



Counseling and Military Justice

Defense Language Institute and Foreign Learning Center



Counseling in General



- Counseling is a process
- The Army prescribes that Leaders counsel their subordinates
- The verbal and written portion of counseling occurs as a part of assessing, teaching, coaching, mentoring, broadening and team building



Event Oriented



• It may precede events, such as going to a promotion board or attending a school, or it may follow events, such as noteworthy duty performance, a problem with performance, or a personal problem.

Event may be a serious violation of law or regulation

 Leaders use the counseling form (DA Form 4856) to record the incident



Counseling as Evidence



- Adverse Administrative and Punitive Measures
 - Article 15's
 - Chapters
 - Courts-Martial
 - Letters of Reprimands
 - Flags
 - Bars to Reenlistment



Soldier's Rights



- Presumption of Innocence
- Right Against Self-Incrimination
- Right Against Unreasonable Search/Seizure
- Fair and Impartial Hearings
- Right to Counsel (in most situations)
- Other Rights (discussed throughout this class)



Article 31(b) Rights



Article 31(b), UCMJ:

- To be informed of the nature of the suspected offense
- To remain silent
- To be informed that any statement you make can be used against you

Applies anytime a person subject to the UCMJ questions a Soldier suspected of an offense.

Use DA Form 3881

		S WARNING PROCE se of this form, see AR 180-3					
		DATA REQUIRED E	Y THE	PRIVACY ACT			
AUTHORITY: PRINCIPAL PURPOSE:	To provide comma	ates Code, Section 3012(g nders and law enforcemen	t offici				
ROUTINE USES:		ty Number is used as an ac			of identification to f	acilitate f	iling and retrieval.
DISCLOSURE:	Disclosure of your	Social Security Number is	volunt	ary.			
1. LOCATION			2.	DATE	3. TIME	4.	FILE NO.
5. NAME (Last, First, MI)			8.	ORGANIZATION O	R ADDRESS		
6. SSN		7. GRADE/STATUS					
		PART I - RIGHTS WAIVER	MON-	WAIVER CERTIFIC	CATE		
Section A. Rights							
The investigator whose nam	ne appears below told m	e that he/she is with the Unit					
suspected/accused:			—:	nd wanted to quest	tion me about the follow	ving offens	e(s) of which I am
	cuestions shout the of	fense(s), however, he/she ma	do it els	ar to me that I have	e the following rights:		
1. I do not have to answe							
		against me in a criminal trial.					
3. (For personnel subject	othe UCMU I have the	right to talk privately to a law	yer ber	ore, during, and aft	er questioning and to hi	ave a lawy	er present with me
during questioning. Thi	is lawyer can be a civilia	n lawyer I arrange for at no e	xpense	to the Government	or a military lawyer det	alled for m	e at no expense to r
or both.							
			- 01 -				
(For civillans not subje-	ct to the UCMJ) I have	the right to talk privately to a	lawyer	before, during, and	after questioning and t	o have a la	wyer present with
me during questioning.	I understand that this I	awyer can be one that I arrang	ge for a	t my own expense,	or if I cannot afford a I	awyer and	want one, a lawyer
will be appointed for m	ne before any questionin	g begins.					
		der investigation, with or wit			ve a right to stop answ	ering quest	ions at any time, or
speak privately with a	lawyer before answering	further, even if I sign the wa	iver be	ow.			
5. COMMENTS (Continu	ie on reverse side)						
Section B. Waiver							
I understand my rights as st without having a lawyer pre	tated above. I am now v esent with me.	villing to discuss the offense(s	under	investigation and m	nake a statement withou	at talking t	o a lawyer first and
v	NITNESSES (If availab	(e)	3.	SIGNATURE OF IN	ITERVIEWEE		
1s. NAME (Type or Pris	nt)						
b. ORGANIZATION OR A	ADDRESS AND PHONE		4.	SIGNATURE OF IN	IVESTIGATOR		
2a. NAME (Type or Pris	nt)		5.	TYPED NAME OF	INVESTIGATOR		
b. ORGANIZATION OR ADDRESS AND PHONE			8. ORGANIZATION OF INVESTIGATOR				
Section C. Non-waiver							
I do not want to give	un my rights						
□ I want a lawye				I do not want to	be questioned or say as	ything	
2. SIGNATURE OF INTER	RVIEWEE						
ATTACH THIS WAIVER CER	RTIFICATE TO ANY SWO	AN STATEMENT (DA FORM	2823)	SUBSEQUENTLY EX	ECUTED BY THE SUSP	ECT/ACCU	SED



Punitive and Administrative Actions



• Separate <u>independent</u> processes which may require the same supporting documentation, i.e. DA Form 4856, Police Report, DD Form 2624 (Specimen Collection Document), etc.

Different governing regulations

(Potentially) different approval authorities



DA Form 4856 – 5W's



- Describe an incident in detail
 - Who is the subject, accomplice, and/or victim?
 - What behavior is being identified as an issue. Are there damages or destruction and to what? What are the known facts and circumstances?
 - Where did the incident occur?
 - When did the incident occur vs when it was reported/discovered?
 - Why describe the reason this incident occurred?



DA Form 4856 - "Magic Bullet"



- aka "Magic Counseling Statement" or "Silver Bullet"
- Important for Separation Purposes
- AR 635-200, Para. 1-17
 - Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed.
 - counseling session must be recorded in writing. DA Form 4856 (General Counseling Form) and will include the reason(s) it is being administered, the date, the fact that separation proceedings may be initiated if the deficiencies continue, and other guidance as appropriate.



"Magic Bullet" con't



If this conduct continues, action may be initiated to separate you from the Army IA W AR 635-200, If you are involuntary separated, you could receive an Honorable Discharge, a General (Under Honorable Conditions) Discharge, or Under Other Than Honorable Conditions Discharge. An Honorable Discharge is a separation with honor based on the quality of service, which meets the standards of acceptable conduct and performance of duty. A General Discharge is a separation under honorable conditions, based on a military record being satisfactory but not sufficiently meritorious to warrant an Honorable Discharge. A discharge Under Other Than Honorable Conditions is based upon a pattern of behavior of one or more acts or omissions that constitutes a significant departure from the conduct expected of a soldier. An Honorable Discharge may be awarded under any provision. A General Discharge may be awarded for separation under Chapter 5, Chapter 9, Chapter 13, and Chapter 14. An Under Other Than Honorable Conditions Discharge may be awarded for separation under Chapter 14 for misconduct. If you receive an Honorable Discharge, you will be qualified for most benefits resulting from....



"Magic Bullet" con't



... military service. An involuntary Honorable Discharge, however, will disqualify you from reenlistment for some period of time and may disqualify you from receiving transitional benefits (e.g., commissary, housing, health benefits) and the Montgomery GI Bill or Post 9/11 GI Bill if you have not met other program requirements. If you receive a General Discharge, you will be disqualified from reenlisting in the service for some period of time and you will be ineligible for some military and VA administered benefits, including the Montgomery GI Bill or Post 9/11 GI Bill. If you receive a discharge Under Other Than Honorable Conditions, you will be ineligible for reenlistment and for most benefits, including payment of accrued leave, transitional benefits, the Montgomery GI Bill or Post 9/11 GI Bill, and possibly transportation of dependents and household goods to home. You may also face difficulty in obtaining civilian employment as employers have a low regard for General and Under Other Than Honorable conditions discharges. Although there are agencies to which you may apply to have your characterization of service changed, it is unlikely that such application will be successful.









Take No Action (after investigation)

Take Administrative Action

• Impose Nonjudicial Punishment (Article 15)

Court-Martial



Legal Action Request



Commander determines adverse action is necessary

- Legal Office requires:
 - Commander's request for legal action,
 - Counseling statements
 - Police/CID/(Investigative Agency) Report
 - FLAG
 - SRB
 - Supplementary documentation pertaining to incident (e.g. leave forms, UA's, damage reports/invoices, pictures/video *not pornography)



FLAGS



- AR 600-8-2
- Suspension of Favorable Personnel Actions
 - Awards, Schools, Promotion
 - * Leave is Commander's Discretion

Notification

Counseling should include reason for the Flag, requirement for Flag removal, and action prohibited by the Flag. All flagged Soldiers will be provided a copy of the DA Form 268 when the Flag is initiated and when it is removed



REPORT TO SUSP For use of t	PEND FAVOR his form, see AR 60								
	SECTION I - A	DMINI	STRATIVE	DATA					
a. NAME (Last, First, Middle Initial)	b. DoD ID No.	c. RAI	NK	d. DATE OF F	RANK	e. SPECIALTY/PM	OSC	f. COMPONENT	
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJO	OR COMMAND	h. UIC	;	i. FLAGGED S	SOLDI	ER'S EMAIL ADDRE	SS (.g	ov or .mil)	
. HR OFFICE CONTROLLING FLAGGING ACTION			TELEPHONE NUMBER I. THIS ACTION IS TO:						
						INITIATE A FLAG	(Section	ons II and IV only)	
						REMOVE A FLAG	(Secti	ons III and IV only)	
	SECTION	II - INIT	IATE A FL	LAG					
a. NON-TRANSFERABLE FLAG									
A FLAG IS INITIATED, EFFECTIVE	F0	OR THE	FOLLOW	/ING REASON:					
Adverse Action (A)				JAG Lac	k of Li	cense or Certification	1 (0)		
Involuntary Separation - field initiated (B)			=		motion to PV2/PFC/9)	
Referred OER, AER, or Relief for Cause	-					nendment (Q)		•	
Security Violation or Loss of Security Cl				\vdash	-	y Non-deployable for	Reten	tion (R)	
HQDA - Delay of Promotion or Removal	, ,	et (F)				Plan (S)		()	
AMEDD Lack of License or Certification		J. (1)				motion to 1LT/CW2 (Τ\		
Commander's Investigation (L)	107			\Box			,		
			Drug Abuse (U)						
Law Enforcement Investigation (M)	:: 45 LIGO 54555		Alcohol Abuse (V) HQDA - Involuntary Separation (W)						
Reserve Components Non-compliance	with 10 USC §10206	5 (N)		HQDA -	Involu	ntary Separation (W)			
b. TRANSFERABLE FLAG									
ACFT Failure (J)	y Body Composition	n Progra	am (K)	Punishm Date Pu		nase (H) ent Complete:			
	SECTION I	II - REN	OVE A F	LAG					
a. FLAG TO REMOVE									
A FLAG (Two-Digit Flag Code)	, WITH AN E	FFECT	IVE DATE	OF) IS HERI	EBY R	EMOVED.	
EFFECTIVE DATE OF THIS FLAG REM	MOVAL IS			, FOR THE FO	LLOW	ING REASON:			
b. DISPOSITION									
Final Action Favorable (C)	Final Action Unfav	orable	(D)	Final Act	ion Sp	ecified (E)		Frroneous (Z)	
	SECTION IV	/ - AUT	HENTICA	TION					
a. UNIT COMMANDER'S NAME (Last, First, Middle Initia	b. DoD ID No.		c. RAN	K	d. L	IIC	e. CC	MPONENT	
f. UNIT, ORG., STATION, ZIP CODE/APO, MAJOR CON	MAND	9	. UNIT CO	OMMANDER'S	EMAIL	ADDRESS (.gov or	.mil)		
		L							
		ĺ	. UNIT CO	OMMANDER'S	SIGNA	TURE		i. DATE	
	V - VALIDATION (F	Require							
a. BN COMMANDER'S NAME (Last, First, Middle Initial)	b. DoD ID No.		c. RAN	K	d. L	JIC	e. CC	MPONENT	
f. UNIT. ORG., STATION, ZIP CODE/APO, MAJOR CON	MAND	-	DN CON	MANDEDICE	AAP A	DDDEEC /	ail)		
I. UNIT, UNG., STATION, ZIP CODE/APO, MAJOR CON	INPUND	9	. BN CON	IMIANUER 5 EI	WAIL A	DDRESS (.gov or .m	ш)		
		h	BN COM	MANDER'S SI	GNAT	IRE		i. DATE	
			PRINCOIN	mratucit o oi	UNA	U112		. DAIL	



DA FORM 268, APR 2021

PREVIOUS EDITIONS ARE OBSOLETE.

Page 1 of 2 APD AEM v1.01ES







SECTION II - INITIATE A FLAG					
a. NON-TRANSFERABLE FLAG					
A FLAG IS INITIATED, EFFECTIVE FOR THE FOLLOWING REASON:					
Adverse Action (A)	JAG Lack of License or Certification (O)				
Involuntary Separation - field initiated (B)	Deny Auto Promotion to PV2/PFC/SPC (P)				
Referred OER, AER, or Relief for Cause NCOER (D)	Lautenberg Amendment (Q)				
Security Violation or Loss of Security Clearance (E)	Administratively Non-deployable for Retention (R)				
HQDA - Delay of Promotion or Removal from a Selection List (F)	No Family Care Plan (S)				
AMEDD Lack of License or Certification (I)	Deny Auto Promotion to 1LT/CW2 (T)				
Commander's Investigation (L)	Drug Abuse (U)				
Law Enforcement Investigation (M)	Alcohol Abuse (V)				
Reserve Components Non-compliance with 10 USC §10206 (N)	HQDA - Involuntary Separation (W)				
b. TRANSFERABLE FLAG					
ACFT Failure (J) Army Body Composition Program (K)	Punishment Phase (H) Date Punishment Complete:				
	ser bet school 1 - bet dittelet til dittelet tils - ber bet dittelet bleve				







SECTION II - INITIATE A FL	AG
a. NON-TRANSFERABLE FLAG	AR 15-6 Investigation/
A FLAG IS INITIATED, EFFECTIVE DATE FOR THE FOLLOW	
Adverse Action (A)	JAG Lack of License or Certification (O)
Involuntary Separation - field initiated (B)	Deny Auto Promotion to PV2/PFC/SPC (P)
Referred OER, AER, or Relief for Cause NCOER (D)	Lautenberg Amendment (Q)
Security Violation or Loss of Security Clearance (E)	Administratively Non-deployable for Retention (R)
HQDA - Delay of Promotion or Removal from a Selection List (F)	No Family Care Plan (S)
AMEDD Lack of License or Certification (I)	Deny Auto Promotion to 1LT/CW2 (T)
Commander's Investigation (L)	Drug Abuse (U)
Law Enforcement Investigation (M)	Alcohol Abuse (V)
Reserve Components Non-compliance with 10 USC §10206 (N)	HQDA - Involuntary Separation (W)
b. TRANSFERABLE FLAG	
ACFT Failure (J) Army Body Composition Program (K)	Punishment Phase (H)
	Date Punishment Complete:





SECTION II - INITIATE A FLAG					
a. NON-TRANSFERABLE FLAG	Local PD, MPI, CID,				
A FLAG IS INITIATED, EFFECTIVE DATE FOR THE FOLLOWI	FBI, ATF, DEA				
Adverse Action (A)	dAG Lack of License or Certification (O)				
Involuntary Separation - field initiated (B)	Deny Auto Promotion to PV2/PFC/SPC (P)				
Referred OER, AER, or Relief for Cause NCOER (D)	Lautenberg Amendment (Q)				
Security Violation or Loss of Security Clearance (E)	Administratively Non-deployable for Retention (R)				
HQDA - Delay of Promotion or Pernoval from a Selection List (F)	No Family Care Plan (S)				
AMEDD Lack of License or Certification (I)	Deny Auto Promotion to 1LT/CW2 (T)				
Communder's Investigation (L)	Drug Abuse (U)				
Law Enforcement Investigation (M)	Alcohol Abuse (V)				
Reserve Components Non-compliance with 10 USC §10206 (N)	HQDA - Involuntary Separation (W)				
b. TRANSFERABLE FLAG					
ACFT Failure (J) Army Body Composition Program (K)	Punishment Phase (H)				
	Date Punishment Complete:				





SECTION II - INITIATE	
a. NON-TRANSFERABLE FLAG	
A FLAG IS INITIATED, EFFECTIVE DATE FOR THE FOLI	
Adverse Action (A) Involuntary Separation - fleto initiated (B) Referred OER, AER, or Relief for Cause NCOER (D)	After determining misconduct initiate when pending:
Security Violation or Loss of Security Clearance (E) HQDA - Delay of Promotion or Removal from a Selection List (F) AMEDD Lack of License or Certification (I) Commander's Investigation (L) Law Enforcement Investigation (M) Reserve Components Non-compliance with 10 USC §10206 (N)	Art 15, UCMJ; CM; civilian criminal charges, restraint, or confinement; reduction board; and/or Reprimands
b. TRANSFERABLE FLAG ACFT Failure (J) Army Body Composition Program (K)	





SECTION II - INITIATE A FLAG					
a. NON-TRANSFERABLE FLAG					
A FLAG IS INITIATED, EFFECTIVE DATE	FOR THE FOLLOWING REASON:				
Adverse Action (A)	JAG Lack of License or Certification (O)				
Involuntary Separation - field initiated (B)	Deny Auto Promotion to PV2/PFC/SPC (P)				
Referred OER, AER, or Relief for Cause NCOER (D)	Lautenberg Amendment (Q)				
Security Violation or Loss of Security Clearance (E)	Administratively Non-deployable for Retention (R)				
HQDA - Delay of Promotion or Removal from a Selection	on List (F) No Family Care Plan (S)				
AMEDD Lack of License or Certification (I)	Deny Auto Promotion to 1LT/CW2 (T)				
Commander's Investigation (L)	Drug Abuse (U)				
Law Enforcement Investigation (M)	Alcohol Abuse (V)				

When pending adverse action for Drugs or Alcohol use flag accordingly not (A)





NON-TRANSFERABLE FLAG	Initiate when the punishment
A FLAG IS INITIATED, EFFECTIVE DATE	FOR THE FOLLOWING REASON: period is one month or longer.
Adverse Action (A)	JAG Lack of License or Sertification (O)
Involuntary Separation - field initiated (B)	Deny Auto Promotion to PV2/PFC/SPC (P)
Referred OER, AER, or Relief for Cause NCOER (D)	Lautenberg Amengment (Q)
Security Violation or Loss of Security Clearance (E)	Administratively Non-deployable for Retention (
HQDA - Delay of Promotion or Removal from a Selectio	n List (F) No Family Care Plan (S)
AMEDD Lack of License or Certification (I)	Deny Aut Promotion to 1LT/CW2 (T)
Commander's Investigation (L)	Drug Abuse (U)
Law Enforcement Investigation (M)	Alconol Abuse (V)
Reserve Components Non-compliance with 10 USC §10	0206 (N) QDA - Involuntary Separation (W)
TRANSFERABLE FLAG	
ACFT Failure (J) Army Body Compos	sition Program (K)

Remove the "Adverse Action" Flag the same day unless additional adverse action is pending. e.g. after second reading of Article 15.





SECTION II - INITIATE A F	LAG
a. NON-TRANSFERABLE FLAG	
A FLAG IS INITIATED, EFFECTIVE DATE FOR THE FOLLOW	VING F
Adverse Action (A)	
Involuntary Separation - field initiated (B)	
Referred OER, AER, or Relier for Succe NCOFR (D)	
Security Violation or Loss of Security Clearance (E)	
HQDA - Delay of Promotion or Removal from a Selection List (F)	
AMEDD Lack of License or Certification (I)	
Commander's Investigation (L)	
Law Enforcement Investigation (M)	
Reserve Components Non-compliance with 10 USC §10206 (N)	
b. TRANSFERABLE FLAG	
ACFT Failure (J) Army Body Composition Program (K)	

Do not initiate until Commander conducts (board) notification procedure per AR 635-200



Bar to Continued Service



The Army desires to retain Soldiers of high moral character, competence, and demonstrated adaptability.

• Soldiers who do not meet this standard will be barred from further service.

Bars may be initiated for a variety of misconduct or general poor performance.

Initiation of administrative separation or bar to reenlistment required for:

- Failure to make satisfactory progress in Army Body Composition Program.
- 2 consecutive APFT failures.
- Removal for cause from NCOES courses.
- Full list in AR 601-280



References



- Counseling (AR 600-20)
- Administrative Reprimands (AR 600-37)
- Bar to Reenlistment (AR 601-280)
- FLAG (AR 600-8-2)
- Administrative Reductions (AR 600-8-19)
- Administrative Separations (AR 635-200)



Military Justice Shop Roles



(Military Justice Paralegals)

(Chief of Justice, Attorney)

- Legal Action Submissions
- Counseling Expectations
- Required Documentation
- Legal Updates
- General Facts of Non-judicial Punishment, and Administrative Actions.

- Legal Advisement
- Conditions on Liberties
- The "Can I, Should I, Do I's ?"
- Search Procedures



Questions??



