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SECRETARY OF THE AIR FORCE**

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Personnel



**PROCEDURAL GUIDE FOR ENLISTED
ADMINISTRATIVE DISCHARGE BOARDS**

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This pamphlet provides procedural guidance to enlisted administrative discharge boards convened under Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, and AFI 51-602, *Boards of Officers*, including a suggested format for the written record of the board proceedings and a suggested script that will assist the board's legal advisor in conducting the proceedings in an orderly and efficient manner. This pamphlet implements Air Force Policy Directive (AFPD) 36-32, *Military Retirements and Separations*, and does not apply to US Air Force Reserve or Air National Guard units and members.

SUMMARY OF CHANGES

This interim change eliminates all references to discharge for enlisted Airmen based on homosexual conduct. A margin bar (|) indicates newly revised material.

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Chapter 1

INTRODUCTION

1.1. Purpose, Function, and Duties. An administrative discharge board is a fact-finding and recommending board. The functions and duties of a board appointed to consider a case under AFI 36-3208 are purely administrative, not judicial. An administrative discharge board has four basic decisions and recommendations to make. First, is there a reason for discharge? The board must develop and review the evidence in the case. From this evidence the board must decide if the facts as alleged by the commander are correct. A finding of fact on each allegation in the notification letter is required. The board's findings of fact will determine whether or not there is a reason for discharge. Second, should the member be discharged? If the board finds facts which are a reason for discharge, then the board must recommend whether the respondent should be discharged or retained. Third, what service characterization should the respondent receive for the current enlistment? If the board recommends a discharge, it must also recommend the type of service characterization. Finally, should the respondent be given an opportunity for probation and rehabilitation? The board does not make a finding concerning the respondent's medical qualification for world-wide duty.

1.2. Basic Procedures and Guidance. Under AFI 36-3208, paragraph 8.6, the legal advisor to an enlisted administrative discharge board has a number of specified responsibilities both prior to and during the hearing. The legal advisor consults, as necessary, with the recorder or respondent's counsel at any time prior to or after the convening of the board to: (1) prepare for the hearing; (2) clarify issues; and (3) rule on admissibility of evidence and other issues not requiring the presence of voting members. In addition, the legal advisor must instruct the board on its functions, duties, and procedures and advise the board on other appropriate matters throughout the hearing. While AFIs 36-3208 and 51-602 provide the substantive guidance for enlisted administrative discharge boards, this pamphlet will assist the legal advisor in conducting an orderly and efficient hearing. The legal advisor must also remember, however, that this pamphlet is only a suggested procedural guide. Deviation from this suggested format may be necessary to follow Air Force policy expressed in AFI 36-3208, AFI 51-602, or in other instructions or sources of authority. A failure to follow these guidelines does not constitute an error and provides no grounds to set aside or modify the proceedings. No rights or benefits are created for any party to the discharge board proceedings solely from the guidelines contained in this pamphlet.

1.3. Applicability. This pamphlet applies to all enlisted administrative discharge boards initiated under AFI 36-3208 and AFI 51-602.

1.4. Rules of Evidence. The rules of evidence are stated in AFI 36-3208 and AFI 51-602.

1.5. Abbreviations Explained. The following abbreviations are used throughout the suggested format for administrative board proceedings and the suggested board script (**chapter 2**):

INT	Interpreter
LA	Legal advisor
MEMS	Voting members of the board
PRES	Board president

RC	Respondent's counsel
REC	Recorder
REP	Reporter
RES	Respondent
WIT	Witness

1.6. Arrangement of the Boardroom. The legal advisor should ensure that the arrangement of the boardroom is consistent with the decorum required of an administrative discharge board hearing. The voting members of the board should seat themselves with the president in the center, and the other members should be seated alternately to the right and the left of the president in descending order of grade. The legal advisor should be careful to make sure that the other board participants, as well as the reporter and any witnesses, are seated in a manner that facilitates an orderly and efficient hearing.

1.7. Spectators. Because of the personal nature of the hearing, the legal advisor should exclude spectators from the boardroom. The legal advisor may permit spectators upon the respondent's request if the legal advisor finds that the presence of spectators will not disrupt or interfere with the orderly nature of the proceedings.

1.8. Witnesses. The legal advisor should normally exclude all witnesses from the boardroom except during the time each is testifying before the board. The foregoing does not apply to the respondent, even if the respondent intends to make a sworn or unsworn statement.

1.9. Attorney Consultations. The legal advisor may consult with the recorder and the respondent's counsel at any time prior to the convening of the board to prepare for the hearing and clarify issues. The recorder and the respondent's counsel may also consult with each other, as necessary. Counsel will advise the legal advisor and opposing counsel of the names of their prospective witnesses and proposed exhibits. Counsel will also state all objections which they anticipate making in the board proceedings. This will allow the legal advisor and opposing counsel to prepare for the issues and will eliminate unnecessary delays. Every effort should be made during these consultations to narrow and define the areas of disagreement. These consultations are not part of the board proceedings and will not be recorded or transcribed as part of the proceedings. The respondent does not have a right to be present during these consultations.

1.10. Hearing Without Voting Board Members. The legal advisor may, at any time, convene a hearing outside the presence of the voting board members. During these sessions, the legal advisor should rule on the admissibility of evidence and address any other issues which do not require the presence of the voting members. These meetings are recorded and transcribed as part of the record of the board proceeding. The respondent has the right to be present during these hearings.

1.11. Record of Board Proceedings. [Figure 1.1](#) provides a suggested format for the record of proceedings. AFI 36-3208, table 8.2, explains when a record of proceedings must be verbatim or summarized. If the board recommends retention and the case will not be forwarded to the Office of the Secretary of the Air Force according to AFI 36-3208, paragraph 1.2, then the summarized record need only contain sufficient information to establish that the board was properly convened. The findings and recommendations will be verbatim. The recommendation for discharge, the notification letter, the convening and amending orders, the discharge authority's action, and the exhibits will be used as a record of board proceedings in such cases. In all other summarized record or proceedings, the testimony must be summarized.

1.12. Authentication of Board Proceedings. Figure 1.2 provides a suggested format for authentication of the board proceedings.

1.13. Respondent's Personnel Records. The respondent's personnel records are admissible into evidence. Since the personnel records are available to all levels of command, copies of the personnel records need not be made and appended to the record as an exhibit. The record should clearly reflect that the respondent's personnel records were offered and admitted into evidence for the board's consideration. The legal advisor should also reflect on the record that the personnel records are available to the reviewing authorities but will not be made part of the record. Copies of airman performance reports and personnel documents supporting the reasons for discharge must still be included in the case file and made a part of the record.

**SAMPLE
SUGGESTED FORMAT FOR RECORD OF BOARD PROCEEDINGS
(Cover Page)
RECORD OF BOARD PROCEEDINGS**

re
(Last Name, First Name, Middle Initial) (Social Security Number (SSN))
(Grade)
by

Administrative Discharge Board Convened Under
AIR FORCE INSTRUCTION 36-3208
Held at
(Place of Hearing) on ((Date)(Dates) of Hearings), 19

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Abbreviations Used:

PRES _____	President
MEM _____	Board Member
LA _____	Legal Advisor
REC _____	Recorder
RES(see note) _____	Respondent
RC(see note) _____	Respondent's Counsel

WIT _____
 REP _____
 INT _____

Witness
 Reporter
 Interpreter

NOTE: As used in this record, RES will include RC if respondent is represented by counsel except where the context dictates otherwise (for example, warning of rights to the Respondent). If there is more than one RC, annotate appropriately for ready identification with examples in the index.

Figure 1.1. Suggested Format for Record of Board Proceedings.

TESTIMONY

Name of Witness	Pages Direct and Redirect	Pages Cross and Recross
-----------------	------------------------------	----------------------------

FOR THE GOVERNMENT

FOR THE RESPONDENT

EXHIBITS ADMITTED INTO EVIDENCE

For the Government	Description	Page Offered	Admitted
Exhibit 1			
Exhibit 2			
Etc.			

For the Respondent	Description	Page Offered	Admitted
Exhibit A			
Exhibit B			

Etc.

EXHIBITS NOT RECEIVED INTO EVIDENCE

(Exhibit)	Description	Page Offered	Rejected
-----------	-------------	--------------	----------

REVIEWER’S EXHIBITS

NOTE: If, after the hearing, the legal advisor is not reasonably available, the president and the recorder authenticate the record.

Figure 1.1. Continued.

SAMPLE

AUTHENTICATION FOR RECORD OF PROCEEDINGS

I certify that this record accurately depicts the administrative discharge proceedings of (Name and Grade of Respondent). I further certify that a majority of voting members of the Board concurred in the findings and recommendations.

_____ (see note)

(Signature Element
Legal Advisor)

(Date)

NOTE: If, after the hearing, the legal advisor is not reasonably available, the president and the recorder authenticate the record.

Figure 1.2. Sample Authentication for Record of Proceedings.



Chapter 2

HEARING WITHOUT VOTING MEMBERS

LA:

The hearing will come to order. This hearing is convened under the provisions of AFI 36-3208 and AFI 51-602.

REC:

The hearing is convened at _____ (time), on _____, at _____ (place), pursuant to Special Order _____, a copy of which I now offer into evidence as Government Exhibit 1 for identification.

LA:

Do counsel note any corrections in the convening (order)(orders)?

RC or REC:

(No) (Yes, I note the following (correction) (corrections)) _____

LA:

Does the Respondent have any objections to Government Exhibit 1 for identification?

RC:

(No objection)(We object on the basis of _____)

LA:

Government Exhibit 1 for identification (is)(is not) admitted.

REC:

The following persons named in the convening orders are present: _____.

REC:

The voting members named in the convening orders are absent.

REC:

The Respondent, _____, is present. (If absent, see AFI 36-3208, paragraph 6.22.) I note Respondent is represented by counsel, _____.

NOTE: If the Respondent is not represented by counsel, the Legal Advisor will advise the Respondent of his or her right to be represented by military or civilian counsel notwithstanding the fact that the recorder presents a written waiver at this point (see AFI 36-3208, paragraph 8.9.1). If necessary, the proceedings will recess or adjourn until counsel can be obtained.

RC:

Yes, Respondent is represented by _____
_____, (organization and station) who is a designated judge advocate of the United States Air Force and has been certified under Article 27(b) of the Uniform Code of Military Justice (or if represented by civilian counsel) who is admitted to the practice of law in the state of _____.

REC:

The Reporter will be sworn: Do you, _____, swear that you will faithfully perform the duties of Reporter to this Board, so help you God?

NOTE: Reporters who have been administered one time oaths for courts-martial need not be resworn.

REP:

I do.

NOTE: If the convening authority has detailed an Interpreter to the Board, the Recorder will now swear in the Interpreter:

REC:

The Interpreter will now be sworn: Do you, _____, swear that in the case now in hearing you will interpret truly the testimony you are called upon to interpret, so help you God?

INT:

I do.

REC:

The Legal Advisor will now be sworn: Do you, _____, swear that you will faithfully and impartially perform, according to your conscience and the regulations provided for these proceedings, all the duties incumbent upon you as Legal Advisor to this Board, so help you God?

LA:

I do.

LA:

The Recorder will now be sworn: Do you, _____, swear that you will faithfully perform the duties of Recorder to this Board, so help you God?

REC:

I do.

REC:

The Board is convened to determine whether discharge prior to the expiration of the respondent's term of service is appropriate because of _____ under the provisions of AFI 36-3208, chapter 5, section _____, paragraph _____. The Respondent received notice of this hearing on _____.

Respondent's acknowledgment of that notice is dated _____. I offer the notice and acknowledgment into evidence as Government Exhibit 2 for identification.

RC:

(No objection) (The Respondent objects to Government Exhibit 2 for identification because _____.)

LA:

(The objection is (sustained)(overruled).) Government Exhibit 2 for identification (is)(is not) admitted.

LA:

(Chief) (Sergeant) (Airman) _____, this board is convened to hear evidence concerning _____ on your part and to recommend to the convening authority whether you should be discharged prior to the expiration of your term of service.

As Respondent in this case you have the following rights:

First, you have the right to appear before all open sessions of this Board in person, with or without counsel, or, in your absence, be represented by counsel at all open sessions of this Board.

Second, you have the right to challenge for cause any voting member of this Board.

Third, you have the right to request the appearance before this Board of any witness whose testimony you believe can contribute materially to this case. If you desire, you may ask the Recorder to assist you in securing witnesses. Those witnesses will be invited to appear at no expense to you, provided that I determine the testimony is not cumulative; the personal appearance of the witnesses is essential to a fair determination on the issues of separation or characterization; written or recorded testimony will not adequately accomplish the same objective; the need for live testimony is substantial, material, and necessary for a proper disposition of the case; and the significance of the personal appearance favors production of the witnesses. You or your counsel may question any witness personally appearing before the Board.

Fourth, you are entitled to all rights granted by Article 31, Uniform Code of Military Justice. You may or may not provide sworn testimony before the Board. This is your decision. If you decide to do so, you will be subject to cross-examination like any other witness before the Board. If you do not elect to provide sworn testimony, you may make an unsworn statement to the Board either personally or through counsel, orally, in writing, or both. If you make an unsworn statement in person or through counsel, you will not subject yourself to cross-examination. If you do not choose to testify or make a statement, the Board will not consider your silence as an admission of the truth of the evidence the Recorder has presented against you.

Fifth, in accordance with AFI 51-602, you have the right during the proceedings of this Board to submit any evidence you may desire the Board to consider, including sworn or unsworn statements, affidavits, certificates, stipulations, and depositions.

Finally, you may request that the convening authority appoint one or more enlisted members to the Board. However, in that event, the convening authority will ensure that a majority of the Board consists of commissioned officers, and all enlisted members are in the grade of Master

Sergeant (E-7) or above (and are senior to you in grade).

NOTE: When the Respondent has an appointment as Reserve of the Air Force, commissioned or warrant officer, the Legal

Advisor will advise the Respondent as follows:

LA:

This proceeding is also directed towards arriving at a recommendation as to whether you should retain your appointment as a Reserve of the Air Force (commissioned or warrant) officer.

NOTE: See AFI 36-3208, paragraph 8.11, before proceeding.

LA:

Do you understand the purpose of this Board and your rights as Respondent before it?

RES:

(Yes) (No).

NOTE: If the Respondent indicates a lack of understanding of his or her rights, the Legal Advisor will pursue the matter until

the Respondent's understanding is complete.

LA:

Counsel, prior to hearing any argument regarding evidence in this case, I would like to inform you of some procedural guidelines which will apply. Both the Recorder and the Respondent's Counsel may question the Board members. Each may make an opening statement. Respondent's Counsel may make an opening statement immediately following the Recorder or reserve the opening statement until just prior to the presentation of the Respondent's case. Closing argument will begin with the Recorder, who will then be followed by the Respondent's Counsel. The Recorder will be given an opportunity to argue in rebuttal, if desired. I remind each counsel that this is an administrative proceeding and not a court-martial.

You should address me by my *grade and name*.

Does either counsel desire that I rule on the question of the admissibility of evidence?

Is there anything further we need to discuss?

This hearing without the voting members is now over. The Board will convene at _____, on _____, in this room (Room _____).

NOTE: Procedures for Recessing or Adjourning the Board:

(Generally a recess is taken for a period during the current day. Adjournment is generally used as a means to continue the session the following day or at a later named date.) The following procedure is suggested in the event either a recess or adjournment becomes necessary:

LA:

The Board will now (recess)(adjourn) and will reconvene at _____, on _____.

NOTE: Upon reconvening the Board the following procedure is suggested.

LA:

The Board will come to order. Let the record show that all members of the Board and the Respondent are present and the Board reconvened at _____, _____, 19—.

REC:

All members of the Board are reminded that they are (if applicable) still under oath. (Any witnesses previously sworn will be so reminded prior to testifying further.)

Chapter 3

BOARD PROCEEDINGS

LA: The Board will come to order.

REC:

The Board is convened at _____, on _____, at _____, pursuant to Special Order _____, previously admitted as Government Exhibit 1, a copy of which has been furnished to each member of the Board, the Legal Advisor, Counsel, and the Reporter.

REC: The Board is convened to determine whether the Respondent, _____, should be discharged prior to the expiration of the term of service because of _____ under the provisions of AFI 36-3208, chapter 5, section _____, paragraph _____. The Respondent received notice of this hearing on _____. Respondent's acknowledgment of that notice is dated _____. The Legal Advisor has previously admitted the notice and acknowledgment as Government Exhibit 2.

REC:

The Respondent, _____, is present and represented by _____, a designated judge advocate of the U.S. Air Force who has been certified under Article 27(b) of the Uniform Code of Military Justice, and (if applicable) (civilian counsel, name, and address) _____, who is a member of the bar of the state of _____.

LA:

(To Respondent) At our earlier hearing, I advised you of your rights before this Board. Do you desire that I re-advise you?

RES:

(Yes)(No).

NOTE: If Respondent says yes, the Legal Advisor will repeat the advice of rights.

LA:

Do you understand your rights before this Board?

RES:

(Yes)(No).

REC:

The following members of the Board are present: (The Recorder recites names and grades of all voting and nonvoting members who are present. The Respondent and Respondent's Counsel are not members of the Board and should not be identified.)

REC:

The following members of the Board are absent: (The Recorder recites names and grades of absent members and reasons for their absence).

REC:

The Legal Advisor, the Reporter, and the Recorder have been previously sworn.

LA:

(To voting members). Before proceeding with this hearing, I want to advise you of several matters relating to the duties of the various people present.

As Legal Advisor, I ensure that the Respondent receives a fair, impartial, and orderly hearing. I will rule on the admissibility of evidence, upon procedural matters, and on other questions and objections arising during the Board hearing. My rulings are final and not subject to objection by any member of the Board.

At the conclusion of the presentation of evidence in this hearing and prior to findings, I will advise you on the matters you must consider and the procedures you must follow while you are in closed session to determine your findings and recommendations.

As a voting member of this Board, each of you has a duty and responsibility to act as an impartial fact-finder in this case.

Your findings and recommendations will be of great significance not only to the Respondent but also to the United States Air Force. After hearing the Government's and Respondent's evidence, you will then draw certain conclusions from the facts that you have found, and make appropriate findings and recommendations concerning disposition of this case. In every instance, your recommendations should be consistent with your findings of facts. In this regard, you should not make recommendations on the theory that they are merely advisory and may be changed by the convening or higher authority.

LA:

An administrative discharge board has four basic decisions and recommendations to make. First, is there a reason for discharge? The Board must develop and review the evidence in the case. From this evidence the Board must decide if the facts as alleged by the commander are correct. A finding of fact on each allegation in the letter of notification is required. The Board's findings of fact will determine whether or not there is a reason for discharge. Second, should the member be discharged? If the Board finds facts which are a reason for discharge, then the board must recommend whether the member should be discharged or retained. Third, what service characterization should the member receive for the current enlistment? If the board recommends a discharge, it must also recommend the type of service characterization.

Finally, should the member be given an opportunity for probation and rehabilitation? You must avoid forming any opinion in this case until all the evidence has been presented by both sides.

You will have an opportunity to deliberate fully in closed session. Each of you must be satisfied that you can, fairly and impartially, hear this case and make your findings and recommendations. At a later point in the proceedings, you may be questioned concerning this. If any board member is not satisfied that they can act impartially, they should so state at that time.

The Board is governed by the procedures outlined in AFI 51-602 and the procedures and policies set forth in AFI 36-3208. You have been directed to familiarize yourselves with these procedures and directives prior to today. Have all of you done this? Do each of you feel that you are qualified to serve as a voting member of this board? (All voting members have responded affirmatively.)

NOTE: If there is a negative response to either question, the Legal Advisor should recess the proceedings to allow the voting member or members an opportunity to comply with this requirement.

LA:

The Recorder, _____, serves as the Government's representative and will present the Government's evidence. The Respondent, with the assistance of counsel, _____, has the right to submit additional evidence. Evidence, as I use that term here, consists only of documents properly admitted before you and the admissible testimony of witnesses. If extraneous matter should come to your attention, or if evidence, once admitted, is later excluded, you must appropriately disregard such evidence. I will instruct you if that is necessary.

The Recorder and Respondent's Counsel will also present arguments for your consideration. Although arguments are not evidence, you should carefully consider them, since such arguments may help you in meeting your responsibilities of finding facts and making recommendations. The counsel who calls a witness is ordinarily the first to conduct examination of the witness. When that examination has been concluded, cross-examination may follow. When the Recorder and Respondent's Counsel have both completed their questioning, you may ask questions. You should exercise caution and good judgment in this area. It is sometimes easy to become overzealous and forget or ignore the responsibility of remaining impartial. If you find it necessary to ask questions, please try to confine your questions to matters bearing on issues properly before this Board. Notes may be taken as the testimony proceeds.

LA:

The members of the Board, as well as the Recorder and Respondent's Counsel, may not make "off-the-record" statements. If comment on a witness's testimony is necessary, the Recorder or Respondent's Counsel may refer to it during final argument. Additionally, you may refer to it while you are in closed session.

An administrative board is not bound by formal rules of evidence prescribed for trials by courts-martial. Furthermore, an administrative board does not employ the rigorous "beyond-a-reasonable-doubt" standard of persuasion that criminal courts use. On the contrary, administrative boards seek to find all the relevant facts from the best evidence that is available, and they employ a "preponderance-of-the-evidence" test in making their findings. A preponderance of the evidence means the greater weight of credible evidence. That is to say, boards find their facts according to the weight of all the credible evidence that is properly before them.

Are there any questions?

LA:

The Respondent has an absolute right to have a panel of impartial board members hear this case. Therefore, you must disclose any and all grounds for challenge that may exist. The following reasons are proper grounds for challenge: that you are not eligible to serve on administrative discharge boards; that you have not been properly appointed to this Board; that you have been an investigating officer, staff judge advocate, convening authority, or counsel for either side; that you have formed or expressed a positive and definite opinion as to the disposition to be made in this case; or any other reasons which would cast substantial doubt as to the legality, fairness, or impartiality of the hearing.

Recorder, do your records indicate any grounds for challenge?

REC:

(Yes)(No), _____.

LA:

I am aware of no grounds for challenge for cause against me. Does either counsel have a challenge for cause?

REC:

The Government has no challenge for cause against the Legal Advisor,
_____.

RC:

The Respondent (does)(does not) challenge the Legal Advisor for cause.

NOTES:

1. Challenges for cause against the Legal Advisor should be stated in the presence of the voting members. Each side shall be provided an opportunity to present evidence in support of such challenge in the voting member's presence.
2. The Board shall hear evidence on the challenge to the Legal Advisor and then, in closed session, the President of the Board shall announce his or her ruling on the challenge. The President shall then poll the other voting members to see if they object to his or her ruling, and unless a majority of the voting members object, the President's ruling shall be final. The President shall announce the ruling in open session.

LA:

Members of the Board: In discussing grounds for challenge for cause, it is important that you avoid reference to any specific facts which may disqualify the other members of the Board if heard by them. Therefore, when you answer any of the following questions, please confine your answers to the general nature of the matter and avoid specific references to any facts.

Does any member of the Board write or indorse the effectiveness or performance report of any other member of the Board?

MEMS: _____.

NOTE: If any member writes or indorses another member's effectiveness performance report, the Legal Advisor should examine both members to ensure that each member will be independent and impartial. The mere fact that one member writes or indorses another member's effectiveness or performance report is not grounds for challenge in and of itself.

LA:

Does any member of the Board know the Respondent, Respondent's Counsel, or the Recorder?

MEMS: _____.

NOTE: In the event that any member knows any of the participants, the Legal Advisor should establish whether that relationship may influence that member's deliberations.

LA:

Does any member of the Board have pressing business which will prevent you from devoting your full time and attention to this case?

MEMS: _____.

LA:

Is any member of the Board aware of any facts or circumstances which gave rise to this proceeding?

MEMS: _____.

LA:

Has any member of the Board read or heard details of this case from any of the news media?

MEMS: _____.

LA:

Will each member agree to follow the instructions and rules as given to you by me?

MEMS: _____.

LA:

Is any member of the Board aware of any other matter which may be grounds for challenge by either side against you?

MEMS: _____.

LA:

Does the Recorder desire to question the Board?

RC: _____.

LA:

Does Respondent's Counsel desire to question the Board?

REC: _____.

LA:

Does either counsel desire a hearing without the voting members at this time?

REC:

(Yes)(No), _____.

RC:

(Yes) (No), _____.

NOTE: If either counsel desires a hearing, without the voting members, proceed as follows:

LA:

The Board will be recessed. The voting members are excused.

LA:

This hearing will come to order.

REC:

This hearing is attended by the Legal Advisor, Recorder, Respondent, Respondent’s Counsel, and the Reporter. The voting members are absent.

LA:

Does the Recorder or Respondent’s Counsel desire to challenge any voting member of the Board for cause?

REC:

(Yes)(No), the Government challenges _____

_____ on the grounds that _____.

RC:

(Yes)(No), the Respondent challenges _____

_____ on the grounds that _____.

NOTES:

1. The Legal Advisor rules on all challenges except challenges to the Legal Advisor. The President rules on challenges to the Legal Advisor. See chapter 8 for further guidance. The challenged member may be called into the hearing to give a statement on the challenge.

2. The out-of-board hearing is adjourned when completed and the board reconvened.

LA:

The board will come to order.

REC:

All parties to the board are once again present.

LA:

The Board will be sworn. All persons please rise. Please raise your right hand.

NOTE: All persons in the room stand while the oath is administered to the Board. Each voting Board member raises their right hand as the Recorder calls each name in administering the oath. The Recorder should handle cases of affirmation of Board members individually, in which instance the Recorder substitutes the word "affirm" for the word "swear" and omits the phrase "so help you God."

REC:

Do you (name each member of the board in descending order of grade) swear that you will determine, according to the evidence and without partiality, the case about to be heard by the Administrative Discharge Board of which you are members, so help you God?

MEMS:

(Individually) I do.

LA:

The Recorder may make an opening statement.

REC: _____.

LA:

The Respondent's Counsel may make an opening statement, if desired.

NOTE: Respondent's Counsel may choose to make his or her opening statement after the close of the Government's case.

RC: _____.

LA:

The Recorder may proceed.

NOTES:

1. Upon request, the Legal Advisor may grant a recess to allow the members of the Board to examine documentary evidence.

The Legal Advisor should caution Board members not to discuss the case with anyone prior to the closed session.

2. When all available evidence has been presented, the Recorder will announce:

REC:

The Recorder has no further evidence to present to the Board at this time.

LA:

(To RC) Respondent's Counsel may now make an opening statement (if RC deferred making an opening statement) and present evidence.

RC: _____.

NOTES:

1. Respondent's Counsel presents his or her case. The Recorder will call witnesses in the order specified by Respondent's Counsel, administer oaths, and ask preliminary identifying questions

of the witnesses. After questioning by the Respondent, the Recorder, members of the Board, and the Legal Advisor will have an opportunity to cross-examine each witness. The Legal Advisor will excuse the witnesses, following completion of each witnesses' testimony. If the Respondent elects to testify under oath, the Recorder will administer the oath. If the Respondent desires further explanation of his or her rights, the Legal Advisor will advise him or her.

2. When the Respondent has presented all available evidence, Respondent's Counsel will announce.

RC:

The Respondent has no further evidence to present.

LA:

Does the Recorder desire to present any rebuttal evidence?

REC: _____.

NOTE: The Recorder may now present evidence to rebut matters presented by the Respondent. If the Recorder has nothing in rebuttal, or has finished the presentation of rebuttal evidence, the evidentiary portion of the hearing is over.

LA:

The board will be in recess so counsel may review my instructions to the board. We will recess until (_____).

LA:

This hearing will come to order.

REC:

The hearing is being attended by the Recorder, Respondent, Respondent's Counsel, and the Legal Advisor. The voting members are absent.

NOTE: At this time the Legal Advisor should outline the instructions. The recorder and Respondent's Counsel should be provided with the opportunity to submit requests for instructions. Additionally, the Legal Advisor should examine the findings and recommendations worksheet for adequacy and admit them as a Board Exhibit.

LA:

This hearing is adjourned.

LA:

The Board will come to order.

REC:

All parties present when the Board recessed are again present.

LA:

The Recorder and Respondent may make final arguments. The Recorder may also make a rebuttal argument.

REC: _____.

RC: _____.

REC:

(If rebuttal).

LA:

Members of the Board: In a few moments you will go into closed session to determine your findings and recommendations. In doing so, you will be guided by the instructions I am about to give you, by the directives which I will leave with you, and by evidence admitted before you in open session.

You should become thoroughly familiar with the commander's (allegation)(allegations) because your first order of business during deliberation will be to decide whether the (allegation) (allegations) (is)(are) true.

LA:

The commander alleges the following: [Quote one or more allegations _____

_____].]

The primary function of any administrative board is to develop and review all the information about the matter under consideration. You must reach findings of fact on each separate allegation set out in the letter of notification. You should be as specific as possible as to dates, places, and events. Each finding must be supported by a preponderance of the evidence.

An Administrative Discharge Board has four basic decisions and recommendations to make. First, is there a reason for discharge? The Board must develop and review the evidence in the case. From this evidence the Board must decide if the facts as alleged by the commander are correct. A finding of fact on each allegation in the letter of notification is required. The Board's findings of fact will determine whether or not there is a reason for discharge. Second, should the member be discharged? If the board finds facts which are a reason for discharge, then the Board must recommend whether the member should be discharged or retained. Third, what service characterization should the member receive for the current enlistment? If the Board recommends a discharge, it must also recommend the type of service characterization. Finally, should the member be given an opportunity for probation and rehabilitation?

I remind you that an Administrative Discharge Board need not follow the formal rules of evidence prescribed for trials by courts-martial, and neither does such a board employ the same rigorous "beyond-a-reasonable-doubt" standard of persuasion that criminal courts use. The burden of proof is on the Government to establish each allegation in the letter of notification by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of credible evidence. There is no requirement to prove any allegation beyond a reasonable doubt. You must use your best judgment and common

sense in resolving disputed and conflicting evidence. You must consider the probability or improbability of each piece of evidence, and select only that evidence which is most worthy of

belief. You must be convinced that each fact set forth in your findings is proven to your satisfaction by a preponderance of credible evidence.

In resolving disputed evidence, it may be necessary to decide the credibility of a witness or witnesses who are in dispute. The credibility of a witness is the witness's worthiness of belief. In deciding the credibility of a witness, you should consider all of the circumstances. For example, consider the witness's demeanor and manner of testifying; his or her interest, if any, in the outcome of the case; his or her friendships, biases, and prejudices; and the extent, if any, to which he or she is supported or contradicted by other evidence. In short, you should consider all the circumstances that tend to shed light upon credibility, taking into account your own experience in dealing with people, and then reach your own determination as to truthfulness. Once you have made this determination, you should find the facts accordingly.

In a few moments I will give you a worksheet to assist you in putting your findings and recommendation in the proper form.

NOTE: At this point, the Legal Advisor should tailor limiting instructions based upon the evidence, testimony admitted during the hearing, and on probation and rehabilitation (see chapters 4 and 6). The Legal Advisor continues with the following closing instructions:

LA:

A majority of the voting members of the Board must concur in each of your findings and recommendations. (A tie vote will result in a determination favorable to the Respondent on any issue, and the President will announce this as a majority vote.)

Voting will be by secret written ballot beginning with the findings. You must not vote on recommendations until you have completed your findings. You must disregard any comment or statement I have made during the course of these proceedings, or in these instructions, which may seem to indicate any opinion of mine with respect to the findings or recommendations you will make in this case. You alone have the independent responsibility for making these decisions.

I will leave a copy of AFI 36-3208 and AFI 51-602 with you during your deliberations. If you require my help to interpret these directives, or if a question arises with respect to the procedures you should follow, you may reopen the proceedings and request my help in an open hearing and in the presence of the Respondent, the Respondent's Counsel and the Recorder. If you need help solely to put findings or recommendations into proper form, you may call me into your closed session. I will ask the Reporter to be present to record the proceedings verbatim. During your deliberations, you are to consult no references

other than your own notes and the documents and directives I will give you. You may not consult with any outside person about this case.

Are there any questions?

BOARD: _____.

LA:

The Board is closed. All persons except the voting members of the Board are excused.

NOTE: After the Board has reached its findings and recommendations the Legal Advisor will reopen the Board.

LA:

The Board is open.

REC:

All parties to this hearing who were present when the Board closed are again present.

LA:

Members of the Board, have you made your findings and recommendations?

PRES:

(Yes). (No, we have opened for further instructions).

LA:

Would the President fold Board Exhibit 1. Recorder, please hand that to me.

NOTE: The Legal Advisor examines the worksheet to preclude obvious mistakes.

LA:

I have examined Board Exhibit 1, and I have determined that it is in proper form. Recorder, please return this folded exhibit to the President. The Respondent and Respondent's Counsel will rise and face the Board.

PRES: _____.

NOTE: President reads the findings and recommendations in their entirety.

LA:

The Board is adjourned to meet at the call of the President.

Chapter 4

EVIDENTIARY LIMITING INSTRUCTIONS

Section A—Hearsay Evidence

Members of the Board, I have admitted Government (Exhibit)(Exhibits) () and Respondent (Exhibit)(Exhibits) () into evidence; however, I advise the Board that these exhibits are hearsay evidence. Hearsay is a statement which is offered into evidence to prove the truth of the matters in the statement, but which is not made by the author of the statement as a witness before this Board. I have determined there were adequate safeguards for the truth and have admitted the hearsay into evidence. You have the burden to decide what reliability and weight to give to this evidence. In making this determination, you should consider the nature, effect, authenticity, and circumstances of the statement.

LA:

Section B—Direct and Circumstantial Evidence

There are two types of evidence from which you may find the truth as to the facts of this case—direct and circumstantial evidence. Evidence which tends directly to prove or disprove a fact in issue is called direct evidence. Circumstantial evidence is that which tends to prove or disprove not a fact in issue, but a fact or circumstance from which, either alone or in connection with other facts, a person may, according to the common experience of mankind, reasonably infer the existence or nonexistence of another fact which is in issue. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

LA:

Section C—No Testimony by Respondent

The board will not draw any adverse inference from the fact the respondent did not elect to testify under oath as a witness. (See Note)

LA:

[**NOTE:** USE THIS INSTRUCTION IF REQUESTED BY RESPONDENT OR RESPONDENT'S COUNSEL.]

Section D—Unsworn Statement by Respondent

You are advised that an unsworn statement is an authorized means for a respondent to bring information to the attention of the board, and must be given appropriate consideration. The respondent cannot be cross-examined by the government or by the board members or myself upon an unsworn statement, but the government may offer evidence to rebut statements of fact contained in it.

LA:

The weight and significance to be attached to an unsworn statement rests within the sound discretion of each board member. You may consider that the statement is not under oath, its inherent probability, whether it is supported or contradicted by evidence in the case, as well as any other matter that may have a bearing upon its credibility.

In weighing an unsworn statement, you are expected to use your common sense and your knowledge of human nature and the ways of the world.

Section E—Commander-Directed Urinalysis

You have heard evidence that the Respondent submitted a urinalysis sample at his commander's direction. AFI 36-3208, paragraph 1.21.4, prohibits you from considering the results of mandatory testing conducted during a commander-directed examination in determining how the Respondent's service should be characterized. This means that you may consider the positive urinalysis in deciding whether the Respondent should be discharged. However, if you decide that the Respondent should be discharged, you must not consider the commander-directed urinalysis in determining how to characterize the Respondent's service (with either a General or Under Other Than Honorable Conditions Discharge). You may, however, consider the rest of the Respondent's record during (his)(her) current enlistment, including any independently derived evidence of drug abuse for characterizing the Respondent's service. [This includes admissions of drug use made by Respondent (and admissions made during his testimony today).] Thus, although you may not consider the commander-directed urinalysis in deciding the type of service characterization, you may decide that the Respondent's entire record during (his)(her) current enlistment, excluding the commander-directed urinalysis, warrants a worse type of discharge than Honorable.

LA:

Section F—Previously Adjudicated Matters

With respect to your findings of fact, AFI 36-3208, paragraph 8.14, provides that boards may not enter findings contrary to matters previously adjudicated in courts-martial and civilian court convictions.

LA:

You have evidence before you that Respondent was convicted by a (civil court) (court-martial) for the offense of (insert offense). _____ If you conclude that the Respondent in fact was convicted of an offense, then you must find as a fact that the Respondent committed the (offense)(offenses). The respondent may present matters in mitigation, extenuation, and explanation. Any evidence that I have admitted that tends to conflict with matters previously adjudicated was admitted for these purposes only. The fact that the respondent committed the (offense)(offenses) has already been adjudicated and I may restrict that admission and the use of evidence to prevent a second adjudication of the offense.

Section G—Entry-Level Status (To be used only if entry-level status is an issue.)

You must also find whether the Respondent is in entry-level status. That is, whether, as of the date of notification as to the initiation of separation proceeding, the Respondent was within the first 180 days of continuous active military service, or the first 180 days of continuous active service after a break of more than 92 days of active service.

LA:

Section H—Preponderance of the Evidence

In discharging this responsibility, you must use your best judgment and common sense in resolving disputed and conflicting evidence, considering the probability or improbability of the evidence and selecting and weighing the evidence considered most worthy of belief. You may make reasonable inference based on evidence, but you must avoid conjecture. In making your findings, each finding must be supported by a preponderance of the evidence.

LA:

Proof by a preponderance of the evidence is proof that a proposition is more likely to be true than not true. It is evidence in support of the proposition that is more strongly convincing and of greater weight than evidence in opposition. A preponderance is not to be determined merely by the number of witnesses called. You may properly believe one witness over several others whose testimony conflicts with the one. A greater number of witnesses or exhibits is not the greater weight of the evidence, but opportunity for knowledge, information possessed, and manner of testifying determines the weight of the testimony. The nature and quality of all the evidence presented should be your guide in determining whether the burden of proof has been met.

In summary, a preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence in opposition to it.

After giving all evidentiary limiting instructions, the Legal Advisor should instruct on the grounds for discharge. (See chapter 5.)

Chapter 5

INSTRUCTIONS ON GROUNDS FOR DISCHARGE

Section A—General Guidance

The Legal Advisor must give closing instructions to the Board on the particular grounds for discharge.

The following sections contain suggested instructions for the possible grounds for involuntary separation under AFI 36-3208, chapter 5. The Legal Advisor should tailor these suggested instructions to cover unusual circumstances or issues which may have arisen in the proceedings. Refer to **attachments 1 - 13** as appropriate for guidance concerning drafting a Findings and Recommendations Worksheet.

Section B—Involuntary Convenience of the Government Discharge

In the case before us, the Respondent's commander, _____, recommended that the Respondent be discharged from the United States Air Force with an (Entry-Level Separation). (Honorable Discharge) under AFI 36-3208, chapter 5, section B because (of Respondent's parenthood) (the Respondent has a condition which interferes with military service, specifically _____) (of insufficient retainability for required retraining). The precise factual basis for the recommendation is set forth in paragraph 2 of the commander's notification letter to the Respondent, dated _____, which is before you as Government Exhibit _____.

LA:

You should become thoroughly familiar with that paragraph, because your first order of business during deliberations will be to decide whether the (allegation)(allegations) contained in it (is)(are) true. The commander alleges the following: [Quote one or more allegations

You must reach clear, logical findings of fact as to each allegation in the notification letter. That is, you must find (with respect to each allegation) whether or not that allegation is true. If you find that none of the allegations is true, then a recommendation for retention would naturally follow and should be made by you.

NOTES: The Legal Advisor continues with the following instructions in all cases:

After you have made your findings, you must arrive at one of the following recommendations, consistent with those findings:

1. Retention in the Air Force. Your recommendation for retention is binding on the separation authority. You should therefore deliberate fully the effect that such a recommendation will have both on the Respondent and the Air Force. Note, however, that you may recommend retention even if you have found that there is a reason for discharge under AFI 36-3208, chapter 5, section B.

2. Discharge with an Honorable Discharge. If you wish to recommend discharge, and the Respondent is *not* in entry-level status, then you *must* recommend discharge with an Honorable Discharge.

3. Entry-Level Separation. If you wish to recommend discharge, and the Respondent is in entry-level status, then you *must* recommend Entry-Level Separation.

In reaching your recommendations, you may consider the Respondent's entire military record to the extent permitted by AFI 36-3208. Specifically, you may consider the entire military record to determine whether retention or discharge is appropriate.

Airmen who have demonstrated that they are unqualified for further service should be discharged and their service appropriately characterized.

NOTES:

1. If the Respondent has an appointment as a Reserve of the Air Force commissioned or warrant officer, the Board must make a recommendation whether the Respondent should retain the appointment. In such a case, the Legal Advisor should give appropriate instructions. See AFI 36-3208, paragraph 8.11, before proceeding.

2. After instructing on the grounds for discharge, the Legal Advisor should give an appropriate instruction on probation and rehabilitation. (See chapter 6.)

Section C—Defective Enlistments

The Legal Advisor gives the following instructions where the basis for discharge is fraudulent entry under AFI 36-3208, chapter 5, section C, paragraph 5.15. If the case is based on an erroneous enlistment under section C, paragraph 5.14, the Legal Advisor must tailor instructions for that paragraph.

LA:

The Respondent's commander, _____, has recommended that the Respondent, _____, be discharged from the United States Air Force with (an Entry-Level Separation)(an Honorable Discharge) (a General Discharge)(an Under Other Than Honorable Conditions Discharge) under AFI 36-3208, chapter 5, section C, because of the Respondent's fraudulent entry in to the Air Force. The basis for this recommendation is set forth in paragraph 2 of the commander's notification letter to the Respondent, dated _____, which is Government Exhibit _____. You should become thoroughly familiar with that paragraph, because your first order of business during deliberations will be to decide whether the (allegation)(allegations) contained in it (is)(are) true.

The commander alleges that the Respondent fraudulently entered the Air Force on _____ by deliberately (misrepresenting)(omitting)(concealing) the material (fact)(facts) that (quote one or more specific facts); and that if the (fact)(facts) had been truly stated, the Respondent might have been rejected for enlistment. You must address (the)(each) allegation squarely. You must find(with respect to each allegation) whether or not that allegation is true. If you find that none of the allegations are true, then a recommendation for retention would naturally follow and should be made.

In determining whether the Respondent may be discharged, you should refer to the conditions stated in AFI 36-3208, paragraphs 5.15, 5.17, and 5.18. I specifically advise you that the Respondent may not be discharged for fraudulent entry unless you find that the (misrepresentation)(omission)(concealment) was *deliberate*; and that it concerned a *material* fact.

[CONCEALMENT OF PRIOR SERVICE]

If the case involves concealment of prior service, and the evidence has raised the issue of whether the concealment is a reason for discharge for fraud, the Legal Advisor should give the following instruction:

LA:

In this case, the Respondent allegedly concealed a record of prior service. I advise you that while deliberate concealment of prior service normally is a reason for discharge for fraudulent entry, this is *not* true in the following situations:

1. The prior military service consists of an unterminated enlistment in a Reserve component, and, before entering the Air Force, the Respondent had *not* received orders to report to active service, or to a medical examination in preparation for entry to active duty;
2. The concealed prior service was *not* the last period of active service; provided, however, that the last period of active service was disclosed, included at least 2 years of active military service, and was characterized as honorable; or
3. The concealed prior service was terminated under conditions that, if made known at the time of entry, would not have been a bar to entry.

If you find that the nature of the Respondent's concealed prior service fits one of the categories I have described, then the Respondent is not subject to discharge for fraudulent entry. You may, however, determine in such a case that the Respondent should properly be discharged because of an erroneous enlistment under AFI 36-3208, chapter 5, section C, paragraph 5.14. This would require an amendment to the notification letter. (See chapter 9.)

NOTE: If the case involves concealment of civil court records, the Legal Advisor should give the following instructions:

[CONCEALMENT OF CIVIL COURT RECORDS]

LA:

In this case the Respondent allegedly concealed a record of conviction on _____ in _____ (court) of the offense of _____.

In order for the Respondent to be discharged for concealing a civil court conviction, the Board must find that the Respondent *has* such a conviction and deliberately concealed it. The Board must also find that the Respondent received a sentence which included confinement for 6 months or more, without regard to suspension or probation, or a similar offense under the Manual for Courts-Martial United States, 1984, that authorizes a punitive discharge. (In this case the Respondent was sentenced to _____.) (In this case the same or closely related offense of _____ under the Manual for Courts-Martial, United States, 1984, is an offense that authorizes a punitive discharge.)

NOTE: The Legal Advisor will continue with the following instructions on discharge characterization:

LA:

After you have made your findings, you must arrive at one of the following recommendations:

1. Retention in the Air Force. Your recommendation for retention is binding on the discharge authority. You should therefore deliberate fully the effect that such a recommendation will have both on the Respondent and the Air Force. Note, however, that you may recommend retention even if there is a reason for discharge.
2. Entry-Level Separation. You should recommend this only if you have concluded *both* that the Respondent is in entry-level status, *and* Under Other Than Honorable Conditions discharge is not appropriate.
3. Honorable, General Discharge, or Under Other Than Honorable Conditions. Consult AFI 36-3208, chapter 1, section B, for guidance in determining which type of service characterization would be appropriate.

NOTE: If the case involves concealment of prior service terminated with less than an Honorable Discharge, normally you should recommend an Under Other Than Honorable Conditions Discharge.

LA:

In reaching your findings and recommendations, you may consult the Respondent's entire military record in determining whether retention or administrative discharge is appropriate.

Airmen who have demonstrated that they are unqualified for further service should be discharged and their service appropriately characterized. In making your recommendation as to the type of service characterization, you may *only* consider the Respondent's military record during the current enlistment, plus the preservice misrepresentations or omissions of facts which, if known, would have precluded, postponed, or otherwise affected the Respondent's eligibility for enlistment.

In determining the service characterization, you may *not* consider misconduct during a prior enlistment, including convictions by court-martial, records of nonjudicial punishment, or evidence of other offenses. As I indicated earlier, you should consult AFI 36-3208, chapter 1, section B, to guide you in determining an appropriate type of service characterization.

NOTES:

1. If the Respondent has an appointment as a Reserve of the Air Force commissioned or warrant officer, the Board must make a recommendation whether the Respondent should retain the appointment. In such a case, the Legal Advisor should give appropriate instructions. See AFI 36-3208, paragraph 8.11, before proceeding.
2. If fraudulent enlistment is the only reason for discharge, the member is not eligible for probation and rehabilitation under Chapter 7, AFI 36-3208.
3. Where the facts admitted before the Board provide a possible basis for a constructive waiver of discharge under AFI 36-3208, paragraph 5.19.3, the Legal Advisor should give the following instruction:

[CONSTRUCTIVE WAIVER]

Evidence has been presented which possibly could form the basis for a constructive waiver of discharge under AFI 36-3208, paragraph 5.19.3. That determination belongs solely to the separation authority; therefore, you must make your findings and recommendations without considering the possible constructive waiver.

Section D—Unsatisfactory Performance

The Respondent's commander, _____, has recommended that the Respondent be discharged from the United States Air Force with (an Honorable Discharge)(a General Discharge) under AFI 36-3208, chapter 5, section E, because of the Respondent's unsatisfactory performance. The basis for the recommendation is set forth in paragraph 2 of the commander's notification letter to the Respondent, dated _____, which is Government Exhibit _____. You should become thoroughly familiar with that paragraph, because your first order of business during deliberations will be to decide whether the (allegation)(allegations) (is)(are) true.

The commander alleges the following: [Quote one or more allegations _____
_____.]

You must address (the)(each) allegation squarely. You must find [with respect to each allegation] whether or not that allegation is true. If you find that none of the allegations are true, then a recommendation for retention would naturally follow and should be made.

After you have made your findings, you must arrive at one of the following recommendations.

1. Retention in the Air Force. Your recommendation for retention is binding on the separation authority. You should therefore deliberate fully the effect that such a recommendation will have both on the Respondent and the Air Force. Note, however, that you may recommend retention even if you have found the Respondent may be discharged under AFI 36-3208, chapter 5, section E.

2. Discharge With an Honorable Discharge.

3. Discharge With a General Discharge.

If you recommend discharge in this case, consult AFI 36-3208, chapter 1, section B, for guidance in determining whether an

Honorable or General Discharge is appropriate.

In reaching your findings and recommendations, you may consult the Respondent's entire military record to the extent permitted by AFI 36-3208. You may consult the entire military record to determine whether retention or discharge is appropriate.

Airmen who have demonstrated that they are unqualified for further service should be discharged and their service appropriately characterized.

If you recommend that the Respondent be discharged for unsatisfactory performance, you must also recommend the type of service characterization. In making your recommendation as to the service characterization, you may only consider the Respondent's military record during the current enlistment. Specifically, you may *not* consider preservice or prior service misconduct,

including convictions by court-martial, records of nonjudicial punishment, or evidence of other offenses.

NOTES:

1. If the Respondent has an appointment as a Reserve of the Air Force commissioned or warrant officer, the Board must make a recommendation whether the Respondent should retain the appointment. In such a case, the Legal Advisor should give appropriate instructions. See AFI 36-3208, paragraph 8.11, before proceeding.
2. After instructing on the grounds for discharge, the Legal Advisor should give an appropriate instruction on probation and rehabilitation. (See chapter 6.)

Section E—Substance Abuse Treatment Failure

The Respondent's commander, _____, has recommended that the Respondent be discharged from the United States Air Force with (an Entry-Level Separation)(an Honorable Discharge)(a General Discharge) under AFI 36-3208, chapter 5, section F, because the Respondent has failed in (drug)(alcohol) abuse rehabilitation. The basis for the recommendation is set forth in paragraph 2 of the commander's notification letter to the Respondent, dated _____, which is Government Exhibit _____. You should become thoroughly familiar with that paragraph, because your first order of business during deliberations will be to decide whether the (allegation)(allegations) (is)(are) true.

LA:

The commander alleges the following: [Quote one or more allegations _____
_____]]

You must address (the)(each) allegation squarely. You must find [with respect to each allegation] whether or not that allegation is true. If you find that none of the allegations are true, then a recommendation for retention would naturally follow and should be made.

There is a reason for discharge if the Respondent was referred to a program of rehabilitation for (personal abuse of drugs)(alcohol abuse), and failed to successfully complete the program due to inability, refusal to participate in the program, or unwillingness to cooperate. If you do not find that there is a reason for discharge, a recommendation for retention is appropriate. After you have made your findings, you must arrive at one of the following recommendations, consistent with those findings:

1. Retention in the Air Force. Your recommendation for retention is binding on the separation authority. You should therefore deliberate fully on the effect that such a recommendation will have both on the Respondent and the Air Force. Note, however, that you may recommend retention even if you have found that there is a reason for discharge under AFI 36-3208, chapter 5, section F.
2. Entry-Level Separation. If you wish to recommend discharge, and have made a finding that the Respondent is in entry-level status, then you *must* recommend an Entry-Level Separation.

3. Discharge with an Honorable or General Discharge. If you wish to recommend discharge, and the Respondent is *not* in entry-level status, then you *must* recommend discharge with either an Honorable or General Discharge. Consult AFI 36-3208, chapter 1, section B, for guidance in determining which type of discharge would be appropriate.

In reaching your findings and recommendations, you may consult the Respondent's entire military record to the extent permitted by AFI 36-3208. You may consult the entire military record to determine whether retention or administrative discharge is appropriate.

Airmen who have demonstrated that they are unqualified for further service should be discharged and their service appropriately characterized. If you recommend that the Respondent be discharged, you must also recommend the type of service characterization. As I explained earlier, your recommendation as to the type of service characterization in this case depends upon whether or not the Respondent is in entry-level status, as well as upon the guidelines set forth in AFI 36-3208, chapter 1, section B. In making your recommendations as to the type of service characterization, you may *only* consider the Respondent's military record during the current enlistment. You may *not* consider preservice or prior service misconduct, including records of courts-martial convictions, records of nonjudicial punishment, or evidence of other offenses.

NOTES:

1. If the Respondent has an appointment as a Reserve of the Air Force commissioned or warrant officer, the Board must make a recommendation whether the Respondent should retain the appointment. In such a case, the Legal Advisor should give appropriate instructions. See AFI 36-3208, paragraph 8.11, before proceeding.
2. After instructing on the grounds for discharge, the Legal Advisor should give an appropriate instruction on probation and rehabilitation. (See **chapter 6**).

Section F—(DELETED)

Section G—Misconduct

The Respondent's commander, _____, has recommended that the Respondent be discharged from the United States Air Force with (an Entry-Level Separation)(an Honorable Discharge)(a General Discharge)(an Under Other Than Honorable Conditions Discharge) under AFI 36-3208, chapter 5, section H, paragraphs (5.49)(5.50.1)(5.50.2)(5.50.3)(5.50.4)(5.51)(5.52.1)(5.52.2)(5.54)(5.53), because of (minor disciplinary infractions)(a pattern of misconduct consisting of discreditable involvement with military or civil authorities)(conduct prejudicial to good order and discipline) (failure to support dependents)(dishonorable failure to pay just debts)(a civilian conviction)(the commission of a serious offense, specifically (sexual perversion)(prolonged unauthorized absence) (drug abuse)(_____)). (Failure to comply with lawfully ordered preventive medicine procedures for an airman with serologic evidence of HIV infection.) The basis for the recommendation is set forth in paragraph 2 of the commander's notification letter to the Respondent, dated _____, which is Government Exhibit _____. You should become thoroughly familiar with that paragraph, because your first order of business during deliberations will be to decide whether the (allegation)(allegations) (is)(are) true.

LA:

The commander alleges the following: [Quote one or more allegations _____
_____.]

You must address (the)(each) allegation squarely. You must find [with respect to each allegation] whether or not that allegation is true. If you find that none of the allegations are true, then a recommendation for retention would naturally follow and should be made.

NOTE: If the case was initiated under AFI 36-3208, paragraph 5.51, for a civilian conviction, the Legal Advisor should give the following instructions:

[CIVILIAN COURT CONVICTION]

LA:

There is a reason for discharge for a civilian conviction if you find that the Respondent was convicted by civilian authorities, or action was taken tantamount to a finding of guilty, *if* a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial United States, 1984; *or* the sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

The offense involving the Respondent, _____, (could)(could *not*) result in a punitive discharge under the Manual for Courts-Martial United States, 1984, (and)(but) (resulted in an actual sentence by civilian authorities of confinement for at least 6 months without regard to suspension or probation)

There is a reason for discharge under Section H if you conclude either that the Respondent (*has* been convicted of the civil offense) or (the civil court has taken action which is tantamount to a finding of guilty).

NOTE: The Legal Advisor continues with the following instructions in all cases:

LA:

After you have made your findings, you must arrive at one of the following recommendations:

1. Retention in the Air Force. Your recommendation for retention is binding on the separation authority. You should therefore deliberate fully the effect that such a recommendation will have both on the Respondent and the Air Force. Note, however, that you may recommend retention even if there is a reason for discharge under AFI 36-3208, chapter 5, section H.
2. Entry-Level Separation. You should recommend this only if you conclude *both* that the Respondent is in entry-level status, *and* an Under Other Than Honorable Conditions Discharge is *not* appropriate.

NOTE: Airmen in entry-level status will not be discharged under paragraph 5.49

3. Discharge with an Honorable or General Discharge. If you wish to recommend discharge, and the Respondent is *not* in entry-level status, and an Under Other Than Honorable Conditions Discharge is *not* appropriate, then you must recommend discharge with either an Honorable or General Discharge. However, you may only recommend an Honorable Discharge if the

Respondent's record has been so meritorious that any other characterization would be clearly inappropriate. In making your determination, you should consult AFI 36-3208, chapter 1, section B, for guidelines on service characterization.

4. Discharge with an Under Other Than Honorable Conditions Discharge. Usually, discharges for misconduct under paragraphs 5.50, 5.51, and 5.52 should be an Under Other Than Honorable Conditions Discharge. You should consult AFI 36-3208, chapter 1, section B, in determining whether this type of service characterization is appropriate in this case.

[CONSTRUCTIVE WAIVER]

NOTE: Where the facts admitted before the Board provide a possible basis for a constructive waiver of discharge under AFI 36-3208, paragraph 5.51.3, the Legal Advisor should give the following instruction:

LA:

Evidence has been presented which possibly could form the basis for a constructive waiver of discharge under AFI 36-3208, paragraph 5.51.3. Constructive waiver may occur if the commander has knowledge of the respondent's civilian conviction but fails to take prompt action to initiate discharge. That determination belongs solely to the separation authority; therefore, you must make your findings and recommendations without considering the possible constructive waiver.

NOTE: The Legal Advisor continues with the following instructions in all cases:

In reaching your findings and recommendations, you may consult the Respondent's entire military record to the extent permitted by AFI 36-3208. You may consult the entire military record to determine whether retention or administrative discharge is appropriate.

Airmen who have demonstrated that they are unqualified for further service should be discharged and their service appropriately characterized. If you recommend that the Respondent be discharged, you must also recommend the type of service characterization, you may *only* consider Respondent's military record during the current enlistment. Specifically, you may *not* consider preservice or prior service misconduct, including records of courts-martial conviction, records of nonjudicial punishment, or evidence of other offenses.

[DRUG ABUSE]

NOTE: If the case was initiated under AFI 36-3208, paragraph 5.54, for drug abuse, the Legal Advisor should give the following instructions.

LA:

This basis for this discharge exists if you find the preponderance of evidence shows the respondent illegally, wrongfully, or improperly used, possessed, sold, transferred, or introduced on a military installation any drug. For the purpose of this Board, you are advised that the following definitions shall apply:

"Drug Abuse" means the illegal, wrongful, improper use, possession, sale, transfer or introduction onto a military installation of any drug. "Drug Abuse" also includes the improper use of prescription medication or any other intoxicating substance which might be inhaled, injected, consumed or introduced into the body in any manner for the purposes of altering mood or function. Alcohol is not included.

The term “drug” means any controlled substance listed on the schedules of controlled substances located at 21 United States Code Section 812. The term “drug” also includes anabolic or androgenic steroids. The term “drug” also extends to *any* intoxicating substance, other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner for the purpose of altering mood or function.

A “Drug Experimenter” is defined as one who has illegally or improperly used a drug for reasons of curiosity, peer pressure, or other similar reasons.

“Drug Distribution” is defined as the delivery to the possession of another. Distribution does not occur with the transfer of drug(s) from one person to another while such persons are engaged in the mutual use of drugs, except that individuals who obtain or arrange for obtaining the drug(s) used by others are involved in distribution.

“Delivery” is defined as the actual, constructive, or attempted transfer of drug(s) whether or not an agency relationship exists.

If you find that the Respondent did what is alleged, you are not required to make any further findings, depending on your assessment of the evidence, but you may nevertheless consider recommending retention *if, and only if*, you find that *all* of the following mitigating and extenuating factors are present by a preponderance of the credible evidence in the record.

NOTE: Findings below must be made only if the Respondent has clearly and specifically raised all of them as issues. Whether they have been clearly and specifically raised is a decision for the legal advisor.

- LA: 1. The drug abuse is a departure from the Respondent’s usual and customary behavior; *and*
2. The drug abuse occurred as the result of drug experimentation; *and*
3. The drug abuse does not involve recurring incidents, except for drug experimentation; *and*
4. The Respondent does not desire to engage in or intend to engage in drug abuse in the future; *and*
5. The drug abuse under all the circumstances is unlikely to recur; *and*
6. Under the particular circumstances of this case, the Respondent’s continued presence in the Air Force is consistent with the Air Force’s interest in proper discipline, good order, leadership and morale; and

NOTE: The legal advisor should give the following additional instruction here if the Respondent is a noncommissioned officer.

LA: In this regard, you should take special note that noncommissioned officers have special responsibilities by virtue of their status. They fulfill an integral role in maintaining discipline; and, therefore, must exhibit high standards of personal integrity, loyalty, dedication, devotion to duty and leadership.

7. Finally, the drug abuse did not involve drug distribution.

In making your determinations that retaining the Respondent is warranted under the seven mitigating and extenuating circumstances that I have just outlined, you should remember that

the burden of proof is on the Respondent. If the Respondent fails to prove any one of the seven mitigating and extenuating factors above to your satisfaction, you may make the finding against the Respondent.

LA: I will now summarize your options in this case:

1. If you find that the Respondent did not do what is alleged in (the allegation) (any of the allegations), then you *must* recommend (his) (her) retention.
2. If you find that the Respondent did what is alleged in (the) (any) drug abuse allegation, *and* if you make the additional finding that *all* of the extenuating and mitigating circumstances mentioned earlier are present in this case, then you *may* recommend the Respondent's retention.

[When the legal advisor determines that entry-level characterization is at issue, give the following instruction.]

3. If you find that the Respondent did what is alleged in (the) (any) drug abuse allegation, and you do *not* make the additional findings that all of the mitigation and extenuation factors were present, then if the Respondent is in entry-level status, *and* you determine that an under other than honorable conditions discharge is *not* appropriate, you *must* recommend an entry-level separation.
4. If you find that the Respondent did what is alleged in (the) (any) drug abuse allegation, and you do not make the additional findings that all of the mitigation and extenuation factors were present and if the Respondent is not in entry-level status, then you must recommend discharge with an appropriate service characterization. Usually, discharges for drug abuse under paragraphs 5.54 should be an under other than honorable conditions discharge, unless the limitations on service characterization described in paragraphs 1.21.3 and 1.21.4 apply. If you determine that an under other than honorable conditions discharge is not appropriate, then you must recommend discharge with either an honorable or general discharge. You may only recommend an honorable discharge if the Respondent's record has been so meritorious that any other characterization would be clearly inappropriate. If the basis for discharge includes both drug information which cannot be used for service characterization and other allegations, the Board must recommend an appropriate service characterization based on the other information independent of the drug abuse allegation. Again, you should consult AFI 36-3208, chapter 1, section B, for guidelines on service characterization.
5. If you determine that discharge for drug abuse is appropriate, regardless of service characterization, you are instructed that you may not recommend the Respondent for probation and rehabilitation. AFI 36-3208, chapter 7 specifically prohibits probation and rehabilitation for airmen discharged for drug abuse.

LA: The findings and recommendations worksheet will help you sort out these options.

NOTES: If the Respondent has an appointment as a Reserve of the Air Force commissioned or warrant officer, the Board must make a recommendation whether the Respondent should retain the appointment. In such a case, the Legal Advisor should give appropriate instructions. See AFI 36-3208, paragraph 8.11, before proceeding.

Section H—Discharge in the Interest of National Security

The Respondent's commander, _____, has recommended that the Respondent be discharged from the United States Air Force with (an Entry-Level Separation)(an Honorable Discharge)(a General Discharge)(an Under Other Than Honorable Conditions Discharge) under AFI 36-3208, chapter 5, section I, because retention of the Respondent would be clearly inconsistent with the interest of national security. The basis for the recommendation is set forth in paragraph 2 of the commander's notification letter to the Respondent, dated _____, which is Government Exhibit _____.

LA:

You should become thoroughly familiar with that paragraph, because your first order of business during deliberations will be to decide whether the (allegation)(allegations) (is)(are) true.

Specifically, the commander alleges the following: [Quote one or more allegations _____.]

You must address (the)(each) allegation squarely. You must find (with respect to each allegation) whether or not that allegation is true. If you find that none of the allegations is true, then a recommendation for retention would naturally follow and should be made.

After you have made your findings, you must make one of the following recommendations: LA:

1. Retention in the Air Force. Your recommendation for retention is binding on the separation authority. You should therefore deliberate fully on the effect that such a recommendation will have both on the Respondent and the Air Force. Note, however, that you may recommend retention even if you have found a reason for discharge under AFI 36-3208, chapter 5, section I.
2. Entry-Level Separation. If you wish to recommend discharge, and have made a finding that the Respondent is in entry-level status, then you *must* recommend an Entry-Level Separation.
3. Discharge with an Honorable or General Discharge. If you wish to recommend discharge, and the Respondent is *not* in entry-level status, and an Under Other Than Honorable Conditions Discharge is *not* appropriate, then you must recommend discharge with either an Honorable or General Discharge. Consult AFI 36-3208, chapter 1, section B, for guidance in determining which type of discharge would be appropriate.
- 4. Under Other Than Honorable Conditions Discharge.** If the Respondent is *not* in entry-level status, characterization of service as Under Other Than Honorable Conditions may be appropriate if the Respondent's misconduct constitutes a significant departure from the conduct expected of airmen. Consult AFI 36-3208, chapter 1, section B, for guidance in determining whether this type of discharge is appropriate.

In reaching your findings and recommendations, you may consult the Respondent's entire military record to the extent permitted by AFI 36-3208. Specifically, if you determine that the Respondent's retention is contrary to the interest of national security, then the Respondent may be discharged.

Airmen who have demonstrated that their retention is not in the interest of national security should be discharged and their service appropriately characterized. If you recommend that the

Respondent be discharged, you must also recommend the type of service characterization. As I explained earlier, your recommendation as to the type of service characterization in this case depends both on whether or not the Respondent is in entry-level status, as well as upon the guidelines set forth in AFI 36-3208, chapter 1, section B. In making your recommendations as to the type of service characterization, you may *only* consider Respondent's military record during the current enlistment. You may *not* consider preservice or prior service misconduct, including records of courts-martial convictions, records of nonjudicial punishment, or evidence of other offenses.

NOTE: If the Respondent has an appointment as a Reserve of the Air Force commissioned or warrant officer, the Board must make a recommendation whether the individual should retain the appointment. In such a case, the Legal Advisor should give appropriate instructions. See AFI 36-3208, paragraph 8.11, before proceeding.

Chapter 6

INSTRUCTIONS ON PROBATION AND REHABILITATION

* **NOTE:** In all discharge cases except those processed under AFI 36-3208, chapter 5; section C, paragraph 5.15 (fraudulent entry); section D, paragraph 5.22 (entry-level performance or conduct); section H, paragraphs 5.53, (failure to comply with preventive HIV medicine counseling) and 5.54 (drug abuse); or section I, paragraph 5.57 (national security), the Legal Advisor gives the following instructions:

LA: If you recommend discharge, you must also recommend whether or not the Respondent should receive rehabilitation with conditional suspension of the discharge under AFI 36-3208, chapter 7. For convenience, I will refer to this concept as “probation and rehabilitation” or “P&R.” In considering your recommendation on P&R, you should carefully consult AFI 36-3208, chapter 7. Paragraph 7.1 covers the principles and objectives of the program, and paragraphs 7.2 and 7.3 provide guidance with respect to policy and eligibility for the program.

I caution you that a recommendation that the Respondent be offered P&R is separate and distinct from a recommendation for discharge. Before you may consider P&R, you must first have decided to recommend discharge. Your later recommendation or P&R in no way impeaches the discharge recommendation. You cannot recommend discharge contingent on approval of an accompanying recommendation for P&R.

Your recommendation for or against P&R will be considered; however, your P&R recommendation is not binding on the separation authority.

The Respondent’s commander has (favorably)(not) recommended probation and rehabilitation. You must independently determine whether or not to recommend P&R.

NOTE: In cases processed under AFI 36-3208, chapter 5, section C, paragraph 5.15 (fraudulent entry); section D, paragraph 5.22 (entry-level performance or conduct); section H, paragraphs 5.53; (failure to comply with preventive HIV medicine counseling) and 5.54 (drug abuse); or section I, paragraph 5.57 (National Security), the Legal Advisor instructs as follows:

LA:

In this case, your only recommendations will be whether or not to discharge the Respondent, and if so, the type of discharge the Respondent should receive. The rehabilitation procedures with conditional suspension of discharge (referred to as “probation and rehabilitation” or “P&R”) under AFI 36-3208, chapter 7, are not available in this case. Neither your findings nor your recommendations should mention probation, rehabilitation, or any related concept.

NOTE: After instructing on probation and rehabilitation, the Legal Advisor concludes his or her closing instructions to the Board. (See chapter 3.)

Chapter 7

PROCEDURES FOR WITNESSES

Section A—Military Witnesses

REC/RC:

The (Government)(Respondent) calls as a witness _____

REC:

(Addresses witness) Do you (swear)(affirm) that the evidence you will give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth so help you God? (Omit the final phrase if affirmation is used.)

NOTE: If the Witness wishes to affirm, the Recorder omits the phrase “so help you God.”

WIT:

I do.

REC:

State your full name, grade, and armed force.

WIT: _____.

REC:

Do you know the Respondent?

WIT: (Yes)(No).

REC:

Is (he)(she) present in the boardroom?

WIT:

(Yes)(No).

REC:

Would you point (him)(her) out?

WIT:

(Identifies the Respondent if able to do so.)

REC:

(The Witness has properly identified the Respondent.)

NOTE: At any time it might appear appropriate, the Legal Advisor should explain to the Witness the rights available to him or her under Article 31 of the Uniform Code of Military Justice. (See section C.)

Section B--Civilian Witnesses

REC/RC:

The (Government)(Respondent) calls as a witness _____.

REC:

(Addresses witness) Do you (swear)(affirm) that the evidence you will give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (so help you God)?

NOTE: If the Witness wishes to affirm, the Recorder omits the phrase "so help you God."

WIT:

I do.

REC:

State your full name and address.

WIT: _____.

REC:

What is your occupation?

WIT: _____.

REC: Do you know the Respondent?

WIT:

(Yes)(No).

REC:

Is (he)(she) present in the boardroom?

WIT:

(Yes)(No).

REC:

Would you point (him)(her) out?

WIT:

(Points out Respondent if able to do so.)

REC:

(The Witness has properly identified the Respondent.)

NOTE: At any time it might appear appropriate, the Legal Advisor should explain to the Witness the rights available to him or her under the Fifth Amendment to the Constitution of the United States. (See section C.)

Section C--Advice to Witnesses

NOTE: When appropriate, the Legal Advisor should explain to a Witness the following rights available to him or her: RIGHTS OF MILITARY SUSPECT

I am _____. (I am) (We are) investigating the alleged (offense) (offenses) of _____ of which you are suspected.

I advise you that under the provisions of Article 31, Uniform Code of Military Justice, you have the right to remain silent, that is, to say nothing at all. Anything you do say may be used as evidence against you in a trial by court-martial or in other judicial or administrative proceedings. I advise you also that you have the right to consult with a lawyer, if you desire, and to have a lawyer present during this questioning. You may obtain a civilian lawyer of your own choosing at your own expense, or, if you wish, the Air Force will appoint a military lawyer for you free of charge. You may request a lawyer at any time during your testimony, and if you decide to answer questions without a lawyer present, you may stop the questioning at any time.

After advising the individual of his rights, the following questions should be asked to determine that he understands his rights:

- Do you understand your rights?
- Do you wish to remain silent or will you answer my questions?
- Do you want a lawyer?

RIGHTS OF CIVILIAN SUSPECT

I am _____ (I am)(We are) investigating the alleged (offense)(offenses) of _____ of which you are suspected. I advise you that under the provisions of the Fifth Amendment to the Constitution of the United States, you have the right to remain silent, that is, to say nothing at all. Anything you do say may be used as evidence against you in a trial or in other judicial or administrative proceedings. I advise you that you have the right to consult with a lawyer, if you desire, and to have a lawyer present during this questioning. You may obtain a civilian lawyer of your own choosing at your own expense, or, if you cannot afford a lawyer, the Air Force will provide you guidance in finding one. You may request a lawyer at any time during your testimony, and if you decide to answer questions without a lawyer present, you may stop the questioning at any time.

Chapter 8

CHALLENGE PROCEDURES

A Respondent who wants to question the Legal Advisor or a voting member of the Board about possible grounds for challenge, or to present evidence in support of a challenge, is permitted to do so. Before making a challenge, the Respondent may address questions to the whole Board or individual members to find out if there are grounds for a challenge for cause. The Respondent may ask that an individual member be sworn in as a Board member before being questioned. The Respondent may call witnesses or take the stand to testify under oath about the impartiality of a member. A challenged member is permitted to make a statement about the challenge. The President of the Board presides if the challenge is asserted against the Legal Advisor. A challenge for cause may be asserted as follows:

RC:

The Respondent challenges _____ for cause on the grounds _____.
_____. (If witnesses for the Respondent, including the Respondent, are called to testify regarding the competency of a Member, the oath or affirmation below will be administered.)

REC:

(Addresses witness) You (swear)(affirm) that the evidence you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God. (Omit the final phrase if affirmation is used.)

WIT:

I do.

REC:

State your name, grade, and organization.

WIT: _____.

NOTES:

1. The questioning then proceeds to elicit the testimony of the witness as to the impartiality of the Board member. The witness may be questioned by the Respondent, Respondent's Counsel, Recorder, and Legal Advisor. The challenged member will take no part in the hearings on the challenge except when called on to make a statement. When the presentation of evidence in support of the challenge is completed, the challenged member will be given an opportunity to make a statement. The challenged Member may be questioned by the Respondent, Respondent's Counsel, Recorder, and Legal Advisor. The opposing counsel may also call witnesses to testify regarding the challenge. Such witnesses will be sworn as previously indicated.
2. When all evidence on the challenge for cause has been introduced, arguments on the challenge for cause may be made at a hearing without voting board members present.

LA: (After hearing evidence and argument on each challenge.)

The challenge (is)(is not) sustained. (The challenged Member is excused and will withdraw from this hearing.)

NOTES:

1. The disqualified Member withdraws from the hearing and, if appropriate, the Board reseats itself to the right and left of the President in order of seniority. If excusal of the Member results in the retention of less than a quorum of voting members, or the lack of a Legal Advisor, or fewer commissioned than noncommissioned officers, the Board will recess or adjourn and the hearing will be delayed until the deficiency is remedied. If additional members are detailed to the Board, counsel for each side will be afforded the opportunity to assert a challenge for cause against them.

2. Challenges for cause against the Legal Advisor should be made in the presence of the voting members. Each side shall be provided an opportunity to present evidence in support of such challenge.

3. Following presentation of evidence and argument on the challenge to the Legal Advisor, the Board shall meet in closed session, wherein the President shall announce his ruling on the challenge. The President shall then poll the other voting members to see if they object to the President's ruling, and unless a majority of the voting members object, the President's ruling shall be final. The President shall announce the ruling in open session.

REC:

Let the record show that the challenged Member withdrew from the hearing room.

LA:

Does the Respondent desire to challenge any other voting member of the Board for cause? If not, we will proceed.

Chapter 9

SUPPLEMENTING THE NOTIFICATION LETTER

The addition of a new basic allegation to the existing notification letter should be accomplished at any time during the Board proceedings when it becomes evident that such an addition is appropriate. The normal procedure is for the Recorder, as the government's representative, to make the request and present the proposed format for the additional allegation as an exhibit for adoption. However, the Board, on its own motion, may initiate this action. The Board should request the Recorder to prepare a draft allegation—see the suggested procedure below.

LA:

It has become apparent that consideration should be given to the addition of a new basic allegation to the notification letter because of evidence presented or offered at this proceeding. The Recorder has been requested to draft the proposed additional allegation as Government Exhibit _____ and has completed that task.

REC:

At this time the Recorder moves that the Board amend the notification letter to include an additional allegation. The evidence heretofore presented (or offered) to this Board tends to substantiate _____. In support of this motion I offer as Government Exhibit _____ a sample additional allegation which incorporates the allegation outlined above.

LA:

The Recorder's motion is (granted)(denied). Government Exhibit (is)(is not) so amended.

NOTE: If the notification letter is amended, the Legal Advisor will advise the Respondent as follows:

LA:

The Letter of Notification has been amended by adding the following (allegation)(allegations) (_____). You are entitled to a delay for a reasonable period of time to prepare your defense to this additional allegation. Please consult with your counsel and state your desires.

RC:

(Respondent is prepared to proceed at this time and waives further delay with respect to the additional allegation.) (Respondent requests delay for preparation of the defense.) (State period of time.)

LA:

(Respondent may present evidence on the additional allegation) or (The Board will (adjourn) (recess) until _____, 19____.)

LA:

The Board is open.

REC:

Let the record reflect that the Board adjourned at _____, 19__, and that all parties who were present when the Board (adjourned)(recessed) are again present.

LA:

Is the Respondent prepared to present (his)(her) defense to the additional Statement of Reasons?

RC:

Respondent is prepared to proceed.

(Testimony will be introduced by each side in accordance with normal procedures.)

EUGENE E. HABIGER, Lt General, USAF
DCS/Personnel

ATTACHMENT 1
SAMPLE FINDINGS AND RECOMMENDATIONS
CONDITIONS THAT INTERFERE WITH MILITARY SERVICE

This Board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

- a. The Respondent: (List allegations in the notification letters.)
 - (1) (did)(did not) (list first allegation).
 - (2) (did)(did not) (list second allegation).
 - (3) (list any other allegations.)

- b. The Respondent (is)(is not) in entry-level status. (See note.)

RECOMMENDATIONS

- a. Recommend the Respondent be (retained) [separated with (an Entry-Level Separation) (an Honorable Discharge) (see note)].

- b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate references to Entry Level Status from the worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

ATTACHMENT 2
SAMPLE FINDINGS AND RECOMMENDATIONS

FRAUDULENT ENTRY

This Board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

a. The Respondent: (List allegations in the notification letter.)

(1) (did)(did not) (list first allegation).

(2) (did)(did not) (list second allegation).

(3) (list any other allegations.)

b. The Respondent (is)(is not) in entry-level status. (See note.)

1. The Respondent may not be discharged for fraudulent entry unless the board finds that the (misrepresentation)(com- mission)(concealment) was *deliberate* and that it concerned a *material* fact.

2. If the Respondent is alleged to have concealed a civil court conviction, the board must find whether or not the Respondent received a sentence which included confinement for 6 months or more, without regard to suspension or probation, or that a similar offense under the MCM authorizes a punitive discharge.

NOTE: Eliminate from worksheet if not in issue.

RECOMMENDATIONS

Recommend the Respondent be (retained) [separated with (an Entry-Level Separation (see note)) (an Honorable Discharge) (a General Discharge) (an Under Other Than Honorable Conditions Discharge)].

NOTE: Eliminate reference to Entry Level Status from the worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 3

SAMPLE FINDINGS AND RECOMMENDATIONS

UNSATISFACTORY PERFORMANCE

This Board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

The Respondent: (List the allegations in the notification (letter)(letters).)

- a. (did)(did not) (list first allegation).
- b. (did)(did not) (list second allegation).
- c. (list any other allegations.)

The Respondent (is)(is not) in entry-level status.

RECOMMENDATIONS

- a. Recommend the Respondent be (retained) [separated with (an Honorable Discharge) (a General Discharge)].
- b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate reference to Entry Level Status from worksheet if not an issue. Airmen may not be discharged under this provision if they are in Entry Level Status.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 4

SAMPLE FINDINGS AND RECOMMENDATIONS

DRUG OR ALCOHOL ABUSE REHABILITATION FAILURE

This Board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

- a. The Respondent, (grade and name), (was)(was not) referred to a program of rehabilitation for (personal abuse of drugs)(alcohol abuse).
- b. The Respondent (failed)(did not fail) to successfully complete the program due to (inability)(refusal to participate in the program)(unwillingness to cooperate), as evidenced by: (List allegations in notification (letter)(letters).)
 - (1) (did)(did not) (list first allegation).
 - (2) (did)(did not) (list second allegation).
 - (3) (list any other allegations).
- c. The Respondent (is)(is not) in entry-level status. (See note.)

RECOMMENDATIONS

- a. Recommend the Respondent be (retained) [separated with (an Entry-Level Separation (see note)) (an Honorable Discharge) (a General Discharge)]. [See note]
- b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate references to Entry Level Status from worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 5
(DELETED)

**Attachment 6
(DELETED)**

Attachment 7
(DELETED)

**Attachment 8
(DELETED)**

Attachment 9

SAMPLE FINDINGS AND RECOMMENDATIONS

MINOR DISCIPLINARY INFRACTIONS

This board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

The Respondent: (List allegations in notification (letter)(letters).)

- a. (did)(did not) (list first allegation).
- b. (did)(did not) (list second allegation).
- c. (list any other allegations).

[NOTE: Airmen may not be discharged under this provision if they are in an entry-level status].

RECOMMENDATIONS

a. Recommend the Respondent be (retained) [separated with (an Entry-Level Separation (see note)) (an Honorable Discharge) (a General Discharge) (an Under Other Than Honorable Conditions Discharge)].

b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate from worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 10

SAMPLE FINDINGS AND RECOMMENDATIONS

PATTERN OF MISCONDUCT

This board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

- a. The Respondent: (List allegations in notification (letter)(letters).)
 - (1) (did)(did not) (list first allegation).
 - (2) (did)(did not) (list second allegation).
 - (3) (list any other allegations).
- b. The Respondent (is)(is not) in entry-level status. (See note.)

RECOMMENDATIONS

- a. Recommend the Respondent be (retained) [separated with (an Entry-Level Separation (see note)) (an Honorable Discharge) (a General Discharge) (an Under Other Than Honorable Conditions Discharge)].
- b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate from worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 11

SAMPLE FINDINGS AND RECOMMENDATIONS

CIVILIAN CONVICTION

This board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

- a. The Respondent, (name), [(has)(has not) been convicted of a civil offense)] [(has)(has not) been entered into some type of program with the civil court which action is tantamount to a finding of guilty], as evidenced by: (list the allegations in the notification (letter)(letters).)
- b. [A punitive discharge (would)(would not) be authorized for the same or a closely related offense under the MCM.] or [The sentence by civilian authorities (includes)(does not include) confinement for 6 months or more without regard to suspension or probation.]
- c. The Respondent (is)(is not) in entry-level status. (See note.)

RECOMMENDATIONS

- a. Recommend the Respondent be (retained) [separated with (an Entry-Level Separation (see note)) (an Honorable Discharge) (a General Discharge) (an Under Other Than Honorable Conditions Discharge)].
- b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate from worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 12

SAMPLE FINDINGS AND RECOMMENDATIONS

COMMISSION OF A SERIOUS OFFENSE

This board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

- a. The Respondent: (List allegations in notification (letter)(letters).)
 - (1) (did)(did not) (list first allegation).
 - (2) (did)(did not) (list second allegation).
 - (3) (list any other allegations).
- b. A punitive discharge (would)(would not) be authorized for the same or a closely related offense under the MCM.
- c. The Respondent (is)(is not) in entry-level status. (See note.)

RECOMMENDATIONS

- a. Recommend the Respondent be (retained) [separated with (an Entry-Level Separation (see note)) (an Honorable Discharge) (a General Discharge) (an Under Other Than Honorable Conditions Discharge)].
- b. Recommend the Respondent (be)(not be) offered probation and rehabilitation with a conditional suspension of the discharge.

NOTE: Eliminate from worksheet if not an issue.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date

Attachment 13

SAMPLE FINDINGS AND RECOMMENDATIONS

DRUG ABUSE

This board, after carefully considering all the evidence in this case, has, in closed session, by secret written ballot a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

a. The Respondent. (List allegation(s) in notification (letter)(letters).)

- (1) (did)(did not) (list first allegation).
- (2) (did)(did not) (list second allegation).
- (3) (list any other allegations).

b. The Respondent (is)(is not) in entry-level status. (Eliminate from worksheet if not an issue.)

NOTE: No other findings are required; however, if the Board finds that the Respondent committed one or more of the alleged incidents, then the Board may make the further findings described below. (Eliminate from worksheet if not an issue.)

c. If you find the Respondent has committed a drug offense, and if the Respondent has asserted that (s)he meets the requirements of AFI 36-3208, paragraph 5.55.2.1, or if the board itself finds (s)he does, then the board will make the following findings:

1. Drug abuse (is) (is not) a departure from the Respondent's usual and customary behavior
2. Drug abuse (did)(did not) occur as the result of drug experimentation
3. Drug abuse (does)(does not) involve recurring incidents, other than experimentation
4. The Respondent (does)(does not) desire or intend to engage in drug abuse in the future
5. The board (does)(does not) believe that under all the circumstances of this case, the Respondent's drug abuse will likely recur.
6. Under the particular circumstances of the case, the Respondent's continued presence in the Air Force (is)(is not) consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership and morale.
7. The drug abuse (did)(did not) involve drug distribution as defined in AFI 36-3208, paragraph 5.55.2.1

RECOMMENDATIONS:

(Indicate one choice; if choice 3 is selected, circle type of discharge)

1. Since it has not been shown by a preponderance of the evidence that a drug offense has been committed by the Respondent, (s)he should be retained in the United States Air Force.

2. Despite Respondent's involvement with illegal drugs, (s)he meets all seven retention criteria set out in AFI 36-3208, para 5.55.2.1, as we noted in our Findings. The Respondent should, therefore, be retained in the United States Air Force.

3. Respondent should be discharged from the United States Air Force with (an Entry Level) (an Honorable) (a General) (an Under Other Than Honorable Conditions) discharge.

The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

Name of Board President

Date

Name of Board Member

Date

Name of Board Member

Date