



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO

1520  
JAG 61  
23 Apr 04

From: Judge Advocate General  
To: Captain James F. Duffy, JAGC, USN

Subj: PRECEPT CONVENING A SELECTION BOARD TO RECOMMEND OFFICERS  
IN THE JUDGE ADVOCATE GENERAL'S CORPS FOR NAVY-FUNDED  
POSTGRADUATE EDUCATION AT CIVILIAN INSTITUTIONS

Encl: (1) Board Membership  
(2) Supplemental Guidance

1. Membership, Date and Location. The selection board, consisting of you as president and the officers listed in enclosure (1), is ordered to convene at the Washington Navy Yard, Washington, D.C., at 0800, 12 May 2004, or as soon as practicable thereafter. The function of the board is to consider active duty officers in the competitive category of the Judge Advocate General's Corps for selection to attend Navy-sponsored postgraduate education programs at civilian institutions. The records and names of all eligible officers, determined as of the date the board convenes, will be furnished to the board.

2. Selection Standard. The board shall consider, carefully and without prejudice or partiality, the record of every eligible officer. The officers selected will be those whom a majority of the members of the board consider best qualified for postgraduate education, giving due consideration to the needs of the Navy for officers with particular skills. In addition, each officer recommended must be fully qualified for selection; that is, each officer must be capable of performing the duties of a student in the postgraduate education program. The "best qualified" standard shall be applied uniformly to all eligible officers.

3. Authorized Selections. The maximum number of officers that may be recommended are listed below:

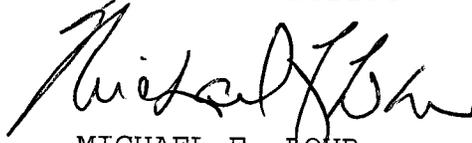
Postgraduate Education Selection Limit

<u>DESIGNATOR</u>	<u>SELECTION LIMIT</u>
2500	16

4. The board shall proceed in accordance with guidance provided in enclosure (2).

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5. Unless expressly authorized or required by me or higher authority, neither you nor any member of the board or administrative staff may disclose the proceedings, deliberations, or recommendations of the selection board. All board members and administrative staff must comply fully with these requirements, and I expect you to emphasize the need for strict confidentiality.

A handwritten signature in black ink, appearing to read "Michael F. Lohr". The signature is fluid and cursive, with a prominent initial "M".

MICHAEL F. LOHR

BOARD MEMBERSHIP

PRESIDENT

Captain James F. Duffy, JAGC, USN

MEMBERS

Captain Michael J. Suszan, JAGC, USN  
Captain Raul A. F. Pedrozo, JAGC, USN  
Commander John K. Waits, JAGC, USN  
Commander Jennifer S. Herold, JAGC, USN  
Commander Karen L. Fischer-Anderson, JAGC, USN  
Commander Michael J. Jackonis Jr., JAGC, USN

RECORDER

Lieutenant Commander James A. Protin, JAGC, USN

ASSISTANT RECORDER

Lieutenant Commander Gary E. Sharp, JAGC, USN

## SUPPLEMENTAL GUIDANCE

*This enclosure contains appendices that provide additional guidance as indicated.*

<u>Appendix</u>	<u>Subject</u>
<b>A</b>	<b>General Procedural Guidance</b> <ul style="list-style-type: none"><li>- Duties of the Board President</li><li>- Board Proceedings</li><li>- Marital Status</li><li>- Area Tours</li><li>- Adverse Information</li></ul>
<b>B</b>	<b>Skills Guidance</b> <ul style="list-style-type: none"><li>- Application of the "Best Qualified" Standard</li><li>- Graduate Education</li><li>- Innovation and Efficiency</li><li>- Performance Trends</li></ul>
<b>C</b>	<b>Equal Opportunity Guidance</b> <ul style="list-style-type: none"><li>- Addresses Equitable Consideration for All Officers</li></ul>
<b>D</b>	<b>Board Report</b> <ul style="list-style-type: none"><li>- Addresses Content and Routing of Selection Board Report</li></ul>
<b>E</b>	<b>Oaths</b> <ul style="list-style-type: none"><li>- Provides Oaths for Board Members and Recorders</li></ul>

APPENDIX - A

**GENERAL PROCEDURAL GUIDANCE**

1. **Duties of the Board President.** The president of the board has been appointed by me and shall perform prescribed administrative duties. The board president has no authority to constrain the board from recommending for selection those fully qualified officers that the majority finds best qualified to meet the needs of the Navy. The board president shall ensure that the directions regarding board proceedings, listed below, are read to each board member and recorder on the convening date of the board or on the date of assignment to the board.
2. **Board Proceedings.** The following directions concerning communications and information apply to all board proceedings:
  - a. Each of you (president, members, and recorders) is responsible to maintain the integrity and independence of this selection board, and to foster careful consideration, without prejudice or partiality, of all eligible officers.
  - b. You must pay particularly close attention to the rules governing communications with and among other board members, the information authorized to be furnished to you, and the procedures you should follow if you believe that the integrity of this selection board has been improperly affected.
  - c. You may not receive, initiate, or participate in communications or discussions involving information that these instructions preclude from consideration by the selection board. You are to base your recommendations on the material in each officer's military record, any information I have provided to the board, and any information communicated to you by individual eligible officers under provisions I have issued. In your deliberations, you may discuss your own personal knowledge and evaluation of the professional qualifications of eligible officers to the extent that such matters are not precluded by these instructions from consideration by a selection board or inclusion in an officer's military personnel record. You may not discuss or disclose the opinion of any person not a member of the board concerning an officer being considered unless that opinion is contained in material provided to the board under the provisions of these instructions.
  - d. When discussing your own personal knowledge concerning the professional qualifications of eligible officers, the board is reminded that if personal remarks, based on a member's personal knowledge, could be considered adverse, the member cannot discuss any personal knowledge or evaluation unless such matter is contained in the officer's official record or other material placed before the board in compliance with these instructions. In addition, should an officer's record reveal the removal of a fitness report, the member may not discuss any

personal knowledge regarding the circumstances that resulted in the removal of the report.

e. I am the only person who may appear in person to address you on other than administrative matters. All communications with the board, other than those that are clearly administrative, must be in writing, given to each of you, and made part of the board's record.

f. Before the report of the selection board is signed, the recommendations may be disclosed only to members of the board and the recorders. I will release the names of those selected to the public after the board's report is approved. Do not disclose recommended selectees until such time. Except as authorized by me or higher authority, the proceedings and deliberations of the board may not be disclosed to any person not a board member or board recorder.

g. If at any time you believe that you cannot in good conscience perform your duties as a member of the board without prejudice or partiality, you have a duty to request relief by me from this duty. I will honor any such request. If a member or recorder believes that the integrity of the board's proceedings has been affected by improper influence of military or civilian authority, misconduct by the board president or a member, or any other reason, or believes someone is exerting or attempting to exert inappropriate influence over the board or its proceedings, he or she must request, from me or higher authority, relief from the obligation not to disclose board proceedings and, upon receiving it, to report the basis for this belief.

3. **Marital Status**. Selection boards are prohibited from considering the marital status of a member or the employment, education, or volunteer service of a spouse.

4. **Area Tours**. Repeated tours in a particular geographic location should not be considered negatively, provided the officer has progressed in billet complexity, professional development, and leadership responsibility.

5. **Adverse Information**

a. Just as you must consider positive performance, you must consider documented incidents of misconduct and substandard performance that are included in an officer's official service record in determining those officers who are best qualified for selection. Members must give careful consideration to each such incident. For those eligible officers who are recommended for selection and who have received disciplinary action, or whose privileged information record (Fiche Five/EMPRS Field Code 17) contains matters relating to conduct or performance of duty, every board member shall review the information contained therein, personally, prior to the final board decision.

b. Faced with many well-qualified officers, there may be a tendency to simplify your task by summarily putting aside the folders of officers whose past records are less than perfect; however, to do this is to fall short of your obligation. A judgment of the whole person and the whole record is required to determine whose future potential will serve our Navy best. You may conclude that particular adverse information undermines an officer's ability to serve successfully, despite an otherwise outstanding record. On the other hand, you may find that an officer's overall outstanding performance demonstrates such potential for future service that it outweighs the deficiency noted in the record. Some officers will have learned from their mistakes in ways that make them stronger; others will have strengths that outweigh relative weaknesses in their records.

c. Make the best, not simply the most obviously defensible, choices. By doing this, you will not only fulfill your obligation, you will also better serve the Navy.

## APPENDIX - B

### SKILLS GUIDANCE

1. **"Best Qualified" Standard.** Navy policy regarding application of the "best qualified" standard is as follows:

a. The needs of the Navy dictate that our future leaders possess the qualities to excel as leaders and commanders or in support of operational commanders or positions of leadership in direct support of fleet operations. Proven excellence, particularly in leadership positions, is an important measure of the qualities required. Officers may have also demonstrated leadership, skill, integrity, and resourcefulness in other difficult and challenging positions.

b. The board must consider that the needs of the Navy, and therefore the Judge Advocate General's Corps, have changed over the years and will continue to change. Within the "best and fully qualified" standard, give consideration not only to the proven ability to perform well in an academic setting, but more importantly, to officers, regardless of seniority, who demonstrate excellence, or the potential to excel, in a broad variety of assignments of increasing difficulty and responsibility.

2. **Innovation and Efficiency.** In your deliberations, give careful consideration to the fact that the needs of the Navy have changed over the years and will continue to change. Please be especially alert for officers who embrace innovation and efficiency to find new solutions to our most challenging problems. The Navy needs bold officers who are willing to think creatively, take well-calculated risks, develop new ideas, and maximize capabilities through sound management practices. Seek to select officers who have shown initiative in finding and pursuing the most effective ways of accomplishing our mission. In your consideration, recognize that the continued preeminence of the Navy in the future is inextricably linked to its ability to change and to manage for efficiency. I note also, in this regard, that officers with the greatest capacity for innovation and management efficiency may have had some billets different from the norm. In the context of a changing Navy, the best qualified officers may reflect a variety of backgrounds and proven records of accomplishment.

3. **Performance Trends.** In order to not disadvantage outstanding performers, the selection board should give due consideration to those records which contain both a superior trend of performance on fitness reports submitted on or before 31 December 1995, and performance marks other than 5.0 and other than "early promote" evaluations submitted on or after 1 January 1996. To establish performance trends, the board should consider rankings assigned to officers under the former evaluation system, and trait grade averages and promotion recommendations under the current system;

however, just as you must give careful consideration to positive outstanding performance, you must consider documented incidents of misconduct and substandard performance, which are included in a service member's record, in determining those service members best qualified for selection.

## APPENDIX - C

### ***EQUAL OPPORTUNITY GUIDANCE***

1. The Department of the Navy is dedicated to equality of treatment and opportunity for all personnel without regard to race, creed, color, gender, or national origin. The Navy strives to maintain a professional working environment in which an individual's race, creed, color, gender, or national origin will not limit his or her professional opportunities. Accordingly, within this board's charter to determine those officers who are best qualified, you must ensure that officers are not disadvantaged because of their race, creed, color, gender, or national origin.
2. Your evaluation of all officers must afford them fair and equitable consideration. You should be particularly vigilant in your evaluation of records to take care that no officer's selection opportunity is disadvantaged by service utilization policies or practices. You should evaluate each officer's potential, the overriding factor being performance of assigned duties.
3. The Navy has assigned some officers outside of traditional career development patterns, e.g., institutional instructors, recruiting and equal opportunity billets. In addition, other utilization policies or practices, such as those based on statutory restrictions on the assignment of women, may have had an effect on career opportunities. These assignments, though beneficial to the Navy, may have foreclosed to the officers so assigned opportunities available to other officers. Such assignment practices should not prejudice the selection of these officers. Successful performance of assigned duties is the key in measuring an officer's potential for selection. Accordingly, in determining the qualification for selection of any officer who has been affected by such utilization policies or practices, duty performed well in such assignments should be given weight equal to duty performed well by an officer not affected by such policies or practices.
4. This guidance should not be interpreted as requiring or permitting preferential treatment of any officer or group of officers on the grounds of race, creed, color, gender, or national origin.

APPENDIX - D

BOARD REPORT

1. The record of the board's proceedings shall be compiled by the recorders. The written report of the board shall be signed by the board president, the board members, and board recorders. It shall contain the following:

a. All instructions, information, and guidance provided to the board.

b. Certification that:

(1) To the best of your knowledge, the board complied with all instructions contained in the precept, and, as appropriate, other letters of guidance or instruction provided by me;

(2) You were not subject to or aware of any censure, reprimand, or admonishment about the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board;

(3) You were not subject to or aware of any attempt to coerce or influence improperly any action in the formulation of the board's recommendations;

(4) You were not party to or aware of any attempt at unauthorized communications;

(5) To the best of your knowledge, the board carefully considered the records of each officer whose name was furnished to the board;

(6) The officers recommended for selection are, in the opinion of the majority of the members of the board, fully qualified and best qualified to meet the needs of the Navy among those officers whose names were furnished to the board;

(7) You are aware that the names of the selectees will be released to the public after the board report is approved, and you know that you may not disclose recommended selectees until the names are released to the public; and

(8) You understand that you may never disclose the proceedings and deliberations of the board to any person who is not a board member or board recorder.

c. A list of the officers recommended for selection.

d. Precept.

- e. A list of all officers eligible for consideration.
  - f. Such other lists as the board may deem necessary.
2. The report shall be forwarded for approval to the Judge Advocate General of the Navy.

**APPENDIX - E**

**OATHS**

1. The following oath or affirmation shall be administered to the recorder and assistant recorder by the president of the board:

"Do you, and each of you, solemnly swear (or affirm) that you will keep a true record of the proceedings of this board, and you will not divulge the proceedings of this board except as authorized or required by the Judge Advocate General of the Navy or higher authority, so help you God?"

2. The following oath or affirmation shall then be administered by the recorder to the members of the board:

"Do you, and each of you, solemnly swear (or affirm) that you will perform your duties as a member of this board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the Naval Service, and you will not divulge the proceedings of this board except as authorized or required by the Judge Advocate General of the Navy or higher authority, so help you God?"