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What Happens if I Fail to Report for Duty?

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12.0 [Military Criminal Justice](#)

Q: I am of the impression that reserve component members are only subject to the UCMJ when on active duty or drilling. Does this mean that I cannot be subjected to a court martial for not responding to my orders, since I would never technically be on active duty?

A: You are subject to the Uniform Code of Military Justice (UCMJ) for failing to respond to your orders, regardless of if they are for active duty or inactive duty training, and service members have been subjected to court martial for such transgressions. *See Lawrence v. Maksym*, 58 M.J. 808 (N.M.Ct.Crim.App. 2003).

Unless otherwise stated, an order is self executing. So it becomes effective at the time that you are supposed to report, regardless of whether or not you actually show up. Throughout the duration of the order, you are subject to the UCMJ and can be charged with absence without leave (10 U.S.C. §886). In extreme circumstances, you could even be charged with desertion (10 U.S.C. §885), which can be punishable by death in a time of war. (It is most unlikely that you would receive capital punishment for failure to report for duty.)

In the event that the transgression is not realized until after the order expires, you can still be subjected to a court martial if you are still in the reserves (including the Individual Ready Reserve or IRR). In the case of *Lawrence v. Maksym*, for example, Major Lawrence had Active Duty for Special Work (ADSW) orders to report from 17-21 October, 2001, but he failed to properly execute them. He was, however, not charged until August 2002. At that point he was no longer on active duty, but was recalled and subjected to a court martial. On appeal, the U.S. Navy-Marine Corps Court of Criminal Appeals held that such a practice was permissible.² So as long as you are still affiliated with the military (active, reserve, IRR, etc.), you can be recalled and held accountable for failing to execute orders properly.

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*The views expressed in this article do not represent the Maryland Law School or the Marine Corps.

² For an in depth discussion on the legality of being recalled for a court martial, I invite your attention to [Law Review 1135](#).