BY ORDER OF THE
SECRETARY OF THE AIR FORCE

AIR FORCE INSTRUCTION 36-3206

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Personnel

ADMINISTRATIVE DISCHARGE PROCEDURES FOR COMMISSIONED OFFICERS

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This Air Force Instruction (AFI) explains how to discharge active duty Air Force officers for substandard performance of duty, misconduct, moral or professional dereliction, homosexual conduct, or in the interest of national security. It prescribes procedures for disposing of cases involving officers and for processing cases approved under AFI 31-501, *Personnel Security Program Management*. This AFI implements Department of Defense (DoD) Directive 1332.30, 21 December l993, and Air Force Policy Directive (AFPD) 36-32, *Military Retirements and Separations*. It contains guidance for conducting boards of inquiry (BOI). This AFI doesn't apply to Air National Guard units or members when not on active duty. It also doesn't apply to US Air Force Reserve units and members when not on active duty, including individual mobilization augmentees, or other individual reservists administered by Air Reserve Personnel Center. Refer to **Attachment 1** for a glossary.

The Air Force judges the suitability of officers for continued service on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Continued service as an officer is a privilege that the Secretary of the Air Force may end. An officer who fails to meet and maintain performance standards consistent with that officer's grade and experience is subject to having that service ended. The same applies to officers who do not maintain high standards of professional and personal conduct. The Air Force has both the right and the responsibility to identify such officers and to take appropriate administrative action.

This AFI requires the collection and maintenance of records protected by the Privacy Act of 1974. Authorities to collect and maintain the records prescribed in this AFI are Title 10, U.S.C., section 8013, and AFPD 36-32. Privacy Act statements required by AFI 37-132, *Air Force Privacy Act Program* are on the forms used or available to the subject. System of Records Notice F030 AF MP A, *Personnel Data Systems,* applies. Process supplements that affect any military personnel function as shown in AFI 37-160, volume 1, table 3.2, *The Air Force Publications and Forms Management Programs--Developing and Processing Publications*. Major commands (MAJCOM) must submit proposed supplements to this AFI to Headquarters Air Force Military Personnel Center, Retirements and Separations Branch (HQ AFPC/DPPRP), 550 C St W, Suite 11, Randolph AFB TX 78150-4713, for approval before publication.

SUMMARY OF REVISIONS

This change incorporates interim change (IC) 2004-1 (**Attachment 18**). The Air Force Director of Personnel has directed implementation of a new fitness program (AFI 10-248, *Fitness Program*) combining fitness and weight body management programs. Reference to "Weight control failure" is replaced with "Failure in the Fitness Program." See the last attachment of the publication, IC 2004-1, for the complete IC. A bar (|) indicates revision from the previous edition.

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Chapter 1

USING THIS INSTRUCTION

1.1. Show-Cause Authority (SCA). The SCA determines whether the information or evidence presented warrants initiation of discharge action before referring a case to an administrative board under **Chapter 6** or **Chapter 7**, as appropriate. If the SCA determines that the information or evidence does not warrant discharge action, the SCA notifies the officer pending discharge action that the action is terminated. MAJCOM commanders will delegate SCA to wing commanders who are general officers or General Court-Martial Convening Authorities for wings not commanded by a general officer, unless they personally determine that specific delegations cannot be made because of unusual circumstances.

1.2. Staff Judge Advocate (SJA) and Personnel Staffs. The servicing SJA and personnel staffs advise commanders as to whether or not there is sufficient information or evidence to initiate discharge action in accordance with this AFI.

1.3. HQ AFPC/DPPRS. HQ AFPPC/DPPRS advises commanders, SJAs, and SCAs on administrative procedures and requirements. HQ AFPC/DPPRS ensures cases meet the administrative processing requirements according to this AFI before sending them to either:

1.3.1. HQ USAF/JAG.

1.3.2. The Air Force Personnel Council (AFPC).

Chapter 2

DETERMINING WHETHER TO DISCHARGE FOR SUBSTANDARD PERFORMANCE OF DUTY

2.1. Character of Discharge.

2.1.1. When directing an officer's discharge in accordance with this chapter, the Office of the Secretary of the Air Force (OSAF) may direct:

2.1.1.1. A discharge under honorable conditions (general)

2.1.1.2. An honorable discharge

2.2. Identifying Substandard Performance of Duty. Commanders or other cognizant authorities document an officer's substandard performance of duty in any or all of these forms:

2.2.1. Performance reports.

2.2.2. Records of formal counseling.

2.2.3. Admonishments or reprimands.

2.2.4. Training reports.

2.2.5. Operational or technical evaluation reports.

2.2.6. Medical reports.

2.2.7. Statements or memorandums for record (MFR).

2.2.8. Article 15s.

2.3. When Action Is Proper. The SCA initiates a discharge by citing one or more of these paragraphs:

2.3.1. Failure to show acceptable qualities of leadership required of an officer of his or her grade.

2.3.2. Failure to achieve acceptable standards of proficiency required of an officer of his or her grade.

2.3.3. Failure to discharge duties equal to his or her grade and experience.

2.3.4. Substandard performance of duty resulting in an unacceptable record of effectiveness.

2.3.5. A record of marginal service over an extended time as shown by performance reports covering two or more jobs and prepared by at least two different supervisors.

2.3.6. Apathy or defective attitude when the officer is unable or unwilling to expend effort.

2.3.7. Mental disorders that interfere with the officer's performance of duty and don't fall within the purview of the medical disability process. A psychiatrist or a clinical psychologist must conduct an evaluation. The evaluation must confirm any of these diagnoses as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition:

2.3.7.1. Personality disorder.

2.3.7.2. Disruptive behavior disorder.

2.3.7.3. Adjustment disorder.

2.3.7.4. Impulse control disorder.

2.3.7.5. Other disorders, including gender identity disorders as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition, that interfere with performance of duty and don't fall within the purview of the medical disability process. ***NOTE:*** A gender identity disorder may be transsexualism or a gender identity disorder of adolescence or adulthood.

2.3.8. Failure in the Air Force Fitness Program as specified in AFI 10-248, *Fitness Program* (formerly AFIs 40-501 and 40-502). ***NOTE****: Administrative actions commenced on or before 31 Dec 03 may be executed to completion, using this paragraph and separation program designator (SPD) codes BCR and GCR. Officers who have been notified in writing IAW this directive on or after 1 Jan 04 (as specified in AFI 10-248) will be separated using SPD codes BFT and GFT and paragraph 2.3.9.*

2.3.9. Failure to conform to prescribed standards of dress, physical fitness, or personal appearance. The SCA initiates action as specified in **Chapter 3** when he or she determines that the failure is deliberate.

2.3.10. Inability to perform duties or meet military commitments because of family care responsibilities.

2.3.11. Failure to maintain satisfactory progress while in an active status student officer program.

2.4. Recoupment. If an officer being separated for reasons under this chapter received educational assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph **4.32.**for rules regarding recoupment.

Chapter 3

DETERMINING WHETHER TO DISCHARGE FOR MISCONDUCT, MORAL OR PROFESSIONAL DERELICTION, HOMOSEXUAL CONDUCT, OR IN THE INTERESTS OF NATIONAL SECURITY

3.1. Character of Discharge.

3.1.1. When directing an officer's discharge in accordance with this chapter, the Office of the Secretary of the Air Force (OSAF) may direct:

3.1.1.1. A discharge under other than honorable conditions (UOTHC).

3.1.1.2. A discharge under honorable conditions (general).

3.1.1.3. An honorable discharge. ***NOTE:*** The three types of character of discharge are further described in paragraph 1.7 of AFI 36-3207, *Separating Commissioned Officers*.

3.1.2. An honorable discharge is normally appropriate when the basis for discharge pertains solely to precommissioning activities. ***EXCEPTIO*N:** A discharge UOTHC or a discharge under honorable conditions (general) may be appropriate if an officer intentionally misrepresents or omits facts in official statements, records or commissioning documents.

3.1.3. An honorable discharge or a discharge under honorable conditions (general) are the only types of discharges available when homosexual conduct is the sole basis for the discharge with these exceptions:

3.1.3.1. A discharge UOTHC may be directed if there is a finding that an officer attempted, solicited, or committed a homosexual act:

3.1.3.1.1. By using force, coercion, or intimidation.

3.1.3.1.2. With a person under 16 years old.

3.1.3.1.3. With a subordinate in circumstances that violate the military superior and subordinate relationship. ***NOTE:*** The military superior and subordinate don't have to be in the same chain of command.

3.1.3.1.4. Openly in public view.

3.1.3.1.5. For compensation.

3.1.3.1.6. Aboard a military vessel or aircraft.

3.1.3.1.7. In another location subject to military control under aggravating circumstances, noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

3.1.4. In drug or alcohol abuse cases, the SCA or BOI may consider all relevant and admissible evidence on the issue of retention or discharge. However, the SCA or BOI may not consider the following in determining the character of discharge:

3.1.4.1. Evidence that the officer provides voluntarily when seeking treatment and rehabilitation for drug abuse if the officer's actions meet the requirements for self-identification in AFI 36-2701, *Social Actions Program.*

3.1.4.2. Results of mandatory urinalysis testing for controlled substances as part of:

3.1.4.2.1. A command-directed examination as defined in AFI 36-2701.

3.1.4.2.2. A specified member's referral for a medical purpose when the case involves a reasonable suspicion of drug abuse.

3.1.4.2.3. An examination of a specified member participating in a drug treatment and rehabilitation program.

3.1.4.3. Information provided by the officer in response to questions about intoxicated driving offenses if the officer's statements conform with the provisions on screening members as specified in AFI 36-2701.

3.1.4.4. The limitations in paragraphs **3.1.4.2.2.**, and **3.1.4.3.** don't apply to:

3.1.4.4.1. Evidence introduced to impeach or rebut evidence introduced by the officer.

3.1.4.4.2. The results of urinalysis testing in circumstances other than that specifically excluded in the above paragraphs.

3.1.4.5. The SCA consults with the local SJA in deciding how to use urinalysis evidence. ***NOTE:*** If the SCA or BOI considered any of the above and recommended a discharge under honorable conditions (general) or a discharge UOTHC, the SCA or BOI will specify which evidence warranted the less than fully honorable discharge recommendation.

3.1.5. A discharge more severe than the one recommended by a BOI may not be approved.

3.2. Misconduct or Moral or Professional Dereliction. The procedures in this AFI are administrative. Commanders must not use them as a substitute for punitive or disciplinary action under the Uniform Code of Military Justice (UCMJ).

3.2.1. Wing or comparable commanders may take administrative action when evidence of misconduct and moral or professional dereliction raises doubts about an officer's suitability for continued service, regardless of whether the officer has already received judicial or nonjudicial punishment. Disciplinary action should normally be completed prior to initiation of administrative separation action but pending disciplinary action does not preclude initiation of administrative discharge action.

3.2.2. The SCA should not normally initiate action based solely on the same allegation(s) which resulted in an acquittal (or equivalent action) in a military or civilian court. However, a wing commander or other authority may initiate action based on substantive information not available or admitted at trial, or if the court action was terminated for reasons not related to the guilt or innocence of the officer.

3.3. Homosexual Conduct.

3.3.1. Congress has determined that the policy on homosexual conduct in the armed forces is based upon the following findings, which are codified at section 654 of Title 10, United States Code:

3.3.1.1. Section 8 of Article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation for the land and naval forces.

3.3.1.2. There is no constitutional right to serve in the armed forces.

3.3.1.3. Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

3.3.1.4. The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

3.3.1.5. The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

3.3.1.6. Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

3.3.1.7. One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

3.3.1.8. Military life is fundamentally different from civilian life in that (a) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and (b) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

3.3.1.9. The standards of conduct for members of the armed forces regulate a member's life 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

3.3.1.10. Those standards of conduct, including the Uniformed Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

3.3.1.11. The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

3.3.1.12. The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

3.3.1.13. The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service.

3.3.1.14. The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

3.3.1.15. The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

3.3.2. Homosexual conduct is grounds for separation from the military services under the terms set forth in paragraph **3.3.3.**Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. A member's sexual orientation is considered a personal and private matter and is not a bar to continued service unless manifested by homosexual conduct in the manner described in paragraph **3.3.3.**

3.3.3. A member will be separated if one or more of the following approved findings is made:

3.3.3.1. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that the member has demonstrated that all of the following are true:

3.3.3.1.1. Such acts are a departure from the member's usual and customary behavior.

3.3.3.1.2. Such acts under all the circumstances are unlikely to recur.

3.3.3.1.3. Such acts were not accomplished by use of force, coercion, or intimidation.

3.3.3.1.4. Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in proper discipline, good order, and morale.

3.3.3.1.5. The member does not have a propensity or intent to engage in homosexual acts.

3.3.3.2. The member has made a statement that he or she is a homosexual or bisexual or words to that effect, unless there is a further approved finding that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a service member that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether a member has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

3.3.3.2.1. Whether the member has engaged in homosexual acts.

3.3.3.2.2. The member's credibility.

3.3.3.2.3. Testimony from others about the member's past conduct, character, and credibility.

3.3.3.2.4. The nature and circumstances of the member's statement.

3.3.3.2.5. Any other evidence relevant to whether the member is likely to engage in homosexual acts. ***NOTE:*** This list is not exhaustive; any other relevant evidence may also be considered.

3.3.3.3. The member has married or attempted to marry a person known to be the same biological sex (as evidenced by the external anatomy of the person involved).

3.3.4. The member shall bear the burden of proving, throughout the proceeding, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraph **3.3.3.1.**or **3.3.3.2.**

3.3.5. Nothing in this AFI requires a member's discharge when a determination is made by the commander that:

3.3.5.1. The member engaged in acts, made statements, or married or attempted to marry a person known to be the same biological sex for the purpose of avoiding or terminating military service; and

3.3.5.2. Separation of the member would not be in the best interest of the Air Force.

3.3.6. Commanders must refer to the guidelines for fact-finding inquiries into homosexual conduct when determining whether to initiate an inquiry into the alleged homosexual conduct. See **Attachment 2** of this AFI.

3.3.7. If an officer being separated for homosexual conduct received education assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph **4.33.** for rules regarding recoupment.

3.4. Fear of Flying. The Air Force considers professed fear of flying as professional dereliction. The unit commander initiates action on a rated officer suspended from aviation service under paragraph 3.7.1.3 of AFI 11-402, *Aviation and Parachutist Service, Aeronautical Ratings and Badges,* because of professed fear of flying, and who has been found physically qualified for flying duties. The unit commander includes a copy of the suspension from aviation service in the case file.

3.4.1. The BOI may retain a respondent who meets the criteria for discharge for fear of flying only if the respondent has nonflying skills critical to the needs of the Air Force.

3.5. Human Immunodeficiency Virus (HIV) Related Reason.

3.5.1. Officers may be discharged in accordance with paragraph **3.6.11.** when officers don't follow lawfully ordered preventive medicine procedures for individual patients to prevent transmission of HIV infection. However, an officer may not be discharged solely on serologic evidence of HIV infection.

3.5.2. A SCA may not initiate action by using any information that the officer discloses during or as a result of an acquired immune deficiency syndrome (AIDS) epidemiological assessment interview. ***EXCEPTIO*N:** The SCA may take action on evidence first introduced by the officer during proceedings on drug abuse or sexual misconduct or evidence derived independent of the epidemiological assessment interview.

3.6. When Action Is Proper. The SCA initiates action by citing one or more of these paragraphs:

3.6.1. Failure to meet financial obligations.

3.6.2. Intentional or discreditable mismanagement of personal affairs.

3.6.3. Drug abuse as defined in AFI 36-2701. See paragraph **3.1.4.**

3.6.4. Serious or recurring misconduct punishable by military or civilian authorities.

3.6.5. Intentional neglect or intentional failure to either perform assigned duties or complete required training (including failure in any government-funded educational or training program due to personal negligence or factors within the officer's control).

3.6.6. Misconduct resulting in the loss of professional status necessary to performance of military duties.

3.6.7. Intentionally misrepresenting or omitting facts in official statements, records, or commissioning documents.

3.6.8. Homosexual Conduct. See paragraph **3.3.**

3.6.9. Sexual perversion, including lewd and lascivious acts, sodomy not of a homosexual nature, indecent acts with a child, or any other indecent acts or offenses.

3.6.10. Sexual deviation, including transvestitism, exhibitionism, voyeurism, and others as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition.

3.6.11. Professed fear of flying. See paragraph **3.4.**

3.6.12. Retention is not clearly consistent with the interests of national security. ***NOT*E:** The SCA initiates action only after ensuring required actions under AFI 31-501, *Personnel Security Program Management have been completed.*

3.6.13. When the officer doesn't follow lawfully ordered preventive medical procedures to prevent transmission of HIV infection. See paragraph **3.5.**

3.6.14. An officer who is sentenced by a court-martial to a period of confinement for more than six months and not sentenced to a dismissal may be separated at any time after the sentence to confinement has become final and the person has served in confinement for a period of six months. Officers sentenced to a dismissal cannot be separated until the appellate review of his or her case is final as announced by AFLSA/JAJR.

3.7. Recoupment. If an officer being separated for reasons under this chapter received education assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph 4.37. for rules regarding recoupment.

Chapter 4

COMMANDERS AND SHOW-CAUSE AUTHORITIES

Section 4A—General Guidance

4.1. Reinitiating Actions. When a show-cause authority, a board of officers, or the SAF retains an officer on active duty, the SCA may:

4.1.1. Reinitiate discharge action only on the basis of new information that again shows the officer may be subject to administrative discharge.

4.1.2. Consider the file, including correspondence and documents from the previous action when reinitiating discharge action.

4.2. Limitations on Reinitiating. The SCA:

4.2.1. Must wait 1 year beginning on the date that a board of inquiry (BOI) or board of review (BOR) retains an officer before reinitiating action for the same reasons under **Chapter 2**.

4.2.2. May reinitiate action under **Chapter 3** at any time but not for the same conduct that was the subject of the previous BOI or BOR proceeding unless the previous board findings and recommendations resulted from fraud or collusion.

4.3. Reassigning Officers. The unit commander submits a request for an officer's reassignment to HQ AFPC or HQ USAF assignments office when the officer is assigned to activities not under a SCA. ***NOTE:*** The reassignment places the officer under the jurisdiction of a SCA before a unit commander may recommend initiation of discharge action. ***EXCEPTION***: Reassignment isn't necessary when a host tenant agreement exists which gives discharge authority over tenant officers to the host SCA.

4.3.1. SCAs don't reassign an officer to the jurisdiction of another SCA until the action ends except as authorized by HQ AFPC/DPPRS, when circumstances warrant reassignment.

4.3.2. The Military Personnel Flight (MPF) notifies HQ AFPC/DPPRS and the appropriate assignments office at HQ AFPC or HQ USAF upon receiving reassignment instructions for an officer pending discharge action. The MPF takes no further action to reassign the officer until HQ AFPC provides additional instructions.

4.3.3. SCAs don't reassign officers to a hospital for Physical Evaluation Board action when they are undergoing medical disability processing. See AFI 41-120, *Medical Resource Management Operations* for assignment status while undergoing disability processing.

4.3.4. The MPF enters the assignment availability code 21 in the personnel data system (PDS) to show unavailability for reassignment.

4.3.5. SCAs may reassign officers when a SCA terminates or withdraws the action, or a board of officers, or the SAF retains the officer.

4.4. Aviation Service Code. The MPF tells the Flight Management Office to enter the aviation service code 04 in the PDS when the unit commander suspends a rated officer from aviation service because of discharge action under this AFI.

4.5. Separation Under Normal Conditions.

4.5.1. The SAF normally won't approve an officer's separation request submitted under AFI 36-3207, *Separating Commissioned Officers*, chapter 2, section A, when the officer is pending discharge action under this AFI.

4.5.2. When officers have an established date of separation (DOS), MAJCOMs send the case file to HQ AFPC/DPPRP for appropriate action no later than 30 calendar days before the officer's DOS.

4.6. Processing Pending Cases. MPFs continue processing cases under the regulation or instruction in effect at the time the commander initiates the discharge action.

4.7. Authority for Discharge. The authority for officer administrative discharges is vested in the Secretary of the Air Force (SAF)or his or her designee.

4.7.1. MPFs cite AFI 36-3207 in the discharge documents as the authority for discharge.

4.8. Excess Leave. The SCA may grant an officer's request for excess leave if the Air Force no longer requires the officer's presence to process the discharge case. AFI 36-3003, *Military Leave Program,* governs excess leave. Officers will be advised in writing that they may request excess leave at any time after the SCA forwards the case to HQ AFPC/DPPRS.

4.9. Waivers or Exceptions. The SAF may authorize waivers or exceptions to this AFI.

4.10. Sensitive Compartmented Information (SCI), Single Integrated Operational Plan -Extremely Sensitive Information (SIOP-ESI), or Other Special Access Programs, and Personnel Reliability Program (PRP).

4.10.1. Unit commanders must comply with AFI 31-501, *Personnel Security Program Management,* when recommending action under this AFI on an officer who has, or once had, access to SCI, SIOP-ESI, or other special access programs.

4.10.2. Unit commanders must comply with AFI 36-2104, *Nuclear Weapons Personnel Reliability*, to decertify officers under the PRP prior to their discharge.

4.11. Effecting Discharge. MPFs normally discharge officers as soon as possible but no later than 10 calendar days (20 calendar days if the officer is returning from overseas) from the date that the MPFs receive separation instructions from HQ AFPC/DPPRS.

4.11.1. The MPFs tell the officer of the discharge directed by the SAF.

4.11.2. MPFs separate an officer who is enlisting to retire in enlisted status 3 calendar days before the end of the month.

Section 4B—Commanders

4.12. Evaluating Officers of Other Services. Unit commanders evaluate cases that involve officers of other services who are serving with the Air Force. Commanders review these cases by Air Force standards and send their recommendation for appropriate action directly to the SCA .

4.12.1. The SCA sends the case with appropriate recommendation to HQ AFPC/DPPRS for referral to the officer's service.

4.13. Documenting Cases.

4.13.1. Office of Special Investigations (OSI) Reports or Reports Furnished Through OSI Channels and Investigative Reports or Documents from Other Agencies. See AFI 90-301, *Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information From AFOSI Investigative,* for safeguarding, handling, and releasing information *Reports*. AFI 90-301 also explains the procedures for handling investigative reports from other agencies. When using OSI reports or investigative reports from other agencies:

4.13.1.1. The legal office prepares a releasable summary or extract using the guidelines in AFI 90-301.

4.13.1.2. The legal office refers the summary or extract to the originating agency or higher authority for release approval.

4.13.1.3. The legal office doesn't make OSI reports or privileged investigative documents part of a documented case or release them to the officer, officer's counsel, or to any board considering a case under this AFI.

4.13.1.4. MPFs may include the OSI reports and investigative reports from other agencies when sending the case to the SCA.

4.13.1.5. The SCA returns the investigative reports through channels to the military organization that submitted them after receiving the final decision.

4.13.1.6. Military organizations dispose of the investigative reports or documents according to AFI 37-138, *Records Disposition--Procedures and Responsibilities.*

4.13.2. Records of Non-judicial Punishment. Unit commanders include the official record of nonjudicial punishment in the case file as documentary evidence. Include any available written evidence that supported the nonjudicial punishment action.

4.13.3. Medical Reports. Follow the guidance in AFI 41-103 when using and releasing medical data.

4.13.4. Records Withheld in the Interest of National Security. The legal office, MPFs, or SCAs may not give an officer undergoing discharge proceedings under this AFI copies of records withheld under AFI 31-601. ***NOTE*:** The officer may obtain a summary of the withheld records from the legal office.

4.13.5. Questions about Withholding Records. MPFs direct questions to the SCA about records withheld under AFI 31-601.

4.14. Unit Commander's Responsibilities:

4.14.1. Evaluating Information. Consult with the SJA and the MPF before deciding to proceed with disciplinary or administrative discharge action when reviewing information that involves violations under the UCMJ. Administrative separation action is not a substitute for disciplinary action.

4.14.2. Documenting a Case. Ensure that the appropriate military authorities:

4.14.2.1. Complete all inquiries and investigations.

4.14.2.2. Consult with the SJA, inform the OSI of all suspected offenses, and request that the OSI investigate the allegations. Refer to the guidelines for fact-finding inquiries into homosexual conduct when determining whether to initiate an inquiry into alleged homosexual conduct (**Attachment 2**).

4.14.2.3. Substantiate all the facts in the case.

4.14.2.4. Compile and tab the documentation, including unclassified summaries of OSI reports and investigative reports furnished or prepared by other agencies.

4.14.2.5. Comply with AFI 31-501 when the officers have, or once had, access to SCI, SIOP-ESI, or other special access programs.

4.14.3. Taking Action When Other Action Is Ongoing. Commanders should not delay evaluating information or recommending action under this AFI after taking other action (for example, promotion propriety action or action to terminate clinical privileges).

4.15. Show-Cause Authority (SCA) Responsibilities. The SCA may return a case to the unit commander for further investigation or documentation without terminating the case. The SCA:

4.15.1. Reviews the discharge action against an officer within his or her command.

4.15.2. Evaluates all information presented concerning the case.

4.15.3. Ensures the SJA completes a legal review and includes it in the case file, but not as an attachment to the show cause notification memorandum.

4.15.4. Determines whether the record is sufficient to convene a BOI or forward the case to the Air Force Personnel Board (AFPB).

4.15.5. Terminates the case when determining that a discharge isn't warranted on the basis of the evidence.

4.15.6. Determines whether to recommend the officer for discharge.

4.16. Determinations by the SCA. The SCA reviews the entire case and makes one of the following determinations:

4.16.1. Retain the officer on active duty either because:

4.16.1.1. The officer's duty performance meets the standards prescribed for an officer of his or her grade and experience.

4.16.1.2. The evidence is not sufficient to substantiate the allegations or the allegations are not serious enough to require the officer to show cause for retention on active duty.

4.16.2. Initiate separation of the officer from active duty if:

4.16.2.1. The evidence is sufficient to substantiate the allegations and the allegations are serious enough to warrant the officer’s separation.

4.16.2.2. The officer's duty performance is below the standards prescribed for an officer of his or her grade and experience.

4.17. Initiating Action:

4.17.1. The SCA makes certain the requirements of AFI 31-501 have been met in initiating action on officers who have, or once had, access to SCI, SIOP-ESI, or other special access programs. Compliance with AFI 31-501 should be indicated in the show cause notification memorandum.

4.17.2. The SCA may initiate action when a promotion selection board identifies officers with records showing that they are subject to action under this AFI.

4.17.3. When the OSAF decides to hold disability processing in abeyance and the SCA initiates discharge action:

4.17.3.1. The MPF sends a message with specific details to HQ AFPC/DPPD and HQ AFPC/DPPRS.

4.17.3.2. The OSAF determines and directs final disposition of the dual disability and administrative discharge actions.

4.18. How Action Is Initiated:

4.18.1. Process a fear of flying case under AFI 11-402. Unit commanders ensure that medical authorities have found the officer physically qualified for flying duties before recommending action under this AFI.

4.18.2. Process a case involving violations of national security under AFI 31-501 before initiating action under this AFI.

4.18.3. Notifying Officer. The SCA personally signs the notification memorandum (**Attachment 4**). The officer acknowledges the notification memorandum upon receiving it.

4.18.3.1. The office preparing the notification memorandum sends copies to:

4.18.3.1.1. HQ AFPC/DPPRS.

4.18.3.1.2. The MPF for file in the officer's UPRG.

4.18.3.2. When the SCA initiates action based on information received from a promotion selection board, the SCA sends copies of the notification memorandum to:

4.18.3.2.1. The officer's commander .

4.18.3.2.2. The officer's MPF.

4.18.3.2.3. HQ AFPC/DPPRS.

4.18.4. Counseling Officer. If the officer doesn’t contact the area defense counsel or declines counsel, the chief, personnel division, or the MPF commander, counsels the officer on these points:

4.18.4.1. The officer's eligibility for separation pay, readjustment pay, or severance pay.

4.18.4.2. The least favorable character of discharge that may be directed when accepting the officer's resignation (officers may submit a resignation after show cause notification and prior to the convening of a BOI).

4.18.4.3. The least favorable character of discharge that the BOI may recommend when the officer doesn't submit a resignation.

4.18.4.4. Recoupment of education assistance, special pay, or bonuses. See paragraph **4.32.**

4.19. Physical Qualification for Separation. The unit commander tells the medical treatment facility of the possibility of action against the officer and provides necessary information. A commander may refer an officer for mental health evaluation to determine the existence of mental disorders interfering with duty performance only in accordance with AFI 44-109, *Mental Health and Military Law*.

4.19.1. The MPF schedules the officer for a medical examination under AFI 48-123, *Medical Examination and Standards*.

4.19.2. The medical officer decides whether the officer has any mental or physical disability that warrants action under AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*) or AFI 48-123. The medical officer documents the findings in accordance with AFI 48-123.

4.19.2.1. The medical treatment facility sends the MPFs a completed AF Form 422, **Physical Profile Serial Report**.

4.19.2.2. Officers who return to duty after an initial HIV positive test evaluation at Wilford Hall Medical Center, Lackland AFB TX doesn't require a medical examination if the SAF directs their discharge before the scheduled annual physical. Don't process these officers as dual-action unless the individual's condition deteriorates. If there is doubt about the individual's qualification for continued service or nondisability separation, paragraph **4.19.4.** applies.

4.19.2.3. When the officer shows evidence of mental illness, the medical officer attaches an evaluation by a psychiatrist or psychologist to the AF Form 422. The psychiatrist or psychologist prepares an evaluation based on available information if the officer won't agree to an examination. The evaluation must include:

4.19.2.3.1. A concise description of the officer's mental status.

4.19.2.3.2. A statement whether the officer, at the time of any misconduct, had a severe mental disease or defect which made the officer unable to appreciate the nature and quality or wrongfullness of his or her acts.

4.19.2.3.3. A statement whether the officer presently has a mental disease or defect rendering the officer unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case.

4.19.3. The unit commander includes a copy of AF Form 422 when sending the case file to HQ AFPC/DPPRS.

4.19.4. Except as specified in paragraph **4.23.**, the MPFs may not hold actions under this AFI or requests for separation in abeyance when an officer undergoes a medical or disability evaluation.

4.19.4.1. The unit commander notifies HQ AFPC/DPPRS when the officer is undergoing a medical or disability evaluation.

Section 4C—MAJCOM Show-Cause Authority

4.20. Advising the Officer. The applicable show cause notification memorandum tells the officer of his or her rights and options. See **Attachment 4**.

4.21. Withdrawing a Case. After reviewing additional evidence or facts, the SCA may withdraw a case at any time before a BOI convenes when the SCA determines that the evidence doesn't substantiate the allegations or that the allegations aren't serious enough to warrant a discharge.

4.21.1. The SCA may also withdraw a case processed under **Chapter 6** before HQ AFPC sends the case to the OSAF.

4.21.2. When the SCA withdraws a case, he or she notifies the officer in writing with an explanation for the decision. The SCA must send a copy of the memorandum to HQ AFPC/DPPRS.

4.22. Delegating Administrative Actions. Excluding the administrative actions in paragraphs **4.22.1.** through **4.22.4.** which may be delegated (but are not required to be delegated), the SCA personally undertakes the review and signatory requirements of this AFI unless the SCA directs a vice-commander (who is a general officer) to fulfill these requirements. A SCA vice-commander (who is a general officer) may fulfill the requirements in the absence of the SCA.

4.22.1. The SCA's personnel division chief or mission support squadron commander may approve an officer's request for more time to prepare a response to the action initiated. They may disapprove a request after determining that denying the request doesn't compromise the officer's rights. When the length of time requested is determined to be unreasonable, a shorter delay may be approved.

4.22.2. The SCA's personnel division chief or mission support squadron commander:

4.22.2.1. Refers the case of a probationary officer to the AFPB when the SCA recommends a discharge characterization of an honorable or under honorable conditions (general).

4.22.2.2. Refers additional information to the AFPB when the SCA receives the information after the case is referred to the AFPB.

4.22.3. The SCA's personnel division chief or mission support squadron commander:

4.22.3.1. Appoints the BOI membership.

4.22.3.2. Refers a case to the BOI when directed by the SCA.

4.22.3.3. Sends the BOI case to HQ AFPC/DPPRS.

4.22.4. The SCA may direct the personnel division chief or mission support squadron commander to reconvene a BOI based on new or additional evidence received by the SCA before sending the BOI report to HQ AFPC/DPPRS.

4.22.5. If the SCA receives additional evidence after sending the BOI case to HQ AFPC/DPPRS, the personnel division chief or mission support squadron commander sends HQ AFPC/DPPRS the evidence with a SCA recommendation whether to reconvene a BOI. ***NOTE:*** SCAs may, at their option, use their SJA offices instead of their personnel staffs to perform the functions in paragraphs **4.22.1.** through **4.22.5.**

4.23. Holding Actions in Abeyance. The following applies when an officer is undergoing medical or disability evaluation and has ongoing actions under this AFI.

4.23.1. HQ AFPC/DPPRS and HQ AFPC/DPPD must closely monitor the ongoing actions, including actions pending under AFI 36-3207.

4.23.2. The SCA continues processing actions under this AFI or AFI 36-3207 but will hold in abeyance referring a case to the AFPB through HQ AFPC/DPPRS or convening a BOI until advised by HQ AFPC/DPPRS that it can do so.

4.23.3. HQ AFPC/DPPRS advises the SCA to continue with the action held in abeyance when the medical evaluation board (MEB) finds the officer physically qualified for continued service. The MEB refers a case to the Air Force Disability Evaluation System when it finds the officer isn't physically qualified for continued service.

4.23.4. When receiving a disability case, HQ AFPC/DPPD tells HQ AFPC/DPPRS and processes the disability case and any pending action under this AFI or AFI 36-3207 to the Secretary of the Air Force Personnel Council (SAFPC) for a determination of the disposition of the discharge action and disability case.

4.23.5. If the disability action is terminated or the officer is found physically qualified for continued service, HQ AFPC/DPPRS tells the SCA to continue processing actions held in abeyance under paragraph **4.23.2.**

4.24. Requests for Delay in Responding to the Show Cause Notification Memorandum.

4.24.1. Officers must send a request for delay in responding to the SCA, or his or her designee, within 10 calendar days after receiving the show cause notification memorandum. The request must explain why more time is needed to respond to the action. When the length of time requested is determined to be unreasonable, a shorter delay may be approved.

4.24.2. The SCA, or his or her designee notifies the officer of the decision within 10 calendar days of receiving the officer's request, and sends a copy of the response to HQ AFPC/DPPRS. The SCA or his or her designee grants a delay when determining that denying the requests would compromise the officer's rights. ***NOTE:*** Give the reasons when denying a requested delay.

4.25. Processing Request for Resignations and Retirement Applications.

4.25.1. The SCA sends the retirement application indorsed by the SCA to HQ AFPC/DPPRS within 10 calendar days after receiving it. The SCA includes:

4.25.1.1. The show cause notification memorandum.

4.25.1.2. All supporting documents.

4.25.1.3. The officer's response (if any).

4.25.2. The SCA sends the indorsed resignation to the MAJCOM/CC (or MAJCOM/CV, if delegated). The indorsement should include the SCA notification memorandum, all supporting documents, and the officer's response (if any). The SCA recommends the character of discharge when the basis for the action initiated doesn't restrict the character of discharge to honorable.

4.25.2.1. The show cause notification memorandum.

4.25.2.2. All supporting documents.

4.25.2.3. The officer's response (if any).

4.25.3. If the MAJCOM/CC recommends approval of the resignation he of she indorses the resignation and forwards it to the HQ AFPC/DPPRS. The MAJCOM/CC may disapprove the resignation.

EXCEPTION: If the SCA for the case is at the MAJCOM level, then the MAJCOM/CC may not disapprove the resignation and forwards a recommendation for disapproval to HQ AFPC/DPPRS.

4.26. Notifying HQ AFPC. The SCA sends a copy of the show cause notification memorandum HQ AFPC/DPPRS, 550 C Street West, Ste 11, Randolph AFB TX 78150-4713.

4.27. Amending the Show Cause Notification Memorandum. The SCA may amend the Show Cause notification memorandum before sending a case to the AFPB through HQ AFPC/DPPRS or referring a case to a BOI.

4.27.1. When amending the notification memorandum, the SCA will give the officer the reasons for amending the action memorandum, enclose a copy of the SCA memorandum amending the show cause notification memorandum, and allow the officer 10 calendar days to prepare a response.

4.27.2. If the SCA receives additional information after referring the case to a sitting BOI the SCA should forward the information to the recorder for submission to the BOI. If the SCA receives additional information after referring the case to the AFPB then the SCA should forward the information to the AFPB for consideration.

4.28. Referring Case to a Board of Officers. The SCA must refer a nonprobationary officer's case to a BOI as specified in **Chapter 7**. The SCA may refer a probationary officer's case to:

4.28.1. The Air Force Personnel Board (AFPB) when recommending an honorable discharge or under honorable conditions (general) (see **Chapter 6**) and the basis for the discharge doesn't include homosexual conduct.

4.28.2. A BOI whenever the SCA determines it would be otherwise appropriate.

4.28.3. The SCA must refer a probationary officer's case to:

4.28.3.1. A BOI when the SCA recommends an UOTHC discharge or when the basis for the action initiated includes homosexual conduct (see **Chapter 7**).

4.29. Rights of the Officer Entitled to a BOI. **Chapter 7** explains the rights of an officer entitled to a hearing before a BOI.

4.30. Voluntary Retirement. An officer may, at any time before the SAF decides his or her administrative discharge case, apply for retirement when eligible under AFI 36-3203, *Service Retirements.*

4.31. Processing Time Guidelines. Each level of command and headquarters processes cases as efficiently as possible while protecting the officer's rights throughout the administrative discharge process. Case processing begins on the date that the officer receives the SCA's notification memorandum. Use express mail or overnight delivery to reduce mail time. **NOTE**: The availability of counsel, BOI report transcribing capability, the need for referral to the Air Force Physical Disability System, or other local circumstances may affect case processing. Additionally, officers eligible for transition assistance program benefits may elect to take excess leave or permissive TDY for relocation/transition activities. (Commanders are not required to authorize either if doing so would interfere with the military mission). See AFI 36-3022, *Transition Assistance Program*, for transition assistance benefit eligibility requirements and AFI 36-3003, *Military Leave Program*, for excess leave and permissive TDY eligibility requirements.

4.32. Recoupment of Education Assistance, Special Pay, or Bonuses.

4.32.1. Recoupment Requirements. The Air Force normally requires recoupment of a portion of education assistance, special pay, or bonus money received when officers separate before completing the period of active duty they agreed to serve. Special rules, however, apply to homosexual conduct; see paragraph **4.33.**

4.32.1.1. Education assistance includes such programs as:

4.32.1.1.1. Service academy.

4.32.1.1.2. Armed forces health profession scholarship program.

4.32.1.1.3. Uniformed Services University of the Health Sciences.

4.32.1.1.4. ROTC college scholarship program.

4.32.1.1.5. Tuition assistance.

4.32.1.1.6. Minuteman education program.

4.32.1.1.7. Air Force Institute of Technology.

4.32.1.2. The recoupment in all cases will be an amount that bears the same ratio to the total amount or cost provided the officers as the unserved portion of active duty bears to the total period of active duty they agreed to serve.

4.32.2. Basis for Recoupment.

4.32.2.1. If the SAF directs involuntary separation for any reason in **Chapter 2** or **Chapter 3**, the officer is subject to recoupment of a portion of education assistance, special pay or bonus money received.

4.32.3. Dispute of Education Assistance Debt. When a member who is subject to recoupment of educational assistance disputes that debt, the SCA will appoint an officer (or a civilian employee) to conduct an inquiry into the facts and hear evidence presented by the member and other parties as appropriate, to determine the validity of the debt. If the case involves a BOI, that board will conduct the inquiry. The SCA will forward the report of inquiry, together with his/her recommendation concerning recoupment, with the case to the SAF for decision. See **Attachment 4** for required notification to officer.

4.33. Special Rules for Recoupment in Homosexual Conduct Cases. Where the applicable statute, regulation or agreement authorizes recoupment when the separation is "voluntary" or because of "misconduct," the following rules apply.

4.33.1. A separation for homosexual conduct is voluntary when the member made the homosexual statement; committed, attempted or solicited the homosexual act; or entered or attempted to enter the homosexual marriage for the purpose of seeking separation. Circumstantial evidence must be considered in determining the member's intent.

4.33.2. Homosexual conduct is misconduct if:

4.33.2.1. An under other than honorable conditions (UOTHC) discharge is authorized, whether or not the member is actually discharged under other than honorable conditions.

4.33.2.2. The homosexual conduct is punishable under the UCMJ (provisions governing sexual conduct), whether or not the member is punished under the UCMJ.

4.33.3. The discharge board, or the show cause authority if the member waives the board, must make specific written findings as to whether the member is subject to recoupment for one or more of the reasons in **4.33.1.** or **4.33.2.** Specific findings are required even if the respondent does not raise this issue as a "dispute" under paragraph **4.32.3.** above.

4.33.4. If an inquiry officer is appointed, he or she shall make specific written findings as to whether the prospective separation is voluntary or because of misconduct as described above.

Chapter 5

PROBATIONARY OFFICER DISCHARGE BOARD (PODB)

5.1. DELETED .

Chapter 6

AIR FORCE PERSONNEL BOARD (AFPB)

6.1. Purpose . The Air Force Personnel Board (AFPB) reviews officer discharge cases and makes recommendations to OSAF or designee when:

6.1.1. A BOI recommends discharge in accordance with the procedures of **Chapter 7**.

6.1.2. The SCA recommends the separation of a probationary officer. (NOTE. The SCA forwards the original and one copy of the case file to HQ AFPC/DPPRS who refers the discharge case to the AFPB through HQ USAF/JAG.)

6.1.3. An officer submits a resignation instead of undergoing further administrative discharge proceedings or a resignation for the good of the service.

6.2. Membership. The AFPB will be convened from officers assigned to the Secretary of the Air Force Personnel Council.

6.3. Functions and Duties. The AFPB is an administrative board and thus not subject to the rules and procedures governing civilian or military courts. AFI 51-602 does not apply to AFPB proceedings. The AFPB considers all information presented to it and determines whether to retain the respondent in the Air Force. It makes recommendations to the OSAF when it determines that the respondent should not be retained or when circumstances of the case require such consideration.

6.4. Appearance of Probationary Officers before the AFPB. Probationary officers or their counsel may appear before the AFPB only if the AFPB decides that it needs the officer's testimony to evaluate the case. If the AFPB invites an officer to testify, the officer may have his or her counsel attend the AFPB proceedings.

6.5. AFPB Recommendations on Probationary Officer Cases Not Involving a BOI. The Board considers these options when making recommendations.

6.5.1. Probationary Officers. The administrative discharge action of a probationary officer ends when the AFPB decides to retain an officer on active duty. If the case involves approved findings of homosexual conduct, the Board will make specific findings of the reasons that may warrant retention in accordance with paragraph **3.3.3.1.** or **3.3.3.2.** When deciding not to retain a probationary officer on active duty, the AFPB:

6.5.2. Recommends an honorable discharge if the basis for the discharge action is under **Chapter 3** solely for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.5.3. Recommends an honorable discharge or a discharge under honorable conditions (general) if the basis for the discharge action is under **Chapter 2** or **Chapter 3**, except for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.5.4. Recommends returning the case to the SCA for action under **Chapter 7** if the board concludes that the case warrants a BOI hearing.

6.5.5. Recommends the proper action to the Office of the Secretary of the Air Force (OSAF) if the board determines that unusual circumstances warrant different procedures.

6.5.6. Recommends acceptance or rejection of a resignation instead of undergoing further administrative discharge proceedings or a resignation for the good of the service.

6.5.7. The AFPB sends the case to the OSAF for final action.

6.6. Action on AFPB Probationary Officer Non-BOI Recommendations.

6.6.1. Board Determines Officer Should Be Retained. HQ AFPC/DPPRS advises the officer through the SCA that the AFPB determination ends the discharge action initiated in accordance with this AFI. The SCA may reassign the officer.

6.6.2. Board Recommends Referral to a BOI. HQ AFPC/DPPRS returns the case to the SCA for action under **Chapter 7**.

6.6.3. Board recommends acceptance or rejection of a resignation instead of undergoing further administrative discharge proceedings or resignation for the good of the service. The Board sends the case to the OSAF.

6.6.4. Board recommends removal from active duty, discharge, or other action. The board sends the case to the OSAF.

6.6.5. Recoupment. If the AFPB makes a finding that the respondent engaged in homosexual conduct that constitutes a basis for recoupment, the AFPB must make a specific written recommendation whether recoupment should be effected. See paragraph **4.32.** for special rules regarding recoupment**.**

6.7. Final Action of the SAF on Non-BOI Cases. The decision of the SAF or his or her designee is final.

6.7.1. When Officer Is Retained. The SAF decision ends the discharge action in accordance with this AFI. The SCA may reassign the officer.

6.7.2. When Officer Is Not Retained. HQ AFPC/DPPRS issues instructions to discharge the officer as soon as possible but no later than 10 (20, if serving overseas) calendar days from receipt of instructions. Discharge authority is AFI 36-3207.

6.7.2.1. The SAF directs an honorable discharge if the basis for the discharge action is under **Chapter 3** solely for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.7.2.2. The SAF may direct an honorable discharge or a discharge under honorable conditions (general) when the basis for the discharge action is under **Chapter 2** or **Chapter 3**, except for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.7.3. When Other Action Is Directed. HQ AFPC/DPPRS issues instructions for any other actions directed by the SAF.

6.8. Referring a BOI Case to the AFPB. HQ AFPC/DPPRS sends a BOI case to HQ USAF/JAG within 5 calendar days after receiving it. The case consists of the transcribed BOI record with exhibits and any additional information submitted by the respondent.

6.8.1. After completing its legal review, HQ USAF/JAG sends the BOI case to the SAFPC for referral to the AFPB.

6.8.2. Neither the respondent nor the respondent's counsel may appear before the AFPB unless it decides that personal testimony is essential in evaluating the case. If the AFPB invites the respondent to appear, the respondent's counsel may be present only when the respondent testifies.

6.9. AFPB Recommendations on BOI Cases. The Board considers these options when making recommendations:

6.9.1. Retention. The Board recommends retention when it determines that the respondent should be retained on active duty. If the case involves approved findings of homosexual conduct, the Board will make specific findings of the reasons that may warrant retention in accordance with paragraph **3.3.3.1.**or **3.3.3.2.** When deciding not to retain a probationary officer on active duty, the AFPB:

6.9.2. Respondent Not Eligible to Retire. When the AFPB determines that the respondent should not be retained on active duty, it recommends removing the respondent from active duty if the respondent is a regular officer or recommends discharge if the respondent is a reserve officer. When the AFPB recommends removal from active duty or discharge, it also recommends an honorable discharge or under honorable conditions (general) if the basis for discharge falls solely under **Chapter 2** or an honorable discharge if the basis for discharge falls solely under **Chapter 3** for precommissioning activities not involving intentional misrepresentation or omission of facts in official documents. In all other cases with a basis for discharge under **Chapter 3**, the AFPB may recommend an honorable discharge, a discharge under honorable conditions (general) or a discharge UOTHC.

6.9.3. Respondent is a Regular officer and Eligible to Retire. When the AFPB determines that the respondent should not be retained on active duty, it recommends removal from active duty and retirement.

6.9.4. Respondent is a Reserve Officer and Eligible to Retire. When the AFPB determines that the respondent should not be retained on active duty and the officer applied for voluntary retirement, it recommends retirement. If the respondent hasn't applied for voluntary retirement, the AFPB recommends discharge and the character of discharge (see paragraph **6.9.2.**).

6.9.5. Other Action Recommended. If the AFPB determines that unusual circumstances warrant some other type of action, it recommends the action to the SAF.

6.9.6. Recoupment. If the AFPB makes a finding that the respondent engaged in homosexual conduct that constitutes a basis for recoupment, the AFPB must make a specific written recommendation whether recoupment should be effected. See paragraph **4.32.** for special rules regarding recoupment**.**

6.10. Action on AFPB Recommendation. When the AFPB recommends retaining the respondent, HQ AFPC/DPPRS advises the respondent, through the SCA, that the AFPB's determination ends the action. If appropriate, the SCA may reassign the officer.

6.10.1. When the AFPB recommends removal from active duty, discharge, or other action, the AFPB sends the case to the SAF.

6.11. Final Action of the Secretary of the Air Force. The decision of the SAF or designee is final.

6.11.1. When Officer Is Retained. HQ AFPC/DPPRS advises the respondent, through the SCA, that the SAF's decision terminates the action initiated under this AFI. If appropriate, the SAF may reassign the officer.

6.11.2. When An Officer Is Not Retained and Is Not Eligible to Retire. HQ AFPC/DPPRS issues instructions to effect the discharge of an officer not eligible to retire. Authority for discharge is AFI 36-3207.

6.11.3. When An Officer Is Not Retained and Is Eligible To Retire. HQ AFPC/DPPRS effects the retirement of a Regular officer when the officer is eligible, but has not applied, for retirement. When a Reserve officer is eligible to retire but has not applied for retirement, HQ AFPC/DPPRS issues instructions to effect his or her discharge under AFI 36-3207.

6.11.4. When Other Action Is Directed. HQ AFPC/DPPRS issues instructions when the SAF or designee directs some other action.

6.12. Respondent's Copy of the AFPB Proceedings. Respondents may request a copy of unclassified BOR proceedings, by writing to the National Personnel Records Center (NPRC), 9700 Page Blvd, St Louis, MO 63132-6100.

Chapter 7

BOARD OF INQUIRY (BOI)

Section 7A—Pre-BOI Administrative Functions

7.1. Purpose. The BOI gives respondents who face discharge proceedings a fair and impartial hearing, makes case findings, and recommends whether the Air Force should retain or discharge officers. ***NOTE:*** "Respondent" refers to an officer who appears before a BOI.

7.2. Referring Case to BOI. The SCA refers the documented case to the BOI by letter addressed "TO: Board of Inquiry Appointed by (paragraph, special order number, headquarters, date). ATTN: Recorder." The SCA and the recorder may communicate directly with each other on matters relevantto cases and board procedures.

7.3. Officer's Rights When Notified to Show Cause for Retention.

7.3.1. Written Notification. The SCA must send the officer written notification at least 30 days before the BOI hearing. The notification will explain why the SCA is requiring the officer to show cause for retention on active duty and the least favorable characterization of discharge authorized. Written notification should normally be served on the respondent by the unit commander or another officer designated to make service. If the officer is unavailable for personal service of notification (ie: in civil confinement) notification will be made by registered mail or certified mail, return receipt (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the officer's last known address or to the next of kin.

7.3.2. Delay to Prepare. See paragraph **7.11.**

7.3.3. Personal Appearance or Representation Before a BOI. The respondent may appear in person at all open proceedings of the BOI. Nonresponse to the notification letter may be construed as the respondent's voluntary election not to appear before the Board. Either military counsel appointed according to AFI 61-201, *Military Justice Guide*, or military counsel of the respondent's own choice, if requested and approved according to AFI 61-201, may represent the respondent, but not both. The respondent may be represented by civilian counsel, retained at his or her own expense, in addition to or instead of military counsel.

7.3.3.1. The military counsel must have the same qualifications as the recorder under Article 27(b)(1), UCMJ. ***NOTE:*** The respondent may waive this requirement.

7.3.3.2. Either military or civilian counsel may represent a respondent who can't attend the hearing or waives the right to appear.

7.3.3.3. The chief circuit defense counsel appoints a military lawyer to represent the officer who doesn't appear or isn't otherwise represented by counsel at the BOI hearing. The chief circuit defense counsel doesn't have to appoint a military counsel if the officer employs civilian counsel at no expense to the Government.

7.3.4. Access to Relevant Records. The SCA gives officers copies of records considered relevant to his or her case on request. This requires strict compliance with paragraph **4.13.**

7.3.5. Witnesses. The respondents may request that the board invite any witness whose testimony bears on his or her case. A respondent may personally arrange the appearances of witnesses or ask the BOI recorder to contact the witnesses (see paragraph **7.12.**).

7.3.6. Documents. A respondent may submit documents relevant to his or her case (for example, record of service, letters, responses, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations) before the BOI convenes or during the hearing.

7.3.7. Testifying. The legal advisor will advise the respondent of the provisions of Article 31, UCMJ (10 U.S.C. 831). The respondent may testify, but is not required to do so. If a respondent wants to make a statement under oath, he or she is sworn in and will be subject to examination by the recorder and the board. If a respondent doesn't want to make a sworn statement, he or she or may make an oral or written unsworn statement, personally or through counsel, or both. If the respondent or counsel makes an unsworn statement, the board may not examine them. However, the recorder may submit and the board may receive other evidence to rebut the unsworn statement.

7.3.8. Report of Proceedings. The legal office gives the respondent an authenticated copy of the report of the proceedings. The respondent may submit written comments for consideration by the AFPB.

7.4. Voluntary Retirement. Any time before the SAF takes final action on the case, a respondent who is eligible to retire may apply for retirement under AFI 36-3203.

7.4.1. An officer with enough years of active military service but who does not have the required active commissioned service to retire in officer status may apply for discharge under AFI 36-3207, chapter 2, section B, to enlist and retire. If the BOI has not convened, the SCA suspends further action under this AFI. See paragraph 6.27 for guidelines for processing retirement applications if the BOI has convened.

7.4.2. If a BOI recommends discharge of an officer who is otherwise eligible for voluntary retirement under any provision of law, the officer shall be retired in the grade and with the retired pay for which he would be eligible if retired under such provision regardless of the BOI's recommendation.

7.5. Voluntary Discharge. Any time before the SAF or designee takes final action on the case, an officer may apply for resignation under AFI 36-3207, chapter 2, section B, in lieu of further administrative proceeding to be effective as soon as possible but no later than 10 calendar days (20 calendar days if serving overseas) following notification of approval by the SAF. If the BOI has convened, the SCA suspends further action under this AFI (see paragraph **7.27.**).

7.6. Functions and Duties. The BOI is an administrative board. It is not subject to the rules of evidence and procedures governing civilian or military courts. Its function is not limited to considering the information and the Statement of Reasons presented at its hearing. If before or during the proceedings, the board decides it needs more information to properly evaluate the case, it requests the information through the recorder.

7.6.1. The BOI receives evidence presented during the board's proceedings and develops added information to create a record on which to base a proper decision. The board evaluates evidence that it receives or develops during open hearings on the case; arrives at findings consistent with the evidence presented; and makes recommendations consistent with the findings.

7.7. BOI Membership. The BOI consists of at least three voting members with the senior member serving as president. In addition, the SCA or his or her designee (must be an officer in the grade of colonel or above):

7.7.1. Appoints a field grade judge advocate certified under Article 27b(2), UCMJ, or a company grade judge advocate certified as a military judge under Article 26b, UCMJ, to serve as a nonvoting legal advisor. ***NOTE*:** If the respondent is a judge advocate, the legal advisor must be senior in grade.

7.7.2. Appoints a field grade officer to serve as a nonvoting recorder. ***NOTE*:** The SCA or his or her designee may appoint a company grade judge advocate qualified under Article 27b(2), UCMJ, as a nonvoting recorder, and may detail alternate or assistant recorders to assist the nonvoting recorder. Assistant recorders who are judge advocates need not be certified under Article 27(b)(2), UCMJ.

7.7.3. May assign a nonvoting interpreter when necessary. ***NOTE:*** If the SCA can't meet any of these requirements, the SCA notifies HQ AFPC/DPPRS without delay.

7.7.4. If the case involves a regular officer, the voting members must be regular officers serving in a grade above lieutenant colonel and in a grade senior to the officer.

7.7.5. If the case involves a reserve officer, the voting members must be in a grade above lieutenant colonel and in a grade senior to the officer. At least one voting member must be a reserve officer but doesn't have to be on the active-duty list. The SCA appoints the most senior reserve officer available if a reserve officer in a grade above lieutenant colonel is not available. A reserve officer in the grade of captain or above may serve as a voting member only if senior in grade to the respondent.

7.7.6. When the BOI membership requires general officers, the SCA notifies HQ USAF/AFGOMO (General Officer Matters), Washington DC 20330-6060, at least 20 calendar days before the scheduled convening date of the board and sends a copy of its notice to HQ AFPC/DPPRS.

7.7.7. The SCA may not appoint officers who have any prior involvement with the case or who have served as voting members on a board convened against the same respondent under this AFI. This restriction doesn't apply to a BOI reconvened under paragraph **7.37.**

7.8. Who May Not Be BOI Members. Officers may not serve on a BOI if they:

7.8.1. Are witnesses in the case.

7.8.2. Appeared as witnesses before any previous board convened under this AFI to review the record of the respondent.

7.8.3. Served as members of any previous board convened under this AFI to review the record of the respondent.

7.8.4. Served as members or convening or reviewing authority of a court-martial where the respondent was the accused.

7.8.5. Previously recommended a discharge in the case or administered nonjudicial punishment pursuant to Article 15, UCMJ, to the respondent.

7.8.6. Have written a referral performance report on the respondent.

7.8.7. Have considered the case of the respondent and can't make an impartial judgment.

7.9. Who Appoints BOI. The SCA or his or her designee (must be in the grade of colonel or above) normally publishes orders to appoint members to serve on a BOI within 2 days of receipt of the officer's response to the SCA notification memorandum. The orders must include:

7.9.1. A statement that the board members are appointed by order of the SAF and according to this AFI, **Chapter 5**.

7.9.2. The place and date that the BOI will convene.

7.9.3. The component (regular officer, reserve officer, ANG officer) after the name and grade of each board member.

7.9.4. Copies of the orders appointing the board shall be provided to each board member and to the respondent and his or her counsel.

7.10. Time and Place for Convening BOI. Unless the officer requests delay or requests that the board convene earlier, the SCA may direct that the BOI convene 30 calendar days from the date that the officer receives the SCA notification memorandum. The BOI convenes at the designated time and place, subject to approved delays or to approval of an earlier date requested by the officer.

7.10.1. The board normally convenes at the respondent's installation. However, the availability of witnesses and board members and other factors may make it necessary or advisable to convene the board elsewhere. The recorder schedules a meeting place for the BOI that is in keeping with the seriousness of the proceedings.

7.10.2. The board recorder notifies the board members of the time and place set for the hearing. The recorder also notifies the respondent not less than 10 calendar days before the board convenes, even if the respondent does not intend to appear before the board. The recorder's notification to the respondent will comply with AFI 51-602, *Boards of Officers* (see attachment 12). The recorder sends a copy of the notification memorandum to the SCA and HQ AFPC/DPPRS.

7.11. Delay in Convening the BOI. The respondent may request a delay in convening the BOI, normally not to exceed 10 calendar days. The respondent must send the request directly to the legal advisor with copies to the recorder and SCA within 6 calendar days after receiving notice of the place and date for the hearing. ***EXCEPTION***: The legal advisor may consider a request submitted more than 6 days after receiving notice of the place and date for the BOI when denying the request would prejudice the rights of the respondent.

7.11.1. The legal advisor may grant the delay when denying the request would prejudice the rights of the respondent. The legal advisor may grant additional delays after consulting with the SCA.

7.11.2. The legal advisor also considers requests for delay from the Government and may grant a delay, normally not to exceed 10 days, as long the delay would not unfairly prejudice the rights of the respondent.

7.12. Witnesses. The recorder invites witnesses for both the respondent and the government to appear at the BOI if the legal advisor decides that they are available, their testimony relates to a significant issue, and the respondent or the government can't adequately present their evidence any other way. The recorder uses the procedures and policies in Rules for Courts-Martial 703c of the Manual for Courts-Martial United States, 1984, as a general guide in determining which witnesses to invite. The recorder may use

depositions, affidavits, stipulations, and in-board telephone calls to obtain testimony of witnesses who can't testify in person.

7.12.1. If the board is convened at a place other than the witness's duty station, the recorder asks the SCA concerned to make the military member or Federal employee available. The SCA concerned may deny the request if military requirements don't allow the member or employee to appear before the board as a witness. Make witness travel plans in accordance with the Joint Federal Travel Regulation (JFTR), volume 1 and the JTR, volume 2. If the board is convened at the witness's duty station, the legal advisor may presume that the witness is available.

7.12.2. The recorder will arrange to publish invitational travel orders for witnesses who are neither Federal employees nor members of the armed forces in the active military service (see Joint Travel Regulation [JTR], volume 2.

7.12.2.1. The recorder sends a memorandum to the prospective witnesses inviting them to appear before the board. See AFI 51-201, *Military Justice Guide* for funding travel orders for witnesses.

7.12.3. The recorder asks HQ AFPC/DPPRS to determine whether members of other armed forces in the active military service and civilian employees of other Federal agencies are available to give testimony at BOI hearings.

7.13. Reviewing the Case. The recorder reviews the case before the BOI convenes to decide which areas may need exploration and explanation at the hearing. The recorder can request further investigation or more documentation at this time to ensure that the hearing is thorough and fair. When receiving a documented case, the recorder:

7.13.1. Obtains facts about the availability of requested and other prospective witnesses.

7.13.2. Submits the names of requested witnesses (both those requested by the respondent or counsel and those that the recorder is requesting to testify for the Government) to the legal advisor for a decision in accordance with paragraph **7.12.**

7.13.3. Arranges to publish invitational travel orders based on the legal advisor's decision.

7.13.4. Gives the respondent or counsel, to the extent permissible, a copy of any records or other documentary material not previously furnished the respondent that the recorder proposes to offer in evidence at the board hearing.

7.13.5. Attends any prehearing conference called by the legal advisor, along with the respondent and counsel.

7.13.6. Makes any other necessary preparations for the orderly and proper presentation of the case at the board hearing.

7.13.7. The legal advisor also reviews the file before the BOI convenes and apprises the recorder and respondent of any matters that require attention to ensure a fair hearing.

Section 7B—The Hearing

7.14. Who Conducts Hearings. The president of the BOI presides over the hearings and may require the recorder to perform administrative duties. **Attachment 13** is a sample guide for conducting the BOI proceedings.

7.14.1. Although the BOI doesn't follow strict rules of evidence or the procedures governing civilian and military courts, it must adhere to reasonable bounds of relevance, competency, and materiality. The board follows AFI 51-602 except when in conflict with this AFI.

7.14.2. All BOI members must become familiar with this chapter before the board convenes. The members must not form a final opinion until the closed session and must be sure that they can give a fair and impartial hearing to both parties.

7.14.3. Voting members may not review the case before the hearing.

7.14.4. When the board meets in closed session, only the voting members may attend. If the board needs the advice of the legal advisor, the board president opens the board to obtain the legal advisor's opinion in open session with the recorder, respondent, and counsel.

7.14.5. After the board has made a final decision in the case, it may request the legal advisor, in closed session, to help draft the findings and recommendations. The reporter enters the closed session with the legal advisor, records the proceedings verbatim, and includes them in the transcript.

7.14.6. After the BOI convenes, the legal advisor makes final rulings on:

7.14.6.1. Procedural matters (including admissibility of proffered evidence, relevance of material, presence of witnesses, challenges to the voting members).

7.14.6.2. Motions, objections, and arguments of counsel.

7.14.6.3. Any other matter in connection with the conduct of the hearing that requires a legal decision.

7.14.7. The legal advisor instructs the members of the BOI on their duties and responsibilities, with the respondent and counsel present.

7.14.8. The legal advisor has no authority to dismiss an allegation or to terminate the proceedings.

7.15. Hospitalized Respondent. If the respondent is hospitalized after the BOI receives the case, the recorder immediately notifies HQ AFPC/DPPRS and the SCA by message. Summarize the respondent's condition and estimate when the hospital stay will end.

7.15.1. The board may not convene or meet while the respondent is hospitalized unless the respondent consents, the SCA directs for good cause, or medical authorities determine that the respondent no longer requires hospitalization.

7.16. Presence of Respondent, Counsel, or Witnesses. The respondent and counsel have the right to attend all open sessions of the BOI. Witnesses may be present in the boardroom only when they are actually testifying. Witnesses waiting to testify may not be present in the boardroom. The legal advisor decides whether to allow spectators in the boardroom if a respondent requests spectators at the hearing.

7.17. Calling the Board to Order. The president calls each session of the board to order. At the first session, the recorder places the authority for and the time, date, and place of the hearing in the record and attaches a copy of the appointing order to the record as an exhibit. At all sessions, the recorder calls the roll of all voting and non-voting members in the appointing orders and enters the attendance in the record.

7.18. Recording Presence or Absence of Members, Respondent, and Counsel. The recorder announces which of the voting and non-voting members are present, and whether the respondent and counsel are in attendance. The recorder includes the counsel's name (grade if a member of the armed services), and address.

7.19. Postponing the Board. If the respondent or counsel is absent, the board determines the cause. The legal advisor then decides whether to postpone the hearing. When postponing a hearing, the legal advisor announces when the board will reconvene.

7.20. Explaining Rights to Respondent. The legal advisor advises the respondent of his or her rights in paragraph **7.3.** of this AFI.

7.21. Challenging Voting Members. The respondent and the recorder may challenge voting members of the board and the legal advisor for cause. The challenging party has the burden of establishing that the member is not able to participate in a fair and impartial hearing.

7.21.1. The legal advisor rules on challenges to the voting members and may question the challenged member to determine if he or she will judge the case on the evidence, the provisions of this AFI, and the instructions of the legal advisor.

7.21.2. The board rules on challenges to the legal advisor. After hearing evidence on the challenge to the legal advisor, the board votes on the challenge in closed session. A secret-ballot majority vote must uphold a challenge to the legal advisor. The President of the board announces the ruling on the challenge to the legal advisor in open session.

7.21.3. Voting members are considered qualified and competent if they can:

7.21.3.1. Follow the legal advisor's instructions.

7.21.3.2. Reserve judgment until all the evidence is in.

7.21.3.3. Give sincere consideration to the respondent's evidence in defense and mitigation.

7.21.3.4. Make findings and recommendations on the evidence.

7.22. Oaths. The recorder swears in the legal advisor, reporter, interpreter, and the voting members. ***EXCEPTION:*** The recorder doesn't have to swear in a reporter who has been administered a one-time oath for court-martial.

7.22.1. The legal advisor swears in the recorder.

7.23. Opening Statements and Presenting Evidence. The recorder may present the case against the respondent by documentary evidence, through witnesses, or both. The recorder presents a verbal resume of the information contained in the documentary evidence. The recorder also may make an opening statement outlining the allegations, the evidence to support them, and the conclusions the recorder wishes the board to draw from the evidence. The recorder then presents evidence and testimony to the board.

7.23.1. The respondent may make an opening statement immediately following the recorder's opening statement or at the conclusion of the recorder's evidence. The respondent may then offer evidence in defense, extenuation, or mitigation. Both the recorder and the respondent may present evidence in rebuttal, as authorized by the legal advisor.

7.23.2. The reporter transcribes or describes the contents of any video or audio tapes that the recorder or the respondent presents as evidence.

7.24. Examining Witnesses. The recorder, respondent and respondent's counsel may examine and cross-examine witnesses to assist the board in making a complete record. If the respondent chooses to testify under oath, he or she is subject to cross-examination.

7.24.1. Any member of the BOI and the legal advisor may question witnesses for clarification. However, they must refrain from questioning witnesses until the recorder and the respondent have finished. The legal advisor only allows questions that are necessary to clarify a significant issue bearing on the board's purpose. Any questions must be relevant to the issue before the board.

7.24.2. The board considers all relevant material, not only the information in the Statement of Reasons. The recorder ensures that all information favorable to the respondent that bears on the case comes to the attention of the board as a matter of record.

7.25. Accepting Additional Evidence and Amending the Statement of Reasons.

7.25.1. The recorder may present new or additional evidence received after the SCA refers the case to a BOI unless otherwise directed by the SCA.

7.25.2. The president of the BOI may ask the recorder for additional evidence if the board decides that it's necessary for a full, fair, and impartial evaluation of the case. The new or additional evidence may include documentary evidence, statements, or testimony of witnesses.

7.25.3. The legal advisor admits additional evidence that's relevant, material, and otherwise admissible and allows a delay if necessary for the respondent to rebut or respond to new evidence.

7.25.4. The BOI may amend the Statement of Reasons to:

7.25.4.1. Correct errors.

7.25.4.2. Ensure it conforms to the evidence (including new or additional evidence).

7.25.4.3. Add any reasons for the discharge distinct from those already on record.

7.25.4.4. The president of the BOI informs the parties in open session before making its findings, determination, or recommendation that the BOI has amended the Statement of Reasons.

7.25.4.5. If the board amends the Statement of Reasons, it must give the respondent the amended Statement of Reasons and allow the respondent additional time, normally not to exceed 30 calendar days as determined by the legal advisor, to respond to the amended Statement of Reasons. The respondent can waive the right to additional time. In such cases the waiver must be included in the record.

7.26. Appearance of Witnesses. The recorder administers the oath to each witness who appears before the board. Relevant statements from persons not present are properly admissible as evidence. The board calls witnesses as necessary for a full presentation of the entire case.

7.27. Retirement or Resignation Application. If the respondent submits a retirement or resignation application any time during the proceedings, the BOI continues until it makes its findings and recommendations.

7.27.1. If the SCA receives an application after sending the BOI report to HQ AFPC/DPPRS, the SCA notifies HQ AFPC/DPPRS by message and sends an information copy to the AFPC.

7.28. Examining the Respondent. The respondent may choose to be examined under oath and subject to cross-examination, or to make an unsworn statement to the board, or to remain silent. The board may not draw any adverse inference from the respondent's choice to remain silent, or to make an unsworn statement.

7.28.1. The legal advisor must advise the respondent of his or her rights under Article 31, UCMJ.

7.29. Deliberations. After the respondent or counsel presents closing arguments, the legal advisor gives instructions to the board, as necessary. The board then enters closed session, attended only by voting members.

7.29.1. The board:

7.29.1.1. Must judge the case on its own merits.

7.29.1.2. Must judge the facts in light of the instructions given by the legal advisor, and the standard of conduct or performance of duty expected of an officer of the respondent's grade and experience.

7.29.1.3. Must ensure its findings are supported by a preponderance of the evidence.

7.29.1.4. Must weigh all the evidence and arrive at their findings by a preponderance of the evidence. A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence in opposition to it.

7.29.2. Legal Assistance. If the board must seek advice of the legal advisor during the deliberations, the board president opens the board and obtains the advice in open session with the reporter, recorder, respondent, and counsel present and makes these proceedings a part of the record.

7.29.3. Review Proceedings. The board in its deliberations may review any phase of the proceedings, including recalling witnesses. The board president:

7.29.3.1. Determines whether the voting members should review particular parts of the hearing.

7.29.3.2. Determines whether to open the board to review the recorded testimony and, or to recall witnesses for re-examination.

7.29.3.3. Makes the review proceedings a part of the record.

7.30. Specific Findings. The board makes its findings by the majority vote of a secret written ballot. The board must make a separate specific finding on each allegation contained in the Statement of Reasons. If a majority doesn't conclude that a preponderance of credible evidence supports an allegation, the board decides the finding in the respondent's favor.

7.30.1. In making its findings on homosexual conduct cases, the board makes findings regarding the existence of the circumstances cited in paragraph **3.3.3.1.** or **3.3.3.2.** of this AFI when specifically raised by the evidence. The board relies upon said circumstances to justify whether the member should be retained on active duty.

7.30.2. If the basis for discharge is homosexual conduct, the board must make a specific written finding whether the respondent engaged (or did not engage) in homosexual conduct that constitutes a basis for recoupment of unamortized education assistance, special pay, or bonuses the respondent may have received. If the board finds a basis for recoupment, the board must make a specific written recommendation whether recoupment should be effected. See paragraph **4.32.** for special rules regarding recoupment.

7.30.3. If a respondent disputes a debt for education assistance funds, the board must make findings and recommendations concerning the validity of the indebtedness. See paragraph **4.32.** for special rules regarding recoupment.

7.31. Recommendations. Once the board has completed its findings, it determines whether the respondent should be retained on active duty and makes a recommendation on the case. Findings that make the respondent subject to removal from active duty or discharge do not prevent the board from recommending retention. However, there must be at least one finding making the respondent subject to removal from active duty or discharge before the board may recommend such removal or discharge. The board may make only one of the specific recommendations in paragraphs **7.31.1.** through **7.31.4.**The board reaches its decisions by the majority vote of a secret ballot.

7.31.1. Retention. The board recommends retaining the respondent when it determines that the respondent should be retained on active duty. If the board made findings that homosexual conduct occurred, the board makes specific findings as to the reasons that may warrant retention according to paragraph **3.3.3.1.** or **3.3.3.2.**

7.31.2. Respondent Not Eligible to Retire. When the board determines that the respondent should not be retained on active duty, the board recommends:

7.31.2.1. Removing the respondent from active duty if the respondent is a regular officer.

7.31.2.2. Discharging the respondent if the respondent is a reserve officer.

7.31.2.2.1. When the board recommends removal from active duty or discharge, the board:

7.31.2.2.2. Recommends an honorable or under honorable conditions (general) discharge if the basis for discharge falls solely under **Chapter 2**.

7.31.2.2.3. Recommends an honorable discharge if the basis falls solely under **Chapter 3** for precommissioning activities not involving intentional misrepresentation or omission of facts in official documents.

7.31.2.2.4. May recommend an honorable discharge, a discharge under honorable conditions (general) or an UOTHC discharge in all other cases with a basis for discharge under **Chapter 3**. ***NOTE:*** Where the board has made a finding that the respondent committed, attempted, or solicited a homosexual act, the board may not recommend a UOTHC discharge unless it further finds one of the circumstances in paragraph **3.1.3.1.**

7.31.3. Respondent is a Regular officer and Eligible to Retire. When the board determines that the respondent should not be retained on active duty, it recommends removal from active duty and retirement.

7.31.4. Respondent is a Reserve Officer and Eligible to Retire. When the board determines that the respondent should not be retained on active duty, it recommends retirement if the respondent applied

for voluntary retirement. If the respondent hasn't applied for voluntary retirement, the board recommends discharge and the character of discharge (see paragraph **7.31.2.**).

7.32. Announcing Results. The board president announces the results of the ballot to the board members immediately after collecting and counting the votes. The board president may ask the legal advisor and reporter to help in preparing the board's findings and recommendations in proper form. The respondent, the counsel, and the recorder may not be present.

7.32.1. After announcing the results to the closed session, the president opens the board and announces the findings and recommendations of the board in open session to the respondent.

7.32.2. The reporter transcribes the proceedings of both sessions as part of the record.

7.32.3. If the board retains the respondent**,** the board president advises the respondent of this decision in writing and sends an information copy to HQ AFPC/DPPRS and the SCA.

Section 7C—Post-BOI Administrative Functions

7.33. Preparing BOI Report. The reporter normally completes the report within 30 calendar days after the BOI adjourns. The report contains the board proceedings verbatim, except as specified in paragraph **7.33.3.**

7.33.1. Findings and Recommendations. The legal advisor or the recorder ensures that the findings and recommendations are recorded verbatim.

7.33.1.1. Board members sign the report to certify that a majority of the voting members concurred in the findings and recommendations. Members who don't concur may file a statement and explanation for inclusion in the case record.

7.33.1.2. The board president adds the following statement at the bottom of the signature page: "The above signatures certify that the findings and recommendations of this board represent a majority opinion of the board."

7.33.2. Authentication. The legal advisor authenticates the BOI report. When the legal advisor isn't available, the board president and the recorder authenticate the report and explain why the substitution was necessary.

7.33.3. Summarizing Proceedings. When the BOI retains the respondent on active duty, the reporter transcribes the findings and recommendations verbatim and summarizes the record of the board proceedings. The legal office must keep the tapes of the record of the board proceedings for 1 year, so that it can transcribe them again, if necessary.

7.34. Distributing the BOI Report.

7.34.1. The legal office gives the respondent:

7.34.1.1. An authenticated copy of the BOI report.

7.34.1.2. Any unclassified extract of a classified board report.

7.34.1.3. Access to the classified portion according to AFI 31-601.

7.34.2. After obtaining a signed and dated receipt for the BOI report, the legal office addresses the report transmittal memorandum to the SCA. The legal office sends:

7.34.2.1. The original and two copies of the BOI report when a BOI doesn't retain the officer on active duty.

7.34.2.2. The original and one copy of the BOI report when a BOI retains the officer on active duty.

7.34.3. The SCA sends the BOI report to HQ AFPC/DPPRS normally 20 calendar days after receiving it. The SCA sends:

7.34.3.1. The original report when a BOI retains the officer on active duty.

7.34.3.2. The original BOI report and one copy when a BOI doesn't retain the officer on active duty.

7.34.4. HQ AFPC/DPPRS sends the BOI case to the AFPC through HQ USAF/JAG when a BOI doesn't retain the officer on active duty.

7.34.5. HQ AFPC/DPPRS retains a BOI case for 1 year when the BOI retains an officer on active duty. HQ AFPC/DPPRS destroys the case file after 1 year.

7.35. Action by Respondent. If the BOI recommends that the officer be removed from active duty or discharged, the respondent may take these actions within 10 calendar days after receiving or having access to an authenticated copy of the BOI report:

7.35.1. File with the legal advisor any suggested corrections to the report. The legal advisor determines what corrections are allowable and advises the respondent or counsel accordingly.

7.35.2. Send to the SCA any brief or argument assigning error or raising new matters.

7.35.3. Submit to the SCA additional evidence that could materially affect the BOI's findings and recommendations, provided such evidence was not reasonably available for presentation to the board during its hearings.

7.35.4. Request a delay in taking one or more of these actions. ***NOTE*:** The respondent must provide reasons for requesting the delay. The SCA may grant such delay if satisfied that denying the request would compromise the officer's rights.

7.36. Action by SCA on BOI Report.

7.36.1. BOI Recommends Retention. The SCA sends HQ AFPC/DPPRS a copy of the BOI president's memorandum advising the respondent of the BOI decision. The SCA retains a copy of the BOI report and sends the original BOI report to HQ AFPC/DPPRS normally 20 calendar days after receiving the report of the BOI proceedings. If appropriate, the SCA may reassign the officer.

7.36.2. BOI Recommends Removal From Active Duty or Discharge. The SCA sends the original and one copy of the BOI report to HQ AFPC/DPPRS normally 20 calendar days after receiving the report of the BOI proceedings. The SCA advises the respondent in writing that he or she may request excess leave pending final decision in the case.

7.37. Reconvening the BOI. This applies when a BOI recommends removal from active duty or discharge. The SCA may reconvene the board any time before the SAF makes a final decision when the SCA receives evidence that could materially affect its findings and recommendations. The SCA must establish that this evidence was not reasonably available for presentation during the board hearings. New evidence includes conduct after the BOI adjourns.

7.37.1. When the SCA receives evidence before sending the report of the BOI but decides not to reconvene the board, the SCA sends the evidence or a summary or extract to HQ AFPC/DPPRS, with reasons for the decision not to reconvene the BOI. If the SCA receives evidence after sending the report of the BOI to HQ AFPC/DPPRS, the SCA promptly sends the evidence or a summary or extract to HQ AFPC/DPPRS, with a statement indicating whether the SCA intends to reconvene the BOI or take other action.

7.37.2. The SCA gives the respondent 10 calendar days to submit comments or rebuttal before the SCA acts on the new information or evidence received.

Chapter 8

BOARDS OF REVIEW (BOR)

8.1. DELETED.

ROGER M. BLANCHARD
Assistant DCS/Personnel

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Title 10, United States Code:

Section	Subject
630	Discharge of Regular commissioned officers with less than 5 years of active commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)
642	Entitlement of officers discharged or retired under this chapter to separation pay or retired pay
644	Authority to suspend officer personnel laws
654	Policy concerning homosexuality in the armed forces
1162	Reserves: discharge
1163	Reserve components: members; limitations on separation
1174	Separation pay upon involuntary discharge or release from active duty
1181	Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons
1182	Boards of Inquiry
1183	Boards of Review
1184	Removal of Officer: action by Secretary upon recommendation of board review
1185	Rights and procedures
1186	Officer considered for removal: voluntary retirement or discharge
1187	Officers eligible to serve on boards
2005	Advanced education assistance: active duty agreement; reimbursement requirements

DoD Directive 1332.30, 21 December 1993, *Separation of Regular Commissioned Officer*s.

DoD Directive 6025.11, 20 May 1988, *Credentials Review and Award of Clinical Privileges*.

DoD Directive 6025.6, 6 June 1988, *Licensure of Health Care Providers*.

DoD Directive 6490.1, 14 September 1993, *Mental Health Evaluation of Members of the Armed Forces*.

DoD Instruction 1332.29, 20 June 1991, *Eligibility of Regular and Reserve Personnel for Separation Pay*.

DoD Financial Management Regulation, part 4, chapter 4.

Diagnostic and Statistical Manual of Mental Disorders (current edition).

Abbreviations and Acronyms

AFDPG—HQ USAF (General Officer Matters) Washington DC

AFI—Air Force Instruction

AFPB—Air Force Personnel Board, Andrews AFB MD

AFPC—Air Force Personnel Council, Andrews AFB MD

AFPD—Air Force Policy Directive

AIDS—Acquired Immune Deficiency Syndrome

ANG—Air National Guard

BOI—Board of Inquiry

BOR—Board of Review

DOS—Date of Separation

HIV—Humane Immunodeficiency Virus

HQ AFPC—Headquarters Air Force Personnel Center, Randolph AFB TX

HQ USAF—Headquarters United States Air Force, Washington DC

JFTR—Joint Federal Travel Regulation

JTR—Joint Travel Regulation

MAJCOM—Major Command

MEB—Medical Evaluation Board

MPF—Military Personnel Flight

NPRC—National Personnel Record Center, St Louis MO

OSAF—Office of the Secretary of the Air Force

OSI—Office of Special Investigations

PDS—Personnel Data System

PRP—Personnel Reliability Program

SAF—Secretary of the Air Force

SCA—Show-Cause Authority

SCI—Sensitive Compartmented Information

SIOP-ESI—Single Integrated Operational Plan, Extremely Sensitive Information

SJA—Staff Judge Advocate

SSN—Social Security Number

SPTC—Specified Period of Time Contract

TAFCSD—Total Active Federal Commissioned Service Date

TFCSD—Total Federal Commissioned Service Date

UCMJ—Uniform Code of Military Justice

UOTHC—Under Other Than Honorable Condition

U.S.C.—United States Code

Terms

Bisexual—A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in, both homosexual and heterosexual acts.

Board of Inquiry—A board of officers convened to receive evidence, make findings on discharge cases, and give recommendations on whether the Air Force should retain an officer who is required to show cause for retention on active duty.

Commander—A commissioned officer who occupies a position of command. Unless otherwise specified, usually refers to the member's unit commander.

Homosexual—A person, regardless of sex, who engages in , attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

Homosexual Act—(a) Any bodily contact, actively undertaken or acts passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and (b) any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in (a).

Homosexual Conduct—A homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

Nonprobationary Officer—A Regular officer with five or more years of active commissioned service, computed from the total active federal commissioned service date or a Reserve officer with five or more years of commissioned service computed from the total federal commissioned service date.

Preponderance of Evidence—A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence in opposition to it.

Probationary Officer—A Regular officer with less than five years of active commissioned service, computed from the total active federal commissioned service date or a Reserve officer with less than five years of commissioned service, computed from the total federal commissioned service date.

Procedural Matters—Administrative responsibilities that a BOI must undertake during hearings and proceedings, including motions for continuances, securing of witnesses or production of documentary evidence, challenges, the admissibility of evidence, and other interlocutory matters that a military judge would rule on in a trial by court-martial.

Propensity—Propensity to engage in homosexual acts means more than abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

Recoupment—An amount that bears the same ratio to the total amount of education assistance, special pay, or bonus money provided to the officer as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.

Report of Board Proceeding—Usually a properly authenticated verbatim transcript of the BOI hearings, including supporting exhibits.

Reserve Component—The United States Air Force Reserve (USAFR) and the Air National Guard of the United States (ANGUS). Members of the USAFR or ANG may be on active duty although not on the active-duty list.

Respondent—An officer who appears before a BOI to show cause for retention on active duty.

Serious Misconduct—Any misconduct punishable by military or civilian authorities. This includes any misconduct that, if punished under the Uniform Code of Military Justice (UCMJ), could result in confinement for 6 months or more, and any misconduct requiring specific intent for conviction under the UCMJ.

Sexual Orientation—An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

Show Cause Authority—For purposes of this AFI, the commander of a MAJCOM or equivalent commander to whom the officer is assigned and other officers designated by the SAF. MAJCOM commanders will delegate SCA to wing commanders who are general officers or General Court-Martial Convening Authorities for wings not commanded by a general officer, unless they personally determine that specific delegations cannot be made because of unusual circumstances.

Statement that a Member is a Homosexual or Bisexual or Words to that Effect—Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

Addresses

HQ AFPC/DPPRS (*Separations Branch)*

550 C St West, Ste 11

Randolph AFB TX 78150-4713

Air Force Personnel Council (*AFPC*)

1535 Command Drive EE-Wing, 3d Floor

Andrews AFB MD 30221-7002

HQ USAF/JAG (*General Law Division)*

1420 Air Force Pentagon

Washington DC 20330-1420

HQ USAF/AFDPG (*General Officer Matters*)

5060 Air Force Pentagon

Washington DC 20330-5060

NPRC (*National Personnel Records Center,* Air Force Branch)

9700 Page Blvd.

St Louis MO 63132-5100

Attachment 2

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A2.1. Responsibility.

A2.1.1. Only a commander in the member's chain of command is authorized to initiate fact finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly.

A2.1.2. In every case, prior to initiating an inquiry, a commander must consult through the chain of command with a commander possessing general court-martial convening authority (GCMCA) and the servicing staff judge advocate of the initiating commander must consult with the servicing staff judge advocate of the GCMCA. A single base GCMCA, NAF or higher level GCMCA is not required to consult a higher headquarters prior to initiation of an inquiry, but may do so at his or her discretion.

A2.1.3. In addition to the requirement of **A2.1.2.**, a commander desiring to initiate a substantial inquiry to determine whether or not a statement of homosexuality was made for the purpose of seeking separation from military service, as defined in **A2.2.6.**, must submit a request for approval through the chain of command and the Vice Chief of Staff of the Air Force (AF/CV) to the Undersecretary of the Air Force (SAF/US). The request must explain why there is a clear interest in conducting the substantial inquiry, why it is expected that the expanded inquiry will result in additional relevant evidence and why the Air Force benefit in expanding the inquiry outweighs any foreseeable disadvantage of expanded inquiry. Any commander in the chain of command, AF/CV or SAF/US can disapprove the request and return it to the initiating commander. SAF/US approval of a request shall be communicated back through the chain of command to the initiating commander.

A2.1.4. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. Subject to the restrictions on substantial inquiries in homosexual statements cases, it may consist of an examination of the information reported or a more extensive investigation, as necessary.

A2.1.5. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquires shall be limited to the factual circumstances directly relevant to the specific allegations. A member who makes a voluntarily statement acknowledging his or her homosexuality may, but will not be required to, provide the names of other individuals to be interviewed relevant to his or her statement. The fact that an individual is identified to be interviewed, does not, standing alone, provide credible evidence sufficient to initiate an inquiry of that individual. Should the alleged homosexuality of members other than the subject arise in the course of the substantial inquiry, they will not be inquired into further without the approval of the appropriate command authority or, when required, the Under Secretary of the Air Force. See **A2.1.1.** and **A2.1.3.**

A2.1.6. If a commander has credible evidence of possible criminal conduct, he or she may follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretary of the Air Force.

A2.1.7. The guidelines in this attachment do not apply to activities of the Defense Criminal Investigative Organizations (DCIO) and other DoD law enforcement organizations, which are governed by DoD Instruction 5505.8.

A2.2. Definitions.

A2.2.1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in both homosexual and heterosexual acts.

A2.2.2. Commander. A commissioned officer who occupies a position of command.

A2.2.3. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A2.2.4. Homosexual Conduct. "Homosexual Conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

A2.2.4.1. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

A2.2.4.2. A "statement that a member is a homosexual or bisexual, or words to that effect" means language or behavior that a reasonable person would believe intends to convey the statement that a person engages in or has a propensity or intent to engage in homosexual acts. This may include statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

A2.2.4.3. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

A2.2.4.4. "Propensity to engage in homosexual acts" means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

A2.2.5. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

A2.2.6. Substantial Inquiry to Determine Whether a Statement was Made for the Purpose of Seeking Separation from Military Service. A substantial inquiry to determine whether a statement was made for the purpose of seeking separation from military service is an inquiry that extends beyond questioning the member who made the statement, and/or a third party who reports that a member made a statement, individuals suggested by the member for interview and the member's immediate supervisory chain of command.

A2.2.7. "Threats" and "harassment," as used in paragraphs **A2.3.3.4.** and **A2.4.3.**, are not technical terms and are used in the commonly understood sense. "Harassment" includes the use of derogatory or demeaning words, gestures or actions in regard to the sexual orientation of another or others.

A2.3. Basis for Conducting Inquiries.

A2.3.1. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

A2.3.2. A Basis for Discharge Exists if:

A2.3.2.1. The member has engaged in a homosexual act.

A2.3.2.2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts.

A2.3.2.3. The member has married or attempted to marry a person of the same sex.

A2.3.3. Credible information does not exist, for example, when:

A2.3.3.1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion.

A2.3.3.2. The only information is the opinions of others that a member is homosexual. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation.

A2.3.3.3. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

A2.3.3.4. A member reports being threatened or harassed because he or she is labeled or perceived to be a homosexual. Such information, standing alone, does not constitute credible information justifying the initiation of an inquiry into alleged homosexual conduct by the member reporting the threats or harassment.

A2.3.4. Credible information exists, for example, when:

A2.3.4.1. A reliable person states that he or she observed or heard a service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex.

A2.3.4.2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.3.4.3. A reliable person states that he or she observed behavior that amounts to a nonverbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.4. Procedures.

A2.4.1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

A2.4.2. Commanders must exercise sound discretion regarding when credible information exists. They must examine the information and decide whether an inquiry is warranted, whether an inquiry is necessary in light of the facts reported or whether no action should be taken.

A2.4.3. If a member reports threats or harassment based on being labeled or perceived to be a homosexual, the alleged threat or harassment must be addressed promptly by inquiry or investigation, as appropriate based on the surrounding facts. Assuring the physical safety of the complainant will be a primary consideration in any such case. A report of threats or harassment based on being labeled or perceived to be a homosexual does not constitute credible information justifying initiation of an inquiry or investigation of the complainant. Persons conducting an investigation or inquiry into the threats or harassment should not solicit allegations about the sexuality or possible homosexual conduct of the complainant. If information regarding alleged homosexual conduct by the complainant arises during an inquiry or investigation into threats or harassment, commanders must carefully consider the source of the information, and the circumstances under which it was provided, in assessing its credibility. The receipt of information alleging homosexual conduct on the part of the complainant does not negate the need to inquire into or investigate the facts and circumstances surrounding the original complaint of threats or harassment.

A2.4.4. Commanders or appointed inquiry officials must not ask, and members may not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member must first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). If the member chooses not to discuss the matter further, the commander may consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding; nor does it provide the member with any basis for challenging the validity of any proceeding or the use of such evidence, including a statement by the member in any proceeding.

A2.4.5. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

A2.4.6. A statement by a service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member must be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or intends to engage in, homosexual acts.

A2.4.6.1. The Service member bears the burden of proving, throughout the proceedings, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A2.5. Legal Effect. The procedures set forth in this attachment create no substantive or procedural rights, such as excluding evidence from an administrative proceedings or court-martial. Command authorities must take appropriate action against any military member or civilian employee who violates these procedures.

Attachment 3

RECOMMENDING ACTION

Use this memorandum for commanders below wing-level to recommend that the wing commanders or other cognizant authority initiate action on officers who may be subject to discharge under AFI 36-3206. Instructions are enclosed in parentheses ( ). Use material enclosed in brackets [ ], as appropriate.

Sample Memorandum

MEMORANDUM FOR (Wing commander's or other cognizant authority's functional address symbol)
(Date)

FROM: (Functional address symbol)

SUBJECT: Recommendation for Action Under AFI 36-3206 Against (Officer's grade, name, and SSN)

I recommend that you consider initiating action under AFI 36-3206, [**Chapter 3**] [paragraph] [paragraphs] [___] [and] [**Chapter 2**], [paragraph] [paragraphs] [_____], against (grade, full name, and SSN).

I recommend this action because (state in concise but explicit terms what the officer did that forms the basis for recommending action. If the misconduct falls within the purview of UCMJ, state the specific misconduct and state the disciplinary or punitive you have taken or are considering. If you haven't taken action, explain your reasons. Describe any efforts you've made to rehabilitate the officer and assess the effectiveness of the rehabilitation).

I have attached all documentary evidence available to support the recommendation. (Attach all documentary evidence, including any unclassified summaries and extracts of investigative reports or documents. Don't include as attachments to this memorandum any investigative reports and documents summarized for use in documenting the case. Show these and the SJA legal review as attachments to the memorandum transmitting the recommendation memorandum.) I have also attached an opinion from the staff judge advocate.

(Grade and name) is:

[nonprobationary] (or) [probationary] [regular] [reserve] officer. (If a probationary officer, include date of appointment as a regular or reserve officer.) The promotion category is _____(line, medical, dental, nurse, medical service, biomedical science, judge advocate, or chaplain).

Scheduled for normal separation on (date).

AF Form 422, Physical Profile Serial Report, [including mental health evaluation,] [is] [is not] attached.

[I [have] [have not] taken action required under AFI 31-501 (formerly AFR 205-32).] (If the officer has, or once had, access to SCI, SIOP-ESI, or other special access programs, place a copy of the action taken or pending in the case file.)

(signature)

(typed name, grade, USAF)

title)

Attachments:

(list attachments)

Attachment 4

NOTIFYING AN OFFICER OF SHOW CAUSE ACTION INITIATED

Use this memorandum for the show cause authority to notify officers (probationary and nonprobationary) of action initiated under AFI 36-3206. Instructions are enclosed in parentheses ( ). Use material in brackets [ ] as appropriate.

Sample Memorandum

MEMORANDUM FOR (Officer's grade, name, SSN, and functional address symbol) (Date)

FROM: (SCA)

SUBJECT: Notification of Show Cause Action Initiated Under AFI 36-3206, [**Chapter 2**] [paragraph] [paragraphs] [___] [and] [**Chapter 3**] [paragraph] [paragraphs] [__]

I am initiating action against you under AFI 36-3206, [**Chapter 2**] [paragraph] [paragraphs] [____][and] [**Chapter 3**] [paragraph] [paragraphs] [___] that requires you to show cause for retention on active duty. (Use the following sentence when the officer is named in a promotion board report as having a record showing action under AFI 36-3206 is appropriate.) [Further, the promotion selection board that convened at HQ AFPC, Randolph AFB TX on [date] identified you in its report as having a record that warrants initiation of this discharge action.]

I am taking this action because (State the reason or reasons in precise and explicit terms. Specifically state what the officer did that forms the basis for this action.) The least favorable character of discharge that the Secretary of the Air Force may approve in this case is [honorable] [under honorable conditions (general)] [under other than honorable conditions]. Attached [is a copy] [are copies] of documentary evidence supporting this action.

Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of the notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will indicate on it, the date and time that you declined to acknowledge receiving it and it will be included as a part of your case file.

Familiarize yourself with AFI 36-3206, particularly the rights that you have. If you do not apply for retirement or request a resignation in lieu of further administrative action, a board (AFPB or BOI) will convene as provided in **Chapter 6** or **Chapter 7**. Contact (grade, name, telephone number, and office address of

the area defense counsel) to discuss the procedures involved and your rights and options. If you decline counsel, contact (grade, name, telephone number, and office address of the chief, Military Personnel Flight) for counseling about your rights and options.

If you elect to present matters to a BOI, the standard of proof used by the board to make findings is a preponderance of evidence. You may present evidence and argument to rebut the [reason] [reasons] set forth in this notification memorandum or any additional reason or information developed during the BOI proceedings. You also may present other pertinent evidence.

Within l0 calendar days after you receive this notification memorandum, you must respond by indorsement to me. If I do not receive the indorsement within the allotted time I will proceed with further action under AFI 36-3206. Include in your indorsement:

a. Any statement you wish to submit on your own behalf and/or any additional evidence that you wish me to consider. (Use the following sentence only if the basis for the action initiated is or includes homosexual conduct.) [If you desire that a board of inquiry consider retention, you must submit evidence documenting the existence of all the circumstances cited in paragraphs **3.3.3.1.** or **3.3.3.2.** in AFI 36-3206.] (Use the following sentence if the homosexual conduct is homosexual statement only.) [You may present evidence to rebut the presumption that you engage in, attempt to engage in, have the propensity to engage in, or intend to engaged in homosexual acts.] If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time to (the SCA or if the SCA has delegated, to his or her designee under para. **4.22.1.**). If you do not submit statements or evidence, your failure will constitute a waiver of your right to do so and I will refer your case to the (BOI or AFPB).

b. A statement that (grade, name and of the area defense counsel) counseled you and that you fully understand your rights and options in this action. If you declined counsel, so state and indicate that (grade, name, chief, Military Personnel Flight) counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of education assistance, special pay, or bonuses received if you haven't completed the period of active duty you agreed to serve:

Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.

Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.

(Include the following if the reason for separation is not homosexual conduct)

Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.]

(Include the next two bullets if the reason for separation is homosexual conduct)

Recoupment of education assistance, special pay, or bonus money received if basis for discharge is determined to be statements, or marriage or attempted marriage to a person of the same sex, for the purpose of seeking separation.]

Recoupment of education assistance, special pay, or bonus money received if a discharge under other than honorable conditions (UOTHC) is authorized, or if the homosexual conduct is punishable under the UCMJ. This is the case whether or not you are actually discharged UOTHC or actually convicted under the UCMJ.]

The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve. (Include the following bullet if the officer is subject to recoupment of education assistance costs.)

If you dispute that you are indebted for educational assistance, the board of inquiry, or, if you do not choose or are not entitled to a board of inquiry, an authority appointed by the MAJCOM/CC , will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, **4.32.** and **4.33.**, regarding special rules for recoupment.]

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the retirement application or the resignation.

e. A statement that the area defense counsel or the chief, Military Personnel Flight, explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information. In response to this notification memorandum, you may, within 10 calendar days, (consult with the MPF chief of quality force to determine the officer's retirement eligibility and use one of the following passages to complete this sentence, as applicable):

(Enter the following passage when the basis for the action initiated restricts the character of discharge to honorable and the officer is not eligible to retire in officer status.) [tender your resignation under AFI 36-3206, **Chapter 3**, paragraph **3.1.2.**, with the understanding that, if the Secretary of the Air Force accepts your resignation, you will receive an honorable discharge and that your discharge date will be as soon as possible but no later than 10 calendar days (20 calendar days if serving overseas) after the date that the MPF receives separation instructions.] (Enter the following passage when the basis for the action initiated does not restrict the character of discharge to honorable and the officer is not eligible to retire in officer or enlisted status.)

[Tender your resignation under AFI 36-3207, chapter 2, section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive [a discharge under honorable conditions (general) unless the Secretary of the Air Force determines that you should receive an honorable discharge]. [an under other than honorable conditions discharge unless the Secretary of the Air Force determines that you should receive a discharge under honorable conditions (general) or an honorable

discharge.] If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon as possible but no later than 10 calendar days (20 calendar days if serving overseas) after the date that the MPF receives separation instructions.]

(Enter the following passage if the officer has the years of active military service and the years of active commissioned service to apply for retirement in officer status.)

[Apply for retirement in officer status with the understanding that your retirement may on the first day of the month, or no later than the first day of the second month, immediately following approval of your application. It is possible that the Secretary of the Air Force may direct retirement in a grade lower than your current grade if the Secretary of the Air Force determines that you did not hold the higher grade satisfactorily.]

(Enter the following passage if the officer doesn't have the years of active commissioned service to retire in officer status but has the years of active military service to retire in enlisted status.)

[Tender your resignation under AFI 36-3207, chapter 2, section B, to enlist and retire. It is possible that the Secretary of the Air Force may accept your resignation, determine that you did not hold your current grade satisfactorily and direct, when your active service plus service on the retired list totals 30 years, your advancement on the retired list to a grade lower than your current grade. If the Secretary of the Air Force accepts your resignation to enlist and retire, you will receive [an honorable discharge] (when the basis for the action initiated restricts the character of discharge to honorable) (or) [a discharge under honorable conditions (general) unless the Secretary of the Air Force determines that you should receive an honorable discharge] (when the basis for the action initiated does not restrict character of discharge to honorable), and your separation and enlistment will be within the 3 calendar days immediately preceding the effective retirement date.]

[I [have] [have not] taken action required under AFI 31-501.] (If the officer has or once had access to SCI, SIOP-ESI, or other special access programs, place a copy of the action taken or that is pending in the case file.)

You may request excess leave if the Air Force doesn't require your further participation in processing your case.

(signature)

(typed name, grade)

(title)

Attachments: (do not include SJA legal review)

1. (List documentary evidence)
2. AFI 36-3206
3. AFI 36-3207
4. Other Pertinent Documents (list individually)

1st Ind (Respondent)

MEMORANDUM FOR SCA

I acknowledge receiving (complete identification of the notification memorandum, to include issuing headquarters, subject, and date) with _____ attachments at (hour) on (date).

(Signature)

(Typed name, grade)

Attachment 5

RESPONSE TO THE SHOW CAUSE NOTIFICATION MEMORANDUM

Use this memorandum for officers to respond to the show cause notification memorandum from the SCA under AFI 36-3206. Instructions are enclosed in parentheses ( ). Use material enclosed in brackets [ ] as appropriate.

Sample Memorandum

MEMORANDUM FOR (SCA) (Date)

FROM: (Officer's grade, name, SSN, and functional address symbol)

SUBJECT: Response to the Notification of Administrative Discharge Action Initiated Under AFI 36-3206

I understand that:

a. I may contact the area defense counsel to discuss procedures involved, separation pay eligibility, reimbursement requirements, and my rights and options in this action.

b. If I decline counseling, I am to contact the chief, Military Personnel Flight, for counseling regarding my rights and options.

c. I must indorse the notification memorandum and submit the applicable statements within 10 calendar days after receiving it.

I understand the show-cause authority will proceed with further action under AFI 36-3206 if I do not submit my response to the notification memorandum within the allotted time.

I understand the following applies regarding recoupment if I have received education assistance, special pay, or bonuses and I haven't completed the period of active duty I agreed to serve:

a. Recoupment of a portion of education assistance, special pay, or bonus monies received if I voluntarily separate.

b. Recoupment of a portion of education assistance received if involuntary discharge is for misconduct. (Include the following paragraph c if the basis for separation does not involve homosexual conduct.)

[c. Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntarydischarge.]

(Include the following paragraph c if the basis for separation involves homosexual conduct.)

[c. Recoupment of education assistance, special pay, or bonus money received if homosexual conduct is statements, or marriage or attempted marriage to a person of the same sex, for the purpose of seeking separation. Recoupment of education assistance, special pay, or bonus money received if a discharge under other than honorable conditions (UOTHC) is authorized, or if the homosexual conduct is punishable under the UCMJ. This is the case whether or not you are actually discharged UOTHC or actually convicted under the UCMJ.]

d. The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.

(Include the following paragraph e if the officer is subject to recoupment of education assistance costs.)

[e. If I dispute a debt for educational assistance, the board of inquiry or, if I do not choose a board of inquiry, or am not entitled to a board of inquiry, an authority appointed by the Show Cause Authority, will make the findings and recommendations concerning the validity of my indebtedness. (See AFI 36-3206, paragraph **4.32.** regarding special rules for recoupment.)]

(signature)

(typed name, grade, SSN)

Attachment 6

NOTIFYING A NONPROBATIONARY OFFICER TO SHOW CAUSE

DELETED.

Attachment 7

NOTIFYING A PROBATIONARY OFFICER RECOMMENDED FOR HONORABLE DISCHARGE

DELETED.

Attachment 8

NOTIFYING A PROBATIONARY OFFICER RECOMMENDED FOR DISCHARGE UNDER HONORABLE CONDITIONS (GENERAL)

DELETED.

Attachment 9

NOTIFYING A PROBATIONARY OFFICER WHOSE CASE IS GOING TO A BOI

DELETED.

Attachment 10

PODB RECOMMENDS AN HONORABLE DISCHARGE OR A DISCHARGE UNDER HONORABLE CONDITIONS (GENERAL)

DELETED.

Attachment 11

PODB RECOMMENDS REFERRING A CASE TO A BOI

DELETED.

Attachment 12

NOTIFICATION OF BOI HEARING

Use this memorandum to notify officers of the date and time of the BOI hearing. Instructions are enclosed in parentheses ( ). Use material enclosed in brackets [ ] as appropriate.

Sample Memorandum

MEMORANDUM FOR (Respondent's grade, name, SSN, and functional address symbol) (Date)

FROM: (Functional address symbol)

SUBJECT: Board of Inquiry Hearing Under AFI 36-3206

A board of inquiry (BOI) appointed by paragraph _____, Special Order _____ , Headquarters _____, dated _____ , will convene on _____ 19 _____, at _____ hours at (place), to receive evidence and make findings and recommendations whether to retain you in the Air Force. Attached is a copy of this order.

Your rights as a respondent are specified in AFI 36-3206, **Chapter 7**. You may request the presence of any witness whose testimony you believe to be pertinent to your case, specifying the type of information each witness can provide. The board will invite witnesses as authorized by the legal advisor.

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

a. The request is made with enough time to make arrangements, and

b. The witnesses, in the opinion of the legal advisor, can present relevant and material evidence.

[I have attached a list of witnesses, their organization, and station (if civilian, the address), expected to be called to appear before the BOI.]

You may be represented by either a detailed military lawyer or a military lawyer of your choosing, if reasonably available. Civilian counsel may represent you at your own expense.

You also may request that the SCA postpone convening of the board if you need more time to prepare your case. If the SCA approves your request, the SCA will set a new date for the hearing. However, if you do not request a later date and you do not appear at the time and place specified for the hearing, the board will consider your case on the complete file in your absence.

(Use this paragraph only if respondent indicated that he or she did not intend to appear before the BOI.) [You indicated in your (date) indorsement to the Show-Cause Authority's notification memorandum dated _____, that you did not intend to appear before the BOI. You may appear with or without counsel and present evidence in your behalf. Your presence will assist the board in arriving at its determination.]

Within 5 calendar days after you receive this notification memorandum, you must acknowledge receipt, including in your memorandum of acknowledgment the following:

a. Date and time you received this notification memorandum.

b. Name and addresses of any witnesses you want to appear before the BOI, giving a concise summary of the type of information each witness can provide.

c. If you want to postpone the BOI hearing, a statement that substantiates your request and the additional time (not to exceed 10 calendar days) that you are requesting.

d. [A statement that you [do] [do not] intend to appear before the BOI.]

Address all correspondence to: (The recorder of the board of inquiry designates proper address.)

(signature)

(type name, grade, USAF)

(title)

Attachment

Special Order Appointing Board of Inquiry (cy)

Attachment 13

GUIDE FOR BOI PROCEEDINGS

Legal advisors and reporters use this guide to conduct, record, and transcribe BOI proceedings. Instructions are in parentheses ( ). Use material in brackets [ ] as appropriate.

RECORD OF PROCEEDING OF BOARD OF INQUIRY CONVENED UNDER AIR FORCE INSTRUCTION 36-3206

Appointed by (title and command of appointing authority)

Concerning (last name, first name, middle initial) (SSN) (grade)

Held at (place of hearing) on (date) (dates)

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NOTE: Use the following abbreviations:

PRES - President

WIT - Witness

MBR - Member of BOI

REP - Reporter.

LA - Legal Advisor.

INT - Interpreter.

RESP - Respondent.

REC - Recorder.

RC - Respondent's Counsel.

(***NOTE:*** If counsel is representing the respondent, it is customary to show all exhibits to the respondent's counsel rather than respondent.)

TESTIMONY

_____

Name of Witness:

Direct and Redirect:

Cross and Recross

FOR THE AIR FORCE:

_____

FOR THE RESPONDENT:

_____

_____
_____
_____

EXHIBITS ADMITTED IN EVIDENCE

_____

Number or Letter	Description	Page Where Offered	Page Where Admitted

PROCEEDINGS OF THE BOARD OF INQUIRY

1. Pre-board Session.

LA: This pre-board session will come to order.

REC: This pre-board session is convened at (time)_____ hours, on (date)_____ , at (building, base, or city)_____ _____, pursuant to AFI 36-3206 and special order _____, dated_____, Headquarters (SPCM)_____. The appointing orders are offered into evidence as Government Exhibit 1. A copy has been provided to the respondent.

LA: Is there any objection? [If none] Government Exhibit 1 is admitted into evidence.

REC: The voting members of the board are absent. The recorder [assistant recorder] and the following persons are present:

Respondent (RESP):_____

Legal Advisor (LA):_____

Reporter (REP):_____

Respondent's counsel (RC):_____

[Bailiff: _____]

REC: I am (grade & full name)_____ , the recorder in this case. I am assigned to the (organization) _____ and stationed at base)_____. I am a designated judge advocate, qualified and certified under Article 27(b) of the Uniform Code of Military Justice (UCMJ). (***NOTE:*** If assistant recorders are present, they identify themselves at this point.

RC: The respondent is represented by (grade & full name) _____. I'm a designated judge advocate and qualified and certified under Article 27(b) of the UCMJ. (***NOTE:*** Civilian counsel states full name, office address, and bar membership(s).)

REC: The respondent is junior in grade and rank to all voting members [and alternate members] designated in the appointing orders. Notice of this hearing was sent to the respondent on (date)_____. Respondent's written acknowledgment of that notice is dated (date)_____. The notice and acknowledgment have been marked as Government Exhibit 2 and are offered into evidence. A copy has been provided to the respondent's counsel. (***NOTE***: The respondent must receive notice of this Board of Inquiry (BOI) hearing at least 10 calendar days before initial convening of the BOI, unless the respondent requested an earlier date.)

LA: Does the respondent have any objection? (If none:) Government Exhibit 2 is admitted into evidence.

2. Oaths.

REC: The reporter will now be sworn. (***NOTE:*** If the reporter has been administered a one-time oath for court-martial, state for the record "The reporter has been previously sworn.")

REC: Do you, (name of reporter) _____, [solemnly swear so help you God] (or) [affirm] that you will faithfully perform the duty of reporter to this board?

REP: I do.

REC: The legal advisor will now be sworn. Do you (grade & full name)_____ [solemnly swear so help you God] (or) [affirm] that you will faithfully perform the duties of legal advisor to this board?

LA: I do.

LA: The recorder(s) will now be sworn.

LA: Do you (grade & full name[s])_____ [solemnly swear so help you God] (or) [affirm] that you will faithfully perform the duties of recorder to this board?

REC: I do.

REC: (Where appropriate) The interpreter will be sworn.

LA: There are no spectators in the hearing room. (***NOTE***: If there are spectators in attendance, obtain the respondent's consent and ensure none of them will be witnesses.)

3. Advice of Rights to Respondent.

LA: (to respondent) You have previously been notified of your rights as set forth in AFI 36-3206, **Chapter 7**. I will again advise you of those rights at this time.

LA: An officer whose case is being referred to a BOI has the right to be notified in writing, at least 30 days before the hearing, of the reasons for which you are required to show cause for retention in the United States Air Force and of the least favorable character of discharge for which you may be recommended.

LA: At any time before a final decision is made by the Secretary of the Air Force (SAF) on your case you may apply for separation. (***NOTE:*** Refer to "Secretary of the Air Force" instead of the abbreviated form "SAF" during the hearing.)

If you are eligible to retire, you may apply for voluntary retirement with the understanding that you may be retired on the first day of the month, or no later than the first day of the second month, immediately following the SAF's approval of your application. If the SAF determines that you did not hold the higher grade satisfactorily, you may be retired in a grade lower than your current grade. If you are not eligible to retire voluntarily, you may apply for a discharge, to be effective within 10 calendar days [20 calendar days if serving overseas] following notification of approval by the SAF.

[If and when you apply for retirement or discharge, these proceedings will continue until the findings and recommendations have been reached.] [Although you are awaiting SAF approval on your [retirement] [discharge], (enter the name of the show-cause authority) has directed that this BOI convene. The proceedings will continue until the findings and recommendations have been reached.]

LA: You may be represented by military or civilian counsel and you may appear in person, with or without counsel at all open proceedings of the board. If you can't be present or you waive your right to be present, you must be represented by counsel. The Air Force may designate counsel or you may request a qualified counsel who is an Air Force officer and reasonably available. You may be represented by either

designated or requested military counsel, but normally not by both. You may retain civilian counsel at no expense to the Government. Civilian counsel may represent you alone or along with your military counsel.

Unless you waive the requirement, your military counsel must have equal qualification and certification under Article 27(b)(2), UCMJ, with a recorder qualified under that article. [As you heard earlier, your military counsel meets this requirement.]

If you do not appear in person and are not represented by a lawyer, the major commander will appoint a military lawyer to represent you.

LA: Do you understand your rights to counsel?

RESP: [Yes] [No]. (***NOTE***: LA explains rights to counsel until RESP understands them.)

LA: You may arrange for the appearance of witnesses whose testimony you believe is pertinent to your case. You may also request the recorder to have invitational travel orders issued to witnesses who meet the requirements of AFI 36-3206, **Chapter 7**. This board may not authorize Government payment of the expenses of witnesses who are not invited to appear by the recorder.

LA: You may submit depositions, sworn or unsworn statements, certificates, affidavits, stipulations or other evidence for consideration by the BOI, whether or not you appear in person. You may also submit a written brief covering any phase of the case at any time before the BOI convenes, during its proceedings, or no later than 10 calendar days after receiving or having access to a copy of the authenticated transcript of these hearings (as provided in AFI 36-3206, **Chapter 7**).

LA: You may challenge, for cause only, any voting member of the board or me, the appointed legal advisor.

LA: You or your counsel may question any witness brought before the board.

LA: All rights under Article 31, UCMJ, are extended to you. Article 31 provides that:

No person subject to the UCMJ may compel any person to incriminate himself or herself or to answer any question that may be self-incriminating.

No person subject to the UCMJ may interrogate or request any statement from an accused or a person suspected of an offense without first stating the nature of the accusation and advising the person that he or she

does not have to make any statement regarding the offense and that any statement may be used as evidence in a trial by court-martial.

No person subject to the UCMJ may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may be degrading.

No statement obtained from any person in violation of Article 31, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.

LA: Do you understand your rights under Article 31, UCMJ?

RESP: [Yes] [No].(***NOTE***: LA explains rights under Article 31, UCMJ, until RESP understands them.)

LA: During the hearing, you may submit to an examination by the board if you wish. You will be sworn as a witness and subject to cross-examination just as any other witness before this board.

LA: If you do not desire to make a statement under oath, you may make a statement to the board without taking an oath, either personally or through your counsel, orally, in writing or in any combination of those ways. If you do not make a statement under oath, you will not be subject to cross-examination, but other evidence may be offered to rebut the facts and representations made in your statement.

LA: You will be furnished copies of any records that I, as the legal advisor to the board, consider relevant to the case at any time during the board proceedings.

LA: You will be furnished a copy of the record of this BOI. After you have been notified of the decision by the Office of the Secretary of the Air Force, you may request a copy of the report of the Board of Review, unless the report is classified, by writing to the National Personnel Records Center, 9700 Page Blvd, St Louis, MO 63132-5100.

LA: Do you understand your rights in these proceedings?

RESP: [I do.] [I do not.] (LA explains RESP's rights in these proceedings until RESP understands them.)

LA: If you have any questions as to your rights at any point in these proceedings, feel free to consult with your counsel, or ask me.

4. Presentation of Government Exhibits.

(If the recorder presents video or audio tapes as Government exhibits, the reporter transcribes or describes the contents of the tapes.)

LA: The recorder may proceed.

REC: I have marked as Government Exhibit 3 the Statement of Reasons (and supporting documentation). (Documents may be individually marked or grouped as appropriate.) Also included is the show-cause authority's notification memorandum to (RESP) advising the respondent to show cause for retention in the Air Force, with the respondent's indorsement. This exhibit indicates that the respondent received this memorandum on (date) _____, which is more than 30 days prior to today's date.

REC: Exhibit 3 shows that the respondent has received the Statement of Reasons and supporting documents as attachments to the notification memorandum.

REC: Government Exhibit 3 is offered into evidence. A copy has been provided to the respondent. (***NOTE:*** Exhibit 3 includes only those records and supporting documents that have already been given to RESP. Records and supporting documents need not appear more than once in the record.)

LA: Is there any objection by the respondent?

RC: [No] [Yes]. (***NOTE***: LA doesn't proceed until resolving any objection.)

LA: Government Exhibit 3 [is] [is not] admitted into evidence.

REC: (Introduce other documentary evidence relating to the BOI and mark as Government Exhibit 4 as appropriate. Briefly describe each document. (***NOTE:*** Make sure that all evidence is logically grouped, legible, and clearly marked on every page.)

LA: Is there any objection by respondent?

RC: [No] [Yes]. (***NOTE***: LA doesn't proceed until resolving any objection.)

LA: Government Exhibit 4 [is] [is not] admitted into evidence.

LA: (If documents are admitted into evidence that the Air Force didn't previously refer to the RESP.) [I note that documents that were not previously referred to the respondent have been admitted into evidence. Does the respondent wish to request additional time, normally not to exceed 10 calendar days, in which to prepare? If you request additional time, you must show why the additional time is required. If you do not desire additional time or if I determine that your request for additional time is not required, this board will proceed. Please indicate at this time if you are prepared to proceed or if you need additional time to prepare your case.

RC: [Respondent is prepared to proceed.] [Respondent requests ___ calendar days to prepare [his] [her] case.]

LA: [The BOI convening date will be reset to allow the respondent to prepare a response to the additional documentary evidence.] [Respondent's request for additional time is not granted. (LA gives reasons for not granting additional time.) We will proceed.]

LA: Does the respondent have any exhibits to offer or other matters requiring ruling at this time?

RC: [No] [Yes]. (LA proceeds to address exhibits offered or to rule on other matters.)

(***NOTE**:* This is the appropriate time to address board membership (regular/reserve officers), board procedural overview, voir dire procedures, challenges, instructions to board MBRs, and so forth.)

LA: Are there any further matters before we adjourn this preboard session?

LA: We will adjourn in a moment. When we resume, with the members present, I will instruct the members and conduct a brief voir dire. Then, both the recorder and the respondent's counsel may conduct a brief voir dire of the board members, if they desire. Before I ask about challenges, I'll ask if either side wishes an out-of-board hearing. Each side will also have the opportunity to make an opening statement. After both sides have rested, we will have an out-of-board hearing to discuss the legal instructions. Closing arguments will begin with the recorder, who will then be followed by the respondent's counsel. The recorder will have an opportunity to make a brief rebuttal if desired. I ask counsel to remember that this is an administrative proceeding and not a court-martial. Therefore, don't refer to the respondent as the "accused" or the "defendant" or refer to me as "your honor." Address me as "Mr.(or MS) Legal Advisor."

LA: The pre-board hearing is adjourned. The BOI will convene [when the members are present] [at_____ hours, on (date)_____].

(***NOTE:*** Recesses and Adjournments. Generally the board recesses for a period less than one day or for periods not extending into the succeeding day. The legal advisor usually calls adjournments to continue the session the following day or at a specified later date. Consider this suggested procedure:)

LA: (addresses the session) The board will now [recess] [adjourn] and will reconvene at _____hours, _____. (The recorder enters into the record the time for recess or adjournment and time and date of reconvening.)

(***NOTE:*** Procedure for Adding Allegations to the Statement of Reasons. A recorder or the board may propose to add a new allegation to the existing Statement of Reasons at any time during the BOI proceedings when it becomes evident that such addition is proper. If the recorder raises the issue, the usual procedure is for the recorder, as the representative of the Government, to advance the request and present the proposed addition to the Statement of Reasons as an exhibit for adoption. If members of the BOI raise new allegations on their own motion, the board requests the recorder to prepare a draft of the amendment to the Statement of Reasons. The following or similar procedure is appropriate:)

[REC: I believe that the board should consider adding a new allegation to the Statement of Reasons because of evidence received at this proceeding. This evidence is adverse to the respondent in that it tends to indicate another reason to consider separating the respondent from the Air Force. I have drafted a proposed additional Statement of Reason and now hand it to the legal advisor as proposed Exhibit _____.]

(At this time the recorder moves that the board amend the Statement of Reasons to include an additional allegation. For example:)

REC: The evidence received by this board tends to substantiate that the respondent misrepresented material facts in an official document. Specifically included with exhibit 3, which has already been submitted into evidence before this board, is a letter dated 28 June 1979 signed by the respondent, to the effect that "I have liquidated all of my bills as of this date." However, other testimony before this board (or offered to this board) clearly shows that as of 28 June 1979 and since, the respondent still owes $45 to Archer's of San Antonio, Texas; $50 to Harry's Variety Store of Arlington, Virginia; and $75 to the First Citizens Bank of Wall Street, Virginia; and that as of 28 June 1979, and since, those debts were delinquent. To support this mission, I offer as Exhibit _____, a sample additional Statement of Reasons that incorporates the allegations outlined above.

LA: The recorder's motion is granted. Exhibit _____ is accepted into evidence and the Statement of Reasons is so amended.

LA (to RESP): You may be entitled to no more than 30 calendar days from the present time within which to prepare your defense to this additional Statement of Reason. While you may be entitled to this time, I

urge you to prepare promptly. With your agreement, the board will continue further proceeding now. Do you agree to continue the hearing or do you want to request a delay to prepare your case.

RC: _____. [The respondent is prepared to proceed at this time and waives further delay with respect to this additional Statement of Reason.] [The respondent requests _____ days (not in excess of 30 calendar days) delay for preparation of case.

LA: [Respondent may present any evidence on the additional Statement of Reason as desired.] or [The board will recess until _____ hours, _____ 19____.]

(The board reconvenes at the designated time and date. The LA opens the session.)

LA: The Board is open.

REC: Let the record show that the board adjourned at _____ hours, _____ 19 ___ and reconvened at _____, hours, _____ 19____, and that all parties who were present when the board adjourned are again present.

LA: Is the respondent prepared to present a defense to the additional Statement of Reason?

RC: The respondent is prepared to proceed.

(Each sides introduces testimony in accordance with the usual procedures.)

5. Convening of BOI with Members.

LA: The president may call the board to order.

PRES: The board will come to order.

REC: This board is convened at (time)_____ hours, on (date)_____, at (place)_____ pursuant to Special Order A_____ , dated _____, Headquarters (SCA)_____. The appointing order has been previously admitted as Government Exhibit 1 and I have distributed copies to each member of the board, the legal advisor, respondent's counsel, and the reporter.

The board is convened to determine whether the respondent, (grade & full name) _____, should be retained in the Air Force.

LA: Would each member of the board examine the appointing order to ensure their names and identifying information is correct?

REC: The following persons, including all voting members of the board are present:

President (PRES): _____, [regular] [reserve] Officer

Member (MBR): _____, [regular] [reserve] [ANG] Officer

Member (MBR): _____, [regular] [reserve] [ANG] Officer

(***NOTE:*** If the respondent is a regular officer, all the voting members must be regular officers. If the respondent is a reserve officer, at least one voting member must be a reserve or ANG officer.)

Legal Advisor (LA): _____

Recorder(s) (REC): _____

Respondent (RESP): _____

Respondent's counsel (RC): _____

Reporter (REP): _____

(***NOTE:*** Identify civilian counsel by full name, office address and bar membership(s).)

REC: [No] [The following] members of the board are absent: The voting members have been provided a copy of AFI 36-3206 and a copy of the directive that governs boards of officers

REC: No witnesses who will appear before this board are present in the hearing room. [There are no spectators in the hearing room.] [The spectators are present at the request of the respondent.]

REC: The respondent is junior in grade and rank to all voting members designated in the appointing orders. [The respondent is a reserve officer; therefore, at least one voting member is a reserve officer.] The Air Force notified the respondent of this hearing on (date)_____. The respondent's written acknowledgment of that notice is dated (date)_____. The board has previously admitted the notice and acknowledgment as Government Exhibit 2. A preboard session was held at (hours) _____ on (date)_____. This is the initial board session with the voting members present.

6. Board Members Sworn.

LA: The board will now be sworn. All rise, please.

REC: As I call your name, please raise your right hand. Do you, (grade & last name), [solemnly swear so help you God] (or) [affirm] that you will truthfully answer all questions about your ability to be an impartial member of this board, and that you will determine, according to the evidence and without partiality, favor or affection, the case about to be heard by this BOI of which you are members?

MBRS: I do.

LA: Please be seated. Members of the board, you have been appointed as members of a BOI under AFI 36-3206 to consider the case of (grade & full name)_____. [He] [She] has been recommended for discharge because of the allegations in the Statement of Reasons [and the additional Statement of Reasons] contained in Government Exhibit 3 [and Government Exhibit 4], which the recorder will now dis-tribute.

REC: Yes, sir. (Distributes copies of Government Exhibit 3 [and Government Exhibit 4] to MBRs.)

LA: Members, please find the Statement of Reasons [and the additional Statement of Reasons] in Government Exhibit 3 [and Government Exhibit 4]. Take a few minutes at this time to examine the Statement of Reasons and to place my instructions and the rest of the proceedings in proper context.

7. Preliminary Instructions.

LA: (After the board MBRs review the statement of reasons.) Before we proceed, I will give you some preliminary instructions. First, I will address the responsibilities of various personnel of the board. Next I will cover some basic concepts and principles that govern the proceedings. Finally, I will highlight the procedural and evidentiary rules that this hearing will follow.

LA: You have been appointed as a member of a BOI under AFI 36-3206 to consider the case of (RESP's grade & full name) _____. [He] [She] has been recommended for discharge because of the allegations in the Statement of Reasons that the recorder has distributed to you.

LA: As Board members, you must be attentive and keep an open mind while the evidence, arguments, and guidance are being presented. It is important that you understand the functions and duties of a BOI as they are outlined in AFI 36-3206, **Chapter 7**.

LA: First, the following individuals have certain responsibilities to this board. The recorder will represent the United States Air Force, and the respondent's counsel will represent the respondent. At various points during the proceedings, counsel are permitted to present arguments or statements for your consideration. Those arguments and statements are not evidence, but they may assist you in forming your view of the evidence, and in discharging your duties.

LA: As legal advisor, it is my responsibility to ensure that the proceedings are fair, orderly, and impartial. I will instruct you on the law and rule on the admissibility of all evidence and on motions or objections by counsel. You must follow the law as I interpret it for you.

LA: During the course of the proceedings, I may need to recess the board or conduct hearings with counsel and the respondent, out of your presence. I will try to estimate the time required for these hearings, but such estimates are not always accurate. Your patience and understanding will contribute greatly to a climate of fairness. During recesses, you must refrain from discussing the case among yourselves or with others. You must restrict your deliberations to the closed session, after presentation of all evidence, arguments by counsel, and my instructions on the law. Further, because of the possible appearance of impropriety, you must avoid off-the-record communications with me, counsel, the respondent, or any potential witness.

LA: During the hearing, you may consider it necessary to question a witness after both sides have completed their examination. Exercise caution when asking questions and be aware that counsel for both sides have prepared their cases. Often a question that occurs to you was not asked for a specific reason or will be best answered by a subsequent witness. If after due consideration, you wish to ask a question, you must submit it to me in writing. If the question is permissible, I will direct the witness to answer it, or I may pose specific questions to elicit the information you desire. Bear in mind that the questions you ask are subject to objection by counsel for either side. If there is an objection regardless of my ruling, you must not let it reflect adversely on the side that raised it.

LA: Because you must find facts based upon the evidence in order to reach your decision, you may wish to take notes. I must caution you, however, that no member may regard another member's notes as evidence. Retain your notes for your personal use only, to refresh your recollection of the testimony. At the end of the hearing, destroy them.]

LA: As you take notes, be sure that you still observe the witnesses, because you are required to assess their credibility. In judging the credibility of a witness, you must consider all the circumstances under which the witness testifies; the witness's demeanor and manner on the stand; the acuteness of the witness's powers of observation; the accuracy and extent of the witness's memory; the witness's interest, if any, in the outcome of the case; and any other circumstances that tend to shed light on the witness's credibility, taking into account your own experience in dealing with people.

LA: With regard to your fact-finding responsibility, let me emphasize that this board is not a judicial tribunal. Accordingly, this hearing is not subject to the rules and procedures that govern civilian or military courts. For example, the rules of evidence are greatly relaxed, and it is not necessary that the allegations in the Statement of Reasons [or in the additional Statement of Reasons] be proven beyond a reasonable doubt.

LA: Administrative boards must weigh all the evidence and arrive at their findings by a preponderance of the evidence. A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence opposition to it.

LA: Additionally, I caution you that the function of the BOI is not limited to considering the information in the Statement of Reasons [or in the additional Statement of Reasons] as it has been presented to you.

LA: The duties of the BOI are specific: First, to receive evidence during the proceedings; second, to develop any additional information, as needed, to create a record on which to base a proper decision; third, to evaluate evidence received during the hearing; fourth, to arrive at clear, logical findings consistent with the evidence presented; and fifth, to make a determination and recommendations consistent with the finding(s).

LA: As a member of this board, you must follow the guidance in AFI 36-3206, **Chapter 7**. In addition, you must protect (grade & last name)_____'s rights, and give [him] [her] a fair and impartial hearing. At the same time, however, you must remember that the Air Force is also a party to the hearing and is entitled to a fair and impartial hearing of its evidence. An officer who fails to meet and maintain the standards expected of an officer of the respondent's grade and experience should not be retained in the Air Force. However, it would be a grave injustice to the officer and contrary to the best interests of the Air Force to remove from active duty an officer who should be retained.

LA: It is your duty to weigh all the evidence and arrive at findings that are supported by the preponderance of the evidence. Based on your findings, the board must then determine whether the respondent should be retained in the Air Force. The board is limited to the specific recommendations stated in AFI

36-3206, chapter 7, without modification or qualification. The board is not authorized to make any other recommendation or proviso to any of the possible recommendations.

(***NOTE:*** Include the following if the respondent is subject to recoupment of education assistance, special pay or bonus money.)

[LA: You'll need to refer to AFI 36-3206, paragraph **4.32.**, Recoupment of Education Assistance, Special Pay, or Bonuses, for special rules regarding recoupment. If the respondent is subject to recoupment of education assistance and disputes the debt, you must make findings and recommendations concerning the validity of the indebtedness.]

[LA: Special rules for recoupment apply if the basis for discharge includes homosexual conduct. These rules are in AFI 36-3206, paragraph **4.33.**, Recoupment of Education Assistance, Special Pay, or Bonuses.]

(***NOTE:*** Include the following if the basis for discharge includes homosexual conduct.)

[LA: You'll need to refer to AFI 36-3206, paragraph **3.3.** Homosexual Conduct, if the basis for discharge includes homosexual conduct.]

8. Procedural Overview.

LA: Let me now turn to an overview of the procedures that we will use in this BOI. In a few minutes, counsel and I will ask you some questions to determine if any grounds for challenge exist against any of you. Please keep in mind that none of us intend these questions to embarrass you or to question your integrity. We ask them only to ensure that the respondent as well as the Air Force receive a hearing by fair and impartial voting members.

LA: You may be questioned individually or collectively, but you should respond individually. If you feel that you have to say something that might prejudice or disqualify any other member who hear your answer, tell me and I'll ensure that you'll be asked any pertinent questions out of the presence of the other members.

LA: Once we determine the final membership of the board, the recorder and the respondent's counsel will be permitted to make opening statements. At this time, I'll give you any documents and additional information that I admitted as evidence at a preliminary session conducted out of your presence.

LA: We will then recess the board to allow you to read those documents. After you read the documents, witnesses may be called. During the recess you should simply read the documentary evidence and absorb

the information. You must not begin deliberating or otherwise discuss the case in any manner either among yourselves or with any other person.

LA: After the presentation of all evidence, the recorder and the respondent's counsel may make closing argument to aid you in evaluating the evidence. I will then give you final instructions before you go into your deliberations.

LA: You will vote by secret written ballot. A majority vote is required to arrive at the findings and recommendations for disposition of the case. After the board adjourns, no member may disclose the vote or position of any other member. A member may disclose his or her own vote but may not be required to do so by anyone.

(***NOTE:*** Omit the following instructions and go to part 9, "Voir Dire Procedure" if the board's determination may only result in an honorable discharge recommendation as specified as specified in AFI 36-3206.)

LA: Here is a concise summary of the rights and benefits associated with each character of discharge that the Air Force may give an officer after the BOI determines that he or she shouldn't be retained:

Honorable Discharge: The board may recommend this discharge when the military record of the respondent warrants the highest type of discharge. As a rule, the officer is entitled to full rights and benefits but is ineligible to reenter the Service as an enlisted member.

Discharge Under Honorable Conditions (General): The board may recommend this discharge when the military record of the respondent is not sufficiently meritorious to warrant an honorable discharge but is not of such a nature that a discharge under other than honorable conditions is warranted. Usually, the respondent is entitled to full rights and benefits. If present or future statutes specifically require honorable discharge as a condition of granting rights and benefits, the officer's eligibility for these rights or benefits may be affected. The officer is ineligible to reenter the Service as an enlisted member.

Discharge Under Other Than Honorable Conditions: The board may recommend this discharge when the military record of the respondent does not warrant other than the least desirable administrative discharge. An officer who receives this type of discharge may not receive certain benefits as determined by the Department of Veterans' Affairs and is ineligible to reenter the Service as an enlisted member.

9. Voir Dire Procedure.

LA: Members of the board, at this time I will direct some general questions to you about your qualifications to serve as a member of this BOI.

LA: Does any member write or indorse the officer performance report of any other member of this BOI?

LA: Have each of you familiarized yourself with AFI 36-3206, **Chapter 7**?

LA: Does any member know the respondent?

LA: Do any of you know anything about the matters in the Statement of Reasons?

LA: Have any of you had any prior participation in this case?

LA: Is your acquaintance with any of the counsel such as might influence your deliberation or vote in this case?

LA: Will you each give a fair and impartial hearing to both parties and base your decision solely on the evidence, and not form a final opinion until you enter your closed session deliberations?

LA: The recorder may question the voting members, if desired.

LA: The respondent's counsel may question the voting members, if desired.

LA: Does the respondent's counsel desire an out-of-board hearing?

RC: [No] [Yes]. (If yes, the LA adjourns the BOI hearing, holds an out-of-board hearing, and then reconvenes the BOI hearing to continue with part 10.)

10. Hearing Challenges.

(***NOTE:*** The legal advisor hears challenges to voting members of the board outside their presence. The respondent, the respondent's counsel, or the recorder may challenge voting members of the board for cause based upon matters raised in voir dire, or upon evidence or testimony. After the respondent's counsel and the recorder have had opportunity to present evidence and argument, the legal advisor rules on the challenge. If the voting membership drops below quorum, the president adjourns the board until new members are appointed. Voir dire and the right to challenge new members for cause will be extended when the board resumes. If the basis for a sustained challenge develops at a later stage of the proceedings, any new members must be read the record of the proceedings-to-date in open session, in the presence of all parties. When challenging witnesses, including the respondent, the order of questioning is the respon-

dent's counsel, the recorder, voting members of the board, and the legal advisor. All persons testifying on a challenge will be sworn as witnesses but questions are limited to the ground for challenge.)

LA: Does the respondent desire to challenge any voting member for cause?

RC: [No] [Yes]. (After the RC argues, the REC may be allowed to argue.)

LA: The challenge of (MBR's grade & full name) is [sustained] [denied]. [The member is permanently excused from further participation in this case. The board is adjourned until a new member is available.]

REC: Does the respondent desire to challenge the legal advisor for cause?

RC: [No] [Yes]. (If yes, the RC has the opportunity to voir dire the LA in the presence of the members.) (***NOTE:*** The board votes on a challenge to the LA in closed session and the PRES announces the board's ruling in open session.)

PRES: The challenge of (LA's grade & full name) is [sustained] [denied]. [The legal advisor is permanently excused from further participation in this case. The board is adjourned until a new legal advisor is available.]

RC: The respondent has no [further] challenges.

11. Proceedings of the Board.

LA: The recorder may proceed.

REC: (The REC must account for all parties present.) At this time, I am distributing Government Exhibits 1 and 2 to the board members. Government Exhibit 1 is the appointment order and, Government Exhibit 2 is the notice of this hearing to the respondent and [his] [her] acknowledgment.

REC: (If additional evidence was admitted) I am also at this time, distributing Government Exhibits _____ to the board.

LA: The recorder may make an opening statement.

REC: (Makes opening statement and summarizes the evidence).

LA: The respondent's counsel may make an opening statement at this time, or reserve the opportunity.

RC: (Makes or defers opening statement). (***NOTE:*** The RESP may present documentary evidence to board MBRs at this time so they can review it during the following recess.)

LA: At this time, the board will recess so that the members may familiarize themselves with the documentary evidence. Please remember that you are not to begin deliberations at this time. Tell me when you are finished reviewing the documents. The board is in recess.

12. Recess/Proceedings Resumed.

LA: Please be seated. The board will come to order. All parties are present.

13. Witness Procedure.

REC: (***NOTE***: The REC administers the oath for all WITs.) Do you [solemnly swear so help you God] (or) [affirm] that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth?

REC: Please state your name. (If military:) [What is your grade and unit?] (If civilian:) [What is your home address?]

WIT: _____.

REC: Do you know the respondent in this case, (State RESP's grade and full name) _____?

(If affirmative) Please point [him] [her] out.

REC: The witness [has] [has not] correctly identified the respondent.

(***NOTE:*** The BOI proceeds with direct, cross, redirect and recross-examination. The MBRs and LA then have the opportunity to pose questions orally.)

REC: (After presenting all evidence.) The Government has no further evidence at this time.

LA: The respondent may now present [further] matters if [he] [she] wishes.

RC: (Makes opening statement and distributes documentary evidence to the MBRs and calls WITs.)

RC: (After presenting all evidence.) The respondent has no further evidence at this time.

LA: Does the recorder have evidence in rebuttal?

REC: [No] [Yes]. (If REC wants to submit further evidence, procedures already outlined apply.)

LA: (After both side present all evidence.) Do the members want to recall any witness or have additional witnesses called, or want any additional documentary evidence, Mr. President?

PRES: [No] [Yes]. (If yes, procedures already outlined apply.)

14. Out-of-Board Hearing.

LA: Members of the board, I will need a hearing with the respondent and counsel, out of your presence, to discuss my legal instructions and the Findings and Recommendations Worksheet we will be giving to you. I estimate that we will be in recess [for about _____ minutes] [until _____ hours]. I remind you not to begin deliberating until your closed session, after the argument by counsel, and my instructions on the law. The board is in recess. (***NOTE:*** During the recess the LA goes over the instructions he or she intends to give with the Findings and Recommendations Worksheet. The LA must modify the worksheet to be consistent with evidence admitted at the BOI. When the evidence has so substantially changed the nature of the Statement of Reasons that a new or different reason for separation is present, the LA may need to follow the procedure set out in AFI 36-3206, paragraph **7.25.4.** In cases based on serious misconduct, the LA must give the definition of serious misconduct, AFI 36-3206, **Attachment 1**, to the MBRs. When appropriate in cases involving serious misconduct, the LA may also give instructions on the elements of the alleged misconduct. Use the discussion of the element of certain offenses contained within the manual for court-martial as a guide.)

15. Argument and Instructions.

LA: Please be seated. The board will come to order. All parties and members are present. The recorder may make a closing statement.

REC: _____.

LA: The respondent's counsel may make a closing statement.

RC: _____.

LA: The recorder may make a brief rebuttal.

REC: _____.

LA: (Gives closing instructions, tailored as appropriate to the issues.)

16. BOI Closing Instructions.

LA: Members of the board, in a few moments you will close to determine your findings, determination, and recommendations in this case. In discharging your duties, you should apply the following guidelines.

LA: You must make a [separate] finding with respect to [each of] the allegations contained in the Statement of Reasons. [The] [Each] findings should be consistent with the facts presented.

LA: You must carefully phrase your findings to include the substance of all material facts you find to be established by the evidence. The primary function of any administrative board is to discover and report the facts found in the matter under consideration and to present appropriate recommendations so that higher authorities have adequate information with which to make a final decision on the case. You must base your findings solely on evidence of record.

LA: By "evidence of record," I mean documents or other exhibits admitted into evidence [and testimony of witness] [and the respondent's statement].

LA: In discharging this responsibility, you must use your best judgment and common sense in resolving disputed and conflicting evidence, considering the probability or improbability of the evidence and select-

ing and weighing the evidence considered most worthy of belief. You may make reasonable inference based on evidence, but you must avoid conjecture. You must make certain that a preponderance of evidence supports your findings.

(***NOTE:*** Use the following when the basis for discharge involves homosexual conduct.)

[LA: I remind you to refer to AFI 36-3206, paragraph **3.3.**, Homosexual Conduct, for required findings and recommendations.] (***NOTE:*** Use the following when the respondent is subject to recoupment of education assistance, special pay or bonus money.)

[LA: I remind you to refer to AFI 36-3206, paragraph **4.32.**, Recoupment of Education Assistance, Special Pay or Bonuses, for required findings and recommendations. Remember, if the respondent is subject to recoupment of education assistance funds and disputes the debt, you must make findings and recommendations regarding the validity of this debt.]

LA: After you make your findings, you must then determine whether the Air Force should retain the respondent.

LA: If you determine that the Air Force should retain the respondent, you don't need to make a further recommendation.

LA: If you determine that the Air Force shouldn't retain the respondent, then you must also recommend the character of discharge which should be awarded. In this case, the board can recommend: [Only an honorable discharge.]

[An honorable discharge, a discharge under honorable conditions (general), or a discharge under other than honorable conditions.]

17. Character of Discharge.

(***NOTE:*** Don't read these definitions if the discharge characterization is restricted to an honorable discharge.)

LA: In my previous instructions to you, I discussed the different types of discharge that this board may recommend. At this time, I will amplify on the definitions of each type of discharge.

LA: An honorable discharge is appropriate when the military record of the respondent warrants the highest type of discharge. As a rule, a respondent is entitled to full rights and benefits but is ineligible to reenter the Service as an enlisted member.

LA: A discharge under honorable conditions (general) is appropriate when the military record of the respondent isn't sufficient to warrant an honorable discharge, but is not of such nature that it warrants a discharge under other than honorable conditions. Usually, the respondent is entitled to full rights and benefits. If present or future statutes specifically require honorable discharge as a condition precedent to granting rights and benefits there under, the respondent's eligibility for such rights or benefits may be affected. However, the respondent is ineligible to reenter the Service as an enlisted member.

LA: A discharge under other than honorable conditions (UOTHC) is appropriate when the military record of the respondent doesn't warrant other than the least desirable administrative discharge. Officers who receive a discharge UOTHC normally don't qualify for certain benefits as determined by the Department of Veterans' Affairs and are ineligible to reenter the Service as an enlisted member.

(***NOTE**:* Use the following if the basis for discharge involves homosexual conduct.)

[LA: I remind you to refer to AFI 36-3206, paragraph **3.1.**, Character of Discharge, to determine the type of discharge that may be recommended for discharges involving homosexual conduct.]

18. Voting Procedures.

LA: You must vote by secret written ballot, with at least a majority of the voting members concurring in the findings, determination, and recommendations. After you complete your discussion, you will vote first on the findings, and then continue with the determination and the recommendations, respectively. The president collects and counts the votes and announces the ballot results to the other board members.

LA: Retain your copies of AFI 36-3206 to use during deliberations in closed session. If you need to consult with the legal advisor during your deliberations, the president must open the board and obtain the advice on the record, in open session in the presence of the recorder, the respondent, and the respondent's counsel. If you desire assistance solely to put your findings and recommendations into proper form, you may call me into your closed session. I will ensure that the reporter is present to record the proceedings verbatim.

LA: To assist you in putting your findings, determination, and recommendations in proper form, I have asked the recorder to prepare a worksheet, marked as Board Exhibit [__], which has been examined by the respondent's counsel during the preboard session and the out-of-board hearing.

LA: The recorder will hand the worksheet to the president.

REC: (Complies).

LA: Complete the worksheet after you have finished voting. It will be attached to the record, so please exercise care in completing it. The president will read from the worksheet in announcing the board's findings, determination, and recommendations. All the concurring members must sign the worksheet. The signatures of all members certify that a majority of the voting members concurred in the findings and recommendations. Members who don't concur may file an explanatory statement for inclusion in the record.

(Discuss the worksheet's format and options.)

LA: Be advised that you may not interpret my comments, questions, or instructions as indicating an opinion as to the findings, determination, or recommendations you make in this case. You have the independent responsibility for making these decisions. Does any member of the board have any questions concerning these instructions or the worksheet?

LA: Does the recorder or the respondent's counsel desire any additional instructions or have any objections to the instructions as given?

LA: If questions of law or procedure arise during your closed deliberations, don't speculate. Open the board and ask me for guidelines. Likewise, if you wish to call or recall any witness, or if you desire a recess, you should open the board and make your request. If you need a break (or would like to recess for a meal or overnight), you should notify me, and we will open the board to consider your request.

LA: You may not begin to discuss the case until the board closes and all members are present in the deliberation room. Once your deliberations begin, you may not interrupt them except by formally opening the board in the presence of all parties, or requesting my assistance solely to put your findings and recommendations in proper form. (***NOTE***: The LA may call a recess before closing the session for the convenience of the members.)

LA: The Board is closed for deliberations.

19. Announcement of Findings.

LA: Please be seated. The board is open.

REC: All parties who were present when the board closed are again present.

LA: Mr. President, has the board arrived at findings, determination, and recommendations?

PRES: It has.

LA: (If the LA didn't examine the worksheet in closed session.) Would you fold the worksheet in half and hand it to the recorder so I can examine it for form. (After compliance and review.) I find that Board Exhibit ___ is in proper form, and I will return it to the president.

LA: The respondent and counsel please rise. Mr. President, please read from the worksheet, beginning with the respondent's grade and name, to announce the board's findings, determination, and recommendations.

PRES: (PRES reads findings, determination, and recommendations.)

20. Advice to Respondent.

LA: (If recommendation is for retention.) (RESP's grade & last name)_____, I will give you a memorandum with the board's decision to retain you and we'll send a copy of the board's decision to the SCA and HQ AFPC. You will be receiving a summarized transcript of the record of the board proceedings with the board's findings and recommendation transcribed verbatim. However, the reporter's tapes of the record of the board proceedings will be retained for one year, so they can be tran-scribed verbatim if required.

LA: (If recommendation is for removal from active duty or discharge.) (RESP's grade & last name)_____, you will be receiving a copy of the record transcribed verbatim. I will send your case through (SCA), the Air Force Personnel Center and through the General Law Division, Office of the Judge Advocate General, to the Office of the Secretary of the Air Force for further referral to a Board of Review for final review. You may not appear in person or be represented by counsel during this review unless the Board of Review requests you or your counsel appear.

LA: Within 10 calendar days after you receive or have access to an authenticated copy of the report of this board's proceedings, you or your counsel may file with this board any suggested corrections to the report that you think necessary to make sure the transcript conforms to the testimony given during the hearings. I will determine what corrections are allowable and will advise you accordingly.

LA: Within the 10-day period, you may also submit to the convening authority any brief or argument that you feel should be considered in the final evaluation of your case.

LA: This board may be reconvened any time before the Secretary of the Air Force makes a final decision in your case if additional evidence that could materially affect its findings and recommendations is discovered or brought to the attention of the convening authority, and if it can be established that such evidence was not reasonably available for presentation to the board during its proceedings. If you discover

additional evidence that was not reasonably available for presentation to the board during the hearing, you may also submit it within the 10-day period after you receive a copy of the report of this board's proceedings.

LA: The board is adjourned.

Attachment 14

IC 97-1 TO AFI 36-3206, ADMINISTRATIVE DISCHARGE PROCEDURES FOR COMMISSIONED OFFICERS

29 MAY 1997

SUMMARY OF REVISIONS

This change incorporates interim change (IC) 97-1 which changes the definition of a Reserve non-proba-tionary and probationary officer from one who has three years of commissioned service to five years of commissioned service (**Attachment 1** - terms).

Nonprobationary Officer -- A Regular officer with five or more years active commissioned service, computed from the total active federal commissioned service date or a Reserve officer with five or more years of commissioned service, computed from the total federal commissioned serviced date.

Probationary Officer -- A Regular officer with less than five years of active commissioned service, computed from the total active federal commissioned service date or a Reserve officers with less than five years of commissioned service, computed from the total federal commissioned service date.

Attachment 15

IC 98-1 TO AFI 36-3206, ADMINISTRATIVE DISCHARGE PROCEDURES FOR COMMISSIONED OFFICERS

19 JUNE 1998

SUMMARY OF REVISIONS

This change incorporates interim change (IC) 98-1 which changes the type of characterization an officer may receive and adds a new reason when discharged for substandard performance of duty; authorizes separation of officers who are not sentenced to a dismissal and are sentenced to serve in confinement for six months or more; requires notification of show cause action to be sent by registered or certified mail, return receipt; nonresponse to the show cause notification will be construed as the respondent voluntarily electing not to appear before the board; and changes the processing time guidelines for officers eligible for transition assistance program benefits who elect to take excess leave or permissive TDY for relocation/ transition activities. Updates office symbols throughout the publication. See the last attachment of the publication, IC 98-1, for the complete IC. A bar (|) indicates revision from the previous edition.

2.1. **Character of Discharge.** An officer discharged solely for substandard performance of duty may receive an honorable or under honorable conditions (general) discharge.

2.3.11. Failure to maintain satisfactory progress while in an active status student officer program.

3.6.14. An officer who is sentenced by a court-martial to a period of confinement for more than six months and not sentenced to a dismissal may be separated at any time after the sentence to confinement has become final and the person has served in confinement for a period of six months. Officers sentenced to a dismissal cannot be separated until the appellate review of his or her case is final as announced by AFLSA/JAJR.

7.3.1. Written Notification. The MAJCOM must send the officer written notification at least 30 days before the BOI hearing. The notification will explain why SCA is requiring the officer to show cause for retention on active duty and the least favorable characterization of discharge authorized. Notification will be by registered mail or certified mail, return receipt (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the member's last known address or to the next of kin.

7.3.3. Personal Appearance or Representation Before a BOI. The respondent may appear in person at all open proceedings of the BOI. Nonresponse to the notification letter may be construed as the respondent

voluntarily electing not to appear before the Board. Either military counsel appointed according to AFI 51-201, *Military Justice Guide,* or military counsel of the respondent's own choice, if requested and approved according to AFI 51-201, may represent the respondent, but not both. The respondent may be represented by civilian counsel, retained at his or her own expense, in addition to or instead of military counsel.

4.36. Processing Time Guidelines. Each level of command and headquarters processes cases as efficiently as possible while protecting the officer's rights throughout the administrative discharge process. Case processing begins on the date that the officer receives the initiating commander's notification memorandum. MPFs and MAJCOM use express mail or overnight delivery to reduce mail time. ***NOTE:*** The availability of counsel, BOI report transcribing capability, the need for referral to the Air Force Physical Disability System, or other local circumstances may affect case processing. Additionally, officers eligible for transition assistance program benefits may elect to take excess leave or permissive TDY for relocation/transition activities. (Commanders are not required to authorize either if doing so would interfere with the military mission.) See AFI 36-3022, *Transition Assistance Program*, for transition assistance benefit eligibility requirements and AFI 36-3003, *Military Leave Program*, for excess leave and permissive TDY eligibility requirements.

Attachment 16

IC 2000-1 TO AFI 36-3206, ADMINISTRATIVE DISCHARGE PROCEDURES FOR COMMISSIONED OFFICERS

10 MARCH 2000

SUMMARY OF REVISIONS

This change incorporates interim change (IC) 2000-1 which makes minor administrative changes; updates **Chapter 1**, **Chapter 2** and **Chapter 3**; allows MAJCOM commanders to delegate their show cause authority (SCA) to subordinate levels of command including wing commanders who are general officers or general court-martial convening authorities for wings not commanded by general officers (**Chapter 1**); realigned the contents of **Chapter 4** and renumbered paragraphs; deletes **Chapter 5**, probationary officer discharge boards; combines **Chapter 8** with **Chapter 6** and deletes **Chapter 8**; updates **Chapter 7**; changes the definition of the show cause authority (**Attachment 1**, Terms); revised **Attachment 2**, Guidelines for Fact Finding Inquiries into Homosexual Conduct; combines **Attachment 4** and **Attachment 6** (notification and show cause memorandums) into **Attachment 4**; makes minor changes to **Attachment 5**; deletes **Attachment 6**, **Attachment 7**, **Attachment 8**, **Attachment 9**, **Attachment 10**, and **Attachment 11** and makes necessary changes in **Attachment 12** and **Attachment 13** to reflect new SCAs. Updates office symbols throughout publication. See the last attachment of publication, IC 2000-1, for the complete IC. A bar (|) indicates revision from previous edition.

Chapter 1

USING THIS INSTRUCTION

1.1. Show-Cause authority (SCA). The SCA determines whether the information or evidence presented warrants initiation of discharge action before referring a case to an administrative board under **Chapter 6** or **Chapter 7**, as appropriate. If the SCA determines that the information or evidence does not warrant discharge action, the SCA notifies the officer pending discharge action that the action is terminated. MAJCOM commanders will delegate SCA to wing commanders who are general officers or General Court-Martial Convening Authorities for wings not commanded by a general officer, unless they personally determine that specific delegations cannot be made because of unusual circumstances.

1.2. Staff Judge Advocate (SJA) and Personnel Staffs. The servicing SJA and personnel staffs advise commanders as to whether or not there is sufficient information or evidence to initiate discharge action in accordance with this AFI.

1.3. HQ AFPC/DPPRS. HQ AFPPC/DPPRS advises commanders, SJAs, and SCAs on administrative procedures and requirements. HQ AFPC/DPPRS ensures cases meet the administrative processing requirements according to this AFI before sending them to either:

1.3.1. HQ USAF/JAG.

1.3.2. The Air Force Personnel Council (AFPC).

Chapter 2

DETERMINING WHETHER TO DISCHARGE FOR SUBSTANDARD PERFORMANCE OF DUTY

2.1. Character of Discharge.

2.1.1. When directing an officer's discharge in accordance with this chapter, the Office of the Secretary of the Air Force (OSAF) may direct:

2.1.1.1. A discharge under honorable conditions (general)

2.1.1.2. An honorable discharge

2.2. Identifying Substandard Performance of Duty. Commanders or other cognizant authorities document an officer's substandard performance of duty in any or all of these forms:

2.2.1. Performance reports.

2.2.2. Records of formal counseling.

2.2.3. Admonishments or reprimands.

2.2.4. Training reports.

2.2.5. Operational or technical evaluation reports.

2.2.6. Medical reports.

2.2.7. Statements or memorandums for record (MFR).

2.2.8. Article 15s.

2.3. When Action Is Proper. The SCA initiates a discharge by citing one or more of these paragraphs:

2.3.1. Failure to show acceptable qualities of leadership required of an officer of his or her grade.

2.3.2. Failure to achieve acceptable standards of proficiency required of an officer of his or her grade.

2.3.3. Failure to discharge duties equal to his or her grade and experience.

2.3.4. Substandard performance of duty resulting in an unacceptable record of effectiveness.

2.3.5. A record of marginal service over an extended time as shown by performance reports covering two or more jobs and prepared by at least two different supervisors.

2.3.6. Apathy or defective attitude when the officer is unable or unwilling to expend effort.

2.3.7. Mental disorders that interfere with the officer's performance of duty and don't fall within the purview of the medical disability process. A psychiatrist or a clinical psychologist must conduct an evaluation. The evaluation must confirm any of these diagnoses as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition:

2.3.7.1. Personality disorder.

2.3.7.2. Disruptive behavior disorder.

2.3.7.3. Adjustment disorder.

2.3.7.4. Impulse control disorder.

2.3.7.5. Other disorders, including gender identity disorders as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition, that interfere with performance of duty and don't fall within the purview of the medical disability process. ***NOTE:*** A gender identity disorder may be transsexualism or a gender identity disorder of adolescence or adulthood.

2.3.8. Weight control failure as specified in AFI 40-502, *Weight Management Program*

2.3.9. Failure to conform to prescribed standards of dress, physical fitness, or personal appearance. The SCA initiates action as specified in **Chapter 3** when he or she determines that the failure is deliberate.

2.3.10. Inability to perform duties or meet military commitments because of family care responsibilities.

2.3.11. Failure to maintain satisfactory progress while in an active status student officer program.

2.4. Recoupment. If an officer being separated for reasons under this chapter received educational assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph **4.32.**for rules regarding recoupment.

Chapter 3

DETERMINING WHETHER TO DISCHARGE FOR MISCONDUCT, MORAL OR PROFESSIONAL DERELICTION, HOMOSEXUAL CONDUCT, OR IN THE INTERESTS OF NATIONAL SECURITY

3.1. Character of Discharge.

3.1.1. When directing an officer's discharge in accordance with this chapter, the Office of the Secretary of the Air Force (OSAF) may direct:

3.1.1.1. A discharge under other than honorable conditions (UOTHC).

3.1.1.2. A discharge under honorable conditions (general).

3.1.1.3. An honorable discharge.

NOTE: The three types of character of discharge are further described in paragraph 1.7 of AFI 36-3207, *Separating Commissioned Officers*.

3.1.2. An honorable discharge is normally appropriate when the basis for discharge pertains solely to pre-commissioning activities. ***EXCEPTIO*N:** A discharge UOTHC or a discharge under honorable conditions (general) may be appropriate if an officer intentionally misrepresents or omits facts in official statements, records or commissioning documents.

3.1.3. An honorable discharge or a discharge under honorable conditions (general) are the only types of discharges available when homosexual conduct is the sole basis for the discharge with these exceptions:

3.1.3.1. A discharge UOTHC may be directed if there is a finding that an officer attempted, solicited, or committed a homosexual act:

3.1.3.1.1. By using force, coercion, or intimidation.

3.1.3.1.2. With a person under 16 years old.

3.1.3.1.3. With a subordinate in circumstances that violate the military superior and subordinate relationship. ***NOTE:*** The military superior and subordinate don't have to be in the same chain of command.

3.1.3.1.4. Openly in public view.

3.1.3.1.5. For compensation.

3.1.3.1.6. Aboard a military vessel or aircraft.

3.1.3.1.7. In another location subject to military control under aggravating circumstances, noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

3.1.4. In drug or alcohol abuse cases, the SCA or BOI may consider all relevant and admissible evidence on the issue of retention or discharge. However, the SCA or BOI may not consider the following in determining the character of discharge:

3.1.4.1. Evidence that the officer provides voluntarily when seeking treatment and rehabilitation for drug abuse if the officer’s actions meet the requirements for self-identification in AFI 36-2701, *Social Actions Program.*

3.1.4.2. Results of mandatory urinalysis testing for controlled substances as part of:

3.1.4.2.1. A command-directed examination as defined in AFI 36-2701.

3.1.4.2.2. A specified member's referral for a medical purpose when the case involves a reasonable suspicion of drug abuse.

3.1.4.2.3. An examination of a specified member participating in a drug treatment and rehabilitation program.

3.1.4.3. Information provided by the officer in response to questions about intoxicated driving offenses if the officer’s statements conform with the provisions on screening members as specified in AFI 36-2701.

3.1.4.4. The limitations in paragraphs **3.1.4.2.**, and **3.1.4.3.** don't apply to:

3.1.4.4.1. Evidence introduced to impeach or rebut evidence introduced by the officer.

3.1.4.4.2. The results of urinalysis testing in circumstances other than that specifically excluded in the above paragraphs.

3.1.4.5. The SCA consults with the local SJA in deciding how to use urinalysis evidence.

NOTE: If the SCA or BOI considered any of the above and recommended a discharge under honorable conditions (general) or a discharge UOTHC, the SCA or BOI will specify which evidence warranted the less than fully honorable discharge recommendation.

3.1.5. A discharge more severe than the one recommended by a BOI may not be approved.

3.2. Misconduct or Moral or Professional Dereliction. The procedures in this AFI are administrative. Commanders must not use them as a substitute for punitive or disciplinary action under the Uniform Code of Military Justice (UCMJ).

3.2.1. Wing or comparable commanders may take administrative action when evidence of misconduct and moral or professional dereliction raises doubts about an officer's suitability for continued service, regardless of whether the officer has already received judicial or nonjudicial punishment. Disciplinary action should normally be completed prior to initiation of administrative separation action but pending disciplinary action does not preclude initiation of administrative discharge action.

3.2.2. The SCA should not normally initiate action based solely on the same allegation(s) which resulted in an acquittal (or equivalent action) in a military or civilian court. However, a wing commander or other authority may initiate action based on substantive information not available or admitted at trial, or if the court action was terminated for reasons not related to the guilt or innocence of the officer.

3.3. Homosexual Conduct.

3.3.1. Congress has determined that the policy on homosexual conduct in the armed forces is based upon the following findings, which are codified at section 654 of Title 10, United States Code:

3.3.1.1. Section 8 of Article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation for the land and naval forces.

3.3.1.2. There is no constitutional right to serve in the armed forces.

3.3.1.3. Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

3.3.1.4. The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

3.3.1.5. The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

3.3.1.6. Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

3.3.1.7. One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

3.3.1.8. Military life is fundamentally different from civilian life in that (a) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and (b) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

3.3.1.9. The standards of conduct for members of the armed forces regulate a member's life 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

3.3.1.10. Those standards of conduct, including the Uniformed Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

3.3.1.11. The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

3.3.1.12. The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

3.3.1.13. The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service.

3.3.1.14. The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

3.3.1.15. The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

3.3.2. Homosexual conduct is grounds for separation from the military services under the terms set forth in paragraph **3.3.3.**Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. A member's sexual orientation is considered a personal and private matter and is not a bar to continued service unless manifested by homosexual conduct in the manner described in paragraph **3.3.3.**

3.3.3. A member will be separated if one or more of the following approved findings is made:

3.3.3.1. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that the member has demonstrated that all of the following are true:

3.3.3.1.1. Such acts are a departure from the member's usual and customary behavior.

3.3.3.1.2. Such acts under all the circumstances are unlikely to recur.

3.3.3.1.3. Such acts were not accomplished by use of force, coercion, or intimidation.

3.3.3.1.4. Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in proper discipline, good order, and morale.

3.3.3.1.5. The member does not have a propensity or intent to engage in homosexual acts.

3.3.3.2. The member has made a statement that he or she is a homosexual or bisexual or words to that effect, unless there is a further approved finding that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a service member that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether a member has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

3.3.3.2.1. Whether the member has engaged in homosexual acts.

3.3.3.2.2. The member's credibility.

3.3.3.2.3. Testimony from others about the member's past conduct, character, and credibility.

3.3.3.2.4. The nature and circumstances of the member's statement.

3.3.3.2.5. Any other evidence relevant to whether the member is likely to engage in homosexual acts. ***NOTE:*** This list is not exhaustive; any other relevant evidence may also be considered.

3.3.3.3. The member has married or attempted to marry a person known to be the same biological sex (as evidenced by the external anatomy of the person involved)

3.3.4. The member shall bear the burden of proving, throughout the proceeding, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraph **3.3.3.1.**or **3.3.3.2.**

3.3.5. Nothing in this AFI requires a member's discharge when a determination is made by the commander that:

3.3.5.1. The member engaged in acts, made statements, or married or attempted to marry a person known to be the same biological sex for the purpose of avoiding or terminating military service; and

3.3.5.2. Separation of the member would not be in the best interest of the Air Force.

3.3.6. Commanders must refer to the guidelines for fact-finding inquiries into homosexual conduct when determining whether to initiate an inquiry into the alleged homosexual conduct. See **Attachment 2** of this AFI.

3.3.7. If an officer being separated for homosexual conduct received education assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph **4.33.**for rules regarding recoupment.

3.4. Fear of Flying. The Air Force considers professed fear of flying as professional dereliction. The unit commander initiates action on a rated officer suspended from aviation service under paragraph 3.7.1.3 of AFI 11-402, *Aviation and Parachutist Service, Aeronautical Ratings and Badges,* because of professed fear of flying, and who has been found physically qualified for flying duties. The unit commander includes a copy of the suspension from aviation service in the case file.

3.4.1. The BOI may retain a respondent who meets the criteria for discharge for fear of flying only if the respondent has nonflying skills critical to the needs of the Air Force.

3.5. Human Immunodeficiency Virus (HIV) Related Reason.

3.5.1. Officers may be discharged in accordance with paragraph **3.6.11.** when officers don't follow lawfully ordered preventive medicine procedures for individual patients to prevent transmission of HIV infection. However, an officer may not be discharged solely on serologic evidence of HIV infection.

3.5.2. A SCA may not initiate action by using any information that the officer discloses during or as a result of an acquired immune deficiency syndrome (AIDS) epidemiological assessment interview. ***EXCEPTIO*N:** The SCA may take action on evidence first introduced by the officer during proceedings on drug abuse or sexual misconduct or evidence derived independent of the epidemiological assessment interview.

3.6. When Action Is Proper. The SCA initiates action by citing one or more of these paragraphs:

3.6.1. Failure to meet financial obligations.

3.6.2. Intentional or discreditable mismanagement of personal affairs.

3.6.3. Drug abuse as defined in AFI 36-2701. See paragraph **3.1.4.**

3.6.4. Serious or recurring misconduct punishable by military or civilian authorities.

3.6.5. Intentional neglect or intentional failure to either perform assigned duties or complete required training (including failure in any government-funded educational or training program due to personal negligence or factors within the officer's control***).***

3.6.6. Misconduct resulting in the loss of professional status necessary to performance of military duties.

3.6.7. Intentionally misrepresenting or omitting facts in official statements, records, or commissioning documents.

3.6.8. Homosexual Conduct. See paragraph **3.3.**

3.6.9. Sexual perversion, including lewd and lascivious acts, sodomy not of a homosexual nature, indecent acts with a child, or any other indecent acts or offenses.

3.6.10. Sexual deviation, including transvestitism, exhibitionism, voyeurism, and others as defined in the Diagnostic and Statistical Manual of Mental Disorders, current edition.

3.6.11. Professed fear of flying. See paragraph **3.4.**

3.6.12. Retention is not clearly consistent with the interests of national security. ***NOT*E:** The SCA initiates action only after ensuring required actions under AFI 31-501, *Personnel Security Program Management have been completed.*

3.6.13. When the officer doesn't follow lawfully ordered preventive medical procedures to prevent transmission of HIV infection. See paragraph **3.5.**

3.6.14. An officer who is sentenced by a court-martial to a period of confinement for more than six months and not sentenced to dismissal may be separated at any time after the sentence to confinement has become final and the person has served in confinement for a period of six months. Officers sentenced to a dismissal cannot be separated until the appellate review of his or her case is final as announced by AFLSA/JAJR.

3.7. Recoupment. If an officer being separated for reasons under this chapter received education assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph **4.32.**for rules regarding recoupment.

Chapter 4

COMMANDERS AND SHOW-CAUSE AUTHORITIES

Section 4A—General Guidance

4.1. Reinitiating Actions. When a show-cause authority, a board of officers, or the SAF retains an officer on active duty, the SCA may:

4.1.1. Reinitiate discharge action only on the basis of new information that again shows the officer may be subject to administrative discharge.

4.1.2. Consider the file, including correspondence and documents from the previous action when reinitiating discharge action.

4.2. Limitations on Reinitiating. The SCA:

4.2.1. Must wait 1 year from the date that a board of inquiry (BOI) or board of review (BOR) retains an officer, before reinitiating action under **Chapter 2**.

4.2.2. May reinitiate action under **Chapter 3** at any time but not for the same conduct that was the subject of the previous BOI or BOR proceeding unless the previous board findings and recommendations resulted from fraud or collusion.

4.3. Reassigning Officers. The unit commander submits a request for an officer's reassignment to HQ AFPC or HQ USAF assignments office when the officer is assigned to activities not under a SCA. ***NOTE:*** The reassignment places the officer under the jurisdiction of a SCA before a unit commander may recommend initiation of discharge action. ***EXCEPTION***: Reassignment isn't necessary when a host tenant agreement exists which gives discharge authority over tenant officers to the host SCA.

4.3.1. SCAs don't reassign an officer to the jurisdiction of another SCA until the action ends except as authorized by HQ AFPC/DPPRS, when circumstances warrant reassignment.

4.3.2. The Military Personnel Flight (MPF) notifies HQ AFPC/DPPRS and the appropriate assignments office at HQ AFPC or HQ USAF upon receiving reassignment instructions for an officer pending discharge action. The MPF takes no further action to reassign the officer until HQ AFPC provides additional instructions.

4.3.3. SCAs don't reassign officers to a hospital for Physical Evaluation Board action when they are undergoing medical disability processing. See AFI 41-120, *Medical Resource Management Operations* for assignment status while undergoing disability processing.

4.3.4. The MPF enters the assignment availability code 21 in the personnel data system (PDS) to show unavailability for reassignment.

4.3.5. SCAs may reassign officers when a SCA terminates or withdraws the action, or a board of officers, or the SAF retains the officer.

4.4. Aviation Service Code. The MPF tells the Flight Management Office to enter the aviation service code 04 in the PDS when the unit commander suspends a rated officer from aviation service because of discharge action under this AFI.

4.5. Separation Under Normal conditions.

4.5.1. The SAF normally won't approve an officer's separation request submitted under AFI 36-3207, *Separating Commissioned Officers*, chapter 2, section A, when the officer is pending discharge action under this AFI.

4.5.2. When officers have an established date of separation (DOS), SCAs send the case file to HQ AFPC/DPPRS for appropriate action no later than 30 calendar days before the officer's DOS.

4.6. Processing Pending Cases. MPFs continue processing cases under the regulation or instruction in effect at the time the SCA initiates the discharge action.

4.7. Authority for Discharge. The authority for officer administrative discharges is vested in the Secretary of the Air Force (SAF) or his or her designee.

4.7.1. MPFs cite AFI 36-3207 in the discharge documents as the authority for discharge.

4.8. Excess Leave. The SCA may grant an officer's request for excess leave if the Air Force no longer requires the officer's presence to process the discharge case. AFI 36-3003, *Military Leave Program,* governs excess leave. Officers will be advised in writing that they may request excess leave at any time after the SCA forwards the case to HQ AFPC/DPPRS.

4.9. Waivers or Exceptions. The SAF may authorize waivers or exceptions to this AFI.

4.10. Sensitive Compartmented Information (SCI), Single Integrated Operational Plan -Extremely Sensitive Information (SIOP-ESI), or Other Special Access Programs, and Personnel Reliability Program (PRP).

4.10.1. Unit commanders must comply with AFI 31-501, *Personnel Security Program Management,* when recommending action under this AFI on an officer who has, or once had, access to SCI, SIOP-ESI, or other special access programs.

4.10.2. Unit commanders must comply with AFI 36-2104, *Nuclear Weapons Personnel Reliability*, to decertify officers under the PRP prior to their discharge.

4.11. Effecting Discharge. MPFs normally discharge officers as soon as possible but no later than 10 calendar days (20 calendar days if the officer is returning from overseas) from the date that the MPFs receive separation instructions from HQ AFPC/DPPRS.

4.11.1. The MPFs tell the officer of the discharge directed by the SAF.

4.11.2. MPFs separate an officer who is enlisting to retire in enlisted status 3 calendar days before the end of the month.

Section 4B—Commanders

4.12. Evaluating Officers of Other Services. Unit commanders evaluate cases that involve officers of other services who are serving with the Air Force. Commanders review these cases by Air Force standards and send their recommendation for appropriate action directly to the SCA .

4.12.1. The SCA sends the case with appropriate recommendation to HQ AFPC/DPPRS for referral to the officer’s service.

4.13. Documenting Cases.

4.13.1. Office of Special Investigations (OSI) Reports or Reports Furnished Through OSI Channels and Investigative Reports or Documents from Other Agencies. See AFI 90-301, *Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information From AFOSI Investigative,* for safeguarding, handling, and releasing information *Reports*. AFI 90-301 also explains the procedures for handling investigative reports from other agencies. When using OSI reports or investigative reports from other agencies:

4.13.1.1. The legal office prepares a releasable summary or extract using the guidelines in AFI 90-301.

4.13.1.2. The legal office refers the summary or extract to the originating agency or higher authority for release approval.

4.13.1.3. The legal office doesn't make OSI reports or privileged investigative documents part of a documented case or release them to the officer, officer's counsel, or to any board considering a case under this AFI.

4.13.1.4. MPFs may include the OSI reports and investigative reports from other agencies when sending the case to the SCA.

4.13.1.5. The SCA returns the investigative reports through channels to the military organization that submitted them after receiving the final decision.

4.13.1.6. Military organizations dispose of the investigative reports or documents according to AFI 37-138, *Records Disposition--Procedures and Responsibilities.*

4.13.2. Records of Non-judicial Punishment. Unit commanders include the official record of nonjudicial punishment in the case file as documentary evidence. Include any available written evidence that supported the nonjudicial punishment action.

4.13.3. Medical Reports. Follow the guidance in AFI 41-103 when using and releasing medical data.

4.13.4. Records Withheld in the Interest of National Security. The legal office, MPFs, or SCAs may not give an officer undergoing discharge proceedings under this AFI copies of records withheld under AFI 31-601. ***NOTE*:** The officer may obtain a summary of the withheld records from the legal office.

4.13.5. Questions about Withholding Records. MPFs direct questions to the SCA about records withheld under AFI 31-601.

4.14. Unit Commander's Responsibilities:

4.14.1. Evaluating Information. Consult with the SJA and the MPF before deciding to proceed with disciplinary or administrative discharge action when reviewing information that involves violations under the UCMJ. Administrative separation action is not a substitute for disciplinary action.

4.14.2. Documenting a Case. Ensure that the appropriate military authorities:

4.14.2.1. Complete all inquiries and investigations.

4.14.2.2. Consult with the SJA, inform the OSI of all suspected offenses, and request that the OSI investigate the allegations. Refer to the guidelines for fact-finding inquiries into homosexual conduct when determining whether to initiate an inquiry into alleged homosexual conduct (**Attachment 2**).

4.14.2.3. Substantiate all the facts in the case.

4.14.2.4. Compile and tab the documentation, including unclassified summaries of OSI reports and investigative reports furnished or prepared by other agencies.

4.14.2.5. Comply with AFI 31-501 when the officers have, or once had, access to SCI, SIOP-ESI, or other special access programs.

4.14.3. Taking Action When Other Action Is Ongoing. Commanders should not delay evaluating information or recommending action under this AFI after taking other action (for example, promotion propriety action or action to terminate clinical privileges).

Section 4C— Show-Cause Authority

4.15. Show-Cause Authority (SCA) Responsibilities. The SCA may return a case to the unit commander for further investigation or documentation without terminating the case. The SCA:

4.15.1. Reviews the discharge action against an officer within his or her command.

4.15.2. Evaluates all information presented concerning the case.

4.15.3. Ensures the SJA completes a legal review and includes it in the case file, but not as an attachment to the show cause notification memorandum.

4.15.4. Determines whether the record is sufficient to convene a BOI or forward the case to the Air Force Personnel Board (AFPB).

4.15.5. Terminates the case when determining that a discharge isn't warranted on the basis of the evidence.

4.15.6. Determines whether to recommend the officer for discharge.

4.16. Determinations by the SCA. The SCA reviews the entire case and makes one of the following determinations:

4.16.1. Retain the officer on active duty either because:

4.16.1.1. The officer's duty performance meets the standards prescribed for an officer of his or her grade and experience.

4.16.1.2. The evidence is not sufficient to substantiate the allegations or the allegations are not serious enough to require the officer to show cause for retention on active duty.

4.16.2. Initiate separation of the officer from active duty if:

4.16.2.1. The evidence is sufficient to substantiate the allegations and the allegations are serious enough to warrant the officer’s separation.

4.16.2.2. The officer's duty performance is below the standards prescribed for an officer of his or her grade and experience.

4.17. Initiating Action:

4.17.1. The SCA makes certain the requirements of AFI 31-501 have been met in initiating action on officers who have, or once had, access to SCI, SIOP-ESI, or other special access programs. Compliance with AFI 31-501 should be indicated in the show cause notification memorandum.

4.17.2. The SCA may initiate action when a promotion selection board identifies officers with records showing that they are subject to action under this AFI.

4.17.3. When the OSAF decides to hold disability processing in abeyance and the SCA initiates discharge action:

4.17.3.1. The MPF sends a message with specific details to HQ AFPC/DPPD and HQ AFPC/DPPRS.

4.17.3.2. The OSAF determines and directs final disposition of the dual disability and administrative discharge actions.

4.18. How Action Is Initiated:

4.18.1. Process a fear of flying case under AFI 11-402. Unit commanders ensure that medical authorities have found the officer physically qualified for flying duties before recommending action under this AFI.

4.18.2. Process a case involving violations of national security under AFI 31-501 before initiating action under this AFI.

4.18.3. Notifying Officer. The SCA personally signs the notification memorandum (**Attachment 4**). The officer acknowledges the notification memorandum upon receiving it.

4.18.3.1. The office preparing the notification memorandum sends copies to:

4.18.3.1.1. HQ AFPC/DPPRS.

4.18.3.1.2. The MPF for file in the officer's UPRG.

4.18.3.2. When the SCA initiates action based on information received from a promotion selection board, the SCA sends copies of the notification memorandum to:

4.18.3.2.1. The officer's commander .

4.18.3.2.2. The officer's MPF.

4.18.3.2.3. HQ AFPC/DPPRS.

4.18.4. Counseling Officer. If the officer doesn't contact the area defense counsel or declines counsel, the chief, personnel division, or the MPF commander, counsels the officer on these points:

4.18.4.1. The officer's eligibility for separation pay, readjustment pay, or severance pay.

4.18.4.2. The least favorable character of discharge that may be directed when accepting the officer's resignation (officers may submit a resignation after show cause notification and prior to the convening of a BOI).

4.18.4.3. The least favorable character of discharge that the BOI may recommend when the officer doesn't submit a resignation.

4.18.4.4. Recoupment of education assistance, special pay, or bonuses. See paragraph **4.32.**

4.19. Physical Qualification for Separation. The unit commander tells the medical treatment facility of the possibility of action against the officer and provides necessary information. A commander may refer an officer for mental health evaluation to determine the existence of mental disorders interfering with duty performance only in accordance with AFI 44-109, *Mental Health and Military Law*.

4.19.1. The MPF schedules the officer for a medical examination under AFI 48-123, *Medical Examination and Standards*.

4.19.2. The medical officer decides whether the officer has any mental or physical disability that warrants action under AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*) or AFI 48-123. The medical officer documents the findings in accordance with AFI 48-123.

4.19.2.1. The medical treatment facility sends the MPFs a completed AF Form 422, **Physical Profile Serial Report**.

4.19.2.2. Officers who return to duty after an initial HIV positive test evaluation at Wilford Hall Medical Center, Lackland AFB TX doesn't require a medical examination if the SAF directs their discharge before the scheduled annual physical. Don't process these officers as dual-action unless the individual's condition deteriorates. If there is doubt about the individual's qualification for continued service or nondisability separation, paragraph **4.19.4.** applies.

4.19.2.3. When the officer shows evidence of mental illness, the medical officer attaches an evaluation by a psychiatrist or psychologist to the AF Form 422. The psychiatrist or psychologist prepares an evaluation based on available information if the officer won't agree to an examination. The evaluation must include:

4.19.2.3.1. A concise description of the officer's mental status.

4.19.2.3.2. A statement whether the officer, at the time of any misconduct, had a severe mental disease or defect which made the officer unable to appreciate the nature and quality or wrongfullness of his or her acts.

4.19.2.3.3. A statement whether the officer presently has a mental disease or defect rendering the officer unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case.

4.19.3. The unit commander includes a copy of AF Form 422 when sending the case file to HQ AFPC/DPPRS.

4.19.4. Except as specified in paragraph **4.23.**, the MPFs may not hold actions under this AFI or requests for separation in abeyance when an officer undergoes a medical or disability evaluation.

4.19.4.1. The unit commander notifies HQ AFPC/DPPRS when the officer is undergoing a medical or disability evaluation.

4.20. Advising the Officer. The applicable show cause notification memorandum tells the officer of his or her rights and options. See **Attachment 4**.

4.21. Withdrawing a Case. After reviewing additional evidence or facts, the SCA may withdraw a case at any time before a BOI convenes when the SCA determines that the evidence doesn't substantiate the allegations or that the allegations aren't serious enough to warrant a discharge.

4.21.1. The SCA may also withdraw a case processed under **Chapter 6** before HQ AFPC sends the case to the OSAF.

4.21.2. When the SCA withdraws a case, he or she notifies the officer in writing with an explanation for the decision. The SCA must send a copy of the memorandum to HQ AFPC/DPPRS.

4.22. Delegating Administrative Actions. Excluding the administrative actions in paragraphs **4.22.1.** through **4.22.4.** which may be delegated (but are not required to be delegated), the SCA personally undertakes the review and signatory requirements of this AFI unless the SCA directs a vice-commander(who is a general officer) to fulfill these requirements. A SCA vice-commander (who is a general officer) may fulfill the requirements in the absence of the SCA.

4.22.1. The SCA's personnel division chief or mission support squadron commander may approve an officer's request for more time to prepare a response to the action initiated. They may disapprove a request after determining that denying the request doesn't compromise the officer's rights. When the length of time requested is determined to be unreasonable, a shorter delay may be approved

4.22.2. The SCA's personnel division chief or mission support squadron commander:

4.22.2.1. Refers the case of a probationary officer to the AFPB when the SCA recommends a discharge characterization of an honorable or under honorable conditions (general).

4.22.2.2. Refers additional information to the AFPB when the SCA receives the information after the case is referred to the AFPB.

4.22.3. The SCA's personnel division chief or mission support squadron commander:

4.22.3.1. Appoints the BOI membership.

4.22.3.2. Refers a case to the BOI when directed by the SCA.

4.22.3.3. Sends the BOI case to HQ AFPC/DPPRS.

4.22.4. The SCA may direct the personnel division chief or mission support squadron commander to reconvene a BOI based on new or additional evidence received by the SCA before sending the BOI report to HQ AFPC/DPPRS.

4.22.5. If the SCA receives additional evidence after sending the BOI case to HQ AFPC/DPPRS, the personnel division chief or mission support squadron commander sends HQ AFPC/DPPRS the evidence with a SCA recommendation whether to reconvene a BOI. ***NOTE:*** SCAs may, at their option, use their SJA offices instead of their personnel staffs to perform the functions in paragraphs **4.22.1.** through **4.22.5.**

4.23. Holding Actions in Abeyance. The following applies when an officer is undergoing medical or disability evaluation and has ongoing actions under this AFI.

4.23.1. HQ AFPC/DPPRS and HQ AFPC/DPPD must closely monitor the ongoing actions, including actions pending under AFI 36-3207.

4.23.2. The SCA continues processing actions under this AFI or AFI 36-3207 but will hold in abeyance referring a case to the AFPB through HQ AFPC/DPPRS or convening a BOI until advised by HQ AFPC/DPPRS that it can do so.

4.23.3. HQ AFPC/DPPRS advises the SCA to continue with the action held in abeyance when the medical evaluation board (MEB) finds the officer physically qualified for continued service. The MEB refers a case to the Air Force Disability Evaluation System when it finds the officer isn't physically qualified for continued service.

4.23.4. When receiving a disability case, HQ AFPC/DPPD tells HQ AFPC/DPPRS and processes the disability case and any pending action under this AFI or AFI 36-3207 to the Secretary of the Air Force Personnel Council (SAFPC) for a determination of the disposition of the discharge action and disability case.

4.23.5. If the disability action is terminated or the officer is found physically qualified for continued service, HQ AFPC/DPPRS tells the SCA to continue processing actions held in abeyance under paragraph **4.23.2.**

4.24. Requests for Delay in Responding to the Show Cause Notification Memorandum.

4.24.1. Officers must send a request for delay in responding to the SCA, or his or her designee, within 10 calendar days after receiving the show cause notification memorandum. The request must explain why more time is needed to respond to the action. When the length of time requested is determined to be unreasonable, a shorter delay may be approved.

4.24.2. The SCA, or his or her designee notifies the officer of the decision within 10 calendar days of receiving the officer's request, and sends a copy of the response to HQ AFPC/DPPRS. The SCA or his or her designee grants a delay when determining that denying the requests would compromise the officer's rights. ***NOTE:*** Give the reasons when denying a requested delay.

4.25. Processing Request for Resignations and Retirement Applications.

4.25.1. The SCA sends the retirement application indorsed by the SCA to HQ AFPC/DPPRS within 10 calendar days after receiving it. The SCA includes:

4.25.1.1. The show cause notification memorandum.

4.25.1.2. All supporting documents.

4.25.1.3. The officer's response (if any).

4.25.2. The SCA sends the indorsed resignation to the MAJCOM/CC (or MAJCOM/CV, if delegated). The indorsement should include the SCA notification memorandum, all supporting documents, and the officer's response (if any). The SCA recommends the character of discharge when the basis for the action initiaged doesn't restrict the character of discharge to honorable.

4.25.2.1. The show cause notification memorandum.

4.25.2.2. All supporting documents.

4.25.2.3. The officer's response (if any).

4.25.3. If the MAJCOM/CC recommends approval of the resignation he of she indorses the resignation and forwards it to HQ AFPC/DPPRS. The MAJCOM/CC may disapprove the resignation. EXCEPTION: If the SCA for the case is at the MAJCOM level, then the MAJCOM/CC may not disapprove the resignation and forwards a recommendation for disapproval to HQ AFPC/DPPRS.

4.26. Notifying HQ AFPC. The SCA sends a copy of the show cause notification memorandum HQ AFPC/DPPRS, 550 C Street West, Ste 11, Randolph AFB TX 78150-4713.

4.27. Amending the Show Cause Notification Memorandum. The SCA may amend the Show Cause notification memorandum before sending a case to the AFPB through HQ AFPC/DPPRS or referring a case to a BOI.

4.27.1. When amending the notification memorandum, the SCA will give the officer the reasons for amending the action memorandum, enclose a copy of the SCA memorandum amending the show cause notification memorandum, and allow the officer 10 calendar days to prepare a response.

4.27.2. If the SCA receives additional information after referring the case to a sitting BOI the SCA should forward the information to the recorder for submission to the BOI. If the SCA receives additional information after referring the case to the AFPB then the SCA should forward the information to the AFPB for consideration.

4.28. Referring Case to a Board of Officers. The SCA must refer a nonprobationary officer's case to a BOI as specified in **Chapter 7**. The SCA may refer a probationary officer's case to:

4.28.1. The Air Force Personnel Board (AFPB) when recommending an honorable discharge or under honorable conditions (general) (see **Chapter 6**) and the basis for the discharge doesn't include homosexual conduct.

4.28.2. A BOI whenever the SCA determines it would be otherwise appropriate.

4.28.3. The SCA must refer a probationary officer's case to:

4.28.3.1. A BOI when the SCA recommends an UOTHC discharge or when the basis for the action initiated includes homosexual conduct (see **Chapter 7**).

4.29. Rights of the Officer Entitled to a BOI. **Chapter 7** explains the rights of an officer entitled to a hearing before a BOI.

4.30. Voluntary Retirement. An officer may, at any time before the SAF decides his or her administrative discharge case, apply for retirement when eligible under AFI 36-3203, *Service Retirements*.

4.31. Processing Time Guidelines. Each level of command and headquarters processes cases as efficiently as possible while protecting the officer's rights throughout the administrative discharge process. Case processing begins on the date that the officer receives the SCA's notification memorandum. Use express mail or overnight delivery to reduce mail time. **NOTE**: The availability of counsel, BOI report transcribing capability, the need for referral to the Air Force Physical Disability System, or other local circumstances may affect case processing. Additionally, officers eligible for transition assistance program benefits may elect to take excess leave or permissive TDY for relocation/transition activities. (Commanders are not required to authorize either if doing so would interfere with the military mission). See AFI 36-3022, *Transition Assistance Program*, for transition assistance benefit eligibility requirements and AFI 36-3003, *Military Leave Program*, for excess leave and permissive TDY eligibility requirements.

4.32. Recoupment of Education Assistance, Special Pay, or Bonuses.

4.32.1. Recoupment Requirements. The Air Force normally requires recoupment of a portion of education assistance, special pay, or bonus money received when officers separate before completing the period of active duty they agreed to serve. Special rules, however, apply to homosexual conduct; see paragraph **4.33.**

4.32.1.1. Education assistance includes such programs as:

4.32.1.1.1. Service academy.

4.32.1.1.2. Armed forces health profession scholarship program.

4.32.1.1.3. Uniformed Services University of the Health Sciences.

4.32.1.1.4. ROTC college scholarship program.

4.32.1.1.5. Tuition assistance.

4.32.1.1.6. Minuteman education program.

4.32.1.1.7. Air Force Institute of Technology.

4.32.1.2. The recoupment in all cases will be an amount that bears the same ratio to the total amount or cost provided the officers as the unserved portion of active duty bears to the total period of active duty they agreed to serve.

4.32.2. Basis for Recoupment.

4.32.2.1. If the SAF directs involuntary separation for any reason in **Chapter 2** or **Chapter 3**, the officer is subject to recoupment of a portion of education assistance, special pay or bonus money received.

4.32.3. Dispute of Education Assistance Debt. When a member who is subject to recoupment of educational assistance disputes that debt, the SCA will appoint an officer (or a civilian employee) to conduct an inquiry into the facts and hear evidence presented by the member and other parties as appropriate, to determine the validity of the debt. If the case involves a BOI, that board will conduct the inquiry. The SCA will forward the report of inquiry, together with his/her recommendation concerning recoupment, with the case to the SAF for decision. See **Attachment 4** for required notification to officer.

4.33. Special Rules for Recoupment in Homosexual Conduct Cases. Where the applicable statute, regulation or agreement authorizes recoupment when the separation is "voluntary" or because of "misconduct," the following rules apply.

4.33.1. A separation for homosexual conduct is voluntary when the member made the homosexual statement; committed, attempted or solicited the homosexual act; or entered or attempted to enter the homosexual marriage for the purpose of seeking separation. Circumstantial evidence must be considered in determining the member's intent.

4.33.2. Homosexual conduct is misconduct if:

4.33.2.1. An under other than honorable conditions (UOTHC) discharge is authorized, whether or not the member is actually discharged under other than honorable conditions.

4.33.2.2. The homosexual conduct is punishable under the UCMJ (provisions governing sexual conduct), whether or not the member is punished under the UCMJ.

4.33.3. The discharge board, or the show cause authority if the member waives the board, must make specific written findings as to whether the member is subject to recoupment for one or more of the reasons in **4.33.1.** or **4.33.2.** Specific findings are required even if the respondent does not raise this issue as a "dispute" under paragraph **4.32.3.** above.

4.33.4. If an inquiry officer is appointed, he or she shall make specific written findings as to whether the prospective separation is voluntary or because of misconduct as described above.

Chapter 5

PROBATIONARY OFFICER DISCHARGE BOARD (PODB)

5.1. DELETED.

Chapter 6

AIR FORCE PERSONNEL BOARD (AFPB)

6.1. Purpose. The Air Force Personnel Board (AFPB) reviews officer discharge cases and makes recommendations to OSAF or designee when:

6.1.1. A BOI recommends discharge in accordance with the procedures of **Chapter 7**.

6.1.2. The SCA recommends the separation of a probationary officer. (Note. The SCA forwards the original and one copy of the case file to HQ AFPC/DPPRS who refers the discharge case to the AFPB through HQ USAF/JAG.)

6.1.3. An officer submits a resignation instead of undergoing further administrative discharge proceedings or a resignation for the good of the service.

6.2. Membership. The AFPB will be convened from officers assigned to the Secretary of the Air Force Personnel Council.

6.3. Functions and Duties. The AFPB is an administrative board and thus not subject to the rules and procedures governing civilian or military courts. AFI 51-602 does not apply to AFPB proceedings. The AFPB considers all information presented to it and determines whether to retain the respondent in the Air Force. It makes recommendations to the OSAF when it determines that the respondent should not be retained or when circumstances of the case require such consideration.

6.4. Appearance of Probationary Officers before the AFPB. Probationary officers or their counsel may appear before the AFPB only if the AFPB decides that it needs the officer's testimony to evaluate the case. If the AFPB invites an officer to testify, the officer may have his or her counsel attend the AFPB proceedings.

6.5. AFPB Recommendations on Probationary Officer Cases Not Involving a BOI. The Board considers these options when making recommendations.

6.5.1. Probationary Officers. The administrative discharge action of a probationary officer ends when the AFPB decides to retain an officer on active duty. If the case involves approved findings of homosexual conduct, the Board will make specific findings of the reasons that may warrant retention in accordance

with paragraph **3.3.3.1.** or **3.3.3.2.** When deciding not to retain a probationary officer on active duty, the AFPB:

6.5.2. Recommends an honorable discharge if the basis for the discharge action is under **Chapter 3** solely for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.5.3. Recommends an honorable discharge or a discharge under honorable conditions (general) if the basis for the discharge action is under **Chapter 2** or **Chapter 3**, except for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.5.4. Recommends returning the case to the SCA for action under **Chapter 7** if the board concludes that the case warrants a BOI hearing.

6.5.5. Recommends the proper action to the Office of the Secretary of the Air Force (OSAF) if the board determines that unusual circumstances warrant different procedures.

6.5.6. Recommends acceptance or rejection of a resignation instead of undergoing further administrative discharge proceedings or a resignation for the good of the service.

6.5.7. The AFPB sends the case to the OSAF for final action.

6.6. Action on AFPB Probationary Officer Non-BOI Recommendations.

6.6.1. Board Determines Officer Should Be Retained. HQ AFPC/DPPRS advises the officer through the SCA that the AFPB determination ends the discharge action initiated in accordance with this AFI. The SCA may reassign the officer.

6.6.2. Board Recommends Referral to a BOI. HQ AFPC/DPPRS returns the case to the SCA for action under **Chapter 7**.

6.6.3. Board recommends acceptance or rejection of a resignation instead of undergoing further administrative discharge proceedings or resignation for the good of the service. The Board sends the case to the OSAF.

6.6.4. Board recommends removal from active duty, discharge, or other action. The board sends the case to the OSAF.

6.6.5. Recoupment. If the AFPB makes a finding that the respondent engaged in homosexual conduct that constitutes a basis for recoupment, the AFPB must make a specific written recommendation whether recoupment should be effected. See paragraph **4.32.** for special rules regarding recoupment**.**

6.7. Final Action of the SAF on Non-BOI Cases. The decision of the SAF or his or her designee is final.

6.7.1. When Officer Is Retained. The SAF decision ends the discharge action in accordance with this AFI. The SCA may reassign the officer.

6.7.2. When Officer Is Not Retained. HQ AFPC/DPPRS issues instructions to discharge the officer as soon as possible but no later than 10 (20, if serving overseas) calendar days from receipt of instructions. Discharge authority is AFI 36-3207.

6.7.2.1. The SAF directs an honorable discharge if the basis for the discharge action is under **Chapter 3** solely for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.7.2.2. The SAF may direct an honorable discharge or a discharge under honorable conditions (general) when the basis for the discharge action is under **Chapter 2** or **Chapter 3**, except for precommissioning activities not involving intentional misrepresentation or omission of facts in official statements, records, or commissioning documents.

6.7.3. When Other Action Is Directed. HQ AFPC/DPPRS issues instructions for any other actions directed by the SAF.

6.8. Referring a BOI Case to the AFPB. HQ AFPC/DPPRS sends a BOI case to HQ USAF/JAG within 5 calendar days after receiving it. The case consists of the transcribed BOI record with exhibits and any additional information submitted by the respondent.

6.8.1. After completing its legal review, HQ USAF/JAG sends the BOI case to the SAFPC for referral to the AFPB.

6.8.2. Neither the respondent nor the respondent's counsel may appear before the AFPB unless it decides that personal testimony is essential in evaluating the case. If the AFPB invites the respondent to appear, the respondent's counsel may be present only when the respondent testifies.

6.9. AFPB Recommendations on BOI Cases. The Board considers these options when making recommendations:

6.9.1. Retention. The Board recommends retention when it determines that the respondent should be retained on active duty. If the case involves approved findings of homosexual conduct, the Board will make specific findings of the reasons that may warrant retention in accordance with paragraph **3.3.3.1.**or **3.3.3.2.** When deciding not to retain a probationary officer on active duty, the AFPB:

6.9.2. Respondent Not Eligible to Retire. When the AFPB determines that the respondent should not be retained on active duty, it recommends removing the respondent from active duty if the respondent is a regular officer or recommends discharge if the respondent is a reserve officer. When the AFPB recommends removal from active duty or discharge, it also recommends an honorable discharge or under honorable conditions (general) if the basis for discharge falls solely under **Chapter 2** or an honorable discharge if the basis for discharge falls solely under **Chapter 3** for precommissioning activities not involving intentional misrepresentation or omission of facts in official documents. In all other cases with a basis for discharge under **Chapter 3**, the AFPB may recommend an honorable discharge, a discharge under honorable conditions (general) or a discharge UOTHC.

6.9.3. Respondent is a Regular officer and Eligible to Retire. When the AFPB determines that the respondent should not be retained on active duty, it recommends removal from active duty and retirement.

6.9.4. Respondent is a Reserve Officer and Eligible to Retire. When the AFPB determines that the respondent should not be retained on active duty and the officer applied for voluntary retirement, it recommends retirement. If the respondent hasn't applied for voluntary retirement, the AFPB recommends discharge and the character of discharge (see paragraph **6.9.2.**).

6.9.5. Other Action Recommended. If the AFPB determines that unusual circumstances warrant some other type of action, it recommends the action to the SAF.

6.9.6. Recoupment. If the AFPB makes a finding that the respondent engaged in homosexual conduct that constitutes a basis for recoupment, the AFPB must make a specific written recommendation whether recoupment should be effected. See paragraph **4.32.** for special rules regarding recoupment**.**

6.10. Action on AFPB Recommendation. When the AFPB recommends retaining the respondent, HQ AFPC/DPPRS advises the respondent, through the SCA, that the AFPB's determination ends the action. If appropriate, the SCA may reassign the officer.

6.10.1. When the AFPB recommends removal from active duty, discharge, or other action, the AFPB sends the case to the SAF.

6. 11. Final Action of the Secretary of the Air Force. The decision of the SAF or designee is final.

6.11.1. When Officer Is Retained. HQ AFPC/DPPRS advises the respondent, through the SCA, that the SAF's decision terminates the action initiated under this AFI. If appropriate, the SAF may reassign the officer.

6.11.2. When An Officer Is Not Retained and Is Not Eligible to Retire. HQ AFPC/DPPRS issues instructions to effect the discharge of an officer not eligible to retire. Authority for discharge is AFI 36-3207.

6.11.3. When An Officer Is Not Retained and Is Eligible To Retire. HQ AFPC/DPPRS effects the retirement of a Regular officer when the officer is eligible, but has not applied, for retirement. When a Reserve officer is eligible to retire but has not applied for retirement, HQ AFPC/DPPRS issues instructions to effect his or her discharge under AFI 36-3207.

6.11.4. When Other Action Is Directed. HQ AFPC/DPPRS issues instructions when the SAF or designee directs some other action.

6.12. Respondent's Copy of the AFPB Proceedings. Respondents may request a copy of unclassified BOR proceedings, by writing to the National Personnel Records Center (NPRC), 9700 Page Blvd, St Louis, MO 63132-6100.

Chapter 7

BOARD OF INQUIRY (BOI)

Section 7A—Pre-BOI Administrative Functions

7.1. Purpose. The BOI gives respondents who face discharge proceedings a fair and impartial hearing, makes case findings, and recommends whether the Air Force should retain or discharge officers. ***NOTE:*** "Respondent" refers to an officer who appears before a BOI.

7.2. Referring Case to BOI. The SCA refers the documented case to the BOI by letter addressed "TO: Board of Inquiry Appointed by (paragraph, special order number, headquarters, date). ATTN: Recorder." The SCA and the recorder may communicate directly with each other on matters relevantto cases and board procedures.

7.3. Officer's Rights When Notified to Show Cause for Retention.

7.3.1. Written Notification. The SCA must send the officer written notification at least 30 days before the BOI hearing. The notification will explain why the SCA is requiring the officer to show cause for retention on active duty and the least favorable characterization of discharge authorized. Written notification should normally be served on the respondent by the unit commander or another officer designated to make service. If the officer is unavailable for personal service of notification (ie: in civil confinement) notification will be made by registered mail or certified mail, return receipt (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the officer's last known address or to the next of kin.

7.3.2. Delay to Prepare. See paragraph **7.11.**

7.3.3. Personal Appearance or Representation Before a BOI. The respondent may appear in person at all open proceedings of the BOI. Nonresponse to the notification letter may be construed as the respondent's voluntary election not to appear before the Board. Either military counsel appointed according to AFI 61-201, *Military Justice Guide*, or military counsel of the respondent's own choice, if requested and approved according to AFI 61-201, may represent the respondent, but not both. The respondent may be represented by civilian counsel, retained at his or her own expense, in addition to or instead of military counsel.

7.3.3.1. The military counsel must have the same qualifications as the recorder under Article 27(b)(1), UCMJ. ***NOTE:*** The respondent may waive this requirement.

7.3.3.2. Either military or civilian counsel may represent a respondent who can't attend the hearing or waives the right to appear.

7.3.3.3. The chief circuit defense counsel appoints a military lawyer to represent the officer who doesn't appear or isn't otherwise represented by counsel at the BOI hearing. The chief circuit defense counsel doesn't have to appoint a military counsel if the officer employs civilian counsel at no expense to the Government.

7.3.4. Access to Relevant Records. The SCA gives officers copies of records considered relevant to his or her case on request. This requires strict compliance with paragraph **4.13.**

7.3.5. Witnesses. The respondents may request that the board invite any witness whose testimony bears on his or her case. A respondent may personally arrange the appearances of witnesses or ask the BOI recorder to contact the witnesses (see paragraph **7.12.**)

7.3.6. Documents. A respondent may submit documents relevant to his or her case (for example, record of service, letters, responses, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations) before the BOI convenes or during the hearing.

7.3.7. Testifying. The legal advisor will advise the respondent of the provisions of Article 31, UCMJ (10 U.S.C. 831). The respondent may testify, but is not required to do so. If a respondent wants to make a statement under oath, he or she is sworn in and will be subject to examination by the recorder and the board. If a respondent doesn't want to make a sworn statement, he or she or may make an oral or written unsworn statement, personally or through counsel, or both. If the respondent or counsel makes an unsworn statement, the board may not examine them. However, the recorder may submit and the board may receive other evidence to rebut the unsworn statement.

7.3.8. Report of Proceedings. The legal office gives the respondent an authenticated copy of the report of the proceedings. The respondent may submit written comments for consideration by the AFPB.

7.4. Voluntary Retirement. Any time before the SAF takes final action on the case, a respondent who is eligible to retire may apply for retirement under AFI 36-3203.

7.4.1. An officer with enough years of active military service but who does not have the required active commissioned service to retire in officer status may apply for discharge under AFI 36-3207, chapter 2, section B, to enlist and retire. If the BOI has not convened, the SCA suspends further action under this AFI. See paragraph 6.27 for guidelines for processing retirement applications if the BOI has convened.

7.4.2. If a BOI recommends discharge of an officer who is otherwise eligible for voluntary retirement under any provision of law, the officer shall be retired in the grade and with the retired pay for which he would be eligible if retired under such provision regardless of the BOI's recommendation.

7.5. Voluntary Discharge. Any time before the SAF or designee takes final action on the case, an officer may apply for resignation under AFI 36-3207, chapter 2, section B, in lieu of further administrative proceeding to be effective as soon as possible but no later than 10 calendar days (20 calendar days if serving overseas) following notification of approval by the SAF. If the BOI has convened, the SCA suspends further action under this AFI (see paragraph **7.27.**).

7.6. Functions and Duties. The BOI is an administrative board. It is not subject to the rules of evidence and procedures governing civilian or military courts. Its function is not limited to considering the information and the Statement of Reasons presented at its hearing. If before or during the proceedings, the board decides it needs more information to properly evaluate the case, it requests the information through the recorder.

7.6.1. The BOI receives evidence presented during the board's proceedings and develops added information to create a record on which to base a proper decision. The board evaluates evidence that it receives or develops during open hearings on the case; arrives at findings consistent with the evidence presented; and makes recommendations consistent with the findings.

7.7. BOI Membership. The BOI consists of at least three voting members with the senior member serving as president. In addition, the SCA or his or her designee (must be an officer in the grade of colonel or above):

7.7.1. Appoints a field grade judge advocate certified under Article 27b(2), UCMJ, or a company grade judge advocate certified as a military judge under Article 26b, UCMJ, to serve as a nonvoting legal advisor. ***NOTE*:** If the respondent is a judge advocate, the legal advisor must be senior in grade.

7.7.2. Appoints a field grade officer to serve as a nonvoting recorder. ***NOTE*:** The SCA or his or her designee may appoint a company grade judge advocate qualified under Article 27b(2), UCMJ, as a nonvoting recorder, and may detail alternate or assistant recorders to assist the nonvoting recorder. Assistant recorders who are judge advocates need not be certified under Article 27(b)(2), UCMJ.

7.7.3. May assign a nonvoting interpreter when necessary. ***NOTE:*** If the SCA can't meet any of these requirements, the SCA notifies HQ AFPC/DPPRS without delay.

7.7.4. If the case involves a regular officer, the voting members must be regular officers serving in a grade above lieutenant colonel and in a grade senior to the officer.

7.7.5. If the case involves a reserve officer, the voting members must be in a grade above lieutenant colonel and in a grade senior to the officer. At least one voting member must be a reserve officer but doesn't have to be on the active-duty list. The SCA appoints the most senior reserve officer available if a reserve officer in a grade above lieutenant colonel is not available. A reserve officer in the grade of captain or above may serve as a voting member only if senior in grade to the respondent.

7.7.6. When the BOI membership requires general officers, the SCA notifies HQ USAF/

AFGOMO (General Officer Matters), Washington DC 20330-6060, at least 20 calendar days before the scheduled convening date of the board and sends a copy of its notice to HQ AFPC/DPPRS.

7.7.7. The SCA may not appoint officers who have any prior involvement with the case or who have served as voting members on a board convened against the same respondent under this AFI. This restriction doesn't apply to a BOI reconvened under paragraph **7.37.**

7.8. Who May Not Be BOI Members. Officers may not serve on a BOI if they:

7.8.1. Are witnesses in the case.

7.8.2. Appeared as witnesses before any previous board convened under this AFI to review the record of the respondent.

7.8.3. Served as members of any previous board convened under this AFI to review the record of the respondent.

7.8.4. Served as members or convening or reviewing authority of a court-martial where the respondent was the accused.

7.8.5. Previously recommended a discharge in the case or administered nonjudicial punishment pursuant to Article 15, UCMJ, to the respondent.

7.8.6. Have written a referral performance report on the respondent.

7.8.7. Have considered the case of the respondent and can't make an impartial judgment.

7.9. Who Appoints BOI. The SCA or his or her designee (must be in the grade of colonel or above) normally publishes orders to appoint members to serve on a BOI within 2 days of receipt of the officer's response to the SCA notification memorandum. The orders must include:

7.9.1. A statement that the board members are appointed by order of the SAF and according to this AFI, **Chapter 5**.

7.9.2. The place and date that the BOI will convene.

7.9.3. The component (regular officer, reserve officer, ANG officer) after the name and grade of each board member.

7.9.4. Copies of the orders appointing the board shall be provided to each board member and to the respondent and his or her counsel.

7.10. Time and Place for Convening BOI. Unless the officer requests delay or requests that the board convene earlier, the SCA may direct that the BOI convene 30 calendar days from the date that the officer receives the SCA notification memorandum. The BOI convenes at the designated time and place, subject to approved delays or to approval of an earlier date requested by the officer.

7.10.1. The board normally convenes at the respondent's installation. However, the availability of witnesses and board members and other factors may make it necessary or advisable to convene the board elsewhere. The recorder schedules a meeting place for the BOI that is in keeping with the seriousness of the proceedings.

7.10.2. The board recorder notifies the board members of the time and place set for the hearing. The recorder also notifies the respondent not less than 10 calendar days before the board convenes, even if the respondent does not intend to appear before the board. The recorder's notification to the respondent will comply with AFI 51-602, *Boards of Officers* (see **Attachment 12**). The recorder sends a copy of the notification memorandum to the SCA and HQ AFPC/DPPRS.

7.11. Delay in Convening the BOI. The respondent may request a delay in convening the BOI, normally not to exceed 10 calendar days. The respondent must send the request directly to the legal advisor with copies to the recorder and SCA within 6 calendar days after receiving notice of the place and date for the hearing. ***EXCEPTION***: The legal advisor may consider a request submitted more than 6 days after receiving notice of the place and date for the BOI when denying the request would prejudice the rights of the respondent.

7.11.1. The legal advisor may grant the delay when denying the request would prejudice the rights of the respondent. The legal advisor may grant additional delays after consulting with the SCA.

7.11.2. The legal advisor also considers requests for delay from the Government and may grant a delay, normally not to exceed 10 days, as long the delay would not unfairly prejudice the rights of the respondent.

7.12. Witnesses. The recorder invites witnesses for both the respondent and the government to appear at the BOI if the legal advisor decides that they are available, their testimony relates to a significant issue, and the respondent or the government can't adequately present their evidence any other way. The recorder

uses the procedures and policies in Rules for Courts-Martial 703c of the Manual for Courts-Martial United States, 1984, as a general guide in determining which witnesses to invite. The recorder may use depositions, affidavits, stipulations, and in-board telephone calls to obtain testimony of witnesses who can't testify in person.

7.12.1. If the board is convened at a place other than the witness's duty station, the recorder asks the SCA concerned to make the military member or Federal employee available. The SCA concerned may deny the request if military requirements don't allow the member or employee to appear before the board as a witness. Make witness travel plans in accordance with the Joint Federal Travel Regulation (JFTR), volume 1 and the JTR, volume 2. If the board is convened at the witness's duty station, the legal advisor may presume that the witness is available.

7.12.2. The recorder will arrange to publish invitational travel orders for witnesses who are neither Federal employees nor members of the armed forces in the active military service (see Joint Travel Regulation [JTR], volume 2.

7.12.2.1. The recorder sends a memorandum to the prospective witnesses inviting them to appear before the board. See AFI 51-201, *Military Justice Guide* for funding travel orders for witnesses.

7.12.3. The recorder asks HQ AFPC/DPPRS to determine whether members of other armed forces in the active military service and civilian employees of other Federal agencies are available to give testimony at BOI hearings.

7.13. Reviewing the Case. The recorder reviews the case before the BOI convenes to decide which areas may need exploration and explanation at the hearing. The recorder can request further investigation or more documentation at this time to ensure that the hearing is thorough and fair. When receiving a documented case, the recorder:

7.13.1. Obtains facts about the availability of requested and other prospective witnesses.

7.13.2. Submits the names of requested witnesses (both those requested by the respondent or counsel and those that the recorder is requesting to testify for the Government) to the legal advisor for a decision in accordance with paragraph **7.12.**

7.13.3. Arranges to publish invitational travel orders based on the legal advisor's decision.

7.13.4. Gives the respondent or counsel, to the extent permissible, a copy of any records or other documentary material not previously furnished the respondent that the recorder proposes to offer in evidence at the board hearing.

7.13.5. Attends any prehearing conference called by the legal advisor, along with the respondent and counsel.

7.13.6. Makes any other necessary preparations for the orderly and proper presentation of the case at the board hearing.

7.13.7. The legal advisor also reviews the file before the BOI convenes and apprises the recorder and respondent of any matters that require attention to ensure a fair hearing.

Section 7B—The Hearing

7.14. Who Conducts Hearings. The president of the BOI presides over the hearings and may require the recorder to perform administrative duties. **Attachment 13** is a sample guide for conducting the BOI proceedings.

7.14.1. Although the BOI doesn't follow strict rules of evidence or the procedures governing civilian and military courts, it must adhere to reasonable bounds of relevance, competency, and materiality. The board follows AFI 51-602 except when in conflict with this AFI.

7.14.2. All BOI members must become familiar with this chapter before the board convenes. The members must not form a final opinion until the closed session and must be sure that they can give a fair and impartial hearing to both parties.

7.14.3. Voting members may not review the case before the hearing.

7.14.4. When the board meets in closed session, only the voting members may attend. If the board needs the advice of the legal advisor, the board president opens the board to obtain the legal advisor's opinion in open session with the recorder, respondent, and counsel.

7.14.5. After the board has made a final decision in the case, it may request the legal advisor, in closed session, to help draft the findings and recommendations. The reporter enters the closed session with the legal advisor, records the proceedings verbatim, and includes them in the transcript.

7.14.6. After the BOI convenes, the legal advisor makes final rulings on:

7.14.6.1. Procedural matters (including admissibility of proffered evidence, relevance of material, presence of witnesses, challenges to the voting members).

7.14.6.2. Motions, objections, and arguments of counsel.

7.14.6.3. Any other matter in connection with the conduct of the hearing that requires a legal decision.

7.14.7. The legal advisor instructs the members of the BOI on their duties and responsibilities, with the respondent and counsel present.

7.14.8. The legal advisor has no authority to dismiss an allegation or to terminate the proceedings.

7.15. Hospitalized Respondent. If the respondent is hospitalized after the BOI receives the case, the recorder immediately notifies HQ AFPC/DPPRS and the SCA by message. Summarize the respondent's condition and estimate when the hospital stay will end.

7.15.1. The board may not convene or meet while the respondent is hospitalized unless the respondent consents, the SCA directs for good cause, or medical authorities determine that the respondent no longer requires hospitalization.

7.16. Presence of Respondent, Counsel, or Witnesses. The respondent and counsel have the right to attend all open sessions of the BOI. Witnesses may be present in the board room only when they are actually testifying. Witnesses waiting to testify may not be present in the board room. The legal advisor decides whether to allow spectators in the board room if a respondent requests spectators at the hearing.

7.17. Calling the Board to Order. The president calls each session of the board to order. At the first session, the recorder places the authority for and the time, date, and place of the hearing in the record and attaches a copy of the appointing order to the record as an exhibit. At all sessions, the recorder calls the roll of all voting and non-voting members in the appointing orders and enters the attendance in the record.

7.18. Recording Presence or Absence of Members, Respondent, and Counsel. The recorder announces which of the voting and non-voting members are present, and whether the respondent and counsel are in attendance. The recorder includes the counsel's name (grade if a member of the armed services), and address.

7.19. Postponing the Board. If the respondent or counsel is absent, the board determines the cause. The legal advisor then decides whether to postpone the hearing. When postponing a hearing, the legal advisor announces when the board will reconvene.

7.20. Explaining Rights to Respondent. The legal advisor advises the respondent of his or her rights in paragraph **7.3.** of this AFI.

7.21. Challenging Voting Members. The respondent and the recorder may challenge voting members of the board and the legal advisor for cause. The challenging party has the burden of establishing that the member is not able to participate in a fair and impartial hearing.

7.21.1. The legal advisor rules on challenges to the voting members and may question the challenged member to determine if he or she will judge the case on the evidence, the provisions of this AFI, and the instructions of the legal advisor.

7.21.2. The board rules on challenges to the legal advisor. After hearing evidence on the challenge to the legal advisor, the board votes on the challenge in closed session. A secret-ballot majority vote must uphold a challenge to the legal advisor. The President of the board announces the ruling on the challenge to the legal advisor in open session.

7.21.3. Voting members are considered qualified and competent if they can:

7.21.3.1. Follow the legal advisor's instructions.

7.21.3.2. Reserve judgment until all the evidence is in.

7.21.3.3. Give sincere consideration to the respondent's evidence in defense and mitigation.

7.21.3.4. Make findings and recommendations on the evidence.

7.22. Oaths. The recorder swears in the legal advisor, reporter, interpreter, and the voting members. ***EXCEPTION:*** The recorder doesn't have to swear in a reporter who has been administered a one-time oath for court-martial.

7.22.1. The legal advisor swears in the recorder.

7.23. Opening Statements and Presenting Evidence. The recorder may present the case against the respondent by documentary evidence, through witnesses, or both. The recorder presents a verbal resume of the information contained in the documentary evidence. The recorder also may make an opening statement outlining the allegations, the evidence to support them, and the conclusions the recorder wishes the board to draw from the evidence. The recorder then presents evidence and testimony to the board.

7.23.1. The respondent may make an opening statement immediately following the recorder's opening statement or at the conclusion of the recorder's evidence. The respondent may then offer evidence in defense, extenuation, or mitigation. Both the recorder and the respondent may present evidence in rebuttal, as authorized by the legal advisor.

7.23.2. The reporter transcribes or describes the contents of any video or audio tapes that the recorder or the respondent presents as evidence.

7.24. Examining Witnesses. The recorder, respondent and respondent's counsel may examine and cross-examine witnesses to assist the board in making a complete record. If the respondent chooses to testify under oath, he or she is subject to cross-examination.

7.24.1. Any member of the BOI and the legal advisor may question witnesses for clarification. However, they must refrain from questioning witnesses until the recorder and the respondent have finished. The legal advisor only allows questions that are necessary to clarify a significant issue bearing on the board's purpose. Any questions must be relevant to the issue before the board.

7.24.2. The board considers all relevant material, not only the information in the Statement of Reasons. The recorder ensures that all information favorable to the respondent that bears on the case comes to the attention of the board as a matter of record.

7.25. Accepting Additional Evidence and Amending the Statement of Reasons.

7.25.1. The recorder may present new or additional evidence received after the SCA refers the case to a BOI unless otherwise directed by the SCA.

7.25.2. The president of the BOI may ask the recorder for additional evidence if the board decides that it's necessary for a full, fair, and impartial evaluation of the case. The new or additional evidence may include documentary evidence, statements, or testimony of witnesses.

7.25.3. The legal advisor admits additional evidence that's relevant, material, and otherwise admissible and allows a delay if necessary for the respondent to rebut or respond to new evidence.

7.25.4. The BOI may amend the Statement of Reasons to:

7.25.4.1. Correct errors.

7.25.4.2. Ensure it conforms to the evidence (including new or additional evidence).

7.25.4.3. Add any reasons for the discharge distinct from those already on record.

7.25.4.4. The president of the BOI informs the parties in open session before making its findings, determination, or recommendation that the BOI has amended the Statement of Reasons.

7.25.4.5. If the board amends the Statement of Reasons, it must give the respondent the amended Statement of Reasons and allow the respondent additional time, normally not to exceed 30 calendar days as

determined by the legal advisor, to respond to the amended Statement of Reasons. The respondent can waive the right to additional time. In such cases the waiver must be included in the record.

7.26. Appearance of Witnesses. The recorder administers the oath to each witness who appears before the board. Relevant statements from persons not present are properly admissible as evidence. The board calls witnesses as necessary for a full presentation of the entire case.

7.27. Retirement or Resignation Application. If the respondent submits a retirement or resignation application any time during the proceedings, the BOI continues until it makes its findings and recommendations.

7.27.1. If the SCA receives an application after sending the BOI report to HQ AFPC/

DPPRS, the SCA notifies HQ AFPC/DPPRS by message and sends an information copy to the AFPC.

7.28. Examining the Respondent. The respondent may choose to be examined under oath and subject to cross-examination, or to make an unsworn statement to the board, or to remain silent. The board may not draw any adverse inference from the respondent's choice to remain silent, or to make an unsworn statement.

7.28.1. The legal advisor must advise the respondent of his or her rights under Article 31, UCMJ.

7.29. Deliberations. After the respondent or counsel presents closing arguments, the legal advisor gives instructions to the board, as necessary. The board then enters closed session, attended only by voting members.

7.29.1. The board:

7.29.1.1. Must judge the case on its own merits.

7.29.1.2. Must judge the facts in light of the instructions given by the legal advisor, and the standard of conduct or performance of duty expected of an officer of the respondent's grade and experience.

7.29.1.3. Must ensure its findings are supported by a preponderance of the evidence.

7.29.1.4. Must weigh all the evidence and arrive at their findings by a preponderance of the evidence. A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence in opposition to it.

7.29.2. Legal Assistance. If the board must seek advice of the legal advisor during the deliberations, the board president opens the board and obtains the advice in open session with the reporter, recorder, respondent, and counsel present and makes these proceedings a part of the record.

7.29.3. Review Proceedings. The board in its deliberations may review any phase of the proceedings, including recalling witnesses. The board president:

7.29.3.1. Determines whether the voting members should review particular parts of the hearing.

7.29.3.2. Determines whether to open the board to review the recorded testimony and, or to recall witnesses for re-examination.

7.29.3.3. Makes the review proceedings a part of the record.

7.30. Specific Findings. The board makes its findings by the majority vote of a secret written ballot. The board must make a separate specific finding on each allegation contained in the Statement of Reasons. If a majority doesn't conclude that a preponderance of credible evidence supports an allegation, the board decides the finding in the respondent's favor.

7.30.1. In making its findings on homosexual conduct cases, the board makes findings regarding the existence of the circumstances cited in paragraph **3.3.3.1.** or **3.3.3.2.** of this AFI when specifically raised by the evidence. The board relies upon said circumstances to justify whether the member should be retained on active duty.

7.30.2. If the basis for discharge is homosexual conduct, the board must make a specific written finding whether the respondent engaged (or did not engage) in homosexual conduct that constitutes a basis for recoupment of unamortized education assistance, special pay, or bonuses the respondent may have received. If the board finds a basis for recoupment, the board must make a specific written recommendation whether recoupment should be effected. See paragraph **4.32.** for special rules regarding recoupment.

7.30.3. If a respondent disputes a debt for education assistance funds, the board must make findings and recommendations concerning the validity of the indebtedness. See paragraph **4.32.** for special rules regarding recoupment.

7.31. Recommendations. Once the board has completed its findings, it determines whether the respondent should be retained on active duty and makes a recommendation on the case. Findings that make the respondent subject to removal from active duty or discharge do not prevent the board from recommending retention. However, there must be at least one finding making the respondent subject to removal from active duty or discharge before the board may recommend such removal or discharge. The board may make only one of the specific recommendations in paragraphs **7.31.1.** through **7.31.4.**The board reaches its decisions by the majority vote of a secret ballot.

7.31.1. Retention. The board recommends retaining the respondent when it determines that the respondent should be retained on active duty. If the board made findings that homosexual conduct occurred, the board makes specific findings as to the reasons that may warrant retention according to paragraph **3.3.3.1.** or **3.3.3.2.**

7.31.2. Respondent Not Eligible to Retire. When the board determines that the respondent should not be retained on active duty, the board recommends:

7.31.2.1. Removing the respondent from active duty if the respondent is a regular officer.

7.31.2.2. Discharging the respondent if the respondent is a reserve officer.

7.31.2.2.1. When the board recommends removal from active duty or discharge, the board:

7.31.2.2.2. Recommends an honorable or under honorable conditions (general) discharge if the basis for discharge falls solely under **Chapter 2**.

7.31.2.2.3. Recommends an honorable discharge if the basis falls solely under **Chapter 3** for precommissioning activities not involving intentional misrepresentation or omission of facts in official documents.

7.31.2.2.4. May recommend an honorable discharge, a discharge under honorable conditions (general) or an UOTHC discharge in all other cases with a basis for discharge under **Chapter 3**. ***NOTE:*** Where the board has made a finding that the respondent committed, attempted, or solicited a homosexual act, the board may not recommend a UOTHC discharge unless it further finds one of the circumstances in paragraph **3.1.3.1.**

7.31.3. Respondent is a Regular officer and Eligible to Retire. When the board determines that the respondent should not be retained on active duty, it recommends removal from active duty and retirement.

7.31.4. Respondent is a Reserve Officer and Eligible to Retire. When the board determines that the respondent should not be retained on active duty, it recommends retirement if the respondent applied for voluntary retirement. If the respondent hasn't applied for voluntary retirement, the board recommends discharge and the character of discharge (see paragraph **7.31.2.**).

7.32. Announcing Results. The board president announces the results of the ballot to the board members immediately after collecting and counting the votes. The board president may ask the legal advisor and reporter to help in preparing the board's findings and recommendations in proper form. The respondent, the counsel, and the recorder may not be present.

7.32.1. After announcing the results to the closed session, the president opens the board and announces the findings and recommendations of the board in open session to the respondent.

7.32.2. The reporter transcribes the proceedings of both sessions as part of the record.

7.32.3. If the board retains the respondent**,** the board president advises the respondent of this decision in writing and sends an information copy to HQ AFPC/DPPRS and the SCA.

Section 7C—Post-BOI Administrative Functions

7.33. Preparing BOI Report. The reporter normally completes the report within 30 calendar days after the BOI adjourns. The report contains the board proceedings verbatim, except as specified in paragraph **7.33.3.**

7.33.1. Findings and Recommendations. The legal advisor or the recorder ensures that the findings and recommendations are recorded verbatim.

7.33.1.1. Board members sign the report to certify that a majority of the voting members concurred in the findings and recommendations. Members who don't concur may file a statement and explanation for inclusion in the case record.

7.33.1.2. The board president adds the following statement at the bottom of the signature page: "The above signatures certify that the findings and recommendations of this board represent a majority opinion of the board."

7.33.2. Authentication. The legal advisor authenticates the BOI report. When the legal advisor isn't available, the board president and the recorder authenticate the report and explain why the substitution was necessary.

7.33.3. Summarizing Proceedings. When the BOI retains the respondent on active duty, the reporter transcribes the findings and recommendations verbatim and summarizes the record of the board proceedings. The legal office must keep the tapes of the record of the board proceedings for 1 year, so that it can transcribe them again, if necessary.

7.34. Distributing the BOI Report.

7.34.1. The legal office gives the respondent:

7.34.1.1. An authenticated copy of the BOI report.

7.34.1.2. Any unclassified extract of a classified board report.

7.34.1.3. Access to the classified portion according to AFI 31-601.

7.34.2. After obtaining a signed and dated receipt for the BOI report, the legal office addresses the report transmittal memorandum to the SCA. The legal office sends:

7.34.2.1. The original and two copies of the BOI report when a BOI doesn't retain the officer on active duty.

7.34.2.2. The original and one copy of the BOI report when a BOI retains the officer on active duty.

7.34.3. The SCA sends the BOI report to HQ AFPC/DPPRS normally 20 calendar days after receiving it. The SCA sends:

7.34.3.1. The original report when a BOI retains the officer on active duty.

7.34.3.2. The original BOI report and one copy when a BOI doesn't retain the officer on active duty.

7.34.4. HQ AFPC/DPPRS sends the BOI case to the AFPC through HQ USAF/JAG when a BOI doesn't retain the officer on active duty.

7.34.5. HQ AFPC/DPPRS retains a BOI case for 1 year when the BOI retains an officer on active duty. HQ AFPC/DPPRS destroys the case file after 1 year.

7.35. Action by Respondent. If the BOI recommends that the officer be removed from active duty or discharged, the respondent may take these actions within 10 calendar days after receiving or having access to an authenticated copy of the BOI report:

7.35.1. File with the legal advisor any suggested corrections to the report. The legal advisor determines what corrections are allowable and advises the respondent or counsel accordingly.

7.35.2. Send to the SCA any brief or argument assigning error or raising new matters.

7.35.3. Submit to the SCA additional evidence that could materially affect the BOI's findings and recommendations, provided such evidence was not reasonably available for presentation to the board during its hearings.

7.35.4. Request a delay in taking one or more of these actions.

***NOTE*:** The respondent must provide reasons for requesting the delay. The SCA may grant such delay if satisfied that denying the request would compromise the officer's rights.

7.36. Action by SCA on BOI Report.

7.36.1. BOI Recommends Retention. The SCA sends HQ AFPC/DPPRS a copy of theBOI president's memorandum advising the respondent of the BOI decision. The SCA retains a copy of the BOI report and sends the original BOI report to HQ AFPC/DPPRS normally 20 calendar days after receiving the report of the BOI proceedings. If appropriate, the SCA may reassign the officer.

7.36.2. BOI Recommends Removal From Active Duty or Discharge. The SCA sends the original and one copy of the BOI report to HQ AFPC/DPPRS normally 20 calendar days after receiving the report of the BOI proceedings. The SCA advises the respondent in writing that he or she may request excess leave pending final decision in the case.

7.37. Reconvening the BOI. This applies when a BOI recommends removal from active duty or discharge. The SCA may reconvene the board any time before the SAF makes a final decision when the SCA receives evidence that could materially affect its findings and recommendations. The SCA must establish that this evidence was not reasonably available for presentation during the board hearings. New evidence includes conduct after the BOI adjourns.

7.37.1. When the SCA receives evidence before sending the report of the BOI but decides not to reconvene the board, the SCA sends the evidence or a summary or extract to HQ AFPC/DPPRS, with reasons for the decision not to reconvene the BOI. If the SCA receives evidence after sending the report of the BOI to HQ AFPC/DPPRS, the SCA promptly sends the evidence or a summary or extract to HQ AFPC/DPPRS, with a statement indicating whether the SCA intends to reconvene the BOI or take other action.

7.37.2. The SCA gives the respondent 10 calendar days to submit comments or rebuttal before the SCA acts on the new information or evidence received.

Chapter 8

BOARDS OF REVIEW (BOR)

8.1. DELETED.

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Title 10, United States Code:

Section	Subject
630	Discharge of Regular commissioned officers with less than 5 years of active commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)
642	Entitlement of officers discharged or retired under this chapter to separation pay or retired pay
644	Authority to suspend officer personnel laws
654	Policy concerning homosexuality in the armed forces
1162	Reserves: discharge
1163	Reserve components: members; limitations on separation
1174	Separation pay upon involuntary discharge or release from active duty
1181	Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons
1182	Boards of Inquiry
1183	Boards of Review
1184	Removal of Officer: action by Secretary upon recommendation of board review
1185	Rights and procedures
1186	Officer considered for removal: voluntary retirement or discharge
1187	Officers eligible to serve on boards
2005	Advanced education assistance: active duty agreement; reimbursement requirements

DoD Directive 1332.30, 21 December 1993, *Separation of Regular Commissioned Officer*s.

DoD Directive 6025.11, 20 May 1988, *Credentials Review and Award of Clinical Privileges*.

DoD Directive 6025.6, 6 June 1988, *Licensure of Health Care Providers*.

DoD Directive 6490.1, 14 September 1993, *Mental Health Evaluation of Members of the Armed Forces*.

DoD Instruction 1332.29, 20 June 1991, *Eligibility of Regular and Reserve Personnel for Separation Pay*.

DoD Financial Management Regulation, part 4, chapter 4.

Diagnostic and Statistical Manual of Mental Disorders (current edition).

Abbreviations and Acronyms

AFDPG-HQ USAF (General Officer Matters) Washington DC
AFI-Air Force Instruction
AFPB-Air Force Personnel Board, Andrews AFB MD
AFPC-Air Force Personnel Council, Andrews AFB MD
AFPD-Air Force Policy Directive
AIDS-Acquired Immune Deficiency Syndrome
ANG-Air National Guard
BOI-Board of Inquiry
BOR-Board of Review
DOS-Date of Separation
HIV-Humane Immunodeficiency Virus
HQ AFPC-Headquarters Air Force Personnel Center, Randolph AFB TX
HQ USAF-Headquarters United States Air Force, Washington DC
JFTR-Joint Federal Travel Regulation
JTR-Joint Travel Regulation
MAJCOM-Major Command
MEB-Medical Evaluation Board
MPF-Military Personnel Flight
NPRC-National Personnel Record Center, St Louis MO
OSAF-Office of the Secretary of the Air Force
OSI-Office of Special Investigations
PDS-Personnel Data System

PRP-Personnel Reliability Program
SAF-Secretary of the Air Force
SCA-Show-Cause Authority
SCI-Sensitive Compartmented Information

SIOP-ESI-Single Integrated Operational Plan, Extremely Sensitive Information

SJA-Staff Judge Advocate

SSN-Social Security Number

SPTC-Specified Period of Time Contract

TAFCSD-Total Active Federal Commissioned Service Date

TFCSD-Total Federal Commissioned Service Date

UCMJ-Uniform Code of Military Justice

UOTHC-Under Other Than Honorable Condition

U.S.C.-United States Code

Terms

Bisexual--A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in, both homosexual and heterosexual acts.

Board of Inquiry--A board of officers convened to receive evidence, make findings on discharge cases, and give recommendations on whether the Air Force should retain an officer who is required to show cause for retention on active duty.

Commander--A commissioned officer who occupies a position of command. Unless otherwise specified, usually refers to the member's unit commander.

Homosexual--A person, regardless of sex, who engages in , attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

Homosexual Act--(a) Any bodily contact, actively undertaken or acts passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and (b) any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in (a).

Homosexual Conduct--A homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

Nonprobationary Officer--A Regular officer with five or more years of active commissioned service, computed from the total active federal commissioned service date or a Reserve officer with five or more years of commissioned service computed from the total federal commissioned service date.

Preponderance of Evidence--A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence in opposition to it.

Probationary Officer--A Regular officer with less than five years of active commissioned service, computed from the total active federal commissioned service date or a Reserve officer with less than five years of commissioned service, computed from the total federal commissioned service date.

Procedural Matters--Administrative responsibilities that a BOI must undertake during hearings and proceedings, including motions for continuances, securing of witnesses or production of documentary evidence, challenges, the admissibility of evidence, and other interlocutory matters that a military judge would rule on in a trial by court-martial.

Propensity--Propensity to engage in homosexual acts means more than abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

Recoupment--An amount that bears the same ratio to the total amount of education assistance, special pay, or bonus money provided to the officer as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.

Report of Board Proceeding--Usually a properly authenticated verbatim transcript of the BOI hearings, including supporting exhibits.

Reserve Component--The United States Air Force Reserve (USAFR) and the Air National Guard of the United States (ANGUS). Members of the USAFR or ANG may be on active duty although not on the active-duty list.

Respondent--An officer who appears before a BOI to show cause for retention on active duty.

Serious Misconduct--Any misconduct punishable by military or civilian authorities. This includes any misconduct that, if punished under the Uniform Code of Military Justice (UCMJ), could result in confinement for 6 months or more, and any misconduct requiring specific intent for conviction under the UCMJ.

Sexual Orientation--An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

Show Cause Authority--For purposes of this AFI, the commander of a MAJCOM or equivalent commander to whom the officer is assigned and other officers designated by the SAF. MAJCOM commanders will delegate SCA to wing commanders who are general officers or General Court-Martial Convening Authorities for wings not commanded by a general officer, unless they personally determine that specific delegations cannot be made because of unusual circumstances.

Statement that a Member is a Homosexual or Bisexual or Words to that Effect--Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

Addresses

HQ AFPC/DPPRS (*Separations Branch)*

550 C St West, Ste 11

Randolph AFB TX 78150-4713

Air Force Personnel Council (*AFPC*)

1535 Command Drive EE-Wing, 3d Floor

Andrews AFB MD 30221-7002

HQ USAF/JAG (*General Law Division)*

1420 Air Force Pentagon

Washington DC 20330-1420

HQ USAF/AFDPG (*General Officer Matters*)

5060 Air Force Pentagon

Washington DC 20330-5060

NPRC (*National Personnel Records Center,* Air Force Branch)

9700 Page Blvd.

St Louis MO 63132-5100

Attachment 2

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A2.1. Responsibility.

A2.1.1. Only a commander in the member's chain of command is authorized to initiate fact finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly.

A2.1.2. In every case, prior to initiating an inquiry, a commander must consult through the chain of command with a commander possessing general court-martial convening authority (GCMCA) and the servicing staff judge advocate of the initiating commander must consult with the servicing staff judge advocate of the GCMCA. A single base GCMCA, NAF or higher level GCMCA is not required to consult a higher headquarters prior to initiation of an inquiry, but may do so at his or her discretion.

A2.1.3. In addition to the requirement of **A2.1.2.**, a commander desiring to initiate a substantial inquiry to determine whether or not a statement of homosexuality was made for the purpose of seeking separation from military service, as defined in **A2.2.6.**, must submit a request for approval through the chain of command and the Vice Chief of Staff of the Air Force (AF/CV) to the Undersecretary of the Air Force (SAF/US). The request must explain why there is a clear interest in conducting the substantial inquiry, why it is expected that the expanded inquiry will result in additional relevant evidence and why the Air Force benefit in expanding the inquiry outweighs any foreseeable disadvantage of expanded inquiry. Any commander in the chain of command, AF/CV or SAF/US can disapprove the request and return it to the initiating commander. SAF/US approval of a request shall be communicated back through the chain of command to the initiating commander.

A2.1.4. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. Subject to the restrictions on substantial inquiries in homosexual statements cases, it may consist of an examination of the information reported or a more extensive investigation, as necessary.

A2.1.5. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquires shall be limited to the factual circumstances directly relevant to the specific allegations. A member who makes a voluntarily statement acknowledging his or her homosexuality may, but will not be required to, provide the names of other individuals to be interviewed relevant to his or her statement. The fact that an individual is identified to be interviewed, does not, standing alone, provide credible evidence sufficient to initiate an inquiry of that individual. Should the alleged homosexuality of members other than the subject arise in the course of the substantial inquiry, they will not be inquired into further without the approval of the appropriate command authority or, when required, the Under Secretary of the Air Force. See **A2.1.1.** and **A2.1.3.**

A2.1.6. If a commander has credible evidence of possible criminal conduct, he or she may follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretary of the Air Force.

A2.1.7. The guidelines in this attachment do not apply to activities of the Defense Criminal Investigative Organizations (DCIO) and other DoD law enforcement organizations, which are governed by DoD Instruction 5505.8.

A2.2. Definitions.

A2.2.1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in both homosexual and heterosexual acts.

A2.2.2. Commander. A commissioned officer who occupies a position of command.

A2.2.3. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A2.2.4. Homosexual Conduct. "Homosexual Conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

A2.2.4.1. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

A2.2.4.2. A "statement that a member is a homosexual or bisexual, or words to that effect" means language or behavior that a reasonable person would believe intends to convey the statement that a person engages in or has a propensity or intent to engage in homosexual acts. This may include statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

A2.2.4.3. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

A2.2.4.4. "Propensity to engage in homosexual acts" means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

A2.2.5. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

A2.2.6. Substantial Inquiry to Determine Whether a Statement was Made for the Purpose of Seeking Separation from Military Service . A substantial inquiry to determine whether a statement was made for the purpose of seeking separation from military service is an inquiry that extends beyond questioning the member who made the statement, and/or a third party who reports that a member made a statement, individuals suggested by the member for interview and the member's immediate supervisory chain of command.

A2.2.7. "Threats" and "harassment," as used in paragraphs **A2.3.3.4.** and **A2.4.3.**, are not technical terms and are used in the commonly understood sense. "Harassment" includes the use of derogatory or demeaning words, gestures or actions in regard to the sexual orientation of another or others.

A2.3. Basis for Conducting Inquiries.

A2.3.1. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surround-

ing circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

A2.3.2. A Basis for Discharge Exists if:

A2.3.2.1. The member has engaged in a homosexual act.

A2.3.2.2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts.

A2.3.2.3. The member has married or attempted to marry a person of the same sex.

A2.3.3. Credible information does not exist, for example, when:

A2.3.3.1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion.

A2.3.3.2. The only information is the opinions of others that a member is homosexual. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation.

A2.3.3.3. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

A2.3.3.4. A member reports being threatened or harassed because he or she is labeled or perceived to be a homosexual. Such information, standing alone, does not constitute credible information justifying the initiation of an inquiry into alleged homosexual conduct by the member reporting the threats or harassment.

A2.3.4. Credible information exists, for example, when:

A2.3.4.1. A reliable person states that he or she observed or heard a service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex.

A2.3.4.2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.3.4.3. A reliable person states that he or she observed behavior that amounts to a nonverbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.4. Procedures.

A2.4.1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

A2.4.2. Commanders must exercise sound discretion regarding when credible information exists. They must examine the information and decide whether an inquiry is warranted, whether an inquiry is necessary in light of the facts reported or whether no action should be taken.

A2.4.3. If a member reports threats or harassment based on being labeled or perceived to be a homosexual, the alleged threat or harassment must be addressed promptly by inquiry or investigation, as appropriate based on the surrounding facts. Assuring the physical safety of the complainant will be a primary consideration in any such case. A report of threats or harassment based on being labeled or perceived to be a homosexual does not constitute credible information justifying initiation of an inquiry or investigation of the complainant. Persons conducting an investigation or inquiry into the threats or harassment should not solicit allegations about the sexuality or possible homosexual conduct of the complainant. If information regarding alleged homosexual conduct by the complainant arises during an inquiry or investigation into threats or harassment, commanders must carefully consider the source of the information, and the circumstances under which it was provided, in assessing its credibility. The receipt of information alleging homosexual conduct on the part of the complainant does not negate the need to inquire into or investigate the facts and circumstances surrounding the original complaint of threats or harassment.

A2.4.4. Commanders or appointed inquiry officials must not ask, and members may not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member must first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). If the member chooses not to discuss the matter further, the commander may consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding; nor does it provide the member with any basis for challenging the validity of any proceeding or the use of such evidence, including a statement by the member in any proceeding.

A2.4.5. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

A2.4.6. A statement by a service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member must be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or intends to engage in, homosexual acts.

A2.4.6.1. The Service member bears the burden of proving, throughout the proceedings, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A2.5. Legal Effect. The procedures set forth in this attachment create no substantive or procedural rights, such as excluding evidence from an administrative proceedings or court-martial. Command authorities must take appropriate action against any military member or civilian employee who violates these procedures.

Attachment 4

NOTIFYING AN OFFICER OF SHOW CAUSE ACTION INITIATED

Use this memorandum for the show cause authority to notify officers (probationary and nonprobationary) of action initiated under AFI 36-3206. Instructions are enclosed in parentheses ( ). Use material in brackets [ ] as appropriate.

Sample Memorandum

MEMORANDUM FOR (Officer's grade, name, SSN, and functional address symbol) (Date)

FROM: (SCA)

SUBJECT: Notification of Show Cause Action Initiated Under AFI 36-3206, [**Chapter 2**] [paragraph] [paragraphs] [___] [and] [**Chapter 3**] [paragraph] [paragraphs] [__]

I am initiating action against you under AFI 36-3206, [**Chapter 2**] [paragraph] [paragraphs] [____][and] [**Chapter 3**] [paragraph] [paragraphs] [___] that requires you to show cause for retention on active duty. (Use the following sentence when the officer is named in a promotion board report as having a record showing action under AFI 36-3206 is appropriate.) [Further, the promotion selection board that convened at HQ AFPC, Randolph AFB TX on [date] identified you in its report as having a record that warrants initiation of this discharge action.]

I am taking this action because (State the reason or reasons in precise and explicit terms. Specifically state what the officer did that forms the basis for this action.) The least favorable character of discharge that the Secretary of the Air Force may approve in this case is [honorable] [under honorable conditions (general)] [under other than honorable conditions]. Attached [is a copy] [are copies] of documentary evidence supporting this action.

Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of the notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will indicate on it, the date and time that you declined to acknowledge receiving it and it will be included as a part of your case file.

Familiarize yourself with AFI 36-3206, particularly the rights that you have. If you do not apply for retirement or request a resignation in lieu of further administrative action, a board (AFPB or BOI) will convene as provided in **Chapter 6** or **Chapter 7**. Contact (grade, name, telephone number, and office address of the area defense counsel) to discuss the procedures involved and your rights and options. If you decline counsel, contact (grade, name, telephone number, and office address of the chief, Military Personnel Flight) for counseling about your rights and options.

If you elect to present matters to a BOI, the standard of proof used by the board to make findings is a preponderance of evidence. You may present evidence and argument to rebut the [reason] [reasons] set forth in this notification memorandum or any additional reason or information developed during the BOI proceedings. You also may present other pertinent evidence.

Within l0 calendar days after you receive this notification memorandum, you must respond by indorsement to me. If I do not receive the indorsement within the allotted time I will proceed with further action under AFI 36-3206. Include in your indorsement:

a. Any statement you wish to submit on your own behalf and/or any additional evidence that you wish me to consider. (Use the following sentence only if the basis for the action initiated is or includes homosexual conduct.) [If you desire that a board of inquiry consider retention, you must submit evidence documenting the existence of all the circumstances cited in paragraphs **3.3.3.1.** or **3.3.3.2.** in AFI 36-3206.] (Use the following sentence if the homosexual conduct is homosexual statement only.) [You may present evidence to rebut the presumption that you engage in, attempt to engage in, have the propensity to engage in, or intend to engaged in homosexual acts.] If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time to (the SCA or if the SCA has delegated, to his or her designee under paragraph **4.22.1.**). If you do not submit statements or evidence, your failure will constitute a waiver of your right to do so and I will refer your case to the (BOI or AFPB).

b. A statement that (grade, name and of the area defense counsel) counseled you and that you fully understand your rights and options in this action. If you declined counsel, so state and indicate that (grade, name, chief, Military Personnel Flight) counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of education assistance, special pay, or bonuses received if you haven't completed the period of active duty you agreed to serve:

Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.

Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.

(Include the following if the reason for separation is not homosexual conduct)

Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.]

(Include the next two bullets if the reason for separation is homosexual conduct)

Recoupment of education assistance, special pay, or bonus money received if basis for discharge is determined to be statements, or marriage or attempted marriage to a person of the same sex, for the purpose of seeking separation.]

Recoupment of education assistance, special pay, or bonus money received if a discharge under other than honorable conditions (UOTHC) is authorized, or if the homosexual conduct is punishable under the

UCMJ. This is the case whether or not you are actually discharged UOTHC or actually convicted under the UCMJ.]

The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve. (Include the following bullet if the officer is subject to recoupment of education assistance costs.)

If you dispute that you are indebted for educational assistance, the board of inquiry, or, if you do not choose or are not entitled to a board of inquiry, an authority appointed by the MAJCOM/CC , will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, **4.32.** and **4.33.**, regarding special rules for recoupment.]

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the retirement application or the resignation.

e. A statement that the area defense counsel or the chief, Military Personnel Flight, explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information.

In response to this notification memorandum, you may, within 10 calendar days, (consult with the MPF chief of quality force to determine the officer's retirement eligibility and use one of the following passages to complete this sentence, as applicable):

(Enter the following passage when the basis for the action initiated restricts the character of discharge to honorable and the officer is not eligible to retire in officer status.)

[tender your resignation under AFI 36-3206, **Chapter 3**, paragraph **3.1.2.**, with the understanding that, if the Secretary of the Air Force accepts your resignation, you will receive an honorable discharge and that your discharge date will be as soon as possible but no later than 10 calendar days (20 calendar days if serving overseas) after the date that the MPF receives separation instructions.]

(Enter the following passage when the basis for the action initiated does not restrict the character of discharge to honorable and the officer is not eligible to retire in officer or enlisted status.)

[Tender your resignation under AFI 36-3207, chapter 2, section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive [a discharge under honorable conditions (general) unless the Secretary of the Air Force determines that you should receive an honorable discharge]. [an under other than honorable conditions discharge unless the Secretary of the Air Force determines that you should receive a discharge under honorable conditions (general) or an honorable discharge.] If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon

as possible but no later than 10 calendar days (20 calendar days if serving overseas) after the date that the MPF receives separation instructions.]

(Enter the following passage if the officer has the years of active military service and the years of active commissioned service to apply for retirement in officer status.)

[Apply for retirement in officer status with the understanding that your retirement may on the first day of the month, or no later than the first day of the second month, immediately following approval of your application. It is possible that the Secretary of the Air Force may direct retirement in a grade lower than your current grade if the Secretary of the Air Force determines that you did not hold the higher grade satisfactorily.]

(Enter the following passage if the officer doesn't have the years of active commissioned service to retire in officer status but has the years of active military service to retire in enlisted status.)

[Tender your resignation under AFI 36-3207, chapter 2, section B, to enlist and retire. It is possible that the Secretary of the Air Force may accept your resignation, determine that you did not hold your current grade satisfactorily and direct, when your active service plus service on the retired list totals 30 years, your advancement on the retired list to a grade lower than your current grade. If the Secretary of the Air Force accepts your resignation to enlist and retire, you will receive [an honorable discharge] (when the basis for the action initiated restricts the character of discharge to honorable) (or) [a discharge under honorable conditions (general) unless the Secretary of the Air Force determines that you should receive an honorable discharge] (when the basis for the action initiated does not restrict character of discharge to honorable), and your separation and enlistment will be within the 3 calendar days immediately preceding the effective retirement date.]

[I [have] [have not] taken action required under AFI 31-501.] (If the officer has or once had access to SCI, SIOP-ESI, or other special access programs, place a copy of the action taken or that is pending in the case file.)

You may request excess leave if the Air Force doesn't require your further participation in processing your case.

(signature)

(typed name, grade)

(title)

Attachments: (do not include SJA legal review)

1. (List documentary evidence)

2. AFI 36-3206

3. AFI 36-3207

4. Other Pertinent Documents (list individually)

1st Ind (Respondent)

MEMORANDUM FOR SCA

I acknowledge receiving (complete identification of the notification memorandum, to include issuing headquarters, subject, and date) with _____ attachments at (hour) on (date).

(Signature)

(Typed name, grade)

Attachment 5

RESPONSE TO THE SHOW CAUSE NOTIFICATION MEMORANDUM

Use this memorandum for officers to respond to the show cause notification memorandum from the SCA under AFI 36-3206. Instructions are enclosed in parentheses ( ). Use material enclosed in brackets [ ] as appropriate.

Sample Memorandum

MEMORANDUM FOR (SCA) (Date)

FROM: (Officer's grade, name, SSN, and functional address symbol)

SUBJECT: Response to the Notification of Administrative Discharge Action Initiated Under AFI 36-3206

I understand that:

a. I may contact the area defense counsel to discuss procedures involved, separation pay eligibility, reimbursement requirements, and my rights and options in this action.

b. If I decline counseling, I am to contact the chief, Military Personnel Flight, for counseling regarding my rights and options.

c. I must indorse the notification memorandum and submit the applicable statements within 10 calendar days after receiving it.

I understand the show-cause authority will proceed with further action under AFI 36-3206 if I do not submit my response to the notification memorandum within the allotted time.

I understand the following applies regarding recoupment if I have received education assistance, special pay, or bonuses and I haven't completed the period of active duty I agreed to serve:

a. Recoupment of a portion of education assistance, special pay, or bonus monies received if I voluntarily separate.

b. Recoupment of a portion of education assistance received if involuntary discharge is for misconduct. (Include the following paragraph c if the basis for separation does not involve homosexual conduct.)

[c. Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntarydischarge.]

(Include the following paragraph c if the basis for separation involves homosexual conduct.)

[c. Recoupment of education assistance, special pay, or bonus money received if homosexual conduct is statements, or marriage or attempted marriage to a person of the same sex, for the purpose of seeking separation.

Recoupment of education assistance, special pay, or bonus money received if a discharge under other than honorable conditions (UOTHC) is authorized, or if the homosexual conduct is punishable under the UCMJ. This is the case whether or not you are actually discharged UOTHC or actually convicted under the UCMJ.]

d. The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.

(Include the following paragraph e if the officer is subject to recoupment of education assistance costs.)

[e. If I dispute a debt for educational assistance, the board of inquiry or, if I do not choose a board of inquiry, or am not entitled to a board of inquiry, an authority appointed by the Show Cause Authority, will make the findings and recommendations concerning the validity of my indebtedness. (See AFI 36-3206, paragraph **4.32.**regarding special rules for recoupment.)]

(signature)

(typed name, grade, SSN)

Attachment 6

NOTIFYING A NONPROBATIONARY OFFICER TO SHOW CAUSE

DELETED.

Attachment 7

NOTIFYING A PROBATIONARY OFFICER RECOMMENDED FOR HONORABLE DISCHARGE

DELETED.

Attachment 8

NOTIFYING A PROBATIONARY OFFICER RECOMMENDED FOR DISCHARGE UNDER HONORABLE CONDITIONS (GENERAL)

DELETED.

Attachment 9

NOTIFYING A PROBATIONARY OFFICER WHOSE CASE IS GOING TO A BOI

DELETED.

Attachment 10

PODB RECOMMENDS AN HONORABLE DISCHARGE OR A DISCHARGE UNDER HONORABLE CONDITIONS (GENERAL)

DELETED.

Attachment 11

PODB RECOMMENDS REFERRING A CASE TO A BOI

DELETED.

Attachment 12

NOTIFICATION OF BOI HEARING

Use this memorandum to notify officers of the date and time of the BOI hearing. Instructions are enclosed in parentheses ( ). Use material enclosed in brackets [ ] as appropriate.

Sample Memorandum

MEMORANDUM FOR (Respondent's grade, name, SSN, and functional address symbol) (Date)

FROM: (Functional address symbol)

SUBJECT: Board of Inquiry Hearing Under AFI 36-3206

A board of inquiry (BOI) appointed by paragraph _____, Special Order _____ , Headquarters _____, dated _____ , will convene on _____ 19 _____, at _____ hours at (place), to receive evidence and make findings and recommendations whether to retain you in the Air Force. Attached is a copy of this order.

Your rights as a respondent are specified in AFI 36-3206, **Chapter 7**. You may request the presence of any witness whose testimony you believe to be pertinent to your case, specifying the type of information each witness can provide. The board will invite witnesses as authorized by the legal advisor.

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

a. The request is made with enough time to make arrangements, and

b. The witnesses, in the opinion of the legal advisor, can present relevant and material evidence.

[I have attached a list of witnesses, their organization, and station (if civilian, the address), expected to be called to appear before the BOI.]

You may be represented by either a detailed military lawyer or a military lawyer of your choosing, if reasonably available. Civilian counsel may represent you at your own expense.

You also may request that the SCA postpone convening of the board if you need more time to prepare your case. If the SCA approves your request, the SCA will set a new date for the hearing. However, if you do not request a later date and you do not appear at the time and place specified for the hearing, the board will consider your case on the complete file in your absence.

(Use this paragraph only if respondent indicated that he or she did not intend to appear before the BOI.) [You indicated in your (date) indorsement to the Show-Cause Authority's notification memorandum dated _____, that you did not intend to appear before the BOI. You may appear with or without counsel and present evidence in your behalf. Your presence will assist the board in arriving at its determination.]

Within 5 calendar days after you receive this notification memorandum, you must acknowledge receipt, including in your memorandum of acknowledgment the following:

a. Date and time you received this notification memorandum.

b. Name and addresses of any witnesses you want to appear before the BOI, giving a concise summary of the type of information each witness can provide.

c. If you want to postpone the BOI hearing, a statement that substantiates your request and the additional time (not to exceed 10 calendar days) that you are requesting.

d. [A statement that you [do] [do not] intend to appear before the BOI.]

Address all correspondence to: (The recorder of the board of inquiry designates proper address.)

(signature)

(type name, grade, USAF)

(title)

Attachment

Special Order Appointing Board of Inquiry (cy)

Attachment 13

GUIDE FOR BOI PROCEEDINGS

Legal advisors and reporters use this guide to conduct, record, and transcribe BOI proceedings. Instructions are in parentheses ( ). Use material in brackets [ ] as appropriate.

RECORD OF PROCEEDING OF BOARD OF INQUIRY CONVENED UNDER AIR FORCE INSTRUCTION 36-3206

Appointed by (title and command of appointing authority)

Concerning (last name, first name, middle initial) (SSN) (grade)

Held at (place of hearing) on (date) (dates)

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NOTE: Use the following abbreviations:

PRES - President

WIT - Witness

MBR - Member of BOI

REP - Reporter.

LA - Legal Advisor.

INT - Interpreter.

RESP - Respondent.

REC - Recorder.

RC - Respondent's Counsel.

(***NOTE:*** If counsel is representing the respondent, it is customary to show all exhibits to the respondent's counsel rather than respondent.)

TESTIMONY

_____

_____

_____

Name of Witness:

Direct and Redirect:

Cross and Recross

FOR THE AIR FORCE:

_____
_____
_____

FOR THE RESPONDENT:

_____
___
_____
_____
_____

EXHIBITS ADMITTED IN EVIDENCE

_____

Number or Letter	Description	Page Where Offered	Page Where Admitted

PROCEEDINGS OF THE BOARD OF INQUIRY

1. Pre-board Session.

LA: This pre-board session will come to order.

REC: This pre-board session is convened at (time)_____ hours, on (date)_____ , at (building, base, or city)_____ _____, pursuant to AFI 36-3206 and special order _____, dated_____, Headquarters (SPCM)_____. The appointing orders are offered into evidence as Government Exhibit 1. A copy has been provided to the respondent.

LA: Is there any objection? [If none] Government Exhibit 1 is admitted into evidence.

REC: The voting members of the board are absent. The recorder [assistant recorder] and the following persons are present:

Respondent (RESP):_____

Legal Advisor (LA):_____

Reporter (REP):_____

Respondent's counsel (RC):_____

[Bailiff: _____]

REC: I am (grade & full name)_____ , the recorder in this case. I am assigned to the (organization) _____ and stationed at base)_____. I am a designated judge advocate, qualified and certified under Article 27(b) of the Uniform Code of Military Justice (UCMJ). (***NOTE:*** If assistant recorders are present, they identify themselves at this point.

RC: The respondent is represented by (grade & full name) _____. I'm a designated judge advocate and qualified and certified under Article 27(b) of the UCMJ. (***NOTE:*** Civilian counsel states full name, office address, and bar membership(s).)

REC: The respondent is junior in grade and rank to all voting members [and alternate members] designated in the appointing orders. Notice of this hearing was sent to the respondent on (date)_____. Respondent's written acknowledgment of that notice is dated (date)_____. The notice and acknowledgment have been marked as Government Exhibit 2 and are offered into evidence. A copy has been provided to the respondent's counsel. (***NOTE***: The respondent must receive notice of this Board of Inquiry (BOI) hearing at least 10 calendar days before initial convening of the BOI, unless the respondent requested an earlier date.)

LA: Does the respondent have any objection? (If none:) Government Exhibit 2 is admitted into evidence.

2. Oaths.

REC: The reporter will now be sworn. (***NOTE:*** If the reporter has been administered a one-time oath for court-martial, state for the record "The reporter has been previously sworn.")

REC: Do you, (name of reporter) _____, [solemnly swear so help you God] (or) [affirm] that you will faithfully perform the duty of reporter to this board?

REP: I do.

REC: The legal advisor will now be sworn. Do you (grade & full name)_____ [solemnly swear so help you God] (or) [affirm] that you will faithfully perform the duties of legal advisor to this board?

LA: I do.

LA: The recorder(s) will now be sworn.

LA: Do you (grade & full name[s])_____ [solemnly swear so help you God] (or) [affirm] that you will faithfully perform the duties of recorder to this board?

REC: I do.

REC: (Where appropriate) The interpreter will be sworn.

LA: There are no spectators in the hearing room. (***NOTE***: If there are spectators in attendance, obtain the respondent's consent and ensure none of them will be witnesses.)

3. Advice of Rights to Respondent.

LA: (to respondent) You have previously been notified of your rights as set forth in AFI 36-3206, **Chapter 7**. I will again advise you of those rights at this time.

LA: An officer whose case is being referred to a BOI has the right to be notified in writing, at least 30 days before the hearing, of the reasons for which you are required to show cause for retention in the United States Air Force and of the least favorable character of discharge for which you may be recommended.

LA: At any time before a final decision is made by the Secretary of the Air Force (SAF) on your case you may apply for separation. (***NOTE:*** Refer to "Secretary of the Air Force" instead of the abbreviated form "SAF" during the hearing.)

If you are eligible to retire, you may apply for voluntary retirement with the understanding that you may be retired on the first day of the month, or no later than the first day of the second month, immediately following the SAF's approval of your application. If the SAF determines that you did not hold the higher grade satisfactorily, you may be retired in a grade lower than your current grade. If you are not eligible to retire voluntarily, you may apply for a discharge, to be effective within 10 calendar days [20 calendar days if serving overseas] following notification of approval by the SAF.

[If and when you apply for retirement or discharge, these proceedings will continue until the findings and recommendations have been reached.] [Although you are awaiting SAF approval on your [retirement] [discharge], (enter the name of the show-cause authority) has directed that this BOI convene. The proceedings will continue until the findings and recommendations have been reached.]

LA: You may be represented by military or civilian counsel and you may appear in person, with or without counsel at all open proceedings of the board. If you can't be present or you waive your right to be present, you must be represented by counsel. The Air Force may designate counsel or you may request a qualified counsel who is an Air Force officer and reasonably available. You may be represented by either designated or requested military counsel, but normally not by both. You may retain civilian counsel at no expense to the Government. Civilian counsel may represent you alone or along with your military counsel.

Unless you waive the requirement, your military counsel must have equal qualification and certification under Article 27(b)(2), UCMJ, with a recorder qualified under that article. [As you heard earlier, your military counsel meets this requirement.]

If you do not appear in person and are not represented by a lawyer, the major commander will appoint a military lawyer to represent you.

LA: Do you understand your rights to counsel?

RESP: [Yes] [No]. (***NOTE***: LA explains rights to counsel until RESP understands them.)

LA: You may arrange for the appearance of witnesses whose testimony you believe is pertinent to your case. You may also request the recorder to have invitational travel orders issued to witnesses who meet the requirements of AFI 36-3206, **Chapter 7**. This board may not authorize Government payment of the expenses of witnesses who are not invited to appear by the recorder.

LA: You may submit depositions, sworn or unsworn statements, certificates, affidavits, stipulations or other evidence for consideration by the BOI, whether or not you appear in person. You may also submit a written brief covering any phase of the case at any time before the BOI convenes, during its proceedings, or no later than 10 calendar days after receiving or having access to a copy of the authenticated transcript of these hearings (as provided in AFI 36-3206, **Chapter 7**).

LA: You may challenge, for cause only, any voting member of the board or me, the appointed legal advisor.

LA: You or your counsel may question any witness brought before the board.

LA: All rights under Article 31, UCMJ, are extended to you. Article 31 provides that:

No person subject to the UCMJ may compel any person to incriminate himself or herself or to answer any question that may be self-incriminating.

No person subject to the UCMJ may interrogate or request any statement from an accused or a person suspected of an offense without first stating the nature of the accusation and advising the person that he or she does not have to make any statement regarding the offense and that any statement may be used as evidence in a trial by court-martial.

No person subject to the UCMJ may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may be degrading.

No statement obtained from any person in violation of Article 31, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.

LA: Do you understand your rights under Article 31, UCMJ?

RESP: [Yes] [No].(***NOTE***: LA explains rights under Article 31, UCMJ, until RESP understands them.)

LA: During the hearing, you may submit to an examination by the board if you wish. You will be sworn as a witness and subject to cross-examination just as any other witness before this board.

LA: If you do not desire to make a statement under oath, you may make a statement to the board without taking an oath, either personally or through your counsel, orally, in writing or in any combination of those ways. If you do not make a statement under oath, you will not be subject to cross-examination, but other evidence may be offered to rebut the facts and representations made in your statement.

LA: You will be furnished copies of any records that I, as the legal advisor to the board, consider relevant to the case at any time during the board proceedings.

LA: You will be furnished a copy of the record of this BOI. After you have been notified of the decision by the Office of the Secretary of the Air Force, you may request a copy of the report of the Board of Review, unless the report is classified, by writing to the National Personnel Records Center, 9700 Page Blvd, St Louis, MO 63132-5100.

LA: Do you understand your rights in these proceedings?

RESP: [I do.] [I do not.] (LA explains RESP's rights in these proceedings until RESP understands them.)

LA: If you have any questions as to your rights at any point in these proceedings, feel free to consult with your counsel, or ask me.

4. Presentation of Government Exhibits.

(If the recorder presents video or audio tapes as Government exhibits, the reporter transcribes or describes the contents of the tapes.)

LA: The recorder may proceed.

REC: I have marked as Government Exhibit 3 the Statement of Reasons (and supporting documentation). (Documents may be individually marked or grouped as appropriate.) Also included is the show-cause authority's notification memorandum to (RESP) advising the respondent to show cause for retention in the Air Force, with the respondent's indorsement. This exhibit indicates that the respondent received this memorandum on (date) _____, which is more than 30 days prior to today's date.

REC: Exhibit 3 shows that the respondent has received the Statement of Reasons and supporting documents as attachments to the notification memorandum.

REC: Government Exhibit 3 is offered into evidence. A copy has been provided to the respondent. (***NOTE:*** Exhibit 3 includes only those records and supporting documents that have already been given to RESP. Records and supporting documents need not appear more than once in the record.)

LA: Is there any objection by the respondent?

RC: [No] [Yes]. (***NOTE***: LA doesn't proceed until resolving any objection.)

LA: Government Exhibit 3 [is] [is not] admitted into evidence.

REC: (Introduce other documentary evidence relating to the BOI and mark as Government Exhibit 4 as appropriate. Briefly describe each document. (***NOTE:*** Make sure that all evidence is logically grouped, legible, and clearly marked on every page.)

LA: Is there any objection by respondent?

RC: [No] [Yes]. (***NOTE***: LA doesn't proceed until resolving any objection.)

LA: Government Exhibit 4 [is] [is not] admitted into evidence.

LA: (If documents are admitted into evidence that the Air Force didn't previously refer to the RESP.) [I note that documents that were not previously referred to the respondent have been admitted into evidence. Does the respondent wish to request additional time, normally not to exceed 10 calendar days, in which to prepare? If you request additional time, you must show why the additional time is required. If you do not desire additional time or if I determine that your request for additional time is not required, this board will proceed. Please indicate at this time if you are prepared to proceed or if you need additional time to prepare your case.

RC: [Respondent is prepared to proceed.] [Respondent requests ___ calendar days to prepare [his] [her] case.]

LA: [The BOI convening date will be reset to allow the respondent to prepare a response to the additional documentary evidence.] [Respondent's request for additional time is not granted. (LA gives reasons for not granting additional time.) We will proceed.]

LA: Does the respondent have any exhibits to offer or other matters requiring ruling at this time?

RC: [No] [Yes]. (LA proceeds to address exhibits offered or to rule on other matters.)

(***NOTE****:* This is the appropriate time to address board membership (regular/reserve officers), board procedural overview, voir dire procedures, challenges, instructions to board MBRs, and so forth.)

LA: Are there any further matters before we adjourn this preboard session?

LA: We will adjourn in a moment. When we resume, with the members present, I will instruct the members and conduct a brief voir dire. Then, both the recorder and the respondent's counsel may conduct a brief voir dire of the board members, if they desire. Before I ask about challenges, I'll ask if either side wishes an out-of-board hearing. Each side will also have the opportunity to make an opening statement. After both sides have rested, we will have an out-of-board hearing to discuss the legal instructions. Closing arguments will begin with the recorder, who will then be followed by the respondent's counsel. The recorder will have an opportunity to make a brief rebuttal if desired. I ask counsel to remember that this is an administrative proceeding and not a court-martial. Therefore, don't refer to the respondent as the "accused" or the "defendant" or refer to me as "your honor." Address me as "Mr.(or MS) Legal Advisor."

LA: The pre-board hearing is adjourned. The BOI will convene [when the members are present] [at_____ hours, on (date)_____].

(***NOTE:*** Recesses and Adjournments. Generally the board recesses for a period less than one day or for periods not extending into the succeeding day. The legal advisor usually calls adjournments to continue the session the following day or at a specified later date. Consider this suggested procedure:)

LA: (addresses the session) The board will now [recess] [adjourn] and will reconvene at _____hours, _____. (The recorder enters into the record the time for recess or adjournment and time and date of reconvening.)

(***NOTE:*** Procedure for Adding Allegations to the Statement of Reasons. A recorder or the board may propose to add a new allegation to the existing Statement of Reasons at any time during the BOI proceedings when it becomes evident that such addition is proper. If the recorder raises the issue, the usual procedure is for the recorder, as the representative of the Government, to advance the request and present the proposed addition to the Statement of Reasons as an exhibit for adoption. If members of the BOI raise new allegations on their own motion, the board requests the recorder to prepare a draft of the amendment to the Statement of Reasons. The following or similar procedure is appropriate:)

[REC: I believe that the board should consider adding a new allegation to the Statement of Reasons because of evidence received at this proceeding. This evidence is adverse to the respondent in that it tends to indicate another reason to consider separating the respondent from the Air Force. I have drafted a proposed additional Statement of Reason and now hand it to the legal advisor as proposed Exhibit _____.]

(At this time the recorder moves that the board amend the Statement of Reasons to include an additional allegation. For example:)

REC: The evidence received by this board tends to substantiate that the respondent misrepresented material facts in an official document. Specifically included with exhibit 3, which has already been submitted into evidence before this board, is a letter dated 28 June 1979 signed by the respondent, to the effect that "I have liquidated all of my bills as of this date." However, other testimony before this board (or offered to this board) clearly shows that as of 28 June 1979 and since, the respondent still owes $45 to Archer's of San Antonio, Texas; $50 to Harry's Variety Store of Arlington, Virginia; and $75 to the First Citizens Bank of Wall Street, Virginia; and that as of 28 June 1979, and since, those debts were delinquent. To support this mission, I offer as Exhibit _____, a sample additional Statement of Reasons that incorporates the allegations outlined above.

LA: The recorder's motion is granted. Exhibit _____ is accepted into evidence and the Statement of Reasons is so amended.

LA (to RESP): You may be entitled to no more than 30 calendar days from the present time within which to prepare your defense to this additional Statement of Reason. While you may be entitled to this time, I urge you to prepare promptly. With your agreement, the board will continue further proceeding now. Do you agree to continue the hearing or do you want to request a delay to prepare your case.

RC: _____. [The respondent is prepared to proceed at this time and waives further delay with respect to this additional Statement of Reason.] [The respondent requests _____ days (not in excess of 30 calendar days) delay for preparation of case.

LA: [Respondent may present any evidence on the additional Statement of Reason as desired.] or [The board will recess until _____ hours, _____ 19____.]

(The board reconvenes at the designated time and date. The LA opens the session.)

LA: The Board is open.

REC: Let the record show that the board adjourned at _____ hours, _____ 19 ___ and reconvened at _____, hours, _____ 19____, and that all parties who were present when the board adjourned are again present.

LA: Is the respondent prepared to present a defense to the additional Statement of Reason?

RC: The respondent is prepared to proceed.

(Each sides introduces testimony in accordance with the usual procedures.)

5. Convening of BOI with Members.

LA: The president may call the board to order.

PRES: The board will come to order.

REC: This board is convened at (time)_____ hours, on (date)_____, at (place)_____ pursuant to Special Order A_____ , dated _____, Headquarters

(SCA)_____. The appointing order has been previously admitted as Government Exhibit 1 and I have distributed copies to each member of the board, the legal advisor, respondent's counsel, and the reporter. The board is convened to determine whether the respondent, (grade & full name) _____, should be retained in the Air Force.

LA: Would each member of the board examine the appointing order to ensure their names and identifying information is correct?

REC: The following persons, including all voting members of the board are present:

President (PRES): _____, [regular] [reserve] Officer

Member (MBR): _____, [regular] [reserve] [ANG] Officer

Member (MBR): _____, [regular] [reserve] [ANG] Officer

(***NOTE:*** If the respondent is a regular officer, all the voting members must be regular officers. If the respondent is a reserve officer, at least one voting member must be a reserve or ANG officer.)

Legal Advisor (LA): _____

Recorder(s) (REC): _____

Respondent (RESP): _____

Respondent's counsel (RC): _____

Reporter (REP): _____

(***NOTE:*** Identify civilian counsel by full name, office address and bar membership(s).)

REC: [No] [The following] members of the board are absent: The voting members have been provided a copy of AFI 36-3206 and a copy of the directive that governs boards of officers

REC: No witnesses who will appear before this board are present in the hearing room. [There are no spectators in the hearing room.] [The spectators are present at the request of the respondent.]

REC: The respondent is junior in grade and rank to all voting members designated in the appointing orders. [The respondent is a reserve officer; therefore, at least one voting member is a reserve officer.] The Air Force notified the respondent of this hearing on (date)_____. The respondent's written acknowledgment of that notice is dated (date)_____. The board has previously admitted the notice and acknowledgment as Government Exhibit 2. A preboard session was held at (hours) _____ on (date)_____. This is the initial board session with the voting members present.

6. Board Members Sworn.

LA: The board will now be sworn. All rise, please.

REC: As I call your name, please raise your right hand. Do you, (grade & last name), [solemnly swear so help you God] (or) [affirm] that you will truthfully answer all questions about your ability to be an impartial member of this board, and that you will determine, according to the evidence and without partiality, favor or affection, the case about to be heard by this BOI of which you are members?

MBRS: I do.

LA: Please be seated. Members of the board, you have been appointed as members of a BOI under AFI 36-3206 to consider the case of (grade & full name)_____. [He] [She] has been recommended for discharge because of the allegations in the Statement of Reasons [and the additional Statement of Reasons] contained in Government Exhibit 3 [and Government Exhibit 4], which the recorder will now dis-tribute.

REC: Yes, sir. (Distributes copies of Government Exhibit 3 [and Government Exhibit 4] to MBRs.)

LA: Members, please find the Statement of Reasons [and the additional Statement of Reasons] in Government Exhibit 3 [and Government Exhibit 4]. Take a few minutes at this time to examine the Statement of Reasons and to place my instructions and the rest of the proceedings in proper context.

7. Preliminary Instructions.

LA: (After the board MBRs review the statement of reasons.) Before we proceed, I will give you some preliminary instructions. First, I will address the responsibilities of various personnel of the board. Next I will cover some basic concepts and principles that govern the proceedings. Finally, I will highlight the procedural and evidentiary rules that this hearing will follow.

LA: You have been appointed as a member of a BOI under AFI 36-3206 to consider the case of (RESP's grade & full name) _____. [He] [She] has been recommended for discharge because of the allegations in the Statement of Reasons that the recorder has distributed to you.

LA: As Board members, you must be attentive and keep an open mind while the evidence, arguments, and guidance are being presented. It is important that you understand the functions and duties of a BOI as they are outlined in AFI 36-3206, **Chapter 7**.

LA: First, the following individuals have certain responsibilities to this board. The recorder will represent the United States Air Force, and the respondent's counsel will represent the respondent. At various points during the proceedings, counsel are permitted to present arguments or statements for your consideration. Those arguments and statements are not evidence, but they may assist you in forming your view of the evidence, and in discharging your duties.

LA: As legal advisor, it is my responsibility to ensure that the proceedings are fair, orderly, and impartial. I will instruct you on the law and rule on the admissibility of all evidence and on motions or objections by counsel. You must follow the law as I interpret it for you.

LA: During the course of the proceedings, I may need to recess the board or conduct hearings with counsel and the respondent, out of your presence. I will try to estimate the time required for these hearings, but such estimates are not always accurate. Your patience and understanding will contribute greatly to a climate of fairness. During recesses, you must refrain from discussing the case among yourselves or with others. You must restrict your deliberations to the closed session, after presentation of all evidence, arguments by counsel, and my instructions on the law. Further, because of the possible appearance of impropriety, you must avoid off-the-record communications with me, counsel, the respondent, or any potential witness.

LA: During the hearing, you may consider it necessary to question a witness after both sides have completed their examination. Exercise caution when asking questions and be aware that counsel for both sides have prepared their cases. Often a question that occurs to you was not asked for a specific reason or will be best answered by a subsequent witness. If after due consideration, you wish to ask a question, you must submit it to me in writing. If the question is permissible, I will direct the witness to answer it, or I may pose specific questions to elicit the information you desire. Bear in mind that the questions you ask are subject to objection by counsel for either side. If there is an objection regardless of my ruling, you must not let it reflect adversely on the side that raised it.

LA: Because you must find facts based upon the evidence in order to reach your decision, you may wish to take notes. I must caution you, however, that no member may regard another member's notes as evidence. Retain your notes for your personal use only, to refresh your recollection of the testimony. At the end of the hearing, destroy them.]

LA: As you take notes, be sure that you still observe the witnesses, because you are required to assess their credibility. In judging the credibility of a witness, you must consider all the circumstances under which the witness testifies; the witness's demeanor and manner on the stand; the acuteness of the witness's powers of observation; the accuracy and extent of the witness's memory; the witness's interest, if any, in the outcome of the case; and any other circumstances that tend to shed light on the witness's credibility, taking into account your own experience in dealing with people.

LA: With regard to your fact-finding responsibility, let me emphasize that this board is not a judicial tribunal. Accordingly, this hearing is not subject to the rules and procedures that govern civilian or military courts. For example, the rules of evidence are greatly relaxed, and it is not necessary that the allegations in the Statement of Reasons [or in the additional Statement of Reasons] be proven beyond a reasonable doubt.

LA: Administrative boards must weigh all the evidence and arrive at their findings by a preponderance of the evidence. A preponderance of evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against any evidence opposition to it.

LA: Additionally, I caution you that the function of the BOI is not limited to considering the information in the Statement of Reasons [or in the additional Statement of Reasons] as it has been presented to you.

LA: The duties of the BOI are specific: First, to receive evidence during the proceedings; second, to develop any additional information, as needed, to create a record on which to base a proper decision; third, to evaluate evidence received during the hearing; fourth, to arrive at clear, logical findings consistent with the evidence presented; and fifth, to make a determination and recommendations consistent with the finding(s).

LA: As a member of this board, you must follow the guidance in AFI 36-3206, **Chapter 7**. In addition, you must protect (grade & last name)_____'s rights, and give [him] [her] a fair and impartial hearing. At the same time, however, you must remember that the Air Force is also a party to the hearing and is entitled to a fair and impartial hearing of its evidence. An officer who fails to meet and maintain the standards expected of an officer of the respondent's grade and experience should not be retained in the Air Force. However, it would be a grave injustice to the officer and contrary to the best interests of the Air Force to remove from active duty an officer who should be retained.

LA: It is your duty to weigh all the evidence and arrive at findings that are supported by the preponderance of the evidence. Based on your findings, the board must then determine whether the respondent should be retained in the Air Force. The board is limited to the specific recommendations stated in AFI 36-3206, **Chapter 7**, without modification or qualification. The board is not authorized to make any other recommendation or proviso to any of the possible recommendations.

(***NOTE:*** Include the following if the respondent is subject to recoupment of education assistance, special pay or bonus money.)

[LA: You'll need to refer to AFI 36-3206, paragraph **4.32.**, Recoupment of Education Assistance, Special Pay, or Bonuses, for special rules regarding recoupment. If the respondent is subject to recoupment of education assistance and disputes the debt, you must make findings and recommendations concerning the validity of the indebtedness.]

[LA: Special rules for recoupment apply if the basis for discharge includes homosexual conduct. These rules are in AFI 36-3206, paragraph **4.33.**, Recoupment of Education Assistance, Special Pay, or Bonuses.]

(***NOTE:*** Include the following if the basis for discharge includes homosexual conduct.)

[LA: You'll need to refer to AFI 36-3206, paragraph **3.3.** Homosexual Conduct, if the basis for discharge includes homosexual conduct.]

8. Procedural Overview.

LA: Let me now turn to an overview of the procedures that we will use in this BOI. In a few minutes, counsel and I will ask you some questions to determine if any grounds for challenge exist against any of you. Please keep in mind that none of us intend these questions to embarrass you or to question your integrity. We ask them only to ensure that the respondent as well as the Air Force receive a hearing by fair and impartial voting members.

LA: You may be questioned individually or collectively, but you should respond individually. If you feel that you have to say something that might prejudice or disqualify any other member who hear your answer, tell me and I'll ensure that you'll be asked any pertinent questions out of the presence of the other members.

LA: Once we determine the final membership of the board, the recorder and the respondent's counsel will be permitted to make opening statements. At this time, I'll give you any documents and additional information that I admitted as evidence at a preliminary session conducted out of your presence.

LA: We will then recess the board to allow you to read those documents. After you read the documents, witnesses may be called. During the recess you should simply read the documentary evidence and absorb the information. You must not begin deliberating or otherwise discuss the case in any manner either among yourselves or with any other person.

LA: After the presentation of all evidence, the recorder and the respondent's counsel may make closing argument to aid you in evaluating the evidence. I will then give you final instructions before you go into your deliberations.

LA: You will vote by secret written ballot. A majority vote is required to arrive at the findings and recommendations for disposition of the case. After the board adjourns, no member may disclose the vote or position of any other member. A member may disclose his or her own vote but may not be required to do so by anyone.

(***NOTE**:* Omit the following instructions and go to part 9, "Voir Dire Procedure" if the board's determination may only result in an honorable discharge recommendation as specified as specified in AFI 36-3206.)

LA: Here is a concise summary of the rights and benefits associated with each character of discharge that the Air Force may give an officer after the BOI determines that he or she shouldn't be retained:

Honorable Discharge: The board may recommend this discharge when the military record of the respondent warrants the highest type of discharge. As a rule, the officer is entitled to full rights and benefits but is ineligible to reenter the Service as an enlisted member.

Discharge Under Honorable Conditions (General): The board may recommend this discharge when the military record of the respondent is not sufficiently meritorious to warrant an honorable discharge but is not of such a nature that a discharge under other than honorable conditions is warranted. Usually, the respondent is entitled to full rights and benefits. If present or future statutes specifically require honorable discharge as a condition of granting rights and benefits, the officer's eligibility for these rights or benefits may be affected. The officer is ineligible to reenter the Service as an enlisted member.

Discharge Under Other Than Honorable Conditions: The board may recommend this discharge when the military record of the respondent does not warrant other than the least desirable administrative discharge. An officer who receives this type of discharge may not receive certain benefits as determined by the Department of Veterans' Affairs and is ineligible to reenter the Service as an enlisted member.

9. Voir Dire Procedure.

LA: Members of the board, at this time I will direct some general questions to you about your qualifications to serve as a member of this BOI.

LA: Does any member write or indorse the officer performance report of any other member of this BOI?

LA: Have each of you familiarized yourself with AFI 36-3206, **Chapter 7**?

LA: Does any member know the respondent?

LA: Do any of you know anything about the matters in the Statement of Reasons?

LA: Have any of you had any prior participation in this case?

LA: Is your acquaintance with any of the counsel such as might influence your deliberation or vote in this case?

LA: Will you each give a fair and impartial hearing to both parties and base your decision solely on the evidence, and not form a final opinion until you enter your closed session deliberations?

LA: The recorder may question the voting members, if desired.

LA: The respondent's counsel may question the voting members, if desired.

LA: Does the respondent's counsel desire an out-of-board hearing?

RC: [No] [Yes]. (If yes, the LA adjourns the BOI hearing, holds an out-of-board hearing, and then reconvenes the BOI hearing to continue with part 10.)

10. Hearing Challenges.

(***NOTE:*** The legal advisor hears challenges to voting members of the board outside their presence. The respondent, the respondent's counsel, or the recorder may challenge voting members of the board for cause based upon matters raised in voir dire, or upon evidence or testimony. After the respondent's counsel and the recorder have had opportunity to present evidence and argument, the legal advisor rules on the challenge. If the voting membership drops below quorum, the president adjourns the board until new members are appointed. Voir dire and the right to challenge new members for cause will be extended when the board resumes. If the basis for a sustained challenge develops at a later stage of the proceedings, any new members must be read the record of the proceedings-to-date in open session, in the presence of all parties. When challenging witnesses, including the respondent, the order of questioning is the respondent's counsel, the recorder, voting members of the board, and the legal advisor. All persons testifying on a challenge will be sworn as witnesses but questions are limited to the ground for challenge.)

LA: Does the respondent desire to challenge any voting member for cause?

RC: [No] [Yes]. (After the RC argues, the REC may be allowed to argue.)

LA: The challenge of (MBR's grade & full name) is [sustained] [denied]. [The member is permanently excused from further participation in this case. The board is adjourned until a new member is available.]

REC: Does the respondent desire to challenge the legal advisor for cause?

RC: [No] [Yes]. (If yes, the RC has the opportunity to voir dire the LA in the presence of the members.) (***NOTE:*** The board votes on a challenge to the LA in closed session and the PRES announces the board's ruling in open session.)

PRES: The challenge of (LA's grade & full name) is [sustained] [denied]. [The legal advisor is permanently excused from further participation in this case. The board is adjourned until a new legal advisor is available.]

RC: The respondent has no [further] challenges.

11. Proceedings of the Board.

LA: The recorder may proceed.

REC: (The REC must account for all parties present.) At this time, I am distributing Government Exhibits 1 and 2 to the board members. Government Exhibit 1 is the appointment order and, Government Exhibit 2 is the notice of this hearing to the respondent and [his] [her] acknowledgment.

REC: (If additional evidence was admitted) I am also at this time, distributing Government Exhibits _____ to the board.

LA: The recorder may make an opening statement.

REC: (Makes opening statement and summarizes the evidence).

LA: The respondent's counsel may make an opening statement at this time, or reserve the opportunity.

RC: (Makes or defers opening statement). (***NOTE:*** The RESP may present documentary evidence to board MBRs at this time so they can review it during the following recess.)

LA: At this time, the board will recess so that the members may familiarize themselves with the documentary evidence. Please remember that you are not to begin deliberations at this time. Tell me when you are finished reviewing the documents. The board is in recess.

12. Recess/Proceedings Resumed.

LA: Please be seated. The board will come to order. All parties are present.

13. Witness Procedure.

REC: (***NOTE***: The REC administers the oath for all WITs.) Do you [solemnly swear so help you God] (or) [affirm] that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth?

REC: Please state your name. (If military:) [What is your grade and unit?] (If civilian:) [What is your home address?]

WIT: _____.

REC: Do you know the respondent in this case, (State RESP's grade and full name)
_____?

(If affirmative) Please point [him] [her] out.

REC: The witness [has] [has not] correctly identified the respondent.

(***NOTE:*** The BOI proceeds with direct, cross, redirect and recross-examination. The MBRs and LA then have the opportunity to pose questions orally.)

REC: (After presenting all evidence.) The Government has no further evidence at this time.

LA: The respondent may now present [further] matters if [he] [she] wishes.

RC: (Makes opening statement and distributes documentary evidence to the MBRs and calls WITs.)

RC: (After presenting all evidence.) The respondent has no further evidence at this time.

LA: Does the recorder have evidence in rebuttal?

REC: [No] [Yes]. (If REC wants to submit further evidence, procedures already outlined apply.)

LA: (After both side present all evidence.) Do the members want to recall any witness or have additional witnesses called, or want any additional documentary evidence, Mr. President?

PRES: [No] [Yes]. (If yes, procedures already outlined apply.)

14. Out-of-Board Hearing.

LA: Members of the board, I will need a hearing with the respondent and counsel, out of your presence, to discuss my legal instructions and the Findings and Recommendations Worksheet we will be giving to you. I estimate that we will be in recess [for about _____ minutes] [until _____ hours]. I remind you not to begin deliberating until your closed session, after the argument by counsel, and my instructions on the law. The board is in recess. (***NOTE:*** During the recess the LA goes over the instructions he or she intends to give with the Findings and Recommendations Worksheet. The LA must modify the worksheet to be consistent with evidence admitted at the BOI. When the evidence has so substantially changed the nature of the Statement of Reasons that a new or different reason for separation is present, the LA may need to follow the procedure set out in AFI 36-3206, paragraph **7.25.4.** In cases based on serious misconduct, the LA must give the definition of serious misconduct, AFI 36-3206, **Attachment 1**, to the MBRs. When appropriate in cases involving serious misconduct, the LA may also give instructions on the elements of the alleged misconduct. Use the discussion of the element of certain offenses contained within the manual for court-martial as a guide.)

15. Argument and Instructions.

LA: Please be seated. The board will come to order. All parties and members are present. The recorder may make a closing statement.

REC: _____.

LA: The respondent's counsel may make a closing statement.

RC: _____.

LA: The recorder may make a brief rebuttal.

REC: _____.

LA: (Gives closing instructions, tailored as appropriate to the issues.)

16. BOI Closing Instructions.

LA: Members of the board, in a few moments you will close to determine your findings, determination, and recommendations in this case. In discharging your duties, you should apply the following guidelines.

LA: You must make a [separate] finding with respect to [each of] the allegations contained in the Statement of Reasons. [The] [Each] findings should be consistent with the facts presented.

LA: You must carefully phrase your findings to include the substance of all material facts you find to be established by the evidence. The primary function of any administrative board is to discover and report the facts found in the matter under consideration and to present appropriate recommendations so that higher authorities have adequate information with which to make a final decision on the case. You must base your findings solely on evidence of record.

LA: By "evidence of record," I mean documents or other exhibits admitted into evidence [and testimony of witness] [and the respondent's statement].

LA: In discharging this responsibility, you must use your best judgment and common sense in resolving disputed and conflicting evidence, considering the probability or improbability of the evidence and selecting and weighing the evidence considered most worthy of belief. You may make reasonable inference based on evidence, but you must avoid conjecture. You must make certain that a preponderance of evidence supports your findings.

(***NOTE:*** Use the following when the basis for discharge involves homosexual conduct.)

[LA: I remind you to refer to AFI 36-3206, paragraph **3.3.**, Homosexual Conduct, for required findings and recommendations.] (***NOTE:*** Use the following when the respondent is subject to recoupment of education assistance, special pay or bonus money.)

[LA: I remind you to refer to AFI 36-3206, paragraph **4.32.**, Recoupment of Education Assistance, Special Pay or Bonuses, for required findings and recommendations. Remember, if the respondent is subject

to recoupment of education assistance funds and disputes the debt, you must make findings and recommendations regarding the validity of this debt.]

LA: After you make your findings, you must then determine whether the Air Force should retain the respondent.

LA: If you determine that the Air Force should retain the respondent, you don't need to make a further recommendation.

LA: If you determine that the Air Force shouldn't retain the respondent, then you must also recommend the character of discharge which should be awarded. In this case, the board can recommend: [Only an honorable discharge.]

[An honorable discharge, a discharge under honorable conditions (general), or a discharge under other than honorable conditions.]

17. Character of Discharge.

(***NOTE:*** Don't read these definitions if the discharge characterization is restricted to an honorable discharge.)

LA: In my previous instructions to you, I discussed the different types of discharge that this board may recommend. At this time, I will amplify on the definitions of each type of discharge.

LA: An honorable discharge is appropriate when the military record of the respondent warrants the highest type of discharge. As a rule, a respondent is entitled to full rights and benefits but is ineligible to reenter the Service as an enlisted member.

LA: A discharge under honorable conditions (general) is appropriate when the military record of the respondent isn't sufficient to warrant an honorable discharge, but is not of such nature that it warrants a discharge under other than honorable conditions. Usually, the respondent is entitled to full rights and benefits. If present or future statutes specifically require honorable discharge as a condition precedent to granting rights and benefits there under, the respondent's eligibility for such rights or benefits may be affected. However, the respondent is ineligible to reenter the Service as an enlisted member.

LA: A discharge under other than honorable conditions (UOTHC) is appropriate when the military record of the respondent doesn't warrant other than the least desirable administrative discharge. Officers who receive a discharge UOTHC normally don't qualify for certain benefits as determined by the Department of Veterans' Affairs and are ineligible to reenter the Service as an enlisted member.

(***NOTE:*** Use the following if the basis for discharge involves homosexual conduct.)

[LA: I remind you to refer to AFI 36-3206, paragraph **3.1.**, Character of Discharge, to determine the type of discharge that may be recommended for discharges involving homosexual conduct.]

18. Voting Procedures.

LA: You must vote by secret written ballot, with at least a majority of the voting members concurring in the findings, determination, and recommendations. After you complete your discussion, you will vote first on the findings, and then continue with the determination and the recommendations, respectively. The president collects and counts the votes and announces the ballot results to the other board members.

LA: Retain your copies of AFI 36-3206 to use during deliberations in closed session. If you need to consult with the legal advisor during your deliberations, the president must open the board and obtain the advice on the record, in open session in the presence of the recorder, the respondent, and the respondent's counsel. If you desire assistance solely to put your findings and recommendations into proper form, you may call me into your closed session. I will ensure that the reporter is present to record the proceedings verbatim.

LA: To assist you in putting your findings, determination, and recommendations in proper form, I have asked the recorder to prepare a worksheet, marked as Board Exhibit [__], which has been examined by the respondent's counsel during the preboard session and the out-of-board hearing.

LA: The recorder will hand the worksheet to the president.

REC: (Complies).

LA: Complete the worksheet after you have finished voting. It will be attached to the record, so please exercise care in completing it. The president will read from the worksheet in announcing the board's findings, determination, and recommendations. All the concurring members must sign the worksheet. The signatures of all members certify that a majority of the voting members concurred in the findings and recommendations. Members who don't concur may file an explanatory statement for inclusion in the record.

(Discuss the worksheet's format and options.)

LA: Be advised that you may not interpret my comments, questions, or instructions as indicating an opinion as to the findings, determination, or recommendations you make in this case. You have the independent responsibility for making these decisions. Does any member of the board have any questions concerning these instructions or the worksheet?

LA: Does the recorder or the respondent's counsel desire any additional instructions or have any objections to the instructions as given?

LA: If questions of law or procedure arise during your closed deliberations, don't speculate. Open the board and ask me for guidelines. Likewise, if you wish to call or recall any witness, or if you desire a recess, you should open the board and make your request. If you need a break (or would like to recess for a meal or overnight), you should notify me, and we will open the board to consider your request.

LA: You may not begin to discuss the case until the board closes and all members are present in the deliberation room. Once your deliberations begin, you may not interrupt them except by formally opening the board in the presence of all parties, or requesting my assistance solely to put your findings and recommendations in proper form. (***NOTE***: The LA may call a recess before closing the session for the convenience of the members.)

LA: The Board is closed for deliberations.

19. Announcement of Findings.

LA: Please be seated. The board is open.

REC: All parties who were present when the board closed are again present.

LA: Mr. President, has the board arrived at findings, determination, and recommendations?

PRES: It has.

LA: (If the LA didn't examine the worksheet in closed session.) Would you fold the worksheet in half and hand it to the recorder so I can examine it for form. (After compliance and review.) I find that Board Exhibit ___ is in proper form, and I will return it to the president.

LA: The respondent and counsel please rise. Mr. President, please read from the worksheet, beginning with the respondent's grade and name, to announce the board's findings, determination, and recommendations.

PRES: (PRES reads findings, determination, and recommendations.)

20. Advice to Respondent.

LA: (If recommendation is for retention.) (RESP's grade & last name)_____, I will give you a memorandum with the board's decision to retain you and we'll send a copy of the board's decision to the SCA and HQ AFPC. You will be receiving a summarized transcript of the record of the board proceedings with the board's findings and recommendation transcribed verbatim. However, the reporter's tapes of the record of the board proceedings will be retained for one year, so they can be tran-scribed verbatim if required.

LA: (If recommendation is for removal from active duty or discharge.) (RESP's grade & last name)_____, you will be receiving a copy of the record transcribed verbatim. I will send your case through (SCA), the Air Force Personnel Center and through the General Law Division, Office of the Judge Advocate General, to the Office of the Secretary of the Air Force for further referral to a Board of Review for final review. You may not appear in person or be represented by counsel during this review unless the Board of Review requests you or your counsel appear.

LA: Within 10 calendar days after you receive or have access to an authenticated copy of the report of this board's proceedings, you or your counsel may file with this board any suggested corrections to the report that you think necessary to make sure the transcript conforms to the testimony given during the hearings. I will determine what corrections are allowable and will advise you accordingly.

LA: Within the 10-day period, you may also submit to the convening authority any brief or argument that you feel should be considered in the final evaluation of your case.

LA: This board may be reconvened any time before the Secretary of the Air Force makes a final decision in your case if additional evidence that could materially affect its findings and recommendations is discovered or brought to the attention of the convening authority, and if it can be established that such evidence was not reasonably available for presentation to the board during its proceedings. If you discover additional evidence that was not reasonably available for presentation to the board during the hearing, you may also submit it within the 10-day period after you receive a copy of the report of this board's proceedings.

LA: The board is adjourned.

Attachment 17

IC 2000-2 TO AFI 36-3206, ADMINISTRATIVE DISCHARGE PROCEDURES FOR COMMISSIONED OFFICERS

6 JULY 2000

SUMMARY OF REVISIONS

This change incorporates interim change (IC) 2000-2 which makes changes and adds guidance regarding processing resignations in lieu of further administrative discharge. Paragraph **4.25.2.** is amended to indicate that a resignation should be processed through the MAJCOM (vice HQ AFPC/DPPRS), making it consistent with 36-3207, *Separating Commissioned Officers*, paragraph 2.21; also adds the MAJCOM/CV to the process (if delegated by the MAJCOM/CC). Paragraph **4.25.3.** is amended to add language concerning disapproval authority by the MAJCOM, and procedures to follow if the SCA is at the MAJCOM level, making it consistent to AFI 36-3207, paragraph 2.31.

Chapter 4

COMMANDERS AND SHOW-CAUSE AUTHORITIES

Section 4C— Show-Cause Authority

4.25.2. The SCA sends the indorsed resignation to the MAJCOM/CC (or MAJCOM/CV, if delegated). The indorsement should include the SCA notification memorandum, all supporting documents, and the officer's response (if any). The SCA recommends the character of discharge when the basis for the action initiated doesn't restrict the character of discharge to honorable.

4.25.3. If the MAJCOM/CC recommends approval of the resignation he of she indorses the resignation and forwards it to HQ AFPC/DPPRS. The MAJCOM/CC may disapprove the resignation. **EXCEPTION:** If the SCA for the case is at the MAJCOM level, then the MAJCOM/CC may not disapprove the resignation and forwards a recommendation for disapproval to HQ AFPC/DPPRS.

Attachment 18

IC 2004-1 TO AFI 36-3206, ADMINISTRATIVE DISCHARGE PROCEDURES FOR COMMISSIONED OFFICERS

9 JUNE 2004

SUMMARY OF REVISIONS

This change incorporates interim change (IC) 2004-1 (**Attachment 18**). The Air Force Director of Personnel has directed implementation of a new fitness program (AFI 10-248, Fitness Program) combining fitness and weight body management programs. Reference to "Weight control failure" is replaced with "Failure in the Fitness Program." See the last attachment of the publication, IC 2004-1, for the complete IC. A bar (|) indicates revision from the previous edition.

OPR: HQ AFPC/DPPRS (Ms. Nancy Baker)

Supersedes: AFI 36-3206, 6 July 2000

Certified by: HQ AFPC/DPP (Col Steven F. Maurmann)

2.3.8. Failure in the Air Force Fitness Program as specified in AFI 10-248, *Fitness Program* (formerly AFIs 40-501 and 40-502). ***NOTE****: Administrative actions commenced on or before 31 Dec 03 may be executed to completion, using this paragraph and separation program designator (SPD) codes BCR and GCR. Officers who have been notified in writing IAW this directive on or after 1 Jan 04 (as specified in AFI 10-248) will be separated using SPD codes BFT and GFT and paragraph* ***2.3.9.***