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TDS INFO PAPER #1
Nonjudicial Punishment
&
Nonpunitive Measures
AR 27-10 / Manual for Courts-Martial ("Article 15")

I. Use of Nonjudicial Punishment--AR 27-10, Chapter 3, Section I.

- A. A commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial punishment.**
- 1. Nonpunitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies.**
 - (a) Denial of pass or other privileges**
 - (b) Oral or written counseling**
 - (c) Administrative reduction in grade**
 - (d) Administrative reprimands and admonitions**
 - (e) Extra training**
 - (f) Bar to reenlistment**
 - (g) MOS reclassification**
 - 2. Nonjudicial punishment is imposed to correct misconduct resulting from intentional disregard of or failure to comply with prescribed standards of military conduct in cases involving minor violations of the UCMJ in which nonpunitive measures are considered inadequate or inappropriate.**
- B. Prompt action is essential for nonjudicial punishment to have the proper corrective effect. Statute of limitations applicable to nonjudicial punishment is 2 years. Article 43(b)(2), U.C.M.J.**

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II. Personal Exercise of Discretion--AR 27-10, paragraph 3-4.

- A. A commander will PERSONALLY exercise discretion in the nonjudicial punishment process by:
1. Evaluating the case to determine whether proceedings under Article 15 should be initiated. **COMMON ERROR:** Block 2 of DA Form 2627 unsigned or signed by First Sergeant. (“Should this be an Article 15?”)
 2. Determining whether the soldier committed the offense(s) where Article 15 proceedings are initiated and the soldier does not demand trial by court-martial. (“Does the evidence show the soldier is guilty of the suspected offense(s) beyond a reasonable doubt?”)
 3. Determining the amount and nature of any punishment, if punishment is appropriate. (“Given the soldier is guilty, what is the appropriate punishment for the offense(s) and the soldier?”)
- B. Nonjudicial punishment should be administered at the lowest level of command commensurate with the needs of discipline. No superior may direct that a subordinate authority impose punishment under Article 15 or issue regulations, orders or so-called “guides” that certain categories of offenders or offenses should be disposed of by punishment under Article 15, or that predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses. However, a superior commander may reserve the right to exercise Article 15 authority over a particular case or over certain categories of offenders or offenses (normally done for NCO offenses, weapons, alcohol or drug offenses).

III. Filing Determination--AR 27-10 paragraphs 3-6, 3-37b.

- A. For soldiers in the grade of E4 (SPC or CPL) and below (prior to punishment) the original DA Form 2627 will be filed locally in unit nonjudicial punishment files. Such locally filed originals will be destroyed at the end of 2 years from the date of imposition of punishment or on the soldier’s transfer to another general courts-martial convening authority, whichever comes first.
- B. For all other soldiers, the original will be sent to the appropriate custodian for filing in the OMPF. The decision to file the original DA form 2627 on the performance fiche or the restricted fiche in the OMPF will be determined by the imposing commander at the time punishment is imposed.

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- C. A commander's decision whether to file a record of nonjudicial punishment on the performance fiche of a soldier's Official Military Personnel File (OMPF) is as important as the decision relating to the imposition of nonjudicial punishment itself. That decision is NOT subject to change on appeal.
- D. If a record of nonjudicial punishment has been designated for filing in a soldier's restricted fiche, the soldier's OMPF will be reviewed to determine if the restricted fiche contains a previous record of nonjudicial punishment. In those cases where a previous DA Form 2627, which has not been wholly set aside, has been filed in the restricted fiche, and the soldier, prior to that punishment, was in the grade of SGT or higher, the present DA Form 2627 will be filed in the performance fiche.

IV. Notification and Explanation of Rights--AR 27-10, paragraph 3-18.

- A. General. The imposing commander will ensure that the soldier is notified of the commander's intention to dispose of the matter under the provisions of Article 15. The soldier will also be notified of the maximum punishment which the commander could impose under Article 15. The imposing commander may authorize a commissioned officer, warrant officer, or NCO (SFC or above) to inform the soldier of the soldier's rights.
- B. Right to remain silent. The soldier will be informed that the soldier is not required to make any statement regarding the offense and that any statement may be used against the soldier in the Article 15 proceedings or in any other proceedings, including a trial by court-martial.
- C. Right to Counsel. The soldier will be informed of the right to consult with counsel and the location of counsel.
- D. Right to demand trial. The soldier will be advised that the soldier has a right to object to proceedings under Article 15 and can demand trial by court-martial instead. The demand for trial may be made at any time prior to imposition of punishment. The soldier will be told that if the soldier demands trial, trial could be by summary court-martial (SCM), special court-martial (SPCM), or general court-martial (GCM). The soldier will also be told that the soldier may object to trial by SCM and that at SPCM or GCM the soldier would be entitled to be represented by qualified military counsel, or by civilian counsel obtained at no government expense.

E. Other rights. The soldier will be informed of the right to:

1. Fully present the soldier's case in the presence of the imposing commander.
2. Call witnesses.
3. Present evidence.
4. Request that the soldier be accompanied by a spokesperson.
5. Request an open hearing.
6. Examine available evidence. **COMMON ERROR:** No supporting documentation other than blotter for DWI; government resistance to giving full disclosure in urinalysis cases.

The soldier will be provided with a copy of DA Form 2627 *and supporting documents and statements*, for use during the proceedings (emphasis added).

AR 27-10, paragraph 3-18a.

F. Decision period.

1. If the soldier requests a decision period, the soldier will be given a reasonable time to consult with counsel, including time off from duty, if necessary, to decide whether or not to demand trial. Normally, 48 hours is a reasonable decision period. If the soldier does not request a delay, the commander may continue with the proceedings immediately.
2. Prior to deciding whether to demand trial, the soldier is not entitled to be informed of the type or amount of punishment the soldier will receive if nonjudicial punishment ultimately is imposed. The soldier will be informed of the maximum punishment that may be imposed under Article 15 and, on the soldier's request, of the maximum punishment that can be adjudged by court-martial on conviction of the offense(s) involved.
3. If the soldier does not demand trial by court-martial prior to expiration of the decision period the imposing commander may continue the proceedings. The imposing commander also may continue the proceedings if the soldier, even though demanding trial, refuses to complete or sign item 3, DA Form 2627, within the prescribed time.

G. Hearing.

1. In the presence of the commander the soldier will be allowed to personally present matters in defense, extenuation, or mitigation.
2. Ordinarily, hearings are open. However, a soldier may request an open or closed hearing. In all cases, the imposing commander will determine whether the hearing will be open or closed.

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- H. Spokesperson. The person who may accompany the soldier to the Article 15 proceeding and who speaks on the soldier's behalf need not be a lawyer. An offender has no right to legal counsel at the nonjudicial proceedings. The soldier may retain civilian counsel to act as the soldier's spokesperson at no cost to the Government. However, the commander need not grant a delay for the appearance of any spokesperson, to include civilian counsel so retained. Neither the soldier nor spokesperson (including any attorney present on behalf of the soldier) may examine or cross-examine witnesses, unless permitted by the imposing commander. The soldier or spokesperson may, however, indicate to the imposing commander relevant issues or questions they wish to explore or ask.
 - I. Witnesses. The soldier's request for witnesses shall be restricted to those witnesses reasonably available as determined by the imposing commander. Note that the Article 15 handout provided to the soldier contains a form memo to the commander requesting witnesses for the hearing.
 - J. Evidence. The imposing commander may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the offense.
 - K. Action terminating proceedings. If, after evaluation of all pertinent matters, the imposing commander determines that nonjudicial punishment is not warranted, the soldier will be notified that the proceedings have been terminated and all copies of DA Form 2627 will be destroyed.
 - L. Imposition of punishment. Punishment will not be imposed unless the commander is convinced *beyond a reasonable doubt* that the soldier committed the offense(s).
- V. Punishment Rules and Limitations--AR 27-10, Section IV; para 5, Part V, Manual for Courts-Martial.
- A. Restriction.
 - 1. Company Grade: 14 days.
 - 2. Field Grade: 60 days; however, if any extra duty is imposed, maximum restriction is 45 days.

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B. Extra Duty.

1. Company Grade: 14 days.
2. Field Grade: 45 days.
3. Extra duty may be required to be performed at any time and, within the duration of the punishment, for any length of time. No extra duty may be imposed that:
 - (a) Constitutes cruel or unusual punishment or a punishment not sanctioned by the customs of the service; for example, using the offender as a personal servant.
 - (b) Is a duty normally intended as an honor, such as assignment to a guard of honor.
 - (c) Is required to be performed in a ridiculous or unnecessarily degrading manner; for example, an order to clean a barracks floor with a toothbrush.
 - (d) Constitutes a safety or health hazard to the offender.
 - (e) Would demean the soldier's position as an NCO or specialist.

C. Reduction.

1. Company Grade: E4 and below: one grade.
2. Field Grade: E4 and below: one or more grades.
E5 and E6: one grade.

D. Forfeiture of Pay.

1. Company Grade: 7 days' pay.
2. Field Grade: ½ of 1 month's pay for 2 months.

- E. **Effective Date and Execution of Punishments.** Unsuspended punishments of reduction and forfeiture of pay take effect on the date imposed. Other unsuspended punishments take effect on the date they are imposed, unless the imposing commander prescribes otherwise. In those cases where the execution of the punishment legitimately must be delayed (for example, the soldier is hospitalized, placed on quarters, authorized emergency leave or on brief period of TDY or a brief field problem) the execution of the punishment should begin immediately thereafter. Once commenced, deprivation of liberty punishments will run continuously, except where temporarily interrupted due to the fault of the soldier, or the soldier is physically incapacitated, or an appeal is not acted on within 5 calendar days and the soldier requests that the performance of those punishments involving deprivation of liberty be interrupted pending decision on the appeal. **COMMON ERROR:** Command not counting field time after punishment imposed. Punishments must run concurrently and consecutively; command cannot impose 14 days of restriction to run on the next seven weekends, nor can they impose seven days of restriction to be followed by seven days of extra duty.
- F. **Announcement of Punishment.** The punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. It also may be posted on the unit bulletin board.
- G. **Suspension.** Punishment may be suspended to grant a probationary period during which a soldier may show that he deserves a remission of the remaining suspended punishment. Suspension of punishment may not be for a period longer than 6 months from the suspension date. Note: Suspension affects the time the soldier is flagged; the flag stays in place until completion of the Article 15 punishment, to include any period of suspension. AR 600-8-2, paragraph 1-12a(3).
- H. **Vacation.** A commander may vacate any suspended punishment where the commander has determined that the soldier has committed misconduct during the suspension period. There is no appeal from a decision to vacate a suspension. Unless the vacation is prior to the expiration of the stated period of suspension, the suspended punishment is remitted automatically without further action. Misconduct resulting in vacation of a suspended punishment may also be the basis for the imposition of another Article 15.
- I. **Appeals--AR 27-10, Section VI.** Only one appeal is permissible under Article 15 proceedings. An appeal not made within 5 calendar days after the punishment is imposed may be rejected as untimely. If, at the time of imposition of punishment, the soldier indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 5-day period.