U.S. Department of Homeland Security

United States Coast Guard

Enlisted Personnel Administrative Boards Manual

PSCINST M1910.1
June 2014

U.S. Department of Homeland Security
United States Coast Guard

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PERSONNEL SERVICE CENTER INSTRUCTION M1910.1

Subj: ENLISTED PERSONNEL ADMINISTRATIVE BOARDS MANUAL

Ref: (a) Military Separations, COMDTINST M1000.4 (series)
(b) Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
(c) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(d) Information and Life Cycle Management Manual, COMDTINST M5212.12 (series)

1. PURPOSE. References (a) and (b), in relevant part, establish Coast Guard policy regarding the involuntary separation, ineligibility for reenlistment, and reduction in rate for incompetence of Coast Guard personnel. They also establish the circumstances under which a Service member subject to such contemplated adverse action is entitled to appear before an administrative board. Those boards are formal boards of investigation convened in accordance with reference (c). The purpose of this Manual is to provide procedures and guidance for conducting administrative separation boards, reenlistment boards, and chief petty officer (CPO) incompetency reduction boards.

2. ACTION. Coast Guard Personnel Service Center, Personnel Services Division (CG PSC-psd) is responsible to provide procedures and guidance necessary to execute Coast Guard policy for the administrative board actions controlled by this Manual. All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Manual. Internet release is authorized.

DISTRIBUTION – SDL No. 163

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NON-STANDARD DISTRIBUTION:

3. DIRECTIVES AFFECTED. The Director of Reserve and Military Personnel, Commandant (CG-13), has scheduled the cancellation, effective 1 September 2014, of the Administrative Separation Board Manual, COMDTINST M1910.2, which remains applicable until that date for administrative boards already in progress. This Manual replaces that policy document and is effective immediately for all new administrative boards.

4. DISCUSSION. Issuing this Manual as a PSC directive is consistent with the intent to retain policy as a Headquarters function and shift the execution of policy to the field organization.

5. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.

6. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

   a. The development of this Manual and the general policies contained within it have been thoroughly reviewed by the originating office and are categorically excluded under current Coast Guard categorical exclusion #33 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series).

   b. This Manual will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Policy NEPA regulations at 40 Code of Federal Regulations Parts 1500-1508, Department of Homeland Security and Coast Guard NEPA policy, and compliance with all other environmental mandates.

7. DISTRIBUTION. No paper distribution of this Manual will be made. An electronic version is accessible through the PSC website, either through "PSC Instructions" under "PSC Quick Links" on the home page at http://www.uscg.mil/psc/; in the posting of all PSC instructions at http://www.uscg.mil/psc/hra/pscinst.asp; or on the Personnel Services Division, Field Support Branch (PSC-psd-fs) page at http://www.uscg.mil/psc/psd/fs/.

8. RECORDS MANAGEMENT CONSIDERATIONS. This Manual has been evaluated for potential records management impacts and has been thoroughly reviewed during the directives clearance process. It has been determined that there are no further records scheduling requirements, in accordance with Federal Records Act, 44 United States Code 3101 et seq., National Archives and Records Administration requirements, and reference (d). This Manual does not cause any significant or substantial change to existing records management requirements; records, and their associated information, produced by the administrative boards controlled by this Manual shall be maintained in accordance with reference (d).

9. PROCESS HIGHLIGHTS. This Manual was developed in the interest of enhancing the transparency and accountability of administrative board actions, better managing command and member expectations, and expediting the review of and final action on board reports, without compromising the enlisted member's rights to a full and fair hearing. Significant aspects of this Manual include:

   a. Applicability of Process – Clarifies that these procedures are applicable for CPO incompetency reduction boards and reenlistment boards in addition to the more common administrative separation boards.

   b. Board Membership – Prescribes that one of the three voting members of an administrative board must be a senior enlisted member (E-8 or above, and of a grade the same as or senior to the respondent).

   c. Board Report Content – Specifies the questions that each board type must answer in developing its findings, opinions, and recommendations.

   d. Completion of the Board Report – Requires each board to complete its report during deliberations, and, upon completion, to then expeditiously provide a copy of the report to the respondent for review and comment.

   e. Consistent and Efficient Development of Board Process Documentation – Samples of the various documents requiring completion during the administrative board process are included in the Manual's appendices. The samples shown are for an administrative separation board; however, templates unique to each board type (in Word and in fillable Adobe formats) are available for reference, and optionally for download for use, from the Personnel Services Division, Field Support Branch (PSC-psd-fs) website at http://www.uscg.mil/psc/psd/fs/. Alternatively, the required documentation may be prepared locally, ensuring that the information shown in the samples is included in those documents.

   f. Paperwork Management and Efficiency of Routing the Board Report – The board report will be retained by the convening authority until final action is taken on the case. Only an electronic copy of the complete report will be routed (via CG Portal) for sequential review and final action.

10. FORMS/REPORTS.

   a. The forms referenced in this Manual are available in USCG Electronic Forms on the Standard Workstation or on the Internet at http://www.uscg.mil/forms/; on CG Portal at https://cgportal2.uscg.mil/library/forms/SitePages/Home.aspx; and on the Intranet at http://cgweb.comdt.uscg.mil/CGForms.

   b. Samples and templates of the memoranda and other administrative board tools referenced in this Manual are available electronically on the Personnel Services Division, Field Support Branch (PSC-psd-fs) website at http://www.uscg.mil/psc/psd/fs/.

11. REQUEST FOR CHANGES. Recommendations for improvements to the administrative board process are welcome, and should be submitted to the Personnel Services Division, Field Support Branch (PSC-psd-fs). If submitted by email, please use ARL-PF-CGPSC-PSDFS-ADSEP@uscg.mil.

D. R. CALLAHAN
Commander, Personnel Service Center

RECORD OF CHANGES			
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CHAPTER 1 – OVERVIEW

Purpose. This chapter provides an overview of the administrative board process and explains a member's rights when he or she goes before an administrative board.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

1.A. ADMINISTRATIVE BOARDS AND THE AUTHORITY FOR THEM

1.A.1. Administrative Board.

For the purposes of this Manual, an administrative board (board) is a fact-finding body convened:

a. To gather evidence, and

b. To recommend whether administrative action should be taken in the case of a Coast Guard enlisted member.

1.A.2. Boards Controlled by this Manual.

The Coast Guard conducts many types of administrative boards, but this Manual establishes procedural requirements for only three types:

a. Administrative discharge (separation) boards,

b. Reenlistment boards, and

c. Chief petty officer (CPO) incompetency reduction boards.

1.A.3. Authority for Administrative Board Procedures.

a. Authorized by Administrative Investigations Manual (AIM). The boards controlled by this Manual are formal boards of investigation as described at Article 8.A. of the Administrative Investigations Manual, COMDTINST M5830.1 (series), and are convened under the same authority as other administrative investigations (See AIM Article 1.B.).

b. Implement personnel policy. The procedures in this Manual allow the Coast Guard to efficiently and fairly investigate, document, and decide administrative military personnel matters in accordance with Military Separations, COMDTINST M1000.4 (series), the MILSEP; Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series), the EAEA; Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series), the CGDAAP; and other applicable Coast Guard policy.

(1) Administrative discharge boards are authorized by MILSEP Article 1.B. and AIM Article 11.L. (See MILSEP Article 1.B.22.a. for the definition of an "administrative discharge board".)

(2) Reenlistment boards are authorized by MILSEP Article 1.B.5. and AIM Article 11.L.

(3) CPO incompetency reduction boards are authorized by Article 3.A.30.c.(2)(a) of the EAEA and Article 11.M. of the AIM.

c. Follow this Manual. Convening authorities, board members, and participants in board proceedings controlled by this Manual shall comply with the procedures set out in this Manual. If, during the course of a board proceeding, a question arises that is not answered by this Manual, the procedures for formal boards set out in the AIM may be used as a guide to answer the question.

1.A.4. Respondent.

The Coast Guard enlisted member whose conduct or performance of duty is under review by an administrative board is the "respondent." Although the respondent in an administrative board is a "party" to a formal investigation as defined in Article 1.D.8. of the AIM, he or she shall be referred to as the "respondent" in all board records and reports to ensure consistent application of terms.

Prohibition on naming multiple parties. No participant in an administrative board convened in accordance with this Manual may be named as a party except the respondent.

1.B. RESPONDENT'S ENTITLEMENT TO A BOARD.

Coast Guard enlisted members' rights to appear before boards controlled by this Manual are established by the MILSEP and the EAEA.

1.B.1. Eight Years of Service.

Coast Guard members with eight or more years of military (active and/or Reserve) service are entitled to a board before they are involuntarily administratively separated or denied reenlistment. This right is established in the MILSEP for each of the bases for administrative action listed below.

a. Reenlistment Ineligibility, see MILSEP Article 1.B.5.c.

b. Unsatisfactory Performance, see MILSEP Article 1.B.9.e.

c. Unsuitability, see MILSEP Article 1.B.15.i.

d. Misconduct, see MILSEP Article 1.B.17.d.

1.B.2. Discharge Under Other Than Honorable (OTH) Conditions.

Coast Guard members with any length of service are entitled to a board if their military record supports that the member receive a discharge under Other Than Honorable (OTH) conditions upon separation for a basis of misconduct, security reasons, or the good of the Service.

See MILSEP Articles 1.B.2.e., 1.B.2.f.(3), and 1.B.23.a.(1).

1.B.3. Reduction in Rate of a Chief Petty Officer (CPO) for Incompetence.

CPOs with any length of service are entitled to a board if their command recommends that the CPO be reduced in rate for incompetence.

See EAEA Article 3.A.30.c.2.(a).

1.C. THE RESPONDENT'S RIGHTS.

The rights of the respondent described in this article and in Articles 1.K. and 1.L. of this Manual conform to the rights of a party appearing before a formal board of investigation set out in Article 10.F. of the AIM. Those rights shall be afforded the respondent in accordance with the procedures set out in this Manual.

1.C.1. *Before* Board Hearing.

A respondent identified in Article 1.B. of this Manual shall be notified of the following information and afforded the following rights *before* a board is convened:

a. Reason for Administrative Action. The facts that caused the convening authority to believe the respondent should be considered for administrative action.

b. Administrative Board. That the respondent is entitled to a board.

c. Military Lawyer. That the respondent may consult with a military lawyer before deciding whether to exercise or waive his or her right to go before a board.

d. Civilian Lawyer. That the respondent may elect to consult with a civilian lawyer at his or her own expense. However, if the respondent elects to consult with a civilian lawyer, then he or she is not entitled to also consult with a military lawyer at the Coast Guard's expense.

e. Voluntary Retirement. That a respondent with 18 or more years of creditable active service (or 20 or more years of satisfactory federal service for a Reserve respondent) may waive his or her right to appear before a board conditioned on being permitted to voluntarily retire. See Article 2.E.3.d.(2) of this Manual.

(1) Policy on Requesting Voluntary Retirement. In accordance with MILSEP Article 1.C.11.a.(2), a Coast Guard enlisted member may submit a request for voluntary 20-year retirement if he or she has completed 18 or more years of creditable active service. In accordance with Article 8.R. of the Reserve Policy Manual, COMDTINST M1001.28 (series), the RPM, a Reserve member may request voluntary retirement after being notified of the completion of 20 years of satisfactory federal service.

(2) No Right to Voluntary Retirement.

The right to request voluntary retirement does not create a safe harbor for a respondent.

Members with any amount of time in service are subject to administrative processing pursuant to Coast Guard policy. A respondent has no right to be voluntarily retired in lieu of administrative discharge, denial of reenlistment, or reduction in rate for incompetence, even if he or she has already been approved for voluntary retirement or has already completed 20 or more years of creditable active service or satisfactory federal service.

Members who are eligible to request voluntary retirement, and wish to do so, are encouraged to exercise their right to submit a conditional board waiver request, which will be considered pursuant to Coast Guard policy on a case-by-case basis.

(3) Conditional board waivers may be denied. See Article 2.E.3.d.(4) of this Manual for more details.

f. Type of Discharge and Characterization of Service. For administrative discharge boards and reenlistment boards:

(1) What the least favorable type of discharge and corresponding characterization of the respondent's service may be,

(2) That adverse consequences may result if he or she receives a General discharge (characterization of service as under honorable conditions) or an OTH discharge (characterization of service as under other than honorable conditions) at the time of his or her discharge, and

(3) That the respondent may waive his or her right to appear before a board, conditioned on receiving no worse than a particular type of discharge / characterization of service.

(Conditional board waivers may be denied. See Article 2.E.3.d.(4) of this Manual for more details.)

1.C.2. Board Membership Requests.

Before a board is convened, a member who elects to go before a board shall be permitted to request board membership as follows:

a. Female. If the respondent is a female, she may request that one of the board members be a female if one is reasonably available.

b. Minority Group Member. If the respondent is a minority group member, he or she may request that one of the board members be a minority group member if one is reasonably available.

The term "*minority group*" means a segment of the population possessing common traits by descent or common characteristics and a cultural heritage significantly different from that of the general population. See MILSEP Article 1.B.1.f.(14).

c. Reservist. Reservists do not need to request Coast Guard Reserve membership on their board since at least one Reserve member will always be appointed to his or her board. See Article 3.A.1.d. of this Manual.

1.C.3. Confinement – Notice.

a. A respondent confined by civilian or military authorities shall be given notice of administrative action by registered mail in accordance with MILSEP Article 1.B.23.b.(5).

b. Alternatively, the convening authority may give the respondent notice of administrative action by any comparably effective means, such as personal delivery, if doing so is more practical and efficient.

1.C.4. Absentee / Deserter.

a. A member who is determined by his or her command to be in an Absentee or Deserter status *before* receiving notice of administrative proceedings shall not be processed for administrative separation.

See Article 1.C.2. of Discipline and Conduct, COMDTINST M1600.2 (series), for information about processing enlisted members who are absent without authorization.

b. See Articles 1.C.5.b. and 5.B.7. of this Manual for information about board proceedings for a respondent who absents himself or herself from his or her unit *after* receiving notice from a convening authority of intent to convene a board.

1.C.5. *During* Board Hearing.

The respondent shall be afforded the following rights *during* board proceedings:

a. To be represented by a lawyer/counsel.

(1) Military Lawyer. The respondent may be represented by a military lawyer who will be detailed at no cost to the respondent.

i. If the respondent chooses to be represented by a military lawyer, the Coast Guard shall detail a Navy or Coast Guard judge advocate qualified under Article 27(b) of the Uniform Code of Military Justice (UCMJ).

(2) Civilian Lawyer. The respondent may hire a civilian lawyer at his or her own expense.

i. If the respondent hires a civilian lawyer, the respondent is not entitled to also be represented by a military lawyer at the Coast Guard's expense.

(3) Respondent's Lawyer Acts for Respondent. The respondent's lawyer will be presumed to act and speak for the respondent, and the respondent is bound by the actions of his or her lawyer.

b. To be present during board proceedings.

(1) Exceptions. The right to be present during board proceedings does not apply if:

i. The respondent knowingly absents himself/herself from the proceedings, or

ii. The respondent cannot be present because he/she is confined by civilian or military authorities.

iii. The respondent, as determined by the board president, becomes unruly or threatening, so as to disrupt the board proceedings.

(2) Absent *After* Receiving Notice. If a respondent intentionally absents himself/herself from his or her unit at any time *after* receiving notice from a convening authority of intent to convene a board, the board may proceed without the respondent's presence, but with the respondent's counsel acting on behalf of the respondent.

(3) Absent Because of Confinement. If a respondent is unable to appear in person before a board because he/she is confined by civilian or military authorities, that respondent has no right to attend the proceeding or appear personally before a board. However, he/she may exercise all of his or her other rights through his or her counsel.

(4) Respondent's Presence is Disruptive. If the board president determines that a respondent's presence is disrupting the board proceedings, the respondent has no right to continue to appear personally before the board. However, he/she may exercise all of his or her other rights through his or her counsel.

c. To question and challenge members of the board.

d. To examine and object to the evidence presented to the board.

e. To examine and object to the board considering the testimony of witnesses.

f. To cross-examine witnesses.

g. To introduce evidence, including witnesses, provided at the respondent's expense.

h. To testify or refuse to testify under oath at the hearing.

(1) If the respondent testifies under oath, he/she may be questioned by the recorder and/or the board.

i. To make an unsworn statement.

(1) If the respondent makes an unsworn statement, he/she shall not be questioned by the recorder and/or the board. (The respondent may waive this right – see Articles 1.C.7. and 1.K.1. of this Manual – and consent to questioning, but any questions shall be restricted to the content of the unsworn statement.)

j. To make a statement/argument at the beginning and at the end of the presentation of evidence.

k. If, at any time during the proceedings the board becomes aware of the respondent's involvement with criminal activity, to be advised of his or her right against self-incrimination, the right to make no statement regarding a charged or suspected offense, and the right to warnings regarding these matters prior to custodial interrogation as provided by Article 31 of the UCMJ.

See Appendix 1-2, U.S. Coast Guard UCMJ AND MIRANDA/TEMPIA RIGHTS, Article 31(B), Form CG-5810E.

Downloading U.S. Coast Guard UCMJ AND MIRANDA/TEMPIA RIGHTS, Article 31(B), Form CG-5810E. A fillable version of Form CG-5810E may be downloaded from the Coast Guard forms library at: http://www.uscg.mil/forms/cg/CG_5810E.pdf.

1.C.6. *After* Board Hearing.

After the board's hearing, the respondent shall be afforded the right to review and comment on the board report, which includes a summarized record of the hearing.

See Article 7.C. of this Manual.

1.C.7. Can the Respondent Waive or Forfeit His or Her Rights?

Yes, the respondent may waive or forfeit the rights described in this Manual. See Article 1.K.1. of this Manual.

1.D. WHO CAN CONVENE A BOARD?

1.D.1. By Rank and Position.

Any flag officer, commander, or commanding officer who is a Special Court-Martial Convening Authority (SPCMCA) or designated as a General Court-Martial Convening Authority (GCMCA) in an enlisted member's chain of command may convene a board controlled by this Manual, and thereby is a "convening authority".

See the Military Justice Manual, COMDTINST M5810.1 (series), for a listing of those officers designated as GCMCAs (Article 3.A.1.) and SPCMCAs (Article 3.A.2.).

1.D.2. "By Direction".

Any convening authority may delegate authority to a subordinate commissioned officer in his or her chain of command to convene boards controlled by this Manual "By direction."

1.D.3. Commander, Coast Guard Personnel Service Center (CG PSC).

a. Convening a Board. CG PSC may initiate board action to consider the performance of duty or conduct of any enlisted member assigned to any Coast Guard unit based on knowledge of adverse information about that enlisted member's performance of duty or conduct.

b. Transferring a Board. Subject to the written concurrence of the first flag officer in the respondent's chain of command, CG PSC may transfer a board convened by any other convening authority to CG PSC's control if CG PSC determines that transferring the proceeding is in the best interests of the Coast Guard.

1.E. THE BOARD'S GUIDING PRINCIPLES.

1.E.1. Guiding Principles.

Boards shall be guided by the following principles when making recommendations to CG PSC.

a. Coast Guard members do not have a right to remain in the Coast Guard, or retain their current rate, regardless of their length of service or the personal hardships the administrative action might cause.

b. A board's primary consideration is "What is in the best interests of the Coast Guard?" Boards should focus on the respondent's fitness to serve and be a valuable asset to the Coast Guard. Boards should not be guided by consideration of the needs of individual commands or of the respondent.

c. Sound personnel management and ordinary concepts of fairness demand that a decision to separate, deny reenlistment to, or reduce in rate a member must be carefully considered, and that a member entitled to a hearing must be provided an opportunity to be heard, to present evidence, and to challenge evidence that will be included in the record. The requirements in this Manual, Coast Guard policy, and U.S. law pertaining to board proceedings shall be administered equitably and in good conscience by all participants of a board hearing.

d. Because board hearings are intended to assess an individual member's fitness to continue to serve in the Coast Guard (or, as applicable, to determine whether he or she should continue to serve in his or her current rate), boards should not make recommendations based on considerations of general deterrence (e.g., "to send a message to the fleet").

1.F. THE BOARD'S SCOPE OF INQUIRY.

1.F.1. Set By Convening Authority.

The scope of the board's inquiry is established by the convening authority. Boards shall collect facts, law, and policy relevant to the allegations of unsatisfactory conduct or performance of duty described in the convening authority's notice of administrative action to the respondent and in the convening order to the board.

1.F.2. Narrow Focus.

Timely review and final action of board reports is important. To minimize delay in the board's proceedings and subsequent reviews of the board report, boards should keep the scope of their inquiry narrowly focused on the conduct and performance of duty identified by the convening authority.

See MILSEP Article 1.B.1.d. for a discussion of the material a board is authorized to review when considering whether to recommend the retention or administrative separation of a member.

1.F.3. Changing the Scope.

a. If, during the course of its proceedings, the board determines that the scope of its inquiry should be expanded or restricted, that the composition of the board should be altered, or that the board's convening order should be modified, the board shall recommend the changes to the convening authority.

b. The convening authority may take such action on a board's recommendation for changes as he or she deems appropriate. Copies of any such communications and replies shall be appended to the record.

See Article 2.G.1. of this Manual about amending a convening order.

1.F.4. Physical Disability.

a. Beyond the scope of an administrative board. Issues regarding separation for physical disability shall be handled under the Physical Disability Evaluation System and are beyond the scope of a board's inquiry.

b. Prohibition of certain involuntary administrative separations. Except as provided in subsection (b) of section 427, Title 14 United States Code (U.S.C.), the Secretary of Homeland Security may not involuntarily administratively separate a Coast Guard member based on a determination that he or she is unsuitable for deployment or other assignments due to medical conditions that were considered by a Physical Evaluation Board which determined that the member is fit for duty.

1.G. FINDINGS / OPINIONS / RECOMMENDATIONS A BOARD MUST MAKE.

1.G.1. Administrative Separation Boards and Reenlistment Boards.

Administrative separation boards and reenlistment boards shall answer four questions in all cases, and a fifth question when the respondent is eligible to request voluntary retirement.

a. Basis? Is there a basis (or multiple bases) in Coast Guard policy for administratively separating or denying reenlistment to the respondent? This question shall be answered by every administrative separation and reenlistment board.

b. Retain or Separate? Should the Coast Guard discharge / deny reenlistment to the respondent? This question shall be answered by every administrative separation and reenlistment board. The board shall provide a recommendation even when, in its opinion, a basis to administratively separate or deny reenlistment does not exist.

c. Service Characterization / Type of Discharge? How should the respondent's service be characterized if he or she is discharged / denied reenlistment? This question shall be answered by every administrative separation and reenlistment board. The board shall provide a recommendation even when the board is recommending that the member be retained or allowed to reenlist.

d. Probation? Should the respondent be placed on probation instead of being involuntarily administratively separated immediately or denied reenlistment? This question shall be answered by every administrative separation and reenlistment board.

(1) Administrative Separation Board. An administrative separation board may recommend that CG PSC suspend the execution of an approved discharge and place the respondent on probation for a specified period of time when there may be a reasonable prospect for rehabilitation.

See Article 1.B.24. of the MILSEP.

(2) Reenlistment Board. A reenlistment board may recommend a probationary enlistment extension for any period up to one year.

See Articles 1.B.5.d. and 1.B.5.f. of the MILSEP.

(3) No Right to Probation. Coast Guard members have no right to receive probation in lieu of administrative discharge or denial of reenlistment, but may request probation pursuant to MILSEP Article 1.B.24. for administrative discharge boards and MILSEP Article 1.B.5.f. for reenlistment boards.

e. Voluntary Retirement? If the respondent has 18 or more years of creditable active service (or 20 or more years of satisfactory federal service for a Reserve respondent), should he or she be permitted to voluntarily retire instead of being involuntarily administratively separated or denied reenlistment? The board might not be aware that the respondent either has or has not requested voluntary retirement, and the respondent might not desire to request voluntary retirement. Nevertheless, this question shall be answered by every administrative separation and reenlistment board **if** the respondent has 18 or more years of creditable active service or 20 or more years of satisfactory federal service.

(1) Policy on Requesting Voluntary Retirement. In accordance with MILSEP Article 1.C.11.a.(2), a Coast Guard enlisted member may submit a request for voluntary 20-year retirement if he or she has completed 18 or more years of creditable active service. In accordance with Article 8.R. of the RPM, a Reserve member may request voluntary retirement after being notified of the completion of 20 years of satisfactory federal service.

(2) No Right to Voluntary Retirement.

The right to request voluntary retirement does not create a safe harbor for a respondent.

Members with any amount of time in service are subject to administrative processing pursuant to Coast Guard policy. A respondent has no right to be voluntarily retired in lieu of administrative discharge or denial of reenlistment, even if he or she has already been approved for voluntary retirement or has already completed 20 or more years of creditable active service or satisfactory federal service.

Administrative separation boards and reenlistment boards should base their recommendation regarding voluntary retirement on the respondent's performance of duty and conduct as detailed in the evidence presented and considered in the case, and upon consideration of the respondent's military record. See also Article 1.E.1. for a discussion of the board's guiding principles.

1.G.2. CPO Incompetency Reduction Boards.

a. A CPO incompetency reduction board shall determine whether the respondent:

(1) "Is not unqualified by reason of incompetency," or

(2) "Is unqualified by reason of incompetency."

b. A CPO may only be reduced in rate for incompetence if the administrative board finds him/her unqualified. See EAEA Article 3.A.30.c.(2)(a).

See AIM Article 11.M. A reduction in rate is limited to one pay grade in accordance with EAEA Article 3.A.30.c.(1)(c).

1.H. AFTER A BOARD CONCLUDES ITS HEARING AND DELIBERATIONS.

When a hearing is concluded and a board report is completed, the board report, which includes a summarized record of the hearing, is routed as indicated below. (However, also see Article 8.C. of this Manual for information about terminating board proceedings.)

1.H.1. Staff Judge Advocate (SJA).

The board president will forward the board report to the convening authority's SJA for legal sufficiency review.

See Article 8.B.4. of this Manual for a discussion of what happens during the legal sufficiency review.

1.H.2. Convening Authority.

After completing the legal sufficiency review, the SJA will forward the board report to the convening authority for review and endorsement.

Exception. See Articles 6.D.8.b. and 8.B.5.d. of this Manual for guidance on when a convening authority is not authorized to endorse a board report.

1.H.3. First Flag Officer.

After endorsing the board report, the convening authority will forward it to the first flag officer in the respondent's chain of command for review and endorsement.

Exception. This step in the routing is not necessary if the convening authority is a flag officer or when a board has been convened by or transferred to the control of CG PSC pursuant to Article 1.D.3. of this Manual.

1.H.4. CG PSC.

After endorsing the board report, the first flag officer will forward it to CG PSC for review and final action.

1.I. TIME GOALS FOR THE DURATION OF THE BOARD PROCESS.

1.I.1. Without Delay.

It is in the best interests of both the respondent and the Coast Guard to complete board proceedings without delay. However, unless waived or forfeited, the respondent's rights shall not be denied, especially through haste. The Coast Guard's interests also should be thoroughly protected; the best way to protect those Coast Guard interests is by developing a complete board report. Processing time for board proceedings and board reports will vary because of operational needs and local circumstances. Processing time will also be affected by location, the availability of counsel, support staff, and other process requirements.

1.I.2. Recommended Time Goals.

The convening authority shall establish board deadlines to ensure that proceedings, reporting, and processing requirements adhere as closely as practicable to Coast Guard time goals. Every effort should be made to meet the following recommended time goals:

a. From Notice to Respondent to Beginning of Hearing [no more than 60 days]. The time from the date the member is notified of the Coast Guard's intent to pursue administrative action to the commencement of a board hearing should usually be no more than 60 calendar days. Included within this time goal, a respondent shall be afforded at least 21 calendar days from the issuance of the convening order to the date the hearing starts to allow him or her to prepare for the hearing.

   See Article 2.G.1. of this Manual for information on the convening order.

b. The Hearing from Start to Finish [as long as necessary]. Most administrative board hearings will be completed in one day or less. However, there is no established time goal for this part of the process. The board president controls the pace of the hearing, ensuring that the respondent's rights are protected and that all evidence required by the board is presented and entered into the record.

   See Article 4.C.1.c. of this Manual for information on the board president directing the business of the hearing.

   See Article 5.B.6.a. of this Manual for guidance on recessing or adjourning a hearing.

c. From End of Hearing to Completion of Board Report [1-3 days]. Following the conclusion of the hearing, the board will continue the proceedings in private to deliberate and complete the board report. This should usually be accomplished in no more than three calendar days, and prior to the board members resuming their normal duties.

See Article 3.A.2. of this Manual regarding the primary duty of board members.

d. From Board Report Completed to Receipt at CG PSC [no more than 30 days]. The time from the completion of the board report to receipt of a complete and accurate board report, with endorsements, at CG PSC should be no more than 30 calendar days.

See Article 7.C. of this Manual for information on the respondent's review and comment period, and Articles 1.H. and 8.B. of this Manual regarding the submission and routing of the report.

1.I.3. Missing Time Goals.

Failure to process a board proceeding within the recommended time goals does not affect the validity of the final action taken by CG PSC.

1.J. BOARD RECOMMENDATIONS AND FINAL ACTION BY CG PSC.

Unless terminated as authorized by Article 8.C. of this Manual, final action on all boards controlled by this Manual is taken by Commander, Coast Guard Personnel Service Center. A board's report, including its findings of fact, opinions, and recommendations, is advisory only; it will be thoroughly and carefully reviewed and considered, but it is not binding on CG PSC. CG PSC is responsible for enforcing policy that is in the best interests of the entire Coast Guard and for ensuring the consistent application of military personnel policy across the Coast Guard. Whether CG PSC accepts the board's recommendations or not, the board process is inherently valuable for the following reasons.

1.J.1. Years of Service and Due Process.

Board proceedings distinguish administrative actions for members with more total military service (generally eight or more years) from those for members with less service. Members with more service have usually begun to seriously consider the Coast Guard as a career, and the Coast Guard has invested more in their technical and professional training. Consequently, it is in both the Coast Guard's and the member's best interests to allow the member to participate in developing the record by objecting to evidence, submitting evidence, and calling witnesses.

1.J.2. Insight.

CG PSC does not participate in board hearings; that means CG PSC cannot see and evaluate a witness's demeanor, sincerity, and credibility when he or she testifies before a board. A board's analysis of witness testimony provides important insight for CG PSC about that witness's credibility and the weight a witness's testimony should have in the proceedings.

1.J.3. Critical Analysis of Facts and Policy.

Because a board must assemble a thorough record of the facts and circumstances that caused the convening authority to convene the board, a board finds things both favorable to and adverse to the respondent. A board's evaluation of the competing evidence provides valuable insight for CG PSC. In sum, the board's evaluation of witnesses and analysis of how Coast Guard policy applies to the facts of the respondent's case are valuable insights that CG PSC considers thoroughly before making a final decision.

1.J.4. Documentation.

Board hearings, summarized records, and board reports do an outstanding job of collecting, assembling, analyzing, and recording evidence about the matters within the board's scope of inquiry. The material developed by an energetic and thoughtful board serves as strong evidence of Coast Guard compliance with its own policy.

1.K. PROCEDURAL ERROR.

The proceedings of any board should be conducted substantially in accordance with the requirements of this Manual. Deviations from these requirements do not create a right to relief for the respondent unless they materially prejudice the respondent's rights established in this Manual and have the potential to improperly affect CG PSC's decision.

1.K.1. Waiver / Forfeiture.

Any of the respondent's rights described in this Manual may be voluntarily waived, and any error will generally be forfeited by failure to make timely objection or otherwise to assert the right in a timely manner, to the board president prior to or during the hearing and to the convening authority at other times.

1.K.2. Returning the Record.

Failure to follow the requirements of this Manual may result in the return of the board report for further proceedings.

See Article 8.B.7. of this Manual.

1.L. APPEALING A FINAL ACTION.

Appeals of a final action may be taken in accordance with Correcting Military Records, COMDTINST 1070.1 (series), and Article 1.B.36.h. of the MILSEP.

1.M. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 1-1	Glossary
Appendix 1-2	U.S. Coast Guard UCMJ AND MIRANDA/TEMPIA RIGHTS, Article 31(B), Form CG-5810E

CHAPTER 2 – BEGINNING THE BOARD PROCESS

Purpose. This chapter explains the decisions a convening authority must make when convening a board and describes the procedures to be completed before a board is convened.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

2.A. WHY CONVENE A BOARD?

Convening authorities initiate boards (a) when administrative action is required by Coast Guard policy, and/or (b) when the convening authority determines that administrative action is in the best interests of the Coast Guard.

See Appendix 2-1, Advice to Convening Authorities, for a discussion of matters related to convening boards.

2.B. CONSULTATION WITH STAFF JUDGE ADVOCATE AND PERSONNEL SERVICE CENTER.

Before notifying a member entitled to a board that administrative action is being initiated, the convening authority shall consult with his or her SJA and, as applicable, CG PSC's Enlisted Personnel Management Division, Advancements and Separations Branch (PSC-epm-1) or Reserve Personnel Management Division, Reserve Component Category Branch (PSC-rpm-1), providing documentation to demonstrate that sufficient evidence exists to move forward with an administrative board.

2.B.1. SJA Support to Convening Authority.

a. The SJA shall provide the following support to the convening authority.

(1) Review the documents and evidence provided by the convening authority, consult with PSC-epm-1/PSC-rpm-1 (as applicable), as necessary, and advise:

i. Whether the documents appear to be in proper form,

ii. Whether the evidence appears to support administrative board action, and

iii. Whether the proposed basis (or bases) for administrative action is (are) supported by the evidence provided.

(2) Assist in determining whether a proposed board's proceedings may require a Coast Guard judge advocate or other Coast Guard counsel to be assigned as the recorder to the board. (See Articles 3.B. and 4.E. of this Manual for information about the recorder's duties.)

(3) Upon receipt of the message described in Article 2.F. of this Manual, assign a Coast Guard judge advocate or other Coast Guard counsel to provide legal advice to the board, and assist in determining whether the legal advisor should be a non-voting member of the board. (See Article 3.E. of this Manual for information about the legal advisor's duties.)

b. Stopping Administrative Processing. At any time prior to the opening of an administrative board hearing, the convening authority may stop the administrative processing of a member entitled to a board, including processing otherwise required by Coast Guard policy, with the advice and concurrence of the SJA and PSC-epm-1/ PSC-rpm-1 (as applicable). If administrative processing is stopped after the message required by Article 2.F. of this Manual has been transmitted, that message shall be cancelled with an explanation provided to CG PSC-psd-fs. (See Article 8.C. of this Manual for information about terminating board proceedings prior to final action by CG PSC-psd.)

c. The SJA's advice may be communicated by the most convenient means.

2.B.2. Purpose of Consultation with SJA and CG PSC.

The advice and support provided by the SJA and PSC-epm-1/PSC-rpm-1 are technical and procedural, addressing matters such as adequacy of documentation and Service-wide application of military personnel policy. The responsibility for weighing the performance and conduct of individual Coast Guard enlisted members and determining whether Coast Guard policy permits or requires that an administrative board be convened rests solely with the convening authorities in that member's chain of command.

2.C. NOTICE TO RESPONDENT OF INTENT TO TAKE ADMINISTRATIVE ACTION.

2.C.1. Form of Notice to the Respondent.

If, after consulting with the SJA and CG PSC, the convening authority decides to take administrative action requiring a board controlled by this Manual, the convening authority shall notify the respondent.

See Appendix 2-2 for a sample notice to the respondent for an administrative separation board.

Downloading Respondent Notices. The memo notifying the respondent of intent to take administrative action may be prepared locally by the convening authority. Notice templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the Personnel Services Division (PSC-psd) website: http://www.uscg.mil/psc/psd/fs/.

2.C.2. Content of Notice to Respondent.

The convening authority's notice shall include the following information.

a. Type. The type of board that will be convened.

b. Basis. The Coast Guard policy that authorizes separating, denying reenlistment to, or reducing the respondent, and the conduct or performance of duty that proves that the elements of that policy have been met.

c. Type of Discharge and Characterization of Service (not applicable to CPO incompetency reduction boards). The least favorable type of discharge and corresponding characterization of service a member may receive if he/she is administratively discharged or denied reenlistment.

(1) The convening authority shall consult MILSEP Articles 1.B.2.e. and 1.B.2.f. to determine the least favorable type of discharge and characterization of service that the respondent may receive if he or she is separated from the Coast Guard.

(2) *Warning*: The convening authority shall not recommend a characterization of service at this time.

d. Rights. The respondent's rights as described in Articles 1.C. and 1.K. of this Manual.

e. Deadline. The respondent's deadline for exercising his/her rights and the consequences of not acting before the deadline.

2.C.3. Confinement.

See Article 1.C.3. of this Manual if the respondent is in civilian or military confinement.

2.D. RESPONDENT ACKNOWLEDGES NOTICE AND DECIDES WHETHER TO CONSULT A LAWYER.

2.D.1. Acknowledging Notice.

The respondent shall acknowledge receipt of the convening authority's notice of intent to take administrative action without delay by completing the acknowledgement of rights and election of counsel portion of the convening authority's notice of administrative action.

A sample of the respondent's acknowledgement is included in Appendix 2-2 as the first endorsement to the convening authority's notice of intent to take administrative action.

2.D.2. Consulting a Lawyer.

a. The respondent may consult with a lawyer before deciding whether to request or waive his or her right to go before a board.

See Articles 1.C.1.c. and 1.C.1.d. of this Manual.

b. The respondent shall indicate whether he or she wants to consult with a lawyer by completing the endorsement to the convening authority's notice of administrative action, which includes an option to request military counsel.

c. Defense Service Office (DSO). If the respondent elects to consult with a military lawyer, the convening authority shall schedule a consultation through the nearest Defense Service Office. A DSO locator is found at http://www.jag.navy.mil/legal_services/legal_services_locator_dso.htm.

d. Coast Guard Judge Advocate. If the respondent asks to consult with a Coast Guard judge advocate or if the nearest DSO cannot assist the respondent, then the convening authority shall contact Chief, Office of Legal and Defense Services, Commandant (CG-094M), who will provide pre-board advice.

e. Civilian Lawyer. If the respondent elects to consult with a civilian lawyer at his or her own expense, then he/she is not entitled to also consult with a military lawyer at the Coast Guard's expense.

2.D.3. What if the Respondent Refuses to Acknowledge Notice or Elect Counsel?

If the respondent refuses to acknowledge receipt of the convening authority's notice of administrative action and/or declines to request or waive his or her right to consult with a lawyer, the convening authority shall:

a. Document the respondent's refusal on an administrative board supplemental page. A sample supplemental page is shown at Appendix 2-3.

Downloading Supplemental Pages. The convening authority may locally prepare a memo or other form that includes the same information as Appendix 2-3. Templates (both Word and fillable Adobe versions) of the supplemental page may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

b. Proceed as if the respondent had acknowledged the notification and waived his or her right to consult with a lawyer.

2.E. EXERCISING / WAIVING RIGHT TO APPEAR BEFORE A BOARD.

2.E.1. Deadline – Five Days.

a. The respondent shall be permitted five calendar days from the day he or she is given notice of intent to take administrative action to consult with a civilian lawyer, if he or she so elects, and to exercise the rights described in this article.

b. If the respondent elects to consult with a military lawyer, then he/she shall be permitted five calendar days from the date of consultation to exercise his or her rights under this article.

See Article 2.D.2. of this Manual regarding the respondent's right to consult with a lawyer.

2.E.2. Failure to Act Before the Deadline.

A respondent who fails to exercise the rights described in this article before the deadline waives and forfeits his or her right to appear before a board. The convening authority shall:

a. Document the respondent's waiver on an administrative board supplemental page, a sample of which is shown at Appendix 2-3.

   Downloading Supplemental Pages. The convening authority may locally prepare a memo or other form that includes the same information as Appendix 2-3. Templates (both Word and fillable Adobe versions) of the supplemental page may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

b. Proceed as if the respondent has affirmatively waived his or her right to appear before a board.

2.E.3. Form of Respondent's Exercise of Rights.

The respondent shall complete an Exercise of Rights memorandum and submit it to the convening authority.

See Appendix 2-4 for a sample Exercise of Rights memo for an administrative separation board.

Downloading Respondent's Exercise of Rights. The Exercise of Rights memo may be prepared locally by or for the respondent. Templates of the memos (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

The respondent may exercise his or her rights to do any of the following.

a. Submit a written statement.

b. Request a hearing before an administrative board.

c. Unconditionally waive a hearing.

d. Conditionally waive a hearing as follows:

(1) Type of Discharge and Characterization of Service. The respondent may submit a board waiver conditioned on receiving a specified, or more favorable, type of discharge and characterization of service. The conditional board waiver shall be submitted to PSC-epm-1/PSC-rpm-1 (as applicable) through the convening authority and the first flag officer in the respondent's chain of command.

(2) Voluntary Retirement. A respondent with 18 or more years of creditable active service (or a Reserve respondent with 20 or more years of satisfactory federal service) may submit a board waiver conditioned on being permitted to voluntarily retire. The conditional board waiver, along with a voluntary retirement request prepared in accordance with MILSEP Article 1.C.11.a.(5) or, in the case of a Reserve member, Article 8.R. of the RPM, shall be submitted to CG PSC-epm-1 or CG PSC-rpm-1, as applicable. The conditional board waiver and voluntary retirement request shall be routed through the convening authority and the first flag officer in the respondent's chain of command.

Warning – If a board waiver conditioned on approval of voluntary retirement is disapproved pursuant to Article 2.E.3.d.(4) of this Manual, the disapproval applies only to the board waiver request and not to the voluntary retirement request. The voluntary retirement request shall remain valid for CG PSC to consider when reviewing and taking final action on the board report, unless the voluntary retirement request is rescinded sooner by the respondent.

Note – In accordance with MILSEP Article 1.C.11.a.(2), a Coast Guard enlisted member may submit a request for voluntary 20-year retirement if he or she has completed 18 or more years of creditable active service. In accordance with Article 8.R. of the RPM, a Reserve member may request voluntary retirement after being notified of the completion of 20 years of satisfactory federal service.

The right to request voluntary retirement does not create a safe harbor for a respondent.

Members with any amount of time in service are subject to administrative processing pursuant to Coast Guard policy. A respondent has no right to be voluntarily retired in lieu of administrative action, even if he or she has already been approved for voluntary retirement or has already completed 20 or more years of creditable active service or satisfactory federal service.

Members who are eligible to request voluntary retirement, and wish to do so, are encouraged to exercise their right to submit a conditional board waiver request, which will be considered pursuant to Coast Guard policy on a case-by-case basis.

See Article 1.C.1.e.(2) of this Manual.

(3) Approval Authority. CG PSC may approve any conditional board waiver.

(4) Disapproval Authority. The convening authority, the first flag officer in a respondent's chain of command, or CG PSC may disapprove a respondent's conditional board waiver. If either the convening authority or the first flag officer disapproves a board waiver conditioned on approval of voluntary retirement, the convening authority shall ensure that the respondent's exercise of rights with the retirement request and the disapproved conditional waiver are provided to the board president for entry into the record of the board proceedings. (See Articles 4.B.2.a. and 6.B.2.b. of this Manual.)

(5) Deadline. If a respondent's conditional board waiver is disapproved, he/she shall have five calendar days from the day he/she is notified of the disapproval to request or waive his or her right to appear before a board. (See Article 2.E.1. of this Manual.)

e. Request female or minority group representation on the board, if applicable and if reasonably available.

See Article 1.C.2. of this Manual.

2.E.4. What if the Respondent Waives His or Her Right to Appear Before a Board?

If a respondent waives his or her right to appear before a board, either affirmatively or by failing to act before the deadline, he or she shall be processed for final action in the same manner as a Coast Guard member not entitled to a board. The convening authority shall forward documentation showing the respondent's notification, acknowledgement, and decision to waive a board to PSC-epm-1/PSC-rpm-1 (as applicable) along with a recommendation for final action.

2.F. MESSAGE REQUIRED IF RESPONDENT EXERCISES RIGHT TO A BOARD.

2.F.1. Message Traffic.

If the respondent elects to appear before a board, the convening authority shall send message traffic to the offices identified below within five calendar days after election.

a. Convening authority's Servicing Legal Office

b. Commander, Coast Guard Personnel Service Center (PSC-psd)

c. Commander, Coast Guard Personnel Service Center (PSC-epm or PSC-rpm)

d. Coast Guard Office of General Law, Commandant (CG-0944)

e. Coast Guard Office of Legal and Defense Services, Commandant (CG-094M)

The message shall be in the format described in Appendix 2-5.

Downloading Message Template. A Word version of the sample message notice for convening of an administrative board may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

2.F.2. Significant Privacy Concerns.

If any details of the message implicate significant privacy concerns, indicate such in the message and pass that information separately by the most expeditious means.

Warning – The Department of Homeland Security (DHS) defines Sensitive Personally Identifiable Information (PII) as personally identifiable information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

See DHS Sensitive Systems Policy Directive 4300A dated March 14, 2011, or any successor DHS policy.

See also DHS Privacy Office's Handbook for Safeguarding Sensitive PII dated March 2012, or any successor document, which applies to every DHS employee, contractor, detailee, intern, and consultant.

2.G. CONVENING A BOARD.

2.G.1. Convening Order.

The convening authority shall convene a board by completing a convening order, consistent with the type of board being convened. The convening authority shall deliver the convening order to the board president. A convening order may be amended at any time during the board's proceedings at the discretion of the convening authority.

See Article 1.F.3. of this Manual for information about changing the scope of a board's inquiry.

See Appendix 2-6 for a sample convening order for an administrative separation board.

Downloading Convening Orders. The convening authority may locally prepare the convening order memo. Convening order templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

The convening order shall contain the following information.

a. Board Members. The names of the board members. The senior board member shall be designated as the board president.

   See Article 3.A. of this Manual for information about requirements of board membership.

   (1) *Warning* - The respondent may request board membership under certain circumstances, and the convening authority shall attempt to comply with requests for board membership the respondent makes pursuant to Article 1.C.2. of this Manual.

   (2) Not Reasonably Available. If the convening authority determines that the requested membership is not reasonably available, the convening authority shall explain that determination in writing on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example, which shall be made a part of the record as an exhibit when the hearing is convened. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.)

   (3) Any Coast Guard Member May Be Appointed. The convening authority may appoint any Coast Guard member he or she deems qualified and who meets the requirements established by Article 3.A. of this Manual to be a board member, whether or not requested by the respondent pursuant to Article 1.C.2. of this Manual.

   (4) Reservists. See Article 3.A.1.d. of this Manual if the respondent is a Reservist.

b. Date/Time/Location of the Hearing. The location of the hearing and guidance on establishing a date for the hearing, including a deadline for completing the board's hearing and report.

c. Recorder. The name of the board recorder. The recorder need not be a Coast Guard judge advocate, but shall meet any requirements established by the SJA. The convening authority may consult with the SJA if the convening authority considers it advisable to appoint a Coast Guard judge advocate to be the recorder.

See Articles 3.B. and 4.E. of this Manual for information about the recorder's duties.

d. Reporter. The name of the board reporter. The convening authority shall assign a competent stenographer or clerk to act as a reporter for all boards controlled by this Manual.

See Article 3.D. of this Manual for information about the reporter's duties.

e. Legal Advisor. The name and the duties of the board's legal advisor.

(1) Routine Hearings. The legal advisor is a scalable resource that should be used according to the complexity of each case. Most board proceedings are routine enough that a legal advisor need not be present during the hearing, but should be available to consult with the board by telephone. For these boards, the legal advisor will be assigned by the SJA upon receipt of the message required by Article 2.F. of this Manual.

Note - A legal advisor assigned by the SJA shall contact the convening authority's point of contact (POC) and board president in accordance with Article 3.E.1.a. of this Manual.

(2) Complex or Unusual Hearings. In a few cases, the board's proceedings may appear to be complex or unusual enough to merit a greater degree of participation by a Coast Guard judge advocate or other Coast Guard counsel. In complex or unusual proceedings, a legal advisor may be appointed by the convening authority to be a non-voting member of the board.

Examples of complex or unusual proceedings include, but are not limited to, proceedings with significant public interest and/or cases that involve concurrent state criminal proceedings.

Warning - The convening authority should consult with the SJA before appointing a legal advisor as a non-voting member of the board.

f. Detailed Counsel for the Respondent. The name of the counsel detailed to represent the respondent.

(1) Coast Guard Office of Legal and Defense Services, Commandant (CG-094M). Upon receipt of the message described in Article 2.F. of this Manual, if the respondent has requested representation by a military lawyer, Commandant (CG-094M) shall detail a Navy or Coast Guard judge advocate qualified under Article 27(b), UCMJ, to represent the respondent. Commandant (CG-094M) shall notify the SJA and the convening authority of the name and contact information for the detailed military counsel for the respondent.

(2) Detailing Letter. The respondent's counsel, whether a military or civilian lawyer, shall notify the convening authority, the board president, and the recorder that he/she represents the respondent as soon as practical after he/she has been detailed or hired. Military counsel may provide a detailing letter as proof that he/she represents the respondent.
See Article 4.G.1. of this Manual.

g. Transcript of the Proceedings. Whether or not a verbatim transcript of the board proceedings is required by the convening authority.

See Article 5.B.3. of this Manual.

2.H. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 2-1	Advice to Convening Authorities
Appendix 2-2	Sample Notice to the Respondent of the Intent to Take Administrative Action
Appendix 2-3	Sample Administrative Board Supplemental Page
Appendix 2-4	Sample Exercise of Rights Memorandum
Appendix 2-5	Sample Message Notice for Convening of an Administrative Board
Appendix 2-6	Sample Convening Order

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CHAPTER 3 – BOARD MEMBERS AND OTHER APPOINTEES

Purpose. This chapter establishes requirements for board membership, identifies the key stakeholders in the board process, and describes their roles.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

3.A. BOARD MEMBERS.

3.A.1. Number / Rank.

A board appointed pursuant to this Manual shall consist of three voting members.

a. Senior Member. The senior member of the board shall serve as the board president and shall be in the grade of Lieutenant Commander (O-4) or above.

b. Junior Members. The two junior voting members are co-equal participants. The board shall include one other commissioned officer (including commissioned warrant officers) and one senior enlisted member (E-8 or above).

c. Senior Enlisted Member. The enlisted board member shall be of the same or a senior grade to the respondent.

d. Reservist. If the respondent is a Reservist, at least one member of the board shall be a Reservist.

e. Respondent Requests. The respondent may request board membership under certain circumstances, and the convening authority shall attempt to comply with such requests made pursuant to Article 1.C.2. of this Manual.

See Article 2.G.1.a. of this Manual for more information regarding board membership.

3.A.2. Primary Duty.

It is the primary duty of any Coast Guard member appointed to an administrative board to attend the board's hearing and complete the hearing and board report within the timelines established at Article 1.I. of this Manual.

See Appendix 3-1, Advice to Board Members, for more information about the board process.

3.A.3. Experience.

The convening authority shall strive to ensure that board membership is composed of experienced, unbiased members who, in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and temperament.

3.A.4. No Knowledge of the Case.

No person with direct knowledge of the matters to be considered at the hearing shall be appointed as a member of the board.

3.A.5. Non-disclosure.

Except as required by this Manual, board members shall not disclose any specifics of the board's closed deliberations to any person who is not a member of the board.

3.B. RECORDER.

3.B.1. Primary Duties.

The recorder's primary duty is to assemble and present relevant evidence to the board regarding matters within the board's scope of inquiry. The recorder shall investigate all reasonable sources of evidence about the respondent's conduct and/or performance of duty and impartially present that evidence to the board, with due regard to the opportunity for the respondent to present evidence and arguments on his or her own behalf.

The recorder shall:

a. Arrange telephone/teleconference/video teleconference calls for witnesses testifying remotely,

b. Question witnesses,

c. Administer oaths and affirmations, and

d. Secure witnesses pursuant to Articles 4.B.3., 4.E.3.b., and 6.D.11. of this Manual.

See Appendix 3-2, Advice to Recorders and Counsel, for more information about the board process.

3.B.2. Informing the Board.

During the hearing, the recorder shall assist the board in determining relevant facts, identifying applicable Coast Guard policy, and applying that policy to the facts of the case before the board.

See Chapters 5 and 6 of this Manual for information about a recorder's duties during a board hearing.

a. The recorder is not a member of the board and shall not participate in the board's deliberations.

b. The recorder is not subject to questioning or challenge for cause.

3.B.3. Qualifications.

The recorder need not be a Coast Guard judge advocate or other Coast Guard counsel, but shall meet any requirements established by the SJA.

3.C. COUNSEL FOR THE RESPONDENT.

3.C.1. Duty.

The primary duty of the respondent's counsel is to represent the respondent's interests before the board. The respondent's counsel is not a member of the board and shall not participate in the board's deliberations.

See Appendix 3-2, Advice to Recorders and Counsel, for more information about the board process.

3.C.2. Qualifications.

If the counsel for the respondent is a military lawyer detailed by the Coast Guard, he or she shall be qualified in accordance with Article 27(b) of the UCMJ.

3.C.3. Counsel Speaks for Respondent.

The respondent's counsel shall be presumed to speak for the respondent, and the respondent is bound by the actions of his or her counsel.

3.D. REPORTER.

3.D.1. Duties.

The reporter shall report to the board president and support the board as directed in conducting the board hearing, completing the summarized hearing record, and drafting the board report.

See Appendix 3-3, Advice to Reporters, for more information about the board process.

3.D.2. Know This Manual.

The reporter shall familiarize himself or herself with this Manual prior to the board hearing.

3.D.3. Reporter is Not a Member of the Board.

a. The reporter is not a member of the board, is not subject to challenge for cause, and shall not participate in the board's deliberations, except that he/she may be present during the board's deliberations to act as a scrivener for the board.

b. To the extent that the reporter is present during the board's deliberations, he/she shall not disclose, except as required by this Manual, any specifics of the board's closed deliberations to any person who is not a member of the board.

3.E. LEGAL ADVISOR.

The legal advisor to the board is responsible for providing impartial advice to the board regarding its responsibilities, authorities, and other legal matters.

3.E.1. Duties of Legal Advisor Assigned by Staff Judge Advocate.

a. Within three calendar days of being assigned, the designated Coast Guard judge advocate or other Coast Guard counsel shall contact the unit POC and, when identified, the board president, identify himself or herself as the legal advisor to the board, and provide his or her contact information.

b. The legal advisor shall advise the board president concerning board procedures.

See Article 4.C.2. of this Manual.

c. The board president may request the legal advisor's presence at the hearing if he or she deems it necessary.

d. A legal advisor assigned by an SJA is not a member of the board and shall not participate in the board's deliberations.

e. A legal advisor assigned by an SJA is not subject to questioning or challenge for cause.

3.E.2. Duties of Legal Advisor Appointed by Convening Authority.

When it appears that an upcoming board may be complex or unusual, the convening authority may consult with the SJA to identify a Coast Guard judge advocate or other Coast Guard counsel to be appointed as both the legal advisor and a non-voting member of the board.

A respondent is not entitled to elect that a legal advisor be appointed as a non-voting member of a board or to object when one is appointed.

A legal advisor appointed by the convening authority as a non-voting member of a board:

a. Shall be present during the board's proceedings.

b. Is not subject to questioning by the respondent or challenge for cause.

c. Shall make rulings on evidence and carry out the procedural duties ordinarily handled by the board president before, during, and after the board's hearing.

d. Shall not participate in the deliberations of the board.

3.F. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 3-1 Advice to Board Members

Appendix 3-2 Advice to Recorders and Counsel

Appendix 3-3 Advice to Reporters

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CHAPTER 4 – BEFORE THE HEARING

Purpose. This chapter identifies important concepts and action items for key stakeholders before a board hearing begins. This chapter also describes the procedural matters that should be accomplished to support a successful board hearing.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

4.A. COMMUNICATING WITH THE BOARD.

4.A.1. Convening Authority.

a. Communications with Board. Except as provided by Article 6.D.8. of this Manual, all communications between a convening authority and members of a board shall be in writing.

b. Modifying the Convening Order. See Article 1.F.3. of this Manual for information about recommendations that the convening authority modify the scope of the board's inquiry.

c. Convening Authority as Witness. See Article 6.D.8. of this Manual for information about the convening authority being a witness at the board's hearing.

4.A.2. Recorder and Counsel for the Respondent.

a. The recorder and the respondent's counsel may communicate with the convening authority and members of the board as necessary to resolve matters such as the scheduling and logistics of a board hearing.

b. *Warning* - The recorder and counsel for the respondent shall not present arguments or evidence about matters within the board's scope of inquiry to the convening authority or members of the board prior to the hearing.

4.B. PREPARING FOR THE HEARING.

4.B.1. Logistics.

The convening authority shall ensure that space, equipment, personnel, and other logistical arrangements are made for the hearing.

See discussions on hearing logistics in Section IV.C. of Appendix 2-1, Advice to Convening Authorities, and Paragraph II.A.5. of Appendix 3-1, Advice to Board Members.

4.B.2. Evidence.

a. The convening authority shall provide the board president with the notice of administrative action, the respondent's exercise of rights, any written statement of the respondent given as part of exercising his or her rights to a board, the board's convening order, and any supplemental or other pre-hearing material required by this Manual to be made a part of the record.

b. Except for the matters described above, the convening authority shall not provide any member of the board with evidentiary material. The convening authority shall provide material that is relevant to the board's hearing only to the recorder. In addition, the convening authority shall facilitate, as necessary, the process for the respondent to obtain records to which he or she is entitled under the Privacy Act or Freedom of Information Act and other relevant available evidence.

See The Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series), Chapter 15, for information about collecting information covered by the Privacy Act

4.B.3. Convening Authority's Role in Securing Witnesses.

The recorder and the respondent should be permitted reasonable opportunities, facilitated by the convening authority as necessary, to interview witnesses (including Coast Guard personnel) prior to and throughout the hearing process. However, the recorder and the respondent are responsible for securing the witnesses whose testimony they determine should be presented to the board.

a. If the recorder or the respondent cannot secure a witness - as examples, when a witness may be reluctant to testify, or when a witness's presence at the hearing is desired but would require the issuance of funded travel orders - they may request assistance from the convening authority. The respondent is required to submit witness requests at least 15 calendar days prior to the date of the hearing.

See Article 4.G.3.a. of this Manual.

b. If a witness request is approved, the convening authority shall secure the attendance of the witness at the hearing. The logistics of securing a witness for whom a witness request was approved by the convening authority may be delegated to the recorder.

(1) Military Authority. Convening authorities may use their inherent authority as military officers to compel the appearance of witnesses subject to orders.

(2) *Warning* - No Subpoena Authority. Convening authorities do not have the authority to subpoena witnesses. A convening authority may request that witnesses appear, arrange for the Coast Guard to pay for their travel, and otherwise encourage their participation in the proceeding.

c. Denying Witness Requests. If the convening authority denies a witness request, he or she shall explain his or her reasons in writing on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example, which shall be made a part of the record as an exhibit when the hearing is convened. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.) See Article 6.B.2. of this Manual for information about entering pre-hearing matters into the record.

d. Decisions are Final. The convening authority has final authority to approve or deny requests for witnesses provided at the government's expense.

4.B.4. Factors in Considering Requests for Witnesses.

Requests for witnesses should provide sufficient information to permit the convening authority to make an informed decision. When considering requests for witnesses made by the respondent or the recorder, the convening authority may consider whether the significance of the personal appearance of the witness, when balanced against the costs and difficulties in producing the witness, favors production of the witness. The following is an illustrative, but not exhaustive, list of factors that may be helpful when preparing or considering requests for witnesses.

a. The potential evidentiary value of the testimony,

b. The cost of producing the witness,

c. The timing of the request for production of the witness,

d. The potential delay in the proceeding that may be caused by producing the witness, and

e. The likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

4.C. BOARD PRESIDENT.

4.C.1. Routine Matters.

a. Scheduling a Hearing. As soon as possible after receiving the convening order, the board president shall contact the other board members, the recorder, and, if applicable, the respondent's counsel to determine their availability, and then shall notify the respondent of the date, time, and location of the hearing. The notice shall include an explanation of the respondent's rights and responsibilities as established by this Manual.

See Article 1.I.2.a. of this Manual regarding time goals related to scheduling a hearing.

Appendix 4-1 is a sample hearing scheduling notice for an administrative separation board.

Downloading Board President's Hearing Scheduling Notice. The board president may prepare the hearing scheduling notice locally. Templates (both Word and fillable Adobe versions) of the notice for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

b. Before the Hearing. The board president shall provide a copy of any written correspondence from the convening authority to the respondent and the recorder, and shall include any written correspondence from the convening authority as an exhibit in the record of the proceeding.

See Article 6.B.2. of this Manual for information about entering pre-hearing matters into the record.

Warning - Classified Material. Article 4.H.2. of this Manual requires the recorder and/or respondent to notify the board president if they plan to introduce classified material as evidence during the board hearing. The board president should consult with the board's legal advisor as necessary in order to handle the evidence appropriately if he or she receives such a notice.

c. During the Hearing. The board president shall decide the routine business of the board, including when to convene the hearing, and when to recess, adjourn, and close the board's hearing.

Warning - Exception to Routine Business. See Article 3.E.2.c. of this Manual for information about deciding evidentiary and procedural matters when a legal advisor has been appointed by the convening authority to be a non-voting member of the board.

4.C.2. Consulting with Legal Advisor.

The board president shall consult with the board's legal advisor concerning board procedures before the board's hearing, and may consult with the legal advisor in closed or open sessions as appropriate during the board's proceedings.

See Article 3.E. of this Manual for information about the duties of the board's legal advisor.

4.C.3. Directing the Recorder.

The board president shall direct the recorder as necessary if, during the hearing, the board determines that more evidence, additional witnesses, or new lines of investigation/ questioning are necessary for the hearing.

4.C.4. Directing the Reporter.

The board president shall direct the reporter as necessary to facilitate completion of a thorough summarized hearing record and board report.

4.D. BOARD MEMBERS.

4.D.1. Primary Duty.

It is the primary duty of any Coast Guard member appointed to an administrative board to attend the board's hearing and complete the hearing and board report within the timelines established by this Manual.

See Article 3.A.2. of this Manual.

See Appendix 3-1, Advice to Board Members, for more information about the board process.

4.D.2. Know Policy and Procedure.

Board members shall familiarize themselves with this Manual.

4.D.3. Do Not Review Evidence Prior to the Hearing.

Warning - Board members shall not review or consider evidence about matters that will be within the board's scope of inquiry prior to the hearing.

4.E. RECORDER.

4.E.1. Know Policy and Procedure.

The recorder shall familiarize himself or herself with this Manual.

See Appendix 3-2, Advice to Recorders and Counsel, for more information about the board process.

4.E.2. Evidence.

The recorder shall collect evidence relevant to the board's scope of inquiry to present to the board.

4.E.3. Witnesses.

a. The recorder shall interview personnel familiar with the matters to be considered by the board and determine who should testify before the board.

b. The recorder is responsible for securing the witnesses whose testimony he or she determines should be presented to the board.

See Articles 4.B.3. and 4.B.4. of this Manual for information about requesting the convening authority's support in securing witnesses.

4.E.4. Disclosure to Respondent.

The recorder shall disclose evidence and information to the respondent in accordance with Article 4.H. of this Manual.

4.F. REPORTER.

See Article 3.D. of this Manual.

4.G. RESPONDENT.

4.G.1. Notice of Representation.

a. Any military or civilian lawyer detailed or retained to represent the respondent shall, as soon as practicable, notify the convening authority, board president, and recorder, and provide a detailing letter or other documents proving he/she represents the respondent. The detailing letter for the respondent's counsel shall be made a part of the record and listed as an exhibit in the summarized hearing record.

See Appendix 3-2, Advice to Recorders and Counsel, for more information about the board process.

b. The respondent's counsel shall be presumed to speak for the respondent, and the respondent is bound by the actions of his or her counsel.

See Article 3.C.3. of this Manual.

4.G.2. Know Policy and Procedure.

The respondent and his or her counsel shall be presumed to be familiar with the requirements of this Manual and other relevant Coast Guard policy.

4.G.3. Securing Witnesses.

The respondent is responsible for securing the witnesses whose testimony he or she determines should be presented to the board. The respondent's witnesses are expected to be secured at no cost to the government. Although the respondent is not entitled to compel production of witnesses at the Coast Guard's expense, he/she may request that the convening authority secure witnesses at the Coast Guard's expense.

See Articles 4.B.3. and 4.B.4. of this Manual.

a. Deadline. The respondent shall submit any requests for witnesses to be provided at government expense as soon as possible, but no later than 15 calendar days prior to the date of the hearing.

b. Routing of Requests. Requests for witnesses to be provided at government expense shall be submitted in writing to the convening authority.

c. Content. Requests for witnesses to be provided at government expense shall contain sufficient information to permit the convening authority to make an informed decision.

4.G.4. Disclosure to Recorder.

The respondent shall disclose evidence and information to the recorder in accordance with Article 4.H. of this Manual.

4.H. DISCLOSURE.

4.H.1. Deadline – 15 Days Before the Hearing.

The recorder and respondent shall disclose to each other the following material as soon as possible, but no later than 15 calendar days before the hearing. Failure to disclose any of this material/information does not constitute error unless that failure causes material harm to the respondent.

a. Copies of documents the recorder/respondent expects to present at the hearing.

Warning - Coast Guard Investigative Service (CGIS) Reports of Investigation (ROIs). This Manual does not authorize, and no person participating in a board controlled by this Manual shall duplicate or otherwise produce a CGIS ROI except as permitted by Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series), the CGISRR.

b. Copies of sections of this Manual, the MILSEP, the CGDAAP, the EAEA, and any other Coast Guard policy the recorder/respondent plans to use at the hearing.

Note – This Manual, the MILSEP, the CGDAAP, the EAEA, and most of the other Coast Guard policies that are typically used at board hearings are readily available on the World Wide Web. The respondent and recorder may agree to provide notice to each other of Coast Guard policy they intend to use during the hearing and avoid exchanging physical copies of the policy.

c. A list of all witnesses the recorder/respondent intends to call.

d. The address and daytime phone number of each witness.

e. The manner in which each witness will testify (e.g., in person, by telephone or video teleconference, etc.).

f. A brief summary of the expected testimony.

g. Other material as appropriate. An illustrative, but not exhaustive, list of other material/information that may be appropriate for disclosure is as follows:

(1) Copies of relevant parts of the respondent's medical record.

Warning - Medical records should not be made a part of the summarized hearing record unless the information is relevant to a matter within the board's scope of inquiry.

(2) A summary of any military offenses committed during the respondent's Coast Guard career.

See MILSEP Article 1.B.1.d.

(3) A summary of any disciplinary actions against the respondent taken during his or her current enlistment. ("Current enlistment" refers to the current, continuous period of service, including any reenlistments, that has not been previously characterized on discharge documents.)

See MILSEP Articles 1.B.9.c. and 1.B.23.c.(2).

(4) Civil convictions, if any, on the basis of information contained in the service record or otherwise readily available.

See MILSEP Articles 1.B.9.c. and 1.B.23.c.(4).

(5) An Employee Review Summary printed from Direct Access.

4.H.2. Classified Material.

a. If either the recorder or the respondent determines that classified information is relevant to an issue that will be presented to the board, he/she shall notify the board president immediately and request instructions. Administrative board proceedings and reports are subject to all applicable security directives.

b. Security of Classified Information. Because of the wide distribution in the Coast Guard of administrative board summarized hearing records and board reports, classified material should be omitted unless its inclusion is essential.

See AIM Article 5.A.3. for guidance on including classified information in a summarized hearing record or board report.

See also Military Rule of Evidence (MRE) 505, Classified Information, in the Manual for Courts-Martial (MCM), United States.

4.H.3. Medical Records / Privacy Act Protected Information.

a. Administrative board evidence, summarized hearing records, and board reports shall be prepared in compliance with the Privacy Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and DHS policy.

See AIM Article 1.H. for general guidance on complying with the Privacy Act and HIPAA.

See AIM Article 5.A.5. for guidance on authorized receipt and use of protected health information of Coast Guard military members.

See The Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series), Chapter 15, for information about collecting information covered by the Privacy Act.

b. Sensitive PII. Participants to a board should assume that the contents of a summarized hearing record and board report are Sensitive PII.

Warning - DHS defines Sensitive PII as personally identifiable information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

See DHS Sensitive Systems Policy Directive 4300A dated March 14, 2011, or any successor DHS policy.

See also DHS Privacy Office's Handbook for Safeguarding Sensitive PII dated March 2012, or any successor document, which applies to every DHS employee, contractor, detailee, intern, and consultant.

4.H.4. Substantive Changes – Notice Of.

The recorder and respondent shall notify each other of substantive changes to the material/information provided during disclosure as promptly as practicable before the hearing.

4.H.5. Recently Discovered Evidence.

a. The recorder and the respondent shall make every effort to facilitate disclosure of evidence, including physical and documentary evidence, and witness testimony.

b. Information that becomes available only after the 15-calendar day disclosure deadline may be admitted as agreed upon by the recorder and respondent.

c. Disputes over the admissibility of evidence discovered or disclosed after the 15-calendar day deadline shall be resolved by the board president. The board president may authorize a delay in the proceedings if he or she determines that delay in disclosure of evidence may have harmed the respondent.

4.H.6. Email Acknowledgement.

Materials received via email shall be acknowledged by the recorder and respondent.

4.I. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 4-1 Sample Hearing Scheduling Notice

CHAPTER 5 – PROCEEDINGS OF THE BOARD: THE HEARING (GETTING STARTED)

Purpose. Chapters 5, 6, and 7 explain the proceedings of the board in three phases. The first two phases, describing the hearing process, are covered in Chapters 5 and 6. The proceedings of the board are described in "phases" and "steps" to help the user understand the process. The phases and steps are as follows:

- **Phase One, The Hearing (Getting Started), Steps 1 – 5: Explained in this chapter.**
- Phase Two, The Hearing (Presenting the Case), Steps 6 – 11: Explained in Chapter 6.
- Phase Three, After the Hearing, Steps 12 – 13: Explained in Chapter 7.

Please refer to Appendix 5-1, Sample Board Guide (Script), which is organized in the same phases and steps for the hearing described in Chapters 5 and 6.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

5.A. PHASE ONE, THE HEARING (GETTING STARTED).

Phase One has five steps:

Step 1: Opening the Board

Step 2: Members' Oaths and Preliminary Instructions

Step 3: Rights Advisement

Step 4: Recorder / Reporter Oaths

Step 5: Voir Dire and Challenges to Board Members [*Optional*]

5.B. OPENING THE BOARD (STEP 1).

5.B.1. Hearings are Not Public.

a. Ordinarily Closed. Administrative board hearings are not disciplinary proceedings; hearings should ordinarily be closed to Coast Guard members and the public, except those individuals with an *official interest* as determined by the board president.

b. Persons with an Official Interest. Hearings should not ordinarily be open to the public or non-involved members of the command. Aside from board members and other appointed or detailed participants (including witnesses), only people with an *official interest* should be allowed to observe the proceedings. Some examples of people with an official interest include command representatives, law enforcement personnel, and Coast Guard members present for professional development.

5.B.2. Use of Video Technology.

a. As approved by the convening authority and/or determined by the board president to be beneficial to the proceedings, the respondent, witnesses, and other participants in the hearing may, subject to availability, appear through the use of video teleconference technology. Unless otherwise agreed upon with the respondent or his/her counsel, the government will bear the expense of its use.

b. Video recording of board proceedings, including closed deliberations by the board members during and after the hearing, is prohibited.

5.B.3. Audio Recording of Board Hearings and Verbatim Transcripts.

a. Board proceedings may be electronically recorded (audio only).

(1) When directed by the convening authority, audio recording will be performed at government expense.

(2) If elected and arranged for by the respondent, audio recording will be performed at no expense to the government.

(3) The board and/or the reporter may selectively use audio recordings to assist in the preparation of required documentation – administrative board supplemental pages, the summarized hearing record, summarized witness testimony memos, and the board report.

b. Audio recording is prohibited during any recess or adjournment in the proceedings and during closed deliberations by the board members.

c. There is no requirement for an audio recording to be transcribed. However, only a complete, verbatim, and unedited transcript may be accepted as part of the record of the proceedings.

5.B.4. Assembling the Board.

a. Location. The board shall assemble at the place, on the date, and at the time established by the board president. Thereafter, the board may recess or adjourn at any time to a place convenient to the proceedings if necessary.

b. Seating. The board members may sit in any order conducive to the efficient operation of the hearing.

5.B.5. Before Opening.

a. Attendance. The board president shall determine whether all parties necessary to the proceeding are present before opening the board hearing.

See Article 1.C.5.b. of this Manual if the respondent is not present.

b. Using the Board Guide (Appendix 5-1). When all parties are present and/or accounted for, the Board Guide (Script) shall be used as a guide to conducting the hearing. In the event of a conflict between this Manual and the Board Guide, the Manual provisions take precedence.

Downloading the Board Guide. Appendix 5-1 is a sample script for an administrative separation board. Board Guide templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

See Step 1 of the Board Guide.

5.B.6. Quorum.

No business other than a recess or adjournment may be conducted without a majority of the total board membership present.

a. Recesses / Adjournments. The board president may pause (i.e., take a break in) the hearing at any time by announcing that the board will either recess (to reconvene on the same day in the same location) or adjourn (to reconvene on a future date and/or in a different location) until a specified time. However, no adjournment of more than three calendar days may be taken without the approval of the convening authority.

b. Closed Deliberations. The board's hearing may be closed at any time for deliberations by the board members. When the board's hearing is closed, all persons except the voting board members shall withdraw from the hearing room, or the voting members may move to another private room. *Exception* – The reporter, if so directed by the board president, may be present during the board's deliberations (See Article 3.D.3. of this Manual).

Closed deliberations shall not be made a part of the hearing record, but any decisions resulting from the closed deliberations are normally announced once the hearing reopens.

c. Missing Board Member. If a board member is unable to attend a hearing, the board may not proceed unless authorized to do so by the convening authority. The board president shall notify the convening authority if a member will be absent for more than a short period of time and/or if the board's membership will fall below a majority of the total membership.

If a member of the board is temporarily absent and then returns, he or she shall examine the record of the proceedings conducted in his or her absence, which shall be noted in the record on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example, which shall be made an exhibit. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.) A temporary absence does not preclude that member's full participation in the deliberations of the board relative to findings of fact, opinions, and recommendations.

d. New Board Member. Any substitute member appointed by the convening authority shall examine the record of the proceedings conducted prior to sitting as a member, which shall be noted in the record on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example, which shall be made an exhibit. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.) After reviewing the record, each substitute member shall participate fully in the subsequent proceedings of the board, its deliberations, and development of the board's findings of fact, opinions, and recommendations.

5.B.7. Respondent Absent.

a. Except when the board is closed for deliberations or consultation, the respondent (other than one confined by civil authority) shall be present with counsel unless that right has been waived or forfeited.

b. A respondent may waive the right to be present during any portion of a board proceeding. Waiver must be knowingly made by the respondent or by counsel for the respondent. Likewise, where a respondent is represented by counsel, the respondent may waive the presence of counsel at any session of the board. The record shall note the beginning and the end of any absence of the respondent or counsel and shall note or include the express waiver of the right to be present by the respondent.

c. Unauthorized absence of a respondent from the board hearing constitutes a knowing waiver and forfeiture of the right to be present at the hearing. If the respondent absents himself or herself from the hearing, the board president shall contact the convening authority for a determination of whether the hearing should be held without the respondent present.

See Article 1.C.5.b. of this Manual.

5.B.8. Exclusion of Witnesses.

Witnesses other than the respondent should be excluded from the hearing room except when testifying or when the board president deems their presence in the hearing room necessary.

5.B.9. Objections.

a. The respondent and the recorder may object to any matter or decision of the board at any time during the hearing based on procedural error, infringement on the rights of the respondent, or another appropriate basis. The proponent of an objection shall concisely state the grounds for the objection to the satisfaction of the board president.

b. The board president is the final decision authority on all objections. (See Article 3.E.2.c. of this Manual regarding when the convening authority has appointed a legal advisor as a non-voting member of the board.)

c. See Articles 6.B.4. and 6.D.1.b. of this Manual for information on objections to evidence and witness testimony.

5.C. MEMBERS' OATHS AND PRELIMINARY INSTRUCTIONS (STEP 2).

The recorder shall administer an oath to the board members, and the board president shall address the purpose of the hearing, the board's duties, and the manner in which he/she will direct the proceedings.

See Step 2 of the Board Guide.

5.D. RIGHTS ADVISEMENT (STEP 3).

The board president shall explain the respondent's rights as described in Articles 1.C. and 1.K. of this Manual to the respondent.

See Step 3 of the Board Guide.

5.E. RECORDER / REPORTER OATHS (STEP 4).

The board president shall administer an oath to the recorder and the reporter.

See Step 4 of the Board Guide.

5.F. VOIR DIRE AND CHALLENGES TO BOARD MEMBERS (STEP 5) [*OPTIONAL*].

5.F.1. Voir dire.

a. The respondent and recorder may question the voting members of the board to determine their fitness to serve on the board.

(1) Recorder. The recorder is not a member of the board and shall not be subject to voir dire or challenge.

See Article 3.B.2. of this Manual.

(2) Reporter. The reporter is not a member of the board and shall not be subject to voir dire or challenge.

See Article 3.D.3.a. of this Manual.

(3) Legal Advisor. The legal advisor is not a voting member of the board and shall not be subject to voir dire or challenge.

See Article 3.E. of this Manual.

b. The respondent and recorder may challenge the fitness of any voting member of the board to serve on the board.

See Step 5 of the Board Guide.

5.F.2. Order of Voir Dire.

a. Respondent. The respondent may begin voir dire questioning of the members.

b. Recorder. The recorder may voir dire the members after the respondent.

5.F.3. Limits of Voir Dire.

a. The board president shall control the voir dire process to avoid unnecessary delay, harassment, or embarrassment of the board members.

b. The respondent and the recorder shall have a good-faith basis (i.e., act with fair and honest intent) for questioning members about specific facts relating to potential bias.

c. A board member may decline to answer irrelevant or unnecessarily intrusive questions, unless directed to answer by the board president. If the board president declines to answer irrelevant or unnecessarily intrusive questions, then only the convening authority may direct the board president to answer the questions.

5.F.4. Resolving Challenges to Board Members.

a. Stay the Proceedings. When voir dire questioning is complete, the respondent or the recorder may challenge any board member's participation on an administrative board. A challenge to a member constitutes a request for a new member to be substituted. If a board member is challenged, the board president shall stay or recess (i.e., pause) the board proceedings until the challenge is considered.

b. Convening Authority Decision is Final. Challenges to a board member shall be made in writing and shall include a statement summarizing the reasons for the challenge. Challenges shall be directed to the convening authority and delivered by the board president. The convening authority shall either approve or disapprove the challenge and request to substitute board members. The convening authority's decision on a challenge to a member is final.

   The challenge and the convening authority's decision shall be documented on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs.) The supplemental page shall be made a part of the record, marked in accordance with Article 6.B.1.a.(3) of this Manual and identified as an exhibit in the summarized record of the hearing.

c. Appointing New Board Members. If a board member is disqualified, the convening authority shall appoint a new member to a board; the respondent and/or recorder may voir dire and challenge the newly appointed member.

d. Documentation in the Record. The board president shall enter any written challenges and the convening authority's responses into the record of the board's proceedings as exhibits listed in the summarized record of the hearing.

   See Appendix 5-2 for a sample summarized hearing record for an administrative separation board.

   Downloading Summarized Hearing Records. The summarized hearing record memo may be prepared locally by the board. Memo templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

5.G. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 5-1 Sample Board Guide (Script)

Appendix 5-2 Sample Summarized Hearing Record

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CHAPTER 6 – PROCEEDINGS OF THE BOARD: THE HEARING (PRESENTING THE CASE)

Purpose. Chapters 5, 6, and 7 explain the proceedings of the board in three phases. The first two phases, describing the hearing process, are covered in Chapters 5 and 6. The proceedings of the board are described in "phases" and "steps" to help the user understand the process. The phases and steps are as follows:

- Phase One, The Hearing (Getting Started), Steps 1 – 5: Explained in Chapter 5.
- **Phase Two, The Hearing (Presenting the Case), Steps 6 – 11: Explained in this chapter.**
- Phase Three, After the Hearing, Steps 12 – 13: Explained in Chapter 7.

Please refer to Appendix 5-1, Sample Board Guide (Script), which is organized in the same phases and steps for the hearing described in Chapters 5 and 6.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

6.A. PHASE TWO, THE HEARING (PRESENTING THE CASE).

Phase Two has six steps:

Step 6: Introducing Documents and Physical Evidence into the Record

Step 7: Opening Statements [*Optional*]

Step 8: Presenting Witnesses [*Optional*]

Step 9: Respondent's Unsworn Statement [*Optional*]

Step 10: Closing Arguments [*Optional*]

Step 11: Completing the Summarized Hearing Record

6.B. INTRODUCING DOCUMENTS AND PHYSICAL EVIDENCE INTO THE RECORD (STEP 6).

6.B.1. Documents and Physical Evidence.

a. All documents and physical evidence submitted for consideration by the board, whether or not ultimately considered by the board (See Article 6.B.4. of this Manual), shall be made a part of the record and identified as an exhibit in the summarized record of the hearing.

(1) Documents and Photographs. Documents and photographs submitted as evidence should be on 8.5" by 11" paper, one side only, whenever practicable.

(2) Physical Evidence. Boards shall not attach physical evidence to the record. The person (recorder or respondent) submitting the physical evidence to the board shall submit a clear, printed image (photograph, PDF print, etc.) of the physical evidence at the same time. The printed image shall be made a part of the record in place of the physical evidence, and shall be listed as an exhibit in the summarized record of the hearing.

See Article 7.B.8.a.(1) of this Manual for information about returning physical evidence to its owner after the hearing.

(3) Marking Documents, Photographs, and Printed Images of Physical Evidence as Exhibits. Documents, photographs, and printed images of physical evidence submitted as evidence shall be marked for identification in the lower right-hand corner (or some other obvious place if marking the lower right-hand corner is not practical).

i. The marking shall be as follows: "Exhibit ( ), Page __ of __."

ii. Exhibits shall be numbered sequentially in the same order they are listed in the summarized record of the hearing.

iii. Exhibits need not be marked as "Government Exhibit" or "Respondent's Exhibit" because the proponent of each exhibit will be identified in the summarized record of the hearing.

b. Medical Records / Privacy Act Protected Material. Administrative board evidence, summarized records, and board reports shall be handled in compliance with the Privacy Act and the HIPAA.

See AIM Article 1.H. for general guidance on complying with the Privacy Act and HIPAA.

See AIM Article 5.A.5. for guidance on authorized receipt and use of protected health information of Coast Guard military members.

See The Coast Guard Freedom of Information (FOIA) and Privacy Acts Manual, COMDTINST M5260.3 (series), Chapter 15, for information about collecting information covered by the Privacy Act.

c. Sensitive PII. Participants to a board shall assume that the contents of a summarized hearing record and board report are Sensitive PII.

Warning - DHS defines Sensitive PII as personally identifiable information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

See DHS Sensitive Systems Policy Directive 4300A dated March 14, 2011, or any successor DHS policy.

See also DHS Privacy Office's Handbook for Safeguarding Sensitive PII dated March 2012, or any successor document, which applies to every DHS employee, contractor, detailee, intern, and consultant.

6.B.2. Board President Begins.

a. The board president shall begin by entering into the record evidence of the matters decided by the convening authority or members of the board before the hearing convened.

See Step 6 of the Board Guide.

b. This is the point in the proceedings when the board president should place into the record matters that were decided before the hearing was convened. This is not a time for the recorder or respondent to re-argue decisions already made by the board president or the convening authority. The following documents should be entered in all cases.

(1) Notice to the respondent of the intent to take administrative action, with respondent's endorsement concerning the election of counsel;

(2) Respondent's exercise of rights memorandum;

(3) Convening order;

(4) Board president's hearing scheduling notice;

(5) Counsel for the respondent's detailing letter, if the respondent is represented by counsel; and

(6) Any other written communications between the convening authority, the board, and/or the respondent regarding the proceedings.

6.B.3. Recorder / Respondent Present Evidence after Board President.

a. The recorder and respondent may present documents and physical evidence to the board after the board president. The recorder goes first.

b. The recorder and respondent shall provide copies or otherwise permit all participants to view the proposed exhibits at the time they are presented to the board.

6.B.4. Evidence - Objections.

a. Objecting to Documents and Physical Evidence. The recorder or the respondent may object to the board considering documents or physical evidence at the time the document or physical evidence is submitted to the board and marked as an exhibit. The person who objects shall explain the basis for his or her objection to the satisfaction of the board president.

b. Decision Authority. The board president is the final decision authority on all objections, except when the convening authority has appointed a legal advisor as a non-voting member of the board (See Article 3.E.2.c. of this Manual).

See Appendix 6-1, Evidence, for guidance on the rules of evidence for administrative proceedings.

c. Explanation on the Record. The board president shall consider objections made during the hearing. The board president shall explain in writing his or her reason for granting an objection if granting an objection will result in the board not considering evidence offered by the recorder or the respondent. Despite the granting of an objection, documentary and physical evidence shall still be entered into the record as an exhibit in accordance with Article 6.B.1.a. of this Manual. The purposes for documenting the board president's determination are to explain why the board did not consider the evidence and to offer rationale to reviewers of the board report to similarly not consider the evidence.

The written explanation shall be documented on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.) The supplemental page shall be made a part of the record, marked in accordance with Article 6.B.1.a.(3) of this Manual and identified as an exhibit in the summarized record of the hearing.

(1) Evidence Considered. If the board president disapproves an objection, the evidence in question shall be considered by the board.

(2) Evidence Not Considered. If the board president approves an objection, the evidence in question shall not be considered by the board.

(3) Evidence and the Summarized Record. Exhibits shall be identified in the summarized record as either "considered-YES" or "considered-NO" in accordance with the determinations of the board president.

d. Recently Discovered Evidence. There may be times when an important document, witness, or piece of physical evidence is discovered by either the recorder or the respondent after the disclosure process, even at the last minute. If there is no objection to the material, then the tardiness of the disclosure may be excused.

See Article 4.H.5. of this Manual.

6.B.5. Recess to Review Exhibits [*Optional*].

The board may recess (*i.e.,* "pause" the hearing) to review the exhibits approved for consideration by the board president after all documents, photographs, and physical evidence (and/or printed images of physical evidence) have been submitted to the board.

Warning - Board members should not discuss the exhibits or deliberate with each other about the evidence during the recess.

6.C. OPENING STATEMENTS (STEP 7) [*OPTIONAL*].

6.C.1. Recorder and Respondent Proceed.

The recorder and the respondent may each make opening statements; typically, the recorder goes first. The board president may set any reasonable limitation on these presentations.

See Step 7 of the Board Guide.

6.C.2. Written Copies Permitted.

The recorder and respondent may submit written copies of their opening statements for the record. If submitted in writing, opening statements shall be made a part of the record and listed as exhibits in the summarized record of the hearing.

6.D. PRESENTING WITNESSES (STEP 8) [*OPTIONAL*].

6.D.1. Presenting Witness Testimony.

a. All witnesses whose testimony is presented to the board for consideration shall be identified in the summarized record of the hearing.

b. Objecting to Witness Testimony. Witness testimony is governed by the same rules that apply to other evidence. See Article 6.B.4. of this Manual.

(1) The recorder or the respondent may object to the board considering the testimony of any witness at the time the witness is presented to the board. The party that objects shall explain the basis for his or her objection to the satisfaction of the board president.

(2) The board president shall consider objections and shall explain in writing his or her reason for granting an objection if granting an objection will result in the board not hearing the testimony of a proposed witness. The purpose for documenting the board president's determination is to explain to reviewers of the board report why the board did not consider the witness testimony.

(3) The objection and the board president's written explanation shall be documented on an administrative board supplemental page, an example of which is shown at Appendix 2-3, or in a memo or form that includes the same information as the example. (Word and fillable Adobe templates of the supplemental page may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.) The supplemental page shall be made a part of the record, marked in accordance with Article 6.B.1.a.(3) of this Manual and identified as an exhibit in the summarized record of the hearing.

c. Witnesses Not Heard by the Board. If an objection to a proposed witness's testimony is approved (meaning that the witness's testimony will not be considered by the board), the proponent of that witness may submit a summary of the witness's expected testimony, or a written statement from the disapproved witness, before the close of the hearing. If a summary of expected witness testimony or a written statement is submitted for a witness who was not heard by the board, it shall be made a part of the record and listed as an exhibit in the summarized record of the hearing.

6.D.2. Summarizing Witness Testimony.

a. Witness testimony is verbal (spoken) evidence.

b. The board shall summarize the testimony of each witness who testifies before the board in a witness testimony summary memorandum.

See Appendix 3-1, Advice to Board Members, for information about summarizing witness testimony.

See Appendix 6-2 for a sample witness testimony summary memorandum.

Downloading Witness Testimony Summary Memorandum. The board may locally prepare summaries of testimony that include the same information shown in Appendix 6-2. Templates of a Witness Testimony Summary Memorandum (both Word and fillable Adobe versions) suitable for all boards controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

c. Authenticate Witness Testimony Summary Immediately. When examination and cross-examination (if any) of the witness is complete, the witness, respondent (and/or counsel), recorder, and the board shall review the witness testimony summary memorandum and correct it as necessary to ensure it is fair and accurate.

Before the witness is dismissed, the following persons shall review and certify the accuracy of the witness testimony summary memorandum.

(1) Witness giving the testimony [does not apply to witnesses testifying by telephone or video teleconference],

(2) Members of the board,

(3) Recorder, and

(4) Respondent or his or her counsel.

d. Entry into the Record. Every certified witness testimony summary memorandum produced during a hearing shall be made a part of the record and listed as an exhibit in the summarized record of the hearing.

6.D.3. Sequence of Calling Witnesses to Testify.

Witnesses are usually called first by the recorder and then followed by the respondent's witnesses. The sequence may be modified by agreement of the respondent and recorder, or as determined by the board president if the respondent and recorder disagree.

See Step 8 of the Board Guide.

6.D.4. Oath or Affirmation.

All witnesses shall testify under oath or affirmation, administered by the recorder.

6.D.5. No Authority to Compel Testimony.

The board has no authority to compel a witness (including the respondent) to testify against his or her will. Furthermore, the board should protect every witness that does testify from improper questions, harsh or insulting treatment, and unnecessary inquiry into private matters.

6.D.6. Keep Witnesses Apart.

a. Witnesses (except the respondent) should be excluded from the hearing room, except when testifying or when the board deems their presence in the hearing room necessary.

b. To prevent collusion, coercion, or other influence on witnesses, the board president shall direct witnesses to refrain from discussing their testimony or prospective testimony with other witnesses or any other person not having an official interest in the inquiry.

6.D.7. Testimony by Remote Witnesses.

Any witness giving testimony by telephone or video teleconference shall be sworn and asked whether he or she is in a place appropriate to give testimony, free from distraction and without the influence of others.

6.D.8. Convening Authority as a Witness.

a. The convening authority should not normally be a witness at a hearing he or she convened.

b. Endorsement of the Board Report. If the convening authority testifies as a witness at a hearing, he/she shall not endorse the report of the board; instead, the convening authority/witness shall forward the report of the board to the first flag officer in the respondent's chain of command for first endorsement.

See Article 8.B.5.d. of this Manual.

6.D.9. Board Member as a Witness.

No voting or non-voting member of the board may be called as a witness at the hearing.

6.D.10. Respondent as a Witness.

See Article 1.C.5.h. of this Manual regarding testimony by the respondent.

See Articles 1.C.5.i. and 6.E. of this Manual regarding the respondent making an unsworn statement.

6.D.11. Recalling or Securing Additional Witnesses.

The board president may direct the recorder to recall witnesses who have testified previously in the same hearing, or to secure additional witnesses, if the board president deems it necessary.

6.D.12. Military Witnesses and Article 31(b), UCMJ, Rights Advice.

If, before or during a hearing, a military member called as a witness is suspected of committing an offense under the UCMJ, the board president shall stop the examination and advise the member of his or her rights under Article 31(b) of the Uniform Code of Military Justice before proceeding.

See Appendix 1-2, U.S. Coast Guard UCMJ AND MIRANDA/TEMPIA RIGHTS, Article 31 (B), Form CG-5810E.

Downloading U.S. Coast Guard UCMJ AND MIRANDA/TEMPIA RIGHTS, Article 31 (B), Form CG-5810E. A fillable version of Form CG-5810E may be downloaded from the Coast Guard forms library at: http://www.uscg.mil/forms/cg/CG_5810E.pdf .

6.D.13. Affidavits and Other Written Statements.

Affidavits and other written statements shall be treated in accordance with the rules for documents in this Manual. The affiant or author of an affidavit or a written statement shall not be identified as a witness in the summarized record of the hearing.

6.E. RESPONDENT'S UNSWORN STATEMENT (STEP 9) [*OPTIONAL*].

6.E.1. Unsworn Statement.

a. The respondent may make an unsworn statement to the board even if he or she has previously testified under oath at the hearing.

   See Article 1.C.5.i. of this Manual.

   See Step 9 of the Board Guide.

b. The respondent may submit a written copy of his or her unsworn statement. If submitted in writing, the respondent's unsworn statement shall be made a part of the record and listed as an exhibit in the summarized record of the hearing.

6.E.2. No Cross-Examination.

The respondent shall not be cross-examined about his or her unsworn statement. However, the respondent may waive this right and consent to questioning, but any questions shall be restricted to the content of the unsworn statement.

See Articles 1.C.5.i.(1), 1.C.7., and 1.K.1. of this Manual.

6.E.3. Stop and Assess.

Before moving to Step 10, the board, the recorder, and the respondent should stop and assess how the hearing has progressed. Participants to the hearing should determine whether all appropriate evidence (documents, physical evidence [if any], and witnesses) needed for a full and fair hearing has been presented. Only then should the board proceed to the Closing Arguments.

6.F. CLOSING ARGUMENTS (STEP 10) [*OPTIONAL*].

6.F.1. Respondent and Recorder Proceed.

The recorder and the respondent may make closing arguments on the issues before the board; typically the respondent goes first. The order of closing arguments may be modified by agreement of the recorder and respondent, or as determined by the board president if the recorder and respondent disagree.

See Step 10 of the Board Guide.

6.F.2. Proposed Findings of Fact, Opinions, and Recommendations.

The recorder and respondent may offer proposed findings of fact, opinions, and recommendations to the board for consideration during its deliberations and report preparation. The recorder and respondent may submit written copies of their proposed report content for the record and/or discuss them during their closing arguments. If submitted in writing, proposed findings of fact, opinions, and recommendations shall be made a part of the record and listed as exhibits in the summarized record of the hearing.

6.F.3. Written Copies Permitted.

The recorder and respondent may submit written copies of their closing arguments for the record. If submitted in writing, closing arguments shall be made a part of the record and listed as exhibits in the summarized record of the hearing.

6.G. COMPLETING THE SUMMARIZED HEARING RECORD (STEP 11).

6.G.1. Ensure the Summarized Record is Complete.

a. After closing arguments (if any) are finished, the board president shall recess the hearing. The board president, with the assistance of the board members, the reporter, and the recorder, shall ensure that all exhibits have been listed in the summarized record of the hearing in accordance with Article 6.B.1.a. of this Manual and have been properly marked in accordance with Article 6.B.1.a.(3) of this Manual.

b. The board president also shall ensure that all witness testimony has been properly summarized, and that witness statements have been certified properly in accordance with Article 6.D.2. of this Manual.

c. The board president should consult with the respondent or the respondent's counsel in ensuring the accuracy and completeness of the evidence listed, marked, and included in the summarized hearing record.

d. The board shall ensure that the summarized record is complete, with the exception of still having to note when the hearing was closed. The members of the board should be confident that the summarized record is sufficiently accurate to provide a useful and informative record of the hearing. Such a record should enable CG PSC to understand what happened at the hearing, what issues were raised, what the witnesses said, and the arguments that were made.

   See Step 11 of the Board Guide.

6.G.2. Concluding the Hearing.

a. Before closing the hearing and beginning private board deliberations, the board president shall discuss with the respondent and/or respondent's counsel the method(s) to be used to communicate the board results and to deliver a copy of the board report, upon completion, to the respondent for review and comment. The respondent, his or her counsel, and the recorder shall provide their updated contact information because, following deliberations and the completion of the board report, the board president shall:

   (1) Convey the board results to the respondent and/or respondent's counsel and the recorder by convenient and reliable means (i.e., in person, telephonically, or by email).

   (2) Ensure the respondent and/or respondent's counsel receive the board report in a timely fashion either by email with file attachment, or delivery by hand or other verifiable method of a paper or electronic copy.

   See Article 7.C. of this Manual regarding the respondent's review of the board report.

b. The board president shall then announce that the administrative board hearing is closed, adjourn the proceedings of the board for deliberations, and dismiss all other participants to return to their normal duties, with the possible exception of the reporter who may be directed to assist the board in the preparation of the board report.

   See Articles 3.D.3., 5.B.6.b., and 7.B.1. of this Manual regarding the reporter's presence during board deliberations.

c. The date and time the board president closed the administrative board hearing shall be documented in the summarized hearing record, which shall then be signed by the board members.

6.H. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 6-1 Evidence

Appendix 6-2 Sample Witness Testimony Summary Memorandum

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CHAPTER 7 – PROCEEDINGS OF THE BOARD: AFTER THE HEARING

Purpose. Chapters 5, 6, and 7 explain the proceedings of the board in three phases. The first two phases, describing the hearing process, are covered in Chapters 5 and 6. The proceedings of the board are described in "phases" and "steps" to help the user understand the process. The phases and steps are as follows:

- Phase One, The Hearing (Getting Started), Steps 1 – 5: Explained in Chapter 5.
- Phase Two, The Hearing (Presenting the Case), Steps 6 – 11: Explained in Chapter 6.
- **Phase Three, After the Hearing, Steps 12 – 13: Explained in this chapter.**

Please refer to Appendix 5-1, Sample Board Guide (Script), which is organized in the same phases and steps for the hearing described in Chapters 5 and 6.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

7.A. PHASE THREE, AFTER THE HEARING.

Phase Three has two steps:

Step 12: Deliberations and Completing the Board Report

Step 13: Respondent Review of the Board Report

7.B. DELIBERATIONS AND COMPLETING THE BOARD REPORT (STEP 12).

7.B.1. Deliberations.

a. Timeliness. Although the hearing has concluded, the board's continuing primary duty, in accordance with Article 3.A.2. of this Manual, is to complete the board report within 1-3 calendar days, as established at Article 1.I.2.c. of this Manual. Therefore, after the board president closes the hearing, the board shall adjourn to a closed (private) space for deliberations. Alternatively, the board may remain in the hearing room if suitable and available for its extended use. At the discretion of the board president, the reporter may accompany the board to assist in preparation of the board report. The reporter may be present during the board's deliberations to act as a scrivener for the board.

b. Attendance at Deliberations. Except for the reporter, the board's deliberations shall be made in private with no participants to the hearing in attendance.

c. Participation in Deliberations. Only voting members of the board may participate in the board's deliberations.

d. Considering Evidence. During the deliberations, the board shall consider *for the first time* the evidence and arguments presented by the recorder and respondent during the hearing.

(1) Only Approved Evidence. The board shall be careful to consider only the exhibits approved for consideration by the board president during the hearing.

(2) Guiding Principles. The board shall consider the exhibits, statements, and arguments in light of the convening order and the board's guiding principles.

See Article 1.E. of this Manual.

7.B.2. Standard of Proof – Preponderance of the Evidence.

In an administrative board hearing, the findings of fact need to be supported by a preponderance of the evidence presented at the hearing. That is, findings of fact should be based on evidence that, after considering all evidence approved for consideration, points to a particular conclusion that is more likely than not the correct conclusion.

7.B.3. Respondent's Service Record.

a. All Boards. The board may consider the respondent's Personnel Data Record (i.e., service record) if it was entered as evidence in the record of the proceedings.

See MILSEP Article 1.B.1.d. for a discussion of limitations on considering conduct not occurring during the respondent's current enlistment or period of service.

See MILSEP Article 1.B.2.e. for a discussion of limitations on characterizing the respondent's service based on conduct not occurring during the respondent's current enlistment or period of service.

("Current enlistment" as used above refers to the current, continuous period of service, including any reenlistments, that has not been previously characterized on discharge documents.)

b. Reenlistment Boards. See Article 1.A.5. of the EAEA and Articles 1.B.4. and 1.B.5. of the MILSEP for a discussion of reenlistment qualifications.

7.B.4. Prior Administrative Proceedings – Boards (Double Jeopardy) and NJP.

a. Previous Administrative Boards – Double Jeopardy. See MILSEP Article 1.B.22.c.

b. UCMJ Article 15 (Non-judicial Punishment or Mast). Findings of fact made by a convening authority at non-judicial punishment (NJP) are not binding on an administrative board because NJP findings of fact are based on the same *preponderance of the evidence* standard as administrative board findings of fact. This rule applies even if the NJP convening authority is the same as the administrative board convening authority.

c. Finality of NJP Proceedings. NJP proceedings, including NJP appeals, are authorized by Article 15 of the UCMJ and are conducted in accordance with Part V of the Manual for Courts-Martial (MCM), United States.

Warning - A board shall not make any finding regarding the validity of an NJP proceeding that has been approved on appeal or for which the member has waived his or her right to appeal.

See MILSEP Article 1.B.1.d.(2) for information about NJP records.

7.B.5. Prior Criminal Proceedings.

a. Criminal Courts. Criminal court proceedings (civilian and military) apply a strong presumption of innocence during criminal trials to protect the rights of a person accused of a crime. That strong presumption of innocence can only be overcome by the presentation of evidence considered under strict evidentiary standards that proves *beyond a reasonable doubt* that all elements of a crime have been met.

b. Verdict of "Guilty" is Binding on Boards. A finding of "guilty" (including one based on a plea of “guilty” or “nolo contendere,” i.e., “no contest”) made by a civilian or military criminal court shall establish for purposes of a subsequent administrative board that the facts underlying the criminal offense are true, regardless of whether the conviction is pending review, appeal, or clemency action.

See MILSEP Article 1.B.22.f.

c. Verdict of "Not Guilty" is not Binding on Boards. A verdict of “not guilty” at a criminal court proceeding means that the facts underlying a charged criminal offense were not proved *beyond a reasonable doubt*. A verdict of "not guilty" (including dropped or dismissed charges or other non-convictions) is not binding on an administrative board. If the facts considered at a prior criminal proceeding where the respondent was found not guilty are also within the scope of inquiry of a board, the board shall look into them, and may find them proved if they are supported *by a preponderance of the evidence* presented at the hearing.

Note – In accordance with MILSEP Article 1.B.17.b.(3), a basis for administrative separation for misconduct due to the commission of a serious offense can be established, not only despite a “not guilty” verdict, but even if neither non-judicial nor criminal proceedings were initiated.

d. OTH not Permitted in Some Cases. A board shall not recommend, and a respondent shall not receive, an OTH discharge and characterization of service if discharged for conduct for which he/she was acquitted at a court-martial or civilian criminal proceeding.

See MILSEP Article 1.B.23.a.(4).

7.B.6. Completing the Board Report.

a. The board shall prepare a report.

b. Finish During Board Deliberations. The deliberation period is the best time to complete the board's report, including findings of fact, opinions, and recommendations. Board members shall bear in mind the importance of confining their deliberations to matters of record approved for consideration by the board president during the hearing and not predicate their judgments on rumor or hearsay. Board members must base their findings on evidence which was documented in the record during the board's hearing.

See Appendix 7-1 for a sample board report for an administrative separation board.

Downloading Board Reports. The board report may be prepared locally by the board. Board report memo templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

c. Findings of Fact. The board's report shall contain findings of fact.

(1) Findings of fact should, as clearly as possible, answer the "who, what, when, why, where, and how" of the matters presented to the board.

(2) Findings of fact should fix dates, places, persons, and events as accurately as possible.

(3) Findings of fact shall include only facts established by a preponderance of the evidence gathered at the hearing.

(4) Each finding of fact shall identify all exhibits (including witness statements) and/or policy that support the finding.

d. Opinions. The board's report shall contain opinions.

(1) Opinions are clear, concise statements formed based on matters contained in the record and approved for consideration by the board president during the hearing. Boards should draw reasonable inferences from those matters of record to answer the fundamental questions presented to the board.

See Article 7.B.6.g. of this Manual – the board may include much of the necessary analysis of the evidence and findings of fact, and explanation of the board's deliberations on the issues that relate to the fundamental questions, in its opinions.

(2) In stating its opinions, boards should identify and comment on factual disputes between witnesses and evidence, and should explain how they evaluated witnesses' credibility. Boards should explain how they analyzed and resolved conflicting evidence and/or witness statements.

(3) Every opinion shall identify all exhibits and findings of fact that support it.

e. Recommendations. The board's report shall contain recommendations.

(1) The board shall make recommendations that are consistent with the findings of fact and opinions.

(2) Each recommendation shall identify all exhibits, findings of fact, and/or opinions that support the recommendation.

f. Minority Report. The report of the board shall reflect the opinion of the majority of the board members. If a board member does not concur with the findings of fact, opinions, or recommendations of the majority, that board member shall complete a minority board report to submit alternate, new, or different findings of fact, opinions, and/or recommendations as the dissenting member deems appropriate. The dissenting board member shall identify which parts of the majority report he/she disagrees with and explain why. The dissenting board member may consult with the board's legal advisor at any time.

See Article 7.B.7.b. of this Manual.

g. Required Findings of Fact, Opinions, and Recommendations.

CG PSC may not agree with every finding of fact, opinion, and recommendation of the board. However, incomplete reports (i.e., those that do not answer the key questions) could result in the discharge authority being the first decision-maker in the review chain to go "on the record" for matters originally posed to the administrative board. Therefore, board reports shall answer the questions below completely, not merely by providing a list of recommendations with supporting exhibits, findings of fact, and opinions, but through analysis and explanation that serves to inform CG PSC how and why the board formed its recommendations.

See MILSEP Article 1.B.22.a. and Article 1.G. of this Manual.

(1) Administrative Separation Boards – An administrative separation board shall answer four questions (five questions when the respondent is eligible to request voluntary retirement) in its report.

i. Basis. Is there a basis for separating the respondent? This question shall be answered by every administrative separation board.

ii. Retention / Separation. Should CG PSC retain or separate the respondent? This question shall be answered by every administrative separation board.

iii. Service Characterization / Type of Discharge. How should the respondent's service be characterized if he/she is separated from the service? This question shall be answered by every administrative separation board.

Warning - Before making its recommendation on characterization of service, the board shall review MILSEP Articles 1.B.2.e. and 1.B.2.f., which explain the process for characterizing a member's service.

iv. Probation. Should the respondent be placed on probation in lieu of immediate separation? This question shall be answered by every administrative separation board. A recommendation for probation shall include terms and conditions applicable to the probationary period for CG PSC's consideration.

See MILSEP Article 1.B.24. and Article 1.G.1.d. of this Manual.

v. Voluntary Retirement. If the respondent has 18 or more years of creditable active service (or 20 or more years of satisfactory federal service for a Reserve respondent), should he or she be permitted to retire voluntarily, if he/she so requests, in lieu of involuntary administrative separation? This question shall be answered by every administrative separation board if the respondent has 18 or more years of creditable active service or 20 or more years of satisfactory federal service.

See Article 1.G.1.e. of this Manual.

(2) Reenlistment Boards – A reenlistment board shall answer three questions (and up to two additional questions depending on the circumstances) in its report.

i. Basis. Is there a basis for denying reenlistment to the respondent? This question shall be answered by every reenlistment board.

ii. Reenlistment. Should CG PSC deny reenlistment to the respondent? This question shall be answered by every reenlistment board.

iii. Service Characterization / Type of Discharge. How should the respondent's service be characterized if he/she is separated from the service? This question shall be answered by every reenlistment board.

iv. Probation. Should the respondent be placed on probation instead of being denied reenlistment? A reenlistment board may specify a probationary enlistment extension for any period up to one year, and, if so, shall include in its recommendation terms and conditions applicable to the probationary period for CG PSC's consideration.

See Articles 1.B.5.d. and 1.B.5.f. of the MILSEP.

v. Voluntary Retirement. If the respondent has 18 or more years of creditable active service (or 20 or more years of satisfactory federal service for a Reserve respondent), should the respondent be permitted to retire voluntarily, if he/she so requests, in lieu of denying reenlistment? This question shall be answered by every reenlistment board if the respondent has 18 or more years of creditable active service or 20 or more years of satisfactory federal service.

See Article 1.G.1.e. of this Manual.

(3) CPO Incompetency Reduction Boards – A CPO incompetency reduction board shall make one of the following determinations during its deliberations.

i. The respondent "is not unqualified by reason of incompetency."

ii. The respondent "is unqualified by reason of incompetency."

See Article 1.G.2. of this Manual.

7.B.7. Signing the Board Report.

a. Each concurring board member shall sign the board report at the conclusion of its deliberations and after all matters before the board have been properly considered. Electronic signatures are permitted.

b. A separate board report shall be prepared if there is a dissenting member of the board. A minority board report shall be signed by the dissenting member. Electronic signature is permitted.

7.B.8. Organizing and Scanning the Board Report.

a. All exhibits that were made a part of the record during the hearing shall be compiled and organized in the same order as they are listed in the summarized record of the hearing.

(1) Disposition of Physical Evidence. A printed image of any physical evidence presented to the board during the hearing should also have been submitted, and the printed image made a part of the hearing record (See Article 6.B.1.a.(2) of this Manual). The actual physical evidence should be returned to its owner or the convening authority (as appropriate) for use or proper disposition at this time.

b. The complete report, signed by the board and including any minority report, the summarized hearing record, and all exhibits, shall be scanned (i.e., digitized) into Adobe PDF format.

7.C. RESPONDENT'S REVIEW OF THE BOARD REPORT (STEP 13).

7.C.1. Announcing Results.

a. The board president shall communicate the results of the board's deliberations to the respondent and/or respondent's counsel and the recorder by convenient and reliable means (i.e., in person, telephonically, or by email) as previously discussed (See Article 6.G.2.a. of this Manual).

(1) If the notification is made to both the respondent and respondent's counsel, it shall be communicated at the same time and by the same means; in other words, respondent's counsel shall participate in an in-person or telephonic notification of the respondent.

(2) Notification of the recorder may be made separately.

(3) An email notification of the respondent and/or respondent's counsel shall also include the convening authority, the unit POC identified at paragraph 1.N. in the message required by Article 2.F. of this Manual, the recorder, and the board's legal advisor as addressees.

b. *Warning* – Prior to announcing the results to the respondent, the board president, or the board's legal advisor if requested to do so by the board president, shall advise the unit POC and, if applicable, the command cadre of the unit to which the respondent may be temporarily assigned, of the imminent notification. The purpose is to make the unit(s) aware of the board results, especially if adverse to the respondent, and, except when notification will be made by email, to request assistance in facilitating a private in-person or telephonic conference by the respondent with the board president and respondent's counsel. A representative of the command(s) may participate in the in-person or telephonic conference.

7.C.2. Provide a Copy of the Board Report to the Respondent.

The board president shall give the respondent a paper or electronic copy of the completed board report, including the summarized hearing record and its exhibits, for review and comment by the respondent before it is forwarded to the SJA for legal sufficiency review. The board report may be provided to the respondent's counsel instead of the respondent if the respondent is represented by counsel.

See Appendix 7-2 for a sample memo for providing a copy of an administrative board report to the respondent for review.

Downloading Respondent Review of Board Report. The board president may prepare the memo forwarding the board report to the respondent locally. Memorandum templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

See also Article 6.G.1.c. of this Manual regarding the respondent and/or counsel's role in the earlier completion of the summarized hearing record.

See also Article 6.G.2.a.(2) of this Manual regarding methods of delivering the board report to the respondent.

7.C.3. Respondent's Review Deadline – Seven Days.

The respondent may take up to seven calendar days to review and comment on the board report. The board president may grant additional review and comment time for good cause as determined by the board president.

7.C.4. Purpose of Respondent's Review.

The respondent may use the review and comment period as follows:

a. To submit written comments to preserve objections made before or during the hearing.

b. To submit written rebuttal comments refuting the board report and/or summarized hearing record, including the board's findings of fact, opinions, and/or recommendations.

c. To submit a statement of no objection indicating no intent to preserve objections or rebut any part of the board report or hearing record.

   (1) The respondent shall submit a statement of no objection in writing if he/she does not wish to object or rebut.

d. To submit a complete, verbatim, and unedited transcript of the board proceedings, if applicable. (See Article 5.B.3. of this Manual.)

7.C.5. Missing Deadline – Waiving Rights.

A respondent who fails to submit a response within the respondent's review time period shall be considered to have waived his or her right to object or comment on the board results. The board president shall:

a. Document on an administrative board supplemental page, or on a memo or form that includes the same information as the sample supplemental page shown in Appendix 2-3, the respondent's failure to meet his or her deadline, and

Downloading Supplemental Pages. The board president may prepare the supplemental page locally. Word and fillable Adobe versions of the supplemental page may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

b. Proceed as if the respondent had submitted a statement of no objection.

7.C.6. Material Submitted after the Deadline.

Material submitted by the respondent after the review time period deadline shall not be attached to the record.

7.C.7. No Right to Review Convening Authority's Endorsement.

The convening authority's endorsement, when completed later in the review process, and the comments of subsequent reviewers are not part of the board report, and the respondent is not entitled to review and comment on them.

7.C.8. After Respondent's Review and Comment Period – Board President.

Following the respondent's review period, including any extension granted pursuant to Article 7.C.3. of this Manual, the board president shall prepare a memo to append to the board report that details the respondent's response or failure to respond within the review time allowed.

See Appendix 7-3 for a sample memo for documenting the outcome of the respondent's review of the board report.

Downloading Memo to Document Respondent's Review. The board president may locally prepare the memo detailing the respondent's response or failure to respond. Memorandum templates (both Word and fillable Adobe versions) for each type of board controlled by this Manual may also be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

7.D. CONTINUITY OF THE BOARD.

Even though its report will now be forwarded for review and final action, an administrative board remains in effect until the board proceedings are terminated by proper authority or until the Coast Guard takes final action on a respondent's case. Consistent with the requirements of this Manual, if a record is returned to a board for correction or further proceedings, the board is authorized to consider additional matters included in the record, reconsider, and modify the board report and the summarized record of the board hearing.

See Article 8.B.7. of this Manual for information about who can return a record to a board for correction or further proceedings.

See MILSEP Articles 1.B.22.d. and 1.B.22.e. for information about the options available to the discharge authority, including the authority to return the report to the board for more deliberation.

See Articles 2.B.1.b. and 8.C. of this Manual for information about when administrative processing may be stopped and when a board's proceedings may be terminated, respectively.

7.E. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 7-1 Sample Board Report

Appendix 7-2 Sample Memo Providing Board Report to Respondent for Review

Appendix 7-3 Sample Memo Documenting Outcome of Respondent's Review

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CHAPTER 8 – REVIEW AND FINAL ACTION

Purpose. This chapter describes how a board report, following review and comment by the respondent, should be forwarded for review, endorsement, and final action.

Glossary. See Appendix 1-1 of this Manual for a glossary of the abbreviations and terms used in this Manual.

8.A. BOARD REPORT.

A board convened in accordance with this Manual shall submit the board report, which includes the summarized hearing record as an enclosure, to the convening authority for review/endorsement and forwarding for further review and final action in accordance with the procedures set out in this chapter.

8.B. SUBMITTING THE RECORD OF THE PROCEEDING FOR REVIEW AND FINAL ACTION.

8.B.1. Board President Compiles a Complete Record of the Proceeding.

a. The record of the proceeding shall contain:

(1) The previously-scanned board report (See Article 7.B.8.b. of this Manual), including any minority report, and the summarized hearing record, including all exhibits that were made part of the summarized hearing record during the hearing, and

(2) The board president's memo documenting the outcome of the respondent's review of the board report (See Article 7.C.8. of this Manual), including any objections, rebuttal comments, statement of no objection, or other submission by the respondent. These documents shall be scanned and added to the board report.

b. The original paper copy and a complete digitized copy of the record of the proceeding, and any audio recordings of the proceedings performed by or for the government, shall be delivered to the convening authority who will maintain them during the review process.

8.B.2. Unit POC Uploads the Record of the Proceeding to CG Portal.

a. The unit POC identified at paragraph 1.N. of the message required by Article 2.F. of this Manual shall upload the record of the proceeding (scanned in Adobe PDF format) to CG Portal in accordance with directions on the CG PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

The unit POC may contact the Personnel Services Division's Field Support Branch (PSC-psd-fs) for guidance on uploading the record of the proceeding to CG Portal.

b. When the record of the proceeding has been uploaded into CG Portal, the unit POC shall notify PSC-psd-fs by electronic mail.

E-mail Address for PSC-psd-fs: ARL-PF-CGPSC-PSDFS-ADSEP@uscg.mil.

c. CG PSC-psd-fs shall manage the sequential review of the record of the proceeding through CG Portal.

8.B.3. Retaining the Record of the Proceeding at the Convening Authority.

The convening authority shall retain the record of the proceeding until final action is taken.

See Article 8.F. of this Manual for information about disposition of the record.

8.B.4. SJA Legal Sufficiency Review.

a. The SJA shall review the record of the proceeding to determine whether the proceedings substantially complied with Coast Guard policy, that the rights of the respondent (including the right to a full and fair hearing) were not materially prejudiced, and that the recommended final action is supported by the evidence in the record of the proceeding.

See Article 1.K. of this Manual for information about deviations from the procedures set out in this Manual.

b. Returning the Record to the Board. See Article 8.B.7. of this Manual for information about returning the board report to the board for correction or additional proceedings.

8.B.5. Convening Authority Review / Endorsement.

a. If the SJA determines that the record of the proceedings is legally sufficient, the convening authority shall review and endorse the board report.

b. Reenlistment Board. If a reenlistment board's recommendations include permitting the respondent a probationary extension of enlistment (See Articles 1.G.1.d.(2) and 7.B.6.g.(2)iv. of this Manual), the convening authority's endorsement shall address whether the respondent has been offered the opportunity and has begun voluntary evaluation under the recommended probation terms. If voluntary evaluation is offered, the convening authority shall also ensure compliance with the other provisions of MILSEP Article 1.B.5.f.

c. CPO Incompetency Reduction Board. To the extent it may affect the endorsement, Coast Guard policy in Article 3.A.30.c.(2)(a) of the EAEA provides that a CPO may only be reduced in rate for incompetence if the administrative board finds him/her unqualified. (See Article 1.G.2. of this Manual.)

d. Exception. The convening authority shall not endorse a board report for a board at which he or she was a witness.

See Article 6.D.8.b. of this Manual.

e. Returning the Record to the Board. See Article 8.B.7. of this Manual for information about returning the board report to the board for correction or additional proceedings.

8.B.6. First Flag Officer Review / Endorsement.

a. After the convening authority reviews the record of the proceeding and endorses the board report, the first flag officer in the respondent's chain of command, or his or her designee, shall review the record of the proceedings and endorse the board report.

b. CPO Incompetency Reduction Board. To the extent it may affect the endorsement, Coast Guard policy in Article 3.A.30.c.(2)(a) of the EAEA provides that a CPO may only be reduced in rate for incompetence if the administrative board finds him/her unqualified. (See Article 1.G.2. of this Manual.)

c. Returning the Record to the Board. See Article 8.B.7. of this Manual for information about returning the board report to the board for correction or additional proceedings.

d. Exception to Flag Officer Review. Flag officer review is not required if a board is initiated by CG PSC or transferred to CG PSC as permitted by Article 1.D.3.b. of this Manual. Additional flag officer review is not required when the first flag officer in the respondent's chain of command is the convening authority.

8.B.7. Returning the Board Report.

a. The SJA or any subsequent reviewer may return the record of the proceeding and board report to the board for correction or further proceedings if he or she determines that the record and report are not in acceptable form, that the proceedings did not comply with the requirements of this Manual or any other Coast Guard policy, or that it is necessary to ensure that a complete record is developed.

b. Changes to the Record – Material. If, as a result of being returned, the board report is materially changed, the respondent shall be permitted to review the changes (but not any endorsements that may have been added to the record during its review) and amend or supplement his/her comments in accordance with Article 7.C. of this Manual. The respondent's amended and supplemental comments shall be attached to the record by the board president as a post-hearing exhibit.

c. Changes to the Record – Not Material. Changes such as correcting typographical errors and attaching exhibits admitted to the record during the hearing but not properly accounted for are not material.

8.B.8. Limitation on Reviewer Comments.

Reviewers shall confine their endorsement comments to the findings of fact, opinions, and recommendations of the board report and evidence included in the record of the proceeding. References to Coast Guard policy, even if not considered or discussed during the board hearing, are permitted and appropriate.

8.B.9. Limitation on Adding to the Record.

Documents may not be added to the record of the proceeding, nor shall reviewers refer to reports or investigations that were not made a part of the record at the time of the hearing.

8.C. TERMINATING BOARD PROCEEDINGS PRIOR TO FINAL ACTION BY CG PSC.

8.C.1. Respondent Request for Termination.

A respondent may request that any board controlled by this Manual be cancelled at any time during a board proceeding. A respondent's request to terminate board proceedings shall be made in writing and shall contain a new exercise of rights in which the respondent waives his or her right to go before a board. Respondent requests to terminate boards shall be forwarded to PSC-epm-1/PSC-rpm-1 (as applicable), with a copy sent to PSC-psd-fs. PSC-epm-1/PSC-rpm-1 may approve or disapprove the respondent's request based on consideration of what is in the best interests of the Coast Guard. If a respondent's request to terminate a board is approved, he or she shall be processed in accordance with Coast Guard policies for members who are not entitled to a board.

8.C.2. Situations When Convening Authorities Shall Not and May Terminate Board Proceedings.

a. Boards Required by Coast Guard Policy. Administrative boards convened in accordance with Articles 2.B.8.b., 2.B.9., and 3.B.3.a. of the CGDAAP (Second/Third Alcohol Incident and Drug Incident, respectively) are required by Coast Guard policy and shall not be terminated by a convening authority.

   Chapter 5, Section B, of the Coast Guard Medical Manual, COMDTINST M6000.1 (series), describes Service policy regarding psychiatric conditions that are either inherently disqualifying for retention or which are disqualifying for retention due to a poor prognosis for a successful outcome from treatment. The Medical Manual (MEDMAN) directs that in certain circumstances members shall be processed for discharge in accordance with the MILSEP. An administrative board convened as required by this policy shall not be terminated by a convening authority.

b. Boards Not Required by Coast Guard Policy. Except for the boards described in Article 8.C.2.a. of this Manual, administrative boards controlled by this Manual are initiated by the convening authority who, after applying thoughtful judgment, experience, and his or her discretion, has determined that administrative action is in the best interests of the Coast Guard. Service policy – as one example, CGDAAP Article 3.B.4.b. regarding discharge recommendations for drug incidents – reinforces the authority of leadership to withdraw administrative action when doing so is similarly determined to be in the Service's best interests. Thus, the convening authority retains the authority to exercise his or her judgment and terminate boards that are not required by Coast Guard policy based on the receipt of new or additional information. However, the convening authority shall not terminate a board until after the SJA has determined that the record of the proceedings is legally sufficient and the convening authority has reviewed the board report (See Articles 8.B.4. and 8.B.5. of this Manual).

Exception – CPO Incompetency Reduction Boards are initiated at the discretion of the convening authority. However, in accordance with Article 3.A.30.c.(2)(a) of the EAEA, the records of the proceedings for these boards shall be forwarded to CG PSC for final action. (See Article 8.D. of this Manual.)

Warning – Convening authorities should review Appendix 2-1, Advice to Convening Authorities, before terminating a board he or she has convened.

c. Consultation with SJA and CG PSC Required before Terminating a Board. A convening authority who is considering terminating a board shall consult with the SJA and PSC-epm-1/PSC-rpm-1 (as applicable) prior to terminating the board. The advice provided by the SJA and PSC-epm-1/PSC-rpm-1 is technical and procedural only, addressing matters such as adequacy of documentation and Service-wide application of military personnel policy. The convening authority who convenes an administrative board controlled by this Manual retains the authority to terminate the board except as provided in Articles 8.C.2.a. and 8.C.2.b. of this Manual.

CG PSC retains the authority, subject to the written concurrence of the first flag officer in the respondent's chain of command, to transfer any administrative board controlled by this Manual to CG PSC's control pursuant to Article 1.D.3.b. of this Manual before a convening authority terminates a board.

8.C.3. Notice of Termination.

a. If a board is terminated by a convening authority, the convening authority shall send message traffic within five calendar days to notify the offices identified in Article 2.F.1. of this Manual that the board proceedings have been terminated.

The message shall be in the format shown in Appendix 8-1.

Downloading Message Template. A Word version of the sample administrative board termination message may be downloaded for use from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

b. The message shall include a brief description of the reason the proceedings were terminated.

c. Significant Privacy Concerns. If any details implicate significant privacy concerns, indicate such in the message and pass that information separately by the most expeditious means.

Warning - DHS defines Sensitive PII as personally identifiable information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.

See DHS Sensitive Systems Policy Directive 4300A dated March 14, 2011, or any successor DHS policy.

See also DHS Privacy Office's Handbook for Safeguarding Sensitive PII dated March 2012, or any successor document, which applies to every DHS employee, contractor, detailee, intern, and consultant.

8.C.4. Unit POC Uploads Documentation of the Terminated Proceeding to CG Portal.

If a board is terminated by the convening authority, the unit POC shall upload to CG Portal documentation of the convening authority's decision, and any service record (PDR) entries required by Article 8.F.2.c. of this Manual, to supplement the record of the proceeding previously uploaded as described in Article 8.B.2. of this Manual.

8.D. FINAL ACTION.

Final action on records of proceedings for administrative separation boards and reenlistment boards that are not terminated pursuant to Article 8.C. of this Manual shall be taken by CG PSC-psd in accordance with applicable Coast Guard policy.

Final action on records of proceedings for CPO incompetency reduction boards shall be taken by CG PSC.

8.E. APPEALING FINAL ACTION.

Pursuant to Article 1.B.36.h. of the MILSEP, appeals of the final action on a board report may be made in accordance with Correcting Military Records, COMDTINST 1070.1 (series).

8.F. SERVICE RECORD ENTRIES AND DISPOSITION OF BOARD REPORT.

8.F.1. CG PSC.

After final action has been taken, CG PSC is the custodian of the record of the proceeding of a board controlled by this Manual.

a. CG PSC shall maintain records of board proceedings in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).

b. CG PSC is responsible for entering into the respondent's Electronically Imaged-Personnel Data Record (EI-PDR) any report or documents produced by an administrative board as may be authorized and required by the Military Personnel Data Records (PDR) System, COMDTINST M1080.10 (series).

8.F.2. Convening Authority.

After final action has been taken, the convening authority:

a. Shall dispose of all copies of the record of the proceeding, or may, if appropriate, provide them to the respondent (See Article 8.B.1. of this Manual for a description of the documents that are, and specifically are not, included in the record of the proceeding.) The convening authority shall not provide the respondent, and shall dispose of as appropriate, any documents or material associated with the administrative board that are not a part of the record of the proceeding, e.g., audio recordings of the proceedings, reviewer endorsements, or correspondence from the SJA. (See also Article 8.B.3. of this Manual).

b. Shall complete any Administrative Remarks, Form CG-3307, for entry into the respondent's Personnel Data Record (PDR), or other documentation, as directed by the final action decision.

c. Shall complete, for boards that do not result in the immediate, involuntary separation of the respondent – i.e., administrative separation boards that result in the retention of the respondent either through favorable final action or termination of the proceedings, and all reenlistment boards and CPO incompetency reduction boards – and for which documentation exists in the respondent's PDR that administrative processing was initiated and/or that an administrative board was convened, Administrative Remarks, Form CG-3307, for entry into the respondent's PDR that summarize in sufficient detail the outcome of the administrative proceedings.

8.F.3. Other Units.

No other unit may maintain a record of proceeding after final action has been taken.

8.G. APPENDICES INTRODUCED IN THIS CHAPTER.

Appendix 8-1 Sample Message Notice for Terminating an Administrative Board

LIST OF APPENDICES

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APPENDIX 1-1

GLOSSARY

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GLOSSARY

Abbreviations

The following abbreviations are used in this Manual.

AIM – Administrative Investigations Manual, COMDTINST M5830.1 (series)

BCD – Bad Conduct Discharge

CG PPC – Coast Guard Pay and Personnel Center

CG PSC – Coast Guard Personnel Service Center

CG-0944 – Coast Guard Office of General Law

CG-094M – Coast Guard Office of Legal and Defense Services

CGDAAP – Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)

CGIS – Coast Guard Investigative Service

CGISRR – Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5 (series)

CPO – Chief Petty Officer

DD – Dishonorable Discharge

DHS – Department of Homeland Security

DSO – Defense Service Office (formerly Navy Legal Service Office)

EAEA – Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

EI-PDR – Electronically Imaged-Personnel Data Record

FOIA – Freedom of Information Act, 5 U.S.C. § 552

GCMCA – General Court-Martial Convening Authority

HIPAA – Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. §§ 1320d – 1320d-8

MCM – Manual for Courts-Martial, United States

MEDMAN – Medical Manual, COMDTINST M6000.1 (series)

MILSEP – Military Separations, COMDTINST M1000.4 (series)

MRE – Military Rules of Evidence, contained in the Manual for Courts-Martial (MCM)

NJP – Non-judicial Punishment, pursuant to Article 15, Uniform Code of Military Justice (UCMJ)

OTH – Other Than Honorable

PDR – Personnel Data Record

PII – Personally Identifiable Information

POC – Point of Contact

PSC-epm – Coast Guard Personnel Service Center, Enlisted Personnel Management Division

PSC-epm-1 – Coast Guard Personnel Service Center, Enlisted Personnel Management Division, Advancements and Separations Branch

PSC-psd – Coast Guard Personnel Service Center, Personnel Services Division

PSC-psd-fs – Coast Guard Personnel Service Center, Personnel Services Division, Field Support Branch

PSC-rpm – Coast Guard Personnel Service Center, Reserve Personnel Management Division

PSC-rpm-1 – Coast Guard Personnel Service Center, Reserve Personnel Management Division, Reserve Component Category Branch

ROI – Report of Investigation (prepared by the Coast Guard Investigative Service)

RPM – Reserve Policy Manual, COMDTINST M1001.28 (series)

SPCMCA – Special Court-Martial Convening Authority

SJA – Staff Judge Advocate

SLO – Servicing Legal Office

UCMJ – Uniform Code of Military Justice, 10 U.S.C. §§ 801 - 936, also in the Manual for Courts-Martial (MCM)

U.S.C. – United States Code

VA – Department of Veterans Affairs

Definitions

The following definitions apply to terms used in this Manual.

Adjourn

The board president "adjourns" or pauses an **administrative board** hearing when the intention is that the hearing will reconvene on a later date or in a different location. (Compare to definition of **recess**.)

Administrative Board

"Administrative board" ("board") is a fact-finding body convened to gather evidence both in favor of and adverse to a Coast Guard enlisted member and to recommend whether administrative action should be taken in the case of that enlisted member. The administrative boards controlled by this Manual are formal boards of investigation as described at Article 8.A. of the AIM.

Administrative Separation (Discharge) Board

An "administrative separation board" is an **administrative board** convened to recommend whether a basis exists to involuntarily separate the **respondent** due to his or her conduct and/or performance of duty, whether or not he/she should be discharged immediately, and how his or her service should be characterized if he/she is involuntarily separated. (Also, see MILSEP Article 1.B.22.a. for the definition of an "administrative discharge board".)

Board Report

The "board report" is the document in which an **administrative board** provides the **convening authority** with the results of its investigation into the case of the **respondent**, including findings of fact, opinions, and recommendations, as well as analysis of the evidence and explanation of the board's deliberations to fully inform reviewers how and why the board formed its recommendations.

Characterization of Service

"Characterization of service" is the determination reflecting a member's military behavior and performance of duty during a specific period of service. The three authorized characterizations and corresponding types of discharge for administrative separations are honorable (Honorable discharge), under honorable conditions (General discharge), and under other than honorable conditions (discharge under Other Than Honorable conditions).

Chief Petty Officer (CPO) Incompetency Reduction Board

A "CPO incompetency reduction board" is an **administrative board** convened to recommend whether or not the **respondent** is unqualified by reason of incompetency for the duties of his or her current rate.

Coast Guard Reserve

References to Coast Guard members include both active duty and Coast Guard Reserve personnel unless otherwise specified.

Commander

A "commander" is a commissioned officer who occupies a position of command, is duly assigned to that position pursuant to official orders, and whose command authority covers multiple major commands and/or field units as defined at Article 2.E.1.a. of the Coast Guard Organization Manual, COMDTINST M5400.7 (series).

Commanding Officer

"Commanding Officer" means:

(1) A commissioned officer or chief warrant officer who occupies a position of command, is duly assigned to that position pursuant to official orders, and whose command authority covers an individual unit as defined by Article 2.E.1.b. of the Coast Guard Organization Manual, COMDTINST M5400.7 (series), or

(2) A Commanding Officer of Enlisted or Military Personnel as described at Article 3-2-5 of the United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series).

Convening Authority

Any **flag officer**, **commander**, or **commanding officer** who is a Special Court-Martial Convening Authority or designated as a General Court-Martial Convening Authority in an enlisted member's chain of command may convene a board controlled by this Manual. The "convening authority" decides whether a board should be convened and who should participate in the board proceedings. The convening authority executes the **convening order** which establishes the scope of inquiry of an **administrative board**. (Designations as General Court-Martial Convening Authorities and Special Court-Martial Convening Authorities are listed in Articles 3.A.1. and 3.A.2., respectively, of the Military Justice Manual, COMDTINST M5810.1 (series).)

Convening Order

A "convening order" is the order that initiates an **administrative board**; it designates personnel to conduct and assist with board proceedings. The convening order tells the board what kind of investigation to conduct and establishes the board's scope of inquiry. The convening order vests the board and its members with authority to investigate the matter on behalf of the **convening authority**.

Current Enlistment

An enlisted member's "current enlistment" refers to his or her current, continuous period of service, including any reenlistments, that has not been previously characterized on discharge documents. (See also **characterization of service.**)

Day

Unless otherwise specified, the use of "day" is intended to refer to a calendar day.

Disclosure

"Disclosure" refers to the sharing of evidence, witness lists, and other information by the **recorder** and the **respondent** (or respondent's counsel) with each other in advance of the **administrative board** hearing.

Flag Officer

"Flag officer" means a Coast Guard admiral, vice admiral, rear admiral, or rear admiral (lower half).

Legal Advisor

The designated Coast Guard judge advocate or other Coast Guard counsel who provides legal advice to an **administrative board**. The "legal advisor" may be assigned by the **Staff Judge Advocate** or appointed by the **convening authority**. A legal advisor assigned by the Staff Judge Advocate is not a member of the board, and may be present at the board's hearing if deemed necessary by the board president. A legal advisor appointed by the convening authority is a non-voting member of the board and shall be present during the board's proceedings.

Legal Sufficiency Review

"Legal sufficiency review" refers to the review of the **record of the proceeding** performed by the **Staff Judge Advocate** to determine whether the proceedings substantially complied with Coast Guard policy, that the rights of the **respondent** (including the right to a full and fair hearing) were not materially prejudiced, and that the recommended final action is supported by the evidence in the record of the proceeding.

May

"May" is used in a permissive sense, indicating that actions are allowed but not required.

Minority Group

"Minority group" means a segment of the population possessing common traits by descent or possessing common characteristics and a cultural heritage significantly different from that of the general population as defined by Article 1.B.1.f.(14) of the MILSEP.

Minority Report

A "minority report" is completed by a member of an **administrative board** who does not concur with the findings of fact, opinions, or recommendations of the majority. In the minority report, the dissenting board member submits alternate, new, or different findings of fact, opinions, and/or recommendations as he or she deems appropriate.

Preponderance of the Evidence

"Preponderance of the evidence" is a standard of proof for evidence. Evidence that proves something by a preponderance is evidence that, after considering all of the evidence, points to a particular conclusion that is more likely than not the correct conclusion.

Recess

The board president "recesses" or pauses an **administrative board** hearing when the intention is that the hearing will reconvene later on the same date and in the same location. (Compare to definition of **adjourn**.)

Record of the Proceeding

The "record of the proceeding" is an electronic or physical compilation of all of the documents relevant to an **administrative board** proceeding. The record of the proceeding consists of the **board report**, the **summarized hearing record**, all exhibits that were made a part of the summarized hearing record, and any objections, rebuttal comments, **statement of no objection**, or other submission from the **respondent**, or a statement from the board president that the respondent failed to reply during the review and comment period.

Recorder

The "recorder" investigates all reasonable sources of evidence about the **respondent**'s conduct and/or performance of duty that is relevant to matters within an **administrative board**'s scope of inquiry, and impartially presents that evidence to the board. The recorder does not have to be a Coast Guard judge advocate or other Coast Guard counsel, but shall meet any requirements established by the **Staff Judge Advocate**.

Reenlistment Board

A "reenlistment board" is an **administrative board** convened to recommend whether or not a **respondent**, who has been determined by his or her **commander** or **commanding officer** to be ineligible to reenlist, should be denied reenlistment.

Reporter

The "reporter" supports an **administrative board** as directed by the board president in conducting the board hearing, completing the **summarized hearing record**, and drafting the **board report**.

Respondent

The "respondent" is the Coast Guard enlisted member whose conduct or performance of duty is under review by an **administrative board.** The respondent is a "party" to a formal investigation as defined in Article 1.D.8. of the AIM. However, he or she shall be referred to as the "respondent" in all **summarized hearing records** and reports of **administrative boards** to ensure consistent application of terms.

Servicing Legal Office

The "servicing legal office" is the Coast Guard legal office primarily responsible for providing legal advice to the **convening authority**.

Shall

"Shall" is used in an imperative sense, indicating actions that must be done.

Shall Not

"Shall not" is used in an imperative sense, indicating actions that must not be done.

Signed / Signature

"Signed" or "signature" includes physical and electronic signatures made with the intent to authenticate the document being signed.

Staff Judge Advocate

"Staff Judge Advocate" means the Coast Guard judge advocate designated as the principal legal advisor to the **convening authority**. The Staff Judge Advocate is in charge of the **servicing legal office**.

Statement of No Objection

A "statement of no objection" is a written statement submitted by a **respondent** after his or her review of the **board report** indicating that he/she does not wish to either preserve objections made before or during the hearing or rebut the findings of fact, opinions, and/or recommendations of an **administrative board**.

Summarized Hearing Record

The "summarized hearing record" provides the details of the **administrative board** hearing conducted as directed by the **convening authority**. It also includes all of the evidence submitted by the **recorder** and the **respondent** for consideration by the board, as well as summaries of the testimony of all witnesses that testified before the board. The summarized hearing record is sufficiently complete and accurate so as to provide reviewers of the **record of the proceeding** an informative summary of the issues raised and the arguments made at the hearing.

Termination

"Termination" is the act, when authorized, of concluding **administrative board** proceedings prior to final action being taken on the **record of the proceeding** by Commander, Coast Guard Personnel Service Center.

Voir Dire

This phrase denotes the preliminary examination the **respondent** and the **recorder** make of board members to determine their qualifications and suitability to serve as members of an **administrative board**.

Written / In Writing

"Written" or "in writing" includes any convenient means of correspondence that can be made a part of a board's record and may include electronic mail.

APPENDIX 1-2

U.S. COAST GUARD UCMJ AND MIRANDA/TEMPIA RIGHTS, ARTICLE 31(B), FORM CG-5810E

A fillable version of Form CG-5810E may be downloaded from the Coast Guard forms library at: http://www.uscg.mil/forms/cg/CG_5810E.pdf

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DEPARTMENT OF HOMELAND SECURITY

U.S. Coast Guard

UCMJ AND MIRANDA/TEMPIA RIGHTS

Article 31(B)

Instructions to the Interviewer…

This form shall be completed when anyone investigating an alleged offense(s) considers it desirable or necessary to **interview an individual** subject to the Uniform Code of Military Justice **who is:**

a. **Suspected of an offense** under the Uniform Code of Military Justice, state, or other federal law; **or,**

b. **In custody** (freedom of movement is limited in some significant way).

This warning is more extensive than the individual warnings required under either Article 31(b), UCMJ or the *Miranda* and *Tempia* line of court decisions. In a case in which both rights apply (a. & b. above}, however, this form should be given to a military member by a military investigator or anyone acting on behalf of the military. This warning should be used at the preliminary investigation stage because no determination has been made as to the appropriate disposition of the alleged offense(s). This form may also be used in interviewing civilian suspects even though the warnings are more extensive than are required.

Other Warnings That May Be Required...

1. Under 10 U.S.C. § 1219, a military member must be advised that he or she is not required to make any statement relating to the origin, incurrence, or aggravation of a disease or injury. *See,* Administrative Investigations Manual, COMDTINST M5830.1 (series).
2. Under the Privacy Act, 5 U.S.C. § 552a, the subject of an investigation must be advised of his or her rights under the Privacy Act if required to provide protected personal information (such as social security number, home address, etc.). *See,* Administrative Investigations Manual, COMDTINST M5830.1 (series).

I, _____, _____, _____

[Suspect's Rate/Rank Name] [SSN or Military ID] [Unit]

have been advised by: _____ that he/she is investigating –

[Interviewer's Rate/Rank Name]

State briefly the matters/incidents being investigated:

I am suspected of committing the following offense(s) – *Plain language description of suspected offense(s):*

I understand that: [*Suspect should initial each paragraph*]

Suspect's Initials	***Suspect's Rights***
_____	1. I have the right to remain silent. I do not have to answer questions or make any statement.
_____	2. Before I decide whether I want to answer questions or make a statement, I may consult with a lawyer. If I decide to consult with a lawyer, the interviewer will stop the questioning. I may consult with a military lawyer provided without cost to me, or a civilian lawyer obtained at no expense to the government, if the government intends to continue questioning me. If I decide to consult with a lawyer, I have the right to have an appointed military lawyer, a civilian lawyer obtained at no expense to the government, or both, present during any further questioning.
_____	3. If I decide to answer questions or make a statement, anything I say may be used as evidence against me in any court-martial, nonjudicial proceeding, administrative proceeding, or civilian court.
_____	4. Even if I decide to answer questions or make a statement, I may at any time stop answering questions, refuse to make any further statements, or request to consult with a lawyer.
_____	5. **I have carefully read the above. I understand my rights**. Any questions I have asked concerning my rights have been answered to my satisfaction.

With full knowledge of my rights and the information contained on both pages of this form, I voluntarily make the following elections:

_____ a. **I do not desire** to consult a lawyer.

_____ b. **I desire** to make a statement and/or answer any questions.

_____ c. **I desire** to consult a lawyer

_____d. **I do not desire** to make a statement or answer any questions.

_____
[Time and Date]

_____
[Signature of Suspect]

_____
[Signature of Witness]

Interview Instructions

1. If the suspect elects **<u>either</u> block c. <u>or</u> d., stop questioning**. Consult the servicing legal office before reinitiating any further questioning of this suspect concerning these suspected offenses.

2. If the suspect elects **<u>both</u> blocks a. <u>and</u> b**, the interviewer **may continue questioning.**

3. Any written statements by the suspect should be **prefaced with** the following statement: *"With full understanding of my rights, I make the following statement freely, voluntarily, and without any promises or threats made to me."* The statement should be **signed and dated by the suspect and a witness.**

APPENDIX 2-1

ADVICE TO CONVENING AUTHORITIES

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ADVICE TO CONVENING AUTHORITIES

REFERENCES:

(a) Military Separations, COMDTINST M1000.4 (series)
(b) Reserve Policy Manual, COMDTINST M1001.28 (series)
(c) Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
(d) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(e) Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)
(f) Coast Guard Medical Manual, COMDTINST M6000.1 (series)

I. Background, Policy, and other Process Considerations.

A. Commandant established the administrative board process to provide a check against arbitrary or unjust action against an enlisted member. When considering and then initiating action to involuntarily discharge or deny the reenlistment of a member entitled to an administrative board, or to reduce a chief petty officer (CPO) in rate for incompetence which always includes the right to appear before an administrative board, it is in the best interests of the Coast Guard that convening authorities and all board participants strictly comply with the procedures detailed in this Manual.

B. Convening authorities should keep a focus on the timeline for administrative board processing. In many cases, it is in the Coast Guard's and unit's best interest for an administrative separation board respondent to be discharged as soon as possible. In accordance with Article 1.B.5.g. of the MILSEP, reference (a), the record of the proceedings of a reenlistment board should arrive at CG PSC 120 days prior to the expiration of the respondent's enlistment, when practical; this is an especially aggressive timeline considering that the administrative board process typically is initiated after the initial pre-discharge interview with approximately six months remaining in the enlistment. There is arguably more latitude with a CPO incompetency reduction board, but the situation is presumably having an adverse impact on the efficiency of the command. Regardless, convening authorities should be vigilant in adhering to the time goals in Article 1.I.2. of this Manual.

1. **Time from notice to the respondent until beginning of the hearing [not more than 60 calendar days].** The respondent shall acknowledge the convening authority's notice of intent to take administrative action "without delay" (see Article 2.D.1. of this Manual). It is reasonable to allow the respondent to "sleep on it" to comprehend the action being contemplated and reach decisions whether to consult a lawyer and/or attach a written statement. However, this and any additional time spent scheduling a consultation appointment with a military lawyer, plus the five days after that consultation for the member to exercise his or her rights, all count toward the 60-day time goal. Therefore, it is best to assume that the member will exercise his/her right to appear before a board and to identify prospective board members while the respondent is deliberating on his/her rights. It is advisable to have the convening order prepared and ready to issue upon receipt of the respondent's exercise of rights, especially since the hearing shall begin no sooner than 21 calendar days after the convening order is issued in order to permit the respondent to prepare for the hearing. If you are not proactive, the board president will be left with a very limited time window within which to schedule the hearing.

C. Similar to the effort (including documentation) involved in mentoring, counseling, and/or disciplining an enlisted member whose conduct or performance of duty has not met expected Service standards, convening and conducting an administrative board is a necessary and significant investment in time and resources. Convening authorities should consider the following in deciding whether or not to initiate administrative board action, to disapprove or recommend approval of a respondent's conditional waiver of the right to a board (see Article 2.E.3.d. of this Manual), whether or not to terminate board proceedings after reviewing a legally-sufficient board report (see Article 8.C.2. of this Manual), and what to potentially include in an endorsement to a completed board report.

1. **Consultation.** Convening authorities shall consult with the Staff Judge Advocate (SJA), and with CG PSC's Advancements and Separations Branch (PSC-epm-1) or Reserve Component Category Branch (PSC-rpm-1) as appropriate, in advance to demonstrate that sufficient evidence of a basis for administrative action exists (see Article 2.B. of this Manual). Nevertheless, this consultation will not assure a particular outcome. With the notable exceptions mentioned later in this list, a convening authority's recommendation, and the opinions and recommendations of a board, only serve as advice and are not binding on CG PSC in its responsibility for taking final action on administrative board cases (see Article 1.J. of this Manual). Articles 1.B.22.d. and 1.B.22.e. of the MILSEP describe the actions CG PSC may take after reviewing the report of an administrative separation board or a reenlistment board.

2. **Enlisted member will soon have eight years of military service.** One of the reasons that establishes an entitlement to an administrative separation board or reenlistment board is when the enlisted member has eight or more years of military (active and/or Reserve, and not solely Coast Guard) service. (See Article 1.B.1. of this Manual.) If there is any uncertainty whether the routine processing for discharge (i.e., as for a member not entitled to an administrative board) can be completed prior to the enlisted member attaining eight years of service, it may be in the best interests of the Coast Guard and the member to proceed as if the entitlement already exists, rather than have the right vest before routine processing is completed.

3. **Enlisted member is, or will soon be, eligible to retire.** An enlisted member with 18 or more years of creditable active service may request voluntary retirement (see MILSEP Article 1.C.11.a.(2)). Reserve personnel may request voluntary retirement after they have been notified that they have completed 20 or more years of satisfactory federal service (see Article 8.R. of the RPM, reference (b)). If the enlisted member is eligible to request voluntary retirement, or if he/she will become eligible during administrative board processing, the convening authority should consider whether recommending approval of a board waiver on the condition of being permitted to voluntarily retire is in the Coast Guard's best interests. However, simply processing a routine retirement request, rather than first initiating administrative action that could precipitate the conditional board waiver, is not advisable. This is due to the fact that an otherwise voluntary request to retire could be disapproved for the needs of the Service, or the enlisted member could later request to rescind an approved voluntary retirement.

   a. Convening an administrative separation board for an enlisted member with 18 or more years of creditable active service or 20 or more years of satisfactory federal service is not a common occurrence. Determining that a member with 18 or more years of creditable active service or 20 or more years of satisfactory federal service is ineligible to reenlist is rare. Either scenario, however, could and will occasionally present itself. A respondent's appointed or hired counsel should advise the enlisted member on the merits of voluntary retirement, either as a conditional board waiver or as an alternative (if offered) to the execution of a final action decision that is unfavorable to the member. Convening authorities should be aware, and should counsel an enlisted member as appropriate, that he/she does not have a right to voluntary retirement (see Articles 1.C.1.e., 1.G.1.e., and 2.E.3.d.(2) of this Manual), and that involuntary separation or denial of reenlistment could result in discharge without the receipt of retirement benefits.

4. **When a board's recommendation is binding.** A CPO may only be reduced in rate for incompetence if an administrative board finds that the CPO is unqualified. Thus, if a board finds that the respondent "is not unqualified by reason of incompetency," the convening authority should consider Service policy when preparing an endorsement to the board report. (See Article 3.A.30.c.(2)(a) of the EAEA, reference (c); Article 11.M. of the AIM, reference (d); and Article 1.G.2. of this Manual.)

5. **When an OTH discharge may be awarded.** A discharge under Other Than Honorable (OTH) conditions may only be awarded, in the circumstance that the right to a board is not waived, if an administrative board recommends that the respondent's service be characterized as under OTH conditions (see MILSEP Article 1.B.2.f.(3)). Thus, even though the convening authority may strongly believe an OTH discharge is warranted, it may be considered an acceptable outcome to recommend approval of a board waiver conditioned on the receipt of a General discharge in order to expedite separation.

6. **Ineligibility to reenlist as an outcome of an administrative separation board.** A General discharge will, in most cases, result in the assignment of a reenlistment code that makes the enlisted member ineligible to reenlist. An involuntary separation due to misconduct, although possibly resulting in an Honorable discharge under the circumstances, will also, in most cases, result in the assignment of a reenlistment code that makes the enlisted member ineligible to reenlist. The convening authority's consultations with the SJA and PSC-epm-1/ PSC-rpm-1 should address what may be in the best interests of the Service – the prospect of accepting conditions that lead to an expedited discharge with the member not eligible to reenlist in the Coast Guard or any other military service, or undergoing the board process for an uncertain, and potentially the same, outcome.

7. **Unsuitability due to alcohol abuse.** In accordance with Articles 2.B.8.b. and 2.B.9. of the CGDAAP, reference (e), an enlisted member involved in a second alcohol incident will normally be processed for separation, and shall be processed for separation if involved in a third alcohol incident. The policy to process alcohol abuse program offenders for separation does not preclude retention. However, as stated in CGDAAP Article 2.B.8.b.(1), retention after even a second alcohol incident is not a routine action and is only considered when "mitigating circumstances or an exceptional situation" may warrant retention. The fact that the respondent may be a top performer is not a mitigating circumstance since Service policy is applied equitably to all members. Examples of such circumstances/situations might include time remaining until retirement eligibility, the time elapsed between alcohol incidents (possibly either a lengthy period, or a short period during which there may have been insufficient time for treatment after the first incident to be effective), the specific facts concerning the conduct documented as an alcohol incident (e.g., did an investigation reveal that the member was actually playing the role of peace-maker in the incident?), or Service failure to ensure proper treatment. Regardless, should an enlisted member be retained after a second, or even conceivably a third, alcohol incident, expect that final action on an administrative board report will include strict probationary conditions that will assure separation and the avoidance of another board proceeding in the event of a subsequent violation.

8. **Service characterization is based on the entire military record.** When deciding whether to retain or separate an enlisted member, the Coast Guard may evaluate the member's entire military record including, under certain circumstances (see MILSEP Article 1.B.1.d.), military justice records from previous periods of service. However, in accordance with MILSEP Article 1.B.2.e., a member's service upon discharge is characterized solely based on his/her military record during the current period of service, which may encompass multiple enlistments. (Any previous period of service would have been documented on a Certificate of Release or Discharge from Active Duty, Form DD-214.) If the conduct or performance that formed the basis or bases for initiating administrative action represents a departure from the balance of the respondent's military record for the current period of service, it may have to be considered particularly serious or egregious to outweigh the record and result in a less favorable characterization of service. Therefore, in some situations, it may be an acceptable outcome to recommend a more favorable discharge, or approval of a board waiver conditioned on the receipt of a more favorable discharge, in order to expedite separation.

9. **Special consideration for a discharge upgrade.** MILSEP Article 1.B.2.f.(1)(f)[1] discusses, for specific discharge reasons, the potential for "special consideration" of an upgrade to a more favorable type of discharge when the enlisted member has received one or more of certain military decorations. If the personal awards are applicable to the respondent, the convening authority may consider whether the performance documented in the decoration(s) merits a recommendation for special consideration that could possibly avoid the necessity to conduct an administrative board.

D. Historically, a significant number of administrative separation boards are convened for the basis of unsuitability due to alcohol abuse. There is very little discretion in Service policy found in the CGDAAP concerning initiating administrative separation processing when an enlisted member is involved in a second or subsequent alcohol incident. Convening authorities and unit leaders at all levels of command should exercise due diligence in reviewing a new crewmember's Personnel Data Record for the presence of documentation of past alcohol incidents, effectively counseling those members who have service record evidence of an alcohol incident(s) or who incur an incident, seeking the appropriate treatment for the member, and conveying awareness of members with a history of alcohol abuse to successors upon a change of supervisory leadership. A member with one or more alcohol incidents should be fully cognizant of the fact that any future involvement in an alcohol incident will result in administrative discharge processing, regardless of how stellar of a performer he or she may be or how highly regarded he or she may be by the chain of command.

E. If the final action by CG PSC on an administrative separation board is to approve the discharge of the respondent, expect discharge orders to direct that separation shall be effected within 30 days. If the final action by CG PSC on a reenlistment board is to deny the reenlistment of the member, the respondent will complete his/her enlistment, but expect that there will not be much more than 30 days remaining in the enlistment at that point. The approved retirement date for a request to voluntarily retire in lieu of administrative board action will not be too far in the future, and, if applicable, likely not beyond the first day of the month following the date the member completes 20 years of creditable active service. Therefore, it is prudent – as unit operations, board hearing commitments, and resources permit – to allow the respondent to take advantage of transition assistance offerings, even though the outcome of the board process may be in doubt.

II. Military Justice and Administrative Board Processing.

A. Convening authorities and commanders/commanding officers/officers-in-charge should not confuse administrative action (i.e., employment decisions) with military justice (i.e., disciplinary decisions). However, they should not be viewed as mutually exclusive actions; in other words, both may be appropriate for the circumstances.

1. The first determination to make is whether or not to pursue military justice. Courts-martial and non-judicial punishment (NJP, or "mast") are intended to promote justice and/or assist in maintaining good order and discipline in the Coast Guard. Convening authorities should consult with their SJA and consider whether the military justice option will achieve its purpose and is appropriate. This should be done even, or especially, when it is known that administrative processing will occur, for one or more of the following reasons.

    a. Military justice is generally most effective when rendered in a timely manner. Administrative action, including involuntary separation, is not "punishment," and the administrative board process, although designed to be relatively expeditious, can be more time-consuming than expected. This could give the impression to the crew and other observers that the enlisted member experienced no adverse consequences for his/her conduct or performance.

    b. The convening authority and/or the commander/commanding officer/officer-in-charge has a more direct role in military justice proceedings by either awarding punishment, considering appeals, or (if a court-martial convening authority) approving, modifying, or disapproving the results. With the exception of when a convening authority may terminate an administrative board (see Article 8.C.2. of this Manual), the outcome of any administrative board action is determined by CG PSC and might not be what the convening authority recommended or desired. Pursuing military justice only after what the convening authority considers an unfavorable final action decision in an administrative case would not be appropriate.

    c. A court-martial or NJP may establish, or help later establish, a pattern of misconduct that creates a basis or additional basis for administrative action (see MILSEP Article 1.B.17.b.(2)). In addition, due to the stricter evidentiary standard of proof in a military criminal court proceeding, a "guilty" verdict would make the facts underlying the offense(s) binding on a subsequent administrative board (see Article 7.B.5. of this Manual).

    d. Since administrative proceedings are not punitive, an OTH is the least favorable characterization of service that can be assigned to a member being involuntarily separated. Only court-martial action can result in a punitive discharge, i.e., either a Bad Conduct Discharge (BCD) or a Dishonorable Discharge (DD). (See MILSEP Article 1.B.2.f.)

2. Administrative board proceedings should only be initiated after deciding whether or not a court-martial or a mast is warranted. If military justice action is initiated, ongoing consultation with the SJA will inform the convening authority as to the appropriate time to provide notice to the respondent and commence administrative action. The following are considerations, whether or not military justice is pursued, when contemplating initiating administrative action to involuntarily separate or deny reenlistment to an enlisted member.

a. There is nothing inherently derogatory about an administrative discharge. However, a former military member may expect to encounter some prejudice in future employment if he or she did not receive an Honorable discharge.

b. Administrative separation or denial of reenlistment may be initiated at any time during an enlisted member's career, even if the member has 20 or more years of creditable active service or satisfactory federal service. If the involuntary separation of a member with 20 or more years of creditable active service or satisfactory federal service is approved, the result could also include the member being discharged without receiving retirement benefits. (See Articles 1.C.1.e., 1.G.1.e., and 2.E.3.d.(2) of this Manual.)

c. Administrative separation processing is mandatory for a second alcohol incident (see CGDAAP Article 2.B.8.b.), a third alcohol incident (see CGDAAP Article 2.B.9.), a drug incident (see CGDAAP Article 3.B.3.a.), and certain psychiatric conditions as prescribed in Chapter 5, Section B, of the MEDMAN, reference (f). For other reasons, administrative processing is not mandatory but may be initiated by a convening authority if separation is considered to be in the best interests of the Coast Guard. In these instances, convening authorities should determine:

(1) Is there a Coast Guard policy that appears to provide a basis for discharging the member?

(2) Is there sufficient evidence to prove by a preponderance that the basis has been satisfied and separation is warranted? Documentation (i.e., evidence) of the relevant conduct and performance should have been properly completed in accordance with Service policy, and should demonstrate, for example, that required counseling, probation, alcohol screening and treatment, etc., as applicable, were provided by the member's current and previous commands.

III. Choosing between an Administrative Separation Board and a Reenlistment Board.

A. The findings, opinions, and recommendations that administrative separation boards and reenlistment boards must make are similar (see Articles 1.G.1., 7.B.6.g.(1), and 7.B.6.g.(2) of this Manual). Both types of boards advise CG PSC on the primary question of whether an enlisted member should be permitted to continue his or her Coast Guard service. Key differences are the timing of discharge relative to the member's current expiration of enlistment date, and the least favorable characterization of service that is possible.

1. Administrative separation proceedings may be initiated at any time during a member's enlistment. If the member waives his/her right to a board and CG PSC approves a discharge, or if the final action on a board report is approval of an involuntary separation, the member will generally be processed for separation within 30 days of CG PSC issuing the discharge orders. The least favorable discharge the respondent in an administrative separation board may receive is a discharge under Other Than Honorable conditions.

2. A commanding officer typically makes a determination of ineligibility for reenlistment approximately six months prior to the expiration of a member's enlistment, coinciding with or any time subsequent to the initial pre-discharge interview (see MILSEP Articles 1.B.4.b. and 1.B.5.a.). If the member waives his/her right to a board, or if the final action on a board report is the denial of reenlistment, CG PSC will issue discharge orders and the member will generally be processed for separation upon the expiration of his/her enlistment or any extension of the enlistment that was approved to allow for the completion of the administrative board process. The reenlistment board respondent typically is separated with an Honorable discharge, although a General discharge is possible if warranted.

B. A convening authority should rarely be faced with the question of which administrative action – involuntary separation or ineligibility for reenlistment – to pursue, and then probably only when conduct or performance issues come to a head at about the same time that a member is due for an initial pre-discharge interview.

1. Involuntary discharge action is appropriate when the convening authority determines that a basis for separation exists, the enlisted member's conduct and/or performance warrant separation, and the member should be discharged as soon as possible. The evidence presented during an administrative separation board may include documents not included in the member's Personnel Data Record, such as law enforcement reports, court records, investigations, letters of indebtedness, etc.

2. Determining that a member is ineligible to reenlist is appropriate when the member's overall performance and conduct during the current period of service, and potential for continued productive service, lead to the conclusion that he/she should not be allowed to reenlist (see EAEA Article 1.A.5.c.). Some examples of situations that may result in a determination that a member is ineligible to reenlist include:

   a. The member is deemed to be a poor risk due to indebtedness, non-support of dependents, or personal problems as described in MILSEP Article 1.B.4.a.

b. The member is the proverbial "administrative burden" who has repeatedly been placed on probation for various reasons (albeit perhaps successfully completing probation each time), or who has a history of multiple NJPs and/or unauthorized absences but not of the frequency or duration to satisfy the definition of a pattern of misconduct (see MILSEP Article 1.B.17.b.(2)).

c. The member's rating knowledge and/or performance is not commensurate with his or her years of military and specialty service and pay grade.

C. If the member is otherwise a good shipmate, can work effectively in his/her assigned duties without having to be temporarily administratively-assigned to another unit, and the command can function normally despite the administrative requirements imposed by the member's performance or conduct for the remainder of his/her enlistment, then action to initiate reenlistment board proceedings may be more appropriate than administrative separation proceedings.

D. The failure of a member to advance in rate in a timely manner does not by itself make the member a candidate for either an administrative separation board or a reenlistment board.

IV. Convening an Administrative Board and Facilitating the Board's Hearing.

A. Selection of board appointees.

1. Board members – Article 3.A. of this Manual discusses board composition and the duties of board members. In soliciting candidates for appointment to an administrative board, convening authorities should:

a. Recognize that many officers and senior enlisted personnel chosen to serve on a board controlled by this Manual will not have served on such a board in the past, and may not again during the remainder of their careers. Therefore, previous board membership is desirable, but so too is broadening the pool of leaders who have had the opportunity to gain this experience.

b. Ensure prospective board members have no direct knowledge of matters that will be the subject of the hearing. This may necessitate the appointment of members from outside of the respondent's and even the convening authority's command. Regardless, expect that board members will not be keenly aware of the impact that the respondent's conduct or performance has had on the command. Therefore, especially in complex cases, it may be advisable to appoint members with command cadre, department head, leading CPO, or other leadership experience from which they can appreciate the perspective of the command and the greater interests of the Coast Guard.

c. Understand that the board remains convened until either final action is taken by CG PSC or the proceedings are terminated as authorized (see Article 7.D. of this Manual). Prospective board members who are nearing retirement, end of service, or transfer are not good candidates if they may not be available to complete the known and potential obligations of the board.

d. Consider the pros and cons of appointing board members who share the same community (i.e., afloat, aviation, marine safety, etc.) and/or rating with the respondent, as well as the pros and cons of having community and rating diversity on the board.

2. Reporter – Article 3.D. of this Manual describes the duties of the reporter. In appointing a reporter, convening authorities should consider that:

a. The board is required to complete the summarized hearing record, which includes in its exhibits the board-prepared summaries of the testimony of all witnesses, prior to beginning deliberations. The board's report is then finalized during deliberations. The accuracy and efficiency with which these administrative requirements of the board are fulfilled are critical to the board being able to complete the hearing and submit its report in a timely manner. The appointed reporter should have the requisite experience and skills to ably assist the board with its responsibilities.

b. The board president may direct the reporter to be present during the board's deliberations to help prepare the report. As such, the reporter will be privy to even more private or closed discussions than he/she might during the hearing. There must be no reason to question the integrity of the appointed reporter.

B. **Command involvement.**

1. It is likely that prior to deciding to initiate administrative action, multiple layers of the command's leadership were engaged in counseling the respondent, guiding him/her through probation, treatment, or other measures as necessary, and documenting the performance, conduct, and results of the command's efforts. Presumably, then, there should be a united front or at least common understanding within the wardroom and CPO mess that administrative action was the proper course of action. While the convening authority will not normally be a witness at the hearing (see Article 6.D.8.a. of this Manual), it would not be surprising for a respondent to call his/her division chief and/or division officer as a witness. It is acceptable and expected that a witness may offer a positive character statement, but being able to describe the events that led to the board action and support the action as being in the best interests of the Service will help dispel any notion that the command was biased against the respondent.

2. Convening authorities should recognize that a respondent will not call anyone as a witness who could possibly discredit the respondent. Consequently, the board will only hear favorable testimony from the respondent's witnesses. While solid administrative work reflected in Personnel Data Record documentation is essential, working with the recorder to establish a pool of witnesses the recorder may call is advisable. The service record should establish that there is a basis for administrative action, and testimony should reinforce that the administrative action is in the best interests of the Service.

C. **Hearing logistics.**

1. In accordance with Article 4.B.1. of this Manual, the convening authority is responsible for making the logistical arrangements for the hearing. It is in the mutual best interests of the Coast Guard, the respondent, and the respondent's permanent and, if applicable, temporary commands to process administrative board actions and determine the final outcome of each case in a timely and efficient manner. The up-front investment in resources – space, equipment, and personnel – will pay dividends in the time needed to complete the process.

   a. Identify hearing space that is appropriate in size and privacy for the proceedings. Administrative board hearings are ordinarily closed and are not open to the crew, unlike NJP proceedings which may be, because they do not have general deterrence as a purpose (see Article 5.B.1. of this Manual). The board should have a separate private space to conduct its deliberations, if the hearing room is not used for deliberations. In addition, space away from the hearing room where witnesses can wait to be called to testify is needed.

   b. The board will require computer and printer access within the hearing room and, if used, the separate space for deliberations. This will facilitate the board's ability to complete the summarized hearing record during the hearing, and the board report during deliberations.

   c. See paragraph IV.A.2. above for information concerning appointing a reporter who is particularly responsible, proactive, and efficient.

2. As discussed in Article 5.B.3. of this Manual, the convening authority may direct that audio recording of the board's proceedings be performed, and that a verbatim transcript be produced from the recording. In deciding whether or not the proceedings should be recorded or a transcription produced, the convening authority should consider whether the added value, marginal in most instances, is worth the expense and potential delay to the process. However, audio recording and a verbatim transcript may be prudent for complex administrative boards or those expected to be particularly contentious.

Note: Only a transcription, and not the media on which the audio is recorded, may be attached to the record of the proceedings. This is due to the fact that disposition of the record after final action is taken may include entry into the respondent's EI-PDR (see Article 8.F.1.b. of this Manual), which also explains, among other reasons, why only printed images of physical evidence may be included in the record (see Article 6.B.1.a.(2) of this Manual) and video recording of the proceedings is prohibited (see Article 5.B.2.b. of this Manual).

V. Terminating the Proceedings and Endorsing the Board Report.

A. Termination.

1. Article 8.C.2. of this Manual discusses the board circumstances under which a convening authority shall not terminate (when administrative processing is required by Coast Guard policy and, for CPO incompetency reduction boards, when policy requires final action to be taken by CG PSC) and may terminate (when administrative processing is not required by Coast Guard policy and, consequently, initiating administrative action was discretionary on the convening authority's part) an administrative board process.

2. Convening an administrative board is a significant investment of Coast Guard resources. The convening authority is authorized to terminate certain board actions after the hearing has concluded and the board report has been determined by the SJA to be legally sufficient (see Article 8.B.4. of this Manual). Doing so is a prudent saving of resources in the review process and is in the Coast Guard's best interests. When permitted, a convening authority might decide to terminate a proceeding, for example, because:

   a. The board report concludes, and the convening authority concurs, that no basis exists to execute the administrative action that had been initiated.

   b. After reviewing the board report and the evidence presented during the hearing, the convening authority concludes that, whether or not a basis for the administrative action exists, executing the administrative action is no longer deemed to be warranted.

3. Even if the board report is persuasive, convening authorities should consider the following before terminating board proceedings, and should consult with the SJA and CG PSC as necessary.

a. MILSEP Article 1.B.22.c. severely limits and may preclude the Coast Guard (e.g., the convening authority's successor, or the respondent's future commanding officer) from pursuing administrative action at a later date when another board would consider substantially the same evidence. Therefore, convening authorities should resolve doubt in favor of forwarding a board report for review and final action by CG PSC, providing an endorsement with a recommended outcome to possibly be included in the final action decision.

b. When a convening authority is inclined to terminate the board proceedings, but believes that continued employment (i.e., retention, reenlistment, not unqualified due to incompetence) should be accompanied by certain conditions, such as probation, forward the board report for review and final action by CG PSC. CG PSC can approve, but suspend on probation the execution of, the administrative action under specific terms and conditions that, if violated by the respondent, would automatically vacate the suspended action without the need to convene a new board and without the risk of double jeopardy. With the exception of a basis of alcohol abuse, for which conditions relative to abstaining from the consumption of alcohol can apply to the remainder of a respondent's career, the duration of probation is limited to the balance of the respondent's current enlistment (see MILSEP Article 1.B.24.a.); the enlistment could be extended to accommodate probation, but the respondent may not reenlist during probation. Consult with CG PSC to discuss the viability of possible conditions, and include an appropriate recommendation in your endorsement of the board report.

4. If a convening authority is persuaded by the board report that executing the administrative action is no longer warranted, but he/she is not authorized to terminate the board proceedings, the convening authority should, similar to the discussion in paragraph V.A.3. above, consult with the SJA and CG PSC in formulating an appropriate endorsement that may include a recommendation for a final action decision that is favorable to the respondent, with or without conditions.

B. **Endorsement.**

1. Administrative actions are inherently adversarial. In some cases more than others, a convening authority may have an emotional attachment to the outcome of the board process due to his or her background of involvement in dealing with the respondent's conduct and performance issues, and perhaps due to the effort and sheer volume of administrative documentation that was necessary. While understandable, convening authorities, nevertheless, are encouraged to avoid having an endorsement appear overly emotional and give the impression that he or she "has it out for" the respondent.

2. Recognize that the board might not recommend the same outcome that the convening authority was seeking. This could result from a different, yet collective, perspective of the evidence including witness testimony, some of which the convening authority had not previously had the opportunity to consider. The board's recommendation may also have been influenced by factors discussed above such as that the board members have not personally been impacted the way the command has by the respondent's conduct and performance, may not have experience dealing with employment decisions in significant leadership positions and hence may be less inclined to recommend adverse action, and/or may have been persuaded by the testimony (all favorable) of many respondent witnesses. When this occurs, it is advisable for the convening authority, in endorsing the board's report, to acknowledge the board's dedicated work and consideration of the issues, and then succinctly state the convening authority's argument for a particular outcome.

3. Just as CG PSC endeavors to fully appreciate the perspective of the convening authority, the convening authority should consider CG PSC's responsibility in consistently enforcing Service policy and should attempt to craft the endorsement accordingly. In doing so, statements that may be construed as inconsistent should be avoided.

    a. Do not express disagreement with Service policy. For example, it should not be obvious that administrative separation processing due to the respondent receiving a second alcohol incident was initiated only because it was required by policy, and you were going to recommend retention regardless of what recommendations the board made. This could be overt in the endorsement, or more subtle such as when a board report includes testimony from a senior command representative stating that the member should be retained. The presumption is that administrative action was initiated because the convening authority believed that it was warranted and was in the best interests of the Coast Guard. If the convening authority is now recommending an outcome favorable to the respondent, the endorsement should explain what evidence or circumstances caused the convening authority to reconsider his/her action.

    b. Do not contradict yourself or give the appearance that you are less than convinced that your recommended outcome is the correct result. For example, an endorsement to an administrative board report affirming that the respondent should be involuntarily separated, denied reenlistment, or reduced in rate for incompetence should not be accompanied by a caveat such as "or, at a minimum, should be transferred to another unit." This only serves to cast doubt on the original motivation for initiating the administrative action and could cause a reviewer to question the leadership within the respondent's chain of command.

c. Coast Guard policy is to be applied to its enlisted workforce equally, whether or not they are strong performers, which the vast majority are. Even the best performers have human failings and suffer conduct or performance lapses that dictate the imposition of administrative action. While there may be an inclination to grant certain latitude or special consideration to a strong performer, recognize that the vast majority of enlisted members will never place themselves in the position of being a respondent in an administrative board. Thus, it is the fact of being a respondent to an administrative board proceeding, not the fact of being a strong performer, that makes the member somewhat unique. The respondent's military record does inform decision-makers as to what administrative action, if any, is warranted, but the military record does not generally establish a mitigating circumstance or an exceptional situation leading to a more favorable decision for the respondent, regardless of the proposed basis for the action.

APPENDIX 2-2

SAMPLE NOTICE TO THE RESPONDENT OF THE INTENT TO TAKE ADMINISTRATIVE ACTION

The sample memo included in this appendix is for an Administrative Separation Board. The more significant differences between this sample and the corresponding memos for a Reenlistment Board and for a CPO Incompetency Reduction Board are mentioned below. A Word version and/or a fillable Adobe template of this memo, for each type of board controlled by this Manual, may be downloaded from the Personnel Services Division (PSC-psd) website: http://www.uscg.mil/psc/psd/fs/.

What is different for a Reenlistment Board:

- List of potential bases for administrative action is shorter.
- Other than honorable (OTH) characterization of service is not a potential outcome.

What is different for a CPO Incompetency Reduction Board:

- Applicable policy manual was added as a reference.
- Discussion of characterization of service was deleted as separation is not contemplated.

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U.S. Department of Homeland Security
United States Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

Convening Authority's Signature

From: **I.A. Officer, RANK**
Command Short Title
Convening Authority

To: **I.A. Member, GRADE/RATE, EMPLID**
Respondent

Subj: NOTICE TO RESPONDENT – INVOLUNTARY SEPARATION

Ref: (a) Military Separations, COMDTINST M1000.4 (series)
(b) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)
(c) Reserve Policy Manual, COMDTINST M1001.28 (series)

1. Notice of Involuntary Separation: I am initiating action to involuntarily separate you from the Coast Guard, pursuant to the provisions of references (a) and (b). I have identified the following Coast Guard policy or policies as potentially providing a basis for your discharge:

(*select all that apply*)

Unsatisfactory Performer [ref (a)]

_____ 1.B.9. Unsatisfactory Performer

Unsuitability [ref (a)]

_____ 1.B.15.b.(1) Inaptitude

_____ 1.B.15.b.(2) Personality Disorders

_____ 1.B.15.b.(3) Apathy, Defective Attitudes, Adjustment Disorders

_____ 1.B.15.b.(4) Unsanitary Habits

_____ 1.B.15.b.(5) Alcohol Abuse

_____ 1.B.15.b.(6) Financial Irresponsibility

Misconduct [ref (a)]

_____ 1.B.17.b.(1) Civilian or Foreign Conviction

_____ 1.B.17.b.(2) Pattern of Misconduct

_____ 1.B.17.b.(3) Commission of a Serious Offense

_____ 1.B.17.b.(4) Drugs

_____ 1.B.17.b.(5) Fraudulent Enlistment

_____ Other (identify)

2. Your Conduct/Performance of Duty: The conduct and/or performance that caused me to initiate this action are as follows:

Clearly explain the respondent's conduct and/or performance of duty that caused the convening authority to initiate involuntary administrative separation action. The conduct/performance of duty described should support the policy (or policies) cited in paragraph 1 as the basis (or bases) for separation. Give the dates and circumstances of events, facts, and incidents, including (if applicable) non-judicial punishment and courts-martial.

***Note: If any of the bases for discharge identified in paragraph 1 requires that the member be placed on probation, explain whether probation was implemented and the results of the probation.**

_____Continued on Supplemental Page (Appendix 2-3 of reference (b) or similar document)

3. Type of Discharge and Characterization of Service: If you are separated from the Coast Guard, the discharge authority, Commander, Coast Guard Personnel Service Center (CG PSC), will determine the appropriate type of discharge and characterization of service that you will receive – either an Honorable discharge (characterization of service as honorable), a General discharge (characterization of service as under honorable conditions), or a discharge under Other Than Honorable (OTH) conditions (characterization of service as under other than honorable conditions). I have reviewed Article 1.B.2. of reference (a) and your service record. My review indicates that the least favorable characterization of your service that may be approved is: (*select one*)

____Honorable ____Under honorable conditions ____Under other than honorable (OTH) conditions

No Recommendation at This Time: I am not recommending a characterization of your service at this time. I will wait until your administrative separation board, if you choose to go before one, is complete to review the summarized record of your hearing and the board's report. At that time, I may endorse the board's recommended characterization of service or I may recommend a different characterization of service.

Warning - Consequences of a General Discharge: CG PSC may approve an Honorable discharge (characterization of service as honorable) or a General discharge (characterization of service as under honorable conditions) *at his or her sole discretion*. If CG PSC approves a General discharge, you may be deprived of some rights and privileges available to honorably discharged veterans under federal or state law; as a result, you may encounter some prejudice in situations in which the characterization of your service may have a bearing.

Warning - Consequences of an OTH Discharge: CG PSC may approve a discharge under OTH conditions (characterization of your service as under other than honorable conditions) if the administrative separation board recommends such a discharge, or if you waive your opportunity to appear before an administrative separation board. If CG PSC approves an OTH discharge, you may be deprived of many or all rights as a veteran under both federal and state law; as a result, you should expect to encounter substantial prejudice in situations in which characterization of your service may have a bearing.

4. Your Rights: All of the rights you will be afforded during an administrative board proceeding are described in detail at Articles 1.C. and 1.K. of reference (b). My staff will ensure you have access to reference (b), and I encourage you to review your rights in detail.

I want to highlight several of those rights immediately so that you can make thoughtful decisions about what to do next. In the endorsement below, you must decide whether to consult with a lawyer and whether to submit a written statement.

I encourage you to exercise your right to consult with a lawyer. You may consult with a military lawyer at the Coast Guard's expense or with a civilian lawyer at your own expense. If you choose to consult with a military lawyer, I will arrange for you to speak to a Navy or Coast Guard judge advocate. If you choose to consult with a civilian lawyer at your own expense, you must make those arrangements on your own. If you decide to consult with a civilian attorney at your own expense, you are not entitled to also consult with a military lawyer at the Coast Guard's expense.

You may submit a written statement on your own behalf in which you may disagree with my intent to involuntarily separate you from the Coast Guard. Your written statement will be forwarded to the discharge authority, CG PSC, for consideration.

5. Acknowledge this Notice: You shall acknowledge receipt of this notice by completing the first endorsement below without delay.

6. Time Limits:

a. You have five calendar days from the date you receive this notice to consult with a civilian lawyer, if applicable, and to exercise your rights in enclosure (1).

b. If you elect to consult with a military lawyer, I will arrange for a consultation appointment, and the five calendar days to exercise your rights in enclosure (1) shall run from the date of that appointment.

c. *Warning* - Failure to exercise your rights within the time limits set out in Paragraphs 6.a. and 6.b. will constitute a waiver of your rights, and you will forfeit your right to present your case to an administrative separation board.

7. Matters of Importance to You: Whether you choose to consult with a lawyer or not, you will be required to decide whether to appear before an administrative separation board or to waive that right. You should consider the following when making your decision:

a. Administrative Separation Board: An administrative separation board consists of three Coast Guard members who will make findings regarding evidence presented at your hearing and make detailed recommendations about whether you should be allowed to continue to serve in the Coast Guard and how your service should be characterized if you are discharged. If you waive your right to go before a board, your waiver may be conditional or unconditional.

b. Your Representative at the Board: If you choose to appear before an administrative separation board, a military lawyer will be provided to you at the Coast Guard's expense to assist you in presenting your case. You may choose instead to be represented by a civilian lawyer that you hire at your own expense, but if you hire a civilian lawyer, you are not entitled to also be represented by a military lawyer at the Coast Guard's expense.

c. Unconditional Waiver: If you unconditionally waive your right to appear before a board, you will be processed for separation in accordance with the procedures established for Coast Guard members who are not entitled to a board.

d. Conditional Waiver: In accordance with Article 2.E.3.d. of reference (b), only CG PSC is authorized to approve a conditional board waiver. Any conditional waiver request you submit may be disapproved by me, the first flag officer in your chain of command, or CG PSC. If you submit a conditional board waiver that is disapproved, this administrative process will continue (see also "Waiving Your Rights" below).

(1) Conditional Waiver for Type of Discharge / Service Characterization: You may waive your right to appear before a board on the condition that you receive a certain type of discharge and characterization of service if you are discharged. If CG PSC approves your conditional waiver request under those conditions, you will receive the same or a more favorable characterization of service if you are administratively separated; you will not receive a less favorable characterization of service.

(2) Conditional Waiver for Voluntary Retirement: In accordance with Article 1.C.11.a.(2) of reference (a), if you have 18 or more years of creditable active service, or if you attain 18 years of creditable active service at any time during this administrative process, you may submit a request to voluntarily retire. For Reserve personnel, in accordance with Articles 8.M. and 8.R. of reference (c), if you have been notified by the Coast Guard Pay and Personnel Center (CG PPC) that you have completed 20 years of satisfactory federal service, you may submit a request to voluntarily retire. You may waive your right to appear before a board on the condition that you are permitted to voluntarily retire. Your request to voluntarily retire should be prepared in accordance with Article 1.C.11.a.(5) of reference (a), or in accordance with Article 8.R. of reference (c) for Reserve personnel, and should be attached to your exercise of rights, enclosure (1). If CG PSC approves your conditional waiver, your retirement request will be approved and retirement orders will be issued. If your conditional waiver request is disapproved, your right to elect to appear before a board will be restored, and no action will be taken on your request to voluntarily retire pending review of the board report. The voluntary retirement request will be included in the board report and will remain valid for CG PSC to consider when taking final action, unless you rescind the retirement request sooner.

Subj: NOTICE TO RESPONDENT – INVOLUNTARY SEPARATION 1910
dd Mmm yyyy

8. Waiving Your Rights: Consider your options carefully before you waive your right to appear before a board! You should re-read the discussion above about the consequences of receiving either a General discharge or an OTH discharge before you decide to waive any of your rights.

If, after considering the warnings above carefully, you decide to waive your right to appear before a board on the condition that you receive a specific type of discharge and characterization of service, or that you be permitted to voluntarily retire, and your request is denied, you will have five calendar days from when you receive notice of that denial to exercise or waive your right to appear before a board.

9. Privacy Act:

Authority: 5 U.S.C. 301; 10 U.S.C. 1169; 44 U.S.C. 3101; 49 C.F.R. 1.45(a)(1); Art 1.B., COMDTINST M1000.4(series).

Purpose: The information that will be solicited during the board's proceedings is intended principally to enable the Coast Guard to determine the desirability of retaining you in the Coast Guard, at your current rate if applicable, and the characterization of your service. In the course of the investigation, information also may be solicited that could give rise to a determination concerning disciplinary or punitive action.

Routine Uses: The information will be maintained as part of the Enlisted Personnel Record System, DHS/USCG-014-Military Pay and Personnel, which is maintained for use in formulating all Coast Guard personnel actions including, but not limited to, assignment, promotion, reenlistment, retirement, discharge, determination of entitlement to pay allowances, correction of records, and disciplinary actions. In this case, the use will be to determine your eligibility to remain in the Coast Guard, at your current rate if applicable. Data is also provided to the Department of Veterans Affairs for determination of an individual's eligibility for benefits administered by that agency and to medical facilities maintained by the Department of Health and Human Services in conjunction with medical treatment afforded an individual. These are not the only possible uses listed under DHS/USCG-014 but they are the most common.

Disclosure is Voluntary: You are advised that the final determination will be based on all the evidence in the investigative record, which includes evidence you provide. Your election not to provide information could possibly prevent the investigation from obtaining evidence that may be needed to support a determination in your favor, and thus result in a determination adverse to you.

#

Encl: (1) Exercise of Rights Memorandum

Copy:

1910
dd Mmm yyyy

FIRST ENDORSEMENT on _____**unit name**____memo 1910 of **date on notice to respondent**

From: **I.A. Member, GRADE/RATE, EMPLID**
Respondent

Respondent's Signature

To: **Command Short Title**
Convening Authority

Subj: INVOLUNTARY SEPARATION

1. Acknowledgement: (*initial all that apply*)

_____ I have received and reviewed your memo 1910, Notice to Respondent - Involuntary Separation, dated **dd Mmm yyyy,** to which this endorsement applies.

_____ I have read and understand the information contained in your memo 1910, Notice to Respondent - Involuntary Separation, dated **dd Mmm yyyy**. I make the elections below with the understanding that if CG PSC approves the recommendation for an administrative discharge, CG PSC will also determine the type of discharge to be issued to me - Honorable, General, or under Other Than Honorable (OTH) conditions.

_____ I understand that if a General discharge (characterization of service as under honorable conditions) is issued to me, I may be deprived of some rights and privileges available to honorably discharged veterans under federal or state law, and that I may encounter some prejudice in situations in which the characterization of service may have a bearing. I further understand that if a discharge under Other Than Honorable conditions is issued to me, such discharge may deprive me of many or all of my rights as a veteran under both federal and state law, and that I may expect to encounter substantial prejudice in situations in which characterization of service may have a bearing.

2. Election of Counsel About Decision to Request Administrative Board: (*initial one*)

_____ I **want** to consult with a military lawyer.

_____ I **waive my right** to consult with a military lawyer because I **will consult with a civilian lawyer** on this matter at my own expense.

_____ I **waive my right** to consult with a military or civilian lawyer and request the opportunity to exercise my rights to request or waive a board at this time.

3. Right to Provide a Written Statement: (*initial one; if electing the first option, also indicate the number of pages attached*)

_____ I **am** providing a written statement at this time, and I have attached __**#**__ pages to this endorsement.

_____ I **waive my right** to make a statement at this time with the option to submit a statement at another time.

#

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APPENDIX 2-3

SAMPLE ADMINISTRATIVE BOARD SUPPLEMENTAL PAGE

Fillable administrative board supplemental pages may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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U.S. Department of Homeland Security
United States Coast Guard

Commander / Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: **F. M. Last, RANK/RATE**
Role in Board Process

Originator's Signature

To: Record of the Proceedings

Subj: ADMINISTRATIVE BOARD SUPPLEMENTAL PAGE

Ref: (a) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)

1. In the Case of: **Respondent's F.M. Last, RATE**

2. This memo is prepared in accordance with reference (a) for the following reason: (*select one*)

   a. _____ Failure to acknowledge notice or to elect counsel (see Article 2.D.3.)

   b. _____ Failure to exercise (waiver of) right to appear before board (see Article 2.E.2.)

   c. _____ Requested board membership is not reasonably available (see Article 2.G.1.a.(2))

   d. _____ Denial of witness request (see Article 4.B.3.c.)

   e. _____ Examination of record by returning board member (see Article 5.B.6.c.) or new board member (see Article 5.B.6.d.)

   f. _____ Voir dire challenges of board members (see Article 5.F.4.)

   g. _____ Granting of objection to evidence (see Article 6.B.4.c.) or witness testimony (see Article 6.D.1.b.)

   h. _____ Waiver of right to object or comment on board results (see Article 7.C.5.)

   i. _____ Continuation of paragraph [**paragraph # fill-in**] of:

   [**identification of document fill-in**]

   j. _____ Other:

   [**cite reference and/or provide explanation fill-in**]

3. Comments/explanation for the record*:

*For all of the reasons except f. and g. listed in paragraph 2 above, if only one page is needed, begin and finish comments/explanation for the record on the next page; otherwise, begin here and finish on the next page. For reasons 2.f. and 2.g., use the last page of this file.

3. Comments/explanation for the record:

#

Copy: [**NOTE: "Respondent" only when supplemental page is a stand-alone pre-hearing document; "N/A" for all other uses.**]

3. Comments/explanation for the record*:

*For reason 2.f. or 2.g. above.

Select one:

_____ The following voting member of the board was challenged.

Name and Rank/Rate: _____

_____ An objection to evidence was granted.

_____ An objection to witness testimony was granted.

Basis for challenge/objection:

Final Decision:

Decision made by: **F.M. Last, RANK/RATE**
Role in Board Process

Decision Authority's Signature

#

APPENDIX 2-4

SAMPLE EXERCISE OF RIGHTS MEMORANDUM

The sample memo included in this appendix is for an Administrative Separation Board. The more significant differences between this sample and the corresponding memos for a Reenlistment Board and for a CPO Incompetency Reduction Board are mentioned below. A Word version and/or a fillable Adobe template of this memo, for each type of board controlled by this Manual, may be downloaded from the Personnel Services Division (PSC-psd) website: http://www.uscg.mil/psc/psd/fs/.

What is different for a CPO Incompetency Reduction Board:

- Applicable policy manual was added as a reference.
- Option of waiving board on condition of characterization of service was deleted as separation is not contemplated.

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U.S. Department of Homeland Security
United States Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: **I.A. Member, GRADE/RATE, EMPLID**
Respondent

Respondent's Signature

To: **Command Short Title**
Convening Authority

Subj: EXERCISE OF RIGHTS – INVOLUNTARY SEPARATION

Ref: (a) Your memo 1910 dated **date of notice of board action and member rights**
(b) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)
(c) Military Separations, COMDTINST M1000.4 (series)
(d) Reserve Policy Manual, COMDTINST M1001.28 (series)

1. Consultation with Counsel regarding reference (a): *(Initial and complete **only one**)*

_____ I **consulted** with a **military** lawyer named __**LAST NAME, First, MI., RANK, SERVICE**_ on **dd Mmm yyyy,** and I understand the rights I am about to exercise.

_____ I **consulted** with a **civilian** lawyer named __**NAME OF LAWYER**_____, on **dd Mmm yyyy**, and I understand the rights I am about to exercise.

_____ I **waived my right to consult** with a lawyer (documented in my endorsement to reference (a)), and I understand the rights I am about to exercise.

2. Statement: *(Initial and complete **only one**)*

_____ I **am submitting and have attached** my __**#**__ -page written statement to this memo.

_____ I **waive my right to submit** a written statement.

3. Administrative Board: *(Initial and complete **only one**)*

_____ I **want to appear** before an administrative board.

_____ I have read and understand the notice and warnings in reference (a). I understand my rights as they are established in reference (b), and I **waive unconditionally my right to appear** before an administrative board.

_____ I have read and understand the notice and warnings in reference (a). I understand my rights as they are established in reference (b), including Article 2.E.3.d. concerning conditional waivers, and I **waive** my right to appear before an administrative board **on condition** that if I am separated from the Coast Guard, the type of discharge and characterization of service I receive will be: [*select **only one***]

_____ **General** discharge (characterization of service as under honorable conditions) or more favorable.

_____ **Honorable** discharge (characterization of service as honorable).

_____ I have 18 or more years of creditable active service, and I am eligible to request retirement in accordance with Article 1.C.11.a.2.(a) of reference (c); or, I have completed 20 or more years of satisfactory federal service, and I am eligible to request retirement in accordance with Article 8.R. of reference (d). I have read and understand the notice and warnings in reference (a). I understand my rights as they are established in reference (b), including Article 2.E.3.d. concerning conditional waivers, and I **waive** my right to appear before an administrative board **on condition** that I am permitted to voluntarily retire. I have attached my retirement request to this memo, and I understand that if my conditional waiver request is disapproved, my retirement request will remain valid for consideration by CG PSC when reviewing the report of the administrative board, unless I sooner rescind the retirement request.

4. Representation: (*Initial **only one***)

_____ I **request a military lawyer** be detailed to represent me.

_____ I **waive** my right to be represented by a military lawyer because **I will hire a civilian lawyer** at my own expense.

_____ I **waive my right to be represented** by either a military or civilian lawyer.

_____**N/A**, above I waived unconditionally my right to appear before an administrative board. I **understand that I have no right** to further representation by a military lawyer.

5. Board Membership: (*Initial* ***all that apply, if any****)*

_____ I am a female, and I request that at least one member of the administrative board be female, if available.*

_____ I am a member of a minority group, and I request that at least one member of the administrative board belong to a minority group, if available.*

_____ **N/A**, above I waived unconditionally my right to appear before an administrative board.

* *For Your Information*: The convening authority may appoint any qualified member of the Coast Guard to your board even if you have requested that a female member or a minority group member be appointed to your board.

#

Encl: (1) Respondent's Written Statement
(2) Voluntary Retirement Request

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APPENDIX 2-5

SAMPLE MESSAGE NOTICE FOR CONVENING OF AN ADMINISTRATIVE BOARD

A Word version of the sample message notice for convening of an administrative board may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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SAMPLE MESSAGE NOTICE FOR CONVENING OF AN ADMINISTRATIVE BOARD

FM (Initiating Command)
TO (Servicing Legal Office)
INFO COMDT COGARD WASHINGTON DC//CG-0944/CG-094M//
COMCOGARD PSC ARLINGTON VA//PSD/EPM/(for a Reserve member, RPM)//
(First flag officer in member's chain-of-command)
(Initiating command's chain-of-command, as required by local authority)
BT
UNCLAS FOUO //N01910//
SUBJ: NOTICE OF CONVENING OF [ADMINISTRATIVE SEPARATION BOARD (ASB)] [REENLISTMENT BOARD (RB)] [CHIEF PETTY OFFICER INCOMPETENCY REDUCTION BOARD (CPOIRB)].
1. [AN ASB] [AN RB] [A CPOIRB] IS EXPECTED TO BE CONVENED AS FOLLOWS:

ALPHA	(EMPLID of member - EMPLID only; do not include any other form of identification.)
BRAVO	(Years and months of member's total active and inactive military service. Use active duty base date (ADBD) or pay entry base date (PEBD), as applicable, as the start date.)
CHARLIE	(Unit where administrative board was initiated.)
DELTA	(Member's permanent duty station and, if different, where member is temporarily assigned during administrative board proceedings.)
ECHO	(Date member notified of command intent to initiate administrative action, and date member exercised right to elect board hearing.)
FOXTROT	(Basis or bases for action - cite the specific articles of Military Separations, COMDTINST M1000.4 (series) or Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series) that the convening authority has determined form a basis for discharge or reduction, e.g., Unsuitability, MILSEP Article 1.B.15.b.(5), Alcohol Abuse; Misconduct, MILSEP Article 1.B.17.b.(3), Commission of a Serious Offense, etc.)
GOLF	(State whether member requested that military counsel be detailed for board proceedings.)
HOTEL	(Anticipated convening date of administrative board, if known.)
INDIA	(Convening authority's Servicing Legal Office.)
JULIET	(Statement as to whether any disciplinary action is pending.)
KILO	(Date member reported to current unit, anticipated rotation date, and expiration of enlistment date.)
LIMA	(Grade, name, and title of convening authority.)
MIKE	(Board president name and phone number, if known.)
NOVEMBER	(Convening authority's point of contact name and phone number.)
OSCAR	(Name of first flag officer or designee who will review the record of the proceedings.)

2. INTERNET RELEASE OF THIS MESSAGE IS NOT AUTHORIZED.
BT
NNNN

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APPENDIX 2-6

SAMPLE CONVENING ORDER

The sample memo included in this appendix is for an Administrative Separation Board. The more significant differences between this sample and the corresponding memos for a Reenlistment Board and for a CPO Incompetency Reduction Board are mentioned below. A Word version and/or a fillable Adobe template of this memo, for each type of board controlled by this Manual, may be downloaded from the Personnel Services Division (PSC-psd) website: http://www.uscg.mil/psc/psd/fs/.

What is different for a CPO Incompetency Reduction Board:

- Applicable policy manual was added as a reference.
- Option of waiving board on condition of characterization of service was deleted, as separation is not contemplated.
- Option of placing respondent on probation was deleted, as separation is not contemplated.

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U.S. Department of
Homeland Security

United States
Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

Convening Authority's Signature

From: **I. A. Officer, RANK**
Command Short Title
Convening Authority

To: **I. A. Officer, RANK**
Board President

Subj: CONVENING ORDER – INVOLUNTARY SEPARATION

Ref: (a) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)
(b) Military Separations, COMDTINST M1000.4 (series)

1. Appointment of Administrative Separation Board: You are designated as the board president for an administrative separation board convened under references (a) and (b). The other members of the board appointed by this convening order are:

a. **Last Name, First, MI, Rank, USCG(R)**.

b. **Last Name, First, MI, Rate, USCG(R)**.

See Article 3.A. of reference (a) for information about the board members' duties.

2. Purpose: The board shall conduct a hearing to gather relevant evidence, both in favor of and adverse to the following respondent:

Last Name, First, MI, Grade/Rate, USCG(R), EMPLID.

I am providing you, as enclosure (1), the notice I gave the respondent explaining the conduct and/or performance of duty that I believe may constitute a basis for the proposed administrative action.

Enclosure (2) is the respondent's exercise of rights related to this administrative proceeding; it contains information you need to know to prepare for your hearing.

3. *Warning: Except for reviewing enclosures (1) and (2) and Coast Guard policy on administrative boards contained in references (a) and (b), you shall refrain from examining or discussing any substantive matters about this case prior to the hearing unless required by your regular duties. In addition, you shall refrain from speculation and shall not form opinions about matters that may arise at the hearing.*

4. Date/Time: As board president, you determine the date and time of the board's hearing, which should be convened as soon as possible, provided that:

a. The hearing shall not begin sooner than 21 calendar days after the date of this convening order unless the respondent requests an earlier beginning date and you determine that an earlier beginning date is practical; and

b. The hearing shall not begin later than 45 calendar days from the date of this convening order unless the delay is approved by me.

c. You should contact the respondent (or respondent's counsel if he or she has elected to be represented by counsel), the recorder, and your fellow board members as soon as possible to identify the earliest available hearing date consistent with the requirements of this order and reference (a). Contact information for the respondent's counsel is identified in Paragraph 9 below.

5. Location: The hearing shall be conducted at the following location:

Location of hearing .

6. Notifying the Respondent: You shall notify the respondent of the date, time, and location of the hearing. See Article 4.C.1.a. of reference (a) for guidance on notifying a respondent about those matters along with other important facts about the hearing and a respondent's rights during and after the hearing.

Appendix 4-1 of reference (a) contains an example of the notice you must give the respondent. You may create your own notice following the example, or a fillable template of the notice can be downloaded from the CG PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

7. Recorder: The *recorder* for this administrative board is:

Last Name, First, MI, Rank, USCG(R) .

See Article 3.B. of reference (a) for information about the recorder's duties.

8. Reporter: The *reporter* for this administrative board is:

Last Name, First, MI, Rank or Grade/Rate, USCG(R) .

See Article 3.D. of reference (a) for information about the reporter's duties.

9. Respondent's Counsel: (*select one*)

_____ The respondent elected to be represented by the following lawyer:

Last Name, First, MI, (Rank, SERVICE *if applicable)* _____.

Unit Name (*or, if a civilian lawyer, the mailing address*):

_____

Telephone: _____

See Article 3.C. of reference (a) for information about the Counsel's responsibilities.

_____ The respondent *declined* and *waived* his or her right to be represented by a military or civilian lawyer.

10. Legal Advisor: (*select one*)

_____ The Staff Judge Advocate (SJA) has assigned the following Coast Guard lawyer to be the legal advisor to the board. You may request the legal advisor's presence at the hearing if you deem it necessary.

Last Name, First, MI, Rank, USCG(R) (*if applicable***)** _____.

Unit: _____

Telephone: _____

See Article 3.E.1. of reference (a) for information about the duties of a legal advisor assigned by the SJA.

_____ I have appointed the following Coast Guard lawyer to be the legal advisor as a non-voting member of the board. The legal advisor shall be present during the board proceedings and is a non-voting member of the board.

Last Name, First, MI, Rank, USCG(R)(*if applicable***)** _____.

Unit: _____

Telephone: _____

See Article 3.E.2. of reference (a) for information about the duties of a legal advisor appointed by the convening authority to be a non-voting member of the board.

Contact the Legal Advisor: You shall contact the legal advisor as soon as possible; the legal advisor shall provide guidance to you before the hearing on board procedures, and throughout the board proceedings as you deem appropriate.

11. Hearing:

a. Procedure/Rights: The hearing procedures shall be conducted in accordance with reference (a); the respondent's rights before the board are explained in Articles 1.C. and 1.K. of reference (a).

See Chapters 5 and 6 of reference (a) for guidance on how to conduct your hearing.

b. Witness Statements: Testimony of witnesses heard by the board shall be under oath or affirmation. Witness testimony shall be summarized and made a part of the hearing record in accordance with reference (a).

See Article 6.D.2. and Appendix 3-1 of reference (a) for information on how to summarize witness statements.

Appendix 6-2 of reference (a) is a sample witness testimony summary sheet. You may create your own witness testimony summary sheet, or a fillable template for a witness testimony summary sheet can be downloaded from the CG PSC-psd website: http://www.uscg.mil/psc/psd/fs.

c. Electronic Recording / Verbatim Transcript: Video recording of board proceedings is prohibited; audio recording may be used by the board to assist in fulfilling its documentation requirements.

(*select if applicable*)

You shall ensure that: _____ an audio recording of the board proceedings is performed.

_____ a verbatim transcript is produced and attached to the record.

See Articles 5.B.2. and 5.B.3. of reference (a).

d. If You Suspect Criminal Conduct: If, at any time during the proceedings, you become aware of the respondent's involvement in criminal activity, you shall halt the proceedings and advise the respondent of his or her right against self-incrimination, the right to make no statement regarding a charged or suspected offense, and the right to warnings regarding these matters prior to custodial interrogation as provided by Article 31, UCMJ. If, at any time during the proceedings, you become aware of any witness's involvement in criminal activity, see Article 1.C.5.k., Article 6.D.12, and Appendix 1-2 of reference (a).

e. Inquiry into Medical Records: If your hearing requires the use of medical records or other protected health information of the respondent or any other military member of the Coast Guard, you are authorized to receive and appropriately use the medical records or other protected health information as necessary to achieve the purposes of the board's investigation. This authorization is pursuant to 45 C.F.R. § 164.512(k)(1), as implemented by Coast Guard Notice USCG-2003-15026 (See 68 Fed. Reg. 81, 22408 (April 28, 2003)).

All board members are responsible for complying with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Privacy Act of 1974.

See Article 6.B.1.b. of reference (a) for information on how to comply with HIPAA and the Privacy Act.

f. Summarizing the Hearing: You shall prepare a summarized record of the hearing in accordance with Article 6.G. of reference (a).

Appendix 5-2 of reference (a) is a sample summarized hearing record. You may create your own summarized hearing record following the example, or, a fillable template of a summarized record can be downloaded from the CG PSC-psd website: http://www.uscg.mil/psc/psd/fs.

12. Board Report: The board shall prepare a report and submit it in accordance with Chapters 7 and 8 of reference (a).

Appendix 7-1 of reference (a) contains an example of a board report. You may create your own board report following the example, or, a fillable template of a board report can be downloaded from the CG PSC-psd website: http://www.uscg.mil/psc/psd/fs.

a. You shall provide the following information in the board report:

(1) Findings of Fact: The board shall render findings of fact that are proved by a preponderance of the evidence presented and considered at the hearing. See Article 7.B.6.c. of reference (a) for information about writing findings of fact.

(2) Opinions: The board shall render opinions based on its findings of fact and the evidence presented and considered at the hearing. See Article 7.B.6.d. of reference (a) for information about developing opinions.

(3) Bases for Separation: The board shall identify any bases for separating the respondent that are authorized by reference (b) and are proved by a preponderance of the evidence presented and considered at the hearing;

(4) Retain/Separate: The board shall recommend either that the respondent be retained in or separated from the Coast Guard;

(5) Service Characterization and Type of Discharge: The board shall recommend the appropriate characterization of the respondent's service and the corresponding type of discharge the respondent should receive, as required by Article 1.B.2. of reference (b) and Article 1.G.1.c. of reference (a) if CG PSC determines that the respondent should be administratively separated;

(6) Probation: The board shall recommend whether the respondent should be placed on probation instead of being involuntarily separated immediately if CG PSC determines that the respondent should be administratively separated.

(7) Voluntary Retirement: If the respondent has 18 or more years of creditable active service or 20 or more years of satisfactory federal service, the board shall recommend whether he or she should be permitted to voluntarily retire instead of being involuntarily separated if CG PSC determines that the member should be administratively separated.

b. Time Goal for the Board Report: Whereas you should take as much time as is necessary to complete the hearing, the board report shall be completed within 1-3 calendar days of the conclusion of the hearing. Therefore, after the hearing is closed, you should begin deliberations and the writing of the board report. In accordance with reference (a), the board report shall be completed before you resume your normal duties. If you are unable to complete your board report within **three calendar days** of the date the hearing concludes, you shall promptly report the reasons to me and include an explanation of the delay in the report of the proceedings of the board. See Articles 1.I.2. and 3.A.2. of reference (a).

13. Policy and Deviations: Refer to references (a) and (b) for policy and guidance. Any authorized deviations from the requirements of these references shall be identified in the Board Report.

#

Encl: (1) Notice of intent to take administrative action – w/ respondent's acknowledgement and initial elections
(2) Respondent's Exercise of Rights memorandum dated **dd Mmm yyyy**

Copy: [**Respondent**]
[**Board Member**]
[**Board Member**]
[**Recorder**]

APPENDIX 3-1

ADVICE TO BOARD MEMBERS

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ADVICE TO BOARD MEMBERS

REFERENCES:

(a) Military Separations, COMDTINST M1000.4 (series)
(b) Reserve Policy Manual, COMDTINST M1001.28 (series)
(c) Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
(d) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(e) Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)
(f) Coast Guard Medical Manual, COMDTINST M6000.1 (series)

I. General Advice.

A. It is important to remember that the board hearing process is an administrative process, put in place to provide Coast Guard members with the opportunity to present information for consideration on their behalf when there is administrative cause to separate, reduce in rate, or deny reenlistment. It is not a court of law, nor is it intended to be run that way, despite the general use of terminology and procedures similar to legal proceedings. The Board is simply charged with listening to the information presented, eliciting additional information to help you ascertain the relevant facts and formulate informed opinions, and then making recommendations to the Convening Authority and others who will review and take final action on the Board Report.

B. The Board should become familiar with this Manual and the other references as they may be applicable to the Respondent's case.

II. How to Prepare for the Hearing.

A. Board President.

1. The Board President is the senior Coast Guard member detailed to an administrative board. The officer appointed to be the Board President has primary responsibility for ensuring the timely completion of the hearing, and the timely and thorough production of the Board Report, which includes the Summarized Hearing Record.

   Warning: Scheduling the hearing is one of the most complicated elements of the hearing process. The Board President should contact Respondent's counsel, the Recorder, and the other Board Members as soon as possible to schedule the hearing for the earliest date available to all participants and consistent with the rights of the Respondent. See Article 1.I. of this Manual for a discussion about the time goals for the board.

Hint: Hearings convened earlier in the week are more likely to avoid carrying over into weekends.

2. The Board President is responsible for deciding all matters related to the routine business of the Board – including processing all pre-hearing matters, directing the procedures of the hearing and the Board, scheduling hearing sessions, and ruling on motions and objections. *(See Article 4.C. of this Manual for information about the Board President's responsibilities, and Article 3.E.2. of this Manual for information about how rulings on evidence and procedural duties are handled when a Legal Advisor is appointed by the Convening Authority as a non-voting member of the Board.)*

3. To prepare for these responsibilities, the Board President should, in particular:

   a. Carefully review Article 6.B. of this Manual, Introducing Documents and Physical Evidence into the Record, for details on the general rules and guidance for including submitted items in the Summarized Hearing Record. Here again, it is important to remember that this is not a court of law, and the Board President should use his or her best judgment when deciding any requests for the Board to not consider any item of evidence. The Board President shall explain in writing, to be made a part of the record, any reason(s) for approving an objection to evidence *(see Article 6.B.4. of this Manual)*. The Board President will not irrevocably harm the record by deciding that an item will not be considered by the Board, as the item shall still be made a part of the record to ensure any future reviewer has access to it if, in fact, he or she finds it relevant.

   b. Review Article 6.D.2. of this Manual and Section IV below for information about the process of summarizing the testimony of witnesses who appear at the hearing. Summarizing witness testimony during the hearing, and ensuring that each witness's summarized testimony is authenticated before the witness is dismissed, is critical to the timely completion of the Summarized Hearing Record and to the Board's ensuing deliberations.

   c. Review Article 7.B.6. of this Manual and Section V below for information about completing the Board Report. Depending on the type of administrative board, there are certain questions required to be answered by the Board in its findings of fact, opinions, and recommendations. It is important for the Board to identify, for each finding of fact, opinion, and recommendation, all of the exhibits, findings of fact, and/or opinions that support them.

4. The Board President should become acquainted with the personnel resources allocated to the hearing and their responsibilities. These resources include two additional Board Members, the Recorder, the Reporter, and the Legal Advisor. *(More information about the responsibilities of these personnel is found in this Manual in Article 4.D. for Board Members, Articles 3.B. and 4.E. for the Recorder, Article 3.D. for the Reporter, and Articles 2.G.1.e. and 3.E. for the Legal Advisor.)*

   a. The Board President shall consult with the Legal Advisor before the hearing concerning procedures for the hearing, and may consult with the Legal Advisor during the proceedings. *(See Article 4.C.2. of this Manual.)*

   b. The Board President should develop a plan and assign responsibilities for accomplishing the following tasks before and during the hearing.

      (i) Producing a tailored script for use during the hearing, with copies for each participant named in the Convening Order.
      (Appendix 5-1 of this Manual is the Board Guide (Script), organized in the same phases and steps as the hearing process. A fillable Board Guide template may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/*.)*

      (ii) Securing the attendance of witnesses before the hearing.
      (See Articles 4.B.3., 4.E.3., and 4.G.3. of this Manual.)

      (iii) Keeping track of start and stop times and the attendance of required participants during the hearing.

      (iv) Managing witnesses during the hearing.

      (v) Summarizing witness testimony during the hearing.

      (vi) Assisting the Board in completing the Summarized Hearing Record and the Board Report.
      (Among the Reporter's duties identified in Article 3.D.1. of this Manual.)

   c. The Board President should notify the Convening Authority immediately if, at any time before or during the hearing, it appears that additional resources are needed.

5. Albeit that the Convening Authority is responsible for the logistics necessary to support the hearing *(see Article 4.B.1. of this Manual)*, the Board President should visit the designated hearing site prior to the hearing to be assured that the Board's needs will be met and that the space is conducive to the proceedings. If the site will not support the hearing, the Board President should notify the Convening Authority immediately. Most hearings need the following capabilities:

a. Computer equipment and Internet connectivity, with dedicated printer.

b. Telephone/video teleconference equipment and connectivity appropriate for remote witness testimony.

c. Equipment for audio recording of the proceedings if required by the Convening Authority or desired by the Board.

d. Separate, closed (private) space for Board deliberations, unless the Board will use the hearing room for private deliberations. A separate space for deliberations would require the same computer, connectivity, and printer needs listed above.

e. Separate spaces to secure witnesses away from the hearing, and away from each other.

f. Male and female head facilities.

B. **All Board Members.**

1. The primary duty of all Board Members is explained in Article 3.A.2. of this Manual. The key to fulfilling the Board's requirements for timeliness is familiarity with this Manual. In particular, the Board's preparation should focus on the discussion of the Board's Guiding Principles (Article 1.E.) and the Board's Scope of Inquiry (Article 1.F.), keeping in mind that the Board is charged with using its best judgment to ensure the procedures detailed in this Manual and the rights of the Respondent, as identified in the referenced materials, are maintained. Should a significant point of law be raised, the Board President should consult with the Legal Advisor, and when there are administrative issues, the Board President may contact the Convening Authority.

2. Review the entire Board Guide (Script) that is Appendix 5-1 of this Manual, the Sample Summarized Hearing Record (Appendix 5-2), and the Sample Board Report (Appendix 7-1) in advance. *(Fillable templates of these appendices may be downloaded from the PSC-psd website:* http://www.uscg.mil/psc/psd/fs/*.)* Doing so will not only prepare the Board for the day of the hearing, but it will help solidify an understanding of the entire process. The script serves as a step-by-step guide for ensuring that the rights of the Respondent, the requirements of the Board, and the responsibilities of the reviewing authorities are upheld.

3. Board Members may resume their regular duties upon the conclusion of deliberations, after which a copy of the completed Board Report has been provided to the Respondent in accordance with Article 7.C. of this Manual. However, you should recognize that the Board remains convened until either the board proceedings are terminated by the Convening Authority or the Coast Guard takes final action on the case *(see Article 7.D. of this Manual)*.

a. To complete its report in this timely manner, the Board may need to work late or extend its work over multiple days. Board Members should prepare themselves and their supervisors for this possibility. If a Board Member senses that his or her time to participate on the day(s) of the hearing may be restricted, or that a supervisor is reluctant to accept the time requirements, talk with the Board President immediately. A Board Member who is unable to complete his or her responsibilities in a timely fashion, for any reason, can prevent the Respondent from the swift response he or she deserves from the Coast Guard. In such a circumstance, the Convening Authority might want to assign a substitute member.

4. Prior to the start of the hearing, discuss the Board's plan for completing the hearing, the Summarized Hearing Record, and the Board Report. The templates available for download from the PSC-psd website are designed to follow the script and ensure that all elements of the hearing are completed and documented. The intent is for the Board, with the assistance of the assigned Reporter, to complete the Summarized Hearing Record while the hearing is in progress and the Board Report during the Board's deliberations.

a. It is unlikely, however, that witness testimony can be appropriately summarized in real time. Therefore, a specific consideration that the Board should discuss before starting the hearing is the how-and-when of the completion of each summary of witness testimony. If it will assist the Board in summarizing witness testimony or in the preparation of other required documentation, equipment to record and review the audio of the proceedings may be utilized.

(See Section IV below for advice on how to summarize a testimony. Appendix 6-2 of this Manual is a Sample Witness Testimony Summary Memorandum. A fillable template suitable for all boards controlled by this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/. *See Article 5.B.3. of this Manual for information on the recording of Board proceedings.)*

III. During the Hearing.

A. The Summarized Hearing Record serves to capture the proceedings and is intended to coordinate with the hearing script to allow the Board to quickly record each step in the process. Each accepted witness testimony must be summarized and each piece of evidence recorded.

B. In the Board Report, the Board must identify the facts of the case and indicate the source(s) that provided the facts for the Board. A simple way to track these facts during the hearing is for each Board Member to have a notepad with two columns, one with testimony that is being offered and a second with other evidence offered in the hearing. This way it is easy for the Board Members to match/compare witness testimony with evidence. Another method is for each Board Member to create a list of notes of each fact he or she identifies and notes connecting the originating and/or supporting pieces of evidence or witness testimony.

C. Whenever necessary in the judgment of the Board, the Board President may direct the Recorder to seek more evidence, call additional witnesses, and/or pursue new lines of questioning.

IV. Summarizing Testimony.

A. The Witness Testimony Summary Memorandum must accurately capture the content of the testimony with sufficient detail to enable the other reviewers of the hearing record to understand the facts and opinions presented by the witness. The summary should not be thought of as a shortened transcript, but as a holistic representation of the witness's contributions to the Board's decision-making process.

B. When summarizing testimony, it may help to group the information provided by the witness into five elements: (1) introduction and personal background, (2) scene description, (3) action description, (4) exhibits highlighted or repeated, and (5) damage description (if applicable). Grouping details into these elements can help reduce confusion or frustration when the questioning and/or witness responses bounce around in time or between questioners.

C. Example summarization:

The following testimony transcript and summary are intended to provide an example of an accurate summary of witness testimony.

RECORDER QUESTION: Please state your name, rank/rate, duty station, and branch of service for the record.

WITNESS ANSWER: I'm BM2 Bill Bungey, from Coast Guard Cutter TAHOMA. Oh yeah, I'm in the Coast Guard.

RECORDER QUESTION: How do you know the Respondent, BM2 Jones?

WITNESS ANSWER: She was on TAHOMA with me before she transferred, I guess it was last year sometime.

RECORDER QUESTION: Have you ever been in a drinking situation with BM2 Jones?

WITNESS ANSWER: Yeah, she used to hang out with friends of mine, and so most port calls and weekends we were all usually together.

RECORDER QUESTION: Did she drink a lot?

WITNESS ANSWER: Yeah, she used to party pretty hard.

RECORDER QUESTION: What do you mean by that?

WITNESS ANSWER: I guess, um, yeah, she would drink a lot and get kind of crazy. She would do a lot of shots and almost try to, you know, out-drink the guys, so she'd usually start early and be one of the last people drinking at the end of the night.

RECORDER QUESTION: Okay, on the night of her accident, were you drinking with BM2 Jones?

WITNESS ANSWER: Yes.

RECORDER QUESTION: What time did you first see her that night?

WITNESS ANSWER: Around, 7:30. Wait, I mean 6:30.

RECORDER QUESTION: Okay, and what time was the last time you saw her that night?

WITNESS ANSWER: Umm, I'm not sure, maybe, sometime after midnight.

RECORDER QUESTION: And how many drinks do you think she had that night?

WITNESS ANSWER: I saw her with a cup in her hand most of the night, but I don't know. But, I saw her take 3 different shots of Southern Comfort.

RECORDER QUESTION: Would you say she was drunk?

WITNESS ANSWER: Yeah, she was acting kind of silly, and she tripped a couple of times.

RESPONDENT COUNSEL: Hello, I'm Mr. Brown. I have just a few questions. You are a BM2, is that correct?

WITNESS ANSWER: Yes.

RESPONDENT COUNSEL: When you worked on TAHOMA, you said you worked with BM2 Jones. Is that correct?

WITNESS ANSWER: Yes.

RESPONDENT COUNSEL: Were you in the same duty section in port?

WITNESS ANSWER: No.

RESPONDENT COUNSEL: Were you in the same duty section underway?

WITNESS ANSWER: No.

RESPONDENT COUNSEL: How many duty sections did TAHOMA use while in port? Both at home and on patrol?

WITNESS ANSWER: Three; we should have had four, but we were usually short on section leaders so we'd end up with these really huge duty sections.

RESPONDENT COUNSEL: So, in port, if you had duty on Monday, when would BM2 Jones have duty? Tuesday, Wednesday?

WITNESS ANSWER: Umm, it changed, but most of the time I relieved her, so, um, she'd have it on Wednesday I guess.

RESPONDENT COUNSEL: Okay, so, on Sunday night she would be on duty, Monday night you'd be on duty, then Tuesday night you'd both be off, right?

WITNESS ANSWER: Right, something like that.

RESPONDENT COUNSEL: Did you and your friends party every night of the week?

WITNESS ANSWER: No, usually just the weekends.

RESPONDENT COUNSEL: When you were in homeport, how many nights a month would you say that you and BM2 Jones were out drinking at the same place?

WITNESS ANSWER: Umm, well then, now that I think of it that way, maybe two or three.

RESPONDENT COUNSEL: On the night of the accident, were you drinking? Were you drunk?

WITNESS ANSWER: Yeah, I was drinking; I guess you could say I was drunk.

RESPONDENT COUNSEL: Can you say for sure when BM2 Jones left the party? Did you see her leave?

WITNESS ANSWER: I don't know; it was sometime after midnight. I don't remember seeing her leave specifically.

RECORDER QUESTION: I know it may be hard to remember, but can you try again to think about what time BM2 Jones left; was it just after midnight, or do you think it was much after midnight? Maybe, do you know when you left and can say it was shortly before that?

WITNESS ANSWER: Yeah, sorry, um, I think it was a few hours after midnight. Yeah, it was after 2 because I remember BM3 Andrews showing up and announcing it was 2. She left soon after that because the party broke up soon after that.

BOARD MEMBER QUESTION: Would you say that you are friends with BM2 Jones? What kind of social and working relationship did you have with her?

WITNESS ANSWER: I'd say we are, well were, friends. We worked well together and I liked her a lot.

BOARD MEMBER QUESTION: How would you characterize her work ethic; did she work hard, do her job, and act as a responsible Second Class Petty Officer?

WITNESS ANSWER: Yeah, I think she's a great Coastie; she worked damned hard and took care of the non-rates in her duty section; she was hard but fair, that's for sure. In fact, when people from my section switched with guys from her section, they'd come back and complain that BM2 Jones worked them from Muster to Taps.

BOARD PRESIDENT QUESTION: Do you think that BM2 Jones was a good leader and shipmate? Would you want to be stationed with her again?

WITNESS ANSWER: Yes, she's great; the Coast Guard would lose a great Petty Officer if she had to get out. I'd work with her any day and would trust her and follow her if she was my supervisor, which, knowing her, she will be one day.

BOARD PRESIDENT QUESTION: You saw BM2 Jones with a cup in her hand during the night; do you know what was in the cup? Did you see anyone pour anything into her cup that night?

WITNESS ANSWER: No, I don't know what was in the cup.

Example Summary:

BM2 Bill Bungey is stationed on CGC TAHOMA. He was stationed with BM2 Jones before her transfer. They worked together but were in separate duty sections. BM2 Bungey indicated that he partied/drank socially with BM2 Jones and their mutual friends, and he felt they were friends. He had a good working relationship with BM2 Jones. He said that she was a fair but tough leader who took care of her subordinates. BM2 Bungey thought highly of her as a peer and even potential leader, and indicated that the Coast Guard would "lose a great Petty Officer" if she was to leave the Coast Guard.

BM2 Bungey thought that BM2 Jones liked to party "pretty hard" and that she tended to drink heavily almost as if to out-drink the guys. However, given their duty schedules, their interaction off-duty was limited.

On the night of the accident, he reported being drunk at the end of the night, but remembers seeing BM2 Jones with a cup in her hand all night and said he saw her drink 3 shots of Southern Comfort. However, he could not say how much, or what, was in the cup. He said she was acting "silly and tripped a couple of times." He did not remember seeing her leave specifically but said that the party broke up around 0200 and everyone left.

V. Sample Findings of Fact, Opinions, and Recommendations of the Board.

A. The sample findings of fact, opinions, and recommendations that follow are unrelated to the example transcript and summarized witness testimony in Section IV above. They separately illustrate how a Board addresses in its recommendations all of the questions required to be answered (See Articles 1.G. and 7.B.6.g. of this Manual), in this example for an administrative separation board, and how each finding of fact, opinion, and recommendation identifies the exhibits, findings of fact, and/or opinions that support it.

1. The sample findings of fact, opinions, and recommendations should not be interpreted as the necessary outcome in a case involving a Respondent with two documented alcohol incidents. Rather, it is expected that a Board will consider Service policy and exercise its judgment in determining appropriate recommendations based on the evidence presented during the hearing.

2. In this example, the Board does not have to address whether the Respondent should be permitted to voluntarily retire because the Respondent does not have sufficient creditable active service to be eligible to request voluntary retirement (Finding of Fact 1). For the same set of findings of fact, however, the Board could formulate different opinions and recommend retention in the Coast Guard, with or without probation. A recommendation for probation shall include recommended terms and conditions for the probationary period (See Article 7.B.6.g.(1)iv. of this Manual for administrative separation boards and Article 7.B.6.g.(2)iv. for reenlistment boards).

B. Findings of Fact

1. Respondent, MKC A.B. Smith, has served in the United States Coast Guard for 15 years and 2 months. (Exhibit 1)

2. Respondent's most current enlistment in the Coast Guard began on 1 January 2012 and is for a period of six years. (Exhibit 2)

3. An alcohol incident is defined by the Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10. (Exhibit 3)

4. Enlisted members involved in two alcohol incidents will normally be processed for discharge from the Coast Guard in accordance with the MILSEP, COMDTINST M1000.4. (Exhibit 3)

5. Respondent received his first alcohol incident on 13 November 2004 after being involved in a fight at a bar while on liberty in Key West, Florida. (Exhibit 4)

6. Following this altercation, Respondent participated in Alcohol Screening in accordance with Art. 2.B.5. of the CGDAAP, COMDTINST M1000.10. The screening results indicated that Respondent was not alcohol abusive and recommended no further treatment. (Exhibits 4, 5, 6)

7. Respondent received his second alcohol incident on 2 January 2012 when he was arrested for driving under the influence (DUI) in Boston, MA. (Exhibit 7).

8. Respondent does not contest the factual basis for either alcohol incident. (Exhibit 20)

9. CDR Jones, Respondent's executive officer, testified that, in his opinion, Respondent "is one of the best Chiefs I have ever served with in over 16 years of commissioned service." (Exhibit 21)

10. Respondent also provided 6 character witness statements, which all detail Respondent's devotion to duty and, more specifically, Respondent's dedication to developing and training subordinates. (Exhibits 8-13)

11. Respondent's LES indicates that he has over 7 years of sea time. (Exhibit 14)

12. Respondent's Direct Access print-out, as well as his PDR, indicates he has numerous personal awards, including the Coast Guard Commendation Medal, three Coast Guard Achievement Medals, the Global War on Terrorism Expeditionary Medal, and two Commandant Letter of Commendation ribbons. (Exhibits 15, 16)

13. Respondent provided an unsworn statement to the Board, in which he indicated that he accepted responsibility for both alcohol incidents, but strongly desires to remain in the Coast Guard to finish his career. Respondent stated he has loved "every minute" of his service. Respondent asked the Board not to punish his family for his actions. (Exhibit 20)

C. Opinions

1. The basis for discharge has been met based on Respondent's two alcohol incidents. (Facts 4, 5, 7)

2. With the exception of his two alcohol incidents, Respondent consistently personified the Coast Guard Core Values of Honor, Respect, and Devotion to Duty. (Facts 9-12)

3. However, each alcohol incident brought significant discredit to the Coast Guard, due to the public nature of the acts and involvement of civilian law enforcement authorities. (Facts 5, 7)

4. Respondent was on notice after his first alcohol incident that his career would be over if he was involved in a second incident, yet decided to drive his vehicle after consuming alcohol. (Facts 6, 7)

5. It is the opinion of all of the Board members that it is paramount for the Coast Guard to demonstrate a commitment to maintaining high standards of excellence, maturity, and judgment by its members. Although the Board strongly believes that Respondent would continue to be an exceptional asset to any unit, if retained, the Board believes Respondent's retention would send the wrong message that such conduct is accepted in the Coast Guard as long as a member is a good performer and/or a senior rank/rate. (Facts 5-13)

D. Recommendations

Accordingly, this Board recommends that Respondent, MKC A.B. Smith, be separated from the Coast Guard for unsuitability due to alcohol abuse with an Honorable Discharge in accordance with Article 1.B.15. of the MILSEP, COMDTINST M1000.4. Placing MKC Smith on probation would be inconsistent with Service policy, and is not recommended. (Opinions 1-5)

APPENDIX 3-2

ADVICE TO RECORDERS AND COUNSEL

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ADVICE TO RECORDERS AND COUNSEL

REFERENCES:

(a) Military Separations, COMDTINST M1000.4 (series)
(b) Reserve Policy Manual, COMDTINST M1001.28 (series)
(c) Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
(d) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(e) Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)
(f) Coast Guard Medical Manual, COMDTINST M6000.1 (series)

I. Resources.

This Manual and references (a) – (f) are the primary resources for the recorder and the counsel for the respondent (or the respondent if not represented by counsel) to learn about policy and procedure for administrative boards.

II. Recorder's Responsibilities.

The recorder's primary duties are explained at Articles 3.B. and 4.E. of this Manual. Put simply, the recorder's job is to "inform" the board, and to "advise" the board.

A. **Informing the board.** The recorder informs the board by gathering evidence (documents and witnesses) that bears on the respondent's conduct and performance and then impartially presenting that evidence to the board. Assembling the evidence is done well before the hearing. The recorder should pay close attention to Article 4.H. of this Manual, which requires him or her to tell the respondent, at least 15 calendar days before the hearing in most cases, about the evidence he or she plans to use at the hearing.

The recorder presents the evidence he or she gathered to the board during the hearing. The procedures for presenting evidence are explained in Chapter 6 [Steps 6, 8, and 9] of this Manual. The recorder must present enough evidence to allow the board to make thorough, well-informed findings, opinions, and recommendations about all of the matters within its scope of inquiry. *(See Article 1.F. of this Manual for information about the board's scope of inquiry.)*

B. **Advising the board.** The recorder advises the board by explaining how the respondent's conduct and performance intersect with Coast Guard policy. The opening statement (Step 7 of the hearing process described in Chapter 6 of this Manual; also see Section V.E. below) and the closing argument (Step 10 of the hearing process; also see Section V.G. below) are two good opportunities for the recorder to advise the board. Although Steps 7 and 10 are optional, they should not be skipped very often, because they provide the recorder (and respondent's counsel) opportunities to put the respondent's conduct and performance into context and to explain how that conduct and performance is treated by Coast Guard policy.

C. **Collateral duties.** The recorder should be prepared to assist the board with ministerial duties such as marking evidence, ensuring the appearance of government witnesses, and providing guidance to the board's reporter. The recorder also may be directed to secure military witnesses requested by the respondent and approved by the convening authority. *(See Articles 4.B.3., 4.B.4., 4.E.3., and 4.G.3. of this Manual for information on securing and requesting witnesses.)*

III. Counsel for the Respondent's Responsibilities.

The duties of the respondent's counsel are explained at Article 3.C. of this Manual. Simply put, the respondent's counsel always represents the best interests of the respondent.

A. Counsel for the respondent's actions before the board are guided by the goals of the respondent and the professional judgment of the counsel. In general though, the respondent's counsel should be prepared to inform the board and then advise the board in much the same way the recorder does.

Respondent's counsel presents the respondent's case to the board and is presumed to act and speak for the respondent *(see Articles 1.C.5.a.(3), 3.C.3., and 4.G.1.b. of this Manual)*. Counsel for the respondent must follow the procedural rules for administrative boards set out in this Manual when they represent a Coast Guard member appearing before a board covered by the Manual. This applies even if respondent's counsel is not a member of the Coast Guard or one of the other armed forces.

Respondent's counsel should pay particular attention to Article 4.H. of this Manual, which requires him or her to tell the recorder, at least 15 calendar days before the hearing in most cases, about the evidence he or she plans to use at the hearing. Respondent's counsel also should see Article 4.G.1. of this Manual, which requires him or her to notify the convening authority and others as soon as he/she has been detailed (or retained) to represent the respondent.

IV. Board Preparation for Recorder and Respondent's Counsel.

Items A – G below are an illustrative but not exhaustive list of things both the recorder and respondent's counsel can do to prepare for a board.

A. **Education about process and policy.** Read the applicable directives (this Manual and typically most or all of references (a) – (f), but there may be others) to ensure the case meets all of the requirements for taking administrative action against the respondent.

Caution. If counsel for the respondent is not a Coast Guard member, he or she should keep an eye out for differences between Coast Guard and Department of Defense policy and procedure. For example, relying on Navy policy alone is not sufficient.

Caution. Familiarize yourself with the reporting requirements of the administrative board you have been detailed to appear before. Reporting requirements for administrative separation boards are different than the reporting requirements for reenlistment boards, and chief petty officer (CPO) incompetency reduction board reporting requirements are different than either of the other boards. Generally speaking, boards will be required to determine findings of fact, provide opinions, and make recommendations on up to five questions:

1. Is there a basis in Coast Guard policy to take administrative action against the respondent?

2. Should the Coast Guard take administrative action against the respondent?

3. If the Coast Guard takes action that results in the respondent's separation from the Service, how should the respondent's service be characterized?

4. Should the respondent be offered probation – if probation is allowed by policy – in lieu of immediate administrative action?

5. For a respondent with 18 or more years of creditable active service or 20 or more years of satisfactory federal service, should the respondent be permitted to voluntarily retire, if he/she requests, in lieu of immediate administrative action?

The recorder and respondent's counsel should prepare to present evidence, opinions, and advice on each of those matters, if the board is required to report on them. *(See Articles 1.G. and 7.B.6.g. of this Manual for information about the reporting requirements for each type of board.)*

B. **Familiarization with the facts.** Thoroughly familiarize yourself with the facts of the case and the customs and courtesies followed in the Coast Guard.

C. **Review the respondent's personnel records.** This will provide recorder and counsel with evidence to support a particular characterization of service if that is one of the reporting requirements of the board.

1. The respondent's official Personnel Data Record (PDR) is always relevant because it is necessary for the board to determine the appropriate characterization of service, which involves an evaluation of the record of the member's entire current enlistment or continuous period of service.

2. The recorder should obtain and review a "Blue Ribbon" copy of the respondent's service record (PDR) from the Military Records Branch at the Coast Guard Personnel Service Center, and provide a copy to the respondent even if not specifically requested.

3. Either counsel may seek documents or records from other sources (e.g., hospital records, police reports, character witness statements). If these are going to be entered into evidence however, they must be disclosed to the other party well in advance and some may require special handling *(See Article 4.H. of this Manual)*.

D. **Conduct interviews.** Interview the respondent's chain of supervisors, peers, and any potential witnesses on the merits of the case, in particular all of the witnesses expected to be called to testify at the board hearing.

E. **Make additional copies of exhibits – with care.** Deciding how many copies of documents and images of physical evidence to make is a matter of professional preference; the recorder and respondent's counsel may choose to make multiple copies of exhibits to expedite their review by the board or to facilitate handling of exhibits by witnesses *(See Article 6.B.3.b. of this Manual)*.

Caution. Remember to submit copies of pertinent parts of Coast Guard directives you intend to discuss at the hearing. Those copies should be attached to the record as exhibits in order to ensure a complete, summarized record of the hearing.

If recorder or respondent think it is necessary, they *may* make as many as six copies of every exhibit - one for their own use, one for each board member, one for opposing counsel, and one for the record. However, only one copy of each document, image, or excerpt of pertinent Coast Guard policy that is submitted to the board for consideration must be attached to the summarized record of the hearing. (Note: Not every document or image will necessarily be found relevant by the board president – *See Article 6.B.4. of this Manual*.)

Consult and, if in doubt, ask the board president. Recorder and respondent's counsel are encouraged to discuss and agree on the matter of how many copies of exhibits to make before the hearing begins. Recorder and counsel are encouraged to discuss the matter with the board president to determine whether he or she has a preference on the matter.

F. **Exchange information well in advance.** Recorder and counsel should provide evidence, witness lists, etc., as far in advance of the board as practical, but in all cases within the time period specified by Article 4.H. of this Manual. There should be no surprises on either side.

G. **Review documents.** Both the recorder and respondent's counsel must review all documents before the board convenes to evaluate whether the basis for administrative action exists and that there is adequate documentation to support that basis.

V. Board Procedure.

A. **Voir dire.** The procedures for conducting voir dire (Step 5 of the hearing process) are explained in Article 5.F. of this Manual. Voir dire happens at the end of the first phase ("Getting Started") of the hearing. Voir dire is an optional step for both the recorder and respondent's counsel and should be used judiciously. If either the recorder or respondent's counsel decides to voir dire the board members, their questions should be asked respectfully. If either counsel anticipates asking questions that are personal, then individual voir dire outside the presence of the other board members may be necessary. Depending on the answers, either counsel may wish to ask more detailed questions. If either counsel believes a challenge exists, that member may be questioned by the other counsel.

The following lists of standard, prospective voir dire questions are not intended to be exhaustive. Counsel should ask additional questions based on the specific facts and circumstances of the case.

1. **General questions by either side:**

a. Do any of the members know the respondent? If so, how?

b. Does any member know the facts surrounding the reason for this board? If so, how?

c. Has anyone discussed with you the facts related to the underlying reasons for calling this board before today?

d. Are any of the members in the chain of command for any other member, and, if so, do you write the evaluation or marks for that member?

e. Do any of you believe the convening authority desires a particular result today? If so, what is that?

f. Do the members understand that the rules of evidence in whole do not apply to these proceedings?

g. Has any member served in the past as a legal officer, recorder in an administrative action, or official conducting non-judicial punishment proceedings? If so, what was the outcome?

h. Have any members ever served on a previous administrative board? If so, what was it for, and what was the outcome?

i. Has any member ever served on a panel for a court-martial?

j. Has anyone already formulated an opinion or notional decision regarding today's case?

k. Do all of the members agree that you will hear all evidence from both sides before making a determination and recommendation?

l. Has any member received any direction on how to vote today?

m. Do you agree that your votes are equal and rank/rate plays no part in voting?

n. Do any of you feel pressured to vote in any way because of the rank/rate differences today?

o. Do each of you think you are a fair and impartial member?

2. **Questions by the recorder:**

a. Do the members understand that administrative boards are purely administrative in nature and are not criminal proceedings?

b. Do the members understand that an administrative board has a much lower burden of proof for showing why administrative action should be taken against a member than if the member was at a criminal proceeding?

c. Do all of the members understand the "preponderance of the evidence" standard? Do you understand that it is often described as being more likely than not that something did or did not happen, or as being more than 50% likely?

d. Do the members understand that their determination is only a recommendation, and the responsibility and authority for final determination and action lies with CG PSC? (Exception – In some cases, the convening authority may terminate the board proceedings in accordance with Article 8.C.2.b. of this Manual.)

e. Do you agree that the issuance of an Other Than Honorable (OTH) discharge corresponds to a characterization of the respondent's service and is not a punishment?

f. Do all of the members agree that they have a duty to uphold the honor and integrity of an Honorable discharge and its corresponding characterization of service?

g. Do the members agree that individuals who will not follow the expected Coast Guard values and standards of conduct and performance should be subject to administrative action, including separation from the Service or reduction in rate as appropriate?

h. Do you agree that an enlisted member's length of service does not obligate the Coast Guard to retain him or her if, for example, misconduct is found and separation is warranted?

i. Do you agree that even one poor decision can form the basis for separation?

j. Do you agree that, as a military organization with a law enforcement role, we hold our members to a high standard of honor, respect, and devotion to duty?

3. **Questions by the respondent's counsel:**

a. Do you understand that your recommendation is not bound to any decision made by the respondent's commanding officer at any prior NJP/mast?

b. Would you agree that voting for "no misconduct" is appropriate if supported by the evidence despite the fact that the respondent was punished at mast for the conduct?

c. Are you aware that an OTH discharge and characterization of service carries with it punitive consequences?

d. Do you understand that those consequences include that the respondent may lose virtually all Department of Veterans Affairs (VA) benefits and may stand to lose educational and employment opportunities because of this characterization of service?

e. Do the board members agree that administrative processing that may be required by Coast Guard policy does not necessarily mean mandatory separation? Do the members agree that, even if the basis for separation exists, you can still recommend retention in the service?

f. Do the board members understand that despite making a determination for separation, you still have the ability to recommend that the respondent receive a more favorable discharge – Honorable or General – than might have been argued for by the evidence?

g. Do you agree that the Coast Guard invests substantial resources in new accessions for training, equipment, and related resources and that an early separation is a loss on that investment?

h. Do the members agree that if the evidence supports retention, you will vote for retention?

i. Do the members agree that even though the recorder's burden of proof is lower than if we were at a court-martial, you must still be persuaded by a preponderance of the evidence that the basis exists, and that administrative action is warranted?

j. Do the members agree that not all adversarial proceedings initiated by a command are in the best interests of the Coast Guard?

B. **Challenging a board member**. See Article 5.F.4. of this Manual.

C. **Presenting exhibits**. All evidence and witness lists are presented at the beginning of the second phase ("Presenting the Case") of the hearing in Step 6. Both the recorder and counsel for the respondent should briefly go through their exhibits with the board by identifying what the exhibit is. Do not argue the exhibit at this point.

1. Suggest to the board that they take a break to review the evidence presented if the board president does not recess the hearing to do so on his/her own *(See Article 6.B.5. of this Manual)*. Emphasize, however, that the board should not discuss the exhibits or deliberate with each other during this time. It is simply an opportunity for them to familiarize themselves with the material before proceeding with opening statements and calling witnesses.

2. The recorder should include the following exhibits**:**

a. Extracts of relevant policy documents;

b. Relevant records from the respondent's PDR, health record, etc; and

c. Records of civilian or foreign convictions, if relevant to an underlying basis of misconduct.

3. Respondent's counsel should include the following exhibits, if applicable:

a. Extracts of relevant records from the respondent's PDR, health record, etc.;

b. Certificates, awards, letters of recognition, etc., from the command or community;

c. Character witness questionnaires or character witness statements;

d. The respondent's unsworn written statement (if not deferred to Step 9); and

e. Any other evidence in extenuation or mitigation, which can include photos, positive work e-mails, evidence of community involvement, etc.

D. **Handling objections.** Counsel for the respondent must raise objections to protect the respondent's rights at an administrative board, and may object to other procedural violations. However, the rules of evidence apply in only a very limited way. *(See Article 6.B.4. of this Manual for information about objections to evidence, and Appendix 6-1 for information about the rules of evidence for administrative boards.)*

E. **Opening statements**. Opening statements are made during the second phase ("Presenting the Case") of the hearing in Step 7 after all evidence and witness lists have been presented in Step 6. A good opening statement will give the board members an outline of the facts and policy that will be presented during the hearing. The opening statement also is a good place for the recorder and respondent's counsel to give the board members a heads-up about the recommendations they will have to make in the board report, and to provide a road map of how the evidence will help the board make those recommendations.

The board members are capable Coast Guard members who were selected by the convening authority for, among other reasons, their experience, judgment, and knowledge of Coast Guard rules *(See Article 3.A.3. of this Manual)*. What they do not know are the real-life aspects that go on behind the scenes of the paper investigation, such as the damage caused by the respondent's behavior to other shipmates or the efficiency of the unit, or the extent to which senior leadership gave or failed to give the respondent the help he or she needed. Both counsels may submit written copies of their opening statements, which will be attached to the record *(See Article 6.C.2. of this Manual)*.

1. **Come up with a theme**. The opening statement can serve as an outline of what the board will hear from you and see in the exhibits. Try to think of a one-sentence catchphrase or "sound bite" that will stick with the members and encompasses the theme of your argument. Then weave your theme throughout the opening statement and revisit it in your closing argument.

2. **Keep it simple**. Avoid legal jargon, and do not bore the members with a lengthy synopsis of every detail. If you are the counsel for the respondent, call him/her by the respondent's name. Try not to read your opening. Just talk to the board.

3. **Engage the Board**. Look at the members when you talk to them. Make eye contact and use professional body language that is not subject to interpretation. Incorporate facts about the members that you learned during voir dire to keep them engaged.

F. **Witnesses.**

1. If witnesses cannot testify in person, the recorder shall arrange for testimony by telephone, video teleconference, or similarly effective means.

2. Key witnesses should be requested to testify in person, if available, regarding significant acts or effects of conduct and other disputed factual issues.

3. Written statements are sufficient for non-controversial matters and are a much more efficient means of establishing facts.

G. **Closing arguments**. Closing arguments may be made near the end of the second phase of the hearing (Step 10). Closing arguments are a good time for the recorder and respondent's counsel to remind the board members about the important evidence that was presented, and to make recommendations about how that evidence should be interpreted. Both counsels may submit written copies of their closing arguments for the record *(See Article 6.F.3. of this Manual)*.

Both the recorder and respondent's counsel may summarize relevant evidence and testimony, point out applicable rules and guidelines, and reach conclusions based on the evidence and guidelines.

1. Either counsel may submit proposed findings (but, if so, should also make an electronic format available for the board's use) and refer to them in their closing argument *(See Article 6.F.2. of this Manual)*.

2. Either counsel may, if appropriate, remind members of the preponderance of the evidence standard and the board's authority to call or recall witnesses at any time, even after closing arguments if necessary.

APPENDIX 3-3

ADVICE TO REPORTERS

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ADVICE TO REPORTERS

REFERENCES:

(a) Military Separations, COMDTINST M1000.4 (series)
(b) Reserve Policy Manual, COMDTINST M1001.28 (series)
(c) Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
(d) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(e) Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series)
(f) Coast Guard Medical Manual, COMDTINST M6000.1 (series)

I. Resources.

This Manual and references (a) – (f) are the primary resources for the reporter to learn about the procedures for administrative boards. The reporter also should review the administrative board tools provided by CG PSC-psd at its website: http://www.uscg.mil/psc/psd/fs/.

II. Reporter's Responsibilities.

The reporter's primary duties are explained at Article 3.D. of this Manual. Put simply, the reporter's job is to help the board president prepare for and conduct an administrative hearing, produce a summarized record of the hearing, and then produce a board report.

The board report is the board's final product and contains the board's recommendations to CG PSC about whether adverse administrative action should be taken against a Coast Guard enlisted member. The reporter is not a member of the board, but the reporter participates in virtually every step of the board's proceedings and can have a big impact on the process by helping the board to do its job fairly, accurately, quickly, and responsibly.

A. **Follow the direction of the board president.** The reporter works directly for the board president.

B. **Be prepared to work with the recorder and the respondent or respondent's counsel.** Subject to the approval of the board president, the reporter should work with the recorder and respondent's counsel in completing the administrative duties of the board.

III. Preparing for the Hearing.

Items A – D below are an illustrative but not exhaustive list of things the reporter should do to prepare for the board's hearing. The reporter should consult with the board president and exercise initiative in assisting the board to complete its duties quickly and efficiently.

A. **Learn the process.** As soon as the reporter learns that he or she has been detailed to an administrative board, he or she should review Chapter 1 of this Manual, which provides an overview of the entire administrative board process. The reporter should also go the CG PSC-psd website and learn how to download and use the many administrative board tools provided at that website.

B. **Learn about the tools**. The reporter should identify which documents will be needed for the board to which he or she has been detailed. The CG PSC-psd website provides all of the documents needed for each type of administrative board covered by this Manual.

A board has three options for completing the documentation associated with administrative hearings – the board may create the documents locally using the examples in the appendices of this Manual; it may download Word versions of the documents from the CG PSC-psd website to use as a template to overtype; or it may download writable Adobe versions of the documents from the CG PSC-psd website to use as a standard document with selectable and writable fill-in fields. The board president may have a reason for wanting to create the documents locally, but typically, he or she will want to download either the Word or the Adobe templates.

C. **Prepare the tools ahead of time.** If the board president approves using the Word or Adobe documents available on the CG PSC-psd website, the reporter should download the documents ahead of time and save them in a file location or on a disk or device that he or she can access during the board's hearing. The reporter should fill in as much of the administrative data (e.g., convening authority's command information in the letterhead of memos; name/rate of the respondent; names and rank/rate of the board members; names of recorder and respondent's counsel; location of the hearing, etc.) before the hearing even begins. If the board president's preference is to create the documents locally, document files that include the same required information that appears in the templates should be prepared in advance. Doing so will save time during the hearing.

1. Witness testimony summaries can be duplicated – the reporter should prepare one electronic witness testimony summary sheet for each witness expected to testify at the hearing (you can get this information from the recorder and respondent's counsel).

2. Administrative board supplemental pages can also be duplicated at will. It is a good idea to prepare several electronic supplemental pages with the generic administrative data already filled so that the board can quickly access them during the hearing.

3. Board Guide – a board guide (hearing script; See Appendix 5-1 of this Manual) for each type of board can also be downloaded from the CG PSC-psd website. Consult the board president; he or she may think that providing either a hardcopy or electronic script with the names and dates filled in ahead of time will be useful for the board members. And, if you do provide the board members with a script tailored to the board you are detailed to, consult with the recorder and respondent's counsel to see if they would like an electronic copy as well. In addition, the reporter should become familiar with the script in order to anticipate when the various document tools may be required to be used.

D. **Prepare the hardware ahead of time**. The recorder and respondent's counsel are required to prepare documents and physical evidence they want the board to consider ahead of time. (See Articles 6.B.1.a.(1) and 6.B.1.a.(2) of this Manual). The reporter should be ready to mark documents and photographs in accordance with Article 6.B.1.a.(3). The reporter can mark documents with a rubber stamp or by marking the documents in pen.

The reporter also should assist the board president in verifying that the hearing's logistics requirements, which are the responsibility of the convening authority to arrange, have been met and that the following equipment is tested prior to the hearing.

1. Copy machine.

2. Digital camera.

3. Internet-connected Standard Workstation(s) with a Common Access Card (CAC) reader.

4. Printer connected to the Standard Workstation(s).

5. Telephone, video teleconference equipment, and audio recording device, as applicable.

IV. During the Hearing.

A. **Exhibits**. All evidence and witness lists are presented at the beginning of the second phase ("Presenting the Case") of the hearing (See Article 6.B. – Step 6 – in this Manual). The recorder and respondent's counsel will offer exhibits for the board to consider. All exhibits offered for consideration by the board **shall be** attached to the record (See Article 6.B.1.a.). All exhibits **shall be** marked in accordance with Article 6.B.1.a.(3). However, not all exhibits will necessarily be considered by the board (See Article 6.B.4.c.(2)). The reporter should be prepared to assist the board president by tracking the material offered as exhibits; marking the exhibits; and then noting which exhibits (if any) the board president decides should not be considered by the board. Ultimately, all exhibits **shall be** listed in Paragraph 8 of the summarized record of the hearing, a sample of which is shown at Appendix 5-2 of this Manual; the reporter should ensure that the exhibits are marked and organized **in the same order** that they will be listed in Paragraph 8 of the summarized record of the hearing.

1. The board will often take a break to review the evidence presented to the board (See Article 6.B.5. of this Manual). The reporter should make use of that time to continue organizing the exhibits and listing them in the summarized record of the hearing.

B. **Opening statements.** The recorder and respondent's counsel are permitted to submit written copies of their opening statements if they so desire. They may submit it in advance, or they may choose to submit it during or after they give their opening statements (opening statements are optional, so they may choose not to give one). If the recorder and respondent's counsel submit written versions of their opening statements, they should be marked as an exhibit and attached to the record. See Article 6.C.2. of this Manual.

C. **Witnesses.** The recorder and respondent's counsel may call witnesses to testify at the hearing. All witnesses whose testimony is presented to the board for consideration **shall be** identified at Paragraph 9 of the summarized record of the hearing (See Article 6.D.1.a. of this Manual). The reporter should be prepared to assist the board president by tracking the witnesses called by the recorder and the respondent's counsel.

The testimony of witnesses who are permitted to testify at the hearing **shall be** summarized during the hearing, before the witnesses leave the hearing (See Article 6.D.2.). The reporter should be prepared to assist the board president in summarizing witness testimony on Witness Testimony Summary Memos (See Appendix 6-2 of this Manual), or similar documents prepared locally. The use of audio recording equipment should not influence the board to defer the summarization of witness testimony; the equipment could malfunction, so the summaries should be prepared while the testimony is fresh in everyone's minds and before the witness is dismissed.

D. **Closing arguments and proposed findings of fact, opinions, and recommendations.** The recorder and respondent's counsel are permitted to submit written copies of their closing arguments if they wish to do so. They are also permitted to submit proposed findings of fact, opinions, and recommendations to the board for its consideration. See Articles 6.F.2. and 6.F.3. of this Manual.

The recorder and respondent's counsel may submit this material in advance, or they may choose to submit it during or after they give their closing arguments (closing arguments are optional, so they may choose not to give one). If the recorder and respondent's counsel submit written versions of their closing arguments and/or proposed findings of fact, opinions and recommendations, they should be marked as an exhibit and attached to the record.

E. **Completing the summarized record of the hearing.** The board is required to complete and sign the summarized record of the hearing following the closing arguments (if any). See Article 6.G. of this Manual. The reporter shall assist the board president as needed to facilitate the board's completion of the summarized record of the hearing. As indicated in the board guide (script), it will be most efficient to complete the applicable portions of the summarized record as the hearing is in progress, and the board president may pause after various steps in the hearing to ensure that the draft record has captured what has transpired to that point.

V. After the Hearing (Deliberations).

A. Although the hearing concludes after closing arguments are made and the summarized record is completed, the board's continuing primary duty, in accordance with Articles 3.A.2. and 7.B.1.a. of this Manual, is to complete the board report within 1-3 calendar days.

The reporter is allowed to attend the closed session of the board's deliberations, but is not allowed to participate in the actual deliberations (See Articles 7.B.1.b. and 7.B.1.c. of this Manual). The reporter should be prepared to assist the board throughout its deliberations in completing the board report.

B. When deliberations have concluded and the board report has been compiled and signed by the board members, one of the board president's remaining responsibilities is to provide the respondent with a copy (paper or electronic) of the board report, including the summarized hearing record and all exhibits (See Article 7.C.2. of this Manual). The reporter should expect that there will be time while the board is deliberating when his or her assistance in preparing the board report will not be actively needed; during this time, the reporter could assist the board president in preparing the required copies of the report.

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APPENDIX 4-1

SAMPLE HEARING SCHEDULING NOTICE

The sample memo included in this appendix is for an Administrative Separation Board. A fillable hearing scheduling notice template for each type of board controlled by this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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U.S. Department of
Homeland Security

United States
Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910

MEMORANDUM

From: **I. A. Officer, RANK**
Board President

Board President's Signature

To: **I. A. Member, GRADE / RATE, EMPLID**
Respondent

Subj: ADMINISTRATIVE BOARD HEARING SCHEDULING NOTICE

Ref: (a) **(Convening Authority fill-in)** memo 1910 of **(memo date fill-in)**
(b) **(Convening Authority fill-in)** memo 1910 of **(memo date fill-in)**
(c) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)
(d) Military Separations, COMDTINST M1000.4 (series)

1. I have been appointed by reference (a), the convening order, as the president of an administrative separation board that will consider your performance of duty and/or conduct as explained by the convening authority in reference (b), the memorandum notifying you of the convening authority's intent to initiate administrative action. The details for the board's hearing are as follows:

a. Date: _____.

b. Time: _____.

c. Location: _____.

d. Uniform: The uniform prescribed for you is Service Dress Blue.

e. *Warning: If you knowingly absent yourself from this hearing, the administrative board may proceed without you, but with counsel acting on your behalf.*

2. Purpose: The purpose of the hearing is to permit the board the opportunity to gather evidence both in your favor and adverse to you, so that the board can make recommendations to the discharge authority (Commander, Coast Guard Personnel Service Center (CG PSC)). The board is required to advise CG PSC on whether there is a basis (or more than one basis) to separate you from the Coast Guard, whether you should (or should not) be separated from the Coast Guard, and how your service should be characterized if you are separated.

3. Rights: The proceedings will be conducted in accordance with references (c) and (d). Reference (d) includes Service policy on when a Coast Guard member may be involuntarily administratively separated. Reference (c) establishes the procedures for your board hearing, and also establishes and explains your rights as the respondent. I encourage you to become thoroughly familiar with those instructions which are available to you at your unit and on the internet. **Please contact me immediately if you need assistance in getting access to any of the references in this notice**.

4. Voice Your Concerns Promptly: You, or your lawyer if you have chosen to be represented by a military or civilian lawyer, must assert your rights promptly as this administrative board moves forward. If you believe that the board or any person is not properly observing your rights, or is otherwise not acting in accordance with Coast Guard policy, you should notify me or the convening authority immediately so that the situation can be addressed in a timely manner. If you are not satisfied with the response, you should put your objection in writing and submit it to the board as an exhibit so that the board can consider it and include it as part of the record.

5. Disclosure: You (and your lawyer if applicable) and the recorder are directed to disclose the material and information described by Article 4.H. of reference (c) in the manner and within the deadlines prescribed by that article. Failure to comply by either the recorder or the respondent may delay the hearing and/or preclude the introduction of evidence at the hearing. **Please contact me immediately if you need assistance in getting access to reference (c) or in establishing communication with the recorder.**

Subj: ADMINISTRATIVE BOARD HEARING SCHEDULING NOTICE 1910
dd Mmm yyyy

6. Privacy Act:

Authority: 5 U.S.C. 301; 10 U.S.C. 1169; 44 U.S.C. 3101; 49 C.F.R. 1.45(a)(1); Art 1.B., COMDTINST M1000.4(series).

Purpose: The information that will be solicited during the board's proceedings is intended principally to enable the Coast Guard to determine the desirability of retaining you in the Coast Guard, at your current rate if applicable, and the characterization of your service. In the course of the investigation, information also may be solicited that could give rise to a determination concerning disciplinary or punitive action.

Routine Uses: The information will be maintained as part of the Enlisted Personnel Record System, DHS/USCG-014-Military Pay and Personnel, which is maintained for use in formulating all Coast Guard personnel actions including, but not limited to, assignment, promotion, reenlistment, retirement, discharge, determination of entitlement to pay allowances, correction of records, and disciplinary actions. In this case, the use will be to determine your eligibility to remain in the Coast Guard, at your current rate if applicable. Data is also provided to the Department of Veterans Affairs for determination of an individual's eligibility for benefits administered by that agency and to medical facilities maintained by the Department of Health and Human Services in conjunction with medical treatment afforded an individual. These are not the only possible uses listed under DHS/USCG-014 but they are the most common.

Disclosure is Voluntary: You are advised that the final determination will be based on all the evidence in the investigative record, which includes evidence you provide. Your election not to provide information could possibly prevent the investigation from obtaining evidence that may be needed to support a determination in your favor, and thus result in a determination adverse to you.

#

Copy: [Recorder]
[Convening Authority]
[Respondent's Counsel (if known)]

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APPENDIX 5-1

SAMPLE BOARD GUIDE (SCRIPT)

The sample script included in this appendix is for an Administrative Separation Board. A fillable Board Guide template for each type of board controlled by this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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BOARD GUIDE (SCRIPT)

(For an Administrative Separation Board)

General Guidance:

The Board President and the Recorder help direct the proceedings by giving verbal signals at certain times during the administrative board hearing. These signals not only maintain order within the hearing venue, but also assist the Reporter and the Board in developing an accurate summarized record of the hearing. This is of importance to future reviewers of the board report, who do not have the benefit of having been present at the hearing. Basic signals are discussed below.

Opening/Reconvening a Hearing:

To signal the start (opening) or resumption (reconvening) of a hearing, the Board President should make the following announcement before the hearing proceeds:

This administrative board hearing will now come to order. Please be seated. The record will show that the hearing was called to order at ***[TIME]*** *hours on* ***[DATE and YEAR]*** *and is being held at* ***[PLACE]****. If you have not done so already, please turn off all pagers and cell phones or set them to silent mode at this time. I would also like to remind you that, pursuant to Articles 5.B.2. and 5.B.3. of the Enlisted Personnel Administrative Boards Manual, video recording of board proceedings is strictly prohibited, and audio recording by the Board or the Respondent is not permitted during any recess or adjournment in the proceedings or during the closed deliberations of the Board.*

Recessing/Adjourning a Hearing:

A board takes a "recess" when it stops its proceedings for a period of time and will reconvene the same day in the same location. A board "adjourns" when it stops its proceedings for a period of time and will reconvene in a different location or on a later date. To signal a recess or adjournment, the Board President should make the following announcement, indicating when the board will reconvene:

The time is now ***[TIME]*** *hours. This administrative board will (recess) (adjourn) until* ***[TIME, DATE, and YEAR]****. (If at a different location, add the location* ***[PLACE/ROOM]****.) (If applicable* – Any audio recording of the proceedings shall cease at this time.*)*

Persons not Present:

The Recorder shall assist the Board President in tracking the participants involved with the hearing by confirming that they are all in the proper place when a board is opened or reconvened. When all hearing participants are in their proper place upon reconvening, the Recorder should state the following for the record:

All persons who were present when the hearing (recessed) (adjourned) are present. No person required to be present is absent.

If any person required to be present is absent, his or her absence and the reason for it should be noted by the Reporter in the Summarized Hearing Record, an example of which is included as Appendix 5-2 in the Enlisted Personnel Administrative Boards Manual.

Absence/Substitution of a Board Member: Unless a majority of the board members is present, no business other than a recess or adjournment shall be conducted. In the absence of a board member, the Board may proceed with its investigation only if authorized and directed to do so by the Convening Authority. If it appears that a board member(s) will be absent for more than a short period of time and/or the absence reduces the Board to less than a majority of the total membership, the Board President shall notify the Convening Authority who may appoint a substitute board member(s). Any substitute board members appointed shall examine the record of the proceedings conducted prior to sitting as a board member, and accomplishment of that review shall be noted in the Summarized Hearing Record. After reviewing the record, each substituted board member shall participate fully in the subsequent proceedings of the Board, its deliberations, and its findings of fact, opinions, and recommendations. (See Article 5.B.6. of the Enlisted Personnel Administrative Boards Manual.)

Script:

Discussion

The text in the "Discussion" boxes in this Board Guide is provided to aid the user and should not be read aloud during a hearing.

Unless otherwise specified, citations to articles and appendices within this Board Guide are to the Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series).

In this script, the Board President indicates that he/she makes all rulings on any objections. If the Convening Authority has appointed a Legal Advisor as a non-voting member of the Board, those rulings shall be made by the Legal Advisor. (See Articles 3.E.2.c. and 6.B.4.)

PHASE ONE – THE HEARING (GETTING STARTED)

STEP 1 - OPENING THE BOARD (Article 5.B.)

⇩

STEP 2 - MEMBERS' OATHS and PRELIMINARY INSTRUCTIONS

(Article 5.C.)

⇩

STEP 3 - RIGHTS ADVISEMENT (Article 5.D.)

⇩

STEP 4 – RECORDER / REPORTER OATHS (Article 5.E.)

⇩

STEP 5 - VOIR DIRE and CHALLENGES TO BOARD MEMBERS (Article 5.F.)

[*Optional*]

STEP 1
OPENING THE BOARD
(See Article 5.B.)

BOARD PRESIDENT

This administrative board hearing will now come to order. Please be seated. The record will show that the hearing was called to order at **[TIME]** hours on **[DATE and YEAR]** and is being held at **[PLACE]**. If you have not done so already, please turn off all pagers and cell phones or set them to silent mode at this time. I would also like to remind you all that, pursuant to Articles 5.B.2. and 5.B.3. of the Enlisted Personnel Administrative Boards Manual, video recording of board proceedings is strictly prohibited, and audio recording by the Board or the Respondent is not permitted during any recess or adjournment in the proceedings or during the closed deliberations of the Board.

RECORDER

This Board is convened by order of the (Commanding Officer) (Commander) of **[COMMAND]**, dated **[DATE]**, (*if applicable*, as amended on **[DATE]**), which has been provided to each board member, the Respondent, and (*if applicable*) Counsel for the Respondent.

The Respondent, [**RESPONDENT'S NAME and RATE**], and the following persons named in the convening order are present:

Board President:	**[NAME and RANK]**
Member of the Board:	**[NAME and RANK/RATE]**
Member of the Board:	**[NAME and RANK/RATE]**
Recorder:	**[NAME and RANK]**
(If applicable) Counsel for the Respondent :	**[NAME and, if military, RANK]**

Discussion

Do not identify the Reporter unless he/she has been appointed by the Convening Authority, or the Legal Advisor unless he/she has been appointed by the Convening Authority as a non-voting member of the Board.

RECORDER

Reporter: **[NAME and RANK/RATE]**

Legal Advisor: **[NAME and RANK]**

Discussion

Missing Persons: The Recorder should identify anyone named in the convening order that is not present and explain for the record whether that person was excused and, if known, why he/she is missing.

RECORDER

No person named in the convening order is absent.

Or

The following person(s) named in the convening order (is) (are) absent, (having been excused) (not having been excused) by the Convening Authority: **[PROVIDE EXPLANATION FOR ABSENCES]**.

BOARD PRESIDENT	This administrative board is convened to consider the case of **[RESPONDENT'S NAME and RATE]**, who is being considered for involuntary separation from the Coast Guard for the following reason(s): **[GENERAL GROUNDS, *e.g.*, "Unsatisfactory Performance", "Unsuitability", "Misconduct," etc.]** due to **[SPECIFIC GROUNDS, *e.g.*, discussion of the facts relevant to the Respondent's performance and/or conduct as alleged in the Convening Authority's Notice of Intent to Take Administrative Action]**.

Discussion

The Board President should pause to ensure that the applicable portions, generally paragraphs 1 and 2, of the Summarized Hearing Record have been completed. See Article 2.C. for more information regarding the Convening Authority's Notice to Respondent of Intent to Take Administrative Action.

BOARD PRESIDENT	All persons expecting to be called as witnesses in this hearing shall withdraw from the hearing room.

Discussion

The Board President should pause until all witnesses have withdrawn from the hearing room before proceeding with Step 2.

STEP 2
MEMBERS' OATHS and PRELIMINARY INSTRUCTIONS
(See Article 5.C.)

Discussion

The Recorder should swear-in the members of the Board. Persons being sworn should stand and raise their right hand.

Oaths

RECORDER	[**BOARD PRESIDENT'S NAME and RANK]** has been appointed and designated as the Board President in this proceeding and will now be sworn-in. Do you swear or affirm that you will faithfully perform the duties of Board President to this Board?
BOARD PRESIDENT	I do.
RECORDER	[**BOARD MEMBERS' NAMES and RANK/RATE]** have been appointed members of the Board in this proceeding and will now be sworn-in. Do you swear or affirm that you will faithfully perform the duties of members to this Board?
MEMBERS	I do.

Preliminary Instructions

BOARD PRESIDENT

I will now read aloud the preliminary instructions for this hearing so that every participant at this hearing will understand the purpose of the hearing, the duties of this Board, and the way I will direct these proceedings.

There are (four) (five, *if the Respondent is eligible to request voluntary retirement*) questions that the Board shall answer and, regarding which, must formulate opinions and recommendations.

First, the purpose of this hearing and this Board's duty is to consider the evidence presented at this hearing, and to determine whether the preponderance of that evidence proves that there is a basis, or possibly more than one basis, for involuntarily separating the Respondent before us from the Coast Guard.

The term "preponderance of the evidence" means that the evidence offered by the Recorder must "more likely than not" support the basis or bases for separation from the Coast Guard. It is less strict than the "beyond a reasonable doubt" standard applied in criminal proceedings.

Second, the purpose of this hearing and this Board's duty is to consider the evidence presented and to recommend whether **[RESPONDENT'S NAME and RATE]** should -- or should not -- be separated. We must make this recommendation even if we, the Board, conclude that there is no basis to separate **[RESPONDENT'S NAME and RATE]** from the Coast Guard.

Third, the purpose of this hearing and this Board's duty is to consider the evidence presented and recommend how **[RESPONDENT'S NAME and RATE]**'s service should be characterized if (he) (she) is separated from the Coast Guard. We must also make this recommendation even if we, the Board, recommend that **[RESPONDENT'S NAME and RATE]** be retained in the Service.

BOARD PRESIDENT	Fourth, the purpose of this hearing and this Board's duty is to consider the evidence presented and to recommend, in the event that the discharge authority's determination is that **[RESPONDENT'S NAME and RATE]** shall be involuntarily separated from the Coast Guard, whether (he) (she) should be placed on probation instead of immediate separation. Probation is a consideration if the Board believes that there is a reasonable prospect for rehabilitation. In this circumstance, the Board will make recommendations regarding the duration and conditions for satisfactory completion of the period of probation. Again, we must make this recommendation even if we, the Board, recommend that **[RESPONDENT'S NAME and RATE]** be retained in the Service.

Discussion

The Board has a fifth purpose and corresponding recommendation to make if the Respondent is eligible to request voluntary retirement. Eligibility is established by having completed 18 or more years of creditable active service or, for a Reserve member, 20 or more years of satisfactory federal service. If the Respondent is not eligible, skip the following final purpose and continue with the preliminary instructions.

BOARD PRESIDENT	Finally, the purpose of this hearing and this Board's duty is to consider the evidence presented and to recommend, in the event that the discharge authority's determination is that **[RESPONDENT'S NAME and RATE]** shall be administratively separated from the Coast Guard, whether (he) (she) should be permitted to voluntarily retire, if (he) (she) was to so request, instead of immediate involuntary separation. Again, we must make this recommendation even if we, the Board, recommend that **[RESPONDENT'S NAME and RATE]** be retained in the Service.

BOARD PRESIDENT

You might wonder why this Board is required to make certain recommendations even when we either conclude that there is no basis for taking adverse action or have recommended that the Respondent be retained. The reason is that while a board's report, along with its Findings of Fact, Opinions, and Recommendations, is an important part of the Coast Guard's process for deciding whether to retain or to separate a member, the Board is not the only decision-maker in that process. The discharge authority in these matters is the Commander of the Coast Guard Personnel Service Center (CG PSC), located in Arlington, Virginia. CG PSC is responsible for enforcing policy that is in the best interests of the entire Coast Guard and for ensuring the consistent application of military personnel policy across the Service. Consequently, CG PSC is authorized to make independent findings based on the evidence contained in the record compiled at this hearing. While a board may reach its own conclusions, it must be mindful that the discharge authority may reach different conclusions. After reviewing this Board's report, the discharge authority may agree in whole, in part, or not at all with our Findings of Fact, Opinions, and Recommendations.

Thus, as with every board, we have two important responsibilities today – first, to develop a thorough record of the evidence presented at this hearing, and, second, to analyze that evidence and make a complete set of recommendations on all of the matters that will be considered by the discharge authority.

The fact that an administrative board has been convened, and **[RESPONDENT'S NAME and RATE]** has been referred to this Board, <u>does not</u> permit any inference that one or more bases to involuntarily separate (him) (her) exists.

This Board will base its conclusions and make its recommendations solely on the evidence and testimony presented during this hearing, an administrative board's guiding principles, and other applicable Coast Guard policy and U.S. law.

	Our conclusions and recommendations must be made based on a review of all of the evidence and testimony. Therefore, we will refrain from considering or discussing this case among ourselves outside of the Board's formal deliberations, and we will keep open minds until all of the evidence has been presented, we have reviewed applicable Coast Guard policy and U.S. law, and the hearing has closed for our private deliberations.
BOARD PRESIDENT	The final determination as to the weight of the evidence and the credibility of the witnesses in this hearing rests upon the Board members. It is our responsibility to determine the believability of the witnesses brought before this Board. In performing this duty, we will consider each witness's ability to observe and accurately remember relevant facts; we also will consider each witness's sincerity and conduct before this Board and his or her friendships, prejudices, and character for truthfulness.
	The Recorder and the Respondent will each have an opportunity to question all of the witnesses. When they have finished questioning a witness, the Board may ask questions if one or more of its members feels there are additional substantial questions that should be asked. The Board members shall bear in mind that their questions cannot attempt to aid either the Recorder's or the Respondent's case. Both the Recorder and the Respondent, or Respondent's counsel, are entitled to object to any question posed to a witness. I, the Board President, have final authority to rule on any objection.

STEP 3
RIGHTS ADVISEMENT
(See Article 5.D.)

BOARD PRESIDENT

[**RESPONDENT'S NAME and RATE]**, you were notified by the Convening Authority by memo dated **[DATE]** of the matters that caused the Convening Authority to initiate administrative action to involuntarily separate you from the Coast Guard. You acknowledged the Convening Authority's notice by endorsement on **[DATE]**.

On **[DATE OF RESPONDENT'S EXERCISE OF RIGHTS MEMO]**, you chose to appear before an administrative board, in addition to notifying the Convening Authority of your other elections concerning your rights as a respondent.

Upon being appointed as Board President, I informed you of the date, time, and location of this hearing by memo dated **[DATE]**, in which I also encouraged you to become thoroughly familiar with your rights as explained in the Enlisted Personnel Administrative Boards Manual. One of those rights is the right to be represented by counsel.

Discussion

Among the rights previously exercised by the Respondent was the right to be represented, if at all, by either a military or civilian lawyer. At this point in the hearing, it should be apparent whether the Respondent has counsel present. If it appears that the Respondent is not represented by counsel, skip ahead in this Board Guide to the next "Discussion" box.

BOARD PRESIDENT

Who is representing the Respondent at this hearing?

RESPONDENT'S COUNSEL

(Sir) (Ma'am), I represent the Respondent. My name is **[COUNSEL'S NAME and, if military, RANK]** and I (am) (am not) qualified under Article 27(b) of the UCMJ.

Discussion

If the Respondent is represented by civilian counsel: The Board President should inquire into the counsel's qualifications, *e.g.,* where the counsel is a member of the bar, whether the counsel is licensed to practice law in that state, and what is the highest court of that state to which the counsel has been admitted to practice.

If the Respondent is represented by counsel, whether military or civilian, skip ahead in this Board Guide to the next "Discussion" box.

BOARD PRESIDENT

It appears that you are not represented by counsel. Do you plan to be represented by counsel at this hearing?

RESPONDENT

(Yes) (No), (Sir) (Ma'am).

BOARD PRESIDENT

You previously were informed about, and acknowledged and made an election concerning, the following rights to representation:

- You have the right to be represented by a lawyer.
- If you choose to be represented by a military lawyer, the Coast Guard will appoint one for you who is qualified under Article 27(b) of the UCMJ at no expense to you.
- You also may retain a civilian lawyer at your own expense.
- If you elect to be represented by a civilian lawyer, then you are not entitled to also be represented by a military lawyer.
- If you choose to be represented by a lawyer, he or she will be presumed to act and speak for you, and you will be bound by the actions of that person.

BOARD PRESIDENT	Did you understand those rights and do you still want to waive your right to a lawyer at this hearing?
RESPONDENT	(Yes) (No), (Sir) (Ma'am). I understand my rights to representation, including my right to civilian or military counsel, and I (do) (do not) waive my right to counsel at this hearing.

Discussion

Board President Responsibilities: If the Respondent waived his/her right to military counsel, or hired civilian counsel not qualified under Article 27(b) of the UCMJ, the Board President should engage in a discussion with the Respondent and his/her counsel to ensure that he/she understands his/her right to have military counsel and that he/she has knowingly waived that right. This discussion should be noted in the Summarized Hearing Record.

If the Respondent is not represented by counsel, but indicates that he/she does not waive the right to counsel, the Board President shall consult with the Legal Advisor, and the Convening Authority if necessary, recessing the hearing as appropriate, before proceeding further.

BOARD PRESIDENT

In my notice scheduling this hearing, I encouraged you to become familiar with your rights as detailed in the Enlisted Personnel Administrative Boards Manual. Those rights include:

- During this hearing, you may question and challenge for cause the members of this Board.

- During this hearing, you may examine and object to evidence before it is considered by this Board.

- During this hearing, you may object to the testimony of witnesses, and you may cross-examine witnesses.

- During this hearing, you may introduce material and non-cumulative evidence, including witnesses whom you produce at your own expense.

- You have the right to be present at this hearing, but:

  - Your right to be present during board proceedings does not apply if you knowingly absent yourself from these proceedings at any time, or if you are unable to be present because you are confined by civilian or military authorities.

  - If you knowingly absent yourself from this hearing, this board may proceed without you, but with your counsel acting on your behalf.

BOARD PRESIDENT

- If you are confined by civilian or military authorities, you have no right to attend this hearing or appear personally before the Board, but you may exercise all of your other rights through your lawyer.

- Also, if your conduct during this hearing becomes disruptive to the proceedings, you will forfeit your right to continue to be present, and this Board may proceed without you, but with your counsel acting on your behalf.

- You have the right to testify or refuse to testify under oath as a witness.

  - If you choose to testify under oath, you will be subject to questioning by the Recorder and the Board on all matters within the board's scope of inquiry.

- You have the right to make an unsworn statement, either in writing or by speaking directly to the Board, to not be subject to questioning by the Recorder or the Board about your unsworn statement, and to have your unsworn statement included in the record of the proceedings.

- You have the right to make an opening statement and an argument at the conclusion of the presentation of evidence.

- You have the right to be advised of your rights under the Privacy Act of 1974.

- You have the right to be advised of your right against self-incrimination, the right to make no statement regarding a charged or suspected offense, and the right to warnings regarding these matters prior to interrogation as provided by Article 31, UCMJ.

BOARD PRESIDENT	Your previous acknowledgements of your rights and exercise of your rights will formally be introduced into the record of this hearing and will be used in the completion of the Board's report. **[RESPONDENT'S NAME and RATE]**, there are some additional procedural rules in connection with this hearing that I will explain to you now. First, these proceedings are administrative in nature, and the Board is not bound by formal rules of evidence. The Board may consider information that might not be admissible at a court-martial. Also, you should be aware that the Board's decisions will be based upon a preponderance of the evidence. Second, if you or your counsel has any objection to any matters introduced at this hearing, or to any part of this hearing including procedural matters, you or your counsel may state your objection and the reasons for it. I shall make final rulings on all matters of procedure and evidence. If you are dissatisfied with the Board's action on your objection and if you wish to maintain an objection after I have ruled on it, then at the conclusion of this hearing you may put your objection in writing and submit it as an exhibit for the record. Finally, I remind you that in order to protect your rights, you or your counsel must object promptly so that we can correct errors without unduly disrupting the proceedings. **[RESPONDENT'S NAME and RATE]**, do you have any questions concerning your rights or the procedures before this Board?
RESPONDENT	(Yes) (No), (Sir) (Ma'am). [Questions, if any.]
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, do you understand your rights and the procedures before this Board?

RESPONDENT (Yes) (No), (Sir) (Ma'am).

Discussion

If the Respondent indicates that he/she understands the rights, then proceed. If not, address the Respondent's questions and make sure that this discussion is noted in the Summarized Hearing Record.

The Board President should pause to ensure that the applicable portions, generally paragraphs 3 and 4, of the Summarized Hearing Record have been completed.

STEP 4
RECORDER / REPORTER OATHS
(See Article 5.E.)

Discussion

The Board President swears-in the Recorder, Reporter, and, if assigned, Interpreter. Persons being sworn should stand and raise their right hand.

BOARD PRESIDENT	**[RECORDER'S NAME and RANK]** has been named as the Recorder for this proceeding and will now be sworn-in. Do you swear or affirm that you will faithfully perform the duties of Recorder to this Board?
RECORDER	I do.
BOARD PRESIDENT	**[REPORTER'S NAME and RANK/RATE]** has been named Reporter for this proceeding and will now be sworn-in. Do you swear or affirm that you will faithfully perform the duties of Reporter to this Board?
REPORTER	I do.
BOARD PRESIDENT	*(If applicable)* **[INTERPRETER'S NAME and, if military, RANK/RATE]** has been named Interpreter to this proceeding and will now be sworn-in. Do you affirm that you will faithfully perform the duties of Interpreter to this Board?
INTERPRETER	I do.
RECORDER	Let the record reflect that this Board is properly convened and constituted.
RECORDER	I have been detailed to the Board as the non-voting Recorder to the Board. I (am) (am not) a law specialist qualified under Article 27(b), UCMJ.

STEP 5
VOIR DIRE and CHALLENGES TO BOARD MEMBERS
[*Optional*]
(See Article 5.F.)

Discussion

Step 5 is optional in that the Recorder and the Respondent, or his/her Counsel, may choose to not question or challenge any members of the Board (i.e., waive voir dire). The questions below will determine whether voir dire is waived; if it is waived, the Board President should pause to ensure that the applicable portions, generally paragraphs 5 through 7, of the Summarized Hearing Record have been completed and then skip ahead in this Board Guide to Step 6.

BOARD PRESIDENT	Does the Respondent or the Recorder wish to question any member of this Board in relation to any matter which may constitute a ground for challenge for cause?
RESPONDENT or COUNSEL	The Respondent (has) (has no) questions. (*If applicable, the Respondent or his/her Counsel asks questions.*)
RECORDER	The Recorder (has) (has no) questions. (*If applicable, the Recorder asks questions.*)
BOARD PRESIDENT	Does the Respondent or the Recorder have a challenge for cause against any voting member of this Board?
RESPONDENT or COUNSEL	The Respondent (does) (does not). (*See the following "Discussion" box.*)
RECORDER	The Recorder (does) (does not). (*See the following "Discussion" box.*)

Discussion

Grounds for challenge must show that a challenged member cannot render a fair and impartial decision. Either party may present evidence to show why a board member should not sit on the Board, and may examine a member about his/her fitness for the position of Board President or Board Member. Such examination may be under oath at the Respondent's discretion. If requested, the Recorder shall administer the following oath:

"Do you swear or affirm that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth?"

Challenges should be in writing. The Board does not decide the issue; instead, it reports the facts to the Convening Authority who must determine if the member should continue to sit on the Board. The Convening Authority, upon being informed of the circumstances of the challenge and the recommendation of the other members, may appoint a substitute for the challenged member. The new member becomes subject to voir dire in the same manner as the earlier members.

Written challenges and the Convening Authority's responses shall be included as exhibits in the Summarized Hearing Record. At this point, the Board President should pause to ensure that the applicable portions, generally paragraphs 5 through 7, of the Summarized Hearing Record have been completed.

PHASE TWO – THE HEARING (PRESENTING THE CASE)

STEP 6 - INTRODUCING DOCUMENTS AND PHYSICAL EVIDENCE INTO THE RECORD (Article 6.B.)

⇩

STEP 7 - OPENING STATEMENTS [*Optional*] (Article 6.C.)

⇩

STEP 8 - PRESENTING WITNESSES [*Optional*] (Article 6.D.)

⇩

STEP 9 – RESPONDENT'S UNSWORN STATEMENT [*Optional*] (Article 6.E.)

⇩

STEP 10 – CLOSING ARGUMENTS [*Optional*] (Article 6.F.)

⇩

STEP 11 - COMPLETING THE SUMMARIZED HEARING RECORD (Article 6.G.)

STEP 6
INTRODUCING DOCUMENTS AND PHYSICAL EVIDENCE INTO THE RECORD
(See Article 6.B.)

Discussion

The Board President, Recorder, and Respondent (or Counsel) should read aloud a description of each item of evidence being submitted into the record for consideration by the Board.

The Reporter and Recorder should assist all parties in the assignment of exhibit numbers to the evidence presented. The Reporter should complete paragraph 8 (Exhibits) of the Summarized Hearing Record as each item of evidence is entered into the record, including the Board President's rulings on objections to the consideration of any evidence.

Pre-hearing matters are those matters decided by the Convening Authority or members of the Board prior to the hearing. At a minimum, these include the documents listed in Article 6.B.2.b. The Board President enters these documents into the record, as well as any documentation of explanations provided, objections made, and rulings rendered since the hearing was opened and called to order.

BOARD PRESIDENT	The following pre-hearing matters *(if applicable* – and documents created since this hearing was called to order) shall be made a part of the record at this time:
BOARD PRESIDENT	**[NAME, TITLE, and/or DESCRIPTION OF DOCUMENT]**, consisting of **[NUMBER OF PAGES]** pages, is entered into the record as Exhibit # **[EXHIBIT NUMBER]**. Does the Respondent or the Recorder have any objection to this exhibit or it being considered by the Board?
RESPONDENT or COUNSEL	(No.) (Yes, I object to Exhibit # **[EXHIBIT NUMBER]** because **[REASON]**.)
RECORDER	(No.) (Yes, I object to Exhibit # **[EXHIBIT NUMBER]** because **[REASON]**.)

BOARD PRESIDENT	*(After asking questions, if necessary, in order to fully understand the objection(s), and considering the objection(s))*: I have considered your objection(s), and your objection(s) is (are) (sustained) (overruled). The exhibit (will) (will not) be considered by the Board. Your objection(s) and my ruling will be noted for the record. Do the other board members wish to discuss the ruling further?

Discussion

If any board member indicates an interest in discussing the ruling, the Board shall recess for deliberations on the issue. Board deliberations shall be conducted away from the presence of the other hearing participants. At the conclusion of the deliberations, the Board will reconvene, and the Board President shall state for the record any change in his/her ruling.

Repeat the above sequence as needed for each additional item of pre-hearing matter entered into the record.

BOARD PRESIDENT	There are no additional pre-hearing matters to be entered into the record. Does the Recorder have any relevant evidence to submit for consideration by this Board?
RECORDER	(No.) (Yes, I would like to enter **[NAME, TITLE, and/or DESCRIPTION OF DOCUMENT, PHOTOGRAPH, or PRINTED IMAGE OF PHYSICAL EVIDENCE]**, consisting of **[NUMBER OF PAGES]** pages, into the record as Exhibit # **[EXHIBIT NUMBER]** for the Board's consideration. A copy of this evidence has been previously provided or made available to the Respondent. I again show the exhibit to the Respondent for (his) (her) inspection.
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, do you have any objection to this exhibit or it being considered by the Board?

RESPONDENT or COUNSEL	(No.) (Yes, I object to Exhibit # **[EXHIBIT NUMBER]** because **[REASON]**.)
BOARD PRESIDENT	*(After asking questions, if necessary, in order to fully understand the objection, and considering the objection)*: I have considered your objection, and your objection is (sustained) (overruled). The exhibit (will) (will not) be considered by the Board. Your objection and my ruling will be noted for the record. Do the other board members wish to discuss the ruling further?

Discussion

If any board member indicates an interest in discussing the ruling, the Board shall recess for deliberations on the issue. Board deliberations shall be conducted away from the presence of the other hearing participants. At the conclusion of the deliberations, the Board will reconvene, and the Board President shall state for the record any change in his/her ruling.

Repeat the above sequence as needed for each additional item of evidence presented by the Recorder.

RECORDER	I have no further evidence to present. The following witness(es) will be called to testify before this Board. The witness(es) was (were) previously disclosed to the Respondent along with a brief summary of the expected testimony.

Discussion

The Recorder may verbally list the witness(es). If the witness(es) and their order of appearance are on a written list, that document may be made an exhibit in the same manner as done above for the presentation of evidence in lieu of verbally listing the witness(es).

Whether done verbally by the Recorder or through the submission of a written list, the Reporter should also document all proposed witnesses in paragraph 9 (Witnesses) of the Summarized Hearing Record.

BOARD PRESIDENT	Does the Respondent have any objections to the witness(es) who will testify before this Board (*if applicable,* or their order of presentation)?
RESPONDENT or COUNSEL	(No.) (Yes, I object to **[WITNESS NAME(S) and, if military, RATE/RANK]** testifying before the Board because **[REASON]**.)
BOARD PRESIDENT	*(After asking questions, if necessary, in order to fully understand the objection(s), and considering the objection(s))*: I have considered your objection(s), and your objection(s) is (are) (sustained) (overruled). The following witness(es), **[WITNESS NAME(S) and, if military, RATE/RANK]**, (will) (will not) be allowed to testify before the Board. (*If any witnesses will not be allowed to testify* – However, a summary of expected testimony for a witness who will not be heard by the Board, or a written statement from that witness, may be submitted and shall be made a part of the record. The summary or written statement shall be submitted before the close of the hearing.) Your objection(s) and my ruling will be noted for the record. Do the other board members wish to discuss the ruling further?

Discussion

If any board member indicates an interest in discussing the ruling, the Board shall recess for deliberations on the issue. Board deliberations shall be conducted away from the presence of the other hearing participants. At the conclusion of the deliberations, the Board will reconvene, and the Board President shall state for the record any change in his/her ruling.

RECORDER	I have no further witnesses to present.
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, do you have any relevant evidence to submit for consideration by this Board?

RESPONDENT or COUNSEL	(No.) (Yes, I would like to enter **[NAME, TITLE, and/or DESCRIPTION OF DOCUMENT, PHOTOGRAPH, or PRINTED IMAGE OF PHYSICAL EVIDENCE]**, consisting of **[NUMBER OF PAGES]** pages, into the record as Exhibit # **[EXHIBIT NUMBER]** for the Board's consideration. A copy of this evidence has been previously provided or made available to the Recorder. I again show the exhibit to the Recorder for (his) (her) inspection.
BOARD PRESIDENT	**[RECORDER'S NAME and RANK]**, do you have any objection to this exhibit or it being considered by the Board?
RECORDER	(No.) (Yes, I object to Exhibit # **[EXHIBIT NUMBER]** because **[REASON]**.)
BOARD PRESIDENT	*(After asking questions, if necessary, in order to fully understand the objection, and considering the objection)*: I have considered your objection, and your objection is (sustained) (overruled). The exhibit (will) (will not) be considered by the Board. Your objection and my ruling will be noted for the record. Do the other board members wish to discuss the ruling further?

Discussion

If any board member indicates an interest in discussing the ruling, the Board shall recess for deliberations on the issue. Board deliberations shall be conducted away from the presence of the other hearing participants. At the conclusion of the deliberations, the Board will reconvene, and the Board President shall state for the record any change in his/her ruling.

Repeat the above sequence as needed for each additional item of evidence presented by the Respondent.

RESPONDENT or COUNSEL	I have no further evidence to present.

RESPONDENT or COUNSEL	The following witness(es) will be called to testify before this Board. The witness(es) was (were) previously disclosed to the Recorder along with a brief summary of the expected testimony.

Discussion

The Respondent may verbally list the witness(es). If the witness(es) and their order of appearance are on a written list, that document may be made an exhibit in the same manner as done above for the presentation of evidence in lieu of verbally listing the witness(es).

Whether done verbally by the Respondent or through the submission of a written list, the Reporter should also document all proposed witnesses in paragraph 9 (Witnesses) of the Summarized Hearing Record.

BOARD PRESIDENT	Does the Recorder have any objections to the witness(es) who will testify before this Board (*if applicable,* or their order of presentation)?

RECORDER	(No.) (Yes, I object to **[WITNESS NAME(S) and, if military, RATE/RANK]** testifying before the Board because **[REASON]**.)

BOARD PRESIDENT	*(After asking questions, if necessary, in order to fully understand the objection(s), and considering the objection(s))*: I have considered your objection(s), and your objection(s) is (are) (sustained) (overruled). The following witness(es), **[WITNESS NAME(S) and, if military, RATE/RANK]**, (will) (will not) be allowed to testify before the Board. (*If any witnesses will not be allowed to testify* – However, a summary of expected testimony for a witness who will not be heard by the Board, or a written statement from that witness, may be submitted and shall be made a part of the record. The summary or written statement shall be submitted before the close of the hearing.) Your objection(s) and my ruling will be noted for the record. Do the other board members wish to discuss the ruling further?

Discussion

If any board member indicates an interest in discussing the ruling, the Board shall recess for deliberations on the issue. Board deliberations shall be conducted away from the presence of the other hearing participants. At the conclusion of the deliberations, the Board will reconvene, and the Board President shall state for the record any change in his/her ruling.

RESPONDENT or COUNSEL	I have no further witnesses to present.
BOARD PRESIDENT	Does the Recorder have any comments or additions to any of the foregoing matters?
RECORDER	(No.) (Yes – **[COMMENTS/ADDITIONS]**.)
BOARD PRESIDENT	Does the Respondent have any comments or additions to any of the foregoing matters?
RESPONDENT or COUNSEL	(No.) (Yes – **[COMMENTS/ADDITIONS]**.)

Discussion

Recess/Adjournment: At this point, after all evidence has been submitted, and before opening statements have begun, it is an opportune time for the Board to take a recess, or to adjourn as appropriate, in order to review the exhibits. If the Board does so, the Board members should not discuss the evidence or deliberate with each other during the recess/adjournment.

At a minimum, the Board President should pause to ensure that the applicable portions, generally paragraph 8 and the applicable portions of paragraph 9, of the Summarized Hearing Record have been completed.

STEP 7
OPENING STATEMENTS
[*Optional*]
(See Article 6.C.)

Discussion

Step 7 is optional in that the Recorder and Respondent are not required to make opening statements.

The Respondent, or his/her Counsel, may make an opening statement immediately following the Recorder's opening statement or defer exercising this right until after the Recorder has finished presenting witnesses and prior to presenting his/her own witnesses.

If written copies of opening statements are submitted, they shall be made a part of the record.

BOARD PRESIDENT	Is the Recorder ready to present (his) (her) case in this matter?
RECORDER	The Recorder is ready to proceed.
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, you have already indicated an understanding of your rights at these proceedings. Are you (*if applicable* - and your counsel) ready to proceed?
RESPONDENT or COUNSEL	Yes, (Sir) (Ma'am).
BOARD PRESIDENT	The Board will now permit opening statements. Does the Recorder wish to make an opening statement?
RECORDER	(Yes.) (No.)
BOARD PRESIDENT	*(If the Recorder does wish to make an opening statement):* **[RECORDER'S NAME and RANK]**, please proceed with your opening statement.
RECORDER	**[OPENING STATEMENT]**.

BOARD PRESIDENT	Does the Respondent wish to make an opening statement at this time or reserve it until later?
RESPONDENT or COUNSEL	(The Respondent will make an opening statement at this time.) (The Respondent reserves the right to make an opening statement until after the Recorder has presented witnesses.) (The Respondent will not make an opening statement.)
BOARD PRESIDENT	*(If the Respondent does wish to make an opening statement at this time):* **[RESPONDENT'S NAME and RATE]**, please proceed with your opening statement.
RESPONDENT or COUNSEL	**[OPENING STATEMENT]**.

STEP 8
PRESENTING WITNESSES
[*Optional*]
(See Article 6.D.)

Discussion

Step 8 is optional in that the Recorder and Respondent are not required to present witnesses.

Remote Witness Testimony: Before permitting the questioning of a witness giving testimony by telephone or video teleconference, the Board President should inquire to ensure that the witness is in a place appropriate to give testimony, free from distraction and without the influence of others.

Witness Testimony Summary Memorandum: In accordance with Article 6.D.2., prior to dismissing a witness the Board President shall ensure that the witness's testimony has been summarized and certified as accurate. This shall be done on a Witness Testimony Summary Memorandum (See Appendix 6-2), or similar document that includes the same information, that shall be made a part of the record.

Article 31(b), UCMJ: If, before or during the examination of a witness subject to the UCMJ, the witness is suspected of committing an offense under the UCMJ, the Board President shall give the rights warning to that witness after first consulting with the Legal Advisor.

The rights warning is:

> BOARD PRESIDENT: **[WITNESS'S NAME and RANK/RATE]**, (the evidence) (your statement) (testimony) creates a suspicion that you may have committed the following offense(s): _____. I will now advise you of your rights before you are asked any (more) questions.
>
> You have the right to remain silent. You do not have to answer any questions at all.
>
> Before you decide whether or not to answer questions, you may consult with a lawyer.
>
> If you decide to consult with a lawyer, I will stop this questioning until you have been able to do so. You may consult with a military lawyer without cost to you, or you may consult with a civilian lawyer at your own expense.
>
> If you decide to answer questions, anything you say may be used as evidence against you in any court-martial, non-judicial proceeding, administrative proceeding, or civilian court.
>
> If the questioning continues, you may stop it at any time by refusing to answer further questions or by requesting to consult with a lawyer.

You have the right to have a retained civilian lawyer (at your own expense), an appointed military lawyer, or both present during any further questioning. Do you understand these rights as I have read them to you?

WITNESS: (Yes.) (No. – **[rights are explained as necessary]**)

BOARD PRESIDENT: Do you wish to speak with counsel?

WITNESS: (Yes. – **[arrangements are made by and/or for the witness to speak with counsel]**) (No.)

BOARD PRESIDENT: Do you want to continue questioning?

WITNESS: (Yes.) (No.)

BOARD PRESIDENT	The Recorder may call the first witness.
RECORDER	The first witness is **[WITNESS'S NAME and, if military, RANK/RATE]**.
RECORDER	**[WITNESS'S NAME and, if military, RANK/RATE]**, do you swear or affirm that the testimony you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth?
WITNESS	I do.
RECORDER	Please be seated. Would you please state for the record your name and (*if military* – rank/rate, duty station, and branch of the armed forces) (*if civilian* - address)?

Discussion

Civilian Witnesses: The address of the witness should be omitted in appropriate cases, as when it might endanger the witness.

RECORDER	**[Continues with Questions]**.
RECORDER	I have no further questions at this time.
BOARD PRESIDENT	Does the Respondent have any questions for this witness?

RESPONDENT or COUNSEL	(No.) (Yes. - **[Continues with Questions]**)
BOARD PRESIDENT	**[Continues with Questions]**
BOARD PRESIDENT	Does any other member of the Board have any questions?
BOARD MEMBER(S)	(No.) (Yes. - **[Continues with Questions]**)
BOARD PRESIDENT	Does the witness have any comments or additions to make relating to this investigation or your own testimony?
WITNESS	(No.) (Yes. - **[Comments or Additions]**)

Discussion

The Board President should pause to ensure that the witness's testimony has been summarized and certified as accurate for entry into the record.

BOARD PRESIDENT	**[WITNESS'S NAME and, if military, RANK/RATE]**, thank you. You are (temporarily) excused. As long as this hearing continues, do not discuss your testimony or your knowledge of this proceeding with anyone except the Recorder or the Respondent (*if applicable* - or the Counsel for the Respondent). If anyone else tries to talk to you about the case, stop their questioning and report the matter to one of the persons I just mentioned or to me. Do you understand these instructions?
WITNESS	(Yes.) (No. – **[instructions are explained as necessary]**)
BOARD PRESIDENT	You may be excused.
BOARD PRESIDENT	The Recorder may call the next witness.

Discussion

Repeat the above procedures for each witness.

RECORDER I have no further witnesses to present at this time.

Discussion

The Respondent or his/her Counsel may make an opening statement at this point if one was not made previously.

BOARD PRESIDENT The Respondent may call the first witness.

Discussion

The Respondent is not required to testify under oath and submit to questions from the Recorder and the Board. However, if the Respondent elects to testify and/or is called as a witness by his/her Counsel, the Board President shall first remind the Respondent of his/her rights.

Skip ahead to the next "Discussion" box for all other witnesses called by the Respondent.

BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, you have already indicated your understanding of your rights in this proceeding, but I would like to reiterate your right to testify or refuse to testify under oath. If you elect to testify, you may be examined by the Recorder and this Board on any matter considered relevant to these proceedings, regardless of whether or not you testify to these matters when questioned by your Counsel. You cannot, however, be compelled to answer questions concerning an offense of which you are a suspect or with which you are charged, and you may refuse to answer any question by invoking your Article 31 rights of the UCMJ. Your decision not to testify under oath and submit to questioning will not be considered in any manner against you. Whether you testify under oath or not, you will later be given the opportunity to make an unsworn statement, and to submit a written copy of an unsworn statement. Your decision not to testify or make an unsworn statement will also not be considered against you by the Board. Do you understand these rights?
RESPONDENT	(Yes.) (No. – **[rights are explained as necessary]**)
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, do you wish to testify under oath?
RESPONDENT	(Yes.) (No.)

Discussion

The presentation of, and questioning of, a witness for the Respondent – including the Respondent if he/she elects to testify after the rights advisement above – is done as follows.

RESPONDENT or COUNSEL	The first witness is **[WITNESS'S NAME and, if military, RANK/RATE]**.

RECORDER	**[WITNESS'S NAME and, if military, RANK/RATE]**, do you swear or affirm that the testimony you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth?
WITNESS	I do.
RECORDER	Please be seated. Would you please state for the record your name and (*if military* – rank/rate, duty station, and branch of the armed forces) (*if civilian* - address)?

Discussion

Civilian Witnesses: The address of the witness should be omitted in appropriate cases, as when it might endanger the witness.

RESPONDENT or COUNSEL	**[Continues with Questions]**.
RESPONDENT or COUNSEL	I have no further questions at this time.
BOARD PRESIDENT	Does the Recorder have any questions for this witness?
RECORDER	(No.) (Yes. - **[Continues with Questions]**)
BOARD PRESIDENT	**[Continues with Questions]**
BOARD PRESIDENT	Does any other member of the Board have any questions?
BOARD MEMBER(S)	(No.) (Yes. - **[Continues with Questions]**)
BOARD PRESIDENT	Does the witness have any comments or additions to make relating to this investigation or your own testimony?

WITNESS	(No.) (Yes. - **[Comments or Additions]**)

Discussion

The Board President should pause to ensure that the witness's testimony has been summarized and certified as accurate for entry into the record.

BOARD PRESIDENT	**[WITNESS'S NAME and, if military, RANK/RATE]**, thank you. You are (temporarily) excused. As long as this hearing continues, do not discuss your testimony or your knowledge of this proceeding with anyone except the Recorder or the Respondent (or the Counsel for the Respondent). If anyone else tries to talk to you about the case, stop their questioning and report the matter to one of the persons I just mentioned or to me. Do you understand these instructions?
WITNESS	(Yes.) (No. – **[instructions are explained as necessary]**)
BOARD PRESIDENT	You may be excused.
BOARD PRESIDENT	The Respondent may call the next witness.

Discussion

Repeat the above procedures for each witness.

RESPONDENT or COUNSEL	I have no further witnesses to present at this time.

Discussion

The Board President may direct the Recorder to recall any witness who has previously testified for further questioning, or to secure additional witnesses (See Article 6.D.11.). If a witness who has previously testified under oath is recalled, the Board President shall remind the witness that he or she is still under oath. The procedures above should be repeated for any witness called or recalled by the Board.

When there are no further witnesses to be examined, the Recorder may introduce evidence to rebut the matters brought out in the Respondent's case. The Respondent may then introduce evidence in sur-rebuttal to the Recorder's rebuttal evidence.

BOARD PRESIDENT	Does the Recorder have any evidence to present in rebuttal?
RECORDER	(No.) (Yes. - **[Rebuttal]**)
BOARD PRESIDENT	*(If the Recorder presented evidence in rebuttal:)* Does the Respondent have any evidence to present in sur-rebuttal?
RESPONDENT or COUNSEL	(No.) (Yes. - **[Sur-rebuttal]**)
BOARD PRESIDENT	Does the Respondent or Recorder have anything further to present to this Board?
RECORDER	(No.) (Yes. – **[presents further evidence]**)
RESPONDENT or COUNSEL	(No.) (Yes. – **[presents further evidence]**)

STEP 9
RESPONDENT'S UNSWORN STATEMENT
[*Optional*]
(See Article 6.E.)

Discussion

Step 9 is optional in that the Respondent is not required to make an unsworn statement, just as he/she was not required to testify in Step 8. The Respondent may, however, make an unsworn statement even if he/she did previously testify under oath.

If the Respondent submits a written copy of the unsworn statement, it shall be made a part of the record.

BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, you have already indicated your understanding of your rights in this proceeding, and elected (to testify) (not to testify) under oath. I would now like to remind you of your rights to make an unsworn statement and to submit a written copy of an unsworn statement. You may make an unsworn statement, oral or written, to the Board (*if represented by Counsel* - either personally or through your Counsel). You may or may not submit to questioning on your unsworn statement. Unless you state that you submit to questioning on your unsworn statement, no questions will be asked. If you do submit to questioning, the questions shall be directly related to your unsworn statement. Whether you consent to be questioned or not, evidence may be introduced to rebut anything contained in your statement. Also, you may choose not to give an unsworn statement. If you so choose, the Board will not consider it against you in any way. Do you understand these rights?
RESPONDENT	(Yes.) (No. – **[rights are explained as necessary]**)

BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, do you wish to make a unsworn statement?
RESPONDENT	(Yes.) (No.) *(If "no", skip ahead to the "Discussion" box at the end of Step 9.)*
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, you may begin.
RESPONDENT or COUNSEL	**[Makes unsworn statement and/or submits written copy of unsworn statement.]**
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, do you waive your right to not be cross-examined on your unsworn statement? In other words, do you consent to having the Recorder and the Board ask you questions directly related to your unsworn statement?
RESPONDENT	(Yes.) (No.) *(If "no", skip ahead to the next "Discussion" box.)*
RECORDER	**[Asks questions.]**
BOARD PRESIDENT	**[Asks questions.]**
BOARD MEMBERS	**[Ask questions.]**

Discussion

The Recorder is permitted to introduce evidence to rebut anything in the Respondent's unsworn statement.

BOARD PRESIDENT	Does the Recorder wish to introduce any evidence to rebut the Respondent's unsworn statement?
RECORDER	(No.) (Yes. – **[presents evidence]**)

Discussion

Stop and Assess: Before moving to Step 10, the Board, the Recorder, and the Respondent and/or Respondent's Counsel should stop and assess how the hearing has progressed. These participants should determine whether all appropriate evidence (documents, physical evidence [if any], and witnesses) needed for a full and fair hearing have been presented, and all relevant statements and arguments have been made.

The Board President should also pause to ensure that the applicable portions, generally paragraphs 9 and 10 and any additions to the listing of exhibits in paragraph 8, of the Summarized Hearing Record have been completed.

If the Board President determines that it may be necessary, he/she should consider a brief recess to allow the Recorder and Respondent to prepare for closing arguments.

Only then should the Board proceed to Step 10.

STEP 10
CLOSING ARGUMENTS
[*Optional*]
(See Article 6.F.)

Discussion

Step 10 is optional in that the Recorder and Respondent are not required to make closing arguments.

If written copies of closing arguments are submitted, they shall be made a part of the record.

BOARD PRESIDENT	There being no other evidence to present, you may make your closing arguments. In addition, if you submit a written copy of your closing argument, it shall be made a part of the record. If either the Respondent or the Recorder has proposed findings for this Board to consider, you may submit them at this time.
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, if you are prepared to do so, do you wish to make a closing argument?
RESPONDENT or COUNSEL	Thank you. (No.) (Yes. – **[CLOSING ARGUMENT]**)
BOARD PRESIDENT	**[RECORDER'S NAME and RANK],** if you are prepared to do so, do you wish to make a closing argument?
RECORDER	Thank you. (No.) (Yes. – **[CLOSING ARGUMENT]**)
BOARD PRESIDENT	Are there any further matters for this Board? (*If the Recorder and/or Respondent indicate "yes",* Please advise me what matters still need to be resolved.)

Discussion

Unresolved matters, particularly those pertaining to evidence or witness testimony, should be resolved at this time.

STEP 11
COMPLETING THE SUMMARIZED HEARING RECORD
(See Article 6.G.)

Discussion

The Board President shall recess the hearing at this point to ensure that the Summarized Hearing Record is complete. This is accomplished with the assistance of the other Board members, the Recorder, and the Reporter, and in consultation with the Respondent and/or Counsel.

This process shall involve verifying that all exhibits – including the evidence presented, certified summaries of witness testimony, and any other matter that the Enlisted Personnel Administrative Boards Manual or this Board Guide indicates shall be made a part of the record – are properly marked and have been listed in the Summarized Hearing Record as exhibits. The Board should be confident that the record is sufficiently accurate to be useful and informative to any reviewer.

If the Board President paused throughout the hearing to ensure that applicable portions of the Summarized Hearing Record had been completed, as discussed in previous "Discussion" boxes, this should not be a very time-consuming step.

When this has been accomplished, with the exception of noting the date and time that the hearing is closed at the end of this Step 11, the Summarized Hearing Record is ready for signature by the Board. The Board President should then reconvene the hearing.

BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE]**, the Board has ensured that the Summarized Hearing Record is complete, and we will sign the record to certify it as complete immediately after I close this hearing. I will soon close the hearing, and the proceedings of the Board will continue in private deliberations. Only the three voting members of the Board will be present and will participate in the deliberations. However, at my discretion, the Reporter, **[REPORTER'S NAME and RANK/RATE]**, may be present to assist in the preparation of our report. As we deliberate, the Board will consider the evidence, including relevant arguments, presented at this hearing in light of the preliminary instructions that were read aloud at the beginning of the hearing. Those instructions described the Board's essential duties which, to summarize, are to do the following: First, to consider the evidence presented and determine whether the preponderance of that evidence proves that there is a basis or bases for involuntarily separating **[RESPONDENT'S NAME and RATE]** from the Coast Guard. Second, to consider the evidence presented and recommend whether **[RESPONDENT'S NAME and RATE]** should -- or should not -- be separated. The Board must make this recommendation for consideration by the discharge authority even if we conclude that there is no basis to separate **[RESPONDENT'S NAME and RATE]** from the Coast Guard. Third, to consider the evidence presented and recommend how **[RESPONDENT'S NAME and RATE]'s** service should be characterized <u>if</u> (he) (she) is separated from the Coast Guard. The Board must make this recommendation for consideration by the discharge authority even if we recommend that **[RESPONDENT'S NAME and RATE]** be retained in the Service.

BOARD PRESIDENT	Fourth, to consider the evidence presented and recommend, in the event that the discharge authority's determination is that **[RESPONDENT'S NAME and RATE]** shall be involuntarily separated from the Coast Guard, whether (he) (she) should be placed on probation instead of immediate separation. Probation is a consideration if the Board believes that there is a reasonable prospect for rehabilitation. In this circumstance, the Board will make recommendations regarding the duration and conditions for satisfactory completion of the period of probation. Again, the Board must make this recommendation even if we recommend that **[RESPONDENT'S NAME and RATE]** be retained in the Service.

Discussion

If the Respondent is not eligible to request voluntary retirement, skip the following paragraph that includes a final purpose and continue with the closing instructions.

BOARD PRESIDENT	Finally, to consider the evidence presented and to recommend, in the event that the discharge authority's determination is that **[RESPONDENT'S NAME and RATE]** shall be administratively separated from the Coast Guard, whether (he) (she) should be permitted to voluntarily retire, if (he) (she) was to so request, instead of immediate involuntary separation. Again, the Board must make this recommendation even if we recommend that **[RESPONDENT'S NAME and RATE]** be retained in the Service.

BOARD PRESIDENT	The Board is also mindful that the fact an administrative board was convened in the case of **[RESPONDENT'S NAME and RATE]** does not permit us to automatically conclude that one or more bases to involuntarily separate (him) (her) exists. The Board's responsibility is to base its conclusions and make its recommendations solely on the evidence, testimony, and arguments presented during this hearing, on the guiding principles for administrative boards, and on other applicable policy and law. The Board understands the importance of its obligation to confine ourselves to the facts made part of the record of the hearing. The following procedural rules apply to the Board's deliberations and must be observed. The influence of superiority in rank shall not be employed in any manner in an attempt to control the independence of Board members in the exercise of each member's personal judgment. The Board's deliberations should include a full and free discussion of all of the relevant evidence and arguments that have been presented. In addition to being a participant, I will also act as the moderator during the Board's discussions. I will establish an outline for the discussions, which may be organized based on the order of evidence presented, a chronological timeline of findings of fact, or any other method that best suits the characteristics of the matter before the Board.

BOARD PRESIDENT	After the Board has completed its deliberations, the members will vote on our findings of fact, opinions, and recommendations, and the Board will prepare its written report. I will organize and lead the voting process, choosing the method in which voting is conducted – for example, show-of-hands or written ballot. In instances where a Board member disagrees with the majority – for example, a 2-to-1 vote – that Board member shall append a minority report to the record. The minority report shall identify the part or parts of the majority report with which the non-concurring member disagrees, as well as the basis for his or her disagreement. The minority report may also include additional findings of fact, opinions, or recommendations.

Discussion

The Board's report, including any minority report, will be written and signed by the Board at the end of its deliberations. The Board President will then notify the Respondent and/or Respondent's Counsel and the Recorder of the results of the administrative board as reflected in the Board's report, and will provide a copy of the complete report, which includes the Summarized Hearing Record, to the Respondent and/or Counsel. At this point of the hearing, the Board President should explain this process and arrange the method(s) by which the notification will be made and the copy of the report will be delivered.

I will notify the Respondent, (*if applicable,* Respondent's Counsel), and the Recorder of the results of this administrative board proceeding when they have been determined by the Board. I expect that deliberations and the completion of the Board's report, including any minority report, will require no more than three calendar days to accomplish. While I do not expect that it will be necessary, if, for some reason, additional time will be needed, I am required to report the circumstances to the Convening Authority and provide an explanation for the delay in the report.

BOARD PRESIDENT

[RESPONDENT'S NAME and RATE], [*if applicable,* COUNSEL FOR THE RESPONDENT'S NAME and, if military, RANK], [RECORDER'S NAME and RANK], I will contact you to inform you of the board results by the most convenient and reliable method, which may be in person, by telephone, or via email. (*If the Respondent is represented by Counsel* – I will notify the Respondent and (his) (her) Counsel at the same time and by the same means.) Therefore, please ensure that the Board has your updated contact information before departing at the end of the hearing, and indicate any preferred method of notification as well as any days and times when you may not be available.

Discussion

The Board President may indicate in the script above the method, if known, that he/she intends to use for the notification. He/she may also choose to engage the Recorder and Respondent in a "negotiation" over how and when the notification will be made.

BOARD PRESIDENT

I will also provide the Respondent (*if applicable,* and Respondent's Counsel) with a copy of the Board's completed report, which includes the Summarized Hearing Record. Please let me know whether you prefer a paper copy or an electronic copy of the report.

Before I submit the report to the Convening Authority, you may take up to seven calendar days to review and comment on the report. I may grant additional time for good cause. You may use the review and comment period to do any of the following:

1. To preserve any objections you made before or during the hearing. Any objections you wish to preserve should be made in writing.

2. To submit written rebuttal comments refuting any of the Board's report, including its findings of fact, opinions, and/or recommendations. Any rebuttal comments must be made in writing.

3. To submit a statement of no objection. If you have no corrections to note, objections to preserve, or rebuttal comments to make, you are required to submit a short statement to that effect.

(If applicable, i.e., if the Respondent has been recording the audio of the proceedings –
4. To submit a complete, verbatim, and unedited transcript of the board proceedings.*)*

Any written objections, rebuttal comments, or statement of no objection that you submit will be appended to the report as a post-hearing exhibit when I forward the report to the Convening Authority.

The failure to provide any of the items just mentioned within the review and comment period will be considered as a waiver of your right to object or comment on the results of your administrative board hearing. I will note the failure in my memo forwarding the report to the Convening Authority.

Do you have any questions?

RESPONDENT or COUNSEL	(No) (Yes), (Sir) (Ma'am). **[RESOLVE ANY QUESTIONS.]**
BOARD PRESIDENT	Are there any other matters that should be considered before I close this proceeding?
RECORDER	(No) (Yes), (Sir) (Ma'am). **[RESOLVE ANY QUESTIONS.]**
RESPONDENT or COUNSEL	(No) (Yes), (Sir) (Ma'am). **[RESOLVE ANY QUESTIONS.]**
BOARD PRESIDENT	**[RESPONDENT'S NAME and RATE],** there being no other issues to resolve, this administrative board hearing is closed at **[TIME]** hours on **[DATE and YEAR]**. The Board will now adjourn to deliberate and write its report. You and all other participants, including the witnesses, are directed to return to your normal duties. *(If applicable* – Any audio recording of the proceedings shall cease at this time.*)*

Discussion

The Board President should ensure that the date/time the hearing was closed is noted in paragraph 12 of the Summarized Hearing Record. This should complete the Summarized Hearing Record which shall then be signed by all members of the Board.

The Board should either withdraw to a separate, closed (private) space for deliberations, or remain in the hearing room if suitable and available. It is advisable that the Board review Article 7.B. together prior to beginning its deliberations.

Only voting members of the Board may be present during and participate in the Board's deliberations. However, at the discretion of the Board President, the Reporter may be present to assist the Board as a scrivener in the preparation of its report.

A Legal Advisor assigned by the Staff Judge Advocate is not a member of the Board, and consequently shall not be present during or participate in deliberations. A Legal Advisor appointed by the Convening Authority is a non-voting member of the Board, and similarly shall not be present during or participate in deliberations. However, the Board may consult with the Legal Advisor regarding procedural issues.

In accordance with Articles 1.I.2.c. and 3.A.2., the primary duty of the Board members remains to complete the Board report within three calendar days and prior to resuming their normal duties.

In notifying the Respondent and/or Counsel and the Recorder of the board results, the Board President need not announce all of the Board's findings of fact, opinions, and recommendations, or what may be included in a minority report. Rather, the Board President must only announce the results relative to the questions the Board was required to answer.

Even though the Board members may return to their normal duties after the report is completed, and the proceedings of the Board essentially conclude when the Board President delivers the record of the proceeding to the Convening Authority (See Article 8.B.1.), the Board remains in effect until the board proceedings are terminated by proper authority or until CG PSC takes final action on the case (See Article 7.D.).

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APPENDIX 5-2

SAMPLE SUMMARIZED HEARING RECORD

The sample memo included in this appendix is for an Administrative Separation Board. A fillable Summarized Hearing Record template for each type of board controlled by this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

PAGE INTENTIONALLY LEFT BLANK

U.S. Department of Homeland Security
United States Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: Administrative Separation Board

I. A. Officer, RANK
Board President

Board President's Signature

I. A. Officer, RANK
Board Member

Board Member's Signature

I. A. Senior Enlisted, RATE
Board Member

Board Member's Signature

To: Board Report File

Subj: SUMMARIZED HEARING RECORD

Ref: (a) Convening Order – **convening authority** memo 1910 of **dd Mmm yyyy**
(b) Hearing Scheduling Notice – **board president** memo 1910 of **dd Mmm yyyy**
(c) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)

1. Date/Time/Location:

a. Pursuant to references (a) and (b), the hearing for this administrative board in the case of **LAST , F.I., RATE (respondent)** was convened on the following date: _____.

b. The hearing was called to order at the following time: _____

c. The hearing was conducted at the following location and in accordance with the procedures prescribed in reference (c):

_____ (***Unit, or address if not held at a unit***) _____.

2. Persons Present: (*select all that apply*)

_____ **All persons** named in the convening order **were** present throughout the hearing.

_____ The **following person(s)** named in the convening order **were not** present: [list names and rank/rate of person(s) not present] *

Name, Rank/Rate: _____

Name, Rank/Rate: _____

Name, Rank/Rate: _____

_____ It appeared that the **following person(s)** listed as a board member(s) in the convening order **would be absent** for more than a short period of time and/or his/her absence(s) would reduce the board to less than a majority of the total membership:

Name, Rank/Rate: _____

Name, Rank/Rate: _____

Name, Rank/Rate: _____

The **following person(s) were appointed** by the convening authority **to substitute** for the person(s) listed above:

Name, Rank/Rate: _____

Name, Rank/Rate: _____

Name, Rank/Rate: _____

* Use an Administrative Board Supplemental Page (Appendix 2-3 of reference (c)) or an original document containing the same information as shown in Appendix 2-3 to explain the absence of, or substitutions for, persons named in the convening order, and attach it to this summarized record as an exhibit. If a member of the board is temporarily absent and then returns, he or she shall examine the record of the proceedings conducted in his or her absence, which shall be noted in the record on an Administrative Board Supplemental Page or similar document.

3. Notice of Respondent's Rights: The respondent was advised of his/her rights as an administrative board respondent in accordance with reference (c) at the beginning of the hearing. (*select one*)

_____ The respondent stated that he/she **understood** his/her rights.

_____ The respondent **asked questions about** his/her rights. The hearing proceeded after the respondent acknowledged that he/she understood his/her rights.

4. Respondent's Counsel: (*select one*)

_____The respondent **was** represented by the following lawyer:

Name / Rank: _____

Unit / Address: _____

_____

Telephone: _____

_____The respondent **was not** represented; he/she declined and waived his/her right to be represented by a military or civilian lawyer.

(*select one*)

_____ Respondent's lawyer **was** qualified under Article 27(b) of the UCMJ.

_____ Respondent's lawyer **was not** qualified under Article 27(b) of the UCMJ.*

_____ **N/A**, the respondent was not represented by a lawyer.

* A military lawyer provided at the Coast Guard's expense shall be qualified under Article 27(b). Use an Administrative Board Supplemental Page or similar document to explain why counsel is not qualified under Article 27(b), and attach it to this summarized record as an exhibit.

5. Voir Dire by the Respondent: (*select one*)

_____ The **respondent did not** exercise his/her right to ask voir dire questions of the voting members of the board.

_____ The **respondent did** exercise his/her right to ask voir dire questions of the voting members of the board.

(*select one*)

_____ The respondent **did not** challenge a voting member of the board.

_____ The respondent **did** challenge the following voting member(s) of the board:*

Name: _____

Name: _____

Name: _____

* Attach the respondent's written explanation of his/her objection to a voting board member to this summarized record as an exhibit.

6. Voir Dire by the Recorder: (*select one*)

_____ The **recorder did not** exercise his/her right to ask voir dire questions of the voting members of the board.

_____ The **recorder did** exercise his/her right to ask voir dire questions of the voting members of the board.

(*select one*)

_____ The recorder **did not** challenge a voting member of the board.

_____ The recorder **did** challenge the following voting member(s) of the board: *

Name: _____

Name: _____

Name: _____

* Attach the recorder's written explanation of his/her objection to a voting board member to this summarized record as an exhibit.

7. Voir Dire Outcome: (*select all that apply*)

_____ **N/A**, no voting members of the board were challenged.

_____ The convening authority **did not** excuse and/or substitute for a challenged voting member(s) of the board.*

_____ The convening authority **did** excuse and substitute for the following voting member(s) of the board.

[excused voting member(s)]

Name: _____

Name: _____

Name: _____

Subj: SUMMARIZED HEARING RECORD 1910
dd Mmm yyyy

[substituted voting member(s)]

Name: _____

Name: _____

Name: _____

* Attach the convening authority's written explanation for denying a request to excuse and substitute a voting board member to this summarized record as an exhibit.

8. Exhibits:

List all exhibits by number. Briefly describe each exhibit. Note any objections and rulings by the board.

ADMINISTRATIVE BOARD SUMMARIZED HEARING RECORD – EXHIBITS				
a. The exhibits listed in column (a) were submitted to the board for consideration. b. The exhibits were presented as indicated in column (b). c. Objections to exhibits are indicated in columns (c) and (d).				
#	**a. Exhibit** [identify exhibit]	**b. Presented By**	**c. Objection By**	**d. Considered**
1.	**Notice of Intent to Initiate Administrative Action and Respondent's Election of Counsel dated:** _____.	**Board (President)**	**Recorder/-Respondent**	
2.	**Respondent's Exercise of Rights dated:** _____.			
3.	**Convening Order dated:** _____.			
4.	**Hearing Scheduling Notice dated:** _____.			
5.				
6.				
7.				
8.				

#	**a. Exhibit** [identify exhibit]	**b. Presented By**	**c. Objection By**	**d. Considered**
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				

_____ List of exhibits continued on Administrative Board Supplemental Page or similar document(s).

Subj: SUMMARIZED HEARING RECORD 1910
dd Mmm yyyy

9. Witnesses: The testimony of the following witnesses was offered for consideration by the board:

ADMINISTRATIVE BOARD SUMMARIZED HEARING RECORD – WITNESSES

a. The witnesses listed in column (a) were called to testify.

b. The witnesses were presented as indicated in column (b).

c. Objections to witnesses are indicated in columns (c) and (d).

d. Each called witness who testified was properly sworn.

e. Summarized, certified witness statements have been attached to this record as exhibits as indicated in column (e).

a. Witness	b. Presented By	c. Objection By	d. Allowed to Testify	e. Exhibit #
NAME (Last) (Initials)				
NAME (Last) (Initials)				
NAME (Last) (Initials)				
NAME (Last) (Initials)				
NAME (Last) (Initials)				
NAME (Last) (Initials)				
NAME (Last) (Initials)				
NAME (Last) (Initials)				

_____ List of witnesses continued on Administrative Board Supplemental Page or similar document(s).

10. Respondent's Statement: (*select as applicable*)

_____ The respondent **did** make an unsworn oral statement to the board.

_____ The respondent **did** submit a written version of his/her unsworn statement, which has been attached to this summarized record as exhibit # _____**.**

_____ The respondent **did not** submit any statement(s) to the board.

11. Certification of Completeness: By signing this record, the board members certify that all exhibits, including witness statements (if any), and Administrative Board Supplemental Pages (or similar documents, if any), have been listed above and are attached to this summarized record. The board members have ensured, including through consultation with the respondent, or respondent's counsel, that this record and the exhibit package are complete.

12. Closing of the Hearing: The hearing was closed on the following date and at the following time: _____, after which the board began its deliberations.

#

APPENDIX 6-1

EVIDENCE

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EVIDENCE

REFERENCES:

(a) Administrative Investigations Manual, COMDTINST M5830.1 (series)
(b) Manual for Courts-Martial, United States

I. Purpose.

This appendix contains the rules of evidence for administrative boards convened under this Manual.

II. What is Evidence?

A. For boards convened in accordance with this Manual, evidence is any written document, photograph, physical object (or printed image of the object), or spoken statement of a witness presented to the board by the respondent, recorder, or board president for consideration by the board.

B. Opening statements and closing arguments are not evidence; however, if written copies of opening statements or closing arguments are submitted, they shall be made a part of the record *(See Articles 6.C.2. and 6.F.3. of this Manual)*.

III. Administrative Board Rules of Evidence.

A. Rule 1.

1. Evidence presented to boards *shall be attached* to the record *(See Article 6.B.1. of this Manual)*.

   a. Exception. The board president may decline to attach evidence to the record if she or he concludes that attaching the evidence to the record would not be in the best interests of the Coast Guard. The board president might reach such a conclusion if the material, for example, is prohibited by Coast Guard policy from being widely distributed without permission (such as unredacted copies of Coast Guard Investigative Service Reports of Investigation), is grossly demeaning to an individual, or is prurient in nature (such as sexually explicit photographs or magazines).

   If the board president declines to attach a piece of evidence to the record, he or she shall describe the material in general terms and explain his or her decision in writing in the record.

B. **Rule 2.**

Board members *shall consider* evidence that is attached to the record and that is not objected to by the recorder or the respondent *(See Article 7.B.1.d. of this Manual)*.

C. **Rule 3.**

Board members *shall not consider* evidence attached to the record if the recorder or the respondent objects to it and the board president grants the objection.

(See Article 6.B.4. of this Manual.)

D. **Rule 4.**

1. The board president *shall not* exclude evidence from consideration by the board members solely on the basis that the evidence was improperly or illegally obtained, either by the Coast Guard or the respondent.

   a. Exception. A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he or she has. Any such statement against his or her interests, signed by a member, is invalid. (10 U.S.C. § 1219) The board president *shall decline to consider* a coerced written statement of this nature.

   b. Board members may take into account (consider) the fact that evidence was improperly or illegally obtained when making their recommendations.

   c. *Warning*: This Rule 4 is not an exception to Article 4.H.5. of this Manual, which permits the board president to exclude evidence from the hearing if the proponent does not notify opposing counsel within the disclosure deadlines.

   d. *Warning*: This Rule 4 is not an exception to Article 7.C.6. of this Manual, which prohibits material submitted by the respondent after the deadline for reviewing the board report from being attached to the record.

E. **Rule 5.**

1. The board president *shall not* permit the board to consider evidence that is "privileged." Privileged evidence is evidence that is protected from disclosure at a board hearing for policy reasons. Privileged evidence is excluded from all Coast Guard administrative as well as military justice proceedings. *(See Article 4.E.7. of the AIM, reference (a), for information on the rules of evidence in a standard investigation.)*

2. The recorder or the respondent may object to evidence on the basis that it is privileged. The board president should consult Section V (Privileges) of Part III (Military Rules of Evidence) of the MCM, reference (b), for information about evidence that is protected by a privilege.

3. The most common types of communication that may merit consideration for privilege are those between husband and wife, priest (clergy) and penitent, lawyer and client, and some communications between a psychotherapist and a patient (a limited privilege). Section V of the MRE also addresses the government's privileges for classified material (MRE Rule 505) and for other government material, the release of which would be detrimental to the public interest (MRE Rule 506). *(See Article 4.H.2. of this Manual.)*

F. **Rule 6.**

The result of a polygraph examination may be used only with the subject's permission.

IV. Why Have These Rules of Evidence for Administrative Boards?

A. Rule 1 preserves the record in case the recorder, respondent, and/or board president make a mistake in deciding what evidence the board members should consider in their deliberations.

B. Rules 2 and 3 permit the board members to focus their attention on evidence that is relevant, not privileged, and not unreasonably cumulative during their deliberations.

C. Rule 4 addresses the fact that, because most of the Military Rules of Evidence (MRE) do not apply to administrative proceedings, an administrative board can consider evidence that judicial proceedings, like courts-martial, cannot consider. For example, some evidence used at an administrative hearing may have been obtained in violation of the respondent's Article 31, UCMJ, or 5th Amendment rights. Rule 4 prevents administrative boards from "punishing" the respondent or the Coast Guard for those mistakes by excluding that relevant evidence from consideration.

However, Rule 4 also acknowledges that mistakes in obtaining evidence can be factored into a board's recommendations.

D. Rule 5 prevents information from being disclosed to a board when its disclosure could cause more harm than good.

E. Rule 6 recognizes the questionable reliability of polygraph tests.

V. What Can the Recorder and the Respondent Object to?

A. The respondent and the recorder may object to any matter or decision of the board at any time during the hearing. They may make objections about:

1. Failure of the board, the respondent, or the recorder to follow the procedures for boards set out in this Manual,
2. Any infringement on the respondent's rights as set out in this Manual, and
3. Any other appropriate basis.

VI. Common Objections at an Administrative Board Hearing.

A. Evidence that is Not Relevant.

1. "Relevant" evidence is evidence having any tendency to make the existence of a fact within the board's scope of inquiry more or less probable than it would be without the evidence.

2. The recorder or the respondent may object to evidence on the basis that it is not relevant, and the board president *may decline to consider* evidence on that basis.

B. Evidence that is Unreasonably Cumulative.

1. "Cumulative" evidence is evidence that is relevant and touches on the same or similar matters as do other pieces of evidence admitted to the record; the board president *should not decline to consider* relevant, cumulative evidence.

   a. Exception. The gradual presentation of many pieces of cumulative evidence may, at some point during a hearing, cease to appreciably improve the board's understanding while at the same time begin to unreasonably burden the proceedings, unreasonably burden record management, and/or unreasonably burden the board's ability to efficiently complete its hearing.

   The recorder or the respondent may object to evidence on the basis that it is unreasonably cumulative, and the board president may decline to consider even relevant evidence if he or she agrees.

C. Military Rules of Evidence (MRE).

1. The respondent or recorder may object to the board considering a piece of evidence because its disclosure would violate a rule in the Military Rules of Evidence. Except for Section V (Privileges) of the MRE in reference (b), a board is not required to follow the Military Rules of Evidence. Therefore, the board president may approve or disapprove an objection based on an MRE other than a legitimate claim of privilege.

2. If the respondent or the recorder makes an objection based on any MRE, the board president should consider the following.

   a. Does the MRE actually apply to the evidence presented?; and

   b. Is the objection based on privilege?

   c. If yes to both 2.a. and 2.b. above, then the objection should be approved, but if the objection is based on any MRE except privilege, then

   d. Would applying the MRE promote a full, fair, and impartial hearing?

VII. Authenticity of Evidence.

A. Presumption of Authenticity.

Boards may (but are not required to) presume documents, photographs, and physical evidence submitted for consideration are authentic (i.e., they are what they appear to be) if their authenticity is not disputed by the recorder or the respondent.

B. Disputing Authenticity.

1. If the authenticity of a document, photograph, or piece of physical evidence submitted for consideration is disputed, the disputed evidence may be authenticated by any appropriate means, including a signed statement by the proponent stating the source of the evidence.

2. True copies of original documents should be certified as such by the custodian of the record on the copy or on an attached cover document. If that is not possible, a statement of authenticity of the documents should be included in the report.

VIII. Board Legal Advisor.

Boards are encouraged to consult their legal advisor regarding evidentiary matters and objections.

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APPENDIX 6-2

SAMPLE WITNESS TESTIMONY SUMMARY MEMORANDUM

A fillable Witness Testimony Summary Memorandum template suitable for all boards controlled by this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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U.S. Department of Homeland Security
United States Coast Guard

Commander / Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: **F. M. Last, RANK**
Board President

To: Record of the Proceedings

Subj: WITNESS TESTIMONY SUMMARY

Ref: (a) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)

1. In accordance with Article 6.D.2. of reference (a), I certify, together with the other administrative board participants who have signed below, that this is a fair and accurate summary of witness testimony given under oath or affirmation in the case of:
Respondent's F.M. Last, RATE

2. Witness Information:

   a. **Witness's First, MI, Last Name and (if military), Rank/Rate, Branch of Service, and Duty Station or (if civilian) Address _____, _____ Address continued _____.**

   b. Called by: *(select one)* _____Recorder _____ Respondent

   c. Method of Testimony: *(select one)*

   _____In-Person _____Telephonic _____Video Teleconference

3. Summary of Testimony*:

3. (cont) Summary of Testimony:

Subj: WITNESS TESTIMONY SUMMARY 1910
dd Mmm yyyy

3. (cont) Summary of Testimony:

*Write "witness summary ends here" if there is still space remaining at the end of summary.

Witness's Signature (N/A for telephonic testimony)

Witness

Officer Board Member's Signature	**Senior Enlisted Board Member's Signature**
J.K. Lima, RANK Board Member	**M.N. Oscar, RATE** Board Member
Recorder's Signature	**Respondent or Counsel for the Respondent's Signature**
D.E. Foxtrot, RANK Recorder	**A.B. Charlie, RANK (if military)** Respondent/Respondent's Counsel

#

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APPENDIX 7-1

SAMPLE BOARD REPORT

The sample memo included in this appendix is for an Administrative Separation Board. Fillable board report templates for each type of board conducted in accordance with this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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U.S. Department of Homeland Security
United States Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: Administrative Separation Board

I. A. Officer, RANK
Board President

Board President's Signature

I. A. Officer, RANK
Board Member

Board Member's Signature

I. A. Senior Enlisted, RATE
Board Member

Board Member's Signature

To: **Command Short Title**
Convening Authority

Thru: **A. B. Charlie, SJA**
Staff Judge Advocate

SJA's Signature

Subj: BOARD REPORT – INVOLUNTARY SEPARATION

Ref: (a) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)
(b) Military Separations, COMDTINST M1000.4 (series)

1. Notice to Respondent: On **dd Mmm yyyy**, you notified **NAME OF RESPONDENT**, the respondent, of your intent to take administrative action to involuntarily separate the respondent from the Coast Guard, and described the conduct and/or performance of duty that caused you to initiate that action. Your notice to the respondent has been marked as Exhibit #_____ in enclosure (1), the Summarized Hearing Record.

2. Respondent's Exercise of Rights: The respondent exercised his/her rights on **dd Mmm yyyy** and elected to appear before this administrative board. The respondent's Exercise of Rights has been marked as Exhibit #_____ in enclosure (1).

3. Convening Order: In your convening order dated **dd Mmm yyyy**, you directed this administrative board to convene in accordance with references (a) and (b). Your convening order has been marked as Exhibit #_____ in enclosure (1).

4. Hearing Scheduling Notice: The board president notified the respondent of the date, time, and location of the hearing on **dd Mmm yyyy**. The scheduling notice has been marked as Exhibit #_____ in enclosure (1).

5. Findings: The board conducted a formal administrative hearing that is summarized in enclosure (1). The findings of fact, opinions, and recommendations included in this report are based on the evidence presented during the hearing and considered during the board's deliberations.

6. Findings of Fact: Based on a preponderance of the evidence gathered during the hearing, the board finds the following facts that are supported by the exhibits listed. All exhibits are attached to enclosure (1).

#	Findings of Fact	Exhibits that support this Finding of Fact:
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Subj: BOARD REPORT – INVOLUNTARY SEPARATION 1910

dd Mmm yyyy

#	Findings of Fact	Exhibits that support this Finding of Fact:
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		

_____ Findings of Fact continued on Administrative Board Supplemental Page(s), or similar document(s), attached to this report as enclosure (2).

7. Opinions: Based on a preponderance of the evidence presented during the hearing, the board formed the following opinions:

#	**Opinions** Boards should draw reasonable inferences from those matters of record approved for consideration by the board president to answer the fundamental questions presented to the board. This may include analysis of the evidence and findings of fact and explanation of the board's deliberations on the issues that relate to the fundamental questions.	**Findings of Fact and/or Exhibits that support this Opinion**
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

_____ Opinions continued on Administrative Board Supplemental Page(s), or similar document(s), attached to this report as enclosure (2).

8. Recommendations: The board consulted Chapter 7 of reference (a) and Article 1.B.1.d. of reference (b), and the following recommendations are made in compliance with Coast Guard policy.

a. Basis for Discharge: You directed the board, in the convening order, to identify any reason(s) for separation supported by a preponderance of the evidence gathered at the board's hearing. Based on the board's review and consideration of the record of the hearing, as well as the findings of fact and opinions stated above, the board recommends: (*select one*)

_____ **No basis for discharge** was proven by a preponderance of the evidence presented at the hearing.

_____ **The following basis or bases** for separation is/are supported by a preponderance of the evidence presented at the hearing:

(check all applicable)

Unsatisfactory Performer [ref (b)]

_____ 1.B.9. Unsatisfactory Performer

Unsuitability [ref (b)]

_____ 1.B.15.b.(1) Inaptitude

_____ 1.B.15.b.(2) Personality Disorders

_____ 1.B.15.b.(3) Apathy, Defective Attitudes, Adjustment Disorders

_____ 1.B.15.b.(4) Unsanitary Habits

_____ 1.B.15.b.(5) Alcohol Abuse

_____ 1.B.15.b.(6) Financial Irresponsibility

Misconduct [ref (b)]

_____ 1.B.17.b.(1) Civilian or Foreign Conviction

_____ 1.B.17.b.(2) Pattern of Misconduct

_____ 1.B.17.b.(3) Commission of a Serious Offense

_____ 1.B.17.b.(4) Drugs

_____ 1.B.17.b.(5) Fraudulent Enlistment

_____ Other (identify)

The exhibits, findings of fact, and/or opinions that support this recommendation are as follows:

Explain in plain English which exhibits, findings of fact, and/or opinions support each basis for separation identified by the board.*

***Note: If the basis or bases for discharge identified in paragraph 8.a. requires that the respondent be placed on probation prior to implementation of administrative proceedings, explain whether probation was implemented properly and the outcome of the probation.**

_____ Continued on Administrative Board Supplemental Page(s) or similar document(s) attached to this report as enclosure (2).

b. Separate/Retain: You directed the board to recommend either that the respondent be retained in, or separated from, the Coast Guard. Based on the board's review and consideration of the record of the hearing as well as the findings of fact, opinions, and recommendations stated above, the board recommends: (*select one*)

_____ The respondent should be **retained** in the Coast Guard.

_____ The respondent should be **separated** from the Coast Guard.

The exhibits, findings of fact, and/or opinions that support this recommendation are as follows:

Explain in plain English which exhibits, findings of fact, and/or opinions support the recommendation of the board. The board should provide analysis and explanation that serves to inform the convening authority and other reviewers how and why the board formed its recommendation.

_____ Continued on Administrative Board Supplemental Page(s) or similar document(s) attached to this report as enclosure (2).

c. Characterization of Service and Type of Discharge: You directed the board to recommend an appropriate characterization of the respondent's service, and corresponding type of discharge the respondent would receive, in accordance with guidance set out at Article 1.B.2. of reference (b).

The board has consulted Article 1.B.2. of reference (b) as well as the appropriate parts of the respondent's Personnel Data Record (PDR). Based on Coast Guard policy and the board's review and consideration of the record of the hearing and the findings of fact, opinions, and recommendations stated above, if the respondent is separated from the Coast Guard, the respondent's service should be characterized as: (*select one*)

_____ Honorable (Honorable discharge)

_____ Under honorable conditions (General discharge)

_____ Under other than honorable conditions (OTH discharge)

The exhibits, findings of fact, and/or opinions that support this recommendation are as follows:

Explain in plain English which exhibits, findings of fact, and/or opinions support the recommendation of the board. The board should provide analysis and explanation that serves to inform the convening authority and other reviewers how and why the board formed its recommendation.

_____ Continued on Administrative Board Supplemental Page(s) or similar documents attached to this report as enclosure (2).

d. Probation: You further directed the board to recommend whether the respondent should be placed on probation in lieu of immediate involuntary separation if CG PSC determines that the respondent should be administratively separated. Based on the board's review and consideration of the record of the hearing as well as the findings of fact, opinions, and recommendations stated above, the board recommends: (*select one*)

_____ The respondent **should not be placed on probation**, and should be immediately involuntarily separated if CG PSC determines that the respondent should be administratively separated.

_____ The respondent **should be placed on probation** in lieu of immediate involuntary separation, if CG PSC determines that the respondent should be administratively separated. The board recommends the following conditions of probation be imposed: *

Explain in plain English which exhibits, findings of fact, and/or opinions support the recommendation of the board. The board should provide analysis and explanation that serves to inform the convening authority and other reviewers how and why the board formed its recommendation.

_____ Continued on Administrative Board Supplemental Page(s) or similar documents attached to this report as enclosure (2).

* In accordance with Article 1.B.24. of reference (b), the execution of an approved discharge may be suspended on probation if the circumstances indicate a reasonable prospect for rehabilitation. In recommending that probation be considered, the board shall also recommend the duration and terms of probation, recognizing that an approved discharge would automatically be cancelled at the end of the probationary period upon successful completion of the terms and conditions of probation.

e. Voluntary Retirement: If the respondent has 18 or more years of creditable active service (or 20 or more years of satisfactory federal service for a Reserve member), you directed the board to recommend whether the respondent should be permitted to retire voluntarily, if he/she so requests, in lieu of immediate involuntary administrative separation. (*select one*)

_____ **N/A** – The respondent does not have 18 or more years of creditable active service (or 20 or more years of satisfactory federal service) and is not expected to complete 18 years of creditable active service (or 20 or more years of satisfactory federal service) prior to final action being taken in this administrative board process.

_____ The board has examined the respondent's record and determined that he/she has reached or is likely to reach 18 or more years of creditable active service (or 20 or more years of satisfactory federal service) prior to final action being taken in this administrative board process, and if discharge is approved: (*select one*)

_____ The respondent **should be** permitted to voluntarily retire from the Coast Guard, if he or she so requests, in lieu of immediate involuntary separation.

_____ The respondent **should not be** permitted to voluntarily retire from the Coast Guard in lieu of immediate involuntary separation.

The exhibits, findings of fact, and/or opinions that support this recommendation are as follows:

Explain in plain English which exhibits, findings of fact, and/or opinions support the recommendation of the board. The board should provide analysis and explanation that serves to inform the convening authority and other reviewers how and why the board formed its recommendation.

_____ Continued on Administrative Board Supplemental Page(s) or similar document(s) attached to this report as enclosure (2).

9. Minority Report: (*select one*)

_____ A minority report is attached as enclosure (3).

_____ A minority report is not attached.

10. Respondent Review of the Board Report: By separate correspondence (a copy of which is attached as enclosure (4)), the board president is providing the respondent with a copy of this report, including the summarized hearing record, for his or her review and comment as required by reference (a). The board president will append a memo to this report following the review period, detailing the respondent's response or failure to respond within the review time allowed.

#

Encl: (1) Summarized Hearing Record, Administrative Separation Board memo 1910 of **dd Mmm yyyy**
(2) (##) Administrative Board Supplemental Pages, **if applicable**
(3) Minority Report, **if applicable**
(4) Board President memo 1910 of **dd Mmm yyyy** to respondent, providing copy of board report for review – w/o enclosure

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APPENDIX 7-2

SAMPLE MEMO PROVIDING BOARD REPORT TO RESPONDENT FOR REVIEW

The sample memo included in this appendix is for an Administrative Separation Board. Fillable memo templates for each type of board conducted in accordance with this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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U.S. Department of Homeland Security
United States Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: **I. A. Officer, RANK**
Board President

Board President's Signature

To: **I. A. Member, GRADE / RATE, EMPLID**
Respondent

Subj: RIGHT TO REVIEW ADMINISTRATIVE BOARD REPORT

Ref: (a) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)

1. In accordance with Article 7.C. of reference (a), I am providing you with a copy of the report of your Administrative Separation Board. Enclosure (1) is the report, which includes the summarized record of the hearing that was conducted on **dd Mmm yyyy**.

2. Deadline to Review/Comment: You may take up to **seven calendar days** to review and comment on the report. As the board president, I may grant additional review and comment time for good cause; such a request should be made in a timely manner.

a. Purpose: You may use the review and comment period for any of these purposes:

(1) Preserve Objections: To submit written comments to preserve objections that you made before or during the proceedings.

(2) Submit Rebuttal Comments: To submit written rebuttal comments refuting the findings of fact, opinions, and/or recommendations of the board.

(3) Submit a Statement of No Objection: To submit a written statement of no objection indicating that you have no intent to preserve objections or rebut the board's findings of fact, opinions, and/or recommendations.

- Pursuant to Article 7.C.4.c.(1) of reference (a), you are required to submit a statement of no objection in writing if you do not wish to object or rebut.

- Your statement of no objection will be attached to the record as a post-hearing exhibit.

(4) Submit Transcript: To submit a complete, verbatim, and unedited transcript of the board proceedings, if applicable.

b. *Warning (Missing the Deadline/Waiving Rights): If you fail to submit objections, rebuttal comments, and/or a statement of no objection within your review and comment time period, your failure will be considered to be a waiver of your rights to object or comment on the board results. Accordingly, I will then:*

(1) Document your failure to meet your deadline, and

(2) Proceed as if you submitted a statement of no objection.

c. Material Submitted After the Deadline: Any objections, rebuttal comments, or statement of no objection will be forwarded to the convening authority with the board report. However, in accordance with Article 7.C.6. of reference (a), material you submit after the review time period deadline shall not be appended to the record. Therefore, I encourage you to comply with the submission deadline.

3. Privacy Act:

Authority: 5 U.S.C. 301; 10 U.S.C. 1169; 44 U.S.C. 3101; 49 C.F.R. 1.45(a)(1); Art 1.B., COMDTINST M1000.4 (series).

Purpose: The information that will be solicited during the board's proceedings is intended principally to enable the Coast Guard to determine the desirability of retaining you in the Coast Guard, at your current rate if applicable, and the characterization of your service. In the course of the investigation, information also may be solicited that could give rise to a determination concerning disciplinary or punitive action.

Routine Uses: The information will be maintained as part of the Enlisted Personnel Record System, DHS/USCG-014-Military Pay and Personnel, which is maintained for use in formulating all Coast Guard personnel actions including, but not limited to, assignment, promotion, reenlistment, retirement, discharge, determination of entitlement to pay allowances, correction of records, and disciplinary actions. In this case, the use will be to determine your eligibility to remain in the Coast Guard, at your current rate if applicable. Data is also provided to the Department of Veterans Affairs for determination of an individual's eligibility for benefits administered by that agency and to medical facilities maintained by the Department of Health and Human Services in conjunction with medical treatment afforded an individual. These are not the only possible uses listed under DHS/USCG-014 but they are the most common.

Disclosure is Voluntary: You are advised that the final determination will be based on all the evidence in the investigative record, which includes evidence you provide. Your election not to provide information could possibly prevent the investigation from obtaining evidence that may be needed to support a determination in your favor, and thus result in a determination adverse to you.

#

Encl: (1) Board Report - Administrative Separation Board memo 1910 of **dd Mmm yyyy**

APPENDIX 7-3

SAMPLE MEMO DOCUMENTING OUTCOME OF RESPONDENT'S REVIEW

The sample memo included in this appendix is for an Administrative Separation Board. Fillable memo templates for each type of board conducted in accordance with this Manual may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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U.S. Department of Homeland Security
United States Coast Guard

Commanding Officer
Unit Name
Unit Name continued

Address
Address continued
City State, zip code
Staff Symbol Here
Phone Number Here
Fax Number Here
Email Address (Optional)

1910
dd Mmm yyyy

MEMORANDUM

From: **I. A. Officer, RANK**
Board President

Board President's Signature

To: **Command Short Title**
Convening Authority

Thru: **A. B. Charlie, SJA**
Staff Judge Advocate

SJA's Signature

Subj: RESPONDENT'S REVIEW OF BOARD REPORT

Ref: (a) My memo 1910 of **dd Mmm yyyy for memo to respondent**

1. The report of the administrative separation board convened in the matter of **RESPONDENT'S NAME** is complete.

2. A copy of the board's report was provided by reference (a) to the respondent on **dd Mmm yyyy**.

3. The respondent: (*select one*)

_____ **did not** request additional review time.

_____ **did** request additional review time. (*select one*)

_____ The board president **did not** approve the respondent's request for additional review time.

_____ The board president **did** approve the respondent's request for additional review time.

3. (cont) The reason(s) for the board president's decision is/are as follows:

_____ Continued on Administrative Board Supplemental Page(s) or similar document(s), attached as enclosure (2)

4. The respondent: (*select one*)

_____ **did** respond with objections, rebuttal comments, and/or statement of no objection within the time permitted. He/she responded on **dd Mmm yyyy**.

_____ **did not** respond with objections, rebuttal comments, and/or statement of no objection within the time permitted.

5. The respondent's objections, rebuttal comments, and/or statement of no objection: (*select one*)

_____ **are** attached as enclosure (1).

_____ **are not** attached.*

* Explain in detail on an Administrative Board Supplemental Page (or similar document) the circumstances, if known, that support the respondent's decision to not submit a response.

6. A verbatim transcript of the board proceedings: (*select one*)

_____ was not required.

_____ was produced in accordance with your direction in the convening order and is attached as enclosure (3).

_____ was prepared by the respondent at his/her expense and was submitted with enclosure (1).

Subj: RESPONDENT'S REVIEW OF BOARD REPORT 1910
dd Mmm yyyy

7. The record of the proceeding has been uploaded to the CG Portal in accordance with Article 8.B.2. of the Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series).

#

Encl: (1) Respondent's written submission, **if applicable**
(2) **_#_** Administrative Board Supplemental Page(s), **if applicable**
(3) Government-produced verbatim transcript, **if applicable**

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APPENDIX 8-1

SAMPLE MESSAGE NOTICE FOR TERMINATING AN ADMINISTRATIVE BOARD

A Word version of the sample administrative board termination message may be downloaded from the PSC-psd website: http://www.uscg.mil/psc/psd/fs/.

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SAMPLE MESSAGE NOTICE FOR TERMINATING AN ADMINISTRATIVE BOARD

FM (Initiating Command)
TO (Servicing Legal Office)
INFO COMDT COGARD WASHINGTON DC//CG-0944/CG-094M//
COMCOGARD PSC ARLINGTON VA//PSD/EPM/(for a Reserve member, RPM)//
(First flag officer in member's chain-of-command)
(Initiating command's chain-of-command, as required by local authority)
BT
UNCLAS FOUO //N01910//
SUBJ: NOTICE OF TERMINATION OF [ADMINISTRATIVE SEPARATION BOARD (ASB)] [REENLISTMENT BOARD (RB)]
1. [AN ASB] [AN RB] HAS BEEN TERMINATED AS FOLLOWS:

ALPHA	(EMPLID of member - EMPLID only; do not include any other form of identification.)
BRAVO	(Unit where administrative board was initiated.)
CHARLIE	(Unit where administrative board was held.)
DELTA	(Date administrative board reported out.)
ECHO	(Date administrative board proceedings terminated.)
FOXTROT	(Brief description of reason administrative board proceedings terminated, e.g., "SNM has waived his/her rights to an administrative board by signing an exercise of rights form.")
GOLF	(Statement as to whether any disciplinary action is pending.)
HOTEL	(Grade, name, and title of officer terminating administrative board proceedings.)
INDIA	(Date record of board proceeding uploaded to CGPortal.)

2. INTERNET RELEASE OF THIS MESSAGE IS NOT AUTHORIZED.
BT
NNNN

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