



ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

653^d TRIAL DEFENSE TEAM, WEST REGION
UTAH NATIONAL GUARD
12953 Minuteman Way, P.O. Box 1776
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REPLY TO
ATTENTION OF

NGJA-UT-TDS

6 March 2011

MEMORANDUM FOR Soldiers Receiving a Memorandum of Reprimand

SUBJECT: Responding to a Memorandum of Reprimand (AR 600-37)

1. **Summary.** Memorandums of Reprimand (MOR), formerly and still referred to as Letters of Reprimand (LOR), are either punitive from UCMJ (Uniform Code of Military Justice) or your State Code of Military Justice (SCMJ), but more likely are administrative in nature IAW AR 600-37. This memorandum addresses Administrative MOR/LOR's. This memorandum should not be considered legal advice and does not replace the advice of a Judge Advocate. To request counsel from the Trial Defense Service, please visit www.ut.ngb.army.mil/jagtlds/RFC.htm.

2. **Definition.** A letter of reprimand (LOR) is an administrative measure used by commanders to identify and correct conduct or behavior that fails to comply with established standards. Unfavorable information filed in a soldier's personnel records may include evidence of substandard leadership ability, promotion potential, morals, or integrity. Driving while intoxicated (DUI, DWI, etc) or engaging in sexual harassment are common subjects for LORs. Any type of unfavorable information may be put into an LOR. Under AR 600-37, Chapter 3, an LOR may be filed in either your Military Personnel Records Jacket (MPRJ) or your Official Military Personnel File (OMPF). The LOR may be used to document on duty or non-duty, off duty events such as a DUI when not in a duty status. Because it is 'administrative' in nature, other 'punishments' or sanctions may be imposed by the command at the same time (bar to re-enlistment, security clearance revocation, etc.).

3. **Filing in the MPRJ.** An LOR filed in your MPRJ may remain there for up to three years or until you are reassigned to a new general court-martial jurisdiction, whichever is sooner. The LOR must state the length of time it is to be filed. The authority to issue LORs and direct MPRJ filing is as follows:

a. **For enlisted personnel:**

- (1) The recipient's immediate commander (or a higher commander in his or her chain of command);
- (2) School commandants;
- (3) Any general officer; or

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(4) An officer exercising general court-martial jurisdiction over the recipient.

b. For commissioned officers and warrant officers:

(1) The recipient's immediate commander or a higher level commander in the chain of command (if such commander is senior in grade or date of rank to the recipient);

(2) The designated rater, intermediate rater, or senior rater under the officer evaluation reporting system;

(3) Any general officer senior to the recipient or an officer who exercises general court-martial jurisdiction over the recipient.

c. Filing in the OMPF. Any LOR may be filed in your OMPF by direction of a general officer senior to you or an officer with general court-martial jurisdiction over you. All LORs filed in the OMPF are filed on the Performance fiche (P-fiche). Restricted fiche filing is not authorized by the regulation. Unfavorable information filed in your P-fiche remains there permanently unless you successfully appeal or petition to have the information removed.

4. Your Rights. Under the regulation, the LOR (including the intended or possible place of filing) will be referred to you for rebuttal and comment before a filing determination is made. Any statements and other evidence you submit in rebuttal will be attached as enclosures if OMPF filing is directed. You will be allowed a reasonable time (usually until the end of the next scheduled monthly drill) to prepare and submit your response. You will have the opportunity to consult with an attorney for assistance with your rebuttal statement. You may and probably will need to request an extension of time to consult with a Judge Advocate and prepare your rebuttal. Since your consulting counsel will likely be M-Day, an intervening drill is ordinarily desired to allow him or her to review the documents and advise you, so try to secure enough time for that to happen. Make your request quickly and confirm via email with the superior authorizing the extension. With that you will have a reasonable time to respond and you can consult with a Judge Advocate either from Legal Assistance or the Trial Defense Service.

a. Criminal Connection? The more connected the LOR might be to conduct that might be an offense under the UCMJ or your State Code, the more likely a TDS attorney (Trial Defense Counsel or TDC) should be the consulting military attorney. The way you know that is generally because you have been read or given your rights under Article 31 UCMJ, or your 'Miranda' rights. In either case, typically the issuing commander should allow you a reasonable extension to get legal consultation. Typically for the RC, the consulting attorney will be M-Day and not full time, and it is possible they may even be in another State.

b. Article 31, UCMJ / Miranda. If there are allegations of conduct in violation of the UCMJ/ SCMJ then you should be very careful not to make any statements to ANYONE other than your military or private attorney, as anything you say can be used against you, and anyone

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can be forced to disclose your statements and may even have a legal requirement to disclose your statements. It is now a time to be quiet, and talk only with your lawyer.

5. Coordinating with an Advising Military Attorney. Typically, the military attorney will need to see the MOR and the supporting documents from the command. Unless the MOR is punitive where you have already seen the documents supporting the MOR, you will have a right to review the supporting documents. If you have allowed your time to run on your response you need to get a request through to the issuing commander to ask for more time to consult with counsel. Ordinarily it will be your responsibility to ask for more time to consult with counsel and prepare your response.

a. **Copies for Review.** Ordinarily you will need to arrange for copies to get to your counsel. That means scanning the documents over to the consulting Judge Advocate for review. Whenever possible, ask your command to scan the related documents for you, email them to you, and then you can forward them to your counsel.

6. WHAT IS A LETTER OF REPRIMAND AND WHERE CAN ONE BE FILED?

a. A letter of reprimand (LOR) is an administrative censure given to a soldier for a failure to comply with established standards. IAW AR 600-37 (Unfavorable Information), Chapter 3, a letter of reprimand may be filed in either your Military Personnel Record Jacket (MPRJ) or your Official Military Personnel File (OMPF).

b. A LOR filed in a soldier's MPRJ can be made only by an enlisted soldier's immediate commander (or a higher commander in his/her chain of command), school commandant, any General officer or an officer exercising general court-martial jurisdiction over the soldier. Letters filed in your MPRJ may remain for up to three years or until you are reassigned to a new general court-martial jurisdiction, whichever is sooner.

c. A LOR filed in a soldier's OMPF, regardless of the issuing authority, can only be filed upon the order of a general officer senior to the soldier, or by direction of an officer having general court-martial jurisdiction over the soldier. Letters filed in your OMPF are permanently placed in the performance fiche (P-fiche), and may adversely affect your military career in the future. Moreover, the LOR is also placed in your MPRJ as long as it remains in your P-fiche.

7. HOW DO I RESPOND TO A LETTER OF REPRIMAND?

a. Since the LOR is "unfavorable information," IAW AR 600-37 you are entitled to reply to the allegations made against you before a decision is made to file the letter. You may make a written statement to deny, rebut, explain, or mitigate the LOR. You will have a reasonable time to prepare and submit your written statement. Your general goals are to have the MOR:

(1) withdrawn,

(2) not filed, or

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(3) not filed in your P-fiche.

b. Normally your statement should chronologically address the underlying facts (whether you choose to deny, explain mitigating circumstances, or admit your actions and ask for a second chance) of the LOR, and argue for a particular filing determination. If the letter is filed, your statement will be attached. You should not be ‘addressing’ other ‘issues’ about the command, perceived or actual persecution unrelated to the LOR. Even if there are other issues, they have nothing to do with the allegations in the LOR. If there is some logical connection then you need to show the logical connection between the collateral issues and what is in the LOR, not merely that your commander or first sergeant does not like you. Unrelated ‘whining’ merely aggravates what is otherwise a difficult situation and is strongly discouraged.

c. The Judge Advocate, whether a Legal Assistance Attorney (LAA) or Trial Defense Counsel (TDC) can help you with your written statement. To help your counsel understand what has occurred, write out a complete description of the chronological events surrounding the LOR. In writing the statement, and while each LOR will be different, consider how you need to respond by thinking about WHO, WHAT, WHY, WHERE, WHEN and HOW in the order of events that took place. If you are rebutting that something did or did not occur, you should demonstrate inconsistencies in statements made by others used by the Government in supporting the LOR. You should write the statement as clearly and concisely as possible in memorandum format. This memo will be the foundation of your statement as the Judge Advocate is not ordinarily going to write your statement for you. Depending on circumstances the Judge Advocate may give you legal reasons to fight the LOR for inclusion in your rebuttal, and or edit your rebuttal for you, but the bottom line is that you will likely be preparing your rebuttal and submitting it. Due to distances, time, and other issues with representation in the RC, you may consult by email or by phone, or in person. Please give the Judge Advocate sufficient time to review your statement and advise you before there is a critical deadline for submission of the rebuttal.

d. Virtually anything may be attached to support your rebuttal. If you have witnesses to certain events, list their name, email address, telephone number, and units as fully as possible when they are mentioned (do not include social security numbers) and obtain separate written statements (preferably sworn statements) from them (they should consider writing their statement based on the WHO, WHY, WHEN, WHAT, WHERE AND HOW format too). Also, in “MITIGATION,” consider enclosing copies of favorable ratings, letters attesting to your character, and awards received. The Judge Advocate will assist you in editing and refining your statement. After the final statement is complete, turn it into the officer who initiated the LOR in a sealed envelope or folder. Also make sure you keep a copy, and send a copy to your counsel. Make sure you take a note of when, where and to whom you deliver the rebuttal.

8. A LETTER OF REPRIMAND HAS BEEN FILED IN MY MPRJ, CAN I APPEAL?

a. No formal process exists for removing an LOR from your MPRJ. However, you may request its removal by the commander who ordered the filing.

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b. Your appeal should be in memorandum format, and should include any supporting documentation.

9. A LETTER OF REPRIMAND HAS BEEN FILED IN MY OMPF, IS THERE ANYTHING I CAN DO TO GET IT REMOVED OR TRANSFERRED?

a. There is a procedure described in AR 600-37, chapter 7, for requesting the Department of the Army Suitability and Evaluation Board (DASEB) to remove the LOR from your OMPF, or to transfer the LOR from the performance record to the restricted portion of the OMPF.

b. How do I ask for removal? Once a LOR is filed in your OMPF, it is presumed to be administratively correct. Thereafter, the burden of proof rests with you to provide evidence of a clear and convincing nature that the allegations are untrue or unjust, in whole or in part, thereby warranting removal. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered. Appeals are normally restricted to grades E6 and above, officers, and warrant officers. For soldiers in grades below E6, an appeal will be considered only as an exception to policy. Appeals should be in military memorandum format and accompanied by relevant, substantive evidence. Appeals should be sent directly to the President, DA, Suitability Evaluation Board, HQDA (DAPE-MPC-E), Washington, DC, 20310-0300.

c. How do I ask for transfer? Only LORs, admonition, or censure may be the subject of an appeal for a transfer to the restricted fiche. Such appeals may be made on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. As with removal, the burden of proof rests with the soldier. Appeals are normally restricted to grades E6 and above, officers, and warrant officers. Appeals for transfers may be made only after 1 year has elapsed since imposition of the letter and at least one evaluation report, other than academic, has been received in the meantime. Appeals should be in military memorandum format and accompanied by relevant, substantive evidence. Appeals should be sent directly to the President, DA, Suitability Evaluation Board, HQDA (DAPE-MPC-E), Washington, DC, 20310-0300.

10. I'VE NEVER WRITTEN AN APPEAL BEFORE, HOW SHOULD I GET STARTED?

a. Enclosed are three example formats for use in responding to LORs. The first is an example of a rebuttal statement before a LOR is filed. It is simply an example, and the text is not intended to be used as actual language in all cases. It is just provided to inspire thought as to what might be addressed. Seek the assistance of a Judge Advocate (as discussed earlier) in writing a rebuttal for your specific case. The second sample format is for requesting the transfer of a LOR from the performance fiche to the restricted fiche. The third sample format is for requesting the removal from, or alteration of, a LOR filed in the OMPF. You should always check to see if you can send your document electronically as well as by regular, priority or certified mail.

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11. WHERE CAN I GET MORE HELP?

a. If you receive a LOR, you should immediately contact the 653d Trial Defense Services (TDS) at NGUT.JAG.653UT.TDS@ng.army.mil. You should obtain statements from witnesses, draft your response, and bring (or send) everything with you when you contact the TDC. Get some guidance from the TDC before you start.

12. ABCMR Appeals. If your appeal to the DA Suitability Evaluation Board (DASEB) is not successful, then you may further 'appeal' to the Army Board for Correction of Military Records (ABCMR).

a. Before you can apply to the Army Board for Correction of Military Records for consideration for removal of unfavorable information from your file, such as a letter of reprimand, you must exhaust administrative remedies (appeal process) defined in AR 600-37, Unfavorable Information, Chapter 7. Thus, in your submission to the ABCMR you must include information from the DASEB.

b. If after exhausting administrative remedies, you still feel that there is an error or injustice in your record, you may apply to the ABCMR. You may complete an online application at <http://actsonline.army.mil> and send the signature page and evidence as instructed by the online program, or you may print a blank DD Form 149 from the Army Review Boards Agency website at <http://arba.army.pentagon.mil/index.htm> and mail it to the address shown on the reverse of the form. As part of your evidence please provide a copy of documents showing that you have exhausted all administrative remedies.

13. POC is the undersigned.



Encl:

DANIEL K. DYGERT
MAJ, JA
Senior Defense Counsel

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DEPARTMENT OF THE ARMY

(unit)

Address

(co off sym) #

Month #####

MEMORANDUM FOR Commander, (unit of cdr with filing authority), Attn: ____, address

SUBJECT: Memorandum of Reprimand; (RANK), (LASTNAME), (Firstname) (MI);
SSN: (SSN)

1. In response to you memorandum of reprimand, I respectfully request that it be [] withdrawn [] not filed [] filed in my Military Records Personnel Jacket.

2. *Generally, it is best to accept responsibility for the things you DID, and rebut or deny only those which the facts are wrong on. If there are legal defenses that need to be outlined then your consulting JAG will often give you language to insert as legal defenses which are used then in conjunction with your factual defenses. My consulting JAG has advised me that under the allegations made that ****...*

a. The LOR is (untrue) (unjust) (in whole) (in part) because: (here in lay out the clear and convincing basis for the untruthfulness or unjustness of the letter or reprimand referencing enclosed evidence).

b. I fully accept the responsibility for my actions and accept the resulting punishment. I am very fortunate that nobody was hurt because of my recklessness. I am also very fortunate that my wife was able to forgive me for my stupidity. I also hope that my military career will not be ruined because of this.

3. *Generally, if you have taken actions already to mitigate what happened, it is good to outline what those efforts have been, where you are in taking or achieving them, and how that might mitigate the problem that the MOR is addressing – in other words, what are the responsible steps you are taking to address the issues.*

4. To keep you informed of the remedial measures I am seeking:

a. Next week I am going to two days of Alcohol Awareness Training.

b. I am starting Stress Management Classes at the Wuerzburg Hospital.

c. I will be attending Alcoholic Anonymous meetings (newcomer meetings are every Thursday)

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d. My wife and I will be attending marriage enrichment counseling once I arrive at Fort Campbell.

5. If requested, I would appreciate an opportunity to talk with you about any concerns you might have. I have had a solid career as a soldier and have learned tremendously from this mistake.

6. Point of contact is the undersigned at EMAIL, DSN: (phone #) or CIV: (phone #).

Encl:

FULL NAME
RANK, U.S. Army

Cf:

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DEPARTMENT OF THE ARMY
(unit)
address

(co off sym) #
#####

Month

MEMORANDUM FOR President, DA Suitability Evaluation Board, HQDA, ATTN:
DAPE-MPC-E, Washington, DC 20310-0300

SUBJECT: Request for Transfer of Letter of Reprimand from OMPF to Restricted
Fiche; (RANK), (LASTNAME), (Firstname) (MI); SSN: (SSN)

1. In accordance with AR 600-37, I, (RANK) (Full Name), request transfer of the letter of reprimand dated (LOR Date) from my OMPF to my Restricted Fiche.
2. Army Regulation 600-37 allows such transfers when the letter of reprimand has served its intended purpose, has been in the OMPF for at least one year since imposition of the reprimand, the soldier is at least a Staff Sergeant, and has received at least one NCOER since the filing of the reprimand.
3. The LOR has served its intended purpose because: (herein lay out justification as to how the letter of reprimand has served its intended purpose.)
4. Since I have met all the above criteria, I respectfully request that this petition be granted.
5. I would also like the President to note my following achievements:
 - a.
 - b.
 - c.
6. Point of Contact is the undersigned at EMAIL, DSN: (phone #) or CIV: (phone #).

Encls

FULL NAME
RANK, U.S. Army

Cf:

DEPARTMENT OF THE ARMY

NGJA-UT-TDS

SUBJECT: Soldiers Receiving a Memorandum of Reprimand

(unit)
address

(co off sym) #
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Month

MEMORANDUM FOR President, DA Suitability Evaluation Board, HQDA, ATTN:
DAPE-MPC-E, Washington, DC 20310-0300

SUBJECT: Request for Removal (Alteration) of Letter of Reprimand from OMPF;
(RANK), (LASTNAME), (Firstname) (MI); SSN: (SSN)

1. In accordance with AR 600-37, I, (RANK) (Full Name), request the removal (alteration) of the letter of reprimand dated (LOR Date) from my OMPF.
2. Army Regulation 600-37 allows such removals (alterations) when the soldier is at least a Staff Sergeant and provides evidence of a clear and convincing nature that indicates that the letter of reprimand is untrue or unjust in whole or in part.
3. The LOR is (untrue) (unjust) (in whole) (in part) because: (here in lay out the clear and convincing basis for the untruthfulness or unjustness of the letter or reprimand referencing enclosed evidence).
4. I respectfully request that based on the above information supported by the enclosed evidence that this petition be granted.
5. Point of Contact is the undersigned at EMAIL, DSN: (phone #) or CIV: (phone #).

Encls

FULL NAME
RANK, U.S. Army