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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:

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- (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.

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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)