

**IN A GENERAL COURT-MARTIAL
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA**

UNITED STATES)	
)	
v.)	Government Notice Pursuant to R.C.M.
)	801(a)(6) for Appointment of Designee for
BERGDAHL, ROBERT BOWDRIE)	MSG (Ret) Mark Allen
(BOWE))	
SGT, U.S. Army)	
HHC, Special Troops Battalion)	25 January 2016
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	

NOTICE

The Government hereby notifies the Court and Defense Counsel, that there is an "apparent requirement to appoint a designee" under Rule for Courts-Martial [hereinafter "R.C.M."] 801(a)(6) and requests that the Court appoint Mrs. Shannon Allen as the designee for MSG (Ret) Mark Allen to assume his rights as a victim under the Uniform Code of Military Justice [hereinafter "UCMJ"].

FACTS

On 30 June 2009, the Accused, an Infantryman (MOS 11B) deployed to Paktika Province, Afghanistan, as part of Task Force Yukon, Combined Joint Task Force-82/Regional Command-East, deserted from his place of duty at Observation Post Mest. The Accused was captured by enemy forces shortly after he departed. Over the following months, Task Force Yukon and other elements of the United States Armed Forces engaged in extensive search and recovery operations to recover the Accused.

On 08 July 2009, then SFC Mark Allen, was participating in the search and recovery operations as part of Task Force Yukon when his patrol came under fire. SFC Allen received a gunshot wound to the head. SFC Allen underwent medical evacuation, a trauma stroke, multiple surgeries to remove portions of his brain, and extensive rehabilitation. Now MSG (Ret) Allen is confined to a wheelchair, unable to do basic tasks for himself, 100% dependent on others for daily living activities, and unable to communicate.

On 30 November 2010, his wife, Mrs. Allen, was appointed MSG (Ret) Allen's legal guardian by the Circuit Court for Hillsborough County, Florida. At the time, MSG (Ret) Allen was in a treatment facility in Florida. On 11 October 2012, Mrs. Allen's guardianship was transferred to, and accepted by, the Walton County Probate Court in Georgia where the Allen family resides.

Court-martial charges were preferred against the Accused on 25 March 2015. The case was referred to a General Court-Martial on 14 December 2015. The Accused is charged with one specification of desertion with intent to avoid hazardous duty or to shirk important service in violation of Article 85, Uniform Code of Military Justice [hereinafter "UCMJ"], and one specification of misbehavior before the enemy-endangering the safety of the unit in violation of Article 99, UCMJ.

WITNESSES/EVIDENCE

The Government encloses the following documents as evidence:

1. DA Form 2173, Statement of Medical Examination and Duty Status, dated 30 September 2009.
2. Army Regulation 15-6 Investigation "Injury to SFC Mark Allen on 8 July 2009, in Paktika Province, district of Deela", and attachments, dated 30 July 2009.
3. Court Documents Appointing Shannon Allen as Guardian for Mark Allen.
4. Proposed Order Appointing Mrs. Shannon Allen as designee for MSG (Ret) Allen under R.C.M. 801(a)(6)

Under R.C.M. 801(a)(6)(B)(iv) the Court "is not required to hold a hearing before determining whether a designation is required or making such an appointment under this rule." However, if the Court determines a hearing pursuant to Article 39(a), UCMJ, is necessary the Government requests the Court allow the Government to provide notice of additional evidence and witness testimony to be presented at the hearing.

LEGAL AUTHORITY AND ARGUMENT

I. It is necessary to appoint a designee to assume MSG (Ret) Allen's victim rights under the UCMJ

The UCMJ and United States Code (implemented in Department of Defense Directive 1030. 01, dated April 13, 2004, Department of Defense Instruction 1030.2, dated June 4, 2004 and Army Regulation 27-10) provide crime victims significant rights throughout the court-martial process. R.C.M. 801(a)(6) provides the Military Judge the responsibility to "designate in writing a family member, a representative of the estate of the victim, or another suitable individual to assume the victim's rights under the UCMJ" if a victim of an offense is "under 18 years of age and not a member of the armed forces, or who is incompetent, incapacitated, or deceased." MSG (Ret) Allen is incompetent and will be unable to assert his victim rights unless the Court identifies a designee.

II. Mrs. Allen is a suitable individual to assume the legal rights of MSG (Ret) Allen

Mrs. Allen is MSG (Ret) Allen's wife and primary caregiver. Mrs. Allen is currently the appointed guardian for MSG (Ret) Allen in the state of Georgia. She has expressed a willingness to serve as MSG (Ret) Allen's designee if appointed.

While the rule provides the Military Judge with wide discretion on who to appoint, the discussion to R.C.M. 801(a)(6) identifies a number of factors that may be considered including "relationship to the victim and physical proximity of any proposed designee;... the willingness of the proposed designee to serve in such a role; [and] the previous appointment of a guardian by another court of competent jurisdiction."

As his wife, primary caregiver, and legal guardian, Mrs. Allen is most suitable considering the factors outlined in the discussion to the rule and should be appointed as the designee under R.C.M. 801(a)(6).

CONCLUSION

Based on the above, the Government respectfully requests that the Court appoint Mrs. Allen as the designee for MSG (Ret) Mark Allen under R.C.M. 801(a)(6).



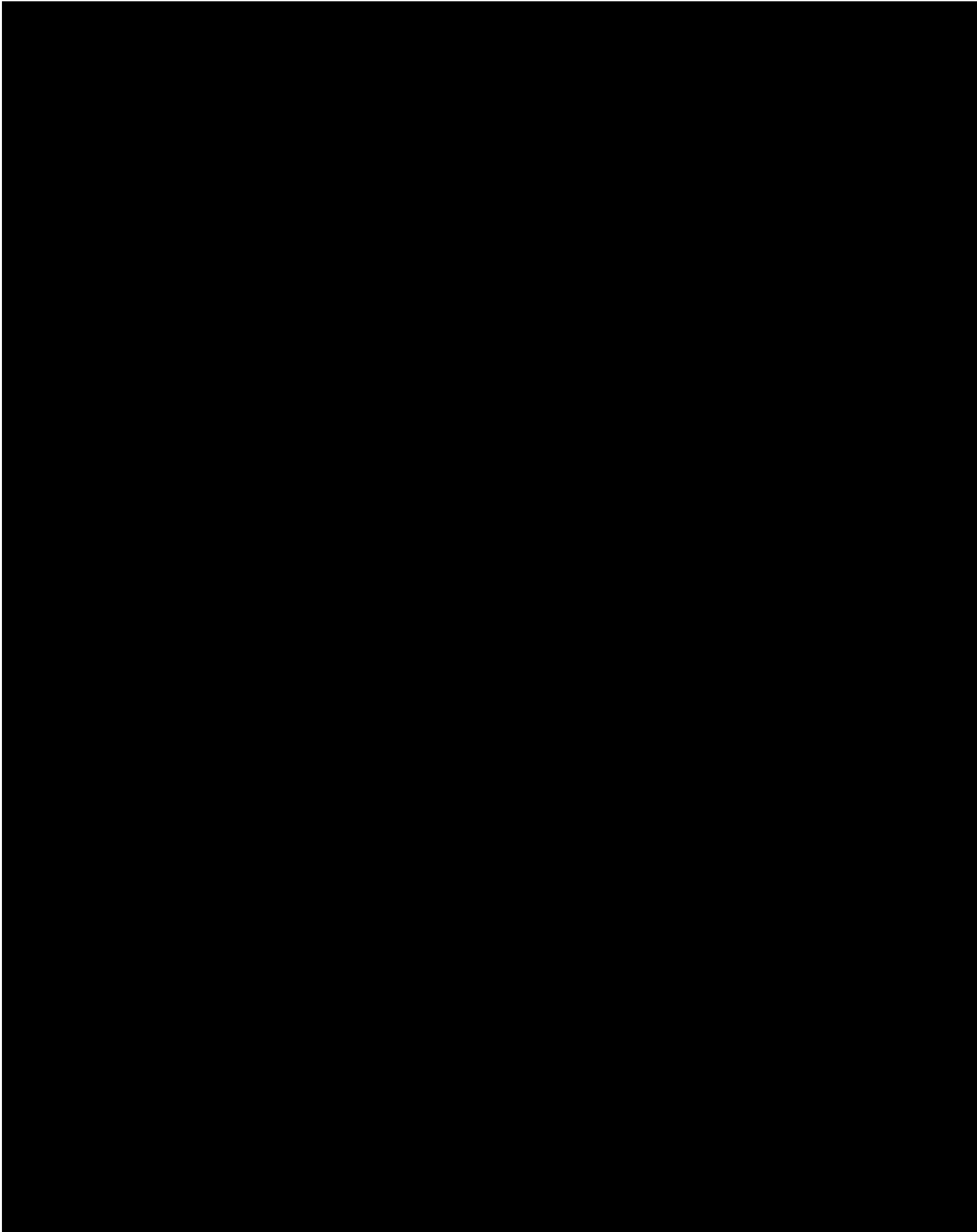
EILEEN C. WHIPPLE
CPT, JA
Trial Counsel

Certificate of Service

I certify that I have served or caused to be served a true copy of the above Government Notice Pursuant to R.C.M. 801(a)(6) for Appointment of Designee for MSG (Ret) Mark Allen to Defense Counsel via email on 25 January 2016.

A handwritten signature in cursive script, reading "E. Whipple".

EILEEN C. WHIPPLE
CPT, JA
Trial Counsel





DEPARTMENT OF THE ARMY HEADQUARTERS,
COMBINED JOINT TASK FORCE PHOENIX
CAMP PHOENIX KABUL, AFGHANISTAN
APO AE 09320

CJTF-PHX-CofS

s: 31 July 2009

19 July 2009

MEMORANDUM FOR MAJ Jose C. Aymat, ARSIC-E, Afghanistan

SUBJECT: Appointment of Investigating Officer UP AR 15-6 - Injury to US Soldier

1. References:

- a. AR 15-6, Procedures for investigating officers and boards of officers, 2 Oct 06;
- b. Uniform Code of Military Justice, 2005.

2. Appointment. You are hereby appointed as an investigating officer pursuant to AR 15-6, Procedure for Investigation Officers and Boards of Officers. to conduct an informal investigation to determine the circumstances regarding the injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, district of Deela.

THIS INVESTIGATION IS YOUR PRIMARY DUTY AND TAKES PRECEDENCE OVER ALL OTHER DUTIES ASSIGNED.

3. Your legal advisor. Before you begin your investigation, you must receive a briefing from the Office of the Staff Judge Advocate (OSJA). COI James Demers, ARSIC-E Command Judge Advocate, is appointed as your legal advisor. You must contact COI Demers prior to beginning your investigation so that he may provide you a briefing packet. You can reach COI Demers at DSN 318-237-6223 or james.c.demers@afghan.swa.army.mil. You should consult with COI Demers regarding developing an investigation plan, determining whether witnesses need to be advised of their rights under the UCMJ, Article 31 or the Fifth Amendment. special procedures for interviewing Department of the Army civilian employees, and preparing findings and recommendations.

4. Procedures.

- a. Because no individual has been named as a respondent at this time, you are to conduct this investigation using the informal procedures outlined in Chapter 3, AR 15-6.
- b. You should swear in all witnesses prior to their interview. You will document all witness interviews on a DA Form 2823 (Sworn Statement). You should interview witnesses in person, if possible. Provide every witness a privacy act statement before taking any personal information such as SSNs. You are to retain copies of the signed

privacy act statement. If you use a DA Form 2823 you should reduce any oral statements to memorandums for record.

c. At the conclusion of your investigation, you will report your findings and recommendations on a DA Form 1574 (Report of Investigation).

1. Your findings must be supported by substantial evidence. Your evidence needs to be attached to your report, with each document labeled as a separate exhibit. You are required to cite, by exhibit number, the evidence that supports your findings in the report.

2. Your recommendations must be supported by the findings. Your recommendation should state whether someone is liable for the loss. If appropriate, include in your recommendations whether judicial, or non-judicial proceedings, or further investigation is warranted.

3. Your report must include an index of all exhibits. Your report must include a written chronology of your actions on this investigation. Your report must include a table of contents.

5. Superior conflict. If, in the course of your investigation, you determine that the investigation will require you to examine the conduct or performance of duty of a soldier senior to you, or to which you have a moral or ethical conflict, then you shall report that fact to my office immediately. I will then appoint another soldier, senior to the soldier affected, who will either replace you as the investigating officer or conduct a separate inquiry into the matters pertaining to that soldier.

6. Scope of the investiQation. Your objective is to conduct a thorough and impartial investigation of the matters identified above. You should consider whether any regulations or UCMJ provisions have been violated. Your report, when finished, should answer these questions:

a. What are the facts and circumstances surrounding the attack? (5 Ws)

b. What was the mission and purpose of the patrol/convoy at the time of the incident? What was the pre-mission briefing concerning enemy forces and threats?

c. Was an up to date threat analysis conducted for the mission?

d. What personal protective equipment was worn by the U.S. Servicemember at the time of the incident?

f. What, if any, medical treatment was provided to the U.S. Servicemember? Were the MEDEVAC procedures timely and appropriate under the circumstances?

g. Did anyone participating in, or having knowledge of, this mission use unsecure communications (including cell phones) up to 24-hours prior to this mission? If anyone did, describe who used the unsecure communications and for what purpose?

h. Did anyone communicate the movement schedule / timeline to any local nationals (including ANSF, local police, local leaders, etc.)? If anyone did, describe what was communicated, to whom, and when prior to the mission?

i. What is the nature and extent of loss of military equipment?

j. What recommendations concerning improvements, if any, to coalition force tactics, techniques, and procedures will help avoid this type of incident in the future?

k. Any other matters pertaining to this incident that you deem relevant .

7. Determination of possible criminal conduct. If you determine through your investigation that possible criminal conduct has occurred, immediately notify your legal advisor before proceeding. Criminal conduct includes violations of the UCMJ, of punitive regulations, International, Host Nation, or other applicable State or Federal Law. In making this decision, consider whether it is more likely than not. under the circumstances you are aware of that an offense has been committed by someone.

8. LeQal review. Due to the type and nature of the investigation a legal review of your report is required. LTC Robert C. Roth, the Staff Judge Advocate. or his assign, is appointed as the legal reviewer for the Task Force Commander.

9. Suspense. Your appointment remains in effect until the investigation is complete and no further investigation is required, unless released sooner by the Task Force Commander. Submit your findings and recommendations **NL T 10** DA VS from the date of appointment to the Office of the Staff Judge Advocate, B Hut Number H5; Camp Phoenix, Kabul, Afghanistan. You should request extensions only when circumstances require. Submit your requests for extensions to the undersigned, through your legal advisor.

FOR THE COMMANDER:

(- -t;) A C. JfE~
~PAUL C. HASTINGS
COL, IN Chief
of Staff

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OT JAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I. APPOINTMENT

Appointed by Paul C. Hastings COL, IN

(Appointing authority)

on 19 July 2009 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II. SESSIONS

The (investigation) (board) commenced at (Place) at (Time) on (Date) (If a formal board met for more than one session, check here ☐. Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1300 (Time) on 6 August 2009 (Date) and completed findings and recommendations at 2000 (Time) on 9 August 2009 (Date)

SECTION III. CHECKLIST FOR

PROCEEDINGS

Inclosures (para 3-15, AR 15-6)

Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)

- a. The letter of appointment or a summary of oral appointment data?
- b. Copy of notice to respondent, if any? (See item 9, below)
- c. Other correspondence with respondent or counsel, if any?
- d. All other written communications to or from the appointing authority?
- e. Privacy Act Statements (Certificate, if statement provided orally)?
- f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?
- g. Information as to sessions of a formal board not included on page 1 of this report?
- h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?

NOTES: 1. Explain all negative answers on an attached sheet.

2. Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

YES	NO 1/	NA 2/
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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a. Are all items offered (<i>whether or not received</i>) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	0	0
b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?		[
c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	0	0
d. Are copies, descriptions, or depictions (<i>if substituted for real or documentary evidence</i>) properly authenticated and is the location of the original evidence indicated?	0	0
e. Are descriptions or diagrams included of locations visited by the investigating officer or board (<i>para 3-6b, AR 15-6</i>)?	J	LJ 12<J
f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	0	0
g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (<i>para 3-16d, AR 15-6</i>)?	0	0
3 Was a quorum present when the board voted on findings and recommendations (<i>paras 4-1 and 5-2b, AR 15-6</i>)?		
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (<i>Chapter 5, AR 15-6</i>)		
4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (<i>para 5-3b, AR 15-6</i>)?		
5 Was a quorum present at every session of the board (<i>para 5-2b, AR 15-6</i>)?		
6 Was each absence of any member properly excused (<i>para 5-2a, AR 15-6</i>)?		
7 Were members, witnesses, reporter, and interpreter sworn, if required (<i>para 3-1, AR 15-6</i>)?		
8 If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (<i>para 5-2d, AR 15-6</i>)?		
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (<i>Section 11, Chapter 5, AR 15-6</i>)		
9 Notice to respondents (<i>para 5-5, AR 15-6</i>):		
a. Is the method and date of delivery to the respondent indicated on each letter of notification?		
b. Was the date of delivery at least five working days prior to the first session of the board?		
c. Does each letter of notification indicate -		
(1) the date, hour, and place of the first session of the board concerning that respondent?		
(2) the matter to be investigated, including specific allegations against the respondent, if any?		
(3) the respondent's rights with regard to counsel?		
(4) the name and address of each witness expected to be called by the recorder?		
(5) the respondent's rights to be present, present evidence, and call witnesses?		
d. Was the respondent provided a copy of all unclassified documents in the case file?		
e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?		
10 If any respondent was designated after the proceedings began (<i>or otherwise was absent during part of the proceedings</i>):		
a. Was he properly notified (<i>para 5-5, AR 15-6</i>)?		
b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (<i>para 5-4c, AR 15-6</i>)?		
11 Counsel (<i>para 5-6, AR 15-6</i>):		
a. Was each respondent represented by counsel?		
Name and business address of counsel:		
(If counsel is a lawyer, check here <input type="radio"/>)		
b. Was respondent's counsel present at all open sessions of the board relating to that respondent?		
c. If military counsel was requested but not made available, is a copy (<i>or, if oral, a summary</i>) of the request and the action taken on it included in the report (<i>para 5-6b, AR 15-6</i>)?	0	0
12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (<i>para 5-7, AR 15-6</i>):		

SECTION IV. FINDINGS *(para 3-10, AR 15-6)*

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

SECTION V - RECOMMENDATIONS *(para 3-11, AR 15-6)* In view

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


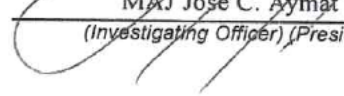
SECTION VI. AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

(Recorder)

(Member)

(Member)


MAJ José C. Aymat
(Investigating Officer) (President)


(Member)

(Member)

(Member)

SECTION VII- MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board.
(In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/ substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or cOffective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

DEPARTMENT OF ARMY AFGHANISTAN REGIONAL SECURITY
INTERGRATED COMMAND-EAST OPERA nON ENDURING FREEDOM FOB
LIGHTNING, AFGHANISTAN APO AE 09354

REPLY TO
ATTENTION OF

RCAC-E

30 July 2009

MEMORANDUM FOR Commander, Afghanistan Regional Security Command- East, FOB
Lightning, Afghanistan 09354

SUBJECT: AR 15-6 Investigation Findings and Recommendations- Injury to SFC Mark Allen on 8 July 2009, in Paktika Province, district of Deela.

1. Appointment: On 21 July 2009 I was appointed by COL Paul C. Hastings, Chief of Staff, Combined Joint Task Force Phoenix to conduct an informal investigation pursuant to the provision of Army Regulation 15-6 into injuries that occurred on 8 July 2009 at the Monari Village, Paktika Province. This report is organized into facts, findings and recommendations.

2. BACKGROUND: On 5 July 2009 CAPT Marx and 5 newly arrived in country ETT Soldiers (SFC Mark Allen, SGT Walters, SGT Elmore, SPC Morita and SPC Benson) were ordered to move from Orgun E to FOB Kushmod by LTC Shuto, 2nd BDE Tm Chief to join the DUSTWUN recovery effort. The new ETT arrived to Orgun E on 3 July from Phoenix and 24hrs later were called upon to support this mission. On 7 July 2009 at 0330hrs, the 5 ETTs under the command of CAPT John Marx together with 52 ANA Soldiers departed FOB Kushmond by foot to conduct KLEs in Otu Kheil and Monari Village IOT gain information on the whereabouts of the DUSTWUN. The patrol reached their initial patrol base (PB) o/a 0600hrs, 1 Km ENE from Otu Kheil village. CAPT Marx then took 30 ANA Soldiers and 2 ETTs and the interpreter to the village to coordinate the KLE with the village elder. As they approached the village he noticed that there were few military age males in the area and the ANA noticed two suspicious men on a motorcycle fleeing the scene at a fast rate of speed. The ANA also noticed the village elder giving instructions to the individuals on the motorcycle. The elder was confronted by the ANA but he denied the allegations. In order to gain an understating of the enemy situation in the area, the ANA leadership coordinated to get together with the village elders at 1200hrs for lunch. The elders agreed to do so and the patrol returned to their PB. At 1145hrs the patrol returned to the village to conduct the KLE in an effort to gain intelligence on the whereabouts of the DUSTWUN and to measure the Taliban influence on the people of the village. The patrol left the village at 1400hrs with no information on the DUSTWUN but with the impression that the Taliban was very influential in the area. At around 2115hrs the patrol moved by foot from their patrol base vic Out Kheil village to their next objective, Minari village. The patrol arrived to their follow on PB vic VB 2567 0063, 2km North from Minari village at around 0330hrs. The patrol established security and initiated their rest plan upon arrival. On or about 0600hrs CAPT Marx wakes up to the sound of motorcycles driving nearby their PB and noticed that the ANA had a check point set up on the road near the PB. 15 minutes later the ANA Soldiers at the check point engaged the individual on the motorcycle who failed to stop when told to do so. The motorcyclist was shot and killed by the ANA check point personnel and later on identified by the ANA as the individual who took off at a fast rate of speed the day before when the patrol entered Otu Kheil village. The ANA as well as

the ETTs believed that the motorcyclist was part of the AAF recon element probing the security of their PB in an attempt to find areas of weakness to be exploited by the main body. Around 0830hrs the patrol started to receive heavy small arms, machine gun and RPG fire from the Southwest side of their perimeter. Immediately CAPT Marx and SFC Allen jumped over the berm looking for cover and to get communications with the TOC and request fires and CAS using their T ACSA T radio. At 0850 CAPT Marx made contact with the TOC and reported being surrounded by the enemy and receiving heavy fire. The rest of the ETT team moved towards the southwest wall to coordinate fires with the ANA and suppress the enemy. It was apparent that the AAF had identified the ETT's position and targeted them first. Within minutes from the initial attack SFC Allen received a gunshot wound to the head, SPC Benson the Tm Medic received shrapnel to his back, and SPC Morita had an RPG hit his right hand and destroyed his weapon. CAPT Marx called for SGT Walters to assist with the air and MEDEV AC coordination while he treated SFC Allen. SPC Morita and SPC Benson were treated by SGT Elmore and the ANA medic. CAS (F15) arrived on station at 0930hrs and immediately upon their arrival the enemy fire decreased to sporadic fire. He also requested a fire mission to a kalot 350m west from his location where the enemy was firing from. The TMs radio, MBTIR on T ACSA T mode drained their short supply of batteries forcing the TM to depend on short range comms only and having to relay all radio traffic through the pilots in support. CAPT Marx directed the F15s to conduct strafing runs in an effort to kill the enemy and to allow the MEDEV AC aircraft to land. MEDEV AC landed at 0946hrs, ETTs and ANA Soldiers loaded the wounded Soldiers and they were transported to the Sharana medical facility. The QRF arrived on station shortly after the MEDEV AC was completed, secured the area and delivered the much needed water for the ANA and ETTs. QRF and ETTs left the area and arrived at FOB Kushmond at 1213hrs.

2. FINDINGS:

a. What are the facts and circumstances surrounding the SAF and RPG attack?

Please see the discussion of the background, paragraph 2, above.

b. What was the mission and purpose of the patrol at the time of the incident? What was the pre-mission briefing concerning enemy forces threats?

On 7 July 2009 at 0330hrs, an element of 6 ETTs from 3-2 and 2-2 under the command of CAPT John Marx together with 52 ANA Soldiers departed FOB Kushamond by foot to conduct Soft Knock/KLEs in Otu Kheil and Minari Village IOT gain information on the whereabouts of the DUSTWUN.

The pre-mission brief stated that the area of interest was non-sympathetic to CF/ANSF and that the intel cell lacked information on the area mainly due to the lack of influence and presence of US/AN SF.

c. Was there an up to date threat analysis conducted before the mission?

No

d. What personal protective equipment was worn by the US Service members at the time of the incident?

All Soldiers in the patrol were wearing their IBA, ACH, eye protection, gloves and fire retardant uniforms.

e. What, if any, medical treatment was provided to the US Servicemember? Were the MEDEV AC procedures timely and appropriate under the circumstances?

All wounded Soldiers received treatment for wounds within moments of getting injured. All ETT Soldiers on this patrol are Combat Life Saver trained. Wounded Soldiers were further evaluated and treated in the Sharana Hospital.

Capt Marx as well as other members of the patrol believed that the MEDEV AC took too long to land and evacuate the wounded Soldiers (Exhibit 2 and 6).

MEDEV AC took 26 minutes to arrive on station and 14 minutes to land mainly due to the enemy situation on the ground. Under these circumstances, the MEDEV AC procedures were timely. As soon as the situation was under control the MEDEV AC moved in. MEDEV AC requested: 0906

MEDEV AC wheels up Sharana: 0920

MEDEV AC on station: 0932

MEDEV AC wheels down TIC site: 0946

f. Did anyone participating in, or having knowledge of, this mission use unsecure communications (including cell phones) up to 24-hours prior to this mission? If anyone did, describe who used the unsecure communications and for what purpose?

Throughout the course of my investigation, including all interviews and collection of sworn statements, no-one reported of unsecure communications to discuss the patrol or its schedule.

g. Did anyone communicate the movement schedule / time line to any local nationals (including ANSF, local police, local leaders, etc.)? If anyone did, describe what was communicated, to whom, and when prior to the mission?

Yes. CAPT Marx discussed the mission with the ANA Platoon leader 6 hours prior to the mission. The leaders discussed the mission task, purpose, concept and timeline.

h. What is the nature and extent of loss of military equipment?

Spc Morita's M4 is the only loss of military equipment, a result of an RPG direct hit.

i. What recommendations concerning improvements, if any, to coalition forces tactics, techniques, and procedures will help avoid this type of incident in the future.

Please see the recommendations portion of the memorandum, paragraph 3, below.

j. Any other matters pertaining to this incident that you deem relevant?

Based upon the statements made by fellow ETT, evidence indicates that the following Soldiers were wounded by enemy fire:

SFC Allen received a gunshot wound to the head

SPC Benson the Tm Medic received shrapnel to his back

SPC Morita had an RPG hit his right hand and destroyed his weapon

3. Recommendations concerning improvements, if any, to coalition forces techniques, tactics, and procedures to prevent future incidents from occurring.

a. Conduct Risk Assessment: Leaders failed to implement control measures to mitigate the following risk factors: Inexperience, lack of communications equipment, knowledge and or familiarity of the enemy, terrain and weather. Leaders and Soldiers at all levels are responsible and accountable for managing risks by ensuring that hazards and associated risks are identified during planning, preparation, and execution of operations. Composite risk assessment is non

negotiable; it must be integrated in the planning process especially when dealing with ADHOC organizations and Soldiers with different levels of experience and backgrounds.

b. Know your Soldiers: Leaders must know their Soldiers weaknesses and strength in order to set the conditions for success and to mitigate risk.

c. Conduct joint rehearsals: The patrol leader conducted a map recon IOT familiarize the members of the patrol with the AO and discussed the task and purpose and timeline of the mission with the ANA leadership. A rehearsal was not conducted by the patrol prior to departure (Exhibit 2). Conduct joint (CF/ETT/ANA) rehearsal that not only coordinates movement and timeline, but also actions on contact, actions on the objective, patrol base occupation, fire support plan and CASEV AC. Rehearsals need to be focused for EVERY mission even if only a backbrief is given when receiving a new mission.

d. Fire Support. No fire support plan was develop by the patrol leaders nor was any information provided to the patrol leader by their HHQ in regards to fire support coverage and assets available (Exhibit 4). Careful route planning that incorporates a fire plan can eliminate many immediate requests so often used. Recommend that all ETTs are trained and certified by qualified FO every 6 months. Have all ETTs and leaders review CFF as well as CCA procedures prior to the mission and make sure are incorporated into the planning process.

e. Security. The ETTs security posture while at the patrol base was poor, most of the ETTs fell asleep upon arrival (Exhibit 1, 3 and 6). A general lack of security is the reason units get caught unaware in the battlefield. Security must be 3600 at all times. Security means Soldiers watch their flanks, rear elements watch behind, and Soldiers scan their sectors during movements. During halts, Soldiers tend to do a rucksack flop. At patrol bases or assembly areas, security should never go below 50 percent unless approved by the patrol commander. If a patrol or other mission departs, security should be at 100 percent until they return. These are all basics taught in our schools. But time and time again, units disregard them when out in the field.

f. Communications: Patrols must have redundant means of communications, long range as well as short range while operating in the battlefield (Exhibit 2).

4. POC is the undersigned at DSN: 237-6220.

17 Ends

Tab A -Appointment Orders

Tab B -DA 1574

AR 15-6 Findings and recommendations Tab

C - CAPT Marx

Exhibit 1, Sworn statement CAPT Marx

Exhibit 2, Email Questionnaire CAPT Marx

Tab D - SGT Walters

Exhibit 3, Sworn Statement SGT Walters

Exhibit 4, Email Questionnaire SGT Walters



JOSE C. AYMAT

MAJ, IN

Investigating Officer

Exhibit 6, Email Questionnaire SGT Elmore
Tab F - LTC Shuto
Exhibit 7, Email Questionnaire LTC Shuto
Tab G- CPT Persley
Exhibit 8, Email CPT Persley
TabH
Exhibit 9, SIR
Exhibit 10, Story Board
Exhibit 11, Terrain Analysis
Exhibit 12, SIGINT traffic
Exhibit 13, Critical event timeline
Exhibit 14, ARSIC-E Battle CPT's notes Tab
1- Medical Record

Exhibit

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 use Section 301; Title 5 use Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
 PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
 ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
 DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION Kushamond FOB 12. DATE (YYYYMMDD) 20090708 13. TIME 2045 14. FILE NUMBER
 5. LAST NAME, FIRST NAME, MIDDLE NAME Mark, John A 6. SSN [REDACTED] 7. GRADE/STATUS ()
 8. ORGANIZATION OR ADDRESS FOB Organ E ANA ETT

9. I, John A. Mark, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I arrived at Kushamond ~~meat~~ FOB on 5 July. With me were 52 ANA, 1 interpreter and 5 new ETTs that stopped of at Organ enroute to Barmel (FOB Barmel). The reason they came along was because the rest of the ANA ETTs at FOB DE were pulled to conduct OPs in Southern Organ & Northern Sarobi Districts. Upon arrival we were told of many diffit missions for us and the ANA. Logistics played a key role on where we were sent to. Finally, we were told to push south (dismounted) to the towns of Otu Kheyl and Minari. We left on 7 July @ 0330L. Arrived at our patrol base at approx 0600 1km ENE of Otu Kheyl. We then took 30 ANA, Walters, Elmore and myself (along with an interpreter) and headed towards the village approx 0800L. We quickly noticed not many adults out and hardly any males. When we came close to the center of the village, the ANA noticed 2 suspicious men on a motorcycle quickly flee the scene. They also noticed an elderly man (who was later ID'd as the village elder) alert the two males on the motorcycle to leave. We confronted the elder and he denied all. We also asked where the males were and he said they were in the fields harvesting. He offered to meet w/us @ 1200L. So we headed back to the patrol base. The second meeting involved SFC Allen, SGT Walters, SGT Elmore an interpreter and ~~not~~ ^(origin) myself. The overall key leader engagement proved that the village harbors and supports the Taliban. We were done about 1400L. We then went to the patrol Base and waited until a storm passed. We started pushing to the next objective around 0115L.

10. EXHIBIT

11. INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 3
 PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING .STATEMENT OF TAKEN AT DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT. AND PAGE NUMBER MUST BE INDICATED.

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72. IS OBSOLETE

APD PE v1 01

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ENCL 2 to G APP - #8

Page 18 of 68

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USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

TAKEN AT ~,~A~ OL DATED ~

STATEMENT OF J't)\m '4\ ffl/f 'J

9. STATEMENT (Continued)

We arrived at our patrol base around 0330L on 8 July. Throughout our 10km march, we were having TACSAT issues. I could not reach them until later on that morning. ANA secured our patrol base ^(21km North of Minari-UGASB 006) and we hunkered down for the next two hours. I was awakened by the sounds of motorcycles near our base. I looked over the berm and saw the ANA conducting a TCP and searching folks. I noticed the same motorcycle come by two times and knew we were being watched. About 15 mins later (0615L) we had on probe into the TCP and the ANA killed the AAF (GSW to upper thigh). I believe this was their initial test b/c approx 45 minutes later, they launched a very coordinated attack against our patrol base. The major portion of their assault came from the southwest. They used small arms, RPG's, Plm, DSHK ^{jam} DSHK and IDF. SFC Allen & myself jumped over the berm to call in for CAS on the TACSAT. Within the first min, our team received the following injuries: SFC Allen GSW to the head, Medic Benson rec'd shrapnel on ^{jam} his back and SFC Morita had an RPG hit his right hand while holding his M-4 (creaking the M-4 into 3 pieces). When I noticed SFC GSW to the head, I immediately yelled for SGT Walters to come to my location and render aid to SFC Allen. While doing so, he called up for MEDEVAC & CAS. At this point while enroute to my location, SGT Walters had several RPGs launched towards him missing him by less than 1 inch. We then realized the enemy had surrounded us and had us pinned. 2x F-15s showed up about 30 mins after main assault. At this point we lost TACSAT and all I had was an MBITR radio. I got in touch w/ CAS and directed them on strafing runs and show of force runs. 30 mins later we ^{jam} also obtained ^{jam} 2 Apaches and directed them towards the known enemy locations. CAS suppressed most of the fighting initially and when the Apaches arrived, the fighting ceased. The QRF from Kusthamond showed up shortly thereafter and brought us much need water (we went black on water around 0800L 8 July). We were finally exfiltrated from our patrol base 15 minutes later.

INITIALS OF PERSON MAKING STATEMENT

PAGE d- OF

3 PAGES

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PAGE 2, DA FORM 2823, DEC 1998

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ENCL 2 to G APP - #8

Page 19 of 68

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STATEMENT OF

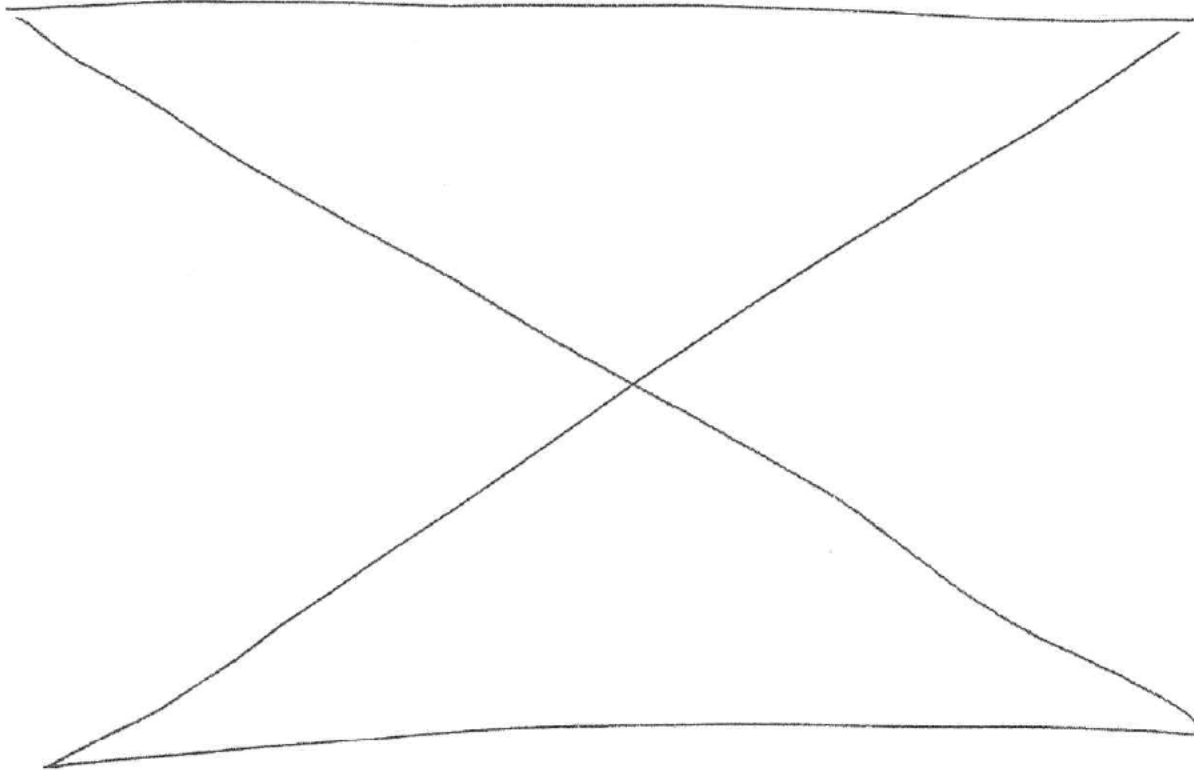
14~~

TAKEN AT ~~ R4ATED

8 July 09

9. STATEMENT (Continued)

Nothing Follows



AFFIDAVIT

I, Jo~n A. Ct14r~
STATEMENT

. HAVE READ OR HAVE HAD READ TO ME THIS

WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE ~. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[Signature]
(Signature of Person Making Statement)

WITNESSES: '7'

.SlIP-A.) f: e' I oS, \.) \ s /- L

C - l.s &- u:fA
- c 1--5"(: / . f) 'o R K'VJle., > l.P-zo.l
ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this -E- day of J~<kY...?d:JIJ

at r'J8 k U'6UJL-iO:VD

[Signature]
(Signature of Person Administering Oath)

J<:r:rS I S:-iU7C:

(Typed Name of Person Administering Oath)

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(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

PAGE 3 OF

PAGES

(Exhibit 2, CAPT John Marx, Interview questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

a. What are the facts and circumstances surrounding the SAF and RPG attack?

Attacks started from our Southwest and began with SAF, followed by RPGs and then an IDF. It was pretty much continuous for the first 30 min until CAS arrived on station and then it was intermittent between the CAS strafing and show of force runs. At one point we were surrounded by the AAF and were pinned down. (see SIR that was submitted for sequence of events)

b. How did you receive the order to execute this mission and from who?

Rec'd the order from our Brigade to move from FOB OE to Kushamond FOB on July 5th. Once on station, we were briefed by DENALI 6 (LTC Campbell) and were told that he was heading up all of the missions in that AO.

c. How much time where you allowed to plan your mission?

A few hours. Due to air assets not being available, we were unsure of our exact location prior to executing our mission.

d. Were you able to issue a plan, conduct rehearsals and PCIs prior to execution? And explain why.

- i. The only rehearsals conducted was a map rehearsal since we were unfamiliar with the land/terrain. PCIs were conducted the night prior to movement. We were also limited in the type of map that was given to us since the BSO only had 1:100K versus 1:50K. We did speak with some of the personnel that work on Kushamond regarding the lay of the land and to get any other intel.
- ii. Furthermore, we did not have a true T ACSA T system and had to rely on a can attached to an MBITR which drained a lot of the batteries that we brought with us. Direct comms were limited at best with Kushamond TOC and we had to relay through others to get comms through.

e. What was the mission and purpose of the patrol at the time of the incident? What was the pre mission briefing concerning enemy forces threats?

Our mission was to conduct KLEs and try to gather some intel on the DUSTWUN. Pre-mission brief regarding enemy forces was limited since we were told that it had been a while since any *USI* ANSF forces had been to that area. Intel briefed us that they knew it was an area that was not sympathetic to *USI* ANSF presence.

f. Was there an up to date threat analysis conducted before the mission?

See previous statement - no further info was given since they did not have any up to date intel of the area.

g. What personal protective equipment was worn by the US Servicemembers at the time of the incident? How did the injured Soldiers sustain their injuries?

All service members had their full battle rattle and weapons with them. The three injured soldiers sustained the injuries as follows:

- a. SPC Benson - GSW to buttocks
- b. SPC Morita - RPG to the shooting hand

(Exhibit 2, CAPT John Marx, Interview questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

c. SFC Allen - GSW to the head

- h. What, if any, medical treatment was provided to the US Servicemember? Were the MEDEV AC procedures timely and appropriate under the circumstances?
- a. Since our medec was hit - we provided first aid as appropriate without endangering others. Since we were mainly pinned down for cover, we could not freely move to help the others. All we could do was bandage/wrap up the wounded in our immediate area.
 - b. In my opinion, MEDEV AC too long to arrive at our location (I believe it took them about 40 min or so - please see SIR for time) They could have arrived quicker and provided air to ground fires to help us out.
1. Were the CAS/CCA procedures timely and appropriate under the circumstances?
- i. It took CAS (F-15s) 30 minutes to arrive on station and then we could not communicate directly with them for about another 10 min or so (we were later told that they (JT AC or TOC) gave the F-15s our wrong MBITR freq.
 - ii. It also took the Apaches another 15 minutes **after** the F-15s to arrive on station again way too long
- J. When was the last time you received call for fire training?
- None rec'd - I had two others on my team that did receive the training but do not know when they rec'd it last. This is a big problem as the training that was given at Ft Riley during CST only called for a rep of our URF to participate **instead of** getting all personnel trained on my URF.
- g. Did you feel you had the appropriate force ratio to conduct your mission? And explain why?
- Initially going in we felt comfortable with 52 ANA and the 6 US and since we were all spread thin due to the DUSTWUN ops in Eastern Afghanistan which made it difficult for us to get more personnel. Additionally, we would have needed more chinooks to carry more personnel - an asset that was and is extremely limited. Bottomline: we had enough personnel for the first village visit, but I think we definitely could have used more for the second village/town visit.
- i. Did anyone participating in, or having knowledge of, this mission use unsecure communications (including cell phones) up to 24-hours prior to this mission? If anyone did, describe who used the unsecure communications and for what purpose?
- Not to my knowledge - I was also told that cell phone coverage was extremely limited in that area.
- j. Did anyone communicate the movement schedule / time line to any local nationals (including ANSF, local police, local leaders, etc.)? If anyone did, describe what was communicated, to whom, and when prior to the mission?
- I spoke with the ANA Platoon leaders 6 hours prior to departing for the mission. I told them that we would be conducting a dismounted op to the south IOT conduct KLEs and gather information for the DUSTWUN. I told them that our mission would last approximately 3-4 days.

(Exhibit 2, CAPT John Marx, Interview questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

k. Is there any other Soldier who might have useful information that may be relevant to this inquiry?

a. saT Walters (located at FOB Boris)

b.1 primarily took the team NCOIC (SFC Allen) with me to all of the meetings and relied on his expertise - unfortunately he was critically injured (aSW to head)

*Note: this was not my first mission since being in country where we have been told to go outside of our AO and have not been provided adequate maps or intel in an area. I made my concerns prior to moving out of FOB OE to my Brigade and was told that Kushamond would be able to cater to my needs. Unfortunately, I don't think that Kushamond was well prepared for the influx of personnel and the logistical support needed in order for the teams to conduct their missions. Basic items such as maps and comms should have been more available for the different teams. Additionally, we were briefed by an intel person that was not used to that AO (something that should not have taken place - they should have used the FOB intel personnel to assist in briefs). Also, air assets are extremely limited which hindered our progress for movement of personnel and logistical re-supply for troops out in the field. The QRF out of Kushamond was also inadequate since they (Appro x 40 ANA w/ 5-10 US) did not have the means to get from the FOB to any location quickly since again they had to rely on air assets and the base did not have any vehicles to support them.

As a basic example: as soon as we touched down at Kushamond (5 Jul), we were not even briefed on chow times, locations for briefs, and the do's and don'ts of what and where our ANA could go within the compound.

Avmat. Jose C USA MAJ USA 1/203rd RSAC Khowst

From: John Marx [REDACTED]
Sent: Monday, July 27, 2009 9:56 AM
To: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst; Neal, John R USA LTC USAF 655
> Subject: RE: 8 July TIC (UNCLASSIFIED) >
Date: Sun, 26 Jul 2009 20:04:05 -0400 > From: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst
Subject: RE: 8 July TIC (UNCLASSIFIED)
rosé.c.aymat@afghan.swat.mil Investigation: Jul 08 Marx.doc
[REDACTED]

>
MAJ Aymat,

Attached is the word doc that I worked on today. I hope that this helps out...especially for future missions. I also want to make sure that you are aware that the team that was with me were new in country and stepped up at all levels. They deserve a lot of recognition for their bravery and for stepping into a mission with having little time in country. They were headed towards Boris when they stopped at OE and I asked for their assistance.
If there is anything else that is needed, please let me know.

Thanx

Vir

>
John Marx

>
>
>
>
>
>
> Classification: UNCLASSIFIED
> Caveats: FOUO

> CPT Marx,

> Thanks for the prompt response and I hope you and your loved ones are doing well.

> The only statement I have is SGT Walters', do you know who collected them?

>
> VIR

> MAJ Aymat

>
> -----Original Message-----

> From: John Marx [mailto:[REDACTED]]
> Sent: Sunday, July 26, 2009 5:59 PM
> To: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst
> Subject: RE: 8 July TIC (UNCLASSIFIED)

> MAJ Aymat,

> Rec'd the package...will work on it today and get it to you as soon as I can.

> Did you get a copy of the sworn statements and the SIR that we

> completed?

> I do have an AKO...it is john.a.marx~us.army.mil I > though. If hardly check it send me
you do send me something can you please > hotmail. an email on

> Thanx

> vir

> Capt Marx

>

>

>

>

> > Subject: 8 July TIC (UNCLASSIFIED) Date: Sat, 25 Jul

> > 2009 19:45:39 +0430 From:

> > jose.c.aymat@afghan.swa.army.mil To:

> > [REDACTED]

> >

> > Classification: UNCLASSIFIED

> > Caveats: FOUO

> >

> > CAPT Marx,

> >

> >

> > I'm the Officer assigned to investigate the TIC you were involved on 8th

> > of JUL. My mission is to determine the circumstances regarding the > injuries to your

> > Teammates and to come up with recommendation that

> > can potentially mitigate risk during future operations. I know this > is a bad time to get

> > this done, but I need your help. I need you to > answer the questionnaire attached IOT

> > gain a clear understanding of > the

> > events.

> > Please use the attached DA form 2823 to answer the questions

> > depicted

> > on

> > the attached questionnaire. Don't limit yourself to those questions, > use it as a guide. Let

> > me know if you have any questions, issues and or

> > recommendations. Do you have an AKO account?

> >

> > Thanks for your support and I'm truly sorry to bother you during > your leave

> >

> > VIR

> >

> >

> >

> >

> >

> > MAJ Aymat

> > AWCC: 070-600-8965

> > SVoIP: 237-7032 NVoIP:

> > Classification: UNCLASSIFIED >

> > Caveats: FOUO

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> Windows Live(tm) Hotmail(r): Celebrate the moment with your favorite > sports pics.
Check it out.
> <http://www.windowslive.com/Online/Hotmail/Campaign/QuickAdd?ocid=TXT_>TAGLM_WL_QA_HM_sports_photos_872889&cat=sports>
> Classification: UNCLASSIFIED
> Caveats: FOUO
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Windows Live™ Hotmail®: Celebrate the moment with your favorite sports pics. Check it out.
<http://www.windowslive.com/Online/Hotmail/Campaign/QuickAdd?ocid=TXT_TAGLM_WL_QA_HM_sports_photos_072009&cat=sports>

Exhibit 3

WITNESS BASUN Kishore TAKEN AT Roshmond COB DATED 20092708

9. STATEMENT (Continued)

ii/1 of i.v. IAC Fire was Directed AT The position's we (us) had taken up. As The First Rounds came in Sgt Elmiré went to The southern side of ii/1, to help out The AHA there, I went to The west to get A Scoped Weapon on THAT AREA, AS I RETURNED FIRE 2 Rpg's went off AT THE POSITION THE FIRST EXPLODED 10 FEET TO MY LEFT, THE SECOND WENT OFF LESS THAN 2 FEET TO MY LEFT. AS I WAS RELOADING I TURNED BACK BEHIND ME & SAW CPT MURPHY SEE MARK ALLEN JUMP OVER THE BARRICADE. AS HE WAS BEHIND ME I OBSERVED HE MARK ALLEN GET SHOT IN THE HEAD. A THIRD Rpg EXPLODED LESS THAN 10 FEET FROM MY HEAD. I SAW THAT HE WAS SHOT. AS I BANDAGED HIS HEAD I HEARD THAT ONE MORE (BROWN) & ONE US (MORITON) WERE SHOT OVER THE BARRICADE. WE WERE FIGHTING 360° WE CAME ON STATION AFTER WE HAD AIR ASSET, THE 3 STAYED THAT WAY UNTIL OUR AIR LIVERED.

The Enemy kid on motor bike was 2 1/2 miles from supportive village. When we left PB at OTO Khayl we were broke on water. The enemy kid on motor bike was 2 1/2 miles from supportive village. When we left PB at OTO Khayl we were broke on water.

AFFIDAVIT: I, Basun Kishore, do hereby certify that I have read or have had read to me this statement

WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 1. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME, THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE OR UNLAWFUL INDUCEMENT.

WITNESSES:

Basun Kishore (Signature of Person Making Statement)

John J. Mac (Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

John J. Mac
FOR DE ANA ETI

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

Basun Kishore

PAGE 3, DA FORM 2823, DEC 1998

Basun Kishore (Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to

administer oaths, this 27 day of August, 2009, at Roshmond, COB.

John J. Mac (Signature of Person Administering Oath)

John J. Mac (Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

PAGE 3 OF 3

PAGES
APO PE v1.01

(Exhibit 4, SOT Jason Walters, Questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

- a. What are the facts and circumstances surrounding the SAF and RPG attack? We were stuck in our pb waiting on a resupply of water (we had been black on water for several hours, and had advised kushmond toc about that before we even moved from our pb outside of out khey1 to our final pb outside monari a 14 klick movement we were told we had priority when air was able to fly again) when we reached the pb at 0330 we asked about resupply and was told 0600, well 0600 passed, we took contact at 0630 suppressed the threat (see sworn statement) called about resupply again and informed kushmond toc that we were out of water and could not move from our present location and were being probed, they told us that resupply would be at 0800, at 0815 I called up toc and was told another time, after getting off the radio we had about another five (5) min of calm then all hell broke lose.
- b. How did you receive the order to execute this mission and from who?
We were told at 1700 to be prepared to move out for a softknock and kle at 0200.
From COL. Campbell.
- c. How much time where you allowed to plan your mission?
Less then nine (9) hrs
- d. Were you able to issue a plan, conduct rehearsals and PCIs prior to execution? And explain why. Cpt Marks, Sfc Allen, the rest of the team and the A.N.A commander came up with a plan, we talked about actions on the objective then, we conducted PCCs and PCIs then moved. There are no rehearsals for a softknock and kle.
- e. What was the mission and purpose of the patrol at the time of the incident? The mission was a soft knock search and kle
- f. What was the pre-mission briefing concerning enemy forces threats? The only intel we got was that out khey1 was "friendly"
- g. Was there an up to date threat analysis conducted before the mission? NO!!
- h. What personal protective equipment was worn by the US Servicemembers at the time of the incident? Mitch helmets, eye pro, iotv wi all plates
- i. How did the injured Soldiers sustain their injuries? Sfc Allen (team leader) was shot in the head while moving to cover, Cpl Morita was injured when his m-4 took a direct hit from a rpg, Spc Benson (medic) was injured by shrapnel and was shot in the buttocks
- J. What, if any, medical treatment was provided to the US Servicemember? Spc Benson bandaged Cpl Morita's hand, and I put a pressure dressing around Sfc Allen's head, and the A.N.A's medic treated Spc Benson
- k. Were the MEDEV AC procedures timely and appropriate under the circumstances? I don't really understand the question, however even though it took well over a hour for

(Exhibit 4, SGT Jason Walters, Questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

medevac to appear (the pilot was orbiting outside our ao waiting for the lz to cool down for over thirty (30) minutes, yet kushmond toc was not listening to me as I was calling in that we had a lull in the fighting and need to get that bird in there at that time) if it wasn't for the flight medics Sfc Allen wouldn't have made it to Sharona (the pilot's decide to take the chance and landed, picked up our three (3) D.S W.I.A and our three (3) A.N.A W.I.A

1. Were the CAS/CCA procedures timely and appropriate under the circumstances? Timely I don't really know, what I do know is that when both the fast movers and the medevac came on station we had no comm's with them for over 15min because kushmond toc gave them the wrong freq to reach us on. After they pushed down to the correct freq Cpt Marks was able to control the air strikes

m. When was the last time you received call for fire training? A week prior to the tic

n. Did you feel you had the appropriate force ratio to conduct your mission? NO!!!!!! And explain why? We were sent into two (2) villiages with grossly inadequate, out dated intel (we were told that the cfhadn't been to out khey1 in over a month, and hadn't been to monari in over a year!!!) with a force of fifty-two (52) A.N.A, six (6) D.S and one (1) interpreter

o. Did anyone participating in, or having knowledge of, this mission use unsecure communications (including cell phones) up to 24-hours prior to this mission? If anyone did, describe who used the unsecure communications and for what purpose?NO!!

p. Did anyone communicate the movement schedule / timeline to any local nationals (including ANSF, local police, local leaders, etc.)? If anyone did, describe what was communicated, to whom, and when prior to the mission?NO!

q. Is there any other Soldier who might have useful information that may be relevant to this inquiry? Yes CPT John Marks (US Airforce) currently in the states on leave, Sgt Travis Elmore (US Army), Cpl Morita US Army (currently in the states getting treatment for wounds received in this tic) and Spc Benson US Army (currently in the states getting treatment for wounds received in this tic)

And SFC Mark Allen US Army (currently in the states in a comma getting treatment for wounds received from this tic)

- While planning for this mission Cpt Marks, Sfc Allen and myself went to the toc and asked about a fires plan. We were told that all we needed to do was call the toc and they would give us fire support. When we asked about predesignated target's we were told there were none and again all we had to do was call the toc and they would support us. The entire time we were in contact and I was requesting then demanding then finall y begging for cas, medevac, qrf, and exfil kushmond toc kept telling me that our water resupply would be delivered shortly, they even went as far as telling us to assault the village, when I informed them that A. A.N.A advised infil of another fifty (50) men before they would even consider this action and B. that we were surrounded and pinned down, kushmond toc again advised me that the water resupply was going to be delivered shortly. When they finally told me that qrf was enroute (I had been requesting them since 0845, they didn't get to our position untill 1245) but that we couldn't exfil on the birds that bring them in because they were also caring our resupply and had to drop off the qrft then fly to kushmond down load the water then fly back to the lz to exfil all of my A.N.A and the surviving U.S.
- The next day my first sergeant I SGT Richard Smith, and two others were flown in. Col Campbell came to our tent and told us that we were to get ready to conduct a soft knock search, kle and get a status on the same area we had just left. My Isgt told him that he didn't think that was a smart plan and that without a

(Exhibit 4, SGT Jason Walters, Questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

five (5) paragraph warning order, and a fire plan we were not going out on that mission. Col Campbell said that "if that's the attitude that you're going to have then you might as well leave" During the time he was talking to us he started to blame the events of the day prior on the team, at that point I told him that what had happened was not our fault and if the team would have listened to the men fighting on the ground we wouldn't have been as bad off as we were. To this Col Campbell said "I was in the tent you weren't, there was nothing wrong with how we handled our end" at this point I left the tent. THE WAY THE BATTLE SPACE OWNERS ARE TREATING E.T.T AND A.N.A IS APPALLING, THEY TREAT US LIKE A RED-HEADED STEP CHILD WHOSE ONLY PURPOSE THERE IS TO BE USED AT THEIR CONVIENCE AND FOR THE MISSIONS THEY DON'T WANT TO RISK THEIR OWN MEN ON!!!!

Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst

From: Walters, Jason R SGT NG NG FORSCOM Uason.walters@us.army.mil]
Sent: Sunday, August 02, 2009 5:16 PM
To: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst
Subject: Re: 8 jul TIC sworn statements (UNCLASSIFIED)
Attachments: Questionnaire.doc

Sir,
Sorry it took so long to get to you. if there are any more questions just call, hope this helps Sgt Walters

Exhibit 5

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 use Section 301; Title 5 use Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

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10. EXHIBIT 11. INITIALS OF PERSON MAKING STATEMENT 11
~ / PAGE 1 OFD..... PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF TAKEN AT DATED
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT. AND PAGE NUMBER
MUST BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

Elmore, Travis

DATED 2009 0708

on him which he ended up dying anyway. After all that excitement I sat down to eat some chow w/ CPL Morita and Doc Benson. After I was done I got up to put the trash away and came back over and sat down. All of a sudden we took small arms fire from somewhere so I combat rolled down to the little tree for concealment and cover from the berms on all four sides. I heard the ANA firing from our west south west so I headed that direction while rounds were just about my head. Then I heard an explosion from my rear which I assume was an RPG. ~~then I heard an explosion from my rear~~ Then I heard 2 more after that that was close by me as I was hunkering to the ANA that was engaging. I got half way there when I was hearing accurate small arms fire so I took cover behind a little tree that was there. I was pinned down for about 3 minutes then as it became lighter I continued to the front. When I got to the front they were putting down suppressive fire and shooting RPGs. The enemy were well hidden and well covered. I unloaded a mag trying to stop them, accurate fire which it didn't. So I tried to direct the ANA which they couldn't not understand me. The firing became sporadic I heard Morita calling for me. He didn't know whether or not I was ok. That's when I found out him & Doc Benson had been hit. I ran to him & saw he & Doc was already bandaged and CPT Mark was on the radio calling for air support. Sgt Walters attended me the SFC Allen had been hit in the head so we tried to get him back to more cover. We all hunkered down between two berms or maybe a ditch while Sgt Walters was on SATCOM and the Capt was talking to air support. The medevac came in which we loaded the wounded 3 US, 3 Afghan. Then GRF came then we got out.

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J PAGE 1 OF.a PAGES

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ENCL 2 to G APP - #8
Page 35 of 68

(Exhibit 6, SSG Travis S. Elmore, Questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

- a. What are the facts and circumstances surrounding the SAF and RPG attack?
- b. How did you receive the order to execute this mission and from who?
- c. How much time were you allowed to plan your mission?
- d. Were you able to issue a plan, conduct rehearsals and PCIs prior to execution? And explain why.
- e. What was the mission and purpose of the patrol at the time of the incident? What was the pre-mission briefing concerning enemy forces threats?
- f. Was there an up to date threat analysis conducted before the mission?
- g. What personal protective equipment was worn by the US Servicemembers at the time of the incident? How did the injured Soldiers sustain their injuries?
- h. What, if any, medical treatment was provided to the US Servicemember? Were the MEDEV AC procedures timely and appropriate under the circumstances?
- i. Were the CAS/CCA procedures timely and appropriate under the circumstances?
- J. When was the last time you received call for fire training?
- g. Did you feel you had the appropriate force ratio to conduct your mission? And explain why?
- i. Did anyone participating in, or having knowledge of, this mission use unsecure communications (including cell phones) up to 24-hours prior to this mission? If anyone did, describe who used the unsecure communications and for what purpose?
- j. Did anyone communicate the movement schedule / time line to any local nationals (including ANSF, local police, local leaders, etc.)? If anyone did, describe what was communicated, to whom, and when prior to the mission?
- k. Is there any other Soldier who might have useful information that may be relevant to this inquiry?

Exhibit 6

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: PRINCIPAL Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

LOCATION

FOB Boris/Bermel

6. LAST NAME, FIRST NAME, MIDDLE NAME

Elmore, Travis, Scott

8. ORGANIZATION OR ADDRESS

2/2 ETT Bravo Company 2-121

9.

I, Travis Scott Elmore

DATE (YYYYMMDD)

2009/07/27

13. TIME

1200

4. FILE NUMBER

7. GRADE/STATUS

E6

, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

The facts and circumstances surrounding the SAF and RPG attack is that my our team was set up at a patrol base outside the village we were suppose to do soft knocks and ask questions about the missing american. We got to our patrol base at 330 that morning of july 8th and the ANA set up a perimeter with security and cleared some calotteson our way into the patrol base. Captain Marx said he would take first shift on the radio. I went to sleep only to be awoken by gunfire and CPT Marx telling me that the ANA was engaging a guy on a motorcycle. Everyone woke up and put on their gear and tried to figure out what was going on. This happened at about 0600 i think. The ANA wounded the guy on the motorcycle and began treating him. This is the same person we saw fleeing the first village we went to less that 24 hours prior. The combatant ended up dying from his wounds, The ANA carried him into our patrol base and CPT Marx took photos of him. We were still waiting on a resupply that was suppose to be dropped but kept getting pushed back. We kept telling them we had been black on water since midnight and tried to get resupplied before we even stepped off for the second village but was denied. Not to mention that we had to call in our grid several times because they werent tracking us and to find out later that their S2 or intel guys had no idea that we were even going to that area. Anyways, I had just finished my last MRE and put it back in my assault pack and went back to the east side of our patrol base. I had just sat down when we started taking small arms. I did a combat roll and started IMT to the otherside of the patrol base where the fire was coming from. The Capt was already on the radio because the time had past when the resupply should have been dropped off. As I was making my way over to the other side thats when the RPGs started to be fired and with great accuracy and it seemed like they were only targeting U.S. forces. When I finally got to the others ide i returned fire and tried to direct the ANA into better positions. We recieved the order of execution by mouth. I was told by CPT Marx and SFC Allen of the mission. I assume LTC Campbell told them of the mission but you would have to ask CPT Marx. We were told to do soft knocks in the two villages that we went to. There was no OPORDER or intel brief. We did our own planning in which I was point and in charge of getting to the villages. We conducted PCIs which was checked by SFC Allen. The time allowed was no more than 8 hours before the mission itself. We did our planning and stepped off the fob at 0300 or 330. There was no up to date analysis before the mission. They tried to send us out to the same village again and thats when we were told that they expect 150 taliban fighters in that village. I recieved call for fire training more times than i can count on the account that i my MOS is 11 C and the last time I had it was at Camp Pheonix and that was a week before the mission. I felt like we did have the appropriate force ratio until they tried to send us back out and told us that they expect 150 tali ban in that area then i was like what in the hell were we doing out there the first time with 50 ANA and just 6 ETT. The guys that got injured all had their gear on. SFC Allen was hit in the head because of a lucky shot the skimmed the brim of the helmet and entered his head. I Believe That CPL Morita took a direct hit from and RPG because his weapon was blown to pieces in which we have pics of and his injuries indicate his hands were on his weapon. Spc Benson was right beside Morita when this happend which caused his injuries if not from another RPG. Everyone was treated appropriatly to the best of my knowledge but i feel that the MEDEV AC should have been quicker and CAS definitely should have been quicker. No one communicated our schedule or movement prior to the mission atleast from our side of things. There was no timeline to our movements once we left the FOB, Our timeline was when our soft knocks were finished we would rest a little and then move out.

10. EXHIBIT

11. INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF

2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF TAKEN AT DATED THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

Exhibit 6

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF Travis Scott Elmore

TAKEN AT

DATED

9. STATEMENT (Continued)

There is one last thing I would like to say. If the landowners knew that there were 150 taliban fighters in that town before we conducted our mission then we should have never went out there in the first place and we would not have lost three of our guys in the process. that is the only thing that I am upset about. The Army never fights unless the have 3 to 1 odds and that definitley isnt the case in this situation. Especially when they tell you that they expect 150 tali ban fighters in the same town you got hit in and didnt get that information bfore the previous mission. We didnt have the man power and and that was the first mission that our ETT team has ever conducted with an ANA element. I dont know about Cpt Marx but for the rest of us we got tasked out in a hey you, take this ANA and do a Dust. We didnt even make to our own FOB yet and met our ANA that we are suppose to be mentoring before that mission went down.

INITIALS OF PERSON MAKING STATEMENT

TSE

.1 PAGE 2 OF 2 PAGES

Aymat. Jose C USA MAJ USA 1/203rd RSAC Khowst

From: Elmore, Travis S SGT RES USAR USARC [travis.elmore@us.army.mil]
Sent: Saturday, August 01, 2009 7:32 PM
To: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst
Subject: Re: 8 July TIC (UNCLASSIFIED)
Attachments: TIC.xfdl

Importance: High

Here is the sworn statement. If there is anything missing just give me a call. Sorry it took so long the computers here are horrible and so much stuff going on.

Original Message -----

From: "Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst" <jose.c.aymat@afghan.swa.army.mil> Date: Saturday, July 25, 2009 19:26
Subject: 8 July TIC (UNCLASSIFIED)
To: travis.elmore@us.army.mil

> Classification: UNCLASSIFIED >
> Caveats: FOUO

>
> SGT Elmore and SGT Walters,
>
> I'm the Officer assigned to investigate the TIC you were involved on
> 8th of JUL. My mission is to determine the circumstances regarding
> the injuries to your Teammates and to come up with recommendation that can potentially
> mitigate risk during future operations. I know you
> are very busy trying to manage 300 different task and then some, however I need your help. I
> need you to answer the questionnaire attached IOT gain a clear understanding of the events.
> Please use the attached DA form 2823 to answer the questions depicted on the attached
> questionnaire. Don't limit yourself to those questions, use it as a guide. Let me know if you
> have any questions, issues and or recommendations.

>
>
>
> Thanks for your support

> VIR
>
> MAJ Aymat
> AWCC: 070-600-8965
> SVoIP: 237-7032 NVoIP:
> 237-6220

> Classification: UNCLASSIFIED Caveats:
> FOUO

>
>

(Exhibit 7, LTC James Shuto, Interview questionnaire, AR 15-6 Investigation - Injury to SFC Mark Allen, a CJTF-PHX Soldier on 8 July 2009, in Paktika Province, District of Deela.)

a. What are the facts and circumstances surrounding the TIC on the 8th of July?

On 4 July 2009, the 2nd Brigade, 203 Corps ANA and their ETTs were ordered to Kushamond to assist in finding the whereabouts of the missing U.S. Soldier (DUSTWUN). On 6 July 2009, 3-2 ANA Soldiers and ETT members were assigned to patrol in vicinity of the village of Monari or Monaray (two different spellings exist) (Grid VB 256006)

b. Who directed the Tm to execute the mission on the 8th of July?

1-40 Cav in support of DUSTWUN operations.

c. Who approved the task organization of the team?

I, LTC Shuto, approved the task organization after discussion with Capt Marx, the Senior ETT officer. The new ETT Soldiers had less than 24 hours of a RIP and had no working knowledge of the AOR, operations or of the ANA Soldiers and interpreters. Also, the new ETT Soldiers did not know the capabilities of the ANA and interpreters.

After Capt Marx left FOB Kushamond, I was informed by LTC Pete Molin (ARSIC-E J3) that Capt Marx "could not participate" in this mission. I called ARSIC-E and discussed the situation. On 7 July 2009 at 1550 hours, I spoke with LTC Molin. He told me, per COL Steven Altman (ARSIC-E, Commander) that Capt Marx, "can finish the mission and upon completion, return to Orgun- E". I acknowledged.

d. How much time were they allowed to plan the mission?

They had a little over 24 hours to plan the mission.

e. What was the Task and purpose of the patrol at the time of the incident?

The Task and Purpose was to conduct a "soft knock" with the local populace and gather intelligence to find the DUSTWUN.

f. Was there an up to date threat analysis conducted before the mission?

To my knowledge there was at least one (1) threat analysis given the night before.

g. Is there any other Soldier who might have useful information that may be relevant to this inquiry?

Capt Marx and SGT Walters

Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst

From: Shuto, James T, USA, LTC, USA, 2/203rd Sharana
Sent: Saturday, August 01, 2009 4:34 PM
To: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst
Subject: FW: TIC 8 July (UNCLASSIFIED)
Attachments: Questionnaire 2.doc

MAJ Aymat,
I hope this helps you.

LTC Shuto

vir
James T. Shuto
Lieutenant Colonel
Senior Mentor for 2nd Bde, 203rd Corps ANA

DSN 237-6392
james.t.shuto~afghan.swa.army.mil

-----Original Message-----

From: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst Sent:
Friday, July 31, 2009 4:06 PM
To: Shuto, James T, USA, LTC, USA, 2/203rd Sharana Subject: TIC 8
July (UNCLASSIFIED)

Classification: UNCLASSIFIED Caveats:
FOUO

Sir,

I'm tasked to conduct an Informal investigation to determine the circumstances regarding the injury to SFC Mark Allen on 8 July 2009. In an effort to identify the facts and circumstances surrounding the TIC I would like to request your assistance. Please answer the attached questionnaire.

vir,
MAJ Jose C. Aymat
RCAC-E, G3 Mentor DSN:
(318)237-6220 SVoIP:
237-7032

Classification: UNCLASSIFIED Caveats:
FOUO

Exhibit 8

Avrnat, Jose C USA MAJ USA 1/203rd RSAC Khowst

From: Persley, Michael J USA CPT USA 48th BCT CJTF Phoenix
Sent: Wednesday, August 05, 2009 12:24 PM
To: Aymat, Jose C USA MAJ USA 1/203rd RSAC Khowst
Subject: Information requested (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

Sir,

The soldiers injured in the fight near Kushmond arrived at FOB Orgun-E on 3 July 2009. A tasking came from the RCAC command for 50 ANA soldiers to go to Kushmond in support of the DUSTWUN operation on 5 July 2009. CPT John Marx was the only ANA ETT member to go with the team and I decided to send five of my soldiers to support him on the mission. They left on the afternoon of 6 July 2009 and I didn't hear from them until their contact on 8 July 2009.

If you need any further information please contact me and I will provide it for you. Thanks.

Michael J. Persley CPT,
IN
FOB Orgun-E 431-0053
sipr 431-8044 nipr

This isn't a perfect place...it's Afghanistan

Classification: UNCLASSIFIED Caveats:
FOUO



DEPARTMENT OF THE ARMY
HEADQUARTERS, ARSIC-EAST
COMBINED JOINT TASK FORCE PHOENIX
FOB LIGHTNING, GARDEZ, AFGHANISTAN
APO AE 09354

RCAC-E

5 August 2009

From: Commanding Officer, RCAC-E


To: Department Head, Surgical Inpatient Ward, 5 East, National Naval Medical
Center, Bethesda

Subj: AUTHORIZED PERSONNEL TO OBTAIN MEDICAL UPDATES FOR SFC Mark
Allen

1. The following Officer is authorized to receive medical information on Soldiers attached to 1-
121 IN Battalion for the purpose of execution of the military mission and determining fitness for
duty.

<u>RANK</u>	<u>NAME</u>	<u>TITLE</u>
MAJ	Jose C. Aymat	Investigating Officer

2. If you have any questions or require additional information, please e-mail LTC Peter C.
Molin, Executive Officer, peter.c.molin@afghan.swa.army.mil.


TERRY ETHRIDGE
COL, AV
Commanding

3-2 ETT TIC (080700Jul09)

0640: Rogue 6 informs Seminole Main of direct fire w/ small arms IVO VB 2567 0063 . Rogue 6 discovered 1 enemy KIA at location.

0700: Rogue 6 advises Seminole Main that they are black on water and food. Relayed to FOB Kushmond TOC. Kushmond TOC advises Rogue 6 will be resupplied within Within the hour (Halo delayed in Kabul0

0850: Rogue 6 receives contact and reports being completely surrounded. ANA refuses to Move b/c of heavy volume of enemy. Location VB 2567 0063

0859: Rogue 6 reports 3 US WIA (1 head wound) status Critical

0900: CAS request sent / Rouge 6 advises contact from their west/ marked their location w/ VS-17 panel in NE corner of position/ Rouge 6 advises all communications are down except EMBITR. Only communication w/ Seminole Main.

0910: Rogue 6 advises aircraft flying overhead (Dude01 CCA). Medevac request sent to Kushmond TOC/ Rouge 6 request air strike 200m East of their position.

0920: ETA of CAS 10min(Dude01)/ Rouge 6 advises ammo status will be black In 10 mins.

0925: Rogue 6 requests a fire mission 350m West of his location in a Kalot. Rogue 6 has No more communications with Dude01 CCA

0935: Rouge 6 request Ammo resupply: 5,000 rds 7.62, 100 rds RPG, 5,000 rds RPK. Seminole Main advised that attack air (call sign Outbreak01 and Outbreak 04) ETA is 35 mins.

0940: ODA and an Apache Cav Scout PLT are reported to b enroute to Rouge 6's location/ Rouge 6 advises he sees 2 Blackhawks (medavacs) and 1 fix wing (CCA).

0955: 2 Medavacs land at Rouge 6's location/ Outbreak element makes commo contact with Rouge 6.

1000: Denali 6 calls Cpt. Crane for SitRep

1005: 1-Geronimo loading QRF (ODA/ Apache PLT/ Medics) in a CH-47 at Sharana.

1010: 3 US and 3 ANA soldiers loaded on Medavacs and sent to Sharana.

1020: QRF advises ETA to Rouge 6's location to be 6 mins.

1045: QRF arrives on location and secures site/ Medavac arrives at Sharana

1100: 3 US WIA sent from Sharana to BAF: Allen [REDACTED] and Bensin [REDACTED] Morita [REDACTED] /
Allen received head trauma/ Bensin received shrapnel to lower back/ Morita US
hand injury and 3 ANA soldiers left in Sharana

1150: 3 WIA ANA awaiting ANA to pick them up and decide whether or not to send
Them back to Kushmond.

1213: All QRF and 3-2 returned to base IOT refit and await remission.

TIC VB 2567 0063 (PAKTIKA IVO KUSHMAND)

TIME APROX for TIC 0945L (MEDEVAC Landed @ Sharona 1123L)

2/2/203 – Bermel ETT led by CPT Marx (Rouge 6)

Notes:

Team was on a mission ISO Operation Yukon Recovery with ANA element to clear a local qalat.

Patrol went black on H2O and had a soldier suffer dehydration

Patrol was being probed by motorcycles and LN in vicinity of qalat, ANA refused to go further without more troops

Patrol began to take sustained SA / Mortar / RPGs fire, team medic was wounded on initial engagement

FF were surrounded and sustained two more US WIA

ANA soldiers were armed with RPGs and RPKs

FM radio was damaged in the engagement, degraded commo throughout entire operation

Team did not have comms with any US units, finally able to reach Sharona CP and communicate with CPT Crane

CAS was called in (team was black on ammo) and supported team until TIC was Complete

WIA were medevaced to Sharona and BAF by priority

ODA and QRF from 1/509 were on scene to exfill patrol

WIA

SFC Allen (GSW Head)

SPC Bensin (Shrapnel lower back)

SPC Morita (hand / partial amputation of thumb index finger)

CPT Justin Ririe

8 July 2009 / 1154I

TITLE: ACCIDENT REPORT/SERIOUS INCIDENT REPORT (SIR 4479)**REPORT NUMBER: 189-005**

GENERAL INSTRUCTIONS: Use to convey flash traffic to the commander and command post relating to an accident or serious incident within the compound. Use FLASH precedence on CMD nets. For all other stipulations and instructions refer to AR 190-45 (Law Enforcement Reporting) and AR 385-40 (Accident Report).

LINE 1 - **DATE AND TIME** 08JULY 2300L
(DTG of Report)
LINE 2 - **UNIT** ARSIC-E ETT 2/2/203
(Unit Making Report)
LINE 3 - **CATEGORY** CAT 1
(Category 1 or 2)
LINE 4 - **TYPE** ENEMY ENGAGEMENT 3 US WIA
(Type of incident)
LINE 5 - **TIME OF INCIDENT** 08JULY 1145L
(DTG of incident)
WEEKEND/HOLIDAY NO
(Indicate YES or NO and Include Holiday Name)
LINE 6 - **LOCATION** PAKTIKA VB 25670063
(UTM or Six Digit Grid Coordinate with MGRS Grid Zone Designator)
LINE 7 - **PERSONNEL WIA**
(Personnel Involved)

a. (SUBJECT)

(1) Name, Injury, Fatality	1. ALLEN, MARK, GSW HEAD
(2) Pay Grade	2.E-7
(3) SSN	3. [REDACTED]
(4) Race	4.CAUCASION
(5) Sex	5.MALE
(6) Age	6.UNKNOWN
(7) Position (CDR, PSG, Gunner)	7.ASST TM CHIEF
(8) Security Clearance	8.NONE
(9) Unit, Station, and MACOM Assigned	9.B 2-121
(10) Duty Status (Leave)	10.NG

b. (VICTIM)

(11) Name, Injury, Fatality	1. MORITA, JONATHON, HAND INJURY
(12) Pay Grade	2.E-4
(13) SSN	3. [REDACTED]
(14) Race	4.CAUCASION
(15) Sex	5.MALE
(16) Age	6.UNKNOWN
(17) Position (CDR, PSG, Gunner)	7. CO MENTOR
(18) Security Clearance	8.NONE
(19) Unit, Station, and MACOM Assigned	9.B 2-121
(20) Duty Status (Leave)	10.NG

c. (VICTIM)

Name, Injury, Fatality	1. BENSON, CHARLES, SHRAPNEL BACK
(20) Pay Grade	2.E-4

LINE 15N - NEAREST COMMERCIAL AIRFIELD
(Name, Town, State)
LINE 15O - TYPE OF EQUIPMENT
LINE 15P - AC SERIAL NUMBER
(Serial, Tail Number)
LINE 15Q - TYPE MISSION
(Training, Single Ship, Multi-Ship)
LINE 15R - MAP OF THE EARTH
(Yes or No)
LINE 15S - FLIGHT RULES
(VFR/IFR)

(21) SSN
(22) Race
(23) Sex
(24) Age
(25) Position (CDR, PSG, Gunner)
(26) Security Clearance
(27) Unit, Station, and MACOM Assigned
(20) Duty Status (Leave)

3. [REDACTED]
4. CAUCASION
5. MALE
6. UNKNOWN
7. CO MEDIC
8. NONE
9. B 2-121
10. NG

LINE 8 -

PUBLICITY

LINE 9 - (Adverse or Anticipated Publicity)

LINE 10 - **COMMANDER**

(Commander Reporting)

COL WINSTEAD

LINE 11 - **POC**

(Unit POC/Duty Position)

COL WINSTEAD 318-237-7031

LINE 12 - **DOWNGRADE**

(Downgrading Instructions)

N/A

LINE 13 - **NARRATIVE**

(Free Text for Additional Information
Required for Clarification of Report)

DETAILED SIGACT ATTACHED

LINE 14 - **AUTHENTICATION**

(Report Authentication)

LINE 14A - **POC**

(Email, Phone, DSN)

LINE 14B - **MACOM**

(TRADOC, FORSCOM, USAREUR)

LINE 14C - **ACCIDENT CLASS**

(GRND/AC - A or B, AC - C)

LINE 14D - **WEATHER**

(Visibility, Light Level, Precipitation, Wind)

LINE 14E - **NIGHT VISION DEVICE**

(Yes, Type, Nomenclature)

LINE 14F - **MILITARY INSTALLATION**

(Nearest Site)

LINE 14G - **EXPLOSIVE, HAZARDOUS MATERIAL**

(Involved: Yes or No, Secured: Yes or No)

LINE 14H - **ACCIDENT SITE SECURED IAW AR 385-40**

(Yes or No)

LINE 14I - **ACCIDENT SITE DISTURBED**

(Yes or No)

LINE 14J - **PHOTOS OF DISTURBING SCENE**

(Yes or No)

LINE 14K - **FLIGHT DATA RECORDER INSTALLED**

(Yes or No)

LINE 14L - **LOCAL ACCIDENT INVESTIGATION BOARD APPT**

(Yes or No)

LINE 14M - **NEAREST AIRFIELD**

(4000 Ft. Min. Runway)

LINE 14N - **NEAREST COMMERCIAL AIRFIELD**

(Name, Town, State)

LINE 14O - **TYPE OF EQUIPMENT**

LINE 14P - **AC SERIAL NUMBER**

(Serial, Tail Number)

LINE 14Q - **TYPE MISSION**

(Training, Single Ship, Multi-Ship)

LINE 14R - **NAP OF THE EARTH**

(Yes or No)

LINE 14S - **FLIGHT RULES**

(VFR/IFR)

TITLE: ACCIDENT REPORT/SERIOUS INCIDENT REPORT (SIR)
REPORT NUMBER:

GENERAL INSTRUCTIONS: Use to convey flash traffic to the commander and command post relating to an accident or serious incident within the compound. Use FLASH precedence on CMD nets. For all other stipulations and instructions refer to AT 190-40 (SIR) and AR 385-40 (Accident Report).

LINE 1 -	DATE AND TIME (DTG of Report)	111045LJuly2009
LINE 2 -	UNIT (Unit Making Report)	3/2/203 ETT / ARSIC-E
LINE 3 -	CATEGORY (Category 1 or 2)	
LINE 4 -	TYPE (Type of incident)	Complex Ambush
LINE 5 -	TIME OF INCIDENT (DTG of incident)	080700LJuly2009
	WEEKEND/HOLIDAY (Indicate YES or NO and Include Holiday Name)	
LINE 6 -	LOCATION (UTM or Six Digit Grid Coordinate with MGRS Grid Zone Designator)	42S VB 256 006
LINE 7 -	PERSONNEL (Personnel Involved)	ANA ETTs (Capt Marx, SFC Allen, SGT Walters, SGT Elmore, SPC Morita and SPC Benson), 3 rd Kandak, 2 nd Brigade, 203 rd Corps (52x ANA soldiers from 1 st Coy)
	a. (SUBJECT)	N/A
	b. (VICTIM)	N/A

*** Repeat lines 7a (1-10) through 7b (1-10) up to four times to transmit multiple data sets. Assign sequential line numbers to succeeding iterations; for example, first iteration a (1) through a (10) or b (1) through b (10); second iteration a (11) through a (20) or b (11) through b (20); third iteration a (21) through a (30) or b (21) through b (30); fourth iteration a (31) through a (40) or b (31) through b (40).*

LINE 8 - **SUMMARY**
(Summary of incident)

At 0645L, we called up to HHQ stating we were taking SAF at VB 25679 00648. The ANA returned fire, and AAF quickly broke contact. ANA approached enemy position and found 1xEKIA 100m from their position. Shortly there after we began getting probed by several individuals on bikes from all sides.

At 0900L we reported taking heavy SAF and IDF at VB 25679 00648. Estimated 50 x AAF firing at our element from hilltop, buildings, and various locations surrounding our element.

At 0906L we called in MEDEVAC request for 3 Urgent pax. 1 x US with GSW to head and 2 pax status unknown. At 0908L MEDEVAC was updated to 3 x Urgent US Pax. Between 0908L and 0946L we continued to report sporadic fire from AAF riding on motorcycles circling our position. Our element again reported that we were black on water and food (black on water since 0000L on 8 July 09).

CAS (DUDE01[F-15]) on station at approx 0930L, conducts strafing run, and confirms 1 x EKIA. MEDEVAC arrived at approx 0946L. They picked up 3 x US and 3 x ANA. At 0948L LLVI Kushmond picks up traffic station AAF has visual on MEDEVAC. At 0950L MEDEVAC WU and heads to SHR

FST.

2xCH47s inbound for Kushmond [QRF = 1/A/1-40CAV, ODA3113, and 32 pax Commandos] WD at Kushmond at 1042L. QRF arrived at TIC site with resupply of water. QRF stated no enemy contact and secures HLZ to exfil our element (ROGUE). We are brought back to Kushmond via Air and treated for several heat casualties and minor injuries. QRF discovers and reports several tunnels in the Qalats in the area and Apaches on station destroy the entrances after the QRF is exfired. QRF is air transported back to COP Kushmond at 1139L.

Summary: (3x US WIA/3 x ANA WIA/ 2 x EKIA)

LINE 9- **COLLATERAL DAMAGE ASSESSMENT**
(LN Personnel and Property)

LINE 10 - **PUBLICITY**
(Adverse or Anticipated Publicity)

LINE 11 - **COMMANDER**
(Commander Reporting)

Capt John Marx

LINE 12 - **POC**
(Unit POC/Duty Position)

Capt John Marx, FOB OE ANA ETT S3 Mentor

LINE 13 - **DOWNGRADE**
(Downgrading Instructions)

LINE 14 - **NARRATIVE**
(Free Text for Additional Information Required
for Clarification of Report)

LINE 15- **AUTHENTICATION**
(Report Authentication)

ACCIDENT SUPPLEMENT (GROUND(GRNG)/AIRCRAFT (AC))

LINE 15A - **POC**
(Email, Phone, DSN)

Capt John Marx. 3-2-203 ETT S3 Mentor
John.a.marx@afghan.swa.army.smil.mil

LINE 15B - **MACOM**
(TRADOC, FORSCOM, USAREUR)

CJTF-PHOENIX

LINE 15C - **ACCIDENT CLASS**
(GRND/AC - A or B, AC - C)

LINE 15D - **WEATHER**
(Visibility, Light Level, Precipitation, Wind)

Clear skies, approx 80 deg F

LINE 15E - **NIGHT VISION DEVICE**
(Yes, Type, Nomenclature)

LINE 15F - **MILITARY INSTALLATION**
(Nearest Site)

Kushamond COP

LINE 15G - **EXPLOSIVE, HAZARDOUS MATERIAL**
(Involved: Yes or No, Secured: Yes or No)

LINE 15H - **ACCIDENT SITE SECURED IAW AR 385-40**
(Yes or No)

LINE 15I - **ACCIDENT SITE DISTURBED**
(Yes or No)

LINE 15J - **PHOTOS OF DISTURBING SCENE**
(Yes or No)

LINE 15K - **FLIGHT DATA RECORDER INSTALLED**
(Yes or No)

LINE 15L - **LOCAL ACCIDENT INVESTIGATION**
BOARD APPT
(Yes or No)

LINE 15M - **NEAREST AIRFIELD**
(4000 Ft. Min. Runway)

**IN THE CIRCUIT COURT FOR HILLSBOROUGH
COUNTY,
FLORIDA**

PROBATE DIVISION

IN RE:

MARK C. ALLEN

File No.

Division:

**an alleged incapacitated
person**

PETITION TO DETERMINE INCAPACITY

Petitioner SHANNON C. ALLEN alleges:

1. Petitioner is an adult, age 34, whose present address is [REDACTED]
[REDACTED], and whose relationship to the hereafter named alleged incapacitated person is spouse.

2. Petitioner believes Mark C. Allen, whose date of birth was [REDACTED] and who is age 37, a resident of Hillsborough County, Florida, whose primary spoken language is English, whose Social Security Number is [REDACTED] and whose present address is [REDACTED]
[REDACTED] to be incapacitated, based upon the following factual information:

On July 8, 2009, SFC Allen was on active duty in Afghanistan when he was injured by a gun shot wound to the head. He is now classified as having a traumatic brain injury that was accompanied by a stroke. He is unable to communicate and is 100% dependent on daily living activities.

3. The names and addresses of all persons known to petitioner who have knowledge of such facts through personal observations are:

- a. Dr. Marissa McCarthy, M.D.
James A. Haley Veterans' Hospital
13000 Bruce B. Downs Blvd
Tampa, FL 33612
(813) 972-2000 x4198

b. Dr. Jo 'Tran
James A. Haley Veterans' Hospital
13000 Bruce B. Downs Blvd.
Tampa, FL 33612
(813) 972-2000 x4198

4. The alleged incapacitated person is incapable of exercising the following rights:

- (X) to personally apply for government benefits
- (X) to contract
- (X) to sue and defend lawsuits
- (X) to manage property or to make any gift or disposition of property
- (X) to determine his residency
- (X) to consent to medical and mental health treatment
- (X) to make decisions about his social environment or other social aspects of his life
- (X) to marry
- (X) to vote
- (X) to travel
- (X) to have a driver's license
- (X) to seek or retain employment

5. (X) Plenary () Limited guardianship is being sought for the alleged incapacitated person.

6. The names, addresses and relationships of all known next of kin of the alleged incapacitated person are (give dates of birth of any who are minors):

<u>NAME</u>	<u>ADDRESS</u>	<u>RELATIONSHIP</u>	<u>DATE OF BIRTH</u>
[REDACTED]	[REDACTED]	[REDACTED]	N/A
[REDACTED]	[REDACTED]	[REDACTED]	N/A
[REDACTED]	[REDACTED]	[REDACTED]	N/A
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

7. The alleged incapacitated person's attending or family physician is (give name, address and

telephone number):

Dr. Marissa McCarthy, M.D.
James A. Haley Veterans' Hospital
13000 Bruce B. Downs Blvd
Tampa, FL 33612
(813) 972-2000 x4198

Petitioner requests that an examination be made as to the mental and physical condition of the alleged incapacitated person as provided by law, and that an order be entered determining the mental and physical capacity of said person.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 01, 2010


SHANNON C. ALLEN, Petitioner




Kay J. McGucken
Florida Bar Number: 230510
Nina McGucken Alvarez
Florida Bar Number: 63814
Kay J. McGucken, P.A.
1320 9th Avenue, Suite 210
Tampa, FL 33605
Telephone: (813) 248-3782
Fax: (813) 248-9267
E-Mail: KJM1320@aol.com
Attorneys for Petitioner

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
PROBATE, GUARDIANSHIP, TRUST AND MENTAL HEALTH DIVISION

IN RE: THE GUADIANSHIP OF

MARK C. ALLEN,
Alleged Incapacitated Person.

CASE NOS.: 10-MH-3099 & 10-CP-2495

DIVISION: A

REPORT AND RECOMMENDATION OF GENERAL MAGISTRATE
and ORDER OF COURT

Hearing Types: INCAPACITY and GUARDIANSHIP

Hearing Date: November 29, 2010

Hearing Time: 9:30 A.M.

Place of Hearing: George Edgecomb Courthouse
800 East Twiggs Street, Courtroom 414
Tampa, FL 33602

FILED
2010 NOV 29 PM 3:33
CLERK CIRCUIT COURT
HILLSBOROUGH CNTY. FLA.
MENTAL HEALTH

APPEARANCES:

- ☒ Petitioner – Shannon C. Allen
- ☒ Attorney for Petitioner – Kay J. McGucken, Esq. (Nina Alvarez, Esq. appeared on her behalf)
- ☒ Attorney for Alleged Incapacitated – Diane Zuckerman, Esq.

Any objection to the referral of this case to the General Magistrate? No.

EVIDENCE:

- ☒ Stipulation of the parties waiving the presence of the Subject.
- ☒ Report of the Examining Committee (Petitioner's Composite Exhibit #1 in the incapacity file)
- ☒ Application for Appointment as Guardian (Petitioner's Exhibit #1 in guardianship file)
- ☒ Oral Report of Court-Appointed Attorney for Alleged Incapacitated Person
- ☒ Testimony of: Shannon C. Allen

FINDINGS OF COURT:

Based upon the evidence presented and upon review of the Court file, including the Report of the Examining Committee, the diagnosis and the prognosis, the recommended course of treatment which was based on a physical and mental health examination, and the functional assessment, the undersigned finds that:

☒ The Ward lacks the capacity to make informed decisions about his care and treatment.
Condition(s): Dementia - Related to brain injury

☒ The Ward lacks the capacity to make informed decisions regarding his rights, in whole.

☒ A Guardian must be appointed to exercise all delegable rights of the Ward.

☒ A Guardian should have full powers and duties with respect to the Ward and the Ward's person and property.

☒ There is at this time no other alternative which will sufficiently and reasonably meet the needs of the Ward.

☒ The proposed guardian has the following relationship with the Ward:
Relative: Wife - qualified to serve as guardian.

☒ The proposed guardian has not completed the appropriate guardian training course.

☒ The training requirement should be waived for the family/non-professional guardian.

☒ The Ward is not indigent.

☒ The initial inventory and annual accountings in this case should be waived. The proposed Guardian is the Wife of the Ward. All of their assets are jointly held and have been jointly held during their marriage. Since her husband's injury, the proposed Guardian has been utilizing his military pay and social security disability benefits to support the family - just as she had been using her husband's military pay to support the family prior to his injury. The Ward's incapacity is a direct result of his having receiving a gun shot wound to the head while on active duty in Afghanistan. To require the proposed Guardian (the Wife of the Ward) to separately account for the parties joint funds would be an undue hardship. The proposed Guardian resides in the State of Georgia with the parties minor daughter. The Ward's residence is at [REDACTED]

☒ The Attorney for the Ward in this case should be awarded reasonable attorneys fees, as follows: \$400.00, pursuant to applicable law.

☒ Other: The oral report of the Court-Appointed Attorney for the Ward was consistent with the other evidence. No objections to the requested relief have been raised. The Court-Appointed Attorney agreed that under the circumstances of this case, the initial inventory and annual accountings should be waived.

RECOMMENDATIONS:

☒ It is therefore recommended that **MARK C. ALLEN** be adjudicated to be totally incapacitated and that Shannon C. Allen be appointed as Plenary Guardian to provide for the welfare and safety of the Ward's person and property.

☒ The Guardian shall have sixty (60) days to file the Initial Guardianship Plan.

☒ The initial inventory and annual accountings in this case shall hereby be waived.

☒ That the fees of the Examining Committee and the Court-Appointed Attorney shall be paid by the Guardian from the assets and/or income of the Ward.

☒ The Guardian shall have sixty (60) days to pay the costs of the Examining Committee (which will be enumerated in a separate Order that will be entered contemporaneously with the Order on this Report) and the Court-Appointed Attorney for the Ward (if the attorney fee amount is specified hereinabove).

☒ The family/non-professional guardianship course requirement should be deemed conditionally waived, so long as the family/non-professional guardian timely file(s) all statutorily required guardianship reports in this case and said reports are deemed by the Court to be legally sufficient. The Court reserves jurisdiction to require completion of the course at a later time.

BOND/RESTRICTED DEPOSITORY:

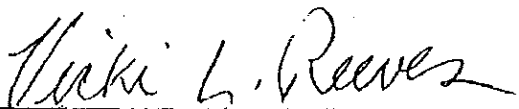
☒ Bond for the Guardian is waived until further order of Court.

EXCEPTIONS:

☒ The parties have waived the ten (10) day Exception Period applicable to this Report.

WHEREFORE, the undersigned files this Report and recommends that the Court enter its Order confirming this Recommendation.

DATED this 29th day of November, 2010.


VICKI L. REEVES
GENERAL MAGISTRATE

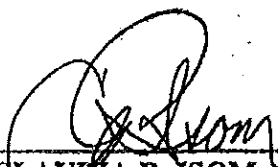
ORDER OF COURT

THIS CAUSE having come before the Court on the Report and Recommendation of General Magistrate set forth above, and the Court having considered the findings and recommendations therein, and finding that either no exceptions to the Report of the General Magistrate have been filed within the ten (10) day period provided by the rule or that the exception period has been waived, it is thereupon,

ORDERED and ADJUDGED:

1. That the Report of the General Magistrate set forth above shall be and the same is hereby approved, ratified and confirmed by this Court.
2. That the Court adopts each and every finding and recommendation contained in the aforesaid Report as this Court's Order and the parties shall comply with each of them therewith.
3. That separate Orders regarding incapacity, guardianship and the approval of compensation shall be entered contemporaneously with this Order of Court, and letters of guardianship shall also be issued when all court-ordered and statutory requirements have been met.
4. That all prior Orders not inconsistent herewith are hereby reaffirmed.

DONE and ORDERED in Chambers at Tampa, Florida, this 30 day of November, 2010.


CLAUDIA R. ISOM
CIRCUIT COURT JUDGE

FILED
2010 DEC - 1 PM 4:37
CLERK CIRCUIT COURT
HILLSBOROUGH CNTY, FLA.

Copies to:

Kay J. McGucken, Esquire
Diane Zuckerman, Esquire

IN THE CIRCUIT COURT FOR HILLSBOROUGH
COUNTY,
FLORIDA

PROBATE DIVISION

IN RE: GUARDIANSHIP OF

MARK C. ALLEN

File No.

Division:


**OATH OF GUARDIAN,
DESIGNATION OF RESIDENT AGENT AND ACCEPTANCE**

STATE OF FLORIDA

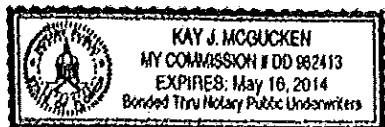
COUNTY OF HILLSBOROUGH

I, SHANNON C. ALLEN (Affiant), state under oath that:

1. I will faithfully perform the duties of guardian of the person and property of Mark C. Allen (the Ward) according to law.
2. My place of residence is [REDACTED] and my post office address is [REDACTED]
3. I hereby designate Kay J. McGucken, who is a member of The Florida Bar, a resident of Hillsborough County, Florida, whose office address is 1320 9th Avenue, Suite 210, Tampa, FL 33605 and whose post office address is 1320 9th Avenue, Suite 210, Tampa, FL 33605 as my agent for the service of process or notice in any action against me, either in my representative capacity, or personally, if the personal action accrued in the performance of my duties as such guardian.


SHANNON C. ALLEN
Affiant

Sworn to and subscribed before me on November 15, 2010, by Affiant, who is personally known to me.



Kay J. McGucken

Notary Public State of Florida
My Commission Expires:
My Commission Number is:

ACCEPTANCE

I CERTIFY that I am a permanent resident of Hillsborough County, Florida, and my office address is indicated above. I hereby accept the foregoing designation as Resident Agent.

Signed on November 1, 2010.

Kay J. McGucken

Kay J. McGucken
Resident Agent

IN THE CIRCUIT COURT FOR HILLSBOROUGH
COUNTY, FLORIDA PROBATE DIVISION

IN RE:

MARK C. ALLEN

File No. 10-MH-3099

Division A

an alleged incapacitated
person

FILED
2010 DEC -1 PM 4:38
CLERK CIRCUIT COURT
HILLSBOROUGH COUNTY, FLA.
HERNANDEZ

ORDER DETERMINING TOTAL INCAPACITY

On the Petition to Determine Incapacity filed herein with respect to Mark C. Allen (the Ward), the Court having taken testimony, having considered the reports of the Examining Committee, having considered all alternatives to guardianship, and being fully advised in the premises, finds, based on the clear and convincing evidence presented, as follows:

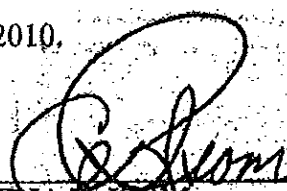
1. The nature and scope of the Ward's incapacities are: TOTAL.
2. The following facts demonstrate that the Ward is totally without capacity to care for the Ward's person or property: On July 8, 2009, SFC Allen was on active duty in Afghanistan when he was injured by a gun shot wound to the head. He is now classified as having a traumatic brain injury that was accompanied by a stroke. He is unable to communicate and is 100% dependent on daily living activities.
3. The Ward totally lacks capacity to make informed decisions about care and treatment or to meet the essential requirements for the Ward's physical or mental health or safety; is subject to total legal disability; is incapable of exercising any rights; and a guardian must exercise all delegable rights of the Ward and have full powers and duties with respect to the Ward and the Ward's person and property.
4. After consideration of reasonable alternatives to guardianship, the Court finds that no alternative will sufficiently address the problems and needs of the Ward.
5. Other than those rights set forth in section 744.3215(1), Florida Guardianship Law,

which are expressly reserved to the Ward, the Ward is not capable of exercising any other rights and all delegable rights of the Ward should be delegated to a plenary guardian. Accordingly, it is

ADJUDGED as follows:

1. Mark C. Allen is hereby determined to be totally incapacitated and a plenary guardian should be appointed to provide for the welfare and safety of the Ward.
2. A copy of this Order shall be served on the petitioner, the Ward and the Ward's attorney by the clerk and a certificate attesting to such service promptly filed in this proceeding.

ORDERED on November 30, 2010.



CLAUDIA R. ISOM
Circuit Judge

Copies furnished to:
Kay J. McGucken, P.A.
1320 9th Avenue, Suite 210
Tampa, FL 33605
Attorneys for Guardian

Diane Zuckerman
412 E. Madison St. #824
Tampa, FL 33602
Attorney for Ward

FILED IN OFFICE
CLERK, PROBATE COURT
WALTON COUNTY, GA

2012 OCT 11 PM 3:09

PROBATE COURT OF WALTON COUNTY
STATE OF GEORGIA
SHERRIE H. BEALL
CHIEF CLERK

IN RE:) ESTATE NO. 12 - 0292
MARK C. ALLEN,)
WARD) PETITION FOR THE RECEIPT AND
ACCEPTANCE OF A FOREIGN
GUARDIANSHIP AND CONSER-
VATORSHIP.

FINAL ORDER

A Petition for the Receipt and Acceptance of a Foreign Guardianship and Conservatorship was filed on the 5th day of September, 2012.

A hearing on the Petition was held on the 11th day of October, 2012,

The evidence shows that Shannon C. Allen, the fiduciary appointed in the foreign court, has complied with the laws of the state of Florida and that Mark C. Allen (Hereinafter referred to as "the Ward") has been relocated to this jurisdiction. It is in the best interest of the Ward for the guardianship and conservatorship of the above ward to be transferred to this jurisdiction.

IT IS THEREFORE ORDERED that the Petition for the Receipt and Acceptance of a Foreign Guardianship and Conservatorship is hereby GRANTED.

IT IS FURTHER ORDERED that Letters of Guardianship shall issue to Shannon C. Allen upon taking the required oath.

IT IS FURTHER ORDERED that Letters of Conservatorship shall issue to Shannon C. Allen upon taking the required oath and upon posting a surety bond in the amount of \$[REDACTED]

IT IS FURTHER ORDERED that a family budget shall be filed with the Court within 120 days. Once filed, a Petition to Encroach for necessary expenses shall also be filed.

IT IS FURTHER ORDERED that an Inventory and Asset Management Plan shall be filed with

Effective 8/10

GPCSF 60 Court

OCT 15 2012
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the Court within 120 days and yearly thereafter.

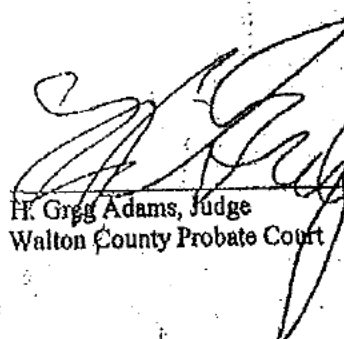
IT IS FURTHER ORDERED that, until a budget and Inventory and Asset Management Plan are filed, the sum of [REDACTED] shall be provided to Shannon C. Allen, as Conservator, for the support, care, education, health, and welfare of Mark C. Allen and his family.

IT IS FURTHER ORDERED that the Guardian shall file a Personal Status Report within 120 days of this Order and on an annual basis thereafter.

IT IS FURTHER ORDERED that the Conservator shall file an Annual Return with receipts and disbursements each year within 60 days of the date of this Order as required by O. C. G. A. §29-5-60.

IT IS FURTHER ORDERED that a copy of this Order shall be served by first class mail on the foreign court, the ward, the ward's attorney, the guardian and conservator; her attorney; and the individuals listed in paragraphs 5, 6, 7, and 8 of the Petition.

SO ORDERED this 11th day of October, 2012.


H. Greg Adams, Judge
Walton County Probate Court



Effective 8/10

GPCSF 60 Court

CERTIFIED COPY

IN FULL FORCE AND EFFECT
THIS 8 DAY OF August 2014
Rhonda Smith
JUDGE CLARK
PROBATE COURT
WALTON COUNTY, GEORGIA

IN THE PROBATE COURT
COUNTY OF WALTON
STATE OF GEORGIA

IN RE: ESTATE OF

MARK C. ALLEN,
WARD.

)
) ESTATE NO. 12-0292
)
)

LETTERS OF GUARDIANSHIP AND CONSERVATORSHIP OF ADULT WARD

From the Judge of the Probate Court of said County. Date of Birth: [REDACTED]

TO: Shannon C. Allen, Guardian and Conservator

The above-named adult ward has been found by this Court to be in need of a guardian and conservator, and this Court has entered an order designating you as such guardian and conservator. You have assented to this appointment by taking your oath and posting a bond. In general, your powers and duties are to protect and maintain the person and property of the ward.

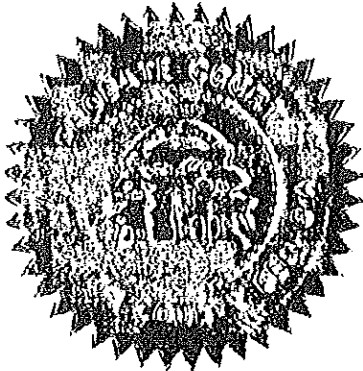
Special Instructions:

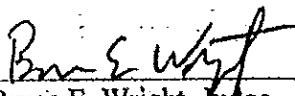
1. It is your duty to see that your ward is adequately fed, clothed, sheltered and cared for, and that your ward receives all necessary medical attention.
2. You must keep your ward's funds separate from your own. You should put your ward's funds in a separate checking or savings account, as appropriate, and make all payments by check.
3. You may not sell, mortgage, give away, or otherwise dispose of any of your ward's property without a court order.
4. You may not spend any of your ward's funds for any purpose, except as set forth in the court approved budget, without a court order.
5. You must file within two months of your appointment an inventory showing the ward's property and a plan for managing, expending, and distributing the property. Further, you must file, within sixty (60) days of each anniversary date of these Letters, an annual return showing all receipts and disbursements, accompanied by an affidavit certifying that the original vouchers (checks) have been compared with the items listed on the return, and that the return is correct, together with an updated inventory and plan for managing the property. A copy of said return shall be sent by first class mail to the surety, the ward, and the guardian, if any.
6. The regular commissions allowed a conservator are [REDACTED]% on all sums of money received, and [REDACTED]% on all sums paid out, as shown by the annual or final return. There are special rules concerning commissions for property delivered in kind, interest earned, extraordinary services, and market value of property held as of the last day of your reporting period.
7. You must keep the Court informed of any change in your name or address and promptly notify the Court of any conflict of interest arising between you and your ward.
8. Within sixty (60) days after appointment and within sixty (60) days after each

anniversary date of appointment, you must file with the probate court a personal status report concerning your ward which shall include:

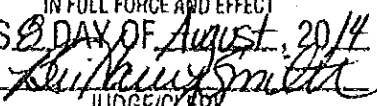
- (a) A description of your ward's general condition, changes since the last report, and needs;
 - (b) Your recommendations for any alteration in the guardianship and/or conservatorship order; and
 - (c) All addresses of the ward during the reporting period and the living arrangements of the ward for all addresses.
9. The following powers are removed from the Ward pursuant to O.C.G.A. § 29-4-21 and § 29-5-21:
- (a) The power to enter into and make contracts.
 - (b) The power to buy, sell, or otherwise dispose of or encumber real, personal, or trust property without the approval of the Court.
 - (c) The power to bring or defend any action at law or equity except through a guardian, conservator, or guardian ad litem.
 - (d) The power to enter into any business transaction.
 - (e) The power to change domicile.
 - (f) The power to change residence.
 - (g) The power to enter into a marriage.
10. Your authority to act pursuant to these Letters is subject to applicable statutes and to any special orders entered in this case.

Given under my hand and official seal, the 8th day of August, 2014, *nunc pro tunc* to the 11th day of October, 2012.





Bruce E. Wright, Judge
Walton County Probate Court

CERTIFIED COPY
IN FULL FORCE AND EFFECT
THIS 8th DAY OF August, 2014

JUDGE/CLERK
PROBATE COURT
WALTON COUNTY, GEORGIA

IN THE CIRCUIT COURT FOR HILLSBOROUGH
COUNTY,
FLORIDA

PROBATE DIVISION

IN RE: GUARDIANSHIP OF

MARK C. ALLEN

File No. 10-CP-2495

Division A

ORDER OF DISCHARGE OF GUARDIAN

On the petition of SHANNON C. ALLEN for discharge as guardian of MARK C. ALLEN (the Ward), the court finding that notice of hearing on the petition has been served on or waived by all persons entitled to notice, that the guardian has faithfully discharged the duties of guardian, has rendered a true, complete and final report or a waiver of such, and has delivered the assets of the Ward to the person or persons entitled thereto; it is

ADJUDGED that the guardian is discharged and the surety on the guardian's bond, if any, is released from liability.

ORDERED on Dec 20, 2012.


1st Claudia R. Isom

CLAUDIA R. ISOM, Circuit Judge

cc:

Kay J. McGucken, P.A.
1320 9th Avenue, Suite 210
Tampa, FL 33605
Attorneys for Guardian

Shannon C. Allen


Guardian

Andy Tomlinson
John E. Tomlinson, P.C.
3905 Harrison Road, Suite 100
Loganville, Georgia 30052
Attorney for Guardian

**IN A GENERAL COURT-MARTIAL
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA**

UNITED STATES)	
)	
v.)	[PROPOSED] Order Appointing Mrs.
)	Shannon Allen as designee for MSG
BERGDAHL, ROBERT BOWDRIE)	(Ret) Allen under R.C.M. 801(a)(6)
(BOWE))	
SGT, U.S. Army)	
HHC, Special Troops Battalion)	___ January 2016
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	

1. This matter comes before the Court upon notice by the Government pursuant to Rule for Courts-Martial 801(a)(6).

2. The Court finds that MSG (Ret) Allen is incompetent and unable to assert his legal rights as a victim in the instant case.

3. Pursuant to the authority granted under R.C.M. 801(a)(6), and for the sole purpose of assuming the legal rights of the victim as they pertain to the victim's status as a victim of any offense before the court, it is hereby ORDERED that Mrs. Shannon Allen is appointed as designee for MSG (Ret) Allen, and it is further ORDERED that:

a. At any time after appointment, Mrs. Allen shall be excused as designee upon request or a finding of good cause by the Court.

b. If Mrs. Allen is excused as designee, the Court shall appoint a successor consistent with R.C.M. 801(a)(6).

c. This appointment of designee shall remain in effect until the designee is excused or UCMJ proceedings in this case conclude.

ORDERED, this ___ day of January 2016.

[JUDGE NAME]
COL, JA
Military Judge