

## **Ask the Lawyer: When is Wrongful Conduct Not Prejudicial to Good Order and Discipline?**

By Mathew Tully

Q. When is wrongful conduct not prejudicial to good order and discipline in violation of the General Article?

A.

The conduct prejudicial clause is one of three on which an Article 134 violation can be based. Conduct of a nature to bring discredit upon the armed forces is another clause. The Manual for Courts-Martial acknowledges that the conduct prejudicial clause may seem broad because [a]most any irregular or improper act on the part of a member of the military service could be regarded as prejudicial in some indirect or remote sense. Conduct prejudicial, however, excludes these distant effects and is more concerned with disorders and neglects that are reasonably direct and palpable.

For anyone facing an Article 134 charge for conduct prejudicial to good order and discipline, what qualifies as indirect and remote?" Generally, indirectly prejudicial conduct is not obvious. It should not have any measurably divisive effect on unit or organization discipline, morale, or cohesion. Further, it should not negatively affect the respect for a service member or his or her stature, according to the Manual.

The case of U.S. v. Jonsson (2009) sheds some light on this indirectly prejudicial question. This case involved a Coast Guard boatswains mate second class who was married and had an affair with a subordinate. He pleaded guilty to, among other things, adultery in violation of Article 134. Due to the fact that no one outside of the Coast Guard knew of the affair, the Article 134 charge could not be based on the service-discrediting clause, the court noted. That left the charge hinging on the conduct prejudicial clause. The U.S. Coast Guard Court of Criminal Appeals said the government failed to establish a link between the admitted conduct and effect on good order and discipline. Only a handful of people in the boatswains mates unit knew of the affair, meaning there was a likelihood that no detrimental reaction to the relationship could occur. Ultimately, the court found the guilty plea to adultery to be improvident and it set aside and dismissed the charge.

Service members charged with any offense under the General Article for conduct prejudicial to good order and discipline should immediately consult with a military law attorney. Depending on the circumstances, a lawyer could help the service member fight the charge by showing their conduct was not prejudicial to good order and discipline or that it was indirectly prejudicial and remote.

