

TXSG COMMANDER-DIRECTED INVESTIGATION (CDI) GUIDE



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COMMANDER-DIRECTED INVESTIGATION (CDI) GUIDE

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CHAPTER 1. INTRODUCTION

1.1 **Guide Overview.** The intent of this guide is to provide commanders and their investigative team members the information and suggestions necessary to aid them in conducting commander-directed investigations (CDIs). The guideline is intended to **help protect the integrity of the investigative process** and the individual rights of those who may be the subject of the CDI. Investigating Officers (IOs) should consult with the commander directing the investigation for specific guidance. Commanders should consult with their serving JAG regarding legal issues pertaining to the investigative process.

1.2 **U.S. Air Force CDI.** This Guide is patterned from and relies heavily upon the United States Air Force Commander - Directed Investigation (CDI) Guide. When using the attached forms the commanders or IOs should consult with their JA to insure the forms are correctly modified for TXSG use and correctly reference TMD regulations, policy and the TCMJ.

1.3 **Complaint and CDI Flow Chart.** In order to help understand the CDI process a flow chart has been created to **facilitate a visual overview** of the CDI process. The flow chart is an aide and should not be used in deference to the individual chapters and specific paragraphs as set forth in this Guide.

1.4 **Authority to Conduct CDIs.** Commanders have an **inherent authority** to conduct a CDI to investigate matters under their command, unless preempted by higher authority.

1.5 **CDI Purpose.** The CDI is a tool to gather, analyze and record relevant information about matters of primary interest to those in command. The CDI is an extension of the commander's authority to investigate and to correct problems within the command. As such, the CDI is internal to the command concerned. There are two reasons a commander may want to conduct a CDI: **to investigate systemic (or procedural) problems** or to look into matters regarding **individual conduct or responsibility**. CDIs are administrative investigations.

1.6 **Advising.** The commander and IO **should consult with** their serving **JAG** for legal questions arising **before and** during the CDI process.

1.7 **Standard of Proof.** The standard of proof for a CDI is a **preponderance of the evidence**. A preponderance of the evidence is defined as "the greater weight and quality of the credible evidence," meaning the evidence indicates that one position is more probable than the opposing position. After weighing all the evidence, the IO may substantiate a finding when the greater weight or quality of the evidence points to a particular conclusion as more credible and probable than the reverse. While the amount of evidence is something to consider, non-credible evidence will not trump a smaller amount of good evidence. Some additional things to consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events. At all times, IO's may use their own common sense, life experiences and knowledge of the ways of the world to assess the credibility of witnesses they interview.

CHAPTER 2. PRELIMINARY INQUIRY/INFORMAL INVESTIGATION

2.1 **Type Of CDI.** A command directed investigation (CDI) can either be informal/preliminary or formal. The determination of whether a CDI is informal or formal is **dependent upon the facts, issues, and circumstances involved** in the event which gives rise to the CDI process. Depending upon the event that triggers the CDI, the CDI process can be simple and quick or it can be more involved both in terms of people involved in the process, time and the actual process to be followed. The preliminary inquiry (PI) is a quick and informal investigative tool that can be used to determine initially whether a particular incident is serious enough to warrant some form of more formal CDI investigation. A PI is not necessarily required, however, it is “advised” for all incidents potentially warranting an investigation.

2.2 **Method Of Inquiry.** The appointing authority (AA) may conduct a PI personally or appoint a member of the command to do so. There are no requirements or restrictions governing how the inquiry is to be accomplished. The goal is to **take a “quick look”** at a particular incident (e.g., a minor fender-bender), and gather enough information so that an informed decision can be made by the AA regarding whether a more formal investigation is truly necessary. Generally, the PI should not take any longer than three (3) working days. If more time is required it generally means that the investigating officer (IO) is attempting to do too much or has not been sufficiently instructed as to what issue(s) is to be addressed.

Upon completion of the PI, the IO should tender a report to the AA. The PI report need not be in writing, but some form of limited documentation is advisable.

2.3 **Command Options.** Upon reviewing the results of the PI, the AA may **take one of the following actions:**

(A) **Take no further action.** Where further investigation would serve no useful purpose, there is no need to convene a more formal investigation. This is an appropriate course where the PI reveals that the incident is likely to be of little interest to anyone outside the immediate command and does not involve any notable misconduct or TCMJ violation.

(B) Take minor corrective action such **as verbal counseling**, referral to ADR or other informal corrective action.

(C) Conduct a command investigation. If the PI reveals a more serious misconduct or violation of the TCMJ or violation of other rules and regulations, the AA may determine a **formal CDI** is warranted.

(D) If appropriate, **refer the matter to the IG's** office for review and handling.

NOTE: Whenever a question exists about how a particular incident or event should be investigated, command should discuss the matter with their servicing JAG.

2.4 PRELIMINARY INQUIRY CHECKLIST FOR BOTH THE AA AND IO

The **AA should contact their servicing JAG** to discuss issues and answers to any legal questions the AA may have early on in the investigative process.

- A. AA/IO determines whether the matter is considered a **“major” incident** under the SIR/CCIR?
- B. AA determines whether this incident involves a member of the command and/or occurred within the command? If not, are you the **appropriate command** to conduct the preliminary inquiry and/or any administrative investigation?
- C. AA appoints a preliminary inquiry investigating officer (IO).
- D. IO **begins work on the inquiry immediately** upon hearing that they are to be appointed, whether or not you have received an appointing order in writing.
- E. IO determines what the purpose and **methodology** of the inquiry will be.
- F. IO determines whether this preliminary inquiry can be completed in **three working days or less**? If not, you may be trying to do too much. Further clarification from the AA may be necessary.
- G. AA/IO determines whether this incident is under investigation by the **IG or local civilian law enforcement agencies**?
- H. IO obtains any available documentation pertaining to the inquiry, i.e., copies of rules and regulations, instructions, correspondence and messages, logs, standard operating procedures, personnel records, medical records, official reports, vehicle accident report forms, etc.
- I. IO locates, preserves, and **secures evidence**, i.e., real objects (logs, firearms, bullets, etc.) and note physical locations (accident sites, etc.)
- J. IO draws up a list of possible witnesses if necessary.
- K. IO advises any military witness who may be suspected of an offense, misconduct or improper performance of duty, of his/her **rights under TCMJ 433.052**.
- L. IO conducts an **interview of any witness deemed relevant** to the inquiry, in other words, those that will provide enough information to understand what occurred and enable an informed recommendation to the AA on a future course of action.
- M. If a witness is not physically available, an interview may be conducted via telephone or message.

2.5 **Report Of Findings.** Upon completion of the PI, the IO shall report their findings to the AA **either verbally or in writing.** It is advisable that the IO document their PI although it is not necessary that the PI follow any particular written report format.

CHAPTER 3. GENERAL CONSIDERATIONS

3.1 **General Disciplinary Policy Statement.** The following is an extract of TMD policy found in TMDI 5145.01 regarding maintaining discipline and reporting action taken pursuant to the TCMJ and administrative regulations. The full text of the instruction is found at the TMD website.

3.2 **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.

3.3 **Matters Requiring Immediate Reporting.** There are also certain matters that should be referred directly and immediately to command staff for their evaluation and handling direction. These matters that require immediate reporting are sometimes referred to as **Serious Incident Reports (SIR)** or **Commanding General's Critical Information Requirements (CGCIR)**. The following is the current reporting requirements for CGCIR:

3.3.1 TXSG COMMANDING GENERAL'S CRITICAL INFORMATION REQUIREMENTS (CGCIR)

Reporting Instructions:

A. TXSG members will report **CGCIR using a SPOT** report or Serious Incident Report to the TXSG HQ J3.

1. Primary Method: E-Mail - Robert.Finley@txsg.state.tx.us
2. Alternate Method: Phone - (512) 782-5721

B.. 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:

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.

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.

3.3.2 **Self-Investigation.** 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.

3.3.3 **Investigations as an Inspector General Function.** Investigations is the IG function that provides the commander or directing authority another means through which to resolve **allegations of impropriety**. Inspectors general 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.

3.3.4 **Other Matters.** There are also other matters such as issues dealing with **EO/EEO complaints** that should be directed to the EO/EEO office at Camp Mabry, Bldg 34, Room 102 and should be reported pursuant to the CGCIR policy stated in 3.2.1.

3.4 **Completion Timelines.** The commander should establish a **specific suspense date** to have the investigation completed and annotate the suspense in the Investigating Officer appointment letter. Many CDIs are not complex and can be completed in a few days.

CHAPTER 4. CDI TEAM – QUALIFICATIONS AND RESPONSIBILITIES

4.1 **CDI Team Overview.** A successful CDI requires the efforts of several **key players: the commander, the IO, the assigned JA**, and any other subject matter experts or technical advisors (if appropriate). This chapter addresses the qualifications and responsibilities of each CDI team member.

4.2 **Commander (Appointing Authority)** TXSG commanders have the ability to initiate a CDI. The **initiating commander** is the appointing authority.

4.3 **The Investigating Officer (IO)** If the investigation has individual subjects, the IO should be **equal or senior in grade** to the most senior subject and not in their chain of command. In all cases, the IO should be mature and experienced with good writing and critical thinking skills. Generally, the IO will be a captain or higher, or senior NCO.

With commander concurrence, the IO could be selected from a different unit. This may be prudent or necessary to ensure a fair and impartial investigation. The IO should also be fully available to conduct the CDI unhampered by leave, temporary duty, separation, retirement or other commitments that would detract from the investigation. In complex cases, the commander might consider appointing an Assistant IO.

4.3.1 It is recommended that the IO:

- A. Review this guide.
- B. Review all materials provided by the appointing authority.
- C. 4.3.1.3 Review the regulations, directives, instructions, manuals and guidance relating to the allegations.
- D. 4.3.1.4 Formulate an investigative plan and proof analysis in conjunction with the legal advisor.
- E. 4.3.1.5 Coordinate with the commanders of any necessary witnesses to arrange for witness availability.

4.3.2 **Investigative Duties.** Throughout the course of the investigation, the IO:

- A. **Gathers all necessary facts**, through witnesses, documents or other items of evidence, to help the commander make an informed decision.
- B. Stays on task by investigating **only the items outlined** by the commander. If new or different issues come to light during the investigation, the IO should address these issues with the commander. The commander will decide if and how the additional issues will be treated.
- C. Consults with the **assigned JA** when potential legal issues arise.
- D. **Is professional at all times**. This requires the IO's be objective, neutral and fair. IO's should adopt a friendly, but not familiar, attitude. IO's should not disclose witness identities or opinions; deceive, browbeat, threaten, coerce, or make promises; shout, argue, lose composure, or otherwise show emotion.
- E. Treats all information gathered as part of the CDI process as For Official Use Only.

4.3.3.6 **Post-Investigative Duties**. Once the IO has gathered the evidence, the IO:

- A. Writes a **fair and balanced report** of investigation (ROI) that considers both sides of the issue, supports the "right" answer based upon the preponderance of the evidence, and sufficiently documents the deliberative process.
- B. **Organizes the ROI** case file.
- C. Can seek a **legal review** of the ROI from the servicing JAG.
- D. **Forwards the ROI** case file to the commander who directed the investigation.

4.4 **The Assigned JA**. JAs play a critical role in the CDI process.

4.4.1 **The Legal Advisor**. Pursuant to **TMDI 5145.01 5b(2)** JAs are responsible to **provide advise, guidance and training** to Commanders within their Brigade on implementing a command discipline/status of forces program. Commanders are to ensure that JAs are engaged in the command discipline program, **TMDI 5145.01 52.(3)**.

4.4.2 **JAs Engaged**. It is encouraged that JAs are engaged in the discipline process and available for consultation and advise **even prior to the initiation of an informal or informal CDI**. JAs should be available to meet with the IOs to answer any questions, if necessary. The JAs advise the IOs during the investigation, as issues may arise.

4.4.3 **Allegations**. The JAs can assist the commander in framing the allegations prior to commencement of the investigation. After the IO is appointed; and before the investigation begins, the **JAs should be available to meet with the IO** to answer any questions, if necessary. The JAs advise the IOs during the investigation, as issues may arise.

4.4.4. **Legal Sufficiency Review**. Legal Sufficiency Review. Commanders should seek a legal review of the ROI.

CHAPTER 5: INITIATING THE CDI (COMMANDER'S JOB)

5.1 **Drafting Allegations.** The most problematic and recurring issue with CDIs is improperly drafted allegations. The following discusses what allegations are, who should draft them, their constituent parts, how to draft proper allegations, why properly drafted allegations are crucial and when allegations should be drafted.

5.2 **What Is An Allegation.** Simply put, it is an **accusation** that an individual did something wrong. Allegations in the context of military justice proceedings are comprised of two elements, charges and specifications.

5.3 **Who Should Draft The Allegation.** Either the **Appointing Authority or the servicing JAG** should assume the responsibility of drafting the allegation to be included in the appointment letter. Even if the Appointing Authority assumes responsibility the serving JAG should always review the allegations before the Appointment Letter is sent to the IO. The IO should not be involved in drafting the allegations because of their duty to ascertain and impartially consider the evidence on all sides of an issue.

5.4 **Charges.** A charge is the **basis for the action** upon which discipline or other administrative action is predicated and is usually set forth in a law, regulation/rule or policy.

5.5 **Elements Of A Charge.** Charges have elements just like criminal offenses such as assault, theft or murder. Civil proceedings have jury instructions, which are similar to charges such as negligence, premises liability and other instructions, which also have elements. These **elements establish a burden of proof** and all the elements of the charge or in civil cases, the jury instructions, must be proved, if not the charge will fail or the civil action will fail. If the elements of a CDI charge are not proved, it will also fail.

5.6 **Evaluate The Evidence.** It is important to evaluate whatever evidence you have **before you determine the most appropriate charge.** The initial evidence may only be a statement from a complainant which may or may not be comprehensive or specific regarding alleged misconduct.

You should carefully analyze the initial evidence and **ask yourself:**

- A. What does this evidence, if true, **prove**?
- B. Is there **sufficient** evidence, if true, to support a charge?
- C. What are the **deficiencies** in the evidence?
- D. How would I **challenge** this evidence?

5.6.1 **Insufficient Evidence.** If there is insufficient evidence or there are deficiencies in the evidence such as lack of specificity or relevance then you may want to either **further investigate** the complaint or if the evidence is baseless on its face, to make the appropriate decision if you are the Appointing Authority or recommendation to the Appointing Authority if you are the servicing Judge Advocate.

5.6.2 **Independent Acts.** Usually independent acts **merit separate charges** however, one act may encompass more than one charge. An example would be a SM who strikes an officer and at the same time, disobeys an order.

NOTE: It is important to remember that charges must be predicated upon recognizably different reasons but often with different burdens of proof based upon the specific law regulation/rule, policy. **Do not combine charges.** Each charge should be separate and supported by it's own specifications. An exception to this statement would be multiple violations of a law, rule/regulation or policy involving the same charge for all violations.

5.7 **Specifications.** Specifications are the **specific types of facts** which set forth acts or omissions that support the charge.

5.7.1 **Types Of Specifications.** There are four types of specifications which are set forth in the CDI Guide:

A. **WHEN** did the act or omission occur, be as specific as possible with dates, times and locations. If there is some degree of uncertainty as to the exact time the specification can state on or about the times in question.

If the actions occurred during or between certain dates the specification can state between on or about the dates in question.

B. **WHO** is the subject of the charge including their full name, rank, unit and duty position. Use separate allegations when multiple subjects are alleged to have committed the same or similar misconduct.

C. **HOW** the law, regulation/rule or policy was allegedly violated, be specific.

D. **WHAT** law, regulation/rule or policy was violated. Do not combine allegations. Each allegation should address a violation of only one law, regulation/rule or policy always state the actual citation for the law, regulation/rule or policy.

Specifications need to set forth the factual incidents in **concise and unequivocal language.** You must have a specification for each and every element of your charge or the allegations will fail. Eliminate extraneous information. If something is not intended to be proven, it does not belong in the specification.

Specifications must identify the alleged acts or omissions with as much specificity as possible stating dates, times, places, names of all persons involved, units, rank and any and all pertinent documents, identifying material or equipment which may be involved.

5.8 Use Of Legal Standards And Supposition. Do not incorporate legal standards or language that characterizes the offense into your specification unless necessary under the elements of the charge and provable. Examples of **unnecessary language** that may complicate your burden of proof are deplorable conduct, frivolous action, unwarranted behavior, egregious disrespect.

There are some charges that do require the specification to use language that characterizes the action such as Sec. 432-133 Contempt Towards Governor. "A person subject to this chapter who uses contemptuous words against the governor shall be punished as a court-martial directs."

Sec. 432.159 Provoking Speeches or Gestures. "A person subject to this chapter who uses provoking or reproachful words or gestures towards another person subject to this chapter shall be punished as a court-martial directs."

Sec. 432.166 Conduct Unbecoming an Officer and a Gentleman is another example.

In all of the aforementioned examples, specific facts or statements describing the contemptuous words, provoking or reproachable words or gestures and conduct unbecoming must be set forth in the specifications.

NOTE: Suppositions should not be used in drafting the specifications, as SGT Friday said repeatedly, "just the facts mam."

5.8.1 Allegation Example. On or about XX Nov 20XX at 1500 hours (WHEN), Master Sergeant Jack Hammersmith, 4th Brigade Unit SEA; (WHO), did maltreat Staff Sergeant Standup Guy, a person subject to his orders, by repeatedly using profanity towards him (HOW), in violation of [specific TCMJ regulation] (WHAT)

5.9 Importance Of Properly Drafted Allegations. Allegations are the **single most important element** of the Appointment Letter and are crucial to the CDI process. Proper allegations help:

- A. to properly **protect the rights of the accused and accuser** and serve justice;
 - 1. Subject must know specifically what they are **being charged with** in order to defend themselves;
 - 2. The accuser/victim wants to know they are being **protected by the process**;
 - 3. Proper military justice fosters **good order and discipline**;
- B. to provide a **road map** for the IOs investigation;
- C. to help the IO determine **what evidence is needed**;
- D. to help the IO determine **what witnesses** need to be interviewed;

- E. to formulate the most expeditious and **efficient use of investigative time and resources**;
- F. to help focus the **scope of the IO's investigation**; and
- G. to help facilitate the servicing JAG's **legal review** of the report of investigation.

5.9 **Newly Discovered Facts Or Information.** If during the course of the IO's investigation new facts and evidence supporting **additional charges** or other SM's misconduct are discovered or disclosed, then the IO should immediately consult with their servicing JAG.

The servicing JAG should immediately contact the AA to discuss the new information and make recommendations on how to proceed. If new allegations are supported then an **amended or new Appointment Letter** with new and separate allegations should be written.

5.10 **When Should Allegations Be Drafted.** Allegations should be drafted when there is **sufficient evidence to support a charge or charges** and then incorporated into the Appointment Letter. Ideally the servicing JAG should be contacted when the initial complaint or misconduct is at issue.

The servicing JAG should always review the allegations and Appointment Letter regardless of when the servicing JAG is contacted. The servicing JAG should immediately contact the AA and the IO if the allegations are improper or insufficient.

NOTE: Only after the allegation(s) has been drafted should the AA complete the appointment letter. The appointment letter should never be issued until the allegations are finalized and approved by the AA.

5.11 **Forwarding Allegations.** The allegations shall be forwarded to the subject upon the completion of the appointment letter and the IO's receipt of same.

CHAPTER 6. CONDUCTING THE CDI

6.1 **Preparation Tips.** The end result of a CDI typically reflects the amount of **preparation and effort** put into the investigation. The IO's should meet with his or her legal advisor for any assistance in forming an investigative plan, determining what elements of proof are required and interview questions before initiating the investigation.

6.1.1 **Question Formulation.** IO's may **seek input from their legal advisors** when preparing interview questions for relevance, organization, thoroughness and form.

6.1.1.1 **Relevance.** The key to relevance is whether the information sought might have an **effect on the outcome** of the case. The interview questions should focus on the facts and circumstances surrounding, and leading up to, each allegation. Information that relates to the issues and concepts outlined in the proof analysis will always be relevant: when, who, to whom, how, and did what.

6.1.1.2 **Organization.** The best interviews start with background and build up to the pivotal question or issue. Ask pertinent background questions first. Work the witness toward the more difficult subjects. The recommended approach is to **review events chronologically** rather than by allegation (e.g., Thursday, then Friday, rather than allegation 1, then allegation 2). Jumping from allegation to allegation often results in skipping around in time and can be confusing. Using a chronology is helpful in keeping questions in a logical sequence.

6.1.1.3 **Thoroughness.** Thoroughness is required in all CDIs. IO's should **look beyond who, what, where, when, and how.** IO's should also address "why," whether or not motive has been specifically outlined as an element in a proof analysis.

A. Pursue an issue when there is an indication the witness has **additional information.**

B. Find the **source of second-hand information** so that first hand information may be obtained.

C. Determine the **basis for witness opinions** (i.e., A: "In my opinion, he's not a truthful person." Q: "What leads you to believe that?" A: "He lied to me three times." Q: "Explain").

D. Ask for **clarification** when answers contain technical jargon, acronyms, slang or colloquial expressions.

E. **Seek facts, not conclusions** (i.e., A: "He was drunk"; Q: "What gave you that impression?" A: "He smelled like beer, his eyes were bloodshot, he was slurring his speech and couldn't stand up without swaying").

6.1.1.4 **Form.** Let the witness tell what happened and refrain from asking questions that suggest answers. Questions that either assume the answer or leave the witness no choice but to state a particular response (yes or no) are **leading questions.** Leading questions are generally less useful in getting at the truth. While IO's may want to ask leading questions when confirming known facts or when rephrasing answer the witness previously provided, the end goal is for the witness to testify, not the IO. A sure sign of a leading question is the suffix, "Is that correct?"

6.1.1.5 **Avoid compound questions.** A compound question is one that contains **several questions in one.** Compound questions can confuse the witness and often result in one answer, making it impossible later to determine which question the witness answered (erg., Q: "Did you take Private Smith to the store with you, or did you go alone?" A: "Yeah.").

6.2 **Evidence Collection.** IO's should seek **evidence that is accurate** and, where possible, from individuals with direct knowledge. Evidence can be testimonial, physical, or circumstantial. IO's should assess and evaluate evidence while collecting it. Evidence collection often has a ripple effect - the disclosure of one piece of evidence often drives the need to confirm it, or refute it, through other evidence.

6.2.1 **Testimony.** In CDIs, the majority of evidence is witness testimony. Testimony includes **oral statements, written statements and IO summaries** of witness interviews. Testimony can be powerful, as in the case of a hand-written confession. On the other hand, testimony is based on a person's memory. Accordingly it is often incorrect or incomplete.

6.2.1.1 **Witness Availability.** IO's should work through the witnesses' commander to make the witness available for interviews. Most witnesses are willing to cooperate with an IO. In the case of an **unwilling witness**, the IO should stop the interview and consult with the JAs to determine how to proceed

6.2.1.2 **Order of Witnesses.** Each witness must be interviewed individually. The **recommended sequence** is: (1) the complainant; (2) subject matter experts; (3) regular witnesses; (4) subjects or Interviewing the subject last ensures the IO has learned the necessary information to ask the right questions. This process can also enhance truth telling as people are more likely to be truthful if they know the IO has information from others. If such interview is last, the IO can also challenge any statements that are inconsistent with other evidence. Finally, interviewing the subject last allows the IO to advise the subject of all adverse information against them and decreases the need to re-interview.

6.2.1.3 **Interview Locations.** Choosing the correct interview location in advance can prevent a myriad of problems. Choose a place that is private and secure.

6.2.1.4 **Testimony Format.** The IO can obtain testimony in a variety of formats, but **all testimony should be under oath**. Regardless of form, testimony should always include the full names, office designation, and unit for each witness.

6.2.1.4.1 **Privacy Act Notice.** Prior to the commencement of the interview process each and every witness, including the complainant and the subject of the investigation, are required to read and acknowledge the Privacy Act Statement.

6.2.1.4.2 **Under Oath.** All testimony should be taken under oath. It puts the witness on notice that the CDI is a serious matter and lets them know they could be criminally liable if they fail to tell the truth. Swearing or affirming (oath with phrase "so help you God" deleted) witnesses is simple. If a witness, previously sworn, must be re-interviewed, the IO does not need to re-administer the oath, but can simply remind the witness that they are still under oath and obtain the witness' acknowledgment that they understand.

6.2.1.4.3 **Summarized.** The IO may interview witnesses and prepare summaries of testimony. Interviews allow the IO to explore issues raised during the interview and evaluate witness credibility. It is best practice to summarize the testimony immediately following the interview and have the witness review and sign the summary that same day. The **witness and the IO should sign** the summarized statement, under oath, to certify its validity.

6.2.1.4.4 **Written Statements.** A witness' sworn statement should either be written legibly or typed. The best practice is to document written statements on a statement under oath. If a witness makes any pen-and-ink changes to their written statement, the IO should have the witness initial the change.

6.2.1.2.5 **Telephonic.** If the witnesses are unavailable for face- to face interviews but are critical to the CDI, the IO may want to arrange a telephonic interview through the witness' legal office. This allows a local JAG to administer the oath to and verify the identity of the witness. Any prepared statements, whether by the individual or the IO, can be faxed or e-mailed for signature.

6.2.1.5 **Rights Advisements.** Rights advisement for subjects, suspects or witnesses may become an issue. The IO should consult with the JAs **whenever there is a question** about whether an individual should be read their rights.

6.2.1.5.1 **Military.** The mere fact that someone is the subject of a CDI does not automatically trigger the need for a rights advisement. The test is whether the IO, at the time the active duty military subject is interviewed, either believes or reasonably should **believe the individual committed an offense** under the TCMJ, other regulation, or other criminal code. If so, then the subject or witness should be considered a suspect. The IO should advise suspects of their Section 432.052, Rights. It is important to determine the status of the service member at the time of the alleged conduct and the time of interview. Consult with the legal advisor in these cases.

6.2.1.6 **Third-Party Presence During Interviews.** An interview will **normally only involve the IO and the witness.** Sometimes a technical advisor or administrative assistant appointed to assist the IO will accompany the IO during interviews. For example, while interviewing witnesses of the opposite sex, the IO may want an assistant present to avoid any appearance of impropriety. Additionally, if the testimony of a particular witness is especially important to the investigation, the IO may want a third party present to take notes and act as a witness to what is said. Although the IO can have team members present during witness interviews, generally speaking witnesses cannot have third parties present. This section discusses how to proceed when a witness requests that a third party be present during their CDI interview.

6.2.1.6.1 **Attorneys.** **Only a suspect** has the right to have an attorney present during an interview. The attorney may not answer questions for the suspect. Witnesses and subjects may consult with their attorney, but are not permitted to have an attorney present during the interview.

6.2.1.6.2 **Other Personal Representatives.** As a general rule, third party representatives for witnesses and subjects are **not permitted** to be present during CDI interviews. The IO should consult with the legal advisor when special circumstances arise, such as a request for a crime victim to have a Victim Witness Assistance Program (VWAP) representative present or the witness is a minor.

6.2.1.7 **Confidentiality.** Communications made to the IO during a CDI are not privileged or confidential. However, the IO's disclosure of these communications (and the identity of the person who provided the information) will be limited to an **official need-to-know.** The CDI ROI will be marked "**For Official Use Only**" (FOUO) and will be released only in accordance with existing laws.

6.2.1.8 **Immunity.** General Court-Martial Convening Authorities (GMCAs) have the authority to grant **military witnesses immunity** from prosecution in exchange for providing testimony; Subordinate commanders and IO's do not have this authority. The IO should never make promises to any witness that could be interpreted as de facto immunity. An implied immunity can cause significant problems for military prosecutors. If a military witness requests immunity or some other protection as a condition to providing a statement, the IO will consult with the commander and SJA before proceeding.

6.2.2 **Physical Evidence.** Physical evidence consists of documents, computer records, photographs, and objects (e.g., tools), to name a few. IO's must ensure evidence is **properly collected, handled and secured**. For more information, IO's should contact their legal advisor.

6.2.2.1 **Objects.** Occasionally, an IO will have to collect tangible items of evidence as part of a CDI. Consider an example of a tool accountability CDI. Assume several witnesses testified that they saw five torque-wrenches with government markings in Amn Simpson's car, and the IO ultimately locates the five wrenches. The IO should work in tandem with the legal advisor to determine **how to secure and store the evidence**. The IO should obtain photographs of the wrenches to include in the ROI.

6.2.2.2 **Documents.** Documentary evidence may be in the form of handwritten notes, correspondence, reports, newspapers, inventories and computer records such as e-mails. Written documentation, if authentic, gives the IO a snapshot in time. Anytime a witness discusses a particular document during testimony, the IO should ensure the **testimony identifies the document** (e.g., "my letter, dated X, subject line "quote"). If it would be helpful, the IO can create or have witnesses create demonstrative documents to illustrate points in the investigation – demonstrative evidence. For example, the IO can have the witness diagram a location where people were standing at a given time. Other examples of demonstrative evidence include: organizational wiring diagrams, chronologies and maps. Demonstrative evidence should be labeled thoroughly and accurately.

6.2.3 **Circumstantial Evidence.** At times, the IO will need to prove the intangible, such as motive, intent or knowledge. Because the IO cannot read minds, the chance of finding "direct" evidence of such things is remote. **Circumstantial evidence is evidence that tends to prove the existence of a fact.** For example, Able may have seen Ben shoot Cain. Able could provide direct evidence about what he saw. On the other hand, Able may have walked into a room seconds after hearing a gunshot, seen Ben standing over Cain with a smoking gun, and heard Ben yell, "Die, scum!" The circumstantial case against Ben would include the gun, Ben's yell and maybe even a large insurance policy that Ben just took out on Cain's life. Circumstantial evidence can be as compelling as direct evidence.

6.2.4 **Computer Evidence.** Occasionally, an IO may want to access a subject's or witness' email or computer files for evidence of wrongdoing. Generally, real-time monitoring, such as intercepting e-mails en route to their destination, is not within the scope of a CDI. For the most part, searching information on local hard drives is not an option for an IO in a CDI. Where IO's believe a search of computer files is necessary, IO's should consult their legal advisors.

6.3 Adding New Allegations. Sometimes a **CDI may raise additional allegations**. This typically occurs during the investigation when a witness' testimony reveals additional misconduct, or when a later reviewer raises issues that were not addressed in the investigation.

6.3.1 During the Investigation. If a witness' testimony, or other evidence, raises the possibility of additional misconduct of the subject or another person, the IO should coordinate with the commander to determine whether the **additional issues will be investigated separately or as part of the on-going investigation**. If after consultation with the legal advisor, the commander expands the scope of the CDI, the appointment letter should be amended. Subjects must be advised of their alleged wrongdoing when they are interviewed. If a subject has already been interviewed, but has not been given adequate opportunity to respond to the substance of all misconduct under investigation, the subject should be informed of the new allegations and re-interviewed.

6.3.2 Post-Investigation. The more challenging scenario occurs when a later reviewer, such as the JAG conducting the legal review, discovers possible **misconduct that was not addressed** in the ROI. When this occurs, the reviewer should discuss with the IO whether the alleged misconduct was investigated, but just not documented in the case file. If such is the case, the IO can include a brief memorandum for record in the case file. If the alleged misconduct was not considered, the IO should consult with the commander to determine a course of action. If additional investigation is warranted, the commander will decide whether to reopen the CDI or consider the issue in a separate CDI. The CDI case file should include documentation as to the final disposition of the issue, typically in the ROI "Background" section.

6.4 How Much Investigation is Enough? An investigation into whether someone was absent from work may not require as much evidence as an investigation into the improper use of government funds to purchase high definition televisions. However, an IO needs **enough evidence to feel confident of the conclusion**, by a preponderance of the evidence, regardless of the seriousness of the allegation. At a minimum, IO's should interview all witnesses named by a complainant or subject, or document. Consult with your legal advisor on whether you need to interview additional witnesses or gather additional documentary evidence to satisfy the burden of proof.

CHAPTER 7. CDI REPORTING WRITING

7.1 Suggested CDI Investigative File Format. The CDI ROI must be a **stand-alone document**. All essential facts, documents, portions of regulations, interviews, etc., must be included in the report so that a reviewer can arrive at a determination without reference to information outside the report. The IO should write as if the **reader had no prior knowledge of the case**. The following is the suggested format to ensure the CDI contains everything the commander will need to make an informed decision in the case.

7.1.1 Appointment and Tasking Letters. Under this, the IO includes the original letter of appointment with Appendixs, amendments, and any tasking letters received from higher authorities referring to the case.

7.1.2 **Authority and Scope.** The IO documents his or her **source of authority** to conduct the CDI and states the purpose of the CDI. In this section, the IO also lists the allegations investigated.

7.1.3 **Background and Allegations.** The IO provides the factual background leading up to the alleged events. The most difficult part of report writing is to sort through all the information gathered, **determine which facts are important and document them** in a logical manner. In so doing, the IO must be careful to present both sides of the case, not merely those facts that support his ultimate conclusion. The IO should tie every statement in this section to at least one piece of evidence in the file, referencing its location (e.g., "MSgt Hammersmith called Amn Simpson a 'pig' and a 'loser.'" The most helpful way to present facts is in chronological order. Those who read the CDI ROI will generally be limited to the facts within, so IO's must be thorough. The facts are the heart of any case. In this section, the IO also discusses any other issues that arose during the investigation (e.g., documenting why a requested witness was not interviewed).

7.1.4 **Findings, Analysis and Conclusion.** Tab D. IO's invest significant time and effort gathering facts. Much of this effort can go unnoticed if the facts are hidden somewhere in a poorly organized ROI. One helpful method for analyzing each allegation is to **use the IFRAC method.**

7.1.4.1 **"IFRAC" Method.** This method of analytical writing **simplifies the organization** of the Findings, Analysis and Conclusion section of the ROI. (See Appendix 14, Sample Findings, Analysis and Conclusion of ROI).

7.1.4.1.1 **Issue.** The allegations, as framed by the commander, and /or the JA are the issues that the IO must resolve. IO's must address each of the commander's concerns separately. The IO should start analysis of each allegation by first typing out, word for word, the original allegation. The wording of the allegation drives the analysis. Do not combine allegations in an attempt to simplify the process. For example, a CDI involving maltreatment would begin as follows:

7.1.4.1.2 **Allegation.** On or about XX Nov 20XX, Master Sergeant Jack Hammersmith, Superintendent, 1st Contracting Squadron, did maltreat Senior Airman Standup Guy, a person subject to his orders, by using profanity towards him and calling him derogatory names, in violation of sec 432.138 TCMJ.

7.1.4.1.3 **Facts.** After identifying the issue, the IO should **discuss the key facts**, *relevant to the particular allegation at hand*, from the more comprehensive Background section. In most cases, there will be evidence to support two entirely different conclusions — substantiated and not substantiated. The IO must take great pains to present the full story. As noted above, the IO should tie every statement of fact to at least one piece of evidence cited in the case file. (e.g., "MSgt Hammersmith called Amn Simpson a "pig" and a "loser." (Tabs F-1, p.3; F-5, p. 6; and G-6)

7.1.4.1.4 **Rules.** Once the issue and facts have been identified, the IO must next **focus on the applicable rules** or "law" for guidance in resolving the issue. These rules come from sources such as the TCMJ, 600-10 regulations, and policies (administrative decisions, local policy letters, etc). The IO should document the relevant portions of the rules.

NOTE: Generally, IO's will want to *quote* the applicable portions of the instruction, including any definitions, **verbatim from the source**. Summarizing rules can be dangerous, as many of them were carefully crafted so they would have the desired impact. In cases involving TCMJ offenses, the IO should document the elements of the offense, as found in the Manual for Courts-Martial (MCM). In our example involving MSgt Hammersmith, the report might look like this:

7.1.4.1.5 **Analysis.** In the analysis section, the IO **takes the rules of law and applies them to the facts** to resolve the issues. This requires analytical thinking. The IO considers the facts surrounding the issue, assesses preponderance of the evidence and explains *why* he sees it that way. The reader must be able to follow the IO's thought process. When finished reading the ROI, the commander should feel comfortable that it is complete and that the conclusion follows from the facts presented. To ensure the ROI is thorough, fair and balanced, the IO should keep in mind the "Three C's" of analytical thinking and writing: *credibility, corroboration, and clarity*. Analysis requires more than just listing the facts and leaping to a conclusion. It requires a window into the IO's mind. The reader needs to appreciate *why* the IO weighed some items of evidence more heavily than others.

7.1.4.1.6 **Credibility.** When there are opposing sides of a story, in assessing the preponderance of the evidence, the IO must **document a credibility determination**. This may require the IO to assess, and comment upon:

- * Witness demeanor (hostile, at ease?)
- * Nonverbals
- * Bias (best friends with the subject or mortal enemies?)
- * Motive to lie (personal interest in the matter or disinterested?)
- * Knowledge (personal knowledge or second hand?)
- * Perception (located next to the person or vision partially blocked?)
- * Veracity (character for truthfulness or a reputed liar?)
- * Any other information that may affect credibility (corroboration is discussed below.)

Documenting credibility determinations cannot be reemphasized without further explanation, the reader only has testimony and exhibits to review. Only the IO will have the opportunity to assess the witness' appearance and behavior during the investigation. Checklist for an example of an IO's credibility assessment).

7.1.4.1.7 **Corroboration.** When testimony is corroborated by other credible evidence or testimony, witness credibility is greatly enhanced. **The IO should always discuss evidence that supports, or does not support**, witness testimony. With substantial agreement of the evidence, the IO's conclusions have a sound basis.

7.1.4.1.8 **Clarity. Clarify contradictions** before finalizing the investigation. Whenever abbreviations or terms are used for the first time, spell them out or explain them. Avoid the use of slang, unfamiliar jargon, or obscene and profane language unless it is necessary.

7.1.4.1.9 **Conclusion. Each allegation should be answered in a separate finding** that states whether it was substantiated or not substantiated. If the evidence is in conflict and cannot be reconciled, that simply means that the facts did not satisfy the proof by a preponderance of the evidence standard and therefore, the allegations could not be substantiated. The IO should wrap up by *briefly* stating the reasons for the conclusion. For example, the conclusion can state, "The preponderance of credible evidence indicates that MSgt Hammersmith called Amn Simpson a "(bleep)ing pig" and a "dog" and hit him on the head five times during a staff meeting. I find Allegation 1 to be SUBSTANTIATED." The IO should also identify any mitigating or extenuating circumstances in this section of the report, especially if someone committed wrongdoing, but did so unintentionally. It would also be important to know if the individual already rectified the situation.

7.1.5 **Recommendations.** Tab E. If the commander desires recommendations for corrective action, the IO will be tasked in the appointment letter. Do not make recommendations unless specifically directed. If the IO was not tasked to provide recommendations, but feels it would be appropriate to do so, the IO should discuss the issue with the commander and request permission to include recommendations. Recommendations should be tied to the findings and stated as succinctly and objectively as possible. IO's should not recommend specific punishments or administrative actions. **Recommendations are not binding on the commander.**

7.1.6 **Testimony.** Tab F. The IO should first include an index of witnesses and tab each witness' sworn testimony in the order listed.

7.1.7 **Evidence.** Tab G. The IO should first include an index of evidence and tab each evidentiary item in the order listed.

7.1.8 **Technical Reviews.** Tab H. If no technical review was conducted, place a paper in this tab that says, "None." Otherwise, tab all technical reviews in the same order in which they are referenced in the CDI ROI.

7.1.9 **Legal Review.** Tab I. The IO should simultaneously send the draft ROI to their JA for a legal sufficiency review and to the CO for a preliminary review. The commander's servicing legal office will normally review the CDI. Reviews will be completed in accordance with JA policies and procedures. At a minimum, a legal review should include a discussion and assessment of whether:

- * Each **allegation has been addressed**
- * IO applied preponderance of the evidence standard **findings of fact are supported by the evidence** included in the report of investigation
- * **Conclusions** are consistent with the findings of fact and **supported by the preponderance of the evidence**

* **Errors or irregularities** (if any) render the investigation legally insufficient

JAGS should not deem a ROI "legally insufficient" merely because they personally disagree with the IO's findings and conclusions. The reviewing JAG can, if necessary, document their disagreement, while still deeming the ROI "legally sufficient." **JAGs should use great caution not to substitute their judgment for that of the IO**, particularly in cases where the ROI contains thoroughly documented credibility determinations and the preponderance of the evidence could reasonably support the IO's findings. Where the reviewer concludes the preponderance of the evidence does not support the IO's findings, the reviewer should explain whether additional investigation could help the IO meet the burden of proof.

7.1.10 **Commander (appointing authority) Approval and Actions.** Tab J. Upon receipt and review of the entire CDI case file, including the legal review, the initiating commander **either "approves" or "disapproves" the CDI**, in writing. If the commander disagrees with one or more of the CDI's findings and conclusions, the commander will document the rationale for the disagreement and final determination on the matter (substantiated or not substantiated) in writing. An "addendum" to the ROI is the best method of documenting disagreement, rationale, and final determination for the case file.

7.1.11 **Administrative Documents.** Tab K. Include any documents that do not otherwise fall into one of the other tabs, such as witness invitation letters, delay requests and extensions, etc.

7.2 **Report Markings.** Mark "**For Official Use Only**" (FOUO) at the top and bottom of each page. Mark all documents provided by the complainant during the course of the investigation as "**COMPLAINANT PROVIDED**" in the lower right-hand corner of each page. Classify reports according to the policies and procedures contained in security regulations. Control the number and distribution of copies. **IOs will not provide draft or final copies of the CD/ ROI, or disclose the IO's opinion, to complainants, subjects, suspects, or witnesses for any purpose.**

CHAPTER 8. POST-REPORT ACTIONS

8.1 **Closure With Subjects, Suspects, and Complainants.** The commander makes final notification of the CDI results to the, complainant (if any) and subject and subjects counsel if represented, either verbally or in writing. Remember - the Privacy Act applies.

8.2 **Use of Results in Adverse Administrative Actions.** The information obtained in a CDI, including an IO's findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated as a subject or suspect. Commanders should consult their JAG prior to notifying any service member of contemplated adverse action.

8.3 TCMJ Record of Proceedings. Following an adverse administrative action, the commander should prepare an Updated Record of Proceedings Under Section 15 (TMD Form 10, FEB 2019). Reporting format must follow the Command Discipline Program Report, as required by the Command Discipline / Status of Forces Program. Brigade/Wing commanders should post the record of proceedings on the designated armory bulletin board.

8.4 Reporting Record of Proceedings. Brigade/Wing JAs are to collect record of adverse administrative actions via TMD Form 10 (FEB 2019) and submit them quarterly through their senior JA to the OGC at nq.tx.txarng.list.general-counsel-office1@mail.mil. Brigade/Wing JAs are responsible for tracking, collecting, and submitting all Actions and reportable information to the OGC.

CHAPTER 9 - POST CDI PROCESS

9.1 Approval/Disapproval of IO Findings. After the CDI has been concluded and the commander has reviewed the IO's entire investigative file, including the findings, conclusions and recommendations, it is then the commander's responsibility to approve the IO's findings and recommendations, request additional information to consider alternative action, conclude the CDI without further action, and forward the final conclusions to the subject and their counsel if represented.

9.2 Form 35. Should the commander determine the CDI's findings and conclusions warrant discharge or rank reduction action, the commander shall complete a Form 35 and indicate the action requested. The commander should also indicate the requested **re-entry code** on the Form 35 or in writing and the discharge characterization of service being recommended. The following are the current TXSG re entry codes:

Code	Definition
RE-1	Applies to: Person completing their term of service with an acceptable standard of conduct. Eligibility: Fully qualified to reenter the Texas State Guard
RE-2	Applies to Individuals separated for personal reasons. Eligibility: Ineligible to enlist unless waiver is granted.
RE-3	Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation due to medical reasons. Eligibility: Ineligible to enlist unless waiver is granted.
RE-4	Applies to: Person separated from last period of service due to serious misconduct. Eligibility: Ineligible unless a waiver is granted.

9.3 Forwarding File. The entire file, including the Form 35 should be forwarded to Headquarters for review and further action.

CHAPTER 10 – COMMANDER’S DISCHARGE AND RANK REDUCTION PROCEDURES

10.1 Commander’s Discharge Procedures

In the event a commander who is authorized to discharge a member determines to request a discharge of a member with any discharge characterization other than Honorable Discharge and RE-code of RE-1 **shall conform to the following procedures** prior to submitting such Discharge Request. The Form 35 request shall be reviewed and approved in the following order: The initiating authority (or successor), the Brigade 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).

The following procedures shall be followed prior to submitting such Discharge Request:

a. The commander will **give written notice (“Discharge Notice”)** in the form and substance as set forth herein 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’s 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 the characterization of the discharge if other than an Honorable Discharge and/or the discharge code if other than an RE-1, not to discharge itself.**

b. The Notice of Appeal to be filed by a member who determines to appeal the Discharge Request is set forth herein. Such Notice of Appeal is to be an Appendix 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.

c. 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**.

d. 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.

e. **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.

f. **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.

g. The commander will proceed in accordance with the Superior Commander's Determination.

10.2 Commander's Reduction Procedures

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 shall be followed prior to submitting such Rank Reduction Request:

a. The commander will **give written notice ("Rank Reduction Notice")** in the form and substance is set forth herein 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's 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.

- b. The Notice of Appeal to be filed by a member who determines to appeal the reduction is set forth herein. Such Notice of Appeal is to be an Appendix 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.
- c. 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**.
- d. 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.
- e. **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**.
- f. **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.
- g. The commander will proceed in accordance with the Superior Commander's Determination.

Discharge Notice for Commander's Discharge Procedures

DISCHARGE NOTICE

Name, Rank

Last 4 SSN

Unit

1. I am considering (i) recommending that you be discharged from the Texas State Guard, (ii) with a _____ Discharge, and (iii) a discharge code of RE-____ ("Discharge Request").

2. The reasons for this recommended action are:

3. Any written documentation that I have considered in making this recommendation is attached to this Discharge Notice and are as follows:

4. With regard to my contemplated recommendation, you are entitled to appeal my contemplated recommendation as to the [type of discharge] [and/or] [the discharge code] I have recommended ("Appeal") by delivering written notice of such appeal ("Notice of Appeal") in the form and substance of that attached hereto, to me and to your next superior commander, _____ ("Superior Commander") within five (5) calendar days following your receipt of this Discharge Notice. You have no right to appeal the determination to discharge you. Once the Notice of Appeal is received, I shall not proceed with seeking your discharge pending further review of the Commander's determination regarding the Appeal ("Commander's Determination") and will forward copies of all documentation related to the discharge proceeding to the Superior Commander within ten (10) calendar days of my receipt of the Notice of Appeal. You shall have the right to file a written response to the Discharge Notice with any supporting documentation with the Superior Commander ("Written Presentation") within fourteen (14) calendar days following delivery of the Notice of Appeal to both me and the Superior Commander. No personal presentation shall be provided.

5. The Superior Commander shall consider the Appeal as well as any other documentation that the Superior Commander deems necessary and appropriate relating to you and the proposed action and make a final determination regarding the Discharge Notice within fifteen (15) calendar days following the Superior Commander's receipt of such Written Presentation, or, if no Written Presentation is received, within thirty (30) calendar days after receipt of the Notice of Appeal by the Superior Commander, whichever day occurs first. The Superior Commander's Determination will be final. The Superior Commander will give written notice of the Superior Commander's Determination to both you and me. I may thereafter proceed in accordance with the Superior Commander's Determination.

6. You have the right to consult with and be represented by legal counsel having the qualifications prescribed under Section 432.046(b), TCMJ. The contact number for Texas State Guard Trial Defense Services is _____.

7. In the event you, after being given this Discharge Notice, fail to deliver a Notice of Appeal within the prescribed time, you shall be deemed to have waived any rights to appeal the Discharge Request. Unless and until there is waiver of the right to appeal or there is a final determination regarding any Appeal, I will not proceed with the Discharge Request. I may thereafter proceed in accordance with the Superior Commander's determination.

Date Commander's Name, Grade, Organization Signature

I acknowledge receipt of this Discharge Notice on the ____ day of _____, 20____.

Date Member's Name, Grade, Organization Signature

Rank Reduction Notice for Commander's Rank Reduction Procedures

RANK REDUCTION NOTICE

- | Name, Rank | Last 4 SSN | Unit |
|------------|------------|------|
|------------|------------|------|
1. I am considering recommending that you be reduced in rank to the rank of _____ in the Texas State Guard ("Rank Reduction Request").
 2. The reasons for this recommended action are:
 3. Any written documentation that I have considered in making this recommendation is attached to this Rank Reduction Notice and are as follows:
 4. With regard to my contemplated recommendation, you are entitled to appeal my contemplated recommendation as to the rank reduction that I have recommended ("Appeal") by delivering written notice of such appeal ("Notice of Appeal") in the form and substance of that attached hereto, to me and to your next superior commander, _____ ("Superior Commander") within five (5) calendar days following your receipt of this Rank Reduction Notice. You have no right to appeal the determination to reduce you in rank. Once the Notice of Appeal is received, I shall not proceed with seeking your reduction in rank pending further review of the Commander's determination regarding the Appeal ("Commander's Determination") and will forward copies of all documentation related to the reduction in rank proceeding to the Superior Commander within ten (10) calendar days of my receipt of the Notice of Appeal. You shall have the right to file a written response to the Rank Reduction Notice with any supporting documentation with the Superior Commander ("Written Presentation") within fourteen (14) calendar days following delivery of the Notice of Appeal to both me and the Superior Commander. No personal presentation shall be provided.
 5. The Superior Commander shall consider the Appeal as well as any other documentation that the Superior Commander deems necessary and appropriate relating to you and the proposed action and make a final determination regarding the Rank Reduction Notice within fifteen (15) calendar days following the Superior Commander's receipt of such Written Presentation, or, if no Written Presentation is received, within thirty (30) calendar days after receipt of the Notice of Appeal by the Superior Commander, whichever day occurs first. The Superior Commander's Determination will be final. The Superior Commander will give written notice of the Superior Commander's Determination to both you and me. I may thereafter proceed in accordance with the Superior Commander's Determination.

6. You have the right to consult with and be represented by legal counsel having the qualifications prescribed under Section 432.046(b), TCMJ. The contact number for Texas State Guard Trial Defense Services is _____.

7. In the event you, after being given this Rank Reduction Notice, fail to deliver a Notice of Appeal within the prescribed time, you shall be deemed to have waived any rights to appeal the Rank Reduction Request. Unless and until there is waiver of the right to appeal or there is a final determination regarding any Appeal, I will not proceed with the Rank Reduction Request. I may thereafter proceed in accordance with the Superior Commander's determination.

Date Commander's Name, Grade, Organization Signature

I acknowledge receipt of this Rank Reduction Notice on the ____ day of _____, 20__.

Date Member's Name, Grade, Organization Signature

Notice Of Appeal of Discharge

NOTICE OF APPEAL

(Date)

TO: (Name of Superior Commander Named in Discharge Notice)

SUBJECT:

1. I acknowledge receipt of the Discharge Notice dated _____ (“Discharge Notice”) on _____.
2. I request to appeal my proposed discharge from the Texas State Guard regarding [the type of discharge] [and/or] [the discharge code] I am to be given.
3. I acknowledge that I have the right to provide you with a written response to the Discharge Notice with supporting documentation, if any, (“Written Presentation”) which must be provided to you within fourteen (14) calendar days following delivery of this Notice of Appeal to you.
4. I acknowledge that if I fail to provide the Written Presentation within the time period set forth above, I shall be deemed to have waived any rights to present such matters.
5. I acknowledge that your determination regarding my discharge is a final determination and I shall have no right to appeal your determination.
6. I acknowledge that I have the right to consult with and be represented by legal counsel as set forth in the Discharge Notice.

(signature of individual)

(printed name and grade of individual)

cc: (Name of Commander issuing the Discharge Notice)

Notice to be Attached to Discharge Notice

Notice Of Appeal of Rank Reduction

NOTICE OF APPEAL

(Date)

TO: (Name of Superior Commander Named in Rank Reduction Notice)

SUBJECT:

1. I acknowledge receipt of the Rank Reduction Notice dated _____ (“Rank Reduction Notice”) on _____.
2. I request to appeal my proposed rank reduction that I am to be given.
3. I acknowledge that I have the right to provide you with a written response to the Rank Reduction Notice with supporting documentation, if any, (“Written Presentation”) which must be provided to you within fourteen (14) calendar days following delivery of this Notice of Appeal to you.
4. I acknowledge that if I fail to provide the Written Presentation within the time period set forth above, I shall be deemed to have waived any rights to present such matters.
5. I acknowledge that your determination regarding my rank reduction is a final determination and I shall have no right to appeal your determination.
6. I acknowledge that I have the right to consult with and be represented by legal counsel as set forth in the Rank Reduction Notice.

(signature of individual)

(printed name and grade of individual)

cc: (Name of Commander issuing the Rank Reduction Notice)

Notice to be Attached to Rank Reduction Notice

IO APPOINTMENT LETTER

FOR OFFICIAL USE ONLY

On's Commander's Letterhead

Date

(simulated 4 lines between date and header)

MEMORANDUM FOR _____

FROM:___/CC

SUBJECT: Commander Directed Investigation (CDI) (Do not include the Complainant or Subject's names)

1. You are appointed to conduct a CDI into all aspects of the facts and circumstances concerning the following allegation(s). This is your primary duty (no leave, temporary duty, or other duties) unless expressly discussed and permitted by me, until completion of this duty and submission of a legally sufficient report.

2. **First Allegation**. On or about 1 September 2019, SFC Snuffy Smith, the acting S1 for the 5th Brigade, 1st Battalion failed to obey a lawful order given to him by LTC Dudley Doowright, the HQ staff SI in violation of the TCMJ 432.137.

3. **Second Allegation**. On or about 1 September 2019, SFC Snuffy Smith, the acting S1 for the 5th Brigade, 1st Battalion behaved with disrespect towards LTC Dudley Doowright, the HQ staff S1, his superior officer, by comparing LTC Doowright's looks to that of a horned frog in violation of the TCMJ 432.134.

4. In conducting the CDI, follow the guidance in the *Commander Directed Investigation Guide*. Prepare and submit me a report of investigation in the format it describes. Submit the report to me by _____, unless I grant a written extension. (*Optional: Include recommendations you deem appropriate, in your request.*)

5. You will meet the _____ (*JAG name and contact information*), your designated legal adviser for purposes of this CDI, prior to beginning your investigation.

6. You may not release any information related to this investigation without my prior approval. This letter and the attached documents are marked FOR OFFICIAL USE ONLY and contain information that must be protected under the Privacy Act.

JOHN SMITH, Colonel, TXSG
Commander

cc:

(JAG name) _____ FW/JA

(Technical Advisor, if applicable)

(Assistant IO, if applicable)

(Administrative Assistant, if applicable)

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