

Air Force Reserve opts not to discipline Mark Sanford over marital affair

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COLUMBIA — The U.S. Air Force Reserve considered disciplinary measures against Gov. Mark Sanford over his extramarital affair but has decided to take no action, his command office told The Greenville News.

Sanford serves as a captain in the Air Force Reserve. Adultery is considered a crime in the military, punishable under the Uniform Code of Military Justice. Those in the armed forces also are subject to nonjudicial punishment for acts of adultery, ranging from a commander's letter of reprimand, which can end an officer's career, to forfeiture of pay.

Sanford publicly confessed last month to an adulterous affair after returning from a secret trip to Argentina where he had met his lover. He apologized for his behavior and said he was attempting reconciliation with his wife.

In response to questions by The News, Cliff Tyler, spokesman for headquarters of the Air Force Reserve Command at Robins Air Force Base in Georgia, said, "They looked at all the facts and they looked at the circumstances and the decision was made as a command not to take any action against him."

Tyler said he was unsure of the exact process used or the reasons behind the officials' decision. He said it was a deliberative process.

Sanford is in Europe on a two-week vacation with his family. He will return Aug. 5.

Joel Sawyer, spokesman for the governor, said he had no comment on the military review of Sanford's affair.

"He's looking forward, not backward," he said.

Eighteen members of the service faced court-martial in 2008 involving at least one charge of adultery, according to the Air Force. Another 173 faced non-judicial punishment for adultery. So far this year, seven members of the Air Force have faced court-martial on an adultery charge, and 87 have faced non-judicial punishment, according to Lt. Col. Linda Pepin, spokeswoman for the Secretary of the Air Force.

Stephen Karns, a Dallas military lawyer since 1995, said it wouldn't be surprising that a commander would avoid any disciplinary action in a case like Sanford's, in which no spouse is complaining to the military, the adultery didn't involve another member of the military and there were no other charges.

Many adultery incidents, such as those that become known to military commanders, end up in nonjudicial proceedings, he said, that can result in a forfeiture of some pay, a written reprimand or a verbal admonishment.

But in the case of a reservist, even that is remote because the military code of law only applies to those on active duty, said Mathew B. Tully, a Washington lawyer who has practiced military law for 10 years and writes a legal column for military newspapers.

"It is near impossible for reservists to be charged with this," he said.

Tully said if Sanford were to have engaged in an affair while on duty, he could be charged.

"But if he was having sex with his mistress on a Tuesday and his military duty was on Saturday and Sunday, there is no way there is Uniform Code of Military Justice jurisdiction over him," he said.

Tully said in cases in which he has been involved, there is normally some type of military connection — that is, the officer has sex with another member of the military, or a spouse of another member of the military overseas and the accused adulterer was on active duty at the time of the affair.

"Here's a typical situation that comes up," he said. "You're a sailor. Your home port is in Hong Kong. You're off on liberty and you're married and you have sex with a prostitute. Technically, did you commit adultery? Absolutely. Are you going to be prosecuted for that? Not at all."

That's because part of the requirement for prosecution is that the affair "was to the prejudice of good order and discipline in the armed forces," Tully said, meaning that it affected morale of the unit or brought discredit to the military.

That's more often the case, he said, in situations in which a married officer has sex with a subordinate or the spouse of another member of the military.

Those officers who are prosecuted face the end of their careers, lawyers say. In fact, Tully said, officers are often asked to resign in lieu of a court-martial. Such arrangements have cut short the careers of the Air Force's first female B-52 pilot, who was caught in a highly publicized case in 1997, as well as various generals.

In the case of Lt. Kelly Flinn, who was the nation's first female pilot of a B-52, she was accused of ignoring repeated warnings from superiors to stop her affair with the husband of an enlisted female airman. She eventually was discharged, The Los Angeles Times reported.

Sanford joined the Air Force Reserves in 2002 and was commissioned as a second lieutenant as he campaigned for his first term as governor. He initially was assigned to the 315th Aeromedical Evacuation Squadron based in Charleston. In 2005, Sanford was assigned to the Air Force National Security Emergency Preparedness command at Tyndall Air Force Base in Panama City, Fla.

Maj. Susan Romano, director of public affairs for the First Air Force at Tyndall, said the governor's job is as a liaison officer with military or civilian units for disasters or emergencies nationwide.

Early in his first term Sanford was challenged in court over his service in the Air Force Reserve because of a clause in the state Constitution that prohibits a governor from also holding another office or commission.

Sanford told the South Carolina Supreme Court in 2004 that his service in the Air Force Reserve made him a better governor and a better father to his four sons. The justices sided with Sanford and ruled he could remain in the Reserve.