

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE CAPT	AFSN/SSAN								
TYPE GEN		PERSONAL APPEARANCE	X	RECORD REVIEW							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">COUNSEL</td> </tr> <tr> <td style="width: 50%;">YES</td> <td style="width: 50%;">No</td> </tr> <tr> <td></td> <td style="text-align: center;">X</td> </tr> </table>		COUNSEL		YES	No		X	NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
COUNSEL											
YES	No										
	X										
MEMBER SITTING			VOTE OF THE BOARD								
			HON	GEN	UOTHC	OTHER	DENY				
							X				
							X				
							X				
							X				
							X				
ISSUES A94.05		INDEX NUMBER A67.50		EXHIBITS SUBMITTED TO THE BOARD							
				1	ORDER APPOINTING THE BOARD						
				2	APPLICATION FOR REVIEW OF DISCHARGE						
				3	LETTER OF NOTIFICATION						
				4	BRIEF OF PERSONNEL FILE						
					COUNSEL'S RELEASE TO THE BOARD						
					ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE						
					TAPE RECORDING OF PERSONAL APPEARANCE						
HEARING DATE 07 Dec 2005		CASE NUMBER FD-2004-00440									
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE											
<p>Case heard at Washington, D.C.</p> <p>Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p>											
SIGNATURE OF RECORDER				SIGNATURE OF BOARD PRESIDENT							
INDORSEMENT,				DATE: 12/8/2005							
TO: SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742				FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002							

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00440

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined to exercise this right.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received a General Discharge for intentional or discreditable mismanagement of personal affairs and recurring misconduct punishable by Military or civil authority. Over a period of seven years, applicant was accused of and/or incarcerated for domestic disputes, aggravated assaults, (once with a firearm), disorderly conduct, battery, and violating a no-contact order. Most of the applicant's issues center around his Board of Inquiry and the accusation that his wife made false allegations. Applicant also states that the JAG acted improperly during the investigation. The facts of the case are as follows: A Board Of Inquiry heard evidence from a civilian police officer, applicant's estranged spouse, his son, members of the applicant's squadron, and the applicant. The estranged spouse and child testified to numerous instances of violence or threatened violence by applicant, associated with his excessive use of alcohol. Applicant's spouse also provided evidence regarding violation of a no-contact order, issued by civilian and military authorities. The case file was found to be legally sufficient. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and that the applicant was provided full administrative due process.

In view of the foregoing findings the Board further concludes that there exists no legal or equitable basis for upgrade of discharge, thus the applicant's discharge should not be changed.

Attachment:
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

(Former CAPT) (HGH CAPT)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr McConnell AFB, KS on 4 Nov 99 UP AFI 36-3206, para 3.6.2 & 3.6.4 (Intentional or Discreditable Mismanagement of Personal Affairs & Recurring Misconduct Punishable by Military or Civil Authority). Appeals for Honorable Discharge.

2. BACKGROUND:

a. DOB: 8 Nov 61. Enlmt Age: 19 0/12. Disch Age: 37 11/12. Educ: Bachelor's Degree. A-58, E-78, G-76, M-94. PAFSC: K011T3B - Tanker Instructor Pilot. DAS: 30 Jun 94.

b. Prior Sv: (1) AFRes 4 Dec 80 - 6 Apr 81 (4 months 3 days) (Inactive).

(2) Enlisted as AB 7 Apr 81 for 4 yrs. Reenlisted as SrA 18 Feb 85 for 4 yrs. Reenlisted as SSgt 30 Apr 88 for 4 yrs. Svd: 7 yrs 9 months 20 days, all AMS. AMN - Unknown. A1C - Unknown. SrA - Unknown. SSgt - 1 Dec 85. APRs/EPRs: Unknown.

3. SERVICE UNDER REVIEW:

a. Appointed to 2Lt & Ordered on EAD 27 Jan 89. Svd: 10 Yrs 9 Mo 8 Das, all AMS.

b. Grade Status: Capt - 27 Jan 93
1Lt - 27 Jan 91

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOC, UNDATED - Domestic dispute (missing from file).
LOR, UNDATED - Aggravated assault with firearm against wife and son (missing from file).
18 APR 98-20 APR 98 - Incarcerated for violating a no contact order and aggravated assault.
19 FEB 98 - Incarcerated for two counts of aggravated assault.
08 MAR 97 - Disorderly conduct.
13 DEC 96 - Arrested for battery and disorderly conduct.
JAN 92 - Domestic abuse.

f. CM: None.

g. Record of SV: 17 Feb 90 - 06 Jan 91 Minot AFB YE (Semiannual)
07 Jan 91 - 06 Jan 92 Minot AFB YE (Annual)

07 Jan 92 - 06 Jan 93	Minot AFB	YE	(Annual)
07 Jan 93 - 01 Oct 93	Minot AFB	YE	(CRO)
02 Oct 93 - 27 Oct 94	McConnell AFB	YE	(Annual)
28 Oct 94 - 13 Sep 95	McConnell AFB	YE	(CRO)
14 Sep 95 - 31 May 96	McConnell AFB	YE	(CRO)
01 Jun 96 - 31 May 97	McConnell AFB	NE	(Annual) REF
01 Jun 97 - 31 Jan 98	McConnell AFB	YE	(CRO)
01 Feb 98 - 31 Jan 99	McConnell AFB	NE	(Annual) REF
01 Feb 99 - 14 Oct 99	McConnell AFB	YE	(CRO)

h. Awards & Decs: AAF, AFCM W/2 OLCS, AFOUA W/VALOR DEV W/5 OLCS, CRM, AFGCM W/1 OLC, NDSM, AFEM W/1 BS, SWASM W/1 BS, AFLSAR W/3 OLCS, SAEMR, AFTR.

i. Stmt of Sv: TMS: (18) Yrs (11) Mos (1) Das
TAMS: (18) Yrs (6) Mos (29) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 26 Oct 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

23NOV04/ia

AFBCMR

DD Form 149, item 9 remarks

Re: [REDACTED]

The Administrative discharge I received from the USAF is in error and unjust for the following reasons:

1. During my Board of Inquiry at McConnell AFB, KS. (2-4 June 1999), my ex-wife, [REDACTED] testified falsely while under oath and in uniform to the board. As the governments key witness, she made many false allegations that influenced the Board of Inquiry (BOI) in their decision to discharge me after 18 ½ years of active duty service. When my ex-wife testified, there was a valid court order in effect that specifically restrained her from harassment by contacting my workplace, yet she volunteered to testify to effect my discharge (attachment 2, pg. 6). At the time of my discharge, I was embroiled in a bitter divorce. Every reason the military presented at the BOI for my discharge was related to my failed marital relationship and not to duty performance. Further, my legal counsel requested an investigation be conducted regarding my ex-wife's testimony, but this was apparently ignored, as I received no response or reply (attachment 3). My counsel also requested that no processing action be taken against myself until these matters were addressed and resolved. After my BOI, I obtained evidence from a certified forensic handwriting analyst that confirmed false testimony and perjury did in fact occur from my ex-wife (attachment 4). This evidence was submitted to all reviewing authorities IAW AFI 36-3206, and I requested in writing for the board to reverse its decision or reconvene (attachment 5). My military counsel also submitted letters of request to the reviewing authorities to consider this evidence and reconsider (attachment 6). Contrary to AFI 36-3206, pg. 46-47, I never received a response or reply, and this evidence was ignored. AFI 36-3206 specifically requires that I receive a response with 10 calendar days to submit comments or rebuttal. The first page of AFI 36-3206 states "Compliance With This Publication Is Mandatory." While waiting for a response to this additional evidence, I received my discharge order via c-mail (attachment 7).
2. The statement of reasons that initiated this administrative discharge was changed several times. First, my ex-wife made false allegations that I was in arrears in child support payments. This is the complaint that initiated my discharge action and was item #1 on the initial statement of reasons (attachment 8). I obtained a court judgment that specifically stated that I was never in arrears for child or spouse support payments (attachment 9, pg. 3), and requested this discharge action be stopped (attachment 10). As for reason #2, my commander, Lt. Col. [REDACTED] told me "this is not career ending." I pled no contest to a civilian charge on his words and trust. Next, A new statement of reasons was issued, deleting the initiating reason and leaving the old reasons that had been previously resolved in the past (attachment 11). During my BOI, the statement of reasons were again changed for the convenience of the board. This was done despite objections from my legal counsel relating to due process.

The 1

3. I do not believe the BOI considered the impact of an administrative discharge after 18 years service IAW AFI 36-3207, pg. 13, and 10 U.S.C. 8911 and the resulting financial/economic hardships from my total loss of benefits. In fact, I inquired from my finance office about the 15 year retirement option offered at this time, but was told it didn't apply to rated pilots, that I was a national asset and not eligible regardless of my situation. Further, I've received a letter from HQ AFPC asking me to apply for a civilian staff job due to the current pilot shortage (attachment 12). My desire is reinstatement to active duty. I've been accountable and taken full responsibility for myself. I do not blame aircrew turbulence, operations tempo or a pilot shortage for my situation, however combined with a poor marital relationship, these were certainly contributing factors. My ex-wife has been diagnosed with Histrionic Personality Disorder, which was also a prevailing factor in the dysfunctional marriage. I am not able to obtain [REDACTED] psychiatric records, but her behavior was telling at the BOI and in civil court as well (attachment 13). Further, my ex-wife stated in civil court that she didn't realize and was never informed that the BOI was a discharge board when she testified. My ex-wife had full intention of destroying my career out of her anger and vindictiveness.
4. The Judge Advocate General (JAG) lawyer [REDACTED] acted improperly during his investigation. First, to illicit testimony from my 11 year old son [REDACTED] made trips to my sons residence, gave my son rides in his convertible, a tour of the court room, and invited my son to the legal office on his career day at school, against my wishes. In fact, I requested that my son attend his career day at my flight squadron, but was ignored by my ex-wife. This was very wrong and I believe it's not ethical trying to turn a child against his father. I received joint legal custody of my children during my divorce.
5. I made several requests to the National Personnel Records Center for my board of review transcript IAW BOI directions (pg. 6) and AFI 36-3206, pg. 50. After several months, I received a letter stating that there is no record of a board of review in my records. (Attachment 14).
6. I have the continued support of my squadron for reinstatement. My commander and previous three commanders, as well as my pccrs, support my continued service. (Attachment 15).
7. I believe that all administrative appeals have been ignored or exhausted. After contacting Senator Wayne Allard for assistance, I received correspondence advising me to apply to the AFBCMR for reinstatement, since I was no longer on active duty at that time (attachment 16).
8. I request reinstatement to active duty and allowed continuing service in the USAF. I sacrificed 18 1/2 years to my country, as evidenced in my performance reports

(attachment 17). If all evidence was considered as stated above, and all instructions were followed, I believe I would have been retained on active duty. The catalyst for this situation, a very dysfunctional marriage, is over. I believe the supporting evidence will warrant my reinstatement. I am certainly willing to appear before the AFBCMR at my own expense. If you have any questions or need additional information or documentation, please contact me.

Thank you very much for your consideration,

Very respectfully,

A large, solid black rectangular redaction mark covering the signature area.

FD2004-00440

Statement of Reasons

[REDACTED] is subject to discharge under AFI 36-3206, paragraph 3.6.2, for intentional or discreditable mismanagement of personal affairs and paragraph 3.6.4, for serious, recurring misconduct punishable by military or civilian authorities, as evidenced by the following:

1. Between 18 Apr 98 and 20 Apr 98, [REDACTED] violated the conditions of his criminal bond by attempting to contact his wife, [REDACTED] by telephone. [REDACTED] conduct was also in violation of a family court judge's "protection from abuse" order and his Squadron Commander's "no contact" order. The Derby Police Department had verified that [REDACTED] caller ID reflected several calls from [REDACTED] phone number between 18 Apr 98 and 20 Apr 98. The District Court judge issued a warrant for [REDACTED] arrest and, after a hearing, revoked his bond on 30 Apr 98. As a result, [REDACTED] was incarcerated until his aggravated assault charges were resolved by a plea agreement on 21 Jul 98.

2. On 19 Feb 98, at his home in Derby, Kansas, [REDACTED] became violently agitated during a dispute over finances. [REDACTED] son recorded portions of the incident on a pocket cassette recorder. On the tape, [REDACTED] can be heard shouting obscenities and insults at his wife and son. [REDACTED] stated that [REDACTED] threw objects around the house, knocked a hole in a wall, broke a mirror with his fist, and flicked a burning cigar at [REDACTED] head. Finally, according to [REDACTED] retrieved his .45 caliber handgun from its carrying case, loaded a magazine into it, and while cocking it said "lock and load" several times. [REDACTED] can be heard on the audio tape repeating the phrase "lock and load." In fear for their lives, [REDACTED] 9-year-old daughter fled the house. The Derby Police Department responded, arrested [REDACTED], and seized the handgun. As a result of the incident, [REDACTED] was charged with aggravated assault against [REDACTED] and incarcerated until 23 Feb 98. On 27 Jul 98, [REDACTED] pled "no contest" to the two felony counts of aggravated assault. He was convicted and, on 2 Sep 98, the District Court sentenced him to probation.

3. On 8 Mar 97, [REDACTED] became violent during a dispute at his home over the possession of a cordless drill. The Derby Police Department subsequently cited [REDACTED] for disorderly conduct.

4. On 13 Dec 96 at his home in Derby, Kansas, [REDACTED] became intoxicated and became loud and violent while his children and another child were present in the home. [REDACTED] stated that he shouted at [REDACTED] and threw objects around the house. According to [REDACTED] (then 10 years of age), [REDACTED] pulled a cordless phone from [REDACTED] hands, struck him in the face with it, threw him onto a couch, and ripped the phone's base station from the wall after [REDACTED] attempted to call the police. When Derby police officers arrived, they found a mark on [REDACTED] face and the remnants of the base station of the telephone. Derby Police Department officers arrested [REDACTED] for battery and disorderly conduct, and he was incarcerated at the Sedgwick County Detention Facility until 14 Dec 96. The Derby City Prosecutor eventually allowed [REDACTED] to enter a pretrial diversion program, which resulted in the charges being dismissed several months later.

5. In Jan 92 at Minot AFB, North Dakota, during a dispute with his wife, [REDACTED] [REDACTED] kicked down a door in his house. [REDACTED] reported the incident to the Security Police, who detained [REDACTED]. The incident resulted in a temporary marital separation and the temporary removal of [REDACTED] from flying status.



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 22D AIR REFUELING WING (AMC)
McCONNELL AIR FORCE BASE, KANSAS

FD 2004-00 440

22 JAN 1999

MEMORANDUM FOR [REDACTED] 350 ARS

FROM: CC

SUBJECT: Notification of Action Initiated Under AFI 36-3206, Chapter 3, paragraphs 3.6.2 and 3.6.4.

1. I am initiating action against you under AFI 36-3206, Chapter 3, paragraphs 3.6.2 and 3.6.4.
2. I am taking this action in accordance with paragraph 3.6.2 because of your intentional or discreditable mismanagement of personal affairs and in accordance with paragraph 3.6.4 because of your serious, recurring misconduct punishable by military or civilian authorities. The following specific incidents support both bases for discharge:
 - a. Between about 1 May 98 and about 13 Jan 99 you irresponsibly failed to remain current in your court-ordered child support and spousal maintenance payments.
 - b. Between 18 Apr 98 and 20 Apr 98, at or near McConnell AFB, Kansas, you violated the conditions of your bond, a district judge's "protection from abuse" order, an [REDACTED] "no contact" order by attempting to contact your wife by telephone. As a result of your misconduct, your bond was revoked on 30 Apr 98 and you were incarcerated in Wichita, Kansas, until 21 Jul 98.
 - c. On 19 Feb 98, in Derby, Kansas, while intoxicated, you committed the following specific acts of misconduct:
 - (1) You became violent during a dispute with your wife while your 11-year-old son and 9-year-old daughter were present. During this incident, you loudly berated your wife and son, threw objects around the house, punched a hole in the wall with your fist, and broke a mirror with your fist.
 - (2) You wrongfully threatened to use physical violence against your wife and son.
 - (3) You threw a burning cigar at your son, striking him in the head.
 - (4) You retrieved your .45 caliber handgun from its carrying case, loaded a magazine into it, and, in the presence of your wife and son, cocked the weapon while saying "lock and load" several times, leading your wife and son reasonably to believe you intended to shoot them.

As a result of your misconduct on 19 Feb 98, you were arrested for aggravated assault and incarcerated until 23 Feb 98. On 27 Jul 98, you pled "no contest" to, and were convicted of, two counts of felony aggravated assault against your wife and son. On 2 Sep 98 you were sentenced to probation.

d. On 8 Mar 97, in Derby, Kansas, you became violent during an argument with your wife over a cordless drill. For this misconduct, the Derby Police Department cited you for disorderly conduct.

e. On 13 Dec 96 in Derby, Kansas, you, while intoxicated, became violent and frightened your family and a child who was visiting your home. You yelled at your wife and threw objects around your home. When your 10-year-old son, [REDACTED] attempted to call the police, you took the cordless phone from him, struck him in the face with the phone, threw him onto the couch and ripped the phone's base station from the wall. As a result of your misconduct on 13 Dec 96, you were arrested by Derby Police Department officers for battery and disorderly conduct and were incarcerated at the Sedgwick County Detention Facility until 14 Dec 96.

f. In Jan 92 at Minot AFB, North Dakota, during a dispute with your wife, [REDACTED] you became violent and kicked down a door inside your home. For this misconduct, the security police detained you.

3. The least favorable character of discharge that the Secretary of the Air Force may approve in this case under AFI 36-3206, paragraph 3.1 is under other than honorable conditions (UOTHC). Attached are copies of documentary evidence to support this action.

4. Sign and date the attached memoranda of acknowledgment immediately upon receiving this notification memorandum. Give one copy of the acknowledgment memorandum to me. If you decline to acknowledge receiving this notification memorandum, I will note the date and time that you declined to acknowledge receiving it. The notification and acknowledgment memoranda will become a part of your case file.

5. Familiarize yourself with AFI 36-3206, particularly the rights you have and the actions the MAJCOM may take on receipt of your reply to the action initiated. Contact the Office of the Area Defense Counsel (ADC), Building 750, 53155 Kansas Street, Suite 208, McConnell Air Force Base, Kansas, 67221-3608; DSN 743-4375, Commercial (316) 652-4375, and you will be assigned a military defense counsel. Your military defense counsel will, at no cost to you, discuss the procedures involved and your rights and options. If you decline military counsel, you must contact Capt Darlene Hudson, Chief, Military Personnel Flight (MPF), 22 MSS/DPM, Building 795, McConnell Air Force Base, Kansas; DSN 743-3761, commercial (316) 652-3761, for counseling about your rights and options. If you do not take action or respond as specified in the following paragraphs, the MAJCOM will proceed with further action under AFI 36-3206.

6. Within 10 calendar days after you receive this notification memorandum, indorse it, through me, to HQ AMC/DPPFQ, 100 Heritage Drive, Room 102, Scott AFB, Illinois, 62225-5002. The MAJCOM will proceed with further action under AFI 36-3206 if I do not receive the indorsement within the allotted time. Include in your indorsement:

a. A statement of whether you want to comment or submit documentary evidence that you want considered in evaluating your case. Attach any statements or documentary evidence. If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. If you have requested more time to respond to the action initiated, attach a copy of your request.

b. A statement that your military defense counsel (identify him or her by full name and rank) counseled you and that you fully understand your rights and options in this action. If you decline military counsel, so state and confirm that [REDACTED] Chief, Military Personnel Flight, counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of education assistance, special pay, or bonuses received if you haven't completed the period of active duty you agreed to serve:

- Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.
- Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.
- Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.
- The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.
- If you dispute that you are indebted for educational assistance, the board of inquiry, or, if you do not choose or are not entitled to a board of inquiry, an authority appointed by the MAJCOM, will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, paragraph 4.37, regarding special rules for recoupment.

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the retirement application or the resignation.

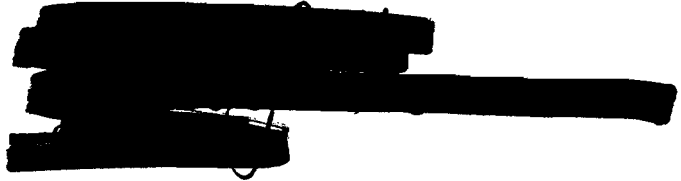
e. A statement that your military defense counsel or the Chief of the Military Personnel Flight explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

7. In response to this notification memorandum, you may, within 10 calendar days, tender your resignation to me under AFI 36-3207, Chapter 2, Section B, with the understanding that, if the

Secretary of the Air Force accepts your resignation, you may receive a discharge under honorable conditions (general) unless the Secretary of the Air Force determines that you should receive an honorable discharge. If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon as possible but no later than 10 calendar days after the date that the MPF receives separation instructions.

8. Actions required under AFI 31-501 are not applicable.

9. You may request excess leave if the Air Force does not require your further participation in processing your case.



Attachments:
(Listed on Next Page -
1a-lu, 2, 3, 4)