



## **TRIAL DEFENSE SERVICE**

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### **WHAT YOU SHOULD KNOW ABOUT A POST-TRIAL CHAPTER 10, AR 635-200 REQUEST FOR DISCHARGE IN LIEU OF TRIAL BY COURT-MARTIAL**

1. WHAT IS THE BASIS FOR A POST-TRIAL CHAPTER 10? You have completed your court-martial and will now have a federal conviction for an offense for which a bad-conduct or dishonorable discharge is authorized to be imposed if your findings remain unchanged. You, the Soldier, may voluntarily submit a request to the General Court-Martial Convening Authority (GCMCA) through your chain of command requesting the approval of an administrative discharge instead of the findings and sentence or you may request that the findings be approved but that an administrative discharge be approved instead of an adjudged punitive (Dishonorable or Bad Conduct) discharge.

2. **You should always remember that the purpose of the post-trial Chapter 10 is to avoid receiving a court-martial conviction or, if the GCMCA will not disapprove the conviction, avoid receiving a punitive discharge. A court-martial conviction is a federal conviction and will become part of your civilian record. Whatever decision you make, you should do so only after consulting a Trial Defense Counsel or an attorney who has experience practicing military criminal law.**

3. WHAT ARE YOUR RIGHTS?

a. You have a right to consult with consulting counsel within a reasonable time to consider the wisdom of submitting a post-trial Chapter 10 request. Your consulting counsel who represented you at court-martial has advised you of the elements of the offenses, the burden of proof the Government must carry to prove your guilt at a court-martial, the possible defenses to the charges against you, the provisions of Chapter 10, AR 635-200, the requirement that you must **voluntarily** submit the request, the type of discharge that is normally given under Chapter 10, your right to withdraw the request, the possible loss of Veterans Administration benefits, the fact that you will receive a reenlistment code which will bar you from ever reentering any branch of the service (RE-4), and the prejudice that you may experience in civilian life as a result of separation under the provisions of Chapter 10.

b. You have a right to submit statements on your behalf.

c. You have a right to obtain copies of the court-martial packet.

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d. You have a right to waive the above rights in writing.

e. **You must be informed that part of the process is signing a request admitting your guilt to all or some of the offenses for which you were found guilty at court-martial. One of those offenses must authorize the imposition of a punitive discharge.** The post-trial Chapter 10 cannot be approved without this admission.

4. TYPES OF DISCHARGE: Members separated under this program will **most likely** be given an **OTHER THAN HONORABLE DISCHARGE** (paragraph 10-8, AR 635-200). It is virtually impossible to receive an Honorable Discharge. In rare instances, it **might be** possible to receive a General Discharge under Honorable Conditions or Uncharacterized Discharge.

a. HONORABLE: This is a separation with honor. An honorable discharge will be given for proper military behavior and proficient performance of duty. If the member has served faithfully and performed to the best of their ability, and there is no derogatory information in the military record, an honorable discharge should be directed. If there are infractions of discipline, the seriousness and frequency will be evaluated. When there is a doubt, it should be resolved in favor of an honorable discharge. It is the pattern of behavior, not the isolated incident, which is important.

b. GENERAL: This is a separation under honorable conditions. A general discharge is given to a Soldier whose record and performance is satisfactory. This is usually given to a Soldier who had frequent nonjudicial punishments but not for serious infractions. When this type of discharge is given, the commander must state the specific basis for it.

c. OTHER THAN HONORABLE: **This is the discharge that you will receive, barring an unusual situation with your case.** This separation is under other than honorable conditions. It may be issued for misconduct that includes acts constituting a significant departure from the conduct expected of members of the Army, including: (1) use of force or violence to produce serious bodily harm or death, (2) abuse of trust, (3) disregard for customary superior/subordinate relationships, (4) lengthy AWOL time, and (5) acts that endanger the security of the United States or welfare of other Army members. **A person receiving an other than honorable discharge will automatically be reduced to E1 and may lose the right to have goods shipped home. Additionally, you will also lose the right to cash in your leave days.**

5. EFFECT OF DIFFERENT KINDS OF DISCHARGES: There is little difference in eligibility for veteran's benefits and programs between general and honorable discharges. Educational benefits (i.e. Montgomery GI Bill), however, require an honorable discharge in addition to specific time in service requirements. With either discharge, other veteran's benefits depend on the length of service and other factors. **An other than honorable discharge will most definitely have some adverse impact once you become a civilian.** There may be some psychological prejudice in the civilian world against people with general discharges; no definite statement can be made about this factor.

6. REENTRY CODE (RE): Soldiers separated under the provisions of Chapter 10, AR 635-200, will receive a RE Code of 4, prohibiting them from reentering the

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service at a later date.

7. UPGRADING THE DISCHARGE: If you receive an other than honorable or general discharge, you are eligible to apply to have your discharge upgraded through the Army Discharge Review Board. The TDS office has information on

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the process for such an upgrade application.

8. TIMING OF SEPARATION: You will be separated as soon as possible.

NOTE: Any misconduct committed after the discharge is approved, but before separation, can still be prosecuted.

9. HOW TO REQUEST A MORE FAVORABLE CHARACTERIZATION OF DISCHARGE. The main way of requesting a more favorable characterization of discharge is with statements from you and your supervisors since the Chapter 10 request goes up for action in written format. Although you may request a personal interview with the commander who is making the decision, but he/she does not have to grant you one.