his or her uniform at a non-military event? Or, turning the question around, under what circumstances is a servicemember *prohibited* from wearing the uniform at these events? Fortunately, the DOD and the military services have issued considerable guidance on this issue.

¹ See Tom A. Peter, *For U.S. Military Veterans, A Free-Speech Dispute*, CHRISTIAN SCI. MONITOR, June 8, 2007, available at <http://www.csmonitor.com/2007/0608/p03s03-usmi.html?page=1> (regarding three Marines in the individual ready reserve who wore parts of their uniforms during an anti-war demonstration). However, not all disputes about the wear of the uniform are associated with the war. See Lori Heffland, *Protest in Uniform Causes Controversy*, CLEARWATER TIMES, Sept. 11, 2006 (regarding an Army noncommissioned officer who repeatedly wore her uniform while speaking her mind at a Largo, Florida City Commission meeting).

DOD Policy

As is obvious by the title, *Wearing of the Uniform*, DOD Instruction (DODI) 1334.01 is a good starting point for Judge Advocates (JAs) and servicemembers researching this issue.² Paragraph 3.1.3 states that absent approval by a competent authority, members of the Armed Services (including retired members and members of Reserve components) are prohibited from wearing the uniform when “participating in activities such as unofficial public speeches, interviews, picket lines, marches, rallies or any public demonstration, which may imply Service sanction of the cause for which the demonstration or activity is conducted.”³

Although DODI 1344.01 lists other situations where the wear of the uniform is prohibited,⁴ paragraph 3.1.3 covers most situations encountered by servicemembers, especially in a time of vigorous public debate, emotion, and opinion associated with the ongoing combat operations. Paragraph 3.1.2 includes an additional “catch-all” provision that prohibits the wearing of the uniform “[d]uring or in connection with furthering political activities, private employment or commercial interests, when an inference of official sponsorship for the activity or interest may be drawn.”⁵ The unambiguous intent of the policy is to restrain servicemembers from engaging in conduct that implies or suggests military sanction of a particular event or activity, especially political events. Simply put, the best way to ensure compliance is to stay out of the military uniform when attending these events.

Consistent with, and serving as a compliment to DODI 1334.01, is DOD Directive (DODD) 1325.6, *Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces*.⁶ Paragraph 3.5.6 entitled “Off-Post Demonstrations by Members” states in part, “[m]embers of the Armed Forces are prohibited from participating in off-post demonstrations . . . when they are in uniform in violation of DOD Directive 1334.1.”⁷ The reference to DOD Directive (DODD) 1334.1 is outdated due to its cancellation and reissuance as DODI 1334.01 that same month. Regardless, DODD 1325.6 underscores the general prohibition laid out in DODI 1334.01.

Another important DOD directive is the recently updated DODD 1344.10, *Political Activities by Members of the Armed Forces*.⁸ Although the directive’s primary focus is to provide general guidance regarding political activity of servicemembers, such as voting, making monetary contributions, attending partisan and nonpartisan political meetings, running for political office and holding political office,⁹ it also directly addresses when to stay out of the military uniform. For example, paragraph 4.1.1.3 states that a servicemember on active duty may “[j]oin a partisan or nonpartisan political club and attend its meetings when not in uniform.”¹⁰ Further, paragraph 4.1.1.4 states that a servicemember may serve as an election official under specific conditions, to include when such service “is performed when not in uniform.”¹¹ Finally, paragraph E3.1.1 states that servicemembers taking part in local nonpartisan political activity shall not “wear a uniform.”¹²

As with DODI 1334.01, the directive also addresses what not to do while *in* uniform, stating in paragraph E3.2.3 that servicemembers engaging in permissible political activity shall “[r]efrain from participating in any political activity while in military uniform.”¹³ Also, the directive now clarifies how political candidates or nominees may use photographs of

² U.S. DEP’T OF DEFENSE, INSTR. 1334.01, WEARING OF THE UNIFORM (26 Oct. 2005) [hereinafter DODI 1334.01].

³ *Id.* para. 3.1.3.

⁴ Such as at events associated with extremist and subversive organizations, activities in connection with private employment or commercial interests, and when the wearing of the uniform may tend to bring discredit upon the Armed Forces. *Id.* paras. 3.1.1, 3.1.2 & 3.1.4.

⁵ *Id.* para. 3.1.2.

⁶ U.S. DEP’T OF DEFENSE, DIR. 1325.6, GUIDELINES FOR HANDLING DISSIDENT AND PROTEST ACTIVITIES AMONG MEMBERS OF THE ARMED FORCES (1 Oct. 1996). The directive applies to both active component and reserve component servicemembers.

⁷ *Id.* para. 3.5.6.

⁸ U.S. DEP’T OF DEFENSE, DIR. 1344.10, POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES (19 Feb. 2008) [hereinafter DOD DIR. 1344.10].

⁹ *See, e.g., id.* para. 4.

¹⁰ *Id.* para. 4.1.1.3.

¹¹ *Id.* para. 4.1.1.4. The paragraph also states that such service must not be in representation of a partisan political party, must not interfere with the performance of military duties, and must have prior approval from the servicemember’s Service Secretary. *Id.*

¹² *Id.* para. E3.1.1.

¹³ *Id.* para. E3.2.3.

themselves in their military uniform.¹⁴ Prior to the recent update, guidance on the use by political candidates of their military photographs was rather murky. The new guidance is much more clear: candidates may use such photographs in campaign literature (to include Web sites, videos, television, and conventional print advertisements) “when displayed with other non-military biographical details,”¹⁵ when accompanied by a prominent and clearly displayed disclaimer,¹⁶ and when the use of the photograph is not the “primary graphic representation in any campaign media, such as a billboard, brochure, flyer, Web site, or television commercial.”¹⁷ Hence, a candidate’s inclusion of his Class A military photograph on page three of his campaign brochure with other photographs of his life (such as a family photograph, a hunting photograph, and a marathon photograph) is acceptable. However, placing the military photograph front and center on page one of the brochure is not acceptable.

It is important for servicemembers to be aware of two other new provisions in the updated DODD 1344.10. First, at paragraph 4.1.5, the directive warns against engaging in any activity that may be viewed as directly or indirectly associating the DOD or the military departments with a partisan political activity, even those activities not expressly prohibited by the directive.¹⁸ In other words, if it is a close call, avoid the uniform. Second, the directive is now punitive, stating plainly that it is a lawful general regulation and that violations of paragraphs 4.1 through 4.5 are punishable under Article 92, the Uniform Code of Military Justice, “Failure to Obey Order or Regulation.”¹⁹ Judge Advocates must emphasize with commanders and servicemembers alike that the DOD has raised the stakes with regard to wearing the military uniform in non-duty settings.

To summarize the DOD guidance, broad principles emerge. First, servicemembers should refrain from wearing the uniform when engaged in events associated with political activity. Second, servicemembers should refrain from wearing the uniform on any occasion when the wear of the uniform may reasonably be viewed as military sanction of the event or activity, whether political or not. Third, if the servicemember is still inclined to wear the uniform, obtaining prior approval should be the rule and not the exception, especially when giving a public speech or participating in a public event.

Service Regulations

Predictably, the military services mirror DOD policy. In fact, most of the language in service regulations proscribing the wear of the uniform at non-military events is taken verbatim from DOD guidance. For example, Army Regulation (AR) 670-1, *Wear and Appearance of Army Uniforms and Insignia*, states at paragraph 1-10j:

Wearing Army uniforms is prohibited in the following situations:

- (1) In connection with the furtherance of any political or commercial interests, or when engaged in off-duty civilian employment.
- (2) When participating in public speeches, interviews, picket lines, marches, rallies, or public demonstrations, except as authorized by competent authority.
- (3) When attending any meeting or event that is a function of, or is sponsored by, an extremist organization.
- (4) When wearing the uniform would bring discredit upon the Army.
- (5) When specifically prohibited by Army regulations.²⁰

The prohibition is quite broad, especially the provision in subparagraph 1-10j(2) prohibiting the wear of the Army uniform when participating in *public speeches* and *interviews*. As with DOD guidance, however, this broad prohibition is tempered by the caveat, “except as authorized by competent authority.”

¹⁴ Numerous veterans, retirees, and current reserve component servicemembers have run for elective office in recent years. See Peter Slevin, *Vets Running for Congress Fight ‘One-Issue’ Label*, WASH. POST, Mar. 21, 2006, at A03, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/20/AR200602001778.html>.

¹⁵ DOD DIR. 1344.10, *supra* note 8, para. 4.3.1.2.

¹⁶ *Id.* The disclaimer must state that the military photographs do not imply endorsement by the DOD or the particular Military Department of the candidate/servicemember. *Id.*

¹⁷ *Id.* para. 4.3.2.1.

¹⁸ *Id.* para. 4.1.5.

¹⁹ *Id.* para. 4.6.4.

²⁰ U.S. DEP’T OF ARMY, REG. 670-1, WEAR AND APPEARANCE OF ARMY UNIFORMS AND INSIGNIA para. 1-10j (3 Feb. 2005) [hereinafter AR 670-1].

Army Regulation 600-20, *Army Command Policy*, reiterates the political activities guidelines found in DODD 1344.10.²¹ It is also consistent with, and compliments, the Army uniform regulation, AR 670-1. The Army command policy regulation states that active duty Army personnel may attend partisan and nonpartisan political meetings or rallies as a spectator when not in uniform,²² join a political club and attend its meetings when not in uniform,²³ serve as an election official if such service “is performed while out of uniform,”²⁴ and take part in local nonpartisan activity when not in uniform.²⁵ Regarding reserve component (RC) personnel, the regulation states that, regardless of the length of an active duty tour, RC personnel must “[r]efrain from participating in any political activity while in military uniform, as proscribed by AR 670-1.”²⁶

Other service regulations parallel the Army regulations and are in virtual lock-step with DOD guidance. In fact, the uniform regulations of the Navy and Marine Corps quote the former DODD 1334.1 (now DODI 1334.01) verbatim.²⁷ The Air Force²⁸ and Coast Guard²⁹ uniform regulations provide handy charts listing situations when personnel may and may not wear the uniform, with language pulled directly from DODI 1334.01.³⁰ Accordingly, the regulatory guidance for the wear of the uniform at non-military events is generally the same across the services.

Resolving the Scenarios

In light of the previous discussion on the substantial DOD and service guidance on the wear of the uniform, how should the scenarios presented earlier in this article be resolved?

- *The Army garrison commander who appeared on stage in Class A uniform at a political campaign rally.* This was an actual case investigated by the Army Reserve³¹ and an obvious violation of standards. The event was a partisan political event—a presidential campaign rally. The officer’s attendance violated DOD and Army policy stating that attendance at partisan political rallies as a spectator is authorized only when not in uniform.³² Further, the wear of the uniform while on stage clearly implies Service sanction of the event.³³
- *The Navy chaplain who appeared in uniform at a public demonstration outside the White House.* The issue here is not what the chaplain was protesting, or whether the demonstration was a political or religious event. The issue centers on the fact that it was a public demonstration.³⁴ The chaplain’s participation in a public

²¹ U.S. DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 5-3, App. B (7 June 2006).

²² *Id.* para. 5-3a(1)c).

²³ *Id.* App. B, para. B-2c

²⁴ *Id.* App. B, para. B-2d. As with DODD 1344.10, this paragraph also states that such service must not be in representation of a partisan political party, must not interfere with military duties, and must have prior approval. *Id.*

²⁵ *Id.* para. 5-3b(1) & App. B, para B-5.

²⁶ *Id.* App. B, para. B-6c.

²⁷ U.S. DEP’T OF NAVY, NAVPERS 156651, GENERAL UNIFORM REGULATION para. 1401 (n.d.); U.S. MARINE CORPS, ORDER P1020.34G, MARINE CORPS UNIFORM REGULATIONS para. 11002 (31 Mar. 2003).

²⁸ U.S. DEP’T OF AIR FORCE, INSTR. 36-2903, DRESS AND PERSONAL APPEARANCE OF AIR FORCE PERSONNEL tbl.1.3 (2 Aug. 2006).

²⁹ U.S. COAST GUARD, COMDTINST M1020.6E, UNIFORM REGULATIONS para 1.B.2. (2 July 2003).

³⁰ The charts mirror the language used in DODI 1334.01. See DODI 1334.01, *supra* note 2, paras. 3.1.2, 3.1.3 & 3.1.4.

³¹ Graeme Zielinski, *Army Inquiry Finds Commander Violated Rules at Bush Rally; Fort McCoy Leader Was Onstage in Uniform*, MILWAUKEE J. SENTINEL, Aug. 26, 2004.

³² DOD DIR. 1344.10, *supra* note 8, para. 4.1.1.9; AR 670-1, *supra* note 19, para. 1-10j(2).

³³ DODI 1334.01, *supra* note 2, paras. 3.1.2 and 3.1.3; DOD DIR. 1344.10, *supra* note 8, para. 4.1.5.

³⁴ The event included a press conference in front of the White House designed to protest against the Navy policy requiring non-sectarian prayers in all but chapel settings. See Ron Strom, *Christian Chaplain to Be Court-Martialed?*, WORLDNETDAILY.COM, May 4, 2006, http://www.wnd.com/news/article.asp?ARTICLE_ID=50054. The chaplain was later convicted at court-martial for violating a direct order not to attend the demonstration while in uniform. See *Chaplain Who Prayed ‘In Jesus’ Name’ Convicted*, WORLDNETDAILY.COM, Sept. 13, 2006, http://www.wnd.com/news/article.asp?ARTICLE_ID=51973.

demonstration while in uniform violated DODI 1334.01, paragraph 3.1.3 because it implies Service sanction for the cause of the protest.³⁵

- *The Air Force reserve officer who displayed his Class A military photograph on the front page of his website and in campaign literature.* This example reflects anecdotal accounts of actions by some reserve component candidates for civil office in recent elections. The new guidance in DODD 1344.10 clearly prohibits this activity. The military photograph was a primary graphic representation used in campaign media and not displayed with other non-military biographical information.³⁶
- *The Marine corporal who wore part of his utility uniform during anti-war protest activities.* Two provisions of DODI 1334.01 are applicable here. Paragraph 3.1.3 prohibits the corporal from wearing the uniform when participating in public demonstrations.³⁷ Additionally, paragraph 3.1.4 prohibits wearing the uniform when it may tend to bring discredit upon the Armed Forces.³⁸ Most would agree that the corporal's conduct in wearing a partial uniform at an anti-war demonstration, with nametag and service insignia torn off, brings discredit to the military.³⁹
- *The Army general who gave speeches in uniform at religious-oriented events:* This was an actual case investigated by the DOD Inspector General's (DOD IG) office.⁴⁰ A straightforward reading of AR 670-1, paragraph j(2) and DODI 1334.01 paragraph 3.1.3 suggests that the standards were violated because the officer gave public speeches in uniform without obtaining approval to wear the uniform. The DOD Inspector General investigation, however, raised interesting questions regarding the standards, such as, whether speeches in places of worship are really "public" speeches and whether a general officer at that level of authority is a "competent authority" authorized to self-approve the wearing of the uniform for his own speeches. The conclusion was that the terms "public speeches" and "competent authority" potentially lacked clarity and that the analysis should focus on whether an appearance in uniform "'may imply Service sanction' for a cause for which an activity is conducted."⁴¹ As a result, on the narrow issue of whether the general improperly wore the uniform while engaged in a non-military religious public speaking event, the DOD IG report concluded there was no regulatory violation.⁴² It should be pointed out that this case involved a general officer faced with different circumstances than that faced by the typical servicemember. For the typical servicemember not in a position to "self-approve" the wearing of the uniform, the teaching point is that, even at non-military religious events, the servicemember must be careful to avoid leaving the impression that the military sanctions the event and the event's cause. It is one thing to merely attend a non-military religious event in uniform as a spectator or in some other customary capacity.⁴³ It is quite another to give a speech in uniform at a non-military religious event, especially if the speech includes comments regarding national security issues, combat operations and the like. The safe approach for servicemembers is to stay out of uniform when speaking at non-military religious events. However, if they insist on wearing the uniform, they would be wise to gain prior approval in accordance with DODI 1334.01 and applicable Service regulations.

³⁵ DODI 1334.01, *supra* note 2, para. 3.1.3.

³⁶ DOD DIR. 1344.10, *supra* note 8, paras. 4.3.1.2 and 4.3.2.1.

³⁷ DODI 1334.01, *supra* note 2, para. 3.1.3.

³⁸ *Id.* para. 3.1.4.

³⁹ The Marine's actions prompted the Marine Corps to initiate administrative separation action against him. See *Iraq Vet Faces Penalty for War Protest*, ASSOC. PRESS, May 31, 2007, available at <http://www.cbsnews.com/stories/2007/05/31/national/main2870895.shtml>.

⁴⁰ Department of Defense Office of the Inspector General, *Alleged Improprieties Related to Public Speaking: Lieutenant General (LTG) William G. Boykin, U.S. Army Deputy Undersecretary of Defense for Intelligence (5 Aug. 2004)* [hereinafter *LTG Boykin, DOD Investigation*], available at <http://www.dodig.mil/foia/err.htm>. In addition to making comments about his personal and spiritual life, the general infused his speeches with information pertaining to national security issues, U.S. policy toward Israel, the war on terrorism, Islamic extremism, and combat operations. *Id.* at 8.

⁴¹ *Id.* at 19.

⁴² The uniform issue was just one of a number of issues investigated by the DOD Office of the Inspector General with regard to the officer's speeches. Ultimately, the investigation concluded that the officer committed other violations in relation to the speeches by failing to clear his speeches with proper authority, failing to preface his remarks with a sufficient disclaimer and failing to report travel reimbursement from one non-Federal entity. *Id.* at 10, 15, 37.

⁴³ Such as attending church off-post in uniform or participating in a wedding.

- *The numerous general officers and other officers who appeared in uniform in a promotional video endorsing a religious organization.* This was an actual case investigated by the DOD IG's office.⁴⁴ The investigation determined that the officers violated DODI 1334.01 and their service regulations by appearing in uniform in the videos without approval to wear the uniform, and that the appearance in uniform without the required approval implied Service sanction of the religious organization.⁴⁵
- *The Army warrant officer who attempted to wear his uniform in court during a civil trial.* Nothing in DOD or Army guidance restricts the Soldier from wearing his uniform at a court proceeding. The wear of the uniform in this situation does not imply the Army's sanction of the proceedings and does not bring discredit to the Army. Whether the wear of the uniform will somehow unduly prejudice the court proceedings is a matter for the judge to decide. In this case, the judge allowed the servicemember to wear the uniform in court.⁴⁶
- *The Army Reserve captain who wore her uniform while testifying before a state legislative committee hearing.* This example reflects anecdotal accounts of actions by some reserve component servicemembers involved in state and local political issues. Although the officer's non-duty testimony before the committee is a permissible political activity, she is prohibited from participating in any political activity while in military uniform.⁴⁷ Also, the wear of the uniform implies Service sanction of the event.⁴⁸

Conclusion

War, politics, religion, and other hotly debated topics often intersect with issues of military service in a free society. A servicemember in uniform represents a powerful American institution held in high regard by most Americans.⁴⁹ Through DOD guidance and corresponding service regulations, broad principles emerge regarding the wear of the uniform in non-military settings, such as the requirement to refrain from wearing the uniform at political events or when it may imply military sanction, and the emphasis on seeking prior approval to wear the uniform. By applying these principles, servicemembers will successfully avoid most conflicts involving the wear of the uniform in non-military settings.

⁴⁴ Department of Defense Office of the Inspector General, *Alleged Misconduct by DOD Officials Concerning Christian Embassy* (20 July 2007), available at <http://www.dodig.mil/fo/foia/err.htm>.

⁴⁵ *Id.* at 16, 19, 24, 27, 30, 35, 39. A number of other issues were investigated during the DOD IG investigation. This article addresses only the uniform issue.

⁴⁶ This case occurred in the Common Pleas Court of Miami County, Ohio. The judge ruled that the Soldier could wear his uniform because it merely represented his job. *See Judge: OK to Wear Military Uniform in Court*, ASSOC. PRESS STATE & LOCAL WIRE, 23 Mar. 2006.

⁴⁷ DODI 1334.01, *supra* note 2, para. 3.1.2.

⁴⁸ *Id.* para. 3.1.3.

⁴⁹ The Harris Poll #22, at tbl. 2A (Mar. 2, 2006), available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=646. The poll has consistently shown over a number of years that U.S. adults give the military the highest ratings when asked in what institutions do they place a great deal of confidence.