MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
UNDER SECRETARY OF DEFENSE FOR PERSONNEL
AND READINESS
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE

SUBJECT: Title 10, U.S.C., § 654

In light of the legal uncertainty that currently exists surrounding the Don’t Ask, Don’t Tell law and policy, including last week’s injunction issued by the District Court in Log Cabin Republicans v. United States, Case No. CV 04-84425-VAP (C.D. Cal.), and the temporary stay of that injunction issued yesterday by the Court of Appeals, and in order to further ensure uniformity and care in the enforcement of the Don’t Ask, Don’t Tell law and policy during this period, effective immediately and until further notice, no military member shall be separated pursuant to 10 U.S.C. § 654 without the personal approval of the Secretary of the Military Department concerned, in coordination with the Under Secretary of Defense for Personnel and Readiness and the General Counsel of the Department of Defense. These functions may not be delegated.

cc:
Chairman of the Joint Chiefs of Staff
Assistant Secretary of Defense for Public Affairs
MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Don’t Ask, Don’t Tell Legal Developments

Last week I wrote to inform you of the injunction issued by a federal district court in California ordering the Department of Defense to cease enforcement of the “Don’t Ask, Don’t Tell” law. I noted then that the Department of Justice had filed an appeal and sought a stay of the injunction while the appeal is pending.

Last night the appellate court issued a temporary stay of the injunction, for at least the next four days, while it considers whether to grant a stay of the injunction for the entire time the case is on appeal before that court. This means that, during this period, the injunction is suspended and the Don’t Ask, Don’t Tell law and policy is back in force and in effect. Within days the court will decide whether to extend the stay for a longer period of weeks or months, or discontinue it. No doubt, I will have additional guidance for you at some point soon.

This latest twist highlights the legally uncertain period in which we now find ourselves with respect to Don’t Ask, Don’t Tell, and the need to further ensure uniformity and care in the enforcement of this law. Accordingly, the Secretary of Defense is directing that, effective immediately and until future notice, no military member shall be separated pursuant to title 10, U.S.C., § 654, without the personal approval of the secretary of the military department concerned, and only in coordination with me and the General Counsel of the Department of Defense, and that this authority may not be delegated. A copy of the Secretary of Defense’s directive is attached.

We note again for Servicemembers, that altering their personal conduct during this period, in reaction to last week’s injunction, may have adverse consequences for themselves or others depending upon the state of the law. I also emphasize again, that it remains the policy of the Department of Defense not to ask Servicemembers or applicants about their sexual orientation, to treat all members with dignity and respect, and to ensure maintenance of good order and discipline.

Clifford L. Stanley

Attachment:
As stated

cc:
Chairman of the Joint Chiefs of Staff
General Counsel of the Department of Defense