Puerto Rico State Guard
Regulation 15-6

Boards, Commissions, and Committees

Procedure for Administrative Investigations and Board of Officers

Headquarters
Puerto Rico State Guard
Guaynabo, PR 00968
4 December 2024

UNCLASSIFIED

SUMMARY of CHANGE

Puerto Rico State Guard Regulation 15-6

Procedure for Administrative Investigation and Board Office.

o This is a New Regulation dated: 4 December 2024—

o This Regulation replaces all previous Procedures for Administrative Investigations and Boards of Officers guidance stated in previously published Puerto Rico State Guard Command Regulations.

Office of the Commanding General
Puerto Rico State Guard Command
Tabonuco #2 GAM Tower
Guaynabo, PR 00968
10 June 2024

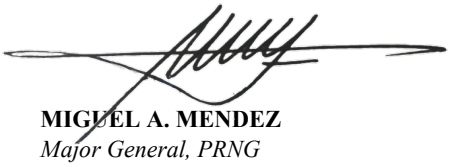
Puerto Rico State Guard
Regulation 15-6

Effective: 4 December 2024

Boards, Commissions, and Committees

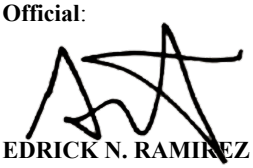
Procedure for Administrative Investigation and Board Officer

By Order of the Adjutant General
of the Puerto Rico National Guard



MIGUEL A. MENDEZ
Major General, PRNG
The Adjutant General

Official:



EDRICK N. RAMIREZ
Brigadier General, PRSG
Commanding General

History. This regulation is a new regulation.

Summary. This regulation provides guidance and procedures for Administrative Investigations and boards of officers.

Summary. This regulation establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established or as supplemented by Puerto Rico Military Code, Century XXI, Law 88, August 8, 2023 or other Puerto Rico State Guard Command regulations, instruction or directives.

Applicability. This regulation applies to all components of the Puerto Rico State Guard Command.

Proponent and Exception Authority. The proponent of this regulation is the Commanding General of the Puerto Rico State Guard Command. The proponent has the sole authority to approve exceptions to this regulation that are consistent with laws and regulation. This regulation does not contain management control provisions.

Supplementation. Supplementation of this regulation on Procedure for Administrative Investigation and Board Officer outside of the authority dictated by this regulation is prohibited without prior approval from the PRSG Commanding General, through the J1 ATTN: Tabonuco #2 GAM Tower Guaynabo, Puerto Rico 00968 Contact Number 1-787-731-3633 Ext. 1464.

Suggested Improvements. Users are invited to send comments and suggested improvements concerning this regulation on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly through the J1, PRSG available at mail: regulations@prsg.us Tabonuco #2 GAM Tower Guaynabo, Puerto Rico 00968 1-787-731-3633 Ext.1464.

Distribution. This regulation is available in electronic media only and is intended for Puerto Rico State Guard Command.

Distribution. A

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Chapter 1
General

1-1. Purpose. This regulation establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established or as supplemented by Puerto Rico Military Code, Century XXI or other Puerto Rico State Guard Command (PRSG) regulations, instruction or directives. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another regulation or directive, but in that case, its provisions are not mandatory.

1–2. References
See appendix A.

1–3. Explanation of abbreviations and terms
See the glossary.

1–4. Responsibilities
See chapter 2.

1–5. Other governing regulations
This regulation, or any part of it, may be made applicable to investigations or boards that are authorized only by another PRSG regulation or directive, but only by specific incorporation by that regulation or directive, or in the memorandum of appointment. In case of a conflict between the provisions of this regulation, when made applicable to an investigation or board that is authorized by another regulation or directive, and the provisions of the specific regulation or directive authorizing the investigation or board, the latter will govern. This regulation does not prescribe procedures for criminal investigations, which are governed under the Puerto Rico National Guard regulations or directives. Serious offenses are to be investigated by Criminal Investigation or the civilian authorities. It also does not prescribe procedures for investigations conducted by the Military Police, Security Forces or by the Inspector General personnel under the provisions of the Puerto Rico Military Code, Century XXI. The appointed authorities will consult their servicing Chief Judge Advocate (CJA) or legal advisor when determining the appropriate procedure to conduct fact-finding into a particular matter.

1–6. Types of procedures
a. General.
There are three types of fact-finding or evidence-gathering procedures under this regulation: *preliminary inquiries, administrative investigations,* and *boards of officers*. Proceedings conducted pursuant to chapter 4 are preliminary inquiries. Proceedings involving a single investigating officer (IO), with or without assistance from assistant IOs, that use the informal procedures delineated in chapters 5 and 6, as applicable, are designated administrative investigations. Proceedings involving one or more IOs that use formal procedures are designated a board of officers.

b. Preliminary inquiries.
A preliminary inquiry is a procedure used to ascertain the magnitude of a problem, to identify and interview witnesses, to summarize or record witnesses' statements, to determine whether an investigation or board may be necessary, or to assist in determining the scope of a subsequent investigation. An appointing authority may conduct a preliminary inquiry personally or may appoint an inquiry officer orally or in writing. The inquiry will be accomplished in accordance with guidance provided by this regulation.

c. Choosing between an administrative investigation and a board of officers.
(1) In determining whether to conduct an administrative investigation or a board of officers, the appointing authority will consider, among others, the following factors:
(a) Purpose for initiating fact-finding.
(b) Seriousness of the subject matter.
(c) Complexity of issues involved.
(d) Need for documentation.

(e) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being, investigated.
(f) Mandates of other applicable regulations or directives.
(g) Resources available in the Puerto Rico State Guard Command (PRSG) or Puerto Rico National Guard (PRNG).
(2) Regardless of the purpose of the investigation or board, the selection of one particular procedure is not mandatory, unless required by other applicable regulations or directives or directed by higher authority.
(3) In determining which procedure to use, the appointing authority will seek the advice of his or her servicing CJA or legal advisor. Although the appointing authority's natural instinct will likely be to ascertain all pertinent facts as quickly as possible, initiating investigations without first consulting a legal advisor may be counterproductive and actually work against the interests of the appointing authority, the command, and the PRSG.
d. Concurrent investigations. An administrative fact-finding or evidence-gathering procedure, whether designated as an administrative investigation or a board of officers, may be conducted before, concurrently with, or after an administrative investigation or board of officers, into the same or related matters by another command or agency. This most commonly occurs when other regulations prescribe a collateral investigation using procedures for investigations contained in this regulation. Appointing authorities, IOs, and boards will ensure that procedures under this regulation do not hinder or interfere with:
(1) A concurrent investigation or board directed by higher headquarters.
(2) A counterintelligence investigation.
(3) A safety investigation, or
(4) An investigation being conducted by a criminal investigative organization. In cases of concurrent or subsequent investigations, coordination with the other command or agency will be made to avoid duplication of investigative effort, where possible.

1–7. Allegations against senior officials

Generally, only The Adjutant General of the Puerto Rico National Guard may authorize or direct an investigation into allegations or incidents of improprieties or misconduct by general officers. The Commanding General of the PRSG may authorize or direct investigations on allegations or incidents of improprieties or misconduct by colonels or promotable Colonels (O-6) Investigations involving allegations against such senior officials must be processed in accordance with this regulation if not established by other PRSG regulation on the same matter. In the event an IO or board encounters allegations against a senior official, the IO or board president will coordinate with the assigned legal advisor as to the procedures for notifying the Investigations to the Commanding General of the Puerto Rico State Guard Command.

1–8. Function of preliminary inquiry, administrative investigation, and board of officers

The primary function of any preliminary inquiry, administrative investigation, or board of officers is to ascertain facts, document and preserve evidence, and then report the facts and evidence to the approval authority. It is the duty of the IO or board to thoroughly and impartially ascertain and consider the evidence on all sides of each issue, to comply with the instructions of the appointing authority, to make findings that are warranted by the evidence, and, where appropriate, to make recommendations to the approval authority that are consistent with the findings. In addition to addressing the questions specified by the appointing authority in the appointment memorandum, the IO or board should address larger issues, such as policies, procedures, doctrine, training, resourcing, and leadership, whenever the IO or board determines that those issues are relevant to the matters or conduct under investigation.

1–9. Interested persons

Appointing authorities may use investigations and boards to obtain information necessary or useful in carrying out their official responsibilities. The fact that an individual may have an interest in the matter under investigation, or that the information may reflect adversely on that individual, does not entitle an individual to a hearing or require designating the individual as a respondent.

1–10. Designation as a respondent in a board and requirement to initiate a suspension of favorable personnel actions

The appointing authority may designate one or more persons as respondents when using board procedures. Such a designation has significant procedural implications. Respondents will not be designated in preliminary inquiries or administrative investigations. A suspension of favorable personnel actions (flag) must be initiated against a member of the PRSG who is designated as a respondent in a board in accordance with PRSG Regulations. In addition, the board president must inform the appointing authority and the PRSG member's commander whenever a Soldier or Airman, who is not a designated respondent, becomes a suspect during board proceedings.

1–11. Requirement to initiate a suspension of favorable personnel actions in preliminary inquiries and administrative investigations.

In accordance with PRSG Regulation 600-10, Personnel and Administrative Procedures, a suspension of favorable personnel actions (flag) must be initiated against a Soldier or Airman when military authorities under the PRSG initiate any investigation or inquiry that may result in disciplinary action or loss of the Soldier's or Airman's rank, pay, or other privileges. If the appointing authority possesses evidence, before directing the inquiry or investigation, indicating that a Soldier or Airman involved is a subject or suspect, or may receive disciplinary action, the appointing authority will ensure the Soldier's or Airman's commander flags him or her. Inquiry officers and IOs must notify the appointing authority and the PRSG member's commander, when a flag is required due to a Soldier or Airman becoming a suspect or subject during the course of an inquiry or investigation. A suspect or subject of an inquiry or investigation is not a designated respondent, and the procedural requirements set forth in this regulation do not apply.

1–12. Use of results of preliminary inquiries, administrative investigations, and boards of officers in adverse administrative actions

a. This regulation does not require that a preliminary inquiry, administrative investigation, or board of officers be conducted before taking adverse administrative action, such as relief for cause, against an individual. The evidence gathered during an inquiry, investigation, or board conducted under the provisions of this regulation may be used in any administrative action against an individual, regardless of the particular procedures used, and regardless of whether that individual was a subject or designated as a respondent.

b. Except as provided in subparagraph e, below, when adverse administrative action is contemplated against a Soldier or Airman of the PRSG, including one designated as a respondent, based upon information obtained as a result of a preliminary inquiry, administrative investigation, or board of officers conducted pursuant to this regulation, the appropriate military authority must observe the following minimum safeguards before taking final action against the individual:

(1) Notify the PRSG Member, in writing, of the proposed adverse action and provide a copy, if not previously provided, of those parts of the findings and recommendations of the inquiry, investigation, or board and the supporting evidence gathered during the proceeding upon which the proposed adverse action is based. This release of information must comply with state and/or federal laws and regulations.

(2) Give the PRSG member a reasonable opportunity, no less than 10 days, to reply, in writing, and to submit rebuttal matters.

(3) Review and evaluate any matters submitted by the Soldier or Airman.

c. Other than as directed in this regulation, there is no requirement to refer the inquiry, investigation, or board to the individual if the adverse action contemplated is prescribed in regulations or directives that provide procedural safeguards, such as notice to the individual and an opportunity to respond.

d. When the inquiry, investigation, or board is conducted pursuant to this regulation and the contemplated administrative action is prescribed by a different regulation or directive with more stringent procedural safeguards than those outlined in subparagraph c, above, the more stringent safeguards must be observed.

1-13 Immunity for Official Acts

Any member of the Military Forces of Puerto Rico who acts as appointing authority or investigates or is a board of officers' member or decides or counsels or acts upon information gathered or reviews or takes any action under this regulation may be entitled to the immunity, representation, benefits and/or coverage granted by Act. No. 104, June 29, 1955, as amended.

Chapter 2

Responsibilities - Investigations and Boards

Section I

Appointing Authority

2–1. Appointment authority

a. Authority to appoint a board. Except as described in subparagraph b, below, the following individuals may appoint boards of officers to inquire into matters within their areas of responsibility:

(1) The Adjutant General (TAG).

(2) The Commanding General (CG) of the PRSG.

(3) Any General Officer/Flag Officer.

(4) Any commander, deputy commander, or special, personal, or principal staff officer in the rank of colonel (lieutenant colonel may appoint if assigned to a slot authorized a colonel) or above at PRSG JFHQ, the installation, activity, or unit level. As used in this paragraph, principal staff officers include individuals assigned to the following positions: Chief of Staff, Executive Officer, Deputy Commanding Officer, J–1/S–1, J–2/S–2, J–3/S–3, and J–4/S–4.

(5)A Commander at any level may have the authority to appoint a preliminary inquiry or administrative investigation of matters within the areas of responsibility.

b. Seriou's incident investigations. Only The Adjutant General, The Commanding General of the PRSG, and the Chief of Staff (CoS) of the PRSG may normally appoint an administrative investigation or board of officers for accidents or incidents (such as incidents resulting in death, permanent injury, or incapacitation or the destruction or loss of property).

c. Delegation of authority. The Commanding General of the PRSG may delegate to members of the J-Staff the authority to select board members.

d. Multiple appointing authorities. When more than one appointing authority has an interest in a matter requiring investigation, a single investigation or board will be conducted whenever practicable. In case of doubt or disagreement as to who will appoint the investigation or board, the first common superior of all organizations concerned will resolve the issue.

e. Conflict of interest; bias. An individual who is reasonably likely to become a witness to an inquiry, investigation, or board may not appoint an inquiry, investigation, or board. Similarly, an individual who has an actual or perceived bias for or against a potential subject of the investigation, or an actual or perceived conflict of interest in the outcome of the investigation, should not appoint an inquiry, investigation, or board. Instead, the potential appointing authority shall forward the matter to the next superior commander or appointing authority, who will determine whether to investigate the matter further and, if so, which proceeding (inquiry, investigation, or board) to use.

(1) A potential appointing authority may have an actual or perceived bias for or against a potential subject of an investigation if the potential subject of the investigation is on the potential appointing authority's principal, special, or personal staff.

(2) A potential appointing authority may have an actual or perceived conflict of interest in the outcome of an investigation if the investigation will examine the potential appointing authority's policies or decisions. Identifying an actual or perceived conflict of interest, however, does not necessarily mean that the potential appointing authority is a subject of the investigation.

2–2. Method of appointment

Administrative investigations and boards of officers will be appointed in writing. When necessary to ensure that facts are properly ascertained, documented, and preserved, investigations and boards may be appointed orally and later confirmed in writing. The written appointment will be in the form of a memorandum of appointment. The appointment will state the purpose and scope of the investigation or board, describe the nature of the findings and recommendations required, and include any special instructions (for example, time limits for the completion of the investigation or requirements for a verbatim record or designation of respondents). If the appointment is made under a specific regulation or directive, that regulation or directive will be cited. If only the procedures of this regulation are intended to apply, the appointment will cite this regulation and specify whether it is to be an administrative investigation or a board of officers. The appointing authority may amend the memorandum of appointment to modify the scope of the proceedings or provide additional guidance to the IO or board. Note: All sample memorandums during this PRSG Regulation 15-6 will be used as guide documents and when necessary, will be modified as appropriate when used by the Puerto Rico State Guard Command.

2-3. Memorandum guidance

When applicable, AR 15-6 sample memorandums are to be used as guidance for drafting the PRSG Regulation 15-6 memorandums. Notwithstanding the AR 15-6 sample memorandums terms will not be obligatory for this regulation.

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR (President)

SUBJECT: Appointment of Board of Officers

1. A board of officers is hereby appointed pursuant to AR 735-5 and AR 15-6 to investigate the circumstances connected with the loss, damage, or destruction of the property listed on financial liability investigations of property loss referred to the board and to determine responsibility for the loss, damage, or destruction of such property.

2. The following members are appointed to the board:

(Enter rank, name, branch, unit, address) 88888 Member (President)

(Enter rank, name, branch, unit, address) 88888 Member

(Enter rank, name, branch, unit, address) 88888 Member

(Enter rank, name, branch, unit, address) 88888 Alternate member (see AR 15-6, para 7-2c)

(Enter rank, name, branch, unit, address) 88888 Recorder (without vote)

3. The board will meet at the call of the President. It will use the procedures set forth in AR 735-5 and AR 15-6 where applicable to boards with respondents. Respondents will be referred to the board by separate correspondence.

4. Reports of proceedings will be summarized (the findings and recommendations will be verbatim) and submitted to this headquarters, ATTN: ABCD-AG-PA. Reports will be submitted within three (3) working days of the conclusion of each case. The Adjutant General's office will furnish necessary administrative support for the board. Legal advice will be obtained, as needed, from the Staff Judge Advocate's office.

5. The board will serve until further notice.

(Authority Line)

(Signature block)

CF: (Provide copy to board personnel)

Figure 2–1. Sample memorandum to appoint a board of officers

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR (President of Standing Board)

SUBJECT: Referral of Respondent

1. Reference memorandum, this headquarters, dated (day—month—year), subject: Appointment of Board of Officers.

2. (Enter rank, name, and unit) is hereby designated a respondent before the board appointed by the referenced memorandum. The board will consider whether (enter name of respondent) should be held pecuniarily liable for the loss, damage, or destruction of the property listed on the attached report of survey. The correspondence and supporting documentation recommending referral to a board of officers are enclosed.

3. (Enter rank, name, branch, and unit) is designated counsel for (enter name of respondent).

4. For the consideration of this case only, (enter rank, name, and unit) is designated a voting member of the board, vice (enter rank, name, and unit).

(Authority line)

Encl (Signature block)

CF: (Provide copy to board personnel, counsel, and respondent)

Figure 2–2. Sample memorandum referring to a designated respondent

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR (Officer concerned)

SUBJECT: Appointment as a Board of Officers to Investigate Alleged Corruption and Mismanagement

1. You are hereby appointed as a board of officers, pursuant to AR 15-6, to investigate allegations of (enter subject matter to be investigated, such as corruption and mismanagement in the office of the Fort Blank Provost Marshal). The scope of your investigation will include (mention specific matters to be investigated, such as whether military police personnel are properly processing traffic tickets, whether supervisory personnel are receiving money or other personal favors from subordinate personnel in return for tolerating the improper processing of traffic tickets, and so forth). Enclosed herewith is a report of proceedings of an earlier investigation into alleged improper processing of traffic tickets that was discontinued when it appeared that supervisory personnel may have been involved.

2. You will use board procedures under AR 15-6. (Enter duty positions, ranks, and names) are designated respondents. Additional respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.

3. (Enter rank, name, branch, and unit) will serve as legal advisor to you, the board. (Enter rank, name, duty position, and unit), with the concurrence of (his) (her) commander, will serve as an advisory member of the board. The office of the adjutant general, this headquarters, will provide necessary administrative support. The Fort Blank Resident Office, Criminal Investigation Division Command (CIDC), will provide technical support, including preserving physical evidence, if needed.

4. Prepare the report of proceedings on DA Form 1574-2 and submit it to me within 60 days.

(Signature block)

CF: (Provide copy to all parties concerned)

Figure 2–3. Sample memorandum appointing a single officer as a board

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR (Officer concerned)

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed as an investigating officer pursuant to AR 15-6 and AR 210-7, paragraph 5-1, to conduct an investigation into complaints that sales representatives of the Fly-By-Night Sales Company have been conducting door-to-door solicitation in the RiverBend Family housing area in violation of AR 210-7. Details pertaining to the reported violations are in the enclosed file prepared by the Commercial Solicitation Branch, Office of the Adjutant General, this headquarters (Encl).

2. In your investigation, all witness statements will be sworn. From the evidence, you will make findings whether the Fly-By-Night Sales Company has violated AR 210-7 and recommend whether to initiate a show cause hearing pursuant to AR 210-7, paragraph 4-5, and whether to temporarily suspend the company's or individual agents' solicitation privileges pending completion of the show cause hearing.

3. Submit your findings and recommendations in four copies on DA Form 1574-1 to this headquarters, ATTN: ABCD-AG, within 7 days.

(Authority line)

Encl (Signature block)

Figure 2–4. Sample memorandum appointing an investigating officer

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR (Officer concerned)

SUBJECT: Appointment as Investigating Officer

1. **Appointment.** You are hereby appointed as an Investigating Officer (IO) pursuant to Army Regulation (AR) 15-6, *Procedures for Administrative Investigations and Boards of Officers*, to conduct (a/an) (preliminary inquiry/informal investigation) into the facts and circumstances (insert basic description of subject of investigation). Your responsibilities as an IO take precedence over all other military duties. **You have 30 days from the date of this appointment to conduct this investigation**. Coordinate any requests for extensions through your legal advisor.

2. **General Instructions.**

a. The purpose of an AR 15-6 investigation is to elicit facts. You are directed to conduct an investigation into the matters set forth in paragraph 3, below. Your investigation should explore any issues or deficiencies with policy, procedures, resources, doctrine, training, and leadership that might have contributed to this incident. Upon completion of this investigation, you will complete a report of investigation that conforms to the requirements in paragraph 5 of this memorandum and AR 15-6. You will provide your report to your legal advisor, who will arrange for a legal review.

b. If, at any time in the conduct of your investigation, something happens that could cause me to consider enlarging, restricting, or terminating your investigation, or otherwise modifying any instruction in this memorandum of appointment, immediately report this situation to me, together with your recommendations as to the action I should take in response.

3. **Scope of Investigation/Specific Instructions.**

a. You are hereby directed to conduct an investigation into (list general scope of investigation). Such review should include a thorough analysis of whether the circumstances alleged are accurate and merit correction. You should also report whether any personnel should be held accountable for any shortcomings or failures.

b. During your investigation you will, at a minimum, ascertain the following:

(1) Who

(2) What

(3) Where

(4) When

(5) Why

Figure 2–5. Sample memorandum appointing a preliminary inquiry/administrative investigation

OFFICE SYMBOL
SUBJECT: [cut and paste from first page]

(6) How

4. **Conduct of the Investigation.**

a. [Legal Advisor name and duty title], is your legal advisor. You will consult with your legal advisor before making substantive efforts regarding your investigation. You may request that additional individuals or subject matter experts be appointed, in writing, to accompany you and assist you in your investigation. Coordinate such requests with your legal advisor.

b. Evidence Collection.

(1) You are to conduct this investigation using the procedures outlined in Chapter 4, and the general guidance provided in Chapter 3, AR 15-6. No individual has been named a respondent at this time.

(2) To the extent possible, witness statements will be written and sworn. You should record witness statements on a DA Form 2823 (*Sworn Statement*). If it is impracticable to obtain a written and/or sworn statement from a particular witness, you will attest to the accuracy of any transcription or summary of such witness testimony in whatever form it appears within your report of investigation. In accordance with AR 340-21, provide a Privacy Act statement to a witness if you do not use a DA Form 2823 to record the statement of that witness, and your report will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. No U.S. military or civilian witness can be ordered to provide information that may incriminate him or herself. You may order a military or Federal Government civilian employee witness to provide a statement if you believe that they have relevant information that would not incriminate themselves. If, in the course of your investigation you come to suspect a person may have engaged in criminal conduct, you will consult with your legal advisor and inform me. Under no circumstances should you attempt to elicit any information from a suspect without first advising that person of his/her rights under Article 31, UCMJ, or the Fifth Amendment of the U.S. Constitution, as appropriate. Document your rights advisement and witness waivers of their Article 31 or Fifth Amendment rights on a DA Form 3881 (*Rights Warning Procedure/Waiver Certificate*).

(3) Where a civilian employee is a member of a bargaining unit and reasonably believes that the inquiry could lead to disciplinary action against him or her, the employee may have a representative from the bargaining unit present during questioning. You will consult your legal advisor if you have any questions regarding these procedures.

(4) Should you determine in the context of your investigation that a Soldier's status has changed from favorable to unfavorable, as defined in AR 600-8-2, *Suspension of Favorable Personnel Actions*, you must notify me immediately and consult with your legal advisor, to ensure that a flag is initiated against that Soldier.

5. **Report of Investigation**.

a. General. Your report of investigation will be written. Use a DA Form 1574-1, *Report of Proceedings by Investigating Officer*, and attach all required enclosures and exhibits.

Figure 2–5. Sample memorandum appointing a preliminary inquiry/administrative investigation (continued)

OFFICE SYMBOL
SUBJECT: [cut and paste from first page]

b. Assembly. Your completed AR 15-6 investigation will include:

(1) This memorandum of appointment;

(2) A completed DA Form 1574-1, *Report of Proceedings by Investigating Officer*;

(3) A detailed chronology of the daily actions you took during the investigation;

(4) An index of all attached exhibits;

(5) All exhibits, labeled and numbered;

(6) A list of the witnesses you interviewed;

(7) If applicable, proper classification markings for each paragraph, page, and exhibit included within your report of investigation; and

(8) A memorandum with your findings and recommendations.

(a) Findings. You will reach your findings by a preponderance of the evidence that you gather. A finding is a clear and concise statement of facts that can be readily deduced from evidence in the record. In your report, develop specific findings and cite the evidence that supports your findings. If evidence conflicts (*e.g.*, conflicting witness statements), make a finding as to which evidence is more credible and why you believe it to be more credible.

(b) Recommendations. Based on your findings, make recommendations as to what changes, if any, are needed in terms of policy, procedures, resources, doctrine, training, and leadership to avoid incidents of this nature in the future, as well as recommendations consistent with your findings concerning other items your investigation revealed. Each recommendation will cite to the finding that supports it, and should comport with the guidance in AR 15-6.

c. Submission. Submit your report of investigation in two hard copies and an electronic copy on a compact disc after you have obtained a legal review. You may not release any information related to this investigation to anyone, other than your legal advisor, without my prior approval.

(Authority line)

Encl (Signature block)

Figure 2–5. Sample memorandum appointing a preliminary inquiry/administrative investigation (continued)

2–4. Who may be appointed

a. IOs and board members will be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service, demonstrated sound judgment and temperament. IOs and board members must be impartial, unbiased, objective, and have the ability to complete the investigation in a timely manner. If an appointing authority determines that a person with the required experience and expertise is not available within his or her organization, he or she may request assistance from a superior in his or her chain of command or supervision or coordinate with a counterpart to obtain an IO or board member with the required education, training, experience, and expertise to conduct the investigation or board.

b. Except as provided in subparagraph e, below, only commissioned officers may be appointed as IOs. Non-commissioned officers in the grade of E–7 or above may be appointed as IOs when the appointing authority determines that military exigencies exist and no commissioned officers, or warrant officers are readily available. Voting members of boards may be commissioned officers, warrant officers, non-commissioned officers in the rank of E–7 or above.

c. Assistant IOs may be appointed, as needed, to provide special technical knowledge, or to assist the appointed IO with conducting interviews and performing other investigative tasks.

d. Recorders and people with special technical knowledge may be appointed to boards in a nonvoting capacity. Legal advisors will be appointed to boards in a nonvoting capacity.

e. For the investigation of serious incidents, as defined in subparagraph 2–1c, above, only field grade commissioned officers (Lieutenant Colonel and above), will be appointed as an IO or board member.

f. In all cases, an IO or voting member of a board will be senior in rank to any person whose conduct or performance of duty may be investigated, or against whom adverse findings or recommendations may be made, except when the appointing authority determines this to be impracticable because of military exigencies. Inconvenience in obtaining an IO or the unavailability of senior persons within the appointing authority's organization are not military exigencies that would justify the above exception. Assistant IOs who are junior to the subject of the investigation in rank or grade (or their civilian equivalent) may be appointed to an investigation team. Assistant IOs, however, should not normally interview a more senior subject of the investigation without the senior IO being present during the interview.

(1) The IO or board president will, subject to the approval of the appointing authority, determine the relative seniority of military and civilian personnel. Actual superior-and-subordinate relationships, relative duty requirements, time in grade, and other sources may be used as guidance. Except where a material adverse effect on an individual's substantial rights results, the appointing authority's determination of seniority shall be final.

(2) An IO or voting member of a board who, during the proceedings, discovers that the completion of the investigation or board requires examining the conduct or performance of duty of, or may result in findings or recommendations adverse to, a person senior to him or her, will report this fact as soon as possible to the board president or the appointing authority. The appointing authority will then appoint another person, senior to the person affected, who will either replace the IO or member, or conduct a separate inquiry into the matters pertaining to that person. When necessary, the new IO or board may be furnished with any evidence properly considered by the previous IO or board. The appointing authority may direct the previous IO to assist the newly appointed IO for the duration of the investigation.

(3) If the appointing authority determines that military exigencies make these alternatives impracticable, the appointing authority may direct the IO or member to continue. This direction will be written and will be included as an enclosure to the report of proceedings. If the appointing authority determines that proceeding with the same IO or member will result in specific prejudice, the appointing authority will request assistance in obtaining a more senior IO from superiors in the chain-of-command or supervision. If the appointing authority does not become aware of the problem until the results of the investigation or board are presented for review and action, the case will be returned for new or supplemental investigation only where specific prejudice is found to exist.

g. The appointing authority must comply with other specific regulatory requirements that IOs or board members be military officers, be professionally certified, or possess an appropriate security clearance.

2–5. Administrative support

The appointing authority will arrange necessary facilities, clerical assistance, and other administrative support for IOs and boards.

2–6. Actions of the appointing authority after appointing an investigating officer

a. Requests for extensions. The appointing authority should ensure timely completion of the investigation. Extensions, however, are often necessary due to the unavailability of evidence or witnesses. In certain cases, it might be appropriate for an IO to make preliminary findings, subject to additional evidence.

b. Resourcing. The appointing authority should provide adequate authority and resources to the IO or board to conduct the investigation. A memorandum from the appointing authority, expressing the IO's or board president's authority is often helpful in this regard. If the IO or board needs resources that are outside the span of control of the appointing authority, the appointing authority should consider whether a higher commander should appoint the investigation.

Section II

Legal Support

2–6. Legal support to investigations and boards

Appropriate support by the servicing CJA or legal advisor is instrumental to the investigation or board process. Involvement by legal advisors is relevant in three distinct phases and will often involve more than one legal advisor. The three phases of legal involvement are pre-appointment of the investigation or board; conduct of the investigation or board; and legal review of the completed investigation or board.

a. Pre-appointment. As discussed in, it is imperative that appointing authorities receive legal advice when deciding whether to conduct a preliminary inquiry or appoint an investigation or board to determine facts or gather evidence. The appointing authority's legal advisor will provide advice regarding the correct procedure; the regulatory requirements and selection process for IO(s) or board members; the scope of the appointment memorandum; and any other preparatory guidance relevant to the appointment, including the impact and coordination requirements pertaining to multiple investigations into the same matter.

b. Conduct of the investigation or board. Each investigation or board must have a designated legal advisor. Such a designation will be made in consultation with the servicing CJA or legal advisor. The legal advisor should be designated in the appointment memorandum. The legal advisor provides advice and addresses any questions or concerns the IO or board raises. In particular, the legal advisor helps the IO or board develop an investigative plan; identify necessary witnesses and develop appropriate questions; protect the rights of respondents and subjects; ensure the requirements established in the appointment memorandum are satisfied; ensure the evidence supports the findings; and ensure that the recommendations are logically related to the findings. Although not required for a preliminary inquiry, a legal advisor may be designated for such inquiries.

c. Legal review. A military PRSG JAG Corps attorney will conduct a legal review of completed investigations and boards, in accordance with this regulation, before the approval authority takes action.

2–7. Legal review

a. The approval authority will obtain a legal review of all investigations and boards directed under this regulation from his or her servicing CJA or legal advisor.

b. The legal review should only be completed after a comprehensive review of the report of investigation by the investigating officer's legal advisor, and it should ensure that the investigation does not raise questions that it leaves unanswered; anticipates future uses of the investigation; resolves internal inconsistencies; makes appropriate findings; and makes recommendations that are feasible, acceptable, and suitable. Specifically, the legal advisor performing the legal review will determine—

(1) Whether the proceedings complied with legal requirements, including the requirements established in the appointing memorandum.

(2) Whether there are errors and, if so, whether the errors are substantial or harmless; the effect, if any, that the errors had on the proceedings; and, what action, if any, is recommended to remediate the errors.

(3) Whether the findings of the investigation or board, or those substituted or added by the approval authority, are supported by a greater weight of the evidence that supports a contrary conclusion; and

(4) Whether the recommendations are consistent with the findings.

c. The legal review should also advise the approval authority whether the evidence supports any additional relevant findings or suggests that additional investigation is appropriate to address additional concerns.

d. The legal review will be conducted in writing and included as part of the investigative or board report. The legal review should be appropriately marked as attorney work product and/or client advice, which is legally privileged and exempt from release.

e. Whenever possible, the legal advisor designated to support the investigation or board will not conduct the legal review.

Section III

Approval Authority

2–8. Action of the approval authority

a. Approval authority. The authority taking action on an administrative investigation or board is the approval authority. Generally, the appointing authority will also act as the approval authority; however, this is not always the case. For example, the appointing authority may not act as the approval authority if the appointing authority retires, changes duty station or assignment prior to the investigation being completed or becomes a witness in the investigation; if a higher commander withholds approval authority from a subordinate appointing authority; or if the appointing authority did not have the requisite authority to appoint the investigation or board. The following individuals may act as the approval authority:

(1) The appointing authority's successor if he or she meets the requirements of this regulation; or

(2) The appointing authority's next higher commander or supervisor if he or she meets the requirements of paragraph 2–1, above.

(3) The PRSG Commanding General or the Chief of Staff.

b. Action by the approval authority.

(1) Upon receipt of a completed investigation or board containing the legal review discussed in paragraph 2–7, the approval authority will conduct a final review of the IO's or board's findings and recommendations and the legal review. The approval authority will notify the IO or board president if further action, such as taking further evidence or making additional findings or recommendations, is required. Such additional proceedings will be conducted under the provisions of the original appointing memorandum, including any modifications, and will be separately authenticated.

(2) If applicable, the approval authority will ensure that the provisions of paragraph 1–11 have been satisfied.

(3) Unless otherwise provided by another regulation or directive, the approval authority is neither bound nor limited by the findings or recommendations of an IO or board.

(a) The approval authority may approve, disapprove, modify, or add to the findings and recommendations, consistent with the evidence included in the report of proceedings. The approval authority may also concur in or disagree with recommendations that cannot be implemented at his or her level. The approval authority may take action different than that recommended with regard to a respondent or other individual, unless the specific regulation or directive under which the investigation or board was appointed provides otherwise. The approval authority will complete the applicable portion of the DA Form 1574-1(Report of Proceedings by Investigating Officer) or DA Form 1574-1(Report of Proceedings by Board of Officers), annotating his or her approval, disapproval, or modification of the findings and recommendations, and making comments regarding follow-on action, if warranted.

(b) The approval authority may consider any relevant information in making a decision to take adverse action against an individual, even information that the IO or board did not consider. The approval authority will attach that information to the report of investigation, if available.

(c) The approval authority should follow through with the recommendations that he or she approves of and maintain a record of the action taken. When the approval authority concurs with recommendations that cannot be implemented at his or her level, he or she should forward the findings and recommendations to the appropriate authority with his or her recommended action.

c. Referral of adverse information.

(1) When an investigation includes a finding containing adverse information (as defined in the glossary) regarding a field grade officer, the portion of the report of investigation and supporting evidence pertaining to the adverse information must be referred to that officer in accordance with paragraph 5–4.

(2) For those findings that are adverse to a field grade officer, which the approval authority intends to approve, the approval authority will give the officer notice and an opportunity to respond before taking final action. The servicing CJA or legal advisor will ensure that the referral is properly made (see sub para (5), below).

(3) A redacted copy of the investigation will be referred to the officer by memorandum (see fig 2–6). The referral must notify the officer of the general nature of the adverse information. In addition, the referral must notify the officer that:

(a) The officer has the right to remain silent, and that anything the officer may say or submit in response to the adverse information may be used against him or her in ongoing or subsequent adverse administrative proceedings.

(b) Adverse information from an officially documented investigation or inquiry must be furnished to a selection board for promotion to a grade above colonel in accordance with PRSG Regulation 600-10, Personnel and Administrative Procedures, PRSG Regulation 600-100, Promotion of Commissioned Officers and Warrant Officers, PRSG Regulation 600-300, Professional Skills Officer Appointment and Promotions and PRSG Regulation 624-100, Procedures for Separation of the Puerto Rico State Guard Command and may be provided to other selection boards.

(c) The approval authority will consider any response the officer provides and may use it to approve, modify, or disapprove any relevant finding(s) or recommendation(s), or as evidence in current or future actions resulting from the investigation.

(4) The officer will be granted at least 10 business days to respond to the referral. Reasonable requests for an extension of this deadline should be granted for good cause to ensure that the officer has an adequate opportunity to gather evidence and prepare a response.

(5) Action on receipt of rebuttal.

(a) Upon receipt of any material in response to the adverse information, the approval authority's servicing CJA or legal advisor will package the materials as an exhibit to the report of proceedings and provide them to the approval authority for his or her consideration. If the subject officer elects not to respond, or fails to do so within the period authorized, the servicing CJA or legal advisor will attach a memorandum stating that the officer elected not to respond or did not respond within the period authorized, along with the referral documents, to the report of proceedings.

(b) When considering the officer's response and whether to substantiate any finding as adverse, the approval authority should consider only evidence that is relevant to the matter under investigation. For instance, evidence of the officer's character or past performance is relevant only to the extent that it reflects on the officer's integrity if his or her statements are contrary to the statements of others.

(6) Adverse information may not result solely from a finding in a preliminary inquiry. If the preliminary inquiry relies on an independent report from an investigative body, then the requirement to refer to the adverse information applies. If, however, the preliminary finding, as a result of the gathering of independent evidence, becomes the source of the adverse information, then the appropriate authority must appoint an administrative investigation.

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR *[Field Grade Officer against whom an Investigating Officer has made an Adverse Finding or Recommendation]*

SUBJECT: Referral of Report of Investigation

1. The attached investigation is referred to you for comment prior to final action by the approval authority IAW AR 15-6, paragraph 5-4, because the investigating officer has made an adverse finding or recommendation against you. Specifically, the investigating officer found that you *[describe with specificity the adverse findings and/or recommendations made against the subject officer]*.

2. You have until *[a date at least 10 business days after the referral date]* to provide whatever additional material you wish for the approval authority to consider before he acts upon the investigation. You may request additional time to respond for good cause through the point of contact below. Failure to respond will be considered a decision not to respond.

3. The approval authority will consider any relevant evidence that you may submit, along with the investigation itself, before taking action on the investigating officer's findings and recommendations. IAW AR 15-6, paragraph 2-7b(3)(a), the approval authority may approve, disapprove, modify, or add to the findings and recommendations, consistent with the evidence included in the investigative report. The approval authority may also direct the investigating officer to take further evidence or make additional findings or recommendations.

4. You are hereby notified that any substantiated adverse finding or conclusion from an officially documented investigation or inquiry must be furnished to a selection board for promotion to a grade above colonel IAW 10 U.S.C. § 615. If approved or modified in a manner which is adverse toward you, the findings and/or recommendations of this investigation will constitute a substantiated adverse finding or conclusion from an officially documented investigation. Any response that you provide may be considered along with these findings and recommendations by a future selection board for promotion to a grade above colonel.

5. IAW Article 31b, Uniform Code of Military Justice, you are advised that you are not required to make any statement or produce any evidence regarding the adverse findings and/or recommendations described above, and that any statement or evidence that you provide may be used as evidence against you in a trial by court-martial or future adverse administrative proceedings.

6. The point of contact for this memorandum is the undersigned at PHONE NUMBER, or via e-mail at inquirypoc@us.army.mil.

Encl Signature Block

Figure 2–6. A sample memorandum to accompany a copy of an investigation with an adverse finding or recommendation

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR RECORD

SUBJECT: Certification of Opportunity to Respond

1. This memorandum is to certify that *[Field-grade officer against whom an adverse finding or recommendation was made]* was provided a copy of the findings and recommendations made by the investigating officer and was granted a reasonable (no less than 10 days) opportunity to respond.

2. He/She elected not to respond/failed to submit a response within the authorized period.

3. The point of contact for this memorandum is the undersigned at PHONE NUMBER, or via e-mail at inquirypoc@us.army.mil.

Encl Signature Block
Referral Memorandum (from Figure 2-6)

Figure 2–7. A sample memorandum to certify that an officer was given the opportunity to respond

2–9. Request for reconsideration

a. Right to request reconsideration. A subject, suspect, or respondent (such as an officer against whom an adverse finding was made) may request reconsideration of the findings of an inquiry or investigation upon the discovery of new evidence, mistake of law, mistake of fact, or administrative error. New evidence is that information that was not considered during the course of the initial investigation and that was not reasonably available for consideration. New evidence neither includes character letters nor information that, while not considered at the time of the original investigation, the subject of the investigation could have provided during the course of the investigation.

b. Limitations.

(1) A request for reconsideration is not permitted when the investigation resulted in administrative, nonjudicial, or judicial action, or any action having its own due process procedural safeguards.

(2) Requests for reconsideration must be submitted to the approval authority within 1 year of the approval authority's approval of the investigation. The approval authority may entertain a request outside of 1 year for good cause. While not exhaustive, good cause is the discovery of new relevant evidence beyond the 1-year time limitation, which the requester could not have discovered through reasonable diligence, or the requester was unable to submit, because duty unreasonably interfered with his or her opportunity to submit a request. The approval authority determination of good cause is final.

(3) Standing. A request for reconsideration will only be considered if the material presented impacts a finding concerning the requester.

c. Procedure.

(1) All requests for reconsideration must be submitted through the Office of the Staff Judge Advocate/legal advisor responsible for advising the approval authority at the time he or she approved the original investigation. If the approval authority has changed assignments or duty location, the CJA or legal advisor receiving the request, will present it to the approval authority's successor who, for purposes of the request for reconsideration, will be the approval authority.

(2) Upon receipt of a request for reconsideration, the approval authority will determine whether the material presented would impact any finding concerning the requester and, if so, whether the impact is such that the finding is no longer supportable by a preponderance of the evidence.

(3) If, after considering a request for reconsideration, the approval authority determines that the finding is no longer supportable, the approval authority will modify the approved findings and update any database or record where the original findings were sent.

(4) Whether or not the approval authority takes favorable action, he or she will ensure the requester is informed of the action taken on the request. The failure to inform, however, does not create a substantive right that impacts the request or the original findings.

Chapter 3

General Guidance for Investigating Officers and Boards

Section I

Conduct of the Investigation

3–1. Preliminary responsibilities

Before beginning an investigation, an IO or board president shall review all written materials provided by the appointing authority and consult with the designated legal advisor to obtain legal guidance.

3–2. Oaths

a. Requirement. Unless required by the specific regulation or directive under which appointed, IOs or board members need not be sworn. Reporters, interpreters, and witnesses appearing before a board will be sworn. The memorandum of appointment may require the swearing of witnesses or board members.

b. Administering oaths. An IO (or assistant IO), recorder (or assistant recorder), or board member is authorized to administer oaths in the performance of such duties under Puerto Rico National Guard or Puerto Rico State Guard Command authorization.

3–3. Challenges

An IO using investigation procedures is not subject to challenge. An IO or board member under board procedures, where a respondent is designated, is subject to challenge as provided in paragraph 7–7, below. Any person who is aware of facts indicating a lack of impartiality or other disqualification on the part of an IO or board member will present the facts to the appointing authority.

3–4. Representation

a. Counsel. Only a respondent in a board is entitled to be represented by counsel. The subject of an investigation is not automatically entitled to representation by counsel, but the right to counsel could arise if, during the investigation, the subject is suspected of committing an offense. Other interested parties in a board may obtain counsel, at no expense to the Government, who may attend, but not participate in proceedings of the board that are open to the public. The proceedings will not be unduly interrupted to allow the person to consult with counsel.

3–5. Decisions

An IO or board arrives at findings and recommendations as provided in section II of this chapter. A board decides challenges by a respondent as provided in paragraph 7–7. The IO or board president decides administrative matters, such as time of sessions, uniform, and recess. In a board, the legal advisor decides evidentiary and procedural matters, such as motions and acceptance of evidence.

3–6. Presence of the public and recording of proceedings

a. The public. Proceedings of an investigation are not generally open to the public. If a question arises about whether the proceedings should be open, the determination will be made based on the circumstances of the case. It may be appropriate to open proceedings to the public, even when there is no respondent, if the subject matter is of substantial public interest. It may be appropriate to exclude the public from at least some of the proceedings, even though there is a respondent, if the subject matter is classified. In any case, the appointing authority may specify whether the proceedings will be open or closed. If the appointing authority does not specify, the IO or board president decides. If there is a respondent, the legal advisor will be consulted before deciding to exclude the public from any portion of the proceedings. Any proceedings that are open to the public will also be open to representatives of the news media.

b. Recording. Neither the public nor the news media will record, photograph, broadcast, or televise board proceedings. A respondent may record proceedings only with the prior approval of the appointing authority.

3–7. Rules of evidence and proof of facts

a. General. Proceedings under this regulation are administrative, not judicial. Therefore, IOs and boards are not bound by the rules of evidence for courts-martial or court proceedings generally. Subject only to the provisions of subparagraph d, below, anything that a reasonable person would consider relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered, regardless of whether the preparer of the record is available to give a statement or testify in person. All evidence will be given the weight warranted by the circumstances. (See para 3–5 regarding who decides whether to accept evidence.)

b. Access to documents, records, evidence, and other data.

(1) No officer, Technical Officer, or Service member of the PRSG may deny IOs and boards access to documents, records, or evidentiary materials needed to discharge their duties, including data stored in official Puerto Rico Military Forces repositories, except as permitted by law and applicable regulations. In accordance with PRSG Reg. 600-10, Personnel and Administrative Procedures and PRSG Reg. 17-100, Standards of Medical Fitness and except as noted below regarding Medical Quality Assurance Records, an IO or board is authorized access to medical records without the consent of the patient.

(2) Only the minimum necessary information will be released to the IO or board, and completion of request forms may be required prior to release of records.

c. Official notice. Some facts are of such common knowledge that they need no specific evidence to prove them; for example, general facts and laws of nature, general facts of history, the structure of the PRSG and PRSG Regulations, including matters of which judicial notice may be taken.

d. Limitations. Although administrative proceedings governed by this regulation generally are not subject to exclusionary or other evidentiary rules precluding the use of evidence, the following limitations do apply:

(1) *Relevance*. Evidence must be relevant. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Witnesses will not be asked whether they believe a particular individual, because it is not relevant. Additionally, relevant evidence is subject to the other limitations, listed below.

(2) *Privileged communications*. Are communications with lawyers, clergy, spouses, psychotherapists, and victim advocates if applicable. Present or former inspector general personnel will not be required to testify or provide evidence regarding information that they obtained while acting as inspectors general. They also will not be required to disclose the contents of inspector general reports of investigation, inspections, inspector general action requests, or other memoranda, except as approved by the appropriate (an official authorized to approve release of an inspector general investigation or inspection) or higher authority.

(3) *Investigations related to sex offenses cases*. With limited exceptions, evidence of an alleged victim's sexual behavior or sexual predisposition is not relevant. Therefore, evidence of an alleged victim's sexual behavior or sexual predisposition will not be considered, unless the legal advisor determines that one of the exceptions in Puerto Rico Rules of Evidence applies. A party desiring to enter such evidence during board proceedings shall provide written notice to the legal advisor, the opposing party, and the alleged victim or the alleged victim's guardian or counsel. Such notice shall describe the evidence and state the purpose for which it is offered. A person may not attempt to enter such evidence until the legal advisor has informed the board president and the parties of the determination regarding admissibility. The board president is encouraged to set deadlines for the receipt of such notice to avoid delays in the proceedings.

(4) *"Off the record" statements*. Findings and recommendations of the IO or board must be supported by evidence contained in the report. Accordingly, witnesses will not make statements "off the record" to the IO or board members. Under the administrative investigation procedure, such statements will not be considered for their substance, but only as help in finding additional evidence.

(5) *Statements regarding disease or injury*. The IO will comply with the provisions of PRSG Regulation 17-100, Standards of Medical Fitness regarding warning a member of the Armed Forces that he or she need not make any statement related to the origin, incurrence, or aggravation of his or her injury.

(6) *Ordering witnesses to testify*.

(a) No PRSG military witnesses or PRSG military respondents will be compelled to incriminate themselves, to answer any question the answer to which could incriminate them, or to make a statement or produce evidence that is not material to the issues being investigated or that might tend to degrade them. An answer tends to incriminate a person if it would make it appear that the person is guilty of a crime.

(b) No witnesses or respondents not subject to PRSG Regulations will be required to make a statement or produce evidence that would deprive them of their rights against self-incrimination under the Fifth Amendment of the U.S. Constitution and Article II, Section 11, of the Puerto Rico Constitution.

(c) A person who refuses to provide information under subparagraphs (a) or (b), above, must specifically state that the refusal is based on the protection afforded by any privilege, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution. The legal advisor will decide whether the witness may be ordered to answer if the reason for refusal is not based on the protection afforded by any privilege, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution.

(d) A PRSG Servicemember who is suspected of an offense under any PRSG Regulation or policy will be advised of his or her rights. (DA Form 3881), before being asked any questions concerning the suspected offense. The Servicemember, whether a witness or respondent, will be given a reasonable amount of time to consult an attorney, if requested, before answering any such questions. No adverse inference will be drawn against witnesses or respondents who invoke their rights under any privileges, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution. The IO or board should use DA Form 3881 (Rights Warning Procedure/Waiver Certificate) to explain the rights, and to memorialize the explanation and the suspect's decision.

(e) The right to invoke a privilege, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution, is personal. No one may assert the right for another person, and no one may assert it to protect anyone other than himself or herself.

(f) In certain cases, the appropriate authority may provide a witness or respondent with a grant of testimonial immunity and require testimony notwithstanding a privilege, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution. Grants of immunity must be made under the provisions of any UCMJ applicable regulation and any local supplements to it.

(8) *Involuntary admissions*. A confession or admission obtained by unlawful coercion or inducement will not be accepted as evidence. IOs or boards should consult with their legal advisor, who will determine whether a confession or admission was obtained through unlawful coercion or inducement. The fact that a respondent was not advised of his or her rights under DA Form 3881, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution, does not, by itself, prevent acceptance of a confession or admission as evidence.

(9) *Bad faith unlawful searches*. If members of the PRSG acting in their official capacity (such as military police or security forces acting in furtherance of their official duties) violate an individual's Fourth Amendment of the U.S. Constitution and Article II, Section 10, of the Puerto Rico Constitution right against unreasonable searches and seizures, the IO or board may not accept or consider evidence obtained as a result of that violation.

Such evidence is acceptable only if the legal advisor reasonably determines that the evidence would inevitably have been discovered. In all other cases, the IO or board may accept or consider relevant evidence obtained as a result of any search or inspection, even if it has been or would be ruled inadmissible in a judicial criminal proceeding.

(10) *Adverse finding against a field grade officer*. If the IO or board president contemplates making an adverse finding against a field grade officer, the IO or board president must afford the officer an opportunity to be interviewed.

(11) *Recordings*. IOs must consult with legal advisors when in receipt of recorded conversations, as use depends on the statutes and policies in effect at the locations where the recording occurred.

(12) *Electronic communications*. IOs must consult with legal advisors to ensure evidence of electronic communications does not violate the Electronic Communications Privacy Act (18 USC 2510, et seq) or fraud and related activity in connection with computers (18 USC 1030) and any similar Commonwealth of Puerto Rico applicable regulation.

3–8. Witnesses

a. General.

(1) IOs and boards generally do not have the authority to subpoena witnesses to appear and/or testify. A commander or supervisor may, however, order military personnel and civilian employees, over whom they exercise command or supervisory authority, to appear and testify. IOs and board presidents should consult their legal advisors regarding interviewing civilian employees and Puerto Rico Military Forces personnel who are not in an Article 2, UCMJ, status. Other civilians, including contractor employees, non-Puerto Rico Military Forces affiliated civilians, retired military personnel, and dependents of active-duty military, who agree to appear, may be issued invitational travel authorizations in certain cases. The IO or board can invite civilians who are not State employees to testify, but the IO or board cannot compel them to testify. The IO or board president normally will inform witnesses of the nature of the investigation or board before taking their statements or testimony. The IO or board president, assisted by the recorder and the legal advisor, will protect every witness from improper questions, unnecessarily harsh or insulting treatment, and unnecessary inquiry into their private affairs.

b. Attendance as spectators.

Witnesses, other than respondents, normally will not be present at the investigation or board proceedings, except when they are testifying. In some cases, however, it is necessary to allow expert witnesses to hear evidence presented by other witnesses, so that they may be sufficiently advised of the evidence to give informed testimony as to the technical aspects of the case. In such instances, the report of proceedings will indicate that the expert witnesses were present during the testimony of the other witnesses.

c. Taking testimony or statements.

(1) Witness statements normally will be elicited by questions and answers when using the board procedure, or if the appointing authority has directed a verbatim record. Narrative testimony may be used when appropriate.

(2) When using the investigation procedure, the IO may obtain statements of witnesses at informal sessions in any manner the IO deems most appropriate to elicit and memorialize evidence. The IO may use a tape recorder to facilitate later preparation of but will inform the witness prior to using one. The IO will assist the witness in preparing a written statement to avoid the inclusion of irrelevant material or the omission of important facts and circumstances. Care must be taken, however, to ensure that the statement is phrased in the words of the witness. The IO must scrupulously avoid coaching the witness or suggesting

the existence or nonexistence of material facts. The IO should ask the witness to read, correct, and sign the final statement whenever possible.

(3) Unless otherwise directed by the appointing authority, the IO or board president has discretion to determine whether the witness swears to the statement. If the statement is to be sworn, the IO or board should use a DA Form 2823 (Sworn Statement), unless a summarized or verbatim record of the statement is prepared. If the witness is unavailable or refuses to sign, the person who took the statement will record, over his or her own signature, the reasons the witness did not sign, and will certify that the statement is an accurate summary of what the witness said.

(4) To save time and resources, witnesses may be asked to confirm written sworn or unsworn statements that have first been made exhibits during investigations and boards. The witnesses remain subject to questioning on the substance of such statements.

(5) Although the direct testimony of witnesses is preferable, the IO or board may use any previous statements of a witness as evidence on factual issues, whether or not the following conditions exist:

(a) The proceedings are an investigation or board.

(b) The witness is determined to be unavailable.

(c) The witness testifies.

(d) Prior statements were sworn or unsworn.

(e) Prior statements were oral or written.

(f) Prior statements were taken during the course of the investigation.

d. Discussion of evidence. An IO or board may direct witnesses who are subject to PRSG authority, and request other witnesses, not to discuss their statements or testimony with other witnesses, or with persons who have no official interest in the proceedings until the investigation is complete. This precaution is appropriate to eliminate possible influence on the testimony of witnesses still to be heard. Normally, witnesses may not be precluded from discussing any relevant matter with the recorder, a respondent, or counsel for a respondent.

e. Privacy Act statements.

(1) When required. A DA Form 7694 (Privacy Statement regarding applicable laws) will be provided to a witness if the report of proceedings will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. Unless otherwise informed by the appointing authority, an IO or board may presume that the report of proceedings will be retrievable by the name of each person designated as a respondent, but that the report will not be retrievable by the name of any other witness. The DA Form 2823 (Sworn Statement) contains a Privacy Statement at the top of the form. An additional Privacy Statement is generally not required if this form is used. If a question arises as to the need for a Privacy Statement, the IO or board will consult the legal advisor. If the investigative plan contemplates the acquisition or review of medical records of any person, the IO or board president must consider the applicable state and federal privacy laws to the PRSG such as the Health Insurance Portability and Accountability Act or HIPAA, Act. 191-2000 as amended, and Act 187-2006 regarding the use of the Social Security Number (SSN) and consult his or her legal advisor.

(2) *Method of providing statement*. Appendix B provides guidance for preparing Privacy Statements. The statement may be written or oral, but it must be provided before taking the witness's testimony or statement. A written statement will be attached to the report of proceedings as an enclosure. An oral statement will be noted in the report as either a part of a verbatim transcript, or as an enclosure in the form of a certificate by the officer who provided the Privacy Act statement.

(3) *Copy of the statement*. Anyone to whom this requirement applies is entitled to a copy of the Privacy Statement in a form suitable for retention. Providing a respondent with a copy of the part of the report of proceedings that includes the statement satisfies this requirement. Any other witness who is provided with a Privacy Statement will, on request, be furnished a copy of the statement in a form suitable for retention.

(4) *Personally identifiable information and the Privacy Statement*. The IO or board president must ensure that personally identifiable information is protected from inappropriate release. Only the minimum amount of personal information necessary to investigate the matter concerned should be included in the report of the investigation. A Privacy Statement must be used if an individual is asked to provide his or her Social Security Number voluntarily for the purposes of an investigation. Social Security numbers should not be obtained, except when it is essential to the conduct of the investigation. The IO or board president should consult his or her legal advisor to ensure that the minimum amount of personal information is included in a report of investigation. Act 187-2006 provides a legal framework regarding the use of the Social Security Number in Puerto Rico which can be supplemented with Title 32, CFR, Part 505 about the use of protected personal information and the Privacy Act. Title 32 reference terms do not constitute a mandatory provision.

3–9. Communications with the appointing authority

If, during the investigation or board, something occurs that could cause the appointing authority to consider expanding, restricting, or terminating the proceedings, altering the composition of the fact-finding body, or otherwise modifying any instruction in the original appointment, the IO or board president will report this situation to the appointing authority with recommendations. Such requests should be made, in writing, and kept as part of the report of proceedings.

Section II

Findings and Recommendations

3–10. Findings

a. General.

A finding is a clear and concise statement of a fact that can be readily deduced from evidence in the record. It is directly established by evidence in the record, or it is a conclusion of fact by the IO or board supportable by the evidence in the record. Negative findings (for example, that the evidence does not establish a fact) may be appropriate. The number and nature of the findings required depend on the purpose of the investigation or board, and on the instructions of the appointing authority. The IO or board normally will not exceed the scope of the investigation authorized by the appointing authority without approval but should address issues encountered during the investigation that are related to policies, procedures, resources, or leadership, if the IO or board determines that those issues are relevant to the matters under investigation. It might be appropriate for the IO or board to recommend additional inquiry into issues that are outside the scope of the investigation.

b. Standard of proof.

Unless another regulation or directive, or an instruction of the appointing authority, establishes a different standard, the findings of investigations and boards governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion (such as, by a preponderance of the evidence). The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating factors such as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

c. Form.

Findings will clearly state the relevant factual conclusions that the evidence establishes. When the evidence in the record may reasonably support alternative findings, the IO or board should state why the finding they made is more credible and probable than the other reasonable conclusion(s). If findings are required on only one subject, they normally will be stated in chronological order. If findings are required on several distinct subjects, they normally will be stated separately for each subject and chronologically within each one. The IO or board must cite the evidence (for example, witness statements) that supports each finding. If the investigation or board is authorized by a regulation or directive that establishes specific requirements for findings, those requirements must be satisfied.

3–11. Recommendations

a. General.

The nature and extent of the recommendations required depends on the purpose of the investigation or board, and on the appointing authority's instructions. Each recommendation, including negative ones (for example, that no further action be taken) must be consistent with and logically based on the findings. IOs and boards will make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness to the Government and the individuals involved.

b. Recommendation criteria.

Recommendations must be clearly written and should be feasible, acceptable, and suitable.

(1) *Feasible*. A recommendation is feasible if it is capable of being implemented.

(2) *Acceptable*. The recommendation must be executable. That is, it must be legal and fall within acceptable levels of risk.

(3) *Suitable*. A recommendation is suitable if it solves the identified problem or initiates a process to further assess and identify a solution.

c. Application of the criteria.

A recommendation may not be feasible because the organization or unit lacks the resources to implement it. A feasible

recommendation may be unacceptable because implementing it may divert personnel and degrade mission readiness. A feasible and acceptable recommendation may not be suitable because it fails to solve the identified issue. Recommendations that do not meet these criteria may result in a negative recommendation (for example, that no further action be taken), be discarded entirely, or be referred through appropriate channels to another organization.

Section III

Report of Proceedings

3–12. Format

a. Investigations. A DA Form 1574–1 will be used, but the IO may make his or her findings and recommendations in an attached memorandum (see fig 3–1). The DA Form 1574–1 and any enclosures and exhibits will constitute the report of the proceedings.

b. Boards. If a verbatim record is produced, the transcript, a completed DA Form 1574–2, and any enclosures and exhibits will constitute the report of the proceedings. If a verbatim record is not produced, a completed DA Form 1574–2 and any enclosures and exhibits will constitute the report of the proceedings.

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR *[Approval Authority name, rank, address]*

SUBJECT: Findings and Recommendations for Army Regulation (AR) 15-6 Investigation
[Include the investigation number if it has a number and the name of the person being investigated and/or the subject of the investigation]

1. **References.**

a. Memorandum of Appointment, dated *[insert date]*.
b. Army Regulation (AR) 15-6, Procedures for Administrative Investigations and Boards of Officers.
c. *[Other Regulations/Policy Letters/Standard Operating Procedures used as references by the Investigating Officer]*

2. **Background.** On *[insert date]* you *[or insert the name and title of the appointing authority, if different from the approval authority)*] appointed me as an investigating officer pursuant to AR 15-6. The purpose of the investigation was to determine the facts and circumstances surrounding the *[insert the purpose of the investigation as set forth in the appointment memorandum]*.

3. **Summary.** *[This is your BLUF - a single, clear statement of the findings of your investigation; the answer to the commander's question "What happened?" WHO, WHAT, WHERE, WHEN, HOW, and WHY.]*

4. **Overview.** *[This statement provides an overview of the conduct of the investigation and explains any unusual delays, extensions requested and granted, difficulties, irregularities, or other problems encountered (e.g. absence of material witness; difficulty in obtaining certain resources, tangible evidence, etc.), and any additional information necessary for a complete understanding of the investigation. This statement should indicate when the investigating officer commenced the investigation, and when he or she completed the findings and recommendations. If assistant investigating officers were appointed, this statement should also document their role/participation in the investigation.]*

5. **Summary of Relevant & Material Facts.** *[This section should be a narrative of the facts that the investigation found. Each fact should reference the exhibit(s) upon which it is based. When a conclusion is contradicted by other evidence gathered in the investigation or if the evidence may reasonably result in alternative findings, the investigating officer must explain why*

Figure 3–1. Sample report of findings and recommendations

OFFICE SYMBOL
SUBJECT: *[Copy and paste subject from first page]*

he or she reached the conclusion he or she did (i.e., what made the conclusion reached more likely than the alternative?). Do not include opinions; this section is for facts only. Generally, the facts should be listed in chronological order. Include all relevant and material facts.

6. **Findings.** [(see AR 15-6, para 3-10)] After carefully considering the evidence, I find that: *[Each paragraph should be ONE conclusion, supported by the facts listed in paragraph 5. If findings are based on information not listed in the facts, go back and include that information in paragraph 5. These findings should provide answers to each question posed in the appointment memorandum. The evidence that supports each finding must be cited.]*

a. _____ *[Encl ( )].*
b. _____ *[Encl ( )].*

7. **Recommendations.** [(see AR 15-6, para 3-11)] In view of the above findings, I recommend: *[Each paragraph should be ONE recommendation, soundly based on the findings listed in paragraph 6. Address what actions if any should be taken with regard to the Soldier or Soldiers involved, the unit leadership, and any steps that can be taken to prevent the occurrence in the future. Recommendations need not to be adverse or punitive, but they should be practical and executable by the approval authority. For example, a recommendation that "the Army should adopt a new training method" is likely not practical or executable by a Brigade-level approving authority, but a recommendation for that approval authority to adopt a particular training method within the Brigade or to forward the proposed training method through the chain of command to Army leadership for consideration would be practical and executable.]*

8. The point of contact for this memorandum is the undersigned at DSN NUMBER, and bestinvestigator@us.army.mil.

5 Encls
1. Appointment Memo dated *[insert date]*
2. DA Form 2823 *[insert name]*
3. Privacy Act statement *[insert name]*
4. Diagram of X
5. Photograph of X

BEST INVESTIGATOR
CPT, IN
Investigating Officer

2

Figure 3–1. Sample report of findings and recommendations (continued)

3–13. Enclosures

In reports of investigations and boards, all significant letters, memoranda, and other papers that relate to the administrative aspects of the investigation or board, but are not evidence, will be numbered consecutively and made enclosures, including the following items:

a. The memorandum of appointment.

b. Copies of the notice to any respondent.

c. Copies of other correspondence with any respondent or counsel.

d. Written communications to or from the appointing authority.

e. Privacy Act statements.

f. An explanation by the IO or board of any unusual delays, difficulties, irregularities, or other problems encountered, and

g. When a case is complex, serious, and/or high-profile, or when the report of investigation contains adverse information regarding a field grade officer:

(1) A 1–2-page executive summary.

(2) An index of the exhibits, with all the exhibits labeled in successive order, and

(3) A chronology of the investigation.

3–14. Exhibits/evidence

a. General. Every item of evidence offered to or received by the IO or board will be marked as a separate exhibit. Unless a verbatim record is prepared, statements or transcripts of testimony by witnesses will also be exhibits.

b. Marking exhibits.

(1) Report of proceedings by investigating officer. Exhibits will be numbered consecutively as the IO receives the exhibit.

(2) Report of Proceedings by Board of Officers. Exhibits will be numbered consecutively when the exhibit is offered in evidence (even if not accepted), except that those submitted by each respondent will be lettered consecutively (and further identified by the name of the respondent, if more than one). Exhibits submitted, but not admitted in evidence, will be marked, "Not admitted."

c. Real evidence.

Attaching real evidence (physical objects) to the report is usually impractical. Clear and accurate descriptions (such as written statements) or depictions (such as photographs), authenticated by the IO, recorder, or board president, may be substituted in the report. The real evidence itself will be preserved, including the chain of custody, where appropriate, for use if further proceedings are necessary. The exhibit in the report will note where the real evidence can be found. After final action has been taken in the case, the evidence will be disposed of in accordance with PRSG Regulation 600-10, Personnel and Administrative Procedures or any other Military Forces of Puerto Rico regulation where applicable.

d. Documentary evidence.

When the original of an official record or other document that must be returned is an exhibit, an accurate copy, authenticated by the IO, recorder, or board president, may be used in the report. The exhibit in the report will note where the original can be found.

e. Official notice.

Matters of which the IO or board took official notice normally do not need to be recorded in an exhibit. If, however, official notice of a matter is taken over the objection of a respondent or respondent's counsel, that fact will be noted in the report of the proceedings, and the IO or board will include a statement regarding the matter of which official notice was taken as an exhibit.

f. Objections.

In a board, if the respondent or counsel makes an objection during the proceedings, the objection and supporting reasons will be noted in the report of proceedings.

3–15. Authentication

Unless otherwise directed, a written report of proceedings will be authenticated by the signature of the IO(s), or of all the voting members of the board and the recorder. Board members submitting a minority report may authenticate that report instead. If any voting member of the board or the recorder refuses or is unable to authenticate the report (for example, because of death,

disability, or absence), the reason will be written in the report where that individual's authentication would otherwise appear.

3–16. Compliance with applicable information security laws and regulations

IOs and boards will comply with applicable information security practices, laws, and regulations when placing classification markings on investigation and board reports. Reports that contain classified material must be marked and handled in accordance with applicable information security practices, laws, and regulations. The IO or board president should consult with the legal advisor and the command security manager to ensure compliance with applicable information security practices, laws, and regulations. PRSGD 23-200 Directive, Operations Security (OPSEC) policy prescribes Guidelines for Protecting Information the following documents may be used as guidance, but in no way its terms are mandatory for the PRSG, see AR 380–5 which provides guidance on the Department of the Army Information Security Program, and DoDD 5230.11 which provides guidance on the disclosure of classified military information to foreign governments and international organizations.

3–17. Safeguarding a written report

When the report of proceedings contains material that requires protection because it is determined that disclosure of the information would cause harm to an interest protected by one or more of FOIA(Freedom of Information Act) exemptions 2 through 9 and Puerto Rico FOIA (collectively known as FOIAs) as applicable, but does not have a security classification, the report should be marked in accordance with this PRSG Regulation. No one will disclose, release, or cause to be published any part of the report, except as required in the normal course of forwarding and staffing the report, or as otherwise authorized by law or regulation, without the approval of the appointing authority or other appropriate FOIAs release authority.

3–18. Submission

A digital copy of the report of proceedings will be submitted, along with a complete written copy, directly to the approval authority, or his or her designee, unless the appointing authority or another regulation or directive provides otherwise. If there are respondents, an additional written copy for each respondent will be submitted to the approval authority. The copies provided for each respondent will be properly redacted to comply with FOIAs and Privacy Statement requirements.

3–19. Filing and record keeping of the report

a. *Approval of authority filing requirements*. Except in the case of an investigation or board that contains adverse information regarding a field-grade officer or a high-profile case, the approval authority will keep the original and a digital copy of the final report of proceedings on file for a period of not less than 5 years.

b. Adverse information.

(1) In the case of an investigation or board that contains adverse information regarding a field-grade officer, the approval authority will keep the original and a digital copy of the final report of proceedings, and the redacted version as provided to the officer. This is done in accordance with para 2–8c, on file for a period of not less than 10 years, regardless of whether any adverse action was taken against the officer based on the findings and/or recommendations of the investigation or board. In addition, the approval authority will comply with specific filing requirements set forth in other regulations or directives, to include requirements to synopsize and upload portions of the investigations into a centralized database.

(2) The servicing JAG or legal advisor will provide a synopsis of the adverse finding, and the filing location of the investigation by emailing the PRSG CJA designated with the official initial as PRSG-JA.

c. Filing requirements for high-profile cases.

Reports of proceedings in serious, complex, or high-profile cases that result in national media interest and/or substantive changes in PRSG policies or procedures have value for historical and lessons-learned purposes.

(1) The approval authority will keep the original and a digital copy of these reports on file for a period of not less than 10 years.

d. Passing investigation or board reports to succeeding commands; requirement to return and maintain investigations at home station. When an investigation or board is conducted in a SAD or activation or mobilization environment and pertains to its operations, the approval authority should provide a copy of the final report of proceedings to the replacing unit if this is the case. The approval authority will keep the original and a digital copy of the report of proceedings.

3–20. Effect of errors

Generally, procedural errors or irregularities in an investigation or board, which do not have a material adverse effect on an individual's substantial rights, do not invalidate the proceeding, or any action based on it.

a. Harmless errors.

Harmless errors are defects in the procedures or proceedings that do not have a material adverse effect on an individual's substantial rights. A harmless error does not prevent the approval authority from taking final action on the investigation or board.

b. Appointing errors.

When an investigation or board is convened or directed by an official without authority, the proceedings are a nullity, unless ratified by an official with the authority to appoint such an investigation or board.

c. Substantial errors.

(1) Substantial errors are those that have a material adverse effect on an individual's substantial rights. Examples involving a board include failing to meet board composition requirements or denying a respondent's right to counsel.

(2) When such errors can be corrected without substantial prejudice to the individual concerned, the approval authority may return the case to the same IO or board for corrective action. Respondents who are affected by such a return will be notified of the error, of the proposed correction, and of their right to comment on both.

(3) If the error cannot be corrected, or cannot be corrected without substantial prejudice to the individual concerned:

(a) The approval authority may not use the affected part of the investigation or board as the basis for adverse action against that person.

(b) Evidence collected by the investigation or board may be used in connection with any action under PRSG 600-10, Personnel and Administrative Procedures or another regulation, instruction or directive that contains its own procedural safeguards.

(c) The approval authority may set aside all findings and recommendations and refer the entire case to a new IO or composed of entirely new voting members. Alternatively, the approval authority may take action on findings and recommendations not affected by the error, set aside the affected findings and recommendations, and refer the affected portion of the case to a new IO or board. In either case, the new IO or board may be furnished with any evidence properly considered by the previous one. The new IO or board may also consider additional evidence. If the regulation or directive under which a board is appointed provides that the approval authority may not take less favorable action than the board recommends, the approval authority's action is limited by the recommendations of the original board, even if the case is referred to a new board that recommends less favorable action.

d. Failure to object to board proceedings.

No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the IO, legal advisor, or board president, prior to the board adjourning. Accordingly, errors in board proceedings described in subparagraph c, above, may be treated as harmless if the respondent or respondent's counsel fails to object.

e. Errors in reports of investigation.

If there is an error in an investigation or board report, the error may be raised as part of any rebuttal matters (see para 2–8c) submitted following service of the report on the individual.

3.21 Reprisals against IO, Board members, JAG and witnesses.

Reprisal under the Puerto Rico Military Code and the UCMJ as applicable. For this regulation reprisal occurs when any person regardless of rank or position retaliates (or threatens to), requires a favorable report (or threatens to), takes (or threatens to take), intimidates with (or threatens to take), blackmails (or threatens to) an unfavorable personnel action against an individual, or withholds (or threatens to withhold) a favorable personnel action because an IO, Board members, JAG, or witnesses or any of them made or was perceived to have participated in an investigation, made a finding, file a report, provided testimony, or counsel or any of them actions. Any person who is found in violation of this disposition may be prosecuted under the Puerto Rico Military Code, Century XXI and the UCMJ as applicable without this being a limitation for prosecution or actions under any other federal and state laws.

3.22 No Liability

An IO, Board member, or JAG will not be liable for conducting an authorized investigation, filing a report, fulfilling its duties

as assigned, providing counsel, or a combination of them if such action is based on the information provided by the authorized by an official with the authority to appoint such an investigation or board, witnesses and available evidence and information. Notwithstanding, any investigation, report, actions regarding its duties as assigned or a combination of them performed in bad faith, or having a conflict of interest as defined in this regulation, disregarding the truth according to the information, being misleading, or lying, incurs or threatens retaliation or reprisal or a combination of them will be liable under the Puerto Rico Military Code and the UCMJ as applicable without this being a limitation for prosecution or actions under any other federal and state laws.

Chapter 4
Preliminary Inquiries

4–1. Purpose

A preliminary inquiry is an informal investigation. The purposes of a preliminary inquiry include, but are not limited to, ascertaining the magnitude of a problem; identifying and interviewing witnesses and summarizing and recording their statements; and determining whether a more extensive investigation is warranted, and, if warranted, assisting in determining the scope of such investigation. While a preliminary inquiry may result in the need to conduct an administrative investigation under the provisions of This regulation, it need not follow the procedural requirements of an administrative investigation or a board. A preliminary inquiry under this regulation may satisfy the preliminary inquiry requirement, sometimes referred to as "commander's inquiry,". Commanders should consult their legal advisor for additional guidance on conducting preliminary inquiries into reported offenses. Except for those offenses specifically reserved to the Criminal Investigation Division, a preliminary inquiry into reported criminal offenses is required only when a military member is accused or suspected of committing an offense that may be tried by court-martial.

4–2. Composition

Persons authorized to direct investigations in paragraph 2–1 are authorized to initiate preliminary inquiries into incidents occurring within or involving personnel assigned or attached to their organizations. An appointing authority may personally conduct the inquiry or appoint an inquiry officer who meets the qualifications in paragraph 2–3, to obtain facts on the appointing authority's behalf.

4–3. Procedure

The inquiry will be accomplished in accordance with guidance and direction provided by the appointing authority. The findings of the inquiry should be documented in writing, and it is advisable to preserve any evidence gathered.

a. Adverse action.

If the appointing authority determines that further investigation is not required but contemplates adverse administrative action against a person as a result of the findings of the inquiry, the appointing authority will require the findings to be in writing and reviewed in accordance with paragraph 2–6. Additionally, the appointing authority will comply with the notice and referral requirements in paragraphs 1–11c.

b. Adverse finding.

If the preliminary inquiry contains adverse information regarding a field grade officer, an administrative investigation must be conducted under the provisions of this regulation. The approval authority need not refer the preliminary inquiry to the field grade officer.

c. Need for further investigation.

Should the approving authority determine that further investigation or a board is required as a result of a preliminary inquiry, the evidence and results of the preliminary inquiry will be provided to the IO or board.

d. Filing.

If the preliminary inquiry results in an adverse finding and an additional investigation does not follow, then the filing requirements of paragraph 3–19b apply.

4–4. Legal consultation

Commanders and preliminary inquiry appointing authorities must consult with their legal advisor prior to conducting a preliminary inquiry and before taking adverse administrative action against any person based upon the findings of a preliminary inquiry. As a preliminary inquiry may lead to a criminal investigation, appointing authorities should refer to the guidance in paragraph 3–7c, above, regarding self-incrimination and other evidentiary rules that preclude the use of evidence.

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL DATE

MEMORANDUM FOR *[Approval Authority name, rank, address]*

SUBJECT: Preliminary Inquiry concerning *[description of incident]*

1. This responds to your request for a preliminary inquiry concerning *[description of the incident]*.

2. Personnel contacted*: [List individuals with name, rank, title, unit, and telephone number]*.

3. Materials reviewed: *[List documents, objects, materials, tangibles reviewed, and if of probable evidentiary value, indicate location where stored together with name of the custodian of such material and the person's phone number]*.

4. Summary of findings: *[Summary should indicate both what is known and unknown about the event in question]*.

5. Recommendation: *[Should indicate for example whether: no further investigation warranted; further inquiry is appropriate by investigation or board under provision of AR 15-6; the matter should be referred to CID, military policy or another agency; or the matter should be referred to another command]*.

6. The point of contact for this memorandum is the undersigned at DSN NUMBER, EMAIL@.mil.

[insert number] Encls (Signature block)

(Note: Exhibits may be added to the report as directed by the appointing authority).

Figure 4–1. Sample report of findings for a preliminary inquiry

Chapter 5
Administrative Investigations

5–1. Composition

Investigation procedures are used by a single IO, or by an investigation team consisting of an IO and one or more assistant IOs designated by the appointing authority to assist the IO in questioning witnesses, taking sworn statements, and otherwise facilitating evidence gathering. If assistant IOs are used, those designated as assistants must abide by the provisions of Chapter 3. There is no recorder. The IO prescribes the duties of each assistant IO and determines the findings and recommendations.

5–2. Procedure

IOs may use whatever method they deem most efficient and effective for acquiring information. (See chapter 3 for general guidance.) An IO may divide the witnesses, issues, or evidentiary aspects of the inquiry among assistant Ios for individual investigation and development, holding no collective meeting until the IO is ready to review all the information collected. Although witnesses may be called to present formal testimony, information may also be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

5–3. Interested persons

Investigation procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation. No respondents will be designated and, except as described in paragraph 5–4, no one is entitled to the rights of a respondent. The IO may still make any relevant findings or recommendations, including those adverse to an individual or individuals. (See para 1–12 for rules regarding the use of adverse information.)

5–4. Right to respond to adverse information

a. Although the investigation procedures are not intended to provide a hearing for interested persons, field grade officers have a right to respond to adverse information in a report of proceedings. This right exists regardless of whether adverse administrative action is recommended or contemplated against the field grade officer.

b. When a field grade officer has the right to respond pursuant to this paragraph, the portion of the report of the investigation and supporting evidence pertaining to the adverse information will be referred to the officer after being properly redacted. The officer will have at least 10 business days to respond. The referral and processing of any response will be conducted in accordance with paragraph 2–8c.

c. The right of a field grade officer to respond to adverse information should not influence the conduct of an investigation. The officer's right to respond to adverse information will not serve as a substitute for attempting to interview the individual during the investigation.

d. The field grade officer's response to the adverse information may include anything that the officer deems to be relevant to the finding, including, but not limited to, a rebuttal memorandum prepared by the officer or his representative, additional evidence in any format, and letters of support. All materials provided in response to adverse information will be included as an exhibit to the report of proceedings.

e. The right to respond to adverse information is extended by this regulation only to field grade officers, because such findings or recommendations may be considered in future promotion boards that will consider those officers for promotion. This does not require nor preclude approval authorities from extending this opportunity to any other individual who is the subject of adverse information in the report of proceedings.

Chapter 6
Collateral Investigations

6–1. General

Collateral investigations are investigations performed in conjunction with another type of investigation and serve a specific purpose. Other regulations generally specify when a collateral investigation must be conducted, the scope of the collateral investigation, and which investigation takes priority. Unless otherwise specified, collateral investigation use the procedures established for investigations in this regulation. Unless otherwise specified, the appointing authority may determine which investigation takes priority.

6–2. Types

a. Collateral investigations include, but are not limited to, those conducted in conjunction with the death of a PRSG Servicemember, and those conducted in conjunction with an accident investigation.

b. In each case, the scope and purpose of the investigation is unique. IOs should consult with any other organization that may be simultaneously investigating an incident and request any relevant information that the other organization has obtained. In many cases, the amount of information the collateral investigation officer may share is limited. Ios should be aware of the limits of evidence sharing and become familiar with the provisions of both this regulation and the regulation mandating the collateral investigation.

Chapter 7
Boards of Officers
Section I
General

7–1. Members

a. Voting members.

All members of a board are voting members, except as provided elsewhere in this paragraph, in other applicable regulations or directives, or in the memorandum of appointment.

b. President. The senior voting member present acts as president. The senior voting member will be senior to any named respondent and at least a major, except where the appointing authority determines that such appointment is impracticable because of military exigencies. The president has the following responsibilities: The president will—

(1) Preserve order.

(2) Determine time and uniform for sessions of the board.

(3) Recess or adjourn the board as necessary.

(4) Decide routine administrative matters necessary for efficient conduct of the business of the board.

(5) Ensure that all business of the board is properly conducted, and that the report of proceedings is submitted promptly. If the board consists of only one member, that member has the responsibilities of both the president and the recorder.

c. Recorder.

The memorandum of appointment may designate a commissioned or warrant officer as recorder. It may also designate assistant recorders, who may perform any duty the recorder may perform. If the memorandum of appointment designates a recorder or assistant recorder, the recorder or assistant recorder is a nonvoting member of the board. If the memorandum of appointment does not designate a recorder, the junior member of the board acts as the recorder and is a voting member. The appointing authority should appoint a judge advocate as recorder, if reasonably available.

d. Legal advisor.

A legal advisor will be appointed as a nonvoting member. He or she rules finally on challenges for cause made during the proceedings—except for a challenge against the legal advisor and on all evidentiary and procedural matters but may not dismiss any question or issue before the board. In appropriate cases, the legal advisor may advise the board on legal matters. If a

respondent has been designated, the respondent and the respondent's counsel will be afforded the opportunity to be present when legal advice is provided to the board. If legal advice is not provided in person (for example, by telephone or in writing), the right to be "present" is satisfied by providing the opportunity to listen to, or read, the advice. The right to be present does not extend to general procedural advice given before the board initially convenes, to legal advice provided before the respondent is designated.

e. Members with special technical knowledge.

Persons with special technical knowledge, including members of other services and allied or coalition partners, may be appointed as voting members or, unless there is a respondent, as advisory members without a vote. Such persons need not be commissioned or warrant officers. If appointed as advisory members, they need not participate in the board proceedings, except as directed by the president. The report of proceedings will indicate the limited participation of an advisory member.

7–2. Attendance of members

a. General.

Attendance at board proceedings is the primary duty of each voting member and takes precedence over all other duties. A voting member must attend scheduled sessions of the board, if physically able, unless excused in advance by the appointing authority. If the appointing authority is a Commanding General with a legal advisor on his or her staff, the authority to excuse individual members before the first session of the board may be delegated to the CJA or legal advisor. The board may proceed, even though a member is absent, provided the necessary quorum is present (see sub para b, below). If the recorder is absent, the assistant recorder, if any, or the junior member of the board will assume the duties of recorder. The board may then proceed at the discretion of the president.

b. Quorum. Unless another regulation or directive requires a greater number, a majority of the appointed voting members (other than nonparticipating alternate members) of a board constitutes a quorum and must be present at all sessions. If another regulation or directive prescribes specific qualifications for any voting member (for example, component, branch, or technical or professional qualifications), that member is essential to the quorum and must be present at all board sessions.

c. Alternate members.

An unnecessarily large number of officers will not be appointed to a board with the intention of using only those available at the time of the board's meeting. The memorandum of appointment may, however, designate alternate members to serve on the board, in the sequence listed, if necessary to constitute a quorum in the absence of a regular member. These alternate members may be added to the board at the direction of the president without further consultation with the appointing authority. A member added at the direction of the president becomes a regular member with the same obligation to be present at all further proceedings of the board (see subpara a, above).

d. Member not present at prior sessions.

A member who was not present at a prior session of the board, such as an absent member, an alternate member newly authorized to serve as a member, or a newly appointed member, may participate fully in all subsequent proceedings. The member must, however, become thoroughly familiar with the prior proceedings and the evidence. The report of proceedings will reflect how the member became familiar with the proceedings. Except as directed by the appointing authority, a member who was not available (because of having been excused or otherwise) for a substantial portion of the proceedings, as determined by the president, will no longer be considered a member of the board in that particular case, even if that member later becomes available to serve.

7–3. Duties of recorder

a. Before a session.

The recorder is responsible for administrative preparation and support for the board, and will perform the following duties before a session:

(1) Give timely notice of the time, place, and prescribed uniform for the session to all participants, including board members, witnesses, the legal advisor, and, if any, the respondent, counsel, reporter, and interpreter. Only the notice to a respondent, required by paragraph 7–5, must be in writing. It is also usually appropriate to notify the commander or supervisor of each witness and respondent.

(2) Arrange for the presence of witnesses who are to testify in person, including the attendance at Government expense or not of military personnel as may be authorized (no compensation entitled for a PRSG member is summoned during his/her military training or camp hours) and civilian government employees ordered to appear, and of other civilians voluntarily appearing pursuant to invitational travel authorizations (see para 3–8a).

(3) Ensure that the site for the session is adequate and in good order.

(4) Arrange for necessary personnel support (for example, a paralegal, reporter, or interpreter), recording equipment, stationery, and other supplies.

(5) Arrange to have available all necessary Privacy Statements and, with appropriate authentication, all required records, documents, and real evidence.

(6) Ensure, subject to security requirements, that all appropriate records and documents referred with the case are furnished to any respondent or counsel.

(7) Take whatever other action is necessary to ensure a prompt, full, and orderly presentation of the case.

b. During the session. The recorder will perform the following duties during the session:

(1) Read the memorandum of appointment at the initial session or determine that the participants have read it.

(2) Note for the record at the beginning of each session the presence or absence of the members of the board and the respondent and counsel, if any.

(3) Administer oaths as necessary.

(4) Execute all orders of the board.

(5) Conduct the presentation of evidence and examination of witnesses to elicit the facts.

c. After the proceedings. The recorder is responsible for the prompt and accurate preparation of the report of proceedings, for the authentication of the completed report, and for the delivery of the report to the approval authority or his or her designer.

Section II

Respondents

7–4. Designation

a. General.

A respondent may be designated when the appointing authority desires to provide a hearing for a person with a direct interest in the proceedings. The mere fact that an adverse finding may be made, or adverse action recommended against a person, does not mean that he or she will be designated a respondent. The appointing authority decides whether to designate a person as a respondent, except where procedural protections available only to a respondent under this regulation are mandated by other regulations or directives, or where the designation of a respondent is—

(1) Directed by authorities senior to the appointing authority.

(2) Required by other regulations or directives.

b. Before proceedings. When it is decided at the time a board is appointed that a person will be designated a respondent, the designation will be made in the memorandum of appointment.

c. During the proceedings.

(1) If, during board proceedings, the legal advisor or the president decides that it would be advisable to designate a respondent, the proceedings will be abated until the legal advisor makes such a recommendation and provides supporting information to the appointing authority, who will decide whether to designate a respondent or to continue the proceedings without designating a respondent.

(2) The appointing authority may designate a respondent at any point in the proceedings. A respondent so designated will be given a reasonable time to obtain counsel (see para 7–6) and prepare for subsequent sessions.

(3) If a respondent is designated during the proceedings, the record of proceedings and all evidence received by the board to that point will be made available to the newly designated respondent and counsel. The respondent may request that witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit recalling a witness, a written statement may be obtained. In the absence of compelling justification, the proceedings will not be delayed obtaining such a statement. Subject to evidentiary limitations (see para 3–7), any testimony given by a person as a witness may be considered, even if that witness is subsequently designated a respondent.

7–5. Notice

The recorder will, at a reasonable time in advance of the first session of the board concerning a respondent (including a respondent designated during the proceedings), provide the respondent a copy of all unclassified documents in the case file and a letter of notification. In the absence of special circumstances or a different period established by the regulation or directive authorizing the board, a "reasonable time" is 10 business days. The letter of notification will include the following information:

a. The date, hour, and place of the session and the appropriate military uniform, if applicable.

b. The matter to be investigated, including specific allegations, in sufficient detail to enable the respondent to prepare.

c. The respondent's rights regarding counsel (see para 7–6).

d. The name and address of each witness expected to be called.

e. The respondent's rights to be present, present evidence, and call witnesses (see para 7–8a).

f. The procedures for examining relevant classified materials, on request and with the assistance of the recorder, if the board involves classified matters (See PRSGD Directive 23-200, Operation Security OPSEC) policy and for guidance AR 380–67, which terms are not compulsory under this regulation).

7–6. Counsel

a. Entitlement.

A respondent is entitled to have counsel and, to the extent permitted by security classification, to be present with counsel at all open sessions of the board. Counsel may also be provided for the limited purpose of taking a witness's statement or testimony if a respondent has not yet obtained counsel. An appointed counsel will be furnished at the discretion of the Commanding General of the PRSG only to civilian employees or members of the military in accordance with para 7–6b.

b. Who may act.

(1) Civilian counsel.

Any respondent may be represented by civilian counsel not employed by, and at no expense to, the Government. A Government civilian employee may not act as civilian counsel for compensation, or if it would be inconsistent with the faithful performance of the employee's regular duties.

(2) Military counsel for military respondents.

A military respondent is not entitled to be represented by a designated military counsel. The retention of civilian counsel does not deprive the military respondent of the right to be represented by his or her designated military counsel if applicable. A military respondent who declines the services of a qualified designated military counsel is not entitled to have a different counsel designated.

c. Delay.

Whenever practicable, the board proceedings will be held in abeyance pending a respondent's reasonable and diligent efforts to obtain civilian counsel. The proceedings will not be delayed unduly to permit a respondent to obtain a particular counsel, or to accommodate the schedule of such counsel. The board president shall determine whether a delay is excessive.

d. Qualifications.

Counsel will be sufficiently mature and experienced to be of genuine assistance to the respondent.

e. Independence.

No counsel for a respondent will be censured, reprimanded, admonished, coerced, or rated less favorably as a result of the lawful and ethical performance of duties, or the zeal with which he or she represents the respondent. Any question concerning the propriety of a counsel's conduct in the performance of his or her duty will be referred to the servicing CJA or legal advisor.

7–7. Challenges for cause

a. Right of respondent.

A respondent is entitled to have the matter at issue decided by a board composed of impartial members. A respondent may challenge for cause the legal advisor and any voting member of the board who the respondent does not meet that standard. Lack of impartiality is the only basis on which a challenge for cause may be made at the board proceedings. Any other matter affecting the qualification of a board member may be brought to the attention of the appointing authority (see para 3–3).

b. Making a challenge.

A challenge will be made as soon as the respondent or counsel is aware that grounds exist. Failure to do so normally will constitute a waiver. If possible, all challenges and grounds will be communicated to the appointing authority before the board convenes. When the board convenes, the respondent or counsel may question members of the board to determine whether to make a challenge. Such questions must relate directly to the issue of impartiality. Discretion will be used, however, to avoid revealing prejudicial matters to other members of the board. If a challenge is made after the board convenes, only the name of the challenged member will be indicated in open session, not the reason for believing the member is not impartial.

c. Deciding challenges.

The appointing authority may decide any challenges made before the board convenes. Otherwise, a challenge is decided by the legal advisor or, if the legal advisor is challenged, by the president.

d. Procedure.

Challenges for lack of impartiality not decided by the appointing authority will be heard and decided at a session of the board attended by the legal advisor, the president, the member challenged, the respondent and his or her counsel, and the recorder. The respondent or counsel making the challenge may question the challenged member and present any other evidence to support the challenge. The recorder may also present evidence on the issue. The person who is to decide the challenge may question the challenged member and any other witness and may direct the recorder to present additional evidence. If more than one member is challenged at a time, each challenge will be decided independently, in descending order of the challenged members' ranks.

e. Sustained challenge.

If the person deciding a challenge sustains it, he or she will excuse the challenged member from the board at once, and that person will no longer be a member of the board. If this excusal prevents a quorum (see para 7–2b), the board will adjourn to allow the addition of another member; otherwise, proceedings will continue.

7–8. Presentation of evidence

a. Rights of respondent. Except for good cause shown in the report of proceedings, a respondent is entitled to be present, with counsel, at all open sessions of the board that deal with any matter concerning the respondent. The respondent may—

(1) Examine and object to the introduction of real and documentary evidence, including written statements.

(2) Object to the testimony of witnesses and cross-examine witnesses other than the respondent's own.

(3) Call witnesses and otherwise introduce evidence.

(4) Testify as a witness; however, no adverse inference may be drawn from the exercise of the privilege against self-incrimination (see para 3–7d (6)). Additionally, the respondent may provide an unsworn statement.

b. Assistance.

(1) Upon receipt of a timely written request, and except as provided in subparagraph (4), below, the recorder will assist the respondent in obtaining documentary and real evidence in the possession of the Government, and in arranging for the presence of witnesses for the respondent.

(2) Except as provided in subparagraph (4), below, the respondent is entitled to the attendance of witnesses who are PRSG members,-civilian employees, or other civilian witnesses who voluntarily appear in response to invitational travel authorizations, and to official cooperation in obtaining access to evidence in the Government's possession, to the same extent as the recorder on behalf of the Government. If the recorder believes any witness's testimony or other evidence requested by the respondent is irrelevant or unnecessarily cumulative, or that its significance is disproportionate to the delay, expense, or difficulty in obtaining it, the recorder will submit the respondent's request to the legal advisor or president (see para 3–5), who will decide whether the recorder will comply with the request. Denial of the request does not preclude the respondent from obtaining the evidence or witness without the recorder's assistance, and at no expense to the Government.

(3) Nothing in this paragraph relieves a respondent or counsel from the obligation to exercise due diligence in preparing for and presenting his or her own case. Normally, the fact that any evidence or witness desired by the respondent is not reasonably available is not a basis for terminating or invalidating the proceedings.

(4) Evidence that is privileged within the meaning of paragraph 3–7d(2), will not be provided to a respondent or counsel, unless the recorder intends to introduce such evidence to the board and has obtained approval to do so.

7–9. Argument

After all evidence has been received, the recorder and the respondent or the respondent's counsel may make a final statement or argument. The recorder may make the opening argument and, if argument is made on behalf of a respondent, the closing argument in rebuttal.

7–10. Deliberation

After all the evidence has been received (and any arguments heard), the board members will consider the evidence carefully in light of any instructions from the appointing authority. These deliberations will (and, if there is a respondent, must) be in closed session (in other words, with only voting members present). Nonvoting members of the board do not participate in the board's deliberations but may be consulted. The respondent and the respondent's counsel, if any, will be afforded the opportunity to be present at such consultations. The board may request the legal advisor to assist in putting findings and recommendations in the proper form after their substance has been adopted by the board. The respondent and counsel are not entitled to be present during such assistance.

7–11. Voting

A board arrives at its findings and recommendations by voting. All voting members present must vote. After thoroughly considering and discussing all the evidence, the board will propose and vote on the findings of fact. The board will next propose and vote on recommendations. If additional findings are necessary to support a proposed recommendation, the board will vote on such findings before voting on the related recommendation. Unless another regulation or directive or an instruction by the appointing authority establishes a different requirement, a majority vote of the voting members present determines questions before the board. In the case of a tie vote, the president's vote is the determination of the board.

7–12. After the hearing

Upon approval or other action on the report of proceedings by the approval authority, and completion of the actions in paragraph 2–8, the respondent or respondent's counsel will be provided a copy of the report, including all exhibits and enclosures that pertain to the respondent. Portions of the report, exhibits, and enclosures may be withheld from a respondent only as required by security classification or for other good cause determined by the appointing authority and explained to the respondent in writing.

Appendix A

References

Section I

Legislation

US Constitution

Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Cited in para 3-8e(1).)

UCMJ

Commonwealth of Puerto Rico Constitution

Act. 88-2023, Puerto Rico Military Code

Required Publications

PRSG Regulation 600-10, Personnel and Administrative Procedures.

PRSG Regulation 600-100, Promotion of Commissioned Officers and Warrant Officers.

PRSG Regulation 600-300, Professional Skills Officer Appointment and Promotions.

PRSG Regulation 17-100, Standards of Medical Fitness

PRSG Regulation 635-100, Officer Retention Review Board.

PRSG Regulation 600-200, Enlisted Retention Review Board.

PRSG Regulation 14-100, Personnel Action Board.

PRSG Regulation 624-100, Procedures for Separation of the Puerto Rico State Guard Command.

PRSG Regulation 10-0 Series, TDA-UMD Position and Vacancy Board.

PRSG Regulation 22-0 Series, Composition and Military Structure of Puerto Rico State Guard Command.

UCMJ articles to follow as applicable under the Puerto Rico Military Code, Century XXI.

Victim Advocate-Victim Privilege (Cited in para 3-7d(2))

UCMJ, Art. 31

Compulsory self-incrimination prohibited (Cited in para 3-7d(7)(a))

UCMJ, Art. 136

Authority to administer oaths and act as notary (Cited in para 1-3.) (Available from www.army.mil/references/UCMJ.)

UCMJ, Art. 138

Complaints of wrongs (Cited in para B-2b(2))

10 USC 933

Conduct unbecoming an officer and a gentleman.

10 USC 1219

Statement of origin of disease or injury: limitations

10 USC 3012

Department of the Army: seal

18 USC 205

Activities of offices and employees in claims against and other matters affecting the Government

U.S. Constitution, amend. 5

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ”

Informative purposes regulation whose terms are not compulsory and may be useful to use as a guide under this regulation.

AR 20–1

Inspector General Activities and Procedures (Cited in para 1–5.)

AR 25–55

The Department of the Army Freedom of Information Act Program (Cited in para 1–12.)

AR 25–400–2

Army Records Information Management System (ARIMS) (Cited in para 3–19.)

AR 27–10

Military Justice (Cited in para 3-7.)

AR 40–66

Medical Record Administration and Healthcare Documentation (Cited in para 3-7b(1).)

AR 190–30

Military Police Investigations (Cited in para 1-5.)

AR 195–2

Criminal Investigation Activities (Cited in para 1-5.)

AR 195–5

Evidence Procedures (Cited in para 3-14.)

AR 340–21

The Army Privacy Program (Cited in para 1-12.)

AR 380–5

Department of the Army Information Security Program (Cited in para 3-16.)

AR 380–67

The Department of the Army Personnel Security Program (Cited in para 7-5.)

AR 600–8–2

Suspension of Favorable Personnel Actions (Flags) (Cited in para 1-9.)

AR 690–700

Personnel Relations and Services (Cited in para 1-12.)

AR 623–3

Evaluation Reporting System (Cited in para 1–12.)

DODD 5230.11

Disclosure of Classified Military Information to Foreign Governments and International Organizations (Cited in para 3–16.)

DODI 6055.07

Mishap Notification, Investigation, Reporting, and Record Keeping (Cited in para 2-1.)

JTR, vol. 2

Joint Travel Regulation (Cited in para 3-8.) (Available at http://www.defensetravel.dod.mil/)

MCM 2012

See Military Rules of Evidence contained therein (Cited in para 3-7.)

MRE 201

Judicial notice of adjudicative facts (Cited in para 3-7c.)

MRE 401

Definition of relevant evidence; (Cited in para 3-7d(1).)

MRE 403

Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time (Cited in para 3-7d(1).)

MRE 412

Sex offense cases; relevance of alleged victim's sexual behavior or sexual predisposition (Cited in para 3-7d(3).)

MRE 502

Lawyer-client privilege (Cited in para 3-7d(2).)

MRE 503

Communications to clergy (Cited in para 3-7d(2).)

MRE 504

Husband-wife privilege (Cited in para 3-7d(2))

MRE 513

Psychotherapist-patient privilege (Cited in para 3-7d(2))

MRE 514

RCM 303

Preliminary inquiry into reported offenses (Cited in para 4-1.)

Freedom of Information Act (Cited in para 1-11c(1).)

5 USC 7114

Representation rights and duties (Cited in para 3–4.)

10 USC 615

Information furnished to selection boards (Cited in para 2–8c(3)(c).)

Section II

Related Publications

A related publication is a source of additional information. See **Puerto Rico State Guard Command Policies, Regulations, Instructions, and Memorandums** at www.prsg.us for statutes that may apply or be incorporated by reference.

The user does not have to read it to understand the following regulation which is **for informative purposes whose terms are not compulsory to follow under this regulation.** United States Code is found at www.gpoaccess.gov/uscode.

DA Pam 385–40

Army Accident Investigations and Reporting

AR 11–2

Managers' Internal Control Program

AR 27–20

Claims

AR 27–40

Litigation

AR 40–68

Clinical Quality Management

AR 210–7

Commercial Solicitation on Army Installations

AR 380–5

Department of the Army Information Security Program

AR 385–10

The Army Safety Program

AR 600–8–1

Army Casualty Program

AR 600–8–4

Line of Duty Policy, Procedures, and Investigations

AR 600–8–24

Officer Transfers and Discharges

AR 600–34

Fatal Training/Operational Accident Presentations to the Next of Kin

AR 600–37

Unfavorable Information

AR 600–43

Conscientious Objection

AR 623–3

Evaluation Reporting System

AR 735–5

Policies and Procedures for Property Accountability

DOD 6025.18–R

Department of Defense Health Information Privacy Regulation

DODI 1320.04

Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation.

32 CFR 505

Army Privacy Act Program.

10 USC 933

Conduct unbecoming an officer and a gentleman.

10 USC 1219

Statement of origin of disease or injury: limitations

10 USC 3012

Department of the Army: seal

18 USC 205

Activities of offices and employees in claims against and other matters affecting the Government U.S. Constitution, amend. 5

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ”

Section III

Prescribed Forms **As modified and/or adopted by the PRSG.** Sample DA forms are available on the APD Web site (www.apd.army.mil).

DA Form 1574–1

Report of Proceedings by Investigating Officer (Prescribed in para 2–8.)

DA Form 1574–2

Report of Proceedings by Board of Officers (Prescribed in para 2–8.)

DA Form 7694

Privacy Statement (Prescribed in para 3–8e(1).)

Section IV

Referenced Forms **As modified and/or adopted by the PRSG.**

Unless otherwise stated, DA forms are available on the APD Web site (www.apd.army.mil).

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 2823

Sworn Statement

DA Form 3881

Rights Warning Procedure/Waiver Certificate

Appendix B

Guidance for Preparing Privacy Statements

B–1. General

a. The Privacy statement requires that, whenever personal information is solicited from an individual, and the information will be filed, so as to be retrievable by reference to the name or other personal identifier of the individual, he or she must be advised of the following information:

(1) The authority for soliciting the information.

(2) The principal purposes for which the information is intended to be used.

(3) The routine uses that may be made of the information.

(4) Whether disclosure is mandatory or voluntary.

(5) The effect on the individual of not providing all or part of the information.

b. Each Privacy Act statement must be tailored to the matter being investigated, and to the person being asked to provide information. The legal advisor will be consulted for assistance in preparing Privacy Act statements, as necessary.

c. The DA Form 2823 (Sworn Statement), or PRSG equivalent contains a Privacy statement at the top of the form. If a DA Form 2823 is used to document a witness's statement, an additional Privacy statement is generally not required.

B–2. Content

a. Authority.

If a specific statute or executive order authorizes collection of the information or authorizes performance of a function that necessitates collection of the information, the Privacy ~~Act~~ statement will cite it as the authority for solicitation.

b. Principal purposes.

The statement of principal purposes will consist of a short statement of the reason the investigation is being conducted. The following examples apply to types of investigations:

(1) Administrative elimination proceeding: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your retention on active duty and, if a determination is made not to retain you on active duty, the type of discharge to award."

(2) Investigation of a complaint under this regulation: "The purpose for soliciting this information is to obtain facts and make recommendations to assist the commander in determining what action to take with regard to (your) (complainant's), complaint."

(3) Investigation of a security violation: "The purpose for soliciting this information is to determine whether the security violation under investigation resulted in a compromise of national defense information, to affix responsibility for the violation, and to determine whether to change existing security procedures."

(4) Flying evaluation board pursuant: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your flying status."

c. Routine uses.

In order to advise an individual of what routine uses may be made of solicited information, it is necessary to identify the system of records in which the report of proceedings will be filed. The routine uses will be summarized from the regulatory guidance that the PRSG uses for personal information disclosures. The routine use statement may be introduced as follows: "Any information you provide is disclosable to members of the Military Forces of Puerto Rico who need the information in the performance of their duties. In addition, the information may be disclosed to Government agencies outside of the Military Forces of Puerto Rico as follows: (list of routine uses external to the Military Forces of Puerto Rico)."

d. Routine uses. Disclosure is mandatory or voluntary; the effect of not providing information. Providing information is voluntary, unless the individual may be ordered to testify. The following statement can be used in most situations:

(1) Respondent or other individual warned of his or her rights under this regulation, or the Fifth Amendment and Article II, Section 11, of the Puerto Rico Constitution: "Providing the information is voluntary. There will be no adverse effect on you for not furnishing the information, other than that certain information might not otherwise be available to the commander for his or her decision in this matter."

(2) Individual who may be ordered to testify: “Providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under this regulation.”

e. Article 31, Uniform Code of Military Justice, rights advisement. If during the proceeding it is determined to advise an individual of his or her rights under Article 31, UCMJ, the Fifth Amendment, or Article II, Section 11, of the Puerto Rico Constitution, after he or she has been told it is mandatory to provide information, the advising official must be certain that the individual understands that such rights warning supersedes this portion of the Privacy Act statement.

Appendix C
Investigating Officer's Guide

C–1. Introduction
a. Purpose. This is a guide only; its provisions are not mandatory. Appointing authorities may provide additional instructions that are consistent with this regulation. This guide is intended to assist IOs who have been appointed under this regulation with conducting timely, thorough, and legally sufficient investigations. This guide does not apply to boards. Legal advisors responsible for advising IOs may also use it. A checklist is included at paragraph C–5. The checklist is designed as a quick reference to be consulted during each stage of the investigation. The questions in the checklist will ensure that the IO has covered all the basic elements necessary for a sound investigation.
b. Duties of an investigating officer. The primary duties of an IO are to:
(1) Ascertain and consider the evidence and facts regarding the relevant issue(s).
(2) Be thorough and impartial.
(3) Make findings and recommendations warranted by the evidence.
(4) Comply with the instructions of the appointing authority.
(5) Report the findings and recommendations to the approval authority.
c. General.
Investigations usually have a single IO who conducts interviews and collects evidence. The appointing authority may appoint assistant IOs to help question witnesses, make sworn statements, and otherwise work to gather evidence. In contrast, boards normally involve due process hearings for a designated respondent. Board procedures are required whenever a respondent is designated. A sample board hearing script when a respondent is designated is provided at Appendix D.
(6) Investigation procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation. Since no respondents are designated in investigations, no one is entitled to the rights of a respondent, such as notice of the proceedings, an opportunity to participate, representation by counsel, or the right to call and cross-examine witnesses. The IO may, however, make any relevant findings or recommendations concerning individuals, even where those findings or recommendations are adverse to the individual or individuals concerned. If the appropriate authority decides to take action against an individual based upon a PRSG 15–6 investigation, that individual will be afforded certain due process rights before adverse action is taken.
(7) PRSG 15–6 procedures are used for many different types of investigations requiring the detailed gathering and analysis of evidence and the making of recommendations based on the findings. PRSG 15–6 procedures may be used on their own, such as in an investigation to determine facts and circumstances, or the procedures may be incorporated by reference into regulations or directives governing specific types of investigations, such as financial liability and line of duty investigations. If such regulations or directives contain guidance that is more specific than that outlined in PRSG 15–6, the more specific guidance will control. For example, if another regulation or directive that incorporates PRSG 15–6 contains time limits, that requirement will apply.

C–2. Preliminary matters
a. Consulting with legal advisor. A legal advisor must be appointed to advise an IO conducting an investigation under this regulation. IOs should seek legal advice as soon as possible after they are informed of this duty, and as often as needed while conducting the investigation. Even if all matters appear clear-cut and the IO has read this guide and the relevant provisions of PRSG 15–6, the legal advisor can provide refined expert guidance to prevent difficulties during and after the investigation. Early coordination with the legal advisor will allow problems to be resolved before they are identified in the mandatory legal review. The legal advisor can assist an IO in framing the issues, identifying the information required, planning the investigation, and interpreting and analyzing the information obtained. The legal advisor's role, however, is to provide legal advice and assistance, not to conduct the investigation.
b. Administrative matters. As soon as the IO receives appointment orders, he or she should begin a chronology showing the date, time, and a short description of everything done in connection with the investigation. The chronology should begin with the date orders are received, whether verbal or written. The annotation of delays in the investigation, if any, is particularly important. IOs should record the reason for any unusual delays in conducting the investigation, such as the absence of witnesses due to a field training exercise. The chronology should be part of the final report.
c. Concurrent investigations. An investigation may be conducted before, concurrently with, or after an investigation into the same or related matters by another command or agency. Appointing authorities and IOs must ensure that investigations do not hinder or interfere with criminal investigations or investigations directed by higher headquarters. In cases of concurrent investigations, IOs should coordinate with the other command or agency to avoid duplication of effort wherever possible. IOs should request any relevant information that the other organization has obtained. The IO may incorporate and consider the results of other available investigations into the PRSG 15–6 investigation. In many cases, the amount of information shared between the collateral investigation officer and the other investigators will be limited. IOs should be aware of the limits of

evidence sharing and become familiar with the provisions of both this regulation and the associated regulation mandating collateral investigation. Additionally, an IO should immediately coordinate with the legal advisor and inform the appointing authority if he or she discovers evidence of serious criminal misconduct. Criminal investigations and administrative investigations conducted using PRSG 15–6 can occur simultaneously and share information, provided that the administrative investigation does not conflict with the criminal investigation.

C–3. Conducting the investigation

a. Developing an investigative plan.

(1) The IO's primary duty is to gather evidence and make findings of fact and appropriate recommendations to the appointing authority. Before obtaining information, however, the IO should develop an investigative plan that consists of:

(a) an understanding of the evidence required to make a finding; and,

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

(2) The IO should begin the investigation by identifying the information already available, and determining what additional information will be required before findings and recommendations may be made to the appointing authority. The IO should determine whether the same matter was previously investigated by another investigation (for example, an PRSG 15–6 or Manual of the Judge Advocate General (JAGMAN) type investigation) and should review that investigation. An important part of the investigative plan is establishing the appropriate standards, rules, or procedures that govern the circumstances under investigation. The legal advisor or other functional expert can assist the IO in determining the information that will be required, and what information is important to develop during the interviews.

(3) The IO should develop a chronology as soon as he or she receives the case, which lists dates of events and records telephone calls and contacts with witnesses. Chronology is important to show the progress of the investigation, and to indicate when certain events occurred.

b. Obtaining documentary and physical evidence.

(1) Generally, the IO should begin the investigation by collecting documentary and physical evidence, such as applicable regulations, existing witness statements, accident or police reports, video/audio evidence (for example building cameras), and photographs. Reviewing this evidence often helps frame the issues and helps develop lines of questioning for witnesses, saving valuable time and effort. In some cases, the information will not be readily available, so a request for the evidence should be made early to enable work on other aspects of the investigation to continue while the request is being processed. The IO should, if possible and appropriate, personally inspect the location of the events being investigated and take photographs or prepare measured diagrams if they will help the IO make findings and recommendations or contribute to the appointing authority's or other future readers' understanding. The IO should also determine what other organizations might be helpful during the course of the investigation (for example, CID for polygraph or forensic assistance).

(2) A recurring problem that must be avoided is lack of documentation in investigations with findings of no fault, no loss, or no wrongdoing. It is just as important to substantiate these findings with documentary evidence as it is to document adverse findings. The report of investigation must include sufficient documentation to convince the approval authority and others who may review the investigation that the evidence supports the finding of no fault, no loss, or no wrongdoing.

(3) If the investigative plan contemplates the acquisition or review of medical records of any person, the IO must consider the applicability of Regulation 7617 of the Puerto Rico Patient Ombudsman and the HIPAA and consult his or her legal advisor.

(4) An IO does not have any special authority to authorize disposal or destruction of property. This authority is determined in accordance with applicable Military Forces of Puerto Rico regulatory guidance, depending upon the type of property or situation. IOs should never agree to the otherwise authorized destruction or removal of physical evidence until the evidence has been properly documented (for example, photographed, reduced to a drawing, measured, and so forth).

c. Obtaining witness testimony.

(1) In most cases, witness testimony is required. Face-to-face interviews are preferred, but interviews may be conducted by telephone or videoconference, if necessary. E-mail and mail interviews should be used only in unusual circumstances. Information obtained telephonically should be documented in a memorandum for record and videoconference shall be recorded (if not, they should be documented in a memorandum for record).

The witness should be asked to read, correct, and sign the final statement, whenever possible. Privacy ~~Act~~ statements are required for some interviews, and IOs must ensure proper completion of Privacy ~~Act~~ statements when required.

(2) Legible, handwritten statements from witnesses and/or questions and answers are ordinarily sufficient, although typewritten statements are preferred. If the witness testimony involves technical terms that are not generally known outside the witness's field of expertise, the witness should be asked to define the terms the first time they are used. Home addresses and telephone numbers should not be recorded on the DA Form 2823 unless necessary. Social Security numbers (SSNs) should not be annotated unless material to the investigation. If the SSN is material and necessary, the information must be properly safeguarded, along with all other personally identifiable information (PII) regarding the witness. This would also be

one of the situations where a Privacy Act statement would be required. If using DA Form 2823, it includes a Privacy Statement that satisfies the requirement.

(3) Although PRSG 15–6 does not require that statements be sworn for investigations, the appointing authority, or another applicable regulation or directive, may require sworn statements, or the IO may ask for sworn statements, at his or her own discretion, even when not specifically required. Under Article 136, UCMJ and under Art. 7.03 of the PRMC, PRSG military officers that are not a JAG, are authorized to administer the oath for sworn statements when performing the duties of an IO. Statements taken out of the presence of the IO may be sworn before an official authorized to administer oaths at the witness's location. The oath should actually be read aloud to the witness. The IO must ensure that all appropriate blocks on the DA Form 2823 are fully completed except where it asks for SSNs, as described in subparagraph (2), above.

(4) IO's do not have the authority to subpoena witnesses, and their authority to interview civilian employees may be subject to certain limitations. Prior to interviewing civilian employees, the IO should seek guidance from the legal advisor or a local labor counselor. Commanders and appropriate supervisors generally have the authority to order military personnel and to PRSG employees to appear and testify. Civilian witnesses who are not government employees may agree to appear, and, may be issued invitational travel authorizations, if necessary. This authority should be used only if the information cannot otherwise be obtained, and only after coordinating with the legal advisor and appointing authority. Witnesses cannot be compelled by commanders, supervisors, or IOs to incriminate themselves; to make a statement or produce evidence that is not material; or to make a statement or produce evidence that might tend to degrade them.

(5) Before concluding a witness interview, ensure that the witness provides reliable contact information to facilitate future contact, should this be necessary. Contact information should be recorded on the DA Form 2823, if this form is used, and must be properly safeguarded if it includes PII.

d. Rights advisement.

(1) All Soldiers and civilian personnel suspected of criminal misconduct must be advised of their rights before being questioned. A DA Form 3881 should be used to record whether the witness understands his or her rights, and whether the witness elects to waive those rights and make a statement. In some cases, it may be necessary to provide the rights warning at the outset of the interview. In other cases, however, an IO will become aware of the witness's involvement in criminal activity only after the interview has started and incriminating evidence is uncovered. In such cases, rights warnings must be provided as soon as the IO suspects that a witness may have been involved in criminal activity. If a witness elects to assert his or her rights and requests an attorney, all questioning must cease immediately. No negative inference may be made against an individual who elects to assert his or her Article 31, UCMJ,-Fifth Amendment, or Article II, Section 11, of the Puerto Rico Constitution rights. A grant of testimonial immunity has the practical effect of nullifying a prior invocation of the right to remain silent, if any, and requires the grantee to testify. If the IO believes a grant of testimonial immunity may be warranted, the IO should consult with the legal advisor and the appointing authority.

(2) Note that these rights apply only to information that might be used to incriminate the witness. They cannot be invoked to avoid questioning on matters that do not involve violations of criminal law or where a privilege does not apply. Finally, only the individual who would be accused of the crime may assert these rights. The rights cannot be asserted to avoid incriminating other individuals.

(3) Every effort must be made to record the rights advisement. In the event a DA Form 3881 cannot be used, the IO should make every reasonable effort to have the witness acknowledge, in writing, that he or she was advised of his rights, and that he or she either waived or invoked those rights.

(4) If the IO is unsure whether to advise a witness of his or her rights or encounters a situation where there is a question concerning rights advisement (for example, the witness invokes his or her rights, but later approaches the IO to provide a statement), the IO should seek advice from the legal advisor.

e. Scheduling witness interviews. The IO will need to determine which witnesses should be interviewed, and in what order. Often, information provided by one witness can raise issues that should be discussed with another. Logically organizing the witness interviews will save time and effort that would otherwise be spent "backtracking" to re- interview prior witnesses concerning information provided by subsequent witnesses. While re-interviewing witnesses may be unavoidable in some circumstances, it should be kept to a minimum. The following suggests an approach to organizing witness interviews, but it is not mandatory.

(1) When planning who to interview, work from the center of the issue outward. Identify the people who are likely to provide the most relevant information. When conducting the interviews, start with witnesses who will provide relevant background information and frame the issues. This will allow the interviews of key witnesses to be as complete as possible, avoiding the "backtracking" described above.

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

(3) Information that is relevant should be collected, regardless of the source; however, IOs should collect the best information available from the most direct source.

(4) It may be necessary or advisable to interview experts having specialized understanding of the subject matter of the investigation, if the information may be helpful to the appointing authority in making a final determination.

(5) At some point, there will be no more witnesses available with relevant and useful information. It is not necessary to interview every member of a unit if, for example, only a few people have information relevant to the inquiry. Similarly, it may not be necessary to interview all relevant witnesses if the facts are clearly established and not in dispute. The IO, however, must be careful not to prematurely terminate an investigation because a few witnesses give consistent testimony.

(6) IOs may find it useful to prepare questionnaires if they are interviewing a large number of people. After reviewing the completed questionnaires, the IO must conduct one-on-one interviews with individuals who may have additional relevant information.

f. Conducting witness interviews. Before conducting witness interviews, IOs may consult inspector general officials or law enforcement personnel, such as military police officers or Criminal Investigation Division agents, for guidance on interview techniques. The following suggestions may be helpful in conducting witness interviews:

(1) *Prepare for the interview.* While there is no need to develop scripts for the witness interviews, IOs may wish to review the information required and prepare a list of questions or key issues to be covered with each witness. While some questions may be the same for all witnesses, the IO should avoid a cookie-cutter approach to the witnesses. This will prevent the IO from missing important issues and will maximize the use of the IO's and the witness's time. Generally, it is helpful to begin with open-ended questions, such as, "Can you tell me what happened on the morning of 16 April 2015" After a general outline of events is developed, the IO should follow up with narrow, probing questions, such as, "Did you see SGT X leave the bar before or after SGT Y" Weaknesses or inconsistent testimony can generally be better explored once the general sequence of events has been provided. Careful mission-analysis will best equip the IO to ask important probing questions during the interview to avoid the need to re-interview.

(2) *Ensure the witness's privacy.* IOs should conduct the interview in a place that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, unnecessarily harsh and insulting treatment, or unnecessary inquiry into private affairs. IOs must not discuss detailed facts and circumstances surrounding the investigation they are conducting, except with the appointing authority, the legal advisor, and other personnel detailed by the appointing authority to assist with the investigation.

(3) *Focus on relevant information*. The IO should not permit the witness to get sidetracked by irrelevant issues, no matter how important they may be to the witness. The information solicited should be material and relevant to the matter being investigated. Relevancy depends on the circumstances in each case. Compare the following examples: Example 1: In an investigation into a larceny of government property, the witness's opinions concerning the company commander's leadership style normally *would not be relevant*. Example 2: In an investigation of alleged sexual harassment in the unit, information on the commander's leadership style *might be relevant*. Example 3: In an investigation of allegations that a commander has abused his or her command authority, the witness's observation of the commander's leadership style *could be highly relevant*.

(4) *Let the witness testify in his or her own words*. IOs must avoid coaching the witness or suggesting the existence or non-existence of material facts. After the testimony is completed, the IO should assist the witness in preparing a written statement that includes all relevant information and presents the testimony in a clear and logical fashion. Written testimony should reflect the witness's own words and be natural. Stilted "police blotter" language is not helpful and detracts from the substance of the testimony. A tape recorder may be used, but the witness must be advised of its use, and the tape must be safeguarded, even after the investigation is completed. IOs must ensure that all necessary information is filled in, and all appropriate boxes completed on the DA Form 2883. If a witness makes any edits to his or her statement, the witness must initial the change to document to show that it was an authorized edit.

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

g. Rules of Evidence. As an investigation is an administrative proceeding, the rules of evidence normally used in court proceedings do not apply. The evidence that may be used is limited by only a few rules. The IO should consult the legal advisor if he or she has any questions concerning the applicability of any of these rules.

(1) The information must be relevant and material to the matter or matters under investigation. Information not meeting this standard must not be included in the investigation.

(2) The result of polygraph examinations may be used only with the subject's permission.

(3) Privileged communications between husband and wife, priest and penitent, attorney and client, psychotherapist and patient, and victim-advocate and victim may not be considered, and present or former inspector general personnel will not be required to disclose the contents of inspector general reports, investigations, inspections, action requests, or other memoranda without appropriate approval.

(4) Off-the-record" statements will not be considered for their substance but may be used to find additional evidence.

(5) An involuntary statement by a member of the Armed Forces regarding the origin, incurrence, or aggravation of a disease or injury will not be considered.

h. Standard of Proof. Unless another specific regulation or directive states otherwise, PRSG 15–6 provides that findings must be supported by "a greater weight of evidence than supports a contrary conclusion." That is, findings should be based on evidence, which, after considering all of the evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. This is known as the "preponderance of the evidence" standard.

C–4. Concluding the investigation

a. Preparing findings and recommendations. After all the evidence is collected, the IO must review it and make findings. The IO should consider the evidence thoroughly and impartially, make findings of fact supported by the evidence, make recommendations consistent with the findings, and comply with the instructions of the appointing authority. The IO must consider evidence on all sides of the issue.

(1) Facts. To the extent possible, the IO should fix dates, places, persons, and events definitely and accurately. The IO should be able to answer questions such as: "What occurred?" "When did it occur?" "How did it occur?" "Who was involved, and to what extent?" Exact descriptions and values of any property at issue in the investigation should also be provided.

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

(3) Recommendations. Recommendations should take the form of proposed courses of action that are consistent with the findings, such as disciplinary action, the imposition of financial liability, or corrective action. Recommendations must follow logically from the findings. Each recommendation should cite the specific findings that support the recommendation. Recommendations regarding disciplinary actions should not include a recommendation for a specific level or type of punishment, unless directed by the appointing authority. For example, if the IO believes that an Article 15 is appropriate, he or she should recommend, "Appropriate action under the Uniform Code of Military Justice should be considered." The IO should not recommend that the "Individual receive punishment under the Uniform Code of Military Justice." Findings and recommendations must be provided on DA Form 1574–1. It is permissible, however, to refer to an attached memorandum.

(4) Draft structure. The IO should use short, declarative sentences and simple words when drafting the findings and recommendations. All medical, legal, or technical terms should be defined, and the use of abbreviations should be minimized. When using an abbreviation, the IO should write out the term the first time it is used, followed by its abbreviation. The IO must remember that the report of investigation may later be reviewed by higher commands, family members, and the media, who may not be familiar with certain technical terminology and abbreviations.

b. Preparing the submission to the appointing authority. After developing the findings and recommendations, the IO should complete the DA Form 1574–1 and assemble the packet:

(1) All administrative documents, such as the memorandum of appointment, rights warning statements, Privacy Act statements, and the chronology, will be marked as enclosures.

(2) Every item of evidence offered or received by the IO will be marked as an exhibit, and each item of evidence will be marked separately. The packet should include an index for the enclosures and exhibits. Each enclosure or exhibit should be clear, complete, legible, and labeled on the first page with the word "Enclosure" or "Exhibit," as appropriate, followed by the number (for example, Enclosure 1 or Exhibit 1).

(3) If photographs and/or videos are included as part of an investigation, the IO must indicate the date/time group when the photographs/videos were taken, and identify the photographer or the videographer.

(4) Care should be taken to organize the report of investigation in a logical, coherent, and useful manner for the approval authority.

(5) As reports of investigation may be provided to family members or reviewed by multiples entities, classified information should be omitted, unless inclusion of the classified material is absolutely essential. In the latter case, the IO will produce a classified and unclassified written report.

(6) Unless directed otherwise, the report should be packaged in a manner conducive to electronic scanning and/or copying. The use of document protectors, tabs, and fasteners should be kept to a minimum. The IO should be prepared to provide a complete copy of the report of investigation in electronic format to ease review, distribution, and storage.

(7) As a general rule, a report of investigation may not be released until the approval authority has approved it and the report is final. The approval authority should designate who has the authority to release the investigation.

a. Legal review.

(1) PRSG 15–6 requires that all investigations be reviewed by an attorney for legal sufficiency. Other specific regulations or directives may also require a legal review. Generally, the legal review will determine:

(a) Whether the investigation complies with requirements in the appointing order and other legal requirements.

(b) The effects of any errors in the investigation.

(c) Whether sufficient evidence supports the findings (including findings of no fault, no loss, or no wrongdoing) and

(d) Whether the recommendations are consistent with the findings.

(2) The legal review will identify substantive errors with the report of investigation and suggest recommendations to the approval authority that would remedy the errors or improve the investigation.
(3) The legal review may also advise the approval authority whether additional investigation is necessary or advisable.
(4) A legal review is required before the approval authority approves the findings and recommendations. After receiving a completed investigation, the approval authority may approve, disapprove, or modify the findings and recommendations, or may direct further action, such as the taking of additional evidence, or making additional findings.
c. Final use of report of investigation. Once approved by the approval authority, the report of investigation may be used in a variety of ways, to include forming the basis for command decisions, adverse personnel actions, family notifications, and reports to higher headquarters. It will be stored appropriately and may be released to the public via a PR FOIA request. It is important, therefore, that the IO conducts the investigation in accordance with the applicable regulations and directives, and produces a report that is thorough, professional, and well-written.

C–5. Checklist for investigating officers

a. Preliminary matters.
(1) Has the appointing authority appointed an appropriate IO based on seniority, availability, experience, and expertise? Do the individual's professional or personal obligations interfere with the performance of this duty? Is the IO senior by date of rank or civilian equivalent grade to anyone being investigated?
(2) Does the appointment memorandum clearly state the purpose and scope of the investigation, the points of contact for assistance (if appropriate), and the nature of the findings and recommendations required?
(3) Has the initial legal briefing been accomplished?
(4) Have background materials been identified and/or provided to the IO?
b. Investigative plan.
(1) Does the investigative plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and order the interviews conducted in the most efficient and effective manner?
(2) Does the plan identify witnesses not locally available and address alternative ways of interviewing them?
(3) Does the plan identify information not immediately available and outline steps to obtain the information?
c. Conducting the investigation.
(1) Is the chronology being maintained in sufficient detail to identify causes for unusual delays?
(2) Is the information collected (witness statements, memoranda for record of phone conversations, photographs, and so forth) being retained and organized?
(3) Is routine coordination with the legal advisor being accomplished?
(4) Is all evidence relevant and material to an issue being investigated?
(5) Are all military personnel who are subjects of the investigation or suspects properly flagged?
d. Preparing findings and recommendations.
(1) Is the evidence assembled in a logical and coherent fashion?
(2) Does the evidence support the findings (including findings of no fault, no loss, or no wrongdoing)? Does each finding cite the exhibit(s) that support it? Does each find address inconsistent evidence?
(3) Are the recommendations supported by the findings? Does each recommendation cite the finding(s) that support it?
(4) Are the findings and recommendations responsive to the tasking in the appointment memorandum?
(5) Did the investigation address all the issues (including whether identified issues resulted from policies, procedures, resources, doctrine, training, or leadership—or a lack thereof)?
e. Final action. Any report of investigation may be returned by reviewing officials. Therefore, it is in the IO's interest to be aware of the status of the investigation, even after it is submitted, and to be available to answer any follow-up questions in an efficient manner, so as to preclude an otherwise unnecessary return of the investigation. An IO should be aware of and track the following events:
(1) Was the report of investigation submitted to the servicing CJA or legal advisor for a legal review?
(2) Was the investigation turned in on time?
(3) Did the approval authority approve the findings and recommendations? If not, have appropriate amendments been made and approved.

Appendix D
Suggested Procedure for Board with Respondents

D–1. About this appendix
The dialogue in paragraph D-3 provides a sample script that may be used for boards of officers conducted in accordance with chapter 7 of this regulation.

D–2. Appendix terms defined

PRES: The president of the board of officers is a role filled by the senior voting member present. LA: legal advisor.

LA (PRES): legal advisor, if one has been appointed; otherwise, the board president.

RCDR: recorder (junior member of the board if no recorder has been appointed). If the board consists of only one member, that member has the responsibilities of both PRES and RCDR.

RESP: respondent.

RESP (COUNSEL): respondent or respondent's counsel, if any.

D–3. Preliminary matters

PRES: This hearing will come to order. This board of officers has been called to determine_____.

*When RESP is without counsel:*_____

PRES: __, you may, if you desire, obtain civilian counsel at no expense to the Government for this hearing. If you do not obtain civilian counsel, you are entitled to be represented by a military counsel designated by the appointing authority. Do you have counsel?

RESP: No (Yes).

If RESP has counsel the RCDR should identify that counsel at this point for the record. If RESP does not have counsel, the PRES should ask this question:

PRES: Do you desire to have military counsel? RESP: Yes (No).

If RESP answers "yes," the PRES should adjourn the hearing and ask the appointing authority to appoint counsel for RESP (see para 7-6b). If counsel is supplied, the RCDR should identify that counsel for the record when the board reconvenes.

A reporter and an interpreter, if used, should be sworn.

RCDR: The reporter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of reporter to this board, (so help you God)?

REPORTER: I do.

RCDR: The interpreter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing, (so help you God)?

INTERPRETER: I do.

RCDR: The board is appointed by Memorandum of Appointment, Headquarters_ , dated _. Have all members of the board read the memorandum of appointment? (If not, the memorandum of appointment is read aloud by RCDR or silently by any member who has not read it.)

When RESP has been designated by a separate memorandum of appointment, the same procedure applies to that memorandum of appointment.

RCDR: May the memorandum of appointment be attached to these proceedings Enclosure I?

PRES: The memorandum of appointment will be attached as requested.

RCDR: The following members of the board are present:_____. The following members are absent:_____.

RCDR should account for all personnel of the board, including RESP and COUNSEL, if any, as present or absent at each session. RCDR should state the reason for any absence, if known, and whether the absence was authorized by the appointing authority.

PRES: __, you may challenge any member of the board (or the legal advisor) for lack of impartiality. Do you desire to make a challenge?

RESP (COUNSEL): No. (The respondent challenges_)

If RESP challenges for lack of impartiality, the legal advisor determines the challenge. See paragraph 7-7. If sustaining a challenge result in less than a quorum, the board should recess until additional members are added. See paragraph 7-2b. If RESP challenges the legal advisor, the PRES shall decide the challenge.

RCDR swears board members, if required. PRES then swears RCDR (if required). RCDR: The board will be sworn.

All persons in the room stand while RCDR administers the oath. Each voting member raises his or her right hand as RCDR calls his or her name in administering the following oath:

RCDR: Do you, Colonel__ , Lieutenant Colonel_____ , Major_swear (affirm) that you will faithfully perform your duties as a member of this board; that you will impartially examine and inquire into the matter now before you according to the evidence, your conscience, and the laws and regulations provided; that you will make such findings of fact as are supported by the evidence of record; that, in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such recommendations as are appropriate and warranted by your findings, according to the best of your understanding of the rules, regulations, policies, and customs of the service, guided by your concept of justice, both to the Government and to individuals concerned (so help you God)?

MEMBERS: I do.

The board members lower their hands but remain standing while the oath is administered to LA and to RCDR, if required.

PRES: Do you,__, swear (or affirm) that you will faithfully perform the duties of (legal advisor) (recorder) of this board (so help you God)?

LA/CDR: I do.

All personnel now resume their seats.

PRES may now give general advice concerning applicable rules for the hearing.

RCDR: The respondent was notified of this hearing on_____20_____.

RCDR presents a copy of the memorandum of notification with a certification that the original was delivered (or dispatched) to RESP (para 7-5) and requests that it be attached to the proceedings as Enclosure____.

PRES: The copy of the memorandum of notification will be attached as requested.

Presentation of evidence by the recorder

RCDR may make an opening statement at this point to clarify the expected presentation of evidence.

RCDR then calls witnesses and presents other evidence relevant to the subject of the proceedings. RCDR should logically present the facts to help the board understand what happened. Except as otherwise directed by PRES, RCDR may determine the order of presentation of facts. The following examples are intended to serve as a guide to the manner of presentation, but not to the sequence.

RCDR: I request that this statement of (witness) be marked Exhibit__ and received in evidence. This witness will not appear in person because _____.

LA (PRES): The statement will (not) be accepted.

RCDR may read the statement to the board if it is accepted.

RCDR: I request that this (documentary or real evidence) be marked as Exhibit_____ and received in evidence.

A foundation for the introduction of such evidence normally is established by a certificate or by testimony of a witness indicating its authenticity. LA (PRES) determines the adequacy of this foundation. If LA (PRES) has a reasonable basis to believe the evidence is what it purports to be, he or she may waive formal proof of authenticity.

RCDR: The recorder and respondent have agreed to stipulate_____.

Before LA (PRES) accepts the stipulation, he or she should verify that RESP joins in the stipulation.

LA (PRES): The stipulation is accepted.

If the stipulation is in writing, it will be marked as an exhibit.

RCDR conducts direct examination of each witness called by RCDR or at the request of PRES or members. RESP or COUNSEL may then cross-examine the witness. PRES and members of the board may then question the witness, but PRES may control or limit questions by board members.

RCDR: The board calls _____as a witness.

A military witness approaches and salutes PRES, then raises his or her right hand while RCDR administers the oath. A civilian witness does the same but without saluting. See MCM, Rules for Court-Martial 807, for further guidance with regard to oaths.

RCDR: Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (so help you God)?

If the witness desires to affirm rather than swear, the words "so help you God" will be omitted.

WITNESS: I do.

The witness then takes the witness chair. RCDR asks every witness the following question no matter who called the witness.

RCDR: What is your full name (grade, branch of service, organization, and station) and address?

Whenever it appears appropriate and advisable to do so, the board should explain the rights of a witness under Article 31 of the UCMJ, the Fifth Amendment to the Constitution, and Article II, Section 11, of the Puerto Rico Constitution. See paragraph 3-7d(5).

If the report of proceedings is filed in a system of records under the witness' name, the board must advise that witness in accordance with the Privacy Act. See paragraph 3-8e. Normally, this requirement applies only to RESP.

RCDR then asks questions to develop the matter under consideration.

RCDR: The recorder has no further questions.

RESP (COUNSEL) may cross-examine the witness. RCDR may then conduct a redirect examination, and re-cross may follow.

RCDR: Does the board have any questions?

Any board member wishing to question the witness should first secure the permission of the PRES.

If RCDR and RESP (COUNSEL) wish to ask further questions after the board has examined the witness, they should seek permission from the PRES. PRES should normally grant such requests unless the questions are repetitive or go beyond the scope of questions asked by the board.

When all questioning has ended, PRES announces:

PRES: The witness is excused.

PRES may advise the witness as follows:

PRES: Do not discuss your testimony in this case with anyone other than the recorder, the respondent, or his or her counsel. If anyone else attempts to talk with you about your testimony, you should tell the person who originally called you as a witness.

Verbatim proceedings should indicate that the witness (except RESP) withdrew from the room.

Unless expressly excused from further attendance during the hearing, all witnesses remain subject to recall until the proceedings have ended. When a witness is recalled, the RCDR reminds such witness, after he or she has taken the witness stand:

RCDR: You are still under oath.

The procedure in the case of a witness called by the board is the same as outlined above for a witness called by RCDR.

RCDR: I have nothing further to offer relating to the matter under consideration.

Presentation of respondent's evidence

RESP (COUNSEL): The respondent has (an) (no) opening statement.
RESP presents his or her stipulations, witnesses, and other evidence in the same manner as did RCDR. RCDR administers oath to all witnesses and asks the first question to identify the witness.

Should the RESP be called to the stand as a witness, the RCDR will administer the oath and ask the following preliminary questions, after which the procedure is the same as for other witnesses:

RCDR: What is your name, (grade, branch of service, organization, and station) (address, position, and place of employment)?

RESP: _____.

RCDR: Are you the respondent in this case?

RESP: Yes.

The board may advise RESP of his or her rights under Article 31 of the UCMJ, the Fifth Amendment of the Constitution, or Article II, Section 11, of the Puerto Rico Constitution. *See paragraph 3-7c(5).*

If the report of proceedings is filed in a system of records under RESP's name, the board must advise RESP in accordance with the Privacy Act. See paragraph 3-8e.

When RESP has concluded his or her case, RESP announces:

RESP (COUNSEL): The respondent rests. RCDR: The recorder has no further evidence to offer in this hearing. Does the board wish to have any witnesses called or recalled?

PRES: It does (not).

Closing arguments and deliberations

PRES: You may proceed with closing arguments.

RCDR: The recorder (has no) (will make a) closing argument.

RCDR may make the closing argument and, if any argument is made on behalf of RESP, the rebuttal argument. Arguments are not required (see para 7-9). If no argument is made, RESP or RCDR may say:

RESP (COUNSEL)/RCDR: The (respondent) (recorder) submits the case without argument.

PRES: Is there any other matter the respondent would like to submit to the board prior to the board adjourning? PRES: The

hearing is adjourned.

Adjourning the hearing does not end the duties of the board. It must arrive at findings based on the evidence and make recommendations supported by those findings. See chapter 3, section II. Findings and recommendations need not be announced to RESP, but in certain proceedings, such as elimination actions, they customarily are. RCDR is responsi- ble for compiling the report of proceedings and submitting properly authenticated copies thereof to the appointing authority. See chapter 3, section III.

Appendix E
Internal Control Evaluation

E–1. Function
The function covered by this evaluation is the PRSG investigative process.

E–2. Purpose
The purpose of this evaluation is to assist in evaluating key internal controls listed below. It is not intended to address all controls.

E–3. Instructions
Answers must be based on the actual testing of key internal controls (such as document analysis, direct observation, interviewing, sampling, or simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These key internal controls must be formally evaluated at least once every 2 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

E–4. Test questions
a. In choosing between an administrative investigation or a board of officers, does the appointing authority give due consideration to the factors listed in this regulation?
b. Was the advice of a serving CJA, or legal advisor sought prior to determining the appropriate type of inquiry or investigation?
c. Are matters appropriately referred to the Inspector General or Criminal Investigations Officer under the provisions of PRSG applicable regulation.
d. Are preliminary inquiries, administrative investigations, or boards of officers found to be legally sufficient and not requiring reinvestigation?
e. When circumstances dictate, are reports marked in accordance with PRSG applicable regulation. AR 380–5 as a guide in accordance with PR FOIA and Privacy statement requirements?

E–5. Comments
Help make this a better tool for evaluating PRSG administrative investigations. Comments regarding this evaluation should be addressed to the PRSG J1 and PRSG CJA.

Glossary

Section I Abbreviations

AR
Army Regulation

CJA
Staff Judge Advocate

DA
Department of the Army

DOD
Department of Defense

DODI
Department of Defense Instruction

EMR
Electronic Military Record

PRFOIA
Puerto Rico Freedom of Information Act

GCMCA
General Court-Martial Convening Authority

GS
General Schedule

HIPAA
Health Insurance Portability and Accountability Act

IO
Investigating Officer

JAG
Judge Advocate General

MCM
Manual for Courts-Martial, United States, 2012

MRE
Military Rules of Evidence

PRMC
Act. 88-2023 or Puerto Rico Military Code, Century XXI

PRSG
Puerto Rico State Guard Command

RCM
Rules for Courts-Martial

SPCMCA
special court-martial convening authority
JAG
Judge Advocate General

UCMJ
Uniform Code of Military Justice
USC
United States Code

Section II Terms

Adverse administrative action
Adverse action taken by appropriate military authority against an individual other than actions taken pursuant to the UCMJ or MCM.

Adverse information
Adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual. The following types of information, even though credible, are not considered adverse: (1) motor vehicle violations that did not require a court appearance; (2) minor infractions without negative effect on an individual or the good order or discipline of the organization that: (a) were not identified because of substantiated findings or conclusions from an officially documented investigation; and (b) did not result in more than nonpunitive rehabilitative counseling administered by a superior to a subordinate.

Collateral investigation
An investigation was performed under investigatory procedures specified in other PRSG regulations. While collateral investigations may address some of the same issues as PRSG 15–6 investigations, they are used for other purposes.

Combatant commander
A commander of one of the unified or specified combatant commands established by the President.

Complex, serious, and/or high-profile case
An incident being investigated that involves a death or serious bodily injury; may result in adverse administrative or disciplinary action; may result in substantive changes in PRSG policies or procedures; may be of significant public, media, or Congressional interest; or may be of interest to senior Military Forces of Puerto Rico. Examples of high-profile cases include, but are not limited to, suicides, friendly-fire incidents, incidents of abuse of a special trust relationship (for example, chaplains, doctors, cadre, and guards), incidents involving extremist motives, and incidents involving high-ranking officers, noncommissioned officers and civilians.

Criminal investigation
An investigation of a criminal incident or allegation conducted by law enforcement personnel.

Friendly fire
A circumstance in which authorized members of U.S., P.R. or friendly military forces, U.S., P.R. or friendly official government employees, U.S., P.R. or friendly nation contractor personnel, and nongovernmental organizations or private volunteer organizations, who, while accompanying or operating with the U.S. or Military Forces of Puerto Rico, are mistakenly or accidentally killed or wounded in action by U.S., P.R. or friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force.

High profile
A high-profile investigation is any investigation that is likely to garner media attention because of the individuals involved in the investigation/board or the subject matter of the investigation/board.

Legal advisor
A judge advocate or Military Forces of Puerto Rico civilian attorney who, based on assignment or appointment, provides legal and practical advice to appointing authorities, approval authorities, investigating officers, and boards of officers, regarding the appointment of preliminary inquiries, administrative investigations, and boards of officers, the conduct of such proceedings, and the actions taken pursuant to such proceedings.

Military exigency
An emergency situation requiring prompt or immediate action to obtain and record facts.

Personally identifiable information
Information used to distinguish or trace an individual's identity, such as name, Social Security number, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information. PII includes any information that is linked or linkable to a specified individual, alone, or when combined with other personal or identifying information.

Preponderance of the evidence
Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Respondent
A designated person involved in an incident or event under investigation by a board in such a way that disciplinary action may follow, the person's rights or privileges may be adversely affected, or the person's reputation or professional standing may be jeopardized. A designated respondent must be flagged (the commanding officer of the unit will decide to which extent) in accordance with this regulation until the procedure under this regulation ends, the aforementioned includes any inquiries, prosecution or disposition by a competent authority.

Subject
A person involved in an incident or event under investigation in such a way that disciplinary action may follow, the person's rights or privileges may be adversely affected, or the person's reputation or professional standing may be jeopardized. Although subject and suspect are often used interchangeably, the subject of an investigation may not be suspected of violating a criminal law, but rather failure to comply with a duty, obligation, regulation, or other requirement that could result in adverse action. A subject must be flagged (the commanding officer of the unit will decide to which extent), in accordance with this regulation until the procedure under this regulation ends, including any inquiries, prosecution, or disposition by competent authority.

Suspect
A person about whom some credible information exists to believe that the person committed a particular criminal offense. A suspect must be flagged, in accordance with AR 600–8–2.

System of records
A group of records under the control of an agency from which information is retrieved by the name of the individual, or by some identifying number, symbol, or other identifying particular assigned to the individual.

Section III
Special Abbreviations and Terms
This section contains no entries.