

# FORT CARSON LEGAL INFO PAPER



## ADMINISTRATIVE REPRIMANDS

AR 27-10 MILITARY JUSTICE

AR 600-37 UNFAVORABLE INFORMATION

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### WHAT IS AN ADMINISTRATIVE REPRIMAND?

Reprimands are administrative tools that commanders may use to censure Soldiers for substandard personal conduct. AR 27-10 authorizes the issuance of administrative reprimands and provides that they may be issued alone or in conjunction with non-judicial punishment. One common type of administrative reprimand is a General Officer Memorandum of Reprimand (GOMOR).

### WILL THIS AFFECT MY CAREER?

Unfavorable information, such as a reprimand, can have severe implications for career Soldiers. A reprimand filed in a Soldier's Army Military Human Resource Record (AMHRR) may result in non-selection for promotion, a bar to reenlistment, or separation under the Qualitative Management Program (QMP). A GOMOR filed in a Soldier's AMHRR is often a "slow poison" because, while it takes time to end a Soldier's career, it often does eventually result in the end of their career.

### WHY IS THE FILING DETERMINATION SO IMPORTANT?

Once issued by a general officer (often the CG), a GOMOR is typically forwarded through the chain of command (often CO, BN, and BDE CDR) and each commander makes a recommendation to the general whether they believe the GOMOR should be filed locally or in the performance section of Soldier's AMHRR. (Filing in the restricted section of the AMHRR is not an option.) If filed locally, the reprimand does not become a part of the Soldier's overall service record and will be destroyed after 18 months or when the Soldier transfers to a new General Court-Martial Convening Authority (GCMCA). If filed in the AMHRR, the reprimand may be career ending. In most cases, only general officers may order placement of a reprimand in a Soldier's AMHRR.

**NOTE:** Reprimands from ANY level of command for sex-related offenses MUST go in a Soldier's AMHRR.

### DO I HAVE ANY SAY IN THIS?

Soldiers have the opportunity to submit rebuttal matters for consideration before the general officer who issued the reprimand makes a filing determination. Normally, Soldiers have seven (7) calendar days to file rebuttal matters. However, extensions may be requested if more time to prepare is needed or if an appointment with a legal assistance attorney is not readily available. Always start obtaining character letters/letters of support as soon as possible.

There are generally three strategies to rebut a reprimand.

1. **EXTENUATION:** Matters in extenuation are those that tend to lessen the severity of the offense thereby warranting less punishment. In this scenario, the Soldier is admitting that the act(s) took place, but is pointing out that there are other facts and circumstances that must be considered to fully understand why those act(s) took place. *Example: I was speeding because my wife was in labor and we were going to the hospital.*
2. **MITIGATION:** While other issues like family or finances can be argued, this is generally an argument that the performance of a Soldier has historically been so good/exceptional that they do not "deserve" to have their career harmed as a result of a permanently filed reprimand. Dubbed the "rock-star" defense, this is generally not a successful tactic and often has the opposite intended effect. However, later in a Soldier's career this argument can be effective to transfer a GOMOR filed in the performance section to the restricted section of the AMHRR. *Example: Other than this, my 15 year military career is spotless and the Army has given me substantial amounts of specialized training. If the CG permanently files my GOMOR, thereby likely ending my career, the Army will have wasted significant time and resources.*
3. **EXCULPATORY:** Exculpatory means the recipient is arguing they did not actually commit the act(s) alleged in the reprimand. This is a rare argument since reprimands are reviewed with great scrutiny by general officers and legal advisors before issuance. In this situation, it would be appropriate to request that the general rescind the GOMOR. *Example: I received a traffic citation, but I was in fact not the driver of the vehicle cited.*

## **CAN I JUST ADMIT WHAT I DID AND APOLOGIZE?**

It is not uncommon for Soldiers to submit matters which acknowledge the conduct alleged in a GOMOR. "Falling on the Sword" can be an effective tactic and *some* commanders are more willing to be lenient with Soldiers who admit what they did, apologize, and explain what steps they have taken to avoid a repeat of the situation. **HOWEVER**, a GOMOR is an administrative action and not criminal. Keep in mind that an admission of a crime in rebuttal matters could later be used in a criminal proceeding.

## **WHAT ARE THE PROCEDURES FOR TRANSFERRING REPRIMANDS FROM THE PERFORMANCE SECTION TO THE RESTRICTED SECTION?**

The Department of the Army Suitability Evaluation Board (DASEB) has authority to review a Soldier's AMHRR and order transfer of unfavorable information from the Soldier's performance section to their restricted section. In submitting an appeal for transfer, the Soldier must show that the reprimand's intended purpose has been served, and that transfer is in the best interests of the Army. Ordinarily, a Soldier must satisfy each of the following criteria before the DASEB will consider an appeal:

1. The Soldier is a Staff Sergeant or above.
2. At least one year has passed since imposition of the reprimand.
3. An evaluation (OER or NCOER), dated after the reprimand, has been filed in the AMHRR.

Showing that the reprimand has served its intended purpose may be hard to prove. The Soldier needs to show that they addressed the conduct which prompted the reprimand, accepted responsibility for it, corrected it, and then moved on to excel in the Army. An example may be a Staff Sergeant who received a reprimand ten years earlier as a Private. The Staff Sergeant has been promoted several times since, has received several awards, and has received a number of excellent evaluations. Service of intended purpose exists in the form of the motivation, hard work, and commitment to excellence that prompted those promotions, the awards, and the excellent NCOERs. In support of the appeal for transfer, the Soldier should obtain statements from past commanders, supervisors, or anyone else knowledgeable of the Soldier's performance and, perhaps more importantly, potential for the future. The goal is to paint the picture of a dedicated Soldier who displays high moral character and who is dedicated to the life of a professional member of the military.

## **HOW DO I REQUEST REMOVAL?**

Once a reprimand is filed in your AMHRR, it is presumed to be administratively correct. Thereafter, the burden of proof rests with you to provide clear and convincing evidence 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. There is no time restriction for requesting a removal. Soldiers may request removal immediately after a reprimand has been filed.

All requests should be in military memorandum format and accompanied by relevant, substantive evidence. Requests should be sent directly by the Soldier to the Department of the Army Suitability Evaluation Board, 251 18th Street South, Suite 385, Arlington, VA 22202-3531.

## **General Officer Memorandum of Reprimand (GOMOR) Process**

- Step 1: Legal receives GOMOR request and supporting evidence.
- Step 2: Legal drafts GOMOR for general's signature.
- Step 3: General briefed case and either issues or does not issue GOMOR.
- Step 4: Soldier formally receives GOMOR and signs acknowledgment memo.
- Step 5: Soldier given time to submit rebuttal matters.
- Step 6: GOMOR forwarded through chain of command who then consider rebuttal matters and make filing recommendations.
- Step 7: General considers rebuttal matters and filing recommendations then makes filing decision.

**Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at (719) 526-5572/5573 or come by the office (Building 6222) Monday through Thursday from 0900-1600 and Friday 0900-1500. Appointments are made on the last duty day of every week and you can call or walk in to schedule an appointment.**

*This is an informative handout from the Fort Carson Legal Assistance Office containing general information on a topic that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation.*