



PRIMER: OFFICER BOARD OF INQUIRY

You are appointed to serve as President/Member of an officer board of inquiry (“BOI”). The purpose of this memo is to summarize key aspects of the governing references in order to help prepare you for the BOI.¹ A BOI differs from an enlisted administrative separation board.

Policy. A BOI is a statutory process by which an officer may be administratively separated from active or reserve service. Title 10, U.S. Code authorizes Service Secretaries to prescribe regulations for conducting a BOI. For Navy and Marine Corps officers, the Secretary of the Navy promulgated [SECNAVINST 1920.6D](#) in fulfillment of DOD policy: 1) “To promote the readiness of the Military Services by maintaining high standards of conduct and performance”; 2) “To judge the suitability of persons for military service based on their conduct and their ability to meet required standards of duty, performance, and discipline”; and 3) “To separate from military service those commissioned officers who will not or cannot: (a) meet rigorous and necessary standards of duty, performance, and discipline; (b) maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable military service; (c) exercise the responsibility, fidelity, integrity, or competence required of them.”²

Purpose. “The purpose of a BOI is to give officers a full and impartial hearing at which they may respond to and rebut the allegations which form the basis for separation for cause or retirement in the current grade or a lesser grade and present matters favorable to their case on the issues of separation and, if applicable, characterization of service.”³

Enclosure (11) of the SECNAVINST 1920.6D governs BOI procedures with five core sections that relate to your role on the Board:

Paragraph 7 describes the rights of a Respondent during the BOI.

Paragraph 11 governs witnesses.

Paragraphs 12 and 13 govern the conduct of the hearing and the decision of the BOI, respectively.

Paragraph 14 governs the record of proceedings and Report of the BOI that you must create.

Key Roles

- **Respondent.** The Officer ordered by the Show Cause Authority to “show cause” and the subject of the separation proceedings.
- **Counsel for the Respondent.** The Respondent shall be represented by a qualified counsel appointed by the Marine Corps Defense Services Organization or civilian counsel hired at the Respondent’s own expense who represents, and advocates on behalf of, the Respondent.
- **Recorder.** Represents the Department of the Navy, who is responsible for presenting the evidence supporting the specified reasons for separation.
- **Legal Advisor.** The Legal Advisor is a non-voting member who will “rule finally on all matters of procedure, evidence, and challenges, except challenges to his/her appointment,” which shall

¹ This primer is merely a tool and is not all-encompassing. The language of the cited reference is controlling whenever any disparity between this primer and the reference exists.

² DODI 1332.30 w/CH3 outlines the DoD policy on officer administrative separations.

³ SECNAVINST 1920.6D, Enclosure (11), para. 1.

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be decided by the Convening Authority.⁴ The Legal Advisor is not required to be present at all sessions of the BOI.

- **President of the Board.** The senior member of the board and a voting member. The President of the Board will preserve order and decide upon matters relating to the routine business of the board. The President of the Board, subject to the Appointing Order, may grant continuances or recesses and may adjourn the BOI to meet at a time and a place most convenient and proper.
- **Board Member.** The BOI will consist of at least three voting members, inclusive of the President.
- **Convening Authority.** The Convening Authority is the officer who convened the BOI and appointed the voting members of the Board and the Legal Advisor.
- **Show Cause Authority.** The Show Cause Authority (or Alternate Show Cause Authority) is a General Officer who was given the authority to direct officers to go to a BOI and identify the specific reasons the Officer is required to show cause.

Procedures. Attendance at the proceedings of the BOI is the primary duty of a Board Member. No member shall fail to attend at the appointed time unless prevented by illness, ordered away, or excused by the Convening Authority. Upon being appointed, no member shall attempt to learn the facts and circumstances underlying the board to include researching any terms outside of the enclosures and references. Parties may reach out to the President of the Board in advance of the board regarding administrative matters for the board, and the President may contact the Legal Advisor with any questions regarding requests from either side.

The President of the Board will be provided a script to conduct the BOI. The template script is available at Figure 15-20 of Volume 15 of the Legal Support and Administration Manual.⁵

Generally, the proceedings of the BOI will be open to the public. The President of the Board shall clear the hearing room when it is time for deliberations, at which time all persons except voting members must leave the hearing room. Unless at least three voting members of the BOI are present, no business other than declaring a recess or adjournment shall be transacted by the BOI.

Prior to the presentation of evidence, the Respondent may challenge any voting member or the Legal Advisor if they believe the person cannot approach the case with impartiality. The Convening Authority will resolve any challenge to the Legal Advisor. The challenged Board Member will have the opportunity to make a statement and may be questioned by the Respondent, the Recorder, or other members of the BOI.⁶ The Legal Advisor will rule on any challenges regarding any voting members.

A BOI is not a court-martial and, as such, during the presentation of evidence the strict Rules of Evidence for courts-martial or other judicial proceedings do not apply. However, matters presented to the BOI may be subject to reasonable restrictions as to authenticity, relevancy, competency, cumulativeness, and materiality of evidence. Such determinations are made by the Legal Advisor.⁷ In some cases, there may be evidence introduced related to alleged misconduct that may be pre-service or

⁴ SECNAVINST 1920.6D, Enclosure (11), para. 5.

⁵ MCO 5800.16 – V15.

⁶ SECNAVINST 1920.6D, Enclosure (11), para. 7.f.

⁷ SECNAVINST 1920.6D, Enclosure (11), para. 12.c.

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that occurred more than five years ago. In those cases, the Legal Advisor will advise on the proper way to consider such evidence.

The Respondent may testify under oath, make an unsworn statement, or elect to remain silent. If the Respondent testifies under oath, they are subject to cross-examination by both the Recorder and the members of the BOI. If the Respondent elects to remain silent, the BOI may not consider the Respondent's election against them nor may the Board Members make any adverse inferences about the election not to testify.

Deliberations. After receiving evidence and hearing argument, you will deliberate on your findings in closed session. The standard of proof at the BOI is a "preponderance of the evidence," which is less than the court-martial standard of "beyond a reasonable doubt." A preponderance of the evidence proves a fact if more than 50% of the evidence supports the fact. The burden of proof at the BOI is on the Recorder and never shifts. The weight of the evidence is not determined by the sheer number of witnesses or volume of evidentiary matter. Board Members will rely on their individual judgment and experience in determining the weight and credibility to be given matters received in evidence. All of the BOI's findings or recommendations will be made by majority vote during a closed session. As directed by SECNAV, all voting members of the BOI must read paragraph 10 of Enclosure (11) in its entirety before deliberations on a BOI.⁸ Any question that arises during the closed deliberations will be resolved by the Legal Advisor in an open session with the Recorder, the Respondent, and the Respondent's Counsel present. All Members shall sign the Findings and Recommendations Worksheet. A voting member who does not concur in any of the findings or recommendations must sign the Findings and Recommendations Worksheet and submit a separate Minority Report that includes the findings or recommendations with which the member does not concur and the reason(s) for such non-concurrence.⁹

The three findings that you will deliberate on are described below:¹⁰

1. Whether the preponderance of the evidence proves the BASIS or BASES alleged in the notification. You are required to "make a finding on each of the reasons for separation specified" in the Notification to Respondent,¹¹ which will be reflected in your Findings and Recommendations Worksheet and signed by each member. There may be more than one basis alleged at the BOI and these will be reflected in the Notification to Respondent. A finding will be made as to each noticed basis. If the BOI determines none of the noticed bases are met, there are no further questions for the BOI to answer and the case shall be closed. If the BOI determines any noticed basis is met, you must address the second question.

2. Whether the Marine should be RETAINED or SEPARATED.

If the BOI determines a basis for separation is met, you are required to make a determination on retention or separation. If the BOI determines that the officer should be retained, then there are no further questions for the BOI to answer, and the case shall be closed. If the BOI recommends that the officer should be separated, then the Board shall answer the third question.

⁸ SECNAVINST 1920.6D, Enclosure (11), para. 10.

⁹ SECNAVINST 1920.6D, Enclosure (11), para. 14.e.

¹⁰ For retirement-eligible officers, you will make slightly different findings, discussed later.

¹¹ SECNAVINST 1920.6D, Enclosure (11), para. 13.a.

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3. What is the recommended CHARACTERIZATION OF SERVICE.

If the BOI recommends separation, you are required to recommend a characterization of service. Enclosure (8) of the SECNAVINST provides guidance on recommendations for characterizations of service.

Retirement-Eligible Officers: If a retirement-eligible Officer is recommended for separation, you will only make a recommendation as to characterization of service if such a recommendation is specifically authorized in your Appointing Order. Additionally, if a retirement-eligible Officer is recommended for separation, you shall make a recommendation to the Secretary of the Navy as to the highest grade that the Officer served satisfactorily for a period of not less than six months.¹²

Post-Board Responsibilities. Following the BOI's conclusion, a written Report of BOI – and, when appropriate, a certified transcript – will be created and signed by the President of the Board, and forwarded to the Convening Authority.

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¹² SECNAVINST 1920.6D, Enclosure (11), para. 13.b.