



DEPARTMENT OF THE NAVY
UNITED STATES NAVAL ACADEMY
121 BLAKE ROAD
ANNAPOLIS, MARYLAND 21402-1300

USNAINST 1610.6A CH-1
SJA
1 Jul 2026

USNA INSTRUCTION 1610.6A CHANGE TRANSMITTAL 1

From: Superintendent, U.S. Naval Academy

Subj: U.S. NAVAL ACADEMY MIDSHIPMEN DISENROLLMENT PROCEDURES FOR
CASES INVOLVING UNSATISFACTORY CONDUCT

Encl: (1) Revised Page 2

1. Purpose. To transmit new a new page 2, which provides clarification on the ability to administratively separate entry level Plebes on the basis of a lack of qualification for service based on deficient conduct.

2. Action. Remove page 2 of the basic instruction and insert enclosure (1).

3. Records Management.

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned per the records disposition schedules located on the Department of the Navy (DON) Assistant for Administration, Directives and Records Management Division portal page at <https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-andInformation-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>.

b. For questions concerning the management of records related to this or the records disposition schedules, please contact the local records manager or the OPNAV Records Management Program (DNS-16).

A handwritten signature in black ink, appearing to read "M. J. Borgschulte", is positioned above the printed name.

M. J. BORGSCHULTE

Releasability and distribution:

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the facts and circumstances surrounding this determination to the Assistant Secretary of the Navy ((Manpower and Reserve Affairs) (ASN (M&RA))), copy to subject midshipman. The midshipman will be provided five business days from receipt of the memo report to examine the final report and submit a written response and accompanying materials via the Superintendent for ultimate consideration by ASN (M&RA) before a final decision is made. Based on all the materials submitted, ASN (M&RA) may take no action and dismiss the case, refer the midshipman to the Reevaluation and Reappointment (R&R) program, disenroll the midshipman from USNA and order the member to continue to serve as an enlisted sailor, or disenroll the midshipman from USNA and discharge the midshipman from the naval service, with or without recoupment of the accrued cost of education.

6. Venue Determination. For cases involving allegations of serious misconduct that may warrant an Other Than Honorable (OTH) characterization of service, the Superintendent may withhold the misconduct from being entered into the conduct system until he determines the most appropriate venue for adjudication. The Superintendent may determine that the alleged misconduct is best adjudicated through a court martial, at a Midshipman Discharge Board (MDB), or via the standard USNA conduct system procedures. He may also choose to take no action on the alleged misconduct. The Superintendent may direct that a case of misconduct be handled through a court martial or an MDB without first referring it to adjudication via the conduct system. Allegations of violations of the Uniform Code of Military Justice (UCMJ) Article 120 (Rape and sexual assault generally) that are not referred to a court martial but are nevertheless determined by the Superintendent to warrant possible accountability actions may be referred to an MDB. MDB procedures are provided in paragraph 12 of this instruction.

7. Criminal Convictions. A finding of guilt by a military or civilian court will be binding upon an MDB or in a hearing under the conduct system. In these cases, the MDB or conduct hearings will focus on appropriate disciplinary measures and potential separation, rather than guilt or innocence.

8. Commandant Procedures

a. Before the Superintendent makes a conduct determination under reference (b), section 8462, the Commandant of the Brigade of Midshipman will conduct a hearing for unsatisfactory conduct consistent with the procedures outlined in reference (e). If the Commandant recommends a midshipman for disenrollment from USNA, the Commandant will forward the case and supporting materials to the Superintendent as provided in reference (e). If the Commandant is unavailable, then the USNA Chief of Staff may perform this role.

b. However, refer to the procedures set forth in COMDMIDNINST 1531.3 to address entry level separation for those plebes who either fail to complete plebe summer requirements or demonstrate unsatisfactory conduct based on a lack of qualification for service from Induction Day through the completion of their first academic semester.

9. MDB Recommendation. For cases of misconduct that are entered into the conduct system as a " Major" or "6K Offense " per reference (e), the initial adjudicating authority may, after reviewing the case, make the recommendation to the Commandant that the case is most appropriately handled via an MDB. The initial adjudicating authority may then forward this recommendation to the Commandant without holding a hearing. The Commandant will then review this recommendation and, if he disagrees, he will send the case back to be heard under the standard conduct procedures. However, if the Commandant concurs with the MDB recommendation, he will forward the recommendation with his positive endorsement to the Superintendent without holding a hearing. The Commandant may also make this recommendation of his/her own accord upon review of the case, even if the initial adjudicating authority did not recommend an MDB. The Superintendent will then review the recommendation and the facts of the case and either refer the case to an MDB or send the case back to the initial adjudication authority to be handled under the standard conduct procedures.

10. Superintendent Procedures. The Superintendent and the Staff Judge Advocate will review the case and all supporting materials forwarded by the Commandant. If after reviewing the case, the Superintendent determines disenrollment of the midshipman from USNA and discharge from the naval service with an OTH characterization may be appropriate, he may refer the case to an MDB rather than holding a personal interview with the midshipman. In all other cases, the following will apply:



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OFFICE OF THE SUPERINTENDENT
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USNAINST 1610.6A
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25 Mar 2021

USNA INSTRUCTION 1610.6A

From: Superintendent, U.S. Naval Academy

Subj: U.S. NAVAL ACADEMY MIDSHIPMEN DISENROLLMENT PROCEDURES FOR CASES INVOLVING UNSATISFACTORY CONDUCT

Ref: (a) SECNAVINST 1531.4
(b) 10 U.S.C.
(c) CNO memo, Policy of Foreign Midshipmen at the U.S. Naval Academy, of 18 Nov 2009
(d) SECNAV memo, Retention and Delegation of Authority in U.S. Naval Academy Midshipmen Commissioning and Disenrollment Cases, of 1 Nov 2007
(e) COMDTMIDNINST 1610.2
(f) MILPERSMAN 1531-020
(g) DoD 7000.14-R, Volume 7A, Financial Management Regulation
(h) MILPERSMAN 1050-230
(i) SECNAVINST 1920.6

Encl: (1) Example Superintendent Interview Script
(2) Superintendent Interview Rights Acknowledgement
(3) Midshipman Discharge Board Policies and Procedures
(4) Midshipman Discharge Board Notice Template
(5) Midshipman Discharge Board Appointing Letter Template
(6) Midshipman Discharge Board Script
(7) Midshipman Discharge Board Report Template

1. Purpose. To prescribe procedures for Midshipmen disenrollment from the U.S. Naval Academy (USNA) in cases involving unsatisfactory conduct pursuant to references (a) and (b), section 8462.

2. Cancellation. USNAINST 1610.6

3. Applicability. This instruction applies to all USNA midshipmen who are U.S. citizens and all U.S. citizens who sign the agreement to serve per reference (b), section 8459. Disenrollment procedures applicable to foreign midshipmen attending USNA are controlled by the guidelines set forth in reference (c).

4. Background. This instruction outlines the due process rights afforded midshipmen being processed or disenrolled from USNA for unsatisfactory conduct, including procedures for characterizing the service of midshipmen recommended for discharge from the naval service.

5. Policy. Pursuant to references (a), (b), section 8462, and reference (d), when the Superintendent determines, through an interview, that the conduct of a midshipman is unsatisfactory, resulting in the Superintendent recommending separation, the Superintendent must submit a final written memo report of

the facts and circumstances surrounding this determination to the Assistant Secretary of the Navy ((Manpower and Reserve Affairs) (ASN (M&RA)), copy to subject midshipman. The midshipman will be provided five business days from receipt of the memo report to examine the final report and submit a written response and accompanying materials via the Superintendent for ultimate consideration by ASN (M&RA) before a final decision is made. Based on all the materials submitted, ASN (M&RA) may take no action and dismiss the case, refer the midshipman to the Reevaluation and Reappointment (R&R) program, disenroll the midshipman from USNA and order the member to continue to serve as an enlisted sailor, or disenroll the midshipman from USNA and discharge the midshipman from the naval service, with or without recoupment of the accrued cost of education.

6. Venue Determination. For cases involving allegations of serious misconduct that may warrant an Other Than Honorable (OTH) characterization of service, the Superintendent may withhold the misconduct from being entered into the conduct system until he determines the most appropriate venue for adjudication. The Superintendent may determine that the alleged misconduct is best adjudicated through a court martial, at a Midshipman Discharge Board (MDB), or via the standard USNA conduct system procedures. He may also choose to take no action on the alleged misconduct. The Superintendent may direct that a case of misconduct be handled through a court martial or an MDB without first referring it to adjudication via the conduct system. Allegations of violations of the Uniform Code of Military Justice (UCMJ) Article 120 (Rape and sexual assault generally) that are not referred to a court martial but are nevertheless determined by the Superintendent to warrant possible accountability actions may be referred to an MDB. MDB procedures are provided in paragraph 12 of this instruction.

7. Criminal Convictions. A finding of guilt by a military or civilian court will be binding upon an MDB or in a hearing under the conduct system. In these cases, the MDB or conduct hearings will focus on appropriate disciplinary measures and potential separation, rather than guilt or innocence.

8. Commandant Procedures. Before the Superintendent makes a conduct determination under reference (b), section 8462, the Commandant of the Brigade of Midshipman will conduct a hearing for unsatisfactory conduct consistent with the procedures outlined in reference (e). If the Commandant recommends a midshipman for disenrollment from USNA, the Commandant will forward the case and supporting materials to the Superintendent as provided in reference (e). If the Commandant is unavailable, then the USNA Chief of Staff may perform this role.

9. MDB Recommendation. For cases of misconduct that are entered into the conduct system as a "Major" or "6K Offense" per reference (e), the initial adjudicating authority may, after reviewing the case, make the recommendation to the Commandant that the case is most appropriately handled via an MDB. The initial adjudicating authority may then forward this recommendation to the Commandant without holding a hearing. The Commandant will then review this recommendation and, if he disagrees he will send the case back to be heard under the standard conduct procedures. However, if the Commandant concurs with the MDB recommendation, he will forward the recommendation with his positive endorsement to the Superintendent without holding a hearing. The Commandant may also make this recommendation of his/her own accord upon review of the case, even if the initial adjudicating authority did not recommend an MDB. The Superintendent will then review the recommendation and the facts of the case and either refer the case to an MDB or send the case back to the initial adjudication authority to be handled under the standard conduct procedures.

10. Superintendent Procedures. The Superintendent and the Staff Judge Advocate will review the case and all supporting materials forwarded by the Commandant. If after reviewing the case, the Superintendent determines disenrollment of the midshipman from USNA and discharge from the naval service with an OTH characterization may be appropriate, he may refer the case to an MDB rather than holding a personal interview with the midshipman. In all other cases, the following will apply:

a. **Superintendent Interview.** Except as provided below, the Superintendent will interview the midshipman per a script, an example is contained in enclosure (1), to determine whether the midshipman's conduct was unsatisfactory and whether the midshipman should be disenrolled from USNA. The midshipman's Battalion Officer, Company Officer, Senior Enlisted Leader, and midshipman chain of command should be present at the interview, in-person when practicable, and will be asked to make statements regarding the midshipman's performance. In making his determination, the Superintendent will take into consideration the entirety of the midshipman's record when deciding whether to separate or retain the midshipman.

b. **Midshipman Rights at Superintendent Interview.** The midshipman subject to disenrollment will have the following rights regarding his/her interview with the Superintendent, documented by USNA 1531/14 Superintendent Interview Rights Acknowledgement, sample provided as enclosure (2):

(1) The midshipman will have at least 48-hours advance notification of his/her interview with the Superintendent;

(2) The Military Rules of Evidence do not apply at a hearing held under this instruction, other than with respect to privileges. Any relevant matter may be considered. The midshipman will have the right to review all materials the Superintendent will rely on in making a conduct determination. This provision does not apply to attorney work-product or materials containing privileged information as defined by the Military Rules of Evidence;

(3) The midshipman will have the right to produce written character statements from any individual prior to the interview. The midshipman will also have the right to provide any other documentation in their defense or for extenuation and mitigation purposes. The Superintendent will review all character statements and additional documentation prior to the interview with the midshipman. The midshipman will not have the right to produce live-witness testimony during the interview; and

(4) The midshipman will have the right to remain silent or to make statements during the interview.

c. **Misconduct Cases Not Requiring Superintendent Interview.** The Superintendent is not required to conduct an interview with a midshipman in the following cases:

(1) If, after initial review of the case materials submitted by the Commandant, the Superintendent does not find the midshipman's conduct to be egregious enough to warrant dismissal;

(2) Cases processed through the MDB procedures;

(3) Cases in which a midshipman waives the MDB procedures or Superintendent's Interview; or

(4) Cases in which the midshipman offers a voluntary or qualified resignation under reference (a), paragraph 7e.

d. **Post-Interview Action.** Pursuant to references (a) and (b), section 8462, after review of all case materials and the Superintendent's interview, the Superintendent may either retain the midshipman, send the case to be reviewed by an MDB, recommend that the midshipman participate in the R&R program, or recommend to ASN (M&RA) that the midshipman be disenrolled from USNA. If the Superintendent recommends disenrollment from USNA:

(1) the Superintendent will prepare a final written memo report of his recommendation and rationale.

(2) The midshipman will meet with a member of the Staff Judge Advocate's office to be informed of their rights during the disenrollment process, complete a statement of understanding pertaining to their disenrollment, and fill out an acknowledgement of options regarding their debt to the government (if applicable).

(3) The midshipman will then return to Bancroft Hall while he or she awaits being served with a copy of the memo report. The midshipman will receive a checkout checklist that they may begin working on while continuing to attend classes and all other military obligations. The midshipman will not actually check out of USNA until a final decision is rendered by ASN (M&RA).

(4) After the Superintendent's interview, but prior to the final decision being rendered by ASN (M&RA), midshipmen will continue to attend classes and all other military obligations and obey all applicable rules and regulations. During this time a midshipman may submit a request to check out early and be placed on voluntary separation leave pursuant to references (f), (g), and (h) while awaiting the final decision. Further, if during this time the Superintendent determines that a midshipman's continued presence at USNA would be disruptive to the good order and discipline of the command, he may assign them to another duty station in a temporary duty status or place them on involuntary separation leave pursuant to reference (b), section 702. This decision should be based on the facts and circumstances of a particular case.

(5) The midshipman will be provided five business days from receipt of the memo report to examine the report and submit a written response and accompanying materials to ASN (M&RA), via the Superintendent, before a final decision is made.

(6) When the Superintendent receives the midshipman's response to the memo report, if his recommendation to separate the midshipman remains unchanged, then he will submit the memo report and the midshipman's response to ASN (M&RA) for a final decision;

11. ASN (M&RA) Procedures. Per references (a) and (d), ASN (M&RA) makes the final decision on midshipman disenrollments for conduct or honor violations. If ASN (M&RA) determines that the Superintendent's recommendation to disenroll the midshipman is reasonable and well founded, he will send an order to separate the midshipman to USNA, and the midshipman Personnel Office will issue the former midshipman a DD Form 214 Certificate of Release or Discharge from Active Duty. Discharge from the Naval service may be an Honorable discharge or a General (Under Honorable Conditions) discharge. An OTH discharge may only be given if MDB procedures were used. Midshipmen who have reached their second class academic year may be subject to the recoupment provisions of references (a) and (b), section 2005. If disenrollment of a midshipman subject to recoupment is ordered, ASN (M&RA) will:

a. Order the midshipman to fulfill any recoupment obligations through active-duty enlisted service consistent with references (a) and (b), section 2005; or

b. If the midshipman is deemed unsuitable for further service as an enlisted Sailor, order discharge of the midshipman from the Naval service and order monetary recoupment consistent with references (a) and (b), section 2005.

12. Cases Warranting an Other Than Honorable Discharge. If at any time after the Superintendent receives a case from the Commandant, the Superintendent concludes a case may warrant discharge from

the Naval service with an OTH discharge as defined in reference (i), the Superintendent may convene an MDB. The MDB will make a formal finding of fact as to whether the midshipman committed the alleged misconduct by a preponderance of the evidence; and if a majority vote determines the midshipman committed the misconduct alleged, recommend whether the midshipman should be discharged from the Naval service; and, if a majority recommends discharge, the recommended characterization of service upon discharge. The MDB policies and procedures are outlined in enclosures (3)-(6). The MDB will submit a report of their findings and recommendations to the Superintendent using the template provided in enclosure (7).

a. Relationship Between Superintendent Interview and MDB. Pursuant to paragraphs 6, 9, and 10(d) of this instruction, the Superintendent may forward a case to an MDB after conducting an interview with a midshipman if he believes that an OTH may be appropriate. However, the Superintendent interview is not required before forwarding a case to an MDB, and a case can be forwarded directly to an MBD at the Superintendent's discretion without any prior conduct hearings.

b. Waiver. A midshipman may waive his or her right to an MDB with an understanding that he or she may be discharged from the Naval service with an OTH discharge without the rights detailed in enclosure (3).

c. Superintendent Action on MDB. After receipt of the MDB's findings, the Superintendent will proceed as follows:

(1) Misconduct Finding and Recommendation for Discharge. When the Superintendent receives an MDB report finding that misconduct occurred and discharge of the midshipman is recommended, the Superintendent may recommend that ASN (M&RA) disenroll the midshipman and the same process as outlined in paragraph 10(d) of this instruction will be followed. The Superintendent will notify the midshipman, via his memo report, of his intent to recommend disenrollment of the midshipman from USNA and the recommended characterization of service from the resulting discharge. The midshipman will have five business days after receipt of a copy of the Superintendent's memo report to submit additional matters to be considered by ASN (M&RA). The Superintendent's final recommendation package will include the MDB's report. If the Superintendent disagrees with the MDB's recommendation regarding separation, he may retain the midshipman and forward the case to the Commandant to apply appropriate disciplinary and remediation measures.

(2) Misconduct Finding and Recommendation for Retention. When the Superintendent receives an MDB report finding that misconduct occurred but recommending retention in the Naval service, the Superintendent may either retain the midshipman and forward the case to the Commandant for appropriate disciplinary and remediation measures, or recommend that ASN (M&RA) disenroll the midshipman. The Superintendent may also hold an interview with the midshipman pursuant to paragraph 10 of this instruction to assist him in determining his recommendation. If the Superintendent recommends disenrollment from USNA, the same process as outlined in paragraph 10(d) of this instruction will be followed. The Superintendent will notify the midshipman of his intended recommendation. The midshipman will have five business days from receipt of the Superintendent's final disenrollment recommendation package to submit additional matters to be considered by ASN (M&RA). The Superintendent's final recommendation package will include the MDB's findings and recommendations.

(3) No Misconduct Finding. When the Superintendent receives an MDB report finding no misconduct, the Superintendent will abide by the finding and retain the midshipman at USNA. The case will be closed with no further hearings or disciplinary measures taken for the alleged misconduct considered by the MDB.

d. ASN (M&RA) Action on MDB. Pursuant to references (a) and (d), ASN (M&RA) holds the authority to take final action on any case involving misconduct. In cases resulting in an MDB finding of misconduct, ASN (M&RA) is not bound by the MDB recommendations pertaining to retention, disenrollment, or characterization of discharge. ASN (M&RA) procedures after an MDB will be the same as outlined in paragraph 11 of this instruction.

13. Notification. In all cases processed pursuant to this instruction, the procedures for notifying midshipmen regarding the outcome of their case are as follows:

a. Retention by the Superintendent. In all cases in which the Superintendent decides to retain a midshipman at USNA, notification of the Superintendent's decision will be made via the midshipman's chain of command.

b. Retention by ASN (M&RA). In all cases in which ASN (M&RA) decides to retain a midshipman at USNA, notification of ASN (M&RA)'s decision will be made via the midshipman's chain of command, who will also assess appropriate disciplinary and remediation measures to be assessed in the case. The Superintendent's Staff Judge Advocate will coordinate communication between ASN (M&RA) and the midshipman's chain of command regarding ASN (M&RA)'s retention decision.

c. ASN (M&RA) Discharge Decision. In all cases in which ASN (M&RA) orders a midshipman discharged from the Naval service, the USNA Midshipman Personnel Office (MIDPERS) will notify the midshipman of ASN (M&RA)'s decision. MIDPERS will execute notification by forwarding a copy of ASN (M&RA)'s order, DD Form 214, and any other required discharge documentation to the midshipman.

d. ASN (M&RA) Active-Duty Enlisted Service Decision. In all cases in which ASN (M&RA) orders a midshipman to active-duty enlisted service, MIDPERS will execute notification by forwarding a copy of ASN (M&RA)'s order and any other required documentation to the midshipman. MIDPERS will facilitate transfer of the midshipman to their designated place of duty where they will begin their active-duty enlisted service obligation.

14. Requests for Deferment. In all cases processed pursuant to this instruction in which midshipmen are ordered to pay monetary recoupment or ordered to active-duty enlisted service, the procedures for deferment are as follows:

a. Requests for Deferment of Monetary Recoupment. Requests for deferment of monetary recoupment will be made directly to the Defense Finance and Accounting Service (DFAS). Guidance on the procedures for petitioning DFAS for deferment of monetary recoupment is available at <https://www.dfas.mil/debtandclaims/paymydebt/hardshipdefermentapplications/>. Requests for deferment of monetary recoupment will only be made after ASN (M&RA) has ordered discharge and payment of monetary recoupment.

b. Requests for Deferment of Active-Duty Enlisted Service. All requests to defer commencement of active-duty enlisted service will be made per reference (f) to ASN (M&RA) via the Superintendent. Requests for deferment of active-duty enlisted service will be made before the disenrolled midshipman is to report for active-duty enlisted service. Note that reference (f) states that deferments will not normally be granted beyond 1 July of the year following the year in which the former midshipman's USNA class graduates.

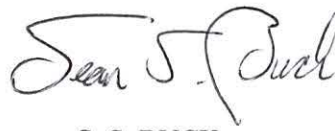
15. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned for the standard subject identification codes (SSIC) 1000 through 13000 series per the records disposition schedules located on the Department of the Navy/ Assistant for Administration (DON/AA), Directives and Records Management Division (DRMD) portal page at <https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact the USNA records manager or the DON/AA DRMD program office.

16. Review and Effective Date. Per OPNAVINST 5215.17A, the Staff Judge Advocates Office will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, DoD, SECNAV, and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction.

17. Forms. DD Form 214 Certificate of Release or Discharge from Active Duty will be issued by the Midshipmen Personnel Office. USNA 1531/14 Superintendent Conduct Interview Rights Acknowledgement can be found on the USNA Official Forms Website at <https://www.usna.edu/AdminSupport/FormsProgram/USNAOfficialFormsList.php>, or it can be obtained directly from the USNA Legal Office.



S. S. BUCK

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Example Superintendent Interview Script

Procedural Rights

MIDN (Last Name), I have been informed that you have had a chance to review the materials (multi-part folder) that I will consider in deciding your case. Is that accurate?

If I determine that your conduct has been unsatisfactory, I may recommend to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) that you be disenrolled from the U.S. Naval Academy. Do you understand this?

Before I decide your case, I will ask you if you want to make an opening statement and closing statement. I will also ask for input from your chain of command, and I may ask you questions pertaining to the circumstances of your case. Do you understand this?

Do you understand all your rights as they have been explained to you by (Name or Title)?

Substantive Matters

Would you like to make an opening statement?

I will now request input from your chain of command, from junior to senior:

Squad Leader – (Rank and Name)
Platoon Commander – (Rank and Name)
Company Commander – (Rank and Name)
SEL – (Rank Name, Service)
Company Officer – (Rank Name, Service)
Battalion Officer – (Rank Name, Service)

Questions by the Superintendent.

MIDN (Last Name), would you like to make a closing statement?

Decision

Based on all the evidence and testimony before me:

1. I have decided to retain you in the Brigade (under the following conditions).

OR

2. I have decided to recommend to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) that you be disenrolled from the U.S. Naval Academy. Please meet with (Name or Title) after this and he/she will explain your rights in this process.

OR

3. I have decided to recommend to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) that you be disenrolled from the Naval Academy for the purposes of participating in the R&R program. Please meet with (Name or Title) after this and he/she will explain your rights in this process.

Enclosure (1)

| SUPERINTENDENT CONDUCT INTERVIEW RIGHTS ACKNOWLEDGEMENT | | | |
|--|---------------------------------------|--------------------------------------|--------------------------|
| Privacy Act Statement | | | |
| AUTHORITY: 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 6954, Midshipmen: number; 10 U.S.C. 6956, Midshipmen: Nomination and Selection to fill Vacancies; 10 U.S.C. 6957, Selection of Persons from Foreign Countries; 10 U.S.C. 6958, Midshipmen: Qualifications for Admission; 10 U.S.C. 6962, Midshipmen: Discharge for Unsatisfactory Conduct or Inaptitude; 10 U.S.C. 6963, Midshipmen: Discharge for Deficiency; DoDI 1322.22, Service Academies; E.O. 9397 (SSN), as amended, and SORN N01531-1. | | | |
| PURPOSE: Maintain a legal record that accused midshipmen subject to disenrollment were given rights advisement regarding their interview with the Superintendent. | | | |
| ROUTINE USES: Used by the Academy's legal offices, midshipmen chain of command, Midshipmen Personnel Office, and Academy administration in the processing of midshipmen conduct and honor cases. | | | |
| DISCLOSURE: Voluntary. | | | |
| SECTION 1. ACCUSED/SUSPECT INFORMATION | | | |
| 1. FULL NAME (<i>Accused/Suspect</i>): | 2. RATE/RANK: MIDN | 3. SERVICE (<i>Branch</i>): USN | |
| 4. ACTIVITY/UNIT: U.S. NAVAL ACADEMY | | 5. ALPHA NUMBER: | |
| SECTION 2. INTERVIEWER INFORMATION | | | |
| 6. INTERVIEWER NAME: | 7. RATE/RANK: VADM | 8. SERVICE (<i>Branch</i>): | |
| 9. ORGANIZATION: U.S. NAVAL ACADEMY | | 10. TITLE: SUPERINTENDENT | |
| 11. LOCATION OF INTERVIEW: LARSON HALL | 12. TIME: | 13. DATE: | |
| SECTION 3. RIGHTS AND ACKNOWLEDGEMENTS | | | |
| RIGHTS | | | |
| I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, I was warned that: | | | |
| (1) I am suspected of having committed the following offenses: | | | <input type="checkbox"/> |
| (2) I have the right to remain silent at all times during the interview; | | | <input type="checkbox"/> |
| (3) Any statement I do make may be used as evidence against me in disciplinary hearings, including a trial by court-martial; | | | <input type="checkbox"/> |
| (4) I have the right to consult with legal counsel prior to any questioning. This legal counsel may be a civilian attorney retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; | | | <input type="checkbox"/> |
| (5) I do not have the right to have an attorney present during this interview; | | | <input type="checkbox"/> |
| (6) I do not have the right to have witnesses called on my behalf during this interview; however, I understand that I may submit letters from character witnesses until 24 hours before the interview; and | | | <input type="checkbox"/> |
| (7) This acknowledgment of rights is made freely and voluntarily by me, without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. | | | <input type="checkbox"/> |
| 14. SIGNATURE (<i>Accused/Suspect</i>): | | 15. TIME: | 16. DATE: |
| 17. NAME (<i>Witness</i>): | 18. SIGNATURE (<i>Witness</i>): | 19. TIME: | 20. DATE: |
| 21. NAME (<i>Optional 2nd Witness</i>): | 22. SIGNATURE (<i>2nd Witness</i>): | 23. TIME: | 24. DATE: |

MIDSHIPMAN DISCHARGE BOARD POLICIES AND PROCEDURES

1. Midshipman Discharge Board (MDB) Composition and Member Roles. An MDB is an administrative fact-finding body. The MDB shall consist of not less than three Navy or Marine Corps officers. The members of the MDB shall be appointed via an appointing order, that names the members, specifies the date, time, and place for the Board, and gives instructions regarding the purpose and procedures of the Board. The appointing order may be amended at any time by the Superintendent. Officers with personal knowledge pertaining to the respondent's case cannot be appointed to serve as a member of the Board considering the case. No officer may be a member of more than one board convened under this instruction to consider the same officer. Board members are subject to challenge for cause, to be ruled on by the legal advisor.

2. Nonvoting Recorder. The Superintendent shall appoint a nonvoting Recorder to present the facts of the case supporting separation, ensure that an audio recording of the Board occurs, and performs other duties as appropriate. The recorder shall not participate in closed sessions of the Board.

3. Nonvoting Legal Advisor. The Superintendent shall also appoint a nonvoting legal advisor on the appointing order to address other legal questions or concerns posed by the Board. The legal advisor must be a lawyer certified per article 27(b), UCMJ. The legal advisor shall not participate in closed sessions of the Board. The legal advisor shall rule finally on all matters of procedure, evidence and challenges except challenges to themselves. The Superintendent will rule finally on all challenges for cause to the legal advisor.

4. Notice to Midshipman Respondent. The midshipman respondent shall be notified at least 15 days before the hearing of the date, time, and location of their case before a Board; of each of the reasons for which they are being required to show cause for retention at USNA and in the Naval service; the least favorable characterization of service which may be recommended by the Board; and of their rights before, during, and after the Board. The respondent shall receive a copy of the appointing order, enclosure (5), no later than 72 hours before the Board.

5. Rights of a Respondent. The respondents shall be afforded the following rights, which may be exercised or waived in writing:

a. Request for Continuance. In addition to the 15 days provided in paragraph 4, the respondents may, for good cause, petition in writing and in a timely manner for a continuance not to exceed 15 calendar days from the original date of the Board. Requests for continuance will be decided by the Superintendent if made prior to the convening of the Board. Once the Board is convened, the senior member may rule on such requests or refer them to the Superintendent for decision. Any requests or continuance which would delay the completion of the Board hearing beyond a total of 30 calendar days from the date of notification to the respondent must be approved by the Superintendent.

b. The Right to Counsel. Respondents are entitled to have qualified counsel provided by the Superintendent. Counsel must be a lawyer certified per article 27(b), UCMJ. Respondents may request military counsel of their choice provided the requested counsel is reasonably available.

The determination as to whether individual counsel is reasonably available shall be made in accordance with the procedures set forth in JAGINST 5800.7E, Manual of the Judge Advocate General, section 0131 for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondents must elect between representation by appointed counsel and representation by individual counsel. Respondents may be represented in these proceedings by both appointed counsel and individual counsel only if the Superintendent, in his or her sole discretion, approves a written request from the respondent for representation by both counsel. Such written requests must set forth in detail why representation by both counsel is essential to insure a fair hearing. Respondents may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel. Consultation with, or retention of civilian counsel, shall not delay orderly processing per this instruction. Respondents should be advised that retained counsel will be expected to comply with any established board schedule absent extraordinary circumstances.

c. Right against self-incrimination. If suspected of an offense, the respondent midshipman should be warned against self-incrimination under Article 31, UCMJ, before testifying as a witness. Failure to warn the midshipman shall not preclude consideration of the testimony of the midshipman by the MDB, but may impact the Naval Academy's ability to use such statements in the event of subsequent disciplinary action.

d. Access to Records. The respondent, and his or her qualified counsel, shall have full access to, and copies of, records relevant to the case, except that information or material shall be withheld if it is determined that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent the interests of national security permit.

e. Names of all witnesses in advance of Board proceedings. Failure to provide any information or the name of a witness shall not preclude the Board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board.

f. Right to challenge any member for cause. The respondent may submit any relevant matter which, in their view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the legal advisor, or by the Superintendent if a legal advisor has not been appointed, to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in Board membership falling below the number required in paragraph 1 of this enclosure, the Superintendent shall appoint a new member who is qualified per that paragraph. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

g. Witness request. Respondents shall have the right to request from the Superintendent or the Board the appearance before the Board of any witness whose testimony is considered to be pertinent to the case, as provided in paragraph 7 of this enclosure.

h. Documentary evidence. Respondents shall have the right to submit, at any time before the Board convenes or during the proceedings, any matter from the respondent's service record,

letters, answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

i. Questioning of witnesses. The respondent, counsel for the respondent, counsel for the government, and the Board members may question any witness who appears before the Board or who testifies by other means (e.g., by telephone or VTC, when available). Testimony of witnesses shall be under oath or affirmation.

j. Right to give sworn or unsworn testimony. A respondent may give an unsworn statement to the board. This statement may be oral or in writing. At no time may a respondent be required to answer questions based on his or her unsworn statement. The respondent may only be questioned based on his or her own sworn testimony. In the event a respondent wishes to give a statement or testimony, the respondent should be warned against self-incrimination under article 31, UCMJ. Failure to so warn the respondents shall not preclude consideration of the testimony by the MDB.

k. Oral argument. The respondent and/or counsel for the respondent and counsel for the government may present oral or written argument, or both, on the matter to the Board. Parties may make opening and closing arguments as desired.

l. Copy of Report. Respondents shall be provided with a copy of the Board report. In cases involving classified matter withheld in the interests of national security, any record or information to be provided to the respondent will be edited prior to delivery to them to remove classified material and preserve its integrity.

m. Post-Board Statement. The respondent may submit a statement in rebuttal to the findings and recommendations of the MDB for consideration by the Superintendent and ASN (M&RA).

n. Appearance at Board. The respondents may appear in person, with or without counsel, at all open proceedings of the Board. Discharge in absentia may be affected by the Superintendent, provided the midshipman has been properly given notice of the MDB and the least favorable characterization of service. An Other Than Honorable discharge shall be awarded for a discharge in absentia if the midshipman is in an unauthorized absence status, has been detained by law enforcement, or is in a confinement status with military or civilian authorities. Upon a midshipman's return from the unauthorized absence, detention, or confinement status, the midshipman may request reconsideration of the Other Than Honorable discharge to ASN (M&RA) via the Superintendent.

o. Failure of the respondents to invoke any of these rights shall not be considered as a bar to the Board proceedings, findings, or recommendations.

6. Waiver. Respondents may waive any of the aforementioned rights before the Board convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond to the notice of MDB after five days,

during which respondents may consult with counsel, constitutes a waiver of the rights in paragraph 5 of this enclosure.

7. Witnesses. Witnesses whose testimony will add materially to the case shall be invited to appear to offer testimony before the Board if such witnesses are reasonably available. Witnesses not within a 100- mile radius of Annapolis, Maryland are considered not reasonably available. The following additional policies govern the presentation of witness testimony:

a. Telephonic testimony, video teleconferencing testimony, sworn statements, affidavits, or depositions shall be admitted and considered by Board from witnesses not reasonably available to testify during a board proceeding;

b. The Superintendent shall make available for personal appearance before a Board active duty or civilian witnesses under his or her jurisdiction whose personal appearance is essential to a fair determination of the facts, unless the witnesses:

(1) are unavailable within the meaning of Military Rule of Evidence (M.R.E.) 804(a); or

(2) decline an invitation to testify before a Board. Civilian employees may be directed to appear by their supervisors. Military personnel can be ordered to appear by their Commanding Officers.

c. Respondents will specify in their response to notice of the MDB the names and contact information for any witnesses they request to the Superintendent or, once the proceedings have commenced, the Board president. Such a request shall contain the following matter:

(1) A synopsis of the testimony that the witness is expected to give;

(2) An explanation of the relevance of such testimony to the issues of misconduct, separation or characterization;

(3) An explanation as to why written, recorded, telephonic, or video teleconferencing testimony would not be sufficient substitute for in-person testimony in order to provide for a fair determination of the facts;

d. Requests for witnesses may be denied if not requested at least five days before commencement of Board proceedings.

e. Witnesses not on active duty must appear voluntarily and at no expense to the government, except as provided for by subparagraph g.

f. The Superintendent shall make all final decisions on the appearance of witnesses before and during the Board.

g. If the Superintendent determines that the personal appearance of a witness is necessary, he or she will authorize expenditure of funds for production of the witness only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) advises that:

- (1) the testimony of a witness is not cumulative;
- (2) the personal appearance of the witness is essential to a fair determination on the issues of misconduct, separation, or characterization;
- (3) written, recorded, telephonic, or video teleconferencing testimony will not accomplish adequately the same objective; and
- (4) the need for live testimony is substantial, material, and necessary for a proper disposition of the case; and the significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

h. If it is determined the personal testimony of a witness is required by the legal advisor or Superintendent, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

i. The hearing may be postponed or continued to provide the respondent with a reasonable opportunity to obtain a written statement from a witness that has been deemed an essential witness or arrange for video teleconferencing/telephonic testimony if an essential witness requested by the respondent is unavailable and

- (1) the legal advisor determines the witness is essential, but that the in-person testimony of the witness is not required; and
- (2) When the Commanding Officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or
- (3) When a civilian witness declines to attend the hearing.

8. Hearing. Hearings by an MDB must be conducted in a fair and impartial manner to ensure the respondent has the opportunity to present his or her case. The Board must conduct the hearing consistent with the procedures outlined in this enclosure and enclosures (4) and (6) of this instruction. At the discretion of the Superintendent, a Board may be convened to hear the cases of multiple respondents. However, the board will make independent determinations of each respondent's case based on the individual facts and circumstances presented pertaining to each respondent. The following additional procedures shall apply to all Boards:

- a. MDBs are not courts-martial and the rules of evidence do not apply.
- b. Oral or written matter not admissible in a court of law may be accepted by Boards.
- c. Oral or written evidence presented may be subject to reasonable restrictions as to authenticity, relevance, materiality, and competency as determined by the Board.
- d. Except for closed sessions during which the board will deliberate on the evidence presented, the proceedings of the board should normally be open to the public at the discretion of the Superintendent. Once convened, the Superintendent may close the proceedings upon motion by either side upon good cause shown.

9. Decision of the Board.

a. The board will make the following determinations, by majority vote, based on the evidence presented at the hearing:

(1) A finding based on a preponderance of the evidence on whether misconduct occurred on each of the reasons for separation specified against the respondent for which he or she was notified. Where a reason for separation is based on an approved finding of guilty by a court-martial or a civilian criminal conviction, including by a plea of guilty, such a finding of guilty or criminal conviction shall be binding on the Board on the question of whether misconduct occurred. Signed letters offering a qualified resignation and the reasons contained therein shall also be binding on the Board;

(2) Whether, based upon a finding of misconduct for any of the reasons specified against the respondent, the respondent is recommended for separation from the Naval Academy; and

(3) If separation from the Naval Academy is recommended, a recommendation as to characterization of service regarding discharge. This characterization shall be based on the evidence presented, the overall record of the respondent's service, and consistent with the characterization of service descriptions provided in reference (i).

b. In the event the Board finds that misconduct did not occur, or that misconduct did occur but the respondent should be retained at the Naval Academy, the Board shall submit their findings to the Superintendent as provided in paragraph 10 of this enclosure.

10. Forwarding Board Report. The Board shall submit its findings and recommendations to the Superintendent using the template provided in enclosure (7) to this instruction.

Midshipmen Discharge Board Notice Template

1610
Ser 28/####
DD Mmm YY

From: Superintendent, U.S. Naval Academy

To: Midshipman (Number) Class (First Name MI Last Name)

Subj: NOTICE OF THE CONVENING OF THE MIDSHIPMAN DISCHARGE BOARD FOR
ADMINISTRATIVE SEPARATION BY REASON OF MISCONDUCT

Ref: (a) USNAINST 1610.1A
(b) JAGINST 5800.7D

Encl: (1) Administrative Separation Processing Notice

1. Pursuant to reference (a), you are being processed by a Midshipman Discharge Board by reason of misconduct. Specifically, you are being processed for [brief summary of facts, dates, and provisions violated]. The Board will be scheduled on a date no earlier than fifteen (15) days from your receipt of this notice. The Assistant Staff Judge Advocate, U.S. Naval Academy, will notify you of the exact date of the hearing no later than fifteen (15) days before the Board convenes. Should you be discharged from the Naval service, the least favorable characterization of discharge is under Other Than Honorable Conditions. Your rights pursuant to the Midshipman Discharge Board are detailed in enclosure (1).

2. If you have any questions regarding the Midshipman Discharge Board process, please contact my Staff Judge Advocate at (SJA phone number). Pursuant to reference (a), you also have the right to qualified military counsel or civilian counsel at your own expense. You may seek military counsel by contacting the Naval Legal Service Office attorney in Dahlgren Hall, or by contacting them at 410-293- 2268.

I. M. SUPERINTENDENT

Reason(s) For Administrative Separation Processing Notice

1. The Midshipman Discharge Board is convening for the following reasons:

- a. Describe reason one for administrative separation
- b. Describe reason two for administrative separation
- c. Describe reason three for administrative separation

2. The least favorable characterization of service possible is Other Than Honorable.

3. You are entitled to the following rights (initial blocks).

a. Request for Continuance. In addition to the 15 days provided in reference (a), enclosure (3), paragraph 4, the respondents may, for good cause, petition in writing and in a timely manner for a continuance not to exceed 15 calendar days from the original date of the Board. Requests for continuance will be decided by the Superintendent if made prior to convening the Board. Once the Board is convened, the senior member may rule on such requests or refer them to the Superintendent for decision. Any requests or continuance which would delay the completion of the Board hearing beyond a total of 30 calendar days from the date of notification to the respondent, must be approved by the Superintendent.

Initial: _____

b. Right to Counsel. Respondents are entitled to have qualified counsel provided by the Superintendent. Counsel must be a lawyer certified per article 27(b), UCMJ. Respondents may request military counsel of their choice provided the requested counsel is reasonably available. The determination as to whether individual counsel is reasonably available shall be made in accordance with the procedures set forth in section 0131 of reference (b) for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondents must elect between representation by appointed counsel and representation by individual counsel. Respondents may be represented in these proceedings by both appointed counsel and individual counsel only if the Superintendent, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing. Respondents may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel. Consultation with, or retention of civilian counsel, shall not delay orderly processing per this instruction. Respondents should be advised that retained counsel will be expected to comply with any established board schedule absent extraordinary circumstances.

Initial: _____

c. Right against self-incrimination. If suspected of an offense, the respondent midshipman should be warned against self-incrimination under Article 31, UCMJ, before testifying as a witness. Failure to warn the officers shall not preclude consideration of the testimony of the officers by the MDB, but may impact the government's ability to use such statements in the event of subsequent disciplinary action.

Initial: _____

d. Access to Records. The respondent and his or her qualified counsel shall have full access to, and copies of, records relevant to the case, except that information or material shall be withheld if it is determined that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent the interests of national security permit.

Initial: _____

e. Names of all witnesses in advance of Board proceedings. Failure to provide any information or the name of a witness shall not preclude the Board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board.

Initial: _____

f. Right to challenge any member for cause. The respondent may submit any relevant matter which, in their view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the legal advisor, or by the Superintendent if a legal advisor has not been appointed, to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in Board membership falling below the number required in reference (a), enclosure (2), paragraph 1, the Superintendent shall appoint a new member who is qualified per that paragraph. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

Initial: _____

g. Witness request. Respondents shall have the right to request from the Superintendent or the Board the appearance before the Board of any witness whose testimony is considered to be pertinent to the case, as provided in reference (a), enclosure (3), paragraph 7.

Initial: _____

h. Documentary evidence. Respondents shall have the right to submit, at any time before the Board convenes or during the proceedings, any matter from the respondent's service record, letters, answers, depositions, sworn or unsworn statements, affidavits, certificates, or

stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

Initial: _____

i. Questioning of witnesses. The respondent, counsel for the respondent, counsel for the government, and the Board members may question any witness who appears before the Board or who testifies by other means (e.g., by telephone or *VTC*, when available). Testimony of witnesses shall be under oath or affirmation.

Initial: _____

j. Right to give sworn or unsworn testimony. A respondent may give an unsworn statement to the board. This statement may be oral or in writing. At no time may a respondent be required to answer questions based on his or her unsworn statement. The respondent may only be questioned based on his or her sworn testimony. In the event a respondent wishes to give a sworn statement or testimony, the respondent should be warned against self-incrimination under by article 31, UCMJ. Failure to so warn the respondents shall not preclude consideration of the testimony by the MDB.

Initial: _____

k. Oral argument. The respondent and/or counsel for the respondent and counsel for the government may present oral or written argument, or both, on the matter to the Board. Parties may make opening and closing arguments as desired.

Initial: _____

l. Copy of Report. Respondents shall be provided with a copy of the Board report. In cases involving classified matter withheld in the interests of national security, any record or information to be provided to the respondent will be edited prior to delivery to them to remove classified material and preserve its integrity.

Initial: _____

m. Post-Board Statement. Consistent with paragraph 8 of this instruction, the respondent may submit a statement in rebuttal to the findings and recommendations of the MDB for consideration by the Superintendent and ASN(M&RA).

Initial: _____

n. Appearance at Board. The respondents may appear in person, with or without counsel, at all open proceedings of the Board.

Initial: _____

o. Failure of the respondents to invoke any of these rights shall not be considered as a bar to the Board proceedings, findings, or recommendations.

Initial: _____

p. Respondents may waive any of the aforementioned rights before the Board convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond to the notice of MDB after five days, during which respondents may consult with counsel, constitutes a waiver of the rights in reference (a), enclosure (3), paragraph 5.

Initial: _____

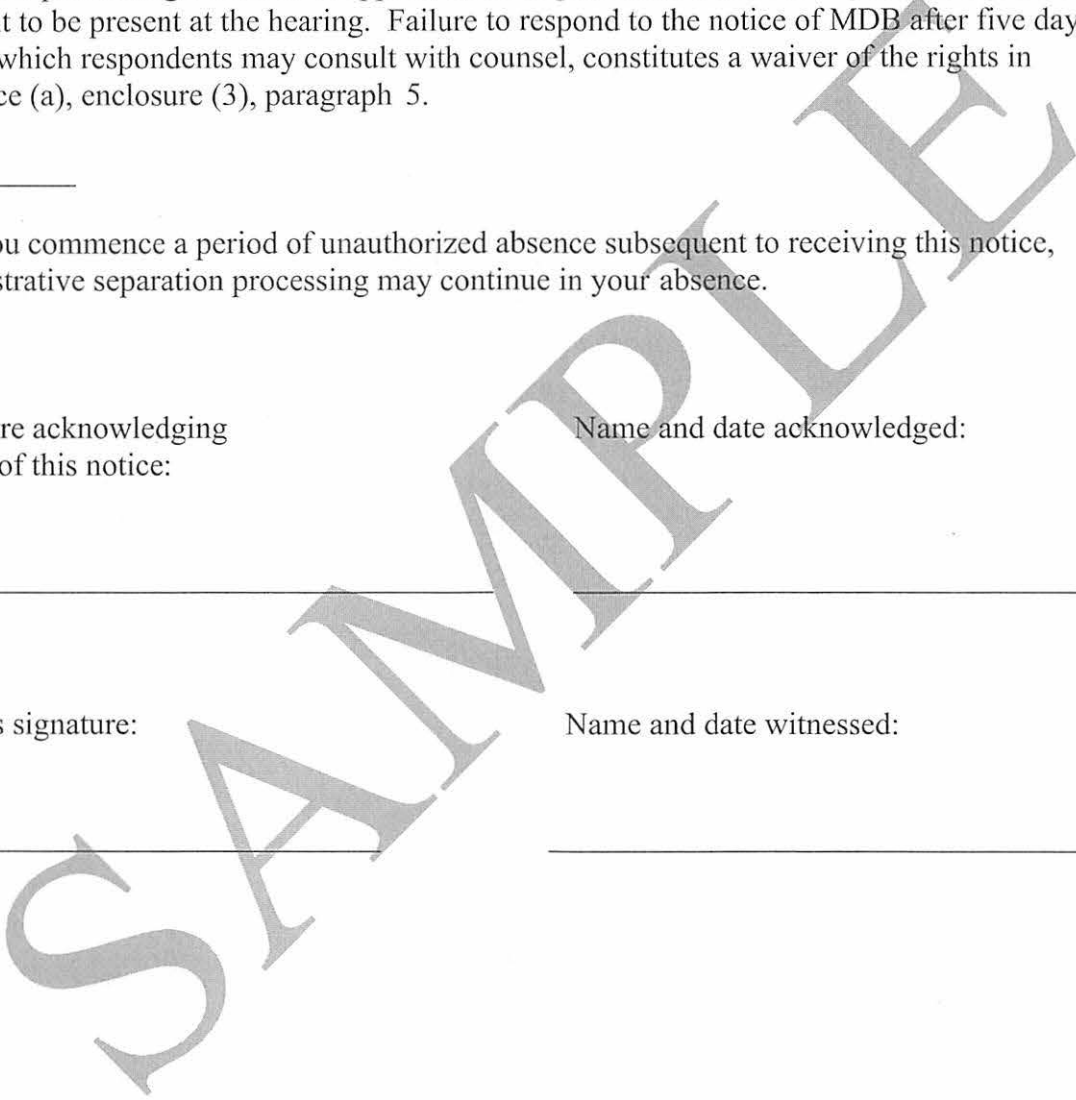
4. If you commence a period of unauthorized absence subsequent to receiving this notice, administrative separation processing may continue in your absence.

Signature acknowledging
receipt of this notice:

Name and date acknowledged:

Witness signature:

Name and date witnessed:



Midshipmen Discharge Board Appointment Letter Template

1610
Ser 28/
DD Mmm YY

From: Superintendent, U.S. Naval Academy
To: (Name of senior member of the board)

Subj: APPOINTMENT TO MIDSHIPMAN DISCHARGE BOARD ICO MIDN (NAME)
WHO IS BEING PROCESSED FOR ADMINISTRATIVE SEPARATION BY
REASON OF MISCONDUCT

Ref: (a) USNAINST 1610.1A

1. Pursuant to reference (a), you are assigned as senior member of the Midshipman Discharge Board to be convened at (time, date, location) or as soon as practicable thereafter. Other individuals assigned to the Board are:

- a. Member Name
- b. Member Name
- c. Non-voting Recorder Name
- d. Non-voting Legal Advisor Name

2. General procedural instructions are contained in reference (a), enclosure (3). You and other board members should become familiar with reference (a) prior to convening of the board.

3. You are admonished not to discuss the pending case with anyone and not to review any documents, including the service record of respondent, prior to convening of the board.

I. M. SUPERINTENDENT

Copy to:
All Board Members
Respondent/Counsel

8 Mar 2021

MIDSHIPMAN DISCHARGE BOARD SCRIPT

Senior Member (SM): The board will come to order. The recorder shall record the time, date, and place of hearing.

NOTE: The recorder should record the time and date of the opening and closing of each session of the board and the presence (or absence) of all parties (board members, recorder, respondent, and counsel for the respondent).

SM: The board is convened by an order of the Superintendent, dated (date), a copy of which has been furnished to each member of the board, the recorder, the respondent, and counsel for the respondent.

The following persons named in the appointing order are present:

Members
Senior Board Member
Member
Member
Recorder
Legal Advisor
Respondent

The following person(s) named in the appointing order (is) (are) absent, having been excused by the Superintendent:

SM: Will counsel for the respondent state his or her legal qualifications?

Counsel for Respondent (CR): Counsel for the respondent is a lawyer within the meaning of reference (a). (If a civilian, include mailing address and phone number.)

SM: Will the recorder state his or her legal qualifications?

Recorder (REC): The recorder is (not) a lawyer within the meaning of reference (a).

SM: This board has been convened for the purpose of considering the pertinent facts relating to the case of Midshipman (name), who is being processed for discharge by reason(s) of (state alleged misconduct). The board will make findings of fact for each reason and will make a recommendation with respect to final action of retention or separation from the Naval Academy and to characterization of service or description of discharge. If discharge is recommended, the reason(s) will be stated along with the type and characterization of discharge recommended.

(RESP'S NAME), I shall now review with you your rights in connection with this hearing. If you have any questions about any of these rights, do not hesitate to ask me, or if you wish, you may discuss your questions with your counsel.

NOTE: Respondents may waive reading of their rights and procedures.

a. You may appear in person before this board, with or without counsel. In your absence, you may be represented by counsel at all open proceedings of the board. You may have a military counsel of your own choice, provided proper authority determines the counsel requested is reasonably available. You may be represented by civilian counsel at no expense to the government.

b. You may challenge any voting member of the board for cause; that is, by showing that the member cannot render a fair and impartial decision. You or your counsel may question any voting member to determine whether a basis for challenge exists. The assigned legal advisor will rule on the challenge. If any member is successfully challenged, this board proceeding will be suspended pending appointment of qualified substitute if - after a successful challenge - the number of board members falls below three.

c. You may submit an oral or written statement in your own behalf; you may testify in your own behalf; or you may remain silent. Any statement you do make may be used as evidence against you in this or other disciplinary hearings, including a trial by court-martial. If you choose to testify and/or make a written statement under oath, you may be cross-examined on your statement and/or testimony. In the alternative, you may make an unsworn statement, personally or through counsel, oral or written. You may not be cross-examined on such an unsworn statement unless you choose to answer questions about it; however, the recorder may introduce evidence to rebut anything contained in such a statement. If you decide not to testify under oath, or if you decide not to make any statement at all, that fact will not be considered against you in any way.

d. You may request the attendance of witnesses at the hearing. The request shall be made no later than five business days in advance of the board and your request must be made in writing, dated, signed by you or your counsel, and submitted to the Superintendent via the senior member of the board. Failure to submit a request for witnesses in a timely fashion shall not automatically result in denial of the request, but it may be considered along with other factors in deciding whether or not the witness can be reasonably produced in person or through other means. Further, the testimony of a witness may be excluded if the legal advisor or, in the absence of a legal advisor, the senior member of the board, determines that its value to determine the truth of the allegations against you is substantially outweighed by considerations such as relevant, undue delay, or needless presentation of cumulative evidence.

(1) Any request for witnesses shall contain the following:

- (a) a synopsis of the testimony that the witness is expected to give;
- (b) an explanation of the relevance of the testimony; and
- (c) an explanation as to why written or recorded testimony would not be

sufficient.

(2) The Superintendent may authorize funding for production of witnesses after commencement of Board proceedings, only if the legal advisor determines that:

8 Mar 2021

- (a) the testimony of a witness is not cumulative;
- (b) the in-person appearance of the witness is essential to a fair determination on the issues;
- (c) telephonic testimony, video teleconferencing testimony, written or recorded testimony will not adequately accomplish the same objective; and
- (d) the significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness; the potential delay in the proceeding that may be caused by producing the witness; or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(3) If the Superintendent (or legal advisor, once the hearing has begun) determines that the personal testimony of a witness is required, the hearing shall be postponed, if necessary, to permit the attendance of the witness. Military witnesses required shall be issued temporary additional duty (TEMADD) orders and civilian witnesses shall be issued invitational travel orders.

(4) The hearing may be postponed or continued to provide the respondent with a reasonable opportunity to obtain a written statement from a witness that has been deemed an essential witness, or arrange for video teleconferencing/telephonic testimony if an essential witness requested by the respondent is unavailable and

- (a) the Superintendent (or legal advisor, once the hearing has begun) determines the witness is essential, but that the in-person testimony of the witness is not required; and

- (b) When the Commanding Officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

- (c) a civilian witness declines to attend the hearing.

- e. You may, at any time before or during the proceedings, submit any answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

- f. You may submit to examination by the board if you desire. If you choose not to submit to examination by the board, the fact will not be considered against you in any way.

- g. You and your counsel may question any witness who appears before the board.

- h. Your failure to invoke any of these rights cannot be considered as a bar to the board proceedings, findings, or recommendations.

Now, (respondent), there are some procedural rules in connection with this board which I shall explain to you. First, these proceedings are administrative in nature and the board is not bound

by formal rules of evidence. Thus, the board may consider information which might not be admissible at a court-martial.

Also, you should be aware that the board's decision will be based upon a preponderance of the evidence presented.

Second, if you or your counsel has any objection to any matters introduced or to any proceedings of the board, you or your counsel may state your objection and the reasons for it. The appointed legal advisor shall rule finally on all matters of procedure and evidence;

(Respondent), do you have any questions concerning your rights or procedures before this board?

RESP: (No, Sir/Ma'am.)

SM: Does the recorder, counsel for the respondent, or respondent wish to question any member of this board in relation to any matter which may constitute a ground for challenge for cause?

REC: (The recorder has no questions.) ().

RESP or CR: (The respondent has no questions.)().

SM: Does either side have a challenge for cause against any voting member of this board?

REC: (The recorder does not.)().

RESP or CR: (The respondent does not.)(_ _ _).

NOTE: The legal advisor shall make a final ruling on a challenge to any of the members. Grounds for challenge must show that the member cannot render a fair and impartial decision. The Superintendent, upon being informed of the circumstances of the challenge and the recommendation of the other members, may appoint a substitute for the challenged member. At this point in the proceedings the senior member should ensure that all persons scheduled to testify as witnesses are excluded from the proceedings except when actually testifying before the board.

NOTE: Ensure that questioning of members for challenge purposes does not cross-contaminate other members with information that would also render them unable to be fair and impartial.

SM: Does either the recorder or respondent desire to make an opening statement?

REC:-----

RESP or CR: (may be made now or before respondent's case)

SM: Is the recorder ready to present the Naval Academy's case in this matter?

REC: The recorder is ready to proceed. The recorder presents the following documents for the board's consideration in this case.

NAVAL ACADEMY'S CASE

Exhibit 1: Appointment of an Administrative Board

Exhibit 2: Respondent's Notice

Exhibit 3: NOTE: Recorders must present, at a minimum, the information which caused the convening authority to convene the board.

SM: Does respondent have any objections to the board's consideration of any of these exhibits?

RESP or CR: (We have no objections.) (We object to Exhibit_ because).

The legal advisor shall be consulted to rule on any evidentiary challenges.

SM: Exhibits 1 through_ are accepted and will be made a part of the record.

REC: The recorder intends to call the following witnesses:

REC: The first witness is (full name, grade, and duty station).

REC: Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth?

WIT: I do.

REC: Would you state your name, rank, unit, and armed force? (If civilian, state name and mailing address.)

WIT:-----

REC: Do you know the respondent in this case?

WIT: -----

NOTE: The recorder, counsel for the respondent, and the board members will now be afforded a full opportunity to question the witness.

SM: You may be excused.

REC: (After all witnesses have testified.) I have nothing further to present.

SM: (Respondent), you have already indicated an understanding of your rights at these proceedings. Are you and your counsel ready to proceed?

RESP: Yes, Sir/Ma'am.

RESPONDENT'S CASE

CR: Yes, Sir/Ma'am (if he or she has not already done so, counsel for the respondent may now make an opening statement).

NOTE: At this point in the proceedings, counsel for the respondent may present documentary or real evidence, stipulations, affidavits, etc., and may call witnesses to testify. The recorder may object to any documentary evidence. If an objection is registered, the senior member should rule and review with the other members, as was done during the recorder's case above, and defer to the legal advisor for a final ruling if necessary. This is also the time for respondent to testify, either by way of sworn or unsworn testimony, or to make any other statement, either personally or through counsel. If counsel for the respondent calls witnesses to testify, the recorder should administer the required oaths. Counsel for the respondent should have the opportunity to conduct direct examination. Thereafter, the recorder and board members may question the witness. Should the respondent elect to provide information to the board, the board may wish to solicit personal information from the respondent. Before the respondent provides personal information in response to such a request, the respondent must be given a Privacy Act Statement. It is recommended that, if the Privacy Act Statement is provided to the respondent in writing, a copy signed by the respondent be included in the record. The Privacy Act Statement should be signed before the board convenes, if possible.

CR: We have nothing further to present.

NOTE: Rebuttal and surrebuttal witnesses may be called, or recalled, at this point. The recorder and counsel for the respondent will then be given an opportunity to make a closing argument.

REC: The recorder (has a) (waives) closing argument.

CR: Counsel for the respondent (has a) (waives) closing argument.

REC: The recorder (has a) (waives) rebuttal argument.

SM: Has the recorder anything further to offer?

REC: I (do) (do not).

SM: This board will close for deliberations.

NOTE: When the board deliberates, only the voting members will be present. Prior to deliberations, the board members should review the appropriate board findings worksheet. Upon

completion of the deliberations, but before the findings are announced, the board must complete the appropriate findings worksheet.

SM: This board will come to order. This administrative board has concluded its deliberations and has completed the board findings sheet with all signatures affixed. (Read boards findings/recommendations for the record.)

SM: The board is adjourned (time and date).

(Signature of senior member)

Midshipmen Discharge Board Report Template

1610
DD Mmm YY

From: Senior Member, Midshipman Discharge Board
To: Superintendent, U.S. Naval Academy

Subj: MIDSHIPMAN DISCHARGE BOARD FINDINGS AND RECOMMENDATIONS ICO
MIDN (FIRST NAME MI LAST NAME)

Ref: (a) USNAINST 1610.1A

Encl: (1) Dissenting Member's Signed Comments (if applicable)

1. The Midshipman Discharge Board met on DD MMM YYY to discuss the following allegations against MIDN (Late Name): Allegation 1, (list allegation) and Allegation 2, (list allegation). The Board consisted of three members (list members). This report contains the boards findings and recommendations.

2. The preponderance of evidence (Supports / Does Not Support) Allegation 1 by a vote of (#) to (#). Specific Evidence relied upon to support findings for Allegation 1 are as follows:

- a.
- b.
- c.

3. The preponderance of evidence (Supports / Does Not Support) Allegation 2 by a vote of (#) to (#). Specific Evidence relied upon to support findings for Allegation 2 are as follows:

- a.
- b.
- c.

4. Based on the facts and circumstances, we recommend (Separation / Retention) by a vote of (#) to (#). (Retention or separation recommendation is required if any allegations are supported by the evidence)

5. The Board recommends a (Honorable / General (Under Honorable Conditions) / Other Than Honorable) characterization of service by a vote of (#) to (#). (Characterization of service recommendation is required if separation is recommended)

J. Q. SAILOR

Enclosure (7)