

LEGADMINMAN

CHAPTER 4

OFFICER MISCONDUCT

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CHAPTER 4

OFFICER MISCONDUCT

4000. CHARGE TO OUR LEADERS

1. Marine Corps officers are a breed apart, entrusted with the leadership of the finest fighting organization in the world. When officers violate the special trust and confidence we have placed in them, the Marines of our Corps have the right to expect that corrective action will be initiated immediately, pursued vigorously, and resolved swiftly. When this does not happen, there is a justifiable perception that inequity exists, i.e., that there is inconsistency between the treatment of officer and enlisted misconduct.

2. Although SECNAVINST 1920.6A establishes time processing goals for officer administrative separation cases, there is no speedy trial rule like there is for courts-martial. Commanders, staff judge advocates, and legal service providers must, therefore, generate an internal sense of urgency in officer misconduct cases. There is no substitute for command attention in officer cases.

3. With the assistance of their staff judge advocates and officers in charge of legal service support sections/teams, all officers exercising general court-martial jurisdiction (OEGCMJ) will:

a. Establish a case tracking system for all reported officer misconduct and personally review its contents at least monthly;

b. Establish internal time processing goals for processing officer misconduct cases;

c. Regularly meet with the staff judge advocate to discuss all pending officer misconduct cases;

d. Meet personally with the Resident Agent in Charge, Naval Criminal Investigative Service, and with the local Officer in Charge, Criminal Investigation Division at least annually to discuss areas of mutual interest in officer case processing;

e. Ensure that expedited mail or courier service is used to transmit officer misconduct cases during all phases of processing and to each level of command. For commands geographically co-located, couriers (not guard mail) will be used. For commands geographically separated, Express Mail or comparable overnight mail service will be used.

4001. DISPOSITION OF CASES

1. The Commandant of the Marine Corps expects all matters involving officer discipline to be handled promptly. By the same token, it must be absolutely clear that commanders are expected to dispose of cases consistently, equitably, and in the interest of good order and discipline, considering those factors listed in the discussion at R.C.M. 306(b), Manual for Courts-Martial (MCM, 1998). Within the boundaries established by the Manual for Courts-Martial, SECNAVINST 1920.6A and related regulations, commanders retain unfettered authority to determine the most appropriate forum for resolution of a particular case. What is desired is not a "rush to judgment," but rather all deliberate speed in handling officer discipline cases.

2. Officer cases should not be postponed because of operations, exercises, or training commitments. We are a naval expeditionary force capable of administering discipline at any time around the world.

3. Drunk Driving or "DUI" Offenses. Certain types of cases arising from misconduct in the civilian community have historically taken inordinate amounts of time to resolve. In particular, drunk driving or "DUI" cases often turn into "trials by continuance." In such cases, commanders should consider the option of immediate nonjudicial punishment proceedings. This technique can speed the ultimate resolution of a drunk driving offense for Marine Corps purposes, as well as having a salutary effect on the disposition of the civilian court case by removing the very reason for postponement. NJP may be imposed at any time before a civilian trial, but only after receiving the permission of the OEGCMJ after a civilian trial. See JAGMAN, section 0124. Commanders who desire to embark on a program of immediate NJP proceedings for all off-base, officer drunk driving cases should make liaison with local law enforcement authorities.

4002. REPORT OF OFFICER MISCONDUCT

1. General. Upon receipt of information which indicates an officer may have committed an act proscribed by a military or civilian criminal statute, a report thereof will be made to CMC (JAM) in the following instances:

- a. The officer is in the grade of colonel or above;
- b. The officer is a commander with special court-martial convening authority;
- c. The incident or allegation may generate media interest; or
- d. The incident or allegation is the subject of NCIS, CID, or a command investigation or a preliminary inquiry under R.C.M. 303, MCM, 1998; or

e. The allegation(s) is supported by credible evidence and:

(1) The suspected criminal behavior is of such apparent seriousness that nonjudicial punishment, court-martial, civilian prosecution, or a recommendation to CMC (JAM) for administrative discharge proceedings may result; or

(2) Other circumstances exist that warrant the incident being brought to the attention of CMC.

f. Report all drunk driving or "DUI/DWI" cases that are supported by credible evidence.

g. Do not report DoD, DON or HQMC Inspector General investigations until they are completed and one of the previous reporting criteria is met.

h. When doubt exists as to whether a report is required, contact the CMC (JAM) for guidance.

2. The report will be made to CMC (JAM), Report Symbol MC-1621-04, by electronic mail, facsimile (DSN 225-8350; commercial 703-695-8350), or telephone (DSN 224-4250/1740; commercial 703-614-4250/1740). If made telephonically, it must be followed up with either electronic mail or facsimile within 1 working day. The report will be made by:

a. The staff judge advocate, senior judge advocate assigned, or other designated representative of an OEGCMJ; or

b. The commanding officer or officer-in-charge where no judge advocate is assigned to the organization or when the officer is not under the command of a Marine OEGCMJ.

3. The report shall include the following information:

a. Name

b. Grade/Date of grade

c. Social Security Number/Military Occupational Specialty

d. Component

e. Unit (including major command)

f. Marital status

g. Whether or not selected for promotion

h. Synopsis of the allegation(s)

4. The reported information will remain in the Commandant's Officer Discipline Notebook and will only be provided to those with a need to know.

a. Such reports will not be included in the officer's official military personnel file (OMPF).

b. Upon receipt of the required notification, the Commandant has directed that the Director, Personnel Management Division hold in abeyance all personnel actions (such as promotion, retirement, separation, or transfer) relating to reported officers. These personnel "stop" orders carry with them no punitive aspect, but rather are implemented to maintain the *status quo* until the matters are resolved by the cognizant commanders and/or civilian authorities.

c. In unusual circumstances, commanders may request, in writing and with appropriate justification, execution of personnel actions prior to resolution of the allegation(s). Such requests shall be forwarded via the chain of command to CMC (JAM) for action.

d. Delays of promotion will be handled in accordance with applicable directives, and are not automatic. Commanders should note that immediate determinations concerning pending promotion and the desirability of delay are imperative, in order to avoid promotion while pending possible criminal charges. The promotion of an officer may not be delayed unless the officer has been given written notice of the grounds for the delay (except when it is impractical to give such written notice) before the effective date of the promotion. An officer whose promotion has been delayed shall be given the opportunity to comment in response to the action. (See SECINST 1120.11A, SECNAVINST 1412.6K, SECNAVINST 1412.9A, and SECNAVINST 1420.1A)

5. Monthly Report. A monthly status report on officer misconduct cases will be provided by each OEGCMJ or CO/OIC of a Marine unit and shall include a chronology of all significant events that have occurred in the case in the period since the last report. Where no significant actions have occurred, an explanation is required. The report shall be provided to CMC (JAM), Report Symbol MC-1621-05, at or before 1200 on the 20th of each month by either electronic mail or facsimile. An example of a monthly report is included as figure 4-1. An information copy of this report should concurrently be provided to the cognizant COMMARFOR. A negative report is not required from commands that have no active cases.

6. Officers of Other Services. A report shall be made per this paragraph on all non-Marine officers assigned or attached to Marine Corps commands. In the case of officers of the Navy, specified reporting as required by the Chief of Naval Personnel must also be complied with. Information on these requirements is available from CMC (JAM).

4003. NONJUDICIAL PUNISHMENT (NJP)

1. The Unit Punishment Book (UPB) will not be used when NJP is contemplated in officer cases. In lieu thereof, the officer should be advised of those matters contained in figure 4-2 or 4-3, as appropriate.

2. The procedure for imposing NJP upon an officer is contained in section 0110, JAGMAN and paragraph 4, Part V, MCM, 1998.

a. When NJP is contemplated on the basis of a formal fact-finding body under JAGINST 5830.1, and the officer was accorded the rights of a party with respect to the act or omission charged, the officer should be advised of those matters set forth in figure 4-2. NJP may then be imposed without further proceeding.

b. When NJP is contemplated on the basis of information not the subject of a formal fact-finding body and the officer concerned was not accorded the rights of a party with respect to the act or omission charged, the officer must be advised of those matters set forth in figure 4-3. An Article 15, UCMJ, hearing must then be held in accordance with the procedures set forth in section 0110, JAGMAN and paragraph 4, Part V, MCM, 1998.

3. If NJP is imposed, the officer must be advised of appeal rights as set forth in figure 4-4.

4004. FORMAL REPORT OF OFFICER NONJUDICIAL PUNISHMENT (NJP) OR DISPOSITION OF ALLEGATIONS OF MISCONDUCT

1. A written report of officer NJP shall be forwarded directly to CMC (JAM) (Report Symbol EXEMPT) from the first OEGCMJ in the chain of command. The OEGCMJ will provide all intermediate commanders (e.g., the MEF and Force commanders) with a copy of the report of NJP. CMC (JAM) will contact the appropriate intermediate commanders (Attn: SJA) for the commander's recommendation. A sample letter report of officer NJP is contained in figure 4-5. The purpose of the report of officer NJP is to provide a complete record of the hearing and misconduct for entry into the officer's OMPF and to provide the Show Cause Authority with sufficient information to make the decision whether to process the officer for administrative separation. A copy of the evidence considered, or photographic representations of evidence that is not readily included, should be provided with the report.

2. The report of officer NJP shall not be made to CMC (JAM) until:

a. The appropriate authority has acted finally upon an appeal of NJP, or a reasonable period of time has elapsed after the imposition of NJP without an appeal having been taken. In this regard, an appeal shall be submitted within 5 days of imposition of punishment, or the

right to appeal shall be waived in the absence of good cause shown. The fact that the officer signed a statement indicating no intent to appeal immediately after imposition of NJP does not prevent the officer from later submitting an appeal. See paragraph 7, Part V, MCM, 1998, and section 0110, JAGMAN; and/or

b. An appeal of a punitive letter of admonition or reprimand issued at NJP has been acted finally upon, or a reasonable period of time has elapsed after the officer concerned has received the letter of admonition or reprimand without an appeal having been taken. In this regard, an appeal shall be submitted within 5 days of receipt of the letter, or the right to appeal shall be waived in the absence of good cause shown. See section 0114, JAGMAN.

3. The report of NJP shall include the following:

a. A brief factual statement of the offense(s) and the NJP imposed.

b. A concise, even-handed explanation of the circumstances surrounding the offense(s), including significant matters in aggravation and extenuation and mitigation.

c. Copies of all correspondence incident to the imposition of NJP and all matters relating to an appeal.

d. A verbatim copy of the record of the NJP hearing, or a copy of proceedings of the record of the court of inquiry or other formal fact-finding body upon which NJP was premised. (A citation for bulky records may be substituted provided the record is on file in the Office of the Judge Advocate General of the Navy.)

e. A copy of the investigation upon which NJP was based.

f. A recommendation as to the appropriateness of processing for administrative separation under SECNAVINST 1920.6A, and shall include the basis for such recommended course of action.

g. A copy of the report of NJP with the commander's recommendation for administrative processing should be provided to the officer. If there is a recommendation for a Board of Inquiry (BOI), the officer shall be allowed an opportunity to submit a resignation request with an appropriately characterized discharge or retirement, if eligible, at the current or next lower grade (see figure 4-8). Any retirement/resignation request made at this time shall be enclosed in the report of NJP.

4. In other cases of substantiated serious officer misconduct not involving NJP (including courts-martial where no dismissal was adjudged or approved, and non-traffic civilian convictions), a similar

report shall also be forwarded with recommendations concerning processing.

a. Serious officer misconduct is defined as any behavior for which administrative separation processing would be appropriate under SECNAVINST 1920.6A.

b. Substantiated misconduct includes a finding or opinion of misconduct in a written investigation, civilian conviction, or admission.

c. While minor traffic offenses need not be reported, all driving under the influence or driving while intoxicated convictions must be reported.

4005. COURT-MARTIAL OF OFFICERS

1. The Commandant of the Marine Corps (JAM) (Report Symbol EXEMPT), will be notified when charges are preferred against an officer. The initial report will be made in the manner set forth in paragraph 4002. In addition, the cognizant commander shall forward all favorable/unfavorable matter from the individual's OQR to CMC (JAM).

2. Upon completion of a court-martial and action by the convening authority pursuant to R.C.M. 1107, MCM, 1998, the cognizant commander will cause the following actions to be taken, as appropriate:

a. If the officer was acquitted, or the findings and sentence were disapproved or set aside, have local orders issued reassigning the officer, or request that CMC (MMOA) originate orders reassigning the officer.

b. If the officer was convicted, a copy of the court-martial order will be forwarded to CMC (JAM), in addition to routine distribution, and:

(1) When the sentence imposed requires approval of the President or Secretary of the Navy prior to execution and the officer is not within CONUS, the convening authority shall:

(a) Request CMC (MMOA) originate orders directing the officer's immediate return to CONUS to await final action; and

(b) Advise the CONUS command to which the officer is ordered by message of the charges; findings, sentence, and actions thereon; and any other information pertinent to ensure adequate restraint of the officer. Ensure that CMC (JAM) is an information addressee.

(2) When the sentence imposed requires approval of the President or Secretary of the Navy prior to execution, and the officer is within CONUS, the convening authority shall advise CMC (JAM) by letter or message of the findings, sentence, and action thereon; the command to which the officer will be assigned or attached; and the exact nature and extent of restraint, if any.

3. When an officer has been transferred to a command to await final disciplinary action in the manner prescribed in paragraph 4005.2, the cognizant commander will notify CMC (MMA) by message as soon as the officer joins the command. The message should indicate the unit to which the officer is being assigned or attached, and should set forth the exact nature and extent of the restraint contemplated while the officer awaits final action on his/her sentence.

4. The Secretary of the Navy has proscribed discharging a dismissed officer outside CONUS, except under special circumstances and upon request to the Secretary of the Navy.

5. When a recommendation is made to the Secretary of the Navy, via CMC (JAM), to execute a sentence to dismissal by reason of violation of the conditions of suspension, cognizant commands should follow the same procedure prescribed in paragraphs 4005.2 and 4005.3, as appropriate.

4006. ADMINISTRATIVE SEPARATION PROCESSING All reports submitted in accordance with paragraph 4004 will be submitted to the Show Cause Authority for the Marine Corps for a decision whether the officer should be required to show cause for retention. The show cause decision and any subsequent administrative action will be taken pursuant to SECNAVINST 1920.6A. Figures 4-6 and 4-7 provide recommended formats for submitting reports of BOIs. Figure 4-8 is the recommended format for a BOI findings worksheet.

4007. RESIGNATIONS AND BOARD OF INQUIRY WAIVERS SUBMITTED WHILE MISCONDUCT/SUBSTANDARD PERFORMANCE ISSUES ARE PENDING

1. An officer may tender a resignation at any time during, or in anticipation of, Show Cause processing. The following guidance applies to resignations offered under these circumstances. Resignations tendered "in lieu of trial by courts-martial" do not come within this section, and are handled under the provisions of Marine Corps Order P1900.16E (MARCORSEPMAN).

a. A request submitted under the conditions outlined herein must state whether the resignation is being offered under paragraph 5002 (a standard resignation) or 4104 (a resignation for cause/in lieu of further administrative processing) of MCO P1900.16E (MARCORSEPMAN). The request must reference the specific paragraph, as that designation

will determine what information is entered on the DD 214 and whether a Reserve commission is authorized (regardless of whether requested).

b. CMC (M&RA) is the denial authority for all resignations. The type of resignation and the characterization of service offered are important factors in this decision, and are therefore critical in each submission.

(1) If the resignation is tendered under paragraph 5002 of MCO P1900.16E (MARCORSEPMAN) [change of career intentions], normal resignation format and procedures should be followed, except that the resignation should be submitted in letter format to CMC (JAM) via the chain of command.

(2) If the resignation is under paragraph 4104 of MCO P1900.16E (MARCORSEPMAN)[a resignation for cause/in lieu of further administrative processing], the following guidance applies:

(a) The resignation must state that it is for cause and is being offered in lieu of further administrative separation processing under paragraph 4104 of MCO P1900.16E (MARCORSEPMAN).

(b) The resignation must state whether it is *unqualified* (least favorable characterization is honorable), *qualified* (least favorable characterization is general), or *for the good of the service* (least favorable characterization is other than honorable) under the definitions contained in enclosure (1) to SECNAVINST 1920.6A, and must use the language in paragraph 4104.3 of MCO P1900.16E (MARCORSEPMAN) to state what characterization of service will be accepted and that the consequences of that characterization are understood by the requesting officer.

(c) The resignation need not, and should not, request a specific separation date since it is effective upon approval by the Secretary of the Navy and subsequent issuance of the discharge message from CMC (MMSR).

c. The resignation should provide the basis (i.e., the nature and circumstances of the conduct that occasioned it) in the body of the request (e.g., NJP, civilian conviction, court-martial).

d. A regular officer resigning due to misconduct is not entitled to a Reserve commission, and that fact should be recognized and commented upon within the body of, and endorsements to, the resignation request.

e. A sample resignation in lieu of administrative processing is provided at figure 4-9.

2. An officer may waive a BOI at anytime during, or in anticipation of, Show Cause processing. A waiver of a BOI may not be conditional. The waiver shall include the following:

a. A statement that the officer is voluntarily waiving his or her right to a BOI.

b. A statement that the basis for the waiver of the BOI stems from the officer's misconduct and/or substandard performance of duty established by a relevant investigation or other documentation.

c. A statement that the officer admits committing the alleged misconduct or agrees that the performance of duty was substandard.

d. If the officer is eligible for retirement, a statement that the officer understands that s/he may be retired in the grade next inferior to that in which the officer is currently serving if the Secretary of the Navy determines that the inferior grade was the highest grade in which the officer served satisfactorily.

e. If the officer is not eligible for retirement, paragraph 4104.3c, MARCORSEPMAN, must be included stating that the officer understands s/he could receive an other than honorable characterization of service.

f. A statement that the officer understands that s/he may submit a sworn or unsworn statement or other materials on his/her behalf, and that the officer understands that statements submitted in connection with the request, including admissions of guilt, are not admissible in a court-martial except as provided by Military Rule of Evidence 410, but may be admissible at other proceedings.

g. A statement that the officer understands that s/he may be required to reimburse the U.S. for advance education assistance that included an active duty service requirement that has not been completed.

h. A statement that the officer understands that once the request is submitted, it may be withdrawn only with the permission of the Secretary of the Navy.

i. A statement that the officer has consulted with a qualified defense counsel, including the counsel's name, grade, and branch of service.

3. A sample waiver of a BOI is at figure 4-10.

4008. ADMINISTRATIVE SEPARATION PROCESSING WITHOUT BOARD ACTION In certain circumstances, a commander or the Show Cause Authority may recommend to the Secretary of the Navy that an officer be separated

without a BOI. The following procedures and guidelines apply to these cases:

1. In cases in which the recommendation for separation without board action originates with the Show Cause Authority, notification will be prepared by CMC (JAM). The original notification will be forwarded via the chain of command, and a facsimile copy will be provided directly to the OEGCMJ or designee for use in notifying the respondent. The respondent shall be formally served with the facsimile copy of the notification documents, and service of these documents constitutes the respondent's official notification.

a. The OEGCMJ should ensure that the respondent is served within 2 working days of receipt, and the originals provided to the respondent upon receipt.

b. The respondent's statement in reply to the recommendation (or a written waiver of the right to respond) should be submitted within 5 working days of the Respondent's receipt of notification. The OEGCMJ may grant an appropriate delay in response time upon written application with supporting reasons for such delay, and by written grant of a specific period of delay. The entire record of correspondence, including any requests for, and grant or denial of, delay shall be forwarded with the respondent's reply or waiver of the right to reply. The OEGCMJ (and relevant subordinate commanders) shall provide written endorsements for use by the Show Cause Authority in evaluating the case.

2. In cases in which the recommendation for separation without board action originates with the officer's commanding officer, the notification of the separation recommendation will be prepared by the commanding officer in accordance with SECNAVINST 1920.6A. A sample notification is included at figure 4-10.

a. The commanding officer shall serve the notification on the respondent.

b. The respondent shall be directed to submit a statement regarding the separation recommendation (or a waiver) using the same parameters outlined previously relating to cases originating with the Show Cause Authority.

c. In this variation on the process, the same package, including all recommendations, notification, documentation substantiating the conduct or performance, and any matters submitted by the respondent, shall be forwarded to the Show Cause Authority via the OEGCMJ. CMC (JAM) will contact the appropriate MEF and Force commanders (Attn: SJA) for the commander's recommendation.

4009. MINIMUM QUALIFICATIONS FOR BOARD OF INQUIRY RECORDER AND LEGAL ADVISOR

1. The recorder for a BOI shall be a judge advocate in the pay grade of O-3 or above who has had at least 1 year of experience as a trial or defense counsel.
2. If the OEGCMJ appoints a legal advisor for a BOI, the legal advisor shall be a judge advocate in the pay grade of O-4 or above who has previously been a BOI recorder or a BOI counsel for the respondent, or who is or has been a military judge or a staff judge advocate to an OEGCMJ.
3. If the minimum qualifications for the BOI recorder or legal advisor cannot be met, the SJA for the OEGCMJ may request a waiver of the minimum requirements from CMC (JAM).
4. This paragraph is intended to ensure that adequately qualified personnel are detailed as BOI recorders and legal advisors and is not intended to, and does not, create any rights, entitlements, or defenses arising out of the failure to comply with this paragraph.

4010. TIME LINES FOR PROCESSING OF OFFICER CASES

1. Every effort should be made to meet the deadlines and processing goals established herein.
2. Reports of Officer NJP/Misconduct. Reports of officer NJP/misconduct should be forwarded to the CMC (JAM) as follows:
 - a. Fourteen days from the imposition of NJP if no appeal is submitted; OR
 - b. Fourteen days from final action on the NJP appeal; or
 - c. Fourteen days from any other action requiring formal reporting (including court-martial and appropriate civilian convictions).
3. Boards of Inquiry
 - a. The Show Cause Authority (or Alternate Show Cause Authority) for CMC will direct the commanding general of a respondent to convene a BOI in appropriate cases. Notifications to convene BOIs are prepared following the Show Cause Authority's decision to direct the convening of a board. CMC (JAM) will forward the original notification and order to convene the BOI via the chain of command, and will also provide a facsimile copy to the respondent's OEGCMJ or designee. The respondent shall be formally served with the facsimile copy of the notification documents, and service of these documents constitutes the respondent's official notification of proceedings.

When the original is received it should then be provided the respondent, and an acknowledgment of receipt noted for the record.

b. The OEGCMJ should ensure that the respondent is served with the copy of the notification within 2 working days of its receipt by the command.

c. The OEGCMJ should ensure that each BOI is scheduled to commence between 30 and 45 days of the date the respondent is served with notice of the BOI. The OEGCMJ may grant a respondent an appropriate delay in the commencement of the BOI based upon a written application by the respondent showing good cause. Any request for, and grant or denial of, delay will be in writing and appended to the record forwarded to the Show Cause Authority.

d. The BOI transcript should be completed and served on respondent's counsel within 7 days of the conclusion of the hearing.

e. Respondent's counsel shall be provided 5 working days to review and return the transcript with a statement that the record has been reviewed, noting any errors.

f. The BOI report and transcript shall be provided to the members of the board for their review and any corrections immediately upon return from counsel, and the members of the board should complete their review and authenticate the report and transcript within 7 working days of receipt by the senior member.

g. The final board report should be served on respondent's counsel within 2 working days of authentication by the members.

h. Respondent's counsel shall be provided 5 working days after receipt of the report of the BOI to submit the respondent's rebuttal or waiver of rebuttal.

i. Following a period of 5 working days for administrative review, the entire package shall be provided to the OEGCMJ for endorsement.

j. All processing commands are encouraged to maintain a continuing dialogue on any case in the BOI processing chain, and to exchange information which would aid any superior headquarters in ensuring expedited review.

4. Endorsements and Recommendations. All reports of NJP/misconduct, reports of BOIs, recommendations for separation, and resignation requests when adverse action is pending shall be forwarded directly to CMC (JAM) from the first OEGCMJ in the chain of command. The OEGCMJ will provide intermediate commanders (e.g., MEF and Force commanders) with a copy of the foregoing documents. Intermediate commanders may provide endorsements at their option. When desired by the Show Cause

Authority, CMC (JAM) will contact the appropriate intermediate commanders for recommendations.

5. The following chart is provided for ready reference:

<u>Action Takes</u> <u>Place on</u> <u>Day Number</u>	<u>Processing</u> <u>Goal for This</u> <u>Action in Days</u>	<u>Required Action</u>
1	0	Receipt of notification of BOI
2-3	2	Respondent served with notification of BOI
32-33	30	30-day preparation period expires
34-48	15	BOI scheduled and conducted
49-55	7	BOI transcript completed
56-60	5	Respondent's counsel reviews and returns transcript
61-67	7	Members sign BOI report and authenticate transcript
68-69	2	BOI report served on respondent's counsel
70-74	5	Respondent's counsel submits rebuttal comments
75-79	5	Report of BOI forwarded to OEGCMJ for endorsement
80-82	3	Endorsement by the OEGCMJ

LEGADMINMAN

(COMMAND TITLE)

(REPORT CONTROL SYMBOL MC-1621-04)

NEW CASE(S)

LAST NAME, First Name MI
Grade/date of grade
SSN/MOS
Component
Unit (include major command)
Marital Status
Whether or not selected for promotion
Allegation of misconduct: Explain allegation(s).
Chronology and status:

Date	Event	Day Count
------	-------	-----------

ONGOING CASES

DOE, John E.
WO/1 Feb 97
123 45 6789/1234
USMC
MWSG-37, 3d MAW
Single
Not selected for promotion
Allegation of misconduct: Engaged in adultery with enlisted Marine's wife during Feb 98.
Chronology and status:
8 Mar 98 - First notified. Preliminary inquiry initiated. (0)
21 Mar 98 - Preliminary inquiry completed. Command intends to offer CG's NJP. (14)
31 May 98 - CG's NJP IMPOSED. Punishment: letter of reprimand. Report of NJP in preparation. (85)
30 Jun 98 - Report of misconduct forwarded to MARFORPAC for endorsement. CG 3d MAW recommended SNO not be required to show cause for retention in the Marine Corps. (115)
31 Jul 98 - Report of misconduct forwarded to HQMC (JAM) via (courier)(FedEx)(express mail)(). (146)

Figure 4-1.--Format for Monthly Officer Misconduct Report.

LEGADMINMAN

HEADING

SSIC
Code
Date

From: Commanding General/Officer
To: (Officer concerned)

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

Ref: (a) Paragraph 4d, Part V, MCM, 1998

Encl: (1) Copy of record of formal fact-finding body

1. You are hereby informed that I intend to impose NJP on you based upon the information contained in the enclosure.

2. Under the reference, an Article 15, UCMJ hearing need not be conducted in your case. The enclosure is the record of the formal fact-finding body in which you were accorded the rights of a party respecting the charge(s) against you.

3. You are advised that the offense(s) for which you will receive nonjudicial punishment is/are: (List offense(s) and respective UCMJ articles violated).

4. You are advised that under the reference, you have the following rights with regard to the proposed NJP:

a. Unless attached to or embarked in a vessel, the right to refuse NJP.

b. The right to submit, in writing, any matter in defense, extenuation, or mitigation, for consideration by me in determining whether you committed the offense in question and, if so, an appropriate punishment.

c. The right to appeal the NJP to the next superior authority, if you consider it unjust or disproportionate to the offense. Such an appeal must be made within a reasonable time following the imposition of NJP. In the absence of unusual circumstances, an appeal made more than 5 days following imposition of NJP may be considered as not having been made within a reasonable time. Such an appeal must be in writing and should include your reasons for regarding the NJP as unjust or disproportionate. You may be required to undergo NJP imposed while your appeal is pending, except that if action is not taken on the appeal 5 days after the appeal was submitted, and you so

Figure 4-2.--Notification of Intent to Impose NJP.

LEGADMINMAN

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT (NJP)

request, any unexecuted punishment involving restraint shall be stayed until action on the appeal is taken.

5. You are further advised that a report of this NJP will be made to CMC and that you may be subject to involuntary separation proceedings directed by CMC. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

6. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within 5 working days.

Signature

(Date)

FIRST ENDORSEMENT

From: (Officer concerned)
To: Commanding General/Officer

Ref: (b) SECNAVINST 1920.6A

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment. I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. I understand that action under reference (b) is not precluded by my acceptance of NJP.

(Signature of accused)

(Date)

(Witness, typed or printed name)

Figure 4-2.--Notification of Intent to Impose NJP--Continued.

LEGADMINMAN

HEADING

SSIC
Code
Date

From: Commanding General/Officer
To: (Officer concerned)

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

Ref: (a) Paragraph 4, Part V, MCM, 1998
(b) SECNAVINST 1920.6A

1. You are hereby notified that it is my intention to conduct an Article 15, UCMJ, hearing in accordance with reference (a). Prior to that hearing, you are advised of the following:

a. That you are accused of: (include a statement describing the alleged offenses--including the article(s) of the UCMJ).

b. That you may, upon request, examine available statements and evidence upon which the allegations are based.

c. That you have the right not to make any statement concerning this/these offense(s).

d. That any statement you do make may be used against you during these proceedings or in trial by court-martial or in administrative separation proceedings under reference (b).

e. That you may consult with a lawyer, either a civilian lawyer retained by you at your own expense, or a judge advocate at no expense to you, if one is reasonably available.

f. That you will receive a hearing at which you will be accorded the following rights:

(1) To be present before the officer conducting the hearing or, if you waive such personal appearance, to submit written matters for consideration;

(2) To be advised of the offense(s) of which you are suspected;

(3) That you will not be compelled to make any statement regarding the offense(s) charged and that any statement you do make can be used against you;

Figure 4-3.--Notification of Article 15, UCMJ Hearing.

LEGADMINMAN

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

(4) To be present during the presentation of all information against you, including the testimony of witnesses present and the receipt of written statements. Copies of any statements will be furnished to you;

(5) To have made available to you for inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

(6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation or defense of the alleged charge(s). Matters in mitigation do not constitute a defense but do reduce the degree of culpability. Such matter might include a fine military record, either previous or subsequent to the alleged offenses. Matters in extenuation are matters that render an offense less aggravated or reprehensible than it would otherwise be, but such matters also do not constitute a defense. A matter offered in defense is offered as a reason in law or in fact why you should not be found guilty of the charges alleged;

(7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative. It is your own obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer; and

(8) To have the proceeding open to the public unless good cause for closing the proceeding can be shown or unless the punishment to be imposed will not exceed restriction for 14 days and an oral reprimand.

2. You are further advised that if NJP is imposed, you have the right to appeal to the next superior authority within 5 working days, if you consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

3. Unless attached to or embarked in a vessel, you have a right to refuse NJP.

4. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

Figure 4-3.--Notification of Article 15, UCMJ Hearing--Continued.

LEGADMINMAN

Subj: NOTIFICATION OF ARTICLE 15, UCMJ, HEARING

5. You will indicate, by return endorsement hereon, your understanding of the foregoing and return it within 5 working days.

Signature

(Date)

FIRST ENDORSEMENT

From: (Officer concerned)
To: Commanding General/Officer

Subj: NOTIFICATION OF ARTICLE 15, UCMJ HEARING

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment; I do not desire to demand trial by court-martial and am willing to accept punishment under Article 15, UCMJ. Prior to making this decision, I have had the opportunity to consult with a lawyer.

(Signature of accused)

(Date)

(Witness, typed or printed name)

LEGADMINMAN

SSIC
Code
Date

From: [Officer Concerned]
To: [NJP Authority]

Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

Ref: (a) SECNAVINST 1920.6A
(b) MCO P1900.16E (MARCORSEPMAN)

1. I [Grade First Name MI Last Name SSN/MOS USMC@], assigned or attached to [unit], have been informed of the following facts concerning my right of appeal as a result of [NJP authority] nonjudicial punishment held on [date NJP imposed].

2. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the 5 day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

a. The appeal must be in writing.

b. There are only two grounds for appeal; that is:

(1) The punishment was unjust;

(2) The punishment was disproportionate to the offense for which it was imposed.

3. I understand that, if I submit an appeal, it must be referred to a military lawyer for consideration and advice before action is taken on the appeal.

4. _____ I intend to appeal the imposition of NJP.

_____ I do not intend to appeal the imposition of NJP.

LEGADMINMAN

Subj: ACKNOWLEDGMENT OF NONJUDICIAL PUNISHMENT APPEAL RIGHTS

[If a Board of Inquiry will be recommended, add the following language]:

5. I have been notified of my right to submit a request for [resignation][retirement] in lieu of administrative separation processing.

_____ I desire to submit a request for resignation/retirement in lieu of administrative separation processing in accordance with references (a) and (b).

_____ I do not desire to submit a request for resignation/retirement in lieu of administrative separation processing.

[signature]

[date]

[witness signature]

[date]

LEGADMINMAN

HEADING

SSIC
Code
Date

From: [Officer Imposing NJP]
To: Commandant of the Marine Corps (JAM)

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (GRADE,
FULL NAME, SSN, MOS) (REPORT CONTROL SYMBOL EXEMPT)

Ref: (a) MCO P5800.16A (LEGADMINMAN)
(b) MCM, 1998
(c) JAGINST 5800.7C (JAGMAN)
(d) UCMJ
(e) SECNAVINST 1920.6A
(f) MCO P1900.16E (MARCORSEPMAN)

Encl: (1) Preliminary inquiry/formal fact-finding body report
[Include, at a minimum, items listed in paragraph
4004.3, LEGADMINMAN]
(2) Record of NJP hearing
(3) Acknowledgment of advance educational assistance
reimbursement requirement
(4) Resignation request

1. This report is submitted per paragraph 4003 of reference (a).
2. On [date], following the applicable provisions of references (b), (c), and (d), nonjudicial punishment was imposed by the undersigned on [grade name]. The charges and disposition thereof are as follows:

<u>Charge(s)</u>	<u>Plea</u>	<u>Finding</u>	<u>Appeal/Status</u>
Article ____	[G/NG]	[G/NG]	[Yes/Denied]

3. [Grade name] voluntarily accepted NJP and the following punishment was imposed: [set forth punishment imposed].
4. The circumstances giving rise to the imposition of nonjudicial punishment in this case are: [Provide concise, even-handed explanation of the offense(s), including significant matters in aggravation, extenuation and mitigation.]
5. A record of the NJP hearing conducted in accordance with paragraph 4, part V of reference (b) is contained in enclosure (2). The accused was present at the hearing, was accorded all rights including the right to consult with a lawyer. [Grade name] officer indicated acceptance of the imposition of nonjudicial punishment and did not desire to demand trial by court-martial. Nonjudicial punishment was

Figure 4-5.--Sample Letter Report of Officer NJP.

LEGADMINMAN

Subj: REPORT OF NONJUDICIAL PUNISHMENT IN THE CASE OF (GRADE,
FULL NAME, SSN, MOS) (REPORT CONTROL SYMBOL EXEMPT)

imposed in accordance with section 0110 of reference (c), and Article 15 of reference (d). All requirements of paragraph 4, Part V of reference (b) have been satisfied.

6. [Grade name] has been accorded the opportunity to read the report of nonjudicial punishment in this case and [did/did not] desire to exercise the right to appeal the punishment. [Grade name] has made a statement, enclosure (), and [does/does not] desire to exercise the right to appeal the punishment.

7. I [do/do not] recommend that [grade name] be required to show cause for retention in the Marine Corps at a Board of Inquiry.

[Add the following, as appropriate]:

8. [Grade name] has been advised of the reimbursement requirement for advanced education assistance. [Grade name's] acknowledgment of this requirement is provided as enclosure (3). I do/do not recommend that the reimbursement requirement be waived in this case. [See paragraph 4007.]

9. [Grade, name] has submitted a request for resignation/retirement in lieu of administrative separation processing in accordance with references (e) and (f). I recommend approval/disapproval.]

[Signature]

LEGADMINMAN

ACKNOWLEDGMENT OF ADVANCE EDUCATION ASSISTANCE REIMBURSEMENT
REQUIREMENT

I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

Signature

Date

LEGADMINMAN

SSIC
Code
Date

FOR OFFICIAL USE ONLY

From: [Senior Board Member Identification]
To: Secretary of the Navy
Via: Commandant of the Marine Corps (JAM)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST
NAME MI LAST NAME SSN/MOS USMC(R)]

Ref: (a) CMC ltr 1920 JAMO of [date] [letter directing BOI]
(b) CG, MARFORXXX ltr 1920 SJA of [date] [convening order]
(c) SECNAVINST 1920.6A

Encl: (1) Transcript of the Board's proceedings with exhibits
(2) Findings and recommendations worksheet
(3) Respondent's comments on the report of the BOI

1. As directed by references (a) and (b), a Board of Inquiry convened at [command/location] and conducted a hearing in accordance with the requirements of reference (c).

2. Enclosure (1) is forwarded pursuant to reference (c). Enclosure (2) is the board's findings and recommendations. As indicated by enclosure (3), defense counsel received a copy of the transcript and submitted no deficiencies, but did submit rebuttal comments on behalf of the respondent.

3. REASONS FOR SHOWING CAUSE FOR RETENTION. The purpose of the Board of Inquiry was to recommend whether the respondent should be retained in the U. S. Marine Corps [Reserve]. The board considered these specific reasons for separation:

a. Misconduct, moral or professional dereliction: Commission of a military offense or civilian offense which, if prosecuted under the Uniform Code of Military Justice (UCMJ), could be punished by confinement of 6 months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction; and/or

b. Substandard performance: failure to demonstrate acceptable qualities of leadership required of an officer of his/her grade.

c. [Other bases for separation that SNO was advised of per reference (a).]

Figure 4-6.--Sample Board of Inquiry Report (Not Retirement Eligible).

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST
NAME MI LAST NAME SSN/MOS USMC@]

4. ACTS ALLEGED. The respondent allegedly...
5. RESPONDENT'S POSITION WITH RESPECT TO THE ALLEGATIONS The respondent asserts that...

PARAGRAPHS SIX AND SEVEN WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS:

CASE CLOSED: ALLEGATIONS UNSUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence did not prove the allegations. See enclosure (2).
7. RECOMMENDATION: The Board recommended that the case be closed. See enclosure (2).

CASE CLOSED: ALLEGATIONS SUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).
7. RECOMMENDATION: The Board recommended that the respondent be retained and that the case be closed. See enclosure (2).

DISCHARGE

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).
7. RECOMMENDATION: The Board recommended that the respondent be discharged and that the characterization be (honorable)(general (under honorable conditions))(other than honorable). See enclosure (2).
8. SERVICE AND BACKGROUND. As required by reference ©, the following information is submitted concerning the respondent's service record and background:
 - a. Date of birth:
 - b. Marital Status:
 - c. Civilian Education:
 - d. Date of Appointment:

Figure 4-6.—Sample Board of Inquiry Report (Not Retirement Eligible)—Continued.

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST
NAME MI LAST NAME SSN/MOS USMC(R)]

e. Date of Rank:

f. MOS:

g. Service Schools: See NAVMC 118(8a) at Government Exhibit __.

h. Decorations/awards: See NAVMC 118(9) at Government Exhibit __.

i. Disciplinary History: None

9. PRESERVICE MISCONDUCT CONSIDERED. None.

10. MINORITY REPORT. None.

SENIOR MEMBER DATE

MEMBER DATE

MEMBER DATE

Copy to:
(Chain of Command)

Figure 4-6.--Sample Board of Inquiry Report (Not Retirement
Eligible)--Continued.

LEGADMINMAN

SSIC
Code
Date

FOR OFFICIAL USE ONLY

From: [Senior Board Member Identification]
To: Secretary of the Navy
Via: Commandant of the Marine Corps (JAM)

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST
NAME MI LAST NAME SSN/MOS USMC@]

Ref: (a) CMC ltr 1920 JAMO of [date] [letter directing BOI]
(b) CG, MARFORXXX ltr 1920 SJA of [date] [convening order]
(c) SECNAVINST 1920.6A

Encl: (1) Transcript of the Board's proceedings with exhibits
(2) Findings and recommendations worksheet
(3) Respondent's comments on the report of the BOI

1. As directed by references (a) and (b), a Board of Inquiry convened at [command/location] and conducted a hearing in accordance with the requirements of reference (c).

2. Enclosure (1) is forwarded pursuant to reference ©. Enclosure (2) records the Board's findings and recommendations. As indicated by enclosure (3), defense counsel received a copy of the transcript and submitted no deficiencies, but did submit rebuttal comments on behalf of the respondent.

3. REASONS FOR SHOWING CAUSE FOR RETENTION. The purpose of the Board of Inquiry was to recommend whether the respondent should be retired from the U. S. Marine Corps [Reserve] and, if so, at what grade. The board considered these specific reasons for retirement:

a. Misconduct, moral or professional dereliction: Commission of a military offense or civilian offense which, if prosecuted under the Uniform Code of Military Justice (UCMJ), could be punished by confinement of 6 months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction; and/or

b. Substandard performance: Failure to demonstrate acceptable qualities of leadership required of an officer of his/her grade.

c. [Other bases for separation that the respondent was notified of per reference (a)].

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible).

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST
NAME MI LAST NAME SSN/MOS USMC(R)]

4. ACTS ALLEGED. The respondent allegedly...

5. RESPONDENT'S POSITION WITH RESPECT TO THE ALLEGATIONS The respondent asserts that...

PARAGRAPHS SIX AND SEVEN WILL DEPEND ON THE BOI'S FINDINGS AND RECOMMENDATIONS:

CASE CLOSED: ALLEGATIONS UNSUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence did not prove the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the case be closed. See enclosure (2).

CASE CLOSED: ALLEGATIONS SUBSTANTIATED

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent not be retired and that the case be closed. See enclosure (2).

RETIREMENT: CURRENT GRADE (NO OTH)

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention. The Board found that the respondent's misconduct was insufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible and that service in the current grade is satisfactory. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in his/her current grade. See enclosure (2).

RETIREMENT: CURRENT GRADE (OTH BUT GOOD RECORD)

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention; that the respondent's misconduct was sufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible; that the respondent served in the current grade at least 6 months; and that the respondent's record is otherwise so

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--
Continued.

LEGADMINMAN

Subj: REPORT OF THE BOARD OF INQUIRY IN THE CASE OF [GRADE FIRST
NAME MI LAST NAME SSN/MOS USMC(R)]

meritorious as to demonstrate the respondent has served satisfactorily in the current grade. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in his/her current grade. See enclosure (2).

RETIREMENT: INFERIOR GRADE

6. FINDINGS: The Board found that a preponderance of the evidence proved the allegations and that the respondent failed to show cause for retention; that the respondent's misconduct was sufficiently serious to warrant an other than honorable discharge if s/he were not retirement eligible; that the respondent served in the current grade for at least 6 months; and that the respondent's record is not otherwise so meritorious as to demonstrate the respondent has served satisfactorily in the current grade. See enclosure (2).

7. RECOMMENDATION: The Board recommended that the respondent be retired in the next inferior grade. See enclosure (2).

8. SERVICE AND BACKGROUND. As required by reference (c), the following information is submitted concerning the respondent's service record and background:

- a. Date of birth:
- b. Marital Status:
- c. Civilian Education:
- d. Date of Appointment:
- e. Date of Rank:
- f. MOS:
- g. Service Schools: See NAVMC 118(8a) at Government Exhibit _.
- h. Decorations/awards: See NAVMC 118(9) at Government Exhibit _.
- i. Disciplinary History: None

9. PRESERVICE MISCONDUCT CONSIDERED. None.

10. MINORITY REPORT. None.

Figure 4-7.--Sample Board of Inquiry Report (Retirement Eligible)--
Continued.

LEGADMINMAN

SAMPLE BOARD OF INQUIRY FINDINGS WORKSHEET

(Note: Below is an example using the most common reasons for separation. Each reason listed by the BOI order must be listed on the findings worksheet)

FINDINGS OF THE BOARD OF INQUIRY

By a preponderance of the evidence, this Board of Inquiry finds that Major John Doe 123 45 6789/4402 USMC,

Has/Has not demonstrated Substandard Performance of Duty by:

_____ Failure to demonstrate acceptable qualities of leadership required of an officer of his grade.

_____ Failure to properly discharge the duties expected of an officer of his grade and experience.

Has/Has not engaged in personal or professional conduct that is unbecoming an officer as evidenced by:

_____ The commission of a military or civilian offense that, if prosecuted under the UCMJ, could be punished by confinement of 6 months or more, or if prosecuted under the UCMJ, would require specific intent for conviction. Specifically:

_____ A violation of Article xxx, UCMJ.
(list each article separately)

RECOMMENDATIONS OF THE BOARD OF INQUIRY (Separation BOI)

_____ By majority vote, the Board of Inquiry recommends that Major John Doe 123 45 6789/4402 USMC be separated from the naval service for the reason(s) listed above. The Board of Inquiry further recommends that Major Doe's service be characterized as:

_____ Honorable

_____ General (Under Honorable Conditions)

_____ Other Than Honorable

_____ By majority vote, the Board of Inquiry finds that none of the reasons listed above warrant Major Doe's separation from the naval service and the case is, therefore, closed.

(SEE ENCLOSURE (5) OF SECNAVINST 1920.6A FOR GUIDANCE ON CHARACTERIZATION OF SERVICE RECOMMENDATION)

Figure 4-8.—Sample Board of Inquiry Findings Worksheet.

LEGADMINMAN

RECOMMENDATIONS OF THE BOARD OF INQUIRY (Retirement BOI)

_____ By majority vote, the Board of Inquiry recommends that Major John Doe 123 45 6789/4402 USMC be retired for the reason(s) listed above, and that:

_____ Major Doe be retired in his current grade.

_____ Major Doe be retired in the next inferior grade.

_____ By majority vote, the Board of Inquiry finds that none of the reasons listed above warrant Major Doe's involuntary retirement.

(SEE ENCLOSURE (8) OF SECNAVINST 1920.6A FOR GUIDANCE ON RETIREMENT GRADE RECOMMENDATION)

LEGADMINMAN

SSIC
Code
Date

From: [Officer Concerned]
To: Secretary of the Navy
Via: () (Chain of Command)
() Commandant of the Marine Corps (JAM)

Subj: REQUEST FOR RESIGNATION FOR CAUSE

Ref: (a) MCO P1900.16E (MARCORSEPMAN), paragraph 4104
(b) SECNAVINST 1920.6A

1. Pursuant to references (a) and (b), I voluntarily tender my (unqualified resignation, qualified resignation, or resignation for the Good of the Service)¹ of my commission in the United States Marine Corps (Reserve) in lieu of (further) processing for administrative separation for cause.²

2. [Include "authorized characterization of service" statement required by paragraph 4104.3 of MARCORSEPMAN. This language must correspond with the type of resignation tendered above.³]

3. This resignation is based on (my nonjudicial punishment for _____, my civilian conviction for _____, my misconduct/substandard performance of duty by _____).

4. [Regular Officers] Pursuant to reference (b), I understand that a Reserve commission is normally not authorized for officers resigning for cause and I do not desire such a commission. (While I understand that pursuant to reference (b) a Reserve commission is normally not authorized for officers resigning for cause, if tendered, I would accept a commission in the United States Marine Corps Reserve.)

Figure 4-9.--Sample resignation in lieu of administrative processing.

4-37

¹ See enclosure (1) to SECNAVINST 1920.6A.

² The officer should not request a specific separation date. The resignation will be effective upon SecNav approval of the request.

³ The officer may request a higher characterization of service than the lowest that is authorized by the officer's request. This is simply a request that the Secretary of the Navy consider a higher characterization, and the Secretary is free to characterize at the lowest level authorized by the type of resignation offered. For example: An officer requesting **qualified** resignation (least favorable characterization allowed is general) may state: "Based on my entire record of service, I request separation with an honorable characterization of service. However, I have been informed and understand that if my resignation in lieu of processing for administrative separation for cause is accepted, I may subsequently receive a certificate of **general** discharge from the Marine Corps; that such..."

LEGADMINMAN

Subj: REQUEST FOR RESIGNATION FOR CAUSE

5. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

SIGNATURE

Figure 4-9.--Sample resignation in lieu of administrative processing--continued.

LEGADMINMAN

SSIC
Code
Date

From: Commanding Officer
To: Second Lieutenant John Doe xxx xx xxxx/9901 USMCR

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN
THE CASE OF SECOND LIEUTENANT JOHN DOE XXX XX XXXX/9901 USMCR

Ref: (a) CO, ltr of
(b) SECNAVINST 1920.6A
(c) (Documentation)

Encl: (1) Sample Resignation Format
(2) Acknowledgment of Respondent's Rights

1. In reference (a), I am recommending your separation from the Marine Corps with an honorable characterization of service pursuant to reference (b). The specific factual basis supporting this recommendation is the substandard performance of duty documented in reference (c).

2. The specific reason for your separation is substandard performance of duty as evidenced by your failure to demonstrate acceptable qualities of leadership required of an officer of your grade (or other appropriate basis).

3. You are afforded the following rights regarding this recommendation for your separation:

a. The right to submit a statement to the Secretary of the Navy in rebuttal to this recommendation or to decline to make a statement.

b. The right to tender a resignation in lieu of separation processing. The format for such a resignation is included at enclosure (1).

c. The right to confer with a judge advocate concerning this matter.

d. The right to consult with a civilian counsel at your own expense. This right shall in no way be allowed to delay the orderly processing of this recommendation.

e. The right to be provided copies of the papers to be forwarded to the Secretary of the Navy to support your proposed separation. Any classified documents will be summarized.

Figure 4-10.--Sample notification/acknowledgment without board rights.

LEGADMINMAN

Subj: NOTIFICATION OF RECOMMENDATION FOR ADMINISTRATIVE SEPARATION IN
THE CASE OF SECOND LIEUTENANT JOHN DOE XXX XX XXXX/9901 USMCR

4. You also have the right to waive the rights contained in paragraph 3(a)-(e), and any failure to respond as indicated in paragraph 5, below, shall constitute a waiver of these rights.

5. If you are voluntarily or involuntarily separated before you complete an active duty service requirement incurred because you received advanced education assistance (USNA, ROTC, FLEP, etc.), you may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

6. You are directed to acknowledge receipt of this notification and to designate your election of rights in enclosure (2). All matters you desire to submit concerning this recommendation are due to me within 5 working days of your receipt of this notice. You may request an extension of this time upon a timely showing of good cause.

COMMANDING OFFICER

Figure 4-10.—Sample notification/acknowledgment without board
rights—continued.

LEGADMINMAN

SSIC
Code
Date

From: Second Lieutenant John Doe xxx xx xxxx/9901 USMCR
To: Commanding Officer,

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

Ref: (a) CO, ltr 1920 CO of

1. I acknowledge receipt of the reference informing me of the recommendation for my administrative separation from the Marine Corps.

2. I understand the factual basis for my recommended separation and understand that I am being recommended for an honorable characterization of service.

3. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

4. _____ I (do) (do not) desire to submit a statement to the Secretary of the Navy in rebuttal to this recommendation.

5. _____ I (do) (do not) desire to tender a resignation in lieu of separation processing.

6. _____ I (do) (do not) desire to confer with a judge advocate concerning this matter.

_____ I have conferred with _____ on _____.

7. _____ I (do) (do not) desire to consult with a civilian counsel at my own expense. I understand that the processing of my case shall in no way be unduly delayed to await the availability of such civilian counsel.

_____ I have conferred with _____ on _____.

Figure 4-10.--Sample notification/acknowledgment without board rights--continued.

LEGADMINMAN

Subj: ACKNOWLEDGMENT OF NOTIFICATION OF SEPARATION RECOMMENDATION

8. _____ I (do) (do not) desire to be provided copies of the papers to be forwarded to the Secretary of the Navy to support the proposed separation. Any classified documents will be summarized.

JOHN DOE

Date: _____

Figure 4-10.--Sample notification/acknowledgment without board rights--continued.

LEGADMINMAN

SSIC
Code
Date

From: [Officer Concerned}
To: Secretary of the Navy
Via: (1) (Chain of Command)
(2) Commandant of the Marine Corps (JAM)

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6A
(b) MCO P1900.16E (MARCORSEPMAN)

1. Pursuant to references (a) and (b), I voluntarily waive my right to a Board of Inquiry for processing for [administrative separation for cause][involuntary retirement]. (Note: Conditional language will not be accepted.)

2. (Insert a statement that the basis for the waiver stems from the officer's misconduct and/or substandard performance of duty established by a relevant investigation or other documentation, and a statement that the officer admits committing the alleged misconduct or agrees that the performance of duty was substandard.)

3. [Not retirement eligible] I have been informed and understand that if I am separated from the Marine Corps that I may receive a characterization of service from the Marine Corps which will state upon its face that it is under other than honorable conditions; that I may be deprived of substantial rights, benefits, and bounties which Federal or State legislation confers or may hereafter confer upon persons with honorable service in, or separated from, the Armed Forces, that I may expect to encounter substantial prejudice in civilian life in situations where the nature of service rendered in, or the character of separation from, the armed forces may have a bearing.

OR

3. [Retirement eligible] I have been informed and understand that I may be retired in the grade next inferior to that in which I am currently serving if the Secretary of the Navy determines that the inferior grade was the highest grade in which I served satisfactorily.

4. I have consulted with [insert counsel's name, grade, and branch of service] a qualified defense counsel.

5. I understand that I may submit a sworn or unsworn statement or other material on my behalf for consideration by the Secretary of the Navy, and that any statements submitted in connection with this

Figure 4-11.--Sample voluntary waiver of a board of inquiry.

LEGADMINMAN

Subj: VOLUNTARY WAIVER OF A BOARD OF INQUIRY

waiver, including admissions of guilt, are not admissible in a court-martial except as provided by Military Rule of Evidence 410, but may be admissible at other proceedings.

6. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advance education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

7. I understand that once this waiver is submitted, it may be withdrawn only with the approval of the Secretary of the Navy.

JOHN DOE

Date: _____

Figure 4-11.--Sample voluntary waiver of a board of inquiry--
continued.