

AR 15-6 GUIDE FOR THE INVESTIGATING OFFICER



OFFICE OF THE STAFF JUDGE ADVOCATE
U.S. ARMY NORTH AND FT SAM HOUSTON

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Congratulations! You're a 15-6 Investigating Officer!

This guide is intended to assist investigating officers (IOs) appointed under the provisions of Army Regulation (AR) 15-6, in conducting timely, thorough, and legally sufficient investigations. Although it is designed specifically for informal investigations, some provisions are applicable to formal investigations as well. A brief checklist is included at the end of the guide as an appendix. The checklist is designed as a quick reference for use during each stage of the investigation. The questions in the checklist will ensure that the investigating officer has covered all the basic elements necessary for a sound investigation. If this is your first time as an IO, or if it's been a while, don't worry! 15-6 investigations don't have to be difficult or frustrating. Take time to read through this "how-to" manual, and remember that you can always seek clarification from the Administrative Law Division at the Office of the Staff Judge Advocate.

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1. Purpose of this guide.

a. This guide is intended to assist you, as an Investigating Officer (IO), in conducting a timely, thorough, and legally sufficient AR 15-6 informal investigation. An informal investigation differs from a formal investigation in that the IO follows the informal procedures set forth in AR 15-6, Chapter 5, rather than the formal procedures specified in Chapter 7. In addition, there are no respondents designated in an informal investigation. While there may be one or more persons believed to be responsible for the matter under investigation (suspects), these individuals do not have the same rights as a respondent in a formal AR 15-6 investigation. Note that a suspect (See paragraph 4f below) still retains his/her rights against self-incrimination. If any action is to be taken against a person found to be responsible, he will be given all of his/her “due process rights” in the subsequent action. Because of these differences, an informal investigation can be conducted more expeditiously than a formal investigation and uses fewer resources.

b. This guide is based on the 2013 edition of Army Regulation (AR) 15-6, Procedures for Investigating Officers and Boards of Officers. While AR 15-6 contains the basic rules for informal investigations in the Army, some investigations are appointed under a more specific regulation or directive (e.g., AR 735-5 provides for the investigation of the loss/damage to government property). In that case, the specific regulation may make AR 15-6 applicable to the investigation. Consequently, you have to look to both the specific regulation involved, and AR 15-6 for the proper procedures to follow. If the two regulations conflict on a particular point, the provisions of the specific regulation will override the provisions of AR 15-6.

2. What is a 15-6 Investigation?

AR 15-6 procedures generally govern investigations requiring detailed fact gathering and analysis along with recommendations based on those facts. An “investigation” is simply the process of collecting information for the command, so that the command can make an informed decision. AR 15-6 sets forth procedures for both informal and formal investigations. Only informal investigations are discussed here. Informal investigations usually have a single investigating officer who conducts interviews and collects evidence. In contrast, formal investigations normally involve due process hearings for a designated respondent before a board of several officers. Formal procedures are required whenever a respondent is designated.

3. What rules do I follow?

Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation. Since no respondents are designated in informal procedures, no one is entitled to the rights of a respondent, such as notice of the proceedings, an opportunity to participate, representation by counsel, or the right to call and cross-examine witnesses. The investigating officer may, however, make any relevant findings or recommendations concerning individuals, even where those findings or recommendations are adverse to the individual or individuals concerned. AR 15-6

procedures may be used independent of other regulations, such as in an investigation to determine facts and circumstances, or the procedures may be incorporated by reference into directives governing specific types of investigations, such line of duty (LOD) investigations and Financial Liability Investigations of Property Loss (FLIPL). If such directives contain **guidance that is more specific** than that set forth in AR 15-6 or **conflicts with 15-6 procedures**, the more specific guidance will control. For example, AR 15-6 does not contain time limits for completing investigations; however, if another directive incorporating AR 15-6 procedures contains time limits, those requirements will apply. Finally, your appointment orders (which are discussed in more detail below) will usually ask for specific things in your findings and recommendations. It will help to read through this list of things when trying to plan how to conduct your investigation.

4. Who's Who?

Appointing Authority. The individual with the authority to “start” an investigation under AR 15-6 is called the Appointing Authority. The requirements for who can be an appointing authority differs for formal and informal investigations. For an informal investigation or board, the appointing authority could be a commander at any level, a principal staff officer or supervisor in the grade of major or above, or any officer or civilian employee with the authority to appoint a formal board. However, only a general court–martial convening authority may appoint an informal investigation or board for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability or the death of one or more persons.

Respondent. In formal investigations the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications. Only a respondent is entitled to be represented by counsel; a subject of an investigation is not entitled to representation by counsel. However, respondents may not be designated in informal investigations, so you won't have to worry about them. Remember this: just because someone is the main focus or most important “player” in your informal 15-6 investigation, it doesn't make that person a respondent.

Investigating Officer. That's you! Only commissioned officers, warrant officers, or DA civilian employees paid under the General Schedule, Level 11 (GS 11) or above may be investigating officers. Under exigent circumstances, an NCO in the grade of E-7 or above may also be an IO. The investigating officer must also be senior to any person that is part of the investigation, if the investigation may require the investigating officer to make adverse findings or recommendations against that person. Since the results of any investigation may have a significant impact on policies, procedures, or careers of government personnel, the appointing authority should select the best-qualified person for the duty based on their education, training, experience, length of service, and temperament.

5. What's my job as the Investigating Officer for a 15-6?

The primary duties of an investigating officer are:

- To fully establish and consider all the relevant evidence on an issue;
- To be thorough and impartial;
- To make findings and recommendations warranted by the facts and that comply with the instructions of the appointing authority; and
- To report the findings and recommendations to the appointing authority.

6. Appointment and Administrative Concerns.

Informal investigation appointments will be made in writing or may be made orally and later confirmed in writing. When written, the appointment orders are usually issued as a memorandum signed by the appointing authority or by a subordinate with the appropriate authority line. The appointment should specify clearly the purpose and scope of the investigation and the nature of the findings and recommendations required. If the orders are unclear, you should seek clarification. Furthermore, you may request that assistant IO's be appointed as needed to provide special technical knowledge or to assist you with conducting interviews and performing other investigative tasks. Assistant IO's may be junior in rank or grade (or civilian equivalent) to the subject of the investigation, but may not interview the more senior subject without the senior IO being present during the interview. The primary purpose of an investigation is to report on matters that the appointing authority has designated for inquiry. The appointment orders may also contain specific guidance from the appointing authority, which, even though not required by AR 15-6, nevertheless must be followed. As soon as you receive appointing orders, you should begin a chronology showing the date, time, and a short description of everything done in connection with the investigation. The chronology should begin with the date orders are received, whether verbal or written. You should also record the reason for any unusual delays in processing the case, such as the absence of witnesses due to a field training exercise. The chronology should be part of the final case file.

7. Getting help from JAG.

Before beginning an informal investigation, you must review all written materials provided by the appointing authority and the next step in **ALL** cases is to contact your Legal Advisor in the Administrative and Civil Law Division, U.S. Army North and Fort Sam Houston Office of the Staff Judge Advocate at (210) 221-2373 to arrange for a legal briefing (**you must present a copy of the appointing letter to the Legal Advisor**) and then promptly begin your investigation. Early coordination with the legal advisor will allow problems to be resolved before they are identified during the mandatory legal review. The legal advisor can assist an investigating officer in framing the issues, identifying the information required, planning the investigation, preparing for any witness interviews, including the need for any possible rights advisements, and interpreting and analyzing the information obtained. The attorney's role, however, is to provide legal advice and assistance, not to conduct the investigation or substitute his or her judgment for that of the investigating officer. **NOTE.** Complex and sensitive cases include: those involving a death or serious bodily injury; those

in which findings and recommendations may result in adverse administrative action; and those that will be relied upon in actions by higher headquarters.

8. How do you start your investigation?

Review your appointment order, all information provided by the appointing authority (if any), AR 15-6 and any other pertinent regulation or directive. You review the appointment order to ascertain whether there are any special instructions. In conducting your investigation, use AR 15-6, Chapter 3, as a guide. Pay particular attention to paragraphs 3-7 (Rules of evidence and proof of facts), 3-8 (Witnesses), 3-10 (Findings), and 3-11 (Recommendations). This will help ensure the legal sufficiency of your findings and recommendations when you submit your report to the appointing authority. Ensure your immediate commander/supervisor is aware of your appointment, because your investigating duties will normally take precedence over your other duties. Begin a chronological log documenting your investigative efforts to show later, if necessary, that you diligently pursued the investigation. Do not discuss the facts and circumstances of your investigation with your immediate commander or anyone else who does not have an official need to know. Note that you should explain who you are and the purpose of your presence whenever you enter a commander's/supervisor's area of responsibility/facility.

9. Getting to Work: Putting Together a Plan.

The investigating officer's primary duty is to gather evidence, and make findings of fact and appropriate recommendations to the appointing authority. Before obtaining information, however, the investigating officer should develop an investigative plan that consists of (1) an understanding of the facts required to reach a conclusion, and (2) a strategy for obtaining evidence. Begin the process by thinking about what sort of information you need to gather. Do you need to interview witnesses? If so, make a list of the names and the substance of the information each witness is expected to give. Do you need documents? Where are these documents located? Do you need to visit the scene of an alleged incident? Do you need logistical support: a vehicle, camera or clerk? After you ascertain what sort of information you need, and where you are likely to find it, you are ready for the next step.

Your plan should include a list of potential witnesses and a plan for when each witness will be interviewed. The order in which witnesses are interviewed may be important. An effective, efficient method is to interview principal witnesses last. This best prepares the investigating officer to ask all relevant questions and minimizes the need to re-interview these critical witnesses. As the investigation proceeds, it may be necessary to review and modify the investigative plan.

10. Obtaining Documents and Physical Evidence.

You may need to collect documentary and physical evidence such as applicable regulations, existing witness statements, accident or police reports, and photographs.

Obtaining this information early in the investigation can save valuable time and effort. You may also draw upon the results of and evidence gathered by the preliminary inquiry. In some cases, the information will not be readily available, so you should request it early so you can continue to work on other aspects of the investigation while the request is being processed. As an IO with an official need to know, you should have access to all relevant government records. If someone denies you access, you should seek legal advice immediately. You may consider any evidence which in the minds of reasonable people is relevant and material to the issue. You may not consider privileged communications, polygraph tests (unless the subject agrees), off the record statements, bad faith unlawful searches, and involuntary (coerced/forced/tricked) statements.

You should consult with other organizations that may be simultaneously investigating the incident and request any relevant information that the other organization has obtained. However, you should be aware of the limits of evidence sharing in collateral investigations.

You should also consider personally inspecting relevant incident locations and take photographs if they will assist the appointing authority. It is important to provide evidence to support your findings of fault/no fault, loss/no loss, or wrongdoing/no wrongdoing. Your report must include sufficient documentation to convince the appointing authority, and others who may review the investigation, that the finding of fault/no fault, loss/no loss, or wrongdoing/no wrongdoing is supported by the evidence.

If during the course of the investigation you discover the need for a lawful search and seizure contact the Chief, Criminal Law Division at (210) 221-0098 for assistance in obtaining a search authorization from the military magistrate, appropriate commander or judge. A search authorization may be obtained where there is a probable cause to believe that the fruits or evidence of a crime may be found in the location to be searched.

11. Talking to People: Interviews, Rights Warnings, and More

In most cases, witness testimony will be required. Clearly, the best interviews occur face-to-face; but, if necessary, interviews may be conducted by telephone or mail. Because of the preference for face-to-face interviews, telephone and mail interviews should be used only in unusual circumstances (i.e., where witnesses have PCSed or are otherwise not readily available). **Information obtained telephonically should be documented in a memorandum for record.**

Any information that is relevant should be collected regardless of the source; however, investigating officers should collect the best information available from the most direct source. All relevant evidence is admissible unless protected by a privilege. It may be necessary or advisable to interview experts having specialized knowledge of the subject matter. It is not necessary to interview every member of a unit if only a few people have information relevant to the inquiry. Also, all relevant witnesses do not need to be interviewed if the facts are clearly established and not in dispute. However, you must be careful not to prematurely terminate an investigation because a few witnesses give consistent testimony.

Sworn Statements. However you gather information, avoid “off-the-record” statements and record the substance of your interviews on DA Form 2823, Sworn Statement. This form is available on the Army Publishing Directorate Website. Statements and/or questions-and-answers are ordinarily sufficient. The statement should be typed if at all possible, but if not, they may be printed/written. They must be legible so they can be read by the appointing authority and by all who must take action based on the report. If the witness testimony involves technical terms that are not generally known outside the witness's field of expertise, the witness should define each term the first time it is used. The statement of each witness must be dated and signed by the individual making the statement, the IO will note, over his own signature, the reasons why the witness has not signed and will certify that the statement is an accurate summary of what the witness said.

Under Article 136, UCMJ, IOs are authorized to administer the oath required for sworn statements; 5 U.S.C. 303 provides this authority for civilian employees. (Statements taken out of the presence of the investigating officer may be sworn before an official authorized to administer oaths at the witness's location.) Do not treat this aspect of your duties lightly. **You should swear a witness before taking his/her statement.** Have the witness raise his or her right hand and solemnly swear/affirm to the statement: Do you swear that the evidence you shall give in this investigation shall be the truth, the whole truth, and nothing but the truth, so help you God? If the witness professes not to believe in God and declines to swear an oath, change the oath to the following: Do you affirm that the evidence you shall give in this investigation shall be the truth, the whole truth, and nothing but the truth?

Privacy Act. The Privacy Act requires that whenever personal information is solicited from an individual and the information will be filed so as to be retrievable by reference to the name or other personal identifier of that individual, he/she must be advised orally or in writing of the information listed in AR 15-6, Appendix B, paragraph B-1a. **If you plan to acquire or review medical records of any person, you must consider the applicability of the Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA),** and consult your legal advisor. In the report of investigation, you must only include the minimum amount of personal information necessary to investigate the matter concerned. Additionally, **social security numbers should not be obtained, except when essential to the investigation.** Generally, a Privacy Act statement is only required when soliciting information from an individual who is or could have been designated as a respondent in a formal board/investigation (i.e., a suspect). A copy of a Privacy Act Statement, suitable for your use, can be found in Appendix A. The suspect need not sign the Privacy Act Statement, if there are any questions concerning the Privacy Act, contact your Legal Advisor.

Subpoenas. Investigating officers do not have the authority to subpoena witnesses, and their authority to interview civilian employees may be subject to certain limitations (i.e., union contract provisions). As an IO, you may invite civilians who are not Federal civilian employees to testify, but if the person refuses, you may not compel him or her to testify. Prior to interviewing civilians, you should discuss this matter with the local Labor Counselor.

This authority should be used only if the information cannot be otherwise obtained and only after coordinating with the legal advisor or appointing authority.

Rights Warnings. When a reasonable person could believe a soldier has committed a criminal offense, that soldier must be advised of their rights under Article 31 before questioning. DA Form 3881 should be used to record the witness's understanding of his or her rights and election to waive those rights by making a statement. It may be necessary to provide the rights warning at the outset of the interview. In some cases, you will become aware of the witness's involvement in criminal activity only after the interview has started and incriminating evidence is uncovered. In such case, rights warnings must be provided as soon as you suspect that a witness may have been involved in criminal activity. If a witness elects to assert his right to remain silent or requests an attorney, all questioning must cease immediately. If the suspect has requested an attorney, questioning may only resume in the presence of the witness's attorney, if the witness consents to being interviewed. Note that these rights apply only to information that might be used to incriminate the witness. They cannot be invoked to avoid questioning on matters that do not involve violations of criminal law. Finally, only the individual who would be accused of the crime may assert these rights. They cannot be asserted to avoid incriminating other individuals.

In an informal investigation there are no respondents (AR 15-6, paragraph 1-7). However, there may be an individual or individuals whom it is reasonable to suspect may have committed a crime based on the evidence known to the IO. The test is an objective, rather than a subjective test. The test is not whether you suspect the individual, but whether a reasonable IO, knowing the same things you know, would suspect the individual of committing the crime. A crime is defined as a violation of one of the punitive articles (Articles 77 through 134) of the UCMJ. This includes violations of state and/or federal criminal laws as well. In the case of a suspect, the soldier will be advised of his rights against self-incrimination under Article 31 of the UCMJ. A civilian will be advised of his rights under the Fifth Amendment to the Constitution. It is recommended that the procedure for explaining rights set forth on the back of DA Form 3881, Rights Warning Procedure/Waiver Certificate, be used. This form is available on the SJA webpage.

Read the Article 31/Fifth Amendment rights as set forth on the back of the DA Form 3881. You should not change the words, even when explaining them. If the suspect indicates that he/she does not understand the rights, determine what is not understood. Then proceed to that spot in the rights warning and repeat the rights advisements as written. Do not attempt to put the rights advisement into your own words. After one or two repeats, suspects will usually indicate that they understand and you can proceed. If the suspect repeatedly indicates that he/she does not understand, what the suspect is really saying is that he/she does not intend to waive his/her Article 31 rights. If a suspect indicates that he/she is not going to waive his rights, then all questioning must cease. In that event, have the suspect complete Part I, section C (Non-waiver) of DA Form 3881 and seek legal advice before proceeding further.

If a suspect indicates that he/she wants to talk to a lawyer, then all questioning must cease until the suspect has had a reasonable opportunity to see a lawyer. If the suspect already has a lawyer, then the lawyer must be given a reasonable opportunity to be present at the questioning, notwithstanding the fact that the suspect says he doesn't want/need the lawyer. If you want to question the individual on a matter totally unrelated to the matter for which the individual is represented by an attorney, you need NOT contact the attorney. However, you must not discuss anything concerning the matter for which the individual is already represented by the attorney. In a situation such as this, it is always wise to seek legal advice first.

If a suspect indicates that he/she wants to waive his/her rights and give the IO a statement Part I, section B (Waiver) of DA Form 3881 must be completed.

If a witness is represented by a lawyer, remember that the lawyer's job is a partisan one to advise and counsel his/her client. Do not ask the lawyer for legal advice. Your Legal Advisor is identified in the Letter of Appointment. If not, you may obtain a Legal Advisor by contacting the Chief of the Administrative and Civil Law Division, Office of the Staff Judge Advocate, ARNORTH & Fort Sam Houston at (210) 221-2373. Do not accept legal advice or argument from a witness' counsel. Should you encounter any difficulties with a witness' counsel, you should immediately contact your Legal Advisor.

No adverse inference will be drawn against individuals for invoking their rights under Article 31 or the Fifth Amendment. If a reluctant military witness has no Article 31 rights, then he or she may be ordered to testify by their commander. The right to invoke Article 31 or the Fifth Amendment is personal. No one may assert it to protect anyone other than himself/herself. There may, however, be privileged communications involved. If so, consult your Legal Advisor.

Privileges. The rules in the Manual for Courts-Martial, Part III, concerning privileged communications between lawyer and client (Military Rule of Evidence (MRE) 502); to clergy (MRE 503); between husband and wife (MRE 504); between psychotherapists and patients (MRE 513); and between victim advocates and victims apply. Present or former inspector general personnel will not be required to provide evidence regarding information that they obtained while acting in the capacity of Inspector General. There are other records, such as Army Substance Abuse Program (ASAP) or "limited use records", the use of release of which is restricted by regulation. Any questions concerning this type of information should be discussed with your Legal Advisor.

Civilian Employees. When interviewing a civilian employee who is a member of a bargaining unit, the employee is entitled to have a union representative present if the employee so requests, and the employee reasonably believes disciplinary action may be taken against him/her. There is NO obligation to inform the employee of this right and no obligation for you to make arrangements with the union. If an employee requests union representation, just reschedule the interview for at least a day later. This will allow the employee time to arrange for union representation. NOTE: Most nonsupervisory employees at Fort Sam Houston are members of a bargaining unit, as are some supervisory

employees within the ASA. If there are any questions, contact a Labor Attorney at the Administrative and Civil Law Division, Office of the Staff Judge Advocate, ARNORTH & Fort Sam Houston at (210) 221-2373.

Scheduling witness interviews. You will need to determine which witnesses should be interviewed and in what order. Often, information provided by one witness can raise issues that should be discussed with another. Organizing the witness interviews will save time and effort that would otherwise be spent “backtracking” to re-interview prior witnesses. While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following is a suggested approach to organizing witness interviews; it is not mandatory. When planning who to interview, identify the people who are likely to provide the best information. Start with the witnesses that will provide all relevant background information and frame the issues. The intent is to have a general understanding of the issue before confronting the key witnesses with specific questions. This will often avoid the “backtracking” described above.

Concentrate on those witnesses who would have the most direct knowledge about the events in question. Without unnecessarily disclosing the evidence obtained, attempt to seek information that would support or refute information already obtained from others. In closing an interview, it is appropriate to ask if the witness knows of any other persons who might have useful information or any other information the witness believes may be relevant to the inquiry.

Conducting witness interviews. You may find it useful to consult with Inspector General officials or law enforcement agents such as Military Police investigators or CID agents for assistance in interviewing techniques. The following suggestions may also be helpful:

a. Prepare for the interview. While there is no need to develop a script for the witness interviews, you may wish to review the information required and prepare a list of questions or key issues to be covered. This will prevent you from missing issues and will maximize the use of your time. Generally, it is helpful to begin with open-ended questions such as “Can you tell me what happened?” After a general outline of events is developed, follow up with narrow, probing questions, such as “Did you see SGT X leave the bar before or after SGT Y?” Weaknesses or inconsistencies in testimony can generally be better explored once the general sequence of events has been established. Ensure the witness's privacy. You should conduct the interview in a place that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, unnecessarily harsh and insulting treatment, or unnecessary inquiry into private affairs.

b. Focus on relevant information. Unless precluded for some reason, you should begin the interview by telling the witness about the subject matter of the investigation. Generally, any evidence that is relevant and useful to the investigation is permissible. Relevancy depends on the circumstances in each case. You should not permit the witness to get off track on other issues, no matter how important the subject may be to the witness.

c. Letting the witness testify in his or her own words. You must avoid coaching the witness or suggesting the existence or non-existence of material facts. After the testimony is completed, the investigating officer should assist the witness in preparing a written statement that includes all relevant information, and presents the testimony in a clear and logical fashion. Written testimony also should reflect the witness's own words and be natural. Stilted "police blotter" language is not helpful and detracts from the substance of the testimony. You may use a tape recorder, but must advise the witness that you are going to do so. Additionally, the tape should be safeguarded, even after the investigation is completed.

d. Protecting the interview process. In appropriate cases, you may direct witnesses not to discuss their statement or testimony with other witnesses or with persons who have no official interest in the proceedings until the investigation is complete. This precaution is recommended to eliminate possible influence on testimony of witnesses still to be heard. Witnesses, however, are not precluded from discussing matters with counsel.

e. Other Interviewing Best Practices. In many cases wherein your investigation requires you to interview witnesses of the gender opposite your own, it is a sound practice to have another individual present with you during the interview, of the same gender as the witness being interviewed. For instance, if you are a male investigating officer and you are interviewing a female witness, you should consider having another female present with you during the interview, to act as a chaperone, in a sense.

Having another person present with you during the interview of a respondent or person potentially responsible or liable, one whom you have advised of his or her Article 31, UCMJ, rights or rights against self-incrimination, is also a sound practice. Have this individual sign on the DA Form 3881, Rights Warning Procedure/Waiver Certificate, Section B.1a., as well as on the DA Form 2823, Sworn Statement, in the Affidavit section, as a witness to the interview.

These practices are intended to protect you in your role as investigating officer, and to ensure your integrity and the conduct of your investigation are not afterwards called into question by any witness interviewed or any subsequent reviewer of your work.

12. Looking at the evidence.

Because an AR 15-6 investigation is an administrative and not a judicial action, the rules of evidence normally used in court proceedings do not apply. Therefore, the evidence that may be used is limited by only a few rules: The information must be relevant and material to the matter or matters under investigation.

Information obtained in violation of an individual's Article 31, UCMJ, or 5th Amendment rights may be used in administrative proceedings unless obtained by unlawful coercion or inducement likely to affect the truthfulness of the statement. You should consult with your legal advisor to determine whether a confession or admission was obtained through unlawful coercion or inducement. The result of polygraph examinations may be used only

with the subject's permission. Civilian polygraph reports should not be accepted. Similarly, witnesses may not testify as to whether they believe a particular individual.

“Off-the-record” statements are not acceptable.

An involuntary statement by a member of the Armed Forces regarding the origin, incurrence, or aggravation of a disease or injury may not be admitted. Remember, you should consult the legal advisor if you have any questions concerning the applicability of any of these rules.

It is your responsibility to ensure that all forms are accurately completed.

13. Contacting the Appointing Authority.

If during the course of the investigation you discover that the completion thereof requires examining the conduct or performance of duty of, or may result in findings and recommendations adverse to, a person senior in rank or position to him/her, report this fact to the appointing authority. The appointing authority may replace you with a more senior officer or determine that it is impractical because of military exigencies and direct you to continue.

If in the course of the investigation something happens that could cause the appointing authority to consider enlarging, restricting, or terminating the investigation, you should report this situation to the appointing authority at once.

If in the course of the investigation you come to the realization that more time is required to complete the investigation you should contact the appointing authority in order to request an extension of the time for completion. All requests for extension should be in writing. If the appointing authority concurs, your request and his or her response can be via e-mail, otherwise, a short memorandum stating that additional time is needed, to include only a general statement of why the time is needed, for instance to interview additional witnesses or gather additional evidence you became aware of only after the start of the investigation. You should coordinate any such request for an extension in advance with your legal advisor in order to determine how much additional time you will require. You should only request the minimal amount of time you require to complete your work. Evaluate the need for an extension thoughtfully in order to avoid having to make repeated requests for extensions. Consider what work you have left to do and how much time you need to accomplish it.

Whether you request an extension or not, as you compute your time requirements for your investigation with an eye towards your deadline, allow sufficient time for an informal legal review of a draft of your report of investigation by your legal advisor, as well as a formal one of your completed report. Your legal advisor can help you factor in time for these processes. The time required for both should be minimal. The legal review process is discussed further, below.

14. Putting it together.

After all the evidence is collected, the investigating officer must review it and make findings. You should start by re-reading your appointment orders to help you focus on what the appointing authority needs to learn from your investigation. Next, you should consider the evidence thoroughly and impartially, and make findings of fact and recommendations that are both supported by the facts and comply with the appointing authority's instructions. To the extent possible, you should fix dates, places, persons, and events, definitely and accurately. You should be able to answer questions such as: What occurred?; When did it occur?; Why did it occur?; Where did it occur?; Who was involved in the event and to what extent?; And how did it occur?; Exact descriptions and values of any property at issue in the investigation should be provided.

Findings. A finding is a clear and concise statement that can be deduced from the evidence in the record. In developing findings, you are permitted to rely on the facts and any reasonable inferences that may be drawn from those facts. In stating findings, you should refer to the exhibit or exhibits relied upon in making each finding. The documented evidence must support the findings (including findings of no fault, no loss, or no wrongdoing) and must be included in the report. Exhibits should be numbered in the order they are discussed in the findings.

Standard of Proof. Each finding must be based on the evidence and should reference the exhibit(s) which supports it. Since an investigation is not a criminal proceeding, there is no requirement that facts and findings be proven beyond a reasonable doubt. Thus, unless another specific directive states otherwise, AR 15-6 provides that findings must be supported by the "preponderance of the evidence" or "a greater weight of evidence than supports a contrary conclusion." That is, each finding should be based on evidence that, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion (minimum 51% probability).

Recommendations. Recommendations should take the form of proposed courses of action consistent with the findings; such as disciplinary action, imposition of financial liability, or other corrective action. Recommendations must be supported by the facts and consistent with the findings. Each recommendation should cite the specific findings that support the recommendation. It is the duty of the IO to ascertain and consider the evidence in the record

A recommendation should be clear, concise, and specific. A recommendation must be consistent with, and should logically follow from the findings. Recommendations generally cover the pecuniary, disciplinary, and corrective phases of the matter investigated.

Sometimes an IO feels that there is a need to explain the circumstances surrounding an event, the chronology, or how/why the IO made a certain finding, in order to help the commander more clearly understand the case. This information, which is too much to include in the findings, can be put in **an IO's Memorandum for Record (MFR) and**

attached to the report as Exhibit 1. At Fort Sam Houston, an IO is required to prepare an MFR in every investigation and explain at a minimum how the IO arrived at his/her finding.

15. Report of Proceedings.

Unless the appointing authority has authorized an oral report, the IO will utilize a DA Form 1574, Report of Proceedings by Investigating Officer/Board of Officers (this form is available on the Army Publishing Directorate Website), with exhibits and enclosures (see paragraphs 5c and d below) to constitute the report. An Index of Exhibits and Enclosures is attached immediately behind the DA Form 1574 (and continuation sheets if used).

All significant letters and other papers that relate to administrative aspects of the investigation or board and that are not evidence will be numbered consecutively with roman numerals and made enclosures, including such items as the following:

(1) The memorandum of appointment or, if the appointment was oral, a summary by the investigating officer or board including date of appointment, identification of the appointing authority and of all persons appointed, purpose of the investigation or board, and any special instructions.

(2) Copies of the notice to any respondent.

(3) Copies of other correspondence with any respondent or counsel.

(4) Written communications to or from the appointing authority, including any requests for and grants of extension.

(5) Privacy Act statements.

(6) Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered.

Exhibits are the items of evidence considered by the IO. Possible exhibits include statements and transcripts of testimony by witnesses, real evidence, and documentary evidence. You must comply with applicable information security practices, laws, and regulations when placing classification markings on board reports and reports of investigations. Consult with the legal advisor and the command security manager to ensure compliance with applicable information security laws and regulations. Because attaching real evidence (physical objects) to the report is usually impractical, clear and accurate depictions (such as photographs) may be substituted in the report. The exhibit should tell where the real document or evidence can be found. The IO must ensure that the real evidence itself, including the chain of custody, is preserved. Exhibits are marked numerically and attached immediately under the Index.

Enclosures are significant letters and other papers that relate to the administrative aspects of the investigation and are not evidence. Examples include the memorandum of appointment (always the first enclosure), copies of correspondence or other written communications to or from the appointing authority, Privacy Act Statements, and

explanations by the IO of any unusual delays, difficulties, irregularities, or other problems encountered. In complex, serious and/or high-profile cases, you should also prepare the following documents: (1) a 1-2 page executive summary; (2) an index of exhibits with all exhibits labeled in successive order; (3) a chronology of the investigation; and (4) a list of all persons interviewed and evidence gathered. Enclosures are consecutively numbered with roman numerals (I, II, III...) and are attached behind the exhibits.

When you make an adverse finding or recommendation against a field grade officer, he/she will have a right to respond prior to action by the approval authority. The field grade officer is entitled to review the entire investigation, to include the findings, recommendations, and exhibits, properly redacted to comply with PA requirements. He or she will have at least 10 business days to respond. The officer's response will not serve as a substitute for attempting to interview the individual during the investigation when appropriate. This right to respond is extended only to field grade officers because such findings may be considered in future promotion boards.

16. Getting a Legal Review.

Unless the appointing authority or another directive provides otherwise, the written report (original and one copy) should be submitted to the Staff Judge Advocate, at (210) 221-2373. The IO should submit the written report to the Staff Judge Advocate five (5) days before the suspense date in order to complete a formal legal review of the report. The legal review will advise the appointing authority whether the evidence supports any additional relevant findings, or suggests that additional investigation is appropriate to address additional concerns. The IO will be available to the Legal Advisor during the time he/she is conducting the legal analysis for any question or unforeseen situation that could delay the completion of the review.

APPENDIX A

PRIVACY ACT STATEMENT

[Use only if the AR 15-6 Report of Investigation will be filed under the witness name or other personal identifier (AR 15-6, paragraph 3-8e), generally, this is only applicable to the “subject” of the investigation.]

1. **PURPOSE:** The authority for the collection of personal information during the conduct of this informal investigation under AR 15-6 is 10 U.S.C. §3013.

2. **PRINCIPAL PURPOSE:** The purpose for soliciting this information is to ascertain sufficient factual information on which to make findings and recommendations to assist the appointing authority in determining the appropriate disposition of this matter.

3. **ROUTINE USES:**

a. Any information you provide may be filed in a system of records under your name or other personal identifier and used for any lawful and official purpose.

b. Any information you provide is disclosable to members of the Department of Defense (DOD) who have an official need for this information in the performance of their duties. Blanket routine uses listed in AR 340-21 also apply. In addition, the information may be disclosed to government agencies outside DOD as follows:

(1) To members of the Department of Justice when necessary in the defense of litigation against DOD or members of DOD as a result of actions taken in their official capacity.

(2) To members of the Department of Justice when necessary for the further investigation of criminal misconduct.

4. **DISCLOSURE:**

a. For an individual who may be ordered to testify (no right to refuse to testify): Providing the information is MANDATORY. Failure to provide information could result in disciplinary or other adverse action against you under the Uniform Code of Military Justice, Army Regulations, or Office of Personnel Management regulations, as appropriate.

b. For an individual who is warned of his right under Article 31, UCMJ, or the Fifth Amendment to the U.S. Constitution: Providing information is VOLUNTARY. There will be no adverse effect on you for failure to furnish information, other than that which might result as a consequence of the appointing authority having less than complete information on which to base his disposition of this matter.

DATE: _____

NAME: _____

SIGNATURE: _____

APPENDIX B

CHECKLIST FOR INVESTIGATING OFFICER

- Has the appointing authority appointed an appropriate investigating officer based on seniority, availability, experience, and expertise?
- Does the appointment memorandum clearly state the purpose and scope of the investigation, the points of contact for assistance (if appropriate), and the nature of the findings and recommendations required?
- Has the IO received an initial briefing and received appropriate resources?
- Does the investigative plan outline the background information the IO must gather, identify the witnesses who must be interviewed, and organize the interview order in the most effective manner?
- Does the plan identify witnesses who are no longer in the command and address methods of interviewing them?
- Does the plan identify information that will not be immediately available and outline steps to quickly obtain it?
- Is the IO maintaining a chronology in sufficient detail to identify causes for unusual delays?
- Is the IO retaining and organizing the information collected (witness statements, MFR's of phone conversations, photographs, etc.)?
- Does the IO make routine coordination with the legal advisor, appointing authority, and subject matter experts as necessary?
- Is the evidence assembled in a logical and coherent fashion?
- Does the evidence support the findings (including findings of no fault, no loss, or no wrongdoing)? Does each finding cite the specific evidence, by exhibit, which supports it?
- Are the recommendations supported by the findings?
- Does each recommendation cite the findings that support it?
- Are the findings and recommendations responsive to the tasking in the appointment memorandum?
- Did the investigation address all the issues (including systemic breakdowns; failures in supervision, oversight, or leadership; program weaknesses; accountability for errors; and other relevant areas of inquiry) raised directly or indirectly by the appointment?
- Was a legal review conducted by the OSJA, Administrative Law Division?
- Did the appointing authority approve the findings and recommendations? If not, have appropriate amendments been made and approved?
- Has the IO conducted necessary coordination to implement the recommendations?

APPENDIX C

SAMPLE REPORT

COMMAND LETTERHEAD

ORG SYMBOL

DATE

MEMORANDUM FOR Appointing Authority, LTC John Doe, Commanding, XX HHBN, Fort Sam Houston, TX 78234

SUBJECT: Findings & Recommendations for 15-6 Commander's Inquiry of Alleged Misconduct by 1SG Jane Roe, XX HHBN

1. On 6 April 2012, I was appointed as an AR 15-6 Investigating Officer (IO) to investigate allegations of misconduct against 1SG Jane Roe, XX HHBN. I conducted a thorough investigation surrounding the allegations. My observations, conclusions and recommendations are provided below.
2. Investigation Findings. Based on the documentary evidence, interviews and sworn statements, the following findings are made:

- a. Allegation #1. That 1SG Roe showed preferential treatment towards NCOs and soldiers in the company, notably SGT Castle, SGT Monk and SPC Horatio,

- (1) Army Regulation 600-20, Army Command Policy, par. 4-14, states that relationships between soldiers of different rank are prohibited if they, among other things, cause actual or perceived partiality or unfairness.

- (2) While the preponderance of the evidence did not support a finding of actual preferential treatment by 1SG Roe towards NCOs and Soldiers in the company, the preponderance of the evidence did support an allegation of the appearance of preferential treatment towards SGT Castle, SGT Monk and SPC Horatio. Sergeant Julie Andrews (Exhibit 3) stated she heard complaints that SGT Castle, SGT Monk and SPC Horatio never had to do anything when 1SG Roe was around. Staff Sergeant Erick Richard (Exhibit 4) stated that 1SG Roe had her favorites, referring to SGT Castle, SGT Monk and SPC Horatio. Sergeant First Class Bobby James (Exhibit 5) stated several soldiers warned him to be careful of several members in the unit who get to do and say anything they want, referring to SGT Castle, SGT Monk and SPC Horatio. Sergeant Teresa Lopez (Exhibit 7) stated 1SG Roe had her favorites, and noted that SPC Horatio could talk to Roe without using the chain of command. There were accounts of 1SG Roe not enacting the same requirements to SGT Castle, SGT Monk and SPC Horatio as she does other unit members. These are specified in SPC Gorga's, SGT Andrews', SSG Donaldson's, SGT Lopez's and SSG Jackson's statements. (Exhibit 1, 3, 4, 7 and 8) Based on a preponderance of the evidence, this allegation was substantiated.

- b. Allegation #2. That 1SG Roe enacted reprisals in the form of negative evaluations against NCOs and Soldiers in the XX HHBN, who disagreed with her.

- (1) Army Regulation 600-20, Army Command Policy, par. 5-12, Military Whistleblower's Act, states that "no person will restrict a member of the Armed Services from making a protected communication

with a member of Congress; an Inspector General; a member of a DOD audit, inspection, investigation or law enforcement organization; or any other person or organization (including any person in the chain of command) designated under this regulation or other administrative procedures to receive such communication.”

(2) A preponderance of the evidence did not support the allegation of reprisal. Staff Sergeant Erick Richard (Exhibit 4) stated he had to “fight” to get positive bullets on SSG McCormick’s NCOER. According to SSG Donaldson, he felt it was “personal” as 1SG Roe and SSG McCormick had had prior disagreements. However, Chief John James (Exhibit 10) stated he felt that SSG McCormick was apathetic in his duties, and had several counselings which supported 1SG Roe’s reluctance to approve positive comments on the NCOER. Based on the preponderance of the evidence, this allegation was unsubstantiated.

3. Other Findings. Although not listed as specific allegations for investigation in my appointment order, I make the following comments:

a. I find that 1SG Roe’s conduct is unbecoming of a First Sergeant and Senior Non Commissioned Officer. The standards that she must be held to are in effect 100% of the time. This is very important, especially considering the position she holds in the Company and in the Battalion. Statement such as “shitty NCO” or the condescending statement “what do you think about Matheson now?” to SSG Donaldson (Exhibit 4) were unprofessional, and do not encourage unit cohesion. Threats about “shining the light” to the CSM on SPC Gorga’s evaluations, when he had wanted to talk to him were unacceptable, (Exhibit 1).

b. She fails to empower the squad leaders by not utilizing the NCO support channels for disseminating information and decision-making. 1SG Roe was a Platoon Sergeant in this unit prior to becoming the First Sergeant. It is important that she separate herself from her peers and allow those NCOs who are stepping up to perform those duties. This is done by positive empowerment, adequate training and professionalism at all times. Her current involvement in rear-detachment operations, while she is deployed, displays her continued inability to “let go” and entrust her NCOs. She is exceedingly disrespectful and unprofessional towards her NCOs. There is a lack of respect and communication between her and her Platoon SGTs. This leaves the NCOs at a standstill, unable to perform and sufficiently lead his/her platoon. The NCO support channel is broken. Examples are as follows: “not having confidence in her Platoon Sgts” (Exhibit 5); “continuously bad mouths my NCOs” and “they [NCOs] do not know what they are doing” (Exhibit 10); and “SSG Donaldson does not know what he is doing, SSG Orwell not know what he is doing, SSG Melon is a bad manager and a push over. They are all bad writers, I can’t believe that I have to deal with this, I have to do everything” (Exhibit 10). Two Soldiers, SFC Brown and WO1 James, have also expressed their concern that impossible suspenses were created to ensure they could not be met in order for 1SG Roe to express her impression that NCOs were incompetent. (Exhibits 5 and 10).

c. Based on the overall comments made during this investigation, the majority of witnesses describe 1SG Roe as an ineffective First Sergeant and NCO. Aside from creating an appearance of preferential treatment towards certain Soldiers, a number of witnesses described 1SG Roe as having created a “hostile work environment.” The Soldiers are “tired” and “look down due to the constant badgering” (Exhibits 5 and 11). They “purposely steer clear” or “avoid contact” with her (Exhibit 1 and 10). She is “emotional” (Exhibit 11), “very coarse” and “her temper becomes inflamed” (Exhibit 10) and takes “things personal” (Exhibit 3).

d. Lastly, there were statements made concerning CPT John Hancock, which suggest he has created a negative work environment. His threat of "seeking and destroying," as noted in SFC Brown's and WO1 Orwell's statements (Exhibits 5 and 11); his statement of "not sticking his neck out," (Exhibit 7), the strained conversations between SFC Brown and himself, (Exhibit 6); and his inaction in allowing the 1SG to conduct business as she does allows the negativity to perpetuate throughout the company. SSG Orwell's NCOER Senior Rater ratings do appear to conflict. Based on SSG Orwell's and SSG Jackson's statements (Exhibit 10 and 11), when SSG Orwell tried to rectify his NCOER, CPT Hancock's only reasoning for the rating was that SSG Orwell didn't conduct PT with the Soldiers. SSG Orwell's recommendation from CPT Hancock (Exhibit 13), his bullet points and previous record do cause me to question if his final rating was unjustified (Exhibit 2). These are actions that are unprofessional and unbecoming of a Company Commander, and an Officer.

Recommendations. While 1SG Roe has created an appearance of preferential treatment, her actions seemed based more on a lack of leadership ability than intentional misconduct. Any disciplinary action is within the discretion of the command. However, a mentoring session or counseling on the critical role of the First Sergeant, covering, among other things, the adverse effects caused by a lack of leadership, would be appropriate. Additionally, CPT Hancock should be mentored on his role as a leader as well.

JANE HONOR
CPT, MS

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- 4 SSG EDDIE DONALDSON
- 5 SFC BOBBY JAMES
- 6 EMAIL CORRESPONDENCE DATED 2 MARCH 2012
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