

Nonjudicial Punishment

PROVISIONS OF UCMJ, ARTICLE 15

Under the provisions of UCMJ, Article 15, commanding officers may impose nonjudicial punishment upon soldiers who commit minor offenses within their units. These soldiers include commissioned officers, warrant officers, and other soldiers whether attached or assigned. Nonjudicial punishment is not the same as nonpunitive disciplinary measures, which Chapter 2 of this manual discusses.

To be punished under an Article 15, soldiers must violate the UCMJ, that is, their conduct must be criminal. However, the crime must be minor in order for nonjudicial punishment to be appropriate. Ordinarily, if the accused is tried by general court-martial, a minor offense does not include misconduct that is punishable by dishonorable discharge or confinement for more than one year. All circumstances surrounding the offense and the personal history of the offender should be considered.

AUTHORITY TO IMPOSE AN ARTICLE 15

Any commanding officer, including a warrant officer in command, may impose an Article 15 unless a superior commander has restricted or withheld the authority to do so. For example, general officers in command often reserve to themselves the authority to impose nonjudicial punishment upon their officers. Only commanding generals and general court-martial convening authorities may delegate Article 15 authority. In no case may noncommissioned officers impose nonjudicial punishment, even on behalf of commanders.

Company grade officers in command may impose nonjudicial punishment as outlined in Table 1, shown on the next page. If a company grade officer does not feel that company grade punishment is adequate for an offense, he should forward the case to the field grade commander with a request that the field commander exercise authority under the provisions of UCMJ, Article 15. The company grade commander may not, however, recommend what punishment the offender should receive.

A field grade officer may return a case to a company grade officer for disposition. In no case may a superior direct that a subordinate commander take action under Article 15, nor may the superior dictate to a subordinate the type of punishment to be administered under Article 15. A field grade officer in command may impose punishment as outlined in Table 1.

CONDUCT OF AN ARTICLE 15

Before taking action under Article 15, you must be satisfied that the misconduct was a UCMJ offense and that an Article 15 is appropriate in view of the soldier's record. To determine if a crime has been committed, consult the subparagraphs under the appropriate punitive article in the MCM, Part IV.

Summarized Proceedings

You may use summarized proceedings when dealing with the misconduct of your enlisted soldiers. Punishment under summarized procedures will not exceed 14 days of restriction, 14 days of extra duty, an oral reprimand or admonition, or any combination of these. An imposing commander or a designated subordinate (officer or noncommissioned officer in the pay grade of E7 or above) will inform the accused—

- Of the nature of the alleged offenses and the UCMJ articles violated.
- Of the intent to use summarized proceedings under UCMJ, Article 15.
- Of the maximum punishment.
- That he has the right to remain silent.
- That he has the right to demand trial.
- Of the consequences of a demand for trial. (See MCM, Part V, paragraph 4a(5) and DA Form 2627-1, note 3.)
- That he has the right to confront witnesses, examine adverse evidence, and submit matters in defense, extenuation, and mitigation.
- That he has the right to appeal.

The accused must have reasonable time (normally 24 hours) to decide whether to demand trial or gather matters for defense, extenuation,

and mitigation. He has no right to consult with legal counsel or to have a spokesperson at the proceedings. He also may not request an open hearing.

Summarized proceedings are legibly recorded on DA Form 2627-1, which will remain in the local unit personnel files for two years or until the soldier transfers out of the unit, whichever occurs first.

Formal Proceedings

Formal proceedings for an Article 15 under UCMJ begin with the initial notification and conclude with the appeals process.

NOTIFICATION

AR 27-10, Appendix B, contains a guide for nonjudicial punishment proceedings. Your first step in conducting an Article 15 is to notify the soldier both orally and in writing. You or your designated subordinate (officer or noncommissioned officer in the grade of E7 or above) must inform the soldier of your intent to initiate the process. The initial notification must include a brief statement of the offense. Describe the offense to the soldier in simple language and then record your discussion in items 1 and 2 of DA Form 2627. Use the model specification forms in MCM, Part IV, to draft item 1 on the form. You must also tell the soldier the maximum punishment that he could receive under Article 15.

**TABLE 1. MAXIMUM NONJUDICIAL PUNISHMENTS UNDER ARTICLE 15
(Formal Proceedings)**

Commanding Officer	Admonition or Reprimand	Restriction	Extra Duties	Correctional Custody	Forfeiture of Pay	Reduction in Rank
Company Grade:						
E-5 to E-9	Yes	14 days ¹	14 days ¹	No	7 days	No
E-1 to E-4	Yes	14 days ¹	14 days ¹	7 days ^{2,3} (E-1 to E-3)	7 days	To one grade lower
Field Grade:						
E-5 to E-9	Yes	60 days	45 days	No	½ pay per month for 2 months	To one grade lower if within promotion authority ⁴
E-1 to E-4	Yes	60 days	45 days	30 days	½ pay per month for 2 months	To one or more grades lower
¹ Restriction and extra duty may be combined, but in such a case, the total may not exceed the maximum allowed for extra duty.				³ Enlisted soldiers with pay grades of E-1 to E-3 may be confined for 3 days on bread and water when attached to or embarked on a vessel.		
² Enlisted soldiers with a pay grade of E-4 may not be placed in correctional custody, but if their rank is reduced to a pay grade of E-3, they may be placed in correctional custody as a part of the same punishment.				⁴ The promotion authority for pay grades E-7, E-8, and E-9 rests with Headquarters, Department of the Army; AR 600-200 (paragraph 7-36) prohibits reduction in rank for misconduct of soldiers in these pay grades.		

RIGHTS OF ACCUSED

You or your designated subordinate must advise the accused of his rights as follows:

- **The right to demand trial by court-martial.** Unless attached to or embarked on a vessel, soldiers have the right to demand court-martial in lieu of an Article 15. You must also inform them of the consequences of their demand for trial. (See MCM, Part V, paragraph 4a(5), and DA Form 2627, Note 3.)
- **Rights under UCMJ, Article 31(b).** You must inform soldiers of their right to remain silent and warn them that anything they say may be used against them.
- **The right to consult with counsel.** You must tell the accused where to find counsel and give him time off to consult with counsel. The accused must have reasonable time to review the evidence with counsel or a personal representative and to make the necessary decisions on such matters as the right to demand court-martial. In determining the period of time, consider such factors as the gravity of the offense and the availability of counsel. Generally, 48 hours is reasonable.
- **The right to an informal public hearing.** You must tell the accused of his right to fully present evidence and to be accompanied by a spokesperson.

ACKNOWLEDGEMENT

The accused must acknowledge notification by completing DA Form 2627, item 3. The subsequent course of the proceeding depends upon the accused's decisions regarding the following.

Demand for court-martial. If the soldier demands trial by court-martial, you must terminate the Article 15 and decide whether to prefer court-martial charges.

Waiver of court-martial and failure to submit matters or demand a hearing. If the accused chooses this option, you may determine his guilt and immediately impose punishment.

Waiver of court-martial and hearing with submission of matters. If the accused chooses

this option, you must consider the matters before deciding whether to impose punishment. If the matters persuade you that the accused is innocent or that you have a valid reason for not punishing him, simply terminate the Article 15. If, after considering the matters, you are convinced beyond a reasonable doubt that the accused is guilty and nonjudicial punishment is appropriate, you may impose it.

Waiver of court-martial and demand for hearing. In this case, you must arrange for and conduct a hearing before deciding whether to impose nonjudicial punishment.

Often, commanders conduct hearings in their offices. You must personally conduct the hearing except in rare circumstances in which doing so is not practicable. Then, you must appoint another officer to conduct the hearing. Afterwards, the appointed officer should submit a summary and written recommendations to you.

You should initiate the hearing by advising the accused of his rights under UCMJ, Article 31. During the hearing, a spokesperson may represent the accused. That person need not be an attorney, and his participation in the case must be voluntary. The government will not pay travel fees or other costs to ensure the spokesperson's presence at the hearing.

Neither the accused nor the spokesperson may examine or cross-examine witnesses without your permission; however, the accused or the spokesperson may brief you on the relevant issues and areas of suggested inquiry. You should explore those issues and areas when questioning witnesses.

The accused may indicate which witnesses he prefers at the hearing. If those witnesses are reasonably available, you must arrange for their presence. The government will not pay witness or transportation fees to ensure their presence. Reasonably available witnesses include those on duty at the installation and those whose presence can be arranged without spending government travel funds and whose attendance at the hearing will not materially delay the proceedings.

The accused may waive personal appearance at the hearing and instead submit written matters to you for consideration. You should give such matters due consideration before deciding about the case.

PUNISHMENT

Table 1 outlines the maximum nonjudicial punishments authorized under Article 15. Note that a field grade commander may impose greater punishment than a company grade commander. However, a field grade commander and a company grade commander may not both impose an Article 15 for the same act of misconduct. Nor will a commander ordinarily impose an Article 15 for the same offense over which a civil court has exercised jurisdiction or an offense the commander plans to recommend for a court-martial.

You must also be aware of certain limitations on punishment. You must base any forfeiture of pay upon the grade to which an offender is reduced and not upon his original grade, even if the reduction is suspended. You may combine restriction and extra duties, but only for the maximum time allowed for extra duties alone. In no case may you combine restriction or extra duties with correctional custody. (See AR 27-10, paragraph 3-19b(8).)

You must personally inform the offender of the punishment. At that time, you may explain any factors you considered when you decided on the punishment. You should also inform the offender of his right to appeal and explain how to do so.

According to AR27-10, paragraph 3-6, indicate on the DA Form 2627 where to file the record of nonjudicial punishment.

CLEMENCY POWER

To realize the full effectiveness of Article 15, you should be aware of your power to grant clemency and your duties and responsibilities should an offender decide to appeal. You may delay executing punishment no more than 30 days. Otherwise, unsuspended punishments are effective when you impose them. Under Article 15, you may suspend, mitigate, remit, or

set aside punishment if you conclude that the circumstances of the case warrant it. This power gives you effective means for rehabilitating offenders.

Suspension. Suspension permits offenders to demonstrate good conduct and efficiency. It provides them with an incentive to stay out of trouble. You may suspend the unexecuted portion of any punishment for a reasonable time, not to exceed six months. In fact, the MCM permits you to suspend a reduction in grade or forfeiture of pay any time within four months after you have imposed it, even if you have already executed it. For example, if you reduced a soldier from E3 to E2 in January, and he performs well later, you may suspend the reduction any time before May.

You may consider suspension in all cases, but it is most effective with offenders who have no previous disciplinary problems. You may use suspension to rehabilitate soldiers whose disciplinary problems might otherwise continue. However, no personnel actions favorable to the offender may be taken during his suspension. If during the probation period the offender commits further acts which are considered misconduct under the UCMJ, you may terminate the suspension and put the original punishment into effect. (See AR 27-10, paragraph 3-25.)

Mitigation and remission. Mitigation reduces the punishment's severity and is appropriate when offenders demonstrate subsequent good conduct that merits a decrease in punishment. Mitigation is also warranted when the punishment is disproportionate to the offense. For example, you may reduce 14 days of extra duty to 7 days of extra duty, or you may reduce a forfeiture of pay in amount or duration.

Remission is appropriate under the same circumstances as mitigation.

Set-aside. You may set aside an Article 15 when you are convinced that an injustice has occurred. When you set aside an Article 15, return all rights, privileges, and property. A set-aside would be appropriate, for instance, in a

case in which new evidence or information proves the accused is innocent.

APPEALS

All soldiers receiving an Article 15 have the right to appeal the punishment. This right does not conflict with an accused soldier's consent to the Article 15 proceeding, because his consent is merely a waiver of the right to demand a trial, not an admission of guilt. Appeals should be handled promptly. After considering an appeal, the next higher commander may approve or reduce the punishment but not increase it.

The accused should submit the appeal through the commander who imposed the punishment. An appeal not submitted within five days of imposition of punishment will be waived unless the soldier can show good cause for the delay. The accused may submit written statements regarding the offense or the appropriateness of the punishment. The commander who imposed the punishment should consider these statements and, if warranted, modify the punishment.

You should treat the appeal as a request for reconsideration. If you suspend, mitigate, or remit the punishment, determine if the accused wishes to voluntarily withdraw his appeal. If the accused refuses or you take no modification action, you must forward the appeal to the next higher commander. If forwarding is necessary,

be sure that the soldier receives any help he needs to prepare the appeal, including preparation of any written statements he wishes the reviewing authority to consider.

If you have not acted on a soldier's appeal within five days of its submission, upon request by the soldier, you will postpone any remaining punishment involving restraint or extra duty until you act on the appeal. (For summarized proceedings, the limit is three calendar days.)

You should complete the necessary portions of DA Form 2627 and make any necessary rebuttals. Then forward the file to your immediate superior, who is then responsible for acting on the appeal. Certain punishments, however, require a judge advocate's review before the superior commander's action on the appeal. (See DA Form 2627, note 9.)

You may announce the disposition of all cases involving nonjudicial punishment, including action taken on previously imposed Articles 15. You may do this orally at a routine unit formation and may also post a completed DA Form 2627 on the unit bulletin board or elsewhere routine notices are placed. Before announcing Article 15 disposition for personnel in pay grades E5 and above, you must consider the impact on unit morale and the possibility of impairment to the soldier's job or leadership effectiveness.