



UNITED STATES MARINE CORPS

3D MARINE AIRCRAFT WING
MARINE CORPS AIR STATION MIRAMAR
PO BOX 452038
SAN DIEGO CA 92145-2038

IN REPLY REFER TO:

1920

SJA

SEP 15 2011

From: Commanding General, 3d Marine Aircraft Wing
To: Captain Douglas S. Wacker, XXX XX 9313/0602, USMC

Subj: NOTIFICATION OF BOARD OF INQUIRY

Ref: (a) SECNAVINST 1920.6C
(b) CG, I MEF ltr 1920 SJA of 1 Sep 11

Encl: (1) Rights of a Respondent
(2) Acknowledgment of Notice

1. Per the references, you are notified that a Board of Inquiry will be convened to make a recommendation on your retention in the U.S. Marine Corps. The specific reasons for separation to be considered by the Board are substandard performance of duty, misconduct, and moral or professional dereliction as evidenced by one or more of the following:

a. Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade;

b. Failure to properly discharge duties expected of officers of the member's grade and experience; and

c. Commission of a military or civilian offense that could be punished by confinement of six months or more.

2. The Board of Inquiry will make the following determinations, by majority vote, based on evidence presented at the hearing:

a. A finding on the reasons for separation. This finding is based on a preponderance of the evidence standard; and

b. One of the following:

(1) If the Board finds that one or more of the reasons for separation are supported by sufficient evidence to warrant separation, it may recommend your separation and make an additional recommendation as to the appropriate characterization of service; or

Subj: NOTIFICATION OF BOARD OF INQUIRY

(2) If the Board finds that the reasons for separation are not supported by sufficient evidence to warrant separation for cause, your case will be closed.

3. The most adverse characterization of service that may be recommended by the Board is Under Other Than Honorable Conditions.

4. You have 30 days in which to prepare your case. As the respondent, you are entitled to exercise the rights set forth in enclosure (1). Your failure to invoke any of these rights will not be considered as a bar to the Board of Inquiry proceedings.

5. This letter is the notice required by reference (a). You will be notified of the names of the Board members and of the date and location of the hearing by separate correspondence.

6. You are directed to acknowledge this notification by completing enclosure (2) and returning it to this Command (SJA) within five working days of receipt.



T. CONANT

Copy to:
MWHS-3
IPAC
File

RIGHTS OF A RESPONDENT

(a) The Respondent shall be given the following rights, which may be exercised or waived:

(1) 30 days to prepare his or her case with reasonable additional time, as determined necessary by the Board of Inquiry. The respondent may, for good cause, further petition the convening authority in a timely manner, for a continuance.

(2) The right to counsel, as provided in paragraph (b) below.

(3) The opportunity to present matters in his or her own behalf. If suspected of an offense, the officer should be warned against self-incrimination under Article 31, UCMJ, before testifying as a witness. Failure to warn the officer shall not preclude consideration of the testimony of the officer by the Board of Inquiry.

(4) Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if the DC (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent that the interests of national security permit.

(5) The names of all witnesses in advance of Board of Inquiry proceedings. Failure to provide any information or the name of a witness shall not preclude the Board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board of Inquiry.

(6) The right to challenge any member for cause. The respondent may submit to the convening authority for appropriate action, any relevant matter which, in his or her view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the convening authority or the legal advisor to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required, the convening authority shall appoint a new member who is qualified. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

Enclosure (1)

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(7) The right to request from the convening authority or the Board of Inquiry the appearance before the Board of any witness whose testimony is considered to be pertinent to the case.

(8) The right to submit, at any time before the Board convenes or during the proceedings, any matter from the respondent's service record, letter answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(9) The respondent and counsel may question any witness who appears before the Board of Inquiry. Testimony of witnesses shall be under oath or affirmation.

(10) The right to give sworn or unsworn testimony. The respondent may only be examined on sworn testimony. The respondent should be warned against self-incrimination as required by Article 31, UCMJ. Failure to so warn the respondent shall not preclude consideration of the testimony by the Board of Inquiry.

(11) The respondent or counsel may present argument on the matter to the Board.

(12) The respondent shall be provided with a copy of the record of the proceedings in the case and a copy of the findings and recommendations of the Board. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to him or her to remove classified material and preserve its integrity.

(13) The respondent may submit a statement in rebuttal to the findings and recommendations of the Board of Inquiry for consideration of the Secretary of the Navy.

(14) The respondent may appear in person, with or without counsel, at all open proceedings of the Board.

(15) Failure of the respondent to invoke any of these rights shall not be considered as a bar to the Board of Inquiry proceedings, findings, or recommendations.

(b) Counsel

(1) Respondent is entitled to have appointed as counsel by the convening authority, a lawyer certified per Article 27(b)(1), UCMJ.

(2) Respondent may request military counsel of his or her choice provided the requested counsel is reasonably available.

(3) The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in Section 0131 of JAGINST 5800.7C, "Manual of the Judge Advocate General" for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondent must elect between representation by appointed counsel and representation by individual counsel. A respondent may be represented in these proceedings by both appointed counsel and individual counsel only if the convening authority, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

(4) Respondent may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel.

(c) Waiver

(1) Respondent may waive any of the aforementioned rights before the Board of Inquiry convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph (a) of this enclosure.



UNITED STATES MARINE CORPS

THIRD MARINE AIRCRAFT WING
MARINE CORPS AIR STATION MIRAMAR
P.O. BOX 452036
SAN DIEGO CA 92145-2036

IN REPLY REFER TO:

1920

SJA

From: Captain Douglas S. Wacker, XXX XX 9313/0602, USMC
To: Commanding General, I Marine Expeditionary Force
Via: Commanding General, 3d Marine Aircraft Wing

Subj: ACKNOWLEDGMENT OF NOTICE

Ref: (a) CG, 3d MAW ltr 1920 SJA of _____

1. I acknowledge that I was notified by the reference that my case will be heard by a Board of Inquiry. I understand that I have 30 days in which to prepare my case and that I am entitled to exercise the rights set forth in enclosure (1) of the reference.

2. I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

D. S. WACKER

Date notified _____

Enclosure (2)



UNITED STATES MARINE CORPS
I MARINE EXPEDITIONARY FORCE
U. S. MARINE CORPS FORCES, PACIFIC
BOX 555300
CAMP PENDLETON, CALIFORNIA 92055-5300

IN REPLY REFER TO:
1920
SJA
01 SEP 2011

From: Commanding General
To: Commanding General, 3d Marine Aircraft Wing
Subj: BOARD OF INQUIRY IN THE CASE OF CAPTAIN DOUGLAS S. WACKER
XXX XX 9313/0602 USMC
Ref: (a) CG, 3d MAW ltr 5812 SJA of 11 Aug 11 (Report of
Court-Martial Conviction).
(b) SECNAVINST 1920.6C

1. As the Show Cause Authority in the subject case, I have reviewed the contents of reference (a) and its enclosures and have determined that they contain sufficient evidence to refer this case to a Board of Inquiry for a recommendation as to whether Captain Wacker should be retained in the U. S. Marine Corps.

2. Accordingly, you will convene a Board of Inquiry under the provisions of reference (b) to consider Captain Wacker. The specific reasons for separation to be considered by the Board are substandard performance of duty, misconduct, and moral or professional dereliction as evidenced by one or more of the following:

a. Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade;

b. Failure to properly discharge duties expected of officers of the member's grade and experience; and,

c. Commission of a military or civilian offense that could be punished by confinement of 6 months or more.

3. The written report of the Board of Inquiry and all other correspondence regarding this case shall be expeditiously forwarded to me (Attn: SJA). A verbatim transcript of the proceedings shall be prepared in any case where the Board finds that the allegations of misconduct are supported by a preponderance of the evidence.

Thomas D. Waldhauser
T. D. WALDHAUSER