

TOPIC

Chaplains as Investigating Officers for Commander Directed Investigations.

TEXT OF THE DECISION

This opinion is in response to an inquiry regarding whether the chaplains could serve as investigating officers (IOs) for commander directed investigations (CDIs). For the reasons set forth below, it is our position chaplains should **not** be utilized as IOs for CDIs.

BACKGROUND

The question arose whether a chaplain could serve as IOs for commander directed investigations.

GUIDANCE

AFI 90-301, *Inspector General Complaints Resolution*, 27 August 2015, Certified Current 8 July 2016, paragraph 3.34, describes qualifications of an IO. IOs must be “impartial, unbiased, objective, thorough, and have the ability to complete the investigation.” Similarly, the Secretary of the Air Force, Office of the Inspector General Complaints Resolution Directorate, *Commander Directed Investigation (CDI) Guide*, 18 February 2016, (hereinafter referred to as “the CDI Guide”) states:

If the investigation has named subjects, the IO should be equal or senior in grade to the most senior subject and not in their chain of command. In all cases, the IO should be mature and experienced with good writing and critical thinking skills. Generally, the IO will be a senior captain or higher, a civilian equivalent, or a senior NCO.

Commanders appointed in accordance with AFI 51-604, *Appointment to and Assumption of Command*, 11 February 2016, and AFI 38-101, *Air Force Organization*, 31 January 2017, (on G-series orders) have an inherent authority to conduct a CDI to investigate matters under their command, unless preempted by higher authority. Looking at AFI 90-301, Attachment 1, the Appointing Authority conveys [this inherent command] authority for the investigation to the IO, and the IO’s authority extends to all subordinate echelons of the command and requires the compliance and cooperation of subordinate supervisory channels. The CDI guide similarly states, “[f]or purposes of the CDI, the IO is an extension of the appointing commander.”¹

DISCUSSION

While chaplains have the authority to give lawful orders and exercise functions of supervision, control, and direction (see AFI 51-604, paragraph 3.6.6.7), an officer designated as a chaplain has

¹ Secretary of the Air Force, Office of the Inspector General Complaints Resolution Directorate, *Commander Directed Investigation (CDI) Guide*, 18 February 2016, paragraph 4.2.

“rank without command.”² Command is authority over a military organization or prescribed territorial area.³

Although neither AFI 90-301 nor the CDI guide prohibit any particular AFSC or career field from serving as an IO, the logical conclusion to the analysis above is chaplains could not accept the commander’s inherent authority to conduct the investigation.

The Air Force Chaplain’s Corps also describes taskings which chaplains cannot perform. Commanders cannot task chaplains or chaplain assistants to serve in a capacity in which they may be called upon to reveal privileged communications.⁴ Chaplains provide “religious worship and rites, religious accommodation, pastoral care, unit engagement, counseling and spiritual care.”⁵ Chaplains cannot perform duties “incompatible with their endorsing organizations, professional role and noncombatant status, and they will not serve in any military capacity other than those specific duties contained in the 52XX Specialty Description found in the Air Force Officer Classification Directory.”⁶

The Air Force Officer Classification Directory (AFODC) has the following description for chaplains:

The Chaplain Utilization Field encompasses Chaplain Corps programs, staff management, readiness, plans, advisement, administration, budgetary and fiscal management, and education functions supporting the free exercise of religion provision of the first amendment of the US Constitution. This includes planning, programming, and operations related to the following activities: staff supervision; war and contingency planning; deployment execution, chaplain materiel and facility management; chaplain resource management; chaplain recruiting; and Chaplain Corps training and education.

Only officers originally commissioned to serve as chaplains and possessing ecclesiastical endorsements from a faith group recognized by the DoD Armed Forces Chaplains Board and acceptable to the Chief of Air Force Chaplains are classified in AFSCs 52R1, 52R3, and 52R4. Chaplains have rank without command authority, serve only in noncombatant status, and are not assigned duties outside the chaplain specialty.⁷

“Investigating officer” is not a duty contained in the 52XX AFODC. Accordingly, it does not appear the Air Force *intended* for chaplains to serve in this capacity.⁸

² Title 10, United States Code (U.S.C.), Section 8581.

³ See AFI 51-604, *Appointment to and Assumption of Command*, 11 February 2016, Attachment 1.

⁴ AFI 52-101, *Planning and Organizing*, 5 December 2013, paragraph 5.1.9.

⁵ *Id.*, at paragraph 3.2.3.

⁶ *Id.*

⁷ Air Force Officer Classification Directory (AFODC), *The Official Guide to the Air Force Officer Classification Codes – A Specialty for Every Air Force Job and the Qualifications Necessary to Perform Each Job*, 31 October 2017.

⁸ But see *United States v. Bartlett*, 66 M.J. 426 (C.A.A.F. 2008), in which the Court struck down an Army regulation prohibiting convening authorities from detailing officers assigned to the Medical Corps, Medical Specialist Corps, Army Nurse Corps, Dental Corps, Chaplain Corps, Veterinary Corps to serve as Court members. Unlike in *Bartlett*, Congress has not established criteria for investigating officers like they have for qualifications to serve on a court-

Even assuming it is legal for chaplains to serve as IOs, there are policy reasons for not appointing them in such a capacity.

The CDI Guide discusses the chaplain's role in the CDI process, but the described role is of a counselor, rather than as investigator. At the end of a witness interview, the IO is directed to tell a military witness:

You are ordered not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except a chaplain, or your counsel if you have one until case closure or unless approved by me, the appointing authority, or higher authority.⁹

Similarly, civilian witnesses are informed they may discuss the investigation with a chaplain.¹⁰

If a chaplain were appointed as an IO, it could create a chilling effect on members' willingness to take advantage of chaplain's counsel. They are spiritual advisors and perform an invaluable role in helping those who are victims of crimes, witnesses to traumatic events, subjects of investigations, and those who conduct the investigation. If chaplains were seen as part of the disciplinary process, members might be less willing to seek their guidance. This could have the potential to decrease resilience and increase the potential for self-harm among members who rely on spiritual guidance to sustain them in difficult or stressful times.

Additionally, the Military Rules of Evidence recognize the importance of chaplains and the inviolability of communications made to chaplains.¹¹ It could create confusion and unnecessary issues relating to the usability of witness statements if a subject were to decide to open up to the IO and seek spiritual guidance during the interview, which simultaneously would put the chaplain in a difficult position during the interview.

Could a chaplain serve as a technical advisor rather than as an IO? If the basis of the investigation involved a religious issue, a spiritual matter, or the church tithes and offerings fund, chaplains could be useful as a technical advisor (identifying and explaining applicable provisions to IOs to help them conduct their investigation more effectively).¹² Even then, however, technical advisors are considered "part of the investigation team" and would have an "obligation to protect the privacy of all concerned parties (witnesses and subjects)."¹³ This role could create similar challenges if a chaplain from the wing conducting the investigation were used. If it becomes necessary to rely on a chaplain's expertise as a technical advisor during a CDI, it would be prudent to request assistance from a different wing or from higher headquarters rather than potentially creating a situation in which members of the wing conducting the CDI are unwilling to utilize the same wing's chaplain team.

martial. Therefore, the verbiage of the AFI does not conflict with the law with regard to CDIs as it does with regard to Article 25(d)(2), Uniform Code of Military Justice, as codified in 10 U.S.C. § 825(d)(2).

⁹ *CDI Guide*, page 56.

¹⁰ *Id.*

¹¹ See Military Rule of Evidence 503, *Manual for Courts-Martial* (2016 Edition), III-24.

¹² See *CDI Guide*, paragraph 3.5.

¹³ *Id.*

CONCLUSION

Most chaplains meet the criteria to perform the IO role. They are well educated. They generally are mature and communicate well, both orally and in writing. Given their counseling function, they are likely able to ask probing questions, and they commonly have the critical thinking skills necessary to perform this task. However based on the foregoing, it is our position chaplains should not be utilized as IOs for CDIs.

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