

Under What Circumstances Is it Appropriate for a Reserve or Retired Army Soldier To Wear an Army Uniform?

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Update on Sam Wright

9.0—Miscellaneous

Q: I am a retired Colonel of the Army Reserve Nurse Corps and a life member of the Reserve Officers Association (ROA). I am also an active member of an association of nurses. Most but by no means all of the members of that association are active, reserve, or retired military nurses. For many years, active, reserve, and retired military nurses attending our association's annual meeting have worn our military uniforms.

This year, for the first time, our association has a national president who is not military. She has put out the word that military uniforms are not to be worn at our upcoming annual meeting. What gives? What are the rules about Army retirees and Reserve and National Guard personnel (not on active duty) wearing military uniforms?

¹ I invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1500 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), and other laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1300 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 34 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice at Tully Rinckey PLLC (TR), and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (May 2015), concerning the accomplishments of the SMLC. After ROA disestablished the SMLC last year, I returned to TR, this time in an "of counsel" role. To arrange for a consultation with me or another TR attorney, please call Ms. JoAnne Perniciaro (the firm's Client Relations Director) at (518) 640-3538. Please mention Captain Wright when you call.

A: I invite your attention to Chapter 23 of Army Regulation 670-1. That chapter is titled “Wear of the Uniform by Reserve, Retired, Separated, and Civilian Personnel.” Here are the pertinent paragraphs:

As used in this regulation, the phrase “occasions of ceremony” means occasions essentially of a military character, at which the uniform is more appropriate than civilian clothing. These functions include but are not limited to: military balls, military parades, weddings, and military funerals; memorial services, meetings, conferences, or similar functions of associations formed for military purposes if which the membership is composed largely or entirely of current or honorably discharged veterans of the Armed Forces or the United States. Authority to wear the uniform includes wear while traveling to and from the ceremony or function.³

Army National Guard and United States Army Reserve

- a. All members of the ARNG [Army National Guard] and USAR [United States Army Reserve] on any form of paid or unpaid inactive duty, active duty, annual training, or full-time National Guard duty, or AGR duty will wear the uniform and insignia prescribed for personnel in the AA [Active Army]. ARNG and USAR personnel are authorized to wear the uniform on the following occasions:
- b. Within the limits of the United States or its possessions, ARNG and USAR personnel not on active duty may wear the Army uniform only as follows:
 - (1)When participating in reserve training assemblies (inactive duty training), exercises, conferences, or ceremonies in an official capacity and under appropriate orders.
 - (2)When engaged in military instruction or attending any school or course of instruction under the auspices of the Armed Forces of the United States or the Reserve Components as a student under appropriate orders.
 - (3)When [serving as] instructors at an educational institution conducting courses of instruction approved by the Armed Forces or when responsible for discipline at like institutions.
 - (4)When attending social functions or informal gatherings of a military character. All current and former Soldiers will conform to the wear and appearance standards in this regulation while wearing the uniform under the provisions of this chapter. ...
 - (6)ARNG military technicians who are required to wear the uniform as a condition of their employment will wear the uniform for their federally recognized grade, as prescribed by the Adjutant General of their State, commonwealth, territory, or district.
 - (7)USAR technicians who are also members of the USAR may wear the Army uniform, at their option, while performing in their civil service status.

³ Army Regulation 670-1, section 23-1(a).

- c. ARNG personnel may also wear the Army uniform in the performance of State service when authorized to do so by the Adjutant General of their State, commonwealth, territory, or district.⁴

Retired Army personnel

In addition to the occasions for wear listed above [while serving as an instructor at an educational institution and conducting a course of instruction approved by the Armed Forces—e.g., JROTC], retired personnel are authorized to wear the uniform *only* on the following occasions:

- (1) While attending military funerals, memorial services, weddings, inaugurals, or other occasions of ceremony.
- (2) Attending parades on national or State holidays or other patriotic parades or ceremonies *in which any active or reserve U.S. military unit is taking part*. Uniforms for these occasions are restricted to service and dress uniforms; the combat uniform and physical fitness uniforms will not be worn. *Wearing the Army uniform at any other time, or for any other purpose than stated above, is prohibited.*⁵

Wear of the Army uniform by ARNG, USAR, retired, separated, and civilian personnel is prohibited under the circumstances listed in paragraph 3-7k.⁶

Wearing Army uniforms is prohibited in the following situations:

- (1) In connection with the furtherance of any political or commercial interests, or when engaged in off-duty civilian employment.
- (2) When participating in public speeches, interviews, picket lines, marches, rallies, or public demonstrations, except as authorized by the first O-5 in the chain of command.
- (3) When attending any meeting or event that is a function of, or is sponsored by, an extremist organization.
- (4) When wear the uniform would bring discredit upon the Army, as determined by the commander.
- (5) When specifically prohibited by Army regulations.⁷

The other services have similar regulations.⁸

⁴ Army Regulation 670-1, section 23-2.

⁵ Army Regulation 670-1, section 23-3(e) (emphasis supplied).

⁶ Army Regulation 670-1, section 23-7.

⁷ Army Regulation 670-1, section 3-7(k).

⁸ *Air Force*: Air Force Instruction 36-2903 of 18 July 2011, available at <http://www.afpc.af.mil/shared/media/document/AFD-140814-096.pdf>. *Coast Guard*: COMDTINST M1020.6G of March 2012, available at http://www.uscg.mil/hr/udc/docs/CIM_M1020_6G.pdf. *Marine Corps*: Marine Corps Order P1020.34G W/CH 1-5 of 31 March 2003, available at <http://www.marines.mil/Portals/59/Publications/MCO%20P1020.34G%20W%20CH%201-5.pdf>. *Navy*: NAVPERS 15665I available at <http://www.public.navy.mil/bupers-npc/support/uniformregulations/Pages/default.aspx>.