

# COMMANDER'S LEGAL GUIDE



**V CORPS**  
JULY 2004



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS, V CORPS  
UNIT 29355  
APO AE 09014

AETV-CG

06 JUL 2004

MEMORANDUM FOR Commanders, V Corps

SUBJECT: Commander's Legal Guide

1. The Office of the Staff Judge Advocate (OSJA) has prepared the attached Commander's Legal Guide to familiarize you with the many legal issues you may encounter during your command tour. The guide provides great insight into the significant legal authority you now possess, and it will be a valuable reference. Although the guide will prove to be very useful, it does not replace your routine coordination and communication with the trial counsel and the enlisted paralegals who support you.
2. I recommend you become familiar with the Commander's Legal Guide. The Army's military justice system is among the most respected in the world. As a commander, you play a very large role in the continued success of our system. The fairness of our system and its contribution to good order and discipline rests on you.
3. Our Soldiers deserve your best efforts in this important area, and I know they will get it. VICTORY CORPS!

  
WALTER WOJDAKOWSKI  
Major General, USA  
Acting Commander

## INTRODUCTION

This publication has been designed as a quick-reference tool for V Corps Commanders on matters pertaining to military justice and legal issues. Of all the pitfalls and problems commanders face in their daily routine, legal issues often present some of the most difficult and potentially hazardous situations. Commanders have a dual role: they are responsible for good order and discipline, but must at the same time protect the rights of both those who are victims of crimes and those accused of committing them.

There are, as a minimum, three things that commanders should understand regarding legal issues:

1. Every commander will be confronted with a legal issue or legal issues during his/her command tour.
2. The assigned unit trial counsel and his/her supervisory chain can help in resolving those issues.
3. Leaders (not lawyers) set the ethical and moral tone for the unit.

Rather than simply reproducing an existing Army Regulation or Pamphlet, this publication is designed to complement them. It provides more current and complete information on nonjudicial punishment, rights warnings, and search and seizure than AR 27-10. It also consolidates many of the more significant provisions of AR 635-200, Active Duty Enlisted Administrative Separations, in an easy-to-read format. At a minimum, the commander should have the following publications in addition to this document as references on military justice matters.

1. Manual for Courts-Martial, 2002 Edition (MCM)
2. AR 27-10, Military Justice, 9 Jun 02; USAREUR Reg 27-10, 22 Jan 02; and V Corps Reg 27-10, 1 May 02
3. AR 635-200, Active Duty Enlisted Administrative Separations, 19 Dec 03
4. AR 15-6, Procedure for Investigating Officers and Boards of Officers, 30 Sep 96
5. AR 600-20, Army Command Policy, 13 May 02
6. AR 600-8-19, Enlisted Promotions and Reductions, 20 Jan 04
7. AR 601-280, Army Retention Program, 30 Mar 99
8. FM 27-1, Legal Guide for Commanders, Jan 92
9. V Corps Policy Memos 11, 12, 13, 14 and 19

The reader will find many references to the ‘legal advisor’ and the need for consultation with this person on a continuing basis. This advisor will normally be the assigned unit trial counsel. This guide should not serve as a substitute for timely legal advice. Phone numbers for all area legal offices are included in Appendix K. You should use those numbers freely.

Commanders should also be familiar with the role of judge advocates assigned to the United States Army Trial Defense Service (USATDS). USATDS provides defense services throughout the Army. The mission, organization, and function of USATDS personnel are set forth in AR 27-10, Chapter 6.

Suggestions for improving this publication should be addressed to the Staff Judge Advocate, V Corps, ATTN: Chief, Criminal Law Division (MAJ Huestis), APO AE 09014

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Chapter 1  
Commander's Response to Disciplinary Problems

A. Introduction.

1. Military commanders routinely deal with disciplinary problems and violations of the law. Commanders should take the least severe course of action to correct the disciplinary problem. Selecting the most appropriate means rests in the sound discretion of the commander after considering the individual, the infraction, the surrounding circumstances, and staff advice. Before making any decision or recommendation concerning an alleged violation, a commander should conduct a preliminary inquiry (usually informally) to gather and evaluate all pertinent facts. The commander then has several options to deal with any misconduct discovered. The commander may wish to employ non-punitive measures, administrative actions, non-judicial punishment, or one of the three levels of courts-martial. The options available are discussed more fully below and in the following chapters.

2. International Jurisdiction. Whether Germany or the US Army prosecutes a case depends primarily on the status of the victim. Under the NATO SOFA and applicable rules, if the victim is the United States or an ID card holder, the US Army has primary jurisdiction. In most other cases, Germany has primary jurisdiction, but pursuant to a US request often waives that jurisdiction on a case-by-case basis. Germany has exclusive criminal jurisdiction over offenses committed by civilians in Germany.

3. USAREUR Area Jurisdiction. The jurisdiction of a commander is the limits or territory within which the commander has authority to act. The concept of jurisdiction is not limited to courts-martial. Other actions, such as non-judicial punishment, administrative discharges, line of duty determinations, and reports of survey are all subject to jurisdictional limitations. The two basic choices are command-line jurisdiction and area (or territorial) jurisdiction. USAREUR Regulation (UR) 27-10, para 12, favors area jurisdiction. In Germany, normal chain-of-command relationships may stretch across hundreds of kilometers. Area jurisdiction ensures that local commanders handle local misconduct. Area jurisdiction, however, is not written in stone. Senior commanders may adjust area jurisdiction within their areas to best serve the needs of the command. Any questions regarding international or area jurisdiction should be addressed with your local Trial Counsel.

B. Commanders' Disciplinary Options:

1. Admonition and Counseling. The most common type of non-punitive resolution is admonition and counseling. Counsel the soldier with a view toward preventing a recurrence of the problem. Keep in mind that it is normally inappropriate to criticize or reprimand soldiers in public so as to bring scorn or ridicule upon them. Counseling should be conducted in private and in a non-abusive manner. Counseling for misconduct should be documented on DA Form 4856 and comply with AR 635-200 (para. 1-16). Failure to use the "1-16" language could lead to a later separation action being delayed or overturned. A counseling form with the appropriate warning is at Appendix E.

2. Denial of Privileges. Commanders may deny the use of specified privileges in response to a soldier's misconduct or performance deficiency. Constructive counseling is necessary, so that the individual understands the relationship between the misconduct or deficiency and the withheld privilege. For example, denial of privileges may include withholding permission to engage in MWR activities.

3. Corrective Training. Corrective training is appropriate when the training relates to the deficiency. If the purpose is primarily punitive, it is not "corrective training" and it is not permissible. Corrective training can be effective and is appropriate when the problem to be corrected involves unit and/or individual mission readiness. Corrective training may be imposed in addition to normal duties and may affect a soldier's free time. AR 27-10. para 3-3(c) and AR 600-20, para 4-6(b)

4. Efficiency Ratings. OER and NCOER ratings used alone or with other courses of action can influence conduct. Be careful, however, there are specific requirements on how to process a negative or referred report.

5. Administrative Reduction. An individual who has served in an assigned position for 90 days or more may be reduced one grade for inefficiency by the appropriate promotion authority. A company grade commander may reduce a soldier in the grade of E-4 and below. A field grade commander may reduce a soldier in the grade of E-6 and E-5 by one grade. If a soldier has six years in service, the soldier may request an administrative board. Contact your Trial Counsel about initiating an administrative reduction. AR 600-8-19, Ch 7, Sec III

6. Bar to Reenlistment. Commanders can and should bar unsuitable or untrainable soldiers from reenlisting.

7. Memorandum of Reprimand (**MOR**). See Chapter 2.

8. Nonjudicial Punishment (**Article 15**). See Chapter 3. See Article 15 Checklist, Appendix A.

9. Administrative Separation. Administrative separations, often called "chapters," are used to voluntarily or involuntarily separate soldiers from the Army. There are specific procedural requirements governing separation actions, so coordinate with your Trial Counsel. See Chapter 5.

10. Court-Martial. Generally, a trial by court-martial is the last resort in the correctional process. See Chapter 4.

#### C. Military Justice Support Personnel

1. The Staff Judge Advocate (SJA). The SJA is the Corps Commander's legal advisor. The SJA is responsible for technical oversight of the administration of military justice within the Corps Commander's jurisdiction, and for coordination with higher levels of command as necessary.

2. Chief of Military Justice (COJ). The COJ supervises the Corps pre- and post-trial sections and provides technical supervision to all Corps trial counsel, military justice paralegals, victim-witness liaisons and court reporters.

3. Trial Counsel (TC). Trial Counsel is the prosecutor and legal advisor for brigade, battalion and company level commanders. Trial Counsel represents the Government's interests and is responsible for witnesses, documents, and all other arrangements related to the trial.

4. Paralegals (27D). Paralegals are the primary liaison for all legal support. They prepare documents, correspondence, and packets for non-judicial and court-martial actions, and are the assistant to the trial counsel. Paralegals also provide limited legal services to soldiers, such as powers of attorney and notary services. The Brigade or Battalion Paralegal SPC/NCO is trained to answer many legal questions and should be your first point of contact. Paralegals may not provide legal advice, but they can answer most procedural questions.

5. Defense Counsel (DC). Defense Counsel, detailed by the Trial Defense Services (TDS), are tasked with defending soldiers in military-related legal actions. Soldiers usually have the right to retain civilian counsel, at their own expense, to represent them in court-martial actions. Commanders must understand that Defense Counsel's duty is to zealously represent the accused soldier within the bounds of the law and professional ethics, to make the prosecution meet the burden of proof, and to represent the accused soldier rather than the U.S. Army. Soldiers have the right to consult Defense Counsel regarding administrative chapter actions, Article 15s, and Summary Courts-Martial. Soldiers have the right to be represented by Defense Counsel at administrative separation hearings, pre-trial confinement hearings, and Special and General Courts-Martial.

## Chapter 2

### Reprimands

#### A. Types of Reprimands

1. **Memorandum of Reprimand (MOR)**. A Commander at any level may issue an MOR. An MOR may be issued by itself, or in conjunction with other administrative or UCMJ actions. MORs issued by non-general officers are retained by the unit in the soldier's local 201 file for the earlier of three years or until the soldier is reassigned to another GCM jurisdiction. See AR 600-37.

2. **General Officer Memorandum of Reprimand (GOMOR)**. For more serious offenses, a commander may request an MOR executed by a general officer. GOMORs may be filed in a soldier's Official Military Personnel File (OMPF) and can have a permanent impact on his/her military career. For assistance in requesting a GOMOR, contact your Trial Counsel or Paralegal.

#### B. Procedure for imposing MOR/GOMOR.

1. Once a commander issues the MOR, a signed copy should be served to the soldier. The original should be retained. The soldier should acknowledge receipt of the MOR by signing an acknowledgement memorandum. The soldier should also be informed that he/she has five calendar days to submit matters on his behalf. The soldier may seek advise from the local Legal Assistance office. If you need assistance in preparing the MOR, contact your Trial Counsel or Paralegal.

2. After reviewing any material submitted by the soldier, the commander must decide whether to file the MOR in the soldier's local unit file or his OMPF (if applicable). The commander should notify the soldier of the decision in writing.

a. **Local File**. The original signed MOR should be inserted into the soldier's military personnel records jacket with the original soldier's acknowledgment memorandum and any matters submitted by the soldier. The MOR should be removed from the unit file when the soldier transfers to a unit within a different general court-martial convening authority jurisdiction, or after three years, whichever is earlier.

b. **OMPF**. Filing an MOR in a soldier's OMPF requires approval from the CG, V Corps (currently delegated to the CoS). Coordinate this request through your Trial Counsel.

## Chapter 3

### Non-judicial Punishment (NJP)

A. Introduction. Commanders may impose non-judicial punishment for minor UCMJ offenses committed by military personnel under their command pursuant to Article 15 of the UCMJ (See also, AR 27-10, para. 3-2). An offense is "minor" if the offense has a maximum punishment that does not include a dishonorable discharge or confinement for more than one year if tried by GCM. A soldier facing non-judicial punishment under Article 15 has the right to decline NJP and instead demand trial by court-martial. Acceptance of NJP is not an admission of guilt; the soldier is simply electing to have the commander handle the case and determine guilt and punishment (if warranted). The commander imposing the NJP should not decide the issue of guilt until the soldier has presented all evidence in his defense. If the commander concludes that the soldier is guilty beyond a reasonable doubt, he should consider the soldier's evidence in extenuation and mitigation before imposing punishment.

B. Who may impose NJP? Commanders (commissioned and warrant officers) may impose non-judicial punishment upon military personnel under their command.

C. Types of NJP.

1. Summarized. If a commander determines, after a preliminary inquiry, that an alleged offense by an enlisted soldier warrants punishment less severe than under a formal Article 15, the commander may initiate summarized proceedings (DA Form 2627-1).

2. Formal:

a. Company Grade. Company grade officers in command may impose non-judicial punishment. If the company commander does not feel that company grade punishment is sufficient, he can use DA Form 5109-R to request that the next higher commander (field grade) exercise authority.

b. Field Grade. A field grade Article 15 is identical to a company grade Article 15, except it provides for greater maximum punishment.

### ARTICLE 15 PUNISHMENT CHART

	<u>Summarized</u>	<u>Company Grade</u>	<u>Field Grade</u>
Admonition/reprimand	YES	YES	YES
Extra duties	14 days	14 days	45 days
Restriction	14 days	14 days	60 days
Reduction (max.)			
E1 – E4	NO	one grade	to E-1
E5 – E6	NO	NO	one grade
E7 – E8	NO	NO	NO
Forfeiture of pay	NO	7 days pay	½ mo pay for 2 mo's.

Note: A senior commander may reserve the right to impose NJP on commissioned officers, warrant officers, and senior NCOs (E-9 and above) and for specific types of offenses. The CG, V Corps, has reserved the authority to impose punishment under Article 15, UCMJ, on officers and warrant officers within V Corps.

D. Procedure for Imposing NJP:

1. Preliminary inquiry. Before taking action under Article 15, a commander should have

reasonable grounds to believe that the alleged misconduct occurred, that the misconduct was an offense under the UCMJ, and that the accused committed the offense. No determination of guilt may be made until after all relevant evidence is considered. A commander should conduct an informal investigation into matters involving the alleged misconduct. This informal investigation is not the same as the more formal AR 15-6 Investigation. If a commander's informal investigation uncovers evidence of a serious criminal offense, CID or MPI should be immediately notified. If unsure, commanders should always contact their Trial Counsel for assistance.

2. Physical evidence. All physical evidence relating to the misconduct should be confiscated, photographed, safeguarded and documented. Record the chain of custody.

3. Sworn statement. A soldier suspected of wrongdoing must be informed of the right to remain silent. A soldier may waive the right to remain silent and provide a sworn statement. The waiver can be acknowledged on DA Form 3881 together with the sworn statement on DA Form 2823 (these forms are reprinted at Appendix F and G).

4. Request for Legal Action. Once the commander's inquiry is complete, an Article 15 request form should be prepared and sent to the Trial Counsel. A request form is at Appendix D. The request for Article 15 should include the following information:

- a. All evidence relevant to misconduct, including physical evidence, statements (sworn and unsworn), MP/CID/civilian police reports, video/audio recordings, etc.
- b. All counseling statements relating to the misconduct.
- c. ERB (or other official documentation of the soldier's full name, SSN, rank, and PEBD)

5. Article 15 Packet. Once prepared, the Article 15 packet with a DA Form 2627 and an Article 15 worksheet will be returned to the commander.

6. First hearing. At the initial hearing, the commander or a designated commissioned officer, warrant officer or senior NCO must inform the accused of the charges against him and a number of special rights. The recommended procedure is:

- a. Have the soldier report. Provide him with a copy of the DA Form 2627.
- b. Verify soldier's personal data from the top line of the DA Form 2627 (name, grade, SSN, unit and pay).
- c. Inform the soldier of the charges against him by reading line 1 of the DA Form 2627 and from any continuation sheets.
- d. Inform the soldier of his rights by reading line 2 of the DA Form 2627.
- e. Inform the soldier of the maximum punishment that may be imposed under Article 15 of the UCMJ and, upon request, of the maximum punishment that may be adjudged by a court-martial upon conviction of the offense(s) involved (if unsure, this information can be supplied by Trial Counsel).

7. Send the soldier to the Army TDS (Trial Defense Service). Before making a decision whether to accept an Article 15 proceedings or demand trial by court-martial, a soldier should be given 48 hours to consult with counsel from the TDS. Designate an escort (preferably an NCO who outranks the accused), give the escort a copy of the entire Article 15 packet, and see that the soldier visits TDS as soon as possible. (The soldier has no right to consult with an attorney during summarized proceedings).

8. Second hearing.

a. Have the soldier report. Go through each block in line 3 of the DA Form 2627 with the soldier. If the soldier demands trial by court-martial, stop the hearing immediately and dismiss the soldier. Contact your Trial Counsel about initiating a court-martial. If the soldier does not demand trial by court-martial, but rather intends to present persons or matters on his behalf, the commander may consider any matters reasonably relevant and available. Delay the hearing for a reasonable time so that the soldier has sufficient time to locate persons or gather materials for the hearing. If the soldier does not demand trial by court-martial and does not elect to present matters in defense, proceed with the hearing.

b. Review the evidence and listen to any witnesses, including the accused soldier. Examine any matters submitted by the soldier in his defense. If it is determined beyond a reasonable doubt that the soldier has committed an offense under the UCMJ, read from line 4 of the DA Form 2627 and inform the accused of the punishment imposed. Record the punishment on the Article 15 worksheet provided by the Trial Counsel, but do not write it directly on the DA Form 2627. The Trial Counsel will review punishment to ensure if it is authorized, and will record the punishment on DA Form 2627.

c. For E-5 and above, indicate on line 5 whether the Article 15 should be filed in the soldier's performance or restricted fiche of the OMPF.

d. Sign under line 6 of the DA Form 2627.

e. Have the soldier indicate on line 7 whether he wishes to appeal the Article 15 to the next higher authority and, if so, whether he wishes to submit additional matters in defense.

f. Have the soldier sign under line 7.

g. Dismiss the soldier and return the Article 15 packet to the Trial Counsel.

E. Filing the Article 15. Once the Article 15 paperwork is complete and is returned to the commander by the Trial Counsel, it is the unit's responsibility to properly file the DA Form 2627. If a soldier is an E-4 or below, the Article 15 should be maintained in the soldier's 201 file within the unit for two years, after which all copies must be destroyed. If the soldier is an E-5 or above, a copy of the Article 15 should be sent by the unit's S-1 to the appropriate filing office listed in AR 27-10, paragraph 3-37b(2). Coordinate with your Trial Counsel if you have any questions about the procedure.

## Chapter 4

### The Court-Martial System

A. Introduction. There are three types of courts-martial: Summary, Special, and General. A Summary Court-Martial is akin to a formal Article 15, but is not conducted by the commander. Like an Article 15, a Summary court-martial does not result in a criminal conviction, and there is no right to a trial by members (jury). Special and General Courts-Martial are adversarial proceedings before a military judge with military lawyers representing the U.S. government and the accused (unless civilian counsel is requested). At Special and General Courts-Martial, the accused may elect to have the question of guilt and, if found guilty, the sentence, decided by a military judge or the members.

#### B. Types of Courts-Martial:

1. Summary Court-Martial (**SCM**): Battalion commanders can convene a SCM to try enlisted soldiers for non-capital UCMJ offenses. An impartial commissioned officer in the grade of O-3 or above conducts the SCM trial proceedings, determines guilt or innocence and the appropriate sentence if a guilty verdict is rendered (subject to approval by the convening authority). The accused has a right to consult with TDS before trial, but does not have a right to be represented by TDS at the hearing. A soldier can refuse to be tried by a SCM, just as a soldier can refuse non-judicial punishment, and elect a higher level court-martial. If the accused objects to a SCM, the commander should discuss alternate courses of action with the Trial Counsel.

2. Special Court-Martial (**SPCM**): Although a SPCM may be convened by a brigade/regimental commander, here in V Corps a SPCM is convened by the CG. The accused is ordinarily represented by TDS (although civilian counsel may be retained), and the Trial Counsel represents the U.S. government. The accused may elect trial by military judge or by a panel composed of at least three members. An enlisted accused has a right to at least one-third of the panel consisting of enlisted members if he/she so requests.

3. General Court-Martial (**GCM**): A GCM is convened by the CG. Referral to a GCM requires a preliminary investigation and hearing by an Investigating Officer pursuant to Article 32, UCMJ. The accused has the option of trial by military judge alone or by a jury panel. Upon request by an enlisted accused, at least one third of the panel must consist of enlisted members.

#### COURT-MARTIAL PUNISHMENT CHART

	<u>SCM</u>	<u>SPCM</u>	<u>GCM</u>
Forfeiture of monthly pay:	2/3 for 1 mo.	2/3 for 12 mos.	Total
Reduction (max.)			
E1 – E4	to E1	to E1	to E1
E5 and above	one grade	to E1	to E1
Discharge:			
Enlisted	NO	BCD	BCD/DD
Officers	N/A	NO	Dismissal
Confinement (max.):			
E1 – E4	1 month	12 months	No limit
E5 and above	NO	12 months	No limit
Officers	N/A	NO	No limit

### C. Procedure for Initiating a Court-martial:

1. Preferral of Charges. Once the Trial Counsel has reviewed all evidence pertaining to an investigation and compiled official charges, the command must review the draft charges and formally initiate them against the accused. Typically, the company commander prefers charges against the accused. In doing so, the commander acts as the "accuser" and affirms that he is familiar with the evidence and the charges and that he supports the initiation of a trial by court-martial. Once complete, the command generally has 120 days from the date of preferral to arraign the accused before a military judge. The trial counsel will assist the commander at every stage of the process

a. Pretrial restraint. Pretrial restraint consists of a restraint on a person's liberty which is imposed before and during disposition of charges. It is imposed when a commander has a reasonable belief that an accused may engage in future criminal behavior or is a flight risk. Pretrial restraint can range from revocation of certain privileges to pretrial confinement. Before imposing any type of pretrial restraint commanders should contact their Trial Counsel.

b. Chapter 10 Discharge. A soldier against whom charges have been preferred at the SPCM or GCM level may submit, through his defense counsel, a request for discharge in lieu of court-martial. If granted by the CG, such a discharge typically results in a separation with an Other Than Honorable (OTH) characterization. A discharge under Chapter 10 is not a command-initiated chapter.

c. Article 32 Investigation. An Article 32 investigation is required before any charge may be referred to a GCM. If a GCM is initiated against a soldier, the convening authority will detail an Investigating Officer upon determination that the charges are serious enough that trial by GCM is appropriate.

2. Referral to Trial. Once a convening authority refers a charge to trial by court-martial, the Trial Counsel will coordinate getting the case docketed for trial. A trial date will be set and the command will be informed of its responsibilities. These responsibilities may include locating military witnesses, escorting the accused to trial, and providing a bailiff for the proceeding. Once complete, if the accused is convicted and sentenced to confinement, the command will be responsible for transporting the accused to the confinement facility in Mannheim.

3. Statute of Limitations. Statutes of limitations are the laws that place limits on how long after an offense is committed criminal charges may be filed. The statute of limitations for non-judicial punishment (Article 15s) is two years. The statute of limitation for offenses subject to trial by court-martial is five years, with the exception that AWOL or missing movement in time of war, or any offense punishable by death, which have no time limit.

## Chapter 5

### Inspections v. Search and Seizure

A. Introduction. The Fourth Amendment allows reasonable searches and seizures that are properly authorized and based upon probable cause. Since each fact situation is unique, a commander should contact Trial Counsel before initiating a search. Remember, inspections are not searches, but are instead a commander's tool to assess overall unit readiness.

#### B. Inspections v. Searches

1. "Health and Welfare" inspections. Commanders have the authority (and duty) to inspect military personnel and property within their command. Inspections ensure that barracks, work areas, vehicles and other equipment and locations used by soldiers are clean, safe, serviceable, and mission-ready. They also ensure that all matters affecting the health, safety and morale of soldiers within the command meet or exceed military standards in order to accomplish the unit's mission. Inspections are an important tool in ensuring good order and discipline. Commanders run into problems when the line between inspections and searches is blurred, or when inspections are seen as pretexts for searches. Random or 100% urinalysis (UA) testing, for example, is usually done in the context of an inspection, not a search. Commanders need to know that their soldiers are healthy, drug-free and mission-capable. In contrast, selecting one soldier from many to submit to a UA based upon a hunch of illicit drug use amounts to a search. That is illegal in the absence of probable cause and proper search authorization. Should a commander suspect illegal drug use in his unit, 100% of the unit can be subjected to a UA test. Should a valid inspection uncover contraband (e.g., evidence of drugs/drug use, illegal weapons, pornography, etc.), the contraband may become evidence in a subsequent criminal case. If disciplinary action is pursued against a soldier, propriety of the commander's inspection may become an issue. If Defense Counsel learns that the inspection was improperly executed, then the evidence may be later challenged and suppressed. On the other hand, when defense counsel is confronted with evidence from a properly administered inspection, the accused will be faced with solid and admissible evidence. It is essential that commanders authorize inspections solely for the security, military fitness, and good order and discipline of the unit. The following rules will help ensure that a "health and welfare" inspection is conducted properly:

- a. inspect for unit fitness, health, welfare and mission capability;
- b. inspect everyone in the unit (100%) or **randomly** choose persons to be inspected;
- c. schedule inspections ahead of time (no need to notify those being inspected); and
- d. inspect everyone equally and to the same degree. Do not target suspects.

2. "Probable cause" searches by Commanders. Commanders may order searches of people and things under their command based upon "probable cause." In other words, when a commander reasonably believes, based upon reliable evidence, that someone or something under his command is involved in criminal activity, the commander may authorize a search. Mere suspicion or rumor is not enough to trigger a valid, legal search. A search may be based upon hearsay evidence (so long as the hearsay is reliable). A commander who orders a search of a specific individual or location within his command must have knowledge of the facts and circumstances upon which probable cause is based prior to ordering the search. A commander may not gather facts and evidence after the search to justify the search. If time permits, a commander should first contact Trial Counsel for guidance. A commander may authorize searches either verbally or in writing. The best practice is to use DA Form 3745 to document the authorization in addition to obtaining written sworn statements or affidavits from others concerning the evidence. Items confiscated during a command-initiated search should be documented and secured by the unit. The documents should list precisely who handled the evidence (chain of custody) and when and where the evidence was obtained.

3. Search Warrant. The Constitution requires that an authorization to search come from a "neutral and detached" magistrate. A commander who has taken an active role in the case, such as investigating the facts or expressing bias or partiality, is disqualified from authorizing the search due to not being "neutral and detached." When this happens, the commander should request a search authorization from the next higher commander (who also must be neutral and detached) or from a military magistrate or judge. Judge Advocate officers who have been certified as military magistrates or judges may authorize searches of any property within their judicial jurisdiction. This search warrant authority is in addition to the commander's. When appropriate, commanders should consider gaining search authorizations from magistrates or judges as an alternative to exercising their own authority to avoid claims of partiality or active involvement.

4. Off-post Search and Seizure. US authorities must get authorization from the appropriate German authority before conducting search/seizure off-post (for example, privately rented or government leased housing). Your unit trial counsel will forward all requests through the local Army legal liaison for approval by German authorities.

5. Searches Under "Exigent Circumstances" and Incident to Arrest. Sometimes, time is of the essence. If someone is, for example, fleeing a crime scene or consuming drugs, the evidence may soon be gone. When suspects or evidence may disappear, or someone's health or safety is in jeopardy, there is said to be "exigent circumstances" and a place may be searched or a person apprehended without a warrant. In such circumstances, police, investigators, officers and NCO's may take immediate action and conduct a search to secure evidence or apprehend criminals. Additionally, anyone who is lawfully apprehended is subject to a search of the person and of the property in his or her possession or in the area under his or her immediate control (lunging distance). This type of search is justified for two reasons: (1) to search for weapons (safety issue), and (2) to avoid the concealment or destruction of evidence. The arrest must be lawful (i.e., based upon probable cause) before a search incident to arrest is justified.

6. Consent to Search. Nothing prevents a soldier from voluntarily consenting to a search of himself, his property or a location subject to his possession or control. Probable cause is not required if a soldier consents to a search. Since such consent amounts to a waiver of a fundamental right, the government must produce clear and convincing evidence that the consent was given intelligently and voluntarily. To determine whether consent was free and voluntary, courts look to disparity of rank/position and whether the circumstances were coercive. To establish intelligent and voluntary consent, inform the soldier that:

- a. specific item(s) are sought;
- b. specific areas will be examined in the proposed search;
- c. she/he has a legal right to withhold consent to search (may say no);
- d. she/he need not submit to a search unless it is properly authorized; and
- e. any evidence found in the proposed search can be used as evidence in a court-martial.

Note: The best practice is to obtain a search authorization from the proper commander or military magistrate/judge based upon probable cause. Although exigent circumstances may justify an immediate search without authorization, if time permits, obtain authorization to search. Not all of the exceptions to the warrant requirement are addressed in this guide. Commanders should coordinate with their Trial Counsel before initiating a search.

## Chapter 6

### Separation Actions

A. Introduction. Separation actions, or “chapter” actions, are an administrative tool to separate soldiers no longer fit for military service. This is not a judicial action, and as such, this administrative procedure has less stringent rules to efficiently separate the soldier. Still, soldiers who face administrative separation are afforded due process, and as such, may contest the administrative separation action. A soldier facing administrative separation may request a hearing before an administrative separation board, so long as the soldier:

1. has six or more years of total active and reserve service on the date of initiation of recommendation for separation; or
2. faces separation with a discharge under Other Than Honorable (OTH) conditions, per recommendation of the command.

B. Selected Separation Chapters. The following selected separation chapters serve as a guide to the requirements for the following types of separation actions under AR 635-200:

1. Chapter 5-8: Lack of an Adequate Family Care Plan. Soldiers must arrange for the care of their family members so as to be available for duty when and where the needs of the Army dictate, be able to perform assigned military duties without interference, and remain eligible for worldwide assignment. Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. IAW AR 600-20, paragraph 5-5, the following soldiers are required to maintain an adequate family care plan:

a. A pregnant soldier who has no spouse; is divorced, widowed, or separated; or is residing without her spouse; or is married to another service member of an active or reserve component of any service (Army, Air Force, Navy, Marines, or Coast Guard);

b. A soldier who has no spouse; is divorced, widowed or separated, or is residing apart from his or her spouse; who has joint or full legal and physical custody of one or more family members under the age of 19 or who has adult family member(s) incapable of self-care regardless of age.

c. A soldier who is divorced (not remarried) and who has liberal or extended visitation rights by court decree which would allow family members to be solely in the soldier’s care in excess of 30 consecutive days.

d. A soldier whose spouse is incapable of self-care or is otherwise physically, mentally, or emotionally disabled so as to require special care or assistance.

e. A soldier categorized as half of a dual-military couple of the active or reserve component of any service (Army, Air Force, Navy, Marines or Coast Guard) who has joint or full legal custody of one or more family members under age 19, or who has adult family member(s) incapable of self-care regardless of age.

1-16 Counseling Required: Yes (5-8b)(1-16a(1))

Medical Required: No

Mental Required: No

Type of discharge authorized: Honorable or General (5-1a)

Note: The command does not need to wait the full 30 days before initiating if the soldier provides a statement claiming an inability to provide adequate family care now or in the future.

Documents required by Trial Counsel:

- Request for Legal Action Form
- DA Form 5304-R, Family Care Counseling Checklist
- DA Form 5305-R, Family Care Plan
- All counseling statements regarding inability to perform due to parenthood
- ERB
- Flag for elimination

2. Chapter 5-13: Separation Because of Personality Disorder. A soldier may be separated for personality disorder (not amounting to a disability) that interferes with assignment or with performance of duty. This condition is a deeply-ingrained maladaptive pattern of behavior of long duration that interferes with the soldier's ability to perform duty. The diagnosis of personality disorder must be established by a psychiatrist or a doctoral-level clinical psychologist with necessary and appropriate professional credentials who is authorized to conduct mental health evaluations for DOD components.

1-16 Counseling Required: Yes (1-16a(2))  
 Medical Required: No  
 Mental Required: Yes (1-32e)  
 Type of discharge authorized: Honorable (5-13h)

Documents required by Trial Counsel:

- Request for Legal Action Form
- Mental examination signed by a psychiatrist or licensed clinical psychologist recommending separation IAW AR 635-200, Chapter 5-13, due to a mental condition which is deeply-ingrained causing maladaptive pattern of behavior of long duration.
- All counseling statements describing inability to perform because of personality disorder
- ERB
- Flag for elimination

3. Chapter 5-17: Separation Due To Other Designated Physical or Mental Conditions. Soldiers may be separated for a physical or mental condition so long as the condition does not amount to a recognized disability (AR 635-40), is not a condition which warrants separation under paragraph 5-11 or 5-13, AR 635-200, and is a condition that interferes with performance of the soldier's duties. IAW AR 635-200, paragraph 5-17a, such conditions may include, but are not limited to, chronic airsickness/seasickness, sleepwalking, dyslexia, severe nightmares, claustrophobia, and other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe enough that the soldier's ability to effectively perform military duties is significantly impaired.

1-16 Counseling Required: Yes (1-16a(3))  
 Medical Required: Yes (1-32a)(if based on physical condition)  
 Mental Required: Yes (1-32b)(if based on mental condition)  
 Type of discharge authorized: Honorable or General (5-1a)

Documents required by Trial Counsel:

- Request for Legal Action Form
- Mental examination (if basis is for mental condition) signed by a psychiatrist or licensed clinical psychologist
- Medical examination (if basis is for physical conditions)
- All counseling statements describing inability to perform because of mental or physical condition.
- ERB
- Flag for elimination

4. Chapter 6: Separation Because of Dependency or Hardship. Processed at the unit level (S-1), this chapter is requested by the soldier to be discharged for dependency or hardship. Pursuant to AR 635-200, para. 6-3a, a "dependency exists when death or disability of a member of a soldier's (or

spouse's) immediate family causes that member to rely upon the soldier for principal care or support." AR 635-200, paragraph 6-3b, states that a "hardship exists when in circumstances not involving death or disability of a member of the soldier's (or spouse's) immediate family, separation from the Service will materially affect the care or support of the family by alleviating undue and genuine hardship." A married soldier who becomes a parent by birth, adoption or marriage (step-parent), and whose child (or children) is/are under 18 years of age and resides within the household, may apply for separation under hardship. The soldier must submit evidence that the roles of parent and soldier are incompatible and that their military obligation cannot be met without neglecting the child or children.

1-16 Counseling Required: No  
Medical Required: No  
Mental Required: No  
Type of discharge authorized: Honorable or General

Documents required by Trial Counsel:

• DA Form 4187 or affidavit from soldier explaining hardship/dependency (containing the following language in Section IV – Remarks):

I request voluntary separation IAW AR 635-200, paragraph 6-3b, for hardship/dependency. I am not under charges, in confinement, under investigation, or pending consideration for separation per AR 635-40, AR 604-10, or Chapters 9, 11, 13, 14, or paragraph 5-8. I request a separation date of \_\_\_\_\_. I understand that if I have not completed my statutory service obligation (10 U.S.C. 651), I may be transferred to the Individual Ready Reserve (IRR).

The DA Form 4187 must include a recommendation of approval/disapproval by the company commander and be forwarded through the chain of command by endorsement to the approval authority. The intermediate commander(s) will either disapprove the request or recommend approval and if recommending approval, will specify which characterization of discharge is appropriate (Honorable or General).

- Affidavit or statement from family member on behalf of the soldier substantiating the dependency or hardship claim
- Affidavits by at least two agencies/individuals, other than family members, substantiating dependency or hardship (i.e., Red Cross, chaplain, or family physician)
- Detailed statement with monthly income/expenses info (if basis is financial difficulty)
- Death certificate or valid proof of death in the family (if the basis is because of a death)
- Physician's statement with diagnosis and date of disability (if basis is due to disability)
- If sole parenthood results from divorce or legal separation, a judicial decree/court order awarding child custody to the soldier.
- ERB

5. Chapter 13: Separation for Unsatisfactory Performance. Commanders may separate a soldier for unsatisfactory duty performance if the soldier fails, and will fail, to successfully participate in training and adequately serve in a capacity of a soldier; or the soldier's retention would have an adverse impact on military discipline, good order, and morale; and/or it is likely that the soldier will be a significant disruption in present/future duty assignments. Pursuant to AR 635-200, paragraph 13-2e, initiation of separation proceedings is required for soldiers (without medical limitations) who have two consecutive failures of the Army Physical Fitness Test (APFT) or who are eliminated for cause from Noncommissioned Officer Education System (NCOES) courses, unless the commander chooses to impose a bar to reenlistment.

1-16 Counseling Required: Yes (13-4 and 1-16a(5))  
Medical Required: Yes (1-32a)  
Mental Required: Yes (1-32b)  
Type of discharge authorized: Honorable or General (13-10)

Documents required by Trial Counsel:

- Request for Legal Action Form
- All counseling statements (especially important after initial APFT failure)
- For APFT failures, DA Form 705 - APFT Scorecard with "record." Retest must be within 90 days of first APFT failure. For NCOES disciplinary drops, any documents reflecting soldier's elimination from the school, particularly DA Form 1059
- Medical examination
- Mental examination
- ERB
- Flag for elimination

6. Misconduct. Chapter 14-12a: Minor Disciplinary Infractions. Soldiers are subject to separation from the service for demonstrating a pattern of misconduct consisting of minor military disciplinary infractions. Chapter 14-12b: Acts or Patterns of Misconduct. Soldiers are subject to separation per this chapter for discreditable involvement with civil or military authorities and/or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct that violates accepted standards of personal conduct found in the UCMJ, Army Regulations, the civil law, and time-honored customs and traditions of the Army.

1-16 Counseling Required: Yes (1-16a(6))

Medical Required: Yes (1-32a)

Mental Required: Yes (1-32b)

Type of discharge authorized: Honorable, General, or OTH (14-3).

Documents required by Trial Counsel:

- Request for Legal Action Form
- Counseling statements regarding soldier's pattern of misconduct
- Evidence of misconduct to include Summary Courts-Martial Result of Trial (DA Form 2329) and JAG review endorsement, Article 15s, bad check notifications, memoranda of reprimand, bar to reenlistment, DA Form 4187s for AWOL, etc.
- Medical examination
- Mental examination
- ERB
- Flag for elimination

7. Chapter 14-12c: Commission of a Serious Offense. A soldier may be separated for committing "a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM." See, AR 635-300, para. 14-12c. Commission of a serious offense includes:

a. AWOL or desertion; and

b. Abuse of illegal drugs. In accordance with AR 600-85, all drug offenders will be processed for separation upon discovery of a drug offense.\*

\*Note: AR 600-85, paragraph 1-35, requires mandatory initiation of separation of drug offenders, superceding that portion of AR 600-200, paragraph 14-12(c), distinguishing between first-time or repeat offenders.

1-16 Counseling Required: No

Medical Required: Yes (1-32a)

Mental Required: Yes (1-32b)

Type of discharge authorized: Honorable, General, or OTH (14-3)

Documents required by Trial Counsel:

- Request for Legal Action Form

- Evidence of misconduct to include Summary Courts-Martial Result of Trial (DA Form 2329) and JAG review endorsement, Article 15s, bad check notifications, letters of reprimand, bar to reenlistment, DA Form 4187s for AWOL, etc.
- Medical examination
- Mental examination
- ERB
- Flag for elimination

8. Chapter 15: Discharge for Homosexual Conduct. "Homosexual conduct is grounds for separation from the Army . . ." AR 635-200, Chapter 15, paragraph 2. This includes pre-service, prior service, or current service homosexual conduct. The term homosexual conduct includes homosexual acts, statements that demonstrate a propensity or intent to engage in homosexual acts, or homosexual marriage or attempted marriage. A soldier's statement that demonstrates a propensity or intent to engage in homosexual acts is grounds for discharge not because it reflects the soldier's sexual orientation, but because the statement indicates a likelihood that the soldier engages in, or will engage in, homosexual acts. This is a rebuttable presumption. **HOWEVER, CALL YOUR TRIAL COUNSEL PRIOR TO TAKING ANY ACTION IN REGARDS TO VALIDATING A SOLDIER'S STATEMENT THAT DEMONSTRATES A PROPENSITY TO ENGAGE IN HOMOSEXUAL CONDUCT.** A soldier's sexual orientation is considered a personal and private matter and is not a bar to continued service unless manifested by homosexual conduct. Paragraph 15-3 outlines exceptions. A soldier will be discharged if one or more of the following findings has been made and is approved by the separation authority:

- a. The soldier has engaged in, attempted to engage in, or solicited another person to engage in, a homosexual act or acts; or
- b. The soldier has made a statement that he/she is a homosexual or bisexual, or words to that effect; or
- c. The soldier has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

NOTE: Read 635-200, Chapter 15, para 15-3 for exceptions.

1-16 Counseling Required: No  
 Medical Required: Yes (1-32a)  
 Mental Required: Yes (1-32b)  
 Type of discharge authorized: Honorable, General, or OTH (15-3)

Documents required by Trial Counsel:  
 Request for Legal Action Form  
 Evidence of Homosexual Conduct (soldier's statement, commander's report, etc.)  
 Medical examination  
 Mental examination  
 ERB  
 Flag for elimination

9. Chapter 18: Failure To Meet Body Fat Standard. Soldiers failing to meet the body fat standards set forth in AR 600-9 may be separated when such condition is the sole basis for the separation. IAW AR 635-200, a commander may separate a soldier in the weight control program pursuant to the following four criteria:

- a. Failure to make satisfactory progress after any two consecutive monthly weigh-ins while enrolled in the Army Weight Control Program (AR 600-9, para 21e(2)).
- b. If no medical condition exists, initiation of separation proceedings **is required** for soldiers not making satisfactory progress in the program after a period of 6 months, unless the

responsible commander chooses bar to reenlistment per AR 601-280, Chapter 6 (AR 635-200, para 18-2a).

c. Initiation of separation proceedings is required for soldiers who fail to meet screening table weight and body fat standards during the 12-month period following removal from the weight control program, provided no medical conditions exists (18-2a).

d. Soldiers without medical limitations who exceed the screening table weight and body fat standards after the 12 month period but prior to 36 months following removal from the program, and who do not meet the standards during the 90-day grace period prescribed by AR 600-9, will be processed for separation.

1-16 Counseling Required: Yes  
Medical Required: Yes (1-32a)  
Mental Required: Yes (1-32b)  
Type of Discharge authorized: Honorable (18-2e)

Documents required by Trial Counsel:

- Request for Legal Action Form
- Notification from the commander and receipt of notification from soldier acknowledging entry into the Weight Control Program (AR 600-9).
- Memorandum from health care personnel that no medical condition exists which precludes the soldier from losing weight (AR 600-9).
- Memorandum from nutritionist that soldier was provided nutrition education and weight reduction counseling (AR 600-9).
- If the chapter is for a soldier who re-enters the overweight program, evidence of prior elimination from the Weight Control Program.
- Monthly weigh-in sheets
- Medical examination
- ERB
- Flag for elimination

Note: Below is a proposed course of action for commanders who encounter an overweight soldier in his command:

- Soldier is weighed/taped and exceeds the screening table weight and body fat standard (AR 600-9).
- Commander refers soldier to the nutritionist for counseling and weight-loss advice. This is done by memorandum and must take place as soon as the soldier is found to have exceeded the body fat standards.
- Commander refers soldier to the TMC for medical screening to determine if there is a medical condition that will preclude the soldier from losing weight. This is also done by memorandum and must take place as soon as possible after the soldier has been enrolled in the program.
- Commander initiates flag.
- The commander informs soldier of enrollment into the overweight program in memorandum format. When the soldier acknowledges receipt of the memorandum, the clock starts for the purposes of chapter action.
- Conduct monthly weigh-ins. If the soldier shows no improvement in any two consecutive monthly weigh-ins, initiate separation. If after six months soldier has not shown adequate improvement, the commander can either impose a bar to reenlistment or can chapter. If the soldier meets the body fat standard and/or the screening weight, remove the soldier from the overweight program. Removal is done through memorandum and should be kept on file in the unit for 36 months.

## Chapter 7

### Victim/Witness Assistance

A. Introduction. Commanders play an important role in protecting the rights of victims and witnesses of crimes. When soldiers and civilians have suffered severe physical, emotional, and financial injury as a result of crimes committed against them, they deserve our utmost attention. Moreover, without their cooperation, the military justice system ceases to function effectively. Commanders should do everything in their power to assist victims and witnesses, while being ever vigilant not to infringe upon the constitutional rights of an accused. The Department of Defense Bill of Rights For Victims and Witnesses of Crimes provides for the following rights:

1. The right to be treated with fairness, dignity, and a respect for privacy.
2. The right to be reasonably protected from the accused offender.
3. The right to be notified of court proceedings.
4. The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.
5. The right to confer with the attorney for the Government in the case.
6. The right to restitution, if appropriate.
7. The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

B. Procedures/Resources. DA Forms 2701 through 2706 are used throughout the military justice process to ensure that victims and witnesses are properly informed of their rights and responsibilities, and that they are provided the information and services that they deserve. Assistance for victims and witnesses includes medical/social services, limited financial support, legal advice, and law enforcement assistance. If you believe that a victim may be entitled to compensation from federal and/or state sources, please contact the Office of the Staff Judge Advocate in your area. If the victim is not a military member or dependent, he or she should be referred to the appropriate civilian agencies for assistance.

C. Non-ID Card Holder Victims. Local national or other non-ID card holding victims may file claims for "Ex Gratia" payments for offenses committed by a servicemember or DA civilian employee. The US Army Claims service is the initial POC for these types of monetary claims against the United States.

D. SJA and Victim/Witness Liaisons. The Office of the Staff Judge Advocate has established a Victim/Witness Assistance Program. Victim/Witness Liaisons have been designated throughout the Corps area. They are trained to provide victims and witnesses with valuable information throughout the military justice process. Victims and witnesses should be put in contact with a Victim/Witness Liaison at the earliest possible opportunity. The names of the Victim/Witness Liaison can be obtained from your trial counsel or the local Office of the Staff Judge Advocate.

E. Sexual Assault Victims. The USAREUR commander's guidance is to ensure that victims are aware of the personnel and agencies available in the command and community to help them through their difficult ordeal. These include but are not limited to law-enforcement officials, medical providers (social workers, psychologists, and psychiatrists), community-based services available through Army Community Services, and spiritual and faith-based counseling from Family Life chaplains. *These services must be made available immediately to the victim following the allegation, regardless of the status of the criminal or command investigation.*

## Chapter 8

### Legal Assistance

- A. **Introduction.** Army Legal Assistance provides professional legal advice world-wide to soldiers and their dependents (in addition to other eligible persons, e.g., retirees). Legal assistance personnel provide an array of legal services involving assorted legal topics, such as family law, landlord/tenant law, taxes, wills and estates, powers of attorney, consumer protection, debt collection, immigration, contract law, and notary services. A commander should refer soldiers who need legal help to their local legal assistance office for guidance.
- B. **Family Law.** Soldiers and their family members may seek legal advice on adoption, child support/custody, marriage, divorce/separation, name change, paternity, and legal benefits under the Uniformed Services' Former Spouses' Protection Act (USFSPA). There are several potential legal actions that may arise when a marriage ends: child custody, child support, alimony, property division, divorce. Soldier or dependents who get legal advice during a difficult time like divorce or separation have less apprehension, and as a result, are less distracted and thus able to better function as a soldier.
- C. **Wills and Estates.** Military legal assistance attorneys prepare thousands of wills every year for soldiers and their spouses. This document is usually the center piece of an estate plan. Estate planning is ongoing and continuous. Protecting one's legal and financial well being and ability to acquire, accumulate, preserve, and dispose of assets/wealth is important. A sound estate plan provides not only for the smooth transfer of property upon death, but also distributes benefits (such as life insurance, retirement income, stocks, bonds, annuities and certain disability benefits) to beneficiaries without protracted legal entanglements. Effective estate planning varies; it may involve a simple will, life insurance designations, a power of attorney, an advance medical directive, organ donor designations or more complex planning that involve trusts and other property transfer instruments. Not every soldier needs a will. As a general rule, every soldier who has a child (or children) or who sizeable assets should have a will. The legal assistance office also provides notary services.
- D. **Landlord & Tenant Law.** Military tenants and landlords often seek legal advice about military termination clauses in leases, local laws, security deposits, unlawful detainer actions, collections and other topics. Legal Assistance attorneys render advice on a range of landlord & tenant legal matters.
- E. **Taxes.** Military personnel and spouses may owe income, real, and personal property taxes to local, state and federal governments. Most legal assistance offices operate tax centers to provide income tax return preparation assistance and other tax-related advice during tax season.
- F. **Immigration.** The United States' Immigration and Naturalization laws are important to some US Armed Forces members because an alien who has served honorably in our US armed forces can acquire US citizenship without satisfying the normal residence, physical presence, and waiting period requirements. Legal assistance personnel can advise and refer soldiers on immigration, citizenship, and naturalization matters: alien registration, reentry permits, passports, naturalization of surviving spouse, citizenship of children born abroad of US military parents, alien fiancées, etc.
- G. **Other.** The legal assistance office may also advise on a variety of other areas including automobiles, civilian misconduct, Servicemembers Relief Act (SRA), contracts, insurance, and money matters (such as bankruptcy or debt management).

## Chapter 9

### Family Support , Paternity and Early Return of Dependents

- A. Providing adequate financial support to family members is mandated by AR 608-99, Family Support, Child Custody, and Paternity, 29 October 2003.
- B. While the required support amount may be stated in terms of BAH or BAH II, the soldier's obligation to pay this amount to family members is not contingent on whether the soldier is either entitled to or actually receiving this amount.
- C. Soldiers who are geographically separated from their families are expected to provide financial support for those family members. Appropriate arrangements may include a joint checking account or a voluntary allotment.
- D. In the absence of a court order or written agreement, such as a separation agreement, the amount of support a servicemember must pay to his or her family is set out in AR 608-99, para. 2-6. This paragraph provides for payment of the BAH II-WITH amount to families not residing in government housing. If the soldier has other family members, the amount is calculated using a pro-rata determination. While the family members are living in government housing, the soldier is not required to provide additional financial support.
- E. Soldiers will comply with financial support provisions of court orders arising from paternity. Some states have an administrative process for establishing paternity and/or child support orders. These also obligate a soldier to provide financial support for a child. If paternity has been established, but no amount of child support has been set, the soldier should pay the support amount required by AR 608-99, para. 2-6, in the absence of a court order or written agreement. If you are unsure whether paternity has been established, either the commander or the soldier can contact the JAG office for assistance.
- F. Early Return of Dependents (ERD) at government expense, for extreme marital difficulties, is authorized by the Joint Federal Travel Regulation (JFTR). Such requests should received strict review by the chain of command and professional agencies. The unit commander should review the soldier's case to determine whether the family problems can be solved overseas, and should ensure that the soldier and spouse seek professional guidance and counseling. If an ERD is determined to be appropriate, the commander should forward the soldier's DA Form 4187 with appropriate documentation, through the chain of command for signature and recommendation. Appropriate documentation for marital difficulties may be a letter from a chaplain, mental health professional or therapist. A separation agreement prepared by the Legal Assistance Office is also acceptable documentation.

## Chapter 10

### Investigations and Reports of Survey

A. Commander's Inquiry is a quick and effective procedure that allows a commander to determine whether misconduct has occurred and to gather additional facts. While commander's inquiries are most commonly used to investigate misconduct, an inquiry must be initiated when an officer or NCO receives an adverse evaluation report and requests an inquiry into specific injustices or illegalities concerning the report. These inquiries may be as detailed as the commander desires, and can be conducted either formally or informally. Because of its flexibility, commander's inquiries may normally be completed quicker than more formal investigations, such as those conducted under AR 15-6.

1. Inquiry Officer (IO). Commanders may either conduct the inquiry themselves, or task a subordinate to conduct it. The inquiry officer should be senior in rank to any person reasonably believed to have been involved in the suspected misconduct. In most cases, the inquiry officer should be appointed in writing.

2. Conduct of Inquiry. The commander should identify the issues to be investigated. If he tasks a subordinate to conduct the inquiry, it is advisable to identify these issues in writing, including the names of any witnesses to be interviewed, and any documents or other evidence to be gathered.

a. Witness Interviews. The inquiry officer should not take statements from witnesses they believe may have committed a crime, without first reading the witness a rights warnings pursuant to UCMJ Section 831, Article 31(b)(DA Form 3881).

b. Report. The commander may require either a written or verbal report of the inquiry officer's findings. He also may require that the inquiry officer provide recommendations, based on those findings. Finally, the inquiry officer may be required to provide copies of any witness statements and other evidence collected during the course of the inquiry.

3. Discovery of Serious Criminal Misconduct. Immediately upon the receipt of information that serious criminal misconduct may have occurred, the inquiry officer and/or the commander initiating the inquiry should contact their Trial Counsel for guidance. In serious cases, it may be necessary to seek the assistance of law enforcement authorities to more fully investigate the misconduct.

B. AR 15-6 Investigation is a fact-finding tool. Although they may be formal or informal, in most instances, informal AR 15-6 investigations are preferred. Information gathered during these investigations may be used to initiate adverse actions against soldiers deemed to have committed misconduct. These investigations are also helpful in determining systemic problems. Investigating Officers (IOs) appointed to conduct AR 15-6 investigations should be thoroughly familiar with AR 15-6, and should rely on legal advice provided by their assigned legal advisor.

1. Difference between AR 15-6 Investigation and Commander's Inquiry. The primary differences between these two fact-finding tools are the amount of due process afforded to a soldier who is identified as having committed misconduct, and the paperwork associated with completing the AR 15-6. Commanders normally can accomplish their fact-finding objective through the use of a commander's inquiry, as opposed to a 15-6 Investigation.

2. Use of Results of AR 15-6 Investigations. In most instances, there is no need to conduct a 15-6 Investigation prior to initiating adverse action against a soldier. However, when adverse action is contemplated based on the AR 15-6 investigation's results, the soldier must be afforded due process. This generally includes providing the soldier with notification of the proposed action, a copy of the investigation and supporting evidence, and an opportunity to respond to the proposed action.

3. Appointing an AR 15-6 Investigating Officer. Commanders, as well as principal staff officers or supervisors in the grade of O-4 and above, may appoint IOs. IOs must be senior in rank to any soldier whose conduct forms the basis of the investigation. It is usually advisable to appoint an IO in writing. Appointment orders must be signed by the appointing officer.

a. Scope of Investigation. The directions to the IO should include, at a minimum, the facts and circumstances to be investigated, specific personnel who should be interviewed, whether particular respondents (persons who are the subject of the investigation) are designated, and what evidence (including written statements, sketches, pictures, or recordings) must be obtained.

b. Suspense. The IO should be given a suspense for completing his findings and recommendations. The IO should be instructed to coordinate extensions directly with the appointing authority.

c. Findings. The IO should be tasked to answer specific questions that the appointing authority wants answered (e.g., whether a soldier was negligent in his duties, the circumstances leading up to or causing a military vehicle accident, whether a soldier committed misconduct, etc.).

i. The IO answers the specific questions in his written findings. The standard for making a finding is that the finding is supported by a greater weight of evidence than supports a contrary conclusion. This is commonly referred to as a "preponderance of the evidence" or "more likely than not" standard.

ii. During the course of the investigation, the IO may discover other relevant evidence that is not referenced in the appointment memorandum. The IO should include this information in the findings.

d. Recommendations. The IO should be tasked with making recommendations based on the findings of fact. The IO will not know what these recommendations will be, until the investigation is completed (e.g., that a soldier receive a reprimand, or that the unit's dispatch procedures be overhauled, etc.).

e. Legal Advisor. The appointment memorandum should specify who the IO's legal advisor will be during the investigation. Typically, the legal adviser will be a judge advocate from the administrative law section of the local legal center. The IO should contact the legal advisor as soon as he receives his appointment orders. The legal advisor can assist the IO in identifying specific issues, implied tasks, and problems that the IO may be encountered during the investigation.

4. Conduct of the Investigation. All findings of fact must be supported by evidence, usually in the form of written documents. The documents must be included as exhibits to the investigation. Such exhibits should be numbered consecutively, and should contain, at a minimum:

a. Witness Statements. IOs should reduce witness statements to writing, whenever possible. This should be done on DA Form 2823 (see Appendix G, sworn statement form). When telephonic testimony is authorized and/or necessary, the IO should reduce his conversation with the witness to a memorandum for record as soon as possible after completing the conversation.

b. Rights Warnings. If the IO suspects any potential witness of having committed a crime, he should immediately contact his legal advisor before interviewing the witness. In such cases, it will be necessary to issue the witness a rights warning, prior to taking his statement. This should be done on DA Form 3881 (see Appendix F, rights warning/waiver certificate).

c. Other Evidence. Other pertinent evidence may include; Military Police and/or CID Reports; Sketches, Diagrams, or Pictures of the Scene or Results of the Incident; and Excerpts from Regulations Pertinent to the Subject of the Investigation.

5. Completion of the Investigation. Once the investigation is complete, the IO must prepare a DA Form 1574 (Report of Proceedings by Investigating Officer or Board of Officers). General tips in filling this form out are as follows:

a. Include the appointing authority's name, rank, unit, and the date of the IO's appointment.

b. Indicate the place of investigation (e.g., Heidelberg, Germany) and other pertinent materials. In an informal investigation, there is no need to indicate members, respondents, counsel, etc.

c. Complete the appropriate blocks in Section III(A).

i. Privacy Act Statements. These normally are not required unless the investigation is into the actions of a particular respondent. IOs should consult with their legal advisor regarding whether these are required.

ii. Sections (B) & (C) Are Not Completed in Informal Investigations.

d. The IO should state in detail the facts and circumstances surrounding the incident investigated. Indicate, where appropriate, such information as names, ranks, units, dates, times, and locations that are important. The IO should reference exhibits included in the investigation, and should use a continuation sheet if more space is needed.

e. The IO should provide his recommendations to the appointing authority. All recommendations must be consistent with the findings, and should be based on the IO's understanding of rules, regulations, policies and customs of the service, combined with his concept of fairness to the Government and individuals.

f. Exhibits. The IO's final report should also include the following documents, listed as separate exhibits:

i. Memorandum of Appointment.

ii. Witness Statements and other Written Exhibits.

iii. Explanation of any Unusual Delays, Difficulties, or Other Problems encountered.

iv. Any Written Communications between the IO and Appointing Authority.

6. Legal Review. Once the IO has completed the investigation, the packet should be reviewed by the IO's legal advisor. This may avoid the need to later reopen the investigation, if the investigation, if after it has been sent to the appointing authority.

7. Action by the Appointing Authority. Once the 15-6 Investigation is completed, the appointing authority may act on the IO's recommendations, may disregard the IO's recommendations, or may return the report for additional investigation. The appointing authority may consider any relevant information, even if it was not considered by the IO.

C. Line of Duty Investigations (LOD) investigations are the primary means of investigating the circumstances of a soldier's injury, disease or death. LOD investigations determine the soldier's duty status at the time of the incident, and characterize the soldier's conduct leading up to the injury. LOD investigations are either formal or informal, depending on the circumstances. This Chapter discusses common LOD issues that must be addressed in every investigation. Primary reliance, however, should be on the LOD regulation, when conducting and reviewing LOD investigations.

1. Formal vs. Informal LOD Investigations. Informal LODs are discussed in AR 600-8-1, para's 40-1 to 40-6. Formal LODs are discussed in para's 40-7 to 40-12.

a. Informal LODs. The appointing authority for an informal LOD normally will be the immediate Commander. The General Court-Martial Convening Authority or his representative normally will approve informal LOD findings.

b. Formal LODs. Formal LODs are mandatory in such cases as injury or death involving alcohol or drug abuse; self-inflicted injuries; suicide; injury or death while in AWOL status; and under suspicious circumstances or in cases apparently due to negligence or misconduct on the part of the injured soldier. The appointing authority normally is the immediate Commander. The approving authority is the General Court-Martial Convening Authority or his representative.

2. DA Form 2173 (Statement of Medical Examination and Duty Status). This form will be initiated by the medical authority attending to the subject soldier. AR 600-8-1, figs. 40-1 to 40-4 indicate how to complete this form. The unit commander must complete Section II, showing the soldier's duty status and the facts of the incident. This form will be included as an exhibit in the final LOD report.

3. DD Form 261 (Report of Investigation). This form must be completed by the LOD Investigating Officer (IO). AR 600-8-1, fig 40-5, describes how to complete this form. In section 9(g) (Remarks), the IO should state the facts leading up to the injury. In completing this section, the IO should rely on the sworn statements and other facts discovered during the course of his investigation.

4. Evidence Collection. All findings of fact in a LOD investigation should be supported by evidentiary exhibits. The exhibits may, include at a minimum the following:

a. Informal LODs.

i. DA Form 2173.

ii. Statement or written correspondence from Subject Soldier. This document should indicate that the soldier was warned of his right not to make a statement.

iii. DA Form 3881 (Rights Warning). If the subject is suspected of having committed an offense under the UCMJ, this form should be completed and signed by the soldier.

iv. Military Police and/or CID or Other Law Enforcement Report.

v. Medical Records of Soldier.

vi. Sworn Witness Statements.

b. Formal LODs. In addition to the types of evidence indicated above (for informal LODs), the following should be included, where applicable:

i. Autopsy Reports, Coroners' Inquests, and/or Toxicology and Pathology Studies.

ii. Incident Information: This may include maps, photographs, and/or diagrams of the site and terrain where the accident or other incident occurred.

5. Special Requirements in Intoxication Incidents. Incidents involving death, injury, or disease where intoxication may have been a factor require the that the following additional information be included:

a. Statements or Reports Regarding Subject's Level of Intoxication. This may include comment from witnesses on such factors as the subject's appearance, behavior, speech, coordination, or other characteristics.

b. Sobriety Test Results. Include these test results, when conducted.

6. Special Requirements in Suicide/Attempted Suicide Cases. Incidents involving suicide or attempted suicide require the following additional evidence:

a. Subject's Background Evidence. Evidence concerning the subject soldier's social background, actions, and moods immediately prior to the incident, and other personal issues that may have motivated the incident must be included.

b. Pertinent results of examination or counseling by mental health professionals must be included.

c. Psychological autopsy results are required in all cases of death by suicide.

7. Factual Findings. The LOD IO must make factual findings that are supported by the evidence he collects during his investigation. The IO must complete Item 9(g) of DD Form 261, indicating all facts leading up to the incident, as well as a description of the incident itself.

a. Standard of Evidence. The standard for making a factual finding is that of "substantial evidence." This standard essentially means that the weight of evidence establishes a degree of certainty with which a reasonable person would agree.

b. Evidence Considered. The IO should consider all statements, observations, and other "hard" evidence he collects, plus reasonable inferences and conclusions that may be drawn from that evidence. The IO may, when necessary, evaluate and comment on a witness's demeanor, behavior, memory and potential biases when making his determinations.

c. Intoxication Cases. Injuries incurred as the "proximate result" of prior and specific voluntary intoxication are incurred as the result of misconduct. In order for intoxication, standing alone, to be the basis for a finding of misconduct, it must be established that the subject's faculties were impaired due to intoxication and that his impairment was the proximate (or direct) cause of the injury.

d. Suicide and Attempted Suicide Cases. The IO must determine whether the subject was mentally sound at the time of the incident. In making this determination, the IO should rely on such evidence as the subject's social background, actions and moods prior to the suicide, and counseling records of mental health professionals. In all cases, a mental health officer must review the evidence and render a written opinion as to whether the subject was mentally sound at the time of the incident. Such a memorandum must be included in the IO's final report.

e. Cases Involving Death. In all cases involving death of the subject soldier, the IO will not express an opinion concerning the LOD status of the soldier. Item 10 in DD Form 261 will not be completed.

8. Initial Legal Review. Once the IO has collected pertinent evidence and completed his findings, he should forward the completed investigation to his legal advisor.

9. Adverse Findings (Not in Line of Duty). If the IO anticipates that his final report will conclude that the injury was incurred "Not in the Line of Duty," the IO must provide the subject notice in writing of the proposed adverse finding and include a complete copy of the final investigation, as well as copies of all supporting evidence. The IO should not yet mark the LOD Finding in Item 10 of DD Form 261, as the subject soldier is entitled to provide a rebuttal statement. The IO also must inform the soldier that he is not required to provide a rebuttal statement.

10. Effects of Adverse Findings. A loss of benefits may result from an adverse LOD determination. However, this is entirely administrative, rather than punitive, in nature.

D. Reports of Survey (ROS) document the circumstances surrounding the loss, damage to, or destruction of government property. They fix accountability for government equipment, document the proximate (or direct) cause of the loss, and assess financial liability in the event of losses due to negligence or willful misconduct.

1. Accountability and Responsibility. Accountability and responsibility are separate obligations, carrying with them specific duties. Financial liability may be assessed against any accountable or responsible person who, through negligence or willful misconduct, fails to perform his required duties, provided that this failure proximately causes the loss of government equipment.

a. Accountability. Accountability for equipment encompasses the obligation of a person to maintain property records. Accountability rests with specific individuals, and may not be delegated. Accountable officers maintain formal records detailing such issues as quantities, values, balances, and property transactions.

b. Responsibility. Responsibility entails a person's obligation to ensure that government property entrusted to his possession, command, or supervision is properly used and cared for.

2. Initiation of Reports of Survey. These reports must be initiated in situations involving the loss of property described in AR 735-5, para 13-2. These situations may include:

a. Negligence or Willful Misconduct. When negligence or willful misconduct is suspected as the cause, of the loss or damage and the individual does not admit liability and refuses to voluntarily reimburse the government.

b. Loss Detected During Inventory. Applies to property loss, damage or destruction involves a change to the accountable officer's inventory, and the outgoing accountable officer does not reimburse the government voluntarily.

c. Value of Loss Exceeds Individual's Monthly Basic Pay.

d. Losses Involving Sensitive Items or Weapons.

3. Processing ROS. Once a ROS is initiated (normally by the accountable officer) a survey officer will be appointed to conduct an investigation into the circumstances surrounding the loss of property. The survey officer conducts his investigation under IAW applicable regulations.

a. Recommendation for Financial Liability. If the survey officer recommends that an individual for financial liability (based on negligence or willful misconduct), he must notify that soldier and provide him and opportunity to respond. If a response is submitted, the survey officer must consider this response and attach it to his report of investigation that he forwards to the Approving Authority. There are three basic requirements for the finding of financial liability:

i. The soldier concerned must be found to have been negligent or committed willful misconduct.

ii. The soldier's negligence or misconduct must have "proximately caused" the loss of equipment.

iii. "loss" of the equipment concerned must have occurred. "Loss" is defined as "loss of, damage to, or destruction of property of the U.S. government under the control of the Army."

Thus, prior to recommending financial liability against a soldier, reasonable efforts to locate missing property should be undertaken.

b. Action by Approving Authority. Approving Authorities approve the survey officer's findings and recommendations, but are not bound by them. The approving authority's legal advisor should review the findings and recommendations, and opine regarding the evidence and propriety of the findings and recommendations. This review should not be undertaken until the soldier against whom financial liability is recommended has been provided an opportunity to respond.

## Chapter 11

### Fiscal and Claims Legal Issues

A. Official Representation Funds. Official Representation Funds (ORFs) are those funds which this Command and its subordinate units may use to extend official courtesies to authorized guests. Both HQDA and USAREUR closely monitor the use of ORFs; for this reason, it is essential that ORFs only be expended for authorized purposes.

1. ORF Sources. ORFs derive from emergency and extraordinary expense funds. Each fiscal year, subordinate Commanders each receive a fiscal year allocation to be disbursed.

2. "Authorized Guests." Only authorized guests and select DoD personnel, defined in AR 37-47, para's 2-3 – 2-4 respectively, may receive courtesies purchased with ORFs.

a. Authorized guests include foreign citizens whose military rank, position, function or stature justifies the extension of official courtesies. Foreign personnel usually must serve as field grade officers, or hold the U.S.-equivalent enlisted grade of E-9 or above, to qualify as authorized guests. However, this rule is not strict, and depends on the circumstances of each individual case.

b. ORFs may not be used to purchase gifts or mementos for award to personnel based on achievement only, unless the individual otherwise qualifies as an "authorized guest." For instance, requests to present honor graduates or "most outstanding soldiers" with ORF-purchased mementos will not be acted on favorably.

3. Processing Requests for the Use of ORFs. ORF requests must be processed through this Command's SGS prior to the purchase of the proposed mementos for presentation to authorized guests. Expenditure of unit ORF funds prior to approval of each request is not authorized.

a. Required Information. Pursuant to policy (reprinted at Appendix U to this Guide), ORF requests must contain the following information:

i. List of Each Proposed Recipient's Name, Rank, Duty Position, Unit of Assignment, and Nationality.

ii. Description and Cost of Proposed Memento with which Each Recipient will be Presented.

iii. Explanation Regarding Why Each Recipient Qualifies as an Authorized Guest for Official Courtesies Purchased with ORFs.

iv. Justification Regarding How the Presentation Maintains the Standing and Prestige of the United States.

v. Certification from the Corps Judge Advocate that Sufficient ORF Funds are available to fund the purchase.

vi. Legal Review of the Request by the Corps Judge Advocate.

B. Commander's Coins. QDA increasingly has scrutinized the purchase and presentation of commanders' coins. Commanders must recognize fiscal rules that affect their purchase and distribution. Coins may be purchased, depending on circumstances, using appropriated funds, non-appropriated funds (NAFs), or private funds.

1. Purchase with Appropriated Funds. Commanders may present coins purchased with appropriated funds only to reward soldiers and DA civilians for outstanding duty performance or to recognize unique achievements. Commanders may not present coins purchased with appropriated funds for presentation merely as gifts, mementos or tokens of appreciation (e.g., as a "farewell" gift or during a visit to a unit). Coins purchased with appropriated funds may not be presented to private organizations (POs) or to soldiers as an award for participating in a PO activity. Coins intended for presentation to foreign dignitaries may be purchased with Official Representation Funds (ORFs), if the recipients qualify as "authorized guests" UP AR 37-47.

2. Purchase with NAFs. Commanders may present coins purchased with NAFs only to award soldiers and DoD civilians for excellence in athletic or non-athletic competitions, proficiency in recreational programs, or unusual accomplishment in supporting special events.

3. Private Funds. Commanders wishing to present coins to soldiers or DA civilians for any reason, including such occasions as farewells, may purchase them with their own private funds. Commanders should keep receipts for all such purchases.

C. Article 139 Claims. Claims initiated and processed UP Article 139, UCMJ, permit individuals to file claims against soldiers who willfully take or destroy personal property. Soldiers are not the only persons who may file Article 139 claims; any person whose property was taken or destroyed by a soldier may file such a claim, subject to certain limitations.

1. Limitations on Types of Article 139 Claims. Article 139 claims may not be processed for breach of contract, property damaged through negligence, personal injury/death, actions or omissions of military personnel acting within the scope of their employment.

2. Limitations on Financial Amounts of Article 139 Claims. Special Courts-Martial Convening Authorities (SPCMCAs) (normally, Group Commanders) may approve claims that do not exceed \$5,000 on a single claim. General Courts-Martial Convening Authorities (GCMCAs) may approve claims that do not exceed \$10,000 on a single claim.

3. Processing Article 139 Claims. AR 27-20, chap 9 governs initiating and processing Article 139 claims. In particular, commanders should be aware of the following:

a. Suspense for Filing. Claimants must file claims within 90 days from the date of the incident causing the loss or destruction of property.

b. Place for Filing. Claimants should file claims with their servicing installation's Claims Office. Installation claims offices traditionally are co-located with respective installation's Office of the Staff Judge Advocate. They may do so either verbally or in writing.

c. Forwarding of Claim. Claims that are properly filed will be forwarded to the suspected soldier's SPCMCA. If the SPCMCA determines the claim is cognizable, he will assign, within four working days of receiving the claim, an Investigating Officer (IO) to examine the allegations and surrounding facts and circumstances.

d. Investigation. The IO's investigation must comply with AR 27-20, chap 9. In particular, he must take the following steps:

i. Notify the Soldier. The IO must notify the soldier against whom a claim is filed, and if the soldier wishes to make voluntary restitution, the IO may (with the SPCMCA's approval) delay the proceedings until the end of the next pay period.

ii. Continue the Investigation. If the soldier refuses to make full restitution or cannot do so, the IO will determine whether the claim is cognizable (proper UP AR 27-20) and meritorious (supported by the evidence). The IO likely will have to obtain written statements and other supporting paperwork, diagrams, and/or pictures during his investigation.

iii. Determination of Meritorious Claim. If the IO determines that a soldier should be held financially liable, he must submit his written findings and recommendations to the SPCMCA. The assessment must be reviewed for legal sufficiency; normally, the servicing Group Judge Advocate will perform this legal review.

iv. Notification to Liable Soldier: Soldiers against whom financial liability has been assessed must be notified of the determination and of their right to seek reconsideration. A copy of the IO's findings and recommendations must be enclosed with the notice. Unless the approval authority determines that substantial injustice will result, action to recoup money from the liable soldier must be suspended for 10 working days, in order to afford him an opportunity to respond to the assessment of liability.

e. Disposition of Meritorious Claims. If the investigation into the Article 139 claim ultimately determines that a soldier is financially liable for the loss or destruction of personal property, an amount equal to the assessed amount of loss or destruction will be taken directly from the soldier's military pay and awarded to the claimant. Alternatively, the soldier may choose to make voluntary and full restitution to the claimant at any stage during the claim process. If this occurs, the approval authority may terminate the Article 139 proceedings without findings.

4. Related Administrative and UCMJ Actions. Commanders may determine, in appropriate circumstances, that a soldier's actions resulting in the loss or damage of private property warrant adverse administrative or UCMJ action. Commanders are advised, however, that findings of liability under Article 139 are separate and distinct from findings that may result during other adverse actions. Each type of action requires independent findings.

## Appendix A

### ARTICLE 15 CHECK LIST

**PHASE I.** Investigate. See CRIMINAL INVESTIGATION CHECKLIST, Exhibit B.

**PHASE II.** Select Appropriate Disciplinary Measure: General Rule (not mandatory to follow): Article 15 is for minor offenses (i.e., if max punishment in MCM is less than Dishonorable Discharge and one year confinement).

**PHASE III.** Prepare Article 15 Form (See Exhibit D).

**PHASE IV.** Notification. (E-7 or above reads Part I (para's 1 AND 2 of the Article 15 Form) to soldier).

**PHASE V.** Soldier's Opportunity to Consult with Defense Counsel (TDS)

- A. Summarized Article 15: NO right to consultation.
- B. Formal Article 15 (Company or Field Grade): Soldier has at least 48 hours (more if Defense Counsel is not reasonably available) to consult legal counsel.

**PHASE VI.** Election of Rights. Soldier either accepts Article 15 proceeding or demands trial by court-martial.

**PHASE VII.** Hearing (Does not occur if soldier admits guilt).

- A. Soldier presents evidence through witnesses, statements, documents, evidence, etc.
- B. Commander hears government evidence.
- C. Only after considering all evidence, Commander decides guilty/not guilty.

**NOTE:** Only Commanders (or those acting on orders) hold hearings and impose punishment.

**PHASE VIII.** Punishment (Only if there is a guilty finding).

- A. Soldier again has opportunity to present evidence in extenuation and mitigation, i.e., reasons why punishment should be lessened.
- B. Commander considers government position on punishment (Chain of Command, victim, other evidence).

Punishment imposed based on all evidence. May not exceed maximums set by UCMJ.

## Appendix B

### CRIMINAL INVESTIGATION CHECKLIST

- I. Preliminary Inquiry.
  - A. Determine the basic facts and allegations.
  - B. Preserve witness, documentary and other physical evidence \*
  - C. Decide if further investigation is warranted.
- II. If further investigation is warranted, by whom/how investigation conducted?
  - A. Who?
    1. Unit: Most purely military infractions (disrespect, disobedience, AWOL, etc.).
    2. Military investigations: Monetary crimes under \$1,000.00, some assaults, DUI'S.
    3. Criminal Investigation Division: Monetary crimes \$1,000.00 or over, drugs, serious offenses (rape, child abuse, etc.).
  - B. How?
    1. Unit: IAW AR15-6.\*
      - a. Commander of Investigating Officer/NCO (IO) determines facts based upon substantial evidence.
      - b. Commander or IO determines/recommends disposition.\*\*
    2. MPI/CID: IAW applicable regulations.

\* Statements, confessions, admissions and physical evidence should be preserved consistent with constitutional safeguard (rights warnings for suspects and protection from unreasonable searches and seizures. Call Trial Counsel for assistance. Use DA Form 3881, Rights Warning Procedures and Waiver certificate or rights warning card.

\*\* Recommendation/Disposition of an appropriate disposition does not imply final punitive or administrative determination. Many "final" dispositions/recommendations (e.g., trial by courts-martial, NJP, etc.) are done before administrative separation procedures are instituted.

## Appendix C

### ADMINISTRATIVE SEPARATION CHECKLIST

- I. Counseling. \* (See, generally, Para. 1-18, AR 635-200).
  - II. Rehabilitative Transfer. \*\* (See, generally, Para's 1-18c and 1-18d, AR 625-200).
  - III. Processing of Separation Actions.
    - A. Notification.\*\*\*
    - B. Medical and Mental Evaluations.\*\*\*\*
    - C. Consultation with Military Defense Counsel (civilian counsel only at soldier's expense).
    - D. Presentation of Response/Rebuttal by soldier (at administrative board hearing (if soldier is entitled, or in writing if soldier is not entitled). \*\*\*
    - E. Decision by Separation Board/Separation Authority.
    - F. Appeal Process (if so initiated by the soldier).
- 

\*Counseling, if required, will include:

- A. Reasons for counseling,
- B. The fact that separation action may be initiated if unsatisfactory behavior continues,
- C. Type of discharge that could result from separation action and the effect of each type.

Note: Soldier must have reasonable opportunity to correct deficiencies noted during counseling before separation action initiated. Counseling must be documented (DA Form 4856).

\*\*Some chapters require that a rehabilitative transfer occur before separation process can be initiated. Requirements. If a rehab transfer is required, the soldier must be reassigned at least once, with two months duty at each unit, between battalion-sized units. Waiver. The rehab transfer requirement may be waived if the separation authority determines (See Table 1-2) that further duty of the soldier would:

1. Create a serious disciplinary problem or a hazard to the military mission, to the soldier, or
2. Be inappropriate because the soldier is resisting all attempts at rehabilitation, or
3. Not be in the best interests of the Army as it would not likely produce a quality soldier.

\*\*\*There are two basic types of Discharge actions:

- A. Type I: Notification Procedure. Applies to soldiers not entitled to an administrative board (i.e., less than six years of service when the discharge sought is either a Honorable, General or Uncharacterized).
- B. Type II: Board Procedure. Required if either: 1. the soldier has more than 6 years of service, or 2. an "Other Than Honorable" (OTH) Discharge is sought.

\*\*\*\*Some separation actions require medical and/or mental examinations.

”

# Request for...

NONJUDICIAL PUNISHMENT  
or  
SUPPLEMENTARY ACTION

Date: \_\_\_\_\_

**Please provide the requested information of the space below.**  
All information requested is essential to accurately complete your requested action.

Soldier: \_\_\_\_\_ Rank: \_\_\_\_\_

SSN: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_

PEBD: \_\_\_\_\_ BASD: \_\_\_\_\_

Unit: \_\_\_\_\_

Is the soldier ETSing or PCSing in the near future?  Yes  No If so, when? \_\_\_\_\_

**Place a check in the block that reflects the action you are requesting:**

**Nonjudicial Punishment:**  Summarized Article 15  Company Grade Article 15  
 Field Grade Article 15

**Supplementary Action:**  Mitigation  Remission  Setting Aside  
 Suspension  Vacation

I have conducted the required investigation UP Rule 405, MCM, 2000. This investigation has revealed the following offense(s) committed in violation of the Uniform Code of Military Justice:

**OFFENSE:** \_\_\_\_\_

**OFFENSE:** \_\_\_\_\_

**OFFENSE:** \_\_\_\_\_

I certify that the request packet contains the needed supporting documents; i.e. MP Report, DA Form 4856, sworn statements, etc.

*Initials*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Commanding**



**Plan of Action:** *(Outlines actions that the subordinate will do after the counseling session to reach the agreed upon goal(s). The actions must be specific enough to modify or maintain the subordinate's behavior and include a specified time line for implementation and assessment (Part IV below).)*

**Session Closing:** *(The leader summarizes the key points of the session and checks if the subordinate understands the plan of action. The subordinate agrees/disagrees and provides remarks if appropriate.)*

Individual counseled:  I agree  disagree with the information above.

Individual counseled remarks:

Signature of Individual Counseled: \_\_\_\_\_ Date: \_\_\_\_\_

**Leader Responsibilities:** *(Leader's responsibilities in implementing the plan of action.)*

Signature of Counselor: \_\_\_\_\_ Date: \_\_\_\_\_

**PART IV - ASSESSMENT OF THE PLAN OF ACTION**

**Assessment:** *(Did the plan of action achieve the desired results? This section is completed by both the leader and the individual counseled and provides useful information for follow-up counseling.)*

Counselor: \_\_\_\_\_ Individual Counseled: \_\_\_\_\_ Date of Assessment: \_\_\_\_\_

**Note:** Both the counselor and the individual counseled should retain a record of the counseling.

**RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE**

For use of this form, see AR 190-30; the proponent agency is ODCSOPB

**DATA REQUIRED BY THE PRIVACY ACT**

**AUTHORITY:** Title 10, United States Code, Section 3012(g)  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately identified.  
**ROUTINE USES:** Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
**DISCLOSURE:** Disclosure of your Social Security Number is voluntary.

1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)	6. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS		

**PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE**

**Section A. Rights**

The investigator whose name appears below told me that he/she is with the United States Army \_\_\_\_\_ and wanted to question me about the following offense(s) of which I am suspected/accused: \_\_\_\_\_

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial.
- (For personnel subject to the UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

*(For civilians not subject to the UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

- If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

**Section B. Waiver**

I understand my rights as stated above, I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR

**Section C. Non-waiver**

- I do not want to give up my rights  
 I want a lawyer  I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

PART II - RIGHTS WARNING PROCEDURE	
<b>THE WARNING</b>	
<p>1. <b>WARNING</b> - Inform the suspect/accused of:</p> <ol style="list-style-type: none"> <li>Your official position.</li> <li>Nature of offense(s).</li> <li>The fact that he/she is a suspect/accused.</li> </ol> <p>2. <b>RIGHTS</b> - Advise the suspect/accused of his/her rights as follows:  <i>"Before I ask you any questions, you must understand your rights."</i></p> <ol style="list-style-type: none"> <li><i>"You do not have to answer my questions or say anything."</i></li> <li><i>"Anything you say or do can be used as evidence against you in a criminal trial."</i></li> <li>(For personnel subject to the UCMJ) <i>"You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer</i></li> </ol>	<p>can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."  - or -  <i>(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."</i></p> <ol style="list-style-type: none"> <li><i>"If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."</i></li> </ol> <p>Make certain the suspect/accused fully understands his/her rights.</p>
<b>THE WAIVER</b>	
<p><i>"Do you understand your rights?"</i>  (If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)</p> <p><i>"Have you ever requested a lawyer after being read your rights?"</i>  (If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)</p>	<p><i>"Do you want a lawyer at this time?"</i>  (If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)</p> <p><i>"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)</i></p>
<b>SPECIAL INSTRUCTIONS</b>	
<p><b>WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE:</b> If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notation on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.</p> <p><b>IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY:</b> In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.</p> <p><b>PRIOR INCRIMINATING STATEMENTS:</b></p> <ol style="list-style-type: none"> <li>If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.</li> </ol>	<ol style="list-style-type: none"> <li>If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.</li> </ol> <p><b>NOTE:</b> If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.</p> <p><b>WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS:</b> If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")</p>
<p>COMMENTS (Continued)</p>	

**SWORN STATEMENT**

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).  
**PRINCIPAL PURPOSE:** To provide commanders and law enforcement officials with means by which information may be accurately  
**ROUTINE USES:** Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.  
**DISCLOSURE:** Disclosure of your social security number is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS	

8. ORGANIZATION OR ADDRESS

9.

\_\_\_\_\_, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF _____ PAGES
-------------	---	-----------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"  
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_

9. STATEMENT (Continued)

INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES

STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_

9. STATEMENT (Continued)

**AFFIDAVIT**

I, \_\_\_\_\_, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE \_\_\_\_\_. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

\_\_\_\_\_  
*(Signature of Person Making Statement)*

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this \_\_\_\_\_ day of \_\_\_\_\_

#1

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

\_\_\_\_\_  
*(Signature of Person Administering Oath)*

\_\_\_\_\_  
*(Typed Name of Person Administering Oath)*

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

\_\_\_\_\_  
*(Authority To Administer Oaths)*

INITIALS OF PERSON MAKING STATEMENT

PAGE      OF      PAGES

**SEARCH AND SEIZURE AUTHORIZATION**

For use of this form, see AR 27-10, the proponent agency is OTJAG

TO: (Name and Organization of the person to whom authorization is given)

(An affidavit) (A (sworn) or (unsworn) oral statement) having been made before me by \_\_\_\_\_  
(Name of Affiant)

(Organization or Address of Affiant)

(which affidavit is attached hereto and made a part of this authorization), and as I am satisfied that there is probable cause to believe that the matters mentioned in the affidavit are true and correct, that the offense set forth therein has been committed, and that the property to be seized is located (on the person) (at the place) to be searched, you are hereby ordered to search the (person) (place) known as

for the property described as \_\_\_\_\_

bringing this order to the attention of the (person searched) (person in possession, if any person be found at the place or on the premises searched). The search will be made in the (daytime) (nighttime), and if the property is found there, you shall seize it, issue a receipt therefor to the person from whom the property is taken or in whose possession the property is found, deliver the property to:

(Name and Organization of Authorized Custodian)

and prepare a written inventory of the property. If there is no person at the searched place to whom the receipt may be delivered, the receipt will be left in a conspicuous location at the place or on the premises where the property is found.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

TYPED NAME AND GRADE OF AUTHORIZING OFFICIAL

DUTY POSITION OF AUTHORIZING OFFICIAL

ORGANIZATION OF AUTHORIZING OFFICIAL

SIGNATURE OF AUTHORIZING OFFICIAL

REPLY TO  
ATTENTION OF:

«BnOffSym»

MEMORANDUM FOR «Rank» «FullName», «SSN», «Company», «Battalion», «CoLocation»  
«CoZipCode»

SUBJECT: Reprimand

1. You are hereby reprimanded for
2. By your actions you totally abrogated your responsibilities as a (commissioned/ warrant/ noncommissioned) officer. As a (commissioned/ warrant/ noncommissioned) officer, you have a duty to act responsibly, to exercise mature judgment, and to set a proper example for subordinates. You must never act in a manner that brings discredit to the military. By \_\_\_\_\_, you failed miserably in your responsibility.
3. I question your ability to be a role model for subordinates and your fitness for further service. You must re-examine your actions and take the steps necessary to avoid any future breaches of professional conduct.
4. This is an administrative reprimand imposed under the provisions of AR 600-37 and not as punishment under UCMJ, Article 15. You are advised that in accordance with AR 600-37, paragraph 3-4b, I am considering whether to recommend that this reprimand be filed permanently in your Official Military Personnel File (OMPF). Prior to recommending or making any filing decision, I will consider any matters you present to me.
5. You were provided the information that forms the basis for the reprimand by separate cover. You will acknowledge receipt of this reprimand IAW AR 600-37 by memorandum and return it through your chain of command to me no later than seven working days from date of service. Any matters in extenuation, mitigation, or rebuttal you wish to submit for my consideration must accompany your acknowledgment.

«BNAME»  
«BNRANK», «BNBRANCH»  
Commanding

«CoOffSym»

MEMORANDUM THRU Commander, «Company», «Battalion», «CoLocation» «CoZipCode»

FOR Commander, «Battalion», «BnLocation» «BnZipCode»

SUBJECT: Reprimand

1. \_\_\_\_\_ I have read and understand the unfavorable information presented against me and submit the attached statement(s) and/or document(s) in my behalf.
2. \_\_\_\_\_ I have read and understand the unfavorable information presented against me and elect not to make a statement.

\_\_\_\_ Encls

«FULLNAME»  
«RNK», USA  
«SSN»

«CoOffSym»

MEMORANDUM FOR Commander, «Battalion», «BnLocation» «BnZipCode»

SUBJECT: Reprimand

1. I have personally considered this matter. I recommend that the reprimand be:

- a. \_\_\_\_\_ Issued to «RNK» «LastName» and not filed.
- b. \_\_\_\_\_ Filed in the local information personnel files for local filing, to be destroyed 1 year after transfer or separation of «RNK» «LastName».
- c. \_\_\_\_\_ Filed permanently in the Official Military Personnel File (OMPF) of «RNK» «LastName».

2. I am recommending this because:

\_\_ Encls  
nc

«CONAME»  
«CORANK», «COBRANCH»  
Commanding

«BnOffSym»

MEMORANDUM FOR Commander, «Company», «Battalion», «CoLocation» «CoZipCode»

SUBJECT: Reprimand

1. I have considered the circumstances surrounding this reprimand concerning «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode», and the recommendations of the chain of command.
2. I direct that this reprimand be:
  - a. \_\_\_\_\_ Issued directly to «RNK» «LastName» and not filed.
  - b. \_\_\_\_\_ Issued to «RNK» «LastName» with a copy retained in the local informational personnel files/office military personnel files for local filing, to be destroyed 1 year after transfer or separation of «RNK» «LastName», under the record retention policies of AR 25-400-2.

\_\_\_ Encls  
nc

«BNNAME»  
«BNRANK», «BNBRANCH»  
Commanding

«BnOffSym»

MEMORANDUM FOR Commander, «Brigade», «BdeLocation» «BdeZipCode»

SUBJECT: Reprimand

1. I have considered the circumstances surrounding this reprimand concerning «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode», and the recommendations of the chain of command.
2. I recommend that this reprimand be filed permanently in «RNK» «LastName»'s Official Military Personnel File (OMPF).

\_\_ Encls  
nc

«BNNAME»  
«BNRANK», «BNBRANCH»  
Commanding

«BdeOffSym»

MEMORANDUM FOR Commander, «GCMCA», ATTN: «SJAOfficeSymbol»,  
«GCMCALocation» «GCMCAZipCode»

SUBJECT: Reprimand

1. I have considered the circumstances surrounding this reprimand concerning «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode», and the recommendations of the chain of command.
2. I recommend that this reprimand be filed permanently in «RNK» «LastName»'s Official Military Personnel File (OMPF).

\_\_ Encls  
nc

«BDENAME»  
«BDERANK», «BDEBRANCH»  
Commanding



DEPARTMENT OF THE ARMY  
HEADQUARTERS, «GCMCA»  
«GCMCALOCATION» «GCMCAZIPCODE»

REPLY TO  
ATTENTION OF:

«SJAOfficeSymbol»

MEMORANDUM FOR Commander, «GCMCA», «GCMCALocation» «GCMCAZipCode»

SUBJECT: Memorandum of Reprimand (MOR) Filing Decision

1. **PURPOSE:** To obtain your filing decision on a Memorandum of Reprimand (MOR) issued to «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode».

2. **DISCUSSION:**

a. On \_\_\_\_\_, the Commander, «Battalion», issued a memorandum of reprimand to «RNK» «LastName» for \_\_\_\_\_ (**Tab C**).

b. («RNK» «LastName» elected not to submit a rebuttal statement) (In the rebuttal statement, «RNK» «LastName» states \_\_\_\_\_. He states that \_\_\_\_\_. He further states \_\_\_\_\_. He also states that \_\_\_\_\_ (**Tab B**).

c. The chain of command recommends filing the MOR in «RNK» «LastName»'s Official Military Personnel File (OMPF) (**Tab A**).

3. **RECOMMENDATIONS:** I recommend you sign the memorandum at the signature tab filing the memorandum of reprimand in «RNK» «LastName»'s Official Military Personnel File (OMPF).

«SJANAME»  
«SJARANK», JA  
Staff Judge Advocate



DEPARTMENT OF THE ARMY  
HEADQUARTERS, «GCMCA»  
«GCMCALOCATION» «GCMCAZIPCODE»

REPLY TO  
ATTENTION OF:

«GCMCAOfficeSymbol»

MEMORANDUM FOR Adjutant General, «GCMCA», «GCMCALocation»  
«GCMCAZipCode»

SUBJECT: Reprimand

1. I have considered the circumstances surrounding this reprimand concerning «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode», and the recommendations of «RNK» «LastName»'s chain of command.

2. I direct that this reprimand be:

- a. \_\_\_\_ Issued directly to «RNK» «LastName» and not be filed.
- b. \_\_\_\_ Issued to «RNK» «LastName» with a copy retained in the local information personnel files/office military personnel files for local filing, to be destroyed 1 year after transfer or separation, under the record retention policies of AR 25-400-2.
- c. \_\_\_\_ Filed permanently in «RNK» «LastName»'s Official Military Personnel File (OMPF).

«GCMCANAME»  
«GCMCARank», USA  
Commanding

«CrimLawOfficeSymbol»

MEMORANDUM THRU

Commander, «Brigade», «BdeLocation» «BdeZipCode»

Commander, «Battalion», «BnLocation» «BnZipCode»

Commander, «Company», «Battalion», «CoLocation» «CoZipCode»

FOR «Rank» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode»

SUBJECT: Reprimand

1. Enclosed is the filing decision concerning the memorandum of reprimand issued to «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode».
2. The Commanding General has directed that the reprimand be Filed permanently in «RNK» «LastName»'s Official Military Personnel File (OMPF).

Encl  
as

«PARALEGALNAME»  
«PARALEGALRANK», USA  
«ParalegalPosition»

«CrimLawOfficeSymbol»

MEMORANDUM THRU

Commander, «Brigade», «BdeLocation» «BdeZipCode»

Commander, «Battalion», «BnLocation» «BnZipCode»

FOR Commander, «Company», «Battalion», «CoLocation» «CoZipCode»

SUBJECT: Reprimand

1. Enclosed is the original file concerning the memorandum of reprimand issued to «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode».
2. The Commanding General has directed that the reprimand be [issued directly to the soldier and not be filed] [issued to the soldier with a copy retained in the local information personnel files/office military personnel files for local filing, to be destroyed 1 year after transfer or separation of the soldier, under the record retention policies of AR 25-400-2].

Encl  
as

«PARALEGALNAME»  
«PARALEGALRANK», USA  
«ParalegalPosition»

«CrimLawOfficeSymbol»

MEMORANDUM FOR Office of the Adjutant General, «GCMCA», «GCMCALocation»

«GCMCAZipCode»

SUBJECT: Reprimand

1. The enclosed Memorandum of Reprimand (MOR), pertaining to «RNK» «FullName», «SSN», «Company», «Battalion», «CoLocation» «CoZipCode», is forwarded for filing in the Official Military Personnel File (OMPF).

2. Please acknowledge receipt by below. POC for this action is the undersigned at «ParalegalPhone».

Encl  
as

«PARALEGALNAME»  
«PARALEGALRANK», USA  
«ParalegalPosition»

The above MOR was received on \_\_\_\_\_ for filing.

\_\_\_\_\_

**MILITARY PROTECTIVE ORDER**

**PRIVACY ACT STATEMENT**

In accordance with the Privacy Act of 1974 (Public Law 93-579), this notice informs you of the purpose of the form and how it will be used. Please read it carefully.

**AUTHORITY:** 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and National Defense Authorization Act for Fiscal Year 1995, Sec. 534.

**PRINCIPAL PURPOSE(S):** Information from this form will be used to document commanding officers' orders and members' understanding thereof to avoid all manner of contact with specified individuals, against whom members are alleged, or are confirmed to have committed, domestic violence, child abuse, and any other crime, as stipulated in the terms and conditions of the orders.

**ROUTINE USE(S):** Any release of information contained in this system of records outside of DoD will be compatible with the purposes for which the information is being collected and maintained. The DoD "Blanket Routine Uses" set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**DISCLOSURE:** Voluntary; however, failure to provide or verify personal identifying information may compromise commanding officers' ability to protect victims or to hold members accountable for their actions.

1. SERVICE MEMBER				2. PROTECTED PERSON <i>(Important: see NOTE)</i>			
a. RANK	b. LAST NAME	FIRST NAME	MI	a. RANK	b. LAST NAME	FIRST NAME	MI
c. SSN		d. DATE OF BIRTH (YYYYMMDD)		c. SSN		d. DATE OF BIRTH (YYYYMMDD)	
e. UNIT		f. TELEPHONE <i>(incl. area code)</i>		e. UNIT		f. TELEPHONE <i>(incl. area code)</i>	
g. INSTALLATION				g. INSTALLATION			
h. CURRENT RESIDENCE: STREET <i>(incl. apartment number)</i>				h. CURRENT RESIDENCE: STREET <i>(incl. apartment number)</i>			
CITY		STATE	ZIP CODE	CITY		STATE	ZIP CODE

**NOTE:** Omit information in Item 2 that, if known to the service member in Item 1, could endanger the protected person.

**3. INFORMATION SUPPORTING ISSUANCE OF THIS MILITARY PROTECTIVE ORDER**

**4. THE PROTECTED PERSON HAS ALSO BEEN ISSUED THE FOLLOWING COURT ORDERS:**

a. Civil protection order issued (Date - YYYYMMDD) _____, in _____ Court, _____ County, State of _____		
b. Order issued (Date - YYYYMMDD) _____, in _____ Court, _____ County, State of _____		Property Settlement Custody and/or Visitation

DD FORM 2873, APR 2004

Reset

<p><b>5. As a Commanding Officer with jurisdiction over the above-named service member, I find that there is sufficient reason to conclude that the issuance of an order is warranted in the best interest of good order and discipline. It is hereby ordered that (Initial applicable portions):</b></p>					
	<p>a. The above-named service member is restrained from initiating any contact or communication with the above-named protected person either directly or through a third party. For purposes of this order, the term "communication" includes, but is not limited to, communication in person, or through a third party, via face-to-face contact, telephone, or in writing by letter, data fax, or electronic mail. If the protected person initiates any contact with the service member, the service member must immediately notify me regarding the facts and circumstances surrounding such contact.</p>				
	<p>b. The above-named service member shall remain at all times and places at least _____ feet away from the above-named protected person and members of the protected person's family or household including, but not limited to, residences and workplaces. Members of the protected person's family or household include:</p>				
	<p>c. The above-named service member will vacate the military residence shared by the parties located at:</p>				
	<p>d. Until further notified, the above-named service member will be provided temporary military quarters at:</p>				
	<p>e. The above-named service member will attend the following counseling:</p>				
	<p>f. The above-named service member will surrender his/her government weapons custody card at the time of issuance of this order.</p>				
	<p>g. The above-named service member will dispose of his/her personal firearm(s) that are located or stored on the installation at the time of issuance of this order.</p>				
	<p>h. Exceptions to this order will be granted only after an advance request is made to me and approved by me.</p>				
	<p>i. Other specific provisions of this order:</p>				
<p><b>6. DURATION:</b> The terms of this order shall be effective until _____, unless sooner rescinded, modified, or extended in writing by me.  <b>ENFORCEABILITY:</b> Violation of this order or an applicable civilian protection order shall constitute a violation of Article 90 of the Uniform Code of Military Justice.</p>					
<p>a. COMMANDING OFFICER'S SIGNATURE</p>	<p>b. DATE (YYYYMMDD)</p>				
<p><b>7. I hereby acknowledge receipt of a copy of this order and attest that I understand the terms and conditions it imposes on me.</b></p>					
<p>a. SERVICE MEMBER'S SIGNATURE</p>	<p>b. DATE (YYYYMMDD)</p>				
<p><b>DISTRIBUTION:</b></p> <table border="0"> <tr> <td>Service member's immediate command</td> <td>Protected person (Custodial parent of protected child)</td> </tr> <tr> <td>Service member</td> <td>Provost Marshal/Security Officer/Criminal Investigative Organization</td> </tr> </table>		Service member's immediate command	Protected person (Custodial parent of protected child)	Service member	Provost Marshal/Security Officer/Criminal Investigative Organization
Service member's immediate command	Protected person (Custodial parent of protected child)				
Service member	Provost Marshal/Security Officer/Criminal Investigative Organization				

DD FORM 2873 (BACK), APR 2004

Reset

V CORPS OSJAMAIN OFFICE

MAIN NUMBER 370-5844  
PARALEGAL SGM 370-5842  
ON-CALL JA BEEPER 01686-952783  
SENIOR TRIAL COUNSEL 370-5873  
TRIAL DEFENSE 381-8083  
TRIAL DEFENSE FAX 381-7335  
CIV & ADMIN LAW 370-5855  
OPS LAW 370-5849  
INT'L LAW 370-5848  
MAIN OFFICE FAX 370-5897  
CIV 06221-57-XXXX

PATTON LAW CENTER

MAIN NUMBER 373-5051  
NCOIC 373-5043  
TRIAL COUNSEL 373-5045  
LEGAL ASSISTANCE 373-5059  
CLAIMS 373-5053  
TRIAL DEFENSE 381-8822  
FAX 373-7038/9808  
CIV 06221-17-XXXX

DARMSTADT LEGAL CENTER

MAIN NUMBER 348-7250  
NCOIC 348-6218  
TRIAL COUNSEL 348-7145  
LEGAL ASSISTANCE 348-7345  
CLAIMS 348-7353/6527  
FAX 348-6618  
CIV 06151-69-XXXX

HANAU LEGAL CENTER

MAIN NUMBER 322-8428/8429  
NCOIC 322-8388/8429  
TRIAL COUNSEL 322-8774/8756  
LEGAL ASSISTANCE 322-8993  
CLAIMS 322-8392  
TRIAL DEFENSE 322-8597  
FAX 322-8312  
CIV 06181-88-XXXX

WIESBADEN (1AD) OSJA

MAIN NUMBER 337-4704/4700  
CPLNCO 337-4705  
TRIAL COUNSEL 337-4760  
LEGAL ASSISTANCE 337-4724/4725  
CLAIMS 337-4714  
TRIAL DEFENSE 337-4736  
FAX 337-4765  
CIV 0611-705-XXXX

## V Corps/1AD Rear Military Justice

C, MJ	MAJ Brad Huestis	370-5884	<a href="mailto:sjahuestisb@hq.c5.army.mil">sjahuestisb@hq.c5.army.mil</a>
NCOIC	SFC Daryl Daniels	370-5872	<a href="mailto:sjadanielsd@hq.c5.army.mil">sjadanielsd@hq.c5.army.mil</a>

### V Corps

STC	CPT Chris Graveline	370-5873	<a href="mailto:sjagravelinec@hq.c5.army.mil">sjagravelinec@hq.c5.army.mil</a>
Patton	CPT Gray Broughton	373-5050	<a href="mailto:sjabroughtong@hq.c5.amry.mil">sjabroughtong@hq.c5.amry.mil</a>
	CPT John Morgenstern	373-5045	<a href="mailto:sjamorgensternj@hq.c5.army.mil">sjamorgensternj@hq.c5.army.mil</a>
Darmstadt	CPT Shannon Hanrahan	348-7345	<a href="mailto:shannon.hanrahan@us.army.mil">shannon.hanrahan@us.army.mil</a>
	CPT Justin Evison	348-7345	<a href="mailto:justin.evison@cmtymail.26asg.army.mil">justin.evison@cmtymail.26asg.army.mil</a>
Hanau	CPT Brian Adams	322-8739	<a href="mailto:brian.adams@cmtymail.104asg.army.mil">brian.adams@cmtymail.104asg.army.mil</a>

### 1AD Rear

C, MJ/STC	CPT Charlie Kovats	337-4760	<a href="mailto:charles.kovats@hq.1ad.army.mil">charles.kovats@hq.1ad.army.mil</a>
Wiesbaden	CPT Aaron Feldman	337-4756	<a href="mailto:aaron.feldman@hq.1ad.army.mil">aaron.feldman@hq.1ad.army.mil</a>
	CPT Keith Bracey	337-4757	<a href="mailto:keith.bracey@hq.1ad.army.mil">keith.bracey@hq.1ad.army.mil</a>
Baumholder	CPT Joel Cummings	485-6690	<a href="mailto:joel.cummings@hq.1ad.army.mil">joel.cummings@hq.1ad.army.mil</a>
Friedberg/ Giessen	CPT Abe Burgess	324-3870	<a href="mailto:abraham.burgess@hq.1ad.army.mil">abraham.burgess@hq.1ad.army.mil</a>

# Victim-Witness Liaisons

<b><u>Heidelberg:</u></b>	CPT Rebecca Weiler	373-5058
<b><u>Darmstadt:</u></b>	Maribeth Spellman CPT Kathryn Harker	348-7358
<b><u>Hanau:</u></b>	Meghan Vasquez Michelle Anderson	322-9189 322-8779
<b><u>Wiesbaden:</u></b>	Melanie Clark Cathy Ballard	377-4704 337-4708
<b><u>Baumholder:</u></b>	MAJ Pamela Cater	485-8231
<b><u>Giessen/Friedberg:</u></b>	Clay Donnigan	324-3873