



REPLY TO
ATTENTION OF

ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE
4133^d REGIONAL TRIAL DEFENSE TEAM, WEST REGION
OREGON ARMY NATIONAL GUARD
OFFICE OF THE REGIONAL DEFENSE COUNSEL
1776 Militia Way, P.O. Box 14350
Salem, Oregon 97309-5047



NGJA-OR-TDS

3 March 2011

INSTRUCTIONS AND CAVEATS

1. **WHAT.** T10 GENERAL OFFICER FILED LETTER OF REPRIMAND APPEAL TEMPLATE
2. **USE.** Use this template as an example for a Army National Guard (ARNG) member who while on Federal Title 10 status receives a General Officer Letter of Reprimand
3. **LEGAL ADVICE.** Consult with your Judge Advocate Trial Defense Counsel or Legal Assistance Attorney as assigned. **NO LEGAL ADVICE IS GIVEN HEREIN.**
4. **TEMPLATE.** This is a suggested template, it must be modified for case specificity. There is no particular format other than to comply with the regulation pertaining to the appeal. The template cannot be used **AS IS**. Look for '*' and make sure you obtain, reference in this document, and attach as enclosures supporting documents, sworn statements and such to attack the propriety of filing the GOMOR in the OMPF. You may use footnotes as might be appropriate IAW AR 25-50, F-12.
5. **SELF REPRESENTATION.** Representing yourself? Use no letterhead and no office symbol.
6. **TDC,** use your unit letterhead and office symbol. The petitioner must sign concurring in your legal presentation.
7. **NO LEGAL ADVICE.** No legal advice is provided herein. If you have questions see a qualified attorney.

MEMORANDUM FOR President, DA Suitability Evaluation Board (HQDA (DAPE-MPC-E)
Army Review Boards Agency, Department of the Army Suitability Evaluation Board, 1901 South
Bell Street, 2nd Floor, Arlington, VA 22202-4508 * (verify current address)

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(NOTE ALWAYS BE CAREFUL OF USING SSN WHEN YOU DON'T HAVE TO)

1. References:

- a. AR 15-6 Investigations.
- b. AR 25-50 Army Correspondence.
- c. AR 600-37 Unfavorable Information.
- d. AR ***360-1 (see example in paragraph 11)
- e. AR *** any relevant regulations to the matter***
- f. <http://arba.army.pentagon.mil/unfavorable.cfm>.

2. Appeal. Pursuant to AR 600-37, para 7-3, RANK NAME, (Petitioner) who has signed below [and concurred in this opinion], the undersigned files this appeal of the filing of the Letter of Reprimand issued by GO RANK NAME (encl 1). Petitioner, while a National Guard Officer/Non-

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commissioned Officer/Enlisted Soldier was on Active Duty duty status at the time of receiving Letter of Reprimand (LOR) and therefore you are the appellate authority. The burden of proof with this appeal rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

a. The Soldier was reprimanded for allegations of ** RESTATE THE ALLEGATIONS SET FORTH IN THE LOR.

b. POSSIBLY ADDRESS MATERIAL SUBMITTED WITH THE LOR THAT IS NOT RELEVANT TO THE ALLEGATIONS. EG.

It is somewhat unclear whether the LOR has approved the findings of the AR 15-6 investigation given that the findings therein are not reflected in the LOR itself. The inclusion of part of the AR 15-6 report in the OMPF asserting allegations and findings that are not included in the LOR seems to be inappropriate for the purposes of the LOR. It appears from the filing that the LOR and the documents filed with it are all part of the LOR and not separately filed under paragraph 3-3.

3. Basis for Appeal. NOTE THIS PARAGRAPH ADDRESSES THE REASON FOR THE APPEAL IN SUMMARY. FOR INSTANCE, OFTEN THE AUTHORITY GIVING THE LOR HAS HELD BACK DOCUMENTS SUPPORTING THE LOR FROM THE SOLDIER. The primary reason for the appeal is the violation of AR 600-37 in not providing Petitioner the entire file on which the Letter of Reprimand was based for petitioner to be able to properly rebut the LOR. Petitioner was prejudiced by this since petitioner was unable to fully respond to the allegations, and would have then had the opportunity to seek out statements and witnesses that would have rebutted the findings of the AR 15-6 officer. Secondly, petitioner appeals the LOR based on facts that the findings were based on conjecture, without substantive basis and therefore are untrue and or unjust, also warranting removal of the documents from the OMPF.

a. Herein, petitioner has made a sworn statement pertaining to the circumstances of signing the acknowledgement and other related matters to the processing of the LOR which is enclosure 2. NOTE THIS REQUIRES THE PETITIONER AND IT IS A GOOD IDEA TO PUT IN A SWORN STATEMENT FORM FACTS WHICH SUPPORT THIS PARAGRAPH.

b. This supplements the rebuttal which is at enclosure 3. THIS PRESUMES THAT THERE WAS A WRITTEN REBUTTAL TO THE LOR AND IT SHOULD BE ATTACHED AS AN ENCLOSURE.

c. EXAMPLE OF SUMMARY ARGUMENT. The appeal is procedural in nature though I [my client] denies the substantive nature of the underlying allegations. Petitioner acknowledges some error in judgment but there is nothing in the report that supports the allegations, and so the findings are conclusionary in nature. Fundamental due process under the regulation was denied to petitioner. The LOR and all of its attachments should be directed to be withdrawn from petitioners OMPF.

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4. AR 600-37, Para 1-4. The objectives of AR 600-37 are stated in that regulation to:

- a. Apply fair and just standards to all soldiers.
- b. Protect the rights of individual soldiers and, at the same time, permit the Army to consider all available relevant information when choosing soldiers for positions of leadership, trust, and responsibility.
- c. Prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity.
- d. Provide a means of correcting injustices if they occur.
- e. Ensure that soldiers of poor moral character are not continued in the Service or advanced to positions of leadership, trust, and responsibility. (PARA 1-4).

5. Opportunity to review adverse material. In tendering a Letter of Reprimand to a soldier, “unfavorable information will not be filed in an official personnel file unless the recipient has been given the chance to review the documentation that serves as the basis for the proposed filing and make a written statement, or to decline, in writing, to make such a statement. This statement may include evidence that rebuts, explains, or mitigates the un-favorable information. (See para 3–6.) The issuing authority should fully affirm and document unfavorable information to be considered for inclusion in official personnel files.” (PARA 3-2). ***In the forwarding memorandum only the LOR was to be filed but instead collateral information was also filed which is not reflected in the LOR. NOTE: TYPICALLY COMMAND FILES COLLATERAL MATTERS WITH THE LOR THAT ARE NOT EVEN ALLEGATIONS IN THE LOR. SUCH COLLATERAL MATTERS SHOULD BE REMOVED OR AT LEAST REDACTED IF THE WHOLE OF THE LOR IS NOT REMOVED.

6. Acknowledgement and Rebuttal. Under PARA 3–6. Referral of information “a. Except as provided in paragraph 3–3, unfavorable information will be referred to the recipient for information and acknowledgment of his or her rebuttal opportunity. Acknowledgement and rebuttal comments or documents will be submitted generally in the following form:

(1) “ I have read and under stand the unfavorable information presented against me and submit the following statement or documents in my behalf.”

(2) “ I have read and under stand the unfavorable information presented against me and elect not to make a statement.”

a. NOTE: OFTEN THE ACKNOWLEDGEMENT WAS MADE UNDER PRESSURE, THE LACK OF INFORMATION, THE FAILURE TO PROVIDE SOURCE DOCUMENTS, ETC. FOR INSTANCE. Petitioner in signing the acknowledgment was not provided the unfavorable information on which the whole of the LOR was based given findings and conclusions in the AR 15-6 that are not supported by the ‘record’ provided. The statement on the acknowledgment of receipt that petitioner had ‘read and understood the unfavorable information presented was only as to the material presented and not the more critical substantive material allegedly supporting the allegations.

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7. Allegations contained in the LOR. There are four* (HERE GENERALLY RESTATE THE ALLEGATIONS AND PREPARE TO ATTACK EACH ONE) findings in the AR 15-6 report, page 3 of 4 of the DA Form 1574. In summary:

- a.
- b.
- c.
- d.

8. Allegation 7a *.** (and cite by enclosure and page any supporting information.) EXAMPLE. Violation of Article 92, Dereliction of Duty. While alleged in the LOR, the allegation has no supporting foundational facts, fails to address the elements of the charge under the UCMJ, and no nonjudicial or other judicial action was taken under the UCMJ. No adverse action was taken to adversely affect the Soldier's security clearance, etc, etc.

9. Allegation 7b *.**

10. Allegations 7c **.**

11. Allegation 7d*.** (For example, for violation of policy letters**) (EXAMPLE:)

a. There is nothing in the included documents that supports that petitioner violated the commanders public information and use policy. (See Soldiers rebuttal statement, enclosure _____).

b. Policies must be disseminated to be effective and the Brigade failed to distribute the Brigade Policies, in particular this policy. There is no evidence that the Soldier was aware of the policy which is located at enclosure 1-15. The policy addresses 'operational concern', and the 'unintentional release of sensitive, classified or secret information'. The Soldier's letter to the editor, of a strictly controlled military paper, certainly did not affect operational security. Essentially, even assuming petitioner was aware of the policy, the policy is intended to interdict statements that might adversely affect security.

c. AR 360-1, para 5-1. Release of official Information, states: "Department of Defense policy requires any official information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DOD be cleared by appropriate security review and PA offices prior to release. This includes materials placed on the Internet or released via similar electronic media. See DODD 5230.9 for additional guidance." Under para 6-1, "b. Clearance, through security review and PA channels, is required for all official speeches and writings that are presented or published in the civilian domain, to include materials placed on the Internet or released via similar electronic media. See DODD 5230.9 and chapter 5 of this regulation for additional information and guidance on releasing information." Paragraph 6-6 states "c. Unofficial materials do not require clearance. These include materials produced on personal time, using personal equipment and open sources. Unofficial letters to the editor, book or similar

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reviews, and works of fiction (to include those based upon real events) do not need clearance. It is the author's responsibility to ensure security is not compromised. Information that appears in open sources does not constitute declassification. The combination of several open source documents may result in a classified document."

d. In summary, the Commanders policy was not properly distributed, the Soldier not aware of it, and the application of it to the letter to the Stars and Stripes article is completely in violation of AR 360-1, para 6-6 as an unofficial letter to the editor. It is wrongful to punish someone for doing what the regulation allows. A policy letter cannot contravene the express allowances of a regulation.

12. The LOR is unjustly and improperly filed* (THIS IS AN EXAMPLE).

- a. The Soldier was not provided a full copy of all supporting documents from which to generate a rebuttal, and obtain evidence in response to the allegations.
- b. The failure to provide the Soldier the supporting adverse information violates AR 600-37.
- c. There is nothing in the AR 15-6 report that supports any of the findings in the AR 15-6 report.
- d. There is no evidence that supports violation of the commanders media policy and her actions were protected under the PAO regulation, AR 360-1.
- e. The Soldier's own statements rebutting the allegations are uncontroverted by the evidence presented.
- f. Request is made to direct the removal of the LOR and its collateral documents from the Soldiers OMPF.

13. Further Appeal. The Soldier understands that if after they have exhausted an appeal to the DASEB that they still feel that there is an error or injustice in the information in their military file, that an application to Army Board for Correction of Military Records on a DD Form 149 for consideration for removal of unfavorable information from their file is possible. The Soldier may complete an online application at <http://actsonline.army.mil> and send the signature page and evidence as instructed by the online program, or may print a blank DD Form 149 from the Army Review Boards Agency website at <http://arba.army.pentagon.mil/index.htm> and mail it to the address shown on the reverse of the form. As part of their evidence they need to provide copies of the DASEB decision letter and any other correspondence you have had with other agencies to try and resolve the issue.

14. Soldiers Contact Information. The Soldier's contact information for response to this communication is: ****. Response to this appeal should be directed to the Soldier.

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15. POC. POC for this memorandum is the undersigned at EMAIL ADDRESS**

TDC NAME
RANK, JA
Trial Defense Counsel

I, the undersigned Petitioner, hereby submit this Appeal and concur in the information submitted.

NAME
RANK, BRANCH