

ALARACT 103/2014

DTG: P 161938Z APR 14

THIS MESSAGE HAS BEEN TRANSMITTED BY USAITA ON BEHALF OF DA WASHINGTON DC//OPMG//

SUBJECT: COMMANDER'S RESPONSIBILITY TO REPORT A SOLDIER AS A DESERTER

(U) REFERENCES.

REF//A/ ARMY REGULATION (AR) 190-45, LAW ENFORCEMENT REPORTING, 30 MAR 2007//

REF//B/ AR 190-9, ABSENTEE DESERTER APPREHENSION PROGRAM AND SURRENDER OF MILITARY PERSONNEL TO CIVILIAN LAW ENFORCEMENT AGENCIES, 18 JAN 2007//

REF//C/ ALARACT 366/2011, SUBJECT: GUIDANCE FOR COMMANDERS REQUEST TO ENTER DESERTER WARRANTS INTO THE NATIONAL CRIME INFORMATION CENTER DATABASE, 26 SEP 2011//

REF//D/ MANUAL FOR COURTS MARTIAL (MCM), 2012//

1. (U) THIS MESSAGE RE-EMPHASIZES THE UNIT COMMANDER'S RESPONSIBILITY TO IMMEDIATELY REPORT A SOLDIER AS A DESERTER TO THE DIRECTOR OF EMERGENCY SERVICES/PROVOST MARSHALS (DES/PM), IN ACCORDANCE WITH (IAW) AR 190-45 AND AR 190-9, IF THE FACTS AND CIRCUMSTANCES OF THE ABSENCE INDICATE THAT THE SOLDIER MAY HAVE COMMITTED THE OFFENSE OF DESERTION, REGARDLESS OF THE LENGTH OF ABSENCE.

2. (U) CLASSIFICATION OF A SOLDIER AS A DESERTER IS BASED ON INTENT AND NOT THE TIME THE SOLDIER HAS BEEN ABSENT FROM HIS UNIT. THERE IS NO TIME REQUIREMENT FOR CHARGING SOLDIERS WITH DESERTION.

3. (U) COMMANDERS DO NOT HAVE TO WAIT 31 DAYS TO DECLARE A SOLDIER A DESERTER. THE CHARGE OF DESERTION IS NOT THE SAME AS THE ADMINISTRATIVE ACTION OF DROPPED FROM THE ROLLS, WHICH IS WHEN A SOLDIER IS ABSENT WITHOUT AUTHORITY FOR 30 CONSECUTIVE DAYS.

4. (U) IN ACCORDANCE WITH THE UNIFORMED CODE OF MILITARY JUSTICE (UCMJ), MCM, ARTICLE 85, AN ALLEGED DESERTER IS ANY MEMBER OF THE ARMED FORCES WHO COMMITS ANY OF THE FOLLOWING:

4.A. (U) WITHOUT AUTHORITY GOES OR REMAINS ABSENT FROM HIS OR HER UNIT, ORGANIZATION, OR PLACE OF DUTY WITH INTENT TO REMAIN AWAY FROM THERE PERMANENTLY.

4.B. (U) QUILTS HIS OR HER UNIT, ORGANIZATION, OR PLACE OF DUTY WITH INTENT TO AVOID HAZARDOUS DUTY OR TO SHIRK IMPORTANT SERVICE.

4.C. (U) WITHOUT FULLY DISCLOSING THE FACT THAT HE HAS NOT BEEN REGULARLY SEPARATED FROM ONE OF THE ARMED FORCES, ENLISTS OR ACCEPTS AN APPOINTMENT IN THE SAME OR ANOTHER ONE OF THE ARMED FORCES, OR ENTERS ANY FOREIGN ARMED SERVICE.

4.D. (U) ANY COMMISSIONED OFFICER OF THE ARMED FORCES WHO, AFTER TENDER OF HIS OR HER RESIGNATION AND BEFORE NOTICE OF ACCEPTANCE, QUILTS HIS OR HER POST OR PROPER DUTIES WITHOUT LEAVE AND WITH INTENT TO REMAIN AWAY FROM THERE PERMANENTLY IS GUILTY OF DESERTION.

5. (U) THE INTENT TO REMAIN AWAY PERMANENTLY MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE. THE FOLLOWING ARE SOME EXAMPLES FROM THE MCM THAT FURTHER EXPLAIN WHEN A SOLDIER DEMONSTRATES INTENT TO DESERT AND NOT RETURN:

5.A. (U) AMONG THE CIRCUMSTANCES FROM WHICH AN INFERENCE MAY BE DRAWN:

5.A.1. (U) THAT AN ACCUSED INTENDED TO REMAIN ABSENT PERMANENTLY ARE THAT THE PERIOD OF ABSENCE WAS LENGTHY;

5.A.2. (U) THAT THE ACCUSED ATTEMPTED TO, OR DID, DISPOSE OF UNIFORMS OR OTHER MILITARY PROPERTY;

5.A.3. (U) THAT THE ACCUSED PURCHASED A TICKET FOR A DISTANT POINT OR WAS ARRESTED, APPREHENDED, OR SURRENDERED A CONSIDERABLE DISTANCE FROM THE ACCUSED'S STATION;

5.A.4. (U) THAT THE ACCUSED COULD HAVE CONVENIENTLY SURRENDERED TO MILITARY CONTROL BUT DID NOT;

5.A.5. (U) THAT THE ACCUSED WAS DISSATISFIED WITH THE ACCUSED'S UNIT, SHIP, OR WITH MILITARY SERVICE;

5.A.6. (U) THAT THE ACCUSED MADE REMARKS INDICATING AN INTENTION TO DESERT;

5.A.7. (U) THAT THE ACCUSED WAS UNDER CHARGES OR HAD ESCAPED FROM CONFINEMENT AT THE TIME OF THE ABSENCE;

5.A.8. (U) THAT THE ACCUSED MADE PREPARATIONS INDICATIVE OF AN INTENT NOT TO RETURN (FOR EXAMPLE, FINANCIAL ARRANGEMENTS); OR

5.A.9. (U) THAT THE ACCUSED ENLISTED OR ACCEPTED AN APPOINTMENT IN THE SAME OR ANOTHER ARMED FORCE WITHOUT DISCLOSING THE FACT THAT THE ACCUSED HAD NOT BEEN REGULARLY SEPARATED, OR ENTERED ANY FOREIGN ARMED SERVICE WITHOUT BEING AUTHORIZED BY THE UNITED STATES.

5.B. (U) AMONG THE CIRCUMSTANCES WHICH MAY TEND TO NEGATE AN INFERENCE THAT THE ACCUSED INTENDED TO REMAIN AWAY PERMANENTLY ARE:

5.B.1. (U) PREVIOUS LONG AND EXCELLENT SERVICE;

5.B.2. (U) THAT THE ACCUSED LEFT VALUABLE PERSONAL PROPERTY IN THE UNIT OR ON THE SHIP; OR

5.B.3. (U) THAT THE ACCUSED WAS UNDER THE INFLUENCE OF ALCOHOL OR DRUGS DURING THE ABSENCE.

6. (U) THE POINT OF CONTACT FOR THIS ACTION IS THE OFFICE OF THE PROVOST MARSHAL GENERAL (OPERATIONS DIVISION, LAW ENFORCEMENT BRANCH), MS. KATHERINE BRENNAN, COMM: (703) 692-6721, DSN: 222-6721 OR EMAIL: KATHERINE.E.BRENNAN4.CIV@MAIL.MIL.

7. (U) EXPIRATION DATE OF THIS MESSAGE IS 12 MONTHS FROM THE ISSUANCE DATE.