BY ORDER OF THE SECRETARY OF THE AIR FORCE

AIR FORCE INSTRUCTION 51-602

2 MARCH 1994
Certified current 5 May 2009
Law

BOARDS OF OFFICERS

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

NOTICE: This publication is available digitally on the SAF/AAD WWW site at: http://afpubs.hq.af.mil. If you lack access, contact your Publishing Distribution Office (PDO).

OPR: HQ USAF/JAG (Col Richard Purdon)

Certified by: HQ USAF/JAG (Mr Everett G. Hopson)

Supersedes AFR 11-31, 18 October 1985.

Pages: 4
Distribution: F

This instruction implements AFPD 51-6, *Civil Law for Organizations*. It provides instructions for board proceedings on: (1) separating military personnel from the Air Force; (2) imposing monetary liability on military and civilian personnel, except actions pursuant to AFI 34-202, *Protection of Assets* (formerly AFR 176-2) or as to military personnel for Article 139, *Uniform Code of Military Justice* (UCMJ) claims under AFI 51-502, *Personal and Government Recovery Claims* (formerly AFR 112-1); (3) taking any other administrative action where it applies to Air Force military personnel, either by regulation or appointing orders.

SUMMARY OF REVISIONS

This is the initial publication of AFI 51-602, substantially revising AFR 11-31.

1. General Procedures:

1.1. Conduct proceedings before a board of three or more officers who are senior in grade to the respondent (including a reserve grade if applicable). Board members are subject to challenge for cause only. If the number of members of the board falls below three, the convening authority appoints additional members. ***Note: If the AFPD/AFI that creates the entitlement to a board allows enlisted personnel to serve as board members, follow the procedures of that AFPD/AFI concerning board membership.***

1.2. Appoint a judge advocate to the board as legal advisor (without vote). The legal advisor is the final authority on challenges for cause and all evidentiary and procedural matters. However, the legal advisor may not dismiss any allegation against a respondent or terminate the proceedings. The legal advisor may convene a hearing without board members to assist in clarifying issues.

1.2.1. Military respondents have the right to be represented before the board, free of charge, by either a detailed military lawyer or a military lawyer of their own choosing, if reasonably available. Civilian counsel may represent respondents at respondents' own expense. A recorder (without vote) represents the government.

1.2.2. The recorder, at a reasonable time before convening the board, delivers or sends the respondent a written communication stating:

1.2.2.1. The time and place the board convenes.

1.2.2.2. The specific allegations to be investigated, in sufficient detail to enable a respondent to answer. Do not use generalized statements, unless applicable security regulations or directives require it to protect classified information.

1.2.2.3. The name, organization, and station (if civilian, the address) of any witness the recorder expects to call.

1.2.2.4. If respondents request them, arrangements will be made for military witnesses to be present (or invitational travel orders issued to civilian witnesses who are not federal employees). Approval of such requests are contingent upon the following:

- The request is made with enough time to make the arrangements, and
- The witnesses, in the opinion of the legal advisor, can present relevant and material evidence.

1.2.2.5. Respondents' rights regarding counsel, as stated in **1.2.1.** above.

2. Rules of Evidence:

2.1. The general rule is that all matters that are relevant and material to an issue or inquiry are admissible. In this connection, the following applies:

2.1.1. Respondents cannot be compelled to testify against themselves, nor may their silence be used against them.

2.1.2. Involuntary confessions or admissions by respondents are not admissible. However, failure to advise respondents pursuant to Article 31, UCMJ, or Air National Guard respondents pursuant to the Fifth Amendment, US Constitution, before confessions or admissions does not by itself make them inadmissible.

2.1.3. All relevant evidence obtained from any search and seizure is admissible.

2.1.4. Hearsay evidence is admissible provided the legal advisor determines that there is adequate safeguard for truth. Upon request, respondents are afforded an opportunity at the hearing to confront an individual whose testimony was admitted as hearsay. Exceptions are instances where the individual cannot be compelled to attend because of a lack of subpoena power; or because of distance or demands of the service, it is unreasonable for him or her to attend. In these cases, respondents are afforded an opportunity to obtain a deposition from the individual to submit to the board. If they cannot reasonably obtain a deposition, respondents are afforded an opportunity to obtain a sworn statement from (or present written questions to) the individual to submit to the board. A respondent's failure or inability to exercise the foregoing opportunities does not affect the admissibility of hearsay evidence. If the deposition or sworn statement has not been produced, despite the good faith efforts of the respondent, the legal advisor advises the board that such a good faith

effort has been undertaken and states the reasons that the deposition or sworn statement cannot be produced.

2.1.5. Apply the Military Rules of Evidence on privileged communications.

2.1.6. Do not admit results of polygraph tests, except when both the respondent and recorder consent and the legal advisor approves.

2.1.7. Swear in or take an affirmation from each witness appearing before a board. Use one of the following forms:

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

2.1.8. In resolving all other evidentiary matters, the legal advisor must consider:

- The fact that administrative proceedings are not bound by the formal rules of evidence prescribed for trials by courts-martial;
- The requirement for a full and fair hearing;
- The requirement for an impartial determination by the board; and,
- The requirement that there is adequate safeguard for truth.

2.2. Preponderance of the evidence is the standard of proof to be used in arriving at determinations in administrative proceedings conducted under this instruction. Findings and recommendations (if required) of the board must be concurred in by a majority of the voting members of the board and supported by a preponderance of the evidence.

2.3. Boards may not enter findings contrary to matters previously adjudicated in courts-martial and civilian court convictions. This does not preclude respondents from presenting matters in mitigation, extenuation, and explanation. Without limiting the respondent's right to a full and fair hearing, the legal advisor may impose reasonable restrictions on evidence introduced by respondent that conflicts with previously adjudicated matters.

2.4. Respondents have the right to be present at the board proceedings (except during the boards' closed deliberations) and to present evidence in their own behalf with the following qualifications:

2.4.1. A board may be convened to hear matters against respondents who are in deserter status. A military lawyer must be appointed to protect respondents' interests and present evidence in the respondents' behalf.

2.4.2. A board may be convened to hear matters against respondents who are in civilian confinement. If respondents do not exercise the right to select a military lawyer, the convening authority appoints a military lawyer to represent them and present evidence in their behalf.

2.5. Record the proceedings and provide a copy of them to respondents. The record must include at least a summarized transcript of the proceedings, the evidence admitted, and the findings and recommendations. The legal advisor authenticates the board report. If after the hearing the legal advisor is not reasonably available, the president and recorder authenticate the record and state the reason for the substitution.

2.6. Before final action is taken, the staff judge advocate (for the commander taking final action) reviews the record and determines whether this instruction has been followed and whether the findings are supported by a preponderance of the evidence of record. The staff judge advocate then gives the commander a written statement of that opinion.

NOLAN SKLUTE, Maj General, USAF
The Judge Advocate General