

# **TXSG COMMANDER'S LEGAL REFERENCE GUIDE**



**2020 Edition**

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## **PREFACE/ACKNOWLEDGEMENTS**

I would like to recognize MAJ Ernest Garcia for his hard work and thoroughness in compiling the original TXSG Commander's Legal Reference Guide and I would also like to thank LTC Charles Florsheim for his invaluable assistance to me in editing and revising the 2020 edition of the TXSG Commanders Legal Research Guide.

Consistent with TXMF Strategy (to develop strong, ethical leaders; recruit and maintain a diverse workforce; facilitate success and to provide robust service to our TXSG Members), this legal guide is intended for TXSG field grade officers (0-4 Major to 0-6 Colonel) with three intertwined objectives: (1) to raise awareness of Section 437 of the Texas Government Code; (2) to provide a general overview of the primary legal authority (laws, regulations and lawful orders) applicable to TXSG operations; and (3) to provide general guidance in recognizing or identifying potential legal issues related to TXSG operations. While designed primarily for field grade commanders, this guide may be of benefit to any TXSG officer.

This Guide is designed to assist commanders with legal situations by helping them recognize and avoid issues, or take immediate actions necessary to preserve the situation when legal issues arise. This Guide is a secondary authority and should not serve as a basis for action on specific matters, as it is not intended to replace or supersede the laws, regulations or the independent legal advice of your servicing TXSG Judge Advocate. Commanders should always consult their servicing Judge Advocate to discuss specific cases.

**LTC RANDY ALLEN, DSJA TXSG**

### **PREFACE I**

#### **The Commander's Responsibility to Practice Preventive Law**

“An ounce of prevention is worth a pound of cure”

~~ Benjamin Franklin

## A. Be Proactive, Not Just Reactive

This Guide is designed to assist you in taking proper immediate action when faced with a variety of legal issues that might arise during your time in command. The purpose of your actions should be to preserve the legal situation until you can consult with your servicing Judge Advocate. However, like most aspects of your command responsibilities, you can fail if you wait for things to come to you. You need to be proactive in preventing problems before they occur.

## B. Preventive Law

While responsibility for practicing preventive law remains with the commander, your servicing Judge Advocate stands ready to assist you in meeting this responsibility. One of the most valuable services a Judge Advocate can provide to a commander is eliminating problems before they occur through a robust preventive law program.

So, as you read and use this Guide, please do not use it as an excuse to avoid your servicing Judge Advocate. We hope that you will reach out to your lawyer, and that they will reach out to you, so that through your relationship with this important member of your personal staff, you can receive the advice and assistance you need to have an exceptional and rewarding command experience.

## **PREFACE II**

### **Situations Where you Should Immediately Consult Your Servicing Judge Advocate.**

#### A. After Receiving a Report of any Criminal Offense

Many offenses have time sensitive reporting or other policy requirements, such as sexual assault, sexual harassment, hazing, etc. Your servicing Judge Advocate will help ensure that all of these requirements are met and then can advise you on your options to handle the report and/or the offense.

B. Before Appointing an Investigating Officer

If you need to initiate a preliminary inquiry, or informal investigation or a CDI, ask your servicing Judge Advocate for assistance. Your servicing Judge Advocate can offer advice on the appropriate type of investigation as well as assist in drafting the appointment memorandum that covers the scope of the investigation.

C. Whenever you are Considering any Adverse Personnel Action Against a TXSG Member

Your servicing Judge Advocate will help you to ensure that your action complies with all applicable laws and regulations and is feasible before you announce your intention to pursue the action. Adverse actions include, but are not limited to, administrative separation, issuing a memorandum of reprimand, letter of admonition or counseling.

D. Before Administering Nonjudicial Punishment Under TCMJ Article 15

Your servicing Judge Advocate will help you to ensure that your action complies with the TCMJ and can be supported by the facts.

E. Before Initiating Judicial Action Under the TCMJ

Your servicing Judge Advocate will advise and assist you in determining how to proceed with formal judicial action under the TCMJ for more serious offenses.

# TXSG Commander's Legal Reference Guide

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## I. INTRODUCTION

In joining the TXSG, each Member took this oath:

**“I, \_\_\_\_, do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the governor of Texas, and the orders of the officers appointed over me, according to the laws, rules, and articles for the government of the military forces of the State of Texas.”**

- (emphasis added) See Tex. Gov’t Code § 437.205(b) (which allows the Adjutant General to prescribe the oath).

Therefore, *in addition* to the federal, state and local civil and criminal laws, regulations and ordinances which affect each Texan in their day-to-day activities, this legal guide is intended to provide a *general overview* of laws, regulations, and orders applicable to TXSG operations with the understanding that “[w]e need accurate counsel to stay on the right azimuth.”<sup>1</sup> As a TXSG commander, you have a duty and are responsible for “conduct[ing] business in a professional, ethical, and legal manner”,<sup>2</sup> which means you must have an appreciation and knowledge of the laws, regulations and orders applicable to TXSG operations. It is also just as important for you as a commander to make certain that your troops are also trained to maintain a high level of discipline and compliance with the law, policy, and military standards, as it is for you to train them to perform their mission tasks.<sup>3</sup>

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<sup>1</sup> Taken from The Adjutant General (“TAG”) – Texas, Major General John F. Nichols’ primary policy letter (forming the foundation from which all other Texas Military Forces (TXMF) policies and guidance flow) <http://www.txmf.us/txmf-mission>. The entirety of the TAG’s policy letter is reproduced verbatim in the Appendix to this guide. The TXSG JAG Corps recommends that you become familiar with this policy letter.

<sup>2</sup> *Id.* (The full bullet point statement from the TAG’s policy letter reads “Conduct business in a professional, ethical and legal manner. *I will tolerate nothing less.*” (emphasis added).

<sup>3</sup> Commander’s Legal Handbook 2013, The Judge Advocate General’s Legal Center and School, U.S. Army, 2019. 1.



It is recommended that commanders implement the following habits in an effort to minimize, legal issues / liability:

- A. Always check your TXSG e-mail at least once a day. If you have a smart phone, set your phone up so that you have a TXSG (incoming) mailbox to receive any TXSG Office 365 e-mails. We are all busy in our private lives, but if you receive a TXSG e-mail that requires or requests a response, and if you will not be able to respond within the next 48 hours, then at least briefly acknowledge receipt of the e-mail and if at all possible let the sender know when you will get back to them. In extending the courtesy of a timely response, you should extend the same courtesy to your fellow TXSG Members that you would to any family, business or professional associate. As a leader you must set the communication example or standard for your troops to emulate.
- B. Let everyone that reports to you know (in writing), that they are required to inform you of any legal concerns they have regarding operations, harassment, discrimination, etc. The sooner you are aware of legal issues or problems, the quicker you can take steps to prevent them from growing. Remember the saying “An ounce of prevention is worth a pound of cure.”<sup>4</sup>
- C. Establish a healthy relationship with your TXSG Judge Advocate and make it a point to visit on a regular basis, your servicing TXSG Judge Advocate. This not only allows you to discuss any possible legal concerns that you or your subordinates might have, but it will also allow the Judge Advocate to converse with you about any changes in the laws, regulations or policies (as there could be a delay from the time such are enacted or implemented, to the time such information is disseminated to you as a commander or the troops in some formal written communication).

You should **immediately** contact your servicing TXSG Judge Advocate after receiving a report of any matter requiring reporting under the Commanding General’s Critical Information Requirements (CGCIR). You should also contact your servicing TXSG Judge Advocate before you conduct an investigation and, whenever you are contemplating adverse personnel action against a Member of the TXSG.

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<sup>4</sup> Attributed to both British jurist Henry de Bracton in his *De Legibus et Consuetudinibus Angliae* (“On the Laws and Customs of England”) in 1240 and to Ben Franklin on Feb. 4, 1735. Another applicable quote is “Anticipate problems and prepare to overcome obstacles. Don’t wait until you get to the top of the ridge and then make up your mind.” -- MAJ Richard “Dick” Winters (WWII commander of Easy Company, 2<sup>nd</sup> Battalion, 506<sup>th</sup> Parachute Infantry Regiment, 101<sup>st</sup> Airborne Division).

Each Brigade commander is assigned a primary SJA and each Brigade SJA has a Deputy SJA assigned as well. It is anticipated that in the future a JAG officer will be assigned to each battalion in each of the various Brigades once there are sufficient officers available.

A TXSG Staff Judge Advocate initial point-of-contact (“POC”) list is attached for your reference in the Appendix to this guide. The JAG Corps is committed to an effective and redundant communication system. If you do not have timely communication with a TXSG Judge Advocate through their mobile phone number or primary e-mail address, do not hesitate to contact them on their listed alternate phone number or e-mail address. Failing that, you are always welcome to contact another Judge Advocate or the Staff Judge Advocate.

## II. LEGAL AUTHORITY FOR THE EXISTENCE OF THE TXSG

While the rich history of the creation of our nation’s state militias/defense forces and our TXSG units is beyond the scope of this Guide, the legal foundation for the current existence of the TXSG is worth a brief mention. The United States’ Constitution, federal statute and federal common law or case law each provide a legal basis for our Texas militia/defense force:

“A well regulated **militia**, being necessary to the security **of a free state**, the right of the people to keep and bear arms, shall not be infringed.”

- Second Amendment to the U.S. Constitution (1791) (emphasis added).<sup>5</sup>

“The power of the States over the militia is not taken away; it existed in them before the establishment of the constitution, and there being no negative clause prohibiting its exercise by them, it still resides in the States, so far as an exercise of it by them is not absolutely repugnant to the authority of the Union. . . . The authority of appointing the officers and training the militia, is expressly reserved to the States, because,

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<sup>5</sup> Prior to this, the U.S. Congress of the thirteen colonies had ratified the Articles of Confederation and Perpetual Union (1777 and fully ratified in 1781), which at Article VI stated in relevant part, “No vessel of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such state, or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but **every state shall always keep up a well-regulated and disciplined militia**, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.” Source: National Archives available at <http://www.ourdocuments.gov/doc.php?flash=true&doc=3&page=transcript>

in these respects, it was intended that they should have an exclusive power.”

- *Houston v. Moore*, 18 U.S. 1, 9 (1820) (*emphasis in the original*).

“ . . . a State, . . . may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive . . . considers necessary, but it may not be called, ordered, or drafted into the armed forces.”

- Title 32 United States Code section 109(c) – i.e. 32 U.S.C. §109(c).<sup>6, 7</sup>

“Nothing in this title [32 U.S.C.] limits the right of a State . . . to use . . . its defense forces [authorized by subsection 32 U.S.C. 109(c)] within its borders in time of peace, . . .”

- 32 U.S.C. § 109(b).

In addition to the federal authority above, the Texas Constitution, in referring to the executive authority of the Governor of Texas as the Commander-in-Chief of the State military forces, provides:

“He shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.”

- Tex. Const. art. IV, § 7 (1876, amended 2 Nov. 1999).<sup>8</sup>

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<sup>6</sup> But note that 10 U.S.C. § 332 states that the “President . . . may call into Federal service such of the militia of any State, and use such of the armed forces, as he considered necessary to enforce those laws or to suppress rebellion” and 10 U.S.C. § 333 provides the “President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence . . .” *Perpich v. Department of Defense*, 496 U.S. 334, 350 n. 21 (1990).

<sup>7</sup> Contemporary state defense forces (SDF), were authorized by the U.S. Congress in 1955 and 32 U.S.C. § 109 is the governing legislation. Evaluation of Department of Defense Interaction with State Defense Forces, Inspector General, Department of Defense, Apr. 2014, pg. 3 and Appendix pg. 32.

<sup>8</sup> TEX. GOV'T CODE § 431.111(a) and (c) essentially provide the same statutory authority to the governor. § 431.111(b) also allow the governor to call state military forces to assist civil authorities in executing law as



higher levels of command will override any conflicting orders issued by lower levels of command.

All TXSG Members should become familiar with the TMD website and specifically those serially numbered policies and regulations that are particular to the TXSG. All TXSG Members should also be familiar with TMD policy statements that are also applicable to all TMD Members, TXARNG, TXANG and TXSG.

It is the duty and responsibility of all commanding officers to be knowledgeable of the laws, regulations and policies which govern the conduct and activities of the TXSG. Become familiar with the TMD website and the TXSG web pages.

There is often used saying that dates back to biblical times, “ignorantia juris non excusat” translated it means that a person who is unaware of a law may not escape liability for violating that law merely because they were unaware of its content or existence.

#### **IV. TXSG COMMANDERS AND THE LAW**

As a fundamental requirement, our TXSG Commanding General has certain statutory responsibilities<sup>14</sup>; therefore, every TXSG commander has a duty to also be responsible:

1. for the welfare, strength, and management of the TXSG;
2. for the organization, training, and administration of your TXSG component;
3. to be responsive as a force provider to the state; and
4. to help field and staff your volunteer component of the TXSG.

In addition to the aforementioned responsibilities, commanders are responsible for both enforcing the law and also protecting TXSG Members’ rights.

The military justice system provides for certain fundamental rights and safeguards that must be considered in matters involving either criminal conduct or certain disciplinary proceedings.

TXSG Members are presumed innocent until all evidence of guilt or innocence is gathered and proven. In certain instances discussed later in the guide, TXSG Members have the right-to-counsel. TXSG Members’ also have the right against self-incrimination.

<sup>14</sup> TEX. GOV’T CODE § 437.301.

TXSG Members facing TCMJ action have the right to be advised of the charges against them in disciplinary proceedings and for matters involving criminal charges the right to a speedy trial under civilian authority.

**V.**  
**LEGAL ISSUES SPECIFIC TO THE COMMANDER**

**A. Personal Liability of Commanders and Supervisors.**

As a preliminary matter (and as discussed in the Use of Force section of this Guide), conduct by a commander (or any TXSG Member for that matter), which is outside the course and scope of lawful orders, can lead to exposure of personal liability for damages or injuries resulting from such conduct.

In addition, civil rights federal law under 42 U.S.C. § 1983 provides a cause of action for the deprivation, under color of law, of a citizen’s “rights, privileges, or immunities secured by the Constitution and laws of the United States.” These protected rights include but are not limited to Fourth Amendment-right to privacy/right against unreasonable searches and seizures; Eighth Amendment-right against cruel and unusual punishment<sup>15</sup>; and the Fourteenth Amendment-right to procedural and substantive due process and to equal protection. Governmental entities and individuals may be held liable under § 1983 for inadequate supervision of constitutional violations. A supervisor/commander would not be liable for the actions of a subordinate through the theory of vicarious liability. However, a supervisor/commander might be held personally liable if he or she either (1) is personally involved in a constitutional deprivation, or (2) there is a sufficient causal connection between the supervisor’s/commander’s wrongful conduct and the constitutional violation. For example, if a supervisor/commander fails to supervise or train a subordinate and such failure amounts to a deliberate indifference to constitutional rights (amounting to “overt personal participation”) and there is a connection between such failure to supervise or train and a violation (such as by a subordinate or otherwise) of a plaintiff’s constitutional rights, a supervisor/commander can be held personally liable.<sup>16</sup> In addition, a commander/supervisor may also be personally liable “even without overt personal participation in the offensive act” if the

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<sup>15</sup> TEX. GOV’T CODE § 432.091 also prohibits cruel and unusual punishment from being adjudged by any court-martial.

<sup>16</sup> See *gen. Blank v. Eavenson*, 530 F.App’x 364, 2013 WL 3047124 at \*5 (5<sup>th</sup> Cir. Jun. 19, 2013) (unpublished) (*citing Roberts v. City of Shreveport*, 397 F.3d 287, 292 (5<sup>th</sup> Cir. 2005)); *Porter v. Epps*, 659 F.3d 440, 446 (5<sup>th</sup> Cir. 2011).



commander “implements a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation.”<sup>17, 18</sup>

Violations of environmental laws may also expose a commander to criminal liability. This includes negligent inattention to environmental problems. For a more detailed discussion of this subject you may wish to consult the Air National Guard, Commander’s Legal Deskbook (July 2013), Chapter 12 entitled Environmental Matters as well as Chapter 28, Section 10 on Domestic Operations – Liability and Environmental Issues.

**B. Select Express Legal Responsibilities / Obligations of Commanders.**

1. Commissioned officers must conduct themselves appropriately, suitably, with propriety, honor, justice, morals, integrity, and manners.<sup>19</sup>
2. Commanders should ensure that the Texas Code of Military Justice (Tex. Gov’t Code § 432<sup>20</sup>) is carefully explained to every enlisted Member at the time of or not later than the 30th day after the date of the Member's enlistment and that it is explained annually to each unit of the TXSG. The complete text of the TCMJ – as well as any regulations prescribed by the governor under the TCMJ – must be made available for examination to any Member of the TXSG upon request.<sup>21</sup>

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<sup>17</sup> See *gen. Thompkins v. Belt*, 828 F.2d at 304; *Moore v. Greg Hamilton, Austin Police Dept., et al.*, 2013 WL 2453243 at \*2 (W.D. Tex. Jun. 5, 2013) (unpublished); *Irby v. Nueces County Sheriff*, 2010 WL 1416804 at \*1 (S.D. Tex. 2010) (unpublished) (a supervisor can be held personally liable for enforcing a policy that results in a deprivation of federally protected rights).

<sup>18</sup> In *Newth v. Adjutant General's Department of Texas*, 883 S.W.2d 356, 357 (Tex. App. – Austin 1994, writ denied) a Texas Army National Guard officer sought to maintain a lawsuit against the Adjutant General, alleging he had been discriminated and retaliated against for serving as a Whistleblower. The court held that “claims brought by military personnel under state statutes for injuries arising from or in the course of activity incident to military service are nonjusticiable.” (See also the various cases cited therein). *Newth* was cited with approval in *Texas Adjutant General's Dept. v. Amos*, 54 S.W.3d 74, 78 (Tex. App. – Austin 2001, pet. denied) and *Burkett v. Goodwin*, 2002 WL 1804915, \*3 (Tex. App. – Austin 2002, pet. denied), cert. denied 538 U.S. 947 (2003).

<sup>19</sup> Officers and officer candidates may be convicted of conduct unbecoming an officer and a gentleman, as a court-martial may direct. TEX. GOV’T CODE § 432.166.

<sup>20</sup> The TCMJ applies to all members of the state military forces (not in federal service) while on duty status or under lawful orders to be on duty status. TEX. GOV’T CODE §§ 432.002; 432.121.

<sup>21</sup> TEX. GOV’T CODE § 432.183. While a timely explanation of the TCMJ is not a jurisdictional requirement in a summary court-martial, it is an extenuating circumstance to be carefully considered at sentencing. *Vernon v. State* (Military App.) June 5, 1978, No. 77-1.

3. Consistent with command responsibility, commanders are required to ensure compliance with all TXSG and TMD policies and procedures.
4. Commanders have a responsibility to initiate the process for promotions of qualified Members within their immediate command. To support equal opportunity, promotions are required to be initiated, without regard to race, color, religion, sex, or national origin. Promotions are to be based upon potential for service in the next higher grade, efficiency, time in grade, demonstrated command and staff ability, and military and civilian education.
5. All leaders (commanders) are required to report injuries of a TXSG Member on SAD or attending an approved training drill, within 24 hours of its occurrence and to submit the necessary reposting (SPOT) forms pursuant to the CGCIR reporting requirements.
6. Commanders must ensure that their assigned personnel are familiar with the policy that sexual harassment is not tolerated in the TXSG. Commanders are expressly held accountable for fostering a command and leadership climate, which supports and enforces the TXSG policy of zero tolerance for sexual harassment. Commanders must publish and post written command policy statements for the prevention and reporting of sexual harassment and explain how and where complaints are filed and shall ensure that all complainants will be protected from acts or threats of reprisal. Commanders must also take prompt, decisive action to investigate all complaints and either resolve the problem at the lowest possible level or take formal disciplinary or administrative action. Failure to adhere to this directive is a violation of the TCMJ. In addition, any commander who implicitly condones sexual behavior to control, influence, or affect the career, pay, or job of a TXSG Member/employee has engaged in prohibited sexual harassment.
7. The following are additional potential areas of commander liability:
  - a. Negligent Supervision; I.E., Inadequate monitoring of performance; Failure to reprimand when appropriate; Failure to train new supervisor...
  - b. Negligent Retention; I.E., Keeping non-performing members on the job; Promotions based on favoritism or friendship when they clearly should have been severely disciplined, demoted, or dismissed...



- c. Failure to Train: I.E., Inadequately preparing members to perform their duties; Minimal or inadequate training; Little or no in-service training; Allowing untrained members to perform any field duties...
- d. Failure to Train; TXSG must keep accurate training records, including Lesson Plans, properly constructed, Record of attendance of students; Instructor qualifications; Handout materials given to students, all films and videos shown to students, videotape of students during training in skill-related courses, and tests scores...
- e. Negligent Entrustment; I.E., Inadequately preparing members prior to entrusting them with responsibilities; Combination of failure to train and negligent supervision...
- f. Negligent Assignment; I.E., Assigning known problem members to critical or inappropriate duties; Assigning reckless driver with government vehicle; Assigning sexist member with female member...
- g. Failure to Direct; I.E., Not giving members clear, articulated guidance in how to perform their duties; Not having proper policies and procedures; Commanders "signing off" on policies and procedures without understanding them...
- h. Failure to Discipline; I.E., No effective discipline process, Not following progressive discipline procedures...
- I. Failure to Investigate; I.E., No inspections or integrity checks; No or difficult citizen complaint process, No or difficult member complaint process...

Again, Commanders are responsible for making certain that their TXSG Members know the substance of any TXSG policy directives.

### **C. Section 432.184 Complaints.**

Under TCMJ § 432.184, every TXSG Member has the right to complain that he or she was wronged by their commanding officer. If such Member does not receive redress from his or her commanding officer, the Member may complain to any superior commissioned officer. The superior commissioned officer shall forward the complaint to the next highest commander. The higher commander shall thereafter examine the complaint and take proper measures for redressing the wrong complained of and send to the Adjutant General, as soon as possible, a true statement of that complaint with the proceedings had on it.

#### D. Unlawful Command Influence (UCI).

It is unlawful to influence military justice.<sup>22</sup> In your legal role as a commander, you must have a shift in mindset. You play a quasi-judicial role within the military justice system that precludes you from directing subordinate commanders in the way that you might otherwise do during a mission or training. Even if you think that you are just “mentoring” and “coaching”, you can commit Unlawful Command Influence (UCI). Generally, UCI is the improper use, or perception of use, of a superior authority to interfere with the military justice system.

Commanders often use policy memos, coaching or mentoring to communicate their philosophy on leadership related topics, but they should not attempt to communicate their philosophy on military justice to their subordinate commanders, as this could change the actions of the subordinate commanders, based upon what they believe their superior wants to see.<sup>23</sup> Thus, even if you think that you are merely mentoring or coaching, you may unintentionally commit UCI, by using or creating a perception that you are using superior authority to influence the military justice process,<sup>24</sup> by using statements like:<sup>25</sup>

“I am absolutely uncompromising about discipline in the leader ranks.”

“I am going to CRUSH leaders who fail to lead by example.”

“There is no place in the Army for drug users”

“The accused is a scumbag. Stay away from him.”

“You testified for the accused? You have embarrassed the unit.”

A person subject to the TCMJ may not coerce or inappropriately influence a court-martial or a Member of the tribunal (similar to a juror in a civilian case) regarding findings of fact or the sentence.<sup>26</sup> The convening authority or officer is also not allowed to ensure, reprimand or admonish a court/military judge, court Member (juror) or counsel regarding findings of fact or the sentence.<sup>27, 28</sup>

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<sup>22</sup> TEX. GOV'T CODE § 432.062.

<sup>23</sup> *Id.* at 17-18.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 19.

<sup>26</sup> TEX. GOV'T CODE § 432.062.

<sup>27</sup> *Id.*

<sup>28</sup> It is recommended that commanders consult and review “The 10 Commandments of Unlawful Command Influence” found in the Commander’s Legal Handbook, The Judge Advocate General’s Legal Center and School, United States Army 2019.

## VI. QUALITY FORCE MANAGEMENT

### A. **Disciplinary Procedures in General.**

Good order and discipline establishes, sustains and enforces professional standards that are necessary for individual, unit and mission success. Conduct that interferes or distracts from those necessary professional standards is contrary to Good Order and Discipline. Good Order and Discipline is a command responsibility but also the duty of every Member to foster a climate of professionalism.

Command discipline should be executed at the lowest level when possible. A higher headquarters commander may reserve command authority to exercise command discipline over a particular case or over certain categories of offenders or offenses. Commanders are prohibited from establishing set punishment guidelines within their command.<sup>29</sup>

A commander should use non-punitive measurements to the fullest extent before resorting to punitive action. Use of administrative or non-judicial punishment is proper in all cases involving offenses in which non-punitive measures are considered inadequate or inappropriate. Prompt action is essential for administration of non-judicial punishment to have the corrective affect.<sup>30</sup>

1. Commanders have a number of options from which to choose to maintain Good Order and Discipline:

- a. Verbal Counseling – The lowest level corrective tool is verbal counseling.
- b. Letter of Counseling – A Letter of Counseling is merely the recording of an infraction.
- c. Letter of Admonition – A Letter of Admonition is more severe than a Letter of Counseling. It is used to document clear violations of standard.
- d. Letter of Reprimand – A Letter of Reprimand is more severe than a Letter of Admonition (LOA). Like the LOA, it is also used to document clear violations of standard and is used for more serious offenses. If a letter of reprimand is given then the procedure as set forth in TCMJ 432.015 must be followed.

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<sup>29</sup> TMDI 5145.01, Subject: Commander Discipline Program/Status of Forces, Apr 23 2019.

<sup>30</sup> TMDI 5145.01, Subject: Commander Discipline Program/Status of Forces, Apr 23 2019.

- e. Nonjudicial Punishment – Texas Code of Military Justice, Section 432.015 provides for nonjudicial punishment by rank reduction, Letter of Reprimand or imposition of a fine.
- f. Alternative Dispute Resolution/DRO – The TXSG now has a Dispute Resolution Office (DRO) and a designated dispute resolution officer (DRO). The purpose of alternative dispute resolution using the DRO is to resolve conflict and disposition at the earliest stage possible at the lowest possible organizational level. The DRO is independent and autonomous of the various CoCs, similar to the OIG. ADR using the DRO is a good alternative to resolve intra personnel conflicts that do not rise to the level of other remedial or disciplinary options.

**2. THE FOLLOWING ARE RESTRICTIONS ON AUTHORITY TO DISPOSE OF MISCONDUCT UNDER SECTION 432.015:**

- a. Authority to dispose of all alleged acts of misconduct via Section 432.015 of the TCMJ committed by a senior non-commissioned officer in the grades of E7 to E9 is delegated to the Brigade or Commander in the Member's chain of command.<sup>31</sup>
- b. Authority to dispose of all alleged acts of misconduct via Section 432.015 of the TCMJ of a non-commissioned officer in the grades of E5 and E6 is delegated to the Battalion Commander in the Member's chain of command.<sup>32</sup>

3. In order to be subject to nonjudicial punishment<sup>33</sup> under the TCMJ a TXSG Member must have committed an offense while in an active duty status or under a lawful order. However, there is no duty status requirement when a Member violates a TXSG or TMD policy or regulation apart from the TCMJ.

Any accused TXSG Member who is facing discipline under 432.015 (TCMJ) shall be afforded the opportunity to be represented by privately retained defense counsel at their own expense, or a Member of TXSG Trial Defense Service. A commanding officer may impose on enlisted Members in the officer's command subject to the limitations as set forth in subsection 2 above: (1) a reprimand (2) a fine or (3) a

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<sup>31</sup> TMD P-16-08, Withholding Authority to Dispose of Misconduct Under Section 432.015 of the Texas Code of Military Justice (TCMJ) Nov 07 2016.

<sup>32</sup> TMD P-16-08, Withholding Authority to Dispose of Misconduct Under Section 432.015 of the Texas Code of Military Justice (TCMJ) Nov 07 2016.

<sup>33</sup> Texas Manual for Courts-Martial, Ch. 2.

reduction to an inferior grade. The officer also has the right to suspend, set aside, reduce or remit the nonjudicial punishment and restore all rights and privileges. In addition, the TXSG Member being punished, if they consider the punishment unjust or disproportionate, has a right to appeal within 15 days to the next superior authority.

**B. Rank Reduction.**

In the event a commander who is authorized to reduce a Member in rank determines to request a reduction in rank of a Member ("Rank Reduction Request"), the following procedures will be followed prior to submitting such Rank Reduction Request:

1. The commander will give written notice ("Rank Reduction Notice") to such Member of the commander's determination to reduce the Member's rank. The Rank Reduction Notice provides information to the Member relating to the proposed reduction as well as the Member's rights related to the reduction such as the Member's right to appeal the proposed reduction ("Appeal"). To the extent that there is any written documentation supporting the commander's decision to reduce the rank of the Member such as a Report of Investigation resulting from a Commander Directed Investigation, counseling statements, witness statements, etc., copies of such documents ("Supporting Documentation") shall also be provided to the Member with the Rank Reduction Notice.
2. A Notice of Appeal may be filed by a Member who determines to appeal the reduction. Such Notice of Appeal is to be an attachment to the Rank Reduction Notice. If a Notice of Appeal is not filed within five (5) calendar days after the Member's receipt of the Rank Reduction Notice, the Member shall be deemed to have waived his right to appeal and the commander may proceed with the Rank Reduction Request.
3. If a Notice of Appeal is filed within five (5) calendar days of the Member's receipt of the Rank Reduction Notice, the commander may not proceed with the reduction until there is a final determination of the appeal by the next superior commander named in the Rank Reduction Notice ("Superior Commander"). The commander must forward to the Superior Commander all documentation related to the reduction proceeding including the Supporting Documentation within ten (10) calendar days of the commander's receipt of the Notice of Appeal.
4. If a Notice of Appeal is timely filed and the Member chooses to do so, the Member has fourteen (14) calendar days following delivery of the Notice of Appeal to the Superior Commander to file a written presentation with any supporting documentation ("Written Presentation") with the Superior

Commander. The Member has no right to a personal presentation before the Superior Commander.

5. If no Written Presentation is timely filed, the Superior Commander will give a written notice of the Superior Commander's determination (Superior Commander's Determination") within thirty (30) calendar days after receipt of the Notice of Appeal by the Superior Commander.
6. If a Written Presentation is timely filed, the Superior Commander will give a written notice of the Superior Commander's Determination within fifteen (15) calendar days after receipt of the Written Presentation by the Superior Commander.
7. The commander will proceed in accordance with the Superior Commander's Determination.

Remember a TXSG Member must have committed an offense under the TCMJ while under an active duty status or under a lawful order, in order to be subject to nonjudicial punishment pursuant to the TCMJ 432.015.<sup>34</sup>

## **VII. SEPARATION FROM THE TXSG**

### **A. Types of Discharges under the TCMJ**

1. Punitive - Punitive discharges result from violations of the Texas Code of Military Justice (TCMJ), Texas Government Code, Chapter 432, and can result in one of two types of punitive discharges for enlisted personnel and non-commissioned warrant officers:
  - a. Dishonorable: If a Member is convicted by a general court-martial they can be given a dishonorable discharge.
  - b. Bad Conduct: If a Member is convicted by a special or general court-martial they can be given a bad conduct discharge.

Commissioned officers who are found guilty in a General Court-Martial may be dismissed from service or be subject to a number of lesser forms of punishment.

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<sup>34</sup> Texas Manual for Courts-Martial, Ch. 2.

## B. Administrative Separation/Discharge

Members can also be administratively discharged for violations of the TCMJ, TMD regulations or for violations of the following examples as set forth below in VII B2b. As a practical matter almost all discharges from the TXSG will be administrative discharges. The TXSG has not conducted a court-martial in decades. TXSG Members charged with severe crimes, who would otherwise be subject to being prosecuted by courts-martial, are usually prosecuted by civilian authority under the Texas Penal Code.

Administrative discharges may be voluntary or involuntary.

### 1. Voluntary Separation

- a. Voluntary separations are considered a resignation.
- b. A resignation begins with a written request from the Member—either in a letter or via email. Requests are made to the Member’s immediate commander and routed through the chain of command to the T1, TXSG with TXSG Form 35 to the “discharge@txsg.state.tx.us” mailbox.

### 2. Involuntary Separation

- a. Involuntary separations/discharges are normally based on the results of an informal or formal Commander Directed Investigation (CDI) or an Inspector General Inquiry. Detailed procedures for conducting an involuntary separation/discharge are provided in Section 7.3 of this Guide.
- b. Examples of reasons for involuntary separation/discharge are as follows:
  - i. Unfitness. A Member may be discharged for unfitness due to an incident of a discrediting nature with civil or military authorities. These kinds of incidents include, but are not limited to, sexual perversion, drug addiction, an established pattern for shirking, an established pattern of failure to pay just debts, or an established pattern for failure to contribute adequate support to dependents.
  - ii. Intentional Omission. A Member may be discharged for intentional omission or concealment of information regarding prior service, true citizenship status, a felony

conviction by a civilian or military court, or any information that is intentionally omitted to obtain a higher rank, or any information omitted pertaining to their service in general.

- iii. **Fraudulent Entry.** A Member may be discharged for entering fraudulent information on required appointment or enlistment TXSG documents. A Member may also be discharged for providing fraudulent documents or changing information on legal documents.
- iv. **Qualification.** A Member who joined the TXSG may be discharged for not complying with regulations regarding age, height and weight requirements and/or physical fitness.
- v. **Conviction of a Crime.** Conviction of a crime as an adult or adverse adjudication as a juvenile will carry the same weight when a Member is being considered for discharge by the TXSG. The Member's immediate commander must submit a written recommendation as to what action should be taken. It may be in the best interest of the TXSG to retain the Member. Discharge action may be initiated against a Member under the following circumstances:
  - a) When convicted by civil authorities or action is taken that is tantamount to a finding of guilt of a felony. This includes a similar adjudication in juvenile proceedings.
  - b) When a punitive discharge would be authorized for the same or closely related offense under the TCMJ or the sentence by civil authorities including confinement for six (6) months or more without regard to suspension or probation.
  - c) When specific circumstances or the offense warrants discharge.
- vi. **Nonparticipation.** A Member may be discharged due to unexcused nonparticipation.



- vii. Failure to Maintain State Property. A Member may be discharged for loss or destruction to State Property or failing to maintain State Property or failing to turn in state owned property.
- viii. Ineligible Appointment or Enlistment. A Member who is found to be ineligible and was appointed or enlisted through administrative oversight will have their appointment or enlistment voided.
- ix. Officers or enlisted Members who are substandard in performance of duty or conduct, deficient in character, lacking in professional qualification or status, or otherwise unsuited for continued military service will not be retained in the Texas State Guard. Presence of one or more of these conditions will be sufficient basis for the administrative discharge of an officer or enlisted Member from the Texas State Guard. Additionally, any officer or enlisted Member of the Texas State Guard may be administratively discharge for one or more the following reasons or conditions:
  - a) To allow upward mobility of junior officers or enlisted Member's by implementing a realistic rate of attrition of Members.
  - b) To reduce over-strengths caused by, but not limited to, reorganization, consolidation or conversion of units.
  - c) To reduce excesses to authorized positions only.
- x. Any Other Reason. A Member may be discharged for any other reason indicated in the Military Laws of the State of Texas for conduct that prejudices good order and discipline in the state military forces and/or all conduct of a nature to bring discredit on the state military forces.

### **C. Age Retention Limit Discharge**

The T-1 will prepare discharge orders and certificates for over-70 Members and process requests for transfer to the Honorary Reserve if qualified.

Requests for exception to this policy may be submitted through the chain of command in writing not later than 90 days prior to the Member's 70th birthday, using TXSG Form 1040.10 (Biographical Summary).

1. Exceptions must be based on unique skills and/or operational experience not otherwise duplicated within the TXSG or not immediately replaceable.
2. Exceptions require the approval of the TAG and may only be granted for a period of continued service in the TXSG of up to 12 months for each extension.

#### **D. Characterization of Reenlistment/Reappointment Eligibility**

Upon a Member's discharge/separation, they shall be given a reenlistment/reappointment code indicating their eligibility for reenlistment/reappointment.

1. RE-1. Applies to Member who completes their term of service with an acceptable standard of conduct. Eligible to reenter the Texas State Guard.
2. RE-2. Applies to Member separating for personal reasons. Ineligible to reenter the Texas State Guard unless a waiver is granted.
3. RE-3. Applies to Member who is not considered fully qualified for reentry or continuous service at time of separation due to medical reasons. Ineligible to reenter the Texas State Guard unless a waiver is granted.
4. RE-4. Applies to Member who separated from their last period of service due to misconduct. Ineligible to reenter the Texas State Guard unless a waiver is granted.

#### **E. Action Following Discharge**

1. On termination of an officer's appointment or enlisted Member's enlistment, such individual shall be required to return their TXSG identification card to the HQ, TXSG, T1. See T1 ID card SOP for these instructions.
2. Following discharge from the TXSG, an individual who wishes to rejoin must submit a new enlistment/appointment packet through a TXSG Recruiter.

## F. Commander's Discharge Procedures

For all discharges pursuant to a Form 35 personnel action request, regardless of re-enlistment/reappointment code, the initiating authority (or successor) shall state all procedures, as applicable, herein have been complied with and shall state the reason(s) for the discharge. The Form 35 request shall be reviewed and approved in the following order: The initiating authority (or successor), regional commander, the TXSG Chief of Staff, and the T-1 personnel officer. Following final approval by the foregoing authorities, the T-1 personnel officer shall provide a completed and approved copy of the Form 35 personnel action request to the initiating authority (or successor).

All Member discharges other than discharges with an Honorable discharge characterization and a reenlistment/reappointment code of RE-1 shall follow the procedures set forth below prior to submitting a Discharge Report.

1. The commander will give written notice ("Discharge Notice") to such Member of the commander's determination to request the discharge of the Member. The Discharge Notice provides information to the Member relating to the proposed discharge as well as the Member's rights related to the discharge such as the Member's right to appeal the proposed discharge ("Appeal"). To the extent that there is any written documentation supporting the commander's decision to discharge the Member such as a Report of Investigation resulting from a Commander Directed Investigation, counseling statements, witness statements, etc., copies of such documents ("Supporting Documentation") shall also be provided to the Member with the Discharge Notice. The Appeal is limited to characterizations of discharge other than an Honorable Discharge and/or a discharge code other than a RE-1, but not to the discharge.
2. A member may file a Notice of Appeal. Such Notice of Appeal is to be an attachment to the Discharge Notice. If a Notice of Appeal is not filed within five (5) calendar days after the Member's receipt of the Discharge Notice, the Member shall be deemed to have waived his right to Appeal and the commander may proceed with the Discharge Request.
3. If a Notice of Appeal is filed within five (5) calendar days of the Member's receipt of the Discharge Notice, the commander may not proceed with the Discharge Request until there is a final determination of the Appeal by the next superior commander named in the Discharge Notice ("Superior Commander"). The commander must forward to the Superior Commander all documentation related to the discharge proceeding including the Supporting Documentation

within ten (10) calendar days of the commander's receipt of the Notice of Appeal.

4. If a Notice of Appeal is timely filed and the Member chooses to do so, the Member has fourteen (14) calendar days following delivery of the Notice of Appeal to the Superior Commander to file a written presentation with any supporting documentation ("Written Presentation") with the Superior Commander. The Member has no right to a personal presentation before the Superior Commander.
5. If no Written Presentation is timely filed, the Superior Commander will give a written notice of the Superior Commander's determination (Superior Commander's Determination") within thirty (30) calendar days after receipt of the Notice of Appeal by the Superior Commander.
6. If a Written Presentation is timely filed, the Superior Commander will give a written notice of the Superior Commander's Determination within fifteen (15) calendar days after receipt of the Written Presentation by the Superior Commander.
7. The commander will proceed in accordance with the Superior Commander's Determination.

## **VIII.**

### **COMMANDER DIRECTED INVESTIGATION (CDI)**

#### **A. Matters Appropriate for a CDI.**

Generally speaking, commanders investigate command matters, including all issues and circumstances involving people, processes and materials under their command. CDIs may be used to investigate whether an individual has violated a standard defined by law, regulation, or policy.

CDI's may be informal and preliminary for the purpose of fact gathering or they can be formal involving the appointment of an investigating officer and following the prescribed procedures as set forth in the CDI Guide. A CDI flow chart is provided in Section XII, Specific Reference Material. Commanders should always consult their servicing JAG when contemplating a CDI. Commanders should not investigate or direct a CDI into allegations pertaining to their own alleged misconduct. Typically, the appropriate venue to address issues involving a commander will be the next higher echelon of command or an outside agency such as the TXSG IG.

## B. Matters More Appropriate for the Office of Inspector General

Investigations is the Inspector General (IG) function that provides the commander or directing authority another means through which to resolve allegations of impropriety. The TXSG IG may investigate violations of policy, regulation, or law; mismanagement; unethical behavior; fraud; misconduct, reprisal or command actions condoning wrongdoing. Commanders may opt for an IG investigation or investigative inquiry when extreme discretion is necessary or the allegation requires preliminary fact finding before deciding to resolve the alleged impropriety in command, IG, or other channels. The primary purpose of IG investigations and investigative inquiries is to resolve allegations of impropriety; to preserve confidence in the chain of command; and, if allegations are not substantiated, to protect the good name of the subject or suspect.

## C. CGCIR Matters Requiring Immediate Reporting

There are also certain matters that must be referred directly and immediately to command staff for their evaluation and handling direction. These matters require that immediate reporting are sometimes referred to as **Serious Incident Reports (SIR)** or **Commanding General's Critical Information Requirements (CGCIR)**. Commanders should also notify their servicing JAG of any matter requiring immediate reporting.

1. Reporting Instructions for Commanding General's Critical Information:
  - a. TXSG Members will report CGCIR using a SPOT report or SIR to the TXSG HQ J3.
    - (1) Primary Method: E-mail - Robert.Finley@txsg.state.tx.us
    - (2) Alternate Method: Phone - (512) 782-5721
    - (3) TXSG HQ J3 will ensure that CGCIR events and information are initially reported to the JOC immediately upon learning of the information. Initial reports will be followed up with supplemental and closure reports as needed to continue to keep the TXMF Command Group informed.

The following are the current reporting requirements for CGCIR:

2. **Immediate Notification:**
  - a. Report any potential terrorist event in CONUS;

- b. Report any threats against a TXSG person, facility, or equipment;
  - c. Any fatalities, major accidents, hospitalizations of service Members or civilians who are killed or injured in incidents involving TXSG personnel, equipment, or facilities;
  - d. Suicide threat or attempt;
  - e. All domestic violence or sexual assault/harassment events involving TXSG personnel;
  - f. Any arrest or detention of TXSG personnel by a law enforcement agency;
  - g. Loss of accountability of a TXSG service Member (AWOL);
  - h. Any action that will/could cause unfavorable publicity to the TXSG or TXMF; and
  - i. Any requests for info or TXSG assets from the Governor's office, or other State agency.
3. **Notification Within 24 hours:**
- a. An off-post incident involving the police that will cause a SIR to higher or potentially require further information for the TAG;
  - b. Officer or NCO misconduct (dependent on seriousness);
  - c. Alcohol or drug-related event;
  - d. Possibility of extremist or gang activity or hazing involving or affecting service Members or their families;
  - e. Any visit made by state/federal elected or senior appointed government officials to TXMF facilities, or TXSG units; and
  - f. Any significant theft, loss, or vandalism of TXSG equipment or facilities.

When in doubt whether a matter requires immediate notification consult your servicing Judge Advocate for their advise.

#### **D. Required Reporting for Certain Disciplinary Actions**

On April 23, 2019 MG Tracy R. Norris implemented TMD Instruction Number 5145.01, titled Command Discipline Program/Status of Forces.

Purpose. This Instruction establishes Texas Military Department (TMD) command procedures in executing, maintaining and reporting proposed actions and punitive actions take under the authority of the Texas Code of Military Justice (TCMJ) and administrative regulations.<sup>35, 36</sup>

On May 5, 2019 the Office of the General Counsel for the TMD published a Memorandum setting forth the reporting requirements for certain disciplinary actions in conjunction with the Instruction.<sup>37</sup>

Pursuant to Instruction 5145.01 and the May 5, 2019 Memorandum, from the Office of General Counsel for the TMD, Commanders are responsible for reporting qualifying disciplinary actions to their assigned JAGs. JAGs are then responsible to collect all reportable information and then submit it through their senior Judge Advocate to the Office of General Counsel.

Both the TAG and Office of General Counsel emphasized that commanders must actively engage their assigned JAGs in the command discipline program.

At the end of each quarter, all proposed and executed non-judicial punishments and adverse administrative actions (hereinafter collectively referred to as Actions) must be reported to the Office of the General Counsel (OGC) at [ng.tx.txarng.list.general-counsel-office1@mail.mil](mailto:ng.tx.txarng.list.general-counsel-office1@mail.mil).<sup>38</sup>

1. To all Actions involving Officers and Enlisted, regardless of rank;  
and

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<sup>35</sup> TXARG, TXANG and TXSG commanders will maintain an active discipline program. Command discipline is a tool for commanders at all levels to maintain readiness by implementing prompt action to correct offenses within the formation. TMDI 5145.01, Subject: Commander Discipline Program/Status of Forces, Apr 23, 2019.

<sup>36</sup> This policy should not be interpreted as establishing punishment parameters in executing command discipline. Each commander has absolute discretion to execute command discipline within their command without interference from high headquarters commanders. TMDI 5145.01, Subject: Commander Discipline Program/Status of Forces, Apr 23, 2019.

<sup>37</sup> Memorandum for Texas National Guard and Texas State Guard Advocates, Subject: Guidance and Standards for the Reporting Requirement of the Command Discipline/Status of Forces Program, 5 May 2019.

<sup>38</sup> Memorandum for Texas National Guard and Texas State Guard Advocates, Subject: Guidance and Standards for the Reporting Requirement of the Command Discipline/Status of Forces Program, 5 May 2019.

2. The reporting requirements set forth in TMDI 515.01 do not include Letters of Reprimand for E-4 and below.<sup>39</sup>

Remember your assigned JAGs cannot report what has not been communicated to them. Command communication and engagement of JAGs is crucial.

## **IX.**

### **CRIMINAL OFFENSES AND MILITARY JUSTICE**

Should these steps not bring a Member into compliance or if an offense has been committed then a court-martial should be considered,<sup>40</sup> although as previously discussed, courts-martial are not for the most part a viable option for discharge.

A person may not be tried or punished by courts-martial for an offense under the TCMJ, unless the offense was committed while the person was in a duty status or during a period in which the person was under lawful orders to be in a duty status.<sup>41</sup>

Court-martial convening authorities are required to communicate directly with their Staff Judge Advocate or Judge Advocate officers in matters relating to the administration of military justice.<sup>42</sup>

#### **A. There are three types of courts-martial:<sup>43</sup>**

1. Summary Court-Martial (“SCM” is for enlisted members and is not available for any officers) – may be convened by any commander with a grade of O-4 or higher.<sup>44</sup> Used for relatively minor offenses. Simplified procedure before an officer who must be a military judge or a licensed Texas attorney, without any jury.<sup>45</sup> An accused TXSG member may refuse a trial by a summary court-martial and a trial by a higher court-martial may be ordered as determined by the convening authority.<sup>46</sup> Punishment imposed in a SCM proceeding may include a reduction in rank, a fine of not more than \$1,000 and confinement of not more than 90 days.<sup>47</sup> Chapter 3 of the Texas

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<sup>39</sup> Memorandum for Texas National Guard and Texas State Guard Advocates, Subject: Guidance and Standards for the Reporting Requirement of the Command Discipline/Status of Forces Program, 5 May 2019.

<sup>40</sup> *Id.* In addition, a person authorized to convene a general court-martial may convene a Court of Inquiry to investigate any matter and make findings of fact. TEX. GOV'T CODE § 432.181.

<sup>41</sup> TEX. GOV'T CODE § 432.121.

<sup>42</sup> TEX. GOV'T CODE § 432.005(d).

<sup>43</sup> TEX. GOV'T CODE § 432.031.

<sup>44</sup> TEX. GOV'T CODE § 432.043.

<sup>45</sup> TEX. GOV'T CODE § 432.031(3).

<sup>46</sup> TEX. GOV'T CODE § 432.035.

<sup>47</sup> *Id.*



Manual for Courts-Martial details the TXSG summary court-martial system.

2. Special Court-Martial (“SPCM” is not available for commissioned officers) – may be convened by any commander with a grade of O-5 or higher.<sup>48</sup> It has one military judge and at least a three member panel, but an accused may request a trial by a military judge alone without a panel.<sup>49</sup> Punishment imposed may include a bad conduct discharge, a fine of not more than \$4,000 and confinement for not more than one year for a single offense.<sup>50</sup> Chapter 3 of the Texas Manual for Courts-Martial provides that the procedures for conducting a SCM will be substantially those used by the federal military service and that the TXSG will use the Army procedures.
3. General Court-Martial (“GCM” - available for all TXSG Members) – may be convened by the Governor or the Adjutant General<sup>51</sup> after a thorough and impartial investigation, during which the accused may be represented by counsel.<sup>52</sup> It is for the most severe offenses. The convening authority must obtain advice from the Staff Judge Advocate or legal officer before any trial is directed.<sup>53</sup> A GCM has one military judge and at least a five member panel, but an accused may request a trial by a military judge alone – which is subject to the approval of the military judge.<sup>54</sup> An accused may not request trial by judge if the death penalty is a possibility. Punishment imposed under a GCM may include a dishonorable discharge, a fine of not more than \$10,000 and confinement for nor more than five years.<sup>55</sup> Chapter 3 of the Texas Manual for Courts-Martial states that the procedures for conducting a general court-martial will be substantially those used by the federal military service and that the TXSG will use the Army procedures.

## B. Sexual Assault.

Sexual assault is criminal conduct<sup>56</sup> and will not be tolerated by the TXSG. Commanders notified of a sexual assault must take immediate steps to ensure the

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<sup>48</sup> TEX. GOV'T CODE § 432.042.

<sup>49</sup> TEX. GOV'T CODE § 432.031(2).

<sup>50</sup> TEX. GOV'T CODE § 432.034.

<sup>51</sup> TEX. GOV'T CODE § 432.041.

<sup>52</sup> TEX. GOV'T CODE § 432.053.

<sup>53</sup> TEX. GOV'T CODE § 432.055.

<sup>54</sup> TEX. GOV'T CODE § 432.031(1).

<sup>55</sup> TEX. GOV'T CODE § 432.033.

<sup>56</sup> TEX. GOV'T CODE § 432.163. *See also* TEX. GOV'T CODE §§ 432.125 (attempt to commit an offense), 432.1225 (Penal Code offenses), 432.137 (failure to obey order or reg.) and 432.163 (general article).

victim's physical safety, emotional security and medical treatment needs are met and that the appropriate criminal investigators are notified.<sup>57</sup>

### **C. Advising Suspect of Rights.**

If a commander or supervisor suspects someone of having committed an offense under the TCMJ or other TXSG regulation or policy, and anticipates asking (informally or formally) as the focus or subject of the alleged offense questions or taking any action in which an incriminating response is a reasonable consequence of same, the commander or supervisor must advise the TXSG Member of: the general nature of the suspected offense; the TXSG Member's right to remain silent; the consequences of the TXSG Member making a statement after having been advised of the right to remain silent; the right to consult with legal counsel and the TXSG Member should be asked to acknowledge if they understand their rights.<sup>58, 59</sup> If in doubt, give the rights advisement and consult with the Staff Judge Advocate. This advisement enables the government to preserve any subsequent admissions or confessions for later use as evidence.<sup>60</sup> If the TXSG Member expresses their desire to remain silent, or requests legal counsel, the questioning should cease immediately. If, on the other hand, the TXSG Member desires to waive their rights and agrees to talk, if possible obtain this waiver in writing. If they elect to talk and then change their mind, the questioning should therefore cease immediately.<sup>61</sup>

### **D. Preliminary Investigation/Inquiry into Reported Offenses.**

When a Member of the TXSG is suspected of an offense, whether under the TCMJ or TXSG regulations or procedures, their commander is responsible for ensuring that an appropriate preliminary investigation or inquiry (informal CDI) (examination of the charges, investigative report, gathering of evidence) is conducted (based upon the seriousness of the offense) and that appropriate command action is taken.<sup>62, 63</sup> If the preliminary investigation supports a formal CDI, then the procedure as set forth in the CDI Guide should be followed. In any case involving disciplinary action or a criminal offense, your servicing Judge Advocate should be consulted.

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<sup>57</sup> The Military Commander and the Law, The Judge Advocate General's School, United States Air Force (Eleventh Edition, 2012) at pg. 140.

<sup>58</sup> TEX. GOV'T CODE §§ 432.052(b), 432.053(b).

<sup>59</sup> For a sample verbal script to follow to inform a suspect / accused person of their rights please consult the Commander's Legal Handbook, The Judge Advocate General's Legal Center and School, United States Army (June 2013) pg. 68 (and for a written waiver form see pgs. 69-70).

<sup>60</sup> See TEX. GOV'T CODE § 432.052(d).

<sup>61</sup> The Military Commander and the Law, The Judge Advocate General's School, United States Air Force (Eleventh Edition, 2012), pgs. 154-58.

<sup>62</sup> *Id.* at 167.

<sup>63</sup> Texas Manual for Courts-Martial, Ch. 1.

## E. Offenses.

Using contemptuous words against the Governor is punishable by court-martial.<sup>64</sup> Disrespecting, willfully disobeying, or assaulting a superior commissioned officer<sup>65</sup> and the failure to obey an order or regulation or a dereliction of duty<sup>66</sup> also constitute violations of the TCMJ.

The TCMJ provides further that if a Member commits a criminal offense under the Texas Penal Code, then such Member has also violated the TCMJ.<sup>67</sup>

The TCMJ also broadly states:

Whether or not specifically mentioned by this chapter, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit on the state military forces, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court.<sup>68</sup>

## X.

### PERSONNEL ISSUES FOR THE COMMANDER

#### A. Discrimination/Harassment/Fraternization.

Title VII of the Civil Rights Act (42 U.S.C. § 2000a-2000h) is a federal statute which provides that it is unlawful for employers, to discriminate on the basis of an individual's race, color, religion, sex or national origin.<sup>69</sup> This statute therefore prohibits sexual harassment that takes the form of a tangible employment action such as the creation of a hostile or abusive working environment. Employers can be held liable for the actions of their agents, supervisors, or employees under the doctrine of respondeat superior (Latin meaning, "let the master answer").<sup>70</sup>

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<sup>64</sup> TEX. GOV'T CODE § 432.133.

<sup>65</sup> TEX. GOV'T CODE §§ 432.134; 432.135.

<sup>66</sup> TEX. GOV'T CODE § 432.137.

<sup>67</sup> TEX. GOV'T CODE § 432.1225.

<sup>68</sup> TEX. GOV'T CODE § 432.167.

<sup>69</sup> Texas statutory authority under the TEX. LABOR CODE § 21.001 et seq, also provides for the execution of the policies of Title VII of the Civil Rights Act of 1964.

<sup>70</sup> The U.S. Fifth Circuit Court of Appeals has held that Title VII does not provide for individual liability of supervisors. *Grant v. Lone Star Co.*, 21 F.3d 649, 651-52 (5<sup>th</sup> Cir. 1994), *cert. denied*, 513 U.S. 1015 (1994). Note however that the U.S. Supreme Court has not yet expressly ruled on this issue. Of possible interest is

Like the Civil Rights Act and Tex. Labor Code § 21.001 et seq., TXSG Regulations prohibit discrimination and sexual harassment and require any Member of the TXSG having knowledge of any violations to report same to their commander and serious offenses are to also be reported to TXSG HQ.

Furthermore, consistent with Tex. Gov't Code § 437.0531, the drafted TXSG Policy defines sexual harassment as:

1. A form of gender discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature between the same or opposite genders.
2. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a Member/employee is engaging in sexual harassment.
3. Any Member/employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.

The drafted TXSG policy states further that any individual who feels that they are the victim of harassment or discrimination should report the harassment. Resolution should be attempted through the chain of command or through the EEO at 512.782.5325, the State HR Officer, or the Inspector General Office at 512.782.5122. Excepted technicians and civilian personnel who experience discrimination must contact an EEO counselor within 45 days of the date of the alleged discrimination; military Members have 180 days to file an EO complaint. Individuals who report harassment or discrimination are not to be the subject of any form of retaliation or reprisal and their privacy will be respected to the extent that it is consistent with applicable military and federal regulations.

To demonstrate that the TXSG will not tolerate violence, threats, harassment/intimidation/coercion, rage and similar disruptive behavior in the workplace, any threat of physical or psychological harm or violence, etc., is to be reported to the officer, supervisor, or manager in charge who should seek advice from the TXSG personnel office regarding an investigation and the actions to be taken. Individuals who commit these acts may be removed from the premises by supervisors. Such matters will be investigated and individuals who have committed such acts will be subject to disciplinary action, criminal action or both.

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that the Fifth Circuit Court of Appeals recently ruled (based upon the threshold-remuneration test) that a *volunteer* firefighter was *not* an employee entitled to the benefits of Title VII. *Juino v. Livingston Parish Fire Dist. No. 5*, 717 F.3d 431, 439-40 (5<sup>th</sup> Cir. May 30, 2013).

Professional relationships are essential to the effective operation of all organizations. Such relationships become matters of official concern when they adversely affect or have the reasonable potential to adversely affect the TXSG by eroding morale, good order, discipline, and respect for authority, unit cohesion, or mission accomplishment. Unprofessional relationships, whether pursued on or off-duty, are those relationships that detract from the authority of superiors or result in, or reasonably create the appearance of favoritism, misuse of office or rank, or the abandonment of organizational goals for personal interests. Fraternalization is an aggravated form of an unprofessional relationship and should not be engaged in by the TXSG Members while under orders. As an example, and not as a means of an exhaustive list, officers should not gamble with enlisted Members, lend or borrow money from enlisted Members or date or create sexual relations with enlisted Members / subordinates within their chain of command.

## **B. Drugs and Alcohol.**

Commanders are responsible for assuring that the workplace is free of safety risks and hazards. In an effort to promote a safe work environment for all TXSG Members, Members of the TXSG may not use, sell, purchase, or distribute illegal drugs or drug paraphernalia and they may not misuse or abuse prescribed drugs. TXSG Members are also not permitted to consume alcohol within 8 hours of reporting for duty and may not possess alcohol or weapons while on duty except as described in the following paragraph. (See draft TXSG policy directive No. 802). Commanders are also required to obtain Judge Advocate legal advice before acting under the TXSG policy on alcohol or drug usage by Members of the TXSG. A Member who is found under the influence or who operates a vehicle under the influence of liquor or drugs while on duty shall be punished as a court-martial directs.<sup>71</sup>

## **C. Firearms.**

General Order No. 1 (GO-1) effective 30 Jan. 2013, also states that no TXSG Member while on duty or in uniform, may possess a firearm without written authorization of the Governor, Adjutant General or the CG TXSG.<sup>72</sup> Commanders are required to be proactive in recognizing, preventing, and controlling situations that could potentially lead to acts of workplace violence.

Pursuant to Texas Government Code, Chapter 411, Subchapter H and TMD Directive Number 5210.01 dated 17 January, 2018, anyone issued a handgun license recognized and valid in the State of Texas may possess a handgun on their person or in a properly secured vehicle while on TMD installations or facilities. This authorization encompasses all building and property under the control of the TMD. Off-duty law

<sup>71</sup> TEX. GOV'T CODE §§ 432.155; 432.156.

<sup>72</sup> In *Hamblen v. U.S.*, 591 F.3d.471 (6<sup>th</sup> Cir. 2009) a member of the Tennessee State Guard received 15 months in prison for having unlicensed / unregistered weapons.

enforcement authorities are allowed to carry their weapon consistent with their department policies.

**While in uniform, TMD members are not permitted to carry their handguns open carry as that would violate uniform standards.**

**In addition, guns of any type are strictly prohibited on any Federal installation or property.**

#### **D. Public Information Act.**

The Texas Public Information Act, Tex. Gov't Code § 552.001 et seq. permits access (to the public, entities and other governmental bodies) to information maintained by governmental bodies such as the TXSG (with some exceptions including certain confidential information in personnel files, medical and similar files, which if disclosed would result in an invasion of personal privacy). If you receive a Public Information Act request, you should immediately take it to the TXSG Public Information Officer (PIO) for timely processing. The TXSG is required to refer matters to the Texas Office of the Attorney General ("OAG"), within ten (10) business days of receipt of the request, for a ruling on whether an exception applies.<sup>73</sup> To review the 2014 OAG handbook on public information go to: [https://www.texasattorneygeneral.gov/AG\\_Publications/pdfs/publicinfo\\_hb.pdf](https://www.texasattorneygeneral.gov/AG_Publications/pdfs/publicinfo_hb.pdf)

#### **E. Privacy Laws.**

The privacy rule component of the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA") 42 U.S.C. § 1320d et seq.; 45 C.F.R. pts. 160, 162 and 164 makes protected health information ("PHI"), i.e. certain health care/medical records confidential.<sup>74</sup> The Texas Medical Records Privacy Act, Tex. Health & Safety Code § 181.001 et seq., in some respects is broader than HIPAA. For a general overview please consult the following site: <https://www.texasattorneygeneral.gov/consumer/hipaa.shtml>. Commanders who receive or have this type of information are subject to the privacy acts. Documents or data containing personal identifying information (such as social security numbers, dates of birth, government issued identifying numbers (e.g. driver's license numbers and account numbers))<sup>75</sup> must also be safeguarded from disclosure. Never place privacy act or personal identifying information, where individuals without an official need-to-know would have access to it (this includes common drives on computer systems).

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<sup>73</sup> Public Information 2012 Handbook, Attorney General of Texas Greg Abbott, pg. i.

<sup>74</sup> More HIPAA information can be found at: <http://www.hhs.gov/ocr/privacy/index.html>

<sup>75</sup> See *gen.* the TEX. BUS. & COM. CODE § 521.002 which provides a definition for personal identifying information.



**F. Army/Air Force/Naval Exchange.**

While Members of the TXSG must carry their TXSG issued ID cards with them at all times while in uniform, It is a federal offense to use the TXSG ID card in the Army and/or Air Force Exchange System (AAFES-PX) or the Naval Exchange (NEX), this includes the Camp Mabry (Austin) AAFES facility. At no time should a TXSG ID be used by a Member to gain access to a federal military installation.

**G. Absence.**

Desertion, being absent or missing the movement of a unit, is punishable by court-martial under the TCMJ.

Under Tex. Gov't Code § 432.130, a commissioned officer who after tender of his resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away permanently, is guilty of desertion. In addition, Members of the TXSG may be found guilty of desertion if without authority the Member leaves, remains absent or quits his or her unit or place of duty with intent to remain away permanently or with intent to avoid hazardous duty or to shirk important service.

A TXSG Member is considered absent, under Tex. Gov't Code § 432.131, if without authority a Member:

1. failing to go to an appointed place of duty at the time prescribed;
2. leaves such place; or
3. absents himself/herself from his/her unit or place of duty, at which he/she is required to be at a prescribed time.

A TXSG Member who negligently or by design misses the movement of the Member's unit with which the Member is required to move in the course of the Member's duty, may be found guilty of missing a movement under Tex. Gov't Code 432.132. In addition, if a Member leaves the Member's post before the Member is regularly relieved (or if the Member is found sleeping at their post), the Member may be punished as a court-martial directs.<sup>76</sup>

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<sup>76</sup> TEX. GOV'T CODE § 432.156.

Members of the TXSG are to notify their immediate commander in advance if they cannot attend a drill or duty period. Members may be discharged due to continued absence from military duty, whether or not such absences have been excused.

#### **H. TXSG Member Employment and Reemployment Rights.**

Under Texas law an employer may not terminate an employee who is a Member of the TXSG because such employee was ordered to training or duty of proper authority. Tex. Gov't Code § 437.204(a). The employee shall not lose vacation time or any other employment benefits due to absence because of their TXSG obligations. A violation of such section is an unlawful employment practice and the TXSG Member may also file a complaint with the Texas Workforce Commission civil rights division. Tex. Gov't Code § 437.204(b)<sup>77, 78</sup>,

**The aforementioned employment and reemployment rights however, do not apply to Members employed by the federal government because the federal government and subsequently their employees are not bound by state law.**

#### **I. Worker's Compensation Coverage.**

TXSG State employees who are also Members of the TXSG are entitled to emergency leave without deduction in pay and also are entitled to 15 days of paid leave for their TXSG duty. Tex. Gov't Code §§ 437.202; 437.212(c), 437.305; 661.903.

If a Member of the TXSG is not a state employee, but they have been on SAD, training or duty for more than 90 days, such Member is eligible to participate in the state group benefits program. Tex. Gov't Code §§ 437.212(f)

TXSG Members are covered under the Texas Workers Compensation Act provided they are ordered into service by proper authority and are acting in good faith in the course, scope and furtherance of duly authorized orders.<sup>79</sup> Thus, conduct which results in the service Member's injury or death, but which is not in the course, scope and furtherance of lawful orders, negates the Member's worker's compensation coverage. Please consult with your servicing JAG concerning the question of coverage and reporting.

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<sup>77</sup> The Texas Government Code, Texas Military chapter 437, subchapter I entitled "Administrative Review and Judicial Enforcement", contains 19 statutory provisions. Such provisions detail the steps and procedures that a TXSG member aggrieved by an unlawful employment practice referenced in § 437.204, should take up to and through litigation against his or her employer in a civilian civil court. TEX. GOV'T CODE §§ 437.401 – 437.419.

<sup>78</sup> A TXSG member who is ordered to SAD, training or other duty by proper authority under the law is also entitled to similar related benefits and protections afforded to service members under certain federal statutes (38 U.S.C. §§ 4301-4313, 4316-4319; 50 App. U.S.C. §§ 501-536, 560, 580-594). TEX. GOV. CODE § 437.213.

<sup>79</sup> TEX. GOV'T CODE § 437.212(b), (d), (e).



The following are the procedures to use when a service Member is injured while in a duty status:

1. Service Member Responsibilities:

- a. Get medical assistance/dial 911
- b. Notify supervisor/commander of accidents
- c. When emergency is over – request WC forms
- d. Complete ALL the required forms
- e. Preparing and giving forms to the Member's supervisor or commander.
- f. Keeping the Member's chain of command informed of the Member's health/physical status.

2. Witness/Supervisor Responsibilities

- a. Getting victim medical assistance/call 911
- b. Monitoring victim status/ride to ER if needed
- c. Notifying unit commander/OIC or senior NCO
- d. IF admitted to the hospital, staying with Member until relieved.
- e. Ensuring SIR is submitted.
- f. Obtaining WC forms and ensure victim completes

Those in the chain of command of the injured service Member should be notified within 24 hours of the service Member's injury and potential worker's compensation claim. TXSG Members wanting to review additional information, requirements, etc. regarding Workers Compensation benefits may wish to visit:

<http://www.tdi.texas.gov/wc/employee/index.html>

## J. Use of Force.

TXSG Members activated or ordered to state active duty (SAD), training or other duty have the “rights, privileges, duties, functions, and authorities conferred or imposed by state law.” Tex. Gov’t Code § 437.005. Section 437.2235 does not allow the use of force by TMD Members on SAD. Section 437.2235, Public Duty Justification:

“Section 9.21, Penal Code provides: applies to conduct of a service member of the Texas military forces ordered into service of his state by property authority that is performed in the service member’s official capacity.”

In relation to potential government unit liability under the Texas Torts<sup>80</sup> Claims Act (Tex. Civ. Prac. & Rem. Code § 101.001 et seq.) TXSG Members ordered into service should not face personal liability for their actions, provided such actions were performed in good faith (i.e. objectively reasonable) and within the scope of their authority. Tex. Gov’t Code § 437.222<sup>81, 82</sup>

## K. Unfavorable Information File.

TXSG Instruction 1115.01 dated 1 November 2019 creates a procedure for handling Unfavorable Information (UI Instruction).

Unfavorable Information (UI) is an official record of unfavorable information about an individual. It documents adverse administrative, non-judicial, or judicial actions concerning a member’s performance, responsibility and behavior. UI includes, but is not necessarily limited to, Records of Individual Counseling (RIC), Letters of Admonition (LOA), Letters of Reprimand (LOR), non-judicial and judicial actions taken in accordance with the Texas Code of Military Justice such as Section 15 proceedings and records of

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<sup>80</sup> Torts fall into three categories: intentional, negligent and strict liability.” “Torts are civil wrongs recognized by law as grounds for a lawsuit. These wrongs result in an injury or harm constituting the basis for a claim by the injured party. While some torts are also crimes punishable with imprisonment, the primary aim of tort law is to provide relief for the damages incurred and deter others from committing the same harms.” From: <http://www.law.cornell.edu/wex/tort>

<sup>81</sup> TEX. GOV’T CODE § 437.222 also provides similar immunity to TXSG members under contract law. Also, certain other state or local agency employees or their volunteers, would also be considered a member of the Texas military forces for purposes of § 437.222 in performing an activity related to: (a) the sheltering or housing of individuals connected with an evacuation due to a disaster or (b) homeland security. See TEX. GOV’T CODE §§ 418.006 and 421.061.

<sup>82</sup> The Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE § 101.054 also states “this chapter does not apply to a claim arising from the activities of the state military forces when on active duty under the lawful authority of competent authority.” In addition, § 101.055(2) states “this chapter does not apply to a claim arising “from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others.”

Courts-Martials which are action available to commanders to maintain good order and discipline. Only LOR and non-judicial and judicial actions taken in accordance with the TCMJ will be maintained in a UIF, as that term is later defined. RIC and LOA are not to be maintained in a UIF. Prior to the imposition of a LOR or any non-judicial or judicial actions taken in accordance with the Texas Code of Military Justice, the commander taking such action will consult with such commander's Judge Advocate.

The Personnel Officer, T-1, establishes and maintains a separate file for each individual member of the TXSG who has UI submitted in accordance with the UI Instruction (UIF). The UIF consists of all documents relating to UI which is forwarded to the T-1. This will include, without limitation, any documentation supporting the UI and any rebuttal documentation provided by the member who is the subject of the UI.

When UI is generated within a unit of the TXSG, it shall be the responsibility of each commander of such unit to review such UI and forward it to the Personnel Officer, T-1, accordance with procedures and in the format established by the T-1 within fifteen (15) calendars days of when the action generating the UI is completed.

With regard to a LOR, the commander may set a future date and conditions for the withdrawal of the LOR from the UIF which may not exceed times set forth in paragraph c. (1) and (2) below. Such date and conditions will accompany the LOR when it is submitted to the T-1 for inclusion in the UIF. It is the responsibility of the T-1 to maintain a record of such dates and conditions.

With regard to a LOR, the commander who administered such action may specify on the document itself how long such document is to remain in the individual's UIF. In the event no such date is designated, a LOR shall remain in the individual's UIF for a period of twenty-four (24) month from the date such LOR is given to the individual. Notwithstanding the foregoing, if additional UI is received by the T-1 to be included in such individual's UIF during the period specified by the commander or, if not specified, within the twenty-four (24) month period, a new specified period or a new twenty-four (24) month period, whichever is applicable, shall start for all LOR contained in the individual's UIF which can be further extended by the receipt of any other UI during successive time periods.

With regard to proceedings brought under the Texas Code of Military Justice, both non-judicial and judicial, such UI shall remain a permanent part of the individual's UIF and shall not be removed.

## **XI.**

### **CONCLUSION**

The Air National Guard, Commander's Legal Deskbook, (July 2013) at pg. 17 contains the following Ten Commandments of Command, written from a Judge Advocate's perspective, which may serve as a useful summary:

1. Thou shall ONLY DO, ORDER, or PERMIT AUTHORIZED acts, lest thou MAY become PERSONALLY LIABLE.
2. Thou shall NOT DO, ORDER, or PERMIT ANY PROHIBITED acts lest thou shalt SURELY BECOME PERSONALLY LIABLE.
3. Thou shall constantly maintain a vigorous POLICY AGAINST all forms of DISCRIMINATION, including SEXUAL HARASSMENT.
4. Thou shalt FAIRLY and UNIFORMLY enforce all REGULATIONS, ORDERS and POLICIES.
5. Thou shalt ALWAYS ADHERE to ETHICAL CONDUCT and AVOID even the APPEARANCE of a CONFLICT OF INTEREST.
6. Thou shalt aggressively DISCOURAGE FRATERNIZATION and ENCOURAGE only PROPER, PROFESSIONAL RELATIONSHIPS, among thy unit Members.
7. Thou shalt be ever mindful of the duty status of thy unit Members . . .for STATUS IS EVERYTHING.
8. Thou shalt promptly and thoroughly INVESTIGATE all allegations of MISCONDUCT.
9. Thou shalt STRICTLY FOLLOW applicable REGULATIONS in and thoroughly DOCUMENT all ADVERSE ACTIONS lest thy decisions may be overturned in court.
10. Thou shalt teach thyself to RECOGNIZE all situations and actions WHERE JUDGE ADVOCATE ADVICE or LEGAL REVIEW is NECESSARY lest thy flanks shall become unnecessarily exposed.

As a commander you should now be equipped to practice "preventative law". You should be able to recognize or identify potential legal issues and know when to take immediate action to preserve the legal situation and/or to minimize liability until you can consult with the TXSG Staff Judge Advocate or your servicing TXSG Judge Advocate.





# TEXAS MILITARY DEPARTMENT STRATEGY

## VISION:

*AMERICA'S PREMIER STATE MILITARY COMPRISED OF MISSION-READY PROFESSIONALS FULLY ENGAGED WITH OUR COMMUNITIES, AND RELEVANT THROUGH THE 21ST CENTURY.*



## MISSION:

*PROVIDE THE GOVERNOR AND PRESIDENT WITH READY FORCES IN SUPPORT OF STATE & FEDERAL AUTHORITIES AT HOME AND ABROAD.*



### **PEOPLE FIRST:** *Invest In Our Human Capital*

- Diverse & Engaged Force Sustained Through Effective Retention & Recruiting*
- Trained Ethical Professionals*
- Resilient Professionals & Families, Supported By Robust Services*
- Clearly Communicated Opportunities For Professional & Personal Development*

### **RELEVANT & READY:** *Provide Right Force At The Right Time*

- Force Structure Optimized For Federal & State Missions*
- Modern Training Areas & Facilities That Support Our Mission*
- Effective Resource Management & Protection*
- Enhanced Joint, Interagency, Intergovernmental & Multinational Capabilities*

### **COMMUNICATE & PARTNER:** *Deliver Our Message & Build Lasting Relationships*

- Effective Communication Assets & Channels*
- Partnered & Informed Communities*
- Engaged & Educated Government Partners*
- Strong Department of Defense Relationships*

## **B. Point of Contact List for JAG Personnel**

The following assignments are made for point of contact and assignments for reorganization and realignment.

### **HEADQUARTERS**

#### **Staff Judge Advocate (SJA)**

COL Chuck Vanover  
email: [charles.vanover@txsg.state.tx.us](mailto:charles.vanover@txsg.state.tx.us)  
mobile: (817) 271-3817

Senior legal administrator:  
1LT Reid Koenig  
email: [reid.koenig@txsg.state.tx.us](mailto:reid.koenig@txsg.state.tx.us)  
mobile: (713) 408-3208

Paralegal/legal assistants  
1. (Vacant)  
2. (Vacant)

#### **Deputy Staff Judge Advocate (DSJA) – Brigade Supporting**

LTC Randy Allen  
email: [randy.allen@txsg.state.tx.us](mailto:randy.allen@txsg.state.tx.us)  
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Assigned JAG(S):  
1LT Stephen Vollbrecht  
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mobile: (512) 470-1989

#### **DSJA – Policy, Training, Recruiting, TDS:**

LTC Charles Florsheim  
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Assigned JAG(S):  
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CPT Darryl Coffey  
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FIRST BRIGADE:

SJA:

LTC David Olson  
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DSJA

MAJ Grant Walsh  
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To Be Assigned as Battalion JAGs by Brigade SJA:

1. MAJ Michael Parker  
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2. 1LT Danny Wallis  
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3. 1LT Bill Harris  
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4. 1LT Myron Kimball  
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mobile: (817) 797-8337
5. 1LT Joshua Carpenter  
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## SECOND BRIGADE:

SJA:

LTC James Cooper  
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DSJA:

LTC Willie Blackmon  
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To Be Assigned as Battalion JAGs by Brigade SJA:

1. CPT Roy Moore  
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mobile: (713) 851-3597
2. 2LT Kevin Fulton<sup>83</sup>
3. (Vacant)
4. (Vacant)
5. (Vacant)

## THIRD BRIGADE:

SJA:

CPT Steve Autry<sup>84</sup>  
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DSJA:

CPT Troy Meinke<sup>85</sup>  
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mobile: (210) 867-8424

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<sup>83</sup> Pending transfer to JAG from T9.

<sup>84</sup> These individuals do not reside in the physical area of the Brigade but are designated as points of contact. They are not expected to drill in the region but will provide advice and counsel, as necessary.

<sup>85</sup> These individuals do not reside in the physical area of the Brigade but are designated as points of contact. They are not expected to drill in the region but will provide advice and counsel, as necessary.



To Be Assigned as Battalion JAGs by Brigade SJA:

1. 1LT Wayne Frost  
email: [wayne.frost@txsg.state.tx.us](mailto:wayne.frost@txsg.state.tx.us)  
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2. (Vacant)
3. (Vacant)
4. (Vacant)
5. (Vacant)

SIXTH BRIGADE:

SJA:

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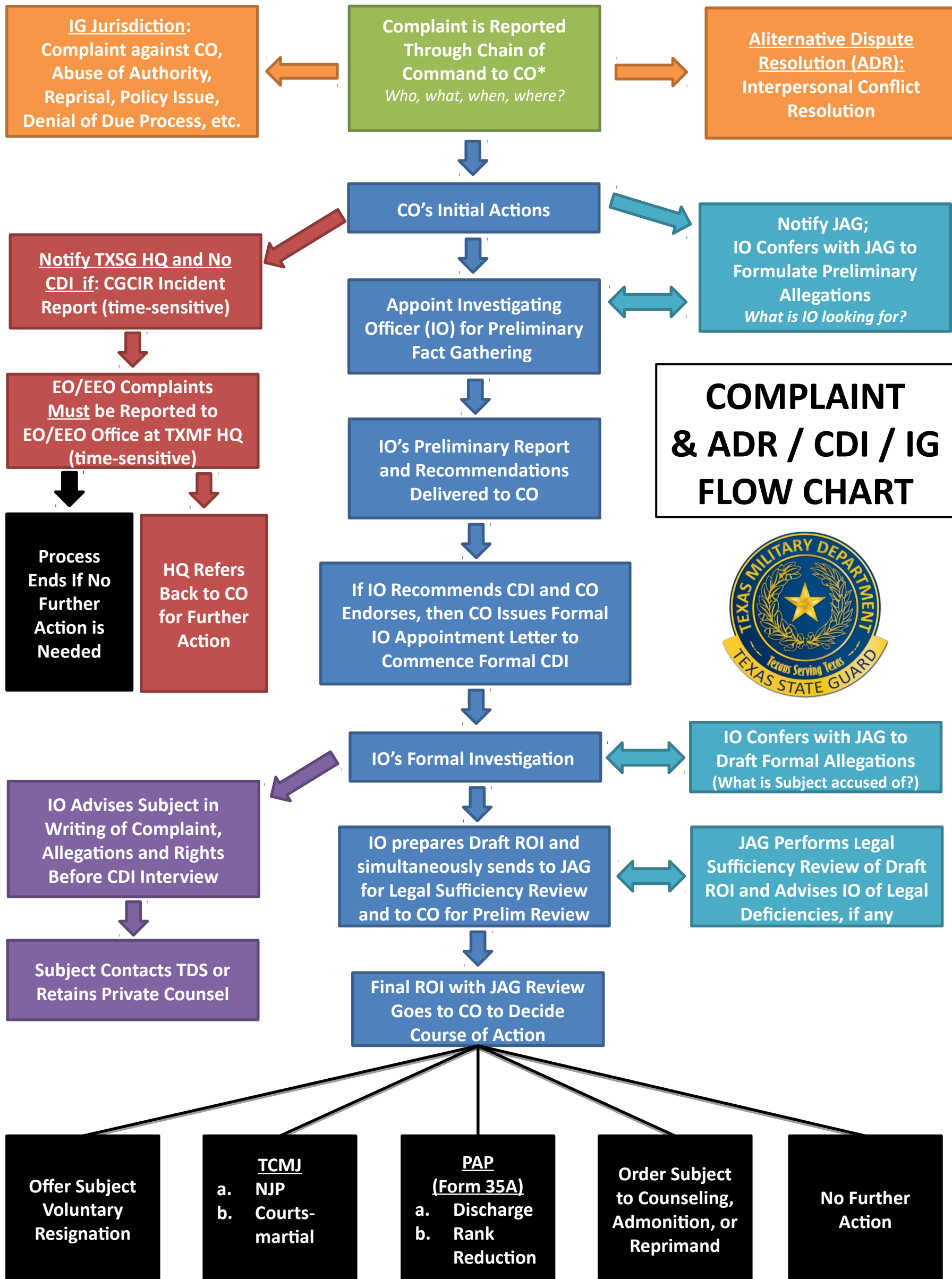
DSJA:

MAJ Ernest Garcia  
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2. (Vacant)
3. (Vacant)
4. (Vacant)
5. (Vacant)

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## D. SELECT RESOURCES

TCMJ (Texas Code of Military Justice) available at:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.432.htm>

Evaluation of Department of Defense Interaction with State Defense Forces, Inspector General, Department of Defense, Apr. 2014, pgs. 1-76.

<http://www.dodig.mil/pubs/documents/DODIG-2014-065.pdf>

Air National Guard, Commander's Legal Deskbook (July 2013), chapters 1-28.

Commander's Legal Handbook, The Judge Advocate General's Legal Center and School, United States Army (June 2013) pgs. 1-309.

<https://www.jagcnet.army.mil/8525799500461E5B/0/A1473A5772D802E385257A5E004587B3/%24FILE/Commanders%20Legal%20HB%202013.pdf>

The Military Commander and the Law, The Judge Advocate General's School, United States Air Force (Eleventh Edition, 2012), pgs. 1-722.

<http://www.afjag.af.mil/shared/media/document/AFD-120828-043.pdf>

USN / USMC Commander's Quick Reference Handbook for Legal Issues (2012), pgs. 1-120. [http://www.hqmc.marines.mil/Portals/135/Quickman\\_Sep\\_2012%5B1%5D.pdf](http://www.hqmc.marines.mil/Portals/135/Quickman_Sep_2012%5B1%5D.pdf)