



TRIAL DEFENSE SERVICE

FORT CARSON FIELD OFFICE
6934 SMITH STREET, BLDG 2354
FORT CARSON, COLORADO 80913



PREPARING A RESPONSE TO CHAPTER NOTIFICATION

When you are served with notice of pending separation, you will be given a chance to respond in writing. Your immediate commander will consider the response and then add it to the packet and forward it to the battalion commander. The period of time you will have is usually seven duty days from the date you received a copy of the letter and supporting documents notifying you of the initiation of separation. If you are not sure what your deadline is, you must ask your commander or First Sergeant to ensure that this right to respond is not waived.

Submitting a written response to an elimination action should be carefully done. In many cases, the statements and documents you attach will be the only favorable information about you in the action.

- If you are seeking to be retained in the Army, your response may persuade your unit commander that the adverse action he has in mind is either too harsh or too soon, that you deserve additional time to prove yourself as a Soldier, or may feel that a rehabilitative transfer is more appropriate. Your response may not persuade your commander, but it may convince your battalion commander, brigade commander, or their legal advisor that you deserve some sort of favorable action. For example, your superior commander may decide to suspend the separation and give you a chance to show you can perform properly.
- If you want to be separated from the Army then your response may be able to persuade your commanders to give you an honorable or general discharge.
- If you are separated from the Army, your response may be very helpful when you try to upgrade your discharge certificate in the future. The fact that you made the effort to fight the action when you were given the chance will benefit you more than if you have just rolled over and accepted the adverse action. Besides, if you wait until you are out of the Army to try and get statements from people who knew you on active duty, you will probably have very little success in finding those people and getting them to write something for you.

The specific tips below in preparing a response are intended to give you some ideas and guidelines. These tips are not intended as a substitute for the personal legal advice of an attorney. If you have questions about what to include in your response, you should ask your military attorney. In any event, you should submit a response because you really have nothing to lose by doing this. If you are thinking about signing a chapter

action or some other action without responding, you should definitely talk with your attorney before making your final decision. If preparing a response, consider the following guidelines:

- **BE ON TIME.** Know when the response is due and do not miss the deadline. If you do not have enough time, you need to talk to your commander about getting an extension. If your request is denied, turn in what you can and note in your statement when you asked for an extension, why, and that your request was denied.
- **BE HONEST AND SUPPORT YOUR POINTS.** You can expect everything you say to be compared with what other people think is the truth. Make sure that every claim you make is supported with witness statements or documents, if possible. Your response will not mean much if you do not have any credibility. Be precise in your language and be accurate. Remember, your statement and those of your witnesses lock you into a story; once it is on paper, you cannot change it later without hurting your credibility.
- **BE COMPLETE.** Your response should usually address every negative point made against you in the packet. Every administrative packet contains Article 15s, counseling statements, or other documentations that “proves” and supports the adverse action against you. You are the only person that can point out why a certain counseling statement is misleading or unfair. You must point out defenses or extenuating circumstances that will make you look better. You must point out any reasons you believe might cause your accusers to be biased against you. If you think somebody is lying or mistaken, then point out evidence to show a motive to color the truth, or point out why you think a person is mistaken. Be specific and, again, support your statements. You cannot expect to attract much attention by making unsupported accusations. You will have more credibility if you cite specific instances to prove your points and mention the names of witnesses. Again, there is a danger here that if you are wrong, it will be a fairly simple matter of proving this by talking to your witnesses; but if you are right, you need not worry.
- **ATTACH STATEMENTS AND DOCUMENTS TO YOUR SUBMISSION.** You should support your points with statements from others, if possible, and refer to those statements and other documents or records in your submission. Each statement should identify the person making it: Include full name, SSN and unit. If the statement describes a specific event then it should identify the approximate time, date, and location of the event.
- **ATTACH CHARACTER STATEMENTS OF PEOPLE WHO KNOW YOU WELL.** People in your present or former chain of command will carry the most weight. Each character statement should be addressed to your commander or “To whom it May Concern,” and should be typed (if possible) and signed by the person making the statement. It is a good idea to have someone sign as a witness. The

statement should include information about the following: How long the witness has known you; duty relationship to you; personal relationship with you; evaluation of your duty performance and soldierly qualities; your attitude about military service; problems you have had with the unit or personal life and your efforts to overcome these problems; problems with harassment within the unit and whether you need a rehabilitative transfer. Modify these suggestions as needed to have the statements and documents fit your situation.

- **INCLUDE AWARDS AND LETTERS OR CERTIFICATES OF COMMENDATION.**
- **PAY ATTENTION TO THE USE OF TACTICS.** It may be advisable to refrain from disclosing the names of certain witnesses or information in your response for tactical reasons. If you are entitled to request a hearing before a board of officers you may not want to tip off your commander and the government representative (who acts like a prosecutor at the board). You may want the element of surprise up to a certain point, and by bringing it up in your written response you will allow the government to prepare a stronger rebuttal. If this is the case, you need to discuss such information in detail with your attorney when you consult with him or her. While tactics may play a part in actions where you are entitled to a hearing, if you are not entitled to a hearing you should usually lay all your cards on the table, because your written response is your only means of affecting the action in your favor.

The foregoing information has been prepared to assist you in deciding what you want to do about the separation action pending against you. It is not intended for use as a substitute for the personal legal advice to which you are entitled. You should outline below the matters you plan to submit so you may discuss them with your military attorney when you review the administrative action with him or her. The guidelines presented in this paper are the general suggestions of the attorney preparing them and do not represent the opinion of the U.S. Army Trial Defense Service or any other government agency.

DEPARTMENT OF THE ARMY
(your company), (your battalion)
(your unit APO)

(Your unit office symbol)

Date: _____

MEMORANDUM FOR Commander, (battalion commander for chapter 13 proceedings or brigade commander for chapter 14 proceedings)

SUBJECT: Chapter ____ Proceedings – Rebuttal Letter

1. The first paragraph is the introductory paragraph. In it you should state that you are pending separation and the reason for the proposed separation. You should tell the separation authority why you are writing this letter. (For example: to ask for retention on active duty or to request that you be separated with an honorable discharge.)
2. In this paragraph you should justify your request. Start by stating your MOS and job specialty. Tell the separation authority how long you have been on active duty and briefly highlight some of your achievements and awards, if applicable. Describe your goals and aspirations. Mention any awards, documentation and letters of support that you will attach to this letter as enclosures.
3. This next area is optional. It concerns the basis for your pending separation. Although you have the constitutional right not to discuss any offense for which you might face criminal charges, you may, after consultation with your attorney, find it helpful to apologize for any offense you may have committed and briefly highlight any factors that lessen the severity of the offense(s). If what you did was a one-time incident, say that in this paragraph of your memorandum. You may want to say that the misconduct (or unsatisfactory performance) will not be repeated or continue. You might also include rehabilitative steps you have taken, like seeking classes or counseling.
4. In the last paragraph respectfully ask for a second chance if you are seeking retention. If retention is not possible, ask for an honorable or general discharge based on your entire military record. Tell the separation authority you do not want to have the stigma of an other than honorable discharge when seeking civilian employment.

(# of) Encls

YOUR NAME
RANK, USA