

ADMINISTRATIVE SEPARATION

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Section I – General

1-1 Purpose. These regulations prescribe the criteria and process for determining whether the capacity and fitness of a member of the Georgia State Defense Force (GSDF), when at issue, is such that a member should be administratively separated from the GSDF.

1-2 Policies. Determination of fitness or unfitness, and separation or continuation of service in the GSDF will be made without regard to race, color, religion, sex, or national origin.

1-3 Authority. The Statutory Authority for conduct of Administrative Separation proceedings is established in O.C.G.A. Sections 38-2-2(10), 38-2-3, 38-2-54 and 38-270.

1-4 Type of Proceedings. Proceedings conducted in accordance with the provisions of these regulations shall be administrative and not judicial.

1-5 Limitations on Administrative Separation.

a. The separation of a member under the provisions of these regulations shall be accomplished upon the Commanding General's approval of the recommendation of a Board of Officers convened for this purpose, and only after the member has been offered the opportunity to voluntarily resign.

b. A member will be separated from the GSDF without Board of Officers action when such member submits a resignation in lieu of proceedings for administrative separation.

c. A member will be separated when the Commanding General upon review of the recommendations of a Board of Officers determines and orders such action to be taken in the best interest of the GSDF.

1-6 Considerations Relevant to Administrative Separation.

a. A member who is being considered for administrative separation and who has declined voluntary resignation as an option must show cause before an appointed Board of Officers as to why he or she should be retained in GSDF service..

b. A member who has been considered for administrative separation for substandard performance of duty and is retained may not be considered again for administrative separation for substandard performance of duty until at least one (1) year after the preceding Board action.

c. A member may be considered for administrative separation on basis of moral or professional dereliction grounds when it is believed such action is in the best interest of the GSDF.

d. Grounds for administrative separation in an earlier case may be joined with grounds in a later case. The grounds must be sufficiently serious to raise a substantial question as to the member's potential for further useful service to the GSDF.

1-7 Approval Authority. The Commanding General of the GSDF shall serve as the approval authority for administrative separation actions recommended under the provisions of these regulations.

a. The Commanding General will review the findings and recommendations of a Board of Officers convened in accordance with these procedures to determine whether administrative separation of a member of the GSDF should be carried out.

b. If the findings and recommendations are against the member, the Commanding General may issue a Letter Order of Administrative Separation of the member from the GSDF:

- (1). The original of the Letter Order of Administrative Separation shall be furnished to the member.
- (2) A copy of the Letter Order shall be placed in the 201 file of the member.
- (3) The issuance of a Letter Order of Administrative Separation by the Commanding General shall in and of itself accomplish separation from the GSDF.
- (4) The final determination for administrative separation of a member of the GSDF rests solely with the Commanding General.
- (5) The Commanding General may exercise the right to retain a member contrary to the findings and recommendation of an Administrative Separation Board..
- (6) There shall be no appeal from the final decision of the Commanding General..

Section II – Grounds for Administrative Separation. Substandard performance of duty, improper conduct, deficient character or other factors reflecting unsuitability for service with GSDF may be grounds for administrative separation.

2-1 Substandard Performance of Duty. Existence of any one of the following or similar conditions

constitutes substandard performance of duty and may require the administrative separation of a member on grounds of incapacity unless the member successfully proves that he or she should not be administratively separated:

- a. Downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service.
- b. Failure to exercise the necessary leadership or command required of an officer of his or her grade or an enlisted person of his or her rank.
- c. Failure to perform with the technical proficiency required of his or her grade or rank.
- d. Failure to meet disciplinary standards for GSDF members.
- e. Failure to discharge assignments in the manner to be expected of a member of his or her grade and experience.
- f. Apathy, defective attitude, or other character disorders to include inability or unwillingness to expend effort.

2-2 Moral or Professional Dereliction.

- a. Intentional omission or misstatement of facts contained in official statements or records for the purpose of misrepresentation.
- b. Conduct unbecoming and officer or an enlisted person, including but not limited to:
 - (1) Disobeying a direct order.
 - (2) Engaging in any act of sexual harassment or abuse.
 - (3) Misrepresenting himself or herself to any official authority.
 - (4) Intentional neglect or failure to:
 - (a) Perform assigned duties.
 - (b) Participate satisfactorily in training.
 - (c) Comply with directives and/or orders of superior officers and/or authorities.
- c. Acts of intemperance or personal misconduct
- d. Mismanagement of personal affairs to the discredit of the GSDF
- e. Unjustified failure to meet personal financial obligations
- f. Entry into military service of the USA or a foreign government
- g. Conviction of a felony or forcible misdemeanor.
- h. Commission of an act punishable under O.C.G.A. 38-2-510 through 38- 2-553.

2-3 Interests of the Command.

- a. The existence of acts or behavior clearly inconsistent with the best interest of the GSDF may be construed as grounds for the administrative separation of a member.

b. The existence of other circumstances or facts which clearly indicate that the continued service of a member would not be in the best interest of the GSDF may be considered grounds for administrative separation.

Section III – Initiation of Separation Action.

3-1 Recommendation for Administrative Separation. Action may be originated by any GSDF brigade commander or GSDF headquarters staff section head with respect to a member under his or her command or supervision, by the Chief of Staff (COS) of the GSDF or by the HQ,GSDF Judge Advocate General (JAG) as pertains to members under their respective jurisdictional control.

a. Commanders will forward their written recommendations for administrative separation through their chain of command to the COS who will apprise and forward such recommendations to the JAG.

b. The HQ, GSDF JAG or designated brigade support JAG will inform the member concerned that a recommendation for administrative separation of said member is under consideration.

3-2 Review of Recommendation. The JAG will legally review and investigate recommendations for administrative separation and determine if a Board of Officers should be convened to examine all pertinent facts and reach a decision as to the appropriate disposition of the case.

3-3 Notification Process. If the JAG determines that there is sufficient basis to initiate administrative separation procedures, the JAG will notify the commander or staff section head concerned, who will then ascertain the whereabouts and notify in writing the member concerned. (See Appendix A).

a. The notification shall set forth the reasons therefor and advise the member that he or she must use the enclosed Response Form *within 15 days* to acknowledge receipt of the notification document, and must elect one of the following two options:

- (1) Submit a written resignation from GSDF service in lieu of undergoing administrative separation process by checking the appropriate space on the enclosed Response Form and then by signing and submitting the provided form letter of resignation. (Appendix B).
- (2) Agree in writing by checking the appropriate space on the enclosed Response Form to appear before a Board of Officers at a date and time to be determined to show cause for retention in GSDF service.

b. Upon acknowledgment of receipt by the member, the brigade commander or general staff section head that initiated the administrative separation action will:

- (1) If the member submits a letter of resignation in lieu of administrative separation, forward a copy of the resignation to his or her assigned JAG and to the ACofS,G1.
- (2) If the member elects appearance before a Board of Officers, initiate action as necessary in coordination with his or her assigned JAG for appointment and scheduling of appearance before such Board as is required by these regulations.

c. If the whereabouts of the member is unknown and unascertained after reasonable attempts to locate him or her, or if the member refuses to accept or respond to the notification as required by 3-3a, above, the JAG will initiate action for the appointment of a Board of Officers as required by these regulations. In such instances, the appointed Board shall proceed with the case in the absence of the member and without according him/her the privileges set out in subparagraph 3-4, below.

3-4 Rights of the Individual. Except in those cases provided for in paragraph 3-3c above, the member

concerned will be entitled to the following privileges and will be so notified by his or her commander, or staff section head.

a. The member, as previously notified, may appear in person before a Board of Officers at his/her own expense. If the member is unable to appear because of imprisonment or other restriction resulting from his or her own misconduct, Board action will not be delayed solely because of the inability of the member to appear, provided he/she is allowed the privileges listed in 3-4 b through 3-4 e, below.

b. Be furnished copies of the records that will be submitted to the board and other pertinent, releasable documents.

c. Be permitted to submit written statements in his or her own behalf.

d. Be represented by appointed GSDf counsel who, if reasonably available should be a lawyer, by GSDf counsel of his own choice if reasonably available or by private counsel at his/her own expense.

e. Be allowed a reasonable time to prepare his/her own case.

f. The burden of proof rests with the member to produce convincing evidence that he or she should not be administratively separated from GSDf service.

Section IV – Boards of Officers

4-1 Overview: This section prescribes the general provisions governing Boards of Officers (hereinafter referred as Board) that are convened under the provisions of this regulation to afford a fair and impartial hearing to determine whether a member should be retained in GSDf service.

a. The Board shall be appointed by official GSDf orders which shall stipulate its composition and purpose.

b. The Board shall not include any officer or other member of the unit to which the member being considered for separation is assigned.

c. The Board shall have neither authority to issue subpoenas nor other powers to compel witnesses to appear before the Board.

d. The Board shall have a period of not more than 90 days from date of appointment to complete its review and deliver its findings to the convening authority.

4-2 Board Composition: The Board will be composed of not less than five commissioned officers:

a. The designated President of the Board shall be a field grade officer, senior in rank to the member being considered for separation.

b. When the capacity or general fitness of a member is under investigation, all voting members of the Board must be of equal or senior rank to the member being considered for separation.

c. In the case of female members being considered for administrative separation, at least one member of the Board must be a female officer of equal or higher rank to that of the member being considered.

d. A non-voting commissioned officer or warrant officer may be designated as Recorder for the Board on the same orders that appoint the Board. When a Recorder is not designated, the junior member of the Board shall act as recorder and shall have a vote.

Board Proceedings. Boards of Officers convened under the provisions of these regulations and related Investigating Officer(s) are not bound by judicial rules of evidence.

a. Although direct testimony of witnesses is preferable, an Investigating Officer or Officers is authorized and shall consider any statement of witnesses as evidence on factual issues, whether or not the following condition exist:

- (1) Proceedings are formal or informal.
- (2) Witnesses are determined to be unavailable.
- (3) Witness testifies.
- (4) Statements were sworn or unsworn.
- (5) Statements were oral or written.

b. A copy of statement(s) to be considered as evidence of a factual issue by the Board or an Investigating Officer will be tendered to the member being considered for administrative separation in order to permit that individual to prepare his or her case.

c. Members of the Board must review all facts and circumstances of each case according to their best understanding of the rules, regulations and policies of the GSDF, and with due consideration to basic principles of fairness and justice to the member concerned.

d. All parties participating in the administrative separation procedure shall be exempt from Criminal and Civil liability as provided in O.C.G.A. Sections 38-2-54 and 38-2-270, and any other applicable Georgia and United States laws.

4-4 Board Findings. The Board will make separate findings with respect to each allegation:

- a. Each finding must be supported by substantial evidence.
- b. Each finding must be a clear and concise statement resultant from facts evidenced in the record, or a conclusion that can be readily deduced from evidence in the record.
- c. Where considered necessary, a brief statement of the reason(s) for each finding, to include pertinent factual data, will be included.

4-5 Board Recommendations.

- a. Recommendations of the Board must be appropriate to and warranted by the findings.
- b. Board recommendations will be limited to either Retention or Administrative Separation.
- c. The Board will submit its Findings and Recommendations to the Commanding General, GSDF. (Appendix C)

4-6 Action on Recommendations. The following actions may be taken on the recommendations a Board of Officers convened for considering administrative separation cases:

- a. The Commanding General may accept the recommendations of the Board.
- b. The Commanding General may reject the recommendations of the Board.
- c. The member has no right of appeal to the actions of the Commanding General.

4-7 Record of Proceedings. The Board will prepare a Report containing an accurate account of its proceedings. Each report will contain –

- a. A record of testimony presented and formal deliberations occurring during open sessions of the Board.
- b. A record of any closed sessions which required the presence of a legal adviser and the recorder.
 - i.
- c. True copies of any and all documents used as a basis for requiring the member to show cause, and all other documents that were accepted as evidence in the case.
- d. A statement of its findings for each presented allegation as required by paragraph 4-4, above.

SECTION V - Resignation in Lieu of Separation.

5-1 General. When a member has been notified that he or she is being considered for administrative separation, he or she may submit a resignation at any time prior to final action on the Board proceedings.

5-2 Process.

- a. Commanders will insure that there is no element of coercion in connection with a resignation in lieu of administrative separation, and that the member is allowed at least 15 days after receipt of notification of impending separation proceedings to make a decision in cases wherein resignation is contemplated.
- b. The resignation of a member under consideration for administrative separation will be submitted in the format prescribed in Appendix B.
- c. Resignations in lieu of administrative separation will be submitted through channels to the ACofS,G1 for the Commanding General's acceptance. A copy of the resignation will be appended to separation orders issued by the ACofS,G1 and placed in the individual's 201 file.
- d. A resignation may be withdrawn by the member at any time prior to acceptance by the CG.

The proponent of this regulation is the HQ,GSDF Judge Advocate General.(JAG). Local supplementation or alteration is not authorized. Comments or suggested changes may be submitted directly to the JAG.

BY ORDER OF THE GOVERNOR

OFFICIAL:

DAVID B. POYTHRESS
Major General
The Adjutant General

MICHAEL E. MCGUINN, III
Colonel, GSDF
Chief of Staff

Distribution: GSDF-A

Appendices:

- A – Notification of Administrative Separation (Format)
- B – Acknowledgment of Receipt of Notification (Form)
- C – Findings and Recommendations of the Board (Form)
- D – Administrative Separation Letter (Format)