

INTRODUCTION

The Office of the Staff Judge Advocate, as well as the Trial Defense Service, is located on Ft. George G. Meade in Snowden Hall at 2257 Huber Rd. The Office of the Staff Judge Advocate is comprised of four branches. The phone numbers to each of these and that of the Trial Defense Service can be found in Chapter 2 of this Guide.

Ft. George G. Meade Regulation 10-1 defines the mission of the Staff Judge Advocate as follows: Provide legal advice to the U.S. Army Garrison and Fort Meade Installation commands; administer military justice; administer the U.S. Federal Magistrate and Felony Prosecution Program; administer the Garrison's U.S. Army claims Program; provide legal assistance and the legal component of the Soldier's readiness Program to eligible service members, retirees, and family members.

While Regulation 10-1 defines our mission, the Office of the Staff Judge Advocate certainly exists for a number of additional reasons. We see the following as the most important components of our mission here at Ft. Meade:

To support the commanders, at various levels, by providing relevant, accurate, and timely legal counsel as is necessary to aid them in the administration of their duties. To keep them apprised of all aspects of legal concern that will directly or indirectly affect their command or the well being of their soldiers. To otherwise make available the resources of this office to provide for the highest quality of legal representation and advice.

To commit this office to taking care of the legal needs of the soldiers that we serve. To take measures to ensure that the soldier is aware of the services we provide and to provide the same in an expedient and professional manner. To perform various legal assistance services for the soldier so that he or she may concentrate their energy on the mission to which they are assigned.

Always and in all situations seeking to do what is right. Whether proactively seeking justice in a given situation or in taking steps to prevent a potential injustice, to remain diligent in seeking the truth.

A brief overview of the functions of this office is outlined in Chapter 2 of this Guide, with a more exhaustive description of our services and resources detailed in Chapter 12. We encourage you to fully utilize our services as the need arises.

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CHAPTER 1 – GENERAL INFORMATION

1-1. PURPOSE.

a. A commander, at any level of command, has several options available for resolving disciplinary problems. This reference guide is designed to make commanders aware of these options and outline the procedures to execute them.

b. This commander's guide is a quick reference tool. Commanders are encouraged to contact their legal specialists or the Office of the Staff Judge Advocate for further guidance. The Criminal Law Division of the Office of the Staff Judge Advocate can be reached during duty hours at COMM: (301) 677-9092/9204/9383 or DSN: 923-9092/9204/9383. For emergency assistance during non-duty hours, contact the Desk Sergeant at the Provost Marshal's Office at (301) 677-6622/6623 and ask to be put in contact with the on-call Judge Advocate Officer.

1-2. SCOPE. The procedures and policies in this commander's guide are applicable to all United States Army units, organizations, detachments, and personnel assigned or attached to Headquarters, Fort George G. Meade, Maryland, or Headquarters, United States Army Garrison, Fort George G. Meade, Maryland, for military justice purposes.

1-3. REFERENCES.

Manual for Courts-Martial (MCM), United States, 1995.

Army Regulation 15-6, "Procedure for Investigating Officer and Boards of Officers," dated 11 May 1988.

Army Regulation 27-3, "The Army Legal Assistance Program," dated 30 September 1992 (C1, 10 September 1995; C2, 21 February 1996).

Army Regulation 27-10, "Military Justice," dated 24 June 1996.

Army Regulation 190-22, "Searches, Seizures, and Disposition of Property," dated 1 January 1983.

Army Regulation 600-8-2, "Suspension of Favorable Personnel Actions (FLAG)," dated 30 October 1987.

Army Regulation 600-8-10, "Leaves and Passes," dated 1 July 1994.

Army Regulation 600-8-19, "Enlisted Promotions and Reductions," dated 1 November 1991.

Army Regulation 600-8-24, "Officer Transfers and Discharges," dated 21 July 1995.

Army Regulation 600-20, "Army Command Policy," dated 30 March 1988.

Army Regulation 600-37, "Unfavorable Information," dated 19 December 1986.

Army Regulation 600-60, "Physical Performance Evaluation System," dated 31 October 1985.

Army Regulation 600-85, "Alcohol and Drug Abuse Prevention and Control Program," dated 3 November 1986 (C1, 21 October 1988; C2, 11 September 1995).

Army Regulation 601-280, "Army Retention Program," dated 29 September 1995.

Army Regulation 611-1, "Military Occupational Classification Structure Development and Implementation," dated 30 September 1997.

Army Regulation 623-105, "Officer Evaluation Reporting System," dated 1 October 1997.

Army Regulation 623-205, "Enlisted Evaluation Reporting System," dated 31 January 1992.

Army Regulation 630-10, "Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings," dated 10 June 1992.

Army Regulation 635-10, "Processing Personnel for Separation," dated 1 July 1984 (8 changes, 10 June 1987).

Army Regulation 635-200, "Enlisted Personnel," dated 5 July 1984 (15 changes, 26 June 1996).

Army Regulation 700-84, "Issue and Sale of Personal Clothing," dated 15 May 1983 (13 changes, 28 February 1994).

Field Manual 27-1, "Legal Guide for Commanders," dated 13 January 1992.

CHAPTER 2 – RESPONSIBILITIES

2-1. SOLDIER. Soldiers are responsible for reading and obeying policy letters issued by all commanders in their chain of command. Soldiers are responsible for obeying all laws, regulations, and policies applicable to them in the area in which they are serving. Soldiers are also responsible for reporting any violations of laws, regulations, and policies to the appropriate authorities.

2-2. COMMANDER.

a. General: The commander is responsible for ensuring that the soldiers under his or her command have the necessary tools to meet the above-stated responsibilities. The commander must also deal with disciplinary problems that may arise in his or her unit. A commander has a number of options for resolving these disciplinary problems. The appropriate disposition for each incident may vary depending upon the soldier and the nature of the alleged misconduct, and each incident should be analyzed and handled on a case-by-case basis. Some disciplinary problems may not constitute an offense under the Uniform Code of Military Justice. These problems may be dealt with by administrative measures. Other disciplinary problems may be serious enough to warrant action through nonjudicial punishment or court-martial. Some may warrant action under both administrative and punitive measures.

b. Company Commander (or equivalent): Upon receiving information that an offense has allegedly been committed by a member of his or her unit, the commander should promptly conduct a preliminary inquiry in accordance with Rule 303, Manual for Courts-Martial (MCM), to determine the following: Was an offense committed? Did the accused commit the offense? What are the circumstances surrounding the offense? What is the character and military record of the accused? How should the case be handled? If the unit commander determines that one of his or her soldiers may have committed the offense, the commander is then responsible for taking appropriate action.

c. Battalion Commander (or equivalent): Battalion commanders are responsible for ensuring that reported offenses are dealt with in a timely and appropriate manner. A battalion commander has the authority to withhold jurisdiction from his or her subordinate commanders and take action on reported offenses. Normally, a battalion commander exercises summary court-martial (SCM) convening authority jurisdiction for both military justice and administrative matters. However, due to differences in unit organization, a battalion commander may have more or less authority.

d. Brigade Commander (or equivalent): Brigade commanders are responsible for ensuring that reported offenses are dealt with in a timely and appropriate manner. A brigade commander also has the authority to withhold jurisdiction from his or her subordinate commanders and take action on reported offenses. Normally, a brigade commander exercises special court-martial (SPCM) convening authority jurisdiction for both military justice and administrative matters. However, due to differences in unit organization, a brigade commander may have more or less authority.

e. Garrison Commander: The Garrison Commander has the authority to withhold jurisdiction from his or her subordinate commanders and take action on reported offenses. The Garrison

Commander exercises general court-martial (GCM) jurisdiction over all units and personnel assigned or attached for military justice purposes to the Headquarters, United States Army Garrison, Fort George G. Meade, Maryland. The Garrison Commander is also responsible for convening special courts-martial empowered to adjudge a bad conduct discharge (SPCM – BCD). The Garrison Commander has the authority to act on administrative separation cases that require an officer exercising GCM jurisdiction in accordance with Army Regulation (AR) 635-200, Chapter 1, paragraph 1-21a. The Garrison Commander also has the authority to file administrative letters of reprimand in a soldier's Official Military Personnel File (OMPF) in accordance with AR 600-37, Chapter 3, paragraph 3-4b.

f. Installation Commander: The Installation Commander has the authority to withhold jurisdiction from his or her subordinate commanders and take action on reported offenses. The Installation Commander exercises general court-martial (GCM) jurisdiction over the First United States Army (East) and for the garrisons, other than Fort George G. Meade, under his or her command. The installation commander has reserved the authority to impose nonjudicial punishment and convene courts-martial for all commissioned and warrant officers attached or assigned to Fort George G. Meade, Maryland, for military justice purposes.

2-3. OVERVIEW - OFFICE OF THE STAFF JUDGE ADVOCATE. (301) 677-9337 / 9576.

a. Criminal Law Division (301) 677-9092 / 9204 / 9383: The Criminal Law Division provides commanders with legal advice and assistance in handling military justice and disciplinary issues including, but not limited to, nonjudicial punishment, courts-martial, administrative separations, and letters of reprimand. The Criminal Law Division is also responsible for providing a trial counsel and a court reporter for courts-martial, a recorder for administrative separation boards, and a government representative for Article 32 investigations.

b. Legal Assistance (301) 677-9536 / 9504:

1. The Army provides legal advice and counseling to soldiers, retirees, and their family members. This program is called legal assistance. It includes advice regarding personal legal issues such as wills, powers of attorney, insurance, taxation, marriage, divorce, renting or leasing, immigration, automobiles, and many other areas. Legal assistance does not include criminal or official military matters that are handled by other staff sections.

2. Soldiers often have difficulty managing their finances. This is one of the most common problems a commander faces. In addition to following the procedures outlined in AR 600-15 (Indebtedness of Military Personnel), commanders should refer soldiers to Army Community Services (ACS). ACS has an excellent financial management program – they map out a detailed budget, contact the creditors to get better repayment terms, and even assist in obtaining loan consolidations. Sometimes a soldier may need legal help to solve financial problems. ACS is well equipped to identify these problems and refer the soldier to Legal Assistance when necessary.

3. Many soldiers, and some commanders, are not aware of the Soldiers' and Sailors' Civil Relief Act (SSCRA). It can help relieve financial difficulties because the law requires reduced interest rates in certain case; shields certain soldiers from burdensome lease arrangements; and

precludes more than one state from taxing a soldier's pay. The SSCRA also permits the suspension (for a reasonable time) of lawsuits against soldiers who, because of military service, find it difficult to appear in court to defend their interests. Questions concerning the SSCRA should be referred to a legal assistance attorney.

c. Procurement and Administrative Law Branch (PAL) (301) 677-9174 / 9756: The PAL Branch advises commanders on administrative legal issues. PAL provides legal advisors for administrative separation boards and Article 32 investigations. Additionally, PAL provides a victim/witness liaison to keep all victims and witnesses informed about the status of the cases in which they are involved.

d. Claims Branch (301) 677-9898 / 9960: The Claims Branch (Claims) is responsible for processing and investigating claims or potential claims by military and civilian personnel for loss or damage of household goods and other personal property. Claims also processes third party claims and tort claims, including those arising from activities of the Army, certain DoD personnel, Nonappropriated Fund Instrumentalities, Army National Guard personnel (Maryland and Pennsylvania), and U.S. Army Reserve personnel. Claims also asserts claims against carriers, insurers, and other third parties.

2-4. TRIAL DEFENSE SERVICE. (301) 677-9216 / 9822. The Trial Defense Service (TDS) provides consultation and representation to soldiers in their personal capacity in the following matters: courts-martial; Article 32 investigations; Article 15, UCMJ; interrogations and line-ups; confinement; administrative separation actions; recruiter misconduct; reductions in grade; and AR 15-6 investigations.

CHAPTER 3 – PRELIMINARY INVESTIGATION

3-1. GENERAL. Anyone may report an offense allegedly committed by a soldier to the local police, the military police, or the soldier's commander. If the alleged offense was committed off post, the civilian authorities will usually investigate. If the alleged offense was committed on post, the Military Police (MPs) or the Criminal Investigation Division (CID) will usually investigate. If the alleged offense is minor, such as being late for formation, the offense will be reported to the unit commander and will not be investigated by the MPs or CID. The unit commander must conduct a preliminary investigation and make an initial decision about how the case should be handled.

3-2. EVIDENCE. When the commander concludes that an offense may have been committed, evidence must be gathered. In simple cases, the commander may gather the evidence. In serious or complex cases, the commander should seek help from law enforcement personnel. In either case, the alleged offense must be quickly and thoroughly investigated. The commander should consider all available evidence, such as:

a. Statements taken from all alleged offenders, victims, and witnesses as soon as possible after the incident. (See Chapter 4 of this guide.)

b. Physical evidence: Weapons, contraband drugs, stolen items, etc., must be secured and a chain of custody established.

c. Military Police (MP) and Criminal Investigation Division (CID) reports: A commander should not delay his or her investigation to wait for final reports. He or she should get copies of statements, chain of custody forms, blood alcohol test results, and interim reports as they are completed.

CHAPTER 4 – OBTAINING STATEMENTS

4-1. GENERAL.

a. Self-incrimination: Article 31 of the Uniform Code of Military Justice (UCMJ) (Code) protects an individual subject to the Code from involuntary self-incrimination. No one subject to the UCMJ may compel any person to incriminate himself or herself or answer questions that may incriminate himself or herself. You may not interrogate, or request a statement from, a person suspected of an offense without first notifying him or her of the nature of the accusation and advising him or her that he or she does not have to make any statement regarding the offense. You may not compel any person to make a statement or produce evidence that is not material to the issue and may degrade him or her. No statement obtained in violation of Article 31, or through the use of coercion, unlawful influence, or unlawful inducement, may be received in evidence against the soldier in nonjudicial punishment proceedings or in a trial by court-martial.

b. Use of DA Form 3881, Rights Warning Procedure/Waiver Certificate: Article 31, UCMJ, and the Fifth and Six Amendments to the U.S. Constitution all provide different but overlapping rights. They include the right to be informed of the nature of the accusation, the right to remain silent, and the right to an attorney. These rights apply when a suspect is interrogated. Because of the complexity of these issues, the best approach is to use a DA Form 3881 whenever you suspect the subject of your questioning has committed any offense, no matter how minor.

4-2. RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE. (DA FORM 3881).

a. Rights: Advise the suspect of his or her rights as follows and have the suspect initial after each statement you have read:

1. “Before I ask you any questions, you must understand your rights.”

2. “You do not have to answer any questions or say anything.”

3. “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 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.”

b. Waiver: Once you have advised the suspect of his or her rights, you must find out to what degree he or she wishes to exercise those rights. Therefore, after informing the suspect of his or her rights, ask the following:

1. “Do you understand your rights?”

2. “Do you want a lawyer at this time?”

3. “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?”

c. **Voluntary Statement:** The suspect must waive these rights freely, knowingly, and intelligently. After waiver, you may question the suspect concerning the offense(s). If the suspect indicates a desire to consult with a lawyer, stop all questioning until a lawyer is present. If the suspect indicates a desire not to answer questions, do not attempt to question the suspect further. You must not use a tone of voice or manner which is threatening or which downplays the importance of the rights warning. If this is done, a court may decide that the suspect was coerced and the statement is inadmissible. If you are aware that a defense counsel represents a suspect, contact that defense counsel prior to initiating any questioning. Also, do not paraphrase the warning, read it word for word aloud to the suspect and have him or her initial the form and sign it.

4-3. **ORAL STATEMENTS.** Prior to beginning any questioning, ensure that you have completed DA Form 3881 as directed above. You should attempt to obtain a written, sworn statement from any oral statements. Also attempt to gather statements made to persons who are not investigating the case, or statements that may have been blurted out before the rights advisement, as these statements may be admissible.

4-4. **WRITTEN STATEMENTS.** The best way to make an accurate and complete record of the information obtained in an investigation is to obtain a written, sworn statement. A sworn statement is simply a statement given by a witness or suspect who states under oath that the contents of the statement are true. Prior to taking a written statement, ensure that the person being questioned has completed a DA Form 3881 (if necessary), as directed above. MPs, CID agents, judge advocates, adjutants, and investigating officers are authorized to administer oaths when taking sworn statements. Status as a commander or First Sergeant does not automatically give you the authority to administer oaths. However, when acting in the capacity of an investigating officer, any authorized investigator can administer oaths. An appropriate oath is “Do you affirm (or swear) that the statement you are about to give (or have given) is the truth, the whole truth, and nothing but the truth (so help you God)?” Use the DA Form 2823, Sworn Statement, to take the statement. The witness or suspect should initial the written statement at the beginning and at the end of each page, at each erasure and correction, and where otherwise indicated on the DA Form 2823. The purpose of initialing is to avoid any question of tampering after the statement has been completed. You should request sworn statements primarily from the people who have direct, personal knowledge about the facts of a case or investigation.

CHAPTER 5 – INVENTORY, INSPECTION, AND SEARCH

5-1. GENERAL. The Fourth Amendment to the U.S. Constitution protects individuals from illegal searches and seizures. If a search or seizure is not performed according to law or regulation, the evidence obtained is not normally admissible in nonjudicial punishment proceedings or in a trial by court-martial. With the exception of emergency situations, a commander should contact his or her trial counsel prior to conducting any search or seizure.

AMENDMENT IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

5-2. INVENTORY. Army Regulation 700-84, Chapter 12, paragraphs 12-12 and 12-14, authorize inventory of a soldier's property when the soldier is absent from the unit under various circumstances such as AWOL and extended hospitalization. If during this inventory the commander, or a designated representative, discovers items that would aid in a criminal prosecution, the items may be seized and later used as evidence. The timing, scope, and manner of the inventory must be consistent with the purpose for which it was authorized or a court may rule that the "inventory" was a subterfuge for an illegal search.

5-3. INSPECTION. Search and seizure requirements do not limit a commander's authority to conduct legitimate inspections. Warnings are not required for an inspection. If criminal evidence is discovered during the course of a proper inspection, it may be used against the soldier.

a. The primary purpose of an inspection is to insure accountability, security, fitness, health and welfare, and good order and discipline of the unit. For example, a commander may inspect to insure that soldiers have their equipment clean, maintained, and properly stored, and that they have no dangerous or prohibited items. The commander should ensure that all inspections are conducted in a reasonable manner. Because of this, the inspection should not ordinarily be conducted in the middle of the night. However, a compelling reason may justify conducting an inspection at an unusual time. Also, the inspection should not result in damage to the soldier's property.

b. If the primary purpose of an inspection is to obtain evidence to use for the purpose of prosecution, the inspection is not a legitimate inspection. It is instead an unlawful search. Generally, evidence obtained in an unlawful search will be inadmissible in nonjudicial punishment proceedings and in a trial by court-martial.

c. The commander may use drug detection dogs during inspections without giving notice to the soldier.

5-4. SEARCH AND SEIZURE.

a. Probable Cause: Generally, only a commander has the authority to authorize searches, and he or she generally may not delegate this authority. (See the commander's pre-authorization search and seizure checklist at the end of this chapter.)

1. General: Probable cause for ordering or authorizing a search exists when there is a reasonable belief that certain specific evidence of crime is located at a certain place or on a person to be searched. A mere suspicion or rumor is not enough. The commander who orders or authorizes the search must have personal knowledge of the facts and circumstances upon which probable cause is based prior to authorizing the search. It is of no importance that a CID agent, a first sergeant, or an informant is aware of sufficient facts and circumstances to provide probable cause. What is important is that those facts and circumstances are relayed to the commander who can authorize the search.

2. Determining if Probable Cause Exists: The information which provides the probable cause for a search may come from any source. It is critical, however, that the information is trustworthy and that the commander who authorized the search is personally aware of it and makes a judgment of its reliability. This does not mean that the commander must personally know the source of the information (normally called the informant). All that is necessary is that the commander is aware of the reasons that make the informant and the information believable. To test the factual basis for the information and the reliability of the source of the information, the commander should ask the following questions: "How does the source of the information know?" and "Why should I believe the source?" In reviewing a situation, the commander should consider the totality of the circumstances in order to determine whether there is probable cause.

3. Authorization Requirements: The "Oath or affirmation" requirement of the Fourth Amendment does not apply to search authorizations issued by a commander. However, if circumstances permit, the commander should have an authorized individual administer an oath to persons providing the information upon which probable cause is determined. He or she may use any form of oath, provided it assures that the person giving the information guarantees its accuracy. The following oath or affirmation is a good example:

"Do you affirm (or swear) that the information you are providing is, to the best of your knowledge, information, or belief, the truth, the whole truth, and nothing but the truth (so help you God)?"

The information that the commander considers may be oral or written. If the information is received orally, the commander should make a memorandum for record. This will enable him or her to remember the facts that formed the basis for the decision to authorize the search. When the commander grants an authorization, he or she should specify with particularity the place to be searched and item(s) to be seized.

4. For an Apprehension: Probable cause for an apprehension exists when there is a reasonable belief that a crime has been committed and that the person to be apprehended committed the crime.

b. Lawful Searches: The best practice is to obtain a search authorization based upon probable cause. Although some exigent circumstances justify an immediate search without authorization (i.e., to prevent imminent destruction of evidence), obtain authorization whenever possible. The following examples represent the types of lawful searches a commander most commonly encounters.

1. Search Authorized by a Commander: A commander has the authority to order searches of persons or property within his or her command. Thus, commanders may authorize searches of any person or property located in places under their control. This includes the unit area, the grounds surrounding the unit area, and any vehicles in the parking lot near the unit area if the authorizing commander has reasonable control of those areas. However, such searches must be based upon probable cause. It is strongly recommended that the commander record the facts constituting probable cause so that he or she can later testify accurately as to the basis for authorizing the search. A commander generally may not delegate authority to order a search. The U.S. Constitution requires that the authorization to search come from a "neutral and detached" entity. Therefore, 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. When this happens, contact the next higher commander who is neutral and detached, or a military magistrate.

2. Search Authorized by Military Judge or Military Magistrate: Judge Advocate (JAG) officers certified as Military Judges or magistrates may authorize a search of any property within their judicial jurisdiction. This search warrant authority is in addition to and independent of a commander's authority. Contact the MPs, CID, and your trial counsel before attempting to gain search authorization from a Military Judge or military magistrate.

3. Search Incident to Apprehension: After a lawful apprehension, a search of the person and of the property in his or her possession or in the area under his or her immediate control is lawful without any probable cause. This is so for two reasons. First, the person who apprehends the suspect needs to protect himself or herself. Thus, he or she can search the suspect for weapons. Second, the suspect may try to conceal or destroy evidence. Therefore, the apprehending official can search for evidence in the area within the suspect's immediate control. The apprehension must be lawful for this type of search to be lawful. (See paragraph a4 above for probable cause required for apprehension.)

4. Consent to Search: A search is lawful when it is made with the voluntary consent of a soldier who has a right of possession or control over the property. No probable cause is required. However, since such consent amounts to the waiver of a fundamental right, the Government must produce clear and convincing evidence that the consent was given intelligently and voluntarily (not merely a submission to apparent authority). To establish intelligent and voluntary consent, you should inform the soldier whose consent you seek of the following:

- (a) What specific item or items you are looking for.
- (b) What specific area the proposed search will cover.
- (c) That he or she has the legal right to withhold consent.

- (d) That he or she need not submit to a search unless it is properly authorized.
- (e) That any evidence found in the proposed search can be used as evidence in court.

To determine whether the consent was freely given, courts often look to see if there was disparity of rank or position and whether the circumstances were coercive. Because the courts closely scrutinize consent searches, it is best, though not mandatory, to obtain written consent for the search. Your unit or the local MPs or CID office will have forms for obtaining written consent.

c. **Statements Made During Searches and Inspections:** Article 31 warnings and Miranda warnings ("reading someone their rights") are not necessary to validate an otherwise lawful search. This is so because a lawful search does not necessarily involve asking a suspect any questions. The warnings are required only when conducting an interrogation. However, experience has shown that searchers ask questions during most searches (e.g., "Which locker is yours?", "Are these your boots?", and "Where did you get this?"). If you suspect that the subject has committed a crime, the answers to such questions may be inadmissible as evidence unless the searcher properly informs the suspect of his or her rights. Hence, the best practice is to give the proper warnings before any search is conducted. (See 4-2 for the recommended advisement of rights procedures.)

d. **Scope of the Search:** Simply put, a search is designed to uncover particular, identifiable evidence of a crime. The searcher may look only in places where that evidence might reasonably be located. Occasionally, an examination that began as a lawful search is expanded to the point of illegality. For example, assume that a commander has probable cause to believe that Private Jones is hiding a .45 caliber pistol in his wall locker and subsequently authorizes a search of the wall locker to find and seize the weapon. Assume further that during the search, the person conducting the search looks inside a matchbox and finds an illegal drug. That drug is not admissible as evidence against Private Jones because the search went beyond the scope of its original authorization. Clearly, a .45 caliber pistol could not be in a matchbox. Hence, when the searcher opened the matchbox, the searcher exceeded his or her authority, and the search became a "fishing expedition." Since the searcher had neither authorization nor a valid reason to look into the matchbox, the intrusion was an unreasonable search in violation of the Fourth Amendment.

5-5. SAFEGUARDING EVIDENCE.

a. **General:** Drugs, weapons, clothing, and other items related to an alleged offense are physical evidence. The company commander must preserve and safeguard physical evidence. As few people as possible should handle physical evidence, since the court may require anyone who handles it to appear at the trial to verify that the evidence being admitted is the same evidence that was seized. In order to properly safeguard physical evidence, mark it properly to insure later identification.

b. **Chain-of-Custody:** Initiate a "chain-of-custody" document (DA Form 4137). Turn over physical evidence to trained investigators, such as the MPs or CID, as soon as possible.

When counsel introduces an item of physical evidence at trial, he or she must show that it is the same item that was found at the scene of the offense or otherwise connected with the crime, and that the item has not been altered. The chain-of-custody document is a written record listing all persons who have handled an item from the time it was originally identified as evidence until the time of the trial.

c. Marking: The first person who assumes custody of physical evidence must mark it immediately to enable him or her to identify it at trial. The MPs or CID usually handle the marking of evidence. The chain-of-custody record should briefly describe the item, and the date and place of its discovery. If the evidence cannot be immediately marked, place it in a sealed container and mark the container. Once again, involve the experts (MPs or CID) as soon as possible.

COMMANDER’S PRE-AUTHORIZATION SEARCH AND SEIZURE CHECKLIST

a. Is the information timely?

1. Considering the time that has passed, is it still more likely than not that the goods to be seized are at the original location? - - - - - []

(a) I have considered the location involved. - - - - - []

(b) I have considered the type of crime. - - - - - []

(c) I have considered the nature of the article to be seized. - - - - - []

(d) I have considered the length of time since the crime. - - - - - []

2. After considering all these factors, I believe it is more likely than not that the item is located at the place to be searched. - - - - - []

b. I have considered the relationship between:

1. The crime. - - - - - []

2. The objects. - - - - - []

3. The place to be searched. - - - - - []

4. I believe the items to be seized are connected with criminal activity and are located at the place to be searched. - - - - - []

c. I have considered my neutrality, and believe I am neutral, detached, and impartial. []

1. I am not representing a law enforcement interest. - - - - - []

2. I do not intend to be a member of the search party. - - - - - []

3. I do not intend to represent the government’s interests in any legal proceeding involving the suspected crime. - - - - - []

4. I have not ordered this investigation. - - - - - []

5. I am not motivated by revenge or vindictiveness. - - - - - []

6. I am confident that the information given me is not intentionally false or given with “reckless disregard for the truth.” - - - - - []

- d. I have been trained on search and seizure rules. - - - - - - []
- e. I have consulted with a judge advocate. - - - - - - - []
- f. I have particularized the place to be searched and the things to be seized. - - []
- g. I have considered the source's:
 - 1. Truthfulness. - - - - - - - - - - - []
 - 2. Reliability. - - - - - - - - - - - []
 - 3. Basis of knowledge. - - - - - - - - - - - []
 - 4. Credibility. - - - - - - - - - - - []

CHAPTER 6 – DRUG OFFENSES

6-1. GENERAL. Drug cases can be disposed of in a number of ways other than trial by court-martial. For instance, AR 635-200, Chapter 14, states that abuse of illegal drugs may be grounds for separation.

6-2. URINALYSIS.

a. A command directed urinalysis is in essence an inspection, and it is a valuable tool for controlling drug abuse. Commanders may use urinalysis results as evidence in disciplinary and judicial proceedings under the UCMJ and to characterize administrative discharges. See the information paper, Commander's Checklist for a Positive Urinalysis Notification, attached at Appendix A. (See AR 600-85, Chapter 10, for more information.)

b. In order to control drug abuse and experimentation, the unit commander must be aware of and be able to coordinate several recommended command policies. The Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) is outlined in AR 600-85. In addition to this, the commander should be aware that frequent and thorough inspections tend to discourage drug use as well as promote the health, safety, and welfare of the soldiers. The commander should take steps to become as knowledgeable about drugs as possible and encourage other officers and NCOs in the unit to do the same. Such things as physiological symptoms of drug use or overdose, physical appearance and common packaging of various drugs (e.g., marijuana, barbiturates, amphetamines, cocaine, or heroin), the odor of burning marijuana, and the slang names for dangerous drugs are important to know. The Military Police (MP) or Criminal Investigation Division (CID) can assist you in this regard. Finally, the commander should understand, and insure that subordinate leaders understand, the law of searches so that evidence seized will be admissible in court.

c. It is imperative that the command conduct its urinalysis program in accordance with all regulatory requirements, maintain a random selection process, and fully train all unit representatives and observers. Contact your trial counsel with any questions or concerns prior to conducting a urinalysis to ensure the integrity of the system.

CHAPTER 7 - NONJUDICIAL PUNISHMENT

7-1. GENERAL.

a. Commanders may impose nonjudicial punishment upon military personnel of their command for minor offenses under the provisions of Article 15, UCMJ, in accordance with the Manual for Courts-Martial (MCM), Part V, and AR 27-10, Chapter 3. Nonjudicial punishment is different from nonpunitive or administrative disciplinary measures. The criminal misconduct must be of a minor nature for nonjudicial punishment to be appropriate. The imposing commander must give due regard to the circumstances surrounding the commission of the offense and the personal history of the offender. Experience has shown that a commander who knows, understands, and properly administers nonjudicial punishment will reap benefits in the form of enhanced unit discipline, morale, and performance.

b. Before taking action under Article 15, the commander should have reasonable grounds to believe that the alleged misconduct actually took place, that the misconduct was an offense under the UCMJ, and that the accused committed the offense. The commander should also ensure that the investigation into the alleged misconduct is conducted as quickly as possible. The commander should also consider nonpunitive and administrative actions before deciding to impose nonjudicial punishment.

7-2. AVOID MAKING A PREDETERMINATION OF GUILT. No determination of guilt may be made until after all of the evidence is considered. Acceptance of an Article 15 proceeding is not, by itself, an admission of guilt. Rather, the soldier is electing to have the commander handle the case and make a fair determination. Remember that soldiers may be punished only if they committed a crime. The commander must maintain a fair and just approach to all proceedings under Article 15. If soldiers believe they will not be given a fair chance to present their side of the story, they will be less likely to accept an Article 15. Obviously, it would not be in the best interest of either the soldier or the Army to have a matter that is appropriate for disposition under Article 15 escalated to a trial by court-martial. The commander should scrupulously avoid any remark that implies bias or prejudice. Under no circumstances should the soldier, or anyone else, be told in advance what the punishment will be if the Article 15 is accepted and if the soldier is found guilty. The commander should not decide whether the soldier is guilty until the soldier has presented all of his or her evidence in defense. If the commander concludes that the soldier is guilty beyond a reasonable doubt, he or she should consider the soldier's evidence in extenuation and mitigation (factors which justify a lighter punishment), and then decide what punishment is appropriate.

7-3. AUTHORITY TO IMPOSE AN ARTICLE 15. Any commander who is a commissioned or warrant officer may impose an Article 15. However, some local regulations and policies reserve the authority to impose Article 15 punishment upon certain categories of soldiers or offenses to senior commanders. The Installation Commander, Fort George G. Meade, Maryland, has reserved the authority to impose nonjudicial punishment on all commissioned and warrant officers attached or assigned to Fort George G. Meade, Maryland, for military justice purposes.

7-4. PERSONS SUBJECT TO ARTICLE 15. A commander may impose nonjudicial punishment upon any military member in his or her unit. This authority generally extends to both attached and assigned personnel. Remember that a senior commander may withhold authority for certain actions.

7-5. SUMMARIZED ARTICLE 15 PROCEEDINGS.

a. General: If the commander determines that an appropriate punishment would not exceed the maximum for summarized proceedings, the commander will use summarized proceedings. The maximum punishment that may be imposed during summarized proceedings is extra duty for 14 days, restriction for 14 days, and oral reprimand or admonition (or any combination of these punishments).

b. Proceedings:

1. Use DA Form 2627-1. The commander, or a designated subordinate commissioned or warrant officer or a noncommissioned officer (E-7 or above), must notify the service member of the following:

- (a) The imposing commander's intent to initiate summarized Article 15 proceedings.
- (b) The maximum punishments under summarized proceedings.
- (c) The right to remain silent.
- (d) The offense(s) allegedly committed and Article(s) of the UCMJ allegedly violated.
- (e) The right to demand trial by court-martial and the right to object to a trial by summary court-martial.
- (f) The right to call and confront witnesses, examine evidence, and submit matters in defense, extenuation, and mitigation.
- (g) The right to appeal.

2. The soldier must then decide whether to accept the Article 15, to demand trial, or to request a reasonable time, normally at least 24 hours, to make a decision and to gather matters in defense, extenuation, and mitigation. The soldier has no right to consult with an attorney during summarized proceedings, and no right to have someone speak on his or her behalf.

3. Unless the soldier demands a trial by court-martial during the decision period, the commander may proceed with the hearing. The hearing consists of an examination of all evidence (written or oral) both against and in favor of the soldier, a determination of guilt or innocence, and, if the soldier is found guilty, consideration of evidence in extenuation and mitigation, imposition of the punishment, and explanation of the right to appeal within 5 calendar days.

7-6. FORMAL ARTICLE 15 PROCEEDINGS. If the commander determines that an appropriate punishment might exceed the maximum for summarized proceedings, but not the maximum for formal Article 15 proceedings, the commander will use formal proceedings.

a. Company Grade Article 15: Company grade officers or warrant officers in command positions may impose nonjudicial punishment in accordance with AR 27-10. If the company grade officer does not feel that company grade punishment is adequate for the offense, the case should be forwarded to the next higher commander (usually a field grade officer), with a request that the commander exercise field grade Article 15 authority. The company grade officer cannot recommend a particular punishment under these circumstances. In an appropriate case, a field grade officer may return a case to a company grade officer for disposition at the company level. In no case can a superior direct that a subordinate commander take action under Article 15, nor can the superior dictate to a subordinate the type of punishment to be imposed under Article 15. A subordinate commander may, however, seek guidance from a superior commander on appropriateness of punishment.

b. Field Grade Article 15: A field grade officer, in a command position, may impose punishment in accordance with AR 27-10. In all respects, other than the maximum authorized punishment, a field grade Article 15 is identical to a company grade Article 15.

c. Proceedings:

1. Use DA Form 2627. The commander, or a designated subordinate commissioned or warrant officer or a noncommissioned officer (E-7 or above), must notify the service member of his or her rights. The designated person must be senior to the alleged offender. (The procedures for administering nonjudicial punishment, "Suggested Guide for Conduct of Nonjudicial Punishment Proceedings" (AR 27-10, Appendix B) is attached as Appendix B.) In formal proceedings, the service member must be notified of the following:

- (a) The right to remain silent.
- (b) The right to consult a lawyer.
- (c) The right to demand trial by court-martial and the right to object to a trial by summary court-martial.
- (d) The right to present his or her case to the imposing commander (except in rare circumstances).
- (e) The right to call witnesses and present evidence.
- (f) The right to be accompanied by a spokesperson.
- (g) The right to request an open hearing.
- (h) The right to examine all available evidence.

2. The soldier is then given reasonable time to consult with counsel, normally at least 48 hours. The commander will inform the soldier of the maximum punishment that may be imposed under Article 15, and, upon request, of the maximum punishment that may be imposed by a court-martial upon conviction. If the soldier does not demand a trial by court-martial within the decision period or the soldier refuses to complete or sign item 3, DA Form 2627, within the prescribed time, the commander may continue the proceedings. Demanding a trial by court-martial and refusing the Article 15 does not give the soldier the right to select which level of court-martial will hear the case. The discretion to refer the charges to trial by court-martial and selection of the level of court-martial lies solely with the convening authority. However, the soldier may object to trial by summary court-martial.

d. Imposition of Punishment:

1. General: Article 15 authority must be administered in a formal and dignified manner; however, Army policy stresses the right and opportunity of the soldier to present matters in defense, extenuation, and mitigation, and the opportunity for personal discussion of the issues with the commander.

2. Informing the Offender: If the imposing commander determines, beyond a reasonable doubt, that the soldier has committed an offense and decides to impose punishment, the commander will ordinarily announce the punishment to the soldier. The commander may explain to the soldier why a particular punishment was imposed.

3. Maximum Punishment: The maximum punishment worksheet (Appendix C) outlines the maximum punishments authorized under the provisions of Article 15. Remember, a field grade commander may impose greater punishment than a company grade commander. A field grade Article 15 may not be administered for misconduct previously punished by a company grade Article 15. Similarly, an offender subject to the UCMJ who has been tried in a civil court will not normally be punished under Article 15 for the same act or acts over which the civil court has exercised jurisdiction. The commander must be aware of other limitations on punishment. Any forfeiture of pay imposed must be based upon the grade to which the offender is reduced (even if suspended), not upon the original grade. Restriction and extra duty may be combined only for the maximum time allowed for extra duty alone. Therefore, if both restriction and extra duty are imposed by a field grade officer, the maximum punishment would be 45 days extra duty and 45 days restriction, rather than 45 days extra duty and 60 days restriction. In no case can restriction or extra duty be combined with correctional custody. (See AR 27-10, paragraph 3-19.)

4. Filing: In cases involving soldiers who are in the grade of E-4 and below prior to punishment, the Article 15 is filed locally and destroyed after two years. In other cases, the commander who imposes punishment must decide whether to file the record in the soldier's performance fiche or restricted fiche. A commander's decision whether to file a record of nonjudicial punishment in a soldier's Official Military Personnel File (OMPF) is as important as the decision to impose nonjudicial punishment. When making a filing determination, the imposing commander must weigh carefully the interests of the soldier's career against the interests of the Army to produce and advance only the most qualified personnel. The imposing commander

should consider the soldier's age, grade, total service, and the fact that the filing decision is final. Remember that promotion boards and school selection boards normally view only the performance fiche. If the imposing commander directs filing of the record of nonjudicial punishment in the soldier's restricted fiche, the soldier's Official Military Personnel File will be reviewed to determine if the restricted fiche contains a previous record of nonjudicial punishment that has not been wholly set aside. In those cases where a previous record of nonjudicial punishment was filed in the restricted file, and the soldier, prior to punishment, was in the grade of SGT or higher, the present record of nonjudicial punishment will be filed in the performance fiche. (See AR 27-10, paragraph 3-6.)

e. Clemency:

1. General: Commanders cannot realize the full effectiveness of Article 15 unless they are aware of their clemency power and their responsibilities if the soldier decides to appeal. As to clemency, commanders imposing punishment under Article 15 have the power to suspend, remit, mitigate, or set aside that punishment if they conclude that this action is warranted. These powers, explained below, give a commander an effective means of rehabilitating offenders. Also, a successor in command may take any action the imposing commander could have taken. (See AR 27-10, paragraph 3-23.)

2. Suspension: When a commander suspends punishment, he holds the punishment in abeyance (i.e. it is not put into effect) for a specified period of time. This results in a probationary period that permits the soldier to demonstrate good conduct and efficiency. If properly explained, a suspension provides the soldier with an incentive to stay out of trouble. Commanders may suspend the unexecuted portion of any punishment for a reasonable time not to exceed six months. In fact, Army regulations permit a reduction in grade or forfeiture of pay to be suspended at any time within four months after it has been imposed, even if the punishment has already been executed. For example, if a soldier is reduced from E-3 to E-2 in January and performs well after the Article 15, the reduction may be suspended any time prior to May. Suspension may be considered in all cases, but it is especially effective in cases of first time offenders. The commander has an opportunity to rehabilitate a soldier who might otherwise become a continuing disciplinary problem. The commander should bear in mind that no favorable personnel actions may be taken during the period of suspension. (See AR 27-10, paragraph 3-24.)

3. Mitigation: The severity of the punishment may be reduced by mitigation. This is appropriate when the soldier has demonstrated, by subsequent good conduct, that a decrease in punishment is warranted. (See AR 27-10, paragraph 3-26.)

4. Remission: Remission is the cancellation of the unserved portion of the punishment. This action may be taken for circumstances similar to those appropriate under mitigation. (See AR 27-10, paragraph 3-27.)

5. Setting Aside: The commander may set aside an action taken under Article 15 when it is clear that an injustice has occurred. All rights and privileges are returned to the soldier. This type of action would be necessary, for instance, in a case where new evidence or information clearly indicates the soldier was not guilty. (See AR 27-10, paragraph 3-28.)

f. Appeals: Every soldier who is found guilty under the provisions of Article 15 has the right to appeal the punishment. (See AR 27-10, Chapter 3, Section VI.)

1. Effective Date and Execution of Punishment: Under normal circumstances the punishment administered pursuant to Article 15 will take effect on the date it is imposed. The commander may delay certain punishment for such reasons as field training, hospitalization, and emergency leave. If the soldier files a timely appeal (normally within five days of the hearing), he or she continues to serve the punishment while the appeal is being processed and considered. If the appeal is not decided within five calendar days following submission (three days for a summarized Article 15), not including the day of submission, the punishments involving deprivation of liberty may be interrupted, upon the soldier's request, pending decision on the appeal.

2. Procedure: The accused is entitled to submit statements dealing with the offense or with the appropriateness of the punishment. The commander who originally imposed the punishment should consider these statements and, if warranted, modify the punishment imposed. Essentially, the imposing commander treats the appeal as a request for reconsideration. If additional action such as suspension, mitigation, or remission is taken, the commander should then inquire if the soldier wishes to withdraw the appeal. If the soldier declines to withdraw the appeal, or if the commander takes no modification action, he or she must forward the appeal to the superior commander. (The chain of command for UCMJ actions may be different from your normal administrative or unit chain of command. Contact your trial counsel on this matter if you are unsure.) The forwarding commander may include a written endorsement addressing the issues raised in the soldier's appeal so the appellate authority will have all the necessary information to act. The appellate authority can approve or reduce, but not increase, the punishment imposed by the first commander. Commanders should avoid delays in handling appeals because they may deprive the soldier of their rights and undermine the military justice system.

g. Publication of Results: In order to be effective, our system of military justice must not only function properly, it must also appear to function properly. The commander may announce to the unit the disposition of all cases involving nonjudicial punishment. This includes findings of not guilty. This may be done orally at a routine unit formation and/or in writing by posting a formal notice on the unit bulletin board or other location where routine notices are placed. If published by posting, the soldier's social security number will be blackened out. The commander must consider the impact on unit morale, the deterrent effect, and the impact on the leadership effectiveness of the individual concerned prior to making a decision to announce or publish nonjudicial punishment cases. (See AR 27-10, paragraph 3-22, for further guidance.)

CHAPTER 8 – COURTS-MARTIAL

8-1. GENERAL.

a. After a preliminary investigation and consideration of administrative, nonpunitive, and nonjudicial courses of action, the unit commander may determine that the matter is sufficiently serious to warrant a trial by court-martial. When the commander considers this, he or she should first consult with his or her trial counsel at the Criminal Law Division of the OSJA at (301) 677-9204/9092.

b. Company commanders normally cannot convene a court-martial. They can recommend a trial by court-martial and forward the entire case file up the chain of command. Each subsequent higher commander must exercise personal discretion in disposing of or recommending disposition of the case.

c. Specific information and guidance for the preparation and forwarding of charges and associated papers can be found in the MCM and AR 27-10.

8-2. PRETRIAL CONFINEMENT OR RESTRAINT. (R.C.M. 304 and 305.) While charges are being processed for trial, a commander may want to confine or restrict the liberty of the accused soldier. In determining whether confinement or restriction is appropriate, the commander must recognize that confinement deprives soldiers of liberty during the period when they are presumed innocent, and confinement may also make it difficult for soldiers to prepare their defense. Unlike civilian proceedings, military proceedings have no provision for release on bail. Thus, a commander may confine an accused soldier only when it appears necessary to insure his or her presence at trial, or to prevent foreseeable serious misconduct, and when lesser forms of pretrial restraint are inadequate. The commander is not required to try lesser forms of restraint before using pretrial confinement if the commander has reason to believe that lesser forms of restraint will be futile. It is important to emphasize that mere convenience to the commander is not a sufficient reason to justify depriving soldiers of their freedom. Pretrial confinement may not be used as punishment. Before attempting to place a soldier in pretrial confinement, notify the Criminal Law Division. Remember that pretrial restraint (e.g. restriction) may create legal issues dealing with the right to a speedy trial. The government must try an accused within 120 days of the imposition of the restraint or the preferral of charges. In addition, if the accused is put in pretrial arrest or confinement, the government must bring him to trial within 90 days. Always seek your trial counsel's advice before placing any restraints on a soldier's liberty. See AR 27-10, paragraph 5-13, for a full discussion of pretrial confinement issues.

8-3. SUMMARY COURT-MARTIAL.

a. A summary court-martial (SCM) consists of one impartial commissioned officer who conducts the trial proceedings and makes all the decisions required in the case. A battalion or higher commander normally convenes a SCM. A SCM can try any person subject to the UCMJ, except officers, warrant officers, cadets, and midshipmen, for any non-capital offense (an offense not punishable by death) under the UCMJ. SCMs are usually used for "minor" offenses. The maximum punishment a SCM can impose is confinement for one month, restriction for two

months, forfeiture of two-thirds of one month's pay for one month, hard labor without confinement for 45 days, and reduction to the lowest grade for soldiers in the grade of E-4 or below. If the accused is in the grade of E-5 or above, no confinement or hard labor without confinement may be adjudged, nor may a reduction exceed one grade. (See R.C.M. 1301(d)(2), MCM for further information.)

b. In a trial by SCM, the accused has the right to consult with military counsel before trial, but does not have the right to be represented by a military defense counsel at the hearing. The accused may obtain representation by a civilian attorney at no expense to the Government. Perhaps the most serious limitation on the jurisdiction of a SCM is that a soldier can refuse to be tried by a SCM, even if the soldier has previously refused nonjudicial punishment.

8-4. SPECIAL COURT-MARTIAL. There are two categories of a special court-martial. Those that may adjudge a bad conduct discharge (SPCM-BCD) and those that may not (commonly referred to as a straight special).

a. A special court-martial (SPCM) is normally composed of a military judge, a minimum of three court members (who serve as the jury), a legally qualified trial counsel (prosecutor), and a legally qualified defense counsel. If the accused elects to be tried by the military judge alone, there will be no court members.

b. Brigade commanders (some battalion commanders) or higher commanders are SPCM convening authorities. In the case of a SPCM authorized to impose a Bad Conduct Discharge (BCD), a General Court-Martial Convening Authority (GCMCA) must convene the court.

c. A SPCM can try any person subject to the UCMJ for any non-capital offense under the UCMJ. A SPCM may impose punishment not to exceed confinement for six months, forfeiture of two-thirds pay per month for six months, and reduction to the pay grade of E-1, and, if the SPCM has been empowered, to adjudge a BCD. An individual cannot refuse to be tried by a SPCM. A SPCM may not sentence an officer to reduction, confinement, hard labor without confinement, or dismissal. No court-martial can reduce an officer.

8-5. GENERAL COURT-MARTIAL.

a. A general court-martial (GCM) is the highest level court in the military legal system and tries those subject to the UCMJ for the most serious types of crimes. A GCM is composed of a military judge, at least five court members, and a legally qualified trial counsel and defense counsel. A commander with General Court-Martial Convening Authority (not necessarily a general, but normally the commander of a post or division) convenes a general court-martial. Any person subject to the UCMJ may be tried by a general court-martial for any offense made punishable by the UCMJ. A GCM can, upon conviction, impose any punishment authorized by law, to include death, dismissal, dishonorable discharge, total forfeiture of all pay and allowances, confinement, and lesser punishments. (See Appendix 12 of the Manual for Courts-Martial for a description of maximum punishments associated with each offense.)

b. The accused can, in non-capital cases, request trial by military judge alone. If the request is granted, there will be no court members. The military judge then rules on all matters of law, finds the accused guilty or not guilty, and, if the accused is convicted, decides the sentence. If the trial is with court members, the court members will, with two-thirds concurrence of the members present, make a finding of guilty and if the accused is convicted, decide the sentence.

c. Before a general court-martial is convened, there must be a formal investigation, pursuant to Article 32 of the UCMJ. This investigation is referred to as an Article 32 Investigation. For more information see Article 32, UCMJ, and R.C.M. 405 in the MCM.

8-6. UNIT RESPONSIBILITIES. The accused soldier's unit will be responsible for many support tasks throughout the court-martial process. Some of these include the following: Ensuring that the accused soldier is present at all required proceedings; ensuring that the accused soldier is in the correct uniform; providing a bailiff for the trial; providing escorts to transport the soldier to all required proceedings, and, if necessary, to the confinement facility after sentencing; and providing a driver to transport witnesses to and from the courtroom. If you have a soldier who is being court-martialed, contact the OSJA for more information about the responsibilities of your unit.

CHAPTER 9 – ADMINISTRATIVE SEPARATIONS

9-1. GENERAL. Commanders frequently use administrative separation procedures (also known as “Chapters” or “Chapter Actions”) to eliminate a soldier who is no longer fit for military service. The use of these separation procedures can help solve disciplinary problems within the unit. However, the commander should be careful to follow the regulations governing administrative separation both in procedure and in intent. Commanders should pay particular attention to the counseling requirements in AR 635-200, paragraph 1-18. (See paragraph 10-2 of this guide.) Also, keep in mind that not all chapters are command-initiated (involuntary). There are also provisions under which a soldier may request separation. These are referred to as voluntary separations. Several examples of administrative separations follow. For a quick reference, see the administrative separation chart at the end of this chapter. Commanders requesting preparation of an administrative separation action should use the chapter request worksheet attached as Appendix D. For more information, see AR 635-200. (The regulations governing personnel separations change frequently, so contact the OSJA before beginning any action.) All chapter references below refer to the chapters of AR 635-200, except paragraph 9-2 which deals with officer eliminations.

9-2. OFFICER ELIMINATION (AR 600-8-24). (Contact your trial counsel before taking any action!) The procedures and grounds for the separation of officers for substandard performance of duty, misconduct, moral and professional dereliction, or in the interests of national security are outlined in AR 600-8-24.

9-3. CHAPTER 5 - Separation for the Convenience of the Government. Soldiers separated under this chapter will normally receive an Honorable Discharge, but may under certain circumstances receive a General Discharge, or, if his or her record warrants, an Other Than Honorable Discharge. Soldiers may be separated for the convenience of the government for a number of reasons, which include, but are not limited to, the following:

- a. Secretarial Authority. Separation must be approved by the Secretary of the Army.
- b. Surviving Sons or Daughters. A soldier may request separation if he or she is the sole surviving son, daughter, brother, or sister of a soldier who was killed or disabled.
- c. Involuntary Separation Due to Parenthood. (Paragraph 5-8.) A soldier who is unable to provide a family care plan or is unable to perform his or her duties due to parenthood may be separated under this chapter. Commanders must ensure that adequate counseling and rehabilitative measures, in accordance with AR 635-200, Chapter 1, paragraph 1-18, have been taken before initiating separation.
- d. Separation Because of Personality Disorder. (Paragraph 5-13 or Paragraph 5-18.) Soldiers with personality disorders (not amounting to disability) which interfere with the performance of their duties may be separated under one of these chapters. Commanders must ensure that adequate counseling and rehabilitative measures, in accordance with AR 635-200, Chapter 1, paragraph 1-18, have been taken before initiating separation.

e. Concealment of Arrest Record. (Paragraph 5-14.) A soldier who concealed an arrest record for any offense, when such concealment does not amount to a fraudulent entry, may be separated under this chapter.

f. Early Separation to Further Education. (Paragraph 5-17.) A soldier may be discharged from active duty in order to attend a specific term at a college or vocational school.

9-4. CHAPTER 6 - Separation Because of Dependency or Hardship. A soldier may voluntarily apply for a discharge for dependency or hardship under this chapter. A dependency exists when death or disability of a member of the soldier's (or spouse's) immediate family causes other members of the family to rely upon the soldier for principal care or support. A hardship exists when an enlisted person's service obligation causes undue and genuine hardship. Individuals separated under this chapter will normally receive an Honorable Discharge. Individuals separated under this chapter may receive an Honorable Discharge or a General Discharge.

9-5. CHAPTER 7 – Defective Enlistment/Reenlistment and Extension. Soldiers may be separated under the provisions of this chapter for one the following reasons: The soldier was a minor at the time of enlistment; the soldier did not met the enlistment/reenlistment requirements; the enlistment/reenlistment agreement was defective or unfulfilled (on the part of the Government); or the soldier fraudulently entered service through a deliberate material misrepresentation. Individuals separated under this chapter may receive an Honorable Discharge, a General Discharge, or an Other Than Honorable Discharge.

9-6. CHAPTER 8 – Separation of Enlisted Women – Pregnancy. Enlisted service women may request voluntary separation due to pregnancy under this chapter. The soldier may also request a specific separation date. However, the separation authority and her military physician will determine the final separation date. The soldier may withdraw her request for separation, even after it has been approved. However, based on the circumstances of the case and the best interests of the Army, the separation authority will determine if the soldier will be retained or separated, as previously requested. Individuals separated under this chapter may receive an Honorable Discharge or an Uncharacterized characterization of service if the soldier is in entry level status.

9-7. CHAPTER 9 – Alcohol or Other Drug Abuse Rehabilitation Failure. Under the provisions of this chapter a commander may initiate the separation of an enlisted soldier based on alcohol or other drug abuse when the soldier qualifies for the alcohol and drug abuse rehabilitation program in accordance with AR 600-85 and is a rehabilitative failure of such a program. Evidence of drug abuse, other than that derived from a soldier's involvement in the rehabilitation program, may constitute misconduct that would support a separation action under the provisions of AR 635-200, Chapter 14. Individuals separated under this chapter may receive an Honorable Discharge or a General Discharge.

9-8. CHAPTER 10 – Discharge in Lieu of Trial by Court-Martial. A soldier who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM, includes a Bad Conduct Discharge or Dishonorable Discharge, may request discharge in lieu of trial by court-martial. Individuals separated under this chapter will normally receive an Other Than Honorable Discharge. Individuals separated under this chapter may receive an Honorable Discharge, a General Discharge, or an Other Than Honorable Discharge. The approval authority for this chapter is the GCMCA.

9-9. CHAPTER 11 - Entry Level Status Performance and Conduct. Commanders may separate soldiers in an entry level status under this chapter because of unsatisfactory performance or conduct (or both). Soldiers separated under this chapter must have completed no more than 180 days of active duty service prior to the date of initiation of separation, and must have demonstrated that they are not qualified for retention in the Army. Commanders must ensure that adequate counseling and rehabilitative measures, in accordance with AR 635-200, Chapter 1, paragraph 1-18, have been taken before initiating separation. Soldiers separated under this chapter will receive an Uncharacterized characterization of service.

9-10. CHAPTER 12 - Retirement for Length of Service. A soldier may request voluntary retirement because of length of service. For more information, contact your Personnel Actions Center (PAC).

9-11. CHAPTER 13 – Separation for Unsatisfactory Performance. A soldier may be separated under this chapter for unsatisfactory performance. An enlisted soldier can be discharged for unsatisfactory performance if the commander determines that he or she will not be able to become a satisfactory soldier, or if retaining the soldier would have an adverse impact on discipline, good order, and morale, and it is likely that the soldier will be a disruptive influence. The commander should initiate separation proceedings under this chapter for soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test (APFT). Commanders must ensure that adequate counseling and rehabilitative measures, in accordance with AR 635-200, Chapter 1, paragraph 1-18, have been taken before initiating separation. Individuals separated under this chapter may receive an Honorable Discharge or a General Discharge.

9-12. CHAPTER 14 – Separation for Misconduct. A soldier may be separated under this chapter for misconduct. Commanders can initiate separation for misconduct under this chapter for a conviction by civil court, a pattern of misconduct, minor disciplinary infractions, commission of a serious military or civil offense, or abuse of illegal drugs. Soldiers in the grade of E-5 and above and all soldiers with three or more years of total active and reserve military service will be processed for separation upon discovery of a drug offense. All soldiers must be processed for separation upon discovery of a second drug offense. Commanders must ensure that adequate counseling and rehabilitative measures, in accordance with AR 635-200, Chapter 1, paragraph 1-18, have been taken before initiating separation under the provisions of 14-12(a) or 14-12(b); but counseling is not required for 14-12(c) cases. Individuals separated under this chapter may receive an Honorable Discharge, a General Discharge, or an Other Than Honorable Discharge. The GCMCA must approve Other Than Honorable and Honorable Discharges under Chapter 14.

9-13. CHAPTER 15 – Separation for Homosexuality.

a. Under the current DOD policy, homosexual orientation is no longer a bar to continued service unless it is manifested by homosexual conduct. Homosexual conduct consists of homosexual acts, a statement by the soldier that demonstrates a propensity or intent to engage in a homosexual act, or a homosexual marriage (or attempted marriage). A soldier may elect to have an administrative separation board when pending separation under Chapter 15. As a general rule, a soldier who engages in homosexual conduct will be administratively separated and will receive an Honorable discharge. If, however, the conduct involves certain aggravating circumstances, such as the use of force, acts with a child under the age of 16, acts in violation of customary superior-subordinate relationships, acts for compensation, or indecent acts in public view, other courses of action might be appropriate.

b. Commanders who receive credible information which forms a basis for discharge due to homosexual conduct must conduct a fact-finding inquiry. Separations should be initiated using the notification procedures that comply with the requirements of AR 635-200, Chapter 15, Interim Change 1, dated 26 June 1996. Your trial counsel will provide guidance to you on this and other procedural matters regarding this type of separation. All Chapter 15 actions are tracked by The Judge Advocate General (TJAG). Commanders should consult their trial counsel before taking any action in cases involving homosexual conduct.

9-14. CHAPTER 16 – Selected Changes in Service Obligations.

a. Discharge for Acceptance into a Program Leading to a Commission or Warrant Officer Appointment. (Paragraph 16-2.) Soldiers may be discharged under this chapter for the purpose of acceptance into a program leading to a commission or warrant officer appointment in any branch of the Armed Forces. See your PAC for further information.

b. Discharge for the Purpose of Immediate Enlistment or Reenlistment. (Paragraph 16-3.) Soldiers may be discharged under this chapter for the purpose of immediate enlistment or reenlistment. Soldiers so discharged will be enlisted or reenlisted on the day following the discharge. See your PAC for further information.

c. Voluntary Separation of Soldiers Denied Reenlistment. (Chapter 16, paragraph 16-5.)

1. DA Imposed Bars to Reenlistment: Soldiers who perceive that they will be unable to overcome a HQDA approved bar to reenlistment may request discharge under this chapter (16-5a). If the command approves the discharge request, the soldier will receive an Honorable Discharge.

2. Locally Imposed Bars to Reenlistment: Soldiers who perceive that they will be unable to overcome a locally imposed bar to reenlistment may request discharge under this chapter (16-5b). First-term soldiers against whom a local bar to reenlistment has been imposed are not eligible for voluntary separation on the grounds of inability to overcome the bar. (See Message, DA WASHINGTON, DAPE-MPE, 121752Z Dec 96). If the command approves the discharge request, the soldier will receive an Honorable Discharge.

3. Declination of Continued Service Statement (DCSS), DA Form 4991-R: A soldier who declines to meet the service remaining requirements and who has signed a DCSS may request separation under this chapter (16-5c). If the command approves the discharge request, the soldier will receive an Honorable Discharge.

9-15. CHAPTER 18 – Failure to Meet Body Fat Standards. Initiation of separation proceedings is required for soldiers in a weight reduction program who do not make satisfactory progress after six months in the program, unless a responsible commander chooses to impose a bar to reenlistment in accordance with AR 601-280. Initiation of separation proceedings is also required for soldiers who are removed from a weight reduction program but fail to meet the weight standards again within 12 months. Also, soldiers in a weight reduction program who fail to make satisfactory progress (weight loss of three to eight pounds per month) for two consecutive months may be subject to separation under this chapter. In any of the above stated situations, the soldier must not have a medical condition that would preclude him or her from participating in the weight reduction program. (Refer to AR 600-9, Army Weight Control Program, for policies and procedures of the Army Weight Control Program.) Soldiers separated under this chapter will receive an Honorable Discharge.

9-16. ADMINISTRATIVE SEPARATION BOARD.

a. A soldier may elect to have an administrative separation board when an Other Than Honorable Discharge is recommended, if the separation is under Chapter 15, or if he or she has six or more years in service. This board will consist of at least three experienced commissioned, warrant, or noncommissioned officers (SFC or above).

b. A soldier may waive his or her right to a hearing before an administrative board. Also, the soldier may also elect to submit a conditional waiver. With a conditional waiver, the soldier may waive his or her right to an administrative board under certain conditions. For example, if a commander recommends an Other Than Honorable Discharge, the soldier may submit a conditional waiver in which he or she will waive his or her right to the administrative board in exchange for a General Discharge. The separation authority does not have to approve the conditional waiver. If the waiver is disapproved, the case will be referred to an administrative board.

ADMINISTRATIVE SEPARATION OF ENLISTED PERSONNEL

Chapter	Grounds for Discharge	Least Favorable Discharge	Initiation Procedure
Chapter 5	Convenience of Government	Other Than Honorable	Notification/Soldier
Chapter 6	Dependency/Hardship	General	Soldier
Chapter 7	Defective Enlistment	Other Than Honorable	Notification/Soldier
(For Fraudulent Entry, an Other Than Honorable Discharge may be given.)			
Chapter 8	Pregnancy	General	Soldier
Chapter 9	Alcohol/Drug Abuse	General	Notification
(Rehabilitation Failures must have been enrolled in a Rehabilitation Program and declared a failure.)			
Chapter 10	In Lieu of Court-Martial	Other Than Honorable	Soldier
(Requested by the soldier after preferral of a charge, for which punishment under the MCM includes a BCD or DD.)			
Chapter 11	Entry Level Status	Entry Level Separation (uncharacterized)	Notification
(Separation for unsatisfactory performance and conduct, or soldiers with less than 180 days of active service).			
Chapter 13	Unsatisfactory Performance	General	Notification
Chapter 14	Misconduct	Other Than Honorable	Notification
(Minor Disciplinary Infractions, Pattern of Misconduct, Commission of a Serious Military or Civil Offense, Conviction by Civil Authorities, and Abuse of Illegal Drugs.)			
Chapter 15	Homosexual Conduct	Other Than Honorable	Notification
Chapter 16-5	Inability to Overcome Bar	Honorable	Soldier
Chapter 18	Failure to Meet Body Fat Standards	Honorable	Notification

1. Chapters 6, 8, 10, and 16-5 are soldier-requested chapters.
2. Chapters 5 and 7 can be either soldier-requested or command-initiated.
3. Chapters 9, 11, 13, 14, 15, and 18 are command-initiated.

(See Discharge Benefits Sheet attached as Appendix E.)

CHAPTER 10 - ADMINISTRATIVE ACTIONS

10-1. REPORT TO SUSPEND FAVORABLE PERSONNEL ACTIONS (FLAG). When a commander anticipates that he or she will initiate a court-martial, disciplinary action, or separation proceedings, he or she must initiate flagging action against the soldier pursuant to AR 600-8-2. This action suspends all favorable personnel action such as promotion, award, reenlistment, or transfer. A soldier may also be flagged for failing the Army Physical Fitness Test (APFT) or for failing to meet the weight standards in accordance with AR 600-9. If a soldier is flagged for failing the APFT, the flag will block promotion, reenlistment, and extension only. If a soldier is flagged for failing to meet the weight standards, the flag will block attendance to schools and reenlistment (with the exception of certain medical conditions). Soldiers flagged for either weight control or APFT failure may still receive awards. In no case may flagging action be used as a punitive or a disciplinary measure. A soldier will not be retained past his or her expiration of term of service (ETS) date just because he or she is flagged. If disciplinary action is not expected to be complete prior to the soldier's ETS date, consult your trial counsel immediately for further guidance. The effective date of the flag will be the date the incident occurred. For more information, see AR 600-8-2.

10-2. COUNSELING.

a. One of the most fundamental, nonpunitive ways of dealing with acts of misconduct or instances of unsatisfactory performance is counseling. Under normal circumstances, it is not wise to criticize or reprimand soldiers in public or in front of their peers. Counseling must not be so forceful that it becomes abusive. Consider the individual carefully, then make the counseling session one that will be effective to try to keep the problem from happening again.

b. Documentation of counseling is important and may be required for subsequent actions. Before a soldier can be separated under certain chapters, he or she must have received counseling in accordance with AR 635-200, paragraph 1-18. To ensure these requirements are met, the OSJA has prepared a blank counseling form with the required notification information preprinted in block nine. This counseling form contains an example of the language needed for the counseling to be legally sufficient. This type of counseling should be used in place of the standard counseling form for counseling based on misconduct or unsatisfactory performance. Refer to chapter nine of this guide for further information about when the chapter counseling is required. See Appendix F for a copy of this counseling statement. It is very important that you take the time to mark out the inapplicable language and tailor the form to the soldier and his or her actions.

10-3. CORRECTIVE TRAINING. Keep in mind that corrective training is appropriate only when the training relates to the deficiency. If the purpose is solely or primarily punitive, it is impermissible. Corrective training can be very effective and is appropriate when the incident involves the readiness of the unit or individual to accomplish an assigned mission. This training may be required in addition to normal duties and may intrude upon a soldier's "free" time. Remember that corrective training should not be degrading or cruel. For more information, contact your trial counsel.

10-4. DENIAL OF PRIVILEGES. Commanders may deny the use of specified privileges directly related to a soldier's misconduct, to include withholding pass privileges (denying the soldier the right to leave the installation). Constructive counseling is necessary so that the individual understands the relationship between the misconduct and the withheld privilege, and that it is a privilege rather than a right that is being withheld. Commanders should note that a soldier's on-post driving privileges can only be revoked by either the Garrison or the Installation Commander.

10-5. WITHDRAWAL OF PRIVILEGE TO RESIDE OFF-POST. Commanders may permanently deny unaccompanied soldiers the privilege of electing or continuing to reside off-post for reasons of military necessity. A military necessity arises when the soldier's off-post residency has a significant adverse effect on operational requirements, maintenance of unit discipline, law and order on an installation, ability to respond to health and safety requirements, or protection of government property. This corrective action may be appropriate for soldiers who fail to appear for duty on time or engage in misconduct off-post. Before denying the soldier the privilege to live off-post, the commander should consider the financial impact on the soldier (costs associated with breaking a lease, loss of security deposit, and transportation costs) and should coordinate with the local Housing Office.

10-6. BAR TO REENLISTMENT.

a. General:

1. Only personnel with high moral character, personal competence, and demonstrated adaptability will be allowed to reenlist.

2. A bar to reenlistment is not technically a punitive action. It is intended to put the soldier on notice that he or she is not a candidate for reenlistment and that he or she may be separated if the circumstances that led to the bar to reenlistment are not overcome.

3. A bar to reenlistment will not be initiated when the soldier is pending involuntary separation per AR 635-200.

b. Normally a bar to reenlistment will not be initiated against a soldier who has been assigned to a unit for less than 90 days or who is in the last 30 days before his or her ETS/PCS. If a bar to reenlistment is initiated within the last 30 days before ETS/PCS, it must be for recent incidents, and the commander's certificate must state why the action was not taken at an earlier date.

c. A bar to reenlistment should not be based on generalities, approximate dates, vague places or times. It should be based on specific incidents substantiated by official remarks (i.e. counseling statements) made at the time of each occurrence. This evidence of untrainability or unsuitability can come from any one or a combination of the following:

1. Failure of the Army Physical Fitness Test (AFPT).

2. Failure to make satisfactory progress in the weight reduction program.

3. Removal for cause from an NCOES course.
4. Late to formations, details, or assigned duties; AWOL; or late returning from pass or leave.
5. Substandard personal appearance or hygiene.
6. Continuous indebtedness, reluctance to repay debts, or late payment of debts.
7. Repeated Article 15 punishments.
8. "Abuses" sick call without medical justification.
9. Cannot follow orders; shirks responsibilities.
10. Cannot train for a job; apathetic.
11. Cannot adapt to military life; is uncooperative or involved in frequent difficulties with other soldiers.
12. Fails to manage personal, marital or family affairs. Cannot perform duties because of family problems. (No family care plan when required.)
13. Causes trouble in the civilian community or is involved in immoral acts.
14. Fails to qualify with assigned weapon.
15. No demonstrated potential for future service.
16. Slow grade progression resulting from a pattern of marginal conduct or performance.

d. Any commander in the soldier's chain of command may initiate a bar to reenlistment. However, the approval authority for the bar to reenlistment is normally as follows:

1. Less than 10 years of service (at initiation of the bar): A commander in the grade of Lieutenant Colonel or the Summary Court-Martial Convening Authority. In cases where the bar was initiated by the Summary Court-Martial Convening Authority, the bar will be approved by the Special Court-Martial Convening Authority.

2. Between 10-18 years of service (at initiation of the bar): The first general officer in the chain of command or the General Court-Martial Convening Authority.

3. More than 18 years of service (at initiation of the bar): The Department of the Army.

e. The soldier may appeal the bar to reenlistment to the next higher approval authority. Soldiers have seven days to submit an appeal.

f. Reviews of an approved bar must be conducted every three months or 30 days before the soldier's scheduled departure (ETS/PCS), in accordance with AR 601-280. If the commander determines the bar should not be removed, the bar will remain in effect for another three months. After the second three-month review, if the unit commander does not recommend removal of the bar, he or she must initiate administrative separation procedures.

g. The commander who approved the bar or his or her successor has the authority to remove the bar.

10-7. ADMONITION OR REPRIMAND.

a. General: An admonition is a warning or reminder of misconduct given to a soldier to advise him of the consequences that may follow if future misconduct occurs. A reprimand is an action by a supervisor or commander of formal denunciation and censure of a subordinate. Admonitions and reprimands may be written or oral. A written reprimand is particularly useful in cases where the offender is youthful and immature or is a first-time offender. In these situations, the memorandum puts the offender on notice that such conduct will not be tolerated and creates a formal record of adjudication of the incident. Any commander or supervisor of a soldier may issue a memorandum of reprimand. (See AR 600-37 for further information.)

b. Filing in the Military Personnel Records Jacket (MPRJ). Normally, any commander in the soldier's chain of command may file a memorandum of reprimand in the soldier's MPRJ or equivalent local file. Supervisors may not file a memorandum of reprimand in the soldier's MPRJ. (See AR 600-37 for more information on filing.) A memorandum designated for filing in the MPRJ may only be filed for a period not to exceed three years, or until the recipient is reassigned to another general court-martial jurisdiction, whichever is sooner.

c. Filing in the Official Military Personnel File (OMPF). A memorandum of reprimand may be filed in a soldier's OMPF only upon the order of a general officer senior to the recipient or by the officer having general court-martial convening authority over the individual. Memorandums of reprimand filed in the OMPF are only filed on the performance portion (P-fiche).

d. Prior to the time a decision is made to forward the reprimand for filing, the affected soldier must be given the opportunity to either make a written statement in rebuttal or to decline in writing the opportunity to do so. Any statement submitted for consideration may include supporting evidence if desired. The officer considering whether or where to file the reprimand must consider any statements and/or supporting evidence submitted prior to making a filing decision. Should the decision to file in the OMPF be made, any statements made in rebuttal must be forwarded for filing as well.

e. The reprimand must state the most adverse filing determination under consideration and that it is imposed as an administrative measure and not as punishment under Article 15, UCMJ. Your trial counsel is available to assist in drafting memoranda or to review memoranda at any stage in the process.

10-8. ADMINISTRATIVE REDUCTION IN GRADE.

a. An individual who has served in an assigned position for 90 days or more may be reduced one grade for inefficiency. Individuals may also be reduced in grade after conviction by a civil court for misconduct. Special rules apply if the individual is above the grade of E-4.

b. Grounds for Administrative Reduction:

1. Misconduct:

(a) A soldier convicted by a civil court or adjudged as a juvenile offender by a civil court may be reduced or considered for reduction according to AR 600-8-19, Table 6-1.

(b) On receipt of documents establishing a sentence (actually imposed or a vacation of a suspended sentence), or a finding of guilty with sentence to be established at a later date, commanders must act in accordance with AR 600-8-19, Table 6-1.

(c) A soldier may be reduced even though an appeal is pending or has been filed.

(d) Soldiers in the rank of SFC, MSG, or SGM/CSM may not be reduced under these provisions.

2. Inefficiency: Inefficiency is the demonstration of characteristics that show that a person cannot fulfill the duties and responsibilities of his or her grade and MOS. Commanders should consider not only performance of duties, but also on and off duty responsibility when determining whether to reduce a soldier for inefficiency.

c. Reduction Authority: The reduction authority based on either misconduct or inefficiency is as follows:

1. A company commander may reduce soldiers in the grade of E-2, E-3, or E-4.

2. A commander in the grade of O-5 or above may reduce soldiers in the grade of E-5 or E-6.

3. A commander in the grade of O-6 or above may reduce soldiers in the grade of E-7, E-8, or E-9 (for inefficiency only).

d. Reduction Board.

1. A reduction board is required for soldiers in the rank of SGT through SGM. Soldiers have the right to appear in person before the board. If the right to appear is declined by the soldier, it must be declined in writing. The reduction of soldiers in the rank of SPC and below may be accomplished without board action. A reduction board, when required, will be convened within 30 days after the individual has been notified in writing of the commander's intent to reduce. A

soldier who is to appear before the board will be given written notification at least 15 working days before the date of the hearing.

2. Soldiers appearing before reduction boards are entitled to representation by a Judge Advocate assigned to the U.S. Army Trial Defense Service, if reasonably available, or they may obtain the services of a civilian attorney at no expense to the Government.

e. Appeals: Soldiers are entitled to submit a written appeal within 30 days of a reduction. The appellate authority is the next authority above the reduction authority for the rank of SSG and below, or the first general officer in the chain of command above the reduction authority for the rank of SFC through SGM. For rules governing date of rank, see AR 600-8-19, paragraphs 6-11f and 6-11g.

10-9. MOS RECLASSIFICATION.

a. General: MOS reclassification is not and should not be substituted for disciplinary action. However, an MOS reclassification may be used in conjunction with punitive and non-punitive responses to appropriate situations. Additionally, MOS reclassification is, in many instances, a first step in what may eventually lead to an elimination proceeding under AR 635-200. Remember, MOS training and retraining represent a significant investment by the Army. Therefore, an MOS should not be changed or taken away unless a significant benefit will accrue to the Army as a result.

b. Grounds:

1. Erroneous award of MOS.
2. UCMJ disciplinary action that adversely affects the individual's eligibility to perform duty in the MOS.
3. Appointment to or reduction from a pay grade that is not in line with or authorized for prior MOS.
4. Loss of qualification, which is defined as duty performance, clearly demonstrating that the individual cannot satisfactorily perform the duties in the MOS. Soldiers disqualified due to their own misconduct must be processed for administrative elimination prior to submission of reclassification action.
5. Lack of security clearance required in performance of duties normally associated with MOS.

c. Procedural Considerations:

1. The unit commander institutes the action through command channels to the reclassification authority under AR 600-200, paragraph 2-29.

2. A soldier is entitled to a reclassification board only at the discretion of the reclassification authority and may be reclassified without a board.

d. Special Considerations:

1. Reclassification based on a medical or physical profile limiting performance of duty within the MOS must be processed under AR 600-60, Physical Performance Evaluation System, which in most cases requires an MOS/Medical Retention Board.

2. Under the provisions of AR 600-85, paragraph 1-15, and associated regulations, personnel diagnosed as alcohol dependent must be medically restricted or suspended from aviation duties. Aviation personnel who use illegal drugs, whether or not determined to be medically fit, are subject to suspension from flying duties, in addition to appropriate disciplinary and administrative measures. These provisions may lead to eventual reclassification action for aviation personnel.

10-10. RELIEF FOR CAUSE.

a. General: Relief for cause is an early release from a specific duty or ratable assignment, directed by a superior authority, based on a decision that a soldier's personal or professional characteristics, conduct, behavior, or performance of duty warrant removal for the best interests of the Army. The decision to relieve a soldier should be made only after careful consideration of the soldier's overall performance during the current rating period and the organization's mission and welfare.

b. Grounds: A relief for cause must be based upon deficiencies in personal or professional characteristics, conduct, or performance of duty, which has caused a superior commander to lose trust and confidence in the soldier's ability to continue to serve in that duty position.

c. Authority to Relieve:

1. E-1 through E-6: First commander in the chain of command.
2. E-7: First commander in the rank of Lieutenant Colonel or above.
3. E-8: First commander in the rank of Colonel or above.
4. E-9: First general officer in the chain of command.
5. Officers: A superior officer in the chain of command.

d. Relief for Cause OER/NCOER:

1. Under the provisions of AR 623-105 and AR 623-205, relief for cause OERs or NCOERs are required in every case of relief. These regulations state specific requirements that must be followed once an officer or NCO is relieved.

2. Relief for cause NCOERs require a minimum time qualification of 30 days for the rater and reviewer, subject to limited exceptions listed in AR 623-205, paragraph 2-10d. Relief for cause OERs are not subject to minimum time qualifications for rater, intermediate rater, or senior rater. (See AR 623-105, paragraph 5-18a.)

e. Special Considerations: If relief for cause is contemplated on the basis of an informal AR 15-6 investigation, the commander directing the investigation or the relief action must ensure that the referral and comment procedures of the regulation are followed prior to the act of initiating the relief.

10-11. REMOVAL FROM LOCAL PROMOTION LIST. Promotion to a next higher grade acknowledges accomplishment, potential for increased responsibility, and recognition that a soldier possesses the maturity and judgment necessary to function effectively in a higher grade. Because removal from the promotion list can have dramatic effects on a soldier's morale, removal should not be undertaken unless warranted by the seriousness of the soldier's conduct. Commanders should be aware, however, that there are circumstances where removal from a local promotion list is mandatory.

10-12. REMOVAL FROM THE DA PROMOTION LIST. Removal from the DA promotion list has far-reaching and long-lasting effects on a soldier's career. Once removed, it is unlikely that the soldier will be subsequently selected for promotion. Consequently, commanders should carefully consider the result of such action and recommend removal based only upon serious deficiencies in conduct.

10-13. SUSPENSION/REVOCAION OF SECURITY CLEARANCE. Access to classified information is an integral part of the work performed in many MOSs. As a result, denial of such access can have a far-reaching impact upon a soldier's career. Not only can it result in reclassification, but also in the perception that the soldier's integrity and patriotism have been called into question. Consequently, commanders should take action to suspend access only when necessary. Commanders must remember that misconduct, especially criminal misconduct, represents a deviation from societal norms. Such deviations could lead to or result in breaches of national security that cannot be tolerated under any circumstances.

10-14. REHABILITATIVE TRANSFER. Where an incident of misconduct or unsatisfactory performance may have been the result of a personality conflict or some other type of unique circumstance, reassignment to another unit may be the appropriate way to handle the problem. A change of commanders, associates, and living or working conditions is often effective. A rehabilitative transfer is a prerequisite for administrative separation under AR 635-200, Chapters 11 (entry-level separation), 13 (unsatisfactory performance), 14-12a (minor disciplinary infractions), or 14-12b (pattern of misconduct), unless this requirement is waived by the separation authority. For more information, see AR 635-200, paragraph 1-18.

CHAPTER 11 – OTHER LEGAL ISSUES

11-1. FREEDOM OF EXPRESSION IN THE MILITARY.

a. The First Amendment to the U.S. Constitution protects soldiers' and civilians' rights to express opinions on matters of public and personal concern and their rights to associate. However, these rights are not absolute. Due to the need for an effective and disciplined Army, reasonable limitations exist. Commanders should familiarize themselves with regulations and directives (principally AR 600-20) pertaining to soldiers' rights to dissent, express themselves, and associate. Appendix B of AR 600-20 sets forth many examples of the types of political activities that are either expressly permitted or prohibited.

b. It is important for commanders to consult with their trial counsel or legal advisor and, in appropriate cases, with higher authorities, before initiating any disciplinary or administrative action in response to manifestations of dissent.

11-2. STANDARDS OF CONDUCT. The Office of Government Ethics (OGE) published ethical rules entitled "The Standards of Ethical Conduct for Employees of the Executive Branch," on 7 August 1992. These rules became effective for all executive agencies, including DoD, on 3 February 1993. DoD implemented these rules in the Joint Ethics Regulation (JER), DoD Directive 5500.7-R. The JER guidelines supersede AR 600-50, Standards of Conduct for Department of the Army Personnel. Violators of the JER may face punitive statutory and regulatory sanctions, including those available under the UCMJ. The JER governs conflicts of interest, gifts, gratuities, outside employment and use of government property.

11-3. OFFICIAL USE OF GOVERNMENT VEHICLES. "Official Use" requires that use of a motor vehicle must be (1) essential for successful completion of a DA function, activity, or operation; and (2) consistent with the purpose for which the vehicle was acquired (DoD 4500.26-R, March 1994, and AR 58-1, C1, March 1981). Determining whether a particular use of a motor vehicle constitutes an official purpose is an administrative determination. Generally speaking, if use of a motor vehicle is in furtherance of the Army's mission, and is an effective use of funds, then it may be authorized. Questionable situations should be referred to legal counsel. Seek the advice of your trial counsel or legal advisor if you have questions regarding the proper use of government vehicles.

11-4. HIV POLICY.

a. AR 600-110 establishes policies and guidelines for HIV testing and administering cases involving soldiers with HIV positive results. Persons who are HIV positive may not enlist nor receive an appointment into the Army, Army National Guard, or United States Army Reserve. All active duty personnel must be tested for HIV at least every two years. Commanders should consult with their trial counsel or legal advisor regarding retention on active duty, assignment, and duty limitations for HIV positive soldiers.

b. When a soldier's screening test is positive, Preventative Medicine will notify and counsel the soldier. If the presence of the HIV antibody is confirmed, Preventative Medicine will provide

counseling to assist in preventing further spread of the disease. Commanders must also counsel soldiers. This counseling must include an order to inform the spouse, before having intercourse, about the presence of the HIV antibody, and a direct order not to engage in unprotected sex with persons other than the spouse. Commanders may be able to prosecute soldiers for violation these orders, but should consult with their trial counsel before taking any action.

11-5. INDEBTEDNESS.

a. Creditors often send letters to commanders asking for assistance in the collection of private debts. Commanders should be aware that Army Policy requires disputed debts to be settled in civil court. When dealing with creditors, commanders must comply with AR 600-15 and applicable state law.

b. If the creditor can show he or she meets one of the necessary requirements (a court judgement or written debtor permission), the commander should interview the soldier. The commander must determine whether the soldier disputes the debt or whether there is any defect in the court judgement. The commander should allow the soldier to consult with a Legal Assistance attorney at the OSJA. After interviewing the debtor, the commander may write the creditor to inform him or her of the soldier's intentions (if the soldier has authorized the release of such information). It is not the commander's job to collect the debt. In certain cases, the soldier's nonpayment may justify an adverse administrative or punitive action. The commander should consult with his or her trial counsel before taking any adverse action based on indebtedness.

11-6. CONTESTED FAMILY ISSUES.

a. Commanders often become involved with a soldier's family problems. The most common of these are family support and paternity. AR 608-99, a punitive regulation, provides detailed guidance about these problems. Commanders at all levels should review their responsibilities as outlined in AR 608-99, paragraphs 1-4 and 1-5. When a complaint is received from a family member, the commander must counsel the soldier who is the subject of the inquiry and reply to the person who sent the complaint within 14 working days. AR 608-99, paragraphs 3-3 through 3-9, set forth specific actions the commander must take to meet these requirements.

b. Soldiers are required to comply with court orders or agreements which require support for family members. Where there is no court order or agreement, the soldier must generally provide support in the amount of his or her BAQ at the with dependents rate if the family members are living in off-post quarters. If the family members are living in government quarters, the soldier's obligation is different. AR 608-99, Chapter 2, contains detailed rules as to the family support obligations of soldiers.

c. Delinquent soldiers may be subject to administrative or punitive (UCMJ) action. Company commanders should consult with their trial counsel before taking action.

d. Commanders should consult AR 608-99, paragraph 3-7, when paternity claims are made against a soldier, and paragraph 3-8 for child custody inquiries. Commanders should also consult with their trial counsel or legal advisor when any of these family legal issues arise.

11-7. LEGAL SUPPORT FOR SURVEY OFFICERS. Reports of survey can be complicated and difficult to complete correctly. The survey form must be completed correctly and survey officers must establish negligence and causation in accordance with AR 735- 5 (The Report of Survey System), Chapter 13. The Procurement and Administrative Law Branch is available to brief survey officers. Early coordination and training in this area can substantially reduce the amount of time and effort expended on reports of survey.

11-8. VICTIM/WITNESS ASSISTANCE PROGRAM.

a. The rights of crime victims and witnesses in the criminal justice process should be enhanced and protected. Fort Meade officials and employees are required to do everything possible to assist victims and witnesses of crime, without infringing upon the constitutional rights of the accused.

b. Crime victims are legally entitled to:

1. Be treated with fairness and respect for the victim's dignity and privacy.
2. Be reasonably protected from the accused offender.
3. Be notified of court proceedings.
4. Be present at all public court proceedings related to the offense, unless the court determines the victim should not be present because it would materially affect the testimony of the victim at trial.
5. Confer with the attorney for the Government in the case.
6. Receive available restitution.
7. Be provided information about the conviction, sentencing, imprisonment, and release of the offender.

c. DA Forms 2701 through 2706 are provided throughout the criminal justice process to victims and witnesses of crimes to assure that they are properly informed of their rights and responsibilities and are given the information and assistance they deserve. Assistance for victims and witnesses of crime includes, but is not limited to, medical services, social services, financial assistance, legal assistance, and police assistance. If the victim is a non-military member and non-dependent, Fort Meade officials have a duty to refer the victims to the appropriate state agencies who may provide assistance.

d. Certain victims of crimes may be entitled to receive compensation from federal and/or state sources. For example, victims of spousal abuse may be entitled to compensation. Contact the OSJA if you think you have a soldier or family member deserving of crime victim compensation moneys.

11-9. SEXUAL HARASSMENT.

a. DoD policy protects male and female soldiers and civilian employees from sexually inappropriate behavior at or related to their job or work environment. The Federal Personnel Guide defines sexual harassment as deliberate or repeated unsolicited and unwelcome verbal comments, gestures, or physical contact of a sexual nature. DoD Directive 1350.2 and AR 600-20 (IO4, 17 September 1993) define sexual harassment as “[a] form of gender discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when: submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay or career; submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person; or such conduct creates an intimidating, hostile, or offensive environment.” Article 93 of the UCMJ (entitled “Cruelty and Maltreatment of Subordinates”) makes sexual harassment of military subordinates illegal. AR 600-20, Chapter 6, contains the Army policy.

b. In summary, supervisors who use any form of coercive sexual behavior to affect the career or work environment of a subordinate violate prohibitions on sexual harassment. Subordinates may violate sexual harassment prohibitions in certain circumstances and supervisors are responsible to ensure their organizations/units are free from potential sexual harassment (suggestive posters and similar items).

c. Sexual harassment or suspected sexual harassment should be reported without delay. Soldiers complaining about other soldiers should complete the complaint form found in AR 600-20, Chapter 6. Contact your trial counsel or legal advisor for assistance with any sexual harassment allegation.

11-10. EXTREMIST ORGANIZATIONS.

a. DoD Directive 1325.6 provides general guidance governing the handling of dissident activities by soldiers on active duty. On 2 May 1995, the Secretary of Defense issued the following “Public Affairs Guidance, Dissident and Protest Activities Among Members of the Armed Forces”:

The activities of extremist organizations are inconsistent with military service and active participation by military personnel is prohibited. Military personnel take an oath of office to support and defend the constitution of the United States against all enemies, foreign and domestic, and to obey the President and those appointed over them. In 1969 the Department of Defense issued Directive Number 1325.6 which provides guidelines for handling dissident and protest activities among members of the Armed Services. It specifically states that the soldier’s right of expression should be preserved to the maximum extent possible, consistent with good order and discipline and national security. On the other hand, no commander should be indifferent to conduct which, if allowed to proceed unchecked, would destroy the effectiveness of the unit. DoD Directive 1325.6 specifically states that military personnel must reject participation in organizations that espouse supremacist causes; attempt to create illegal discrimination based on race, creed, color, sex, religion, or

national origin; or advocate the use of force or violence or otherwise engage in efforts to deprive individuals of their civil rights. It goes on to say active participation, such as publicly demonstrating or rallying, fundraising, recruiting and training members and organizing or leading such organizations is incompatible with military service and is therefore prohibited. **Commanders have authority to employ the full range of administrative procedures, including separation or appropriate disciplinary action against military personnel who actively participate in such groups.**

b. AR 600-20, paragraph 4-12, which contains current Army policy on participation in extremist organizations, is consistent with the DoD Directive and public affairs guidance quoted above.

c. Commanders should consult with their trial counsel or legal advisor in all instances involving a soldier's suspected or actual participation in improper extremist activities.

11-11. DRIVING UNDER THE INFLUENCE OF ALCOHOL & OTHER TRAFFIC OFFENSES

a. Commanders need to be aware that Garrison Policy Memorandum #7 states that all individuals committing motor vehicle offenses on Fort Meade, to include driving under the influence of drugs or alcohol, will be processed through the U.S. Magistrate's Court System. This policy is to ensure consistent treatment and appropriate punishment and applies to all military personnel, regardless of their branch of service, Department of Defense employees, other civilian employees of the U.S. Government, and all other non-affiliated civilians on Fort Meade.

b. When a soldier is arrested on-post for operating a motor vehicle while under the influence of drugs or alcohol, the commander may request an exception to this policy when (s)he feels a military member's offense warrants disposition under the Uniform Code of Military Justice (UCMJ). A soldier arrested on-post for operating a motor vehicle while under the influence of drugs or alcohol is in violation of Article 111, UCMJ and will be subject to the following:

1. The commander may direct any punishment as outlined in the UCMJ to include, but not limited to: counseling, admonition, memorandum of reprimand, bar to reenlistment, administrative separation from the Army, non-judicial punishment under Article 15 of the UCMJ, and court-martial.

2. The maximum punishment allowed for a drunken driving case depends on the circumstances surrounding the arrest. For example, the soldier may receive a dishonorable discharge, confinement for a period of one year, and total forfeiture of all pay and allowances as the result of a court martial if the actions of the soldier driving under the influence results in personal injury either to themselves or to another.

3. A battalion or brigade commander may decide to reserve jurisdiction for all incidents involving soldiers arrested for operating a motor vehicle while under the influence of drugs or alcohol within that unit. This is to ensure equal punishment and consistency as well as sending a message to the soldiers that the command takes DUIs seriously. It is recommended that

if the commander desires to reserve the jurisdiction at his or her level that a written memorandum or policy is published within the unit.

c. In addition to these remedies, the commander has several punitive options available at his or her disposal.

1. A soldier arrested off-post for operating a motor vehicle while under the influence of drugs or alcohol is subject to both Federal and State law. Although there is concurrent Federal and State jurisdiction over a soldier arrested off post, there is a DA Policy that prohibits the Army from imposing punishment for a crime committed off the installation that has already been disposed of by the civilian authorities. AR 27-10, Military Justice, paragraph 4-2 outlines this policy by stating that "a person subject to the UCMJ who has been tried in a civilian court may, but ordinarily will not, be tried by court-martial or punished under Article 15, UCMJ, for the same act over which the civilian court has exercised jurisdiction." Thus in order for a commander to try by court-martial or impose punishment under Article 15, UCMJ to a soldier already punished in the civilian courts, he or she must request an exception to the policy at the DA level.

2. A commander may, however, request jurisdiction from the civilian authorities in order to try by court-martial or impose punishment under Article 15, UCMJ to a soldier arrested off post for driving under the influence. Although this option is available to commanders, it is not usually done. There are two reasons for this.

(a) First, the civilians do not normally give the Military jurisdiction for three types of cases: Bad Checks, Weapons Charges, and Driving Under the Influence Charges. If a commander has a very strong underlying reason to request jurisdiction on these types of cases, they should contact their Trial Counsel as soon as possible in order to request jurisdiction.

(b) Second, and more importantly, under Maryland's Transportation Code, soldiers can receive stiffer penalties if they have previously been convicted of driving under the influence (DUI) in the State of Maryland. This does not include cases that were disposed of under Article 15 of the UCMJ. Therefore, if the military requests jurisdiction for an off-post DUI case and is issued an Article 15 then the soldier is arrested again off-post for DUI, the State will have no record of their previous "conviction" for DUI and they will be unable to impose the enhanced punishment for a two time offender.

3. The Maryland Transportation Code, Section 27-101(k) allows for enhanced penalties. For example, if a soldier has been previously convicted one time of an offense relating to the operation of a motor vehicle while intoxicated, the offense is a Class A misdemeanor, with a maximum term of confinement of two years. If a soldier has been previously convicted two times of an offense related to operating a motor vehicle while intoxicated, the offense is a felony of the third degree. Therefore, with the States' enhanced penalties it is more beneficial to allow the civilian authorities to dispose of the off post DUIs.

d. There are additionally several administrative options available to the commander.

1. A soldier arrested either on or off post for operating a motor vehicle while under the influence of drugs or alcohol will be subject to the following:

(a) AR 190-5, paragraph 2-5 states that all soldiers, family members, DoD affiliated civilian personnel, military retirees, and others may have their installation driving privileges suspended or revoked pending the resolution of an intoxicated driving incident that occurs either on or off the installation. The individual may request a hearing to have these driving privileges restored pending legal resolution. Commanders should contact the Procurement and Administrative Law Division with any questions about the on-post driving privileges revocation program.

(b) In addition to the revocation of the soldier's on-post driving privileges, AR 190-5, Motor Vehicle Traffic Supervision, mandates that Army commanders will take appropriate action against intoxicated drivers to include a mandatory written general officer reprimand. This General Officer Memorandum of Reprimand (GOMOR) will be issued to all active duty Army officers, commissioned and warrant, and noncommissioned officers, to include soldiers in the grade of E-4 appointed on official orders to corporal who fall under one or more of the following three categories:

(1) Convicted of intoxicated driving or driving under the influence of alcohol or drugs either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content (BAC) is 0.10 percent or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of State laws, irrespective of other charges. (In Maryland a person is guilty of operating a motor vehicle while intoxicated if their blood alcohol content is 0.10 percent or higher).

2. Commanders should notify their brigade legal office of any soldier in the rank of Corporal or above that has been convicted of DUI on or off post, refused to take or complete a test to measure the alcohol or drug content, or has been found to be in physical control of a motor vehicle while their blood alcohol content is 0.10 percent or higher. A blotter report is all that is required in order to issue a GOMOR. Then it is the responsibility of the brigade legal office to complete the necessary paperwork in order to issue the soldier the required GOMOR. AR 190-5 makes it optional whether the commander wants to cause a GOMOR to be issued for soldiers below the rank of Corporal.

These are merely the basics of the options available to commanders when a soldier under their command is arrested for operating a motor vehicle while under the influence of drugs or alcohol. Commanders should contact their Trial Counsel with any further questions.

11-12. IMPROPER SENIOR/SUBORDINATE RELATIOINSHIPS

a. On 2 March 1999, DA issued a message revising AR 600-20 and the Army's policy on improper senior/subordinate relationships. The basic change is that the new policy shifts the analytical focus on certain types of relationships from the effects of the relationships to the status of the parties involved. The result is that the new policy specifically prohibits some types of relationships between officers and enlisted personnel which were not necessarily prohibited under the old Army policy.

b. The changes, which were to be fully implemented by 01 March 00, include the following:

1. The new policy prohibits personal relationships between officers (commissioned and warrant) and enlisted personnel, both within the Army as well as those involving soldiers with members of the other services, including:

(a) Dating, sharing living accommodations (except as required by operational necessity) and intimate or sexual relationships are prohibited. Excluding the following excepted relationships: marriages which existed prior to, or were entered into before 1 Mar 00; relationships that go out of compliance solely because of the change of status of one party (for example, one party to a married enlisted couple gets commissioned). Does NOT allow a mere dating relationship to continue; and some limited exceptions for ARNG/USAR soldiers

(b) On-going business relationships, including borrowing or lending money, commercial solicitation, and any other type of on-going financial or business relationships are prohibited. Again, the following limited exceptions remain permitted: landlord-tenant relationships; one-time transactions (such as the sale of the house or a car); and some limited exceptions for ARNG/USAR soldiers.

(c) Gambling. There are no specific exceptions to this prohibition.

2. The above prohibitions against personal relationships do not cover normal team-building associations between officer and enlisted personnel occurring in the context of community organizations, religious activities, family gatherings, unit-based social functions, or athletic teams or events.

3. The new policy prohibits all relationships between permanent party personnel and IET trainees that are not required by the training mission.

4. The new policy prohibits any relationship between permanent party personnel assigned or attached to the U.S. Army Recruiting Command and potential prospects, applicants, members of the Delayed Entry Program, and members of the Delayed Training Program that are not required by the recruiting mission.

5. The new policy is punitive, whereas the prior version of AR 600-20 was not.

c. If the questioned relationship does not fall into one of the strictly prohibited relationships above, the analysis under the new Army policy remains essentially unchanged in its focus on the effects of the relationship. The new policy continues to prohibit all relationships between soldiers of different rank which:

1. Compromise the integrity of the chain of command; cause impartiality or unfairness; involve improper use of rank or position for personal gain; are exploitative or coercive in nature; or create an adverse impact on discipline, authority, morale, or mission accomplishment.

2. The new policy continues to prohibit any relationships that present the appearance of violating any of these standards.

d. For further information and examples, see Draft DA Pam 600-XX.

11-13. ANTHRAX VACCINATIONS

a. On December 15, 1997 Secretary of Defense Cohen approved the plan to immunize the Total Force against anthrax, contingent on four conditions: (1) supplemental testing of anthrax vaccine lots in the stockpile to assure their potency, purity, sterility, and general safety, consistent with Food and Drug Administration (FDA) standards; (2) approval of the Services' implementation plans for execution and communication; (3) implementation of a system for fully tracking anthrax vaccinations; and (4) review of the health and medical aspects of the program by an independent expert. Each of these conditions was fulfilled.

b. DoD policy requires that service members, emergency-essential personnel assigned to rotating or high threat areas, and those pre-designated for immediate contingency deployment to these areas, will be administered the anthrax vaccination first. The first phase of immunizations, to those service members assigned or deployed to the high threat areas of Southwest Asia and Korea began in March of 1998. Early deploying forces supporting missions in Southwest and Northwest Asia, both active and reserve components, will be vaccinated in the second phase. As of January 2000, more than 390,000 service members had begun or completed the DoD Anthrax Vaccine Immunization Program.

c. The Anthrax Vaccine Immunization Program is a component of the DoD Immunization Program for Biological Warfare Defense. DoD Directive 6205.3 establishes the policy mandating the immunization of service members against validated biological warfare threat agents for which suitable vaccines are available. This directive thus provides authority for the enforcement of the vaccinations.

d. Service members who disobey a lawful order to take anthrax vaccinations are subject to administrative or disciplinary actions. There is no DoD-wide policy directing a specific disposition when a service member refuses a lawful military order. Neither does there exist policy dictating a specific service-wide response. Local military commanders may apply the principles in the

Uniform Code of Military Justice (UCMJ) and the guidance in the Manual for Courts-Martial and the Service regulations that apply to other cases involving a refusal to obey a lawful order.

e. Upon a soldier's refusal to submit to a lawful order to undertake the anthrax vaccination, his or her commander has several options available. The commander may first wish to ascertain the soldier's rationale for refusing the vaccination and then determine an appropriate course of action. A commander may choose to take no action, administrative action, non-judicial punishment, the implementation of a court-martial, or seek separation under AR 635-200, Ch. 14. Administrative actions are discussed in chapter 10, non-judicial punishment in chapter 7, courts-martial in chapter 8, and separations in chapter 9 of this Guide.

CHAPTER 12 – FUNCTIONS OF THE OFFICE OF THE STAFF JUDGE ADVOCATE

12-1. FUNCTIONS

a. Office of the Staff Judge Advocate

1. Provide legal advice to the Installation and Garrison Commanders, staff directorates, unit commanders, and tenant commanders. (AR 27-10, AR 600- 20)

2. Provide legal opinions and counsel on questions of law, interpretation and implementation of directives and instructions. (AR 27-1)

3. Supervise the administration of military justice, United States Federal Magistrates Court, claims activities, and training in military justice, the law of war, the Code of Conduct, ethics in Government and other legal subjects. (AR 27-10)

4. Supervise the delivery of legal assistance and claims services to eligible service members, retirees, and their family members. (AR 27-1, AR 27-3)

5. Supervise the delivery of services under the U.S. Army Claims Program. (AR 27-20)

6. Recommends policies relating to liaison with law enforcement and judicial agencies in the civilian community including cooperation with the Department of Justice and other governmental agencies during litigation. (AR 27-10, AR 27-40)

7. Furnishes advice and counsel on legal aspects of procurement policies, procedures, actions, environmental law, equal employment and equal opportunity, labor relations, civilian employment matters, and the use and disposal of government resources. (AR 600-900, Federal Acquisition Regulation)

8. Present briefings and training on the standards of ethical conduct for federal employees. Provide advice, counsel and opinions concerning completion of the OGE Form 450 and SF Form 278 financial interests statements. Provides ethics counsel and ethics opinions to individuals requesting specific ethics advice. (Joint Ethics Regulation)

9. Supervises delivery of Operational Law advice to commanders executing contingency or other operations including force protection, mobilization, and preparation for overseas movement. (AR 27-1, FM 100-5)

10. Supervises ethical training of civilian attorneys and Judge Advocates assigned to the Office of the Garrison Staff Judge Advocate. (DA PAM 27-26)

11. Provides for the professional training and development of all assigned personnel. (AR 27-1)

12. Provides administrative and logistical support to the Regional Defense Counsel and other defense counsel who are stationed at Fort George G. Meade (FGGM), but are assigned to the U.S. Army Trial Defense Service. (AR 27-1, AR 27-10)

13. Provides technical supervision, training, and coordinates assignment for all installation legal specialists.

b. Criminal Law Division

1. Directs the administration of criminal law and military justice activities. (AR 27-10, Manual for Courts Martial (MCM))

2. Advises all assigned and tenant commanders and court-martial convening authorities on matters relating to military justice and the general administration of military justice and adverse administrative action. Reviews and supervises the preparation of all administrative legal documentation necessary to the disposition of military justice and adverse administrative actions. (AR 27-10, MCM)

3. Provides recorder for all administrative separation boards which are convened by the GCMCA or tenant brigade commanders. Provides trial counsel for General and Special Courts-Martial. (AR 27-10, MCM)

4. Reviews Records of Trial of all courts-martial. (AR 27-10, MCM)

5. Coordinates for the contracting of court reporters for the preparation of verbatim records of courts-martial, boards, and other proceedings. (AR 27-10)

6. Provides attorneys to serve as Special Assistant U.S. Attorneys for the prosecution of all Magistrate Court cases with the U.S. Attorney's Office for the District of Maryland. Provide clerical and administrative support to the attorneys for all cases in federal court. Provides counsel to serve as Special Assistant United States Attorneys to prosecute traffic offenses, petty offenses, and other civil federal misdemeanors before the United States Federal Magistrate. Coordinates with United States Attorney to prosecute civilians under the Federal Prosecution Program. (AR 27-10, FGGM Suppl. To AR 190-29)

7. Advises and assists the Provost Marshal's Office and Criminal Investigations Division Field Office on all matters relating to the investigation of criminal offenses, including the

sufficiency of evidence and final opinions on the closure of investigations. Provide training to all law enforcement agencies on the use of force, elements of offenses, and evidence. (AR 27-1)

8. Conducts training on military justice, criminal law, law of war, Code of Conduct, rules of engagement, and other legal subjects on request of troop units, NCO and Officer Professional Development classes, and law enforcement personnel. (AR 27-1, AR 27-10)

9. Coordinates criminal matters requiring General Courts-Martial Convening Authority action for matters arising at Carlisle Barracks, PA, and other sub-installation or subordinate units located in isolated geographic areas falling under AR 5-9 responsibility. (General Orders 3 and 32, AR 5-9, AR 27-10)

10. Maintains liaison with local civilian law enforcement personnel, criminal courts, prosecutors, and judicial officials. Coordinates disposition of disciplinary matters with civil authorities. (AR 27-1, AR 27-10)

c. Claims Division

1. Supervise claims activities with the Command's area of responsibility. (DoD Dir. 5515.9, AR 27-10, DA Pam 27-162)

2. Processes and investigates claims or potential claims by military and civilian personnel for loss or damage of household goods or other personal property. (Personnel Claims Act, 31 USC 3721, DoD Reg. 4500.34R, AR 27-20)

3. Processes third party claims tort claims, including those arising from activities of the Army, certain DoD personnel, Nonappropriated Fund Instrumentalities, Army National Guard personnel (Maryland and Pennsylvania), and U.S. Army Reserve personnel. Area jurisdiction (site of the incident giving rise to the claim) is found in DA Pam 27-162. (Federal Tort Claims Act, 28 USC 2671; Military Claims Act, 10 USC 2733; DoD Dir. 5515.9; AR 27-20, DA Pam 27-162; if litigation ensues, AR 27-40)

4. Asserts claims against carriers for recovery of payment made for loss or damage during Government sponsored shipment. (AR 27-20)

5. Asserts claims against insurers and other third parties under the Federal Medical Recovery Act (42 USC 2651-53), the Federal Claims Collection Act (31 USC 3711) and 10 USC 1095. Prepares litigation and other reports on legal suits filed on behalf of the United States [Note: the United States might, or might not, be a named party]. (Federal Statutes cited above, AR 27-20, AR 27-40, DA Pam 27-162)

6. Makes final adjudication or recommendations on claims over this office's authority, prepares recommendation, and forwards to higher headquarters. (AR 27-20, AR 27-4)

7. Reports operational statistical data to the U.S. Army Claims Service. (AR 27-20)

d. Administrative Law

1. The primary Administrative Law responsibility is to provide legal advice on all non-criminal matters to the command. This includes conducting legal research and rendering opinions concerning the application of laws, regulations, and other directives to all facets of the operation of the command.

2. Advises the command on laws and regulations relating to appointment, status, compensation, promotion, discipline, separation, and retirement of military personnel (ethics issues in these areas will be referred to the Ethics Counselor).

3. Reviews and make recommendations on the legality of constitutions, by-laws, and minutes of private organizations.

4. Prepares formal litigation reports for court cases involving the Command. Provides assistance to DA Litigation Division and the Department of Justice in litigation. Responsible for litigation of such cases when litigation responsibility is delegated.

5. Supports the operation of Military Magistrate Program. Represents the Command in Administrative Hearings.

6. Advises the command on matters pertaining to dissident activities, barring people from post, and termination of occupancy of family housing.

7. Reviews arrest warrants, service of process, and repossession requests.

8. Provides guidance to persons concerning off-post housing discrimination and review reports of off-post housing discrimination.

9. Reviews for legal sufficiency administrative adjudications against service members including, but not limited to, reports of surveys, line of duty determinations, "bad" time assessments, administrative elimination actions, and administrative letters of reprimand.

10. Provides a hearing officer for revocation and suspension of on-post driving privileges.

11. Provides training to commands and individuals regarding administrative law.

e. Procurement Law

1. The principle responsibility is to provide legal advice and assistance to the command in the area of contract law and related matters. An attorney will advise and assist the Directorate of Contracting (DOC) in all contract law matters. Requests for legal reviews, advice, and opinions are, in most instances, submitted in writing, and written replies will be furnished. An attorney will provide contract and contract-related legal advice and assistance to commanders and staff activities which may arise in the contracting process. This will involve the application or interpretation of statutes, the Federal Acquisition Regulation (FAR), Defense Federal Acquisition

Regulation Supplement (DFARS), the Army Federal Acquisition Regulation Supplement (AFARS), Military District of Washington and Fort Meade Acquisition Regulations, and other applicable laws and regulations.

2. Contract solicitations are reviewed to ensure legal sufficiency, the availability of funds, proper acquisition authority, contract type, and the solicitation's compliance with the applicable laws, regulations, instructions, directives and policies.

3. An attorney will provide legal advice and assistance to the contracting officer on a variety of nonappropriated fund contract law matters, including contract solicitations and modifications.

4. An attorney will review acquisition actions and solicitations below regulatory dollar thresholds when required by a contracting officer.

5. An attorney will review for legal sufficiency all contract modifications and determinations and findings when requested by a contracting officer. Contract modifications may take the form of unilaterally issued modifications or bilateral supplemental agreements.

6. Designated attorneys are members of the contracting officer's "team." Attorneys will participate fully in the entire acquisition process. The types of legal issues that are routinely referred to a contract law attorney pertain to subjects including, but not limited to, the following:

- a. Funding of contracts and method of acquisition;
- b. Fiscal law matters;
- c. Anti-Deficiency Act questions;
- d. Unauthorized commitments;
- e. Conflicts of interest;
- f. Contract changes;
- g. Contractor claims and disputes;
- h. Equitable adjustments;
- i. Government termination of contracts for default or convenience;
- j. Contract Type;
- k. Bid Mistake;
- l. Bidder responsiveness;

- m. Bidder responsibility;
- n. Interpretation of contract clauses and drawings;
- o. Applicability and interpretation of laws regulations, policies, directives, and instructions related to acquisition actions;
- p. Acquisition policy matters;
- q. Contract-related labor matters, labor violations, and investigations;
- r. Socio-economic policies;
- s. Freedom of Information Act requests for acquisition-related information;
- t. Novation agreements;
- u. Performance and payment bonds;
- v. Performance work statements under the Commercial Activities Program; and,
- w. Other matters as referred by the Contracting Officer or others.

7. Whenever a contractor claim or contract dispute cannot be mutually settled between the Government and the contractor, the contractor may file an appeal or bring an action in court. When an appeal or suit is filed, an attorney will review the findings of fact and decision made by the contracting officer. An attorney will assist the contracting officer in gathering and marshalling evidence, preparing administrative files, the trial litigation file, or other litigation report.

8. When a protest is filed, the DOC will be notified of the protest, and will be directed to prepare an administrative report for submission, through command channels, to the Department of the Army (DA) which submits input relative to the protest. During pendency of the protest, the contract law attorney maintains contact with DA and provides information and assistance as requested.

9. For commercial activities (CA) matters, an attorney will provide a wide variety of legal advice and assistance to the DOC, Directorate of Resource Management, and other installation activities. The attorney will review draft performance work statements (PWSs), conduct classes for installation personnel on how to write a PWS, advise the Civilian Personnel Office on employee and labor law aspects of CA, and review proposed CA contract solicitations for legal sufficiency. The attorney will review and provide advice concerning management studies and a variety of other actions and documents related to the program.

10. The Procurement Fraud Advisor (PFA), an attorney designated from the PAL Branch will be responsible for the management, oversight, and operation of the Procurement

Fraud Program. The PFA has ultimate responsibility and decision-making authority on how to handle a procurement fraud case at the installation level.

f. Labor Law

1. The principal purpose of labor law is to provide legal advice and assistance to the command concerning Equal Employment Opportunity (EEO) and civilian personnel law matters. A primary labor counselor will be designated.

2. Provide legal advice, opinions, and assistance to the Civilian Personnel Officer, Equal Employment Opportunity Officer, and other installation staff members on a wide variety of labor law matters such as adverse personnel actions, employee discipline, arbitrations, labor contracts, EEO matters, labor-management relations, and related matters.

3. The labor counselor will monitor the status and progress of all civilian personnel cases pending in the courts concerning the command. Upon the filing of a case against the Army, the labor counselor will conduct extensive fact-finding and legal research and prepare litigation files for submission to DA and the U.S. Attorney's Office.

4. The labor counselor assists DA and the U.S. Attorney in litigation matters, to include preparing interrogatories, responses to interrogatories, pleadings, legal memorandums, affidavits, depositions, and related matters. In those cases where DA delegates litigation responsibility, the labor counselor is responsible for the conduct of the litigation on behalf of the DA in conjunction with the U.S. Attorney, the labor counselor represents the United States in the court proceedings.

g. Environmental Law

1. The principal purpose of environmental law is to provide legal assistance to the command concerning environmental law matters. An Environmental Law Specialist (ELS) will be designated.

2. Provide legal advice, opinions, and assistance to commanders and staff members, on a wide variety of environmental law matters arising from Federal, state, and local, statutes and regulations.

3. The ELS will represent the command at administrative hearings.

4. The ELS will monitor the status and progress of all environmental law cases pending in the courts concerning the command. Upon the filing of a case against the Army, the ELS will conduct extensive fact-finding and legal research and prepare litigation files for submission to DA and the U.S. Attorney's Office.

5. The ELS will assist DA and the U.S. Attorney in litigation matters, to include preparing interrogatories, responses to interrogatories, pleadings, legal memoranda, affidavits, depositions, and related matters. In those cases where DA delegates litigation responsibility, the

ELS is responsible for the conduct of the litigation on behalf of DA in conjunction with the U.S. Attorney, the ELS represents the United States in court proceedings.

h. Legal Assistance Division

1. Renders legal assistance and advice to military and retired military personnel and their families on personal legal problems. Provides assistance for the Retirement Services Program. (AR 27-3, AR 608-25)
2. Provides technical advice and assistance to military personnel requesting advice and assistance in support of the Preventive Law Program. (AR 27-3, AR 600-14)
3. Provides technical advice and assistance to military personnel requesting action by the Attorney General of the United States, under Titles I, II, and IV of the Civil Rights Act of 1964. (AR 608-50)
4. Establishes and maintains liaison with local lawyer referral service, legal aid, public defender organization, and the Maryland Bar Association Committee on Legal Assistance for Military Personnel (LAMP). (AR 27-3, AR 608-50)
5. Responsible for coordinating and conducting annual tax program and instruction to unit tax advisors. (AR 27-3)
6. Provides assistance to units and individuals on Soldier Readiness Programs, Preparation for Overseas Replacement/Movements, and Early Deployment Readiness Exercises. (AR 27-33, AR 600-8-101)

INFORMATION PAPER

SUBJECT: Alcohol and Drug Abuse Prevention and Control Program

ISSUE: Commander's Checklist for a Positive Urinalysis Notification

FACTS: When notification of a POSITIVE urinalysis is received, the following Commander's Checklist should be used to ensure all appropriate actions are completed in a timely manner. This checklist includes pertinent administrative and punitive actions to consider. Additional guidance concerning actions related to a POSITIVE urinalysis should be addressed to your trial counsel.

COMMANDER'S CHECKLIST

___ Notify local CID; AR 600-85, paragraph 2-14b(2).

____ Contact your trial counsel to obtain legal guidance and assistance in conducting 1-18 counseling (prior to notifying soldier), requesting litigation packet and retaining specimen, and on other UCMJ or administrative action; AR 635-200, paragraph 1-18; AR 600-85, paragraph 10-9; AR 600-85, change 2, paragraph 10-4e(5); AR 601-1, paragraph 5-10b(6).

____ Notify soldier, read rights before obtaining statement, conduct 1-18 counseling (obtain legal guidance and go-ahead from CID before talking to soldier).

____ Initiate flagging action – DA Form 268; AR 600-8-2, paragraph 1-12 and AR 600-85, change 2, paragraph 1-11d(3).

____ Refer soldier to servicing military ADAPCP (within four working days) for evaluation/assessment; AR 600-85, paragraph 3-6, paragraph 3-7b and change 2, paragraph 1-11.

____ Process revocation of security clearance, if appropriate; AR 380-67, paragraph 2-200n.

____ Consider processing Bar to Reenlistment (if nearing ETS/retirement/or over 18 years of service); AR 601-280, Chapter 8 and AR 635-200, paragraph 12-7c.

____ Consider UCMJ (Art 15/Court-Martial); AR 600-85, change 2, paragraph 1-11b (Reduction Boards; AR 601-200, paragraph 6-1 through 6-12)

____ Consider processing the soldier for separation action unless court-martial action is initiated; AR 600-85, change 2, paragraph 1-1.

____ Consider adverse OER/NCOER; AR 623-205, paragraph 2-13, paragraph 6-5, and paragraph 6-6; AR 623-105, paragraph 4-21 and paragraph 4-26.

Appendix A

Military Justice

Appendix B. SUGGESTED GUIDE FOR CONDUCT OF ARTICLE 15, UCMJ (NONJUDICIAL PUNISHMENT -NJP)

B-1. General: This guide is designed to ensure that the proceedings comply with all legal requirements. It contemplates a three step process conducted in the presence of the soldier, consisting of: (1) notification,(2) hearing (that may be omitted if the soldier admits guilt), and (3) imposition of punishment (if the findings result in determination of guilt). This guide may be tailored for formal and summarized nonjudicial punishment proceedings.

B-2. Notification

Note. If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this provision should be appropriately modified (see note q(4) below).

a. *Statements of Commanding Officer (CO).*

(1) As your commander, I have disciplinary powers under Article 15 of the UCMJ. I have received a report that you violated the Uniform Code, and I am considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings I will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the UCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

Note. Wait for the soldier to read items 1 and 2 of DA Form 2627. Allow him or her to retain copy five of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it.

(2) Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

b. Response of soldier. Yes _____. No _____. If the soldier does not understand the offense(s), explain the offense(s) to him/her.

c. Statement of CO. Do you understand item 2? Do you have any questions about your rights in these proceedings?

d. Response of soldier. Yes _____. No _____.

Note. If soldier does not understand his or her rights, explain them in greater detail. If the member asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources: Article 15, UCMJ, Part V of the Manual for Courts-Martial (MCM); or contact your JA office.

e. Statement of CO. There are some decisions you have to make:

(1) You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. I then will have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.

(2) If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation. Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence in your behalf.

(a) Evidence in defense are facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.

(b) Evidence in extenuation are circumstances surrounding the offense, showing that the offense was not very serious.

(c) Evidence in mitigation are facts about you, showing that you are a good soldier and that you deserve light punishment.

(3) You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.

(4) Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

f. Response of soldier. Yes _____. No _____.

g. Statements of CO.

(1) If you do not demand trial by court-martial and after you have presented your evidence, I am convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you would be (punishment). (See table 3-1 for maximum punishments).

(2) You should compare this punishment with the punishment you could receive in a court-martial. (If the soldier requests to be informed of the maximum court-martial sentence you may state the following: The maximum sentence you could receive in a court-martial is (sentence) for the offense(s).)

Note. Part IV, MCM lists for each punitive article the punishments a court-martial may impose for violation of the various Articles of the UCMJ. The CO -

a. May inform the soldier that referring the charges to a summary or special court-martial would reduce the maximum sentence. For example, a summary court may not impose more than 1 month of confinement at hard labor. A special court may not impose more than 6 months of confinement.

b. Should not inform the soldier of the particular punishment you may consider imposing until all evidence has been considered.

(3) As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is located at Building 2257, Wing A/TDS, Office of the Staff Judge Advocate, Fort George G. Meade, Maryland. Would you like to talk to an attorney before you make your decisions?

h. Response of Soldier. Yes _____. No _____. If the soldier desires to talk to an attorney, arrange for the soldier to consult an attorney. The soldier should be encouraged to consult the attorney promptly. Inform the soldier that consultation with an attorney may be by telephone. The soldier should be advised that he or she is to notify you if any difficulty is encountered in consulting an attorney.

i. Statements of CO.

(1) You now have 48 hours to think about what you should do in this case. You may advise me of your decision at any time within the 48-hour period. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I can continue with these Article 15 proceedings even without your consent. You are dismissed.

Note. At this point, the proceedings should be recessed unless the soldier affirmatively indicates that he or she has made a decision and does not want additional time or to consult with an attorney. In the event the soldier does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, see paragraph 3-18f, AR 27-10. When you resume the proceedings, begin at item 3, DA Form 2627.

(2) Do you demand trial by court-martial?

j. Response of Soldier. Yes _____. No _____. (If the answer is yes, continue with next statement.)

k. Statement of CO.

(1) Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed. If the answer is no, continue with next statement.

(2) An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated soldiers of the chain of command, available witnesses and a spokesperson, if designated, will be present. Do you request an open hearing?

l. Response of Soldier. Yes _____. No _____.

m. Statement of CO. Do you wish to be accompanied by a spokesperson?

n. Response of Soldier. Yes _____. No _____.

o. Statement of CO. Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

p. Response of Soldier. Yes _____. No _____.

q. Statement of CO. Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.

Note. The CO will -

a. Wait until the soldier initials the blocks and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.

b. If the answer regarding witnesses and evidence is yes, and the soldier is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the soldier, terminate the proceedings, inform the soldier, and destroy all copies of DA Form 2627. If you are convinced that the soldier committed the offense(s) beyond a reasonable doubt and deserves to be punished, proceed to impose punishment.

c. If the soldier needs additional time to gather his or her evidence, give the soldier a reasonable period of time to gather the evidence. Tell the soldier when the proceedings will resume and recess the proceedings.

d. If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the soldier's evidence. Insure that the soldier has the opportunity he or she deserves to present any evidence. Ask the soldier, "Do you have any further evidence to present?" If the evidence persuades you that you should not punish the soldier, terminate the proceedings, inform the soldier of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the soldier committed the offense(s) and deserves to be punished, impose punishment.

B-3. Imposition of punishment.

Statement of CO.

I have considered all the evidence. I am convinced that you committed the offense(s). I impose the following punishment(s): (Announce Punishment(s).)

Note: After you have imposed punishment, complete items 4, 5 and 6 of DA Form 2627, and sign the blank below item 6.

B-4. Appellate Advice

Note. The CO will hand the DA Form 2627 to the soldier.

a. Statement of CO. Read item 4 which lists the punishment I have just imposed on you. Now read item 6 which points out that you have a right to appeal this punishment to (title and organization of next superior authority). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (correctional custody, restriction or extra duty), at your request, will be interrupted pending the decision on the appeal. Do you understand your right to appeal?

b. Response of Soldier. Yes _____. No _____.

c. Statement of CO. Do you desire to appeal?

d. Response of soldier. Yes _____. No _____.

Note. If the answer is yes, go to note at e(2). If the answer is no, continue with next statement.

e. Statements of CO.

(1) If you do not want to appeal, initial block a in item 7 and sign the blank below item 7.

Note. Now give the soldier detailed orders as to how you want him or her to carry out the punishments.

(2) You are dismissed. If the answer is yes, continue with next statement.

(3) Do you want to submit any additional matters to be considered in an appeal?

f. **Response of Soldier.** Yes _____. No _____ (If the answer is yes, go to note at g(1). If the answer is no, continue with next statement.)

g. Statements of CO.

(1) Initial block b in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

Note. If the answer is yes, continue with next statement.

(2) If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by (specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initialing the box and signing the blank below. After you complete item 7, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). You are dismissed.

Appendix B

**Table 3-1
Maximum Punishment**

A. Maximum Punishment for Enlisted Members

Note. The maximum punishment imposable by any commander under summarized procedures will not exceed extra duty for 14 days, restriction for 14 days, oral reprimand, or any combination thereof.

Punishment	Imposed by Company Grade Officers	Imposed by Field Grade Officers	Imposed by Field Grade and General Officers	Imposed by General Officers or GCMCAs
Admonition/Reprimand	Yes		Yes	
AND Extra Duties	14 days		45 days	
AND ¹ Restriction	14 days		60 days	
or Correction Custody ²				
or (E1 through E3)	7 days		30 days	
or Restricted Diet				
Confinement				
(E1 through E3 attached or embarked on vessel)			4 days	
AND	3 days			
Reduction (E1 through E4)			One or more grades	

Office of the Staff Judge Advocate
Chapter Request

Name: _____ Rank: _____

SSN: _____ Unit: _____ BASD: _____

ETS: _____ Sex: _____ Race: _____

Type of Chapter Requested:

CH 5-13 & 5-18
PERSONALITY
DISORDERS

CH 9
DRUG AND ALCOHOL
REHAB FAILURE

CH 13
UNSATISFACTORY
PERFORMANCE

Chapter Counseling
Mental Exam
Physical Exam
DA Forms 2A & 2-1

ADAPCP Packet
Physical Exam
DA Forms 2A & 2-1

Performance Counseling
Chapter Counseling
Mental Exam
Physical Exam
DA Forms 2A & 2-1

CH 14-12b/c
MISCONDUCT
Incident Report
Performance Counseling
Chapter Counseling
Mental Exam
Physical Exam
DA Forms 2A & 2-1

CH 15
HOMOSEXUALITY
Incident Report
Mental Exam
Physical Exam
DA Forms 2A & 2-1

CH 18
OVERWEIGHT
Enrollment & Receipt
Nutritional Counseling
Medical Evaluation
Forms 5500-R / 5501-R
Physical Exam
DA Form 2A & 2-1

NOTE: Attach documents as required above IAW AR 635-200. Ensure documents are complete (signed & dated).

Discharge Requested: () Honorable () General () Other Than Honorable [OTH]

NOTE: Chapters 5-13, 5-18, and 18 are Honorable Discharges. Chapters 9 and 13 can be an Honorable or a General Discharge. Chapter 14 is normally a General or OTH Discharge. The Garrison Commander must approve OTH and Honorable Discharges under Chapter 14. Soldiers may elect to have an Administrative Separation Board when an OTH Discharge is recommended, if the separation is under Chapter 15, or if he or she has 6 or more years in service.

Other Actions Taken: (Include a copy if applicable)

Bar to Reenlistment: () Yes () No () Pending

Letter (s) of Reprimand: () Yes () No () Pending

Article 15s: () Yes () No () Pending

NOTE: Above named soldier should be flagged for elimination, IAW AR 600-8-2, prior to forwarding this request. Please attach a copy of the DA Form 268.

Signature of Commander and Date

Appendix D

BENEFITS AT

Honorable DD Form

General Under Honorable Conditions DD Form 257A "4"

Other Than Honorable

Bad Conduct

Dishonorable Discharge
General Court-Martial "6"

E Eligible
NE Not Eligible
TBD To be determined by Administering Agency
DV Eligibility for these benefits depend upon specific disabilities of the veteran

Army Administered	Authority and References					
1. Payment for Accrued Leave	E	E	NE	NE	NE	37 USC 501-503; DODPEM Par. 40401a
2. Death Gratuity (six months pay)	E	E	E	E	NE	10 USC 1480; DODPEM Par. 40501b
3. Wearing of Military Uniform	E	E	NE	NE	NE	10 USC 771a, 772; AR 670-1
4. Admission to Soldiers' Home "1"	E	E	NE	NE	NE	24 USC 49, 50
5. Burial in Army National Cemeteries	E	E	NE	NE	NE	38 USC 1002; AR 290-5
6. Burial in Army Post Cemeteries "2"	E	E	NE	NE	NE	AR 210-190
7. Army Board for Correction of Military Records	E	E	E	E	E	10 USC 1552; AR 15-185
8. Army Discharge Review Board	E	E	E	NE "9"	NE	10 USC 1553; AR 15-180
9. Transportation to Home "3"	E	E	E	E	E	37 USC 404; JTR par. U7500-7506
10. Transportation of Dependents and Household Goods to Home	E	E	TBD "8"	TBD "8"	TBD "8"	37 USC 406; JTR par. US225, par. U5370
Transitional Benefits & Services						
1. Pre-separation Counseling	E	E	E	E	E	10 USC Section 1142
2. Employment Assistance	E	E	E	E	NE	10 USC Section 1143, 1144
3. Health Benefits	E	E	NE	NE	NE	10 USC Section 1145
4. Commissary/Exchange	E	E	NE	NE	NE	10 USC Section 1146
5. Military Family Housing	E	E	NE	NE	NE	10 USC Section 1147
6. Overseas Relocation Assistance	E	E	NE	NE	NE	10 USC Section 1148
7. Excess Leave/Permissive TDY	E	E	NE	NE	NE	10 USC Section 1149
8. Preference for USAR/ARNG	E	E	NE	NE	NE	10 USC Section 1150
9. Montgomery G.I. Bill (Additional Opportunity)	E	N	NE	NE	NE	38 USC Section 3011
Department of Veterans Affairs						
1. Dependency and Indemnity Compensation	E	E	E	E	NE	38 USC 410(b)
2. Pension for Non-Service Connected Disability or Death	E	E	TBD	TBD	NE	38 USC 521; 38 USC 3103
3. Medal of Honor Roll Pension	E	E	TBD	TBD	NE	38 USC 562; 38 USC 3103
4. Insurance	E	E	TBD	TBD	TBD	38 USC 711, 773; AR 608-2
5. Vocational Rehabilitation (DV)	E	E	"11"	"11"	"11"	38 USC 1502, 1503
6. Educational Assistance	E	E	TBD	TBD	NE	38 USC 1411
7. Survivors & Dependents Educational Assistance	E	N	NE	NE	NE	38 USC 1701-1765
8. Home and other Loans	E	E	E	E	NE	38 USC 1802, 1818
9. Hospitalization & Domiciliary Care	E	E	TBD	TBD	NE	38 USC 610; 38 USC 3103
10. Medical and Dental Services	E	E	TBD	TBD	NE	38 USC 612; 38 USC 3103
11. Prosthetic Appliances (DV)	E	E	TBD	TBD	NE	38 USC 614; 38 USC 612(b); 38 USC 3103
12. Guide Dogs & Equipment For Blindness (DV)	E	E	TBD	TBD	NE	38 USC 614; 38 USC 3103
13. Special Housing (DV)	E	E	TBD	TBD	NE	38 USC 801; 38 USC 3103
14. Automobiles (DV)	E	E	TBD	TBD	NE	38 USC 801; 38 USC 3103
15. Funeral and Burial Expenses	E	E	TBD	TBD	NE	38 USC 1901; 38 USC 3103
16. Burial Flag	E	E	TBD	TBD	NE	38 USC 902; 38 USC 3103
17. Burial in National Cemeteries	E	E	TBD	TBD	NE	38 USC 901; 38 USC 3103
18. Headstone Marker	E	E	TBD	TBD	NE	38 USC 1002
		E	TBD	TBD	NE	38 USC 906; 38 USC 3103
Department of Agriculture						
1. Preference for Farm Loan (Dept. of Agriculture)	E	E	E	E	NE	7 USC 1983(5)
2. Preference for Farm & other Rural Housing Loans (Dept. of Agriculture)	E	E	E	E	NE	42 USC 1477
3. Civil Service Preference "13" (Office of Personnel Management)	E	E	NE	NE	NE	5 USC 2108, 3309-3316, 3502, 3504
4. Civil Service Retirement Credit	E	E				
5. Reemployment Rights (Dept. of Labor)	E		NE	NE	NE	5 USC 8331, 8332
6. Job Counseling & Employment Placement (Dept. of Labor)	E	N	NE	NE	NE	38 USC 2021-2026
7. Unemployment Compensation for Ex-Service members (Dept. of Labor)	E	E	E	E	NE	38 USC 2001-2014
8. Naturalization Benefits (Dept. of Justice Immigration & Naturalization Service)	E	E	NE	NE	NE	5 USC 8501, 8521
9. Old Age, Survivors & Disability Insurance (Social Security Administration)	E	E				
10. Job Preference, Public Works Projects "13" (Dept. of Commerce)	E	E	TBD	TBD	NE "12"	8 USC 1439, 1440; AR 608-3, par. 2-2-3
		E	TBD	TBD	NE	42 USC 417
						42 USC 6706; 13 CFR.317.35

General Eligibility. The eligibility of benefits set forth are not the sole determining factors, but only list the various types of discharge. The states also provide various benefits that will be influenced by the type of discharge, but information on state benefits should be obtained from state agencies.

FOOTNOTES:

"1" The veteran must have served "honestly and faithfully" for 20 years or been disabled and excludes convicted felons, deserters, mutineers, or habitual drunkards unless rehabilitated or soldier may become ineligible if that person following discharge is convicted of a felony, or is not free from drugs, alcohol, or psychiatric problems.
 "2" Only if an immediate relative is buried in the cemetery.
 "3" Only if no confinement is involved, or confinement is involved, parole or release is from a US military confinement facility or a confinement facility located outside the US.
 "4" This discharge category includes the discharge of an officer under honorable conditions but under circumstances involving serious misconduct. See AR 600-8-24
 "5" An officer who resigns for the good of the service (usually to avoid court-martial charges) will be ineligible for benefits administered by the Department of Veterans Affairs (DVA). 38 USC 3103.
 "6" Including Commissioned and Warrant Officers who have been convicted and sentenced to dismissal as a result of general courts-martial, See AR 600-8-24, Chapter 5

"7" Additional references include Once a Veteran; Rights, Benefits and Obligations, DA Pam 360-526; and Federal Benefits for Veterans and Dependents, (VA Fact Sheet 1S-1)
 "8" To be determined by the Secretary of the Army on case-by-case basis.
 "9" Only if the Bad Conduct Discharge was a result of conviction by General Court-Martial.
 "10" Benefits from the Department of Veterans Affairs are not payable to (1) a person discharged as a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise comply with lawful orders of competent military authority, (2) by reason of a sentence of a general court-martial, (3) resignation by an officer for the good of the service, (4) as a deserter, and (5) as an alien during a period of hostilities. 38 USC 3103.
 A discharge (1) by acceptance of an other than honorable discharge to avoid court-martial (2) for mutiny or spying, (3) for a felony offense involving moral turpitude, (4) for willful and persistent misconduct, or (5) for homosexual acts, involving aggravating circumstances or other factors will be considered to have been issued under dishonorable conditions and thereby bar veterans benefits. 38 CFR 3.12. A discharge under dishonorable conditions from one period of service does not bar payment if there is another period of eligible service on which the claim may be predicated (Administrator's Decision, Veterans Admin. No. 655, 20 June 1945).

"11" Any person guilty of mutiny, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces or refuses to wear the uniform shall forfeit all rights to National Service Life Insurance and Servicemember's Group Life Insurance. 38 USC 711, 773.
 "12" Applies to Post-1957 service only. Post-1957 service qualifies for Social Security benefits regardless of type of discharge. Pre-1957 service under conditions other than dishonorable qualifies a service member for a military wage credit for Social Security purposes.
 "13" Disabled and Vietnam-era veterans only. Post-Vietnam-era Veterans are those who first entered on active duty as or first became members of the Armed Forces after May 7, 1975. To be eligible, they must have served for a period of more than 108 day active duty and have other than a dishonorable discharge. The 180 day service requirement does not apply to (1) veterans separated from active duty because of a service-connected disability, or (2) reserve and guard members who served on active duty (under 10 USC 672a, d, or g. 673, or 673b) during a period of war (such as the Persian Gulf War) or in a military operation for which a campaign or expeditionary medal is authorized.
 "14" Transitional benefits and services are available only to soldiers separated involuntarily, under other than adverse conditions.

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