

**USAREC Regulation 27-2**

**Legal Services**

**Legal Services  
Support for  
the U.S. Army  
Recruiting  
Command**

**Headquarters  
United States Army Recruiting Command  
1307 3rd Avenue  
Fort Knox, KY 40121-2725  
1 : YVfi Ufm2013**

**UNCLASSIFIED**

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**\*USAREC Regulation 27-2**

**Effective 1 : YVfi Ufm2013**

## Legal Services

### Legal Services Support for the United States Army Recruiting Command

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For the Commander:

HEATHER L. GARRETT  
Colonel, GS  
*Chief of Staff*

Official:

JOSEPH P. BONANO  
*Director, Information Management*

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**History.** This publishes a revised USAREC Reg 27-2, which is effective 1 YVfi Ufy 2013.

**Summary.** This regulation provides information about legal services available to commanders and Soldiers in the United States Army Recruiting Command.

**Applicability.** This regulation is applicable to all military and civilian personnel assigned, attached or detailed to the United States Army Recruiting Command.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested improvements.** The proponent agency of this regulation is the Office of the Staff Judge Advocate. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQ USAREC (RCSJA), Fort Knox, Kentucky 40121-2725.

**Distribution.** This regulation is available in electronic media only and is intended for command level A.

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\*This regulation supersedes USAREC Regulation 27-2, dated 5 June 1996.

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## **Glossary**

## **1. Purpose**

This regulation provides guidance concerning the delivery of legal services to United States Army Recruiting Command (USAREC) personnel. The responsibility for providing such services varies according to particular functional areas. Each area is discussed separately.

## **2. References**

Required and related publications and prescribed and referenced forms are listed in appendix A.

## **3. Explanation of abbreviations**

Abbreviations used in this regulation are explained in the glossary.

## **4. Policy**

a. Legal actions should be handled at the lowest level commensurate with authorized jurisdiction and expertise. Commanders and their legal advisors must be cognizant of and abide by the current Commanding General's (CG's) Withholding of Military Justice Authority.

b. While Judge Advocates and civilian attorney advisors (excepting legal assistance providers and Trial Defense Services (TDS) attorneys) support their respective commands, their primary client is the US Army.

c. Brigade judge advocates (BJA) have specific responsibilities that are described in appendix B. Generally these responsibilities include advising investigating officers (IO); reviewing reports of investigation; providing advice concerning military justice matters; serving as recorders in administrative separation actions; serving as ethics counselors (EC); and providing legal advice concerning enlistment eligibility.

## **5. Military justice**

a. Within each recruiting brigade, the BJA is the principal legal advisor on military justice matters. Commanders will coordinate with the BJA before undertaking Nonjudicial punishment (NJP) or Courts-Martial.

b. The recruiting battalion commander is responsible for ensuring that suspected offenses are promptly and adequately investigated. Depending on the nature and location of the offense, military or civilian law enforcement authorities may conduct an investigation. In other cases, commanders may have to conduct a preliminary inquiry if no other investigation is being conducted. A sample IO appointment memorandum is at figure 1. Alleged or suspected recruiting improprieties (RI) will be investigated using the procedures prescribed by USAREC Reg 601-45. Commanders will report felony-level offenses to the servicing United States Army Criminal Investigation Command (CID) office to ensure that necessary reports are sent to the Crime Records Center. (See AR 190-5, appendix B for guidance on which agency investigates the allegation(s) at issue.)

c. Withholding of Military Justice Authority. Commanders are reminded that jurisdiction over certain offenses is withheld to the CG, USAREC. Commanders should consult the current Withholding of Military Justice Authority policy memorandum to determine whether jurisdiction over a certain offense has been withheld to a higher authority. Additionally, BJAs and commanders must consult Army Directive 2012-07 for specific withholdings pertaining to cases of drug and alcohol abuse.

d. Commanders at all levels are reminded to ensure the completion of the Commander's Report of Disciplinary or Administrative Action (DA Form 4833) in accordance with AR 190-45 and CG Policy Memorandum 60-11.

e. Courts-martial.

(1) USAREC commanders may not prefer any charges, convene any court-martial, or forward any case for trial to a non-USAREC commander without prior coordination with the USAREC Office of the Staff Judge Advocate (OSJA). This coordination is done by the BJA. No BJA will participate in the preferral of charges over the objection of the Staff Judge Advocate (SJA).

(2) If court-martial action is considered appropriate, the commander will forward the evidence of misconduct together with information concerning the Soldier's character and military record to the next superior authority. A sample memorandum of transmittal is at figure 2.

(3) Courts-martial will be convened by a respective supporting installation. AR 5-9 and AR 27-10, appendix E, may be considered in determining the installation that is best suited to convene the Court-Martial. In appropriate cases, jurisdiction may be transferred to another General Courts-Martial Convening Authority (GCMCA) in accordance with AR 27-10, paragraph 5-2b. Attachments prior to the preferral of charges will be processed in accordance with AR 601-1, paragraph 5-16 (Regular Army) or paragraph 6-14 (Active Guard Reserve), as appropriate. Such requests for attachment will be coordinated through the BJA to the SJA, USAREC and G1, USAREC.

(4) Recruiting battalion commanders are Summary Courts-Martial convening authorities, and recruiting brigade commanders are Special Courts-Martial convening authorities for all administrative purposes. The Commander, U.S. Army Medical Recruiting Brigade is the Special Courts-Martial convening authority for Headquarters, USAREC (HQ, USAREC).

(5) The USAREC unit is responsible for funding all witness fees, travel fees, other temporary duty costs, and Department of the Army (DA) civilian court-reporter overtime for cases forwarded to the supporting GCMCA.

(6) The BJA will advise the SJA of any requests for resignation for the good of the service under AR 600-8-24. The USAREC CG is the approval authority for discharges for the good of the service under AR 635-200, chapter 10, prior to referral of charges. After referral, the BJA will advise the SJA before forwarding the request to the servicing GCMCA for action.

f. NJP.

(1) Commissioned and warrant officers. Authority to impose NJP on commissioned and warrant officers is reserved for the CG, USAREC. In appropriate cases, the brigade commander may request authority from the CG to impose NJP on an officer.

(2) Senior noncommissioned officers (NCO). Authority to impose NJP on Soldiers in grades E-8 and E-9 is reserved to the CG, USAREC. In appropriate cases, the brigade commander may request authority from the CG to impose NJP on an NCO.

(3) Legal advice. Commanders will coordinate with the BJA or OSJA before offering NJP under formal procedures.

(4) Reduction authority. Active Guard Reserve (AGR) personnel in grades E-6 and above cannot be reduced under Article 15, UCMJ. Regular Army personnel in grades E-7 and above cannot be reduced under Article 15, UCMJ.

(5) Any additional limitation or withdrawal of Article 15 authority by subordinate commanders will be in writing with copies furnished to the appropriate BJA and OSJA.

(6) Personnel assigned, attached, or detailed to HQ USAREC are attached to the Medical Recruiting Brigade (MRB) for the exercise of field grade Article 15 jurisdiction.

g. Commanders and BJAs must be familiar with the Army's victim and witness program as outlined in AR 27-10, chapter 17. In all cases where a "victim" (in accordance with AR 27-10, para 17-5a) is identified, coordination will be made with the supporting installation victim witness liaison officer.

h. USAREC units that are located on a military installation may be asked to provide nominees for consideration as members for courts-martial. As a matter of comity, such requests should be honored as nominees are drawn from the pool of military personnel assigned to duty at that installation. Similar requests for members on administrative boards should not be granted without coordination with OSJA because USAREC normally conducts its own separation actions.

## **6. Claims**

Responsibility for support in claims matters is prescribed by AR 27-20. Usually claims are filed with the claims office nearest the location of the incident. Claims for damage to household goods should be filed at the Army claims office that supports the servicing transportation office. Claims under the Federal Tort Claims Act (for example, personal injury, property damage to civilian property, or wrongful death of civilians) and affirmative claims (for example, claims by the Federal Government for damage or injury to federal property, personnel, or employees) should be filed at the claims office nearest the location of the accident. Commanders should forward information concerning potential claims for or against the Government to the supporting claims office and BJA office using the format at figure 3. Claims information, including office coverage areas, may be located on the US Army Claims Service webpage at [www.jagcnet.army.mil](http://www.jagcnet.army.mil).

## **7. Enlistment eligibility**

In accordance with AR 601-210, the USAREC Assistant Chief of Staff (ACS), G3 has responsibility for enlistment eligibility questions. Legal questions which arise will be addressed by brigade operations to the BJA or by G3 to OSJA. Installation SJA offices will not be consulted on enlistment eligibility questions.

## **8. Standards of conduct**

a. A summary of the specific rules and regulations as set by the Office of Government Ethics (OGE) is published

at appendix C. USAREC Form 1114 (Standards of Conduct for USAREC Personnel) (see figure 4) can be used by battalions to document awareness training of assigned personnel. The BJA and the brigade attorney-advisor as appointed are the ECs for the brigade and subordinate units. They are responsible for assisting commanders in training and reminding personnel of their obligation to comply with standards of conduct. The SJA is the EC for HQ USAREC and will appoint another attorney at HQ USAREC as deputy EC.

b. Military personnel assigned or attached to USAREC wishing to engage in outside employment (including self-employment) will submit USAREC Form 808 (Outside Employment Permission Request) (see figure 5) through their chain of command to the appropriate commander for approval. See table 2 for approval authorities.

c. Office of Federal Procurement Policy Act Amendments certificates will be completed by all procurement officials indicated in USAREC Reg 715-1, paragraph 6e.

d. Supervisors of positions requiring OGE 450 (Executive Branch Confidential Financial Disclosure Report) are responsible for ensuring that initial statements are submitted properly when a new incumbent is selected. Each September all battalion commanders, brigade chiefs of staff (CoS), and HQ USAREC ACSs and special staff section chiefs will review positions under their supervision and submit the names and positions of persons required to file OGE 450 to the EC. All filers will use the web based Financial Disclosure Management tool to file their annual disclosures.

e. Persons who are required to file a OGE 450 or SF 278 must also attend ethics training each year as part of the Financial Disclosure Management Program. Supervisors are responsible for ensuring their employees complete this training no later than 15 December of each year.

f. Battalion executive officers (XOs) must submit to the brigade ethics counselor a list of persons who received travel payments from a non-federal entity. XOs will submit this report no later than 15 April and 15 October of each year using SF 326.

## **9. Legal Services (Formerly Legal Assistance)**

Soldiers and their Family members may obtain legal services concerning such matters as family law, debts, landlord and tenant, consumer issues, wills, and taxes from an installation SJA office. Soldiers may also obtain legal services from the United States Air Force (USAF), United States Navy (USN), United States Marine Corps (USMC), or United States Coast Guard (USCG) legal services offices if more conveniently located. However, not all legal offices provide extensive legal services. Soldiers needing assistance on Army-related matters should normally see an Army attorney. Soldiers in remote locations may also use Special Legal Assistance Attorneys. These are Army Reserve judge advocates who see qualifying legal assistance clients for retirement points. Individual cases should be coordinated through the BJA or the installation SJA office. Legal services information, to include office coverage areas, may be located on the Legal Services webpage at [www.jagcnet.army.mil](http://www.jagcnet.army.mil).

## **10. Trial Defense Service**

TDS provides military defense counsel for Soldiers pending military justice and administrative separation actions. Military justice actions include courts-martial cases, formal proceedings under Article 15, UCMJ, and requests to consult with counsel under Article 31, UCMJ. Adverse administrative actions such as reliefs, bars to reenlistment, and written reprimands can be handled by either TDS or legal assistance offices depending on local agreements. Therefore, when making an appointment, it is important to identify the nature of the action being taken. A Soldier who receives courts-martial charges, an administrative separation, formal proceedings under Article 15, UCMJ, or other adverse action which requires the Soldier be given the opportunity to see an attorney, is authorized use of a Government-owned vehicle (GOV) or a Government transportation request. Suspension of driving privileges does not preclude the issuance of a transportation request or bus ticket. If the TDS office is located outside the local travel area, the Soldier will be provided with a meal ticket or reimbursed at the meal ticket rate. The Soldier may also be authorized to use a GOV for actions which authorize consulting with counsel, such as Financial Liability Investigation of Property Loss (FLIPL) actions and written reprimands. Per diem is not authorized in accordance with Joint Federal Travel Regulations (JFTR), Volume I, Part O, paragraph U7450. TDS information, to include office coverage areas, may be located on the TDS webpage at [www.jagcnet.army.mil](http://www.jagcnet.army.mil).

## **11. Administrative law**

Legal advice concerning administrative law matters that involve USAREC procedures, policies, or personnel is provided by the BJA or OSJA. For example, involuntary reclassification and/or reassignment of Regular Army recruiters under AR 601-1, FLIPLs, line of duty investigations, Freedom of Information Act (FOIA), and Privacy Act (PA)

requests are handled internally. Legal issues that may depend on state or local law such as environmental or fiscal law may be referred to an installation SJA office by the BJA or SJA after proper coordination. Table 3 outlines the processing of adverse administrative actions.

a. Recruiter reliefs and involuntary reassignments. Pursuant to AR 601-1, the brigade commander is the approving authority for reliefs other than RI. The BJA provides legal review prior to the brigade commander's action.

b. Letters of indebtedness. Failure to pay just debts may require disciplinary or administrative action, such as written reprimands, bars to reenlistment, or administrative separation. DoDI 1344.09 explains Army policy and procedures concerning a commander's responsibilities in responding to letters of indebtedness. The BJA is responsible for providing legal advice to commanders concerning such complaints.

c. FOIA and/or PA. All FOIA and PA requests should be referred to the respective headquarters, brigade, or battalion FOIA point of contact or privacy coordinator. They will coordinate the release of information with the servicing BJA or OSJA.

d. Bars to reenlistment. Bars to reenlistment shall conform to the requirements of AR 601-280, chapter 8. The approving authority for Regular Army Soldiers with less than 10 years service is the first commander in the rank of LTC or above in the Soldier's chain of command or the commander exercising Special Court Martial Convening Authority (SPCMCA), whichever is in the most direct line to the Soldier (unless this is the same commander who initiated the action). For Soldiers with 10 or more years of active Federal Service at date of bar initiation, and who are not on indefinite reenlistment status, the approval authority is the first general officer in the Soldier's chain of command or the commander exercising GCMCA, whichever is in the most direct line to the Soldier. The personal signature of the approving or disapproving authority is required. Whenever a bar to reenlistment is initiated within 30 days before expiration term of service (ETS) or departure from the unit, the commander's certificate will explain why action was not taken sooner. Unit commanders are responsible for reviewing approved bars to reenlistment upon completion of the first 3-month period and will initiate separation proceedings under AR 635-200 upon completion of the second 3-month review, unless a recommendation for removal is submitted. Normally a Soldier with a bar to reenlistment will not be allowed a permanent change of station.

e. Written reprimands. AR 600-37 provides for the filing of reprimands in a Soldier's military records. Any commander can direct that a written reprimand be filed in a Soldier's Personnel Information File (PIF) (commonly referred to as the "local file"). In order to file the reprimand in the Soldier's official military personnel file (OMPF), the memorandum must have been issued or endorsed by a general officer (GO) or the GCMCA. When a reprimand is issued, the Soldier's acknowledgment and any rebuttal are forwarded through the chain of command by endorsement to the filing authority. Commanders must indicate in their endorsement the reasons why the reprimand should be filed in the Soldier's OMPF (performance fiche only), local file, not filed, or withdrawn. If the reprimand indicates the issuing authority intends to file the memorandum in the Soldier's local file, it cannot be filed in the OMPF. A sample written reprimand, acknowledgments, and forwarding endorsement are at figures 6, 7, 8, and 9.

f. Financial Liability Investigation of Property Loss (FLIPL). FLIPLs shall be conducted in accordance with AR 735-5. When the approving authority believes financial liability is appropriate, the approving authority will obtain a legal opinion from the BJA before assessing pecuniary liability. Requests for reconsideration will be submitted to the approving authority who acted on the FLIPL prior to being sent to the appeal authority.

g. Line of duty. The line of duty regulation, AR 600-8-4, provides that an individual who becomes a casualty because of his or her intentional misconduct or willful negligence can never be said to be injured, diseased, or deceased in the line of duty. Because substantial benefits may be lost, it is critical to determine whether the injury or disease occurred while in the line of duty. Authority to make "not line of duty" determination is restricted. USAREC brigade commanders may approve "line of duty" recommendations, but only the CG, USAREC, may approve "not line of duty" recommendations.

h. Taxes, fees, and penalties. State governments occasionally permit localities to provide services such as 911 emergency telephone services and collect the related costs through telephone billing. Similarly, other miscellaneous charges or taxes unrelated to telephone services may appear on individual bills. The issue of whether such charges constitute a permissible reimbursement of fees levied on the utility or an impermissible tax levied on the Federal Government is complex and largely dependent upon local law. Accordingly, all inquiries regarding the permissibility of such charges should be directed to the BJA.

## **12. Administrative separation actions**

Administrative separation actions involving USAREC Soldiers are conducted internally. They may be referred to supporting installations only when the CG or his or her designee determines that USAREC assets are not reasonably

available. The brigade is responsible for funding all separation board expenses including temporary duty for board members and defense counsel. Table 4 provides a simplified reference to the various separation actions.

a. In accordance with Army Directive 2012-07, dated 13 March 2012, the authority to retain a Soldier who is subject to discharge under chapter 14, AR 635-200 for illegal drug activity, two alcohol related incidents in a 12 month period, or two DUI/DWI convictions within a career is withheld to the CG, USAREC. Additionally, the CG is the retention authority for all actions which authorize the issuance of an other than honorable (OTH) discharge.

b. The BJA is normally the recorder for boards appointed by the CG, USAREC. Board members are nominated through the brigade and selected by the CG, USAREC.

c. The brigade commander is the discharge authority for separations under AR 635-200, chapters 5, 6, 7 (when an OTH discharge is not warranted), 8, 9, 11, 13, 14 (when an OTH is not justified), 16, and 18. When a separation action under chapter 14 is initiated under the notification procedure because a Soldier lost his or her primary military occupational specialty (MOS) due to his or her own misconduct, the brigade commander is authorized to direct retention in meritorious cases. Any separation action that allows for an OTH must be processed to the CG, USAREC, even if the brigade commander supports a general discharge.

d. The battalion commander is the discharge authority for separations under AR 635-200, chapters 9, 13, and 18 when the Soldier has less than 6 years total service or does not request a board. However, no separation will be directed without a legal review of the file by the BJA.

e. In administrative separation cases approved by the brigade or battalion commander, the BJA may conduct the required legal review or act as the recorder. If the BJA is the recorder, the case must be forwarded to OSJA for the required legal review. If the BJA is not the recorder, he or she will do the legal review. The brigade legal specialist/NCO/or technician serves as the reporter and prepares the record of proceedings.

### **13. Litigation**

a. In accordance with AR 27-40, paragraph 7-2b, the SJA is required to give written permission to Soldiers or civilian employees to testify concerning information learned in the course of official duties. A copy of any subpoena or court order must be sent to the SJA immediately. Information concerning the handling of subpoenas is contained in appendix D.

b. Units must immediately notify the BJA or OSJA when they receive notice of a complaint filed in civil court against the unit, USAREC, Army, U.S. Government, or any USAREC personnel based on official actions. This includes civil suits arising from GOV accidents which are being processed by the servicing claims office.

c. The SJA, USAREC, or in his or her absence, the Deputy SJA, shall accept service of process for USAREC or for the CG, USAREC, in his or her official capacity.

### **14. Jury duty**

In accordance with AR 27-40, paragraph 10-3, the brigade commander is authorized to determine whether a Soldier qualifies for an exemption from jury duty under section 982, title 10, United States Code. Procedures for requesting an exemption are contained in appendix E.

### **15. Contracts and procurement fraud**

a. Legal review of all contracts except the advertising contract and the OMNIBUS studies contract at HQ USAREC is the responsibility of the SJA office that supports the servicing contracting office.

b. The SJA will appoint an attorney as the Procurement Fraud Coordinator and Procurement Fraud Advisor in accordance with AR 27-40, chapter 8. The Procurement Fraud Coordinator and Procurement Fraud Advisor will coordinate the status of all cases involving procurement fraud, corruption, or irregularities within USAREC with the concerned directorates and commanders.

c. Procurement fraud responsibilities of commanders are addressed in appendix F.

### **16. Labor and civilian personnel law**

BJAs and brigade attorney-advisors have primary responsibility for civilian personnel matters. The USAREC labor counselor will represent brigades in labor proceedings as necessary (that is, Merit System Protection Board appeals, Equal Employment Opportunity appeals, and arbitrations). The BJA and USAREC labor counselor are required to inform the USAREC SJA of all labor proceedings to ensure that HQ USAREC is aware of all civilian personnel actions. Battalions must coordinate all disciplinary actions they intend to impose against civilian employees with the servicing civilian personnel office and BJA.

## 17. Environmental law

Environmental law problems will be referred to the supporting installation SJA.

## 18. Mental health evaluations

Public Law 102-48, National Defense Authorization Act for Fiscal Year 1993, includes mental health evaluation referral procedures for members of the Armed Forces. Department of Defense (DoD) Directive 6490.4 defines those procedures. Before a Soldier can be sent to a mental health evaluation, outpatient or inpatient (other than in an emergency), the commander must consult medical personnel and must provide written notification to the Soldier (see appendix G). Commanders should consult their brigade psychologist and BJA.

## 19. Article 138 Complaints

Commanders must take prompt action on requests for redress or complaints under Article 138, UCMJ. USAREC commanders who receive either a request for redress or complaint under Article 138, UCMJ, will immediately send a copy to OSJA and the BJA. A copy of their response to the request for redress will also be sent immediately to OSJA. Article 138 complaints will be sent through HQ USAREC (RCSJA) for action by the CG. Refer to AR 27-10, chapter 19 for processing times.

## 20. Supporting Installations

United States Army Forces Command and United States Army Training and Doctrine Command installations are responsible for providing certain legal services support in accordance with AR 5-9, paragraph 4f and table B-1. These services include legal assistance; courts-martial support; labor and civilian personnel law; and contracts. Coordination should be accomplished through the BJA or OSJA.

## 21. Supporting CID units

Supporting CID units may be found by going to <http://www.cid.army.mil>.

**Table 1**

**Supporting installations**

<b>Brigade</b>	<b>Battalion</b>	<b>Supporting Installation</b>
MRB		
1st	1st MRB	Fort Meade, MD
2d	2d MRB	Fort Benning, GA
3d	3d MRB	Fort Knox, KY
5th	5th MRB	Fort Sam Houston, TX
6th	6th MRB	Fort Irwin, CA
1st	Albany	*Fort Drum, NY and West Point, NY
1st	Baltimore	Fort Meade, MD
1st	Beckley	*Fort Meade, MD and Fort Lee, VA
1st	Harrisburg	Fort Meade, MD
1st	New England	Fort Drum, NY and West Point, NY
1st	New York City	Fort Meade, MD
1st	Mid-Atlantic	Fort Meade, MD
1st	Syracuse	Fort Drum, NY
2d	Atlanta	Fort Benning, GA
2d	Baton Rouge	Fort Polk, LA
2d	Columbia	*Fort Jackson, SC and Fort Gordon, GA
2d	Jacksonville	Fort Stewart, GA
2d	Miami	Fort Stewart, GA
2d	Montgomery	*Fort Rucker, AL
2d	Raleigh	Fort Bragg, NC
2d	Tampa	*Fort Stewart, GA and Fort Buchanan, PR
3d	Chicago	Fort McCoy, WI
3d	Cleveland	Fort Knox, KY
3d	Columbus	Fort Knox, KY
3d	Great Lakes	*Fort McCoy, WI and Fort Knox, KY
3d	Indianapolis	Fort Knox, KY
3d	Milwaukee	Fort McCoy, WI

3d 3d	Minneapolis Nashville	Fort McCoy, WI Fort Campbell, KY
5th 5th 5th 5th 5th 5th 5th	Dallas Denver Houston Kansas City Oklahoma City Phoenix San Antonio	Fort Hood, TX Fort Carson, CO Fort Hood, TX Fort Leavenworth, MO *Fort Sill, OK and Fort Hood, TX Fort Huachuca, AZ Fort Sam Houston, TX
6th 6th 6th 6th 6th 6th 6th 6th 6th	Fresno Los Angeles Portland Sacramento Salt Lake City Seattle Southern California Seattle Southern California	Presidio of Monterey, CA Presidio of Monterey, CA Fort Lewis, WA Fort Irwin, CA Fort Carson, CO Fort Lewis, WA Fort Irwin, CA Fort Lewis, WA Fort Irwin, CA

\*Battalion area is covered by more than one supporting installation. The first installation listed is responsible for the area which include the Rctg Bn headquarters

**Table 2**  
**USAREC Form 808 Approval Authorities**

<b>Personnel</b>	<b>Approval Authority</b>
Rctg Bde Commanders	Deputy Commanding General (DCG)
HQ USAREC Officers	CoS, USAREC
HQ USAREC Enlisted	Headquarters Commandant, HQ USAREC
Rctg Bde Headquarters Personnel	Rctg Bde Commander (May be delegated to Rctg Bde CoS.)
Rctg Bn Commanders	Rctg Bde Commander (May be delegated to deputy commanding officer.)
Rctg Bn Headquarters Personnel	Rctg Bn Commander
Rctg Co Commanders	Rctg Bn Commander
Rctg Co Personnel	Rctg Co Commander

**Table 3  
Adverse Administrative Actions**

Actions	Grounds for action	Who initiates	Board hearing	Regulation	Entitled to counsel	BJA review	Approval authority	To whom appealed	Ultimate result
On-post drunk driving sanctions	Refusal of blood alcohol test; driving with blood alcohol content of .10%; driving with blood alcohol content between .05%, and .10%; official report of driving while intoxicated.	Installation commander or designee, who is not assigned primarily to law enforcement duties.	Hearing before installation commander or designee within 10 days of suspension, upon request.	AR 190-5, chapter 2.	Entitled to lawyer at own expense at hearing.	No.	Installation commander.	GCMCA may grant restricted privileges for on-post driving.	Privilege to drive suspended or revoked.
Relief from Command	Substandard personal or professional characteristics, conduct, behavior, or duty performance.	Superior Commander.	No.	AR 600-20, paragraph 2-17.	No.	No.	First GO in chain.	No formal appeal.	Soldier is relieved.
Written reprimand	Misconduct or unsatisfactory performance.	Immediate commander or higher, GO, supervisors (enlisted), or rating chain (officers).	No.	AR 600-37.	No.	For OMPF.	Local file: Chain of command. OMPF: GO or GCMCA.	Local file: Chain of command. OMPF: Department of the Army Suitability Evaluation Board.	If filed, goes in local file or OMPF.
Reduction for civil conviction	Any civil conviction. Mandatory if confinement for 1 year or more (unsuspended).	Immediate commander or higher.	Only for sergeant and above.	AR 600-8-19.	Yes, if requested.	Recommended.	Company commander: E-2 to E-4; battalion commander: E-5 and E-6; brigade commander: E-7 to E-9.	Battalion commander: E-2 to E-4; brigade commander: E-5 and E-6; DCG E-7 to E-9.	Reduction of one or more grades.
Reduction for inefficiency	Inability to perform duties and responsibilities required of grade and military occupational specialty.	Immediate commander or higher.	Only for sergeant and above.	AR 600-8-19.	Yes, if requested.	Recommended.	Company commander: E-2 to E-4; battalion commander: E-5 and E-6; brigade commander: E-7 to E-9.	Battalion commander: E-2 to E-4; brigade commander: E-5 and E-6; DCG E-7 to E-9.	Reduction of one grade.
Unqualified reassignment	Medical problems; financial or Family misconduct without recruiter fault.	Battalion commander.	No.	AR 601-1, paragraph 5-4.	No.	Yes.	Brigade commander.	No formal appeal.	Reassignment.
Ineffective relief	Failure to respond to training or attain production standards.	Battalion commander.	No.	AR 601-1, paragraph 5-5 and USAREC Cir 601-91.	Not specifically for relief, but if read Article 31 rights during investigation, yes.	Yes.	Brigade commander.	No formal appeal.	Relief, reassignment, and reclassification.
Unsuitable relief	Misconduct; RI; physical training or weight failure.	Battalion commander (USAREC Fm 713-1 (Notification and Rebuttal of Adverse Action) in RI cases; AR 601-1 memorandum in all others).	No.	AR 601-1, paragraph 5-6; USAREC Reg 601-45; and USAREC Cir 601-91.	Not specifically for relief, but if read Article 31 rights during investigation, yes.	Yes.	RI - CG; all others brigade commander.	RI - no formal appeal.	Relief, reassignment, and reclassification.

**Table 3**  
**Adverse Administrative Actions (continued)**

<b>Actions</b>	<b>Grounds for action</b>	<b>Who initiates</b>	<b>Board hearing</b>	<b>Regulation</b>	<b>Entitled to counsel</b>	<b>BJA review</b>	<b>Approval authority</b>	<b>To whom appealed</b>	<b>Ultimate result</b>
Bar to reenlistment	Unsuitable; untrainable; or single Soldier or inservice couple with dependent Family members.	Immediate commander or higher.	No.	AR 601-280, chapter 6.	No.	Recommended.	Battalion commanders: 1 to 10 years active federal service (AFS) (including 04(P) in 05 command); DCG 10 to 18 and more than 20 years AFS; DA: 18 to 20 years AFS.	DCG: 1 to 10 years AFS; DA more than 10 years AFS.	Soldier is barred from reenlisting.
Revocation of security clearance	Misconduct; improper activities or conduct.	Commanders specified in AR 380-67.	No.	AR 380-67.	No.	No.	Commander specified.	Assistant CofS for Intelligence Headquarters, Department of the Army.	Security clearance revoked.
Adverse Noncommissioned Officer Evaluation Report	Misconduct; misbehavior substandard performance.	Rater or endorser.	No.	AR 623-3, Chapter 3.	Yes.	No.	Not applicable.	Administrative errors: USAREC; substantive errors: Enlisted Special Review Board.	Filed in OMPF.
Adverse Officer Evaluation Report (OER)	Any negative OER; "Attributes" 4 or 5; "often" or "usually" failed; "do not promote"; bottom 3 blocks; failed Army physical fitness test; or overweight.	Rater or senior rater.	No.	AR 623-3, Chapter 3.	Yes.	Recommended.	Not applicable.	Administrative errors: United States Total Army Personnel Command; substantive errors: Officer Special Review Board.	Filed in OMPF.

**Table 4**  
**Separation Actions**

ACTIONS	GROUND FOR ACTION	COUNSELING REQUIRED	WHO INITIATES	BOARD HEARING	REGULATION	ENTITLED TO COUNSEL	BJA REVIEW	SEPARATION AUTHORITY	POSSIBLE CHARACTERIZATIONS OF SERVICE
Secretarial authority	Best interests of the Army.	No.	Immediate commander or higher, including separation authority on action when board recommends retention.	No. Use notification procedure. Kick-up provision is inapplicable.	AR 635-200, paragraph 5-3.	Counsel for consultation (JA).	Yes. See paragraph 26e(3). <sup>1</sup>	Secretary of the Army.	Honorable, general, or entry level separation.
Parenthood	Parental obligations interfere with military responsibilities (e.g., repeated absenteeism, late for work, unavailable for field exercises, change of quarters, special duty only, worldwide assignment or deployment).	Yes.	Immediate commander or higher.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	AR 635-200, paragraph 5-8.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	Brigade commander.	Honorable, general, or entry level separation.
Personality disorder	Personality disorder, as diagnosed by psychiatrist, that interferes with duty performance. Long-term, deeply-ingrained, maladaptive pattern of behavior. Listed in DSM-III.	Yes.	Immediate commander or higher.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	AR 635-200, chapter 5-13.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	Brigade commander.	Honorable or entry level separation; see paragraph 5-13h for limited condition for general.
Failure to meet weight standards	Failure to meet weight control standards set forth in AR 600-9. Overweight condition must be the sole basis for separation.	Yes. Give Soldier time to meet weight standards.	Immediate commander or higher.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	AR 635-200, chapter 18.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	Battalion commander: No board. brigade commander: Board.	Honorable or entry level separation.
Personal abuse of alcohol or other drugs	Soldier is enrolled in Alcohol and Drug Abuse Prevention and Control Program and (1) lacks potential for service and rehabilitation efforts are not practical or (2) long-term rehabilitation required and Soldier is transferred to civilian facility.	No.	Immediate commander or higher.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	AR 635-200, chapter 9- and Army Directive 2012-07	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	Refer to paragraph 12a above and Army Directive 2012-07.	Honorable, general, or entry level separation. Honorable required if limited use evidence used.

**Table 4**  
**Separation Actions (continued)**

ACTIONS	GROUND FOR ACTION	COUNSELING REQUIRED	WHO INITIATES	BOARD HEARING	REGULATION	ENTITLED TO COUNSEL	BJA REVIEW	SEPARATION AUTHORITY	POSSIBLE CHARACTERIZATIONS OF SERVICE
For the good of the service	Preferral of charges for which a punitive discharge is authorized; or referral to court-martial authorized to adjudge a punitive discharge if RCM 1003(d) provisions are used.	No.	Soldier.	No.	AR 635-200, chapter 10.	Counsel for consultation (JA).	Yes. See paragraph 26e(3). <sup>1</sup>	GCMCA of servicing installation after referral; CG, USAREC before referral.	Normally OTH. Honorable, general, or entry level separation also possible.
Unsatisfactory performance	Unsatisfactory duty performance	Yes.	Immediate commander or higher.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	AR 635-200, chapter 13	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 2 6e(3). <sup>1</sup>	Battalion commander: No board. Brigade commander: Board	Honorable or general.
Conviction by a civilian court	Civilian court conviction for an offense that authorizes a punitive discharge under MCM; or sentenced to confinement for 6 months or more by civilian court.	No.	Immediate commander or higher.	Yes, but may be waived. No personal appearance if in confinement. No board if OTH is not warranted and Soldier has less than 6 years active and reserve service.	AR 635-200, paragraph 14-5.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	CG: OTH; brigade commander: No OTH and notification procedure used.	Honorable, general, OTH, or entry level separation.
Minor (military) disciplinary infractions	Pattern of misconduct consisting solely of minor military disciplinary infractions.	Yes.	Immediate commander or higher.	Yes, but may be waived. No board if OTH is not warranted and Soldier has less than 6 years active and reserve service.	AR 635-200, paragraph 14-12a.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	CG: OTH; brigade commander: No OTH and notification procedure used.	Honorable, general, OTH, or entry level separation.
Pattern of misconduct	Discreditable involvement with civil or military authorities; or conduct prejudicial to good order and discipline.	Yes.	Immediate commander or higher.	Yes, but may be waived. No board if OTH is not warranted and Soldier has less than 6 years active and reserve service.	AR 635-200, paragraph 14-12b.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	CG: OTH; brigade commander: No OTH and notification procedure used.	Honorable, general, OTH, or entry level separation.
Commission of a serious offense	Commission of a serious military or civil offense for which a punitive discharge would be authorized under the MCM.	No.	Immediate commander or higher.	Yes, but may be waived. No board if OTH is not warranted and Soldier has less than 6 years active and reserve service.	AR 635-200, paragraph 14-12c.	Counsel for consultation (JA). Counsel for representation before a board.	Yes. See paragraph 26e(3). <sup>1</sup>	CG: Drugs or OTH; brigade commander: No OTH and notification procedure used.	Honorable, general, OTH, or entry level separation.

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**(Appropriate Letterhead)**

(Office Symbol)

S: (Suspense Date)  
(Date)

MEMORANDUM FOR *(Investigating Officer's Rank, Full Name), (Unit), (Address)*

SUBJECT: Appointment as Investigating Officer (Case # \_\_\_\_\_ )

1. APPOINTMENT: You are hereby appointed as investigating officer, pursuant to *(USAREC Reg 601-45, chap 3, to conduct an informal investigation concerning into allegations that: [Factually explain the allegation. For example, SSG John Doe had an inappropriate relationship with applicant Jane Jones in violation of USAREC Regulation 600-25].*

2. SCOPE OF THE INVESTIGATION: The scope of your investigation will include answers to who, what, where, why, and how questions. Specifically *[indicate any specific issues or facts that must be addressed in the investigation].*

3. CONDUCT OF THE INVESTIGATION: Your investigation will use the informal procedures specified in AR 15-6. You will read and familiarize yourself with USAREC PAM 27-65 and *[list other pertinent regulations here]* prior to beginning your investigation. Prior to beginning your investigation, you will contact your legal advisor *[insert legal advisor's name here]* at *[insert contact information here]*. The legal advisor will be available to assist you if you have any questions about the conduct of your investigation or about how to package the investigation for the appointing authority.

a. As a minimum, your investigation will include all relevant documents and gather all relevant sworn testimony from the following individuals:

(1) *List name, rank, position, and unit of known witnesses. It will usually include the individual making the complaint, anyone named in the complaint as a witness, the involved recruiter, station commander, guidance counselor, etc.*

(2)

(3)

(4)

b. All witness statements will be sworn. Sworn statements will be recorded in writing using a DA Form 2823 (Sworn Statement). As an Investigating Officer, you have the authority to administer oaths for the purpose of taking sworn statements pursuant to UCMJ, Article 136(b)(4).

c. Witnesses will be provided a copy of USAREC Form 722 prior to the solicitation of any personal information. You are to exclude all personnel information about the witness, to include social security numbers, date of birth, home address, home telephone and cell phone numbers, from all witness statements.

d. Before you interview any civilian, Department of the Army or Department of Defense civilian employee, or contract employees, you must consult your legal advisor.

e. There are no respondents.

f. If, in the course of your investigation, you suspect that a certain military witness may have committed a violation of the Uniform Code of Military Justice (UCMJ), you will read that witness their Article 31b UCMJ rights using DA Form 3881 (Rights Advisement). You may only question that witness after they have been advised of their Article 31 rights and have waived those rights by signing the DA Form 3881. Call your legal advisor for advice if in doubt as to whether Article 31b advisement and waiver is required. For any offense other than that being investigated by you, immediately upon completion of your questioning of that witness, report telephonically to the BJA and the individual who appointed you.

4. FINDINGS AND RECOMMENDATIONS: Upon completion of your investigation, prepare your findings and recommendations in accordance with USAREC PAM 27-65. The complete Report of Investigation will contain your narrative, all the evidence you used to make your findings and recommendations, a separate chronology listing all significant activity from initial appointment to completion of the investigation, to include the granting of any extensions or delays. Your completed inquiry will be submitted to me no later than close of business *(suspense date)*.

*Signature Block of Appointing Authority*

**Figure 1. Sample IO appointment memorandum**

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**(Battalion Letterhead)**

(Office Symbol)

(Date)

MEMORANDUM THRU Commander, US Army xxx Recruiting Brigade (xxx)

FOR Commander, US Army Recruiting Command

SUBJECT: Recommendation for Court-Martial

1. The enclosed evidence of misconduct concerning SFC Could B. Good, xx-xx-xxxx, US Army Recruiting Company xxx, is forwarded for appropriate disposition in accordance with AR 27-10, paragraph 5-15. (State whether nonjudicial punishment has been offered or refused for this misconduct.)
2. (Provide a summary of the misconduct. For example, "SFC Good was arrested for burglary on xxx in Smalltown, Iowa. Civilian authorities are not taking further action because SFC Good made restitution and the store owner is not pressing charges.") Witness statements and other evidence are at enclosures 1 through 4.
3. All material witnesses are expected to be available at the time of trial except SSG xxx who is scheduled to retire on xxx. SSG xxx may be contacted at Number 1 Retirement Street, Sleepy Eye, Indiana, telephone number (xxx) xxx-xxxx, after that date.
4. Further information concerning SFC Good's background and character of military service is provided as follows:
  - a. Personnel data is reflected on the enclosed copies of SFC Good's DA Form 2 and DA Form 2-1(encls 5 and 6).
  - b. Enclosed are copies of the following evidence of SFC Good's previous disciplinary actions:
    - (1) DA Form 2-2 reflecting one previous conviction (encl 7).
    - (2) One record of nonjudicial punishment, DA Form 2627 (encl 8).
    - (3) One reprimand (encl 9).
  - c. SFC Good has performed well as a recruiter. Prior to this situation he was an average leader. His subordinates are successful recruiters and have high mission box accomplishments.
5. SFC Good is currently pending separation action under the provisions of AR 635-200, chapter 9. He is also attending the Fort xxx Alcohol and Drug Abuse Prevention and Control Program for chronic alcoholism. He began the program on xxx and is scheduled to complete it on xxx.
6. Request that SFC Good be attached to a unit in (location) in accordance with AR 27-10, paragraph 5-2b. SFC Good has been suspended from recruiting duties in accordance with AR 601-1, paragraph 5-7.
7. I recommend trial by (special court-martial) (special court-martial empowered to adjudge a bad conduct discharge) (general court-martial).

JOHNNY D. JONES  
LTC, IN  
Commanding

9 encls

1. Police Report
2. Statement By SSG xxx
3. Statement By Ms. xxx
4. Statement By Mr. xxx
5. DA Form 2
6. DA Form 2-1
7. DA Form 2-2
8. DA Form 2627, dtd xxx
9. Reprimand, dtd xxx

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**Figure 2. Sample memorandum of transmittal**

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**(Appropriate Letterhead)**

(Office Symbol)

(Date)

MEMORANDUM FOR Office of the Staff Judge Advocate, Headquarters, (Command), ATTN: Claims Judge Advocate, Fort (Installation, State, ZIP Code)

SUBJECT: Government-Owned Vehicle Accident

1. The enclosed accident report, SF 91, is forwarded for your information as a potential (claim against the Government)<sup>1</sup> (affirmative medical claim)<sup>2</sup> (lost wages claim)<sup>3</sup>.

2. The point of contact is (rank and name) Rctg Bn (position). The telephone number is commercial (area code and number).

FOR THE COMMANDER:

Encl

Signature Block

CF:  
BJA

Notes:

1. For use when the driver of the Government vehicle is potentially at fault or when a civilian (to include Delayed Entry Program member, Delayed Training Program member, or applicant) is injured.
2. For use when the military driver is not at fault and the Government provides medical treatment or pays for medical treatment of military members, to include emergency care for civilians, applicants, and members of the Delayed Entry Program or Delayed Training Program.
3. For use when the military driver is not at fault and a military member experiences an inability to work for at least 24 hours.

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**Figure 3. Sample forwarding memorandum for claims**

**STANDARDS OF CONDUCT FOR USAREC PERSONNEL**

(For use of this form see USAREC Reg 27-2)

1. The Joint Ethics Regulation (JER), DOD 5500.7-R, is a punitive regulation. It provides guidance concerning standards of conduct, gifts, conflicts of interest, outside employment, misuse of position, and outside activities that all military and civilian USAREC personnel must follow. USAREC Reg 27-2, appendix C, highlights areas of particular interest to USAREC personnel.

2. USAREC Reg 600-25, Prohibited and Regulated Activities, is a punitive regulation. It contains requirements that all military and civilian USAREC personnel must follow. It includes: Unauthorized relationships, other prohibited practices, sexual harassment, pornographic material, misuse of alcohol, weapons, misuse of Government equipment, demonstrations, gambling, dress and appearance, misuse of government credit and charge cards, misrepresentations, computer security, and voluntary services.

3. USAREC Reg 601-45, Recruiting Improprieties Policies and Procedures, is a punitive regulation which prohibits the commission of recruiting improprieties. It contains requirements that all military and civilian USAREC personnel must follow, including procedures for reporting and investigating recruiting improprieties. It identifies specific prohibited recruiting practices, and outlines procedures for disposition of recruiting impropriety cases by commanders and HQ USAREC.

4. I have read USAREC Reg 27-2, appendix C; USAREC Reg 600-25; and USAREC Reg 601-45. If I have any questions concerning standards of conduct issues, I should call my brigade judge advocate or, if assigned to HQ USAREC, the Office of the Staff Judge Advocate.

NOTE: The above USAREC publications can be found on the USAREC Enterprise Portal.

**INITIAL REVIEW**

<b>PRINTED NAME:</b>		<b>SIGNATURE AND DATE:</b>	
John P. Doe		/signed/ 1 Nov 2010	
<b>I have reviewed USAREC Reg 27-2, appendix C; USAREC Reg 600-25; and USAREC Reg 601-45.</b>			
<b>SIGNATURE AND DATE:</b>		<b>SIGNATURE AND DATE:</b>	
/signed/ 3 Jan 2011		/signed/ 1 Mar 2011	
<b>SIGNATURE AND DATE:</b>		<b>SIGNATURE AND DATE:</b>	
/signed/ 1 Mar 2011		/signed/ 1 Mar 2011	
<b>SIGNATURE AND DATE:</b>		<b>SIGNATURE AND DATE:</b>	
/signed/ 3 Aug 2011		/signed/ 3 Aug 2011	

**Figure 4. Sample of a completed USAREC Form 1114**

OUTSIDE EMPLOYMENT PERMISSION REQUEST (For use of this form see USAREC Reg 27-2)						
DATA REQUIRED BY THE PRIVACY ACT OF 1974						
<p><b>AUTHORITY:</b> Title 5, United States Code, Section 301.</p> <p><b>PRINCIPAL PURPOSE:</b> To collect information to evaluate your request to engage in outside employment (including self-employment).</p> <p><b>ROUTINE USES:</b> To ensure that outside employment is in accordance with applicable law. To enable your commander and/or supervisor to contact you during off-duty employment.</p> <p><b>DISCLOSURE:</b> Is voluntary but failure to disclose this information may result in permission to engage in outside employment being denied.</p>						
1. LAST NAME - FIRST NAME - MIDDLE NAME: Smith, John A.			2. GRADE: E-6			
3. UNIT: Smalltown Rctg Co. Metro Rctg Bn		4. DUTY POSITION: RA Recruiter. Anytown RS				
EMPLOYER DATA						
5. NAME OF PROPOSED EMPLOYER: Anytown Times		6. NATURE OF BUSINESS: Newspaper		7. PRODUCT OR SERVICES SOLD, MANUFACTURED, OR PROVIDED: Town Weekly Paper		
8. PLACE OF EMPLOYMENT ( <i>list all sites where work will be performed</i> ):  a. 11 Main St., Anytown			9. ANTICIPATED HOURS:			
			Day	Start Time	End Time	Number of Hours
b.			Sunday			
			Monday			
c.			Tuesday			
			Wednesday			
d.			Thursday			
			Friday	1800	2200	4
Total Hours			Saturday	1300	1700	4
						8
<p>I have read USAREC Reg 27-2, appendix C and my proposed employment will not violate that guidance. I understand that permission to engage in this outside employment may be revoked by the approval authority or higher authority upon determination that the employment is prohibited by statute or regulation. Permission may also be revoked if my duty performance falls below acceptable standards, or for other reasons in the best interest of the U.S. Army Recruiting Command.</p>						
10. DATE: 12 Mar 2012		11. SIGNATURE:				
APPROVAL/DISAPPROVAL						
12. The request is: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Disapproved	13. NAME OF COMMANDER: A. A. Adams	14. TITLE: Smalltown Rctg Co Commander		15. SIGNATURE: /signed/		
16. SPECIFIC REASONS FOR DISAPPROVAL:						

Figure 5. Sample of a completed USAREC Form 808

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(Unit Letterhead)

(Office Symbol)

MEMORANDUM FOR SGT John A. Doe, xxx-xx-0000, US Army Recruiting Battalion Oklahoma City, 301 NW 6th Street, Suite 218, Oklahoma City, OK 73102

Subject: Reprimand

1. On 24 October 2010, you [insert reprimand/misconduct information]
2. You are hereby reprimanded. As a(an) Officer/Soldier you have a duty to act responsibly in every situation, to do what is right, and to set a positive example for Subordinates/Others. You have completely failed in these responsibilities and discredited yourself and the United States Army. I seriously question your judgement and potential for further military service. Your actions have embarrassed and disappointed your chain of command.
3. This is an administrative reprimand imposed under the provisions of AR 600-37, (and not as) (in conjunction with) punishment under the Uniform Code of Military Justice. You are advised that in accordance with AR 600-37, paragraph 3-4b, I am considering whether to direct this reprimand be filed permanently in your Official Military Personnel file. Prior to making my filing decision, I will consider any matters you present to me.
4. You will be provided, by separate cover, a copy of the evidence which forms the basis for this reprimand. You will immediately acknowledge receipt of this reprimand in writing. You may forward any matters you wish me to consider in extenuation, mitigation, or rebuttal through your chain of command within seven calendar days. I will consider any matter you submit before I decide how this reprimand should be filed.

Commander's Signature Block

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Office Symbol

MEMORANDUM FOR Commander, United States Army Recruiting Command, Fort Knox, KY 40121-2725

SUBJECT: Acknowledgement of Receipt of Reprimand

1. I have read and understand the reprimand, which I received on\_\_\_\_\_.
2. I acknowledge that I have the opportunity to respond by submitting matters in defense, extenuation, or mitigation. If I choose to submit written matters, I understand that I must submit them to my immediate commander within seven calendar days.
3. I elect (initial):
  - Not to submit any matters.
  - To submit written matters within seven calendar days. I understand that if I select this option, but do not submit written matters within seven calendar days, I waive my right to respond.

Encls

JOHN A. DOE  
SGT, USA  
Respondent

---

**Figure 7. Sample of acknowledgment (with rebuttal)**

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Office Symbol

MEMORANDUM FOR Commander, United States Army Recruiting Command, Fort Knox, KY 40121-2725

SUBJECT: Acknowledgement of Receipt of Reprimand

1. I have read and understand the reprimand, which I received on\_\_\_\_\_ .
2. I acknowledge that I have the opportunity to respond by submitting matters in defense, extenuation, or mitigation. If I choose to submit written matters, I understand that I must submit them to my immediate commander within seven calendar days.
3. I elect (initial):  
  
 Not to submit any matters.  
  
 To submit written matters within seven calendar days. I understand that if I select this option, but do not submit written matters within seven calendar days, I waive my right to respond.

JOHN A. DOE  
SGT, USA  
Respondent

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MEMORANDUM THRU

Commander, United States Army Recruiting Battalion Oklahoma City, OK 74145-7522

Commander, United States Army 5th Recruiting Brigade, Fort Sam Houston, TX 78234-5061

FOR Commander, United States Army Recruiting Command, Fort Knox, KY 40121-2725

SUBJECT: Commander Recommendation on Filing Determination

1. I have reviewed the enclosed reprimand of SGT John A. Doe, the circumstances of the misconduct, and all matters enclosed.

2. I recommend that you take the following action:

Withdraw and destroy the reprimand.

Place the reprimand temporarily in the Soldier's local unit file for a period of three years or until the Soldier is reassigned outside your GCMCA jurisdiction.

Permanently file the reprimand in the Soldier's OMPF.

3. I make this recommendation for the following reasons [Required].

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JAMES PAUL JONES  
MAJ, IN  
Commanding

**Figure 9. Sample commander's endorsement**

## **Appendix A References**

### **Section I Required Publications**

This section contains no entries.

### **Section II Related Publications**

#### **AR 5-9**

Area Support Responsibilities.

#### **AR 15-6**

Procedures for Investigating Officers and Board of Officers.

#### **AR 27-10**

Military Justice.

#### **AR 27-40**

Litigation.

#### **AR 190-5**

Motor Vehicle Traffic Supervision.

#### **AR 380-67**

Personnel Security Program.

#### **AR 600-8-4**

Line of Duty Policies Procedures, and Investigations.

#### **AR 600-8-19**

Enlisted Promotions and Reductions.

#### **AR 600-8-24**

Officer Transfers and Discharges.

#### **AR 600-9**

The Army Weight Control Program.

#### **AR 600-20**

Army Command Policy.

#### **AR 600-37**

Unfavorable Information.

#### **AR 601-1**

Assignment of Enlisted Personnel to the U.S. Army Recruiting Command.

#### **AR 601-210**

Active and Reserve Components Enlistment Program.

#### **AR 601-280**

Army Retention Program.

**AR 623-3**

Evaluation Reporting System.

**AR 635-200**

Active Duty Enlisted Administrative Separations.

**AR 735-5**

Policies and Procedures for Property Accountability.

**DA Pam 27-162**

Claims Procedures.

**DoD 5500.07-R**

Joint Ethics Regulation.

**DoD Directive 6490.1**

Mental Health Evaluations of Members of the Armed Forces.

**DoD Instruction 1344.09**

Indebtedness of Military Personnel.

**DoD Instruction 6490.4**

Requirements for Mental Health Evaluations of Members of the Armed Forces.

**JFTR, Volume I**

Uniformed Service Members.

**USAREC Reg 190-3**

Procedures in Drunk Driving Cases.

**USAREC Reg 600-25**

Prohibited and Regulated Activities.

**USAREC Reg 601-45**

Recruiting Improprieties Policies and Procedures.

**USAREC Reg 715-1**

Procurement Management and Control.

**Section II**

**Required Forms**

**USAREC Form 808**

Outside Employment Permission Request.

**USAREC Form 1114**

Standards of Conduct for USAREC Personnel.

**Section III**

**Related Forms**

**OGE 450**

Executive Branch Confidential Financial Disclosure Report Form.

## **SF 278**

Public Financial Disclosure Form.

## **USAREC Form 713-1**

Notification and Rebuttal of Adverse Action.

## **Appendix B Responsibilities of Brigade Judge Advocates**

### **B-1. Purpose**

This appendix establishes policies, responsibilities, functions, and procedures for BJA offices within USAREC.

### **B-2. Policy**

Each brigade is assigned one BJA by the Judge Advocate General's Corps. The BJA is the primary legal action officer for the brigade and subordinate elements. As a personal staff officer, the BJA advises the brigade commander and staff concerning legal matters encountered in the performance of their duties. Because the position of the BJA is demanding and multi-faceted, technical assistance is available from SJA at HQ USAREC. The duties assigned to the BJA will be consistent with their functions as legal officers and personal staff members.

### **B-3. Responsibilities**

a. Officer evaluation report (OER). The BJA serves under dual supervision. The BJA is an integral part of the brigade staff and is rated by the brigade CoS. The brigade commander is the senior rater. The SJA is the next superior technical chain officer and will be the intermediate rater when senior to the brigade CoS and junior to the brigade commander. In all other cases, the SJA will render an evaluation by letter-report enclosures to the OER as authorized by AR 623-3.

b. Backup support of BJA offices. SJA assists the BJA offices and provides support as necessary. Close coordination must be maintained between the BJA and SJA to ensure proper services are provided to the brigades and subordinate elements. Multiday leaves, passes, and temporary duty absences must be coordinated with SJA to ensure continuing legal backup support is available.

c. Functional area. The BJA is responsible for being proficient in the functional areas discussed below. In addition, the BJA is responsible for professional development and personal career progression. Attendance at The Judge Advocate General's Legal Center and School, United States Army; Continuing Legal Education (CLE) courses; or other Government and civilian CLE programs is highly encouraged. Quotas for The Judge Advocate General's Legal Center and School, United States Army courses are coordinated through SJA, but funding must be provided by each respective brigade.

### **B-4. Functions and procedures**

The BJA is the legal counsel to the brigade commander, his or her staff, and subordinate units. As such the BJA provides advice on all legal issues involving enlistment eligibility, military justice, administrative law, RI cases, and standards of conduct. The BJA is also responsible for developing and implementing a proactive preventive law program and for coordinating with supporting SJA offices and other agencies to obtain legal support for courts-martial, legal assistance, claims, and defense services when required. In addition the BJA must effectively organize and supervise the administration and personnel assigned to the brigade legal office.

### **B-5. Enlistment eligibility**

a. AR 601-210 sets out the criteria for enlistment eligibility. That regulation is used and interpreted by field recruiters and recruiting operations personnel. Typically requests to help determine the enlistment eligibility of applicants will come from brigade operations personnel. Individual recruiters are required to work through their chain of command and their operations section. The BJA should be aware of, and prevent, possible forum shopping.

b. In the absence of the BJA, brigade operations personnel will contact HQ USAREC operations and, if necessary, that office will contact SJA for legal advice.

c. The BJA should not, as a general principle, render telephonic opinions. It is often advisable to request and review copies of pertinent documents before providing a legal opinion. Because enlistment eligibility questions

often entail matters of policy rather than legal interpretation, the BJA should only address legal issues and refer policy questions to brigade operations or other appropriate authority for decision.

#### **B-6. Recruiting Improprieties (RI)**

- a. RIs will be processed in accordance with USAREC Reg 601-45.
- b. The BJA has primary responsibility for monitoring and tracking RI cases within the Brigade. Cases older than the USAREC established standard and those cases not meeting brigade internal suspense should be subject to special attention. When necessary those cases should be referred to the brigade CoS for action.

#### **B-7. Misconduct and military justice**

a. Administrative separation boards. The BJA normally serves as the recorder on all administrative separation actions arising in the brigade. The brigade legal specialist/NCO/legal technician serves as the reporter and prepares the record of proceedings.

(1) Administrative separation cases requiring action by the CG are forwarded to the OSJA for further processing. The board hearing is often held at the respondent's battalion headquarters. The brigade is required to provide fund cites for all participants including the Trial Defense Counsel.

(2) Once completed and certified by the board members, records of proceedings are forwarded to SJA for final action.

(3) Standing boards should normally be used. Brigades should periodically, but not less than annually, submit nominees for appointment of board members by the CG. Submissions should be forwarded through the BJA to the OSJA for preparation.

b. Urinalysis program.

(1) The BJA should monitor the urinalysis program to ensure compliance with testing requirements and to ensure chains of custody are properly maintained. Confirmed positive results will be reported promptly to the BJA.

(2) When positive results are reported, the BJA should immediately request the laboratory litigation packet and the Soldier's Official Military Personnel File (OMPF). The battalion should simultaneously prepare (or sign the documents prepared by the BJA) and serve the notification on the Soldier. Processing will be in accordance with AR 635-200.

c. Other misconduct. In addition to administrative separation actions, the BJA is the primary brigade staff officer responsible for coordinating, reviewing, and advising the commander on all other matters of misconduct by recruiting personnel. Among these are violations of USAREC Reg 600-25 which prohibits improper personal relationships between prospects, applicants, or members of the Delayed Entry Program (DEP) and recruiting personnel; fraternization; sexual harassment; misuse of alcohol; weapons in recruiting stations; unofficial use of Government equipment; demonstrations; gambling; misuse of Government credit or charge cards; misrepresentation; coercion; and acceptance of voluntary services. All substantiated allegations of improper conduct should be reviewed by the BJA before the command takes adverse action against a Soldier.

d. Criminal acts.

(1) Pursuant to AR 5-9 and AR 27-10, requests for courts-martial are generally forwarded to the servicing GCMCA for referral. Coordination should always be made with SJA before such requests are sent to the servicing GCMCA. To avoid speedy trial issues, charges should not be preferred until after review by the receiving GCMCA's SJA office. The BJA must develop a close working relationship with the servicing SJA office's Chief of Justice. In accordance with AR 27-10, paragraph 5-2b, jurisdiction can be transferred from one GCMCA to another.

(2) Criminal acts, other than violations of Article 92, UCMJ and RIs, must be reported to military law enforcement authorities. Commanders are responsible for ensuring that such reports are submitted, but the BJA should monitor this process to ensure proper coordination is made. As the command attorney, the BJA advises the brigade commander and subordinate unit commanders concerning actions under the UCMJ.

e. Drunk driving. USAREC Reg 190-3 prescribes procedures to follow in cases of drunk driving. The BJA must ensure that all such incidents are properly reported to SJA, monitor the processing of the administrative written reprimand, and obtain endorsements from each level of command in a timely manner.

#### **B-8. Standards of conduct**

The BJA and brigade civilian attorney-advisor are the designated ethics counselors for the brigade and subordinate units. Standards of conduct opinions should be given in writing and a copy furnished to the SJA.

- a. The BJA or attorney-advisor is responsible for reviewing OGE 450, Confidential Financial Disclosure Report,

now electronically filed in Financial Disclosure Management (FDM), for all required positions. New entrant filers and annual filers should be reminded early enough to ensure timely filing and review, at least 30 days before filing due date. Confidentiality of information in the OGE 450 reports must be maintained.

b. The BJA is responsible for coordinating standards of conduct training to members of the brigade and subordinate units. Additionally, the BJA office should monitor the updating of USAREC Form 808 (Outside Employment Permission Request) submitted by members of the command.

### **B-9. Preventive law**

The essence of a good attorney is to keep the client out of trouble. Prevention of legal problems makes the organization more efficient and reduces personnel and financial costs, as well as the amount of effort required to meet the unit's mission. The BJA therefore must develop and implement a vigorous preventive law program. Legal instruction at each battalion is encouraged at least once per year. In the event of conflicts, SJA will provide backup support. The BJA should also provide instruction at other battalion training sessions and at company or center commander training on a regular basis when training time is available. The BJA should take every opportunity to provide guidance and training at company after action reviews to company commanders and first sergeants, as well as be available to answer questions and provide advice to battalion commanders at the battalion after action reviews. In coordination with the brigade CoS and other staff members, the BJA should participate in the training and development of the battalion adjutants and executive officers in processing legal matters and should further the development of battalion personnel staff NCO to assist with legal specialist duties.

### **B-10. Administrative law**

a. Processing of involuntary reassignments from USAREC under AR 601-1 is a personnel function. The BJA will review these cases, particularly unsuitable reliefs, to ensure they are legally sufficient and that Soldiers' rebuttals have been adequately addressed by the command. Preparation of the action documents in these cases should normally be the responsibility of the battalion and brigade adjutants. The BJA will review all reliefs and rehabilitative reassignments of 79R recruiters to ensure compliance with AR 601-1.

b. The BJA will review all FLIPL report of investigation in which a person is found financially liable. The BJA also may be required to review other FLIPLs for legal sufficiency. When the BJA is reviewing a FLIPL which involved civilian vehicle damage or injury, the BJA should ensure that the battalion has provided a copy of the claims memorandum required by paragraph 6.

c. Questions involving fiscal, procurement, or significant administrative law matters should be coordinated with SJA. This would include, for example, requests for information under the FOIA or PA.

### **B-11. Command inspection program**

Each brigade conducts a command inspection program, inspecting each battalion yearly. This program is an opportunity for the BJA to visit each battalion headquarters, to monitor the updating of USAREC Form 808, to inspect and review commander's inquiries, and to meet with the battalion staff concerning all matters in which the BJA might assist the staff, including the urinalysis program and the conduct and processing of misconduct and RI investigations.

### **B-12. Office administration**

a. The BJA office will keep a log of all actions forwarded to it for action. The log should keep track of the type of action, dates received and completed, and the action taken. In cases where the BJA is the primary action officer, the log will also contain the name of the individuals involved and the battalion from which the action originated, along with the status of the case and any other necessary information. Statistical compilations will be provided to SJA as required.

b. The BJA office is responsible for preparing a number of reports. The JAG-2 report must be submitted the first day of each month to the SJA office for the servicing GCMCA. A copy of that report will be provided to USAREC SJA. A monthly disciplinary report listing courts-martial, criminal actions, administrative separation actions, and serious misconduct investigations is prepared by SJA. The BJA is responsible for providing updated information for each entry to SJA no later than the first day of the following month. This may be accomplished by e-mail.

c. The BJA has direct supervision of the BJA office staff. The BJA must ensure proper utilization of his or her staff. As such, the BJA must ensure that the legal staff receives necessary training and development opportunities. The

BJA should coordinate with the installation SJA office to arrange for combined training wherever possible. Technical and professional development for all members of the BJA office and CLE of the BJA are vital to the efficient functioning of the office.

d. The BJA should make maximum use of automation and should seek to develop programs and systems to improve office efficiency. Advances and innovations should be shared with other USAREC legal offices by coordinating with SJA.

## **Appendix C**

### **Standards of Ethical Conduct**

#### **C-1. Introduction**

a. DoD 5500.07-R, Joint Ethics Regulation, is a punitive regulation applicable to all members of DoD. This is only a summary of the provisions in these regulations. If you have any questions, you should ask your EC.

b. A violation of the regulatory standards may be cause for corrective action or for disciplinary action against an employee or Uniform Code of Military Justice (UCMJ) actions against military personnel. There are criminal penalties for violations of criminal statutes referred to in the regulations. Employees are encouraged to seek the advice of their EC. Disciplinary action for violations of regulatory standards will not be taken against an employee who relies on such advice.

c. All references to “employee” includes officers, enlisted personnel, and civilian government employees.

#### **C-2. Gifts from outside sources**

An employee shall not solicit or accept a gift given because of his or her official position or from a prohibited source.

a. A prohibited source is any person, including any organization more than half of whose members are persons: seeking official action by DoD; doing or seeking to do business with DoD; regulated by DoD; or substantially affected by the performance of his or her duties.

b. The term “gift” includes almost anything of monetary value. However, it does not include:

- (1) Coffee, donuts, and similar modest items of food and refreshments when offered other than as part of a meal;
- (2) Greeting cards and most plaques, certificates, and trophies;
- (3) Prizes in contests open to the public;
- (4) Commercial discounts available to the general public or to all Government or military personnel;
- (5) Commercial loans, and pensions and similar benefits;
- (6) Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute;
- (7) Anything for which the employee pays market value.

c. Subject to the limitations noted below, there are exceptions which will permit an employee to accept:

(1) Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any one source (this exception does not permit gifts of cash or investment interest);

(2) Gifts when clearly motivated by a family relationship or personal friendship;

(3) Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups, and certain benefits offered by professional associations or by persons who are not prohibited sources.

(4) Certain awards and honorary degrees;

(5) Gifts resulting from the outside business activities of employees and their spouses;

(6) Travel and entertainment in connection with employment discussion;

(7) Certain gifts from political organizations;

(8) Free attendance provided by the sponsor of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made;

(9) Invitations to certain social events extended by persons who are not prohibited sources, if no one is charged a fee to attend the event;

(10) Certain gifts of food and entertainment in foreign areas;

(11) Gifts accepted by the employee under a specific statute, such as 5 USC 4111 and 7342, or pursuant to supplemental agency regulation.

d. An employee may not use any of the exceptions noted above to solicit or coerce the offering of a gift or to accept gifts: for being influenced in the performance of official duties; in violation of any statute; so frequently as to appear to be using public office for private gain; or in violation of applicable procurement policies regarding participation in vendor promotional training.

e. When an employee cannot accept a gift based on one or more of the issues discussed above, the employee may be able to keep the gift by paying the donor its market value. If the gift is a tangible item, the employee may also simply return the gift. Subject to approval, perishable items may be donated to a charity, destroyed, or shared within the office.

### **C-3. Gifts between employees**

An employee shall not: give or solicit for a gift to an official superior; or accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

a. The term “gift” has the same meaning as in paragraph C-2. However, carpooling and similar arrangements are excluded where there is a proportionate sharing of the cost and effort involved.

b. The term “official superior” includes anyone whose official responsibilities involve directing or evaluating the performance of the employee’s official duties. The term is not limited to immediate supervisors but applies to officials up the supervisory chain.

c. Subject to a limitation on using any exception to coerce a gift from a subordinate, exceptions to the ban on gifts include:

(1) On an occasional basis, including birthdays and other occasions when gifts are traditionally exchanged, items other than cash aggregating \$10 or less per occasion; food and refreshments shared in the office; personal hospitality at a residence; appropriate host or hostess gifts; and leave sharing under Office of Personnel Management regulations may be given or accepted.

(2) On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, permit giving and accepting gifts appropriate to the occasion in excess of \$10 value; and permit voluntary contributions of nominal amounts to be made or solicited for gifts of food and refreshments to be shared in the office or for group gifts on occasions such as retirement. Gifts may not exceed \$300 aggregate value per occasion. No more than \$10 donation per individual may be solicited.

### **C-4. Conflicting financial interests**

a. Under the criminal conflict of interest statute, 18 USC 208, an employee is prohibited from participating in an official capacity in any particular matter in which to his or her knowledge, he or she or certain other persons have a financial interest, if the particular matter will have a direct and predictable effect on his or her own or that person’s financial interests.

b. In addition to matters that affect his or her own financial interests, this prohibition applies to particular matters that affect the financial interests of: the employee’s spouse, minor child, or general partner; or any person the employee serves as officer, director, trustee, general partner, or employee. The prohibition also applies to particular matters that affect the financial interest of a person with whom the employee is negotiating for or has an arrangement concerning future employment.

c. Disqualification can be accomplished simply by not participating in the matter. An employee should notify the person responsible for his or her assignment of the need to disqualify. A written disqualification statement is necessary only if required by an ethics agreement or requested by the EC or the person responsible for the employee’s assignment.

d. Disqualification is not required if the financial interest is the subject of a statutory waiver or if the employee has sold or otherwise divested the conflicting interest.

e. Employees may acquire and hold financial interests subject only to the disqualification requirement imposed by 18 USC 208. DoD may prohibit an individual employee from holding financial interests where disqualification would impair the employee’s ability to perform the duties of this position or adversely affect DoD’s mission.

### **C-5. Impartiality in performing duties**

Even though his or her disqualification may not be required under paragraph C-4, an employee should not participate in an official capacity in certain matters without first obtaining specific authorization if, in his or her judgment,

persons with knowledge of the relevant facts would question his or her impartiality in those matters.

a. The matters covered include a particular matter involving specific parties if the employee knows that it is likely to affect the financial interest of a member of his or her household or that one of the following persons is a party or represents a party in the matter:

- (1) A person with whom the employee has or seeks a business or other financial relationship;
- (2) A member of the employee's household or relative with whom the employee has a close relationship;
- (3) The employee's spouse, parent, or child serves or seeks to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- (4) A person for whom the employee has, in the past year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or
- (5) An organization, other than a political party, in which the employee is an active participant.

b. Disqualification can be accomplished in the same manner as when required under paragraph C-4 for disqualifying financial interests.

c. Notwithstanding the employee's determination that his or her impartiality would be questioned, the agency designee can authorize the employee to participate in the matter based on a determination that the Government's interest in the employee's participation outweighs the concern that a reasonable person would question the integrity of agency programs and operations. The authorization permitted by this paragraph cannot be given, however, if the employee's disqualification is also required by paragraph C-4.

d. Employees are urged to use the process set forth in this paragraph to decide whether they should or should not participate in other matters in which their impartiality is likely to be questioned.

e. An employee is disqualified for 2 years from participating in any matter in which his or her former employer is a party or represents a party if, prior to entering Federal service, that employer gave him or her an extraordinary payment in excess of \$10,000. A routine severance and other payment made under an established employee benefits plan would not be an extraordinary payment. There is authority to waive all or part of this disqualification requirement.

#### **C-6. Seeking other employment**

An employee is prohibited from participating in an official capacity in any particular matter that, to his or her knowledge, has a direct and predictable effect on the financial interests of a person with whom he or she is seeking employment. For this purpose, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services.

a. The term "seeking employment" includes bilateral negotiations with another, mutually conducted with view to reaching an agreement regarding possible employment. It also includes conduct short of negotiations, such as sending an unsolicited resume or other employment proposal. It can include employment contacts by or through an agent or intermediary. It does not include simply: Rejecting an unsolicited employment overture; requesting a job application; or sending an unsolicited resume or other employment proposal to a person affected by performance of the employee duties only as a member of an industry or other discrete class.

b. Having once begun, an employee generally continues to seek employment until he or she or the prospective employer rejects the possibility of employment and all discussions end. However, an employee is no longer seeking employment with the recipient of his or her unsolicited resume or other employment proposal after 2 months with no indication of interest in employment discussions from the prospective employer.

c. Disqualification can be accomplished in the same manner as under paragraph C-4 for disqualifying financial interests.

d. If the employee's conduct in seeking employment amounts to negotiations, the employee can participate in the matter affecting his or her prospective employer only if granted an individual waiver described in paragraph C-4. If his or her conduct falls short of negotiations, the employee may be authorized to participate using the procedures set forth in paragraph C-5.

e. An employee may not participate in a particular matter that, to his or her knowledge, has a direct and predictable effect on the financial interests of anyone with whom he or she has an arrangement concerning future employment. In this case, an employee may be able to participate in a particular matter affecting a prospective employer only if he or she has received an individual waiver described in paragraph C-4.

#### **C-7. Misuse of position**

An employee shall not use his or her public office for his or her own private gain or for private gain of friends, relatives, or persons with whom he or she is affiliated in a nongovernment capacity, or for the endorsement of any product, service, or enterprise. In particular, an employee shall not use his or her Government position, title, or authority:

- a. In a manner intended to induce another to provide any benefit to himself or herself or to friends, relatives, or affiliated persons;
- b. In a manner that could be construed to imply that DoD or the Government sanctions or endorses his or her personal activities or those of another; or
- c. To endorse any product, service, or enterprise except in furtherance of statutory authority to do so.
- d. An employee shall not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further his or her own private interest or those of another. Information that is “nonpublic” includes information the employee knows or reasonably should know: Is routinely exempt from disclosure under the FOIA or protected from disclosure by statute; is designated as confidential by an agency.
- e. An employee has a duty to protect and conserve Government property. He or she may use Government property only for authorized purposes. Authorized purposes are those for which Government property is made available to the public or those purposes authorized in accordance with law or regulation.
- f. Unless authorized in accordance with law or regulation to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or those authorized in accordance with law or regulation.

### **C-8. Outside activities**

In addition to the standards set forth in paragraph C-6, an employee’s outside employment and other activities must comply with all ethical requirements set forth in this appendix, including the requirement to avoid even the appearance of using public office for private gain. For example, the prohibition against use of Government property for unauthorized purposes would prohibit an employee from using the agency photocopier to reproduce documents for his or her outside organization.

- a. An employee’s outside employment and other activities must comply with applicable laws other than the Standards of Ethical Conduct. Outside activities frequently raise questions about the following:
  - (1) The restrictions in 18 USC 203 and 205 on employees engaging in representational activities before the United States;
  - (2) The constitutional prohibition against accepting any office, title, or compensation from a foreign government;
  - (3) The Hatch Act, which prohibits most employees’ participation in certain partisan political activities.
- b. An employee shall obtain approval before engaging in outside employment in accordance with paragraph 8b.
- c. An employee shall not engage in outside employment or activities prohibited by statute or by Army regulation, or that would materially impair the ability to perform his or her official duties by requiring his or her disqualification under paragraphs C-4 or C-5.
- d. In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest. The restriction applies even though no compensation is received. For appearance as a witness concerning information learned in official capacity see appendix D.
- e. An employee shall not receive compensation for teaching, speaking, or writing that is related to his or her official duties. Teaching, speaking, or writing is “related to an employee’s official duties” if:
  - (1) The activity is undertaken as part of his or her official duties;
  - (2) The invitation to engage in the activity was extended primarily because of his or her official position;
  - (3) The invitation or the offer of compensation was extended by a person whose interests may be affected by the employee’s official duties;
  - (4) The information draws substantially on nonpublic information; or
  - (5) For most employees, the subject of the teaching, speaking, or writing deals in significant part with any matter presently assigned to the employee, any matter to which the employee had been assigned in the previous 1-year period, or to any ongoing or announced policy, program, or operation of DoD. Before accepting any honorarium for writing or speaking, he or she should consult with his or her EC.
- f. Provided that he or she does not otherwise violate the Standards of Ethical Conduct, an employee may engage in charitable fundraising activities in a personal capacity if he or she does not use his or her official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him or her to be a prohibited source for purposes of the gift restrictions in paragraph C-2.
- g. Employees shall satisfy in good faith all just financial obligations, including taxes.

## **C-9. Conclusion**

Employees shall apply the general principles of ethical conduct in weighing conduct not otherwise addressed in regulations. Employees shall judge whether circumstances will violate the appearance principle, from the perspective of a reasonable person with knowledge of the relevant facts.

## **Appendix D Procedures for Handling Subpoenas**

**D-1.** Soldiers or commanders may be served with civil court subpoenas for various reasons. If the subpoena is related to military duty (for example, cases involving applicants, enlistment standards, GOV accidents, etcetera) the BJA and/or SJA must be notified immediately and provided with a copy of the subpoena. No documents may be released and no testimony given without prior coordination. If the subpoena concerns a personal case (divorce, witness to a civilian accident or crime, etcetera) there is no mandatory requirement for coordination. However, all cases should be coordinated with the BJA.

**D-2.** If Soldiers are asked to testify about information they learned in the course of performing their duties, they must have written permission from the USAREC SJA prior to testifying. This includes being called as a witness to answer such questions as whether an individual applied for or is/was qualified for enlistment. If the United States, the Army, or DoD personnel acting in their official capacity are named in the case, the SJA must have concurrence from Headquarters, Department of the Army prior to authorizing the testimony.

## **Appendix E Jury Duty**

**E-1.** Service in the Armed Forces is the fulfillment of a vital civic duty. For this reason, many states and the Federal Government exempt military personnel from jury duty. When a commander determines that jury duty would unreasonably interfere with a subordinate accomplishing his or her important official duties, he or she will attempt to have the Soldier excused or exempted in accordance with AR 27-40 and paragraph E-3 below.

**E-2.** It is the responsibility of:

- a. All military personnel to immediately inform his or her supervisor or commander, as appropriate, of any summons to serve on a jury.
- b. Commanders and supervisors are to follow the procedures outlined in paragraph E-3 in coordination with the BJA or SJA. Coordination will be made directly with the OSJA at HQ USAREC.

**E-3.** The following procedures will be followed whenever a USAREC Soldier receives a summons for jury duty:

- a. The Soldier will immediately inform his or her commander or supervisor of the summons. Recruiting company and recruiting battalion commanders will be informed by the supervisor as soon as possible.
- b. The Soldier's direct commander or supervisor will immediately contact the BJA or SJA. At HQ USAREC, the supervisor will contact OSJA.
- c. The attorney contacted will determine if the state involved exempts military personnel from jury duty and will advise the Soldier's commander or supervisor on whether to assert an exemption under state law.
- d. In cases where there is no applicable state exemption the commander, in conjunction with the BJA, should determine if the Soldier qualifies for an exemption from jury duty under 10 USC 982.
- e. The basis for exemption under the statute are:
  - (1) Jury duty would interfere unreasonably with the performance of the Soldier's military duties; or
  - (2) Jury duty would affect adversely the readiness of the unit, command, or activity to which the Soldier is assigned.
- f. DoD implementing regulations and AR 27-40 provide automatic exemptions for the following:
  - (1) Commanders;

- (2) Officers-in-charge;
- (3) Soldiers in a training status; and
- (4) Soldiers overseas.

g. Additional exemptions may be approved on a case-by-case basis by the special courts-martial convening authority when he or she determines jury duty would interfere unreasonably with the performance of the Soldier's military duties.

h. If the commander or supervisor believes that the Soldier should be exempted, they should request, through the chain of command, that the recruiting brigade commander exempt the Soldier from jury duty in accordance with (g) above. For Soldiers assigned or attached to HQ USAREC this determination will be made by the Commander, Medical Recruiting Brigade.

i. If an exemption is approved, the approving authority will provide written notice of the exemption determination to the responsible state or local official who summoned the exempt Soldier for jury duty.

## **Appendix F**

### **Procurement Fraud Program**

**F-1.** Commanders will report all significant cases of fraud, corruption, or irregularities relating to procurement using the format at figure F-1. A copy of the report should be sent to HQ USAREC (RCSJA), Fort Knox, KY 40121-2725, within 24 hours of discovery. Significant cases include those that may result in adverse publicity, involve senior USAREC personnel, or substantial monetary loss to the government.

**F-2.** Commanders should be sensitive to procurement fraud indicators and irregularities that may occur in small purchases, annual training conferences, local media payment system, DEP or centers of influence activities, advertising, and studies contract. Common procurement fraud indicators include:

- a. Requirements for contracts appear to be intentionally written to fit the product or capability of one vendor.
- b. Unauthorized commitment of government funds.
- c. Duplication of effort in studies.
- d. Actual or apparent conflict of interest between a government employee's private interest and official duty or position.
- e. Any apparent favoritism in the evaluation of a proposal or delivery order.
- f. Unauthorized release of procurement information to a vendor or nongovernmental personnel.
- g. Acceptance of gratuities or bribes from a government contractor or vendor.

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Office Symbol

(Date)

MEMORANDUM FOR Office of the Staff Judge Advocate, Headquarters, U.S. Army Recruiting Command, 1307 3d Avenue, Fort Knox, KY 40121-2726

SUBJECT: Report of Procurement Fraud

The following information is provided in accordance with USAREC Reg 27-2, para f-1:

1. Name, grade, and social security number of USAREC personnel involved.
2. Name and address of vendor involved.
3. Source of allegation.
4. Name, address, and telephone number of person making report.
5. Brief description of suspected procurement fraud.

Commander's signature block

CF:  
Brigade Judge Advocate

## **Appendix G**

### **Mental Health Evaluations**

**G-1.** This appendix only addresses two types of mental health referrals: Emergent and Command Directed. The pertinent regulatory guidance is found in DoDI 6490.4 (Requirements for Mental Health Evaluations of Members of the Armed Forces, August 28, 1997), DoDD 6490.1 (Mental Health Evaluations of Members of the Armed Forces, October 1, 1997), and DoDD 7050.6 (Military Whistleblower Protection, August 12, 1995).

**G-2.** Emergent cases are those in which the commanding officer makes a clear and reasoned judgment that the case constitutes an emergency. For example, the Soldier poses an immediate threat to self or others (that is, suicidal or homicidal thoughts or actions). In these cases, the commander may order the immediate transport of the Soldier to a treatment facility without advanced notice to the Soldier. The commanding officer shall make every effort to consult a mental healthcare provider, or other privileged healthcare provider if a mental healthcare provider is not readily available, prior to referring or sending a Service member for an emergency mental health evaluation. If the Commander is unable to contact a mental healthcare provider in advance, the Commander shall document the circumstances in accordance with DoDI 6490.4, paragraph 6.1.1.5.5 and provide this documentation to the service provider. Additionally, commanders must also provide notice to the Soldier in accordance with DoDI 6490.4, paragraph 6.1.1.5.4. However, in emergent cases advance notice is not required if it delays care. If advance notice is possible, commanders must provide notice as soon after the fact as possible. Coordination with the BJA, OSJA, is recommended but not necessary. Commanders must consult and comply with the provisions of DoDI 6490.4, paragraph 6.1 in its entirety. Samples of required memos are contained in the DoDI.

**G-3.** Command directed cases are those in which a Soldier is referred for a mental health evaluation, other than in an emergency. This is often referred to as a non-emergent case. For these command directed cases, Soldiers have certain rights and commanders must adhere to very strict rules. Commanders must consult and comply with the requirements of DoDI 6490.4, paragraph 6.1 in its entirety. Commanders must also consult their brigade psychologist in advance of giving notice to the Soldier. Samples of required memos are contained in the DoDI. Coordination with the BJA, OSJA, is recommended but not necessary.

## **Glossary**

### **ACS**

Assistant Chief of Staff

### **AGR**

active guard reserve

### **BJA**

Brigade Judge Advocate

### **CG**

Commanding General

### **CID**

United States Army Criminal Investigation Command

### **CLE**

Continuing Legal Education

### **CoS**

Chief of Staff

### **DA**

Department of the Army

### **DCG**

Deputy Commanding General

### **DoD**

Department of Defense

### **EC**

Ethics Counselor

### **FLIPL**

Financial Liability Investigation of Property Loss

### **FOIA**

Freedom of Information Act

### **GCMCA**

general court-martial convening authority

### **GO**

general officer

### **GOV**

Government-owned vehicle

### **HQ USAREC**

Headquarters, United States Army Recruiting Command

**IO**  
investigating officer

**JA**  
judge advocate

**MOS**  
military occupational specialty

**NCO**  
Non-commissioned officer

**NJP**  
Nonjudicial punishment

**OER**  
officer evaluation report

**OGE**  
Office of Government Ethics

**OMPF**  
official military personnel file

**OSJA**  
Office of the Staff Judge Advocate (HQ, USAREC)

**OTH**  
other than honorable

**PA**  
Privacy Act

**PIF**  
personnel information file

**Rctg Bde**  
recruiting brigade

**Rctg Bn**  
recruiting battalion

**Rctg Co**  
recruiting company

**RI**  
recruiting impropriety

**SJA**  
Staff Judge Advocate

**SPCMCA**  
Special Court Martial Convening Authority

**TDS**

Trial Defense Service

**UCMJ**

Uniform Code of Military Justice

**USAF**

United States Air Force

**USAREC**

United States Army Recruiting Command

**USCG**

United States Coast Guard

**USMC**

United States Marine Corps

**USN**

United States Navy

**XO**

executive officer

# USAREC

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