

ARMY REGULATION

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## BOARDS, COMMISSIONS, AND COMMITTEES

PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS  
CONDUCTING INVESTIGATIONS

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## Section I. GENERAL

**1. Scope.** Investigating officers and boards of officers (which may consist of only one officer) are appointed by superior authority, usually under an Army regulation pertaining specifically to the matter requiring investigation. Generally, this regulation is supplemental to such specific regulations and, in addition, will govern in the investigation of matters not covered in specific regulations (e.g., whenever an officer is appointed

to investigate a complaint under UCMJ, Art. 138). In case of conflict between this regulation and a pertinent specific regulation, however, the latter will govern. This regulation is not applicable to investigation of court-martial charges. See *Uniform Code of Military Justice, Article 32, and Manual for Courts-Martial, United States, 1951*, chapter VII. The promulgation of this regulation shall not invalidate any investigation or proceeding

\*This regulation supersedes AR 15-6, 3 November 1960, including C 1, 27 October 1961.

initiated prior to the receipt of this regulation and conducted in conformity with the existing regulation.

**2. Function.** The primary purpose of any investigation, whether conducted by an investigating officer or by a board of officers, is to ascertain facts and to report them to the appointing authority as the basis for some appropriate action by him. It is the duty of any investigating officer or board to make a complete and impartial presentation of the evidence on both sides, and to make such findings and recommendations as may be appropriate and warranted by the facts. No person shall attempt to coerce, or by unlawful means influence, the actions of an investigating officer or board of officers in any matter whatsoever or the action of any superior authority acting upon the matter. The appointing authority will take whatever action he deems necessary to correct errors or irregularities in the proceedings of an investigating officer or board of officers. However, errors or irregularities which do not adversely affect the substantial rights of the individual(s) concerned or of the Government will not be deemed to render invalid the proceedings, or any action of the appointing authority, based thereon.

**3. Appointment.** *a. Orders.* Orders appointing an investigating officer or a board of officers will specify clearly the matter to be investigated and the scope of the findings required. If the appointment is made under a specific Army regulation, the regulation should be cited. If made for a purpose not covered specifically by regulations, the purpose should be stated in sufficient detail to apprise the investigating officer or board of officers thereof. When circumstances warrant, the investigation may be ordered orally to enable it to be commenced without delay. Such oral orders will be confirmed in writing.

*b. Investigating officers.* Only commissioned officers will be appointed as investigating officers, unless the specific statute or regulation under which the appointment is made authorizes otherwise. An investigating officer appointed to investigate the conduct, status, efficiency, fitness, character, pecuniary liability, or rights of another will be senior in rank to the person under investigation, except where such is impracticable because of military exigencies (but not because of mere inconvenience). If an investigating officer discovers during the course of an investigation that

the completion thereof requires investigating the conduct, status, efficiency, fitness, character, pecuniary liability, or rights of an officer senior to him, he will report this fact to the appointing authority, who will replace him with an officer senior to the officer under investigation, or appoint another officer, senior to the officer under investigation, to conduct a separate investigation of the matters pertaining to that officer.

*c. Boards of officers.*

- (1) Boards will consist of commissioned officers unless otherwise prescribed by specific statutes or regulations. The voting members of a board shall be senior in rank to all persons under investigation except where such is impracticable because of military exigencies (but not because of mere inconvenience). Appointing authorities may request assistance from higher headquarters to secure sufficient personnel senior in rank to all persons under investigation to carry out the intent of the previous sentence. Unless otherwise designated in the appointing order, the senior member present is president of the board. A commissioned or warrant officer may be designated as recorder by the orders appointing the board, and shall be without vote. Where a recorder is not designated in the appointing orders, the junior member of the board shall act as recorder, and shall have a vote.
- (2) A majority of the appointed members of a board will constitute a quorum and must be present at all its sessions. However, where a statute or regulation specifies the number (or a minimum number) of members of which a board will be comprised, the required number (or minimum number) will be present at all sessions. A large number of officers will not be appointed to a board of officers with the intention of using such of them (but less than a majority of such number) as are available at the time of the board's meeting. This does not preclude designation in the appointing order of one or more "alternate members," provided the appointing order specifies that an alternate member may

serve on the board only in the absence or unavailability of an appointed member, and the order in which alternate members are to be called for service by the president of the board. In any board proceedings, a member who has not been present at a prior session of the board (such as an absent or newly appointed member, or an alternate member called to serve as a member) may participate thereafter if that member has read or had read to him the record of the proceedings held during his absence or prior to his participation.

- (3) When a board of officers is convened to investigate a member of a Reserve component not on active duty or examine an applicant for appointment in a Reserve component, one member of the board will be a Regular Army officer and the remainder will be Reserve officers of the Army in an active reserve status or on active duty. When the appointing authority determines that a Regular Army officer is not available, an officer of a Reserve component, on active duty, may be substituted for the Regular Army officer.
- (4) When a board is convened to consider technical or professional qualifications of a member, or for appointment in a Reserve component, the active duty member of the board will be of the branch concerned if practicable. A Reserve component officer not on active duty, of the branch concerned, may be substituted when it has been determined that an officer on active duty is not available. When practicable, this member will possess the qualifications sought in the individual to be examined. For example, when an optometrist of the Medical Service Corps appears before the board, the Medical Service Corps member thereof should, if reasonably available, be an optometrist. When the branch cannot be determined prior to appearance of the applicant before the board, an officer with qualifications comparable to those in which the individual is to be examined, regardless

of branch, may be detailed to the board and appropriate explanation included as part of the board proceedings.

- (5) A member of the board serving only in an advisory capacity may be junior to any person being considered by the board.

**4. Swearing of an investigating officer or member of board of officers.** Unless the investigating officer or the board of officers is required to be sworn by the specific statute or regulation under which appointed, it is not necessary for the investigating officer or the members of the board of officers to be sworn.

**5. Challenge of an investigating officer or member of boards of officers; membership of board.** Investigating officers and members of boards of officers are not subject to peremptory challenge. The privilege of challenge for cause runs through the entire administrative and punitive system of the Army; where it appears clearly that a challenged investigating officer or a member of a board of officers cannot impartially participate in the investigation, action will be taken on the challenge by the appointing authority or the president, as appropriate. The president or the senior unchallenged member will rule on challenges made while the board is in session. If the challenge of a member of a board of officers is sustained, the remaining members will constitute the board, except that whenever, through such challenge, the number of members is reduced below the minimum required, additional members will be detailed by the appointing authority.

**6. Duties and functions of investigating officer or recorder or junior member of board. a. Prior to hearing.**

- (1) In every case in which the conduct, status, efficiency, character, fitness, pecuniary liability, or rights of any individual is to be investigated, such person will be afforded a hearing, and the investigating officer or the recorder or junior member of the board of officers if no recorder is designated (acting under the supervision of the president) will, at a reasonable time in advance of the hearing, deliver or dispatch by messenger or mail to the individual concerned, a written communication stating—

- (a) The date, hour, and exact place of convening.
  - (b) The specific matter to be investigated.
  - (c) The names of witnesses whose testimony is expected to be used.
  - (d) That the investigating officer, or the recorder, or the junior member of the board will endeavor to arrange for the presence of any available witnesses desired by the individual concerned upon timely written request therefor.
- A copy of this communication, bearing the certificate of the investigating officer or the recorder or the junior member of the board that it is a true copy and that the original was delivered or dispatched, will be read in evidence and the record will affirmatively show this action.
- (2) He will give timely oral or written notice to all concerned (including, when appropriate, members of the board) of the date, hour, and exact place of convening.
  - (3) He will notify and arrange to have present at the hearing witnesses who are to testify in person (including witnesses desired by the individual concerned) and a reporter and interpreter if required.
  - (4) He will obtain a suitable room for the hearing; see that it is in order; procure requisite stationery and other supplies; and take such other action as will make possible a prompt, full, and systematic presentation of the case.
  - (5) He will insure that all records and documents referred with the case are furnished, when appropriate, to the members of the board and, subject to security requirements, to any named respondent or his counsel.

*b. During hearing.*

- (1) The recorder or junior member of the board will execute all orders of the board. The investigating officer or the recorder or junior member of the board will keep or superintend the keeping of the required record of proceedings (sec V).
- (2) At the initial session, the investigating officer or the recorder or junior member of the board will read the appointing order. At the beginning of each session, the investigating officer or the recorder

or junior member of the board will note for the record the presence or absence of members of the board, the individual concerned, and his counsel, if any.

- (3) The investigating officer, or when appropriate the recorder or junior member of the board, under the direction and supervision of the president, will so conduct the presentation of evidence and examination of witnesses (including those of the individual concerned if he is not represented by counsel at the investigation) as to make as complete and impartial a presentation of the evidence on both sides as is possible.

*c. After hearing.* The investigating officer or recorder or junior member of the board will prepare or superintend the preparation of the report of the proceedings as prescribed in section V.

**7. Reporter; clerical assistance.** The appointing authority will make available the necessary clerical assistance for investigating officers and boards of officers. An investigating officer is not authorized to employ a civilian contract reporter. A board of officers may only employ a civilian contract reporter if such a reporter is authorized under the regulations pursuant to which the board is convened. In no event will a civilian contract reporter be employed if an enlisted or Government civilian employee reporter is available.

**8. Individual entitled to have counsel.** An individual under investigation is entitled to have counsel, either military or civilian, and any military person requested by the individual under investigation will be appointed as counsel if reasonably available. A decision by the appointing authority as to availability is final. If the requested military counsel is unavailable, other military counsel will be provided, if requested. Unless the specific statute or regulation under which the investigating officer or board of officers is appointed so provides, an individual under investigation is not entitled as a matter of right to appointed counsel who is legally qualified. Government civilian employees may voluntarily act as counsel for another civilian employee or military member, if such services are rendered gratuitously, while on leave, or subsequent to

normal hours of employment, and do not conflict with regular duties. *See 18 U.S.C. 205.* Civilian counsel will not be provided at Government expense in any case. Civilian or military per-

sonnel under investigation will, to the extent permitted by security classification, be permitted to have their civilian counsel present at all open sessions.

## Section II. CONDUCT OF INVESTIGATION

### 9. General. a. Obtaining evidence.

- (1) The investigation will be conducted so that whenever possible the highest quality of evidence obtainable and available will be considered, e.g.:
  - (a) Stipulations.
  - (b) Views and inspections.
  - (c) Sworn testimony by witnesses appearing before the investigating officer or the board.
  - (d) Depositions taken upon due notice to and, if feasible, in the presence of all parties.
  - (e) Affidavits.
  - (f) Original or properly identified copies of records and documents.
  - (g) Other writings and exhibits.
- (2) Usually, an investigation resolves itself into an inquiry concerning but a few essential facts. These facts should be established by substantial evidence and not by rumor (para 20).
- (3) Unless stipulated to by all parties, no evidence concerning the results, taking, or refusal of polygraph (lie detector) tests will be received in evidence or considered by an investigating officer or board of officers.

b. *Dates, places, persons, and events.* By whatever method evidence is obtained, investigating officers and boards are required to fix dates, places, persons, and events definitely and accurately to the best of their ability. The investigating officer or board should develop complete answers to the questions: What occurred? When did it occur? Where did it occur? How did it occur? Who were involved (and the extent of their involvement)? If property is involved, an exact description thereof and its value, should be included in the record. Diagrams and photos should be used when necessary. Exact descriptions of what occurred, including both the method and the reason for the occurrence, should be included. Reading of the Report of Proceedings by Investigating Officer (Board of Officers) (DA

Form 1574) by the investigating officer or the board before commencing the investigation or hearing will serve to eliminate errors.

**10. Rules of evidence.** As proceedings utilizing this regulation are administrative and not judicial in nature, an investigating officer or board of officers is not bound by the rules of evidence prescribed for trials by courts-martial or for court proceedings generally. Accordingly, subject to the provisions of paragraph 9, there will be admitted in evidence, without regard to technical rules of admissibility, any oral or written matter (including hearsay) which in the minds of reasonable men is relevant and material. All evidence shall be accorded such weight as is warranted under the circumstances. All questions of admissibility will be ruled upon in open session by the president, subject to objection by any member of the board, in which case the determination will be by majority vote of the members present. *See paragraph 20 as to evidentiary basis for findings.*

**11. Individual under investigation will be present at open sessions.** An individual whose conduct, efficiency, fitness, or pecuniary liability is under investigation and who has been notified pursuant to paragraph 6 will, except for good cause shown, be permitted to be present at all open sessions and to cross-examine adverse witnesses. However, whether or not he is present at all sessions, before the hearing is concluded the individual concerned should be given full opportunity by some appropriate method to rebut adverse allegations. The individual concerned, if suspected of an offense punishable by court-martial, shall not be interrogated or requested to make any statement without first being informed of the nature of the offense of which he is suspected, that he does not have to make any statement regarding the offense of which he is suspected, and that any statement made by him may be used as evidence against him in a trial by court-martial. *See Uniform Code of Military Justice, Article 31(b).*

**12. Witnesses to be sworn.** Investigating officers and the president or the recorder of boards of officers have power to administer oaths (see

UCMJ, Art. 130). Any person appearing before an investigating officer or a board as a witness should be sworn. In the absence of any law or regulation prescribing the form of oath to be taken by a witness, the following oath will be administered:

*You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.*

**13. Testimony of witnesses.** *a. Rights of witnesses.* No witness shall be compelled to incriminate himself or to answer any question the answer to which might tend to incriminate him, or to make a statement or produce evidence if the statement or evidence is not material to the issue and might tend to degrade him (see UCMJ, Art. 31), or, in the case of witnesses not subject to the UCMJ, which would deprive him of his rights under the Fifth Amendment of the Constitution of the United States. However, the witness must state specifically that refusal to answer a question is based upon the immunity afforded by the Uniform Code of Military Justice, Article 31, or the Fifth Amendment of the Constitution of the United States. It is the proper province of the investigating officer or board, in each case, to decide whether the stated reason is well taken. Whenever it appears appropriate and advisable to do so, the rights of a witness will be explained to him. The procedure prescribed by the *Manual for Courts-Martial, United States, 1951*, paragraph 150, may be utilized in such cases.

*b. Personal appearance of witnesses.* Personal appearance of a witness should always be obtained whenever possible in preference to use of his deposition, affidavit, or written statements. However, in the event a material witness resides or is on duty at a substantial distance from the installation at which the hearing is conducted, his evidence may be obtained by deposition, affidavit, or written statement. DA Form 19-24 (statement) should, if available, be used for written statements of witnesses. The commander having jurisdiction over the locality in which such a witness is residing or is found may be requested to have a deposition or affidavit taken. Where personal appearance is otherwise not feasible, evidence should be obtained by deposition or affidavit. If it is impracticable to obtain evidence by either method, it may be secured by correspondence between the investi-

gating officer or board and the witness. If evidence is secured by affidavits or written statements (including correspondence), the individual concerned should be given reasonable notice thereof and afforded an opportunity to meet adverse allegations. If depositions are taken, see *Manual for Courts-Martial, United States, 1951*, paragraph 117, and appendix 18, for guidance. The use of oral or written stipulations in appropriate cases is also permissible. If stipulations are used, see *Manual for Courts-Martial, United States, 1951*, paragraph 154b, for guidance.

**14. Prejudicial allegations.** When matters prejudicial to the conduct, status, efficiency, fitness, character, or rights of an individual arise and become an issue during the course of the investigation, the investigating officer or board shall make the individual concerned a party, and make known to him in writing, the precise nature of the prejudicial allegations. Additionally, he will be entitled to counsel as provided in paragraph 8, permitted to examine such allegations or evidence, and afforded an opportunity to answer such allegations by the testimony of any witness or witnesses he may desire heard in his own behalf, and by written statements, sworn to if practicable, of himself and others he may desire to submit. Failure to afford any of the above rights will be fully explained in the record of proceedings. If the person concerned is unavailable for good cause, such as absence from the command, the above requirements may be met by furnishing him a copy of the record of proceedings together with advice as to his right to present evidence. Subject to the rights of a witness as set forth in paragraph 13, the individual concerned may be called by the investigating officer or board and required to testify under oath upon any point involved concerning which he might be a material witness.

**15. Pecuniary responsibility.** The requirements in paragraph 14 also will be observed before arriving at a finding which fixes pecuniary responsibility on any individual who has not been fully apprised of the matter and afforded an opportunity to present his side of the case. Every report of proceedings which recommends that any individual be held pecuniarily responsible for loss of funds or lost, damaged, or destroyed property will contain a positive statement, immediately following the findings, that each individual found pecuniarily

responsible has been afforded an opportunity to examine all evidence considered by the investigating officer or board and to present evidence, including affidavits of other parties, in his own behalf. If it is impossible or impracticable to afford this opportunity to individuals held pecuniarily responsible, the report of proceedings will contain a full explanation as to why it is impossible or impracticable to do so.

**16. Informal evidence.** During hearings, the investigating officer or board should refrain from unnecessary informal conversations or comment upon subjects under investigation, and witnesses should not be allowed to make statements "off the record." It should be understood that the primary mission of the investigating officer or board is to present in the written record all pertinent facts and circumstances supported by the recorded evidence. Findings and recommendations must be supported by the facts contained in the record and not based upon personal knowledge not of record in the report of proceedings.

**17. Written brief.** The individual concerned

or his counsel may submit a written brief covering the whole or any portion or phase of the case under investigation and, except for good cause shown, a reasonable time will be afforded him in which to submit it. To assist in preparation of this brief, the individual concerned or his counsel will, upon request and subject to security requirements, be allowed to examine the report of proceedings prior to action by the convening authority.

**18. Suggested procedure.** The appendix contains a suggested procedure for investigating officers and boards of officers in cases in which the conduct, status, efficiency, fitness, character, rights, or pecuniary liability of persons is being investigated and in which a hearing is considered appropriate, if specific procedure is not prescribed by other regulations. So much of this procedure as is applicable may be used in cases where there appears to be no individual under investigation in the foregoing respects or where no hearing is held. Use of the suggested procedure is not mandatory. However, it may be used as a guide in the presentation of evidence by investigating officers and boards of officers in accordance with this regulation.

### Section III. FINDINGS

**19. General.** A finding, in the sense that it is used in proceedings under this regulation, is a clear and concise statement of a fact evidenced in the record, or is a conclusion of the investigating officer or board which can be readily deduced from the evidence in the record.

**20. Evidentiary basis.** Each finding must be supported by substantial evidence, which is defined as such evidence as a reasonable mind can accept as adequate to support a conclusion.

**21. Form.** Where the regulation under which an investigating officer or board of officers functions

specifically provide the form of findings, such form will be followed. In the absence of specific provisions, the findings will be stated in such form as to give a coherent and clear recital of the facts as established by the evidence and the conclusions thereon of the investigating officer or board. If several findings are required, coherence and clarity will best be achieved by presenting separately the complete facts as to each item. If but one finding is required, the best exposition of facts ordinarily will be obtained by arranging their presentation in chronological order.

### Section IV. RECOMMENDATIONS

**22. General. a.** In appropriate cases, whether or not prescribed by the regulation under which an investigating officer or board is functioning, recommendations should be made, even if of a negative nature, such as a statement that no further action is considered necessary. Recommendations must be appropriate to and warranted by the findings and, in general, should cover the

pecuniary, disciplinary, and corrective phases of the matter under investigation.

**b.** Investigating officers or boards must make their recommendations according to the best of their understanding of the rules and regulations for the government of the Army, of Army policies, and of the customs of the service, guided by their

concept of justice both to the Government and to the individual concerned.

**23. Minority report.** In case of a disagreement between members of a board of officers, a minority

report may be submitted, either as to the findings or to the recommendations, or to both. The reasons for the minority report must be stated clearly.

#### Section V. REPORT OF PROCEEDINGS

**24. General.** The report of the proceedings of an investigating officer or a board of officers will be prepared as prescribed in the regulation under which appointed. When the regulation does not provide the form or character of the report, the report will be prepared on DA Form 1574 (Report of Proceedings by Investigating Officer (Board of Officers)). Also, the following instructions are generally applicable:

- a. The record will be clear and legible.
- b. Erasures, interlineations, and other changes will be initialed by the investigating officer or by the recorder or another member of the board of officers.
- c. Additional pages will be numbered at the bottom, and margins of  $2\frac{1}{2}$  inches will be left at the top, and 1 inch at the bottom and left side of each page.
- d. Where testimony is not recorded verbatim, it should be summarized on DA Form 19-24 (statement) and signed by the witness. If the witness is unavailable or refuses to sign, such should be noted over the signature of the investigating officer, recorder, or junior board member. Unless the specific regulation governing the proceedings provides otherwise, the report of

proceedings of an investigating officer will be authenticated by his signature, and board reports will be authenticated by the signature of all the members of the board present at its deliberations and that of the recorder. If any one of the foregoing persons is unable to authenticate because of death, disability, or absence, the reason will be stated in the report.

e. Unless otherwise specified, the proceedings will be submitted in triplicate; the duplicate and triplicate copies, as well as the original, having appended thereto complete copies of all testimony and other exhibits.

**25. Copies of reports.** Except as prescribed in paragraphs 14, 15, and 17, an investigating officer or board of officers is not authorized to furnish reports of investigation or copies thereof to anyone other than the appointing authority or his duly designated representative. After deletion of classified portions, one copy shall be furnished to each individual concerned. The appointing authority may furnish reports of investigation or copies thereof to others whose official duties entitle them to such; otherwise, the furnishing of copies is governed by the provisions of AR 345-20 and other pertinent regulations.

## APPENDIX

## SUGGESTED PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS

*Note.* The following abbreviations are used in this suggested procedure:

PRES: President or senior member of a board of officers.

IO: Investigating officer.

RCDR: Recorder or junior member of a board of officers if no recorder is designated.

RESP: Respondent, i.e., individual concerned, against whom prejudicial matters are alleged or arise and become an issue.

*Note.* Prior to the opening hearing, the RCDR (IO) will perform the duties and functions provided in paragraph 6a.

PRES (IO): This hearing will come to order. (RESP), this is a board of officers (Investigation is) called to determine -----

PRES (IO): (RESP), you may, if you desire, employ civilian counsel at your own expense for this hearing. Do you have such counsel? You may request military counsel of your own choice, who will be furnished if reasonably available, or you may request that the appointing authority designate military counsel for you.

RESP: Yes (No).

*Note.* If RESP answers "yes," the hearing should be adjourned and the appointing authority should be requested to appoint counsel for RESP, preferably one of his own choosing. If RESP answers "no," the board (IO) may still feel obliged to report absence of counsel to the appointing authority if the issues are grave enough. If counsel is supplied, a proper entry of identification should appear here and a showing of any adjournments incident thereto.

*Note.* During the hearing, the RCDR (IO) will comply with the requirements of paragraph 6b.

*Note.* A commissioned or warrant officer appointed as recorder may not serve as recorder and at the same time sit as a voting member of a board of officers.

*Note.* A reporter and an interpreter, if used, will be sworn.

RCDR (IO): The reporter will be sworn.

RCDR (IO): You swear (or affirm) that you will faithfully perform the duties of reporter to this board. So help you God.

REPORTER: I do.

RCDR (IO): The interpreter will be sworn.

RCDR (IO): You swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing. So help you God.

INTERPRETER: I do.

RCDR (IO): The board is appointed (This investigation is directed) by paragraph ----, Special Orders No. -----, Headquarters, ----- dated -----, 19--. (The order is then read aloud by the RCDR (IO).)

RCDR: The following members of the board are present:

PRESENT: -----

ABSENT: -----

*Note.* A majority of the members of a board of officers constitute a quorum and must be present at all sessions, except that a member who was previously absent, or who had been newly appointed to a board, may participate in the proceedings if the new member or absent member has read or had read to him such record of the proceedings held during his absence or prior to his participation.

*Note.* Reasons or authority for absence should be stated if known. All personnel of

the board, including the recorder and counsel, if any, should be accounted for as present or absent at each session.

RCDR: Request the appointing order to be attached to these proceedings and marked "Exhibit A."

PRES (IO): The appointing order will be attached to the board proceedings and marked as requested.

RCDR (IO): The general nature of the hearing is as follows:

*Note.* RCDR (IO) advises the RESP (and the board members) of the nature of the hearing under consideration.

PRES (IO): Does the respondent desire to challenge any member of the board (the investigating officer) for cause?

RESP (COUNSEL): No. (The respondent challenges \_\_\_\_\_ for cause on the ground \_\_\_\_\_.)

*Note.* If challenge for cause is made by RESP, the board or appointing authority, as appropriate, will consider the challenge. If a challenge is sustained and the remaining members of the board are less than the minimum required by law or regulations, the board should recess until additional members are detailed.

*Note.* Recorder swears board, if required. President then swears recorder, if required.

RCDR: The board will be sworn.

*Note.* All persons in the room stand up while the oath is administered to the board and to the recorder. Each board member raises his right hand as his name is called by the recorder in administering the following oath:

RCDR: You, Colonel \_\_\_\_\_, Lieutenant Colonel \_\_\_\_\_, etc.

*Note.* When the recorder has called all the members of the board by name, he continues--

RCDR: Do swear that you will faithfully perform all the duties incumbent upon you as a member of this board; that you will faithfully and impartially examine and inquire, according to the evidence, your conscience, and the laws and regulations provided, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward; that you will find such facts as are supported by substantial evidence of record; that, in determination of those facts which are in dispute or are difficult of proof, you will use your professional knowledge and best judgment and common sense in weighing the evidence, considering the probability or improbability thereof, and with this in mind will regard as established facts those which are supported by evidence deemed most worthy of belief; and that you will make such findings and recommendations as are appropriate to, warranted by, and consistent with your findings, according to the best of your understanding of the rules and regulations for the government of the Army, Department of the Army policies, and the customs of the service, guided by your concept of justice, both to the Government and to individuals concerned. So help you God.

EACH MEMBER OF THE BOARD: I do.

*Note.* The board members lower their hands but remain standing while the oath is administered by the president to the recorder.

PRES: You, \_\_\_\_\_, do swear that you will faithfully perform the duties and functions of recorder (junior member) of this board. So help you God.

RCDR: I do.

*Note.* All personnel now resume their seats.

- RCDR: Does any member of the board desire to be advised as to the law, regulations, or orders concerned in this hearing?
- PRES: No readings are desired at this time (or statement of what is desired).
- RCDR (IO): The recorder (investigating officer) and respondent have agreed to stipulate -----.

*Note.* Prior to acceptance of the stipulation of the PRES (IO), by questions, should determine that RESP joins in the stipulation. *Manual for Courts-Martial, United States, 1951*, paragraph 154b, will be observed so far as practicable.

- PRES (IO): The stipulation is (not) accepted, and will be marked "Exhibits ...".
- RCDR (IO): (RESP), you were notified of this hearing on ----- 19--.

*Note.* RCDR (IO) reads a copy of the letter of notification certified as a true copy and that the original was delivered or dispatched to RESP (para 6a(1)). At this time, RCDR offers in evidence a copy of the letter of notification and requests it be attached to the proceedings and marked "Exhibit ...".

- PRES (IO): The copy of letter of notification will be attached to the proceedings and marked as requested.

PRES (IO): (RESP), you have the right to cross-examine all witnesses brought before this hearing. It is our desire to ascertain the truth of all matters, and we shall be glad to help you question any witnesses when such questioning might shed a true light on the facts of the case. Do you understand your right of cross-examination?

RESP: I do.

- PRES (IO): (Recorder), you will (I will) now read all the documentary evidence to be considered in this matter, and the statements of any witnesses who are unable to appear in person.

*Note.* With reference to use and form of depositions, see Uniform Code of Military Justice, Article 49, and Manual for Courts-Martial, United States, 1951, appendix 18; for principles governing the introduction of documentary evidence, see *Manual for Courts-Martial, United States, 1951*, paragraphs 143 and 144. If it is impracticable to produce a witness to identify an unofficial paper or document, the board (IO) is authorized to dispense with formal proof of its authenticity, provided the board (IO) is satisfied that the paper or document is what it purports to be.

*Note.* The RCDR (IO) presents the evidence and examines the witnesses so as to make as complete and impartial presentation of the evidence on both sides as is possible.

- RCDR (IO): The first witness to be called is -----.

*Note.* The RCDR, under the direction and supervision of the president (IO), presents witnesses called by him in the order desired. He conducts direct examination of each witness. RESP or his counsel cross-examines each witness after completion of the direct examination. Members of the board question witnesses last, after direct and cross-examination.

*Note.* A witness, if in the military service, salutes the president (IO) when he enters the room, then raises his right hand and thereafter the RCDR (IO) administers the oath. A civilian witness enters the room uncovered, raises his right hand, and then the RCDR (IO) administers the oath. See *Manual for Courts-Martial, United States, 1951*, paragraph 112.

*Note.* Whenever it appears appropriate and advisable to do so, the rights of a witness under the Uniform Code of Military Justice, Article 31, or the 5th Amendment of the Constitution of the United States, may be explained to him. See also *Manual for Courts-Martial, United States, 1951*, paragraph 150.

- RCDR (IO): You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.

WITNESS: I do.

*Note.* The witness now takes his seat in the witness chair. The first two questions asked every witness are asked by the RCDR (IO) whether the witness be called by him (the board) or by the RESP.

RCDR (IO): State your full name and (rank (grade), service number, branch of service, organization and station) or (occupation and residence).

RCDR (IO): Do you know the respondent? If so, what is his name?

*Note.* If the witness states that he knows the RESP, normally he will be asked to point to the RESP if he sees him in the room.

*Note.* Questions should be propounded to develop the matter under consideration.

RCDR (IO): The recorder (investigating officer) has no further questions.

RESP (COUNSEL): The respondent has no (further) questions.

*Note.* If the RESP cross-examines the witness, the RCDR may conduct a redirect examination.

RCDR: Are there any questions by the board?

*Note.* Any board member wishing to question the witness first secures the permission of the president.

*Note.* If either the recorder or the RESP wishes to ask further questions of the witness after his examination has been turned over to the board, permission of the board should be secured. Such request should, in general, be granted, unless the interrogation is superfluous in scope.

*Note.* When questions are concluded, the PRES (IO) announces—

PRES (IO): The witness is excused.

*Note.* The proceedings should indicate that witnesses, other than RESP, withdrew.

*Note.* Unless expressly excused from further attendance during the hearing, all witnesses will remain subject to call or recall until the proceedings have been concluded. When a witness is recalled, the RCDR (IO) reminds such witness, after he has appeared—

RCDR (IO): You are reminded that you are still under oath.

*Note.* The procedure in the case of a witness called by the board is the same as outlined above.

RCDR (IO): There is nothing further to offer relating to the matter under consideration.

RESP (COUNSEL): The respondent has no (has) opening statement.

*Note.* The RESP introduces his stipulations, witnesses, and documentary evidence, following the procedure indicated above for the RCDR (IO); the RCDR (IO) administers the oath to all witnesses and asks the first two formal questions.

*Note.* Whenever it appears appropriate and advisable to do so, the RESP may be advised of his rights under the Uniform Code of Military Justice, Article 31.

*Note.* Should the RESP be called to the stand as a witness, the RCDR (IO) will administer the oath and ask the following preliminary questions, after which the procedure follows that of other witnesses.

RCDR (IO): State your name, rank (grade), service number, branch of service, organization, and station.

RESP: -----

RCDR (IO): Are you the respondent in this case?

RESP: Yes.

*Note.* When the RESP has concluded his case he announces—

RESP (COUNSEL): The respondent rests.

RCDR: There is no further evidence to offer in this hearing. Does the board wish to have any witnesses called or recalled?

PRES: It does (not).

RCDR: Opening argument is waived.

*Note.* The RCDR has the right to make the opening argument, and, if any argument is made on behalf of the RESP, the closing argument. Arguments are not required. If no oral arguments are made, RESP and RCDR continue—

RESP (COUNSEL): The respondent submits the case without comment.

RCDR: The recorder submits the case without comment.

PRES: Has the recorder anything further to offer?

RESP (COUNSEL): I have (not).

*Note.* Matters developed during the proceedings which are prejudicial to persons other than the RESP, if not within the scope of the investigation, will be reported promptly to the appointing authority for such action as he may deem appropriate. If such matters are within the scope of the order directing the investigation, like proceedings will be had as to such persons.

*Note.* When matters prejudicial to the character, standing, or efficiency or matters involving pecuniary liability of the RESP are originally alleged, or arise and become an issue during the course of the investigation, the board (IO) will make known to the RESP the precise nature of the prejudicial allegations, and if practicable permit him to examine such allegations or evidence, and afford him an opportunity to present his side of the case.

PRES: The hearing is adjourned.

*Note.* The conclusion of the hearing does not end the duties of the board (IO). It must then enter into closed session. (It is then the duty of the board (IO) to arrive at findings based upon the evidence heard, and make recommendations justified by that evidence. Thereafter, the RCDR (IO) is responsible for compiling the report of proceedings (para 24) and submitting properly authenticated copies thereof to the appointing authority (para 6c).)

[JAG]

By Order of the Secretary of the Army:

HAROLD K. JOHNSON,  
*General, United States Army,*  
*Chief of Staff.*

Official:

KENNETH G. WICKHAM,  
*Major General, United States Army,*  
*The Adjutant General.*

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