

Veterans Discharge Upgrade Manual



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Veterans Discharge Upgrade Manual

Connecticut Veterans Legal Center, 2011

This manual was prepared on behalf of the Connecticut Veterans Legal Center by Laura Keay and Kathryn Cahoy, students in the Yale Law School Veterans Legal Services Clinic, working under the supervision of Professor Jeffrey Selbin.

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DISCLAIMER: This guide is intended as an introductory tool for attorneys and other advocates representing veterans in discharge upgrade cases. This guide does not purport to provide legal advice or to give an opinion as to the appropriate course of action in a particular case. Veterans' advocates should always conduct their own research on the best course of action for their particular case and should always check any information contained in this guide against the relevant statute or regulation to ensure its accuracy.

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I. Introduction

Most of Connecticut's 250,000 veterans received an "honorable" discharge when they left the military. However, thousands of veterans in the state received a less than honorable discharge, which can prevent them from obtaining educational, medical or pension benefits from the Department of Veterans Affairs and can limit their civilian employment opportunities. Post-traumatic stress disorder, traumatic brain injury, or other service-related injuries may have led to the unfavorable discharge. As a result, many otherwise deserving veterans are ineligible for the very benefits that would help them cope with their in-service trauma.

Veterans can upgrade their discharge status through administrative procedures established by the service branches and in federal court. However, these administrative and judicial processes are complicated, confusing, and time-consuming for many veterans. Fortunately, lawyers and other trained advocates can help veterans apply for discharge upgrades and receive critical services. This manual provides a basic overview of military discharges and how advocates can help veterans upgrade their discharges through administrative procedures:

Part II explains the types of military discharges and why veterans seek upgrades.

Part III describes Discharge Review Boards and Boards for Correction of Military Records, the two main administrative avenues of relief for veterans seeking discharge upgrades.

Part IV provides instruction for preparing applications to these boards.

Part V identifies other potential sources of judicial relief that may be appropriate in certain cases.

Part VI summarizes the information presented in the manual.

Part VII includes sample forms and other helpful materials.

Part VIII lists additional resources for advocates who want to learn more about discharge upgrades.

II. Military Discharge Overview

All servicemembers are discharged when their military term of service expires. A discharge may occur when a servicemember elects or is forced to leave the military as a result of a medical disability, punishment, administrative reason, or simply the end of a term of service. This section describes the paperwork veterans receive when they are discharged, the types of discharges, who administers discharges, and why veterans may want a discharge upgrade.

A. Discharge Documents (DD-214)

When veterans leave the service, they receive discharge documents, the most important of which is the DD-214. This document comes in a short form, which is edited to display only basic information, and a long form.¹ Both forms contain general information including dates of entry and discharge, total time in service, rank, decorations, and military education. Additionally, the long form includes the characterization of service (e.g. honorable, dishonorable, etc.), reason for discharge (e.g. completion of term of service, medical disability, etc.), re-enlistment code (indicating the circumstances under which the veteran can reenter the service), and a code matching the reason for discharge.

Because the long form contains more detailed information, it is usually the one required by the Department of Veterans Affairs and employers who request to see the DD-214 of prospective employees. Therefore, the information that appears on this simple document can significantly affect many aspects of a veteran's life, including the ability to find employment or obtain VA benefits. Veterans usually seek discharge upgrades to change the information that appears on their DD-214.

¹ The military did not begin to issue a short form DD-214 until 1974.

B. Types of Discharges

Discharges before the end of term of service are classified as *administrative* or *punitive*.² This point is often confused, but is central to understanding the discharge process.

1. Administrative discharges are less serious in nature and can only be given, as their name implies, administratively, and cannot be given by court-martial. In order of desirability, from most to least, administrative discharges are classified as follows:

- a. Honorable Discharge [HD];
- b. General Discharge (Under Honorable Conditions) [GD]; and
- c. Discharge Under Other Than Honorable Conditions [OTH] (referred to as Undesirable Discharge [UD] until the early 1980s).

Most servicemembers receive an honorable discharge. Today, only a few specifically defined categories warrant OTH; and in cases where commanders may issue an OTH, procedural rights are greater. Because of restrictions on issuing this type of discharge, opportunities for legal error in the discharge proceedings may be greater.

2. Punitive discharges are more serious and can only be given as a sentence from a court-martial with the requisite authority. Courts-martial can issue punitive discharges but do not have the authority to grant the less serious administrative discharges. In order of severity, from least to most, punitive discharges are classified as follows:

- a. Bad Conduct Discharge [BCD];
- b. Dishonorable Discharge [DD]; and
- c. Dismissal (for officers only).

Not all courts-martial have the authority to issue both of these discharges as punishment. A summary court-martial cannot issue any discharge, and a special court-martial [SPCM] may only issue a Bad Conduct Discharge. Only a general court-martial can issue a Dishonorable Discharge. Courts-martial do not have the power to discharge officers, so an officer may instead be sentenced to dismissal. A dismissal is considered the equivalent of a Dishonorable Discharge.

² There are exceptions to these two categories, including a medical discharge, which is not classified as administrative or punitive and is handled through another process.

Types of Military Discharges	
<i>Administrative Discharges</i>	<i>Punitive Discharges</i>
1. Honorable (HD)	1. Bad Conduct (BCD)
2. General (GD)	2. Dishonorable (DD)
3. Under Other than Honorable Conditions (OTH, previously known as UD)	3. Dismissal (for officers)

Veterans are not only discharged due to misconduct. They may be discharged for a variety of other reasons, including medical disability. For example, when a veteran has been discharged after being diagnosed with a personality disorder, the diagnosis will appear on the DD-214. The diagnosis could be incorrect, contested, or unjustly stigmatizing for the veteran, and the veteran may want to remove such a reference. Veterans may also want to remove other stigmatizing reasons for discharge from the DD-214 including misconduct/drug abuse or unsatisfactory performance. Administrative agencies that handle discharge upgrade applications can also consider requests to change the reason for discharge.

C. Potential Consequences of Discharges

This section presents a few common reasons why a veteran may pursue a discharge upgrade. The specific reason for pursuing a discharge upgrade may be different for each veteran, and even the general categories presented below may affect each veteran in a different way. Thus, this section is meant to provide advocates with a general overview of common motivations for pursuing discharge upgrades and is not meant to be exhaustive.

1. VA Benefits

An important concern for veterans pursuing a discharge upgrade may be eligibility for benefits from the Department of Veterans Affairs (VA). A discharge upgrade may qualify a veteran for VA medical care, disability compensation benefits, educational benefits, home loans, or a pension. Advocates should be careful to understand what type of benefits the veteran wants, whether he/she may already be eligible for other benefits, and whether the reviewing body's decision will affect the veteran's eligibility for VA purposes. A discharge upgrade may not be the only way to

obtain benefits; and, depending on the case, it may not qualify a veteran for the desired benefits. Therefore, understanding a client's ultimate goal can be central to advising the client and making strategic decisions.

VA benefits law is complex and evolving, and we do not intend to review it comprehensively here. However, some generalizations on how discharges affect benefits may be beneficial to understanding why clients may be seeking upgrades. Please keep in mind that none of these rules are without exception.

Veterans with an HD or GD are almost always eligible for most VA benefits, even if the discharge characterization resulted from an upgrade. Those with an OTH can usually obtain VA medical care for disabilities incurred in the line of duty but must receive a favorable character of discharge determination from VA to receive any other benefits, including disability compensation benefits. If a BCD is issued by a special court-martial, the veteran may be eligible for some benefits if VA makes a favorable character of discharge determination. However, a BCD issued by a general court-martial or a DD makes the veteran ineligible for all benefits.³ VA has an adjudicatory process through which it can award benefits in some cases despite these rules, so veterans should also consider submitting an application to VA.⁴

2. Stigma

Any less than honorable discharge can carry stigma. "Since about 90% of all discharges issued are Honorable, a discharge of that type is commonly regarded as indicating acceptable, rather than exemplary service. In consequence, anything less than an Honorable Discharge is viewed as derogatory, and inevitably stigmatizes the recipient."⁵ This "unmistakable social stigma . . . greatly limits the opportunities for both public and private civilian employment."⁶ In addition to social stigma, many veterans feel the character of their discharge does not reflect the overall service and sacrifice they made for their country.

³ Except in cases of insanity at the time of discharge. BARTON F. STICHMAN AND RONALD B. ABRAMS, VETERANS BENEFITS MANUAL 29 (2009).

⁴ See *infra* Part V.C.

⁵ DAVID ADDLESTONE ET AL., MILITARY DISCHARGE UPGRADING, AND INTRODUCTION TO VETERANS ADMINISTRATION LAW: A PRACTICE MANUAL DUP81-1.2 fn.6 (1982) (quoting *Bland v. Connally*, 293 F.2d 852, 853 n.1 (D.C. Cir. 1961)).

Some discharges relate to stigmatizing medical conditions. As noted above, a veteran discharged for a personality disorder diagnosis will have a DD-214 that clearly displays “personality disorder.” Anyone who views the DD-214, including potential employers, will see that the veteran has been diagnosed with this disorder, regardless of whether the veteran wished to share that private health information. Some of these diagnoses are incorrect or inconclusive, and a veteran may not want her records to include such a diagnosis.

III. Choosing a Venue

Discharge upgrade cases can proceed through two main administrative avenues. First, each military branch has a Discharge Review Board (DRB). These boards specialize in reviewing discharge upgrade applications and applications for changes in reason for discharge, and they tend to be a more successful route to obtaining a discharge upgrade, although statistics vary depending on the service branch and the individual case. However, the DRBs have strict 15-year statutes of limitation, and veterans who were discharged or dismissed by general court-martial cannot apply to the DRBs.

Veterans applying after the DRB statute of limitations expires must proceed to the second option – applying for a discharge upgrade to their service department’s Board for Correction of Military Records (BCMR). BCMRs have a waivable 3-year time limit and the authority to upgrade discharges issued by general courts-martial or to change a discharge to or from disability discharge or retirement. BCMRs have authority to make other changes that DRBs cannot. However, if a veteran is eligible to apply to a DRB, the BCMR will require the veteran to apply to the DRB first.

Each service department has its own DRB and BCMR. Therefore, there are four DRBs and four BCMRs – one each for the Army, Navy, Air Force, and Coast Guard. Marine Corps veterans apply to the Navy boards. The following sections refer generally to the DRBs and BCMRs, though each service department’s standards and practices may differ slightly.

⁶ *Id.* at 858.

Discharge Upgrade Boards		
	Discharge Review Boards (DRBs)	Boards for Correction of Military Records (BCMRs)
Army:	Army Review Boards Agency ADRB 1901 South Bell Street Arlington, VA 22202-4508 (See http://arba.army.pentagon.mil)	Army Review Boards Agency Army Board for Correction of Military Records 1901 South Bell Street, 2nd Floor Arlington, VA 22202-4508
Navy & Marine Corps:	Secretary of the Navy Council of Review Boards ATTN: Naval Discharge Review Board 720 Kennon Ave S.E., Suite 309 Washington Navy Yard, DC 20374-5023	Board for Correction of Naval Records 2 Navy Annex Washington, DC 20370-510
Air Force:	Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Board for Correction of Air Force Records SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-474
Coast Guard:	Commandant (CG-122) Attn: Office of Military Personnel US Coast Guard 2100 2nd Street S.W., Stop 7801 Washington, DC 20593-7801	Department of Homeland Security Office of the General Counsel Board for Correction of Military Records 245 Murray Lane, Stop 0485 Washington, DC 20528-048

A. The Discharge Review Board (DRB) Upgrade Process

1. Jurisdiction and Eligibility Requirements

DRBs have jurisdiction both to upgrade the character of a discharge (e.g. from General to Honorable) and to change the reason for discharge (e.g., to remove “homosexuality” from the DD-214 as the reason for discharge).⁷ Any former member of the Armed Forces may apply, but veterans who were discharged or dismissed by general court-martial (including all veterans with dishonorable discharges) are ineligible for DRB review.⁸ Veterans discharged by special court-martial may only request a change of characterization of their discharge, and they will only be granted discharge upgrades for clemency reasons: DRBs do not have the power to overturn the findings of a court-

⁷ 32 C.F.R. §70.8(a)(3).

martial. DRBs also do not have the power to lower discharges, change re-enlistment codes, make decisions regarding disability and retirement, reinstate veterans into military service, or recall any person to active duty.⁹

Veterans must apply within 15 years of the date of discharge.¹⁰ Any requests for discharge upgrades after 15 years must go through the appropriate BCMR.

2. Standards of Review

Standards of review for the DRBs are codified in 32 C.F.R. § 70.9 and 10 U.S.C. § 1553. Generally, DRBs will only upgrade discharges on grounds of *equity* or *propriety*.¹¹ However, if an applicant was discharged by special court-martial, the discharge may be upgraded only for purposes of clemency.¹²

A DRB may upgrade a discharge on grounds of propriety for two reasons:

- (1) An error of fact, law, procedure, or discretion occurred, and the error was prejudicial to the veteran during the discharge process; or
- (2) A change in policy has been enacted and the change is expressly made retroactive to the type of case.¹³

A DRB may upgrade a discharge on grounds of equity for three reasons:

- (1) The current discharge policies and procedures are materially different than those that led to the applicant's discharge.¹⁴ For example, a discharge may be deemed inequitable if "[t]here is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration,"¹⁵
- (2) The discharge was inconsistent with disciplinary standards at the time of discharge;¹⁶ or

(3) Based on evidence relating to quality of service or capability to serve.¹⁷ For determinations based on quality of service, DRBs may consider, but are not limited to considering, factors such as the applicant's service history; military ranks, ratings, awards, and decorations; letters of commendation or reprimand; wounds received in action; acts of merit; length of service; prior military service; convictions by court-

⁸ Dep't. of Def. Instruction 1332.28, April 4, 2004. at E2.1.1 [hereinafter DoDI 1332.28].

⁹ 32 C.F.R. § 70.9.

¹⁰ 32 C.F.R. § 70.8.

¹¹ 32 C.F.R. § 70.9.

¹² 10 U.S.C. § 1553(a).

¹³ 32 C.F.R. § 70.9(b).

¹⁴ 32 C.F.R. § 70.9(c)(1).

¹⁵ 32 C.F.R. § 70.9(c)(1)(ii); DoDI 1332.28, at E4.3.1.2.

¹⁶ 32 C.F.R. § 70.9(c)(2); DoDI 1332.28, at E4.3.2.

¹⁷ 32 C.F.R. § 70.9(c)(3); DoDI 1332.28, at E4.3.3.

martial; non-judicial punishments; civil convictions; records of unauthorized absence; and records relating to the discharge.¹⁸ Evidence relating to prior military service or outstanding post-service conduct (including character references) is applicable if it can help “provide a basis for a more thorough understanding of the performance of the applicant during the period of service that is the subject of the discharge review.”¹⁹

Equitable relief based on capability to serve may take into account the applicant's:

- “Total capabilities,” including age, education, and ability to adjust to military service;
- “Family and personal problems” that may have affected the applicant’s ability to serve;
- “Arbitrary or capricious action” by individuals in authority over the applicant; and
- “Discrimination” as documented by records or other evidence.²⁰

Equitable considerations based on quality of service or capability to serve suggest that the DRB will take into account mitigating circumstances surrounding any offenses that led to an unfavorable discharge. For example, a servicemember with undiagnosed PTSD could have committed offenses that were a result of the disease rather than intentional misconduct. Also, a servicemember who received news of a family emergency might have gone AWOL due to short-term loss of judgment rather than a desire to desert his or her fellow servicemembers. Consequently, a veteran should mention and explain any mitigating factors to the DRB.

Discharge Review Boards may reconsider previously denied applications that meet certain standards of review. According to 32 C.F.R. § 70.8(8), a board may reconsider an application when:

- Previous consideration was on the motion of the DRB, rather than the veteran;
- The applicant did not have a personal appearance hearing for the first application, but the applicant now requests a hearing;
- The relevant discharge policy has changed and has been made expressly retroactive;
- Current discharge policies and procedures are substantially more favorable to the applicant than the discharge policies and procedures under which the applicant was discharged;

¹⁸ 32 C.F.R. § 70.9(c)(3)(i); DoDI 1332.28, at E4.3.3.1.

¹⁹ DoDI 1332.28, at E4.3.3.1.10.

²⁰ 32 C.F.R. § 70.9(c)(3)(ii); DoDI 1332.28, at E4.3.3.2.

- The veteran was not represented by counsel or a representative in a previous application but will be for the reconsideration; or
- The applicant presents new, substantial, and relevant evidence that was not available to the applicant at the time of original review by the DRB.

Discharge Review Boards operate with a “presumption of regularity in the conduct of governmental affairs.”²¹ This means that the DRBs function with legal presumptions that government officials act properly in carrying out their duties, that military records are correct, and that the statutes and regulations are constitutional. Where error is not apparent in the military record, the applicant carries the burden of proof to show “substantial credible evidence” that the discharge was inequitable or improper.²² Court opinions are binding on DRBs, but prior DRB decisions are merely persuasive and are not binding precedent.²³

3. Composition of Panels

In general, DRB panels consist of 5 military officers chosen by the Secretary of each military department.²⁴ Three favorable votes are needed to change any aspect of the discharge.²⁵

Some special rules apply in certain situations. For example, if the veteran served during a period of war or contingency operation and was later diagnosed with post-traumatic stress disorder or traumatic brain injury, the review board must include a physician, clinical psychologist, or psychiatrist, and the case must be expedited.²⁶ Also, Naval DRB panels that review either Navy or Marine Corps cases must include at least three panel members who belong to applicant’s service branch (Navy or Marine Corps).²⁷

4. Personal Appearances Before the DRB

DRB applicants can choose to apply for a records review, for a personal hearing in the Washington, D.C. area, or for a hearing before a traveling board (Army and Air Force only). Generally, applicants who have hearings have been more likely to receive

²¹ 32 C.F.R. § 70.8 (b)(12)(vi); DoDI 1332.28, at E3.2.12.

²² 32 C.F.R. § 70.8 (b)(12)(vi); DoDI 1332.28, at E3.2.12.

²³ 32 C.F.R. § 70.8(e)(1)(iii)(D); DoDI 1332.28, at E3.5.1.3.

²⁴ 10 U.S.C. § 1553(a); 32 C.F.R. § 70.8(b)(1).

²⁵ 32 C.F.R. § 70.8(c)(8).

²⁶ 10 U.S.C. § 1553(d).

upgrades than applicants who only have records reviews. When deciding whether to apply for a records review or a hearing, an advocate should take into account the strength of arguments (and whether they can be presented well in a written application), the client's personality and ability to present the case well before a board of officers, the costs of travel or ability to be seen by a traveling board, and the timing of the application (especially if the fifteen year statute of limitations is about to run and the applicant will not have another chance to personally appear before the Board).

If DRB applicants apply for a records review first and then are denied a discharge upgrade, they are entitled to apply again for a personal hearing (Army, Air Force, and Navy only). This effectively gives applicants two opportunities for review, but only if applicants apply for a records review first. The veteran will receive the decisional document explaining why the application was denied during the records review, and this document could be an advantage when preparing for the subsequent personal hearing because the veteran will know why the board made its initial denial and can tailor the personal hearing application to address those concerns. On the other hand, the Boards have all prior applications on file, so any flaws in the first application will still be available to the board the second time around. Since not all can be explained away in a second application, the prejudice of a prior denial could outweigh the benefit of two chances before the board.

5. Options for Reconsideration

In rare cases, DRB decisions might be automatically reviewed by the Secretary of the relevant military department, in which case the applicant either will be permitted to participate (in some Navy cases) or will be notified of the final decision after review (in Army, Air Force, and some Navy cases).

Applicants have the right to an entirely new DRB review if any of the conditions listed in 32 C.F.R. § 70.8(8) are met.²⁸ Veterans may appeal DRB decisions in federal court under the Administrative Procedure Act, which carries a 6-year statute of limitations from the date of the DRB decision.²⁹ Appeals may be brought in the district

²⁷ 32 C.F.R. § 724.701(b).

²⁸ See *supra* Part III.A.2.

²⁹ 28 U.S.C. § 2401.

where the veteran was discharged, where the veteran currently resides, or in Washington, D.C., where the Secretaries of the service departments are located. However, advocates should consult controlling case law in these districts because some circuit courts have required veterans to exhaust their administrative remedies, including application to the BCOMR, before seeking review in federal district court.

B. The Board for Correction of Military Records (BCMR) Upgrade Process

1. Jurisdiction and Eligibility Requirements

BCMRs have more extensive authority to alter military discharges than DRBs.³⁰ BCOMRs can upgrade any discharge characterization and change any reason for discharge. In addition, they can void discharges; change them to or from medical retirement; change re-enlistment codes; change the date of issue of a discharge (which may result in back pay); remove inaccurate performance evaluations or other damaging documents from the record; and, under rare circumstances, reinstate veterans into military service. Discharge upgrade cases make up only a fraction of the extensive caseload of the BCOMRs.

BCMRs cannot lower discharges, compel the attendance of witnesses, expunge a special or general court-martial conviction,³¹ or award payment to veterans for expenses incurred in preparing an application and presenting a case to the board.³²

Veterans must apply to a BCOMR within three years of “discover[ing] the error or injustice” for which they seek relief.³³ Jurisdictions sometimes conflict about when this time period begins, but the Court of Appeals for the District of Columbia expressly held that an applicant must have *actual knowledge* of the error or injustice – constructive notice is not enough.³⁴ This actual knowledge may occur on the date of discharge, the date of the most recent unsuccessful DRB application, or another date when the applicant discovered the error or injustice. The time period also cannot begin while the

³⁰ 10 U.S.C. § 1552.

³¹ However, court-martial convictions that were issued before the Uniform Code of Military Justice (UCMJ) was enacted in May 31, 1951, may be expunged by BCOMRs.

³² 10 U.S.C. § 1552.

³³ 10 U.S.C. § 1552(b).

³⁴ *Ridgely v. Marsh*, 866 F.2d 1526, 1529 (D.C. Cir. 1989); *see also Dickson v. Sec’y of Def.*, 68 F.3d 1396, 1405 (D.C. Cir. 1995).

servicemember is on active duty.³⁵ BCMRs can waive the three-year time limit “in the interest of justice,”³⁶ so veterans should not hesitate to submit applications after the time limit has passed. The Boards are required to make at least a cursory review of the merits of the case before deciding whether to waive the three-year time limit.³⁷

2. Standards of Review

Unlike DRBs, BCMRs have not clearly codified or published their standards of review. Nevertheless, 10 U.S.C. § 1552 and the federal regulations corresponding to each branch of the military state that BCMRs may change military records of any member or former member of the armed forces to correct any “error or injustice.”³⁸ Discharges issued by a special or general court-martial may only be upgraded on “clemency” grounds.³⁹ As noted above, the three-year time limit may be waived by any BCMR if it is “in the interest of justice” to do so.⁴⁰

The terms “error,” “injustice,” “clemency,” and “in the interest of justice” are not clearly defined by statute. However, one expert has identified parallels between the BCMR’s “error” and the DRB’s “impropriety” standard and between the BCMR’s “injustice” and the DRB’s “inequity” standard.⁴¹ Others have noted that BCMRs consider post-service conduct to be very important when deciding whether to grant a discharge upgrade, especially when an applicant seeks to upgrade a discharge issued by a court-martial on “clemency” grounds.⁴² Mitigating circumstances surrounding offenses, evidence of subsequent rehabilitation, good post-service conduct, and evidence of exemplary citizenship and character are also taken very seriously by BCMRs in discharge

³⁵ Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-96; *Detweiler v. Peña*, 38 F.3d 591 (D.C. Cir. 1994).

³⁶ 10 U.S.C. § 1552(b).

³⁷ *Dickson*, 68 F.3d at 1405; *Allen v. Card*, 799 F. Supp. 158, 166 (D.D.C. 1992).

³⁸ 10 U.S.C. §1552(a)(1); 32 C.F.R. §§ 581.3(b)(4)(i), 723.1, 865.0; 33 C.F.R. § 52.12(a). *See also* *Mudd v. White*, 309 F.3d 819 (D.C. Cir. 2002), holding that applicants must be members or former members of the armed forces (or their heirs or legal representatives) to have standing under 10 U.S.C. § 1552(g).

³⁹ 10 U.S.C. §1552(f)(2).

⁴⁰ 10 U.S.C. §1552(b).

⁴¹ Kathleen Gilberd, *Upgrading Less-Than-Fully-Honorable Discharges*, in *THE AMERICAN VETERANS AND SERVICEMEMBERS SURVIVAL GUIDE* 346, 353-54 (Veterans for America ed., 2009) [hereinafter *Survival Guide*].

⁴² *Survival Guide* at 353; Military Law Task Force, National Lawyer’s Guild, *Discharge Upgrading and Discharge Review 3*, available at www.dd214.us/reference/DischargeUpgrade_Memo.pdf [hereinafter *Discharge Upgrading*].

upgrade cases.⁴³ Otherwise, BCMRs generally consider the same factors that are important to DRBs. Applicants seeking a waiver of the time limit “in the interest of justice” are generally advised to simply argue that the merits of the case warrant the waiver.⁴⁴

The presumptions and burdens of proof are the same in BCMR cases as they are in DRB cases. Boards presume the records are correct as issued, and applicants must provide material evidence showing that their records should be corrected.⁴⁵

3. Composition of Panels

Each branch of the military has from 40 to 115 BCMR members, and individual BCMR panels are comprised from these pools.⁴⁶ By regulation, members of BCMR panels should be high-ranking civilians in the executive part of their military branch.⁴⁷ Three members constitute a quorum for conducting reviews of applications, except in the Coast Guard where three members make up each board, but only two members are necessary to constitute a quorum.⁴⁸ Although most applications must be reviewed by a panel of Board members, BCMR staff members may return applications without such review in the following cases:

- If the applicant does not complete and sign the application;
- If the applicant failed to exhaust all other administrative remedies (such as the DRB, if the fifteen-year DRB time limit has not expired);
- If the Board does not have jurisdiction; or
- If the application is a request for reconsideration but no new material evidence has been submitted.⁴⁹

4. BCMR Application Review

⁴³ *Survival Guide* at 354.

⁴⁴ *See Discharge Upgrading* at 2.

⁴⁵ 32 C.F.R. §§ 581.3(e)(2), 723.3, 865.4; 33 C.F.R. § 52.24(b).

⁴⁶ For 2009 data, see the following responses to Raymond J. Toney’s FOIA requests:

Army – <http://rjtlaw.net/ABCMR%20FOIA%20Responses.pdf>

Navy – <http://rjtlaw.net/BCNR%20FOIA%20Responses.pdf>

Air Force – <http://rjtlaw.net/Air%20Force%20FOIA%20Responses.pdf>

Coast Guard – <http://rjtlaw.net/CG%20BCMR%20FOIA.pdf>

⁴⁷ 32 C.F.R. §§ 581.3(c)(1), 723.2(a), 865.1; 33 C.F.R. § 52.11.

⁴⁸ *Id.*

⁴⁹ 32 C.F.R. § 581.3(e)(1).

Unlike DRBs, BCMRs rarely grant personal appearances. In fact, applications to BCMRs must pass through several stages of review before a board will even render a decision. According to the Army Review Board Agency's website, after a DD Form 149 application is received, the Army BCMR will generally go through the following steps in order:

1. Attempt to obtain records. If records are unavailable (for example, if the records are checked out by another government agency), then the ABCMR might ask the veteran to produce records or return the application.
2. The ABCMR may obtain advisory opinions from other Army staff elements. If that happens, the advisory opinions will be sent to the applicant for comment before further consideration.
3. The ABCMR may make administrative corrections without the need for a Board decision.
4. Board staff members called examiners prepare a brief for the Board's consideration, and the Board renders a decision that is "final and binding."⁵⁰

Therefore, it is very important for an applicant to make sure that the records are complete and available so that the application will not be returned at the first stage. The applicant should request a copy of all records that the BCMR obtains, and the applicant should review those records to see if there are any documents the applicant did not already have. If the Board requests that the applicant provide a full record, then the applicant should include all materials that would be included in the official military personnel record. The applicant should carefully review and respond to advisory opinions issued by staff (item 2 above) so that any inaccuracies or unfairly prejudicial statements are noted before the Board makes a decision. Similarly, applicants should always ask for a copy of the examiner's brief (item number 4 above) in advance of the Board decision so that they may have a chance to respond to inaccurate or unfair contentions raised by the examiner.

5. Options for Reconsideration

If an application has been denied by a BCMR, the applicant may request reconsideration. The Army BCMR has a one-year time limit for such requests for reconsideration, and there is conflicting information on whether the time limit can be

waived. Neither the controlling statute⁵¹ nor the controlling DOD Instruction⁵² provide information on the legality of time limits for requests for reconsideration to the BCMRs. Federal regulations state that if the request for reconsideration is received more than one-year after the ABCMR has issued a decision, then “the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.”⁵³ However, the Army Review Board Agency’s “Applicant’s Guide to Applying to the ABCMR” states that the time limit can be waived “if substantial relevant new evidence has been discovered.”⁵⁴

In any case, a request for reconsideration must contain new material evidence, and generally an applicant must show the evidence was not reasonably available at the time of the previous application.⁵⁵ Technically, BCMR denials of applications without hearings are not considered final decisions, and applicants may submit new applications at any time.⁵⁶ As long as such applications are submitted with substantial new material evidence and/or argument not previously considered by the board, the BCMRs should reconsider the veteran’s assertions. Advocates might also want to explain in the request for reconsideration why the evidence and/or arguments are new and material to ensure the boards do not classify the evidence or new documents as merely cumulative.

Veterans can also appeal BCMR decisions in federal court under the Administrative Procedure Act, which has a 6-year statute of limitations from the date of the board decision.⁵⁷ Veterans may file suit in the district where the veteran was discharged, where the veteran currently resides, or in Washington, D.C., where the Secretaries of the service departments are located.

⁵⁰ The Army Board for Correction of Military Records, <http://arba.army.pentagon.mil/abcmr-overview.cfm> (last visited April 24, 2011).

⁵¹ 10 U.S.C. § 1552.

⁵² DoD Directive 1332.41, March 8, 2004.

⁵³ 32 C.F.R. § 581.3(4)(ii); DoD Directive 1332.41, March 8, 2004, at 2–15.

⁵⁴ Army Review Boards Agency, *Applicant’s Guide to Applying to the Army Board for Correction of Military Records* 13 (2008), available at <http://arba.army.pentagon.mil/abcmr-overview.cfm>.

⁵⁵ 32 C.F.R. §§ 581.3(4), 723.9, 865.6; 33 C.F.R. § 52.67.

⁵⁶ DAVID ADDLESTONE ET AL., *MILITARY DISCHARGE UPGRADING, AND INTRODUCTION TO VETERANS ADMINISTRATION LAW : A PRACTICE MANUAL* §9.4.15.1 (1982).

⁵⁷ 28 U.S.C. § 2401.

IV. Preparing a Case

The Boards have a highly variable and in some cases quite low approval rate for the tens of thousands of applications they process each year:

In the last several years, overall success rates in discharge upgrade cases at the Navy Discharge Review Board have run around 4%. The Army DRB success rate in upgrades is 41%. The Air Force rate is 19% (that breaks down to 15% for upgrade applicants who don't have a personal appearance and 45% for those who have an appearance). The Coast Guard DRB has a success rate of only 1%. The Board for Correction of Naval Records upgrades approximately 15-20% of cases, while the Army Board for Correction of Military Records (BCMR) upgrades 10-15% and the Air Force BCMR upgrades 20%. Coast Guard BCMR rates are 15-20%.⁵⁸

According to the American Legion, there are two primary reasons for this high denial rate. First, the “boards are required, by law, to review applications under the presumption of the regularity in the conduct of government affairs.”⁵⁹ Second, applicants often complete their application incorrectly, and, more importantly, they do not “fully develop their cases and submit viable issues for review.”⁶⁰ For example, many applications consist of only a DD Form 149 or 293 plus a personal statement and a few character references. Often, veterans or their advocates do not understand that applicants bear the burden of proof before the Boards and must present material evidence to support their claims.⁶¹ A successful application consists not only of the required forms but also of accompanying evidence and arguments that convince a Board that a discharge upgrade is warranted. Although the particular facts of a veteran's case are important, anecdotal evidence suggests that a trained attorney or advocate who can thoughtfully prepare the application and synthesize evidence greatly increases a veteran's likelihood of success.

A. Forms to Prepare

Veterans interested in pursuing a discharge upgrade should immediately obtain their military personnel and medical records by submitting a Standard Form 180 (SF 180)

⁵⁸ *Survival Guide* at 349 (reporting statistics obtained by the National Veterans Legal Services Program).

⁵⁹ The American Legion, *Guide to Filing Military Discharge Review Board and Board for Correction of Military Records Applications* 1 (2001), available at <http://wearevirginiaveterans.org/images/About-Us--Exec-Leadership/Resources--clinicians/dodguide.aspx>.

⁶⁰ *Id.*

⁶¹ See *Survival Guide* at 353.

or completing an online request at <http://www.archives.gov/veterans/military-service-records/>. Obtaining the records may take weeks, or even months in some cases.

Practitioners also often make second requests for records because the military services (especially the Army and Navy) frequently provide more complete records in response to a second request. Practitioners may also want to include language referring to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in any records requests from executive branch government agencies, such as the branches of the armed forces.

In addition to the first SF 180, veterans should submit another SF 180 form to the VA records center in St. Louis for any recent medical records. If the veteran has been treated at a VA Regional Office or Medical Center, additional SF 180s should be submitted to each of those facilities. Veterans should also try to obtain military inpatient medical records, rehabilitation records, brig or stockade records, trial records, and post-service criminal records if possible by tracking down their location and the method for requesting them. The Boards themselves will likely only order the personnel and outpatient medical records, so any additional records that are obtained by the veteran could be submitted as useful evidence to support the application. The Boards might also obtain the FBI criminal records sheet of the applicant, so it is important for an applicant to organize or acquire any criminal records.

After receiving and reviewing the records, applicants to the DRBs should submit a DD Form 293 and applicants to the BCMRs should submit a DD Form 149 to the appropriate military branch’s DRB or BCMR as indicated on the form. Generally, applications take several months to be reviewed, and supporting documents can be submitted for weeks after the application has been filed as long as the Board has not yet reviewed the application.

*If the 15-year DRB deadline is approaching, the applicant should consider submitting a DD Form 293 before obtaining military records or fully preparing the case.

*If the 3-year BCMR deadline is approaching and the applicant has already gone through the DRB process or is ineligible for DRB review, an applicant should consider quickly submitting a DD Form 149.

B. Additional Materials to Submit

Although the only document required for DRB or BCMR review is the DD Form 293 or DD Form 149, applicants increase their chances of obtaining a discharge upgrade if they submit additional materials, such as:

- A brief that emphasizes favorable aspects of the applicant's military service, highlights factors that may mitigate disciplinary records, and explains the reasons why an upgrade should be given. The brief should be submitted at least one month before the hearing date, and the applicant should submit as many copies of the brief as there are Board members (5 for the DRBs, 3 for the BCMRs). The applicant should request in a cover letter that one copy be given to each Board member before review.
- A Statement of Material Contentions, which lays out the issues that the applicant wants the DRB or BCMR to address. The Board must respond to all issues raised by the applicant, so it is very important to clearly separate and explain all material issues. The Statement of Material Contentions may double as the Table of Contents for the brief.
- A statement by the veteran, which should be sworn or notarized if possible, to be used as evidence before the Board. The statement should explain discrepancies in the record, add or reaffirm facts supported by other evidence in the application, and dispute errors or prejudices in the record. If the veteran has criminal convictions, the personal declaration is a good place for the veteran to express remorse for their actions, explain how they have changed, and ask for clemency from the board.
- Evidence of in-service conduct, including:
 - Witness statements from fellow servicemembers or other persons;
 - Good performance reviews; and
 - Any evidence of misinformation from command officials that caused the servicemembers to waive important rights in disciplinary or discharge proceedings. For example, veterans might be able to obtain letters from others in command, or they might have email records, diary records, or friends or family who can attest to the fact that the servicemember waived important rights.
- Evidence of good post-service conduct, in the form of:
 - Character references from members of the community, which should always be submitted with an application;
 - Employment documents, including letters from employers;
 - Educational documents, including diplomas and transcripts;
 - Police clearance showing the absence of a criminal record, where applicable;

- Rehabilitation documents, where applicable;
- Family responsibility documents, including birth and marriage certificates;
- Awards and other documentation of personal and professional achievements, including newspaper articles, announcements in church bulletins, and letters recognizing achievements; and
- Similar evidence of involvement in charitable or civic activities, useful in all cases but particularly important in punitive discharge cases.

Gilberd offers the following example of how an advocate could argue a fact pattern to a DRB:

1. My discharge is inequitable, and should be upgraded to honorable and changed to discharge by reason of hardship/dependency in that serious family problems led to my A.W.O.L. and other than honorable discharge.
2. My discharge is improper in that I was denied the rights available to me in the administrative discharge proceedings.
 - a. My command denied me the opportunity to submit a statement on my own behalf in the discharge proceedings, by forwarding the discharge recommendation prior to the time allowed to submit my statement.
 - b. I was denied proper review of my discharge in that the separation authority was not provided a copy of my statement and my evidence of a severe family hardship, and was unaware of the facts warranting a more favorable discharge.⁶²

In the example, the equity and propriety issues are clearly separated; and the propriety argument is subdivided further into two separate contentions for the Board to address. This clear separation of issues forces the Board to address each and provide separate analysis and reason for denial for each contention. The Board must respond to all arguments that are not facially frivolous.⁶³ Advocates should use this example to form the Statement of Material Contentions in the brief accompanying a veteran's discharge upgrade application. The DRBs and BCMRs for each military service department maintain searchable databases of past decisions, so advocates should also consult these to understand how the boards analyze applications and make decisions.⁶⁴

While there are no inherently easy cases, anecdotal evidence suggests that some interesting issues have developed in the discharge upgrade field that may cause boards to

⁶² *Survival Guide* at 360.

⁶³ *Frizelle v. Slater*, 111 F.3d 172 (D.C. Cir. 1997); *Pettiford v. Sec'y of the Navy*, 2011 U.S. Dist. LEXIS 34487 (D.D.C. Mar. 31, 2011).

⁶⁴ Boards of Review Reading Rooms, <http://boards.law.af.mil/> (last visited April 25, 2011).

consider certain arguments more seriously than they have in the past. Some of these emerging issues include the following:

- Personality disorder discharges given to combat veterans (hazardous duty pay area veterans) with PTSD or TBI, particularly if the discharge occurred without a second opinion and service Surgeon General review as is currently required.
- Personality disorder discharges given on the basis of minimal psychiatric evaluation or in violation of rights during involuntary psychiatric evaluations when multiple, equally trained professionals have rejected the diagnosis soon after service.
- OTH discharges of combat area veterans for misconduct if the veteran suffers from PTSD or TBI and the misconduct appears related to the condition.
- OTH discharges for misconduct where servicemembers suffered from unrecognized HIV neurological problems or dementia (non-HIV dementia may similarly be used).
- Other designated physical or mental condition discharges where medical problems were determined to be insufficient for disability discharge/retirement but extensive medical evidence soon after discharge shows the condition warranted disability proceedings.

If any of these applies to a veteran's case, advocates may consider emphasizing that issue and providing the board with as much supporting evidence as possible.

V. Alternate Avenues for Relief

A. Appeals to Federal Court

When the military discharges a veteran against her will, it has made a decision to separate the veteran from the service early. The veteran may bring claims for reinstatement and/or back pay in federal court. Early separation challenges with monetary claims can be brought in federal district court under the "Little" Tucker Act.⁶⁵ For claims over \$10,000, the Court of Federal Claims has exclusive jurisdiction under the Tucker Act (more below), but for claims under \$10,000 the Court of Federal Claims and federal district courts have concurrent jurisdiction.

District courts can also hear challenges limited to the character or reason for discharge that do not involve a monetary claim. They may also hear challenges to DRB or BCMR decisions under the Administrative Procedure Act. District court may be more

⁶⁵ 28 U.S.C. § 1346(a)(2).

accessible to many veterans because venue exists where the veteran was discharged, where the veteran currently resides, and in Washington, D.C. However, monetary claims must be limited to \$10,000, so veterans may not be able to fully recover if their back pay claim would be more than that amount.

Some district courts have required veterans to exhaust administrative remedies before applying to federal court for relief; however, this seems improper in light of *Darby v. Cisneros*, a case holding that it is improper for courts to require exhaustion of administrative remedies when neither statute nor administrative rule specifically mandates exhaustion.⁶⁶ District courts have a six-year statute of limitations, which runs from the date of denial from the reviewing board.⁶⁷

B. Litigation in the Court of Federal Claims

Veterans can bring early separation claims against the government in excess of \$10,000 under the Tucker Act in the Court of Federal Claims.⁶⁸ The Court of Federal Claims has the power to reinstate the veteran into military service, award back pay, correct military records to remove any references to the illegal separation, and award accrual of active duty days.

Advantages of bringing an action in the Court of Federal Claims include that the court does not require a veteran to exhaust all administrative remedies and that it generally allows *de novo* review on issues of military pay. However, many veterans may be ineligible for relief. With rare exceptions, the six-year statute of limitations begins to run on the date of discharge, and it is not tolled by application to DRBs or BCMRs. Also, the court may apply the doctrine of laches to dismiss the case even before the six-year statute of limitations has run if the court finds unreasonable delay in the veteran's claim. The court usually sits only in Washington, D.C.

C. Veterans Benefits Application

VA has an adjudicatory process through which it can decide to award a veteran benefits despite the discharge characterization of the veteran's service. So a veteran

⁶⁶ *Darby v. Cisneros*, 509 U.S. 137 (1993).

⁶⁷ 28 U.S.C. § 2401.

⁶⁸ 28 U.S.C. § 1491.

pursuing a discharge upgrade in order to obtain VA benefits should also look into submitting an application to VA. An application may be submitted concurrently with a discharge upgrade application. This may be advantageous because both processes can be time consuming, and a VA application may help the veteran receive benefits sooner.

However, advocates should be careful to check with the agencies before submitting concurrent applications because an application to one agency can preclude the other from obtaining the veteran's official military records. This occurs because the Military Personnel Records office only keeps one copy of a veteran's personnel file, which it loans out to agencies upon request. Consequently, if an agency insists on obtaining the veteran's official military records before processing an application (as does the ABCMR), then the military records must not be out on loan to another agency. Representing veterans before VA requires accreditation and veterans' benefits is a complex body of law in itself, so we do not attempt to cover it here. However, if the ultimate goal is to help the veteran obtain VA benefits, advocates should actively explore this route themselves or with experts in their community.

VI. Summary

Advocates can improve the lives of veterans through the discharge upgrade process. Discharge upgrades can make veterans eligible for VA benefits, including medical and disability benefits, and may help reduce stigmatization of veterans with low discharge characterizations. Many veterans do not know how to navigate through the convoluted administrative and judicial procedures to obtain the relief they desire, so informed advocates are essential for them to obtain a favorable outcome.

Advocates can help veterans determine the appropriate avenue for relief, whether through the discharge upgrade procedures described in this manual or through VA benefits procedures covered thoroughly in other resources.⁶⁹ If discharge upgrade procedures are appropriate, advocates can help veterans prepare and submit materials to the DRB, BCMR, or federal court.

⁶⁹ See, e.g., BARTON F. STICHMAN AND RONALD B. ABRAMS, VETERANS BENEFITS MANUAL 29 (2009).

Avenues for Relief in Discharge Upgrade Cases		
	<i>Statute of Limitations</i>	
Discharge Review Boards (DRBs)	15 years	Begins at the date of discharge.
Boards for Correction of Military Records (BCMRs)	3 years, waivable	Begins at the date of discovery of error or injustice.
Appeals to Federal Courts	6 years	Begins at the date of DRB or BCMR decision.
Court of Federal Claims	6 years	Begins at the date of discharge.

VII. Supplemental Material

This section includes samples of Standard Form 180 (for requesting military service and medical records), DD Form 149 (for applying to the BCMRs for a discharge upgrade), and DD Form 293 (for applying to the DRBs for a discharge upgrade). Also included are charts summarizing material on preparing discharge upgrade requests. The charts cover (1) records requests and client intake, (2) choosing a venue, and (3) preparing the application.

A. Standard Form 180

Standard Form 180 (Rev. 10/10) (Page 1)
 Prescribed by NARA (36 CFR 1228.168(b))

Authorized for local reproduction
 Previous edition unusable

OMB No. 3095-0029 Expires 10/31/2011

REQUEST PERTAINING TO MILITARY RECORDS

* Requests from veterans or deceased veteran's next-of-kin may be submitted online by using eVetRecs at <http://www.archives.gov/veterans/evetrecs/> *
 (To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. Please print clearly or type.)

SECTION I - INFORMATION NEEDED TO LOCATE RECORDS (Furnish as much as possible.)

1. NAME USED DURING SERVICE (last, first, and middle)	2. SOCIAL SECURITY NO.	3. DATE OF BIRTH	4. PLACE OF BIRTH
5. SERVICE, PAST AND PRESENT (For an effective records search, it is important that all service be shown below.)			
	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED
a. ACTIVE COMPONENT			OFFICER
			ENLISTED
			SERVICE NUMBER (If unknown, write "unknown")
b. RESERVE COMPONENT			
c. NATIONAL GUARD			
6. IS THIS PERSON DECEASED? If "YES" enter the date of death.		7. IS (WAS) THIS PERSON RETIRED FROM MILITARY SERVICE?	
<input type="checkbox"/> NO <input type="checkbox"/> YES		<input type="checkbox"/> NO <input type="checkbox"/> YES	

SECTION II - INFORMATION AND/OR DOCUMENTS REQUESTED

1. CHECK THE ITEM(S) YOU WOULD LIKE TO REQUEST A COPY OF:

DD Form 214 or equivalent. This form contains information normally needed to verify military service. A copy may be sent to the veteran, the deceased veteran's next of kin, or other persons or organizations if authorized in Section III, below. NOTE: If more than one period of service was performed, even in the same branch, there may be more than one DD214. Check the appropriate box below to specify a deleted or undeleted copy. When was the DD Form(s) 214 issued? YEAR(S):

UNDELETED: Ordinarily required to determine eligibility for benefits. Sensitive items, such as, the character of separation, authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and dates of time lost are usually shown.

DELETED: The following items are deleted: authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and for separations after June 30, 1979, character of separation and dates of time lost.

All Documents in Official Military Personnel File (OMPF)

Medical Records (Includes Service Treatment Records (outpatient), inpatient and dental records.) If hospitalized, the facility name and date for each admission must be provided:

Other (Specify):

2. **PURPOSE:** (An explanation of the purpose of the request is strictly voluntary; however, such information may help to provide the best possible response and may result in a faster reply. Information provided will in no way be used to make a decision to deny the request.) Check appropriate box:

Benefits Employment VA Loan Programs Medical Medals/Awards Genealogy Correction Personal

Other, explain:

SECTION III - RETURN ADDRESS AND SIGNATURE

1. **REQUESTER IS:** (Signature Required in # 3 below of veteran, next of kin, legal guardian, authorized government agent or "other" authorized representative. If "other" authorized representative, provide copy of authorization letter.)

Military service member or veteran identified in Section I, above Legal guardian (Must submit copy of court appointment.)

Next of kin of deceased veteran (Must provide proof of death). Other (specify)

Show relationship: _____
 (See item 2a on accompanying instructions.)

2. **SEND INFORMATION/DOCUMENTS TO:**
 (Please print or type. See item 4 on accompanying instructions.)

3. **AUTHORIZATION SIGNATURE REQUIRED** (See items 2a or 3a on accompanying instructions.) I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information in this Section III is true and correct.

Name _____	Signature Required - Do not print _____
Street _____ Apt. _____	Date of this request: () _____ Daytime phone _____
City _____ State _____ Zip Code _____	Email address _____

This form is available at <http://www.archives.gov/research/order/standard-form-180.pdf> on the National Archives and Records Administration (NARA) web site.

B. DD Form 149

APPLICATION FOR CORRECTION OF MILITARY RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SECTION 1552 <i>(Please read instructions on reverse side BEFORE completing this application.)</i>		OMB No. 0704-0003												
The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Service Directorate, Information Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155 (0704-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.														
PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON THE BACK OF THIS PAGE.														
PRIVACY ACT STATEMENT														
AUTHORITY: Title 10 U.S. Code 1552, EO 9397.		ROUTINE USE(S): None.												
PRINCIPAL PURPOSE: To initiate an application for correction of military record. The form is used by Board members for review of pertinent information in making a determination of relief through correction of a military record.		DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security number is strictly to assure proper identification of the individual and appropriate records.												
1. APPLICANT DATA <i>(The person whose record you are requesting to be corrected.)</i>														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">a. BRANCH OF SERVICE <i>(X one)</i></td> <td style="width: 16.5%;"><input type="checkbox"/> ARMY</td> <td style="width: 16.5%;"><input type="checkbox"/> NAVY</td> <td style="width: 16.5%;"><input type="checkbox"/> AIR FORCE</td> <td style="width: 16.5%;"><input type="checkbox"/> MARINE CORPS</td> <td style="width: 16.5%;"><input type="checkbox"/> COAST GUARD</td> </tr> <tr> <td>b. NAME <i>(Print - Last, First, Middle Initial)</i></td> <td colspan="2">c. PRESENT OR LAST PAY GRADE</td> <td>d. SERVICE NUMBER <i>(if applicable)</i></td> <td colspan="2">e. SSN</td> </tr> </table>			a. BRANCH OF SERVICE <i>(X one)</i>	<input type="checkbox"/> ARMY	<input type="checkbox"/> NAVY	<input type="checkbox"/> AIR FORCE	<input type="checkbox"/> MARINE CORPS	<input type="checkbox"/> COAST GUARD	b. NAME <i>(Print - Last, First, Middle Initial)</i>	c. PRESENT OR LAST PAY GRADE		d. SERVICE NUMBER <i>(if applicable)</i>	e. SSN	
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5. I REQUEST THE FOLLOWING ERROR OR INJUSTICE IN THE RECORD BE CORRECTED: <i>(Entry required)</i>														
6. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST FOR THE FOLLOWING REASONS: <i>(Entry required)</i>														
7. ORGANIZATION AND APPROXIMATE DATE <i>(YYYYMMDD) AT THE TIME THE ALLEGED ERROR OR INJUSTICE IN THE RECORD OCCURRED</i> <i>(Entry required)</i>														
8. DISCOVERY OF ALLEGED ERROR OR INJUSTICE														
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9. IN SUPPORT OF THIS APPLICATION, I SUBMIT AS EVIDENCE THE FOLLOWING ATTACHED DOCUMENTS: <i>(If military documents or medical records are pertinent to your case, please send copies. If Veterans Affairs records are pertinent, give regional office location and claim number.)</i>														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. <i>(At no expense to the Government) (X one)</i></td> <td style="width: 33%;"><input type="checkbox"/> YES. THE BOARD WILL DETERMINE IF WARRANTED.</td> <td style="width: 33%;"><input type="checkbox"/> NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENCE.</td> </tr> </table>			10. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. <i>(At no expense to the Government) (X one)</i>	<input type="checkbox"/> YES. THE BOARD WILL DETERMINE IF WARRANTED.	<input type="checkbox"/> NO. CONSIDER MY APPLICATION BASED ON RECORDS AND EVIDENCE.									
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<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">11.a. COUNSEL <i>(if any) NAME</i> <i>(Last, First, Middle Initial)</i> and ADDRESS <i>(Include ZIP Code)</i></td> <td style="width: 40%;">b. TELEPHONE <i>(Include Area Code)</i></td> </tr> <tr> <td></td> <td>c. E-MAIL ADDRESS</td> </tr> <tr> <td></td> <td>d. FAX NUMBER <i>(Include Area Code)</i></td> </tr> </table>			11.a. COUNSEL <i>(if any) NAME</i> <i>(Last, First, Middle Initial)</i> and ADDRESS <i>(Include ZIP Code)</i>	b. TELEPHONE <i>(Include Area Code)</i>		c. E-MAIL ADDRESS		d. FAX NUMBER <i>(Include Area Code)</i>						
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	c. E-MAIL ADDRESS													
	d. FAX NUMBER <i>(Include Area Code)</i>													
12. APPLICANT MUST SIGN IN ITEM 15 BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name <i>(print)</i> and relationship by marking one box below.														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%;"><input type="checkbox"/> SPOUSE</td> <td style="width: 16.6%;"><input type="checkbox"/> WIDOW</td> <td style="width: 16.6%;"><input type="checkbox"/> WIDOWER</td> <td style="width: 16.6%;"><input type="checkbox"/> NEXT OF KIN</td> <td style="width: 16.6%;"><input type="checkbox"/> LEGAL REPRESENTATIVE</td> <td style="width: 16.6%;"><input type="checkbox"/> OTHER <i>(Specify)</i></td> </tr> </table>			<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER <i>(Specify)</i>						
<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER <i>(Specify)</i>									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">13.a. COMPLETE CURRENT ADDRESS <i>(Include ZIP Code) OF APPLICANT OR PERSON IN ITEM 12 ABOVE</i> <i>(Forward notification of all changes of address.)</i></td> <td style="width: 40%;">b. TELEPHONE <i>(Include Area Code)</i></td> </tr> <tr> <td></td> <td>c. E-MAIL ADDRESS</td> </tr> <tr> <td></td> <td>d. FAX NUMBER <i>(Include Area Code)</i></td> </tr> </table>			13.a. COMPLETE CURRENT ADDRESS <i>(Include ZIP Code) OF APPLICANT OR PERSON IN ITEM 12 ABOVE</i> <i>(Forward notification of all changes of address.)</i>	b. TELEPHONE <i>(Include Area Code)</i>		c. E-MAIL ADDRESS		d. FAX NUMBER <i>(Include Area Code)</i>						
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	c. E-MAIL ADDRESS													
	d. FAX NUMBER <i>(Include Area Code)</i>													
14. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. <i>(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</i>		CASE NUMBER <i>(Do not write in this space.)</i>												
15. SIGNATURE <i>(Applicant must sign here.)</i>		16. DATE SIGNED <i>(YYYYMMDD)</i>												

DD FORM 149, JUN 2010

PREVIOUS EDITION IS OBSOLETE.

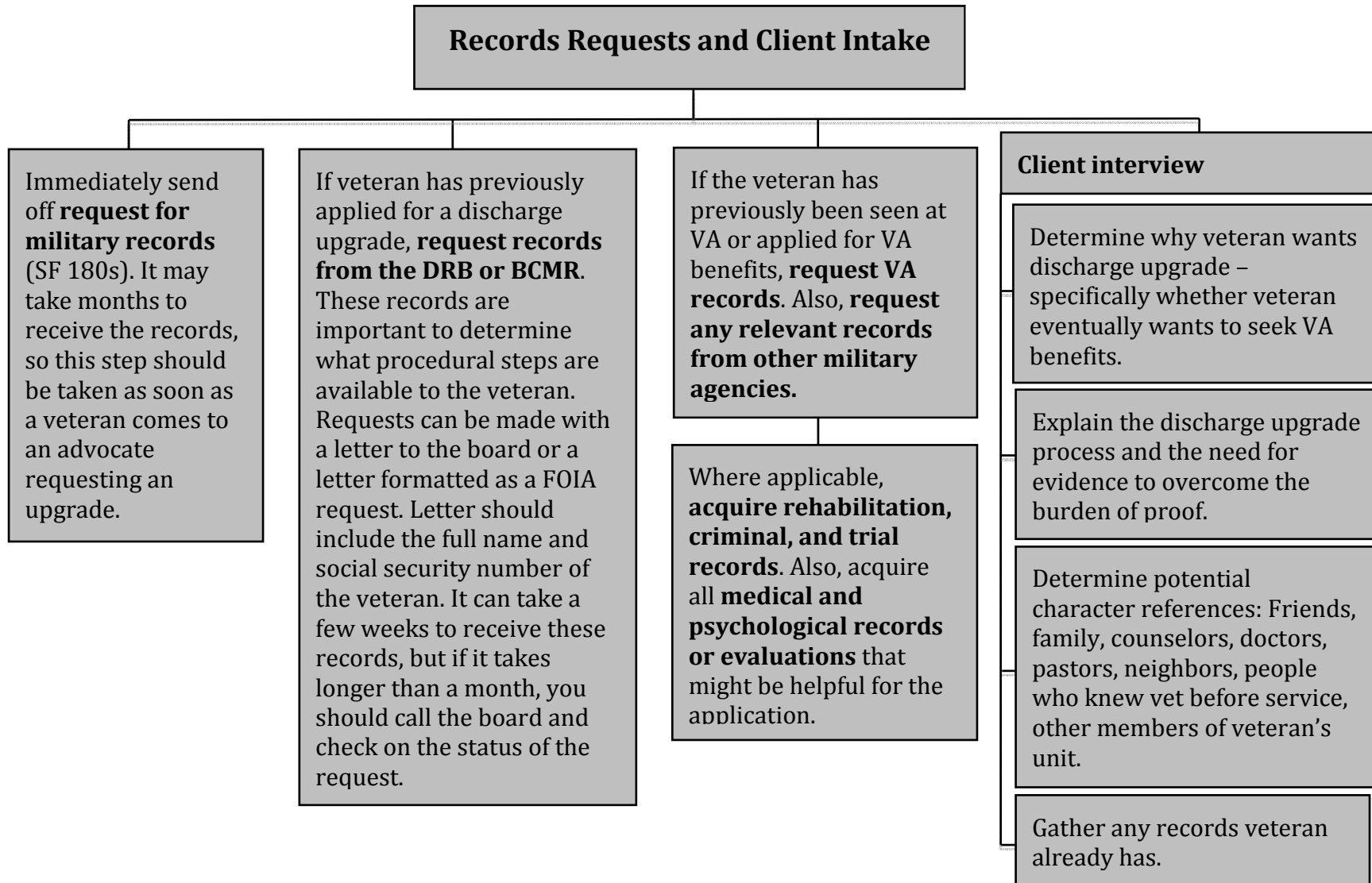
Adobe Designer 8.0

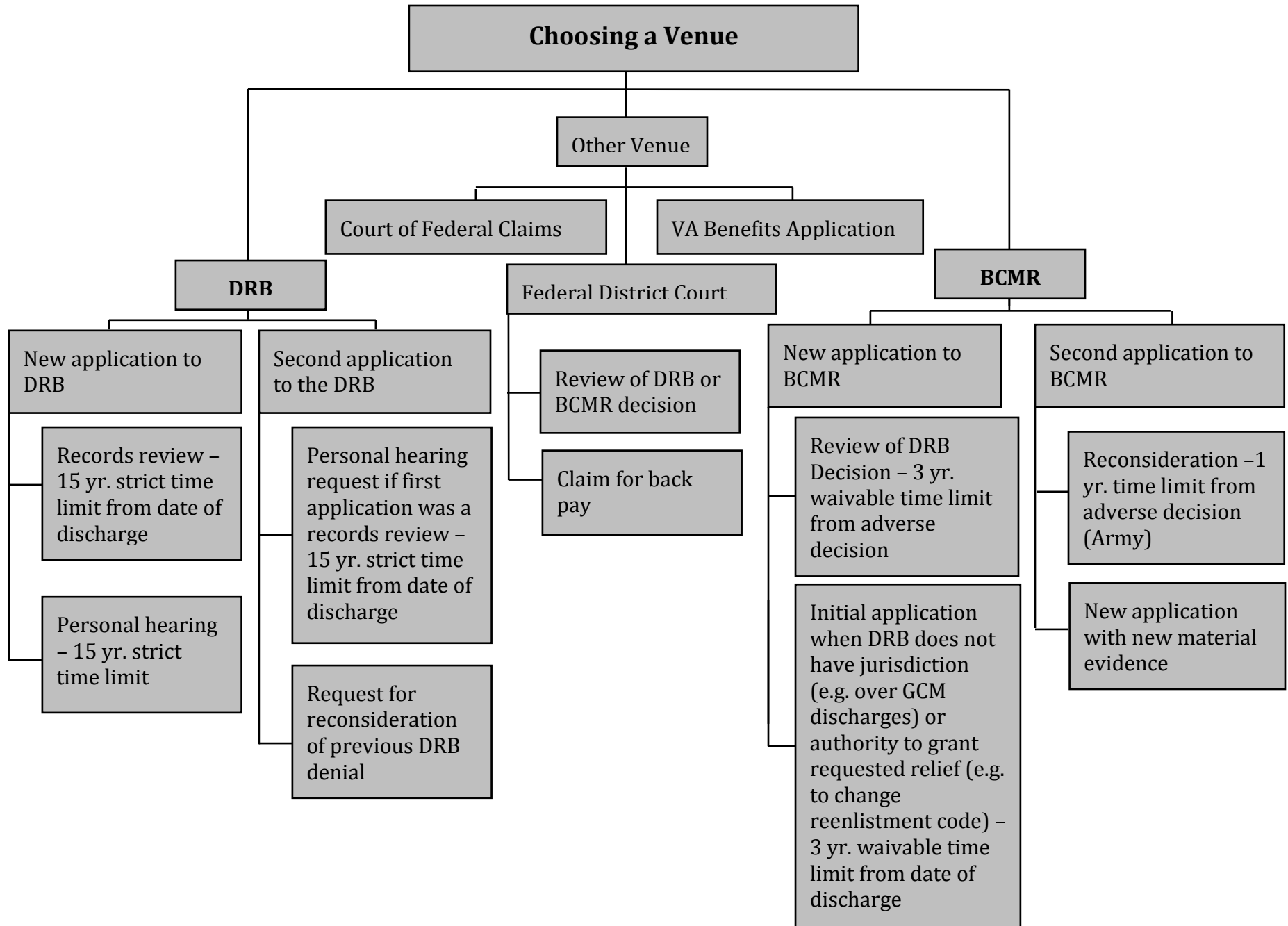
C. DD Form 293

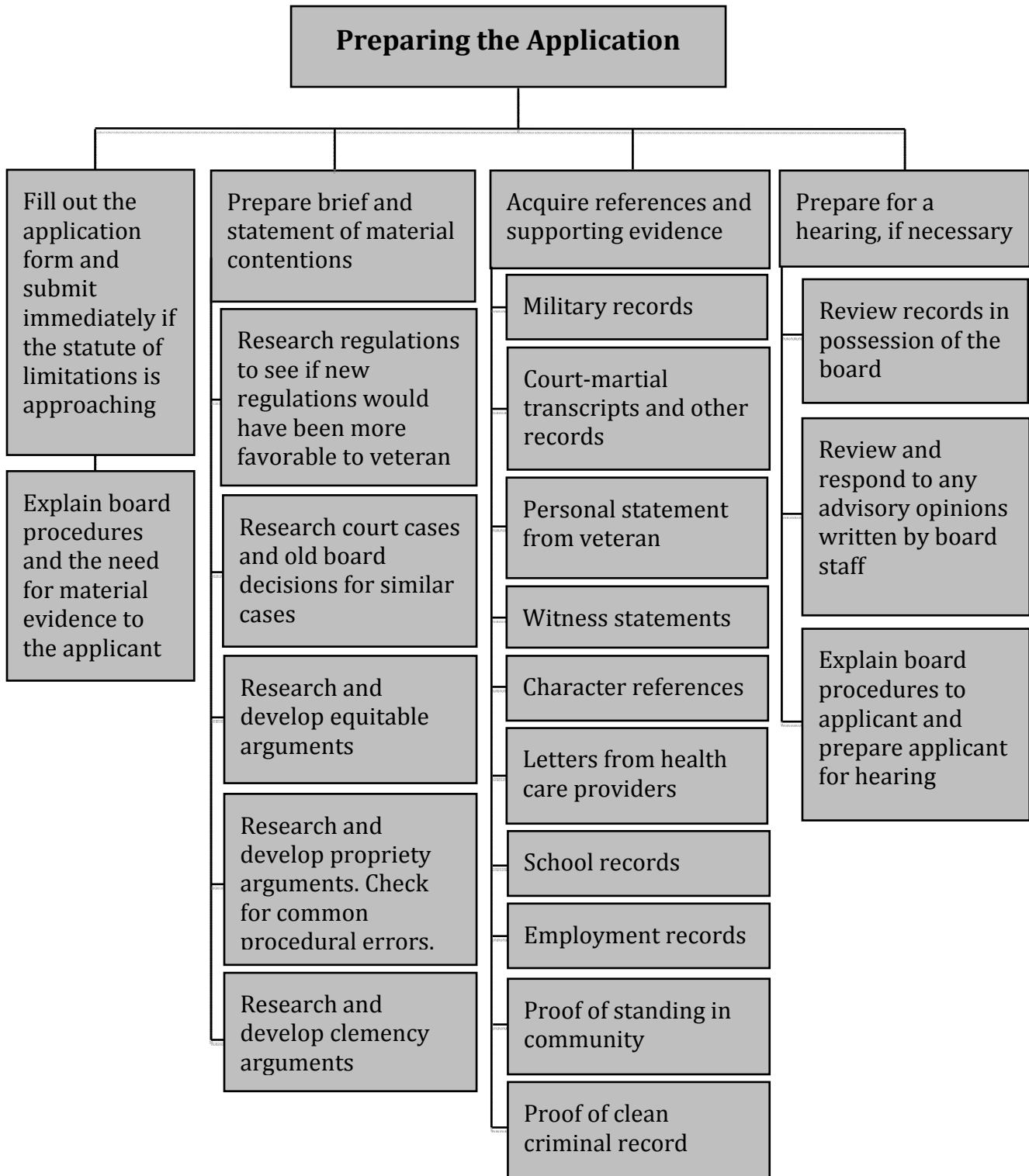
APPLICATION FOR THE REVIEW OF DISCHARGE FROM THE ARMED FORCES OF THE UNITED STATES <i>(Please read instructions on Pages 3 and 4 BEFORE completing this application.)</i>						OMB No. 0704-0004
The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 1155 Defense Pentagon, Washington, DC 20301-1166 (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.						
PRIVACY ACT STATEMENT						
AUTHORITY: 10 U.S.C. 1553; E.O. 9397. PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual. ROUTINE USE(S): None. DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.						
1. APPLICANT DATA <i>(The person whose discharge is to be reviewed).</i> PLEASE PRINT OR TYPE INFORMATION.						
a. BRANCH OF SERVICE <i>(X one)</i>	<input type="checkbox"/> ARMY	<input type="checkbox"/> MARINE CORPS	<input type="checkbox"/> NAVY	<input type="checkbox"/> AIR FORCE	<input type="checkbox"/> COAST GUARD	
b. NAME <i>(Last, First, Middle Initial)</i>			c. GRADE/RANK AT DISCHARGE	d. SOCIAL SECURITY NUMBER		
e. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 <i>(Forward notification of any change in address.)</i>				f. TELEPHONE NUMBER <i>(Include Area Code)</i>		
				g. E-MAIL		
				h. FAX NUMBER <i>(Include Area Code)</i>		
2. DATE OF DISCHARGE OR SEPARATION <i>(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)</i>	4. DISCHARGE CHARACTERIZATION RECEIVED <i>(X one)</i>			5. BOARD ACTION REQUESTED <i>(X all that apply)</i>		
	<input type="checkbox"/> HONORABLE			<input type="checkbox"/> CHANGE TO HONORABLE		
	<input type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS			<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS		
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION	<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS			<input type="checkbox"/> CHANGE TO UNCHARACTERIZED <i>(Not applicable to Air Force or service members with over 6 months of service)</i>		
	<input type="checkbox"/> BAD CONDUCT <i>(Special Court-Martial only)</i>			<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION:		
	<input type="checkbox"/> UNCHARACTERIZED					
	<input type="checkbox"/> OTHER <i>(Explain)</i>					
6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST <i>(Continue in item 13. See instructions on Page 3.)</i>						
7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON <i>(YYYYMMDD)</i> _____ AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.						
8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: <i>(Continue in item 14. If military documents or medical records are relevant to your case, please send copies.)</i>						
9. TYPE OF REVIEW REQUESTED <i>(X one)</i>						
<input type="checkbox"/> CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR <i>(counsel/representative)</i> WILL NOT APPEAR BEFORE THE BOARD.						
<input type="checkbox"/> I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.						
<input type="checkbox"/> I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO <i>(enter city and state)</i> . (NOTE: The Naval and Coast Guard Discharge Review Boards do not have traveling panels.)						
10.a. COUNSEL/REPRESENTATIVE <i>(if any) NAME</i> <i>(Last, First, Middle Initial)</i> AND ADDRESS <i>(See item 10 of the instructions about counsel/representative.)</i>				b. TELEPHONE NUMBER <i>(Include Area Code)</i>		
				c. E-MAIL		
				d. FAX NUMBER <i>(Include Area Code)</i>		
11. APPLICANT MUST SIGN IN ITEM 12.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name <i>(print)</i> _____ and relationship by marking a box below.						
<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER <i>(Specify)</i>	
12. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. <i>(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</i>						CASE NUMBER <i>(Do not write in this space.)</i>
a. SIGNATURE - REQUIRED <i>(Applicant or person in item 11 above)</i>				b. DATE SIGNED - REQUIRED <i>(YYYYMMDD)</i>		

13. CONTINUATION OF ITEM 6, ISSUES <i>(If applicable)</i>	
14. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS <i>(If applicable)</i>	
15. REMARKS <i>(If applicable)</i>	
MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.	
ARMY Army Review Boards Agency ADRB 1901 South Bell Street Arlington, VA 22202-4508 (See http://arba.army.pentagon.mil)	NAVY AND MARINE CORPS Secretary of the Navy Council of Review Boards ATTN: Naval Discharge Review Board 720 Kennon Ave S.E., Suite 309 Washington Navy Yard, DC 20374-6023
AIR FORCE Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	COAST GUARD Commandant (CG-122) Attr: Office of Military Personnel US Coast Guard 2100 2nd Street S.W., Stop 7801 Washington, DC 20593-7801

D. Preparing a Discharge Upgrade Application







VIII. Additional Resources

A. Forms

Records Request Form: Standard Form 180.

<www.archives.gov/research/order/standard-form-180.pdf>

BCMR Application: DD Form 149.

<<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf>>

DRB Application: DD Form 293.

<<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0293.pdf>>

B. Statutes and Regulations

10 USC §1551 to 1559. General statutory authority for discharge upgrades and the correction of military records.

C. BCMR Statutes and Regulations

General

10 U.S.C. § 1552.

DoD Directive 1332.41. 8 March 2004.

<<http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf>>. **4 pages.** Establishes policies for the uniform review of discharges or dismissals.

Army

32 C.F.R. § 581.3.

Army Regulation 15–185. 31 March 2006. Army Board for Correction of Military Records. <http://armypubs.army.mil/epubs/pdf/R15_185.pdf>. **10 pages.** Rapid action revision which updates ABCMR to comply with the decision of Lipsman v. Secretary of the Army (Civil Action No. 02-0251, 2004 U.S. Dist. Lexis 17866).

Navy

32 C.F.R. Part 723.

Secretary of the Navy (SECNAV) Instruction 5420.193. 19 November 1997. Department of the Navy.

<<http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-400%20Organization%20and%20Functional%20Support%20Services/5420.193.pdf>>. **14 pages.** Establishes policies for consideration of Navy and Marine Corps applications for correction of military records to the BCNR.

Air Force

32 C.F.R. § 865.0–.8.

Air Force Instruction 36-2603. 1 March 1996. Air Force Board for Correction of Military Records. Web. <<http://www.af.mil/shared/media/epubs/AFI36-2603.pdf>>. **8 pages.** Establishes policies and procedures for corrections of military records to remedy error or injustice.

Coast Guard

33 C.F.R. Part 52.

D. DRB Statutes and Regulations

General

10 U.S.C. § 1553.

32 C.F.R. Part 70.

DoD Instruction 1332.28. 4 April 2004. <<http://www.dtic.mil/whs/directives/corres/pdf/133228p.pdf>>. **52 pages.** Instruction on Discharge Review Board procedures and standards.

DoD Directive 1332.41. 8 March 2004. <<http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf>>. **4 pages.** Establishes policies for the uniform review of discharges or dismissals.

Army

32 C.F.R. § 581.2.

Army Regulation 15–180. 20 March 1998. Army Discharge Review Board. <http://armypubs.army.mil/epubs/pdf/R15_180.PDF>. **73 pages.** Regulation that implements 10 USC 1553, Public Law 95-126, and DOD Directive 1332.28.

Navy

32 C.F.R. Part 724.

Secretary of the Navy (SECNAV) Instruction 5420.174D. December 22 2004. <<http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-400%20Organization%20and%20Functional%20Support%20Services/5420.174D.pdf>>. **82 pages.** Policies and procedures for the Naval Discharge Review Board.

Air Force

32 C.F.R. § 865.100 – .126.

Coast Guard

33 C.F.R. Part 51.

E. Current Discharge Regulations

General

DoD Instruction 1332.14. 28 August 2008 with updates.

<<http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>>. 60 pages. Policies and procedures governing enlisted administrative separations from the military.

Army

Army Regulation 635–200. 19 December 2003 with rapid action changes.

<<http://www.redstone.army.mil/legal/data/AR635-200.pdf>>. 136 pages. Regulations for administrative discharges from the Army.

Navy

Marine Corps Separation and Retirement Manual (MARCORSEPMAN) with updates. 6 June 2007.

<<http://www.marines.mil/news/publications/Documents/MCO%20P1900.16F%20W%20CH%201-2.pdf>>. 534 pages. Marine Corps regulations for administrative discharges are found in chapter 6.

Milpersman 1900 and 1910 series. 13 April 2005 with updates

<http://advancement.corpsman.com/files/MILPERSMAN_1910_-_ENLISTED_ADMINISTRATIVE_SEPARAT.pdf>. 265 pages. Regulations for administrative discharges from the Navy.

Secretary of the Navy (SECNAV) Instruction 1910.4B.

<http://neds.nebt.daps.mil/Directives/1910_4b.pdf>. Instruction regarding separations from the Navy.

Air Force

Air Force Instruction 36-3208 with updates. 9 July 2004.

<<http://www.af.mil/shared/media/epubs/AFI36-3208.pdf>>. 233 pages. Regulations governing separations from the Air Force.

F. Publications

Addlestone, David, National Veterans Law Center (U.S.), Veterans Education Project (Washington, D.C.), et al. *Military Discharge Upgrading, and Introduction to Veterans Administration Law : a Practice Manual*. Washington, D.C.: Veterans Education Project, 1982 with 1990 update. Print. 700+ pages. Comprehensive practice manual for attorneys with detailed chapters on military structure and the discharge review process, how to obtain and interpret military records, and how to prepare discharge upgrade cases for the DRB, BCMR, and federal court. The manual is very dated, and so parts of the manual are inaccurate (for example, the discharge upgrade regulations have since changed). However, the practice manual is still the most comprehensive resource to date, and it is still considered a very good starting point for attorneys to learn how to approach discharge upgrade cases.

The American Legion. *Guide to Filing Military Discharge Review Board and Board for Correction of Military Records Applications. Guide.* Web.

<<http://wearevirginiaveterans.org/images/About-Us--Exec-Leadership/Resources--clinicians/dodguide.aspx>>. 18 pages. Condensed guidebook for veterans with information on which board to apply to (DRB or BCMR), which forms to use, and basic strategies for developing and presenting a case to the boards. Hypothetical cases and a discussion of case strategy, presented at the end, are substantial part of the guide.

***Boards of Review Reading Rooms.* Web. 26 Feb. 2011.**

<<http://boards.law.af.mil/index.htm>>. Access to Air Force, Army, Navy, and Coast Guard BCMR and DRB decisional documents made since October 1998. A search function on the front page allows attorneys to search for similar cases from particular review boards.

***National Veterans Legal Services Program - Veterans Benefits - Medical Health Disability Claims (NVLSP).* Web. 26 Feb. 2011. <<http://www.nvlsp.org/>>.** Website maintained by the National Veterans Legal Services Program, with links and information relating to veterans' legal needs and entitlements.

Oppenheimer, Carol. *Model Brief for Discharge Upgrading before the United States Army Discharge Review Board.* Washington, D.C.: National Veterans Law Center, American University, Washington College of Law, 1980. Print. 108 pages. Sample brief submitted to the Army DRB in 1980 on behalf of an applicant with a multitude of Article 15 violations and an Undesirable Discharge.

Powers, Rod. "Upgrading Your Military Discharge." *United States Military Information.* Web. 26 Feb. 2011.

<<http://usmilitary.about.com/cs/generalinfo/a/dischargeupg.htm>>. 5 pages. Compact overview of the process of discharge upgrades through the DRB written by Rod Powers, retired Air Force First Sergeant who is the author of several books and articles about military regulations and veterans benefits. Explains how to apply, how to get help, who decides discharge upgrade cases, and what to expect in a hearing, among other things.

Powers, Rod. "Military Justice 101 - Part 3, Enlisted Administrative Separations." *United States Military Information.* Web. 26 Feb. 2011.

<<http://usmilitary.about.com/od/justicelawlegislation/l/aadischarge1.htm>>. 5 pages. General information about discharges from the military, with a focus on administrative discharge processes (as opposed to punitive discharge processes via court martial). Includes information about voluntary and involuntary separations, with information about the Administrative Discharge Board and common reasons for involuntary separation.

Powers, Rod. "Military Justice 101 - Part 7, The Court-Martial Process." *United States Military Information.* Web. 26 Feb. 2011.

<<http://usmilitary.about.com/od/justicelawlegislation/l/aacmartial1.htm>>. 5 pages. General information about court martials, largely focusing on the rules and procedures of the court martial process. There is also a broad overview of appellate review procedures.

Stichman, Barton F., and Ronald B. Abrams. *Veterans Benefits Manual.*

Charlottesville, VA: LexisNexis, 2010. Print. 2,050 pages. Comprehensive practice

manual for attorneys working with Veterans Benefits cases. Chapter 19 describes the BCMR process in detail and Chapter 20 describes the DRB discharge upgrade process.

Toney, Raymond J. “Texas State Bar Association, Military Law Committee Correction of Military Records and Judicial Review.” State Bar of Texas Military Law Section. Web. <<http://www.militarylawsection.com/documents/toney.pdf>>. 11 pages. Article for attorneys that focuses on applying to the BCMR. Includes statutory authorities, common types of claims brought to BCMRs, advice on submission of applications, and information on appellate procedures and DRB procedures. Contains links to recent FOIA data on BCMR practices and procedures in each military branch.

Turcotte, Tom, and Kathleen Gilberd. “Discharge Upgrading and Discharge Review: Introductory Materials and Forms for Attorneys and Counselors.” *The Military Law Task Force*. National Lawyers Guild. Web. <http://www.nlgmltf.org/pdfs/DischargeUpgrade_Memo.pdf>. 10 pages. Short memorandum and outline explaining the features of the discharge review system, with information and advice for advocates preparing applications for veterans.

Veterans for America. *The American Veterans and Servicemembers Survival Guide*. National Veterans Legal Services Program, 2009. Veterans for America. Web. 26 Feb. 2011. <<http://www.nvlsp.org/images/Survival%20Guide-102309.pdf>>. 649 pages. Free online book targeted towards veterans with detailed information about veterans’ benefits, rights, entitlements, programs and organizations. Several chapters contain useful information on the discharge upgrade process including: Chapter 15 (discharge upgrades), Chapter 16 (correcting military records), Chapter 17 (obtaining military records), and Chapter 18 (general information on discharges).

“The VVA Veteran.” *Welcome To Vietnam Veterans of America*. Web. 25 Mar. 2011. <<http://www.vva.org/veteran.html>>. Website for *The VVA Veteran*, a bimonthly publication for veterans. Vietnam era veterans and their attorneys can search for, and potentially contact, people with whom the veterans served through a locator service. Specifically, veterans may send a Locator request to *The VVA Veteran*, 8605 Cameron St., Suite 400, Silver Spring, MD 20910 or to the e-mail addresses mkeating@vva.org or veteranlocator@gmail.com. Veterans or attorneys may also use the search bar on the website to search for specific people or units that might have appeared in Locator ads in previous editions of *The VVA Veteran*.

G. BCMR Publications

General

Powers, Rod. “Changing Your Military Records.” *United States Military Information*. Web. 26 Feb. 2011. <<http://usmilitary.about.com/cs/airforcebase/a/chgrecords.htm>>. 3 pages. Brief overview of the process of discharge upgrades through the BCMR. Explains how to apply, how to get help, and how decisions are made, among other things.

Army

“Army Board for Correction of Military Records (ABCMR).” *Army Review Board Agency*. Web. 25 Mar. 2011. <<http://arba.army.pentagon.mil/abcmr-faq.cfm>>. Website with brief information and links on how to apply to the ABCMR for corrections of military records.

***Applicant’s Guide to Applying to the Army Board for Correction of Military Records (ABCMR)*. Army Board for Correction of Military Records. Web. <<http://arba.army.pentagon.mil/documents/ABCMR%20Applications%20Guide%202005.pdf>>. 17 pages. Publication by the ABCMR with instructions for Veteran applicants, and answers to frequently asked questions.**

***Army Review Board Agency*. Web. 26 Feb. 2011. <<http://arba.army.pentagon.mil/index.cfm>>. Website maintained by the Army Reviews Board Agency, with many links relating to the DRB and ABCMR application processes.**

Navy

“BCNR, Board for Correction of Naval Records.” *Assistant for Administration, Secretary of the Navy*. Web. 26 Feb. 2011. <<http://www.donhq.navy.mil/bcnr/bcnr.htm>>. Website maintained by the Board for Correction of Naval Records (the Navy BCMR), with links.

Air Force

***Air Force Pamphlet 36-260: Applicants’ Guide to the Air Force Board for Correction of Military Records*. U.S. Air Force, 3 Nov. 1994. Web. 26 Feb. 2011. <<http://www.e-publishing.af.mil/shared/media/epubs/AFPAM36-2607.pdf>>. 3 pages. Basic guide to applying to the AFBCMR, published by the Air Force.**

“Factsheets: Air Force Board for Correction of Military Records.” *Air Reserve Personnel Center - Home*. Web. 26 Feb. 2011. <<http://www.arpc.afrc.af.mil/library/factsheets/factsheet.asp?id=9018>>. Basic guide to the AFBCMR process, with links and information.

Coast Guard

“USCG: Board for Correction of Military Records.” *U. S. Coast Guard Home Page*. Web. 26 Feb. 2011. <<http://www.uscg.mil/legal/BCMR.asp>>. Webpage maintained by the US Coast Guard, with basic application instructions and links relating to the CGBCMR process.

H. DRB Publications

Army

***Army Review Board Agency*. Web. 26 Feb. 2011. <<http://arba.army.pentagon.mil/index.cfm>>. Website maintained by the Army**

Reviews Board Agency, with many links relating to the DRB and ABCMR application processes.

Navy

“NDRB.” *Assistant for Administration, Secretary of the Navy.* Web. 26 Feb. 2011. <<http://www.donhq.navy.mil/corb/ndrb/ndrbmainpage1.htm>>. Website maintained by the Naval Discharge Review Board, with information and links relating to the Navy DRB process.

Air Force

***Air Force Pamphlet 31-5: Administrative Discharge Upgrade.* U.S. Air Force. Web. <www.scott.af.mil/shared/media/document/AFD-090930-041.doc>. 5 pages. Basic information about the Air Force Discharge Review Board process.**