

**BY ORDER OF THE COMMANDER
SPANGDAHLEM AIR BASE (USAFE)**

**SPANGDAHLEM AIR BASE
INSTRUCTION 51-1001**

3 DECEMBER 2013

Law



CIVILIAN MISCONDUCT PROGRAM

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at www.e-publishing.af.mil for downloading or ordering

RELEASABILITY: There are no releasability restrictions on this publication

OPR: 52 FW/JA

Certified by: 52 MSG/CD
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Supersedes: SPANGDAHLEMABI51-100
27 February 2009

Pages: 56

This instruction implements Air Force Policy Directive (AFPD) 51-10, *Making Military Personnel, Employees, and Dependents Available to Civilian Authorities*. It establishes policies and procedures governing instances of civilian misconduct for Spangdahlem Air Base (AB) and all its geographically separated units (GSU), as well as Eifel West, hereafter referred to as the Spangdahlem Community. The 52d Mission Support Group (52 MSG) Commander (CC) is responsible for ensuring administration of this program. This instruction applies to all Department of Defense (DoD) civilians assigned to, attached to, employed by, under the supervision or control of any organization in the Spangdahlem Community, as well as civilians allowed to enter the Spangdahlem Community. This includes those family members eligible to attend Department of Defense Dependent Schools (DoDDS) regardless of their sponsor's affiliation with DoD. The Civilian Misconduct Program is designed to assist the 52d Fighter Wing (52 FW) in redirecting civilian misconduct, providing appropriate rehabilitative services, and modifying inappropriate behavior of the military community, the organization, the sponsor, the family, retirees, and the individual. The intent of the Civilian Misconduct Program is to provide an opportunity to rehabilitate civilians and divert their energies away from self-destructive, inappropriate activities. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS). Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF 847, *Recommendation for Change of Publication*; route AF 847s from the field through the appropriate functional's chain of command.

SUMMARY OF CHANGES

This revision is a completely rewritten publication which must be carefully reviewed. Major changes include clarifying that 52 MSG Deputy Commander (52 MSG/CD) has the authority to impose sanctions on civilians who engage in misconduct in the Spangdahlem Community. Appeals, when allowed, are to 52 MSG/CC. This revision clarifies that civilian employee misconduct on the job need not be handled through the Civilian Misconduct Program. This publication reorganizes how adverse administrative actions are described and discussed by including with each adverse action a separate discussion of appeal rights and authorities. This revision establishes the “Rehabilitation and Restitution Opportunity Program ” and clarifies the intent of that program. It also establishes recordkeeping and legal-review procedures and provides samples of notification letters to respondents. Finally, it includes the Misconduct by Civilians timeline, which provides general guidance on how long each step should take.

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Chapter 1

GENERAL

1.1. Applicability. This regulation applies to:

1.1.1. Persons who are not on active military duty but who receive individual logistic support (ILS) from the United States (U.S.) Forces.

1.1.2. Civilian personnel who are permitted to use U.S. Forces facilities, regardless of command-sponsorship status. Persons subject to this regulation (affiliated personnel) include but are not limited to the following:

1.1.2.1. Appropriated and nonappropriated fund DoD civilian employees, their family members, and their “members of household.”

1.1.2.2. Family members of U.S. military personnel.

1.1.2.3. Members of households of U.S. military personnel.

1.1.2.4. U.S. military retirees and their family members.

1.1.2.5. Employees of Government contractors and their family members.

1.1.2.6. Government consular and diplomatic personnel and their family members.

1.1.2.7. Military and civilian personnel and other persons who sponsor family members for logistic support when the family member is involved in misconduct offenses.

1.2. Other Applicable Guidance. Other instructions and international agreements may establish policy and procedures for responding to incidents of misconduct by:

1.2.1. Allied Forces Soldiers and civilians.

1.2.2. Local national employees whose only affiliation with the U.S. Forces is their employment.

1.2.3. Non-Government consular and diplomatic personnel and their family members who are eligible to receive ILS from the U.S. Forces.

1.3. Purpose. This instruction:

1.3.1. Establishes policy and procedures for responding to misconduct by persons (excluding active-duty military personnel) eligible to receive ILS from the U.S. Forces and by persons who have access to U.S. military installations.

1.3.2. Provides guidance on administrative procedures and actions to be taken in response to civilian misconduct.

1.3.3. Establishes administrative actions to safeguard the resources, facilities, and welfare of the Spangdahlem Community

1.3.4. Does not prescribe criminal-justice procedures. Germany has criminal jurisdiction over civilians during peacetime.

1.4. Responsibilities.

1.4.1. **52 FW/CC.** Has responsibility for the morale, welfare, safety, and good order and discipline in the Spangdahlem Community. To carry out this responsibility, 52 FW/CC hereby delegates responsibility for the Civilian Misconduct Program to 52 MSG/CD. 52 FW/CC hereby delegates to 52 MSG/CC authority to consider appeals, when allowed, of misconduct decisions of 52 MSG/CD.

1.4.1.1. 52 FW/CC retains discretionary authority to remain involved as either the action authority or appeal authority in cases he or she believes appropriate.

1.4.2. **52 MSG/CC.** Ensures the Civilian Misconduct Program is properly administered. Serves as the appellate authority in case where appeals are authorized.

1.4.2.1. 52 MSG/CC retains discretionary authority to remain involved as either the action authority or appeal authority in cases he or she believes appropriate.

1.4.3. **52 MSG/CD.** Will investigate and respond to incidents of civilian misconduct and take administrative action against persons who engage in civilian misconduct within the Spangdahlem Community.

1.4.3.1. More specifically, 52 MSG/CD will be responsible for:

1.4.3.1.1. Managing the Civilian Misconduct Program.

1.4.3.1.2. Receiving reports of non criminal misconduct by civilians.

1.4.3.1.3. Coordinating with DoDDS and other community services and agencies on 52 MSG/CD matters.

1.4.3.1.4. Maintaining records of other than criminal misconduct by civilians.

1.4.3.1.5. Monitoring the status of other than criminal civilian misconduct incidents.

1.4.3.1.6. Overseeing the Rehabilitation and Restitution Opportunity (R&RO) program (paragraph 5.1).

1.4.3.1.7. Preparing documentation of 52 MSG/CD actions and proposed actions.

1.4.4. **52d Security Forces Squadron (52 SFS).** Is the administrative assistant to the 52 MSG/CD and is responsible for:

1.4.4.1. Receiving reports or notice of criminal misconduct by civilians.

1.4.4.2. Advising and making recommendations to the 52 MSG/CD on 52 MSG/CD actions.

1.4.4.3. Maintaining records of criminal misconduct by civilians.

1.4.4.4. Monitoring the status of criminal civilian misconduct incidents.

1.4.4.5. The 52 MSG/CD may direct the 52 SFS to conduct and document necessary interviews and collect evidence on criminal civilian misconduct incidents.

1.4.4.6. **52 SFS** will ensure that:

1.4.4.6.1. Investigations of criminal offenses committed by civilians are thorough and accurately reported, with the appropriate nature of the violation cited in any resulting report. Violations of applicable Air Force Instructions and German law by civilians should be specifically indicated. Uniform Code of Military Justice (UCMJ)

provisions do not apply to civilians, but the UCMJ may be cited as an indication of criminal activity.

1.4.4.6.2. Evidence is kept until any appeal on the case (including an appeal from administrative action) has been completed.

1.4.4.6.3. 52 SFS generates law-enforcement blotters or receives other notices of incidents of civilian misconduct that are sufficient to assist 52 MSG/CD in administering the Civilian Misconduct Program.

1.4.4.6.4. As appropriate, refer investigations of offenses alleged to be committed by civilians to other law enforcement officials not controlled by 52 FW/CC, such as the OSI or Army Customs.

1.4.5. Sponsors and Parents. Sponsors and parents will make every effort to prevent misconduct by their family members. Sponsors will:

1.4.5.1. Cooperate fully with 52 FW, school, and host-nation officials.

1.4.5.2. Encourage family members who commit misconduct offenses to demonstrate their desire to remain in the Spangdahlem Community and keep ILS (for example, by offering restitution or by taking part in the R&RO program).

1.4.5.3. Use recommended services as appropriate (for example, family counseling, consultation with school officials, parent effectiveness training) to encourage members to act responsibly.

1.4.6. DoDDS Officials. DoDDS officials will take appropriate internal administrative action to address student, teacher, and staff disciplinary problems that occur at schools, during school activities, or while using DODDS-run school buses. DoDDS officials will notify the 52 MSG/CD of suspensions and expulsions from school and report criminal offenses to the 52 SFS. DoDDS school administrators will report to the 52 SFS all cases of misconduct that warrant suspension or expulsion from school, even if such punishment is not actually executed. DoDDS officials will cooperate with base personnel to inspect for and remove contraband or when evidence of misconduct exists on school premises or in DoDDS facilities.

1.4.7. University and College Officials. Officials of universities and colleges operating in the European theater will take administrative action to address violations of school rules and regulations. Whenever a student is suspended, expelled, or involved in criminal conduct, university and college officials will notify commander of the student's sponsor and the 52 SFS. Criminal conduct should be reported to the Office of Special Investigations (OSI) or 52 SFS.

1.4.8. Legal Liaison Authority (LLA). Only the LLA (the servicing Judge Advocate (JA) via the host nation Legal Advisor) may communicate with German judicial authorities (prosecutors and court officials) and prison officials. Chapter 11 describes procedures for seeking criminal prosecution in Germany. The 52 SFS/CC, 52 MSG/CC, 52 FW/CC, and anyone who is contacted by German judicial authorities or prison officials about prosecution or possible prosecution of U.S. personnel will notify and refer to the local LLA the German authorities or officials and any written communication.

1.4.9. **Commanders.** Commanders at all levels will support 52 MSG/CD actions. Regulations that prescribe a commander's authority to take certain administrative actions must be followed. If a sponsor's commander refuses to impose a sanction requested by the 52 MSG/CD, the 52 MSG/CD will refer the matter through the sponsor's chain of command to the next higher commander.

1.4.10. **All Personnel.** All personnel will:

1.4.10.1. Avoid misconduct.

1.4.10.2. Promote good conduct.

1.4.10.3. Cooperate fully with 52 FW, military, school, and host-nation authorities.

1.4.10.4. Present proper identification when requested by military or civilian law enforcement officials, commissioned officers, and noncommissioned officers in the rank of Master Sergeant or higher who are enforcing order, discipline, or security affecting the U.S. Forces, civilian components, or family members.

1.4.11. **Staff Judge Advocate (SJA).** The SJA will:

1.4.11.1. Provide technical assistance to help the 52 MSG/CD develop administrative procedures for operating a civilian misconduct action program.

1.4.11.2. Review the efficiency and effectiveness of administrative program procedures. These informal reviews will be conducted with the 52 MSG/CD and 52 SFS. The results of the review will provide the basis for program modifications. If the review results in significant observations or recommendations, the SJA will assist in making changes to the program.

1.4.11.3. Provide training for the 52 MSG/CD and 52 SFS. Training will be structured to meet the specific needs of individual 52 MSG/CD and 52 SFS.

1.5. Policy.

1.5.1. **Authority to Suspend or Revoke ILS.** 52 FW/CC allows ILS to civilians who accompany the U.S. Forces on the condition of good behavior. 52 FW/CC has authority to revoke or permanently suspend ILS by barment of personnel from entry to installations housing areas, lands, buildings, and other structures and places under both Spangdahlem AB and European Command (EUCOM) control or jurisdiction.

1.5.1.1. There is no authority to revoke or suspend access to medical facilities if such services are authorized or to impede the access of school-aged children to DoDDS schools.

1.5.1.2. The SJA will provide assistance with ILS and barment issues.

1.5.2. **Authority to Bar Personnel from Installation Access.** The 52 FW/CC has the authority to bar an individual from the Spangdahlem Community. This authority cannot be delegated.

1.5.3. **Application of Procedures and Sanctions.** The Civilian Misconduct Program is most effective when procedures and sanctions are applied consistently.

1.5.3.1. Attachment 5 provides guidance to help 52 MSG/CD select and effectively use administrative procedures for the program. Failure to follow the guidance in Attachment 5 does not constitute grounds to appeal or seek reconsideration of the 52 MSG/CD's action or recommendation. 52 MSG/CD has the express authority to exceed or use lesser sanctions than those listed in Attachments.

1.5.3.2. Incidents of misconduct will be resolved as quickly and informally as possible. Commanders, staffs, and investigating officers (IO) will process actions quickly, thoroughly, and fairly. The procedures in this regulation, along with recommendations from the 52 SFS, law-enforcement officials, the SJA, DoDDS officials, and any other competent source that has an interest in the matter, will help the 52 MSG/CD establish facts and determine appropriate administrative actions. The 52 MSG/CD determines which procedures to use and which actions to take. 52 MSG/CD actions should be coordinated as much as possible with other organizations or agencies (for example, DoDDS or case-review committees) to ensure they do not interfere with the missions of those organizations or agencies.

1.5.4. **Host-Nation Jurisdiction.** In peacetime, host-nation authorities have exclusive criminal jurisdiction over U.S. civilians in the host country. The 52 MSG/CD may request local host-nation authorities to waive criminal jurisdiction over individuals when the 52 MSG/CD believes suitable corrective administrative action is available. 52 MSG/CD will make requests through the local LLA in Germany.

1.5.5. **Criminal Prosecution.** When the 52 MSG/CD believes criminal prosecution is appropriate and the misconduct is a serious criminal offense, he or she should consult the servicing SJA about the prosecution by U.S. authorities pursuant to the Military Extraterritorial Jurisdiction Act (18 United States Code (USC) 3261 et seq.) before requesting that host-nation authorities exercise criminal jurisdiction. The 52 MSG/CD will make such requests through the local LLA in Germany. Under German law, some acts will not be prosecuted unless the victim initiates a criminal complaint. For cases in which the U.S. Government is the victim and military authorities determine that a criminal complaint should be filed, the 52 MSG/CD must consult with the servicing LLA. The LLA will be the liaison between the complainant (the U.S. Government) and German prosecutorial officials.

1.5.6. **Prosecution by Host-Nation Authorities.** Prosecution by host-nation authorities does not prevent and should not delay the 52 MSG/CD from taking appropriate administrative action (see [Chapter 11](#)). However, when a violation of host-nation law is involved, the offender may not be granted early return to the United States before host-nation authorities give permission through the local LLA. Furthermore, any administrative action that could affect host-nation prosecution (such as barment actions, which may induce a subject to leave the jurisdiction) must be coordinated with the LLA.

Chapter 2

PROCEDURES

2.1. Reporting Misconduct.

2.1.1. The 52 SFS is responsible for tracking potential cases of criminal civilian misconduct. 52 SFS prepares and has access to daily blotters. DoDDS school administrators will report to the 52 SFS all cases of misconduct that warrant suspension or expulsion from school, even if such punishment is not actually executed. The 52 SFS will have access to case files and status reports from law-enforcement officials to monitor the progress of criminal investigations when the subjects are either civilians subject to this regulation or unknown but could possibly be civilians subject to this regulation. The 52 SFS must not interfere with OSI or host-nation investigations in any way.

2.1.1.1. 52 MSG/CD will track other than criminal misconduct by civilians if not tracked by 52 SFS, Army Customs, OSI or other law enforcement agency.

2.1.2. When the approved findings of an investigation establish that one or more individuals have engaged in criminal misconduct, the 52 SFS will provide a copy of the report of investigation (ROI) to 52 MSG/CD. However, if the misconduct is committed by one or more civilian employees while performing their civilian employment duties, 52 SFS will not to send a copy of the ROI to 52 MSG/CD for action IAW the Civilian Misconduct Program purposes if the recommendations include only employee discipline under Federal employment regulations. Rather, when the misconduct is work related, 52 SFS will send the ROI to the employing agency. Misconduct committed entirely within the context of an individual's employment will generally be handled by the employing agency and will not require further 52 MSG/CD action unless community interests are directly affected.

2.1.3. Local LLAs or other persons who receive official information that host-nation law-enforcement or social-services authorities suspect a civilian of an offense under German law will notify the 52 SFS.

2.1.4. 52 MSG/CD will establish a separate case file for each civilian respondent. As long as the case file is open, additional instances of misconduct may be added.

2.2. Investigating Misconduct.

2.2.1. The 52 SFS will normally investigate alleged criminal civilian misconduct and/or prepare incident reports.

2.2.1.1. Serious civilian misconduct may be investigated by OSI. Army Customs will normally investigate allegations of German tax evasion.

2.2.1.2. In instances of alleged civilian misconduct outside of normal law enforcement investigations, 52 MSG/CD may appoint an IO to prepare a Commander Directed Investigation (CDI) ROI. 52 FW/JA will advise and assist any investigator as required.

2.2.2. As the "owning commander" of civilians who engage in misconduct, 52 MSG/CD will review each completed investigation, incident report, DoDDS report, or ROI to determine whether the available information establishes by a "preponderance of the

evidence” that the civilian respondent committed the alleged misconduct. 52 FW/JA will advise and assist any investigator as required.

2.2.2.1. A preponderance of the evidence means that the greater weight of credible evidence supports a finding rather than an opposite finding. The 52 MSG/CD may ask 52 FW/JA for advice on whether the facts support the finding that a respondent committed the misconduct.

2.2.3. When reviewing the available information, 52 MSG/CD and/or 52 FW/JA should consider whether there are any unanswered questions that, if answered, would help determine if an act of misconduct occurred and, if so, if the respondent (or someone else) committed it.

2.2.4. If there are additional items of information that would help determine if an act of misconduct occurred and if the respondent committed it, the 52 SFS or someone tasked by the 52 MSG will further investigate to uncover this information. If much of the information is unknown, the 52 MSG should initiate a CDI. Otherwise, to expedite the case, the 52 SFS may contact witnesses or investigators to obtain the missing information.

2.2.5. Once the 52 MSG/CD is confident that all available information has been collected, 52 MSG/CD will proceed as follows:

2.2.5.1. If available information shows by a preponderance of the evidence that a respondent committed the misconduct, the 52 MSG/CD will determine what proper minor administrative or adverse actions to propose, and, as appropriate, either a draft letter of counseling or warning (Attachment 2) or a draft notice of intent (NOI) ([Attachment 3](#)) to the respondent.

2.2.5.2. If the 52 MSG/CD feels there is not enough information to show by a preponderance of the evidence that a respondent engaged in misconduct, the 52 MSG/CD will prepare a memorandum or a staff summary sheet that includes:

2.2.5.2.1. A summary of the facts of the case and the information that is lacking.

2.2.5.2.2. A statement that further investigation is unlikely to uncover the missing information.

2.2.5.2.3. 52 MSG/CD will close the case file with no action taken.

2.3. Notice to Respondent. 52 MSG/CD will prepare and sign notices.

2.3.1. **Letter of Counseling or Warning.** Letters of counseling or warning do not require an NOI and are not appealable (paragraph 12). They require no further action, but are simply issued to a subject under general 52 MSG/CD authority to address an incident of misconduct. If the respondent submits a reply, it will be included in the case file. Unless the 52 MSG/CD chooses to reconsider his or her decision, the case file will be closed. Attachment 2 shows a sample letter of counseling or warning.

2.3.2. **NOI.**

2.3.2.1. Using the template in [Attachment 3](#) as a sample, the notice to the respondent will identify the essential facts of his or her alleged misconduct and the action the 52 MSG/CD intends to take in response. The NOI will be addressed to the respondent and his or her sponsor or to the respondent’s parent or guardian if the respondent is a minor.

A copy will be provided to the sponsor's commander or commander-equivalent civilian supervisor.

2.3.2.2. The NOI will inform the respondent of the right to:

2.3.2.2.1. Submit a written reply to the 52 MSG/CD, which must be received within 3 workdays from the date of the notice. The response may include letters or statements from other people and any other material the respondent believes the 52 MSG/CD should have before taking final action.

2.3.2.2.2. Review the evidence in the case file, except for parts that may be withheld for good cause as explained in paragraph 2.3.2.4 below. The 3-day response period will not be extended to accommodate the review of the case file unless the respondent makes a reasonable request and the 52 MSG/CD cannot make the file available in sufficient time to meet the deadline.

2.3.2.2.3. Request an opportunity to appear before the 52 MSG/CD to present matters orally. However, there is no right to a hearing or appearance before the 52 MSG/CD.

2.3.2.3. If the 52 MSG/CD intends to offer a R&RO, the NOI will explain the proposed R&RO and the terms and conditions that apply if the respondent accepts it. The NOI will also inform the respondent that if he or she declines the offer to volunteer for the R&RO, other adverse actions may be imposed. The notice will inform the respondent that he or she must accept or reject the R&RO offer within the 3-day response period (Attachment 3, figure A3.3).

2.3.2.4. Normally, the respondent and, in case of a minor, the parent or guardian will be provided an opportunity to examine the evidence in the 52 SFS case file or other investigative file held by 52 MSG/CD. They are not entitled to obtain copies of this information through 52 MSG/CD channels except for copies of their own statements that they provided to law-enforcement or investigating officers. Information in the case file may be withheld for good cause (for example, classified documents, investigative files that would endanger the life or physical safety of witnesses or law-enforcement personnel, certain medical files, and Privacy Act (PA)/Freedom of Information Act (FOIA) exempt information). 52 MSG/CD will coordinate with the SJA before withholding case-file material.

2.3.2.5. The respondent may waive the 3-day response period. In this situation, the 52 MSG/CD may immediately take the next step in the process.

2.3.2.6. The 52 MSG/CD will consider any response submitted and will take appropriate action at the end of the 3-day response period. The 52 MSG/CD may consult with interested parties (for example, supervisors, sponsors, school officials, medical and behavioral-health personnel) about the appropriateness of adverse actions that are being considered. In deciding what final action to take, 52 MSG/CD should consider the responses submitted or any other consideration.

2.3.3. **Notice of Adverse Action (NAA).** The 52 MSG/CD will issue an NAA to the respondent and his or her sponsor, or to the respondent's parent or guardian of record if the respondent is a minor. A copy will be provided to the sponsor's commander or commander-

equivalent civilian supervisor. The NAA will be prepared according to the sample in Attachment 4, figure [A4.1](#)

2.3.3.1. When it includes an R&RO, the NAA must be prepared in accordance with the requirements in paragraph 5.1.14. of this instruction. The NAA will repeat the terms and conditions stated in the offer of R&RO, and a statement of acceptance to be signed by the respondent will be enclosed with the NAA.

2.3.3.2. The NAA will explain what the respondent is required to do as a result of the adverse action or actions imposed, such as obtaining a new ID or ration card or relinquishing a United States Army Europe (USAREUR) driver's license.

2.3.3.3. The NAA will explain what appeal right is available, if any, who the appellate authority is, and that the respondent has 5 calendar days to submit the appeal to the 52 MSG/CC through 52 MSG/CD (see [Chapter 7](#)).

2.3.4. Processing Timeline. Timely discipline is imperative to maintain good order and discipline. Every attempt shall be made to complete the disciplinary process within 30 days of the misconduct, unless a CDI is required, or the matter is appealable to 52 FW/CC. Timely completion of any required investigation and getting all pertinent information to 52 MSG/CD is critical.

2.3.4.1. Steps in processing civilian misconduct cases are as follows:

2.3.4.1.1. SFS or other criminal investigative agency is notified of the misconduct. 52 MSG/CD is notified of noncriminal misconduct.

2.3.4.1.2. The alleged misconduct is investigated. If criminal, SFS, OSI Army Customs, or German criminal investigators investigate the misconduct. If non criminal, 52 MSG/CD investigates or appoints Investigating Officer (OI) to prepare a Command Directed Investigation (CDI). If a CDI is involved, allow three weeks to complete.

2.3.4.1.3. Investigation is completed.

2.3.4.1.4. 52 MSG/CD drafts and signs NOI.

2.3.4.1.5. The NOI is served as detailed in paragraph 2.3.3. above.

2.3.4.1.6. The respondent has three workdays to respond.

2.3.4.1.7. 52 MSG/CD considers the response and makes a decision within two workdays. If legal review required, add five workdays. The NAA is issued to respondent and adverse action is implemented.

2.3.4.1.8. If appealable to 52 MSG/CC, the respondent has five workdays to appeal.

2.3.4.1.9. 52 MSG/CC considers the appeal, if any, within three workdays. 52 MSG/CC directs implementation of adverse action, or 52 MSG/CC submits to 52 FW/CC if the adverse action is one that only 52 FW/CC can affect, such as a barment.

2.3.4.1.10. Respondent is notified of appellate authority's decision.

2.3.4.1.11. If not appealed, is not appealable, or the appellate authority decides, 2 MSG/CD monitors R&RO, suspends actions, and closes the file.

Chapter 3

GENERAL GUIDANCE ON SELECTING ADVERSE ACTIONS

3.1. The 52 MSG/CD will consider the following factors when selecting responses to civilian misconduct:

3.1.1. Seriousness of the Misconduct.

3.1.2. Relationship of the Sanction to the Offense. The administrative action imposed should bear a rational relationship to the offense committed (for example, suspension of driving privileges for misconduct involving a privately owned vehicle, but not for shoplifting at an Army and Air Force Exchange Service (AAFES) store).

3.1.3. The Offender's Prior Record. The 52 MSG/CD should take progressively stronger action against persons who have previously been involved in misconduct.

3.1.4. Age and Maturity of the Offender. The 52 MSDG/CD should handle vandalism committed by a 10-year-old child differently than vandalism committed by a teenager or adult.

3.1.5. Compensation for Victims. The 52 MSG/CD will consider actions the offender has taken to rectify the effects of his or her misconduct. The 52 MSG/CC or 52 MSG/CD cannot force offenders (or their military or civilian sponsors) to compensate victims for loss or damage. However, restitution by offenders for damaged property (including Government property) is one indication of the willingness to live responsibly in the community in the future. Compensation for victims need not be monetary. In determining appropriate sanctions, the 52 MSG/CD may consider any type of compensation acceptable to the victim (for example, running errands, mowing the lawn).

3.2. Guidelines for 52 MSG/CD. **Attachment 5** lists factors to consider when determining which administrative actions are appropriate. The list only suggests administrative actions for cases without aggravating factors that would compel a more severe action. It is not intended to impose mandatory limitations on 52 MSG/CD. Failure to follow the list is not grounds for overturning the 52 MSG/CD's decision.

Chapter 4

NONADVERSE ACTIONS

4.1. Minor administrative actions are 52 MSG/CD responses to civilian misconduct that do not impose a loss of a benefit or an obligation to perform some act. When the 52 MSG/CD determines a minor administrative action is warranted, the initial notice should include that action and conclude the case without further process.

4.2. Minor administrative actions are not appealable, although the respondent may submit rebuttal matters, which will be included in the case file before closure.

4.3. The following are minor administrative actions:

4.3.1. **Counseling.** 52 MSG/CD may counsel the offender, orally or in writing, on the nature of the misconduct committed and the basis for concluding that the respondent was the one who committed it, why the misconduct is improper and unacceptable in the military community, what the consequences will be if the respondent continues to engage in that misconduct, and recommendations on ways to avoid misbehavior or improve behavior. If the offender is a juvenile, the parents or sponsor will be given a reasonable opportunity to be present at an oral counseling.

4.3.2. **Letter of Warning.** The 52 MSG/CD may issue a letter of warning to the offender. The letter will explain the nature of the misconduct committed and the basis for concluding that the respondent was the one who committed it, why it is improper and unacceptable in the military community, and that future acts of misconduct will not be tolerated and may lead to serious adverse actions. If the offender is:

4.3.2.1. A family member or a member of household, the letter should be sent through the sponsor's commander or supervisor. A copy of the letter will be provided to the sponsor.

4.3.2.2. An adult civilian employee, the letter should be sent through his or her supervisor. This channel of notification applies to appropriated fund (APF), nonappropriated fund (NAF), and local national employees.

4.3.2.3. An employee of a Government contractor, the letter should be sent through the contracting officer or contracting officer's representative (COR).

Chapter 5

ADVERSE ACTIONS

5.1. R&RO. The R&RO program offers an effective way to determine whether or not an offender is willing to be a responsible member of the community. Normally, an R&RO is offered instead of a more severe action. An R&RO should be tailored to the offense and to the offender. Examples include requiring the offender to:

5.1.1. Make payments to or perform services for victims, including the section, office or other units affected by the misconduct, to reimburse or compensate them for damages or losses.

5.1.2. Perform voluntary services in the community. Those community services may not involve services or activities that are currently covered by APF or contractor positions. Ideally, the services performed should have a direct relationship to the nature of the misconduct. Persons performing services under the R&RO program are not statutory volunteers as defined in 10 USC 1588, Authority to accept certain voluntary services.

5.1.3. Attend and participate in social welfare services, medical programs, or community education or counseling programs intended to identify, diagnose, or treat underlying social or psycho-social disorders that affect an individual's behavior or to educate respondents in better ways to manage their personal lives (for example, anger-management training, marriage or family counseling, alcohol- or substance-abuse programs, personal finance education, parenting skills training).

5.1.4. Remain at home during specified hours of the day.

5.1.5. Receive periodic home visits from 52 MSG/CD or an appropriate designee supervising respondent's rehabilitation.

5.1.6. Periodically report in person to 52 MSG/CD or an appropriate designee supervising respondent's rehabilitation.

5.1.7. 52 MSG/CD will stay informed of the range of rehabilitative programs and opportunities available in the community. They will maintain contacts with points of contact (POCs) in social work services, the Airmen and Family readiness Center, 52d Force Support Squadron (52 FSS), Red Cross, and other activities that can be used for rehabilitation or restitution.

5.1.8. An R&RO will not normally be offered to repeat offenders. It should, however, be considered in almost every case involving a first-time offender instead of other administrative action.

5.1.9. If the rehabilitation program requires the participation of the sponsor or other family members to be effective (for example, marriage and family counseling), the 52 MSG/CD may include a term or condition in the R&RO offer stating that all necessary parties must agree to participate.

5.1.10. The NOI to the respondent will offer an R&RO in appropriate cases. The NOI will explain:

- 5.1.10.1. The specific rehabilitation or restitution opportunity.
- 5.1.10.2. That the respondent or guardian must voluntarily agree to the offer.
- 5.1.10.3. How the respondent's failure to agree to or successfully complete the program will affect the 52 MSG/CD's decision on other adverse actions (for example, by including a statement saying "If you agree to the R&RO, I will suspend the other intended adverse actions.").
- 5.1.10.4. The NOI will include an endorsement to be signed by the respondent or guardian that states whether he or she agrees to undertake the rehabilitation or restitution duty. A sample NOI with an R&RO program offer is at Attachment 3, figure A3.3.
- 5.1.11. If the respondent or guardian consents to the R&RO by signing the NOI endorsement, the 52 MSG/CD will prepare an agreement stating the terms and conditions of the R&RO (figure A3.3). The agreement will specify the following:
 - 5.1.11.1. That the respondent or guardian is entering the program voluntarily and willfully.
 - 5.1.11.2. The factors that constitute satisfactory compliance with the program (for example, regular attendance at weekly meetings, biweekly reporting to a community supervision officer).
 - 5.1.11.3. The factors that constitute successful completion of the program.
 - 5.1.11.4. The consequences of the failure to consent to or to satisfactorily participate in an R&RO in terms of the 52 MSG/CD adverse action.
 - 5.1.11.5. The consequences of successfully completing the program.
 - 5.1.11.6. That the respondent or guardian must agree to the following:
 - 5.1.11.6.1. Grant the 52 MSG/CD or an appropriate designee access to any records maintained by the unit or agency conducting the rehabilitation program.
 - 5.1.11.6.2. Permit the unit or agency to discuss the respondent's progress with the 52 MSG/CD or an appropriate designee.
 - 5.1.11.7. Some method of verifying the completion of the project if the agreement includes a community service project. At his or her discretion, the 52 MSG/CD may allow a parent or guardian to provide such verification if they have overseen a juvenile offender during the course of the community service project.
- 5.1.12. Each respondent will sign a separate agreement even if all respondents share the same terms and conditions of an R&RO.
- 5.1.13. At the 52 MSG/CD's discretion, the agreement may be provided as an attachment to the NAA or presented to the respondent or guardian separately before the NAA is issued. However, 52 MSG/CD is not obligated to delay issuing the NAA to await the results of the R&RO.
- 5.1.14. The NAA will state the adverse actions imposed, including the R&RO, and clearly state the consequences of failing to complete the R&RO duty.

5.1.15. The respondent may not appeal the imposition of an R&RO duty, whereas other adverse actions imposed at the same time may be appealed. The respondent may, however, request a specific form of R&RO as a form of relief in any appeal. In this case, the 52 MSG/CD will include in his or her written comments to the 52 MSG/CC on the appeal (paragraph 7.5.) a statement as to whether such R&RO or a similar form of it is available in the community, the respondent's eligibility for it, and an assessment as to whether or not the respondent might be a good candidate for the program requested. If the appellate authority grants relief in the form of an R&RO, the respondent or guardian must voluntarily enter into an agreement (paragraph 5.1.11.).

5.1.16. When the 52 MSG/CD decides to take other appropriate action against the offender, he or she should consider the respondent's failure to agree to or successfully complete an R&RO duty.

5.2. Suspension or Revocation of Logistic-Support Privileges. By a variety of methods, 52 MSG/CD may effectively suspend or revoke privileges to use the following facilities and services:

5.2.1. **AAFES Facilities.** Unless otherwise specified, revocation or suspension of AAFES privileges will include check-cashing privileges. In case of shoplifting, employee pilferage, or intentional presentation of dishonored checks, exchange privileges will be revoked for a minimum period of 6 months. The NOI and NAA must specify the facilities to which the revocation or suspension applies.

5.2.2. **Commissary.** The 52 MSG/CD may suspend or revoke commissary privileges if those privileges are abused. If the decision to suspend or revoke commissary privileges is made by 52 MSG/CD, the respondent may appeal that decision to 52 MSG/CC.

5.2.3. **Rations.** The 52 MSG/CD may suspend or revoke ration privileges if they are abused. Decisions are final and not subject to appeal.

5.2.4. **Class VI.** Class-VI privileges may be suspended or revoked if abused or if the misconduct is alcohol-related. Decisions are final and not subject to appeal.

5.2.5. Nonappropriated Fund Facilities or Activities, also known as Morale, Welfare, and Recreation (MWR) Facilities or Activities.

5.2.5.1. Access to MWR/non appropriated fund instrumentality (NAFI), facilities and services and participation in MWR activities, individually or collectively, may be suspended or revoked. Services that may be denied include:

5.2.5.1.1. Participation in youth sports; child, youth, and school services; and other youth programs.

5.2.5.1.2. Check-cashing privileges.

5.2.5.1.3. Patronage at lounges, bars, and other facilities that serve food and beverages.

5.2.5.2. The 52 MSG/CD will furnish lists of individuals to whom entry to community facilities was denied to respective local facility managers to implement the preclusion for the duration specified. Individuals listed who enter facilities to which they have lost access will be treated as trespassers. Sponsors and local or host-nation law-enforcement

authorities may be asked to remove them. 52 MSG/CD will keep a master list of individuals denied access to various community facilities.

5.2.5.3. The decision to deny access to MWR facilities or services or participation in MWR activities may be appealed to 52 MSG/CC.

5.2.6. **Government Housing.**

5.2.6.1. Assignment to Government housing may be terminated by 52 FW/CC if a sponsor or family member is involved in an illegal use of the premises or in misconduct that threatens the safety, health, or welfare of neighbors. Termination procedures will be conducted in accordance with Air Force Instruction (AFI) 32-6001_USAFESUP_SPANGDAHLEMABSUP, Family Housing Management.

5.2.6.2. 52 FW/CC's decision to terminate Government housing because of misconduct is not appealable. If 52 MSG/CC recommends termination of Government housing to 52 FW/CC, that recommendation may be appealed 52 FW/CC who will decide if termination of housing is appropriate.

5.2.7. **Installation Driving Privileges.**

5.2.7.1. 52 FW/CC, who is responsible for the safety and welfare of the Spangdahlem community, grants the authorization to drive a motor vehicle of any type on the installation. This privilege is not considered logistic support, nor is it automatically linked to the possession of a USAREUR driver's license (paragraph 5.2.8). 52 MSG/CD has the authority under the AFI 31-204_USAFESUP_SPANGDAHLEMBSUP, Air Force Motor Vehicle Supervision, to suspend or revoke a respondent's driving privileges for the installation. Note: The underlying AFI and Spangdahlem supplement are under revision and expected to change, but 52 MSG/CD will retain the authority to suspend or revoke installation driving privileges.

5.2.7.2. Decisions to suspend or revoke installation driving privileges are final and not subject to appeal.

5.2.7.3. SFS initiates actions to suspend or revoke installation driving privileges.

5.2.8. **USAREUR Driving Privileges.**

5.2.8.1. Mandatory revocations and suspensions of USAREUR driving privileges are governed solely by Joint AFI 31-218_USAFESUP To AFI 31-204_USAFESUP_SPANGDAHLEMABSUP Air Force Motor Vehicle Supervision. . Suspension and revocation authority has been given to 52 MSG/CD by AFI 31-204_USAFESUP_SPANGDAHLEMABSUP. 52 MSG/CC and 52 FW/CC may also suspend or revoke driving privileges. **Note:** The citations to the above guidance are expected to change, but the authority of the 52 FW/CC, 52 MSG/CC and 52 MSG/CD will remain as stated.

5.2.8.2. If a 52 MSG/CD or 52 MSG/CC determines that civilian misconduct warrants a discretionary revocation or suspension of USAREUR driving privileges, he or she may exercise his or her discretion and suspend or revoke USAREUR driving privileges.

5.2.8.3. The appeal of the actual suspension or revocation will be based on AFI 31-204_USAFESUP_SPANGDAHLEMABSUP, or its successor and will not be part of the Misconduct by Civilians Program.

5.2.8.4. 52 SFS, the individual's commander or first sergeant is responsible for the physical confiscation of an Army Europe (AE) Form 190-1F, *USAREUR Driver's License*.

5.2.8.5. SFS initiates actions to suspend or revoke USAREUR Drivers Licenses.

5.3. Barment Orders.

5.3.1. **General.** 18 USC section 1382, DoD Instruction (DoDI) 5200.08, Security DoD Installations and Resources and the Physical Security Review Board (PSRB), German Criminal Trespass law, and AFI 31-101, Security, govern the authority, penalties, policy, and procedures for barment actions. 52 FW/CC may bar offenders from all areas and facilities under his or her responsibility and control, i.e. the entire installation and its annexes. This authority is not delegated any further. A barment order may be permanent or temporary, but should be reasonable under the circumstances. 52 MSG/CC or 52 MSG/CC may only recommend to his or her FW/CC that a respondent be prohibited from entering an installation as a response to misconduct. **Note:** Subordinate commanders may restrict offenders from facilities under their control.

5.3.2. **Appeals.** Barment orders are not subject to appeal, but a respondent may submit a request for reconsideration or revocation to 52 FW/CC. 52 MSG/CC's recommendation to 52 FW/CC to impose a barment order may be appealed to the 52 FW/CC.

5.3.3. Theater-Wide Barment Orders.

5.3.3.1. 52 FW/CC has authority to impose a theater-wide bar on respondents. A 52 MSG/CC's or 52 MSG/CD's recommendation to impose a theater-wide bar on a respondent must be forwarded through the 52 MSG/CD's chain of command.

5.3.3.2. Attachment 6, Figure A6.1 is an interservice memorandum of agreement (MOA) on the acknowledgment, enforcement, and issuance of reciprocal installation bar-to-entry orders among and between the Services in the European theater, which became effective on 26 April 2002. This MOA gives rise to a presumption of reciprocity between the Services when one Service imposes a theater-wide bar. For a theater-wide barment order to become subject to the terms of the MOA, the imposing commander or designee must submit the order to a designated office. The Theater Personnel Services Support Branch, Host Nation Liaison Field Operating Activity (HNLFOA), Installation Management Command (IMCOM)-Europe, is the successor to the office indicated in the MOA. The imposing commander or designee must submit the barment order and a summary of the circumstances of the barment, if not included in the barment order itself, to IMCOM-Europe (IMEU-HB), Unit 29055, APO AE 09081-9055.

5.3.3.3. 52 FW/CC should notify the respondent of the interservice applicability of the barment order by including the following statement in the body of the order: "Pursuant to the interservice memorandum of agreement for installation bars, effective 26 April 2002, this action will bar your entry into all facilities under the operational control of the U.S. Armed Forces in Europe."

5.3.3.4. 52 FW/CC may issue a barment order that limits its applicability to Spangdahlem AB, or United States Air Forces in Europe (USAFE) installations.

5.3.3.5. 52 SFS will ensure that the Theater Personnel Services Support Branch, HNLFOA, is notified when an interservice theater-wide barment is lifted or modified by 52 FW/CC. **Note:** The rescission or modification of a theater-wide barment order by the imposing commander does not force commanders of the other Services to allow the respondent to enter their facilities and installations. Such determinations remain matters of individual command discretion.

5.3.4. APF and NAF Employee Barments. 52 FW/CC must coordinate barment orders for current APF and NAF employees with the Civilian Personnel Office (CPO) for APF employees, and the NAF Human Resources Office for NAF employees and legal office before issuing them. It may be necessary to delay imposition of the barment until disciplinary action has been completed or to modify the terms of the barment order to allow an employee access for employment purposes. Barments against DoDDS or AAFES employees must be coordinated with the respective employing agencies.

5.3.4.1. Generally, APF employees have statutory due-process rights that must be observed in employment-related adverse actions. A bar from a place of employment may constitute a constructive termination triggering such rights. This usually means that if the barment is served before the employee's removal by the traditional removal method, the employee must be paid until removed from employment, even if the employee is barred from coming onto the base for work. Therefore, before imposing a bar from a place of employment, the evidence should be sufficient to support a traditional removal action, and any applicable statutory processes surrounding a removal action should be followed prior to implementing the bar.

5.3.4.2. All individuals, regardless of their present employment status, will be notified of the following in their barment orders:

5.3.4.2.1. Respondents must disclose the fact of this barment order on applications for employment with U.S. Forces installations in the areas covered by the order for the duration of the barment.

5.3.4.2.2. Failure to comply constitutes misconduct that may warrant removal from Federal service should the barred individual secure Federal employment in affected areas during the period of the barment. **Note:** Selecting officials may consider the reasons for an employee's inability to lawfully enter prospective places of employment. Applicants for competitive-service positions may have appeal rights when agencies deny them employment based on conduct-related reasons. (5 CFR 731 shows an example.) If such a barred applicant is selected as the best qualified, management should consult the servicing CPO and legal office to determine whether a suitability determination is appropriate. The inability to gain lawful access to a prospective place of employment may be considered as a factor in the selection process. **Note:** APF employees who are erroneously hired after a bar has been issued and before the bar is successfully appealed must still receive statutory due process based on their status. In such cases, the imposing authority should consult with the servicing SJA and may consider minimally amending the bar to allow the barred

employee access to the place of employment in exchange for the employee's entry into a "Last Chance" or "Alternative to Traditional Discipline" agreement.

5.3.4.3. A barred NAF employee may be separated as disqualified in accordance with AFMAN 34-310, Nonappropriated Fund Personnel Program Management Administration. Consequently, bars that prevent a NAF employee's entry into places of employment must be based on circumstances that ordinarily would support separation under NAF regulations.

5.3.5. **Contractor Employees.** Contractor employees are not Federal employees. Before imposing a barment action, 52 SFS will coordinate with the appropriate 52d Contracting Squadron (52 CONS) or the servicing Contracting Officer to ensure that the Government's refusal to allow a contractor employee entry does not interfere with the contractor's performance, as required by the contract terms, and does not cause the Government to terminate the contract or incur liability in favor of the contractor.

5.3.6. **Limitations on Barment Authority.** Barment may not prohibit a minor enrolled in a DoDDS school from accessing the education facility, nor may it prohibit an offender from receiving military medical attention if entitled to it.

5.3.7. **Legal Coordination.** All bars from entry must be coordinated with 52 FW/JA before they are imposed.

5.3.8. **Early Departure of an Offender.** If an offender departs a command before a bar action is initiated or concluded, the action may be held pending the return of the individual or processed by forwarding the barment letter to the offender at his or her forwarding address. Underlying information may be forwarded to the gaining commander for consideration. Certified mail with return receipt, or its equivalent, will be used to accomplish and record proper delivery. If possible, 52 MSG/CC, 52 MSG/CD, and 52 SFS should determine the departure status of an offender when they learn of misconduct and attempt to conclude necessary actions before the offender departs.

5.4. Early Return of Dependents (ERD). This policy is based on Joint Travel Regulations (JTR) and Joint Federal Travel Regulations (JFTR), Paragraphs 5900 to 5920.

5.4.1. **General.** 52 MSG/CC has the authority to grant voluntary ERDs. 52 MSG/CC will consider an early return of family members or other civilian offenders to the continental United States when other administrative measures are not expected to be effective. However, if host-nation authorities indicate the intent to prosecute the offender or are likely to do so, an ERD will not be affected without host-nation approval, coordinated through the local LLA (paragraph 1.4.10.).

5.4.2. **Voluntary ERD.** In cases where the 52 MSG/CC notifies the respondent and his or her sponsor that an ERD is being considered as an adverse action in response to the alleged misconduct, the NOI will include a statement encouraging the sponsor to consider requesting a voluntary ERD. The NOI will also inform the sponsor that he or she must include such a request, if desired, in any response to that NOI. If the sponsor requests a voluntary ERD, the request will be forwarded to the sponsor's unit to be processed in accordance with the controlling regulations. The 52 MSG/CC may consider the request in his or her decision as to what adverse actions to impose. He or she may, but is not required to, suspend other adverse actions pending completion of the voluntary ERD process.

5.4.3. **Involuntary ERD.** An involuntary ERD may be imposed only when the sponsor is a military member. It is not an available adverse action for a dependent of a civilian employee. In cases where the 52 MSG/CC determines that an ERD is in the best interest of the community and the sponsor has not requested an ERD for his or her dependent, the 52 MSG/CC will recommend to the 52 FW/CC, the approval authority per JFTR U5900 B.2.b., that the offender be subjected to an involuntary ERD.

5.5. Curtailment of Tour.

5.5.1. **Military Sponsors.** In appropriate cases, the 52 MSG/CC may request a curtailment of an overseas tour of a military sponsor. 52 MSG/CC's recommendation for curtailment of a sponsor's tour is not appealable. The respondent will have an opportunity to be heard in the curtailment process.

5.5.2. **Civilian Sponsors.** A family member's inability to adapt to the overseas environment may be an indication that the employee is unable to adapt completely. This may be a factor in any decision on extending the sponsor's tour beyond 3 years and every 2 years thereafter. If an employee's reassignment involves an abridgment of the employee's initial overseas or renewal tour, curtailment rules in applicable travel and transportation regulations must also be observed. Managers should consult CPO and SJA before they make such decisions.

Chapter 6

SUSPENDED ACTIONS

6.1. The 52 MSG/CD may suspend one or more administrative actions on the condition of good behavior by the offender or based on an agreement to perform R&RO duties as described in paragraph 5. 1. Suspension means that the imposition of the adverse action is delayed for the period or purpose described in the NAA or a subsequent notice to the respondent. Administrative actions may not be suspended for periods longer than those specified in the underlying regulation, and ordinarily the suspension should not exceed one (1) year. If the respondent complies with the conditions of the suspension, the adverse action will be terminated.

Chapter 7

APPEALS

7.1. Chapter 5 includes appeal options on individual adverse actions.

7.1.1. Appeals of suspension or revocation of installation driving privileges and USAREUR Drivers Licenses, see paragraphs 5.7. and 5.8. supra, are controlled by other guidance and not this Civilian Misconduct Program instruction. Appeals of suspension or revocation of installation driving privileges and USAREUR Drivers Licenses are submitted to SFS.

7.1.2. Appeals of barment reconsideration, revocation or modification are submitted to SFS at any time.

7.2. When an adverse action is subject to appeal, the appeal may be presented by the respondent or his or her sponsor. The appeal must be submitted to the 52 MSG/CC within five (5) calendar days after the NAA has been received and should be addressed to the appellate authority as identified in Chapter 5. It should state why the respondent considers the appealed action inappropriate and the relief he or she is requesting. The respondent may include character statements and other material, but the 52 MSG/CC will normally not grant extensions to the appeal period for the respondent to get character references.

7.3. The 52 MSG/CC may delay the effective date of adverse actions pending an appeal.

7.4. The 52 MSG/CC will review the submitted appeal. The 52 MSG/CC may grant the full relief requested by the respondent, notify the respondent of the decision, and consequently close the case without further opportunity for an appeal. If the 52 MSG/CC does not grant the full relief requested, he or she will forward the appeal within three (3) workdays to 52 MSG/CD, including the completed case file with a summary of the facts of the case, a summary of the information submitted and the relief requested by the respondent, and information on any relief already granted by the 52 MSG/CC or 52 MSG/CD.

7.5. 52 MSG/CC, the appellate authority, will provide a written response through 52 MSG/CD to the respondent, either a denial of the appeal or a statement as to what relief is granted. The appellate authority may provide any relief that he or she deems appropriate, including some or all of the relief that the respondent requested. The 52 MSG/CD will ensure that the decision made by the appellate authority is implemented.

Chapter 8

RECORDKEEPING

8.1. The 52 MSG/CD will maintain records of actions taken against respondents for acts of misconduct. 52 MSG/CD will maintain the records for three (3) years after the date the case file is closed.

8.2. The case file will be closed when:

8.2.1. No minor administrative action or adverse action is taken in a case opened under paragraph **8.4**

8.2.2. Minor administrative action is taken.

8.3. If adverse action is taken, the case file may be closed after all adverse actions have been concluded. However, it will remain open:

8.3.1. Until the respondent successfully accomplishes the duties assigned under the R&RO program or, if duties are not successfully accomplished, all other adverse actions have been completed.

8.3.2. For the time period for which an adverse action is suspended.

8.4. If a respondent engages in additional criminal misconduct, the 52 SFS may add the new misconduct to the original file. In such cases, the information of past criminal misconduct will be maintained in the 52 SFS's active records. 52 MSG/CD may add additional noncriminal misconduct to the file.

8.5. As a minimum, the case file will include all documents associated with the reporting and investigation of the case; correspondence with the respondent, victims, and other agencies; legal reviews; all documents related to minor or adverse actions taken; appeals; suspensions; and barment orders.

8.6. A chronology will be maintained for each case file detailing key facts, dates, correspondence, and actions taken.

Chapter 9

LEGAL REVIEW

9.1. When a legal review is required, 52 MSG/CD will coordinate with a legal counsel and obtain a written legal review before taking action.

9.2. Legal reviews are required when:

9.2.1. An offender appeals an adverse administrative action.

9.2.2. The adverse action considered is a barment, an ERD, or a tour curtailment.

9.2.3. The case is complex.

9.2.4. The offender, sponsor, or parent wants to review the file and the 52 MSG/CC or 52 MSG/CD wishes to withhold information for good cause.

9.2.5. An adverse employment action is proposed against NAF or APF employees.

9.2.6. An adverse action is proposed against contractor employees, whether or not they are USAFE-sponsored and receiving ILS.

Chapter 10**NOTIFICATION OF U.S. HIRING AUTHORITIES**

10.1. If the offender is a Federal (APF or NAF) or contractor employee , the 52 MSG/CD will inform the servicing CPO, the employee's supervisor, the contracting officer, or the COR, as appropriate, of the respondent's misconduct and the adverse action taken.

Chapter 11

CRIMINAL PROSECUTION IN HOST NATIONS

11.1. This chapter provides guidance and procedures for U.S. military authorities to follow when criminal complaints are filed against civilians for offenses committed against the U.S. Government. The 52 MSG/CD may take action against an offender even when host-nation judicial or administrative authorities are taking action against the offender, provided that the proposed actions do not adversely affect any host-nation interest in the case or the individual. Such actions must be coordinated with the local LLA.

11.2. Initiation of Criminal Complaints in Germany. U.S. military authorities may file criminal complaints with the local German police or with the appropriate local German prosecutor's office on behalf of the U.S. military agency that is the victim of an offense.

11.2.1. Criminal complaints may be filed against U.S. civilians and German or third-country national personnel suspected of having committed the offense. The following are examples of offenses:

11.2.1.1. Criminal trespassing on a fenced installation made available to the U.S. military for its exclusive use.

11.2.1.2. Larceny or destruction of U.S. Government property.

11.2.1.3. Fraud or embezzlement of U.S. Government property.

11.2.1.4. Offenses listed under Article 7 of the Fourth Law to Amend the German Criminal Law of 11 June 1957, as amended, when an agency of the U.S. Forces is the victim.

11.2.2. The military authority determining whether or not a complaint should be filed must consult the servicing SJA. The SJA will refer the matter to the appropriate LLA. The LLA will be the only POC between the military authority filing the complaint and German prosecutorial officials.

11.2.3. When the U.S. Government rather than a private individual is the victim of an offense, the agency that has control over or responsibility for the property should file the complaint. The authority, responsibility, and procedures for filing criminal complaints through the LLA are as follows:

11.2.3.1. When criminal trespassing has occurred in, on, or against a fenced U.S. Forces-controlled installation, the 52 FW/CC should file the complaint.

11.2.3.2. When larceny of Government-owned property other than money has occurred, the complaint should be filed by the following:

11.2.3.2.1. The property book officer responsible for the property (APF property).

11.2.3.2.2. The fund custodian (NAF property).

11.2.3.3. When larceny or embezzlement of Government funds (APF or NAF) has occurred, the person responsible for the funds involved should file the complaint (for example: finance officer, commissary officer, fund custodian).

11.2.3.4. When an offense is against the security of the U.S. Forces or installation other than Spangdahlem and its annexes or GSUs, the matter should be referred to the commander who has jurisdiction over the area where the offense occurred should file the complaint. Commanders should make these requests for prosecution, since these offenses are politically sensitive. The Federal prosecutor general (*Generalbundesanwalt*) or the State prosecutor general (*Generalstaatsanwalt*) at the applicable superior State court (*Oberlandesgericht*) normally prosecutes.

11.2.3.5. LLAs should submit a complaint either by a notification of offense (*Strafanzeige*) or a request for prosecution (*Strafantrag*). No standard format exists for the notice or request. LLAs will submit enough factual information with the complaint to indicate that an offense has been committed. Except for those offenses described in paragraph 11.2.3.4 above, the LLA should submit the notice or request either to the local police or to the office of the public prosecutor (*Staatsanwaltschaft*) who has jurisdiction for the area in which the offense occurred.

11.2.3.6. Most offenses will be prosecuted without a request for prosecution when there is a firm suspicion that an offense has occurred. Certain offenses (for example: trespassing, larceny of property with little value) may be prosecuted only on request of the property holder. An exception is when the prosecutor determines that prosecution is required in the public interest. When requests for prosecution are necessary, the victim must submit the request for prosecution (not the notification of offense) within 3 months after he or she suspects the offense occurred. When a request for prosecution is submitted, the complainant becomes entitled to certain rights including the right to:

11.2.3.6.1. Be notified if the charges are dismissed and to file objections to such a disposition.

11.2.3.6.2. Take part in the criminal proceedings as an intervener (*Nebenkläger*).

11.2.3.6.3. Be informed of the results of the prosecution.

11.2.4. When determining the propriety of filing a complaint, military authorities must consider the following possibilities:

11.2.4.1. If the court determines that a false complaint was filed intentionally or frivolously (*leichtfertig*), the court must assess against the complainant the costs of the proceedings and the necessary expenditures (including attorney fees) of the person against whom the complaint was filed (German Code of Criminal Procedure, sec 469).

11.2.4.2. If the complaint is withdrawn, the complainant may under certain circumstances be required to pay the costs and expenditures described above (German Code of Criminal Procedure, sec 470). Because APFs may not be available to pay such costs and expenditures, the person who knowingly or frivolously files a false complaint or withdraws a complaint (even when the complaint is valid) may be personally liable for payment of the costs and expenditures.

DAVID J. JULAZADEH, Colonel, USAF
Commander

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References******International Agreements, Laws, and Codes:***

NATO Status of Forces Agreement

German Supplementary Agreement to the NATO Status of Forces Agreement

United States Code, Title 5, *Government Organization and Employees*

United States Code, Title 10, section 1382, *Entering Military, Naval, or Coast Guard Property*

United States Code, Title 10, section 1588, *Authority to Accept Certain Voluntary Services*

United States Code, Title 18, section 3261 et seq., *Criminal Offenses Committed by Certain Members of the Armed Forces and by Persons Employed by or Accompanying the Armed Forces Outside the United States*

Fourth Law to Amend the German Criminal Law of 11 June 1957 Code of Federal Regulations, Title 5, *Administrative*, parts 352, 715, and 752

German Code of Criminal Procedure

Publications

Joint Federal Travel Regulations, volume 1, *Uniformed Service Members*

Joint Travel Regulations, volume 2, *Department of Defense Civilian Personnel*

DOD 1342.6-M, *Administrative and Logistic Responsibilities for DOD Dependents Schools*, 11 August 1995

DoD 5400.7-R_AFMAN 33-332, *Freedom of Information Act Program*, September 1998

DoDI 5200.8 *Security of DoD Installations and Resources and the DoD Physical Security Review Board (PSRB)* (10 December 2005) Incorporating Change 1 ((9 May 2010)

Commander-Directed Investigation (CDI) Guide (SAF/IGQ), 26 April 2010

AFI 31-101, *Security*, 3 July 2011

AFI 31-204, USAFESUP SpangdahlemSUP, *Air Force Motor Vehicle Supervision*, 9 March 2011

AFI 32-6001 USAFESUP, SpangdahlemSUP, *Family Housing Management*, 27 May 2009

AFI 33-332, *Air Force Privacy Act Program*, 16 May 2011

AFI 36-3020, *Family Member Travel*, 29 October 2009

AFI 34-201, *Use of Nonappropriated Funds (NAFS)*, 17 June 2002

AFMAN 34-310, *Nonappropriated Fund Personnel Program Management and Administration Procedures*, 28 September 2011

AR 215-8, AFI 34-211(I), *Army and Air Force Exchange Service Operations*, 5 October 2012

AFPD 32-10, *Installations and Facilities*, 4 March 2010

AFI 36-3026_IP, Volume 1, *Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel*, 17 June 2009

AFI 36-2110, *Assignments*, 22 September 2009

AFI 36-102, 18 Feb 1994, and AFI 36-102_USAFE Supplement 1, *Basic Authority and Responsibility for Civilian Personnel Management and Administration*, 18 February 2005

AFI 51-201, *Military Justice*, 21 December 2007

AE Regulation 190-1, *Driver and Vehicle Requirements and the Installation Traffic Code for the U.S. Forces in Germany*, 13 August 2010

AE Regulation 550-50, USAFE Instruction 51-706, *Exercise of Foreign Criminal Jurisdiction Over United States Personnel*, 26 November 2011

AE Regulation 550-56, USAFE Instruction 51-705, *Exercise of Jurisdiction by German Courts and Authorities over U.S. Personnel*, 3 September 2003

AE Regulation 600-1, *Regulated Activities in Europe*, 20 May 2009

AE Regulation 600-700, *Identification Cards and Individual Logistic Support*, 4 February 2010

AE Regulation 600-702/CNE-C6F Instruction 10110.1E/USAFE Instruction 34-101, *Ration Policy*, 7 November 2012

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

AF Form 1768, *Staff Summary Sheet*

AE Form 190-1F, U.S. Forces Certificate of License/United States Forces in Germany

Abbreviations and Acronyms

AAFES—Army and Air Force Exchange Service

52 SFS—52d Security Forces Squadron

AOR—area of responsibility

APF—appropriated fund

CG, USAREUR—Commanding General, United States Army Europe

CG, USAREUR/7A—Commanding General, United States Army Europe and Seventh Army

CINCUSNAVEUR—Commander in Chief, United States Naval Forces, Europe

52 MSG/CD—52d Mission Support Group Deputy Commander, civilian misconduct action authority

COMMARFOREUR—Commander, United States Marine Corps Forces, Europe

COMUSAFE—Commander, United States Air Forces in Europe

COR—contracting officer's representative

CPO—civilian personnel office

DA—Department of the Army

DOD—Department of Defense

DODDS—Department of Defense Dependents Schools

ERD—early return of dependents

GCMCA—general court-martial convening authority

HNLFOA—Host Nation Liaison Field Operating Activity, United States Army Installation Management Command, Europe Region

ID—identification

ILS—individual logistic support

IMCOM—Europe - United States Army Installation Management Command, Europe Region

IO—investigating officer

JA—judge advocate

JFTR—Joint Federal Travel Regulations

LA—legal advisor

LLA—legal liaison authority

MOA—memorandum of agreement

MWR—morale, welfare, and recreation

NAA—notice of adverse action

NAF—nonappropriated fund

NAF HRO—NAF Human Relations Office

NAFI—non appropriated fund instrumentality

NATO—North Atlantic Treaty Organization

NOI—notice of intent

OIC—officer in charge

OSI—Office of Special Investigations

POC—point of contact

POV—privately owned vehicle

R&RO—Rehabilitation and Restitution Opportunity

ROI—report of investigation

SFS—Security Forces Squadron

SJA—staff judge advocate

U.S.—United States

USAFE—United States Air Forces in Europe

USC—United States Code

USEUCOM—United States European Command

USMARFOREUR—United States Marine Corps Forces, Europe

USNAVEUR—United States Naval Forces, Europe

Terms

Appellate— Of, relating to, or recognizing appeals.

Civilian Misconduct Action Authority— The officer responsible for determining and taking action in response to civilian misconduct.

Due Process— A course of formal proceedings carried out regularly and according to established rules and principles.

Family Member— The lawful spouse, legitimate child, legitimized child, adopted child, stepchild, or unmarried student up to 23 years old who is attending an accredited institution of higher learning full-time, whose sponsor is a military member or DOD civilian employee.

Individual Logistic Support— Support that includes but is not limited to Government-provided or -supported housing, Government employment, the use of commissaries, and the use of Army and Air Force Exchange Service facilities.

Legal Advisor— Normally the servicing judge advocate in host nations other than Germany. The legal advisor provides services similar to those of the legal liaison authority at the request of the U.S. country representative for the host nation

Legal Liaison Authority— The POC (normally the servicing judge advocate) for the U.S. Forces response in cases involving foreign criminal jurisdiction. The legal liaison authority is the sole POC with host-nation judicial and prison authorities.

Member Of Household— A person who is either one of the following:

- A close relative who does not qualify as a dependent family member but who currently is and intends to remain a member of a sponsor's household and who is financially or for health reasons dependent on and supported by the sponsor.
- A child who reached age 21 during his or her sponsor's overseas tour.
- An illegitimate grandchild born during the sponsor's overseas tour.

Misconduct— Conduct or behavior by persons subject to this regulation that violates or is inconsistent with the standards of host-nation laws, the United States Code, or the rules, regulations, and other directives of military authorities. Also included are disorderly conduct; conduct prejudicial to good order, discipline, or accomplishment of the mission; truancy; and conduct contrary to directions of persons exercising police authority of a commander.

Offender— A person who is found to have engaged in misconduct as defined in this regulation.

Preponderance Of The Evidence— The level of proof sufficient to show that a thing is more likely to be true than not.

Primary Jurisdiction— Jurisdiction of the commander of the area in which the civilian is housed. In the absence of housing support to a civilian, the commander of the wing in which the civilian is employed will have primary jurisdiction. In the absence of either of these two forms of support, primary jurisdiction will be determined by the wing commander of the area in which the misconduct occurred.

Service— A branch of the U.S. Forces (for example, U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps).

Sponsor— A military member, member of the civilian component, or other person authorized individual logistic support according to the terms of his or her employment (for example, contractor personnel) whose family members are eligible to receive individual logistic support at a U.S. Forces installation.

Attachment 2

SAMPLE LETTER OF COUNSELING OR WARNING

Figure A2.1. Sample Letter of Counseling or Warning

(ON APPROPRIATE LETTERHEAD)

MEMORANDUM FOR: *(Respondent/Parents/Guardian/Sponsor)*

FROM: 52 MSG/CD

SUBJECT: Civilian Misconduct of *(Respondent's Name)* on or About *(Date/Dates of Incident/Incidents)*

1. It has come to *my attention* that *you have/(respondent's name) has (state the offense)* within the Spangdahlem Community. Such conduct is unacceptable and prejudicial to the order and discipline of this military community and cannot be tolerated.
2. I am authorized by AFIs, USAFE Instructions, SABIs, and/or inherent legal authority to take action in response to such misconduct. As the Civilian Misconduct Authority, I have been designated as the officer responsible for ensuring the preservation of order and discipline in this community.
3. You are hereby *warned/counseled/admonished* that such behavior will not be ignored. Your misconduct is serious and poses a threat to the safety and good order of our military and local community members. Should *you/ (respondent's name)* engage in any further misconduct of any sort, I will take appropriate adverse administrative action against *you/(respondent's name)*, up to and including barment from access to all military installations in Europe.
4. The POC for this action is *(name, phone number, e-mail address, and mailing address of the 52 MSG/CD)*.

MSG/CD Signature Block

CC:

Sponsor's commander or supervisor

Note: The personal letter format may also be used in lieu of the Official Memorandum format shown above.

Attachment 3

SAMPLE NOTICES OF INTENT

Figure A3.1. Sample Notice of Intent without Offer of R&RO

(ON APPROPRIATE LETTERHEAD)

MEMORANDUM FOR *(Respondent/Parents/Guardian/Sponsor)*

FROM: 52 MSG/CC or CD

SUBJECT: Civilian Misconduct of *(Respondent's Name)* on or About *(Date/Dates of Incident/Incidents)*

1. It has come to *my attention* that *you have/or (respondent's name if a minor) has (state the offense)* within the Spangdahlem Community. Such conduct is unacceptable and prejudicial to the order and discipline of this military community and cannot be tolerated.
2. I am authorized by AFIs, USAFE Instructions, SABIs, and/or inherent legal authority to take action in response to such misconduct. As the Civilian Misconduct Action Authority, *I have been designated as the officer responsible* for ensuring the preservation of order and discipline in this community.
3. Such behavior will not be ignored. Your conduct is offensive to your neighbors and sets a bad example in the eyes of our host nation. I am considering the following actions in response to the misconduct described above:

(List of adverse administrative actions)

4. In accordance with SABI 51-1001, you have the right to submit a—
 - a. Written response to me to be received within 3 workdays from the date of this notice. The response may include letters or statements from other people and any other material you believe I should have before taking final action. Additionally, you may request a hearing before me in person, which I will only grant if you provide a sufficient and compelling reason for me to do so.
 - b. Request to review the evidence in the case file, except for those portions that I am legally required to withhold. This does not entitle you to receive or make a copy of any piece of the evidence, and the 3-day period to respond to this letter will not be extended solely for you to exercise this privilege.
5. You will acknowledge receipt of this letter by completing the enclosed receipt and returning it to the office address above.
6. The POC for this action is *(name, phone number, e-mail address, and mailing address of the 52 MSG/CD)*.

52 MSG/CD Signature Block

cc:

Sponsor's commander or supervisor

Note: The personal letter format may also be used in lieu of the Official Memorandum format shown above.

Figure A3.2. Sample Receipt of NOI without Offer of R&RO

MEMORANDUM FOR 52 MSG/CD, APO AE 09126-xxxx

FROM:

SUBJECT: Receipt of Notification of Intent to Impose Adverse Administrative Action

1. Reference memorandum, (*office symbol*), (*date*), subject: Civilian Misconduct of (*Respondent's Name*) on or About (*Date/Dates of Incident/Incidents*).
2. I acknowledge receipt of the referenced memorandum and understand the rights provided to me by SABI 51-1001.

Sponsor / SIGNATURE

DATE _____

Respondent / SIGNATURE

DATE _____

Figure A3.3. Notice of Intent with an Offer of R&RO

(ON APPROPRIATE LETTERHEAD)

MEMORANDUM FOR (*Respondent/Parents/Guardian/Sponsor*)

FROM: 52 MSG/CD

SUBJECT: Civilian Misconduct of (*Respondent's Name*) on or About (*Date/Dates of Incident/Incidents*)

1. It has come to *my attention* that *you have/(respondent's name) has (state the offense)* within the Spangdahlem Community. Such conduct is unacceptable and prejudicial to the order and discipline of this military community and cannot be tolerated.
2. I am authorized by AFIs, USAFE Instructions, SABIs, and/or inherent legal authority to take action in response to such misconduct. As the Civilian Misconduct Action Authority, *I have been designated as the officer responsible* for ensuring the preservation of order and discipline in this community.
3. Such behavior will not be ignored. Your conduct is offensive to your neighbors and sets a bad example in the eyes of our host nation. I am considering the following actions in response to the misconduct described above:

(*List of adverse administrative actions*)
4. I am also considering offering you the opportunity for rehabilitation or restitution: (*explanation of the R&RO that the respondent may voluntarily accept*).
5. Should you voluntarily agree to accept this opportunity, you will have to (*explanation of the conditions that will demonstrate successful completion of the R&RO measure*). Upon

completion, *no further action will be taken against you/no further action will be taken against you other than (any actions listed above that will be taken even with successful completion of the R&RO measure)*. If you fail to comply with these conditions, I will consider imposing other adverse actions as described above.

6. In accordance with SABI 51-1001, you have the right to submit a—
 - a. Written response to me to be received within 3 workdays from the date of this notice. The response may include letters or statements from other people and any other material you believe I should have before taking final action. Additionally, you may request a hearing before me in person, which I will only grant if you provide a sufficient and compelling reason for me to do so.
 - b. Request to review the evidence in the case file, except for those portions that I am legally required to withhold. This does not entitle you to receive or make a copy of any piece of the evidence, and the 3-day period to respond to this letter will not be extended solely for you to exercise this privilege.
7. You will acknowledge receipt of this letter by completing the enclosed receipt and returning it to the office address above.
8. The POC for this action is (*name, phone number, e-mail address, and mailing address of the 52 MSG/CD*).

52 MSG/CD Signature Block

cc:

Sponsor's commander or supervisor

Note: The personal letter format may also be used in lieu of the Official Memorandum format shown above.

Figure A3.4. Sample Receipt of Notice of Intent with an Offer of R&RO

MEMORANDUM FOR 52 MSG/CD, APO AE 09126

SUBJECT: Receipt of a Notification of Intent to Impose Adverse Administrative Action and an Offer of Rehabilitation and Restitution Opportunity (R&RO)

1. Reference memorandum, (*office symbol*), (*date*), subject: Civilian Misconduct of (*Respondent's Name*) on or About (*Date/Dates of Incident/Incidents*).
2. I acknowledge receipt of the referenced memorandum. I *accept/do not accept* the terms and conditions of the R&RO offered to *me/the respondent* and acknowledge that this acceptance is voluntary on *my part/my part and the respondent's part*, given without reservation. *I/We* acknowledge and understand what *I/the respondent* must do to successfully complete the R&RO measure and also understand that failure to successfully complete the R&RO measure will result in other adverse action being considered in response to the subject misconduct.

3. *I/We* agree and hereby consent to the release of personal information, including relevant medical information, about our participation in (*the program that constitutes the R&RO*) directly to the 52 MSG/CD. We understand and agree that this consent is an essential element of successful completion of the R&RO and will cooperate fully with the 52 SFS or personnel conducting (*the R&RO measure*) to provide all information deemed necessary to demonstrate successful completion.

Sponsor / SIGNATURE

DATE _____

Respondent / SIGNATURE

DATE _____

Attachment 4

SAMPLE NOTICE OF ADVERSE ACTION

Figure A4.1. Sample Notice of Adverse Action

MEMORANDUM FOR *(Respondent/Parents/Guardian/Sponsor)*

SUBJECT: Notification of Adverse Administrative Action Regarding *(Respondent's Name)*

Mr./Mrs./Ms. (name of recipient):

1. Reference memorandum, 52 MSG/CD *(office symbol)*, *(date)*, subject: Civilian Misconduct of *(Respondent's Name)* on or About *(Date/Dates of Incident/Incidents)*.

2. I have reviewed all material you provided in response to the referenced memorandum and have decided to take the following adverse *action/actions* in response to your *(description of misconduct)* on *(date/dates of misconduct)*:

(List of adverse administrative actions)

NOTE: If this list includes a recommendation for an action that is not within the authority of the 52 MSG/CC, the following statement must be included:

I am also recommending to *(authority)* that *he/she (description of the recommended adverse action)*.

NOTE: If one or more adverse actions have an appeal right as explained in this regulation, paragraph 3 of the memorandum will include the following:

3. You may appeal *(action)* to *(appellate authority)*. To do so, within 5 calendar days from the date of this notification, you must provide a written notice of appeal and any additional information you wish the appellate authority to consider to 52 MSG/CC. You may include in your appeal a request that the appellate authority consider imposing a lesser or different adverse action. If I decide to grant your request, your appeal will be considered final and it will not be forwarded to the appellate authority. No appeal will automatically stop the adverse actions from being imposed. Should part or all of the appeal be granted, the part of the adverse action that has already been imposed will be rescinded.

NOTE: If no suspension or appeal right exists, paragraph 3 of the memorandum will state the following:

3. You will report *immediately/within (XX) workdays* to the following: *(a list of the offices to which the respondent must report to process the adverse action (for example, the ID card office, the Director of Motor Vehicles office, the ration authority) and a description of what he or she must do there)*. Your failure to follow these instructions will result in additional adverse actions against *you/the respondent*.

4. *If the 52 MSG/CC intends to suspend the adverse action or actions, this paragraph will be used to describe the portions suspended, the duration of the suspension, and the conditions that will terminate the suspension. Otherwise, the following paragraphs will be renumbered accordingly.*

5 (or 4). You will acknowledge receipt of this letter by completing the enclosed receipt and

returning it to the office address above.

6 (or 5). The POC for this action is *(name, phone number, e-mail address, and mailing address of 52 MSG/CD)*.

52 MSG/CD Signature Block

cc:

Sponsor's commander or supervisor

Note: The personal letter format may also be used in lieu of the Official Memorandum format shown above.

Figure A4.2. Sample Receipt of Notice of Adverse Action

MEMORANDUM FOR 52 MSG/CD, APO AE 09123

SUBJECT: Receipt of Notification of Adverse Administrative Action

1. Reference memorandum, *(office symbol)*, *(date)*, subject: Notification of Adverse Administrative Action Regarding *(Respondent's Name)*.
2. I acknowledge receipt of the referenced memorandum. I understand and acknowledge that *I/(respondent's name)* must report immediately to *(the offices to which the respondent or sponsor must report for imposition of adverse action, including phone numbers, building numbers, and addresses as needed to prevent the respondent or sponsor from arguing that he or she did not know where to go)*. I understand that my failure to follow these instructions will result in additional adverse action against *me/(respondent's name)*.

_____ DATE _____
 Sponsor / SIGNATURE

_____ DATE _____
 Respondent / SIGNATURE

Attachment 5

GUIDELINES FOR CIVILIAN MISCONDUCT ACTION AUTHORITIES

A5.1. Purpose. This appendix provides guidance for the civilian misconduct action authority (52 MSG/CD) on selecting and effectively using administrative procedures to handle cases of civilian misconduct. It also provides guidance on using administrative sanctions that are available to the 52 MSG/CD.

A5.2. Establishing Civilian Misconduct Program and Procedures. This regulation provides 52 MSG/CD great flexibility in structuring his or her individual program, subject to specified minimum due-process requirements. With the help of 52 FW/JA, 52 MSG/CD should evaluate his or her community needs and organize the program accordingly.

A5.2.1. Due-process requirements mandate certain procedural steps. 52 MSG/CD will do the following in every 52 MSG/CD case:

A5.2.1.1. Notify and coordinate with the local LLA for the types of cases described in paragraph 1.5.6 of this instruction

A5.2.1.2. Review available facts.

A5.2.1.3. Take the following actions after determining that sanctions beyond minor administrative action (see paragraph 4.3) are appropriate:

A5.2.1.3.1. Notify the offender, sponsor, parents, or guardian of intended administrative actions when the information establishes that pertinent facts and sanctions are appropriate.

A5.2.1.3.2. Provide the offender an opportunity to respond in writing within 3 workdays (see paragraph 2.3.2.2.1.).

A5.2.1.3.3. Provide the offender an opportunity to examine the file (see paragraph 2.3.2.2.2).

A5.2.1.3.4. After reviewing responses to notifications, provide the offender a written notice of the decision, administrative sanctions (if any), and the opportunity to submit a written appeal within 5 calendar days (see paragraph 2.3.3.3).

A5.2.1.3.5. Forward appeals to the appellate authority (see paragraph 7.4).

A5.2.2. Other actions may be adopted to help the 52 MSG/CD in the fact-finding or adjudication process. Although not required, these measures may be particularly helpful in resolving cases of civilian misconduct by adding clarity and consistency to the process. Additional measures may include the following:

A5.2.2.1. Immediately suspending ILS privileges to prevent further misconduct until the case is decided (paragraph 5.2.).

A5.2.2.2. Conducting a preliminary inquiry to collect more information (paragraph 2.2).

A5.2.2.3. Appointing an IO.

A5.2.2.4. Conducting hearings. This may include personal appearances by the offender, witnesses, or interested parties.

A5.2.2.5. Delaying the effective date of sanctions pending an appeal (paragraph 7.3.).

A5.3. Selecting the Best Method for Disposition of the Case.

A5.3.1. No further inquiry is necessary when an offender admits misconduct or when pertinent facts are otherwise established. When the 52 SFS is unsure about the sufficiency of the evidence, he or she should refer the available evidence to 52 FW/JA for review.

A5.3.2. In most cases, the 52 SFS or other agency report will include enough information to establish facts needed to determine whether minor administrative action or adverse administrative action should be taken. Notice and appeal rights do not apply when minor administrative actions are taken.

A5.3.2.1. Reports from initial 52 SFS investigations may provide enough information to determine whether a person committed the offense.

A5.3.2.2. 52 MSG/CD should not conduct formal investigations. 52 SFS will conduct normal law enforcement investigations. When additional investigation is necessary, the affected commander should appoint an IO. Appointing an IO should be a last resort.

A5.3.3. Hearings or board proceedings are not required or recommended. Such procedures are at the 52 MSG/CD's discretion and should be applied only in cases involving serious criminal misconduct, in cases where a hearing would have an attention getting/deterrent purpose, or when the 52 MSG/CD is considering severe adverse administrative action. Severe adverse administrative actions may include:

A5.3.3.1. Revoking logistic support privileges.

A5.3.3.2. Terminating access to Government housing facilities.

A5.3.3.3. Barring entry into an area of responsibility (for example, base installations).

A5.3.3.4. An early return of family members.

A5.3.3.5. Curtailing a tour.

A5.3.4. When the person is not affiliated with the military or civilian workforce, the administrative due-process procedures in this instruction do not apply. For example, if the offender is not an employee of the U.S. Forces, a U.S. Forces family member, or a contractor employee, 52 FW/CC may bar the person from the area (when the offense warrants such action) without advance notice and without allowing an opportunity to respond or appeal.

A5.4. Additional Guidance for Selecting Appropriate Administrative Actions (Sanctions).

A5.4.1. Chapter 5 of this instruction describes the factors that the 52 MSG/CD should consider when determining which administrative actions are appropriate in response to civilian misconduct.

A5.4.2. Table A5.1. suggests penalties to help 52 MSG/CD select an appropriate administrative action for a particular act of misconduct. 52 MSG/CD is not limited to taking only the actions listed in this table. Taking an action that is not suggested in this table is not a basis for appealing the 52 MSG/CD action or recommendation.

Table A5.1. Table of Suggested Penalties

Table of Suggested Penalties					
Offense	Nature of Offense	First Offense	Second Offense	Third Offense	Remarks
1. Fighting or assault	Creating a disturbance	Counseling or letter of warning to suspension of privileges for up to 60 days	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for 6 months to early return of family members or tour curtailment	More severe administrative action may be appropriate based on the seriousness of the disturbance.
1. Fighting or assault (continued)	Threatening or attempting to inflict bodily harm without bodily contact	Letter of warning to suspension of privileges for up to 30 days	Suspension of privileges for up to 60 days to early return of family members or tour curtailment	Suspension or revocation of privileges to early return of family members or tour curtailment	
Offense	Nature of Offense	First Offense	Second Offense	Third Offense	Remarks

	Hitting, pushing, or other acts against another without causing injury	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for up to 60 days to early return of family members or tour curtailment	Early return of family members to tour curtailment	More severe administrative action may be taken based on such factors as provocation and status of victim.
	Hitting, pushing, or other acts against another causing injury	Letter of warning to early return of family members or tour curtailment	Early return of family members to tour curtailment		More severe administrative action may be taken based on factors such as provocation, extent of injuries, and status of victim.
2. Truancy	Unexcused absence from school by child	Counseling or letter of warning	Letter of warning to suspension of privileges for up to 30 days	Suspension of privileges for up to 60 days to early return of family members	

3. Insubordination	Refusal to obey orders or community or school rules; defiance of military police, German police, or commander's authority	Counseling or letter of warning to early return of family members	Suspension of privileges for up to 30 days to early return of family members	Early return of family members	Revocation of all logistic support privileges may be appropriate when family members refuse to leave.
Offense	Nature of Offense	First Offense	Second Offense	Third Offense	Remarks
4. Unauthorized use of alcohol or drugs	Unauthorized possession or transfer of alcoholic beverages or drugs while on Government property or in a Government housing area	Letter of warning to suspension of privileges for 30 days	Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year, revocation of privileges, to early return of family members or tour curtailment	More severe administrative action may be appropriate when aggravating factors are present (for example, giving alcohol or drugs to a child under the age of 16).
	Unauthorized use of alcoholic beverages or drugs	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year, revocation of privileges, to early return of family members	

5. Drunk and disorderly conduct	Drunk and creating a disturbance on Government property or in a Government housing area	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for up to 1 year	Suspension of privileges for up to 1 year, revocation of privileges, to early return of family members or tour curtailment	
6. Child neglect	Failure to properly care for a child in violation of law, regulation, or policy	Counseling or letter of warning to suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year, revocation of privileges, to early return of family members or tour curtailment		Early return of family members or tour curtailment may be appropriate for a first offense when the child's life or health is endangered.
Offense	Nature of Offense	First Offense	Second Offense	Third Offense	Remarks
7. Arson	Intentionally setting fire to a building, structure, or property of another	Letter of warning to early return of family members or tour curtailment			If arson is in Government quarters, termination of quarters may be appropriate for a first offense.
8. Damage to property	Intentional or willful damage to private or Government property	Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year	Suspension of privileges for up to 1 year, revocation of privileges, to early return of family members or tour curtailment	Appropriate administrative action depends on factors such as the value of the property, the amount of damage, and the age of the offender.

9. Misuse of ration card, purchase, or postal privileges	Violation of AE Reg 600-1 governing the use of ration cards, purchase privileges, and postal services	Letter of warning to suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year	Suspension of privileges for up to 1 year, revocation of privileges, to early return of family members or tour curtailment	More severe administrative action may be appropriate when evidence shows that the misuse was for profit.
10. Vehicle and traffic violations	Moving and parking violations within areas subject to U.S. Forces jurisdiction	Letter of warning to proposed suspension of driving privileges under AE Reg 190-1	Proposed suspension of driving privileges under AE Reg 190-1	Proposed suspension of driving privileges to early return of family members	If the appropriate suspension or revocation authority declines to take action, the 52 MSG/CC should consider a bar from entry or an early return of family members.
Offense	Nature of Offense	First Offense	Second Offense	Third Offense	Remarks
11. Drunk or drugged driving	Driving any vehicle while under the influence of alcohol or drugs	Proposed suspension of driving privileges under AE Reg 190-1 (mandatory suspension)	Proposed revocation of driving privileges under AE Reg 190-1		The second offense within 5 years requires mandatory revocation for 5 years.

12. Shoplifting		Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year	Revocation of privileges to early return of family members or tour curtailment	AAFES privileges must be suspended for at least 6 months under AR 215-8, para 6-6e. Indefinite suspension for the third offense is authorized.
13. Receipt of stolen goods	Knowingly receiving, possessing, or purchasing stolen property	Letter of warning to early return of family members or tour curtailment			
14. Unauthorized use or possession of a controlled substance	Introduction of a controlled substance to Government property or housing area for personal use	Suspension of privileges for up to 30 days to early return of family members or tour curtailment	Early return of family members or tour curtailment		
Offense	Nature of Offense	First Offense	Second Offense	Third Offense	Remarks

	Introduction of a controlled substance to Government property or housing area in amounts sufficient for distribution on Government property in a Government housing area	Early return of family members or tour curtailment			
15. Trespassing	Normally an offense involving a non-affiliated person	Bar to entry			

NOTE: A particular adverse administrative action is not mandatory solely because it is listed in this table. The selection of an appropriate administrative action requires balancing relevant factors in each case.

A5.4.2.1. Table A5.1 does not list every act of misconduct. When an act of misconduct is committed that is not listed, 52 MSG/CD may determine an appropriate administrative action by comparing the misconduct with other acts of misconduct listed.

A5.4.2.2. A particular adverse administrative action is not mandatory solely because it is listed in table A5.1. Selecting an appropriate administrative action requires balancing the relevant factors in each case. For example, even for acts of misconduct for which an early return of family members or a curtailment of tour is not listed for a first offense, an early return or a curtailment for a first offense may be appropriate for an aggravated offense or multiple offenses.

A5.4.3. In determining the appropriate administrative action for subsequent acts of misconduct, the 52 MSG/CD should consider how much time has passed since the previous offense or offenses in relation to the most recent act of misconduct.

A5.4.3.1. Previous acts of misconduct may form the basis for proposing a more severe administrative action. Although counseling and letters of warning are not considered adverse administrative actions, they may be considered when determining an appropriate administrative action for a subsequent act of misconduct.

A5.4.3.2. Aggravating factors that the 52 MSG/CD intends to consider (for example: previous acts of misconduct, the severity of the current misconduct) should be included in the notice of the proposed administrative action provided to the offender. The offender should have an opportunity to respond to those factors.

A5.4.4. The 52 MSG/CD should also consider the offender's willingness to take part in a community supervision program voluntarily when determining the appropriate administrative action or penalty (paragraph 5.1). The 52 MSG/CD may allow the offender to perform community service instead of imposing an administrative sanction or penalty.

Attachment 6**INTERSERVICE MEMORANDUM OF AGREEMENT FOR A THEATER-WIDE BAR**

A6.1. General. **Figure 5.1** is the interservice of greement (MOA) signed by General Montgomery C. Meigs, former Commanding General (CG), USAREUR/7A; General Gregory S. Martin, former Commander, USAFE; Admiral Gregory G. Johnson, former Commander, United States Naval Forces, Europe (USNAVEUR); and Lieutenant General R. P. Ayers, former Commander, United States Marine Corps Forces, Europe (USMARFOREUR). The provisions of the MOA, which became effective on 26 April 2002, will remain in effect until modified or superseded.

A6.2. Purpose. The intent of the MOA is as follows:

A6.2.1. Provide an interservice acknowledgment, enforcement, and issue authority of theater-wide bars from entry to installations and facilities under the operational control of the U.S. Forces in Europe.

A6.2.2. Prevent personnel who are barred from installations and facilities of one Service of the U.S. Forces in Europe from legally entering the installations and facilities of the other Services of the U.S. Forces in Europe

A6.2.3. Improve the security, welfare, good order, and discipline of the U.S. Forces in the European theater.

Figure A6.1. Interservice Memorandum of Agreement

Memorandum of Agreement

Between

**The Commanding General,
United States Army, Europe, and Seventh Army (USAREUR/7A)**

and

**Commander,
United States Air Forces in Europe**

and

**Commander in Chief,
United States Naval Forces, Europe**

and

**Commander,
United States Marine Corps Forces, Europe**

This memorandum of agreement (MOA) is made by and among the Commanding General, US Army Europe and Seventh Army (CG USAREUR), the Commander, US Air Forces in Europe (COMUSAFE), the Commander in Chief, US Naval Forces, Europe (CINCUSNAVEUR), and the Commander US Marine Corps Forces, Europe (COMMARFOREUR).

1. **Purpose.** To coordinate and agree upon the acknowledgment, enforcement, and issuance of reciprocal installation bar to entry orders. In this agreement, CG USAREUR, COMUSAFE, CINCUSNAVEUR, and COMMARFOREUR are referred to as "the parties."
2. **General.** All parties are in accord that the security and integrity of the US military forces are the paramount reasons for entering into this agreement. Barred personnel are a continuing danger to the safety, welfare, and good order and discipline of personnel stationed at our overseas installations. By entering into this agreement of mutual cooperation and recognition, the US Forces will enhance their ability to identify and prevent barred individuals who have committed serious misconduct on other installations from entering the respective party's installation, and thereby preserve the security of their personnel.
3. **Implementation.** The parties agree as follows:
 - a. To recognize, consistent with applicable Service regulations, theater-wide bar from entry orders issued by each of the parties to this agreement. This acknowledgment is to extend recognition to bar orders issued "by direction" from a designated representative of the parties. A summary of the facts of the case that resulted in the bar shall be attached to each letter or contained in the bar document itself. Bar orders issued pursuant to this MOA shall indicate their validity at all installations under the parties' control.

b. To assist in enforcing any bar from entry order issued by each of the other parties to this agreement.

c. To forward copies of all theater-wide bar from entry orders issued pursuant to this MOA, to the 1st PERSCOM, HQ USAREUR/7A, ATTN: AEUPE-PSSD-PSB, Unit 29058, APO AE 09081, which will act as the executive agent of the parties to maintain and distribute the consolidated list. The 1st PERSCOM will consolidate the bar list by service and distribute the updated list monthly to a central addressee designated by the parties. The parties are responsible for further distribution of the list within their commands. The parties agree to ensure this information will be available to their respective civilian personnel offices to forward for selecting official consideration should barred personnel apply for employment with the US Forces in the area affected by the bar order.

4. The parties further agree:

a. To thoroughly investigate and examine all facts and circumstances before issuing a bar from entry order to any individual or entity.

b. To provide a fair and reasonable appeal process to personnel issued bar from entry orders in which all new facts and information are completely investigated and reviewed. Complete appellate authority will rest with the party initiating the bar. Bars under this MOA that are lifted or modified will be coordinated by the party taking action with 1st PERSCOM to alert the other parties to any changed status and to allow them to consider re-initiating bar action for areas under their control.

c. To keep a summarized incident report file on all barred personnel for a minimum of five years unless the individual is barred for a lesser period of time.

5. Nothing in this MOA shall be construed as infringing or limiting the authority of each installation Commander to independently assess and authorize which personnel shall be granted entry onto installations under that commander's authority.

6. **Effective Date.** This MOA is effective on the date of the last party's signature on page three of this agreement, and shall remain in effect unless otherwise modified or superseded.

Signature Page, Inter-Service Memorandum of Agreement, Installation Bars

FOR USAREUR:

Montgomery Cheung Date: 17 Jan '02

FOR USAFE:

Scott A. ... Date: 29 Mar '02

FOR USNAVEUR:

Gregory J. ... Date: 4/26/02

FOR USMARFOREUR:

R.P. ... Date: 9 MAR '02