

MISCONDUCT - NYGD 1325

PREFACE

---

FOR THE COMMANDER



**OFFICIAL:**

GEORGE J. DE SIMONE  
COL NYG  
Chief of Staff



**STEPHEN A. BUCARIA**  
Brigadier General, New York Guard  
Commander

---

**1. Purpose.** This publication sets forth the procedures for discharging a member of the New York Guard for misconduct.

**2. Application.**

a. Format and procedures established in this publication apply to all members of the New York Guard.

b. This publication is a mandatory directive.

**3. Scope.** This publication describes the procedure for dealing with misconduct in the New York Guard.

**4. Basis.** This directive is in compliance with New York State Military Law Article VII, Sections 130 through 131.12 and Division of Military and Naval Affairs Regulation 27-2. Part of this directive has been tailored from U.S. Army Regulations: AR 135-178 Enlisted Administrative Separations (3 Dec 2001) and AR 135-175 Separation of Officers (28 Feb 1987).

MISCONDUCT – NYGD 1325

TABLE OF CONTENTS

CHAPTER	PAGE
I POLICY.....	I-1
1. Good Order and Discipline.....	I-1
2. Misconduct.....	I-1
II RESPONSIBILITIES AND PROCEDURES.....	II-1
1. Reports of Misconduct.....	II-1
2. Commanders.....	II-1
3. Respondents.....	II-2
4. Convening Authority.....	II-2
5. Board of Officers.....	II-2
Appendix A.....	A-1
New York State Military Law Part X Punitive Articles, Sec. 130.73 to 131.115	
Appendix B.....	B-1
Appointment of Investigative Officer	
Appendix C.....	C-1
Report of Investigative Officer	
Appendix D.....	D-1
Notification of Separation Proceedings	
Appendix E.....	E-1
Acknowledgement of Notification of Separation Proceedings	
Appendix F.....	F-1
Conditional Waiver of Board	
Appendix G.....	G-1
Affidavit of Service by Mail	

**MISCONDUCT**

**CHAPTER I**

**POLICY**

**1. Good Order and Discipline.** In order to maintain good order and discipline in the New York Guard, members of the New York Guard who commit misconduct, may be processed for separation from the New York Guard or may be placed on the Reserve List or the Retired List in lieu of or in addition to the provisions for courts-martial and/or non-judicial punishment provided for in the New York State Military Law.

**2. Misconduct.** Misconduct shall include, but is not limited to, all of the offenses contained with the punitive articles of the New York State Military Law Article VII, Sections 130.73 to 131.115 and such other offenses to include:

- a. A pattern of minor disciplinary infractions;
- b. A pattern of misconduct consisting of:
  - (1) Discreditable involvement with civil or military authorities; or
  - (2) Conduct prejudicial to good order and discipline within the New York Guard; or
  - (3) Conduct unbecoming an officer; or
  - (4) Conduct which violates the accepted standards of personal conduct found in the punitive articles of the New York State Military Law Sections 130.73 to 131.115 (attached as Appendix A); or
  - (5) Conduct which violates the regulations of the Division of Military and Naval Affairs; or
  - (6) Conduct which violates the directives of the New York Guard; or
  - (7) Conduct which violates the civil law; or
  - (8) Conduct which violates the time-honored customs and traditions of the Armed Forces of the United States and/or the Militia of the State of New York;
- c. Commission of a serious military offense found in the punitive articles of the New York State Military Law Sections 130.73 to 131.115 (attached as Appendix A);

d. Commission of a serious civilian offense to include a felony charge or any other misdemeanor charges or offenses for which the potential penalty may exceed three months of imprisonment;

e. Abuse of illegal drugs is serious misconduct. Members of the New York Guard who are charged with abuse of illegal drugs will be processed for separation;

f. Civil conviction. All members who have been convicted of a felony or any other offense for which the potential penalty exceeds three months of imprisonment shall be immediately processed for separation. Convictions of offenses where the potential penalty is up to three months of imprisonment may be processed for separation.

## CHAPTER II

### RESPONSIBILITIES AND PROCEDURES

**1. Reports of Misconduct.** Any person may report the misconduct of any member of the New York Guard to a Commander of a unit of the New York Guard. Upon receipt of an allegation of misconduct, the unit Commander shall immediately advise the next highest Commander in the chain of command.

**2. Investigating Officer.** Upon the receipt of a report of misconduct, a Commander of a Regiment or higher unit shall preliminarily investigate such alleged misconduct personally or may designate a commissioned officer or warrant officer of suitable experience and discretion to investigate the matter (Appendix B). The investigating officer shall report back to the Commander in writing whether there is reason to believe that a member of the New York Guard may have committed misconduct and the nature and extent of it (Appendix C).

**3. Commanders.**

**a. Serious Misconduct.** A unit Commander who reasonably believes, after a preliminary review of the allegation, that serious misconduct may have occurred, shall forward a report of such alleged misconduct up the chain of command through the Commanders of their respective Regiment, Brigade and ultimately through to the Commander of the New York Guard with a request for corrective action. Corrective action for misconduct shall consist of:

(1) **Separation** from the active New York Guard with a discharge characterized as either:

- (a) Honorable; or
- (b) General-Under Honorable Conditions; or
- (c) Other Than Honorable (applies only to enlisted persons)

**Note:** The Commander of the New York Guard may at his/her or her discretion place a member of the New York Guard on the Reserve List or Retired List as appropriate, in lieu of a final discharge;

(2) **Courts-martial** is a criminal proceeding which is governed pursuant to the provisions of the New York State Military Law.

**Note:** Only The Adjutant General (TAG), or the Commander of the New York Guard may convene a Board of Officers for potential separation action or a courts-martial.

**b. Minor Misconduct.** A unit Commander who reasonably believes after a preliminary review of the allegation that minor misconduct may have occurred may recommend that the Commander of a Regiment or higher unit:

- (1) Administer Non-Judicial Punishment to an enlisted member; or
- (2) Recommend to the Commander of the New York Guard that Non-Judicial Punishment be administered to an officer or warrant officer pursuant to NYS Mil Law §130.15(a)(1)(C); or that
- (3) The member be separated from the New York Guard or placed on the Reserve List.

**c. Commanders of Regimental/Brigade/Group** size units or higher may initiate a Request for Separation of a member of their unit for misconduct (Appendix B) up the chain of command through their intermediate Brigade Commander to the Commander of the New York Guard.

**d. A Notification of Separation**, together with the Acknowledgement of the Notice of Separation and a Conditional Waiver shall be served upon the Respondent service member in accordance with Appendices D, E and F. An Affidavit of Service of the foregoing documents (Appendix G) shall be completed and remain with the file. A completed file should be forwarded up the chain of command to the Commander of the New York Guard.

**4. Respondent.** The Respondent is the person charged with misconduct. The Respondent shall complete and return by endorsement to the Commander the Acknowledgement of the Notification of Separation (Appendix E). The Respondent may also execute and return to the Commander which issued the Notification of Separation, a Conditional Waiver of Board (Appendix F), wherein the service member may conditionally waive his/her or her right to a Board of Officers and offer to resign with discharge characterized as either Honorable or General Under Honorable Conditions. Note, the Commander may or may not in his/her or her discretion accept such offer of a conditional discharge at which time the service member will be processed for separation without further proceedings.

**5. Convening Authority.** Only The Adjutant General (TAG), or the Commander of the New York Guard may act as a Convening Authority to convene a Board of Officers or a courts-martial. This duty may not be delegated. The Convening Authority may either approve, approve in part or reject the recommendations of the Board of Officers. However, in no event may the Convening Authority impose a disposition more severe than that recommended by the Board of Officers.

**6. Board of Officers.** A Board of Officers is a civil/administrative proceeding governed by NYGD 1325.1 – “Board of Officers.” The Board will hear the evidence of misconduct and will make findings and recommendations to the Convening Authority.

## APPENDIX A

### PART X

### PUNITIVE ARTICLES

Section 130.73.	Principals.
Section 130.74.	Accessory after the fact.
Section 130.75.	Conviction of lesser included offense.
Section 130.76.	Attempts.
Section 130.77.	Conspiracy.
Section 130.78.	Solicitation.
Section 130.79.	Fraudulent enlistment, appointment, or separation.
Section 130.80.	Unlawful enlistment, appointment, or separation.
Section 130.81.	Desertion.
Section 130.82.	Absence without leave.
Section 130.83.	Missing movement.
Section 130.84.	Contempt towards officials.
Section 130.85.	Disrespect towards superior officer.
Section 130.86.	Assaulting or willfully disobeying officer.
Section 130.87.	Insubordinate conduct towards noncommissioned officer or warrant officer.
Section 130.88.	Failure to obey order or regulations.
Section 130.89.	Cruelty and maltreatment.
Section 130.90.	Mutiny or sedition.
Section 130.91.	Arrest and confinement.
Section 130.92.	Releasing prisoner without proper authority.
Section 130.93.	Unlawful detention of another.
Section 130.94.	Noncompliance with procedural rules.
Section 130.95.	Misbehavior before the enemy.
Section 130.96.	Subordinate compelling surrender.
Section 130.97.	Improper use of countersign.
Section 130.98.	Forcing a safeguard.
Section 130.99.	Captured or abandoned property.
Section 130.100.	Aiding the enemy.
Section 130.101.	Misconduct as a prisoner.
Section 130.102.	False official statements.
Section 130.103.	Military property--loss, damage, destruction, or wrongful disposition.
Section 130.104.	Property other than military property--waste, spoil, or destruction.
Section 130.105.	Improper hazarding of vessel.
Section 130.106.	Drunken or reckless driving.
Section 130.107.	Drunk on duty--misbehavior.
Section 130.108.	Dueling.
Section 130.109.	Malingering.
Section 130.110.	Riot or breach of peace.
Section 130.111.	Provoking speeches or gestures.
Section 130.112.	Perjury.
Section 130.113.	Frauds against the government.
Section 130.114.	Conduct unbecoming an officer and gentleman.
Section 130.115.	General section.

Section 130.73. **Principals.** Any person subject to this code who-

- (1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or
- (2) Causes an act to be done which if directly performed by him/her would be punishable by this code; is a principal.

Section 130.74. **Accessory after the fact.** Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his/her apprehension, trial, or punishment shall be punished as a court-martial may direct.

Section 130.75. **Conviction of lesser-included offense.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or of an offense necessarily included therein.

Section 130.76. **Attempts.**

- (a) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.
- (b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.
- (c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Section 130.77. **Conspiracy.** Any person subject to this code who conspires with any other person or persons to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

Section 130.78. **Solicitation.**

- (a) Any person subject to this code who solicits or advises another or others to desert in violation of section 130.81 or mutiny in violation of section 130.90 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he/she shall be punished as a court-martial may direct.
- (b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 130.95 or sedition in violation of section 130.90 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he/she shall be punished as a court-martial may direct.

Section 130.79. **Fraudulent enlistment, appointment, or separation.** Any person who—

- (a) Procures his/her/her own enlistment or appointment in the organized militia by means of knowingly false representations or deliberate concealment as to his/her/her qualifications for such enlistment or appointment and receives pay or allowances thereunder; or
- (b) Procures his/her/her own separation from the organized militia by means of knowingly false representations or deliberate concealment as to his/her/her eligibility for such separation; shall be punished as a court-martial may direct.

Section 130.80. **Unlawful enlistment, appointment, or separation.** Any person subject to this code who effects an enlistment or appointment in or a separation from the organized militia of any person who



is known to him/her to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

**Section 130.81. Desertion.**

(a) Any member of the organized militia who-

(1) Without proper authority goes or remains absent from his/her place of service, organization, or place of duty with intent to remain away therefrom permanently; or

(2) Quits his/her unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the forces of the organized militia enlists or accepts an appointment in the same or another one of the forces of the organized militia without fully disclosing the fact he/she has not been so regularly separated; is guilty of desertion.

(b) Any officer of the organized militia who, having tendered his/her resignation and prior to due notice of the acceptance of the same, quits his/her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempted desertion shall be punished as a court-martial may direct.

**Section 130.82. Absence without leave.** Any person subject to this code who, without proper authority--

(1) Fails to go to his/her appointed place of duty at the time prescribed; or

(2) Goes from that place; or

(3) Absents himself/herself or remains absent from his/her unit, organization, or other place of duty at which he/she is required to be at the time prescribed; shall be punished as a court-martial may direct.

**Section 130.83. Missing movement.** Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he/she is required in the course of duty to move shall be punished as a court-martial may direct.

**Section 130.84. Contempt towards officials.** Any person subject to this code who uses contemptuous words against the president, the governor or the legislature shall be punished as a court-martial may direct.

**Section 130.85. Disrespect towards superior officer.** Any person subject to this code who behaves with disrespect towards his/her superior officer shall be punished as a court-martial may direct.

**Section 130.86. Assaulting or willfully disobeying officer.** Any person subject to this code who--

(1) Strikes his/her superior officer or draws or lifts up any weapon or offers any violence against him/her while he/she is in the execution of his/her office; or

(2) Willfully disobeys a lawful command of his/her superior officer; shall be punished as a court-martial may direct.

**Section 130.87. Insubordinate conduct toward noncommissioned officer or warrant officer.** Any warrant officer or enlisted person whom--

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while such officer is in the execution of his/her office; or

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his/her office; shall be punished as a court-martial may direct.

Section 130.88. **Failure to obey order or regulations.** Any person subject to this code who-

- (1) Violates or fails to obey any lawful general order or regulation; or
- (2) Having knowledge of any other lawful order issued by a member of the armed forces, which it is his/her duty to obey, fails to obey the same; or
- (3) Is derelict in the performance of his/her duties; shall be punished as a court-martial may direct.

Section 130.89. **Cruelty and maltreatment.** Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his/her order shall be punished as a court-martial may direct.

Section 130.90. **Mutiny or sedition.**

- (a) Any person subject to this code--
  - (1) Who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to obey orders or otherwise do his/her duty or creates any violence or disturbance is guilty of mutiny;
  - (2) Who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority is guilty of sedition;
  - (3) Who fails to do his/her utmost to prevent and suppress an offense of mutiny or sedition being committed in his/her presence, or fails to take all reasonable means to inform his/her superior or commanding officer of an offense of mutiny or sedition which he/she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.
- (b) A person who is found guilty of attempted mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

Section 130.91. **Arrest and confinement.** Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

Section 130.92. **Releasing prisoner without proper authority.** Any person subject to this code who, without proper authority, releases any prisoner duly committed to his/her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct.

Section 130.93. **Unlawful detention of another.** Any person subject to this code who, except as provided by law or regulations, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

Section 130.94. **Noncompliance with procedural rules.** Any person subject to this code who--

- (1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or
- (2) Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct.

Section 130.95. **Misbehavior before the enemy.** Any person subject to this code who before or in the presence of the enemy--

- (1) Runs away; or
- (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his/her duty to defend; or
- (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property; or
- (4) Casts away his/her arms or ammunition; or
- (5) Is guilty of cowardly conduct; or
- (6) Quits his/her place of duty to plunder or pillage; or
- (7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia; or
- (8) Willfully fails to do his/her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his/her duty so to encounter, engage, capture, or destroy; or
- (9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, or to any other state or to the organized militia when engaged in battle; shall be punished as a court-martial may direct.

Section 130.96. **Subordinate compelling surrender.** Any person subject to this code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces of the United States or of any other state, or of the organized militia to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Section 130.97. **Improper use of countersign.** Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his/her knowledge, he/she was authorized and required to give, shall be punished as a court-martial may direct.

Section 130.98. **Forcing a safeguard.** Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

Section 130.99. **Captured or abandoned property.**

- (a) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.
- (b) Any person subject to this code who--
  - (1) Fails to carry out the duties prescribed in subdivision (a) of this section; or
  - (2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he/she shall receive or expect any profit, benefit, or advantage to himself/herself or another directly or indirectly connected with himself/herself; or
  - (3) Engages in looting or pillaging; shall be punished as a court-martial may direct.

Section 130.100. **Aiding the enemy.** Any person subject to this code who--

- (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or
- (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall be punished as a court-martial may direct.

Section 130.101. **Misconduct as a prisoner.** Any person subject to this code who, while in the hands of the enemy in time of war--

(1) For the purpose of securing favorable treatment by his/her captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

Section 130.102. **False official statements.** Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

Section 130.103. **Military property**--- loss, damage, destruction, or wrongful disposition. Any person subject to this code who, without proper authority--

(1) Sells or otherwise disposes of; or

(2) Willfully or through neglect damages, destroys, or loses; or

(3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of; any military property of the United States or of the state, shall be punished as a court-martial may direct.

Section 130.104. **Property other than military property**--- waste, spoil, or destruction. Any person subject to this code who, while on active state duty or in a duty status other than active state duty, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct.

Section 130.105. **Improper hazarding of vessel.**

(a) Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct.

(b) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct.

Section 130.106. **Drunken or reckless driving.** Any person subject to this code who, while on active state duty or in a duty status other than active state duty, operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

Section 130.107. **Drunk on duty misbehavior.** Any person subject to this code who is found drunk on duty or drunk or sleeping upon his/her post, or who leaves his/her post before he/she is regularly relieved, shall be punished as a court-martial may direct.

Section 130.108. **Dueling.** Any person subject to this code who, while on active state duty or in a duty status other than active state duty, fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly or the proper authority, shall be punished as a court-martial may direct.

Section 130.109. **Malingering.** Any person subject to this code who for the purpose of avoiding work, duty, or service in the militia--

- (1) Feigns illness, physical disablement, mental lapse or derangement; or
- (2) Intentionally inflicts self-injury; shall be punished as a court-martial may direct.

Section 130.110. **Riot or breach of peace.** Any person subject to this code who, while on active state duty or in a duty status other than active state duty, causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

Section 130.111. **Provoking speeches or gestures.** Any person subject to this code who, while on active state duty or in a duty status other than active state duty, uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

Section 130.112. **Perjury.** Any person subject to this code who, in a judicial proceeding or course of justice conducted pursuant to this code, willfully and corruptly

- (1) Gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry; or,
- (2) In any declaration, certificate, verification, or statement under penalty of perjury serves any false statement material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

Section 130.113. **Frauds against the government.** Any person subject to this code---

- (1) Who, knowing it to be false or fraudulent--
  - (a) Makes any claim against the United States, the state or any officer thereof; or
  - (b) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state or any officer thereof; or
- (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state or any officer thereof--
  - (a) Makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements; or
  - (b) Makes any oath to any fact or to any writing or other paper knowing such oath to be false; or
  - (c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or
- (3) Who, having charge, possession, custody, or control of any money or other property of the United States, or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he/she receives a certificate or receipt; or
- (4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct.

Section 130.114. **Conduct unbecoming an officer and gentleman.** Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

Section 130.115. **General section.** Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia and all conduct of a nature to bring discredit upon the organized militia or a force thereof, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

**THIS  
PAGE  
INTENTIONALLY  
LEFT  
BLANK**

**APPENDIX B**  
*(Appropriate Letterhead)*

OFFICE SYMBOL (1325)

DATE

MEMORANDUM FOR: *(Officer concerned)*

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer to conduct an informal investigation into complaints of alleged misconduct involving *(state subject matter)*.
2. In your investigation, all witness statements will be sworn. From the evidence, you will make findings whether any misconduct has been committed and by whom. Negative findings shall also be reported in writing. You will make a recommendation as to your findings.
3. Submit your findings and recommendations in three copies to this headquarters within five (5) days of the completion of the investigation.

Enc.

*(Signature block)*

**THIS  
PAGE  
INTENTIONALLY  
LEFT  
BLANK**



**APPENDIX C**  
**Report of Investigating Officer**

**Appointment**

I, *(rank, name, unit)* having been appointed by *(appointing authority)* on *(date)* *(attach enclosure 1: Letter of Appointment)* make the following report:

**Sessions**

The *(investigation)* commenced at *(place)* at *(time)* on *(date)*. The following persons were interviewed: *(After each rank, name, indicate NYG ID # and unit)*

Sworn statements of those individuals are attached as separately numbered exhibits.

The *(investigating officer)* finished gathering and hearing evidence at *(time)* on *(date)* and completed findings and recommendations at *(time)* on *(date)*.

**Findings**

The *(investigating officer)* having carefully considered the evidence, finds:

**Recommendations**

In view of the above findings, the *(investigating officer)* recommends:

**Authentication**

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE.

---

*(Investigating Officer)*

**Action by Appointing Authority**

The findings and recommendations of the *(investigating officer)* are *(approved)* *(disapproved)* *(approved with following exceptions/substitutions)*. *(if appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence [or a summary, if oral] as a number enclosure.)*

---

*(Appointing Officer)*

**APPENDIX D**  
**Notification of Separation Proceedings**

(Letterhead)

(Office Symbol) (1325)

S: (Enter date of suspense)  
(Date)

MEMORANDUM FOR: (Soldier's name, NYG ID#, grade, and organization of assignment)

SUBJECT: Notification of Separation Proceedings Under New York Guard Directive 1325.

1. Under the provisions of New York Guard Directive 1325 (indicate specific subsection), I am initiating action to separate you from the New York Guard for (indicate narrative reason). The reasons for my proposed action are: (state specific, factual details which constitute the basis for the proposed action).

2. I am recommending that upon separation you receive a(n) (indicate one of the following): Honorable Discharge or a General Discharge Under Honorable Conditions or an Under Other Than Honorable Discharge. (Note that commissioned officers and warrant officers may not be issued an Other Than Honorable Discharge.) My recommendation and your reply will be submitted through intermediate commanders (if any) to (enter name, rank and organization of the Convening Authority/Separation Authority, i.e., the Commander of the New York Guard), who will make the final decision in your case.

3. The intermediate commander(s) and the separation authority are not bound by my recommendation as to characterization of service. The separation authority may direct that your service be characterized as Honorable, General Under Honorable Conditions or Under Other Than Honorable Conditions, or you may receive an uncharacterized description of service if you are in an entry level status, i.e., less than one year of service. However, the separation authority may not direct the issuance of a type of discharge or characterization of service less favorable than that recommended by an administrative separation board should you request a hearing before an administrative separation Board of Officers.

4. If my recommendation is approved, the proposed separation could result in your discharge from the New York Guard.

5. I am suspending any favorable personnel actions at this time to include promotions, attendance at drills or state active duty. I am suspending separation action for 45 days to give you an opportunity to exercise the following rights:

a. You have the right to consult with an appointed counsel; military counsel of your choice, if he/she or she is reasonably available, or civilian counsel at your own expense.

(1) If you desire an appointed counsel for consultation, notify this command *before completing the response* by endorsement and the name and phone number of the appointed counsel will be provided.

(2) If you desire a military counsel of your choice, provide this command with the officer's name and grade *before completing the response* by endorsement and if the officer is reasonably available, he/she or she will be appointed counsel for consultation.

(3) If you retain civilian counsel at no expense to the state, it is recommended that such private counsel be retained *before completing the response* by endorsement.

b. You have the right to obtain copies of documents that will be sent to the separation authority supporting the basis for the proposed separation. (Classified documents may be summarized.)

c. You have the right to request a hearing before an administrative Board of Officers in accordance with NYG Directive 1325.

d. You have the right to representation at the administrative board by military counsel that will be designated (see para 6 below). A military counsel of choice is not authorized.

e. You have the right to representation at the administrative board by civilian counsel at your own expense and at no expense to the State of New York.

f. You have the right to present written statements on your behalf instead of appearing at the administrative Board of Officers proceeding.

g. You have the right to waive the rights listed above in paragraphs a through f in writing, and you may withdraw any such waiver at any time before the date the separation authority orders, directs, or approves your separation.

h. You may submit a conditional waiver of your right to an administrative Board of Officers proceeding contingent upon receiving a characterization of service higher than the least favorable characterization of service authorized for the basis of your proposed separation.

6. You must complete the attached endorsement acknowledging receipt of this memorandum and indicate the election of your rights. A copy of this memorandum with the completed endorsement attached must be delivered to the address shown on the endorsement within 30 days from the date of your receipt of this memorandum of notification. Any statement or documents you desire to submit in your behalf must be received by me within 30 calendar days after you receive this memorandum, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to deliver the completed endorsement within 30 days of the date of your receipt of this memorandum will constitute a waiver of your rights in paragraphs 4a through 4h above.

Enc.

(Commander's signature)  
(Typed name, grade, branch)

**APPENDIX E**  
**Acknowledgement of Notification of Separation Proceedings**

(NOTE: The commander issuing the notification memorandum will prepare and partially complete the following endorsement and enclose it with the notification memorandum. The soldier will complete the endorsement by making the appropriate entries where indicated and return the endorsement attached to a copy of the notification memorandum.)

(Insert soldier's last name) (Insert Memo Office Symbol/Date) 1<sup>st</sup> End  
(Insert preparer's name and telephone number)  
SUBJECT: Notification of Separation Proceedings Under New York Guard Directive 1325

(Insert the soldier's full name, NYG ID#, address and organization of assignment)  
(Soldier will enter date of response here)

FOR COMMANDER (Insert the complete organization address shown on memorandum)

1. I hereby acknowledge receipt of the Notification of Separation Proceedings Under New York Guard Directive 1325, dated (insert the date of memorandum). I understand I may expect to encounter substantial prejudice in civilian life if my service is characterized as General (under honorable conditions), or under Other Than Honorable conditions (delete reference to Other Than Honorable if the Respondent is a commissioned officer or warrant officer).

2. Before completing this response, I understand that I have the right to consult with an appointed counsel for consultation; or military counsel of my own choice, if he/she or she is reasonably available, or civilian counsel at my own expense. *(The member will exercise this right by initialing one of the following paragraphs:)*

a. \_\_\_\_\_ *(initial)* I have exercised my right and I have consulted with counsel in preparation of this response to the notification memorandum. I have been advised by my consulting counsel of the basis for the contemplated action to separate me for *(enter the reason)* under New York Guard Directive 1325 and the effect of the rights available to me; and the effect of any action taken by me in waiving my rights. The counsel has confirmed this by entering and signing the statement at the end of this endorsement; or

b. \_\_\_\_\_ *(initial)* I hereby waive my right to consult with an appointed counsel for consultation; or military counsel of my own choice, or civilian counsel at my own expense.

3. I understand I have the right to obtain copies of documents that will be sent to the separation authority supporting the basis of my proposed separation. *(The member will exercise this right by initialing one of the following paragraphs:)*

a. \_\_\_\_\_ *(initial)* I hereby request copies of the documents.

b. \_\_\_\_\_ *(initial)* I hereby waive my right to obtain copies of the documents

4. I understand that if I am an officer, warrant officer or enlisted member with at least six years of active service in the active or reserve components or the New York Guard, I have the right to a hearing before an administrative Board of Officers. *(The member will exercise this right by initialing one of the following paragraphs:)*

a. \_\_\_\_\_ *(initial)* I hereby exercise my right to a hearing before an administrative separation Board of Officers. I understand that after having requested appearance before the board, my willful failure to appear before the board will constitute a waiver of my rights to personal appearance before the board, unless I am in civil confinement. *(When requesting a board hearing the member must also initial one of the following subparagraphs:)*

- (1) \_\_\_\_\_ (*initial*) I request a counsel for representation at the hearing be designated.
- (2) \_\_\_\_\_ (*initial*) I waive my right to a counsel for representation at the board hearing (see para 9 below).

b. \_\_\_\_\_ (*initial*) I hereby waive my right to a hearing before an administrative separation board (see para 9 below).

5. I have the right to representation at the administrative board by civilian counsel at my own expense and at no expense to the State. (*The member will exercise this right by initialing the following paragraph:*)

\_\_\_\_\_ (*initial*) I have retained, or will retain, civilian counsel.

6. I understand I have the right to present written statements in my behalf instead of the administrative board proceedings. (*The member will exercise this right by initialing one of the following paragraphs:*)

- a. \_\_\_\_\_ (*initial*) Statements in my own behalf are submitted herewith and attached as enclosures.
- b. \_\_\_\_\_ (*initial*) I hereby waive my right to submit written statements.

7. \_\_\_\_\_ (*initial*) I understand that if I do not meet the foregoing prerequisites for a hearing, I acknowledge that I may submit a written statement and documents in extenuation or mitigation which are attached.

8. I understand that I may submit a waiver of my right to an administrative board, on the condition that I receive a characterization of service higher than the least favorable characterization of service authorized in my separation action. I understand that the separation authority may decline to accept my conditional waiver. A request for a conditional waiver may be enclosed with this response, or in addition to but separate from this response, but in either case I understand it must be received by the commander by the suspense date shown on the Notification Memorandum. I understand that my request may be disapproved.

9. Except as explained in paragraph 9 below, I understand that I have the right, up until the date the separation authority orders, directs, or approves my separation, to withdraw any waiver of my rights that I may have granted above. If I had a right to a board hearing and waived that right, I can withdraw the waiver and request a hearing before an administrative Board of Officers.

10. I understand that I have been ordered to undergo a medical or mental status evaluation and refuse to comply with the order, or willfully fail to undergo such examination or evaluation, separation action will be taken without an examination or evaluation.

*(Insert the following as paragraph 10 if the member is considered for separation based on fraudulent entry. Renumber later paragraphs if this paragraph is used.)*

alt 10. I understand that if I am being considered for separation for fraudulent entry my enlistment may be voided under certain circumstances and that all pay and allowances will be suspended immediately upon verification of the fraudulent entry.

11. I understand that there is no automatic upgrading or review by any state agency of any characterization of service that is less than honorable.

12. I have retained a copy of the Notification Memorandum and a copy of this completed endorsement and I submit the following statement of understanding:

UNDERSTANDING: I have read and understand each of the statements above and understand that they are intended to constitute all promises whatsoever concerning my waiver options. Any other promise, representation, or commitment made to me in connection with my separation is written below in my own handwriting or is hereby waived (*if none, write "NONE"*).

Encl

*(Signature of individual)*  
*(Typed name, SSN, grade)*

*(Entries will be made in the following statement, where indicated, by the counsel for consultation if the member elects to consult with consulting counsel.)* Having been advised by me of the basis for (his/her, her) contemplated separation and its effects, the rights available to (him/her, her), and the effect of a waiver of (his/her, her) rights, *(member's name)*\_\_\_\_\_ personally made the choices indicated in the foregoing endorsement.

*(Signature of counsel)*  
*(Typed name, SSN, grade, branch)*  
*(Date counsel signed statement)*

**THIS  
PAGE  
INTENTIONALLY  
LEFT  
BLANK**



APPENDIX F  
Conditional Waiver of Board

(Letterhead)

(Office Symbol)(1325)

(Date)

FOR: (Appropriate Commander in Basic Memorandum)

SUBJECT: Request for Conditional Waiver  
Separation Under NY Guard Directive 1325

1. I hereby submit this request for conditional waiver and voluntarily waive my right to a hearing before an administrative separation board on the condition that upon separation my service will be characterized as *(The member will make known an election by initialing one of the following paragraphs:)*

- a. \_\_\_(initial)\_\_\_\_\_ Honorable.
- b. \_\_\_(initial)\_\_\_\_\_ General (under honorable conditions).

2. Before submitting this request, I understand that I have the right to consult with an appointed counsel for consultation; or military counsel of my own choice, if reasonably available, or civilian counsel at my own expense. *(The member will exercise this right by initialing one of the following paragraphs:)*

a. \_\_\_(initial)\_\_\_\_\_ I have exercised my right and I have consulted with counsel preparation of this request for a conditional waiver of my right to a hearing before an administrative board. I have been advised by my consulting counsel of the basis for the contemplated action to separate me for *(enter the reason)* under NY Guard Directive 1325 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights. The counsel has confirmed this by entering and signing the statement at the end of this endorsement; or

b. \_\_\_(initial)\_\_\_\_\_ I hereby waive my right to consult with an appointed counsel for consultation; or military counsel of my own choice, or civilian counsel at my own expense.

3. I understand I have the right to present written statement in my behalf instead of the administrative board proceedings. *(The member will exercise this right by initialing one of the following paragraphs:)*

a. \_\_\_(initial)\_\_\_\_\_ Statements in my own behalf are submitted herewith and attached as enclosures.

b. \_\_\_(initial)\_\_\_\_\_ I hereby waive my right to submit written statements.

4. I understand that I may, up until the date the separation authority orders, directs, or approves my separation, withdraw this waiver and request that an administrative board hear my case.

5. I understand that if the separation authority refuses to grant my request for a conditional waiver of a hearing before an administrative board, my case will be referred to an administrative board and a military counsel will be designated as my counsel for representation at the board hearings.

6. I understand I may expect to encounter substantial prejudice in civilian life if my service is characterized by a General Under Honorable Conditions discharge or Under Other Than Honorable conditions discharge.

7. I have retained a copy of this statement.

UNDERSTANDING: I have read and understand each of the statements above and understand that they are intended to constitute all promises whatsoever concerning my conditional waiver. Any other promise, representation, or commitment made to me in connection with my separation is written below in my own handwriting or is hereby waived (if none, write "NONE").

Encl

*(Signature of individual)*  
*(Typed name, SSN, grade)*

Having been advised by me of the basis for (his/her, her) contemplated separation and its effects, the rights available to (him/her, her) and the effect of a waiver of (his/her, her) rights, (soldier's name) personally made the choices indicated in the foregoing statement.

*(Signature of counsel)*  
*(Typed name, SSN, grade, branch)*  
*(Date counsel signed statement)*

**APPENDIX G**  
**Affidavit of Service by Mail**

State of New York

County of \_\_\_\_\_

(Name of individual who mailed notification), being duly sworn, deposes and says: I am the (job, title, e.g., personnel officer) of (organization) and on (day, month and year) I mailed a notification dated (date), (for subject, select and enter one or more of the following, as appropriate):

- a. Subj: Separation Under New York Guard Directive 1325;
- b. Subj: Medical evaluation;
- c. Subj: Discharge orders.

A true copy of which is attached hereto, via certified mail, restricted delivery, return receipt requested, to (name of subject) at (most recent address of soldier) that being the last known address given to the (soldier's organization of assignment) as the one at which official mail would be received by or forwarded to (him/her, her), by depositing the same in an official depository of the U.S. Postal Service at (location of postal facility) in a securely wrapped and sealed U.S. postage-and-fees-prepaid envelope addressed to (him/her, her) at said address.

(Signature and rank of affiant)  
Printed Name  
Rank, branch, NYG  
Your title  
Address and phone contact information

Sworn and subscribed before me on this (day, month and year).

(Signature and rank of officer administering oath)

Attachment  
Copy of notification

The affidavit together with the receipt showing the certified mail receipt number will be forwarded to the commander for insertion in the member's personnel file as an action pending document.

THIS  
PAGE  
INTENTIONALLY  
LEFT  
BLANK